



**Halifax Planning Board
Meeting Minutes
September 5, 2019**

DRAFT*

A meeting of the Halifax Planning Board was held on Thursday, September 5, 2019, at 6:30 p.m. at the Halifax Town Hall, Selectmen's Meeting Room, 499 Plymouth Street, Halifax, Massachusetts.

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

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

Appointments:

6:30pm - Autumn Lane, Don Treannie: update on subdivision

Chairman Andrews informs the room that Mr. Treannie will not be in this evening.

6:40pm - Hilda Lane, Scott Burgess

Mr. Burgess presents plans to the Board. Mr. Burgess informs the Board that there have been a number of things approved on this project. Mr. Burgess owns the entire 22 acres and isn't sure he owns the road. Mr. Millias' concern is that Mr. Burgess wants access without building a road. Mr. Burgess points out a driveway he'd like to use which Mr. Millias doesn't see as possible. Mr. Burgess is not familiar with the subdivision plan in front of the Board. Mr. Millias feels the road needs to be built before access to the lot can be granted. Right now, Mr. Burgess doesn't have frontage without the road. Mr. Burgess states that according to Land Planning he has frontage on the road and it met all criteria. Mr. Millias is concerned with who owns and is responsible for the road.

Mr. Webby gives a brief history on the land/lots and explains where frontage comes from for each lot. According to Mr. Webby, it is his and his siblings understanding that the Hilda Lane subdivision would be built as he and his siblings would then have a lot. As far as he knows, it is still an approved subdivision. Their frontage is on Hilda Lane but it's not constructed.

Mr. Burgess confirms with the Board that before any house is built, Hilda Lane has to be constructed. Mr. Millias informs Mr. Burgess that the lot lines show that it has already been designed to function as more than one lot. There is discussion of Mr. Burgess' options going forward.

6:45pm - Amanda Estates, Site Plan Modification

Present: The Party Trust (Amanda Monti & Ed Johnson, applicants) with Attorney Adam Brodsky, Gordon C. Andrews with Attorney Ginny Kremer; Joe Webby (engineer)

Motion to open the hearing for The Party Trust, Amanda Estates of Halifax:

MOTION: Amy Troup

SECOND: Mark Millias

All in favor

Gordon R. Andrews recuses himself as his son Gordon C. Andrews is an abutter. Mark Millias becomes acting Chairman for this hearing and reads the Public Hearing Notice into record.

Attorney Brodsky introduces himself, The Party Trust and project engineer Mr. Webby.

Mr. Brodsky gives a summary of the Amanda Estates project: its history, its current state and its location off Elm Street with judgements from Land Court. There were two principal issues raised in connection with the appeal by Mr. Andrews: The general provisions of Halifax Zoning Bylaw 167-10D superseded the multifamily requirements of 167-12A. Mr. Andrews lost on this issue and the Town and The Party Trust prevailed. The second issue was that the site plan approval and special permit required the subdivision of the larger parcel so that each unit was on its own lot. Land Court did not render summary judgment and reserved the issue for trial. The Party Trust maintains this is not a requirement and defeats the purpose of a multifamily development as subdivisions are approved by subdivision control. Mr. Brodsky states that the trial in May had Land Court ruling in Mr. Andrews' favor. The site plan approval for the moment required The Party Trust to create individual lots. Land Court did not order the removal of the buildings or the road but invited The Party Trust to go through some zoning process to fix the problem. Regarding the special permit, the Land Court held that the special permit itself did not require the division of the lots. Mr. Brodsky goes on to say that in order to fix the problem, they are asking the Board to modify the site plan approval. Mr. Brodsky explains that while the Board was reviewing Amanda Estates, they were reviewing a multifamily project called Halifax Trails and granted approval in 2014 in similar conditions. The permits expired and the developer had to reapply in 2016 for Halifax Trails. The solution for Halifax Trails, after speaking with the Building Inspector and the various Boards was to waive the lot requirements which was granted unanimously by the Planning Board. The Party Trust is asking the Planning Board to do the same for Amanda Estates – to waive the condition of showing individual buildings on separate lots.

The Board goes over paperwork from Court and Mr. Brodsky's letter with attached Exhibits. Mr. Millias confirms with Mr. Brodsky that there are no changes made to the plans other than removal of the lot lines. Mr. Millias opens the discussion.

