



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes

Monday, June 3, 2019

The Halifax Zoning Board of Appeals held a public hearing on Monday, June 3, 2019 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Chairman: Robert Gaynor, Co-Chairman: Kozhaya Nessralla, Clerk: Peter Parcellin, Member: Gerald Joy and Associate Member: Daniel Borsari. Member: Robert Durgin is absent.

Chairman Gaynor calls the meeting to order at 7:07pm and reprises the audience that this public hearing/meeting is being audio taped. He also explains the procedure and the protocol at the public hearings.

Meeting Minutes:

Motion to accept the Meeting Minutes from Monday, May 6, 2019:

MOTION: Kozhaya Nessralla
SECOND: Peter Parcellin AIF
Passes: 5-0-0

Bills:

The Board signs bills.

- Plympton-Halifax Express, Petition #897 Advertisement = \$84.00
- Plympton-Halifax Express, Petition #898 Advertisement = \$84.00
- Plympton-Halifax Express, Petition #899 Advertisement = \$84.00
- W.B. Mason, Office Supplies = \$223.61

Correspondence:

The Board reviews all mail items.

- Talent Bank Form dated 5/6/2019 – Colleen Fiumara
- Memo from Tax Collector dated 5/7/2019 – Petition #895, 99 Hudson Street, recycling payment received
- Response letter from Attorney General dated 5/17/2019 to Gordon C. Andrews' regarding his Open Meeting Law Complaint to the Zoning Board
- Planning Board Memo dated 5/22/2019 regarding a 40B project on Franklin Street
- Memo from the Board of Selectmen regarding the reorganization of the Board of Selectmen dated 5/29/2019
- Board of Selectmen Notice of Public Hearing for July 23, 2019 regarding a long-term trailer permit at 464 Plymouth Street

Appointment:

7:05pm – Petition #895 – Tami St. Andre, 99 Hudson St, Special Permit for In-law Apartment

Present: Tami St. Andre (Applicant)

Chairman Gaynor reads the Public Hearing Notice into record. He also reads a memo confirmation from Tax Collector that states Ms. St. Andre's recycling bill has been paid. Ms. St. Andre states that the bill was sent to her daughter at the incorrect address. Ms. St. Andre confirms that there have been no changes made to the In-law, she lives there and her daughter and son-in-law live in the home.

Motion to accept Petition #895 for a Special Permit which will be reviewed in five (5) years:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy

Voice Vote: Robert Gaynor – Yes; Peter Parcellin – Yes; Gerald Joy – Yes; Dan Borsari – Yes; Kozhaya Nessralla – Yes

Passes: 5-0-0

Decision form is signed by all members.

Appointment:

7:10pm – Petition #897 — Victor Ricciardi, 88 Colby Dr. - Special Permit for In-law Apartment

Present: Victor Ricciardi (applicant); Donna Ricciardi, Victor Ricciardi, Sr. and Margaret Ricciardi (family)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Ricciardi confirms that there have been no changes made to the property and his parents live in the in-law.

Motion to accept Petition #897 for a Special Permit which will be reviewed in five (5) years:

MOTION: Gerald Joy

SECOND: Kozhaya Nessralla

Voice Vote: Robert Gaynor – Yes; Peter Parcellin – Yes; Gerald Joy – Yes; Dan Borsari – Yes; Kozhaya Nessralla – Yes

Passes: 5-0-0

Decision form is signed by all members.

Appointment:

7:15pm – Petition #898 – Robert Maker, 27 Cherry St - Special Permit for In-law Apartment

Present: Robert Maker (applicant)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Maker confirms that there have been no changes made to the property and his mother lives in the in-law.

Motion to accept Petition #898 for a Special Permit which will be reviewed in five (5) years:

MOTION: Kozhaya Nessralla

SECOND: Peter Parcellin

Voice Vote: Robert Gaynor – Yes; Peter Parcellin – Yes; Gerald Joy – Yes; Dan Borsari – Yes; Kozhaya Nessralla – Yes

Passes: 5-0-0

Decision form is signed by all members.

Appointment:

7:20pm – Petition #899 – Roy Murphy, 7 First Ave – Special Permit and Variance for Renovation

Present: Roy Murphy (applicant)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Murphy presents his application for a special permit to renovate the interior and exterior existing home, adding a farmer's porch and second floor which would constitute a continuation of a non-conforming use, an alteration exceeding 50% of the real market valuation of the structure and an extension of a non-conforming use. The applicant is also seeking a variance from the front lot line on First Ave from 50 feet to 44 feet.

