

RECEIVED-POSTED

18 JUL 17 AM 9:43

APPROVED

TOWN CLERK ADAMS ZONING BOARD OF APPEALS  
ADAMS MASS.

MEETING MINUTES

TUESDAY, JUNE 12, 2018

**MEMBERS PRESENT:** Chairman Peter West, Vice-Chairman Brian Tenczar and Members Francie Riley, Glen Diehl and Jacob Levesque

**MEMBERS ABSENT:** Members Anthony Donovan and Rob Krzanik

**OTHERS PRESENT:** Xiang L. Chen; Susannah McAllister; Scott McAllister; David Chalifoux; Linda Zepka-Chalifoux; Susan Genevieve Zepka; Todd Senecal; Alan Will; Barbara Will; Joan Smigel; Sandra Moderski; Building Commissioner Don Torrico and Recording Secretary, Pam Gerry

**CALL TO ORDER:** Chairman West called the meeting to order at 6: 00 P.M.

Chairman West stated that the board members had a request made to hear the application of Scott and Susannah McAllister as first on the agenda. He addressed Mr. Li asking him if he would not mind being placed second on the agenda for the evening. He agreed that this would be okay.

**Application of Scott and Susannah McAllister for property located at 34 Richmond Street, requesting an administrative appeal under the Zoning Bylaw §125-3 of the Building Commissioner's determination that pursuant to Section §126-16B. grading and erosion; surface water runoff is creating erosion on the abutter's property.**

Chairman West addressed Building Commissioner Torrico seated in the audience to ask him to clarify the request being made by the applicant's for an administrative appeal. Mr. Torrico stated to the members that he had conducted ten site visits to 34 Richmond Street over the last year. He continued to state that the surface water runoff was creating silt from the applicants' property to the abutting property at 32 Richmond Street. Mr. Torrico told them that on May 25, 2017, a violation notice was issued to them. He told them that they met in his office regarding the resolutions that could be made pertaining to the erosion issues. Mr. Torrico stated to them that during his site visit, he did observe silt and mud entering the abutter's garage from the McAllister's property. He told the board members that in response to this problem, the applicant's installed a barrel to capture the water coming off the back roof. Mr. Torrico explained to them that the hose that was attached to the barrel underwent winter temperatures which caused the hose to freeze and water flowed out. He told them that he sent the McAllister's a second letter requesting that they place underground piping from the back gutter which he mentioned had "picked up a majority of the water from the back of the roof," where he had anticipated the majority of the water was coming from. Mr. Torrico reviewed photos of the McAllister's property with the board members. He told them that he suggested to the applicant's that there was a possibility that they could have dug a hole and placed stone into the hole and have the water from the roof enter into the underground piping. Mr. Torrico stated that he anticipated that this technique could have resolved some of the water issues. He stated to the members that based on that suggestion, the applicant's appealed his decision to resolve their water issues based on his

recommendations. Mr. Torrico explained to them that "he was not an engineer but he was required to enforce the bylaws." In closing, he told the board members that these issues have gone on for a span of time and he added that there has been no resolution and "hopefully we can find one here."

Chairman West stated to the applicant's that any material presented to them at the meeting would have to be included in their application as public record. They agreed that they would comply to their request. Mr. McAllister addressed the board members with his wife, Susannah McAllister to let them know that he thanked them for hearing their appeal.

Mrs. McAllister began by stating to them that the first letter submitted to them from Mr. Torrico implied that they had removed gutters from the west side of their house, which she explained to them that upon purchase of their existing home, there were no gutters as she depicted to members in their slideshow. She stated that there was a gutter on the back porch which was always in that location. She told them that when it rained in April, they got a lot of water in their driveway which eventually made its way to her yard. She stated that their yard is slightly graded but when the water flows downhill, the "water has nowhere else to go when it comes off the hill above us." She mentioned to them that they plan to place topsoil and plant grass to address this issue. Ms. McAllister pointed out more of their property issues to the members from the video slideshow. Mr. McAllister stated to the members that most of the runoff came from an abutter above their property, adding that "we get a ton of water coming down filling our driveway with silt and going to the corner of the driveway and streamlining down to 32 Richmond Street." He told them that during "mild and moderate rainstorms," there was no visible runoff on the west side where Mr. Torrico had proposed putting underground drainage. Mr. McAllister told the members that it would cost them "a sizeable fee" to dig a large hole to place piping to the back of the property. Mr. McAllister wanted the members to know that they had a trampoline removed in their yard which had killed the grass underneath. He wanted members to know they had never experienced water runoff during the years the trampoline was in place. He emphasized to them that they removed it to restore grass to that area once again.

