



Halifax Planning Board Meeting Minutes May 18, 2017

A meeting of the Halifax Planning Board was held on Thursday, May 18, 2017, at 6:30 p.m. at the Halifax Town Hall, Meeting Room #1, 499 Plymouth Street, Halifax, Massachusetts.

Members Present: Gordon Andrews, Chairman; Larry Belcher, Vice-chair
Mark Millias, clerk; Jonathan Soroko & Karlis Skulte, members

The meeting was called to order at 6:38 p.m. and the agenda was read into the record by Gordon Andrews

MOTION: Mark Millias to accept the agenda as read
SECOND: Larry belcher AIF

Discussion - Heron Road – request for bond reduction

Rick Springer present: Mr. Springer submitted a letter of request dated 5/12/17 rec'd 5/15/17.

At Town Meeting the road acceptance was passed over, and would like to know what he can do from here. Also has letter from 9/22/16 par. 3 states Silva Eng. reports how the driveway could be corrected would be acceptable to the Board. SLT corrected, but no feedback that it wasn't corrected properly, we got feedback that it corrected as Mr. Silva design. Feel we've done everything to get the road accepted and no reason the Town should be holding the bond. Had deed drafted by Attorneys, review from the engineers, conveyance to the town with the easements.

Mr. Millias stated he was not at Town meeting and did not know if someone needed to speak on his behalf.

Mr. Springer stated that not being a resident someone should have suggested he go to. Did not go when Kenzie's Path was accepted.

Mr. Andrews noted that the Selectman passed over the article. (Mr. Annis did speak at Town meeting about the driveway, and his feeling that it should be corrected.) Mr. Andrews does not think it's the position of the Town to take it over and not address that position. Needs to be hashed out and the Selectman did not say what this issue is to pass over. As it sits right now, he owns road until it can go to another Town Meeting.

Mr. Springer suggested that he would be willing to work with the resident at 4 Heron Rd., and board, to get guidance. The Board, Mr. Annis and himself would all agree on what will be done and how. In order to resolve properly, the board is willing to meet at the site. Mr. Springer and Board agreed that Mr. Silva the review engineer was not necessary to be at the meeting. They all were in agreement for the Board as a whole to attend. Mr. Springer also decided to have Mr. Webby (Engineer) to mark the driveway... road layout, that way there is no question of where to correct the entrance.

Mr. Springer asked about the bond again. Mr. Millias stated that this issue with the driveway should be resolved first. Discussion on date and time for meeting, it was decided on June 15, 2017 at 6:15 pm. and to contact the resident. Continue discussion on June 15, 2017 at Heron Rd. at 6:15 p.m.

Discussion: 69 Summit St., Solar Array project

Name change from SunConnect USA to SunConnect MA17 LLC., is no longer an issue (email rec'd – attached)
Received proposed amendment to change fence. Abutters have been notified by Bertin Engineering.
Members review the change, site plan called out for a chain link fence and a solid vinyl fence in the same area.
Instead of a double fence, they would use the vinyl fence on that perimeter and as the security fence. They will still have the plantings on the inside.

Discussion of the double fence whether it was necessary. The 7' vinyl fence would remain. Would just be eliminating a double fence in that area.

Motion to accept and approve at 69 Summit St. solar Array to eliminate a section of 7' chain link fence to be tied into the proposed 7' vinyl stockade fence for screening at 6 Harvest Ln.

Any other discussion:

Mr. Belcher asked if the 7' vinyl fence would be suitable security fence.

Members discussed again, the vinyl fence and it would be more solid as opposed to the chain link, being climbable. At one point it was to be chain link with vinyl strips.

MOTION: Mark Millias

SECOND: Jonathan Soroko

AIF

Discussion:

Present: Gordon C. Andrews: Amanda Estates: (herein after as G.C. Andrews)

G.C. Andrews: Wondering if we could look at the site plan that was approved by the Planning Board.

I was wondering was this a subdivision that was approved?

Mr. Millias: It's a Multifamily development.

