



# HALIFAX ZONING BOARD OF APPEALS

## Meeting Minutes

### Monday, April 14, 2014

The Halifax Zoning Board of Appeals held a public hearing on Monday, April 14, 2014 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Kozhaya Nessralla, Robert Gaynor and Robert Durgin present. Peter Parcellin is absent.

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

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#### **Appointments:**

**7:15pm – Petition #806 - Robert & Debra Durgin, 8 Bourne Drive, Halifax, MA**

Zoning Board secretary reads Public Hearing Announcement into record.

Due to a shortage of voting quorum, there will be a continuance until May 19, 2014 at 7:45pm.

**7:30pm – Petition #807 – Peter & Lyn L'Italien, 337 Holmes Street, Halifax, MA**

Present: Peter L'Italien

Zoning Board secretary reads Public Hearing Announcement into record.

Mr. L'Italien presents his petition. He explains that his family is getting bigger and need a larger kitchen for family dinners. The lot is full-sized, 41,255 square feet. The house was built in 1953. There was an addition put on with a two-car garage (under) to the right side of the property in 2004, which is also when the septic was done. Mr. L'Italien is going to step the proposed addition back a foot and there will be a full foundation underneath it. The Board views the pictures presented. There is currently an eight-inch wall foundation and there will be a full basement under it. All appliances will be in the new section. The addition will be 224 square feet. The footprint dimensions are 24 x 38. The bedrooms are in the 2004 addition. The new addition will be on top of the patio. The pre-existing house is 20 feet from the side lot line.

Motion to waive on-site for Petition #807:

MOTION: Robert Gaynor

SECOND: Robert Durgin                      AIF

Passes: 4-0-0

Motion to accept Petition #807 as presented:

MOTION: Robert Gaynor

SECOND: Kozhaya Nessralla                      AIF

Passes: 4-0-0

The addition is not increasing the non-conformity of the pre-existing lot, it's not encroaching to the pre-existing side lot line and everything else meets requirements for setbacks. It's within the established character of the neighborhood and does not derogate from the intent of the Bylaw.

**7:45pm – Petition #802, 340 Monponsett St. Realty Trust, 340-348 Monponsett Street, Halifax, MA**

Present: Attorney Richard M. Serkey (Monponsett Street Realty Trust), Mr. Piccirilli (applicant)

Zoning Board Secretary reads Public Hearing Notice into record.

Because there wasn't enough time to post this hearing 48 hours before this meeting, there needs to be a continuance for this Petition to comply with the Open Meeting Law.

Mr. Serkey comments that as he understands the Open Meeting Law, he doesn't feel this requires a continuance.

Zoning Board secretary, Ms. Wong, responds to Mr. Serkey citing the Open Meeting Law which states that the 48-hour hearing notice doesn't include Saturday and Sunday.

Motion to continue Petition #802:

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

**7:50pm – Petition #808 - 340 Monponsett St. Realty Trust, 340-348 Monponsett Street, Halifax, MA**

Present: Attorney Richard M. Serkey (Monponsett Street Realty Trust); Robert Piccirilli (applicant)

Zoning Board secretary reads Public Hearing Notice into record.

Attorney Serkey explains that Petition #802 was an expansion alteration of a pre-existing, non-conforming use. The present Petition, #808, is based on a different method, theory and section of the Bylaw and statute. Town Counsel, Mr. Hucksam, expressed his concern whether the Board had the authority to grant the request of the special permit as the applicant asked for it under Petition #802. Petition #808 is premised not on the previous history of the property, but on the fact that multifamily is a special permit use. The applicant is seeking the variances of certain sections. The Zoning's Specific Use Regulations say that for multifamily development, each building must be on its own lot. This is not the case here, as there are two buildings on one lot. In the Zoning Bylaw, there are density regulations for multifamily development as well as setback requirements that are not met in this case. The applicant is seeking variances of those multifamily development density regulations and seeking a variance of the multifamily specific use regulation that talks about not having multiple buildings on one lot.

Mr. Serkey further explains that the applicant is seeking to replace what was a commercial unit and two residential units in the front building and one residential unit in the rear building, (the garage in the rear building), with four residential units in the front building and two residential units in the rear building for a total of six residential units. There will be no increase in the footprint of either structure. The financial hardship to the owner of converting less than six units is that producing less than six units would make this project economically unaffordable. There has been no opposition in any of these hearings. Mr. Serkey feels there is a need for more than two-bedroom rental units for lease purposes so that the next generation will be able to stay in the communities where they grew up. Mr. Serkey respectfully requests the special permit as to use and for a variance with respect to the number of buildings on the lot and the dimensional density regulations to be granted.

Ms. Tinkham asks for architectural plans to show interior. It is explained that those plans were submitted with Petition #802. Secretary, Ms. Wong, explains that she cannot take the plans from Petition #802 and switch them to Petition #808.

Mr. Gaynor confirms that the application for Petition #802 is complete. Mr. Gaynor asks exactly what is being requested and what is being waived. Mr. Serkey answers by citing sections of the Bylaws to explain variances being requested: *167-7D(2), Mglc 40A(10) and 167-12A(1)*.

Mr. Piccirilli explains that the septic system is brand new and the lot has passed perk tests. The septic has been built for six-plus units. Mr. Serkey explains that the reason they're varying this is because the engineering hasn't been done that would show 80% of the total parcel tested on a 200' x 200' grid as perk-able; therefore, he cannot prove that this condition is satisfied. It is confirmed with the Zoning Board by Mr. Piccirilli that the Board of Health will show that the septic is designed with the septic installation for more than 660 gallons per day for seven bedrooms.

Mr. Gaynor asks Mr. Piccirilli to talk about the project to meet criteria for the hardship. Originally when it was purchased, Mr. Piccirilli was hoping for four or five units but because of the extent of the damage (right side of the building had to be replaced) that was unforeseen, six units are required for financial reasons.

Mr. Gaynor asks about derogating from the intent of the Bylaw. Mr. Serkey responds that due to the total lack of opposition for this project, he feels this is evidence enough that it does not derogate from the Bylaw.

Ms. Tinkham understands the personal hardship, but when it comes to meeting the criteria for granting the variance, personal hardship is not part of that. Ms. Tinkham asks for another hardship. Mr. Serkey responds that while the statute states whether or not the denial of the requested variance would cause hardship, financial or otherwise, that hardship can't be self-imposed. In this case, Mr. Piccirilli, upon discovering the terrible condition of the building, realized he couldn't get by financially on less than six units. The building was not in the condition that he originally thought. Ms. Tinkham asks about the inspection before it was purchased. Mr. Serkey answers that the condition Mr. Piccirilli found the buildings in before he did the work is the hardship, not the work that he did after the conditions were realized.

Mr. Durgin asks where the parking will be. Mr. Piccirilli answers that there is parking to the left and right. Mr. Piccirilli confirms that the fire department requires a wheel-base of 40 and there's a wheel-base of 80.

Motion to do an on-site inspection for Petition #808 on Saturday, May 17, 2014 at 10:00am:

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

Motion for continuance for Petition #808 to Monday, May 19, 2014 at 7:46pm:

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

**Adjourn:**

Motion to adjourn the meeting at 8:45pm:

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

Respectfully submitted,

Robert Gaynor  
Chairman, Zoning Board of Appeals