



Halifax Zoning Board of Appeals

Meeting Minutes

September 12, 2022

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, September 12, 2022 in the Board of Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with the following Board members in attendance: Vice/acting Chairman - Kozhaya Nessralla, Clerk – Peter Parcellin, Members – Gerald Joy and Robert Durgin and Associate Member – Marline Amedee. Member Tina Kenyon is absent.

Vice / Chair Nessralla calls the meeting to order at 7:00pm.

APPOINTMENT

7:00pm – Hearing – Pet #977 – Ghasson Tanous & Carol Dowd, 20 Holmes Street – Special Permit & Variance to raze and rebuild single-family home

Present: Ghasson Tanous and Carol Dowd (applicants), Joe Webby (Webby Engineers)

Parcellin reads the Public Hearing Notice into record. Webby presents the project. Referencing the plan, Webby points out the existing house and garage and Monponsett pond, which is 100 feet from the structures, and a vernal pool. Webby informs the Board that the applicants have been to Conservation Commission and were granted an Order of Conditions provided they stay eight (8) feet from the pond. The applicants would like to demolish their existing house and garage and build a new single-family dwelling with garage within the same footprint, building a little extra to connect the two structures. They will not be any closer to the southerly property line than they are now, which is approximately 130 feet from 11th Street. Webby explains that the applicants must request a variance on the side setback. Photos of the house are shown to the Board. Nessralla asks if there is anywhere else the house can be placed to avoid a variance request. Webby responds that they cannot as they are already 14 feet from the side lot line and the applicants do not wish to be any further way from the pond. Webby informs the Board that there is a little shed on the property on the other side of the pond. Durgin asks if the applicants can put the new house on the other side where the shed is. Webby responds by referencing the existing septic system already in place which has a Title V and is far away from the pond. Webby explains that there will be a breezeway connecting the new home to the new garage. Parcellin confirms that the proposed garage is bigger but the living area in the proposed house is roughly the same. Parcellin explains that he is asking due to the extension of a non-conforming use requiring the special permit for the garage/breezeway. Due to the topography, the proposed home cannot be repositioned easily. Parcellin asks the applicants if they've considered moving the proposed home to the other side of the pond to be further away from the pond and closer to their driveway. The reason for not doing so is due to the location of the Title V septic and utility location. Tanous states he *would* fix the house up rather than tear it down, but the home is falling apart.

Ann Marie McKay, 150 Plymouth St (abutter) – confirms with applicants that the new structure will be no higher than the existing structure.

Amy Troup (Planning Board member) – asks the Board, according to the By-laws, if you're within 200 feet of the lake shouldn't you stay within a certain footprint and if you have a certain amount of bedrooms, you can't go over that amount and cannot extend closer to the lake. The Board informs Troup that the applicants have already been to Conservation. Webby reiterates that they must keep eight (8) feet from the top of the banking. Troup informs Parcellin that this information comes from DEP.

James Perry (Building) – asks Webby if the vernal pool is a registered variable. Webby responds that it is not certified. Perry asks if it is protectable. Webby responds that yes under the Town and State act. Webby informs the Board and Troup that the applicants have no intentions at all of filling anything in. The applicants do not know the depth of the pond.

- M/Durgin, S/Parcellin. Unanimously approve (5-0-0) to do on-site inspection October 1, 2022 at 9:00am. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)
- M/Durgin, S/Joy. Unanimously approve (5-0-0) to continue Petition #977 to October 3, 2022 at 7:10pm. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)

Webby agrees to stake out the site. He will not be present for the next meeting.

APPOINTMENT

7:05pm – Hearing – Pet #978 – Bruna Soares DaCosta, 22 Colby Drive – Special Permit for a two-family

Present: Luthero de Aguivar Filho (applicant's boyfriend, representative) and James Perry (Building Inspector)

Parcellin reads Public Hearing Notice into record. Filho presents the project to the Board and explains that DaCosta is not making any changes, just wants to legalize the in-law apartment as a two-family with a new special permit so that they can rent the apartment. Perry submitted his inspection report to the Board (re: memo dated 9/12/22 from the Building Department) at the start of the meeting and reviews his findings with the Board. His inspection was conducted on 8/15/22 to verify the existing conditions of the in-law which has a separate entrance, separate utilities, and a separate septic system; there is no common area or opening between the in-law and the main house. Perry informs the Board that the only upgrades required would be to install 5/8" fire code sheetrock in the attic gable end abutting the main house and a 12' section in the basement of the main house abutting the apartment. The in-law doesn't meet any criteria in the by-law for an in-law. Nessralla explains that he is concerned about opening the door to others wanting to change their in-law apartment to a duplex. The home was built in 1966 according to Assessor's Card.

