



Halifax Zoning Board of Appeals

Meeting Minutes

Monday, April 12, 2021

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, April 12, 2021 via Zoom hosted by Town Administrator Charlie Seelig with all Board members in attendance: Chairman Robert Gaynor, Vice Chairman Kozhaya Nessralla, Clerk Peter Parcellin, Members Gerald Joy, Member Robert Durgin and Alternate Member Dan Borsari.

Chairman Gaynor calls the meeting to order at 7:05pm and reprises the audience that this public hearing/meeting is being recorded. He explains the procedure and the protocol for public Zoom hearings per the Governor's order and takes a roll call of members in attendance.

In response to Chairman Gaynor's inquiry of the proper process for including Zoom chats in official Meeting Minutes, Town Administrator Charlie Seelig states that, according to the Attorney General, the transcript of the chat is a separate document to be attached to the Meeting Minutes but is not required to be included in the minutes.

MEETING MINUTES

- M/Joy, S/Nessralla. Unanimously approved (5-0-0) by voice vote to accept Meeting Minutes for March 8, 2021 as presented.

BILLS

PH Express – Pet #933 – Advertisement - Invoice #12334 = \$84.00
PH Express – Pet #934 – Advertisement – Invoice #12335 = \$84.00
PH Express – Pet #935 – Advertisement – Invoice #12336 = \$84.00
PH Express – Pet #936 – Advertisement – Invoice #12337 = \$84.00
PH Express – Pet #937 – Advertisement – Invoice #12338 = \$84.00
Amory Engineers – Pet #920 CC Estates – Feb Invoice #15568B for Engineering Services 1.75 hours = \$259.00
W.B. Mason – Office Supplies – 3/24/21 Invoice #218888199 = \$62.36

- M/Parcellin, S/Durgin. Unanimously approved (5-0-0) by voice vote to accept and pay all invoices listed.

APPOINTMENT

7:05pm – Hearing – Petition #933 – JSC, LLC / Scott Casagrande, 311-313 Plymouth St – Special Permit & Variance for parking garage
Applicant Scott Casagrande present.

Chairman reads Public Hearing Notice into record. Casagrande presents project. This is a commercial lot owned since 1960s which is a pre-existing, non-conforming lot with only 100 feet of frontage with 38,890 sq. feet and is the only non-conforming business lot in Halifax along routes 106 and 58. The use requested falls under 167-7 Commercial Parking Garages allowable by special permit in business district. This will be a private garage for antique classic cars and collectable vehicles. There is no residential use and will never be a secondary structure for residential property – no apartments or residents on the property. Variance requests include side setbacks and rear setback. Structure to be built will be 50 feet by 80 feet deep which is 4,000 square feet. There will be 20.4% lot coverage with pre-existing buildings and this proposed building. Prefer to keep proposed building located in northwest corner of lot, as reflected on plan. Has received site plan approval – parking included. This position is the least intrusive with regards to any developable land around the property and maintaining distance from east abutting property, which is undevelopable.

Casagrande confirms to the Board that the building is plumbed for water and heat. Planning to include a half-bathroom. No repairs will be taking place inside garage. This garage will be private and not open to public. There will be no spaces for rent. Closest existing building is 15 feet from proposed building. Abutters Rosen Realty, Stop & Shop/vacant property to east of Casagrande property have no objections and are supportive. Parcellin concerned about ground floor area of 4,000 sq feet as residential garage should not exceed 884 sq feet. Durgin points out Building Inspector did not deny Casagrande on this issue, it is Commercial property and allows for more. Casagrande explains he pays his own rent to pay bills. A floor drain with holding tank was required by plumbing inspector as there is garage door access. Casagrande confirms that this is a long-term plan for him. Borsari concerned with rear setback regarding location and hardship, has no issue with side setbacks. Per Casagrande the lot is narrow which stretches everything out. The setbacks restrict this lot immensely and make it difficult for garage to hold much which is why he can't reduce the size of building. Plan for 18 cars inside garage, nine (9) on each side. The proposed building cannot be turned due to required parking and septic and cannot be pulled

forward due to elevation and space. Graveled parking area. Doors are 10 feet tall, 12 feet wide. Seelig explains that ground floor area exceeding 884 square feet is specifically for residential garages. Borsari and Parcellin agree on their concern for meeting hardship.