Attorney Ginny Kremer, Land Use counsel representing abutter Mr. Gordon C. Andrews addresses the Board with her summary of Amanda Estates. She discusses site plan approval under state law. She explains that the entirety of the Board's authority for site plan approval is set forth in the Halifax Zoning Bylaws Section 28. The provision the applicant is relying on is Section 28G(4B). Ms. Kremer states that this section only gives the Board authority to waive what is required to be submitted by the applicant under the Bylaw and does not give the Board the authority to waive a substantive provision of the Zoning Bylaw. She adds that the only way to waive what the applicant is asking for (one building per lot) is to grant a variance through the Zoning Board. Ms. Kremer states that The Party trust, back when they were getting their site plan approval, said they were going to seek frontage variances as well as subdivide the property. Ms. Kremer talks about when the original proposal for Amanda Estates came before the Board with a plan like the one in front of the Board now and references an opinion of Town Admin Charlie Seelig, after Land Use counsel consultation, that this plan was not viable as it violated the one building per lot requirement. The applicant had Mr. Webby, their engineer, revised the plans and presented a plan to the Board showing lot lines. The applicant believed, and the Court found, that the applicant could convince the Zoning Board after it had its site plan approval in hand with the subdivision, that Section 7 didn't mean what Section 7 stated and what Land Use Counsel said. Ms. Kremer states that the applicant never asserted to the Zoning Board that it wasn't required to subdivide the lots and the applicant submitted the same plan that showed lot lines. Ms. Kremer adds that both the special permit and site plan approval required separate lots. After the applicant had the special permit and site plan approval in hand, they revised the plans again by removing the lot lines and replacing them with dotted lines calling the lots "phases." Those plans were the ones submitted in connection with the building permit application. The Building Inspector issued the building permits on the last day of the six-month period. When Mr. Gordon C. Andrews told the Building Inspector the lots had not been created the Building Inspector told him that he could appeal to the ZBA, which Mr. Andrews did. Ms. Kremer states that the ZBA changed their interpretation of Section 7 contrary to the opinion of Land Use Counsel Hucksam and KP Law and denied Mr. Andrews' appeals. Two years later Ms. Kremer states that in Phase One of the trial the Court held that the special permit and site plan approval required the creation of individual lots. Phase Two of the trial coming up in the future regarding Mr. Andrews' bad faith against the Town, the ZBA and The Party Trust was bifurcated by the Judge, so Mr. Andrews has to go through two trials on this issue. As far as Halifax Trails, Ms. Kremer confirms that the Board did waive the one building per lot requirement however, she states that this was in excess of the Board's authority. Ms. Kremer adds that the Halifax Trails developer was advised by the Building Inspector to make the waiver request.

Ms. Kremer begins discussing a multifamily property owned by the Building Inspector that she believes he would benefit from the interpretation of the Zoning Bylaw that did not apply Section 7D to multifamily developments which cannot be subdivided and therefore is arguably in violation of Section 7 of the Bylaw. Ms. Kremer states that in Petition #808 filed by the Building Inspector to the ZBA, the Building Inspector admitted through his engineer that a variance would be required to waive Section 7 which is what he was seeking from the ZBA. Ms. Kremer adds that the Building Inspector urged the developer of Halifax Trails to request a waiver from the Planning Board even though he admitted through his engineer that it is only the ZBA that can issue a "waiver," and a "waiver" of that is a variance. She states that the Judge's decision states that with multifamily developments being a condo, the developer needs the condo association to own all the lots as common condo land and deed out the individual units. Ms. Kremer feels that the problem is that the applicant represented to the Planning Board that it would seek frontage variances and then decided to take their approvals and build something different.

Mr. Piccirilli, Building Inspector, asks Ms. Kremer if she is accusing him of something and asks her if his property and Amanda's Estates property are similar and like properties. Ms. Kremer responds that she understands Mr. Piccirilli's property is pre-existing, non-conforming. Mr. Piccirilli confirms this and asks Ms. Kremer if Amanda Estates is pre-existing, non-conforming. Ms. Kremer responds it is not. Mr. Piccirilli responds that they are not similar or like properties.

