



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes

Monday, July 8, 2019

Passes

The Halifax Zoning Board of Appeals held a public hearing on Monday, July 8, 2019 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Chairman: Robert Gaynor, Vice Chairman: Kozhaya Nessralla, Member: Gerald Joy, Member: Robert Durgin and Alternate Member: Daniel Borsari. Clerk: Peter Parcellin is absent.

Chairman Gaynor calls the meeting to order at 7:02pm 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, June 3, 2019:

MOTION: Gerald Joy
SECOND: Dan Borsari AIF
Passes: 5-0-0*

*Member Robert Durgin signed a Meeting Minute Review.

Meeting Minute Release:

Motion to release the Executive Session Meeting Minutes from Monday, July 9, 2018:

Motion: Gerald Joy
Second: Robert Durgin
Roll call: Kozhaya Nessralla – Yes; Gerald Joy – Yes; Robert Durgin – Yes; Dan Borsari – Yes; Robert Gaynor - Yes
Passes: 5-0-0

Motion to release the Executive Session Meeting Minutes from Monday, October 15, 2018:

Motion: Gerald Joy
Second: Robert Durgin
Roll call: Kozhaya Nessralla – Yes; Gerald Joy – Yes; Robert Durgin – Yes; Dan Borsari – Yes; Robert Gaynor - Yes
Passes: 5-0-0

Bills:

The Board signs bill.

- Plympton-Halifax Express, Petition #900 Advertisement = \$84.00

Appointment:

7:05pm – Petition #900 – Green Apple Farms – 0 & 241 Franklin St, Variance for access via different location

Present: Mike McGonigle (Coneco, engineer); Josh Prada, Martin & Sheila Langelier, Robert and Mike DiBona (Abutters)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. McGonigle presents the petition for applicant Green Apple Farms for a Variance for lot access via a different location than the legal frontage at 0 & 241 Franklin Street, Halifax, MA. Said property is owned by Bowker LLC & Green Apple Farms IV, LLC of 0 & 241 Franklin St as shown on Assessor's Map 82, Lot 1, Title Ref: Book 50734 Page 191. The applicant is seeking a variance to allow access to the upland portion of the parcel (0 Franklin Street – being developed as a passive solar facility), which is blocked by wetlands

and other jurisdictional resource areas, by using 241 Franklin Street (Map 93, Lot 9A). Granting this variance will allow the applicant to access the rear of the property with the least impact to the resource areas and associated buffer zones. The requested variance is in accordance with the Halifax Zoning By-Laws Section 167-10L. The area is zoned residential.

Mr. McGonigle references site plans to show the larger parcel, 0 Franklin St, owned by Green Apple Farms, LLC of 57 acres and the second parcel (93-9A), 241 Franklin St. The existing solar facility has been permitted through the Planning Board and Conservation Commission in its current configuration. An access easement does exist and has been recorded to the back parcel. The applicant has a valid Order of Conditions from Conservation. A concern is the level of impact to the site if they were to access through the legal frontage at 0 Franklin St. Once the solar site is developed it will be invisible to the public/abutters – it won't generate noise or pollution. There will be one small vehicle accessing the site once a month to visually check on the site, otherwise it is monitored and controlled remotely. If the single-family lot is developed it will have a single-family home and a shared driveway that would extend up to a gate which would give access to the main site.

Mr. McGonigle explains that abutters have seen this exact site plan at several different hearings with the Planning Board and Conservation Commission, so everyone is well aware of its impacts. The applicant is asking for the legal acceptance of relief from the Zoning By-Law to allow one vehicle a month to pass through via a shared access. A complete wetland lockout of 97% of the parcel's land is unique. There is about one acre up front eliminating access to the back 56 acres without substantial wetland impact. It's unusual to have a parcel of this size limited by one acre of uplands up front and have such a flat expanse between its access to the back-upland areas for development. Once construction is complete, the solar field will be virtually undetectable.

Mr. McGonigle confirms to Mr. Nessralla and the Board that the allowance of the easement between the two parcels has already been negotiated between the two owners (Bowker LLC and an unidentified owner). The frontage is 70 feet. The front lot parcel is about 2.5 to 3 acres and was under agreement until the current controversy for this easement was brought up. Mr. McGonigle confirms that the construction timeline was to begin in July and finish in November. There was a temporary bridge placed for access through the easement (an existing dirt road) for now.

Mr. McGonigle believes the agreement between the owner of the front lot and a third party lapsed due to controversy regarding the shared access. The argument was that the third party felt they were not made aware of the shared access issue when they wanted to build a single-family home with driveway access. Mr. McGonigle states that they were aware of this issue all along and adds that the important thing is that the awareness of this project is well-known and well-established throughout the town and Boards and nobody reviewed or commented on the easement throughout the process.

Gordon C. Andrews feels if the Board approves the variance being requested under 167-10L, the buildable lot becomes non-buildable per 167-16. Mr. McGonigle reads the legal easement aloud to the Board and explains that this is an "access and utility easement." When Mr. Gaynor asks what plan was approved by the Planning Board Mr. McGonigle answers the plan coming through the site, the storm water management and abutter impacts. Mr. McGonigle states that the easement was given about a year or so ago.

Mike DiBona, (abutter, 229 Franklin St), speaks against the petition. He explains that this was always going to be one contiguous lot. The understanding was that the front parcel was going to be used for access, the rear parcel for solar. There was a water basin on the front lot on the original plans which wouldn't have allowed the front lot to be buildable. Mr. McGonigle responds that the plans have evolved, and the drainage structure was reengineered. Mike DiBona repeats that the plan was approved as a contiguous lot by the Planning Board with no single-family home. Mr. DiBona supports the solar project but only how it was originally approved.