Gordon R. Andrews asks if the Board has a list of the requirements for hardship and if state law defines hardship. Chairman responds, per Casagrande, that the hardship is due to the lack of width. Andrews responds, "It just seems like it's 10 pounds of shit in a 5-pound bag" and goes on to say it's not like Casagrande is restricted to the point where he can't build something, he already has two buildings.

- M/Durgin, S/Nessralla. Unanimously approved (5-0-0) by voice vote to schedule an on-site inspection for Petition #933 on May 1, 2021 at 9:00am.
- M/Durgin, S/Nessralla. Unanimously approved (5-0-0) by voice vote to continue Petition #933 to May 3, 2021 at 7:05pm.

APPOINTMENT

7:25pm – Hearing – Petition #934 – Kevin Perkins, 31 Ocean Ave – Special Permit & Variance to raze & rebuild single-family dwelling
Applicant Kevin Perkins is present.

Chairman reads Public Hearing Notice into record. Owner is Ronald Poirier. Perkins presents petition. Pre-existing, non-conforming structure on a pre-existing, non-conforming lot which dates to 1890. 2,800 square foot lot. 10 feet of the lot is in the pond. Relocated the structure further to the rear of property with respect to bylaw to allow for two offsite parking spaces. Setback went from 19.8 feet of existing structure to 28.6 feet. Right side setback request from 1.5 feet to 2 feet to allow for an over-dig which would be an increase, does not need to request this variance. There is also a paper street on this side with a 22-inch corrugated drainage pipe which would be prepared for the Town. Left side setback to 7 feet which would not disturb the abutter. Rear setback would be 18 feet. Reason for hardship is that there is no way to put a structure on this lot without variance. Could meet lot coverage without variance request, however the structure would require two stories to do so, which is a height concern for an abutter. The request for lot coverage variance is to create a one-story structure. Perkins believes this will only improve the neighborhood and bring property values up. Septic will be treated and fully compliant and will get the septic out of the 50-foot wetland setback. If the home were any smaller, it would be unusable as a single story. Proposed home is one story with walk-out basement to the pond.

Amy Troup asks if Kevin Perkins owns the property. Perkins asks Chairman the location of this abutter so he can address her concerns. Troup is not an abutter of the property. Troup asks Perkins to confirm that he's moving the house away from the water but closer to the back. Perkins responds that this is incorrect and reiterates to Troup that the back is the water and will be moving from the street closer to the water to allow for parking and further separation from the right-of-way. Perkins confirms that Conservation has approved this. Troup asks what the hardship is moving the house closer to the pond. Perkins responds so that the septic system can fit on the property and keep it out of the 50-foot conservation setback which is more important than keeping the original structure. Troup asks how many bedrooms are being proposed compared with the existing house. Perkins responds two bedrooms with no increase in flow. Board of Health has also approved the plan, per Perkins.

Julie Mack, 36 Ocean Ave asks about the environmental impact as it is so close to the pond with regards to flooding. Also, with a house this size Mack is concerned about absorption of water when the pond is high as there will be so much structure. Perkins responds that there won't be any additional issues as they are only making improvements to the property. Abutter's concern is with the pond. Perkins explains that this was already approved by Conservation.

Troup states "the rest of us have to comply with our small lots and have to stay within the footprints and it's more substantial to be by the water in these cases that we can't expand our footprints or move them so how is it—it doesn't jive with the rest of the town on all the grandfathered lots. It's not fair to everybody else in the town." Troup believes tight tanks are usually used in these cases and that she doesn't understand how Conservation approved this as houses should not be moved closer to the pond.