Mr. Murphy explains that he's going to center the door and windows, remove the roof, add a second floor and wrap the front with a farmer's porch (not pre-existing). The Board reviews the site plan. Mr. Murphy is only expanding the footprint on the front by adding the porch. The home has two bedrooms and one bathroom. The lot is 14,399 square feet. The home is tucked over to the side of the lot with an 8-inch block foundation. No changes will be made to the foundation. There is a crawl-space basement. All the neighbors to the property are supportive of the project. The home will be three bedrooms and two bathrooms after the renovation.

The Board agrees that the project does not derogate from the intent of the bylaw, will not be detrimental to the established character of the neighborhood and will only increase the property value of the neighborhood. Also, the topography and size of the lot meet the requirements of a hardship.

Motion to waive the on-site for Petition #899:

MOTION: Kozhaya Nessralla

SECOND: Peter Parcellin

Voice Vote: Robert Gaynor – Yes; Peter Parcellin – Yes; Gerald Joy – Yes; Dan Borsari – Yes; Kozhaya Nessralla – Yes

Passes: 5-0-0

Motion to accept Petition #899 as presented for a Special Permit and Variance for renovation:

MOTION: Gerald Joy

SECOND: Kozhaya Nessralla

Voice Vote: Robert Gaynor – Yes; Peter Parcellin – Yes; Gerald Joy – Yes; Dan Borsari – Yes; Kozhaya Nessralla – Yes

Passes: 5-0-0

Decision form is signed by all members.

Appointment:

7:35pm – Petition #886 – Mai, Thao & Hiep Pham, 395 Plymouth St. – Special Permit (closed hearing)

Present: Hiep Pham (applicant) and Quat Tran

Chairman Gaynor asks Mr. Pham if the portion of the building encroaching on the property has been raised. Mr. Pham answers that he negotiated with the owner of the abutting property (385 Plymouth St) and the structure will be removed when the Building Inspector approves the permit to demolish the building. The chicken coop will be demolished (the work has been pre-paid, copies of the checks have been provided by the Phams) when the permit is approved by the Building Inspector.

Mr. Borsari would like to see the six apartments be approved but wants things to be done correctly. He'd like to deny the Petition to give the Phams more time to complete the work. Mr. Nessralla disagrees and feels a special meeting could be scheduled to give the Phams time to get the building permits for the demolitions. Mr. Parcellin feels that the Board should approve the permit that cannot be exercised until specific conditions are met. The Board agrees with this suggestion.

The Board would like a copy of the Decision letter/Special Permit to be sent to Jose Guzman, architect.

Motion to accept Petition #886 for a Special Permit for six units in the same footprint, to the extent necessary for the continuation of a non-conforming structure with the conditions listed (below):

MOTION: Peter Parcellin

SECOND: Gerald Joy

Voice Vote: Kozhaya Nessralla – Yes; Peter Parcellin – Yes; Robert Gaynor – Yes; Gerald Joy – Yes; Dan Borsari – Yes

Passes: 5-0-0

The special permit is granted to allow six units in the same foot print which cannot be exercised unless and until the following conditions are met:

1. The building on the Property that encroaches onto the abutting property (385 Plymouth Street) is moved or the lot line changes to eliminate the violation.
2. The large accessory structure ("chicken coop") is razed and demolished.
3. The septic system is united with the multi-family dwelling ("Farm House") on the same lot and must require 40,000 square feet minimum for multi-family dwelling.
4. Must meet all minimum safety levels required by the Building Inspector and Fire Chief.

Decision form is signed by all members.

Appointment:

7:50pm – Petition #894 – Campbell Lewis – 330 Plymouth St, Variances for parking, O'Reilly's Auto (cont.)

Present: Kevin Solli (licensed professional engineer, Solli Engineering); Casey Burch (civil engineer, Solli Engineering); Campbell Lewis (owner); Tina Alger (abutter)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Solli introduces himself and gives a brief summary of the parking variances being requested. He goes on to say that the Board continued the last meeting to get their attorney's opinion on this Petition and would like to discuss this opinion with the Board so that Mr. Solli can try to answer any questions. Mr. Gaynor asks if there is room on the property to meet the required parking spaces. Mr. Solli answers no and states that an auto parts store is unique compared to a normal retail store. Mr. Gaynor and Mr. Borsari ask if there were no wetlands, would there be enough land for the proposed building and 73 parking spaces. Mr. Solli responds that there is not enough land. Mr. Solli believes that the strict adherence to an auto parts store parking requirement is what creates the hardship. The variance requested is very specific to the use of an auto parts retailer.

Mr. Parcellin feels that the only reason the parking requirements can't be met is due to the size of the building that the applicant wants to build. If the building was sized down, the parking space requirements could be met without needing any variances. Nothing about the financial hardship or topography of the land allows the Board to vary what is being requested. Mr. Solli explains that O'Reilly's is a Fortune 500 company and provides valuable service to the communities they are invested in and have specific prototypes. O'Reilly's only builds stores that fit into a certain box which allows them to operate their stores the same way, so the same shoppers have the same shopping experience in any store. Mr. Solli feels that providing the strict enforcement of the 1/100 parking requirement creates a hardship as there is no need for this much parking.

