



**Halifax Planning Board
Meeting Minutes
September 19, 2019**

Official

A meeting of the Halifax Planning Board was held on Thursday, September 19, 2019, at 6:30 p.m. at the Halifax Town Hall, Selectmen's Meeting Room, 499 Plymouth Street, Halifax, Massachusetts.

Members Present: Gordon Andrews, Jonathan Soroko, Mark Millias, Amy Troup

Absent: Karlis Skulte

The meeting was called into session at 6:30 p.m. and the agenda was read into the minutes by Gordon Andrews.

Motion to accept the agenda as read:

MOTION: Mark Millias

SECOND: Jonathan Soroko All in favor

Ms. Troupe joins the meeting.

Appointment

6:30 p.m. Amanda Estates – Site Plan Modification

Gordon C. Andrews, The Party Trust (Amanda Monti and Ed Johnson) and Attorney Adam Brodsky are present.

Motion to continue the public hearing for Amanda's Estates site plan modification:

MOTION: Jonathan Soroko

Chairman Andrews recuses himself. Mr. Millias becomes acting Chairman for this hearing.

Mr. Millias asks for a recess. Mr. Soroko postpones the public hearing for a short recess with a return in five (5) minutes. Mr. Millias departs.

Mr. Millias joins the table again and states that he has been asked to recuse himself because of a potential conflict. He asks The Party Trust if they would consider continuing their hearing until he receives a determination from the Ethics Board on whether he can participate. Attorney Brodsky asks if Mr. Skulte is going to review what he has missed in order to participate. Mr. Millias responds that he is sure Mr. Skulte will be up-to-date in order to participate. Mr. Soroko agrees.

Ms. Troup asks what's happening and states the Board doesn't have a copy of a document. Former secretary Ms. Renaud (present for training of current secretary Ms. Snow) responds that the document was for Mr. Millias, not for the rest of the Board. Attorney Brodsky states that he just found out about the request of Mr. Millias' recusal. The Party Trust takes a brief break to discuss their options.

Ms. Troup states that in light of the new docket she doesn't feel the Board should be making a decision now. She adds that it is not up to the Planning Board to waive lot lines and thinks it goes to the Town.

There is discussion if the Board should be talking while in recess. The Board stops talking until Mr. Brodsky returns. Mr. Soroko states that they are back in session.

Mr. Brodsky states they have two problems: He must report back to the land court judge tomorrow. The second is that there is a 45-day time period and The Party Trust is not prepared to waive that at the present. The Party Trust is requesting the Board to hold a special meeting next Wednesday.

Mr. Gordon C. Andrews states that he is representing himself as a private citizen and not as a selectman on this matter. He inquires about the Counsel that may be arriving later this evening.

Town Admin Charlie Seelig answers that she is Land Use counsel and is also a municipal attorney and familiar with state ethics laws and may advise on going to the State Ethics Commission and what the alternatives are for the Planning Board.

Mr. Soroko begins to make a motion to continue the public hearing.

Ms. Troup asks what happens if the Board doesn't have a quorum to vote on the continuation. Attorney Brosky advises Ms. Troup that a quorum is still three members. Ms. Troup responds that Mr. Millias can't vote. Mr. Brodsky states that Mr. Millias has not recused himself. Ms. Troup asks Mr. Millias why he can't make the motion. Ms. Renaud responds it is because he is the Chair at the moment. Ms. Troup understands and informs Ms. Renaud that she is new to the Board.

Motion to continue Amanda's Estates site plan modification public hearing until after the zoning bylaws proposal, public hearing and other meeting to-do's following when Land Use Counsel arrives:

MOTION: Jonathan Soroko

SECOND: Amy Troup All in favor

The Board returns to the regularly scheduled planning board meeting and Chairman Andrews joins the Board/meeting.

Bills:

Motion to pay bill to Plympton-Halifax Express Invoice #10981 = \$1,471.10:

MOTION: Mark Millias

SECOND: Jonathan Soroko All in favor

Minutes:

The Board reviews the minutes for August 1, 2019. Ms. Troup feels a motion she made in regards to the September 19, 2019 hearing and Bylaws is missing from the minutes. Mr. Millias reviews his notes for the 8/1/19 meeting and suggests that maybe there was no official motion. Ms. Troup responds that since it already happened, she is okay with it.

Motion to accept the Meeting Minutes from August 1, 2019:

MOTION: Amy Troup

SECOND: Mark Millias All in favor

Appointment

7:00pm – Public Hearing for Zoning Bylaw Proposals

Motion to open the public hearing for Zoning Bylaw Proposals:

MOTION: Jonathan Soroko

SECOND: Mark Millias All in favor

Mr. Andrews reads each article up for proposal.