Mr. Gordon C. Andrews adds that there were two petitions filed by Mr. Piccirilli and states that Mr. Tom Millias is Mr. Piccirilli's business partner with the property owned by Mr. Piccirilli. Acting Chairman Millias states that the Board will stick to discussing the property (Amanda Estates) at this hearing and he feels that Mr. Piccirilli was correct, and that Ms. Kremer insinuated that what he did was in his best interest. Mr. Millias would like to keep this hearing about Amanda Estates. Ms. Kremer responds that the basis for this request is Halifax Trails and the genesis of this request is Mr. Piccirilli. Mr. Millias feels the only connection between Amanda Estates and Halifax Trails are the lot lines. Ms. Troup adds that the Planning Board is not allowed to waive lot lines according to Section 28. Mr. Millias responds that the Board has done it in the past and it has worked so he doesn't know if Ms. Kremer is correct on this statement. Attorney Brodsky adds that The Party Trust has no stake in the dispute between Mr. Andrews and Mr. Piccirilli. He believes the issue regarding Halifax Trails based on documents and minutes he has seen are due to a new attorney hire and this attorney came to a different conclusion requiring permitting. As for Section 28, Mr. Brodsky states it is called "Site Plan Requirements" and is the only section that deals with site plan approval. There are two sections that speak to waivers and then later states the Planning board may waive specific requirements which references the title to the section. This Board has already determined they have the legal authority under Section 28 to grant waivers and have done so on one if not more than one occasion. Mr. Brodsky responds that Ms. Kremer's "facts" are Mr. Andrews' best case. He adds that The Party Trust is doing what the Judge asked which is to fix the problem and states that if there was a serious Zoning violation, the judge would have ruled to tear down the property.

Ms. Troup asks Mr. Brodsky if there is a site plan for Halifax Trails to compare to Amanda Estates as she was not on the Planning Board at the time of Halifax Trails.

Mr. Soroko asks what the process was as far as site plans being granted at the Planning Board, what site plans were approved by the Building Inspector and what site plans were presented to the ZBA to see if they match up. Mr. Brodsky responds that there was give and take between the Planning board, Mr. Webby and Mr. Kotowski. The issue of lot lines was raised in front of the Planning Board. There was a faction that said yes, you need to divide the lots and another that said no, that makes no sense. The judge said that the permit has this condition so it must be done unless the Planning Board changes it. The Party Trust was told to show the lot lines in the plan to show the density requirement according to Mr. Webby's testimony at trial. Later, The Party Trust needed to create Phase Plans when they were condoning to show construction sequence for bank lending. Those phase plans were included with the building permit application. The Building Inspector had all the original site plans from 2014 and 2015 when he issued the building permit. The Court found that the site plan approval and special permit required that Amanda Estates shows each building on a separate lot. The Party Trust disagrees with that but is trying to fix that problem. This project is built and four (4) units completed. Mr. Brodsky states that there is no adverse impact to anyone. Mr. Andrews had concerns for buffer zones, so the project was redesigned for that. Four out of 16 units are built. Mr. Soroko asks if the Planning Board, Zoning or Building Inspector have seen a plan without lot lines and just one single lot and was that approved. Mr.

Brodsky responds no and explains that when the project was originally submitted in 2014 it was one lot. The Planning Board asked Mr. Webby in 2014 to show the lines on the plan so the 2014 plan shows the lines which was approved. The plan in front of the Board now is the same plan without lines to show what the applicant is requesting – to waive the lot lines.

Mr. Corey Merritt speaks to the Board. He explains that when he first applied to the Planning Board Mr. Gordon C. Andrews asked for the lot lines even though Mr. Merritt explained they were only doing condos and do not need lot lines. Mr. Andrews asked for the buffer...changing the sidewalk. The Planning Board approved the plan with lot lines. Ms. Troup asks about the frontage. Mr. Merritt responds that they are not here about the frontage. Mr. Merritt brings up Twin Lakes as another condo complex and Ms. Troup asks what the frontage is for Twin Lakes. Mr. Brodsky responds that there is no frontage requirement for a multifamily development. Ms. Kremer disagrees. Ms. Troup responds that “the stricter of the law” is in the Bylaws and there is 110 feet for street frontage. Mr. Merritt states that the judge said “these lines have to go because this isn’t subdivision control.” Ms. Kremer disagrees with this and states that the lines were added back in when Mr. Seelig authored the memo after consultation with Town Counsel after stating that the Bylaw requires the creation of individual lots. She said that the judge said the applicant is bound by the plan that was approved which had lot lines.