Mr. Andrews: It shows separate lots. In the Special Permit requires them to be separated lots, each building is supposed to have 150 feet of frontage according to the special permit. I'd like to know what was approved when you guys signed off on this site plan. Did you create a private way? Or is this just a driveway that's named this.

Mr. Skulte: It should be a privately owned driveway maintained by the condo association.

Mr. Andrews: Ok, so does that create frontage?

Mr. Skulte: No, none of those lots technically have frontage, the way it's drawn up.

G.C. Andrews: So the way it's drawn up, how would the building inspector, because the building inspector on Monday issued building permits for two of these buildings. Where would the frontage come from? If you didn't approve frontage.

Mr. Belcher: These were thru a special permit

G.C. Andrews: No, the special permit requires 150 feet of frontage.

Mr. Millias: We don't create the special permit correct?

G.C. Andrews: That's correct, but you are the only board in town that can grant frontage.

Mr. Skulte: What do you mean grant frontage?

G.C. Andrews: You're the only board in town that can create a plan. A subdivided plan.

(Secretary: It's not a subdivision)

G.C. Andrews: OK.... It is, the plan, a special permit requires that each building have its own lot and each lot to have 150 feet frontage. Where is that frontage?

Mr. Millias: So you're saying you disagree with the granting of the special permit?

G.C. Andrews: I disagree with the granting of the building permit.

Mr. Millias: Ok, so we don't provide either of those.

(Gordon R. Andrews- chairman recused himself)

Mr. Belcher: Here's the by-laws in question: Multifamily development allowable by Special Permit from the Zoning Board of Appeals, A: it is required that any Multifamily development complex proposed shall locate each building on an individual lot which shall have continuous frontage on a public or private way. What was established is this is a privately owned driveway.

Mr. Andrews: so it's a driveway it's not a public way or private way?

Mr. Belcher: It would be a private way.

G.C. Andrews: How is that a t private way?

Mr. Skulte: It is dedicated so it's a private way.

Mr. Belcher: The frontage was based off of this established private way.

G.C. Andrews: But that's not established.

Mr. Skulte: It's a parcel.

G.C. Andrews: There is no road there, you haven't approved a road. It says

(Secretary: A road does not get approved by the planning board or zoning board it is only approved by Town at town meeting)

G.C. Andrews: As a subdivision, excuse me I'm speaking: It says right here in the subdivision land, in the code of town of Halifax chapter 235-21B : it states in the town of Halifax, private streets are prohibited, and existing private streets will be approved only if they meet public standards. So I'm confused, reading this code where a private street can be created, by anyone if under subdivision control their prohibited.

Mr. Belcher: But this is a multifamily, not subdivision.

G.C. Andrews: It requires subdivision the lots.

Mr. Belcher: We didn't actually subdivide the lots, we're representing lots for each building.

G.C. Andrews: but if you're representing lots, they have to have a lot number. If each building has to be put on its own separate lot, its own 150 feet of continuous frontage, where are you getting the 150 of continuous frontage for one lot?

Mr. Skulte: Your argument is that, there is no right of way, so these lots don't have frontage, so you're challenging this plan being appropriately approved

G.C. Andrews: Ya, because I don't understand where a private way is created that creates frontage for these lots, because from what I found, in case law, that the division of abutting on a statutory private way requires conpuniance with definitive subdivision process and frontage statutory private way does not qualify for an ANR endorsement. So I'm assuming you didn't give an ANR for each one of these lots. So where are these lots, how are they created?

Mr. Skulte: They're all created thru I guess not a subdivision, but thru a special permit, and you can create lots, but what I'm saying is they're not buildable lots.

G.C. Andrews: I'm saying this plan has never been recorded showing separated lots, these lots don't exist because the only way to create lots, that I'm aware of is a subdivision, and that would mean the planning board would have to issue a subdivision to meet the requirement for the special permit. The permit calls out Amanda way, where is Amanda's Way recorded and I can't find it accepted anywhere in the minutes. So I don't understand how you can give a building permit to a street that doesn't exist. I understand that you don't give them, but I'm trying to understand where is this road coming from?