ARTICLE 1 To see if the Town will vote to amend Chapter 167-7 (Zoning – Schedule of Use Regulations) from:

| Use | | AR | B | I | I-2 | C |
|-----|--------------------------------|----|---|----|-----|---|
| | Marijuana Establishment [See § | N | N | SP | N | N |

| | | | | | | |
|--|---|--|--|--|--|--|
| | 167- D(15)] [Added 05-08-17 ATM, Art. 48] | | | | | |
|--|---|--|--|--|--|--|

To

| Use | | AR | B | I | I-2 | C |
|-----|--|----|----|----|-----|---|
| | Marijuana Establishment [See § 167- D(15)] [Added 05-08-17 ATM, Art. 48] | N | SP | SP | N | N |

Mr. Andrews opens discuss to the public. A resident at 129 Circuit Street recommends leaving it “as is” and not open it up to commercial business. Two other residents speak against this change also as they feel it is too close to residential areas, too much traffic, etc. There is discussion on spot-zoning. Mr. Seelig states this is not considered spot-zoning. Mr. Gaynor wonders what criteria the Board will use to determine this recommendation. Mr. Seelig refers to special permit regulations in the Bylaw. Mr. Piccirilli feels this would be a logistical problem for the Board to determine if it is detrimental to the neighborhood as asks what makes it a neighborhood. Ms. Troup refers to the criteria in 167-7D(15) Marijuana Establishments in response to Mr. Gaynor’s inquiry which she feels would relate to Article 55 as well.

ARTICLE 2 To see if the Town will vote to amend Chapter 167, Section 7 (D) (15), paragraph 1 to read:

No Marijuana Establishment shall be located within 500 (five hundred) linear feet of any school or child care facility or where children generally congregate, any other Marijuana Establishment, or any establishment licensed to pour alcohol under the provisions of G.L. c 138 § 12 or within 300 (three hundred) linear feet of any parcel zoned agricultural-residential. Distances shall be calculated by direct measurement of a straight line from the nearest property line of the facility or parcel in question to the nearest property line of the Marijuana Establishment.

There is discussion regarding industrial zones being within 300 feet of residential areas. Ms. Troup explains to a resident that it is lot line to lot line. Mr. Seelig brings a Zoning Map of Halifax into the meeting room for viewing.

The Board clarifies to a resident in the audience what is being proposed in this article and the reason the Board feels recommending this change would make things too restrictive.

Mr. Millias and Mr. Chairman explain to the audience that regardless of the Board’s recommendation, the articles still go to the Town Meeting and are voted on by the Town.

ARTICLE 3 To see if the Town will vote to amend Chapter 167-3 (Zoning – Definitions) from:

MARIJUANA ESTABLISHMENT - A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, all as defined [by] the Massachusetts General Laws, Chapter 94H.

To: MARIJUANA ESTABLISHMENT - A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business, all as defined [by] the Massachusetts General Laws, Chapter 94G.

Mr. Millias clarifies that this is more of a technical change from Chapter 94H to 94G due to the definition in State Law changing due to either a typo or renumbering. Mr. Seelig explains the brackets can be eliminated. 94G specifically deals with recreational, not medical marijuana. Mr. Seelig also explains that there is a separate definition for the medical marijuana establishments in our Bylaws.

ARTICLE 4 To see if the Town will vote to approve the following amendments to Chapter 167-7 (D) (12) Zoning Specific use regulations) of the Code of the Town of Halifax:

(e) Special permits for in-law apartments are granted for a period of five years and must be renewed reviewed after the five years. At least ninety (90) days before the end of the five-year period and for each

five-year period after that while the special permit exists, the Zoning Enforcement Officer (ZEO) shall notify the permit holder and the Zoning Board of Appeals that a review of the permit will be conducted. The ZEO shall inspect the structure to ensure that the requirements of Zoning By-law §167-7.D(a) through (c) continued to be satisfied and the permit holder shall provide a sworn affidavit certifying that the requirements of Zoning By-law §167-7.D(a) through(c) continue to be satisfied because the in-law apartment shares a major utility, some shared living space and a shared entrance and is occupied by a relative of the owner and/or resident of the primary dwelling and the in-law apartment has not been converted to an income producing apartment and that any other conditions of approval imposed on the special permit also are satisfied. If the permit holder does not provide such sworn affidavit and/or the ZEO determines that the stipulations of the permit are not being met, the ZEO shall notify, in writing, the Zoning Board of Appeals and the permit holder of same, and provide the permit holder thirty (30) days after such notification to satisfy the requirements of the Zoning By-Law.

