



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 14, 2016

The Halifax Zoning Board of Appeals held a public hearing on Monday, November 14 2016 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Robert Gaynor, Kozhaya Nessleralla, Peter Parcellin, Daniel Borsari and Robert Durgin were in attendance. Absent: Gerald Joy

Chairperson Gaynor called the meeting to order at 7:00 pm and reprised the audience that this public hearing/meeting is being audio taped. He also explained the procedure and the protocol at the public hearings.

The Board reviewed the mail and other matter/issues:

Procedural Matters

I Correspondence/Mail/Email/Fax

1. OCPD: "Agenda for Meeting No. 531 / October 26, 2016 [received 10/24/16]
2. Deutsch|Williams: re- "Scott M. Clawson v. Town of Halifax Zoning Board of Appeals...Land Court Civil Action No. 16MISC000590" [dated 10/19/16]
3. Charlie Seelig to ZBA – re: "Monponsett Pond Draft TDML.pdf" [emailed 10/30/16 & emailed to ZBA]

II Bill(s)

- Expense: "Landlaw Specialty Publishers" 2017 MA Land Court Reporter Subscription Renewal-Municipal Rate Volume 25-\$235.00

III Approval of Minutes

- August 8, 2016; July 11, 2016

IV New Business – N/A

V Old Business

1. 7:14pm: Petition #836, Ralph Smith, 40 Carver Street, Halifax, MA
2. 7:15pm: Petition #847, R&J, LLC & Halifax Country Club, LLC, Land off Plymouth Street, Halifax, MA

VI Other Matters

- a. Petition #847 Memos – To Be Acknowledged at the Public Hearing Continuance.
 - a. Secretary to PB – re: "Petition #847 (Multi-Family Development on Land Off Plymouth Street)" memo [dated 10/19/16]
 - b. PB to ZBA – re: "Petition #847 (Multi-Family Development on Land Off Plymouth Street)" memo [dated 10/20/16]
 - c. Fire Chief Viveiros to ZBA – re: "Multifamily development at the Halifax Country Club" email [dated 10/24/16]
 - d. Attorney Brennan to ZBA – re: "R&J. LLC and Halifax Country Club, LLC-Application for Special Permit and Variance" memo & email [dated 10/28/16]
 - e. Secretary cc ZBA – re: "Petition #847 (FW: John Peck)" email [dated 10/31/16 & emailed to ZBA]
 - f. Secretary to Attorney Brennan – re: "Petition #847-Letter of Mutual Agreement for Extension V&A" form [emailed 11/8/16]
- b. Secretary to Chairman Gaynor & ZBA Members:
 - a. "Reminder of Board Member Recommendation" memo [dated 10/26/16]
 - b. "2017 Zoning Board of Appeals Meeting Schedule" and request for approval

- c. Proposal of Amended Cover Letter listing the application fees, dated 11/15/2016 and request for approval
-

It was duly moved (P. Parcellin) and seconded (R. Durgin) to accept Gerald Joy to the position of full time Board Member of the Zoning Board of Appeals. Passed 5-0-0.

2017 Meeting Calendar has been submitted to the Board

Meeting Minutes :

It was duly moved (K. Nessralla) and seconded (P. Parcellin) to accept the minutes of July 11, 2016 as presented. Passed 5-0-0

It was duly moved (K. Nessralla) and seconded (P. Parcellin) to accept the minutes of August 22, 2016. Passed 5-0-0

Petition #836: Public Hearing

The Halifax Zoning Board of Appeals granted Petition #836 on Monday, November 9, 2015 in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Ralph Smith. The applicant(s) states the following: “ Owners request permission to sell mulch, loam + other landscaping supplies. There are no sales made to the public on-site. Orders are taken verbally (via phone) & deliveries are made” from the property located at 40 Carver Street, Halifax, MA. Said property is owned by Ralph & Mabel Smith, as shown on Assessor’s Map #71, Lot 23. The applicant(s) 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 & Summary of Uses, page 167:25 & 29. Area is zoned Commercial & Residential.

The intention will be to open Petition #836 at the November 14, 2016 public hearing ONLY to continue the petition to the December 12, 2016 public hearing to renew their petition, as the applicant has willingly offered to re-advertise and re-notify abutters to their Petition #836 with thanks.

It was duly moved (K. Nessralla) and seconded (R. Durgin) to continue to December 12, 2016 @7:30 p.m. Passed 5-0-0

Petition #847: Continuance of Public Hearing Motioned to August 22, 2016 at 7:15pm

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, July 11, 2016 at 7:30p.m. in Meeting Room 1, 499 Plymouth Street, Halifax, MA on the application by Attorney Edmund J. Brennan, Jr., on behalf of R&J, LLC and Halifax Country Club, LLC (c/o John Peck, Manager) for a Special Permit for a Multifamily development, to build four (4) buildings, with four (4) residential units per building (16 units in total), consisting of two (2) bedrooms per unit; a condominium development on land located on the southeasterly side of Plymouth Street. Said properties are owned by R&J, LLC, as shown on Assessor’s Map 63, Lots 31 & 6 and Halifax Country Club, LLC, as shown on Assessor’s Map 73, Lot 5. The applicant seeks a Special Permit in accordance with the Zoning By-laws of the Town of Halifax under Article III, §Section 167-7D (2) (a)-(d), Specific Use Regulations, page 167:23. The applicant seeks Variances of the Units for the development to reduce the frontage from the one hundred fifty