Mr. Skulte: So you can create lots, there wouldn't be buildable lots, you can create it thru recording ANR plans through other survey mechanisms, that's a better question for Webby, but they would technically not buildable lots according to the subdivision regulations, Is what you're saying so even if these lots were created, (subdivided) your argument is that even if they were created, they don't have the necessary frontage to be buildable lots?

G.C. Andrews: yes

Mr. Skulte: so is there a question at the end that you're asking us to do something?

G.C. Andrews: I would like to find out from the Planning Board if you think these are buildable lots or not.

Mr. Skulte: Do we have the formal approval language? Do we have any, did the planning board review this project? We signed off on it right in some context.

Mr. Millias: we're going to have to go thru and check all of our notes and everything. This project has been going on for a long time, so it will be tough for me to recall.

Mr. Skulte: The multifamily across from Stop & Shop didn't have those buildings on individual lots?

Mr. Millias: I'm also trying to remember what we did on the proposed multifamily on 58, where they needed...

Mr. Belcher: There all on the same, its one parcel in a private way, controlled by an Association. It's not anything that's going to be accepted by the Town.

G.C. Andrews: But how do you create frontage, is my question on a private way unless it's subdivided.

Mr. Skulte: You have to dedicate frontage in some capacity.

Mr. Belcher: Based on the special permit, it wasn't requiring it to be subdivided, it was required to be represented on the individual lots.

G.C. Andrews: But where is the continuous frontage come from for those lots.

Mr. Belcher: It's represented on the private way.

Mr. Skulte: It depends on how the language of the approval is written, the special permit to my understanding is essentially all of them are the same

G.C. Andrews: It's not on the special permit it says that you must, (quoted the special permit) so they still have to put each one on of these buildings on a separate lot under 167-10, which is the regulation of density, they must have 150' frontage for each building. I don't understand...

Mr. Skulte: Let me stop you right there, there's two points. Let's read the specific approval language... even if they were to create the lots, they are meeting the definition that you're challenging right? The lots that don't exist, so maybe that's procedural step with meeting the lots. The approval doesn't say that you need the frontage.

G.C. Andrews: It does say you need the frontage. It says you have to have 150' of continuous frontage. You have to have that on a road.... 167.... (again read from the zoning) Shall locate each building on an individual lot which shall have, it shall.

Mr. Skulte: shall have... doesn't say 150

G.C. Andrews: If you look in the book under the regulations of density and dimensions. It requires that each buildable lot have at least 150' of frontage.

Mr. Skulte: My understanding for a multifamily district,, we can review the regulations again, was that that the overall parcel, where all the buildings had to have a certain amount of frontage, a certain amount of acreage. I don't recall the requirements of the lots being on separate.

Mr. Belcher: so many units per acres.

(Secretary: it is still overall one parcel, the lots are not going to be sold off separately)

G.C. Andrews: Actually when the plan was presented I was told that they are separate lots, because when I requested the 30' buffer wrapping around the whole project, I was told it wasn't needed the only one that they were going to give was next to me. They didn't give it to Mr. Avril, because they were individual lots. So that is what was said at their meeting. I don't understand present a driveway, and claim that that has continuous frontage for each one of those lots. Without subdividing. I don't know how you get a recording at the registry of deeds without subdividing the land.

Mr. Belcher: Its, that the thing, it's not being subdivided, the individual lots aren't being created or sold. Why must they be.

G.C. Andrews: Otherwise you can't create an individual lot.

Mr. Belcher: Were not creating it, the whole thing is an individual lot.

Mr. Skulte: His argument is that the regulations say each building has to be on a lot, the lots haven't been created so you can't , so you can't build the buildings. That's his agreement and you can't create a plan to

create those lots without going thru the subdivision process. But they would not be buildable lots according to the subdivision regulations

Mr. Belcher: right.

Mr. Soroko: Isn't that 150' That's going to be strictly a private way owned by the golf course and that was...

Mr. Belcher: The golf course is funky, because that is actually technically part of the golf course.

G.C. Andrews: This only has 74.75' of frontage on Elm St.

