



# 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, September 8, 2014

The Halifax Zoning Board of Appeals held a public hearing on Monday, September 8, 2014 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

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

Chairperson Tinkham called the meeting to order at 7:00 p.m.

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The Board reviewed the mail and other matter/issues:

- 7:15pm – Petition #815, Andrew & Diane Burke, 45 Lillypond Lane, Halifax, MA**
- 7:30pm – Petition #816, Nicholas Memmo, 320 Monponsett Street, Halifax, MA**
- 7:45pm – Petition #817, V.Richard Greeley, 855 Plymouth Street, Halifax, MA**

#### Procedural Matters

#### **I Correspondence/Mail/Email/Fax**

- OCPC – re: “Agenda for Meeting No. 511” for 8/27/14 meeting [received 8/25/14]
- John & Dawn Devine – re: Petition #742; letter sent to applicants from ZBA [dated 8/20/14]
- ZBA to All Boards/Committees/Departments – re: “40B Technical Assistance/Board Training Session on October 22, 2014” [memo dated 8/27/14]

#### **II Bill(s)**

- Revolving: “Express Newspaper” – Legal Notices-Petition #810,#811, #814 & #815, #816 & #817= \$420.00

#### **III Approval of Minutes**

- June 16, 2014 & July 14, 2014

#### **IV New Business**

- **7:15pm – Andrew & Diane Burke, 45 Lillypond Lane, Halifax, MA**
- **7:30pm – Nicholas Memmo, 320 Monponsett Street, Halifax, MA**
- **7:45pm – V.Richard Greeley, 855 Plymouth Street, Halifax, MA**

#### **V Old Business – N/A**

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**VI Other Matters**

- PB to ZBA – re: “Site Review” memo [dated 6/16/14]
- PB to ZBA – re: “Certificate of Site Plan Approval” for Independent Solar Generator for a Solar Farm on 2 Monponsett Street [dated 7/15/14]
- Charlie Seelig to ZBA – re: “Roads and Multi-Family Projects (including Chapter 40B)” memo [dated 7/15/14 & emailed to Board members on 7/28/14]
- Charlie Seelig to ZBA – re: “Multi-Family Developments (not Chapter 40B)” memo [dated 7/16/14 & emailed to Board members on 7/28/14]
- PB to ZBA – re: “Site Plan for Ledwell Take Out Food, 150 Industrial Drive” memo [dated 8/7/14]
- PB to ZBA – re: “Site Plan for Halifax Auto Sales, 320 Monponsett Street” memo [dated 8/7/14]
- PB to ZBA – re: “Form A Distribution-Map 74/Lot 3A” memo [dated 8/8/14]
- PB to ZBA – re: “Form A Distribution-Map 127/131 lots 12A/13” [dated 8/22/14]
- PB to ZBA – re: “Certificate of Site Plan Approval” memo [dated 8/26/14]

**VII Upcoming Hearings, Seminars &/or Conferences**

- Charlie Seelig – re: “Town of Halifax-Chapter 40B Workshop-Wednesday, October 22” [emailed 8/27/14 & forwarded to ZBA on 9/2/14]

**VIII Open Comments /Open Business**

**IX Possible Executive Session**

**X Adjournment**

**Zoning Board of Appeals - Meeting Minutes**

It was duly moved (R.Gaynor) and seconded (K.Nessralla) to approve the meeting minutes of June 16, 2014 and July 14, 2014. So VOTED 5-0-0

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**Petition #815 – Andrew & Diane Burke, 45 Lillypond Lane, Halifax, MA**

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, September 8, 2014 at 7:15 pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Andrew & Diane Burke to request a Variance of the left side setback from thirty (30) feet to seventeen (17) feet to build a twelve (12) feet by sixteen (16) feet Three Season Room addition off the side of their home, located at 45 Lillypond Lane, Halifax, MA. Said property is owned by Andrew & Diane Burke, as shown on Assessor’s Map #79, Lot 13S. The applicants seek a Variance of the setback requirements, under Section(s) 167-11 Table of Dimensional and Density Regulations (page 167:43) in accordance with the Zoning By-laws of the Town of Halifax). Area is zoned Conservancy & Residential. Petition #815

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Applicants Andrew & Diane Burke were present to speak to their petition.

The applicants explained that they would like to add a three season porch. Due to the slope of the property, it makes it challenging to locate the porch. Mr. Burke showed pictures from his cellular phone, along with submitted colored photos to the Board for review. Mrs. Burke explained that the water runs off on their property is so significant during rain and snow storms. Their current deck was built approximately five years ago and is on a complete square space due to conservation land, so the option to place the three season porch is unable. The applicants would not meet the criteria of the conservation bylaws due to the no touch zones. Mrs. Burke explained that they were told by contractors if they place the porch on the proposed location, it would help with the run off of the water. It was asked if they have been in contact with their closest neighbors and all of them were in favor of the project and fine with the addition. There is a fence and trees that separate their closest neighbor. Lillypond Lane was a development built approximately 1989.

