



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, March 16, 2015

The Halifax Zoning Board of Appeals held a public hearing on Monday, March 6, 2015 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

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

Chairperson Tinkham called the meeting to order at 6:31p.m.

Kozhaya Nessralla arrived at 6:40pm

The Board reviewed the mail and other matter/issues:

6:30pm - Petition #787, Irene Alden, 82 Carver Street, Halifax, MA

6:45pm - Petition #826 , Change in Escrow Requirement Request by Applicant

7:00pm – Petition #826, Bowker, LLC, Land Off of Franklin Street, Halifax, MA

[NOTE: The *asterick* (*) & *italicized* 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**

- *OCPC - re: “Agenda for Meeting No. 515 January 28, 2015 [received 2/23/15]
- Deutsch|Williams Municipal Law Newsletter Volume 7, Issue 1 Winter 2015
- Massachusetts Housing Partnership – re: “Project Name: Blackledge Farm [dated 3/4/15]
- *Webby Engineering Associates, Inc. – re: “Amanda Estates” [dated 2/27/15]

***II* *Bill(s)**

- Revolving: “Express Newspaper” – Legal Ad #6401for Petition #826 = \$70
- Revolving: “Halifax Postmaster” – 26 Certified Mailings to Abutters for Petition #826 = \$166.74 [Note: Check already issued but would like to still ascertain the necessary signatures from the Board]

***III* Approval of Minutes - N/A**

***IV* New Business**

- **7:00pm – Petition #826, Bowker, LLC, Land Off of Franklin Street, Halifax, MA**

***V* Old Business**

- **6:30pm - Petition #787, Irene Alden, 82 Carver Street, Halifax, MA**

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VI Other Matters

- *Halifax Fire Department to ZBA – re: “Amanda’s Estates” memo [dated 1/29/15]
- **The following are from Charlie Seelig to ZBA:**
 - * “Town of Halifax-Fieldstone Farm dates for 2015” email [dated 1/12/15]
 - * “Town of Halifax-Economic Development Workshop Postponed to April 2” email [dated 2/19/15]
 - * “Town of Halifax-Visitors Code of Conduct” email [dated 2/23/15]
 - * “Town of Halifax-Continued Filling of MacDonald Landfill in Bridgewater” email [dated 2/26/15]
 - * “MIA Training-Management 101-Duxbury May 20” email [dated 2/27/15]
- **The following were already sent to the Board via email & listed for acknowledgement:**
 - * “2015 Citizen Planner’s Annual Conference Registration” [emailed 3/2/15]
 - * “Formation of Agricultural Commission” [emailed 3/2/15]
 - * “Town of Halifax-Special Town Meeting-May 11, 2015 [emailed to Chairman Tinkham 3/2/15]
 - Historical Commission questions” [emailed 3/4/15]

VII Upcoming Hearings, Seminars &/or Conferences

- March 21, 2015 - Citizen Planner Training Collaborative at Holy Cross College in Worcester, MA

VIII Open Comments /Open Business

IX Possible Executive Session

X Adjourn

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

BOARD/COMMITTEE: ZONING BOARD OF APPEALS

MEETING PUBLIC HEARING (Please circle appropriately)

DATE: MARCH 16, 2015 **TIME:** 6:30PM

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

PURPOSE: PETITION #787, REQUEST BY APPLICANT TO EXTEND SPECIAL PERMIT

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 February 5, 2015 [see below]:

Ms. Alden was present to speak to her petition.

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Chairman Tinkham read aloud the conditions from the last granting of Petition #787 back on Monday, February 10, 2014. Mr. Gaynor asked if there are any concerns from any existing boards regarding the business. The secretary informed the Board that there are no concerns from both Planning Board and Board of Health.

Ms. Alden would like a one-year extension and to open earlier...8:00am as she is thinking about offering breakfast sandwiches. The Board was fine with the requests from the applicant and agreed to a two-year extension. Ms. Alden was agreeable with that as she was using the upcoming year as her gauge as to whether she will continue her business.

It was duly moved (Robert Gaynor) and seconded (Peter Parcellin) to grant your petition (#787) **for a two-year 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 February 10, 2014]

The conditions for granting the special permit remain and are as follows (with addendums underlined below):

1. The days of operation will be 6 days a week (i.e. Monday thru Saturday, excluding Sunday).
2. The hours of operation will be from **8:00 a.m. to dusk.**
3. The Zoning Board of Appeals is to be notified of any change of conditions on the property.
4. The applicant must maintain the property and sanitary conditions, along with the removal of trash.
5. 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.
6. The special permit is to run with the applicant only and is not transferable.
7. The special permit has been granted for **an additional period of two years.** 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 the second Monday of January of 2017 (January 9, 2017). 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.**
8. 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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9. 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 (3/17/15) 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: R.Durgin, YES; P. Parcellin, YES; R.Gaynor, YES; D.Tinkham, YES