Town of Halifax Commonwealth of Massachusetts

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

(150) feet required to one hundred forty three point three (143.3) feet requested. The applicant seeks Variances in accordance with the Zoning By-laws of the Town of Halifax under Article IV, §Section 167-11, Table of Dimensional and Density Regulations, page 167:31 & under Section 167-12.A. (1)-(7), Density regulations for specific uses, under Multifamily development, page 167:31. Area is zoned Residential & Commercial-Business. Petition #847

Board member, Kozhaya Nessralla recused himself from the petition.

Attorney Edmund J. Brennan, Jr. (of BRCSM LLP) present for the petition on behalf of his client, Mr. John Peck who was also present.

Correspondence was distributed to Attorney Brennan.

Chairman Gaynor advised of responses from Town Council, all correspondence from Town Departments and Boards and read aloud by Secretary.

Secretary also requested a letter of mutual agreement in order to continue the public hearings without expiration or delay. (Expires December 12, 2016) The intention will be to stamp the extension by December 8, 2016 in order to get the most out of the days.

Attorney Brennan addressed the Board, in light of council's opinion, he does not believe this could proceed further.

Secretary then read Town council response of Boards questions. (copy attached)

Attorney Brennan: Town council is taking the opinion that the "road" is a structure. Mr. Brennan does not agree with that interpretation. Reasonably believes that the road is not a structure. In the context of developing a project, and apply reasonably, the road should not be a structure under the definition in (your) by-law.

Members discussed their interpretation of council's response, that the road being part of the development to obtain access is a structure, would also require the 30' buffer. However this is being proposed as a private access.

Onward... Attorney Brennan touched upon that each building would also be required to be on a separate lot, (40,000 sq. ft.) they cannot design around that and would require a variance of that. Also required is 1 acre per unit, 40k is less than acre, so can't put a building on 40k because, each unit has to have at least an acre. A multifamily development cannot be on not less than 10 acres. It would have to be designed as a subdivision, and it cannot design this project that way.

It was then discussed of the other Multi-family developments that have been approved by the Board. Halifax Trails and Amanda Estates with what and how they designed the projects.

In order for this projects to go thru, they would have to ask for a variance from the 40,000 sq. ft. requirement, the 30' vegetated buffer between the roadway and the adjacent lot.

This did go to the Planning Board as one large lot, and was approved (as one 16 acre lot).

Mr. Brennan continued on that they have decided to address some of the Boards concerns. The remaining frontage on the street and has been added to this project, and will withdraw the request

for a variance of the frontage. Additional request for a retaining wall within the 30' buffer at building 9 and 10, we have taken that retaining wall out. So will be down to the Special Permit for Multifamily and ask the board to allow the alterations to the vegetated buffer, which is under their jurisdiction. Ask for you to allow a rip-wrap instead of a retaining wall. Also to waive the requirement of the water line be looped, subject to the Fire Dept. and DPW. To go forward I would ask the Special Permit to include those two conditions, 1) rip-wrap within 30 feet no a structural wall, and 2) to allow Fire and DPW to tell us whether they want to water line looped. If they want it or not, it is significant as it is an 8 inch water line.

The whole thing would become part of the project, and then would deal with frontage on the remaining lots at a different time. The frontage variance request would be taken off the table. The board was having issues with easements, so we are going to make the project part of the Country Club, so there wouldn't be any easements required. All would be one parcel, golf facility and condos.

Members and petitioner continued the discussion of the buffer and that they would need to shift the road to get the 30' buffer. Shifting the road, might look fine, but when you get out to the street, lining up the access for a reason, primarily it is all the infrastructure and signaling of the intersection. Best design is to use the lights and line up as best with the intersection. The traffic engineer did submit letter to the Planning Board saying, that the design is within accepted engineering specifications. To shift it over would be a poor design coming in and out. The current light signalization would warrant the granting of a variance just to have a well-designed access road.

It was asked who owned the lot between the access road and the bank. Mr. Peck advised that Cumberland Farms owns the lot. Mr. Brennan went on to advise that signalization drives the access point. It is a major undertaking to relocate the signalization. The variance that they would need is a variance (strip) on that side, there hasn't been any objection from that neighbor. No adverse response. Also need a variance from the 40,000 sq. ft. lot.

It was discussed again regarding the retaining wall at building 9 and 10. Mr. Gaynor asked what rip-wrap is. Mr. Brennan described it as boulder, stones, crushed stones, lined up and piled up on top of each other. Seen in detention basins, used in construction, a method to slow down runoff drainage.

Mr. Gaynor: How it will affect the plan for the Alger's property?