This proposed porch will have a basement with a foundation and there is a lack of locations to place the proposed porch. The proposed porch will be built and not a pre-fabricated. The applicants submitted a picture of what they are proposing to build.

It was duly moved (R.Gaynor) and seconded (K.Nessralla) to waive the on-site inspection. So VOTED 5-0-0

It was duly moved (R.Gaynor) and seconded (K.Nessralla) to grant your petition (#815) for a Variance of the left side setback from thirty (30) feet to seventeen (17) feet to build a twelve (12) feet by sixteen (16) feet Three Season Room addition off the side of your property, located at 45 Lillypond Lane, Halifax, as shown on Assessor's Map #79, Lot 13S. Your application was granted a Variance of the setback requirements (Section(s) 167-11) Table of Dimensional and Density Regulations (page 167:43), in accordance with the Zoning By-laws of the Town of Halifax.

This petition was granted as it does not derogate from the intent of the bylaw and will not be detrimental to the established character of the neighborhood. As for the topography conditions to this lot, the applicant(s) would be limited to the location and the locale that it could be placed. The addition will not derogate from the intent of the bylaw.

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The Zoning Board of Appeals grants this petition with the following conditions:

- **The Board requires a confirmed set of architectural plans of the twelve (12) feet by sixteen (16) feet Three Season Room addition. The Board requires four (4) sets of the confirmed architectural plans.**
- **The special permit and/or variance were granted based on the plans and testimony presented at the hearing. Any changes from what was presented and approved must be brought back before the Zoning Board of Appeals.**

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Please be advised that all variances and/or special permits shall comply with all the rules and regulations and codes of the Town of Halifax.

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 Clerks (9/10/14) 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.

Chairperson Tinkham called for a Voice Vote: R.Durgin, YES; P. Parcellin, YES; R.Gaynor, YES; K.Nessralla, YES; D.Tinkham, YES

The motion to grant petition #815 passed 5-0-0

Chairperson Tinkham reprised Mr. & Mrs. Burke of the procedure following approval of the petition.

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**Petition #816– Nicholas Memmo, 320 Monponsett Street, Halifax, MA**

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, September 8, 2014 at 7:30pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Nicholas Memmo for a Special Permit for one or more of the following: “Retail or commercial businesses with drive-through, drive-in or open-air sales or operations & their appurtenant buildings or structures”, “Motor vehicle service or filling stations” and/or “Repair garages for motor vehicles” to his property located at 320 Monponsett Street, Halifax, MA. Said property is owned by Nicholas Memmo, as shown on Assessor’s Map #63, Lot 17. The applicant seeks a Special Permit under Commercial Uses, in accordance with the Zoning By-laws of the Town of Halifax under Section 167-7 Schedule of Use Regulations, specifically Summary of Use Regulations, page 167:30. Area is zoned Commercial-Business. Petition #816

Applicant Nicholas Memmo was present to speak to his petition.

Mr. Memmo would like to receive a permit for a used car sales. Mr. Memmo said that there are not many changes to the layout of the property as it works for his proposed business. Mr. Memmo did add a fence for privacy between his lot and his neighbors. Mr. Memmo is proposing an 18 feet by 30 feet wooden garage with concrete slabs. The size of the garage doors proposed for approximately 8 feet or 10 feet doors. No heat is proposed for the structure. A small office desk may be placed in the corner of the garage but that is really it. Mr. Memmo is proposing 21 parking spaces, coming off the Wal-mart side. Mr. Memmo points the area from the submitted certified plot plan. The Board wanted to know where customers would be parking.

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Mr. Memmo said that 7 of the 21 parking spaces will not be used for car sales but parking. The 7 parking spaces would cover customers, handicap and/or employee parking.

The Board asked about his background experience. Mr. Memmo said he currently has a used car sales business in Whitman, named Whitman Wheels so he is familiar with the selling of used car sales.

The proposed garage is only being used for repairs of the cars that he is selling. The secretary explained to the Board about explaining to Mr. Memmo what all his intentions will be for the property to avoid any confusion or re-advertising at the applicant's expense.

The Board asked Mr. Memmo about his business hours. He stated his hours would be from 10:00am to 6:00pm from Monday to Friday, along with hours on Saturday and Sunday by appointment only.

The Board wanted a better understanding of the proposed spaces as it compares to the one way location of Wal-mart as the flow of traffic is something the Board wants to assure is being addressed. As for the parking spots, the land has been flattened out due to the previous business of mulch and/or rocks.