The motion to grant petition #783 passed 4-0-0

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

Petition #826 – Change in Escrow Requirement Request by Applicant

BOARD/COMMITTEE: ZONING BOARD OF APPEALS
MEETING PUBLIC HEARING (Please circle appropriately)
DATE: MARCH 16, 2015 TIME: 6:45PM
LOCATION: TOWN OF HALIFAX, 499 PLYMOUTH STREET, HALIFAX, MA; MEETING RM #1/2ND FLOOR
PURPOSE: TECHNICAL REVIEW ESCROW FOR AN APPLICATION FOR A COMPREHENSIVE PERMIT – PETITION #826

REQUESTED BY: MARION WONG-RYAN, ZBA 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.

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LIST OF TOPICS TO BE DISCUSSED

Per the "Halifax Zoning Board of Appeals Rules & Regulations for Comprehensive Permit Application", stated under the "Change in Escrow Requirement", it states: "Any requested escrow change shall be the first order of business prior to the opening of the Public Hearing."

A letter, dated February 10, 2015 from Attorney Robert W. Galvin, stated the following:

- The developer objects to the requirement of certified funds and/or the imposition of a peer review fee and proposes a peer review fee of \$12,750.
- The developer has in the custody of the Town of Halifax, unused peer review fees.
- The developer is requesting that the unused peer review fees be applied to the proposed peer review fee of \$12,750.

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Note: The unused peer review fee in the custody of the Town of Halifax is \$2,671.86 (confirmed by the ZBA Secretary). Technical Escrow Fee may be adjusted by a unanimous vote of the Zoning Board of Appeals.

The secretary directed to the Board to the past payments, outstanding balance in the ZBA revolving account back from the year of 2009 and included the letter from Galvin & Galvin, dated February 10, 2015, referring to page 2 of 3 of the letter as it pertains to the peer review fee. The Board reviews the “Zoning Board of Appeals Rules & Regulations for Comprehensive Permit Application”, stated under the “Change in Escrow Requirement”.

The secretary explained that the subdivision cost is equitable to a peer review cost and validated by Peer Review Consultant, Mr. Glenn, who was present at this public meeting, along with Attorney Robert Galvin for the applicant. The Town is still holding in the revolving account, a balance of \$2,671.86 from the former petition (#719) that was filed years ago by the same applicants.

Chairman Tinkham explained that this was more a “housekeeping” matter the Board needs to be handled at this time.

It was duly moved (Robert Gaynor) and seconded (K.Nessralla) to grant the escrow petition (#826) fee, in the amount of \$12,750, as requested by the applicant and waive the \$30,000 escrow as stated in the “Zoning Board of Appeals Rules & Regulations for Comprehensive Permit Application”, stated under the “Change In Escrow Requirement”.

Chairman 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 the peer review fee of \$12,750 for petition #826 passed 5-0-0.

Attorney Galvin submitted a check in the amount of \$10,079.86 to the Zoning Board of Appeals for the peer review fee.

It was duly moved (Robert Gaynor) and seconded (K.Nessralla) to adjourn to the Great Hall to open the public hearing of Petition #826.

Petition #826 – Bowker, LLC, Land Off of Franklin Street, Halifax, MA

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, March 16, 2015 at 7:00 p.m. on the second floor of the Town Hall in the Great Hall, 499 Plymouth Street, Halifax, MA, for the following, as stated in the application: “The applicant, Bowker, LLC is seeking a Comprehensive Permit from the Town of Halifax Zoning Board of Appeals, under the provisions of Massachusetts General Laws, Chapter 40B, Section 20-23, to construct fifty-two (52) single family homes (39 Market Rate and 13 Affordable) on a parcel of land containing sixty-two (62) acres between 229 and 243 Franklin Street, Halifax, MA. The project will be accessed by a main access road with sidewalks, public water, private subsurface sewage disposal systems and storm water management facilities complying with the current state storm water management regulations. The project will contain a mixture of three (3) and four (4) bedroom homes, thirteen (13) of which will be deed restricted in accordance with the requirements of Mass Housing which is the subsidizing agency on this project. Bowker, LLC will become a limited dividend organization as per the requirements of the state law and

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regulations.” Project is to be named “Blackledge Farm” on land located off Franklin Street, Halifax, MA. Said property is owned by Springer Construction Inc., as shown on Assessors Map 82/Lot 1 and Conoco Energy LLC, as shown on Assessors Map 93/Lot 9A. Petition #826

Chairman Tinkham began by informing the audience that prior to this public hearing, there was a public meeting in Meeting Room 1 to take care of the housekeeping/clerical issues for this project. She informed the audience that Attorney Robert Galvin will begin the presentation, but any questions will be addressed to her, as the Chairman of the Zoning Board of Appeals and that the audience member must come forward to the microphone, state their name and address for the record.

