



Halifax Zoning Board of Appeals Meeting Minutes Monday, February 14, 2022

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, February 14, 2022 in the Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with all Board members in attendance: Chairman - Kozhaya Nessralla, Clerk - Peter Parcellin (remote), Members - Gerald Joy, Robert Durgin, Tina Kenyon and Associate Member - Dan Borsari (remote).

Vice-Chairman Nessralla calls the meeting to order at 7:00pm and informs the audience that this meeting is being recorded. He also takes roll call of members present.

APPOINTMENT

7:05pm – Hearing (Continued) – Petition #960 – Joseph Podgurski, 49 Carver St – Special Permits for Pole Barn and Commercial Building with welding equipment use in a building zone (Filed 11/16/21)

Applicants are not present.

Nessralla states that the Board will be continuing this hearing to March 14, 2022, until Planning Board renders a decision on the Site Plan. Unidentified audience members are present with concerns about an address they referred to as "49 & 63 Carver Street." Kenyon states that this falls under Planning Board as the site plan covers the entire property. Nessralla confirms there is only one proposed pole barn for this Petition.

- M/Durgin, S/Joy. Unanimously approved (5-0-0) to continue Petition #960 to March 14, 2022 at 7:00pm. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

DISCUSSION

648 Plymouth Street – Zoning violation concerns – update/determination from ZEO

688 Plymouth Street – Zoning violation concerns – update/determination from ZEO

Zoning Enforcement Officer James Perry is present.

Kenyon reads Perry's determination in response to the ZBA's request for inspection on properties 648 and 688 Plymouth Street regarding Zoning violation concerns (re: Memo from Halifax Building Department, James Perry, Building Inspector / Zoning Enforcement Officer dated 2/14/22 submitted to Board for the first time at meeting.) Determination states a series of "findings" on each property and Perry's determination that these properties are not in violation of 167-7C (Light Industrial Uses) and the two-family located at 648 Plymouth Street is protected under M.G.L. 40A Section 7. Perry's determination adds that both properties are further protected by M.G.L. Chapter 40A Section 7.

NESSRALLA: Mr. Perry, you went through the whole property, and this is your opinion of what was there?

PERRY: (nods head)

DURGIN: So, the apartments on the property, there are no special permits on the property?

PERRY: Not in my file.

DURGIN: There should be a special permit, right?

PERRY: They've been there a long time, they're grandfathered.

DURGIN: Is that right, Peter?

PARCELLIN: Say that again?

DURGIN: So, having two apartments, shouldn't there be a special permit for a duplex?

PARCELLIN: If it's a multi-family and there are multiple units, probably, but it depends on when that started.

DURGIN (to Perry): Do you know when that was built?

PERRY: No, but...

PARCELLIN: To be honest...it would be appealed to us...I mean, we're not the original people so if it's a zoning violation it falls to Jim, right? And he has to make a determination. I didn't hear in that letter whether or not a special permit is required, but we wouldn't be the people who would be enforcing that anyway, I don't think.

NESSRALLA: It's been there 35 years.

PERRY: I mean, uh...there was a fire on the property at some point and, you know, the Building Inspector and the deputy fire chief went through and filed a report way back when and the Building Inspector commented in the report that there were... and the deputy fire chief...that there were two apartments on the premises. So, this has been, who knows how long it's been...okay? One of the former Building Commissioners' family lived in one of them, okay? Here we are today.

NESSRALLA: Dan, you have any input?

BORSARI: There's no statute of limitations on the use. The building is protected as far as...but the use is not.

PERRY: I believe the 6 years...uh...there's a protection on use and...

BORSARI: You're gonna have to show that to me. Could you send our Board that in writing?

PERRY: I'll send you Chapter 49 Section 7. Uh...Chapter 40A Section 7.

BORSARI: And what about the...you're saying that the other property (688 Plymouth) is not being used as a contractor's yard?

PERRY: All the equipment is personally owned, and the vehicles are personally registered, from what I'm told, okay?

BORSARI: Right, well there's been plenty of businesses in Town where we do not allow people to use their home as the ground base for storing their construction equipment. We've had these issues on Carver Street and other places in Town. I mean, if he's using the property as a contractor's yard, that's a violation.

PERRY: I don't believe he's using his property as a contractor's yard. He parks his stuff there; he's a one-man show. When he's not using it on a job he parks it there, it's his own equipment. Since when can't somebody park something in their own yard?

BORSARI: Because there was...they did try in 1987 to get a special permit which was denied.

PERRY: I don't know about that.

BORSARI: You don't know about that?

PERRY: No.

BORSARI: Oh, well it's in the records. (Silence.) It's my opinion that they need a special permit for 648. But...do what you want to do.

PERRY: I talked to the owner; I don't think he's against coming in for a special permit for those. I mean, it's been going on. It's no mystery.

NESSRALLA: It's been under the same ownership for 35 years. Both parcels.

KENYON: Section 7 calls for 10 years.

NESSRALLA: What?

KENYON: Section 7 is 10 years.

BORSARI: Can you read it, please?

KENYON: I'm not reading this whole thing.

