



# HALIFAX ZONING BOARD OF APPEALS

## Meeting Minutes

### Monday, December 9, 2013

The Halifax Zoning Board of Appeals held a public hearing on Monday, December 9, 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

Chairman Tinkham calls the meeting to order at 7:05pm and reprised the audience that this public hearing/meeting is being audio taped.

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#### **Correspondence/mail/notices:**

Ms. Tinkham reads into record Sally Wells' email of resignation (11/18/13) from the Zoning Board, effective January 1, 2014 and explains that this is a problem as the Zoning Board is a five-member board. There will have to be a unanimous decision of all four for something to pass. Ms. Tinkham goes on to read other mail items.

#### **Bills:**

The Board reviews and approves bill – Landlaw Specialty Publishers 2014, Landcourt Reporter subscription renewal - \$230.00.

#### **Appointments:**

**7:14pm – Petition #798 - Robert W. Johnson, 152 Holmes Street, Halifax, MA**

Present: John Townsend (contractor)

Zoning Board secretary reads the Public Hearing Notice into record.

Mr. Townsend explains proposal as a vestibule on top of the existing garage. There is water penetration through the slider resulting in some infestation. The proposal is to add a sunroom vestibule on top of the garage area, shown on plans. It projects 12 feet off the face of the house on that side and is 14 feet in width. Up against the house it's nine (9) feet in height. It is pitched with a shed roof towards that side of the house. The roof is solid with asphalt shingles. The sunroom has sliding windows. Mr. Townsend shows the Board pictures of the side of the house to show damage. It's a continuation of a previously approved special permit. The lot is less than 40,000 square feet and is zoned residential.

Mr. Townsend confirms to Ms. Tinkham that the only access to the sunroom is through the house. Mr. Townsend confirms that there is going to be no change to the footprint, not increasing the nonconformity. There are no plans for heat and there will be electricity (an outlet). The dimensions are 12 x 14 feet. The windows are going to be reassembled but the rest will be built on site. Mr. Townsend further explains the damage location and that the damage will be assessed for repair.

Ms. Tinkham asks the Board for any further comments, questions or concerns. Mr. Gaynor responds that he feels there should be no problems and that it doesn't derogate from the intent of the By-law. Mr. Parcellin confirms with Mr. Townsend that there will be no changes to the garage, everything will be on top.

Motion to waive the on-site for Petition #798:

MOTION: Robert Gaynor

SECOND: Kozhaya Nessralla      AIF

Passes: 4-0-0

Motion to accept Petition #798 as presented with dimensions:

MOTION: Robert Gaynor

SECOND: Kozhaya Nessralla AIF

Passes: 4-0-0

**7:15pm – Petition #786 - Cease & Desist, Christopher Kasmarek, 149 Elm Street, Halifax, MA**

Present: Christopher Kasmarek, Joan Pierce (Commission of MA, Department of Fishing & Game)

Zoning Board Secretary Marion Wong reads Public Hearing Notice into record.

Mr. Kasmarek explains errors. The surveyors came up with positions and Mr. Kasmarek strung targets between the positions. He pulled the back lot-line on the southeast corner about five (5) feet of what the corner marker was (error #1). Error #2 was he deliberately moved the building three (3) feet to save the red oak tree. Terri called to let him know that he was supposed to be calling to get an as-built as soon as possible. Mr. Kasmarek met with Jason Zimmerman of Wildlife Management. As far as missing the line, which caused the building to skew, he pulled off the wrong stake on the back lot.

Ms. Wong reads correspondence into record regarding this petition.

Mr. Gaynor asks for further explanation of the agreement between Mr. Zimmerman and Mr. Kasmarek as far as the granting or denial of the variance. Mr. Kasmarek explained that he told Mr. Zimmerman that from the time he moved to the property until the recent acquisition by the state, the property was closed off by a bar-gate which always allowed the owners access. Nothing has changed except for when the bar-gate was taken down it resulted in an influx of people. Mr. Kasmarek did not get his bar-gate back and explained to Mr. Zimmerman that nothing has changed. He believes that there will be much more opposition from the people across the road.

Ms. Tinkham feels that this sounds like extortion. The Board agrees that there is no association between Commonwealth of MA Department of Fishing & Game and the petition of cease and desist.

Ms. Pierce does not want to cause Mr. Kasmarek grief because of his building or property. Explains that they have a responsibility as this is a big investment and they want to have good access to the property for the people of Halifax. The property was obtained 12 years ago. They would like to create a parking area that won't cause a problem for the abutters. They did not move the bar-gate and don't know who did and/or when. The survey didn't show and nobody thought there was a problem. Having a parking area way in the back is never a good thing and is not something that they created.

Mr. Kasmarek responds that he doesn't see any relevance tied into his building unless there is another reason.