Don Barrows, 33 Ocean Ave, next door to the existing "monstrosity." States that he has been following this project and everything has been approved. Other neighbors are excited about this project and Perkins, although he doesn't know him personally, has seen his work and does a great job. Barrows states pond has never come close to overflowing. Adds this will be an improvement. Understands the concern or fairness of moving structure closer to the water but it will be elevated.

Borsari confirms that the current structure is vacant. Perkins has this under contract to purchase from the Poiriers. Taxes are current, property is used as a getaway, but no one sleeps or lives there. The Poiriers plans to use this property have changed so has been put up for sale. Borsari states that the ZBA has the authority to make these types of determinations without always requiring an attorney to get involved. Perkins plans to purchase, complete the work and move in himself.

Troup asks if this property is in a flood zone and asks if flood insurance is paid. Perkins doesn't believe so. Barrows responds that he is not in a flood zone and does not pay flood insurance.

Perkins requests that the Board waive the site inspection. The Board recognizes the hardship as the topography and layout of the property. Does not think this would be detrimental to the established character of the neighborhood and does not derogate from the intent of the bylaw.

- M/Parcellin, S/Nessralla. Unanimously voted (5-0-0) by voice vote to waive the on-site inspection.
- M/Nessralla, S/Parcellin. Unanimously voted (5-0-0) by voice vote to accept Petition #934 as presented.

APPOINTMENT

7:45pm – Hearing – Petition #935 – Michael Fonseca, 239 Oak St – Special Permit for single-family renovation

Applicant Michael Fonseca is present.

Chairman reads the Public Hearing Notice into record. Looking to bring this home back to its original state, bring the building up to code and comply with the town bylaws. Would like to fix the eyesore in this neighborhood. Fonseca explains that the builder before him was working on the property without contacting the Building Inspector which is why there was a cease and desist from the Building Inspector. Fonseca is not requesting or changing any setbacks, just renovating as is. There will be no increase in footprint. Garage will remain as is. The owners have been sitting on this project for seven months and would like to make this home beautiful again. Has met with the Building Inspector Mr. Piccirilli on site. Not concerned with other existing structures. Two bedrooms, one bathroom.

Board is familiar with location and agree that this could only be an improvement. No comment from the public.

- M/Nessralla, S/Durgin. Unanimously voted (5-0-0) by voice vote to waive the on-site inspection.
- M/Parcellin, S/Nessralla. Unanimously voted (5-0-0) by voice vote to approve Petition #935 as presented.

APPOINTMENT

8 :05pm – Hearing – Petition #936 – Ana Paula and Jose Tertuliano Filho, 12 White Island Rd – Special Permit for roof overhang and deck

Applicant nor representation are present.

- M/Parcellin, S/Durgin. Unanimously voted (5-0-0) by voice vote to continue Petition #936 to May 3, 2021 at 7:30pm.

APPOINTMENT

8:25pm – Hearing – Petition #937 – Rick & Holly Merry, 301 Holmes St. - Special Permit for In-Law apartment

Applicants Rick and Holly Merry are present.

Chairman reads Public Hearing Notice into record. R. Merry speaks to his petition. Explains that this will be an in-law apartment off the house. His daughter and her family are moving into the home, Rick and Holly Merry will be living in the in-law. Gaynor is familiar with the property and visited the property. Meets in-law bylaw criteria. Shared living space is the dining room in the main house. Electric, water and septic shared. Shared entry/exit/access to in-law. There will be a three-foot cased opening, rear door on the back of the home. When Nessralla states there should be a six-foot opening, Gaynor and Merry respond that there is nothing in the bylaw that states a six-foot opening is required for in-laws. Merry explains the original house was a solar house. The rear of the house is the north side. Explains the design and how it would be impossible to put a six-foot opening, and this is the only area to put an addition due to topography, utilities, and so on. Two abutters submitted letters in support with no objections to proposal. The lot is 4.63 acres. The opening goes from the kitchen into the rest of the home. Exterior door to the right. Four-foot deck. House faces the railroad tracks.

- M/Nessralla, S/Joy. Unanimously voted (5-0-0) by voice vote to waive the on-site inspection for Petition #937.
- M/Nessralla, S/Joy. Unanimously voted (5-0-0) by voice vote to accept Petition #937 as presented.