If the permit holder, within thirty (30) days of such notification, fails to satisfy the requirements of the Zoning By-Law, said special permit shall expire and a new special permit shall be required.

Mr. Seelig explains the change is just to the one word "renewed" to "reviewed" for the reason that the renewal process every five (5) years is very expensive and time-consuming for the property owner. This does not eliminate the rights of abutters as they can speak with the Zoning Enforcement Officer if they feel there are any issues with the special permit or in-law.

ARTICLE 5 To see if the Town will vote to amend Chapter 167- 7 (C) (Zoning – Schedule of Use Regulations) from:

| Use | AR | B | I | I-2 | C |
|--|----|----|---|-----|----|
| Multifamily dwellings or apartments [See § 167-7D(2).] | SP | SP | N | N | SP |

To

| Use | AR | B | I | I-2 | C |
|---|----|----|---|-----|----|
| Multifamily dwellings or apartments [See § 167-7D(2a).] | SP | SP | N | N | SP |
| Multifamily developments [See § 167-7D(2).] | SP | SP | N | N | SP |

And add to Chapter 167-7 (D) (Zoning – Specific use regulations)

(2a) Multifamily dwellings or apartments are allowable by special permit from the Zoning Board of Appeals in the AR, B and C Districts.

(a) It is required that any multifamily dwelling or apartment building proposed hereunder shall locate the building on one lot which shall have continuous frontage on a public or private way.

(b) The complete lot must be under the ownership of the developer before a special permit is granted.

(c) Design guidelines. The shapes, scale, location and materials of all buildings, lighting, roads and parking shall be consistent with the character of the neighborhood and with the terrain and vegetation of the site.

(d) All utilities connected to a multifamily dwelling or apartment shall be installed underground.

Attorney Brodsky speaks regarding Articles 5, 6, 7, 8 and 9 and asks who proposed these changes. Mr. Seelig responds that Article 5 was proposed by the Board of Selectmen to eliminate any discontinuity. Mr. Brodsky feels that because the multifamily development bylaw and its interpretation is the subject of the pending land court litigation brought by Selectman Gordon C. Andrews regarding the Amanda's Estates project, it is inappropriate for the Planning Board to weigh in on something that is presently in litigation. Mr. Brosky adds that the problem with the changes is that it

essentially eliminates the multifamily development concept. If the intention is to defeat and get rid of multifamily developments in the town, he feels that the way to do that is to eliminate the multifamily development bylaw in 167-12.

Ms. Troup (to Mr. Brodsky): As a resident, I'd like to say that you stating what you're saying for them is also probably not necessarily allowed because you're sort of defining what our bylaws say which is also under litigation if we go by what you say.

Mr. Brodsky responds that he is the attorney speaking on behalf of the property owner in the town and the property owners can be asked if they would like to affirm everything he's saying, if the Board would like to do that.

Ms. Troup: What I'm saying is that if we can't discuss it and make changes, which I'm not disagreeing or agreeing with you but I think the litigation is on what the actual bylaw states and you're stating that the bylaw says you don't need lots and I think that's what the litigation is all about. So, stating that the multifamily development doesn't need lots is actually defining that which is under litigation.

Mr. Brodsky answers that is correct and is the point he was making. He feels the Board is taking sides in the litigation by defining the bylaw in a certain way as a result of these changes, if the Board supports that.

Ms. Troup: I was thinking that zero changes, which I think we stated back in one of our meetings, and I can pull out the minutes, something about the bylaws not being able to be talked about and that's why we didn't have a bylaw committee. Is that correct? The bylaw committee never came around because the litigation was stopping any changes from happening. However, I believe what we were doing that night...(to Mark Millias) was me, you and Karlis that night at that meeting, I don't know who else was at that meeting I don't have it in front of me... was just going off of the one that was changed by the Selectmen which this was on the May Town meeting and we passed over and I wasn't on the Planning Board then. It wasn't voted on, right? We didn't have a hearing like this that's why it didn't happen? Okay. Just for the record, the bylaw changes have been started for the annual May meeting 2019 by the Selectmen, not us.

No more discussion.

ARTICLE 6 To see if the Town will vote to amend Chapter 167-8 (E) (Non-Conforming Uses) of the Code of the Town of Halifax with the following change:

E. Abandonment. No nonconforming use, other than any a single-family detached dwelling, which has been abandoned or discontinued for more than two (2) years shall be re-established. Any future use shall be in conformity with the provisions of this chapter.

