



Town of Halifax Commonwealth of Massachusetts

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

HALIFAX ZONING BOARD OF APPEALS

Monday, January 14, 2013

The Halifax Zoning Board of Appeals held a public hearing on Monday, January 14, 2013 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Robert Gaynor, Kozhaya Nessralla and Peter Parcellin were in attendance timely.

Sally Wells was not in attendance.

Richard Gilcoine was in attendance at 7:18pm.

Chairman Tinkham called the meeting to order at 7:08 p.m.

The Board reviewed the mail and other matter/issues:

Correspondence/Mail/Email/Fax – N/A

Bill(s)

1. Expense: "WB Mason" - office supplies = \$31.44
2. Expense: "WB Mason" - ink stamp = \$32.90

Approval of Minutes

Pending Approval = May 24, 2012; August 13, 2012; August 20, 2012; October 15, 2012; November 5, 2012

Old Business

1. Petition #786, Christopher Kazmarek, 149 Elm Street, Halifax, MA
2. Planning Board w/Chairman Gordon Andrews – re: continuance of "Site Review" discussion/procedure
3. "Applicant Checklist: Complete & Return to the Zoning Board of Appeals" form the Secretary would like propose to the Board to included in the application packet process

New Business

1. Informal Discussion w/Robert Durgin – re: 8 Bourn Drive (Lot 5), Halifax, MA on the topic of a Variance for new construction

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Other Matters

1. Wage & Personnel Board to ZBA- re: "Public Hearing" on 1/22/13 [dated 12/11/12]
2. Charlie Seelig to ZBA- re: "Town of Halifax-Community Development Block Grant 2013 [emailed 12/21/12]
3. Planning Board to ZBA – re: "Form A Distribution-Map 98 lot 1" [dated 12/24/12]
4. Charlie Seelig to ZBA – re: "Town of Halifax-Meeting Calendar Update" [emailed 1/2/13]
5. Charlie Seelig to ZBA – re: "Town of Halifax-Fieldstone Farm-2013 Shows" [emailed 1/2/13]
6. Charlie Seelig to ZBA – re: Town of Halifax-Liaison List from Finance Committee [emailed 1/3/12]
7. 2013 Meeting Schedules from the following: Conservation Commission, Planning Board, Communication Committee, Finance Committee & Board of Selectmen
8. Charlie Seelig to ZBA – re: "Town of Halifax-Revolving Fund Article for May 2013 Town Meeting" [emailed 1/7/13]
9. Charlie Seelig to ZBA – re: "Ethics Training" [dated 1/7/13]
10. Charlie Seelig to ZBA – re: "Town of Halifax-Access to Burrage Pond Wildlife Refuge [emailed 1/7/13]

The Board asked the Secretary to look into the amount of horse shows permitted annually at Fieldstone Farms to confirm his calendar of shows for year 2013 is within the compliance set forth for his property/farm.

Another matter that arose following the posting of the agenda for this ZBA meeting was an electronic email from Charlie Seelig, Town Administrator, sent on Friday, January 11, 2013. The subject matter was "Town of Halifax – Medical Marijuana – Public Forum – February 12". The secretary read the email aloud to the Board (-see attached-) and also informed the Board that she will post this meeting in case there is the potential for a quorum at this public forum.

Petition #786 – Christopher Kasmarek, 149 Elm Street, Halifax, MA

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, December 10, 2012 at 7:15 p.m. in Meeting Room 1, Town Hall, 499 Plymouth Street, Halifax, MA on the application by Christopher Kasmarek for a Special Permit to construct a 30.3 feet by 40.5 feet garage, along with a request for a Variance from the rear line setback from 40 feet to 12 feet to the property at 149 Elm Street, Halifax, MA. Said property is owned by Christopher & Thais Kasmarek, as shown on Assessor's Map 37, Lot 14. The applicant(s) seek a Special Permit in accordance with the Zoning By-Laws of the Town of Halifax under Section 167-12F(4 & 5), Density Regulations for Specific Uses page(s) 167:47 & a Variance of the setback requirements, under Section(s) 167-11 Table of Dimensional and Density Regulations (page 167:43).Area is zoned Residential.
Petition #786

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Applicant, Christopher Kasmarek was present to speak to his petition.

The secretary informed the Board that Board member, Kozhaya Nessralla, came into the ZBA office earlier that day, listened to the audio recording of the missed hearing session (on December 10, 2012), reviewed the evidence introduced at that hearing session and certified he can now vote on said petition. He filled out & signed the certification form pursuant to MGL chapter 39, section 23D & time stamped by the Halifax Town Clerk on Monday, January 14, 2013.