Mr. Millias wonders if there is reason to believe if the applicant removes the lot lines and the Board approves that plan, it may impact the permitting for the applicant. Mr. Brodsky responds that he doesn’t think it impacts any other permitting as the judge was very specific and the special permit doesn’t contain the requirement that each building be on a separate lot. Ms. Kremer disagrees. Mr. Brodsky continues that this requirement is in the site plan approval and because the approval is referenced in the special permit, the applicant needs to change the condition in the site plan approval to move forward. Mr. Brodsky adds that if the Board grants the waiver the applicant will need to go back to Land Court and request modification of the judgement. Mr. Brodsky states that the judge decided that the building permits needed to be revoked and The Party Trust needs to rescind that order and get the building permits reinstated or apply for new building permits, but this is the first step. Mr. Brodsky explains that there is a bad faith argument against the Town by Mr. Andrews who has expanded that argument that The Party Trust has acted in bad faith. Mr. Brodsky goes on to say that they have moved forward with the project in conformance with the permits until it was determined that there was an additional requirement. Ms. Troup asks what the additional requirement was. Mr. Brodsky responds that the judge found that the site plan approval required that The Party Trust show each building on a separate lot. Ms. Troup responds that she thought Mr. Brodsky said the site plan approval from the Planning Board stated that and asks how is this a new thing. There is back and forth discussion between Mr. Brodsky and Ms. Troup who feels the Board should have a motion to vote.

Mr. Seelig recommends that the Board continue the hearing to 9/19/19 and seek the advice of Land Use counsel before making a decision.

Mr. Gordon C. Andrews asks Mr. Millias if the Board is going to open up the site plan he would ask that if it’s going to be on one lot that there be a 30-foot buffer around the entire project as it’s required. Mr. Brodsky states that they are not opening up the site plan, that’s not the request before the Board. The request is simply to waive the requirement. Mr. Millias states that this will be on the list of questions for Counsel. Mr. Millias believes they will continue this to the 19th. Ms. Kremer suggests asking if Section 28 gives the Planning Board authority to waive substantive provisions of the Zoning Bylaw and, if not, is there anything else that gives the Board that authority. Mr. Brodsky suggests asking if the Board has the right to waive the site plan requirements, not substantive provisions of the Bylaw because that’s a characterization.

Mr. Soroko states that he feels it’s a variance as the site plan was already approved. Ms. Troup agrees. Mr. Millias states that they are not asking for a variance from a certain setback. Ms. Troup wonders where the hardship is. Mr. Brodsky states again that this is not a variance request, it’s a waiver which he believes the Board has the legal authority to do. Mr. Seelig feels this is a question to ask Counsel. Mr. Gordon C. Andrews suggests the Board ask Counsel to look at Halifax Trails, as it’s being used as an example, to see that what was requested in the hearing notice was not what was done by the Board. Mr. Brodsky states they are not challenging any Zoning issues with respect to Halifax Trails. There is discussion between the Board members.

Mr. Seelig confirms that Attorney Amy Kwesell is Land Use Counsel to be reached for answers to their questions. Mr. Brodsky will send a copy of the judge's findings to Attorney Kwesell/Board.

Mr. Soroko asks why take the lot lines out. Mr. Brodsky answers that first, he and The Party Trust don't believe the Bylaw ever intended that one subdivide multifamily developments, and second he respectfully disagrees with Ms. Kremer on the problems with conveyance if you have a condo with multiple lots. There is discussion between Mr. Millias and Ms. Troup about lot lines. Mr. Millias believes they don't need them, Ms. Troup feels they need to follow the Bylaws. Mr. Millias responds that the Bylaws conflict. Ms. Troup asks Mr. Brodsky why the judge asked that the building permits be revoked. Mr. Brodsky responds that because the Planning Board's site plan approval contained a condition that The Party Trust show each building on a separate lot which had not been done, however the judge also said there were a couple of ways The Party Trust could solve the problem, one of which was seeking modification of the site plan approval. Ms. Troup confirms with Mr. Brodsky that the plan had lot lines on it, The Party Trust were taken to Court and the judge said they need lot lines and now they want the Planning Board to waive those lot lines. Mr. Brodsky adds that the Building Inspector issued the building permits with the lines on the plan, there was never any secret. Mr. Brodsky goes on to say if Mr. Andrews didn't want the project he should have appealed the site plan approval in 2014 instead of waiting three years before taking any action and in the interim, the project was built.

