

**Minutes  
Topsfield Zoning Board of Appeals  
Town Library Meeting Room  
January 23, 2018**

Chairman Moriarty called the meeting to order at 8:04PM. Board members present, in addition to Chairman Bob Moriarty, were Gregor Smith, Dave Moniz, David Merrill and Jody Clineff. Donna Rich, Community Development Coordinator, was also present. Other persons present during all or part of the meeting included Lisa Mead of Mead Talerman & Costa LLC, Matt Harman, Landplex, Bill Heney, Heney & Associates LLC, Joseph C. Edwards, attorney, Ricky & Mike Patel, Country Farms Market, residents Foti, Alex & Donela Qirjazi, Stephen Mackey, Mark Malmquist, Christ Erickson, Tracey Hudson, Michael Radochia, Daniel Toledano, William Gehr, Mark Lyons, Gregg Lindsey, Collee Erickson, Christy & Steve Richards, Jeff Murley Marianne Moore, George Grimes, Lisa Taylor, Lauren Herter, Lori & Chris Boyd, John & Louise King, Richard & Lisa Maki, Mary Hayden, Jennifer DiCarlo, Robert Moyer and Dick Gandt.

**Public Hearing**

**8:09PM: 49 Main Street-continued-** Alex Qirjazi explained that he and his sister, Donela, are requesting a change in use from office space to a retail/variety store at 49 Main St. Alex distributed to the Board architectural plans produced by Kritikos Associates Architects entitled Plans A-1, A-2 & A-3 dated 1-16-18. Alex noted that the handicapped ramp had been relocated to the right and some landscape design had been identified. Member Gregor Smith questioned the location of the deli counter in the interior floor plan, Alex reported that due to a non-compete agreement signed when Alex's Roast Beef was sold they would not be preparing food on site for retail. Clarification was provided on the exterior and interior access of the cooler located in the back of the space, interior access would be for produce and potentially beer & wine, exterior access would be for deliveries of products to the store. Alex described the requested change in windows and that he would be going before the Historical Commission next week for their review. Chairman Moriarty asked if there were any comments from the audience, Joseph Edwards, attorney for the owners of Country Farms Market, spoke against the application. Mr. Patel, owner of Country Farms Market stated his concern for parking. Mr. Edwards pointed out that Mr. Qirjazi would have to go before the Board of Health for items disclosed that would be sold at the establishment. Chairman Moriarty noted that their jurisdiction does not fall to those items. Chairman Moriarty proceeded to guide the Board and applicant through the Site Plan Review Checklist. Items found deficient were elevations on a registered stamped plan, along with a landscape and a parking plan. In addition, knowing what had been approved by the Historical Commission would enable the Zoning Board to proceed with the approval of the outside color and windows. Member Dave Moniz made a motion to continue the Public Hearing until February 27<sup>th</sup> at 8PM, location to be determined, seconded by Member Jody Clineff; so voted: 5-0.

