



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, November 4, 2013

The Halifax Zoning Board of Appeals held a public hearing on Monday, November 4, 2013 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

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

Chairman Tinkham called the meeting to order at 7:03p.m & made the audience aware that the meeting is being recorded.

The Board reviewed the mail and other matter/issues:

I Correspondence/Mail/Email/Fax

1. OCPC – “Agenda for Meeting No.503 October 30, 2013”

II Bill(s) – N/A

III Approval of Minutes- N/A

IV New Business – N/A

V Old Business

1. Petition #787, Irene Alden, 82 Carver Street, Halifax, MA

VI Other Matters

1. ZBA to BOS – re: “Recommendation of a Board Member” memo [dated 10/8/13]
2. BOS to ZBA – re: “ Appointment-ZBA” memo [dated 10/10/13]
3. BOS to ZBA – re: “Defensible Permitting Decision Training” memo [dated 10/28/13 & 10/11/13; emailed to Board on 10/28/13 & 10/15/13]
4. ZBA to ZEO – re: “Petition #786, 149, Elm Street, Halifax, MA” memo [dated 10/21/13 & emailed to Board on 10/21/13]
5. ZEO to ZBA – re: “CEASE AND DESIST!, ANY AND ALL ACTIVITIES RELATING TO BUILDING PERMIT NUMBER 13-34 FOR YOUR GARAGE” memo [dated 10/21/13]
6. Secretary to ZBA – re: “2014 Zoning Board of Appeals Meeting Schedule” request for review & approval from Board
7. ZBA to BOS, PB, ZEO – re: “Map #52, Lots #424-425, 340-348 Monponsett Street, Halifax, MA” memo [dated 10/8/13]
8. BOS to ZBA – re: “Appointment – Assistant Building Inspector & Zoning Enforcement Officer” memo [dated 10/23/13]
9. 340-348 Monponsett Street, Halifax, MA – re: Potential Discussion regarding the property.

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Petition #787 – Irene Alden, 82 Carver Street, Halifax, MA

BOARD/COMMITTEE: ZONING BOARD OF APPEALS

MEETING PUBLIC HEARING (Please circle appropriately)

DATE: NOVEMBER 4, 2013 **TIME:** 7:15PM

LOCATION: TOWN OF HALIFAX, 499 PLYMOUTH ST., 2ND FLOOR, MEETING ROOM 1,
HALIFAX, MA

PURPOSE: PETITION #787

REQUESTED BY: MARION WONG-RYAN, SECRETARY

NOTE: All meeting notices must be filed and time stamped in the Town Clerk's Office and posted on the Municipal Bulletin Board no later than 48 hours in advance of meetings (excluding Saturdays, Sundays and legal holidays). Please keep in mind the Town Clerk's hours of operation and make the necessary arrangements to be sure posting is made in an adequate amount of time.

*Per changes to the Open Meeting Law effective 7/1/2010, "A listing of topics that the Chair reasonably anticipates will be discussed at the meeting" are to be listed on the agenda.

LIST OF TOPICS TO BE DISCUSSED

Letter submitted by the applicant, Irene Alden on September 18, 2013 [see below]:

September 18, 2013

To: Zoning Board of Appeals

From: Irene Alden, 82 Carver Street, Halifax, MA 02338

RE: Petition #787

Dear ZBA:

Per my decision letter from the meeting held on Monday, April 22, 2013, I am adhering to the conditions of my special permit, specifically condition #7 which states:

- The special permit has been granted for a period of six (6) months. The applicant(s) must come before the Board before the expiration of this special permit in order to extend the special permit on this same petition. **The applicant must come before the Board no later than the Monday, November 4, 2013 scheduled public hearing. This will be the responsibility of the applicant(s) to make an appointment with the office of the Zoning Board of Appeals to be placed on the agenda in written form.**

I would like to be placed on the agenda for the November 4, 2013 public hearing to discuss the extension of the special permit. Thank you. Sincerely, Irene Alden

Petition, Irene Alden, was present to speak to her petition and request for continuance.

