



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes - Amended

Monday, August 13, 2018

The Halifax Zoning Board of Appeals held a public hearing on Monday, August 13, 2018 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Robert Gaynor, Kozhaya Nessralla, Peter Parcellin, Gerald Joy, Robert Durgin and Daniel Borsari.

Chairman Gaynor calls the meeting to order at 6:30pm and reprises the audience that this public hearing/meeting is being audio taped. He also explains the procedure and the protocol at the public hearings.

Executive Session

Motion to go into Executive Session at 6:30pm to discuss litigation in the Gordon C. Andrews v. Halifax Zoning Board of Appeals, Halifax Building Inspector and members of The Party Trust, Land Court Civil Action Number 2017 MISC 000507:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy

Voice Vote: Gerald Joy – yes

Robert Durgin – yes

Robert Gaynor – yes

Peter Parcellin – yes

Kozhaya Nessralla – yes

Motion to adjourn Executive Session and re-open the meeting at 7:11pm:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy

Voice Vote: Gerald Joy – yes

Robert Durgin – yes

Robert Gaynor – yes

Peter Parcellin – yes

Kozhaya Nessralla – yes

Appointment:

7:00pm – Petitions #868 and #869 - Public Meeting – Amanda’s Way, Gordon C. Andrews – Remand

Present: Attorney Kim Saillant, Brooks and DeRensis (representing the Halifax Zoning Board of Appeals)

Chairman Gaynor reads the Remand Court Order into record. The Board must address: 1. Whether the applicant’s 9/22/2013 site plan approval and 7/20/2015 special permit requires the applicant to locate each proposed building on a separate lot; and 2. The Board must address if the site plan approval and special permit require separate lots, whether Amanda’s Estates project meets the definition of a multifamily development found in 167-3 of the bylaw. Mr. Gaynor explains to the Board that this is not a hearing. The Board is only to offer clarification on their decision by answering the judge’s questions in the Remand order. He opens discussion up to the Board members.

Mr. Joy begins by saying that a multifamily development must be at least 10 acres. This lot has 12.52 acres with a total of six duplex units. The bylaw doesn’t state that it must be on separate lots to meet the requirements of a multifamily. Mr. Gaynor agrees and further explains that the special permit does not require separate lots. Mr. Parcellin speaks to the confusion of the intent of the bylaw with multifamily development requirements and his struggle to make sense of it. Mr. Gaynor agrees with Mr. Parcellin that the intent of the bylaw needs clarification, however he feels that as far as definition goes, this is an acreage question and Amanda’s Way meets the acreage requirement without having to be divided into separate lots. Mr. Durgin feels that the applicant applied under Section 167-12A of the bylaw which doesn’t

specify that the duplexes be located on separate lots. The Planning Board did not require separate lots on the site plan review, either. Mr. Nessralla states that the Zoning Board is not there to change their decision and feels things should stay the same. Mr. Gaynor feels both questions have been answered. Since the Board feels the requirements of the special permit of the multifamily development have been met, the answer to the second question is moot.

Attorney Saillant addresses the Board to clarify the answer to both questions. Chairman Gaynor answers that the Board answers “no” to the first question and that the second question is moot because of that answer.

Motion to answer No to Question #1 on the Court’s Decision on Remand and request Attorney Saillant to draft this Decision on Remand for the Court:

MOTION: Gerald Joy
SECOND: Kozhaya Nessralla
Voice Vote: Gerald Joy – Yes
Robert Durgin – Yes
Peter Parcellin – No
Kozhaya Nessralla – Yes
Robert Gaynor – Yes
Passes: 4-1-0

Attorney Saillant departs.

Appointment:

7:30pm – Petition #879 – Public Hearing - Brookside Realty, LLC., 11 “A” Street, Halifax – Special Permit/Variance for rebuild of pre-existing, non-conforming, single family home.

Present: Ed Johnson (Manager, Brookside Realty, LLC) and Amanda Monti; Elaine Rock (Abutter, 48 Lake Street)

Chairman Gaynor reads the Public Hearing Notice into record. Ed Johnson presents the petition using a plot plan showing the existing building vs. the proposed building. He explains that the existing building was knocked off its foundation by a tree in a Nor’easter and is just sitting there. The existing, non-conforming building is only four (4) feet from the layout of the road (Water Street). He is trying to build a new building and make it more conforming. The size of the lot is 8,000 square feet. Building the new proposed building in the existing footprint would make it too close to the street. The existing building was 1.9 stories, the new structure would be two (2) stories. The existing building is vacant and has not been condemned. There is a hot water heater inside the shed and exposed gas pipes going into the house which is dangerous. The dimensions of the stairs are 4 x 7 feet. Mr. Borsari clarifies that stairs are considered a structure.

Mr. Gaynor asks Mr. Johnson if the new building could be moved back five (5) feet making it further away from the street. The Board and Mr. Johnson discuss this suggestion. Elaine Rock is a direct abutter behind the property at 48 Lake Street. When asked her thoughts, she expresses her concern with the amount of space with a bigger build as there isn’t much room now. Mr. Johnson explains that the building would only be higher. Ms. Rock isn’t concerned with the height.