PERRY: There's two parts of it, there's a 6-year and a 10-year.

NESSRALLA: Can you read the first paragraph of it?

KENYON: It's way down, where it is. Let me get back to it.

PARCELLIN: I think that the Building Inspector's decision is what's paramount here. I guess from my perspective we got in that hearing--that we mentioned a couple times when this has come up--we got information of a zoning violation based on a business there and then we saw a real estate listing saying that it was publicized as a multi-family without a special permit. So, I think that's why we referred it because that stuff came to us, just like anybody in Town would refer that to the Building Inspector. I wonder...I'm not seeing exactly how whether or not...like, there's been no discussion on what a statute of limitations would be. I mean, I don't think that was advertised as a multi-family property 35 years ago, I think it's much more recent than that. I don't think it's within our scope to issue any sort of decision based on that. I think members themselves can have a disagreement with the Building Inspector's assessment or something, but in the end, I mean, that's what his job is so when he decides to do that or not, that's on him. And I think that's on him. And I think that, you know, if he's gone out there and done that and this is his assessment...and very honestly, he just described right now, um, he believes that it's just the owner's business that he has the trucks there, he probably knows better than I do, I think that concern is explained a little better than the apartments because there are apartments there but there's no special permit. There's really been no decision on what steps the Building Inspector would take to make sure that the zoning would be upheld in that case, but to be very honest, I don't think that we have a role in enforcing

that. I think that's what his job is so we can't take the heat on whether he does something, or he doesn't do something, that's on him. You know? I think we just referred this to him, and we appeal other people's decisions. I have personal feelings, I guess, about how thorough this has been but at the same time it's not my job to make that decision, I guess, right?

BORSARI: Well, all my concern is, and it has been from the very beginning, is that all residents are treated equal. And there's been plenty of instances where maybe a house was listed for sale that wasn't listed with an apartment, or an in-law apartment and this Town has said 'woah, woah, woah' and addressed that with the owners so, in other words, this is not the first time where, you know, the Town is making sure that things are done properly and permitted properly. So, just, moving forward, you know, we don't want to expose ourselves or be accused of doing favors for one person, for one family and not another. That's what I will caution with this. (inaudible)...what you do with this.

NESSRALLA: Dan and Peter, 688 is Mr. Andrews' residence, right? Can you confirm that?

PARCELLIN: Yes.

NESSRALLA: Okay. (To Perry) 648 is the one, in your opinion, does 648 have more than one use. Is there a multi-family there?

PERRY: There's two apartments there.

NESSRALLA: But there's supposed to be a single-family home.

PERRY: (nods head "yes")

NESSRALLA: But there is no permit for...

PERRY: There is no special permit.

NESSRALLA: There is no special permit.

PERRY: I mean, I've got paperwork here back from '97 from the Assessor's Office, I believe it came from, that says it's a two-family.

NESSRALLA: So, it's been a two-family for a long time.

PERRY: Yup.

KENYON (reading from M.G.L.): This says 'if real property has been improved by the erection or alteration of one or more structures and the structures or alterations have been in existence of a period of at least 10 years and no notice of an action suit or proceedings as to an allocated...alleged violation of this chapter or any ordinance of bylaws adopted under this chapter has been reported in the registry of deeds for the county or district in which the real estate is located or in the case registered land has been filed in the registered district in which the land is located within a period of 10 years from that date, the structures were erected and the structure shall be deemed for zoning purposes to be legal non-conforming structures...'

BORSARI: Yes, the structure, not the use. I've read that before. It's the structure, not the use. Hey, it's his decision, it's his decision.

PERRY: 6-year statute calls out for Land Use as well as structures.

BORSARI: Where does it say that?

PERRY: It's in the law.

BORSARI: They're talking about structures, not the use. But hey, your decision is your decision.

PERRY: I read the thing 100 times.

BORSARI: I've read the same thing quite a few times and I've talked to a lot of people about it who are professionals in the industry and absolutely the use, there is no statute of limitations on the use. The use is the use, the building is the building. Two separates. But your decision is your decision. We just have to be consistent. So, if someone comes before us in the future, we're just going to need to remember this.

NESSRALLA: What is the pleasure of the Board?

JOY: I mean, he is the enforcement agent and if this is the report and he sees no problems there, I accept his report. As far as in the future if someone says something, they would have to do the same thing. They would have to go back to the Building Inspector and say, hey look, I think this is a violation and he would have to go out again and look at it because we're not the ones that are saying it's okay. So, if there's a problem out there it has to go through the Building Inspector. And that's the way it has to go. He's the one that does the inspections and he's written up the report, and if there's problems in the report, that's something that someone would look at later on but as far as I can see, he's given us the report and he says everything is fine.

DURGIN: As Charlie said, though, if we don't agree with it, who do we appeal it to?

JOY: No, and we've got to respect his decision.

NESSRALLA (to Kenyon): How do you feel?

KENYON: He's been there for 35 years?

NESSRALLA: We have to look at it and you gave us a report and...we either accept it or we don't. If we don't, who would we go to if we don't, go to a lawyer? We just learn from this mistake and probably do better in the future.