APPOINTMENT

8:45pm – Hearing (continued) – Pet #931 – Robert D’Agostino, 596 Monponsett St – Special Permit & Variance for single-family dwelling

Applicant Robert D’Agostino, Attorney Ron Whitney (representing D’Agostino), Halifax Land Use Counsel Attorney Amy Kwesell are present

Chairman reads Public Hearing Notice into record. Chairman and Kwesell go over some previous concerns and questions from the Board. Kwesell explains that septic on a separate lot is an issue for Board of Health, not Zoning Board. Septic system issue should be set aside. Regarding merging the lots, if a non-conforming lot is owned by an adjacent non-conforming or conforming lot, they merge for Zoning purposes as it will become more conforming. Until lots are purchased under the same name (there is an intent as there is a P&S agreement) they should be treated separately. Pre-existing, non-conforming structure is being altered as a home will be built on an existing foundation. The use of a single-family dwelling is allowed in this business zone. This is an as-of-right use. The foundation

is considered a structure under Halifax Bylaws. If the applicant wants to increase the alteration more than 50%, a special permit is needed by the ZBA. If it's less, the Building Inspector can issue a building permit per the Building Inspector's interpretation. Kwesell states her opinion that the applicant's only option is to get variances from the setback requirements and could qualify for a variance as the lot is a unique shape and topography goes into the pond and their hardship is that they're staying within the exact same footprint. The applicant is not increasing any non-conformities by staying on that footprint. There are two possible forms of relief: 1. The Building Inspector has interpreted the bylaw a certain way that the applicant requires a special permit if go over 50% 2. Variance from setbacks because applicant is staying within the footprint. Kwesell states that the foundation is the structure. Deed restrictions do not have any impact on determination of permits or variances, per Kwesell. If there is a deed restriction, whoever holds that restriction will not allow the building to be built. Halifax does not hold the deed restriction, per Kwesell. It is up to the applicant to decide what they want to ask the Board for – special permit and/or variance.

Durgin asks what happens to the three-foot variance that is requested before the purchase of the lot. Once the merge is complete, does the variance go away? Kwesell responds that the variance stays and explains the Doctrine of Merger. Once empty lot merges with theater lot the empty lot cannot be built upon. Kwesell states that the lots must be in the same name to consider setbacks.

Whitney confirms that D'Agostino will be the name on both lots once merged. States the plan is presented as one lot, not two. If the Board were to make a condition of their approval that both lots be held in common ownership such that they merge for zoning purposes and for purposes of approving this project, the applicant would be willing to accept these conditions. Kwesell does not believe this is feasible as you cannot condition a variance on ownership and wouldn't recommend conditioning a special permit on ownership, especially one that hasn't happened yet, either. Whitney states that they have a non-conforming lot with a non-conforming structure and a non-conforming use that has not been abandoned and suggests that without any variances for setbacks the applicant could go back and rebuild on the footprint that existed by right so not sure that variances are necessary. Whitney adds that he thinks this lot would qualify for a variance. Applicant has been approved by Board of Health and Conservation. Kwesell is only looking at this project under one lot and is not looking at septic. Chairman states that this would not be detrimental to the established character of the neighborhood, there are no issues with the usage, does not derogate from the intent of the bylaw and has a hardship of topography and lot size and feels they can move forward on this. Not increasing the non-conformity. Anything on the vacant lot as far as septic is not in the Zoning Board's purview.

Whitney asks if the Board would consider granting a special permit pursuant to 167-8B and if the Board would consider granting the front, rear and side setback variances. Parcellin and Kwesell agree that the variances can be granted on the theater lot rather than the special permit. Parcellin is comfortable with accepting the special permit if the Building Inspector thinks it's acceptable and if the Board agrees. Kwesell explains that abandonment only applies to the use, not the structure. Borsari is comfortable moving forward with this as nothing will move forward until the applicant purchases the property, which is confirmed by the applicant and Whitney and Borsari believes is the Zoning Board's safety belt.