The Zoning Board of Appeals may approve a special permit for a single-family detached dwelling which has been abandoned or discontinued for more than two (2) years.

Mr. Seelig explains there may be disagreements about the definition of abandonment, but anyone can go to the Zoning Enforcement Officer and he would have to make a determination based on a number of factors. The idea is to have an opportunity to allow the use to be re-established but only for single-family houses on those lots where there's been abandonment. Mr. Millias adds that this change would keep "us" from devaluing that property and give someone a chance to take an abandoned property and make it valuable again or give them more of a chance to do so.

Resident Joann Andrews feels two years is not enough time for someone who has an abandoned property. Mr. Seelig explains that if someone can show the Building Inspector evidence that the property hasn't been abandoned (i.e. paying taxes) than one can go back and work on the house and improve it.

Ms. Troup asks about a checklist for determining abandonment. Mr. Piccirilli, Building Inspector, feels it doesn't come down to a list, it's an intent to abandon the property – one hasn't been there in years, hasn't paid the taxes or it's in disrepair; he states it's a difficult thing to prove.

Resident wonders if the town is ever responsible for the property to take it down. Mr. Seelig responds only if the town foreclosed on the property would that ever happen, but then some difficult decisions would need to be made.

There is discussion about abandoned, grandfathered lots and what is rebuildable. Land Use Counsel Attorney Amy Kwezell weighs in and shares the general law of abandoned lots and clarifies that we are talking about non-conforming uses. She gives an example of intentional abandonment. The proposed change will prevent this abandonment if it's a single-family house in the three zones of Industrial, Industrial (2) and Conservancy and could be re-established.

Mr. Gordon C. Andrews asks who proposed this bylaw change. Mr. Seelig responds that he did so as the town gets into foreclosure situations the town could take these lots and make them more attractive to a potential buyer to be reused in I, I2 and C zones for the time being, unless the use chart changed.

ARTICLE 7 To see if the Town will vote to amend Chapter 167-3 (Definitions) from:

MULTIFAMILY DEVELOPMENT – A development of three (3) or more dwelling units on a single lot of land under one (1) ownership of not less than ten (10) acres in size.

To: MULTIFAMILY DEVELOPMENT - A development of three (3) or more dwelling units on a single lot of land under one (1) ownership of not less than ten (10) acres in size in accordance Section 167.12(A). AND from:

MULTIFAMILY DWELLING – A building intended and designed to be occupied by more than one (1) family, living independently in separate units; any residential structure containing more than one (1) room for cooking facilities.

To: MULTIFAMILY DWELLING - A building intended and designed to be occupied by more than two (2) families, living independently in separate units.

Mr. Seelig asks the Board (who proposed this change) to expound on their reasoning for it. Mr. Soroko explains that the Board wanted to make certain that under the multifamily development definition there is a reference back to 167-12A showing all conditions.

Ms. Troup declines discussion of changing any bylaws due to pending litigation regarding multifamily developments, making reference to a document dated September 18th. Mr. Seelig asks what document she is referring to. Ms. Troup realizes it wasn't the document she thought it was. Mr. Seelig asks what the document is. Ms. Troup responds that it is a document from the hearing tonight that she received in her meeting folder. She hands the document to Chairman Andrews. Ms. Renaud explains that the document in question is in everyone's folders and is in regards to the Amanda's Estates petition from Attorneys Drohan, Tosh and Morgan dated September 17, 2019. Ms. Renaud will give a copy to Mr. Seelig.

Ms. Troup asks if they are supposed to discuss bylaw changes of this kind during litigation. Attorney Kwezell responds she does not think the Board is foreclosed from doing so pursuant to any statute because a zoning bylaw will take effect on the day that it is adopted, so town meeting vote, and any kind of grandfathering takes effect whenever the Board opens up their 40A Sec 5 hearing, tonight, so the litigation would go back to the bylaw that was in effect that's being litigated over. Ms. Troup asks Mr. Brodsky to clarify what he stated earlier about discussing bylaw changes relating to current litigation. Mr. Brodsky clarifies that he was referring to the Planning Board's position in 2018 when this issue was raised. Attorney Kwezell states that it is up to the Board, but they are not foreclosed from doing so.

The Board decides to go ahead and discuss the articles.

ARTICLE 8 To see if the Town will vote to amend Chapter 167-7D2 (Specific Uses) from:

(b) The complete parcel must be under the ownership of the developer before a special permit is granted.

