



Halifax Zoning Board of Appeals Meeting Minutes June 13, 2022

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, June 13, 2022 in the Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with the following Board members in attendance: Vice-Chairman - Kozhaya Nessralla, Members – Gerald Joy, Robert Durgin and Tina Kenyon; Associate Members Dan Borsari and Marline Amedee; Clerk – Peter Parcellin is absent.

Vice Chair/ Nessralla calls the meeting to order at 7:09pm.

APPOINTMENT

7:00pm – (Hearing) Pet #969 – Kerri A. Noonan – 38 Orchard Circle, Halifax MA – Special Permit for In-Law Apartment
Kerri Noonan (applicant) is present.

Kenyon reads Public Hearing Notice into record. Noonan presents her proposed project to build an in-law for her parents to help care for her children. The in-law is 840 square feet. There will be shared electricity and shared hallway that connects to closet with regular door. Noonan presents floor plans to the Board. Chair informs Noonan she must have shared living space and a hallway is not shared living space, which is a common area with an opening that is not closed. Borsari asks Building Inspector if there is any requirement for an opening. Building Inspector states he doesn't know anything about that. Vice Chair states that at one time there needed to be a 6-foot opening and explains this to Noonan to prevent a two-family in the future. The Board continues to discuss the proposed project, specifically shared living space.

Ashley DiSesa (Selectman) asks the Board where in the by-law it says six (6) feet (for opening) and not three (3) feet as she's seen in the past and where in the by-law does it say anything about shared living space. The Board and other members of the audience debate the 6-foot opening. The Board confirms that this is not part of the by-law but explains that they have put the condition of a 6-foot opening on in-law apartments in the past. Building Inspector disagrees with the 6-foot opening as it is not in the by-law. Noonan's father speaks to the petition, stating what they want to do and that he's lived in Halifax for 50 years. Borsari apologizes to Noonan and her father explaining that the Board is being challenged on something that has nothing to do with Noonan and she is being dragged into it and tells Noonan not to worry as the Board hasn't even gotten to her yet. Kenyon confirms that the bathroom is not considered shared living space. Noonan explains that all the living space is at the front of the house and the side of the house where there's a pool, so there cannot be an addition in those locations. Noonan explains again that the closet will be shared with a common hallway. A Holmes Street in-law is brought up by some audience members as this was an in-law that was approved by the Board with no condition of a 6-foot opening.

Kenyon states that an in-law on Thompson Street was approved with a foyer as shared living space in the past. Building Inspector, when asked, states again that there should be a shared area, like a living room. Durgin reads the definition of shared living space from the by-laws. The Board continues to discuss possible shared space. Joy doesn't think Noonan has any other choice for a shared living space area.

Jennifer Carroll (Highland Woods) speaks in support of this proposed in-law.

- M/Kenyon, S/Joy. Unanimously approved (5-0-0) to waive the on-site inspection. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Borsari – Yes; Nessralla – Yes)
- M/Kenyon, S/Joy. Unanimously approved (5-0-0) Petition #969 with condition that opening remains open with no door. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Borsari – Yes; Nessralla – Yes)

The Board signs Decision Form.

APPOINTMENT

7:05pm – Hearing – Petition #970 – Alan Dias, 1 Snow Ln – Appeal of Building Inspector’s Determination

Alan Dias (applicant) and James Perry (Building Inspector) are present.

Kozhaya Nessralla recuses himself. Joy acts as Chairman.

Joy reads Public Hearing Notice into record. Dias presents the reason for his appeal of the Building Inspector’s determination as well as the signs in question. Dias states Perry failed to provide the location of the signs, the date and time the picture was taken, if there was any complaint submitted on the signs, and that Perry’s determination that the signs must be removed within 36 hours or there would be fines is contrary to the by-law. Dias adds that there is no reason that his signs, which are presented to the room, are not strictly political. Perry will inform the Board and Dias of sign location. Dias states he cannot defend an action if he doesn’t know where the signs were.

Perry rebuts Dias’ presentation. Perry gives a copy of his 5/2/22 letter sent to Dias to the Board to be read into record. Perry explains he drove around town on Friday (no specific date given) evening around 5:30pm and he saw a sign. Monday (no specific date given) morning at 8:30 Perry gave a courtesy call to Dias asking him to come by the office to discuss the signs. At that time, Perry did not have a sign count around town. Dias asked Perry to send him a letter which Perry said he would and informed Dias what the letter would say – that Dias had to remove the signs because they are illegal and if he wanted to get a special permit for the signs, come in. Perry states Dias got belligerent on the phone, threatened him and said he was going to put up more signs. Perry doesn’t know how he can quantify how many signs were around town when Dias is adding more. Perry gives Board a copy of a letter from Dias dated 5/2/22 to be read into record. Joy reads both letters into record. Perry submits photos he took of signs and states there are about 24 signs around town, probably more. A copy is given to Dias by the Board.