Chairman Tinkham said that pictures of the structure was requested at the last public hearing by the Board and the applicant came today, supplying photos of the structure for their review. Chairman Tinkham noticed that the proposed packaged structure comes with a roll up door. Mr. Kasmarek explained that he is buying this by a kit. Vice-Chairman Gaynor asked if he already owns the modular structure and the applicant confirmed that he does have it in his possession.

Chairman Tinkham asked if any Board members were able to make it to either the scheduled on-site inspection or able to visit the property at his/her convenience. Mr. Gaynor said that he did not make it to the property but he is very familiar with the property and area. Mr. Gaynor said that he was glad to see that a ruling of access from his property was somewhat settled and Mr. Kasmarek agreed. Mr. Kasmarek stated, on a sidebar note, the frustration of the gate that existed and how it did or did not exist...just frustrating. His intention was to work something out to make his property accessible to the public but it has been proven that this cannot be policed so he had to remove this option.

The secretary wanted to bring to remind the Board that Mr. Kasmarek initially submitted an application requesting only a special permit for the oversized garage. Upon mentioning his desired location and it requiring a variance, my recommendation was to ask for everything he wished for as the Board is only allowed to vote on what is advertised. In the last meeting with the applicant, he stated that he would prefer the option with the variance as it would cut off less trees. Mr. Kasmarek even stated that even if he was granted the special permit, he may or may not put up the structure due to the location. From there, that is when the Board decided to do an on-site inspection.

Mr. Kasmarek said the preferred location pushes it back and it is less visible...most likely the top of the structure may be visible. The option with a special permit only is on the hill and an eye sore, to which he is not convinced that he would still build it, should he be granted the special permit. As much as he wants the building, it's the location that is not pleasing to him. If the structure can go in the back corner, that is preferable. Chairman Tinkham wanted to confirm that was option (plan) A that the applicant presented and Mr. Kasmarek confirmed it to be option A. Mr. Kasmarek said that he did speak to Mr. Zimmer and there did not seem to be a problem. Mr. Zimmer said verbally that he would prefer option A. The secretary explained that Mr. Zimmer did come up to review to explain the scenarios and upon seeing the option A and option B.

Board member, Peter Parcellin asked Mr. Kasmarek about the abutter, Mr. Kallaher and that both parties have had their land surveyed to only find out that there seems to be a section where both of their land intertwined. Needless to say, the neighbors do speak about the things that go on.

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It was duly moved (R.Gaynor) and seconded (K.Nessralla) for grant your petition (#786) for a Special Permit to construct a 30.3 feet by 40.5 feet garage, along with a request for a Variance from the rear line setback from 40 feet to 12 feet to the property at 149 Elm Street, Halifax, MA. Said property is owned by Christopher & Thais Kasmarek, as shown on Assessor's Map 37, Lot 14. The applicant(s) seek a Special Permit in accordance with the Zoning By-Laws of the Town of Halifax under Section 167-12F(4 & 5), Density Regulations for Specific Uses page(s) 167:47 & a Variance of the setback requirements, under Section(s) 167-11 Table of Dimensional and Density Regulations (page 167:43).

This project does not derogate from the intent of the By-law and will not be detrimental to the neighborhood.

The following conditions must be adhered to in order for the special permit to remain in effect:

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1. The garage is to be used for personal use only. No commercial or office use will be allowed.
 2. No running water or drainage will be installed in the garage.
 3. Electricity will be allowed
 4. The special permit runs with the applicant(s) only and is not transferable.
 5. The special permit was granted based on the presentation and plans presented at the hearing. Any changes from what was presented and approved must be brought back before the Zoning Board of Appeals.

This decision shall not take effect until:

- (a) A copy of this decision certified by the Town Clerk to the effect that twenty (20) days have elapsed since this decision was filed in the office of the Town Clerk (1/16/13) without any appeal having been dismissed or denied has been recorded in the Plymouth County Registry of Deeds, or with the Assistant Registrar of the Land Court for Plymouth County, and
- (b) A certified copy indicating such Registry Recording has been filed with the Board.

Chairman Tinkham called for a voice vote: D.Tinkham, YES; R.Gaynor, YES; K.Nessralla, YES; R.Gilcoine, YES; P.Parcellin, YES

The motion to grant petition #786 passed 5-0-0

Chairman Tinkham reprised Mr. Kasmarek of the procedure following approval of the petition

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On a side note, conversation regarding Mr. Kasmarek's property and property line continued. He asked for assistance from the Office of the Zoning Board of Appeals for assistance. The secretary said that she did research and could not find anything that Mr. Kasmarek did not have already. In the end, an email sent from the Town Administrator, Charlie Seelig was sent that access to Burrage Pond can only be accessed via Hanson and not Halifax. He did not want this to be the outcome but without the policing, Mr. Kasmarek said he has no other choice. The secretary read the email from the Town Administrator (-see attached-).