To: (b) The complete parcel must be under the ownership of the developer or evidence of secured interest in the purchase rights of the included parcels must be provided before a special permit is granted.

Mr. Millias clarifies that this allows someone to understand what the potential for a piece of property is before they buy it.

ARTICLE 9 To see if the Town will vote to amend Chapter 167-10 (General Density) from:

B. A dwelling, building or any structure hereafter constructed or altered in any district shall not be located on a lot having less than the minimum requirements, and no more than one (1) dwelling shall be built upon any single lot, except as hereinafter provided.

To: B. A dwelling, building or any structure hereafter constructed or altered in any district shall not be located on a lot having less than the minimum requirements. No more than one (1) dwelling shall be built upon any single lot, except as herein after provided. Each building must be constructed on an individual lot for multifamily developments in accordance with § 167-12(A).

Mr. Seelig asks the reason for the change. Mr. Millias responds that this change was proposed by Mr. Skulte who is absent. Attorney Kwesell responds the wrong section may have been referenced. 167-12(A) does not mention anything about an individual lot and this will not necessarily clear up 7(D) because the way it's written doesn't provide for multifamily developments, but the bylaw does. There is discussion whether Article 10 clarifies this. Attorney Kwesell does not believe it does.

A resident asks the major difference between a multifamily apartment and a multifamily development. Ms. Troup responds that this is currently under litigation. Mr. Millias responds that the answer could be as simple as a multifamily dwelling covers up to two residences. A multifamily development is one building with more than two or split up where there would be more than two dwellings in any building. There is a question about the difference between a duplex and a multifamily. Chairman Andrews responds that a duplex is a two-family. Attorney Kwesell responds that according to the bylaws duplex buildings need to be side by side. Two-family definition is discussed and there is agreement that there is much confusion.

ARTICLE 10 To see if the Town will vote to amend Chapter 167-12 (Density Regulations for Specific Use) from:

A. Multifamily development

- (1) The number of units in a multifamily development shall not exceed the number of acres in the parcel on which they are to be built.
- (2) Eighty percent (80%) of the total parcel tested on a two-hundred-foot by two-hundred-foot grid must be found to be percreable by the Board of Health.
- (3) The minimum parcel size shall be ten (10) acres.
- (4) No unit shall have any more than two and one-half (2½) stories which contain any amount of living space. This limitation will be enforced by a covenant with the purchaser of each unit.
- (5) The minimum front setback shall be seventy-five (75) feet, the minimum rear yard shall be one hundred (100) feet, and there shall be at least one hundred (100) feet between any two (2) buildings. In addition, the required thirty-foot minimum side yard between the development and adjacent properties shall be maintained as a vegetated buffer area free of parking or any structures, and any changes in its natural state shall require approval by the special permit granting authority.
- (6) Minimum residential floor area. No multifamily housing, whether condominium or rental, shall be erected, reconstructed, remodeled or altered so that the lowest level (i.e., ground floor or equivalent) of living space per dwelling unit (i.e., in a unit) contains less than seven hundred fifty (750) square feet.
- (7) Fire protection in condominium developments.
 - (a) Every multifamily development, whether condominium or rental, built after 1984 shall install an automatic fire-detection system in each building. This system shall not include the smoke-detection systems unless so directed by the State Building Code or MGL c. 148, § 26C. The automatic fire-detection system shall be wired into the fire station, and the alarm notification system shall be compatible to the present alarm notification system. All expenses of the installation, including the tie-in at the fire station, shall be borne by the developer. The system shall be approved by the Fire Chief before any construction is started on the site. The maintenance of the system shall be the responsibility of the owner or condominium association, if any.
 - (b) Every multifamily development, whether condominium or rental, built after 1984 shall have a hydrant system which is capable of supplying the required fire flow, plus fifty percent (50%). The water main shall not be less than eight inches in diameter, and the system shall be looped with no dead ends. All hydrants shall be set at five hundred (500) feet apart within the development. 167:3005-14-2012
 - (c) Every multifamily development, whether condo minimum or rental, shall supply adequate space in front of each building for fire apparatus to approach the buildings. This open space shall

be kept open at all times. If said space is blocked by a vehicle, it shall be towed at the owner's expense. This order to tow may be given by either the Police or Fire Department.

To: A. Multifamily development

(1) The number of units in a multifamily development shall not exceed the number of contiguous upland acres in the parcel on which they are to be built, as defined by Section 167-10(M).