Mr. Memmo said he not so concerned about the traffic generated by the displays as most of his business is via internet. Mr. Memmo did list in his application specifically what he is proposing to fix due to meeting the legal requirements when selling used cars from his lot. He will also be accessing his garage space in Whitman, which is already well equipped to handle the services he may require.

The Board asked the vehicles he uses to tow auctioned cars. Mr. Memmo said he rarely uses tow beds and normally uses 2 car tow trucks, which normally suffice for his purposes.

The Board reviewed prior motor vehicle service permits issued in the past to review conditions set forth by the Board. Albeit the public hearing notice listed several areas of the bylaw the applicant has listed, the Board and applicant is taking a moment to decipher the specificity of the applicant's needs.

It was duly moved (R.Gaynor) and seconded (P. Parcellin) to proceed with an on-site inspection on October 4, 2014 at 9:00am. So VOTED 5-0-0

The Board asked the applicant to stake out the proposed garage and parking spaces on the property for review. The Board would like to see a proposed picture/architectural plan of the proposed garage at the next public hearing.

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Abutter Margaret Logan of 324 Monponsett Street was in the audience and wrote on the bottom of the original public hearing notice that she is "...okay w/application".

It was duly moved for a continuance of Petition #816 to the next public hearing date of Monday, October 6, 2014 at 7:15pm. So VOTED 5-0-0

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**Petition #817– V.Richard & Donna Greeley, 855 Plymouth Street, Halifax, MA**

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, September 8, 2014 at 7:45pm in Meeting Room 1, Town Hall, 499 Plymouth Street, Halifax, MA on the application by V. Richard Greeley for a project proposed to the location on 855 Plymouth Street. Said property is owned by V. Richard & Donna M. Greeley, as shown on Assessor's Map #58, Lots 7,2E & A. The project requires a Special Permits to raze the existing house & propose to rebuild a thirty two (32) feet by forty two (42) feet "Two-Family or duplex dwelling" under Continuation & Extension of Non-conforming Uses (Section 167-8A & 8C, page 167:39) & Residential Uses, "Two-Family or duplex dwelling" under Summary of Use Regulations (Section 167-7C, page 167:26). The project requires a Variances of the front set back from fifty (50) feet to thirty four (34) feet & the right side set back from thirty (30) feet to twenty three (23) feet under Table of Dimensional and Density Regulations (Section 167-11, page 167:43) & the foundation will be less than two (2) feet above the crown of the road which abuts the front lot line under General Density Regulations (Section 167-10.K, page 167:42) in accordance with the Zoning By-laws of the Town of Halifax). Area is zoned Commercial-Business. Petition #817

Applicants Mr. & Mrs. Greeley were present to speak to their petition.

The cottage on the property has been there for over 25 years, built in the 1950's. The option is to fix the existing structure that does not sit on a foundation but that would be throwing money away. Mr. Greeley proposes to tear down and rebuild with a foundation. So much needs to be updated so it makes sense to him to tear it down and rebuild. The current residents were there for a bit over 9 years and there are updates required like carpeting, siding, windows, etc....

The proposed structure is pretty much sitting on the existing structure and squaring it off, thus making it a two-family duplex and having each side mirror the other side, with a one bedroom unit on each side. Still working on the certain measurements, for example, the size of the kitchen, location of the doors, parking will be accessible. Looking to raise the foundation a little bit higher than the existing foundation with a proposed 4 feet basement...it will not be a full basement and as for the height of the foundation, he believes he may go approximately 2 feet above the crown will not be visible from the street.

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As for the proposed structure, each place will be a one bedroom unit. The applicants want people without children. The septic system accepts a 3 bedroom unit. The Board asked if he is adding a third bedroom and the applicant repeated the question and the conversation went no further.

The Board understands the pre-existing, non-conforming components of said petition wanted to assure that other sections of the zoning by-law should have been included in the application, specifically section 167-8B = Alterations and section 167-8D=Restoration. The Board had decided to seek town counsel's opinion as it pertains to the zoning by-law section of 167-8B and section 167-8D and whether this specific section should be included in the application. Also, in question is whether under section 167-3=Definitions for "Alteration" should have been part of the request on the application.

It was duly moved (R.Gaynor) and seconded (P. Parcellin) to proceed with an on-site inspection on October 4, 2014 at 9:30am. So VOTED 5-0-0

The Board asked the secretary to seel Town Counsel's opinion on the sections of the by-law that was not sought in the petition (by-law sections 167-3,167-8B & 167-8D) and if it would be required.

It was duly moved for a continuance of Petition #816 to the next public hearing date of Monday, October 6, 2014 at 7:30pm. So VOTED 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

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