Mr. Nessralla asks if there is any public access to this property. Ms. Pierce explains that there is public access in Hanson. Mr. Nessralla confirms that Mr. Kasmarek has this blocked off. Mr. Nessralla asks Ms. Pierce if she wants Mr. Kasmarek to create a parking lot. Ms. Pierce answers no. The roadway is on Mr. Kasmarek's land but Fishing & Game owns another 70 feet where, Ms. Pierce explains, they could have another small parking area. There is another parking area straight up Elm Street on the right, the entrance to the bogs. She believes they could get four (4) cars in that area. Fishing & Game does need to have parking for Halifax residents and they want to work with Mr. Kasmarek. There is a lot more work to be done.

Mr. Kasmarek states that Jason told him the space would be roadside access – four, five or six cars deep. Mr. Kasmarek told Jason that it has always been that number, not 30 cars as it has been. Mr. Parcellin asks how the backline would affect Fishing & Game's property. He finds it difficult to see the argument of how five feet changes Fishing & Game's property. If there weren't a road there already, what would Ms. Pierce's argument be if Fishing & Game opposed it? Ms. Pierce answers that the distance according to the as-built is 2.1 feet from the building. It won't affect the birds or the bogs, but there is a condition because it is a state property and they are responsible – when a building is that close to

the property line, there is concern that there isn't room to maintain the building. Mr. Parcellin doesn't feel there's anything going on that would affect Fishing & Game's property. Ms. Pierce explains that Fishing & Game's opposition would be that, due to how close the building is to the property line, the owner would not be able to maintain the building, or store materials that end up outside of the building.

Mr. Kasmarek states that he has the foundation in place and two-thirds of the building erected (metal shell). He understands Ms. Pierce's concern with the distance from the building to their property. He knows the error was his and must follow the mercy of the Zoning Board. The building is maintenance free, he has no oil basins, no water and hopes to have electrical. The road, really a driveway for access, has been present for 20 years with no issues. After the bulldozing was complete, a professional cleaning company came in and cleaned the property completely.

Mr. Nessralla asks what side of the building Mr. Kasmarek started with. Mr. Kasmarek answers the south side (closest to access road – right to left) for no reason but that it was the front of the building. The building is pre-engineered so it can't be altered. Mr. Kasmarek can reduce the length but not the width. Mr. Nessralla suggests that Mr. Kasmarek start at the back and come forward which would save a lot of problems. If the existing side of the structure isn't allowed, Mr. Kasmarek would just take the building down again as it becomes dysfunctional for what he had planned.

Ms. Pierce confirms that the Burrage Pond area is 1,800 acres.

Motion to waive on-site for Petition #786:

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

Mr. Nessralla asks Ms. Pierce if Mr. Kasmarek can come in on the existing road and go to his property, rather than making a new road. Mr. Kasmarek has no objection to the state having access to his area with a bar-gate. He is opposed to the public thinking they have a right to use his driveway and yard to park in a space as it was illegally opened. Mr. Kasmarek is still wondering why it's being brought up to him in this regard as he has no final say in parking. Ms. Pierce explains that she's at the meeting to say Fishing & Game is not opposed to Mr. Kasmarek's variance.

Mr. Gaynor confirms that the rear setback abutter has no issue with this new variance. There have been no letters since the posting of the new position of the building where the abutter to the north of the applicant's property has any objection.

Ms. Pierce explains that Fishing & Game had no issue when the variance was 12.1 feet. They do not like, however, the 2.1-foot variance now.

Motion to accept Petition #786 as presented:

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

**7:30pm – Petition #800 - Richard Lopez, 26 Richview Avenue, Halifax, MA**

Present: Richard Lopez

Zoning Board Secretary reads the public hearing notice into record.

Mr. Lopez presents his petition. He purchased a house on 26 Richview Avenue which is inhabitable due to its condition. The second floor is a partial on top of the first floor. It was done incorrectly; the floors are sloping. They'd like to fix it by keeping the footprint of the original foundation and demoing the top of the second floor, bringing the sides out to the actual 34 feet. The front will be (pushed back) eight (8) feet short and there will be a deck, almost like a split-level. The

second-floor portion of the deck (off the side of the house) will be removed and it will be determined if the first-floor section needs removal also.

Motion to waive on-site for Petition #800:

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

Motion to accept Petition #800 with the following stipulations:

- 1) Rear cement block foundation be removed (original concrete walls)
- 2) Stairway from the existing deck leading to the second floor be removed

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

**7:45pm – Petition #799 - Bowker LLC, Land Off Franklin Street, Halifax, MA**

Zoning Board Secretary reads public hearing notice into record.

Ms. Tinkham explained that the petition was submitted for two buildings consisting of 61 units each when it's actually four buildings for the 61 units which is going right to Multifamily Development.

Motion to accept the Letter of Mutual Agreement for Withdrawal of Petition #799 :

MOTION: Peter Parcellin  
SECOND: Robert Gaynor           AIF  
Passes: 4-0-0

**Adjourn:**

It was unanimously voted to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Robert Gaynor  
Chairman, Zoning Board of Appeals