(2) Percolation testing shall be performed and witnessed by the Board of Health in accordance with 310 CMR 15.00 (Title V) demonstrating that proposed areas for primary and reserve sanitary sewer leaching fields are suitable for development.

(3) The minimum parcel size for a multifamily development shall be ten (10) acres with 110 ft of frontage prior to development. Each lot containing a multi-family building shall have a minimum of 40,000 square feet in a rea in accordance with Section 167-10(M).and 150 ft of frontage.

(4) No building shall have any more than two and one-half (2½) stories which contain any amount of living space. This limitation will be enforced by a covenant with the purchaser of each unit.

(5) The minimum front yard shall be seventy-five (75) feet, the minimum rear yard shall be one hundred (100) feet, and a minimum of seventy-five (75) feet shall be provided between any two buildings. A minimum thirty-foot undisturbed vegetated buffer free of parking or any structures shall be provided between the development and adjacent properties. Any changes in its natural state shall require approval by the Planning Board as part of the Site Plan Review under § 167-28.

(6) Minimum residential floor area. No multifamily housing, whether condominium or rental, shall be erected, reconstructed, remodeled or altered so that the smallest dwelling unit contains less than seven hundred fifty (750) square feet of living space, excluding areas reserved for parking or garages.

(7) The stormwater management system shall be designed in accordance with the Massachusetts Stormwater Management Handbook and shall meet the Massachusetts Stormwater Management Standards as defined in 310 CMR 10.05(6)(k).

(8) Fire protection in condominium developments.

(a) Every multifamily development, whether condominium or rental, built after 1984 shall install an automatic fire-detection system in each building. This system shall not include the smoke-detection systems unless so directed by the State Building Code or MGL c. 148, § 26C. The automatic fire-detection system shall be wired into the fire station, and the alarm notification system shall be compatible to the present alarm notification system. All expenses of the installation, including the tie-in at the fire station, shall be borne by the developer. The system shall be approved by the Fire Chief before any construction is started on the site. The maintenance of the system shall be the responsibility of the owner or condominium association, if any.

(b) Every multifamily development, whether condominium or rental, built after 1984 shall have a hydrant system which is capable of supplying the required fire flow, plus fifty percent (50%). The water main shall not be less than eight inches in diameter, and the system shall be looped with no dead ends. All hydrants shall be set at five hundred (500) feet apart within the development.

(c) Every multifamily development, whether condominium or rental, shall supply adequate space in front of each building for fire apparatus to approach the buildings. This open space shall be kept open at all times. If said space is blocked by a vehicle, it shall be towed at the owner's expense. This order to tow may be given by either the Police or Fire Department.

There is discussion regarding A(2). Mr. Chairman explains that this change was to clean up the grid regarding perking.

The Building Inspector, referencing A(1), asks if multifamily developments are under 12(A) and asks "isn't 167-10 general?" He wonders why the Board is going from specific to general. Mr. Chairman responds that M talks about the wetlands as defined in Mass General Law 131. Mr. Piccirilli points out that this is general density and multifamily is

specific density. Ms. Troup responds that they don't know as it is under litigation and feels "general" encompasses the town. Mr. Piccirilli responds that with a special permit one can have a general or specific. Mr. Seelig points out that 167-10 is General Density Regulations and then under 167-12 you have Density Regulations for Specific Uses. One of those uses is for Multifamily Developments. Ms. Troup responds that there's a bylaw that states stricter of the law...if it's referring to density, she'd go with stricter...or anything.

Mr. Seelig asks what the Board of Health's reaction was to the proposed perc-ing requirement change in A(2) in terms of how it would change the ability to do the developments. Mr. Chairman stated that the Planning Board did not go to the Board of Health. Mr. Seelig responds that he would think that the Planning Board would want to get information specifically on what would happen. Mr. Chairman states that there's a member from the Board of Health present. Mr. Alan Diaz (BOH) speaks against the proposed change and states that the Board of Health has never been questioned on any percentage changes and agrees with Mr. Seelig. Mr. Diaz references A(3) and states this is very confusing. He feels whoever developed these regulations was wrong and the town is not in a good position by forcing this on the town. He feels the town needs professionals to rewrite these (bylaws).

Gordon C. Andrews feels that when both conditions of general density and specific density apply it's easy to come to an understanding of what's required. For whatever reason, regardless of Attorney Hucksam's opinion, the interpretation changed and that is why he feels that there is a proposed change to A(1).

A resident feels these proposed changes aren't ready for the Special Town Meeting and should wait for next Spring.