Amy Troup, Planning Board member, states she grew up on Colby Drive and thinks the house was built in the 80s with the intent to be used as an in-law.

Nessralla confirms with Filho and Perry that nothing is shared. Perry confirms there is a separate septic and well. The only thing that is shared is the water. Parcellin confirms that the Board approved this property as an in-law apartment one year ago. Perry recalls that there was an inspection report written by the previous Building Inspector (re: 12/4/2008 Memo from Tom Millias to Board of Selectmen "Status Update on In-Law Apartment Abatement" 22 Colby Drive) to the Zoning Board stating that there were two separate units, but it was grandfathered as an apartment. The Board members are concerned with setting a precedent. Perry suggests that the Board require the owner put a deed restriction that states they can sell the entire home as a two-family but cannot subdivide it as a condo with two buyers. Filho responds that this would not be a problem for the owner. The owner hasn't spoken to any abutters. Parcellin states that if this is approved, the concerns would be how it's sold in the future, the possible change in character of the neighborhood, the intent of the By-Law and the abutters feelings. Parcellin adds that the Board is not favoring anyone, they are favoring the existing conditions, presented plans and character of the neighborhood which is what variances and special permits are based on. Parcellin states that the concern is that there will be a rental property, by-right, if the Board approves this special permit in the neighborhood. Parcellin would like to know if there are any "like" properties in that area. Nessralla explains that Colby Drive and surrounding neighborhoods are all single-family homes. Perry states that when you drive by the house, it looks like a single-family home. Troup states that there are other in-laws on this street.

Parcellin reads 33 Colby Drive abutter's note into record which states that as long as the DaCostas are living in the house and not renting it, they are not opposed to renting the apartment. Currently Filho confirms there is family living in the apartment.

- M/Parcellin, S/Durgin. Unanimously approve (5-0-0) to do on-site inspection Saturday, October 1, 2022 at 9:30am. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)
- M/Durgin, S/Parcellin. Unanimously approve (5-0-0) to continue Petition #978 to October 3, 2022 at 7:15pm. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)

APPOINTMENT

7:10pm – Hearing – Petition #979 – Anne McGuinness/Cellco Partnership d/b/a Verizon Wireless – Special Permit for wireless communications facility

Present: Anne McGuinness (applicant), James Perry (Building Inspector)

Parcellin reads Public Hearing Notice into record. McGuinness introduces herself and presents petition. McGuinness explains that Verizon Wireless is already co-located on the tower but when she submitted a building permit application to upgrade some equipment it was brought to her attention that Verizon Wireless doesn't have an existing special permit on file. There are currently 12 antennas, six (6) remote radio heads, one (1) junction box, cabling and the equipment shelter which will be upgraded with 12 new antennas, swapping out the six (6) remote radio heads, removing two (2) small junction boxes and placing one large junction box there. There will be no changes to the existing ground space or equipment. This upgrade is to comply with the By-Laws and have a special permit on file. Perry states that this is similar to the others that have come before the Board around town, it can't be denied due to FCC regulations and this is done as a courtesy as when anything changes on the tower it must be filed. When asked why there was no original special permit, McGuinness explains that she's not sure but the tower is owned by Industrial Communications who obtain their original special permit and then the building permits are granted to each carrier, however McGuinness did not see an original special permit recorded by Industrial Communications. Joy asks how long this tower has been present. McGuinness does not know.

- M/Joy, S/Parcellin. Unanimously approve (5-0-0) to waive on-site inspection. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)
- M/Joy, S/Durgin. Unanimously approve (5-0-0) Petition #979 as presented. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)

The Board signs Decision Form.