The Board members ask questions. The location of the signs is discussed. Perry confirms that a lot of the signs are on public property, vacant and bank owned property. Dias gives the Board the picture Perry gave him that he stated he was in violation of and asks if Perry can provide the location of the sign in this photo and the time when this photo was taken. Perry responds 348 Monponsett Street around 5:30pm. Dias states that this is untrue and states the location of the photo was from a property on Plymouth Street on Saturday. Dias states that Perry wrote him a violation of a particular sign and cannot give the exact location. Perry responds that his letter states numerous signs around town, it wasn’t limited to the photo. There is further discussion on the phone call between Perry and Dias. Perry informs the Board that there was a record request by Dias to his office for complaints received on the signs. Perry states he did not receive any official complaints as he is the one who saw the signs himself.

Borsari asks Perry why he doesn’t think these signs are political as Borsari believes they are. Perry reads the definition of a political sign in the by-laws. Perry and Borsari debate over each of the three signs and their reasons why they fall or don’t fall within the definition of a political sign. Borsari asks Perry about the property lines / ambiguous lines, asking Perry if he went around and saw how many people had their signs too close to the road. Perry states he will not go there about signs on public property because none of them were told they had to keep their signs back off the road. Dias states to the Board that there is no 348 Monponsett Street according to the Assessor’s. Perry responds to each point Dias makes in his letter. Perry did not have the time and location of the signs when he sent the letter. Perry has no problem with the Chapter 167-13F3 as long as they’re political signs. Perry believes Dias’ signs do not meet the standards of a political sign.

Joy opens to the audience. Troup asks if any ZBA members had these signs on their property. Robert Gaynor gives his thoughts on past practice of displaying political signs and that it’s important to remain consistent. Gordon C. Andrews asks when the current building inspector was appointed, which was after the election (2021). Ashley DiSesa states the new zoning enforcement officer / building inspector is following the by-laws as he sees fit and he should be supported and respected. Dias states he had permission to put up his signs from the property owners where they were located.

Joy states that the issue is whether these signs are political or not. Joy gives his opinion that he has no problem with the three signs and gives his reason for why he believes each sign is political. Borsari agrees with Joy. Durgin agrees with Joy.

Perry asks that the Board read the letter dated 5/22/22 from Dias to the Town Administrator into record. Joy reads letter into record. Dias responds that the purpose of that letter was because he was approached by Perry in the Board of Health office.

- M/Durgin, S/Borsari. Approved (4-1-0) Petition #970 to overturn the Building Inspector's determination. (Voice Vote: Durgin – Yes; Kenyon – No; Joy – Yes; Borsari – Yes; Amedee – Yes)

The Board signs Decision Form. Nessralla returns as acting Chair at 8:17pm.

DISCUSSION

314 Plymouth St - preliminary site plan for review - possible variances for parking and layout

Steve Dahms of CASCO is present, on phone

Dahms explains to the Board that the developer is also on the phone. The Board is asked what the likelihood of getting variances on the side setbacks and the parking would be on a potential retail building at 314 Plymouth St with fast food restaurant, etc. The Board is also asked about the water and sanitary systems on this property. The Board reviews the proposed plans submitted. Joy informs Dahms that a site plan approval from the Planning Board comes first before attending the Zoning Board. Dahms apologizes for wasting the Board's time and will return after they have gone through Planning Board.

100 Lake Street - Complaint - Update/Determination from ZEO

James Perry (Building Inspector) is present

Perry states the owner was issued a building permit to replace the roof, front door and siding around the front door, windows, etc. Perry received a call from a neighbor who didn't think the owner had a permit. The owner did have a permit, but it wasn't posted in the window, per Perry. Perry visited the site and asked the owner to post the permit in the window. Owner then called the office informing Perry that he had hit more decay when he removed the front door, so he took more of the siding off. He called Perry on every turn when he hit other issues when opening things up. Perry confirms there is a building on the rear property, and he will discuss if there's any use for this building with the owner. Perry states the two structures are on two separate lots. Perry confirms that the owner is only fixing the building on the front lot. Perry drove by the property last week and the "outside is tight." Perry informed the owner last week that he could not do any more work because there had been some removal of drywall on the inside due to the rot situation. Perry informed the owner he could not do any more work inside the building until he pulled another permit. Perry informs the Board that the work the owner has done thus far is up to Perry's satisfaction.

