



# 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, October 6, 2014

The Halifax Zoning Board of Appeals held a public hearing on Monday, October 6, 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 7:02 p.m.

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The Board reviewed the mail and other matter/issues:

- 7:15pm – Petition #816, Nicholas Memmo, 320 Monponsett Street, Halifax, MA
- 7:30pm – Petition #817, V.Richard Greeley, 855 Plymouth Street, Halifax, MA
- 7:45pm – Kristen & Raymond Lofstrom, 88 Summit Street, Halifax, MA

[NOTE: the correspondence/memos/email/faxes were not distributed to each board member, but only to the Chairperson to review aloud for acknowledgement.]

#### Procedural Matters

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

- Letter to Scott Clawson [dated 9/9/14 & cc'd to ZBA from Town Administrator]
- CPTC Fall 2014 Workshop [emailed 9/16/14 & forwarded to ZBA on 9/16/14]
- OCPC – “Agenda for Meeting No. 512, September 24, 2014” [received 9/22/14]

##### **II Bill(s) &/or Signature Required**

- Revolving: “Express Newspaper” = \$70 [Petition #818]
- “Authorized Signatures on File in Accountant’s Office” memo [dated 9/25/14]

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

- May 19, 2014

##### **IV New Business**

- 7:45pm – Kristen & Raymond Lofstrom, 88 Summit Street, Halifax, MA

##### **V Old Business**

- 7:15pm – Nicholas Memmo, 320 Monponsett Street, Halifax, MA
- 7:30pm – V.Richard Greeley, 855 Plymouth Street, Halifax, MA

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**VI Other Matters**

- PB to ZBA – re: Attendees for the 40B Technical Assistance/Board Training Session on 10/22/14 [received 9/22/14]
- PB to ZBA – re: “Form A Distribution-Map 71 Lot 17C” memo [dated 9/22/14]
- PB to ZBA – re: “Certificate of Site Plan Approval” for the following:
  - Map 15/Lots 6 & 13 + Map 14/Lot 9 = Land off Elm Street for a 12 unit multifamily development [dated 9/22/14]
  - 150 Industrial Drive for a Take-Out Food service [dated 9/23/14]
  - 413 Plymouth Street for Used Car Sales [dated 9/24/14]
  - 320 Monponsett Street for Used Car Sales [dated 9/24/14]
- BOS to ZBA – re: “Notice of Public Hearing” on October 14, 2014 [received 10/1/14]

**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]
- CPTC Fall 2014 Workshops [emailed to ZBA on 10/16/14]

**VIII Open Comments /Open Business**

**IX Possible Executive Session**

**X Adjourn**

**Zoning Board of Appeals - Meeting Minutes**

The meeting minutes for the May 19, 2014 public meeting was tabled to the next public meeting date.

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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

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Applicant Nicholas Memmo was present to speak to his petition.

Mr. Memmo submitted pictures of the type of garage he is proposing to build for a visual. This request was asked by the Board at the last public hearing. The height is important as he may be proposing to place a lift within the garage.

Mr. Durgin and Mr. Gaynor were at the on-site inspection. They walked the property and reviewed placement of garage and there will be no heating unit system place but perhaps a space heating. If there are serious vehicle issues, those vehicles will be worked on at the Whitman, Massachusetts location. The mechanical jobs at the Halifax location will be minor fixes. Mr. Memmo has a four yard dumpster.

As for the display area, that was the only stickler as he wants to place the signage in the front. As most of his business is done via internet, this should not be a problem as he said he is fortunate if he sells a single car a month from coming to his lot.

Mr. Gaynor said that there is sufficient room from the Wal-mart to his location. There will be no additional lighting as the abutting business, Wal-mart keeps the area bright. Mr. Memmo will be adding a six feet vinyl fence to divide the area for privacy purposes.

It was duly moved (R.Gaynor) and seconded (K.Nessralla) to grant your petition (#816) 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 your property located at 320 Monponsett Street, Halifax, MA, as shown on Assessor's Map #63, Lot 17, 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.

The Zoning Board of Appeals granted this petition due to the fact that this addition will not be detrimental to the neighborhood. The building is located in a commercial-business zone and will not derogate from the intent of the bylaw.