Mr. Seelig makes two points. First, he responds to Mr. Andrew's comment about Attorney Hucksam. He doesn't remember Attorney Hucksam's recommendation on a change on percolation. Second, these changes came out of a Planning Board meeting and are being brought to a public hearing and, regardless of the absence of a board member, the entire Board was present at the time of the proposed changes and Mr. Seelig hasn't heard a reason for a change to the percolation changes along with some others being proposed. Mr. Chairman responds "right now the percolation relates to a grid of 200 x 200 square of the land and to go out and perc it at 80% you have to perc in each of those grids. The reason they did it was because they didn't have contiguous upland when they wrote the bylaw. That was to try to prove it was upland. Now we have wetland delineation which determines what that is. So, if you have contiguous upland then it's upland." Mr. Seelig asks if all upland is perc-able. Mr. Chairman answers no. Mr. Seelig feels that this proposed change is changing the ability of development. If the intent is to change the ability to develop, Mr. Seelig would like to know who that benefits.

Mr. Chairman states that the Planning Board tries to come up with proposed changes to the bylaws but would like the participation of a hearing. He feels the Board welcomes any participation at their meetings as every other town board is welcome. He feels there is confliction coming from the Selectmen's office on who can propose changes to bylaws as he was told a Bylaw Committee could not, then the selectmen began proposing changes. The Planning Board is now trying to propose changes with the participation of the public. Mr. Seelig states that nothing was happening with the bylaw committee. Mr. Chairman responds that the only two members of the Bylaw Committee that got sworn in were Mr. Diaz and himself. Thomas Millias adds that he was sworn in for the Bylaw Committee. Mr. Chairman responds that according to the Town Clerk Mr. T. Millias was not sworn in. Mr. T. Millias disagrees and states that they couldn't get a quorum. Mr. Chairman disagrees. Mr. T. Millias and Mr. Chairman agree that they could not get anyone other than committee members to join. Ms. Troup did not know there was a committee. Mr. Chairman responds that it was advertised on the board on the first floor of the Town Hall and on the electronic board.

ARTICLE 11 To see if the Town will vote to amend Chapter 167-28 (Site Plan Requirements) from:

No permit shall be granted for any commercial, industrial, business, institutional, apartment, multi-dwelling, municipal or school building or public utility structure, and none of the above classes of structures shall be constructed or externally enlarged, and no such use shall be expanded or established in an existing building or lot not theretofore used for such purposes, except in conformity with a site plan bearing an endorsement of approval by the Planning Board. Said site plan shall show the owner of record, location, zone boundary lines, easements or other legal restrictions, exact location of building(s) on the lot with side, front and rear dimensions, lot dimensions, topography, adjacent public ways, location of off-street parking,

lighting, utility systems, surface drainage, traffic flow, location and nature of open spaces with specific notations as to landscaping, locus plan and other details deemed necessary by the Planning Board. The Planning Board may waive or substantially reduce the site plan submission requirements for projects having limited or minor impacts consistent with the purposes of this chapter.

To: No permit shall be granted for any commercial, industrial, business, institutional, apartment, multi-dwelling, multi-family development, municipal or school building or public utility structure, and none of the above classes of structures shall be constructed or externally enlarged, and no such use shall be expanded or established in an existing building or lot not theretofore used for such purposes, except in conformity with a site plan bearing an endorsement of approval by the Planning Board. Said site plan shall show the owner of record, location, zone boundary lines, easements or other legal restrictions, exact location of building(s) on the lot with side, front and rear dimensions, lot dimensions, topography, adjacent public ways, location of off-street parking, lighting, utility systems, surface drainage, traffic flow, location and nature of open spaces with specific notations as to landscaping, locus plan and other details deemed necessary by the Planning Board. The Planning Board may waive or substantially reduce the site plan submission requirements for projects having limited or minor impacts consistent with the purposes of this chapter.

Mr. Chairman explains to Mr. Diaz that the Board is adding multifamily developments to clarify the language. Mr. Diaz adds there is pending litigation on this subject to which Mr. Chairman explains they are just discussing these proposed changes and clarifying the language, putting things in that were omitted before. Attorney Kwesell suggests correcting the word from multi-dwelling to multifamily dwelling. This is noted.

ARTICLE 12 To see if the Town will vote to approve the following amendments to Chapter 167-11 (Table of Dimensional and Density Regulations: Notes B) from:

B. No new dwelling or attached addition thereto or attached addition to an existing dwelling shall be closer than thirty (30) feet from either side of the lot line.