Alan Dias, former member of the Board of Health, gives some history on the property. Dias states that there are two structures with no septic system on that property. Per Dias, the bank made a mistake and mortgaged the rear structure, and the front structure was owned by the gentleman's mother. The bank foreclosed on it but there has been a problem since then because there is no septic system for one of those properties. Dias states that the lot was too small to be subdivided, this was a bank error. Dias looked at the folder from a Board of Health perspective and he has been out there on inspections. Dias states Fannie Mae owned it and had to get the property cleared of trash that was deposited there. Dias states that the rear structure, from his experience, has no septic system on it so he doesn't know how a building permit could be issued. Per Dias, there might be potential that the rear structure, through planning, could be subdivided with access off of D Street. Dias states again that the bank created this problem and that there are two different owners of these properties. Amy Troup states she has a copy of the Board of Health file that states the septic is a shared system and was signed off in 2005 or 2006. Durgin states he thought it was shared also. Dias responds that, by definition, this is not a shared system. Audience member Gordon C. Andrews asks the Board if Dias stated he is an abutter who acted as a Board of Health member of this property. Dias responds "maybe." Dias goes on to say that he owns about 48 acres of swamp in the back of the property in question which abuts the property. Dias states again that this is, by definition of Title 5, not a shared system. Perry will speak to the health agent regarding the septic system on this property.

MEETING MINUTES

- M/Joy, S/Kenyon. Approved the Meeting Minutes from May 2, 2022.

BILLS

- M/Joy, S/Kenyon. Unanimously approved all bills.

CORRESPONDENCE & OTHER BUSINESS

The Board reviews all mail items.

Borsari states his concern with the Board that another unidentified member of this Board went to Town Counsel to try to get two other members recused. Borsari goes on to say that there was much vitriol during the first hearing this evening and believes the Board should get approval from the Selectmen to speak with Town Counsel to find out what happened. Nessralla states that he spoke with the Ethics Board today on recusing himself for Petition #970's hearing. Ethics informed him that he could sit in the room, but Nessralla recused himself and left the room. Borsari states that another member of the Board emailed Town Counsel and copied Ashley (Chair of the Selectboard) which is not following protocol. Nessralla agrees. Borsari states that a board member doesn't go to the attorney to ask if somebody *else* has to recuse themselves, a board member goes to the attorney to ask if they, themselves, must recuse themselves. Borsari asked Ashley which Zoning Board member sent the email to Town Counsel, and her response was that it's attorney-client privileged. Borsari doesn't understand how it's attorney-client privileged when the entire Board received Town Counsel's opinion through the Board of Selectmen and asks why it wouldn't it have gone directly back to the person who asked the question if it was attorney-client privileged. Borsari states that when he asked Ashley who the Zoning Board member was that asked Town Counsel about the recusal of two other board members, Ashley responded and gave the members of the Board permission to seek Town Counsel and ask whatever questions the Board would like. Borsari states that the first hearing this evening shows that this Board continues to be attacked and it has to stop. Borsari goes on to say that there was "pure hate and vitriol" on one side of the room tonight and that it was embarrassing what happened to the applicants in the first hearing. Borsari proposes that the Board ask for Town Counsel's opinion. Chair states that protocol is important, otherwise it's chaotic. Chair states when the Board comes to an agreement that they would like to speak to Town Counsel, they should request it through the Selectmen and speak to the attorney with their consent, as is protocol. Borsari states that as far as he's concerned, the board member that went to Town Counsel on their own did it representing the Zoning Board without consulting the Zoning Board.

The Board informs the secretary that they would like to request Town Counsel to attend the next Zoning Board meeting for an Executive Session without the Selectmen present to discuss guidance on protocol, guidance on what to do when a member does not follow protocol and if there is any recourse.

ADJOURN:

- M/Joy, S/Borsari. Unanimously approved (5-0-0) to adjourn at 8:48pm with all in favor. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Borsari – Yes; Nessralla – Yes)

DOCUMENTS

1. Agenda for 6/13/22
2. Application Packet – Petition #969
3. Application Packet – Petition #970 including Dias' final brief submitted 6/08/22
4. Meeting Minutes – 5/2/2022
5. Expense Bill Schedule – 6/13/22, WB Mason
6. W.B. Mason Invoice #229839082
7. Revolving Bill Schedule – 6/13/22, PH Express – Pet #969 and #970
8. PH Express Invoice for Ads #13357 and #13356
9. 5/3/22 – Email from Conservation Commission – Governor's Order on Permit Deadlines
10. 5/9/22 – Email and letter from Conservation Commission – 314 Plymouth St – ORAD extension

11. 5/9/22 – Email, letter and WPA form from Conservation Commission – 516 Plymouth St – DOA
12. 6/7/22 – Memo and site plans from Planning Board – 69 Summit Street / Proposed Solar Array Site Plans

Respectfully submitted,

Date: 7/11/2022

A handwritten signature in black ink, appearing to read "Kozhaya Nessralla". The signature is fluid and cursive, with a large initial 'K' and 'N'.

Vice-Chairman, Kozhaya Nessralla
Halifax Zoning Board of Appeals