JOY: Sure.

PERRY: You guys know I could drive all over town and I could pick up houses on every street, multiple. What am I gonna do with a guy that's got a bobcat that he cleans the snow out of his yard with and he likes to play with it on weekends? We gonna go after *him*?

PARCELLIN: Mr. Perry, I think that our point is that people came to us with this stuff.

PERRY: That's fine.

PARCELLIN: It came up at a hearing and then people have been mentioning it, so they think that we are either ignoring it by not passing it over or...I mean, to be very honest, if that's what you think, okay! I'm fine with that! I'm not a Building Inspector so if that's what you say, that's...fine.

PERRY: It's been going on for 3 Building Inspectors...

PARCELLIN: We're just passing it over.

PERRY: It's gone on for 3 Building Inspectors and now all of a sudden, it's an issue? That's my point. That's not why the report is worded the way it is, the report is my report. But there's been 3 Building Inspectors—

PARCELLIN: Very frankly, if we'd gotten these reports 3 Building Inspectors ago, I think we probably would have referred it to three Building Inspectors ago.

PERRY: And it wouldn't even be an issue. That's the point going forward. He wanted to figure out how to take care of things going forward. If you know something, you gotta jump on it.

JOY: Exactly.

PARCELLIN: Yup.

PERRY: And talking with the gentleman (property owner), I don't think that there's a problem with him coming in and filing a special permit and getting this cleaned up. And that way there, you know, whether it's, you know...it's his prerogative, I can't speak for him.

KENYON: Section 6 seems as though you could go between one and two-family as long as you're not increasing area, footage, width, depth of...requirements of zoning ordinance and bylaws for a period of 5 years from its effective date. This is a lot of legal mumbo jumbo. Wow.

NESSRALLA (to Board): Do we need a motion to accept the Building Inspector's decision?

PARCELLIN: I don't think we need to. I think he filed his report, and I don't think we need to take any further action.

NESSRALLA: Alright.

PARCELLIN: Right?

NESSRALLA: Right. I mean, we don't have to vote on it. He gave us his report and we have to accept his report.

PERRY: I did speak with Mr. Carmichael on this...

BORSARI: The only other thing that I was asking was you're saying the Town has the property recorded as a multi-family?

PERRY: No, the Town has it as a single-family but there's an inspection report on the back of the...I don't know...there's some inspection report I got that shows a bunch of boxes checked off.

BORSARI: So, the Town probably has this as a single unit and somewhere else it's a multiple...

PERRY: The Town says it's a single family.

BORSARI: Okay. Now you say two apartments so is there one main residence and two apartments or is there a previous...

PERRY: No. Two units.

BORSARI: Okay.

KENYON: That's an easy thing to fix though because I have gone through this before. You can file it with the registry of deeds to just make it into a two-family. That's something Mr. Andrews could take care of. Just so it's on the top of the record correctly.

DURGIN: Well, I think he means you need a special permit to be filed with the Registry of Deeds.

KENYON: I don't think you do. Because it says that it could be either.

NESSRALLA: Either or.

KENYON: Right. I'm not positive, this is all new to me.

NESSRALLA: I think we should just accept the Building Inspector's decision and move forward.

JOY: I agree. You know, we shouldn't keep this thing here. We've got the report, that's all we need.

NESSRALLA: That's it.

JOY (to Secretary): Arlanna, we don't...do we have to vote on this or are we all squared away?

SECRETARY: I'm going to leave that totally up to you guys. Sorry.

DURGIN: I think we're good.

NESSRALLA: I don't think we do either. We had a discussion. (To Perry) Thank you for your report. We appreciate it.

PERRY: Yup. Have a good night.

MEETING MINUTES

- M/Joy, S/Kenyon. Unanimously approved (5-0-0) the Meeting Minutes for Monday, January 10, 2022. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)
- M/Joy, S/Durgin. Unanimously approved (4-0-0) the Meeting Minutes for January 19, 2022. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Borsari - Yes)*

*Nessralla and Kenyon cannot vote as they were not present/recused from voting on CC Estates.

OTHER BUSINESS

40B Comprehensive Permit – Country Club Estates – Petition #920 – April 6, 2022 at 7pm

Alternate/Associate ZBA Seat

Durgin asks if the Selectmen had a meeting on the Associate member. Secretary confirms that the Board appointed Marline Amedee.

Zoning By-Law Review Updates

Joy updates the Board that the Committee hasn't had a meeting since the last meeting in December. The Committee hasn't met with the new lawyers yet but should do so soon and will continue. Joy thinks this will be a slow process.

ADJOURN:

- M/Kenyon, S/Durgin. Unanimously approved (5-0-0) to adjourn at 7:31pm with all in favor. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes; Borsari - Yes)

DOCUMENTS

1. Agenda for 2/14/22
2. Application Packet – Petition #960
3. Building Inspector's Determination 2/14/22 – 648 and 688 Plymouth Street
4. Meeting Minutes – 1/10/22 and 1/19/22

Respectfully submitted,

Date: 3/14/2022



Chairman, Kozhaya Nessralla
Halifax Zoning Board of Appeals