Ms. Kremer responds that Mr. Brodsky's opinion that the Zoning Bylaw does not really mean in a multifamily development each building has to be constructed on an individual lot with adequate frontage is that one can just ignore this which is contrary to the opinions expressed by Mr. Seelig, Richard Hucksam and current Land Use Counsel. Ms. Kremer hands out these three opinions to the Board. Ms. Kremer feels that the judge did not say The Party Trust should go back to the Planning Board, but should go back to the Zoning Board and limit their request for relief to the Zoning Board if they wanted him to retain jurisdiction. Ms. Kremer submits for the record their opposition to The Party Trust renewed motion to stay, directing attention to Page 4 and Exhibit B. Ms. Kremer states that Mr. Brodsky's several representations regarding the Court's opinion are contrary to fact. Mr. Brodsky responds by saying the Board can read the judge's opinion and make a determination. Mr. Brodsky does not mean for the Board to ignore the language of 167-7 but it has to be read in the context of the entire Bylaw. 12 units were built on 12 acres which is the density requirement.

Mr. Millias feels the density requirements have been met by multiple other setbacks. Ms. Troup asks why any property in town, regardless of a single-family, pay attention to setbacks, lot lines or anything if the Board waives this. Why is a multifamily development different, Ms. Troup asks. Mr. Millias responds that because of the type of project this is, there were lots of setbacks that The Party Trust had to meet so the density is already taken care of by the other setbacks that are imposed on this type of project. Ms. Troup goes back to the stricter of the law. Mr. Millias responds that density has already been provided for. Mr. Merritt responds that this is a multifamily, not a subdivision which is why they want to remove the lot lines. Ms. Monti states that they have followed the Board's direction. Mr. Millias agrees. Mr. Brodsky, speaking to Ms. Troup, states that the judge made a specific determination that this project is governed by Section 12, not Section 10 which has the "stricter" requirements that Ms. Troup is alluding to. Ms. Troup responds that the stricter of the laws applies to the whole book. Mr. Gordon C. Andrews states that it was the judge's determination on summary judgement to give deference to the Zoning Board's interpretation. The Planning Board had a different interpretation of what the Bylaw says. Mr. Brodsky disagrees and states that the Planning Board's function is not to interpret the Zoning Bylaw, it's to apply the site plan approval criteria. Ms. Troup responds that the Zoning Bylaws are what guide us. Discussion ensues about whether the Planning Board needs to interpret the Bylaws. Ms. Troup and Mr. Soroko agree that they must be able to interpret the Bylaws to make a determination. Mr. Brodsky responds that they are dealing with the request in front of the Board.

Motion to continue the notice for public hearing to September 19, 2019 at 6:30p.m. in the Selectmen's Meeting Room:

MOTION: Amy Troup

SECOND: Jonathan Soroko All in favor

Mr. Gordon Andrews joins the Board as Chairman at 8:10p.m.

Bills

Motion to pay \$84.00 to Plympton-Halifax Express for legal advertisement and Amanda's Estates.

MOTION: Amy Troup

SECOND: Jonathan Soroko All in favor

The Board signs the site plan for 450 Industrial Drive.

The Board reads through and discusses the proposed Zoning Bylaw changes. Mr. Chairman explains that the hearing for these proposed changes will be the next meeting.

Motion to adjourn:

MOTION: Mark Millias

SECOND: Amy Troup All in favor

In was unanimously voted to adjourn the meeting at 8:29p.m.

Respectfully submitted,

Date Approved: _____

Gordon Andrews, Chairman

*Draft – Hearing requested to be done verbatim.