Informal Discussion w/Robert Durgin, 8 Bourne Drive (Lot 5), Halifax, MA

Robert Durgin was present to speak to lot 5/ 8 Bourne Drive. He was interested in purchasing the parcel to build a new house but due to the shape of the topography, he believes he will need a variance. Mr. Gaynor asked if he currently owns the property and he said he does not. He was looking for the opinion of the Board before he pursued this any further from a time and money standpoint. Mr. Gaynor referenced the plot plan submitted by the applicant that the lot is on a cul-de-sac and there are a couple of houses on top of Walnut Street and further down off Walnut Street and you can see how the shape of the lot goes down fifty feet and drops down. Because it takes that turn there on the left, one would have to kitty corner the house.

Mr. Durgin stated if the lot had gone straight back or if it were laid off differently, it may work. But, because it goes off in an angle, they would clip the house. Mr. Durgin showed how he is proposing to lay the house, facing Bourne Drive, as all the other houses do. But due to the topography, the proposed house would have to face an angle compared to the other houses. He points out the conservation land surrounding the lot. Mr. Gaynor points out that the existing houses all face Bourne Drive and there is an easement which slopes off on the property. Mr. Gaynor said that he had never seen that kind of easement before and it appears to be pretty substantial a drop. Mr. Durgin said he had thought of different ways to place the house and the only way is sideways where the side of the house would be facing the road and detracts from the neighborhood. Mr. Nessralla asked if he could shrink the house a little to which Mr. Durgin replied that it would affect the living area and he wanted a larger house for the family growing. Mr. Gaynor asked if there is four now in the family and the amount of bedrooms proposed. Mr. Durgin said the proposed would be a four bedroom house. Mr. Parcellin asked if there is an existing development plan for the house as it appears that is lots for sale. He wanted to understand that the house Mr. Durgin is proposing, which is colonial style, is within the existing character of the neighborhood. Most are colonials with a separate entrance off to the side and some with attached garages. Mrs. Tinkham asked the side closest to the house that is existing is where the garage would be and Mr. Durgin replied yes.

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Mr. Gilcoine asked if the hardship is the shape of the lot. Mr. Gaynor replied, not only that but the topography, where it drops off, the shape and the design of the lot. He believed that this proposal would fit within the established character of the neighborhood and not asking for anything more than what is existing in the area with the attached garage. Mr. Nessralla stated that a lot of variances to get. Mr. Gaynor said that's what he's hoping to do without going ahead and purchasing the property but first getting an idea on how to go about doing it.

Mrs. Tinkham said that it's new construction. Mr. Gaynor agreed. Mr. Nessralla said it's part of the development and the lot is 40,000 square feet. Mr. Gaynor said yes it is with 150 feet frontage but back of the lot, to make it parallel to the street, Mr. Durgin is limited, again because of the topography. Mr. Durgin, the lot is shrunken to one side so it cannot go another way. The desire is to do a four bedroom of normal size and not being too small. Mr. Nessralla questioned if the hardship is the lot. Mr. Gaynor said yes and personally, he thinks the topography also because of the grading easement makes it limiting...the choices. He agrees with Mr. Gilcoine that it meets the criteria of being within the established character of the neighborhood; the hardship would be the layout, topography, grading and he does not think it derogates from the intent of the bylaw, especially with the houses existing in the neighborhood. He wanted to know how much of a variance is required and Mr. Durgin replied approximately three feet on one side, based on the drawings.

Mrs. Tinkham said that she does not feel good about this. Why is the Board being asked to grant a variance on new construction as she feels there are other options? Mr. Gilcoine replied that the proposed does not fit the lot. Mrs. Tinkham replied than you get a new lot or different style house. Mr. Gilcoine said why would you put a Cape in the midst of a lot full of Colonials. Mr. Parcellin asked if he is using the same plans as what is built on the street. Mr. Durgin said it's a different builder as the original builder went bankrupt. Mr. Parcellin asked if his proposal will be similar to what is existing on the street. Mr. Durgin said that a smaller house has a limited living area. There is a 36'x26' foundation house; you build smaller than that and the rooms will be small. If you turn the house, the side of the house faces the front. The only other way is without a garage but all the houses on the street have a garage and that would be where the fourth bedroom would be proposed. The bump out in the back of the house is extra living area, not a deck.