Applicant’s attorney, Robert Galvin (of 10 Enterprise Street, Duxbury, MA) introduced himself to both the Board and the audience, gave a brief recap of his resume and twenty-three years of land use experiences as it pertains to projects of this nature, along with being Town Counsel for the neighboring towns of Marshfield, MA and Norwell, MA and land use counsel for Rockland, MA. He also introduced Mr. Richard Springer, President and Principal of Springer Construction and co-applicant to the application, along with Mr. David Harrington, Senior Project Engineer of Conoco Engineering. Mr. Robert R. Lincoln could not attend this public hearing.

Attorney Galvin proceeded to distribute some information, as it pertains to the site and the wetland area:

- Larger/Full size copies of the plans to review easier; also reduced size for any audience member who would like a copy.
- “Massachusetts Department of Environmental Protection WPA Form 7-Extension Permit for Orders of Conditions” report for DEP File Number 171-0333; signed by the Town of Halifax Conservation Commission on 9/17/14 (-see attached-).
- “Massachusetts Department of Environmental Protection WPA Form 4B-Order of Resource Area Delineation” form for DEP File Number SE171-0333; from the Halifax Conservation Commission, dated September 20, 2006 (-see attached-).
- “Massachusetts Department of Environmental Protection WPA Form 4B-Order of Resource Area Delineation” form for DEP File Number SE171-0437; from the Halifax Conservation Commission, date of issuance May 15, 2012 (-see attached-).

Attorney Galvin addressed the Board and audience aloud. He explained that the application was dropped off on February 10, 2015 but stamped in with the Halifax Town Clerk on February 17, 2015, as agreed upon with the applicants, to adhere to opening the initial public within 30 days of the time stamping of the application. Attorney Galvin proceeded to recap the application as it was submitted (basically the packet submitted at the time of the application filing containing the entire application with a total of 14 tabs, each containing specific contents):

- Talk about future scheduling and engage in site walk(s), weather permitting.
- Work sessions permissible and customary.
- The project is off 229-234 Franklin Street, Halifax, MA.
- Total of sixty-two (62) acres with thirty-two (32) of those acres being upland where 52 single family home ownerships are being proposed.
- Houses will consist of approximately 1,500-2,100 square feet consisting of three (3) or four (4) bedroom homes.
- There is a perennial stream where a constructed bridge is being proposed to cross the middle of the project, causing minimal disturbance of wetlands.

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- Approximately 1,600 square feet would be disturbed and permissible under state law, called the Limited Access Project. May not be permissible under the Town's by-law but will discuss when he reviews waivers for the project.
- Twenty-five (25) percent of the single-family homes will be affordable deed restricted properties as required filing under a comprehensive permit application.
- In the Town of Halifax and as of December 15, 2014, there were 2,971 households with 28 units considered affordable housing and on the state's housing authority listing, which is less than one percent. As such, the town has not met the affordable housing requirement.
- Referring to tab 4 section of the packet, shows the purchase and sales agreement of the property. It shows control of the property and would like to loop the water main through the Halifax Country Club. Something the applicants expect to do.
- Project eligibility letter was ascertained by the applicants from Mass Housing, dated December 17, 2014 (tab 3 section of the packet), along with the pro forma of proposed project (tab 11 of the packet)
- Attorney Galvin lists projects that Mr. Springer has done in the neighboring towns.
- Tab 7 of the packet explains the site development narrative.
- Site layout and home proposal plans are given for the town's review.
- Tab 9 is the vital statistics summary.
- Soil testing of the property is still incomplete due to weather/winter conditions. Expect to accomplish within 30 days and will submit that information, as well.
- Storm water will be managed by a storm water management company; something that the peer review consultant may want to review as the applicant has supplied the fee to the town and is sitting in escrow.
- Tab 10 is a list of required exemptions...mainly anticipated waivers.
- Review fees and waiver of the peer review fee which was taken care of prior to the opening of the public hearing with thanks.
- In the year of 2008, the applicants did file for a Chapter 40B on this same property for 126 duplex units, decreased to 62 units; under conventional permitting, submitted an application for 51 garden style apartments which was granted by the Zoning Board of Appeals but due to stringent percolation requirements, the applicant could not adhere to the regulations under the Board of Health. The applicant abandoned the project and has proceeded with this proposed project.
- Waivers will be necessary to construct this project because of the local regulations being more stringent than state law.

Attorney Galvin explains they are aware of the issues raised by the town because before submitting the application to the Zoning Board, they applied to Mass Housing and were told of several Town concerns with abutters, historic commission's request for an archeologic survey and so on.