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

- Hours of operation will be Monday through Friday, from the hours of 10:00am to 6:00pm. Hours of operation on Saturday and Sunday will be by appointment only.
- The special permit runs with the applicant(s) only and is not transferable.
- The lighting in the exterior of the property is to remain in its current condition.
- The applicant must maintain an acceptable practice of cleanliness on the property.
- The applicant must maintain a removal practice of discarded material from the property.
- The applicant will build an eighteen (18) feet by thirty (30) feet garage. Location specified on the site plan, dated 08/4/14.
- The applicant is to have fourteen (14) used vehicle spaces.
- The applicant is to have seven (7) spaces for customers/handicap/employees.
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- The applicant must remove the banner signage, referencing the business will be “locating to the property of 40 Carver Street, Halifax, MA” , effective IMMEDIATELY.
- The selling of firewood on the applicant’s property must cease and desist, effective IMMEDIATELY.
- The special permit and/or variance are granted to the applicant with the stipulation that the applicant is within compliance of the conditions set forth by the remaining Departments, Boards and/or Committees in the Town of Halifax (specifically Building Inspector’s Office, Planning Board, Historic Commission and Board of Selectmen’s), whether the conditions are pre-existing or forthcoming.
- 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.

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 (10/6/14) 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 #816 passed 5-0-0

Chairperson Tinkham reprised Mr. Memmo of the procedure following approval of the petition.

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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).

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The project requires a Variance 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.

Chairperson Tinkham proceeded to read a letter from the Building Inspector, Thomas Millias, dated October 3, 2014 (-see attached-).

Mr. Gaynor said before he got into the on-site inspection, he wanted to know if Town Counsel returned with an opinion. The secretary informed him that the opinion of Town Counsel was received timely & is in each of the Board's information packet to review. The secretary proceeded to give Mr. Greeley a copy. The secretary read the letter addressed to Town Counsel, Attorney Richard Hucksam, dated September 9, 2014 (-see attached-). Following reading that letter aloud, the secretary read aloud the response email from Town Counsel, Attorney Richard Hucksam, dated September 16, 2014 (-see attached-).

Mr. Durgin and Mr. Gaynor spoke to their opinion of the on-site inspection with agreement. The foundation height, there is a decent size steep. There is a good slope from a topography standpoint. To go two feet above the crown of the road would look ridiculous. The hardship was clear with topography and location of the structure, along with the location of the septic system, which can handle a three bedroom system but the applicant will only be building a two bedroom unit. The proposed is a ranch style, single story structure. There will be no second story as Mr. Greeley pointed out at the on-site. Also, the two-family duplex for each unit will mirror the other side from a size and layout standpoint. The current structure is showing its age and what the applicant is asking to improve the property is needed. As for what the applicant is asking for, variance-wise, the request is mainly to square off the proposed structure and does not create a detrimental character of the neighborhood. As for the foundation pouring, the applicant needs to await engineering plan. There will be no deck built but a standing landing with steps.

The Board said that they are not use to granting an application without architectural plans of the structure with the foundation pouring plans. Mr. Greeley replied that he did not proceed with a full set of architectural as he was unsure about the outcome. Mr. Greeley did submit an illustration of his proposed plans for the house.

Mr. Parcellin asked for an explanation as to why the topography is the hardship. Mr. Greeley said it may not be the an explanation so much as to restore the existing structure because it's in such a bad state, to restore would cost more than rebuild. The Board reviewed and the location of the septic system does limit the location of the structure. Mr. Parcellin just wanted to ensure the asking of this application is valid as his concern is if someone comes to the Board to question the validity of the application and request. Mr. Parcellin's concern is more the next owner and not so much Mr. Greeley but the Board can only proceed with what is in front of them at the time.

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It was duly moved (R.Gaynor) and seconded (K.Nessralla) to grant your petition (#816) for a project proposed to the location on 855 Plymouth Street, as shown on Assessor's Map #58, Lots 7,2E & A. The project was granted 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) & Residential Uses, "Two-Family or duplex dwelling" under Summary of Use Regulations (Section 167-7C). The project was granted 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) & 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) in accordance with the Zoning By-laws of the Town of Halifax). Area is zoned Commercial-Business.

The Zoning Board of Appeals granted this petition due to the fact that this project will not be detrimental to the neighborhood. The current home is pre-existing, non-conforming and will not derogate from the intent of the bylaw

The conditions for granting the special permit are as follows:

- The proposed "two-family or duplex dwelling" structure shall be a single story ranch structure.
- Each dwelling is to consist of a single bedroom unit and will mirror one another.
- There will be no deck off the back of the structure.
- **There will be no second story to the proposed "two-family or duplex dwelling" structure.**
- Parking for the proposed "two-family or duplex dwelling" structure consists of two (2) parking spaces in the front of the dwelling and two (2) parking spaces to the left side of the property.
- **The applicant MUST supply the Office of the Zoning Board of Appeals with the FINAL COMPLETE SET OF PLANS to the proposed "two-family or duplex dwelling" structure.**
- The special permit was 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.