## **Public Hearing**

**8:40PM: 3 Kinsman Lane-** David Merrill read the Legal Notice to open the Hearing. Attorney Lisa Mead, Mead, Talerman & Costa, LLC described the timeline of Mr. Daly purchase of the property at 3 Kinsman Lane, which included, but not limited to, an email from Building Inspector, dated July 25, 2017, expressing that it was a buildable lot. Mr. Daly purchased the land September 29, 2017. Mr. Daly then went before the Board of Health and obtained approval for a Title V septic system (1/9/17) and the Planning Board and obtained a Stormwater & Erosion Control Permit (11/7/17). Ms. Mead further explained that Mr. Daly went to the Building Inspector in November to obtain the building permit to construct a new single family home and was denied a permit because the property did not meet with Zoning Bylaw Article IV, section 4.03 and 4.08. Ms. Mead noted that the property had obtained an Approval Not Required (ANR) from the Planning Board on September 1, 1982, which met all the requirements for a buildable lot. The owner, Kathy Tremblay, on June 30, 2015 granted an exclusive easement to abutting property, 99 Washington Street; however, language stated that a septic system would be able to be installed in the northeasterly portion of the easement. Knowing of the easement and the language regarding the placement of the septic Mr. Daly went forward with the purchase of the land at what is 3 Kinsman Lane. Ms. Mead described how the proposed house met all the requirements contained with Article 4, sections 4.03 and 4.08; in addition she read the definition of what the Bylaw defined as a Buildable Area and Building Area. Chairman Moriarty reviewed the lot size being 40,004 SF, and the easement being 18,398 SF, with an Open Space of 17.7% the buildable area remains at 21,632 SF. Ms. Mead reported that Mr. Daly had read the 14 letters from abutters and reduced the footprint of the house to 2,872 SF, changed a 3 car garage to a 2 car garage, and moved the driveway over so it would not be directly across from the Herter's. Ms. Mead distributed a list of the homes on Kinsman Lane and abutting houses on Washington Street that displayed the SF of each dwelling to state that house proposed at 3 Kinsman Lane would not be out of character with the neighborhood. The Board members individually expressed their concern with section 4.08, Buildable Area, not being 30,000 with the language that is stated in the easement not allowing for that to be included in the SF of the buildable area. Although Ms. Mead argued against this point, the Board was adamant. Chairman Moriarty asked if there were any comments from the audience, Bill Heney, Heney & Associates LLC, spoke on behalf of the Boyd's, the owners at 99 Washington Street. Mr. Heney encouraged the Board to uphold the decision of the Building Inspector, regarding the exclusive easement held by the Boyd's discounts that SF from the buildable area calculation. Chairman Moriarty stated in regards to the applicant's appeal of the Building Inspectors decision of November 21, 2017 the Zoning Board of Appeals votes in support of the Building Inspector that the property at 3 Kinsman Lane is not buildable on the basis that the easement limits the availability to Lot 1 by the terms of the Exclusive Use Area Easement of 18,398 SF leaving the remaining portion being less than the 30,000 SF required for the IRA district, so moved by Member Dave Moniz, seconded by Member Gregor Smith; so voted: 5-0. Member Dave Moniz made a motion to close the Public Hearing, seconded by Member Jody Clineff; so voted: 5-0. Ms. Mead stated that the applicant requests to withdraw without prejudice the petition for a variance from Article IV, Sections 4.03 & 4.08.

**Public Forum:** Donna Rich explained that the Planning Board would be holding a Public Forum on February 13<sup>th</sup> at 7pm, Town Library to ask the citizens opinion on Marijuana.

The Zoning Board was encouraged to attend. Donna also explained that the Planning Board would be looking into changes to the Sign Bylaw and amendments to the Groundwater Protection District as requested by the Town of Hamilton.

**Minutes:** Member Gregor Smith made a motion to approve the minutes of December 19, 2017, as written, seconded by Member Jody Clineff; so voted: 5-0.

At 9:55pm, Member Jody Clineff made a motion to adjourn and Member Dave Moniz seconded the motion; so voted: 5-0.

Respectfully submitted,

Donna C. Rich  
Community Development Coordinator

Per the Open Meeting Law, the documents that were either distributed to the Zoning Board of Appeals before the meeting in a packet, or at the meeting were:

1. Agenda
2. Draft Minutes December 19, 2017
3. Proposed information on 2018 Warrant Zoning Articles
4. Application from 3 Kinsman Lane, dated November 28, 2017, along with 14 letters from abutters
5. Received at meeting: 49 Main Street-Kritikos Associates Architects Plans A-1, A-2 & A-3 dated 1-16-18, 3 Kinsman Lane-Proposed Plot Plan dated: revised building footprint 1/15/17, copy of Topsfield Zoning Bylaws page 9,43,46,47& 52, list of SF, bedrooms and baths for homes located on Kinsman Lane and abutters on Washington Street, email from Glenn Clohecy dated 7/25/17.

*Approved as written at the February 27, 2018 Zoning Board of Appeals meeting.*

Pursuant to the 'Open Meeting Law,' G.L. 39, § 23B, the approval of these minutes by the Committee constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Committee as to the completeness or accuracy of such statements.
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