Mr. Brennan: They met with Mr. Silva, and we stand by our commitment to address their issues. They have redesigned it again. Mr. & Mrs. Alger you asked that the water be directed a different way. I just spoke with Rebecca today, we're still going to address that problem. This won't change that, this is close to it, but it's not part of that system. What we're doing for the Alger's is not part of the retaining wall or rip-wrap. Their problem is being solved independent of buildings 9 and 10.

Mr. Gaynor: How are you going to do the radius now? The cul-de-sac?

Mr. Brennan: We are going to enlarge that. The Fire Chief wanted that, it's been enlarged to 120' diameter to accommodate the fire trucks. That is in this plan as well.

Mr. Parcellin: So you have to go back in front of the Planning Board? When are you meeting with them?

Mr. Brennan: Correct. We haven't scheduled that yet, I didn't know what we would be asking for, until we had Town Council's opinion. Then go back and in light of his opinion, what is the

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

variance list now. Still going to be a couple variances required, but different from what we originally anticipated, we didn't anticipate the 30' strip or the individual lots. We can address those and ask the Board to consider the variance for the 30' strip on the access road coming in and let it be on one lot without 40,000 sq. ft. Mr. Parcellin: What would the hardship on that be?

Mr. Brennan: Wetland surrounds this parcel. You have the golf course on one side, you have the wetlands on the north, so we lose a significant chunk of land on the northwest corner. Were we are adjacent to the Alger's property. Shape, size, topography fits in the wetlands without council's opinion, to looping the water and waiting an answer to the 30' strip. The site has challenges.

Mr. Gaynor: Waiting an answer from where?

Mr. Brennan: Waiting for Town council to respond on whether or not the roadway was a structure.

Mr. Gaynor: I thought he did?

Mr. Brennan: He did, up until now. It was hard to come up with a definitive list, not knowing what council's opinion was going to be. Now I can take his opinion, look at the plan and see where that leaves us. I would like to study council's opinion a bit more.

Secretary touched on the actual application, the variance asked, and that anything new would need to be re-advertised. Amending the existing application would need to re publish, and notify abutters. This would be acceptable to the board. If there are substantial changes, the new publication would be **bold face** to show changes. Mr. Brennan stated there are no substantial changes, just changes for the variance requests. He also stated he will send a letter to withdraw the frontage variance request.

Mr. Gaynor: do you have a tentative date when you will present this to the Planning Board? We can, as Zoning board can meet with the Planning Board on a project of this size and magnitude. I think it would be clear thing up instead of playing back and forth, all sit down together.

Mr. Brennan: It will be the same plan, except they will see the additional frontage and a larger cul-de-sac.

Mr. Brennan said he will contact the Planning Board secretary to get on the agenda and explain the changes, approved before on one lot, so they probably won't have an issue with the lot lines, a larger cul-de-sac, and additional frontage.

Mr. Parcellin: So the original commercial lots are now no longer.

Mr. Brennan: There still out front, the land mass is still out in front.

Mr. Gaynor: But now it's one lot.

Mr. Brennan: It's all one lot.

Mr. Parcellin: But it's always been one lot, they were never divided?

Mr. Brennan: I don't know if they presented a form A plan or not, I don't think so. We showed how the lots would be divided to this board. If it was agreeable to the variance and the project, then we would create the new lot lines. What we're trying to do is not create all these lot lines to find out we don't have a project. Say if you voted for the Special Permit, you can put conditions on that, the condition being that it is all one lot.

Mr. Gaynor: and remain one lot.

Mr. Parcellin: The total in the parcel right now is what?

Mr. Brennan: If you put it with the country club it's 200+

Mr. Parcellin: But that is not merged yet?

Mr. Brennan: The proposal is to merge it with it. So we won't have those easements issues the board was concerned with.

Mr. Parcellin: You have right now.... 16 acres

Mr. Brennan: We were showing 16 acres for the 16 units.

Mr. Parcellin: Including the Country Club? The red section here?

Mr. Brennan: about 5.1 acres

Mr. Parcellin: So the switch has not happened yet?

Mr. Brennan: Correct.

Discussion on what comes next. Mr. Brennan suggested continuing to the next meeting. He agreed to give extension, but 60 days may not be enough, should get to February meeting if stamp in around Dec, 7 or 8th. If have 90 days will give more time to approach Planning Board and come back to Zoning. Change from 60 to 90 day extension (form signed)

Motion to accept letter of Mutual agreement for extension as submitted by Mr. Brennan

Motioned by P. Parcellin and seconded by R. Durgin. Motion carries 4-0-0

Mr. Brennan asked for slot on next meeting in the event they can make it. Continue to December 12 at 7:45 p.m.

Mr. Gaynor asked that he notify the ZBA if they get on the agenda for the Planning Board.

P.Parcellin motion to continue petition #847 to December 12 at 7:45 p.m.

Seconded by R. Durgin. Motion carries

It was duly moved, seconded and VOTED to adjourn the meeting.

Respectfully submitted
Zoning Board of Appeals, Secretary

Robert Gaynor
Zoning Board of Appeals, Chairman