Mr. Johnson confirms that perk tests have been completed. The proposed building versus the old building have almost the same square footage. Mr. Gaynor points out that currently, the old building is a safety hazard. “A” Street gets more traffic now than it used to, per Ms. Rock. Mr. Gaynor asks Ms. Rock again what her concerns are. She asks if the property will be surveyed before anything takes place as she is concerned that the new build won’t go according to plan. Mr. Johnson answers yes, he would have it surveyed as he would like that also. He adds that his engineer (Webby Engineering) did the engineering for the property across the street. Mr. Gaynor explains to Ms. Rock that the builders will get everything correct as the Building Inspector must approve each step starting with the survey, foundation and so on. If the build wasn’t correct the special permit and variance would be null and void and it would be a very expensive process to start all over again. Ms. Rock understands and is okay with the proposal as long as it’s done correctly.

By right, the owners can rebuild on the same footprint, however, Mr. Johnson is trying to make things more conforming by asking for the variances. The Board agrees that they would like to do an on-site inspection. Mr. Gaynor and the Board confirm with Mr. Johnson that the property is staked out (foundation, stairs, etc).

Motion to do an on-site inspection for Petition #879 of 11 A Street property on Saturday, September 8, 2018 at 9:00am as well as continue the hearing to September 10, 2018:

MOTION: Robert Durgin

SECOND: Peter Parcellin AIF

Passes: 5-0-0

Appointment:

7:45pm – Petition #877 – Thao, Mai and Hiep Pham, 395 Plymouth Street – Continuance of Special Permit Authorizing Existing Six-Apartment Use

Present: Hiep Pham (owner), Attorney Alfieri (representing the Pham Family)

Mr. Gaynor welcomes Hiep and Attorney Alfieri and reads into record the Public Hearing Notice from June 4, 2018 into record. Mr. Alfieri gives a status update to the Board. The ANR submitted on June 4th has now been formerly acted upon and a new 43,300 square foot lot has been established and accepted. The septic system is on the estate lot. There is no zoning requirement that requires a septic system beyond that. The Board of Health regulations allow a septic system on a separate lot if there is a right for usage, which there is. The Zoning Board would like to see the septic system moved to the same lot in case the estate lot were sold. Mr. Alfieri agrees but the problem is that the septic system was installed in 2016/2017 without factoring in any future issues. The system is located adjacent to a large barn located on the estate lot. When reconfiguring the two lots to comply and not create any zoning infractions, the Phams had to respect the setbacks between the front lot and the large barn; 50 feet. If the septic was put on the other side, there wouldn't be an estate lot, so there weren't many options for septic location.

Mr. Gaynor asks if Mr. Alfieri has discussed adverse possession with the abutter. Mr. Alfieri answers that no, he has not however he doesn't think there should be any issue working out some type of boundary swap and would prefer it to be this way. As far as the encroachment issue, one survey said there was an encroachment, another said there was not. Mr. Alfieri needs to get more information but is guessing that there is about two feet, three feet maximum. Mr. Alfieri explains that this will be addressed in the future.

Mr. Gaynor asks Mr. Alfieri about the requirements of the building code (780 CMR), fire department and Board of Health. Mr. Alfieri answers that their clients have been advised by the Building Inspector that they will need to put in a sprinkler system and they are prepared to do this within a year. Mr. Alfieri confirms to the Board that the pool house has been discontinued for any use. Mr. Alfieri also explains that his clients are still deciding on whether to raise or fix the condemned structure on the estate lot. Mr. Gaynor asks for a timeframe on this as the Board cannot keep continuing it and saying that they will "talk about it later." Mr. Alfieri requests two years. Mr. Gaynor confirms that if the accessory building were to be *raised*, the boundary lines would be reconfigured, and the septic system moved from the estate lot to the front lot. Mr. Gaynor confirms with Mr. Alfieri that if the building were to be *repaired*, the septic would remain on the estate lot. Mr. Gaynor asks how the Board feels about this. Mr. Joy asks what the building would be used for. Mr. Alfieri answers that his clients haven't had a chance to decide but feels that when it's time for a hard decision to be made, the building will come down. Mr. Joy asks when the accessory (barn) building was condemned. The Building Inspector's secretary, Terri Renaud, answers around four or five years ago, before the Phams owned the property in 2013.

Mr. Gaynor asks for the pleasure of the Board. Mr. Nessralla suggests giving the Phams a year to sort out all the issues. Mr. Durgan feels giving six months for the Phams to plan would be sufficient. Mr. Borsari clarifies that the only reason the Phams are before the Board is for a special permit to increase the front apartment building from four to six apartments. He feels the Board should vote to grant this permit when the issues have been fixed. The Board agrees and feels an occupancy permit would never be issued with the condition this property is in. Currently, Mr. Alfieri confirms to the Board that there are only four units being rented.