MEETING MINUTES

- M/Joy, S/Amedee. Unanimously approve (5-0-0) Meeting Minutes for August 8, 2022. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)

BILLS

- M/Joy, S/Durgin. Unanimously approve (5-0-0) to accept all Plympton-Halifax Express bills totaling \$270.00. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)

CORRESPONDENCE

The Board reviews mail and discusses Town Counsel Attorney Hucksam's (Brooks & DeRensis) email sent 8/17/22 containing a second denial of the Board's request for Town Counsel to attend their meeting to discuss proper protocol and to answer other Zoning Board-related questions. Nessralla thinks the Board should continue to put pressure on Town Counsel to have this meeting so they can understand what's going on. Durgin asks "they work for us, don't they? They work for us." The Board agrees. Joy states that all the Board is asking for is an explanation of process. Amedee confirms the Board made two requests which were both denied by Town Counsel. Nessralla wants to know why a Zoning Board member isn't following what was known to all Boards as "proper protocol." Amedee would like to know what the proper channel is after Town Counsel continues to deny joining a meeting at the ZBA's request. Nessralla states there really isn't any other channel and adds that when there is a new Selectboard the Zoning Board will need to explain it all over again to them. Amedee states that these denials are disrespectful. Nessralla agrees. Parcellin states that it is clear that Town Attorney Hucksam is not interested in engaging with the Board at all. Parcellin adds that he thinks the Board should move to seek a different Counsel and bring Land Use Counsel Attorney Amy Kwesell (K-P Law) back for the Zoning Board's use. Parcellin goes on to say that the ZBA wasn't consulted, offered any input and the result is that the ZBA has an attorney that refuses to come to a meeting to advise the Board when requested. Parcellin's biggest frustration is that there is a member of the ZBA who is having conversations with Town Counsel about other Board members who were never informed. Parcellin states that there is a trust factor that was destroyed. Parcellin would vote yes on every motion

to remove Hucksam as the Zoning Board Counsel and bring back (Land Use) Attorney Amy Kwesell who Parcellin states has been an outstanding Counsel to the Board. However, Parcellin believes, and the Board agrees, that once a full Board of Selectmen has been chosen, the Zoning Board should move to have their own Town Counsel that is “not in cahoots” with whomever wants to be. Parcellin states that Attorney Hucksam has been Town Counsel before and has been to ZBA meetings before. Parcellin doesn’t believe Hucksam is a bad attorney, but there is something “in Hucksam’s head” about the Zoning Board and Parcellin doesn’t trust Hucksam based on what has been going on the past few months and the fact that Hucksam won’t attend a Zoning Board meeting to have an “in-person” conversation with the Board. Nessralla states that the Selectmen now choose who fills Zoning member seats without any input from the ZBA, which is a change from what it always was. Nessralla does not think this is right and he wants clarification. Nessralla and the Board agree that they should be able to have a conversation with Town Counsel at their request and believe this is unprofessional for Town Counsel to deny the Board of this service.

The Board decides to put their request on hold until a complete Board of Selectmen can respond to the Board’s concerns.

OTHER BUSINESS

By-Law Committee Review Update

Joy updates the Board informing the Board that two members of the Zoning By-Law Review Committee have resigned/left: 1. Bob Ross, due to his job, and 2. Ashley DiSesa, as she was appointed by the Selectmen, and she has resigned as Selectman. Gordon R. Andrews was appointed by the Planning Board and would like to remain on the Committee as a member at large. Joy adds that they will need to wait for a full Select Board, but they continue to move forward. Currently, the Committee is working on cleaning up the by-laws to delete repetition to prevent confusion, specifically with the Use table which contradicts the same information in other areas of the By-Law. Joy explains that they are working on cleaning up the section on Signs as it is extremely long. They are looking at the possibility of creating a Use Table. They are also focusing on clarifying the Wireless and Conservation sections. All of this will take time. Amedee asks if there are any community members that are not members of a Town Board on the Committee. Joy responds that there were, not anymore. Amedee suggests comparing Halifax By-Laws to another Town’s By-laws. Joy responds that the Committee is focusing on cleaning the By-laws up right now before moving on.

ADJOURN:

- M/Joy, S/Kenyon. Unanimously approved (5-0-0) to adjourn at 8:04pm with all in favor. (Voice Vote: Durgin – Yes; Parcellin – Yes; Joy – Yes; Amedee – Yes; Nessralla – Yes)

DOCUMENTS

1. Agenda for 9/12/22
2. Application Packet – Petition #977
3. Application Packet – Petition #978
4. Application Packet – Petition #979
5. Meeting Minutes – 8/8/22
6. Revolving Bill Schedules – 9/12/22, PH Express – Pet #977, 978, 979
7. PH Express Invoices for Ads #13600, 13601 and 13602
8. 8/17/22 – Email from Town Counsel Attorney Hucksam
9. Signature Authority Fiscal Year 2023 form

Respectfully submitted,

Date: 10/03/2022



Vice-Chairman, Kozhaya Nessralla
Halifax Zoning Board of Appeals