Mr. Gaynor asked about that new construction on Annawon the Board approved...it was not different with this. Mrs. Tinkham asked if the one being referred to was a 40,000 square foot buildable lot and Mr. Gaynor said no, that's why it was brand new construction and needed the variance to build on it. This lot is a pre-approved 40,000 square foot lot with a crazy configuration. Mr. Nessralla asked about flipping the house and garage as an option. The house would be facing Bourne and putting the garage in the back of the house. Mr. Durgin said that would make the house differ from the existing. Mr. Nessralla said he was only trying to help and think of other options in order to avoid asking for a variance. There are other options of asking for a variance and getting shot down. Another option is shrinking the house. Mr. Gaynor said that you cannot do that on either side because you cannot shrink the garage. Mr. Nessralla said you can do a 30'x24' foundation; making the front of the house 30' and the garage 24'. Mr. Durgin said that the separate entry way would be lost. Mr. Parcellin asked about moving the garage back but would cause issues. Mrs. Tinkham asked the size of the garage; Mr. Durgin said it is standard 24'x24'; a two-car garage.

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Mrs. Tinkham asked if he was hoping for the Board to say “yes” and go ahead with that. Mr. Durgin said he was looking for a yes and has tried many times to see how it can work, been shopping lots and found this to be the best fitting and suited for his family. The builder does not want to invest any time in this so that is why Mr. Durgin in here...to get a feel from the Board. Mrs. Tinkham asked if there is another lot in this area that would work. Mr. Durgin said there is another lot but they did not like it due to the fact the land slopes off within 100 feet to the wetlands so there is no backyard.

Conversations continued about the lot, shape and other applications that the Board may have seen some of these issues or past similar issues in the past. The secretary attempted to look up some of the past petitions to assist in remembering the past petitions.

Mr. Gaynor said that, as before, he agreed with Mr. Gilcoine that he does not believe that this is a self-created hardship, it’s the layout, the topography, shape of the land and drop-offs. As he has driven through the neighborhood, what is being proposed is within the established character of the neighborhood as they are all colonials with attached garages and does not see it would derogate from the intent of the by-law. What is being proposed is what already exists in the area. Mr. Gilcoine concurred.

The Board continued speaking to which Mr. Gilcoine and Mr. Gaynor said they would be in favor of it. Mrs. Tinkham reminded Mr. Durgin that he would need a four out of five vote and seeing that the plans are conceptual and once the actual dimensions are in place, perhaps it will not be that bad. He said that he understood but wanted to try this first before shelling out money for certified plot plans. Mr. Gaynor said that he understood Mr. Durgin’s point in not wanting to go through a huge expense before getting an opinion. Mr. Durgin said he wanted to see if it was worth his while or not. Mrs. Tinkham asked when he was proposing to apply and he believe he missed the next public hearing date. The secretary verified the next deadline date for the February 2013 public hearing is in two days and does not foresee that happening. Therefore, the most reasonable is making the March 2013 public hearing.

The Board thanked him for his time and if he would like to move forward, to do so at his preference. Mr. Durgin thanked the Board for their time and left.

Planning Board with Chairman Gordon Andrews

Mr. Andrews returned to continue the discussion on procedures to ensure that check and balances are in place when an applicant is in need of multiple approvals by Boards/Committees. The secretary spoke in saying that when it comes to subdivisions, that protocol has been set in place by M.G.L. Chapter 40A§11-2 where verbage exists, as follows: “When a planning board or department is also the special permit granting authority for a special permit applicable to a subdivision plan, the planning board or department may hold the special permit public hearing together with a public hearing required by sections 81K to 81GG inclusive of chapter 41 and allow for the publication of a single advertisement giving notice of the consolidated hearing.”

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The secretary introduced to the board a form to proposed to be included in the application packet (- see attached-) called the "Applicant Checklist: Complete & Return to the Zoning Board of Appeals" where if the applicant states that approval is required by certain Board/Committees/Departments, then the burden is on the applicant, where it should be.

An example of the procedure, in hopes it will work, was the land off Franklin Street, along with Amanda Estates and the proposals of both as a subdivision.

Meeting Minutes

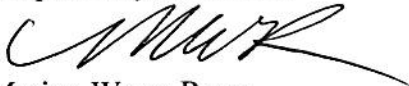
It was duly moved (K.Nessralla) and seconded (R.Gilcoine) to approve the meeting minutes of May 24, 2012.

Chairman Tinkham called for a voice vote: D.Tinkham, YES; R.Gaynor, YES; K.Nessralla, YES; R.Gilcoine, YES; P.Parcellin, YES

The motion to approve the meeting minutes of May 24, 2012 passed 5-0-0

It was duly moved, seconded and VOTED to adjourn the meeting.

Respectfully submitted,



Marion Wong-Ryan
Zoning Board of Appeals, Secretary



Debra Tinkham
Zoning Board of Appeals, Chairman