Please be advised that all Variances and/or Special Permits shall comply with all the rules, 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 Clerk (10/7/14) 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

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(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 #817 passed 5-0-0

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

**Petition #818– Kristen & Raymond Lofstrom, 85 Summit Street, Halifax, MA**

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, October 6, 2014 at 7:45pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Kristen Lofstrom to request the following: a Special Permit to construct a twenty four (24) feet by thirty-six (36) feet In-Law Apartment, along with a Variance of the front set back from fifty (50) feet to forty seven (47) feet and the right side set back from thirty (30) feet to sixteen (16) feet to the existing home at 85 Summit Street, Halifax, MA. Said property is owned by Raymond & Kristen Lofstrom, as shown on Assessor's Map #88, Lot 5 (Note: Previous owners of said property were Raymond & Maureen Kingston). The applicant seeks a Special Permit for an In-Law Apartment, under Section 167-7D(12) Specific Use Regulations (pages 167:38-39) & 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 residential. Petition #818

Applicants, Mr. & Mrs. Lofstrom were present to speak to their petition.

The applicants explained that their intention is to remove the existing greenhouse to build an in-law apartment for their parents. Mrs. Lofstrom explains that she dropped off a set of architectural plans and a certified plot plan. Unbeknownst to the secretary was a change of the certified plot plan from the original submitted at the time of the deadline date. Mrs. Lofstrom did not make the office of the Zoning Board of Appeals aware, nor aware of the ramifications of the changes made to the application.

The Board reviews the certified plot plan, signed by the land surveyor (dated July 29, 2014) and submitted at the time the application packet was due and the second submitted certified plot plan, submitted by Mrs. Lofstrom, signed by the land survey (date September 26, 2014). Mrs. Lofstrom stated that she did not think the issue of the front set back would be as much of an issue as the side set back.

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Suffice it to say, the current public hearing notice do not reflect the revised setback. Also, by the time Mrs. Lofstrom submitted the architectural plans and revised certified plot plan, nothing could be done to the public hearing notice as MGL chapter 40A, section 11 must be adhered to.

Currently, this is how it was advertised and what is being asked to amend:

- Front setback from 50 feet to currently advertised 47 feet to amend to 43.9 feet.
- Right side setback from 30 feet to currently advertised 16 feet to amend to 19.6 feet.

The secretary explained that the Board can only vote on what has been legally publicized on the public hearing notice. The measurements listed on a public hearing notice can represent the maximum distance requested. Should an applicant decide to amend the application during a public hearing notice and the measurement is less than the advertised, then upon approval of the Board, it can be done. However, if the measurement change is to increase the non-conformity, then the public hearing will need to be re-advertised reflecting the changes. The secretary explained the situation to the applicants and requested them to return to amend the following day.

As such, the application can still be heard and will be continued to the following public hearing date with the amended measurements. The Board proceeded to ask questions about the addition and the required shared living space and other conditions. The applicants explained that there is a shared den along with an entrance and reviewed the architectural plans with the Board. The applicants confirmed that all utilities and septic system will be shared. Mr. Gaynor explained why the conditions exist and the fear of a wall going up and there is a two-family or rental home. That is what the Board attempts to avoid from happening. Also, explained the five year renewal process. There is currently a doorway the Board questioned and suggested an archway which the applicants were willing to entertain to the den. The secretary confirmed with Mrs. Lofstrom that when she reviewed the application process with her, the secretary did mention the shared living space and she said it was discussed but eluded her during the process. The shared entryway is not enough shared living space.

Chairperson Tinkham opened the petition to the audience.

Abutter, Edward Giampietro of 127 Walnut Street, Halifax, MA was present to speak to the petition. Mr. Giampietro wanted to know the amount of square footage allowed as his concern is the amount of structures on the said property. He met his new neighbors at the public hearing. In the end, he was fine with the addition but there is just so much buildings on the property.

The father-in-law asked if he will need the architectural plans to reflect the archways at the next public hearing. Chairperson Tinkham said that would be required. The goal is a six feet opening archway.

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

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It was duly moved for a continuance of Petition #818 to the next public hearing date of Monday, November 10, 2014 at 7:15pm, as the Notice of Public Hearing will have to be re-advertised due to the applicant's changes to the setback requests. So VOTED 5-0-0

The applicants were made aware to return to the office of the Zoning Board of Appeals the following day for the remittance of re-advertising their public hearing notice, along with any postage costs to re-notify the abutters and abutting towns.

**Resident Kurt Boetcher of Hayward Street, MA**

Mr. Boetcher wanted to speak to the Board regarding the Federal Housing Urban Development that there are stipulations about assistance to care for someone. Separate living quarters would be made available as he stated that he is substantially handicapped with his knee. Mr. Boetcher wanted to know if the Board had ever heard of this kind of assistance and the Board had not as their jurisdiction lies within the by-laws of the Town of Halifax. The Board said if something of that nature was implemented on a federal level, the Board would not know nor would it come before the Board. The Board had no past applications to that would come close to correlating to what Mr. Boetcher was referring to. The Board suggest Mr. Boetcher continue his research.

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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