Mr. Solli talks about the history of the property. There are issues with the property including storm water management. This would be a unique opportunity to correct a lot of these issues. Mr. Gaynor reads from Land Counsel Attorney Kwesell's opinion (email dated 5/28/2019): "In my opinion, hardship based on the type of business is not sufficient to grant a parking variance. The Applicant must show that due to the soil conditions, shape, or topography of the Property, a literal enforcement of the Bylaw is not possible. Further, it should be noted that the shape of a property or lot should not be confused with its size. Bruzzese v. Board of Appeals of Hingham, 343 Mass. 421 (1962) (A property or lot lacking sufficient area is not eligible for a variance based solely on this condition and the benefits to the tax base of the municipality may not be considered.) A nexus must exist between the Property condition (soil conditions, shape or topography) and the hardship (type of business) which, in my opinion, has not yet been shown by the Applicant's submittal."

Mr. Solli responds that this is a great point because this variance is being requested due to the size of the lot. Mr. Gaynor responds that O'Reilly's is applying for a variance due to the size of the lot *because* the 7,225 square foot building cannot fit on the lot and meet three of the by-laws. Mr. Solli responds that If the Board feels strongly about individual variance requests, Solli engineering can increase the size of the loading space. However, what Solli has been

able to do is design something that fits within the operational requirements of the specific tenant for a specific retail use and feels that this Board has the authority to grant these variances.

Mr. Borsari feels that if the lot was big enough for this size building and 73 parking spaces, the Board could say the lot size meets the bylaws and due to the soil conditions, wetlands etc. there's a hardship. Mr. Borsari states that if the applicant/Solli Engineering can show that the lot size is big enough for that size building with 73 parking spaces, he would feel more comfortable granting those variances. The Board could then possibly ask for an increase in the size of the loading dock and make the spaces bigger, decrease the parking spaces and get rid of two-thirds of the variances requested. Mr. Parcellin responds that if the building fit on the lot, there would be no reason for these meetings as there would be no variances needed.

Mr. Solli states that this retail use is unique, having a 7,200-plus square foot building with more than half used for storage. If the applicant wanted to build a 7,200 square foot retail building this Board would have a difficult time approving the hardship because the applicant would be picking a business that they wanted that didn't fit into the town. This is not what the applicant is requesting a variance for. They are requesting a variance because they have a specific type of retail use that the Board gets to include in a condition of the variance itself which says, "you can provide 1/220 square feet for an auto parts retail store to satisfy parking requirements instead of the 1/100." It's the ratio in which they must provide parking which is established in the Halifax by-laws.

Mr. Joy feels that the applicant can go with open space (45%) rather than putting more parking spaces. The Board isn't demanding more parking spaces as there is also the option of having more open land. It goes back to the size of the lot. Mr. Solli explains that even if they were providing the open space and Halifax was still looking for a ratio of 1/175 the applicant could still be before the Board requesting a variance of 1/220 as that is what the use requires from an operational standpoint. The by-law requirement to build 1/175 or 1/100 creates the hardship. It is detrimental to the environment to require surplus parking, excess pervious surface and excess stormwater runoff as this can affect downstream neighbors from a flooding standpoint.

Mr. Borsari needs to see, on an old or new drawing, that O'Reilly's building size of 7,200 square feet can fit on the lot with 73 parking spaces. Once he sees this he then feels the Board can make a decision to vary.

Mr. Solli explains that there are some site topographic constraints which support the need for them to provide 18 ft deep spaces instead of 20 ft deep spaces. Solli tried to grade and design their site to avoid retaining walls along the northern and southerly property line to reduce the parking space depth along with the depth of the loading space. They're trying to design the site to provide above ground open storm water detention rather than underground detention. Additionally, they could build structured parking (two levels) to meet the requirement, however from a site standpoint due to the wetlands towards the rear of the property, they would have an issue with groundwater. So, there is a site constraint with groundwater due to wetlands.

Mr. Borsari doesn't feel differently and would still like to see how the building can fit on the lot with 73 parking spaces as he would feel that would make things legally justified for the Board to move forward with possibly granting variances as the hardships would be soil conditions and topography which must be physically shown.

Mr. Burch asks the Board their thoughts if Solli were to show 42 parking spaces with 40% open space being a green roof, which is very expensive. Mr. Parcellin doesn't know if that's the intent of the by-law. Mr. Lewis suggests a cross-parking easement agreement which is to provide off-property parking on an adjoining parcel through a legal agreement.

Gordon C. Andrews, selectman, asks if there is another piece of land to purchase, which has been brought up in the past, points out Mr. Joy. Mr. Lewis explains that they were under the impression before that they were getting more land. This has already been discussed in other meetings.