Member Riley asked the applicant's if they were aware of the location of their property boundaries. Mr. McAllister answered her by stating that they did not have their property surveyed at this time but they were interested in having that done.

Mr. McAllister wanted the members to know that he would like the opportunity to address these water runoff problems by allowing them time to plant grass in the critical areas of the property. He told them that filling areas of the yard with topsoil and stone could be more cost efficient than "excavating the entire banking which could be a huge project."

Member Diehl addressed the applicant's asking them if they would know the grade of their property from the "street" to the back." Mr. McAllister answered him by stating to him that it was straight and "not slanted at all." He mentioned that they had an inground pool in the back of their yard. Member Riley stated that it would be to the benefit of the abutters if they each would dig drainage ditches that would take the "water runoff and drop it into the paper road instead of in the street." She expressed concern that "this is a long term erosion issue that is only going away with some engineering and trenching," based on the property boundaries being determined. She told them that this "is a constant maintenance issue." Member Diehl suggested to the applicant's that they could consider creating a shallow swail to help divert water from their property.

Chairman West asked the board members if they had any further questions regarding the applicants' request.

Vice-Chairman Tenczar asked the applicant if there were any other changes made to their property other than the ones that were discussed so far. Mr. McAllister stated to them that they had not performed any changes to the property since they purchased their home.

Chairman West addressed Mr. Torrico to state that it was clear that the McAllister's "were not creating the majority of water that was traveling downhill." Mr. Torrico responded to him by stating that a lot of water was coming down from the town road but also from the applicant's back gutter to the abutters' property. Mr. McAllister stated that the one area of his driveway where the water pools would be the area they would like to address. He stated that would correct "90% of the runoff." He suggested to the applicant's that they could get an excavator to the property to determine the extent of the work that would be needed to control the erosion issues.

Chairman West asked the board members if they had any further questions regarding the applicants' request.

**Chairman West opened the meeting to the public audience.**

He explained to them that they would have to state their name and address prior to speaking.

**Joan Smigel, a resident of 32 Richmond Street** addressed the board members with photos she wanted to present to them. Chairman West reminded her that the photos she was presenting to the members would be included as public record. Board members viewed photos of the McAllister's property with Ms. Smigel. Chairman West made note of the date on the photos being 2017. She stated that a gutter on the McAllister's property was positioned toward her yard. Mr. McAllister was curious to know if that was prior to the rain barrel he installed. Chairman West stated that this would be correct. Ms. Smigel showed a picture of a retaining wall that recently was removed by the applicant's. Ms. Smigel told the board members that she wanted to repave her driveway; however the water issues created problems with moving forward on her proposed project.

Chairman West suggested to the board members that a property survey should be completed before the erosion issues and the paving of the driveway are completed. Chairman West stated that perhaps they should continue the hearing and acquire advice from town counsel.

Chairman West asked if there were any further questions from the public audience.

**Michael Durant, a resident of 41 Richmond Street** addressed the board members stating that he lived across the street. He told them that he had witnessed the "mess in the driveway" adding that it derived from the vehicles "backing in and out." He said the mud was "minimal." Mr. Durant stated that we all "do our best work together."

**Joseph Nowak, resident of 78 East Hoosac Street** wanted board members to know that during the month of April in the early spring season sheet runoff occurred where water was not "able to get into the ground," due to the topography of the land.

**Alan Will, resident of 1801 Windsor Road, Cheshire, MA** stated that his daughter and son-in-law's property "was not the source of the water, but comes from above and into their yard." He stated that

they should not be responsible for nature. He told them that it would “start raining at their house and come down.” He said everything from that hillside traveled down Richmond Street.

**Susan Zepka, a resident of 834 North State Road, Cheshire MA and 23 Victory Street** stated to the board members that if the abutter’s property above the applicants’ property had been “manipulated with tree logs to divert the rainfall off their property into the roadway, that it’s not a natural catastrophe.” She told them that the abutters should use culverts to help with the drainage of the water, adding that the rainwater cannot “end up on the bottom of Summer Street, however.” Ms. Zepka told them that the area of Clifford Lane, the paper road was very unstable; adding that many years of sinkholes and mudslides had created this problem.