Chairman asks Kwesell if any other construction on a pre-existing, non-conforming, grandfathered lot with a structure on it requires variances on the setbacks. Kwesell responds no, not if it's a buildable lot or there's already a structure there. It is clarified to Kwesell that the applicant is building inside the existing foundation, so they are making the current footprint smaller. There is still an alteration of a pre-existing, non-conforming structure but this all depends on how the Board interprets 167-8B. Kwesell agrees with Parcellin that granting the variances would give the applicant more protection. Kwesell explains that the applicant will need five variances: 1) structure on an undersized lot 2) undersized frontage 3) side setbacks 4) front setbacks 5) rear setbacks. Frontage is 129 feet and total is 230 feet when combined. Kwesell urges the Board not to look at this property as merged, only one lot.

Kwesell informs the Board that, per the Duteau case, the relief sought can be adjusted provided that the original notice allowed the public to know what was going to happen: a single-family dwelling will be placed on the lot, in the general location of where the existing structure is. Also, this is at the applicant's risk in the event of an appeal. The applicant is okay with taking this risk.

- Attorney Kwesell: Motion made to grant five variances for the proposed dwelling as shown on the plan of record for the lot size, minimum frontage, front setback, rear setback and side setbacks due to the fact that the lot size and topography are unusual particularly with regard to the pond and the unusual shape of the lot creating a substantial hardship meaning that a structure of normal size cannot be placed on the lot and this would not derogate from the intent of the bylaw.
Peter Parcellin: So moved.
Robert Durgin and Gerald Joy: Second.
Unanimously voted (5-0-0) by voice vote to grant Petition #931.

Note: There was a previous extension made to April 25, 2021.

APPOINTMENT

9:05pm – Hearing (continued) – Petition #927 – Matt Grosschedle/Outback Engineering, 0 Walnut St – Special Permit for Horse Barn
Matt Grosschedle, Outback Engineering and Board of Health Vice Chair Alan Dias are present.

Grosschedle gives the Board an update on their status with Board of Health. BOH approved a submitted plan for a shared system between two lots but are going to hold their permit until all legal documents and easement plan are recorded. Dias updates the Board explaining that the BOH approved the Title 5 shared system and informs that the applicant has met all requirements and guidelines by putting in additional tanks. An agreement will be recorded, will be reviewed and disposal works construction permit will then be issued. Dias believes it will take a couple of weeks to a month to complete. Grosschedle agrees with Dias – hoping to get things done as soon as possible. Dias states that the BOH has conditionally approved the septic plan and believes that the applicants are ready to proceed; does not believe that the ZBA needs to condition the special permit as the applicant cannot move forward and get their construction permit without the completed paperwork submitted to the BOH. Durgin is comfortable with moving forward on this. Parcellin agrees. Grosschedle clarifies that the application states the barn is 3,600 square feet.

- M/Joy, S/Durgin. Unanimously voted (5-0-0) to accept Petition #927 with the condition that there will be no living quarters, it will be for personal use only and sized at 3,600 square feet.

ADJOURN:

- M/Nessralla, S/Joy. Unanimously voted (5-0-0) by voice vote to adjourn the meeting at 10:30pm.

DOCUMENTS:

1. Agenda for 4/12/21
2. Meeting Minutes – 3/8/21
3. PH Express Invoices – Petition #s 933, 934, 935, 936 and 937
4. Amory Engineer February Invoice – Petition #920
5. WB Mason 3/24/21 Invoice
6. Revolving Bill Schedules for PH Express Ads for Petition #s 933, 934 and 935; 936 and 937
7. Application Packets – Petition #s 927, 931, 933, 934, 935, 936, 937
8. Special Town Meeting Notice – 5/10/21
9. 311-313 Plymouth St Site Plan from Planning Board
10. Flower & Soul Legal Notice for Outreach Meeting 4/22/21

Respectfully submitted,

Date: 6/14/2021



Robert Gaynor, Chairman
Kozhaya Nessralla, Vice Chairman
Zoning Board of Appeals