Mr. Soroko: But this in one lot, on buildable lot. Basically that is set up for special permits to build a multifamily development, not a subdivision. So it's not like their taking one lot and subdividing up into 8 or 7 seven lots, however many they want, 6, 4 the things is, it doesn't make sense why if it's just going to be a Condo, why do they need 150' of frontage, because you have that on the street.

Mr. Skulte: Is it one variance they granted.

G.C. Andrews: You can't get a variance on a special permit.

Mr. Millias: do you know, we'd have to look at the Zoning board of Appeals has mentioned, I'm not familiar with them.

G.C. Andrews: It says directly in their by-laws, that there cannot be any reductions, variances or changes to what is required to issue the special permit. So they only have 74.74' frontage on Elm St.

Mr. Skulte: You can get variances though.

G.C. Andrews: Not for the special permit for the multifamily. The way it is written.

Mr. Skulte: Is that true?

(secretary: the zoning board gives variances on special permits all the time)

Mr. Belcher: You have to deal with them about that, that's not us to say one way or the other. Because I know they can variances to across the street from 58.

G.C. Andrews: well I asked for them to check with their attorney at the last meeting I attended and I have not heard back. But what I am asking is, where are these lots created.

Mr. Skulte: You're probably right, if it hasn't been recorded the lots technically haven't been created. I think the question to be to the applicant on how they are going to create those lots.

Mr. Belcher: I don't have it here, but I do recall that there's actually two sections in the multifamily that contradict, and it has to do with those lots, and you aren't creating lots to separate this single lot of land, what you're doing, and this is what we came up with and this is why we've accepted a few of these multifamily, because otherwise you can't accept any multifamilies at all in the town, because you have two different contradictory marked sections.

G.C. Andrews: So in the bylaw it says that the more restrictive bylaw takes place, takes precedent.

Mr. Skulte: So you're just arguing that it was improperly approved and I think that your appeal period has probably ended.

G.C. Andrews: No, I'm appealing the building permits that being issued. That's what I'm going to be appealing, because these lots don't exist.

Mr. Soroko: That would fall under Zoning Board of Appeals that actually that granted the special permit in the first place. If we look at what the Planning Board accepted or at least approved back in 2014 they approved the approved the multifamily development, not a special permit.

G.C. Andrews: did you approve that or did you approve a site plan.

Members: we approved a site plan. Mr. Skulte: Zoning Board approves all the multifamily. We do not grant a multifamily permit.

G.C. Andrews: So you didn't create a private way when you approved the site plan.

Mr. Belcher: we did create the site plan

G.C. Andrews: no, no, you didn't

Mr. Skulte: We're not approving the creation.

G.C. Andrews: My question is, if Amanda's Way is just a driveway. Mr. Belcher: it's a private way.

G.C. Andrews: Well, it's a driveway, if that only has 74.75' of frontage, where's the frontage for these lots that need to be created. Did the planning board, so the planning board did not issue a subdivision for this.

Mr. Belcher: No, and like I keep saying, I don't think it's required that there's a subdivision for it.

G.C. Andrews: How else would you put houses on individual lots if you don't subdivide?

Mr. Belcher: And this is what we're talking about, you can't make a single lot represented multifamily and subdivide it, because then you would have a multiple different lots owned by multiple different people, potentially.

G.C. Andrews: But what it says here is the developer must control at least 10 acres before he applies for the special permit, it does not say that the developer has to own those lots after the permit.

Mr. Belcher: No, actually after the permit is done, he's going to turn the entire thing over to the association.

G.C. Andrews: But that's not what has been said, they said there selling individual buildings.

Mr. Millias: In our approval I believe we have, a stipulation as far as maintenance.

Mr. Skulte: yes, it's to be maintained by the development, and not by the town.

Mr. Belcher: Yes, and the property of the condo association, so it will be controlled by an association, like I just said.

Mr. Skulte: if the applicant was able to demonstrate that they could physically create these lots, with that satisfy your question.