1. 75 feet for multi-family development
2. 100 feet between multi-family buildings
3. 100 feet for multi-family development
4. See 167-12E, minimum yard requirements for accessory buildings

To: B. No new dwelling or attached addition thereto or attached addition to an existing dwelling shall be closer than thirty (30) feet from either side lot line.

1. 75 feet for multifamily buildings.
2. 75 feet between multifamily buildings.
3. 100 feet for multifamily buildings.
4. See § 167-12E, minimum yard requirements for accessory buildings.

Finance Committee member Melinda Tarsi asks Mr. Chairman if any of the Planning Board members would be willing to attend the Finance meeting on Monday, 10/7/19 at 7pm when they make their recommendations. She will send an email.

Motion to close the hearing on the bylaw changes:

MOTION: Amy Troup

SECOND: Jonathan Soroko All in favor

The Board takes a five (5) minute recess.

Mr. Chairman is recused. Mr. Millias takes over as Chairman.

Motion to open the Amanda's Estates site plan modification hearing:

MOTION: Jonathan Soroko

SECOND: Amy Troup All in favor

Attorney Brodsky requests that the Board not discuss the hearing other than the continuance as Mr. Millias may or may not need to recuse himself and will need an answer from the State Ethics Board. Attorney Kwesell explains the Mullin Rule as it relates to the missing member on 9/5/19. She states that the 45 days is up on 9/26/19 and is proposing a continuance to 9/25/29.

Ms. Troup asks for Attorney Kwesell to clarify what happens in 45 days. Attorney Kwesell explains that it's constructive approval which means that whatever is requested is granted (Bylaw Section 28-D); the Board has a time to act, which is very common. Ms. Troup feels this is not the Board's fault that they can't act. Attorney Kwesell explains that applicants can extend the 45 days. Attorney Kwesell discusses the Rule of Necessity with Mr. Gordon C. Andrews if it is decided by the State Ethics Board that Mr. Millias must recuse himself. Ms. Troup asks why the Rule of Necessity doesn't apply this evening as they are here now, and she may not be able to make it to a continued hearing on the 25th. Attorney Kwesell explains that it is because Mr. Millias hasn't had a ruling yet from the State Ethics Board and the Rule of Necessity requires a strict set of reasons. There is discussion on other dates and times the hearing could be continued. Ms. Troup feels the Board could have voted on 9/5/19 as they had quorum but states that the Town Administrator, Mr. Seelig, advised them to wait for Attorney Kwesell's recommendation on Section 28. Attorney Kwesell explains that she couldn't be at the meeting on 9/5/19. Mr. Soroko adds that it's probably a good thing the Board did not vote that evening as they should make sure Mr. Millias is cleared by the Ethics Board. Ms. Troup responds that is a new claim. Attorney Kwesell agrees with Mr. Soroko. Mr. Seelig states that he did advise the Planning Board on the 5th to seek Town Counsel's advice on this matter as it was obvious to him that if the Planning Board voted it would be without the background data, reasons why. He adds that no matter what decision the Board made it would be litigated and he wanted the Board to be on the best legal grounds for whatever decision was made with reasons as that is what the Court will look at when it is litigated. Ms. Troup responds that they had two attorneys in front of the Board, one from each party and written documentation from other attorneys including emails from Town Counsel. Mr. Millias adds that there is no way the Board would listen to anyone else's attorney. Ms. Troup states again that the Board had emails from Town Counsel. Mr. Millias doesn't think so.

Tom Millias adds that regardless of what happened at the last meeting, the Board is here tonight and must make a decision.

Mark Millias doesn't want to do anything that hurts the town, but he doesn't feel the allegations against him having a conflict in this case make any sense and he has no concerns acting.

Attorney Kwesell informs Ms. Troup that the Board has Thursday, 9/26/19 to file the decision made on the 25th. Attorney Kwesell informs Mr. Soroko that if the Board did not make quorum on 9/25/19 a meeting should be posted for the morning of 9/26/19. If no quorum on 9/26/19, the Board would be out of time.

Motion to continue the hearing on Amanda's Estates to Wednesday, September 25, 2019 at 7:00pm in Meeting Room #1 and Thursday, September 26, 2019 at 9:00am in Meeting Room #1:

MOTION: Amy Troup

SECOND: Jonathan Soroko All in favor

Motion to adjourn:

MOTION: Jonathan Soroko

SECOND: Amy Troup All in favor

It was unanimously voted to adjourn the meeting.

Date Approved: 1/2/20



Respectfully submitted,

Gordon Andrews, Chairman