Mr. Gaynor presents two options to Mr. Alfieri and the Pham family. First, the Board can vote on the Petition as presented which would mean that it must meet the requirements of a Special Permit such that it is within the established character of the neighborhood, it is not detrimental, it meets all building codes and has no safety issues. If Mr. Alfieri's clients decide on this option and Mr. Gaynor is sure Mr. Alfieri knows how the Board would vote as those requirements have not been met. The other option is to withdraw without prejudice, fix the issues to comply with the requirements for a six-unit dwelling and in the meantime speak to the abutter, raise the condemned building, move the septic system, make sure there are no residential dwellings in the pool area and meet all building and fire code requirements. Mr. Alfieri needs time to discuss these options with his clients. Mr. Gaynor asks Mr. Alfieri to submit a written extension request with the Zoning secretary. Mr. Alfieri submits this request.

Motion to accept the request of a 60-day extension of Petition #877 from Attorney Alfieri/Pham Family (applicants):

MOTION: Peter Parcellin
SECOND: Kozhaya Nessralla AIF
Passes: 5-0-0

Bills:

The Board approves two bills for Plympton-Halifax Express Advertisements for Petitions #868 and #869 (\$84.00) and Petition #879 (\$84.00) totaling \$168.00.

Other Business:

- Zoning secretary Arlanna Snow informs the Board that the 624 Plymouth Street property has been sold with an existing in-law apartment. The new owners will need to reapply for a special permit to use the in-law apartment and the Board may want to consider doing an onsite inspection.
- The Board signs the Signature Authority Fiscal Year 2019 form for the Town Accountant.

Meeting Minutes:

Motion to accept the Meeting Minutes from Monday, July 9, 2018:

MOTION: Gerald Joy
SECOND: Robert Durgin AIF
Passes: 5-0-0

Correspondence:

Chairman Gaynor and the Board review and read into record all mail items.

- Planning Board Memo dated 6/27/2018 regarding 413 Plymouth Street (Old Allied, Hollywood East) parking schedule with site plan review.
- Board of Selectmen Notice of Public Hearing scheduled on August 14th at 7:45pm regarding Jan & Raymond Jacobs on 23 Anawon Drive.
- Denial Letter from the Building Inspector dated 7/23/2018 for Ballerinis on 6 Danson Lane to build a farmer's porch.
- Planning Board Memo dated 7/24/2018 regarding a Form A Distribution for River Street, Map 117
- Planning Board Memo dated 7/24/2018 regarding a Form A Distribution for 395 Plymouth Street for redistribution of lot lines.
- Planning Board Decision Letter dated 7/25/2018 for Allied Realty Trust at 413 Plymouth Street to allow for 24 used car sales with conditions.
- Planning Board Notice of Public Meeting scheduled on August 2, 2018 for a Solar Farm Array at 0 River St,, Halifax.
- Planning Board Decision Letter and Certificate of Site Plan Approval dated 7/31/2018 regarding a fuel storage tank relocation at 60 Hemlock Lane.
- Denial Letter from the Building Inspector dated 8/7/2018 to Fontes at 52 Ocean Avenue regarding a home renovation.

Adjourn:

Motion to adjourn meeting:

MOTION: Peter Parcellin
SECOND: Gerald Joy AIF
Passes: 5-0-0

It was unanimously voted to adjourn the meeting at 8:30 p.m.

Documents:

1. Zoning Board Meeting Agenda – August 13, 2018
2. Remand Court Order – Petitions #868 and #869
3. Public Meeting Notice – Petitions #868 and #869
4. Public Hearing Notice – Petition #879
5. Plot Plan for 11 A Street – Petition #879
6. Public Hearing Notice – Petition #877
7. Extension Request – Petition #877
8. Plymouth-Halifax Express Advertisement Bill – Petitions #868 and #869
9. Plymouth-Halifax Express Advertisement Bill – Petition #879
10. Signature Authority Fiscal Year 2019 Form
11. Meeting Minutes – July 9, 2018
12. Planning Board Memo – June 27, 2018 – 413 Plymouth St parking schedule
13. Board of Selectmen Notice of Public Hearing – August 14, 2018
14. Building Inspector Denial Letter – July 23, 2018 – 6 Danson Lane
15. Planning Board Memo – July 24, 2018 – River Street Form A Distribution
16. Planning Board Memo – July 24, 2018 – 395 Plymouth Street Form A Distribution
17. Planning Board Decision Letter – July 25, 2018 – 413 Plymouth Street
18. Planning Board Notice of Public Meeting – August 2, 2018 – 0 River Street Solar Farm Array
19. Planning Board Decision Letter and Site Plan Approval Certificate – July 31, 2018 – 60 Hemlock Lane
20. Building Inspector Denial Letter – August 7, 2018 – 52 Ocean Avenue

Respectfully submitted,



Robert Gaynor - **Chairman, Zoning Board of Appeals**