



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes

Monday, March 10, 2014

The Halifax Zoning Board of Appeals held a public hearing on Monday, March 10, 2014 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Kozhaya Nessralla, Peter Parcellin and Robert Durgin present. Robert Gaynor absent.

Chairman Tinkham calls the meeting to order at 7:03pm and reprised the audience that this public hearing/meeting is being audio taped.

Correspondence/mail/notices

The Board reviews mail and Ms. Tinkham reads mail items into record. A Talent Bank form from Alan Diaz to be an alternate member is read into record. Zoning Board secretary instructed to invite him to the next meeting.

Bills

The Board reviews and signs bills: WB Mason Item #LSWMISCPLATE Name Plate (\$11.95) and CPTC 3/15/14 Conference/Attendee, Robert Durgin, Sessions #6,11,12 (\$60.00)

Meeting Minutes:

Motion to approve Meeting Minutes from April 22, 2013:

MOTION: Kozhaya Nessralla
SECOND: Robert Durgin AIF
Passes: 4-0-0

Appointments:

7:15pm – Petition #804 - David Cummings, 42 Oak Place, Halifax, MA

Present: David Cummings

Zoning Board Secretary reads Public Hearing Announcement into record.

Mr. Cummings presents his petition. The Board reviews the plans and current layout. There is a very small living room and no dining room. He'd like to move the kitchen and have a small dining room and living room. Mr. Cummings would like to remove the mud room, as it is rotted, and build an addition two feet past the mud room, which would give extra dining room space. The lot is a quarter of an acre (7,095 square feet). The addition will have a crawl space foundation. Once the addition is built, it will become a part of the house. This is an investment – he'd like to build a nice house and sell it to someone who will enjoy it. Everything is all set with Conservation, he has the building permits and has had everything inspected and approved by the Board of Health. There will be two bedrooms upstairs and one bedroom downstairs (basement), as long as everything works with the ceiling height downstairs. A full bathroom will replace the half bathroom.

Motion to waive on-site for Petition #804:

MOTION: Kozhaya Nessralla
SECOND: Peter Parcellin AIF
Passes: 4-0-0

Motion to accept Petition #804 as presented:

MOTION: Kozhaya Nessralla
SECOND: Peter Parcellin AIF
Passes: 4-0-0

7:30pm – Petition #805 - Brian & Geraldine Connelly 29 Eleventh Avenue, Halifax, MA

Present: Brian Connelly; Joseph Martin of Great Day Improvements (contractor);
Zoning Board Secretary reads the Public Hearing Notice into record.

Mr. Martin's company is going to be constructing the building. Mr. Martin explains that the applicants would like to extend their home for more space. Drawings are submitted to the Board. The addition will replace the deck and there will be an extension to create a small deck on sonotubes. It will be a vinyl structure with a four-season room. It will have an air-conditioning and heating unit that will not be connected to the system in the existing house. There will be a separation between the addition and the existing house. The addition is manufactured and then installed on location.

Motion to waive on-site for Petition #805:

MOTION: Kozhaya Nessralla
SECOND: Robert Durgin AIF
Passes: 4-0-0

Motion to accept Petition #805 as presented:

MOTION: Peter Parcellin
SECOND: Kozhaya Nessralla AIF
Passes: 4-0-0

7:45pm – Petition #802 - 340 Monponsett St. Realty Trust, 340-348 Monponsett Street, Halifax, MA

Present: Attorney Richard M. Serkey (Monponsett Street Realty Trust)
Zoning Board Secretary reads Public Hearing Notice into record.

Attorney Serkey confirms that the absent Zoning Board Member (Robert Gaynor) can still vote by Mullen's Rule with Chairperson Tinkham. Ms. Tinkham reads Attorney Hucksam's email (3/7/2014) regarding his opinion on this petition.

Mr. Serkey comments on Attorney Hucksam's letter. He believes that the letter Mr. Millias wrote to Attorney Doherty, which was forwarded to Ms. Wong upon request, shows that the prior residential use was a legal, pre-existing, non-conforming use because the apartments in the front building predated Zoning and because a building permit was properly issued for the apartment in the rear building. Mr. Serkey disagrees with Mr. Hucksam's opinion on the authority to grant a special permit to extend or alter a pre-existing, non-conforming use. Mr. Serkey feels comfortable that the Zoning Board, under the statute of *Chapter 40A, Section 6*, has the authority to extend or alter a pre-existing, legal, non-conforming use, which is what is being asked for in this petition. As for the issue regarding discontinuance versus abandonment, Mr. Serkey feels the Bylaw defines the term abandonment which requires an intent, where discontinuance does not require proof of intent.

Ms. Tinkham agrees with Attorney Hucksam's opinion.

Mr. Serkey suggests submitting a petition for a variance as there is no doubt that the Zoning Board has the authority to grant it or not. If he submitted a petition for a variance, he would waive the timing requirements for the Board to act on the special permit and he would submit the variance petition, send notices to abutters and the public and have a hearing on the variance petition where it would be joined with this petition. The Board would have the choice to say yes or no to either or both. This, Mr. Serkey feels, would get everyone out from under the difference in opinion between Mr. Serkey and Mr. Hucksam.

Ms. Tinkham asks what variance Mr. Serkey would put before the Board. Mr. Serkey answers the variance would be from the use provisions of the Halifax Zoning Bylaws. Mr. Serkey confirms with Ms. Tinkham that the Zoning Bylaw authorizes use variances, use being multifamily. Mr. Serkey explains that the premise of the new petition would not be based on a prior-use, which was being altered and extended, but would be based on introducing a use that is not allowed and Mr. Serkey would cite as evidence that it had previously been used for residential purposes at various

times. The logical basis for this petition would not be for the existing use, which was being tweaked, it would be asking for a use variance. Then there wouldn't be a problem with the Board having authority.

Ms. Tinkham asks if the applicant would consider going back to the four apartments with no extension. Mr. Serkey would like to proceed with their request for six apartments. The absence of abutters' concerns makes Mr. Serkey think it shouldn't be an issue.

Mr. Serkey takes a break to speak with his clients. He returns informing the Board that he's going to write a memo waiving the time requirement and will submit a variance. There will be a new case number so that it can be joined with this petition, #802 with a deadline of 3/24/2014.

Motion to continue Petition #802 to April 14, 2014 at 7:45pm:

MOTION: Kozhaya Nessralla

SECOND: Peter Parcellin AIF

Passes: 4-0-0

Discussion:

Ms. Tinkham reads into record Charlie Seelig's memos regarding public hearings and the Board discusses.

Adjourn:

Motion to adjourn the meeting at 8:20pm:

MOTION: Kozhaya Nessralla

SECOND: Peter Parcellin AIF

Passes: 4-0-0

Respectfully submitted,

Robert Gaynor
Chairman, Zoning Board of Appeals