Chairman Tinkham asked Mrs. Alden how was business during the summer, to which she replied that it was not that great due to the extensive heat wave. However, as we are in the midst of the Fall season, business has picked up and would like to re-apply for her special permit for another six months. Mrs. Alden informed the Board that the Planning Board granted her the extension of her site plan waiver to March 1, 2014. She would like to correlate both Boards in the approval process. She brought along the letter from the Planning Board and articles written about her business from the local newspaper of the positive feedback.

Chairman Tinkham asked if there had been any complaints regarding the business that the secretary was aware of and the secretary replied that none that she knew of.

Mrs. Alden informed that Board that her neighbor offered freely a signage on his property, where he is located the side of the law, to assure patrons know the location as some have driven by, unaware of the location. The property an owner was present, David Mason of 592 Plymouth Street and spoke in support of her neighbor's business.

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Chairman Tinkham asked if she would consider moving her business to an office location and Mrs. Alden said that she is not interested. It's a small business, at home where she can open at her house and close on rainy days. It's a small business which is a good representative of her vision for this business.

Mrs. Alden is seeking another six month extension and work with the Planning Board regarding the site plan and what is required. Chairman Tinkham recommended extension of the special permit and have the applicant return in February of 2014 to the Board. Chairman Tinkham asked how much longer she is keeping her business open. She said until the weather gets cold, probably until the end of November.

It was duly moved (R.Gaynor) and seconded (K.Nessralla) to grant your petition (#787) **for an extension** to your Special Permit for an "Open air business/outside sales" to your property, located at 82 Carver Street, Halifax, MA, as shown on Assessor's Map #71, Lot 32. The applicant was granted a Special Permit under Commercial Uses for "Open air business/outside sales" in accordance with the Zoning By-laws of the Town of Halifax under Section 167-7 Schedule of Uses.

[Note: The bold typeface and underlined sections show the changes made from the original decision letter, dated April 23, 2013]

The conditions for granting the special permit **remain and** are as follows:

- The days of operation will be 6 days a week (i.e. Monday thru Saturday, excluding Sunday).
- The hours of operation will be from 10:00 a.m. to dusk.
- The Zoning Board of Appeals is to be notified of any change of conditions on the property.
- The applicant must maintain the property and sanitary conditions, along with the removal of trash.
- Signage(s) conveying to the public that there is to be "No Parking On the Street" and/or "No Parking This Side Of The Street" need to be visual in order to prevent a poor traffic flow due to the location of the business.
- The special permit is to run with the applicant only and is not transferable.
- The special permit has been granted for **an additional** period of six (6) months. The applicant(s) must come before the Board before the expiration of this special permit in order to extend the special permit on this same petition. **It was agreed upon by both the Board and the applicant that she will come before the Zoning Board of Appeals at the scheduled public hearing on Monday, February 10, 2014. This will be the responsibility of the applicant(s) to make an appointment with the office of the Zoning Board of Appeals to be placed on the agenda in written form.**
- The special permit was 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, whether the conditions are pre-existing or forthcoming; specifically with the Planning Board, Board of Health, Fire Department and Police Department.

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- 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 Clerks (11/5/13) 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: P.Parcellin, YES; K.Nessralla, YES; R.Gaynor, YES; D.Tinkham, YES

The motion to grant the special permit extension for petition #787 passed 4-0-0.

Chairman Tinkham reprised Mrs. Alden of the procedure following approval of the petition.

340-348 Monponsett Street, Halifax, MA

Chairman Tinkham read a memo aloud (-see attached-) addressed to Board of Selectmen, Planning Board & Building Inspector/Zoning Enforcement Officer, dated October 8, 2013.

After this memo was released, it came to the attention of the Board in a roundabout way that the Building Inspector, Tom Millias decided that it was a conflict of interest for him to enforce this “cease and desist”. Vice-Chairman Gaynor asked why and Chairman Tinkham recalled it that it was because he was too close to the project and looked to the secretary for confirmation. The secretary replied that she did not know, nor did she ever know. It was not until Chairman Tinkham spoke to the Town Administrator, Charlie Seelig, was it known that Mr. Millias had recused himself. As for the office of the Zoning Board of Appeals, the Board was never made aware regarding the issue and the secretary did not understand why there was no feedback from the memo on the cease and desist. The secretary was only made aware of Mr. Millias’ decision from Chairman Tinkham’s conversation with Mr. Seelig. The secretary was concerned about the lack of funneling of information in order to relay this pertinent information to the Board.