**Linda Zepka-Chalifoux, a resident of 19-21 Victory Street** stated to the board members that over the years, large trees existed in the area which had been cut down, emphasizing that they had absorbed at least 80% of the running water. Ms. Zepka-Chalifoux stated that all that remains currently was grass. She told them that in her location on Clifford Lane their sump pump operated constantly when it was wet. She mentioned to them that they made a culvert a year ago behind her property but the water from the hillside dispersed into the lawn and into the street. She said this water issue had been ongoing for many years and the neighbors have had to address it with grass seed, mulch or planting more soil.

**Barbara Will, a resident of 1801 Windsor Road, Cheshire MA** addressed the board to state that the McAllister’s had not experienced any water issues prior to the trampoline being placed on their property. She told them that it “seemed unfair that because the water is pooling in their yard, no one else has to bare the brunt of it.” Ms. Will stated that allowing them to plant additional grass and topsoil could restore it back to the way it once had maintained itself.

Chairman West asked if there were any further questions regarding the applicants’ request.

**Chairman West closed the meeting to the public audience.**

Vice-Chairman Tenczar stated that Building Commissioner Torrico had “valid concern” with the ongoing issues and he emphasized that by taking “baby steps,” such as planting grass, adding topsoil, filling in the hole on the slope and revisiting the issue at a later time to determine if these steps could rectify the erosion issues could be the best answer. He suggested that the applicant’s should be given “a chance to address these concerns.” Vice-Chairman Tenczar emphasized to the board members that they could revisit these issues in the future to see if those remedies had cured the problem, and if it did not solve the issue, perhaps the next step could be to entertain an idea for some drainage and regrading the property.” Chairman West stated that they could deny the administrative appeal and allow Building Commissioner Torrico to follow through with the ongoing restoration.

Mr. McAllister stated to the board members that he “had no problem bringing in a professional to do the seeding, topsoil and the filling of the hole.”

Vice-Chairman Tenczar suggested that if Building Commissioner Torrico feels the applicant can solve the problem based on these upgrades to the property, the board should allow him to follow through with the procedure to “remedy the problem.” Chairman West stated to the members that the applicants were cooperative to the suggestions that were made to address the erosion issues.

Ms. McAllister wanted the board members to know that they appealed Mr. Torrico's decision which pertained to his suggestion to put in a drywell and new gutter system. Mr. McAllister stated that after Mr. Torrico had seen the video, he was more aware that the water was coming down from the abutter's property which was out of his control.

Chairman West asked if there were any further questions regarding the applicants' request.

A motion made by Member Levesque, seconded by Member Diehl to grant the application of Scott and Susannah McAllister for property located at 34 Richmond Street, requesting an administrative appeal under Zoning Bylaw §125-3 of the Building Commissioner's determination that pursuant to Section §126-16B. grading and erosion; surface water runoff is creating erosion on the abutter's property was denied and the motion failed with Chairman Peter West, Vice-Chairman Brian Tenczar and Members Francie Riley and Glen Diehl voted four (4) not in favor of the request of an administrative appeal. Member Jacob Levesque voted one (1) in favor of an administrative appeal.

Chairman West asked if there was any further discussion on the motion. Building Commissioner Torrico stated that the bylaw "Section 126-16B." was incorrect and should read; "Section 125-16B."

A motion made by Member Levesque to amend; "Section 126-16B." to "Section 125-16B.," seconded by Member Diehl.

**Application of Xing Li for property located at 131 Columbia Street, requesting an administrative appeal under Adams Zoning Bylaw §125-3 of the Building Commissioner's determination that pursuant to §125-13A1. only one entry/exit is afforded by right as the property has less than 200' of frontage.**

Chairman West addressed the applicant with his request. He stated to Mr. Li that the board members would like to know the location of his curb cut request to put in a second entrance on his property. Chairman West stated that according to the proposed plans, the current entry was in the southern end of the property and he would be proposing to put a second curbcut at the northern end of the property.

Vice-Chairman Tenczar asked for clarification for the applicant's request.

Chairman West stated that most application requests similar to Mr. Li's required a Special Permit request. Building Commissioner Torrico stated to him that the applicant could not be granted a Special Permit as "a matter of right." He was required to request an administrative appeal prior to that request.

Chairman West asked the board members if they would allow Mr. Li to amend his application and grant him the request for a Special Permit by initialing the document. The board unanimously agreed with Chairman West's request to move forward with the Special Permit application amended by Mr. Li.

Chairman West asked the board members if there were any questions or comments from the public audience.