G.C. Andrews: I would just like to see how those lots are physically recorded for a plan, because, I don't understand without subdividing the land, how each building fits on an individual lot, it doesn't say that it has to show it, it says

Mr. Millias: are you saying that was a requirement of us?

Mr. Skulte: No he's saying it's a requirement in the zoning regs, that each building has to be on lots.

G.C. Andrews: so what I'm saying, in order to do this development, they must do a subdivision.

Mr. Skulte: No, all the other multifamily developments are single property with frontage on the road and a driveway, they don't have houses on separate lots.

G.C. Andrews: So I don't understand why in the zoning bylaws that you guys also read, that the more constricting requirement that would be to put each building on each lot..

Mr. Skulte: And that is exactly the problem that your arguing here is that you have to create a public way, that the town would then have to maintain.

G.C. Andrews: how else would you get individual lots

Mr. Skulte: you shouldn't, which is why most don't

G.C. Andrews: so you're saying that the planning board waived that requirement

Mr. Skulte: No that wasn't in our purview, for the requirement. I wasn't there for the original discussion, thinking of what it might have been at the time.

G.C. Andrews: I'm struggling as to these building permits have been given different lot areas and different frontages, where those have actually been created.

Mr. Millias: you do have to understand, that's not us

Mr. Skulte: you can create them without subdividing, but your saying they don't exist.

G.C. Andrews: If they've never been recorded, then yes. And how will they be recorded if they weren't subdivided.

Mr. Skulte: you can go thru an ANR plan, they just wouldn't be buildable lots according to subdivision regulations. You're not building a subdivision, you'd be building this multifamily condo, it's a procedural issue on how you crate these lots at this point. I'd say it's a question for the applicant on whether or not they intend on creating these or if it's something you've got to do.

Mr. Belcher: what it came down to and I believe is and if you were going to subdivide or be forced to create lots your no longer creating a multifamily development, you're creating a subdivision.

G.C. Andrews continued to reiterate the same series of questions regarding lots, frontage, subdivision, access.

He then addressed the issue of the bylaw regarding no common driveways. He stated that it doesn't single out single family or multifamily, it says you cannot have a common driveway, all access to each lot will be through its frontage. Again he asks if the lots don't exist, where is the frontage for the development would be.

Mr. Skulte said the zoning may have waived the frontage requirement for this development, I don't know exactly what was waived or wasn't or variance that were sought.

G.C. Andrews stated no variances granted or sought.

Mr. Millias: the zoning board did approve the multifamily development, they were able to prove to the board that they were.

G.C. Andrews: The developer was able to present a plan, and ZBA was told they had to prove that they could meet that.

Mr. Skulte: It sounds like they did.

Mr. Millias: But they did, it sounds like the developer was able to satisfy whatever the zoning board required, and gave them the approval

G.C. Andrews: No, no, they told me they were issuing them the permit and they had to go back and create each lot.

Mr. Skulte: But they approved the project as presented.

Mr. Millias: So you're saying they did grant them the permit, but the developer did not satisfy the needs of the conditions. But they still gave the permit without those conditions being met.

It was then discussed if they need to create the lots, how would they do it and would they go to planning board, would they have to get a subdivision. It was discussed that maybe a Survey, or legal description drawn up. A legal description explaining each lot. Continuing on with descriptions of general density for subdivisions in the AR. It was questioned again what the zoning board did with the frontage, if they didn't get a variance for that. Again it was stated that the Planning Board doesn't grant the special permit or variance, but the appeal period is probably over. It was then discussed about the length of time of the special permit. The secretary advised they are for 2 years, and as long as they continue work they permit stays in place. It was also advised that work has been completed and continues at the site.

G.C. Andrews thanked the board for their time.

Meeting Minutes:

Motion to accept the meeting minutes of May 4, 2017

MOTION: Mark Millias

SECOND: Jonathan Soroko

AIF

Adjourn:

Motion to adjourn meeting.

MOTION: Mark Millias

SECOND: Jonathan Soroko

AIF

It was unanimously voted to adjourn the meeting at 7:45 p.m.

Respectfully submitted,

Date Approved: _____

Terri Renaud
Planning Board Secretary