Mr. Borsari asks Mr. Solli if the building can be reduced in size. Mr. Solli and Mr. Lewis respond no, it cannot. Mr. Borsari responds that this is a hardship for this business model. Mr. Lewis states that this project would be dead if they reduced the business model and the property would just sit there as he is never selling it.

Mr. Solli states that he can show a sketch with 73 parking spaces with the building pulled forward but it won't be a good layout and it won't be good from a traffic standpoint. The coverage for this lot is 25% building coverage. They are at 9.2% building coverage. So, the size of the building is not what is creating the request for the variance, it is the strict adherence to the 1/100 parking requirement.

Mr. Parcellin refers to Attorney Kwesell's opinion: "There are three individual requirements which the Board must specifically find in order to grant a variance:

- i. that owing to circumstances relating to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
- ii. a literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the petitioner; and,
- iii. that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law. G.L. c. 40A, §10. Warren v. Zoning Board of Appeals of Amherst, 383 Mass. 1, 9-10 (1981) "

Mr. Parcellin does not feel any of these requirements have been met. Mr. Borsari, referring to Attorney Kwesell's opinion "I have been informed that the Applicant is claiming a hardship based on the type of business (auto retail) in regards to square footage per parking space. In my opinion, hardship based on the type of business is not sufficient to grant a parking variance" which he reads as meaning hardship based on type of business *alone* is not sufficient.

Mr. Lewis and Mr. Solli request a copy of Attorney Kwesell's opinion and would also like permission for their attorney to speak to Attorney Kwesell.

The Board agrees that they would like to continue the hearing to allow Mr. Solli to present a drawing showing the building with 73 parking spaces on this lot to be in compliance with the Zoning By-laws. As 100 days from application is June 22nd, Mr. Solli signs a Letter of Agreement for Extension for 30 days.

Motion to allow Land Counsel Attorney Kwesell to confer with Applicant's attorney, supplying the applicant a copy of Attorney Kwesell's opinion and to extend Petition #894 to July 8, 2019:

MOTION: Dan Borsari

SECOND: Kozhaya Nessralla

Voice Vote: Robert Gaynor – Yes; Peter Parcellin – Yes; Gerald Joy – Yes;

Dan Borsari – Yes; Kozhaya Nessralla – Yes

Passes: 5-0-0

Mr. Solli is given a copy of Attorney Kwesell's opinion, per the Board's approval.

Adjourn:

Motion to adjourn meeting:

MOTION: Peter Parcellin

SECOND: Kozhaya Nessralla AIF

Passes: 5-0-0

It was unanimously voted to adjourn the meeting at 9:30p.m.

Documents:

1. Agenda – 6/3/2019
2. Meeting Minutes – 5/6/2019
3. Signed Revolving Bill Schedule - Petitions #897, #898 and #899
4. Invoices – Plympton-Halifax Express advertisements - Petitions #897, #898 and #899
5. Public Hearing Notice – Petition #895
6. Application packet – Petition #895
7. Tax Collector’s memo – Petition #895
8. Decision Form – Petition #895
9. Public Hearing Notice – Petition #897
10. Application packet – Petition #897
11. Decision Form – Petition #897
12. Public Hearing Notice – Petition #898
13. Application packet – Petition #898
14. Decision Form – Petition #898
15. Public Hearing Notice – Petition #899
16. Application packet – Petition #899
17. Decision Form – Petition #899
18. Application Packet – Petition #886
19. Decision Form – Petition #886
20. Public Hearing Notice – Petition #894
21. Application Packet – Petition #894
22. ZBA Summary Letter from Solli Engineering – Petition #894
23. Signed Revolving Bill Schedule – Petitions #897, #898 and #899
24. Signed Expense Bill Schedule – 5/8/19
25. Invoices – Plympton-Halifax Express advertisements – Petitions #897, #898 and #899
26. Invoice 5/8/19 – WB Mason
27. Talent Bank Form dated 5/6/2019 – Colleen Fiumara
28. Memo from Tax Collector dated 5/7/2019 – Petition #895, 99 Hudson Street, recycling payment received
29. Response letter from Attorney General dated 5/17/2019 to Gordon C. Andrews’ regarding his Open Meeting Law Complaint to the Zoning Board
30. Planning Board Memo dated 5/22/2019 regarding a 40B project on Franklin Street
31. Memo from the Board of Selectmen regarding the reorganization of the Board of Selectmen dated 5/29/2019
32. Board of Selectmen Notice of Public Hearing for July 23, 2019 regarding a long-term trailer permit at 464 Plymouth Street

Respectfully submitted,

Arlanna Snow
Zoning Board of Appeals Secretary

Date: 7-8-19
[Signature]
[Signature]
[Signature]
D. Bowen