**Mr. John Duquette, 20 North Summer Street, seated in the audience agreed with the members that the curb cut request was "badly needed" by the applicant.**

Building Commissioner Torrico stated to the members that he had received a correspondence from the Traffic Commission regarding Mr. Li's curbcut request. He read the notice to them. In the letter, The

Traffic Commission recommended that “one way entrances should be clearly marked, the northern opening as the exit and southern existing as the entrance,” as well as the owner should communicate with the abutters who share the entrance and exit. The Commission stated that this was private property and the Adams Police Department would not enforce these issues.

Chairman West reminded the board members that Dollar General and Dunkins Donuts had two curbs on Commercial Street.

Member Levesque stated to the board members that according to the plans there should be a second curb cut allowed for exit and entry. He emphasized to the members that the activity level at this establishment “did not have a constant flow” of traffic like other businesses in the area.

Member Riley stated to them that the entry/exit should have a sign, adding that it would help the general public to see that it was a “driveway to a restaurant rather than a residence.” Chairman West stated that it was a difficult determination considering it was a “shared driveway.” Chairman West stated that they did not require other businesses to have signs designating entry/exit. Member Riley stated to the member that having the second curb cut was most important to his property. Member Riley told them that they “did not need to “micro manage the traffic flow.”

Chairman West asked if there was any further discussion to the motion. Vice-Chairman Tenczar stated that he would like to condition the Special Permit stating that the entry/exit should be clearly marked. Chairman West showed concern for abutters who access this entry/exit on a regular basis. He addressed Chairman West stating that the property owner should “do his part” by informing the neighbors of what he planned to do on his property. Chairman West stated that the abutters may ignore the marked signs.

Vice-Chairman Tenczar asked for clarity as to the board’s decision on setting a condition for signage regarding the entry/exit to the property.

A motion made by Member Diehl, seconded by Member Levesque to grant a Special Permit to Xing Li for property located at 131 Columbia Street, pursuant to §125-13.H(2)(b) to allow a second entry/exit afforded by right as the property has less than 200’ of frontage at the north end of the property, passed unanimously.

Chairman West explained that the Town will prepare within fourteen (14) days, the Decision Notice to the Town Clerk’s Office and following this, there is a twenty (20) day appeal period before the applicant may obtain the final Decision Notice.

**Application of Jean Marie and David Laurin for property located at 85 North Summer Street, requesting a Special Permit under §125 Attachment 1:3 under the Zoning Bylaw to allow the raising of livestock (chickens) in an R-4 Zoning District.**

Ms. Laurin addressed the board members with her application request. She stated that she had chickens for three years, adding that they were unaware that a Special Permit was required according to the town’s zoning bylaws. Chairman West asked her how many chickens she kept on her property. She stated that she had eight chickens and mentioned to the board members that she got rid of the rooster. Ms. Laurin viewed her photographs that were submitted to the board members regarding the location of her chicken coop on her property. Chairman West wanted Ms. Laurin to explain to the board members how she handled the manure issues from the chickens. She answered him by stating

that she had special compost that was separated from the chickens and helped to maintain the odors with special treatments. Vice-Chairman Tenczar was curious to know how Ms. Laurin disposed of the compost and she answered him by stating that she was using it for her garden. Member Riley told the board members that she performed a site visit to Ms. Laurin's property and could not detect any odors from the area where the chickens were kept.

Chairman West asked the board members if they were satisfied with the answers to the applicant's request for a Special Permit. The board determined that the applicant satisfactorily answered all questions pertaining to the Special Permit request.

Building Commissioner Torrico stated to the members that Ms. Laurin's application was nicely done and he considered it to be "a model application." Zoning board members agreed with him. Ms. Laurin stated that her daughter, seated in the audience contributed to the process as part of a school project.

**Chairman West opened the meeting to public comment.**

**Todd Senecal, a resident of 5 Anthony Street**, seated in the audience addressed the board members to let them know that Ms. Laurin's chicken coop was located under his bedroom windows and he expressed concern that that they were too close to his property. He stated that this has depreciated the value of his home by noise they generated at 5:00 a.m. each morning. Mr. Senecal told them that the chickens are kept 10' from his property boundary. He stated that these have been ongoing issues with him as he had filed complaints with the town in the past. Chairman West stated that the town bylaws allowed agricultural animals to be housed on their residential property. He agreed that changes needed to be made to town bylaws in the near future by the Planning Board.

**Mike Lee, a resident of 6 Sparrow Street**, seated in the audience addressed the board members to ask them why it took three years to discover the violation on Ms. Laurin's property. Chairman West stated to Mr. Lee that this issue was not brought to the zoning board's attention until recently. He further noted that a complaint was submitted to Building Commissioner Torrico regarding the chickens on the property. He told them that Mr. Torrico performed a site visit and sent a certified letter to the Laurin's explaining to them that they required a Special Permit to keep their livestock, adding that the board could now act on this violation.