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Chairman Tinkham read another memo aloud (-see attached-) a memo from the Office of the Board of Selectmen, dated October 23, 2013. Chairman Tinkham informed the Board that she personally delivered an informational packet to the Town of Carver to Mr. DeFelice but he was not there. He reached out to him, via email, informing him that the Halifax Town Clerk will make herself available for him to be sworn in at the regularly scheduled ZBA public hearing tonight, but has not received a return response, nor has Mr. DeFelice picked up a packet at the Building Inspector's office. Mr. Seelig was concerned that the Board was reaching out to Mr. DeFelice and why does he have to be at the ZBA's public hearing or is this just a meet and greet. Chairman Tinkham responded that the owner of the property is continuing to build on the property...apartments. Mr. Seelig replied that the owner of the property is allowed to physically build the property. The issue is the use and if there comes a time that the owner begins to rent apartments will it become an issue, but as of now he is not violating anything. Chairman Tinkham stated all the cease and desists that the Zoning Enforcement officer had no problem issuing (i.e. Kasmarek & an in-law apartment on Hayward Street) but when you walk onto this property, there are six outlets on the outside of the building for electrical, a gas main and a big septic system, it has not come to mind that this is being used for commercial business? Chairman Tinkham said it may be because that Mr. Millias had been seen on more than one occasion digging in the back hoe when he dug up for the septic system. She went to the Fire Department because the owner had never pulled a permit for any of his constructive dumpsters. Meanwhile, when Chairman Tinkham put a permit for a new roof on her garage, she was informed by the office of the Building Inspector's Administrative Assistant that she has to pull a dumpster permit at seventy five dollars and serving on the Board, she did not want to get caught or skirting the rules. Vice-Chairman Gaynor asked how one dig up a main highway, put in a gas line without the necessary permits does. Chairman Tinkham stated that the owner did have a permit for a trench. The secretary recalled to Mr. Gaynor a time earlier in the year, where Mr. Gaynor reviewed the building permits currently issued to the property in August or September of 2012. One of those permits was for a trench. The secretary shared the verbal conversation with land use counsel, Attorney Rich Hucksam, where he stated that the property owner is permitted to fix and correct the property, it's the "use" that 's in question, meaning the proposed income producing apartments, which the property has never technically or legally filed for, at all. Chairman Tinkham reached out to Board of Selectmen member, Kim Roy, and addressed her concerns, the fact that the property owner's apartments or lack of requesting apartments before he came before the Board and the property owner was fully aware as the property owner went to Chairman Tinkham's home, asking if they were good and she said that they are but he has not filed for apartments and when is he going to do that. The property owner did not respond and so, this is not coming as a surprise to the property owner, who by the way, is the Assistant Building Inspector and he should know better. Meanwhile, the property owner has put thousands of money into the property, wouldn't it be smart to file accordingly before putting all this financially or should he continue building and because it's all built, it's expected that the Zoning Board of Appeals is suppose to rollover and give it to him. Mrs. Roy asked if there was a reason why the Board would not give it to him to which Mrs. Tinkham said that is not the point, the property owner has never asked for it. As many months as this petition was going on, the property owner kept trying to run it down the Board's throat that this is what it was and it's not what it is. Mrs. Roy stated that she was good friends with the property owner's sister in law. Chairman Tinkham was opting to go into executive session but due to the regulations of informing the property owner beforehand, than just keep the conversation regarding the property.

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Chairman Tinkham would like to be placed on the next agenda for the Board of Selectmen's public meeting/hearing to discuss the outstanding matters as it pertains to the property and permits, forthcoming and outstanding. It is proposed to be placed on the Board of Selectmen's agenda for Tuesday, November 12, 2013. The Board directed the secretary to release a memo to the Selectmen's office to be placed on the agenda to discuss the matter on 340-348 Monponsett Street, Halifax, MA.

75 Hayward Street, Halifax, MA

Chairman Tinkham requested that the secretary submit a letter to the Zoning Enforcement Officer regarding the status of the property.

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