Mr. Springer (Plympton) addresses the crowd by introducing himself with a list of projects he's been involved in to support his reputation around the town as putting out a quality product for a fair price. He speaks to this project by pointing out some engineering information regarding the perks that were done resulting in suitable conditions. Mr. Springer goes on to explain how the homes were designed with the idea that they would appeal to a variety of people.

Attorney Galvin presents a list of what he thinks would preclude a project like this to be built in relation to the Bylaws:

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- The minimum lot size would require a variance but most of the homes would meet or exceed the setback requirements.
- There will be hydrants every 500 feet.
- In terms of subdivision rules and regulations, the Planning Board's principle concerns with safe access and egress, size and good engineering practice would be demonstrated.
- The Board of Health Bylaw was an impediment to the conventional development of the site so waivers were requested specifically as it relates to the site regulations and septic systems.
- Permits and approvals will be complied with: OSHA requirements, soil removal (soil is very good), proposing streets as public ways plus sidewalks throughout the entire development; proposing the entire project will have public water and that it be looped.

Ms. Tinkham asks if anyone has questions. Mike DiBona, 229 Franklin Street, asks for copies of the paperwork. Ms. Tinkham states the Zoning Board sent copies of the application out to all town boards and departments. She explains they will break the application up into segments and go department by department. First, a letter from the Historical Commission/Susan Cecile is read into record regarding questions about Blackledge Farms. Attorney Galvin answers a few preliminary answers to some of the questions in the letter. Traffic questions can be answered by their traffic engineer who can be present before the Board if necessary. With respect to the Mass Historical Commission with state laws governing unauthorized digging and unmarked burials, if approved for this, they would be subject to file a project form with Mass Historical as there is no local requirement to file anything. Mr. Galvin also discusses being willing to convert a couple of the units to make them handicap accessible.

Ezra Glenn, consultant for the Zoning Board and paid by the state, is present to provide technical assistance for 40B projects. Like any large development, it's chaotic and made more chaotic because certain state laws require a short time frame for review. He asks two questions:

1. What additional information is needed?
2. What issues should be discussed and what is the proper order for discussion?

Mr. Glenn feels additional information is needed on required exemptions.

Ms. Tinkham reads into record a memo addressed to the Board with conditions from the Halifax Fire Department for Blackledge Farm. Fire Chief Jason Viveiros (present) asks if the farm is within the flood zone and would need to look further into this. Mr. Galvin answers that not all of it is flood plain, only parts. Chief Viveiros asks that there be a stipulation made on the brook's location in the flood zone. Chief Viveiros also asks if there will be three distinct street names as he feels only one would be confusing. Mr. Galvin answers yes, they can do that. They will be in with structural drawings to clarify.

Mr. Glenn states that it is clear what the issues are and what further meetings should cover. He recommends that the Board frontload the traffic and circulation issues. Following those issues, the Board should go with answering Conservation wetland questions and Board of Health percolation questions.

Ms. Tinkham feels the Historic Commission should be included in the issues discussed. Mr. Galvin responds that they are willing to comply with any state conditions regarding archeological issues to move forward.

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There is discussion regarding the Zoning Board acquiring quotes from several engineering companies. Larry Silva is recommended.

Motion to allow the Zoning Board secretary to begin the bidding process from a minimum of three to four engineering companies:

MOTION: Robert Gaynor
SECOND: Kozhaya Nessralla AIF
Passes: 5-0-0

Rick Corby, abutter on Musterfield Lane, asks if there is a reason why there isn't a second exit and asks what the lighting situation will be. Mr. Springer answers that the lighting hasn't been developed yet. He also explains that there is no other exit due to the significant amount of wetland and they don't own the property on the other side so nothing can be cut out.

Josh Kramer, abutter, asks what the market value is on the homes. Mr. Springer is proposing to start at \$339,000 for a three-bedroom, cape-style home. The value increases with the four-bedroom to \$409,000.

Mr. Glenn talks about how much people were concerned about the site not being touched at all until the permit is in hand. He recommends the Petitioners to preserve what they have as much as possible and to touch the bare minimum as some of these kinds of projects can get out of hand.

Mr. Gaynor agrees with Mr. Glenn about having a comprehensive plan. There needs to be a very specific plan for Blackledge Farm in order to grant any variances requested.

Motion to continue April 13, 2015 at 7:30pm:

MOTION: Robert Gaynor
SECOND: Kozhaya Nessralla AIF
Passes: 5-0-0

Motion to adjourn:

MOTION: Kozhaya Nessralla
SECOND: Robert Gaynor AIF
Passes: 5-0-0

It was unanimously voted to adjourn the meeting.

Respectfully submitted,

Marian Wong and Arlanna Snow
Secretaries, Zoning Board of Appeals