**Chairman West closed the hearing for public comment.**

Chairman West asked the members and public audience if they had any further questions for the board members. There were none.

A motion made by Member Riley, seconded by Member Diehl to grant a Special Permit to Jean Marie and David Laurin for property located at 85 North Summer Street under §125 Attachment 1:3 under the Zoning Bylaw to allow the raising of livestock (chickens) in an R-4 Zoning District.

Chairman West asked if there was any further discussion. Vice-Chairman Tenczar asked if there should be conditions placed on this Special Permit.

A motion made by Member Riley, seconded by Member Diehl to amend the motion to read; "to allow the raising of up to eight (8) livestock (chickens) and no roosters, passed unanimously subject to the following conditions:

1. The owners are allowed up to eight (8) livestock (chickens).
2. No roosters are allowed on the property.
3. The chicken coop shall be relocated to the side of the garage according to revised plans.
4. The owners must have coop moved to new location no later than August 31, 2018.

Chairman West asked if there were any further discussion regarding the Special Permit request.

Building Commissioner Torrico addressed board members to ask if the abutters could consider relocating their chicken coop. Ms. Laurin responded to him by stating that she could relocate her chicken coops between her garage and house or possibly behind the garage. She reviewed the photographs of her property with the members to show them the location of the changes she would make. Chairman West stated to the board members that the applicant agreed to relocate her chicken coop to "accommodate her neighbor." Chairman West asked Ms. Laurin if she could agree to move her chicken coop on or before August 31, 2018. She agreed with the members on the proposed date.

Chairman West explained that the Town will prepare within fourteen (14) days, the Decision Notice to the Town Clerk's Office and following this, there is a twenty (20) day appeal period before the applicant may obtain the final Decision Notice.

#### **OLD BUSINESS/NEW BUSINESS:**

Building Commissioner Torrico stated to the board members that the Zoning Board Office received certified letters addressed to Zoning Board members pertaining to a lawsuit against said members for the hearing of "Quick and Easy Roll Off," in regards to the administrative appeal request held on April 10, 2018. Mr. Torrico explained to the members that he forwarded these notifications to town counsel who would be representing the members in this lawsuit.

Chairman West stated to board members at that meeting that prior discussion was made by members regarding "Quick and Easy Roll Off," conducting business out of their home without a Special Permit for a "Home Occupation," which was required in the town's zoning bylaws. He stated to members that this issue should be addressed. Building Commissioner Torrico stated to them that he would issue a violation notice to Mr. MacDonald notifying him of this.

Ms. Gerry, recording secretary stated to the board members that the Board of Selectmen would be conducting appointments in the weeks ahead. Chairman West stated to Joseph Nowak, Adams Board of Selectmen, seated in the audience that Member Michael Mach issued a resignation letter to the Zoning Board. He stated to him that Alternate member Rob Krzanik should not be re-appointed as a member, adding that due to work obligations, he never attended their scheduled meetings. Ms. Gerry stated to them that Alternate member Jacob Levesque expressed interest in becoming appointed as a Permanent member replacing Member Mach who served in that seat. Chairman West expressed concern that the board would need to fill these seats as soon as possible to assure a quorum at future meetings. Mr. Nowak told the members that the Board of Selectmen interview appointees prior to the appointments being made. Chairman West stated to him that there "was an importance of a full



board.” Mr. Nowak suggested to the board members that a letter be submitted to Chairman Duval, Board of Selectmen stating their concerns. He agreed to submit the letter as Mr. Nowak requested.

In closing, Building Commissioner Torrico stated to the members that there was money remaining in the current fiscal budget, what would the Zoning Board request? Chairman West stated that he would like to see funding provided for several things; to enable the board to hire a consultant to assist them in rezoning districts; hire Attorney Dubendorf for training, and also to have legal counsel be required to attend the Zoning Board meetings to assist members with the presented cases, as well as current zoning maps. Mr. Torrico stated to them that he would check the current budget and contact them with the information.

**REVIEW MAIL:** The board reviewed mail that was submitted to them.

**ADJOURN:** A motion made by Member Diehl, seconded by Member Riley to adjourn the meeting at 8:05 P.M., passed unanimously.

Respectfully Submitted,

  
Pamela Gerry, Recording Secretary

7-17-18  
Date