Robert DiBona (abutter) speaks in agreement with Mike DiBona. He states that the applicant has legal access through the front lot and now they want legal access **and** to build a single-family home which is a drastic change from what the Planning Board approved.

Mr. McGonigle explains that the project was not to build a single-family home. There's an easement running through the front parcel. The owner of the front parcel granted the easement with the understanding that the parcel could be used as a buildable lot. Mr. Nessralla states that the By-law doesn't allow this, to which Mr. McGonigle responds is why he's here tonight.

Mr. McGonigle confirms to Gordon C. Andrews that there are telephone poles. Mr. Andrews reads from the By-law that "each driveway shall service each individual lot with underground utilities within the proposed access site." Mr. McGonigle responds that the poles already exist and are already there. Mr. Andrews explains that they weren't meant for a single-family home and they are required to be underground from the street. Mr. McGonigle responds that National Grid would have to change this if that's the requirement. Mr. Andrews reads "no more than one lot shall be served by the access-way" and feels the applicant should be asking for two permits at the same time. Mr. Gaynor responds that the applicant doesn't own the property in question.

Mr. Borsari feels the Board should limit their focus to 167-10L as 167-16 talks about Estate lots and isn't an issue here. Mr. McGonigle was not, in writing, denied coming through the legal frontage during the Conservation hearings as they are not going into the wetlands however if they were, it would be a deep encroachment and disturbance to the wildlife. Mr. Borsari feels that if Mr. McGonigle can allow access with the legal frontage, it should be done.

Robert DiBona states that the applicant already has access to the property out back through the front lot which was bought exclusively to provide access to the back uplands. Now the owners want to build a single-family house on the front lot in direct violation of the Zoning Bylaws which says, "one lot, one access." Mr. McGonigle confirms to the Board that the two lots are not owned by the same entities. A third party is under agreement to buy the front lot. Mr. DiBona responds that this would be creating their own hardship which Mr. McGonigle disagrees with. Mr. McGonigle explains that if the front lot were to be sold to a third party, the easement travels with it.

Mr. Gaynor asks Mr. McGonigle if the Planning Board approved the easement as Mr. DiBona feels that they did not. Mr. McGonigle states that when this project was reviewed and approved by the Planning Board and Conservation Commission the access was as it's drawn now. This lot did not have a legal easement on record but there was always the intent to create the legal easement.

Mr. Gaynor asks the Board if they feel they would be rendering the front lot useless if the easement is granted. Mr. Borsari feels access should only be through or across its legal frontage. There is only one legal frontage. He would like to hear what the Planning Board has to say about having a common driveway with an easement.

Gordon Andrews (Planning Board Chairman) believes that the plan currently being presented to the Zoning Board was approved by the Planning Board. Mr. McGonigle states that this plan was approved as is by the Planning Board but not recorded at the Registry of Deeds. Mr. Andrews doesn't recall the dates.

Mike DiBona explains again that the access was always there, but it was on one contiguous lot. Mr. McGonigle states that these two lots were never one parcel. Mr. Nessralla feels that granting the variance would be rendering the 3-acre lot useless. Mr. Andrews adds that the By-law states there can't be shared driveways. Mr. Andrews suggests bringing this plan back to the Planning Board.

Mr. McGonigle asks what the negative impacts would be in granting this variance request. Mr. Gaynor responds that he doesn't have enough information from the Planning Board regarding this project: what was submitted to the Planning Board, their decisions and issues. Mr. McGonigle states that a single-family home was never discussed and wasn't part of the project.

The Board agrees that they would like:

1. Land Counsel's interpretation of 167-16 and 167-10L and their opinion on whether the Board would be rendering the property (3-acre parcel) useless by granting the requested variance and

2. Request the Planning Board to forward the approved plans of both the 3-acre lot and the large parcel that is being proposed to the Zoning Board indicating the existence of the easement.

Motion to send letters to Land Counsel Attorney Amy Kwesell for her opinion and Planning Board for approved plans and to invite Planning Board to the next meeting and continue Petition #900 to August 12, 2019:

MOTION: Kozhaya Nessralla

SECOND: Robert Durgin AIF

Passes: 5-0-0

Appointment:

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

Present: Casey Burch (civil engineer, Solli Engineering); Lawrence LePere (Director of Operations, Solli Engineering); Tina Alger (abutter)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Burch presents the petition and the requested design of a co-compliant plan (which would not require variances) showing 76 10' x 20' parking spaces, a 45' x 22' loading area and the building fitting on the lot. This plan shows soil conditions and topography as hardships. The Board agrees that this will now allow them to decide on the requested variances regarding the original proposed plan.

Mr. Burch elaborates on the hardships. He discusses the soil conditions and topography, specifically the septic leeching field and groundwater levels which would prohibit them from putting a septic system on the property. In addition, there would be a financial hardship of over \$210-220,000 due to an \$80,000 retaining wall needed around the southern, eastern and northern side of the property, underground detention and an additional \$50,000 of pavement if this second design was proposed. There could be no project with the underlying groundwater table if using the second design.

The Board agrees to approve all variances as they will not derogate from the intent of the bylaw and will not be detrimental to the established character of the neighborhood or the public good in the Commercial zone. The topography and soil conditions of the groundwater meet the requirements of a hardship.

1. Lighting is maintained on the property and shielded from the wetlands and residential areas.
2. No outside storage or repairs.
3. No parking on the street.
4. Hours of delivery will only take place at the start and/or end of the day.
5. Hours of operation are 7:30am to 9:00pm.

Motion to accept and approve Petition #894 with above conditions:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy

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

Passes: 5-0-0

Decision form is signed by all members.

Correspondence:

The Board reviews all mail items.

1. Letter from Mass Housing to John Peck dated 6/4/2019 regarding Country Club Estates Project eligibility
2. Planning Board Memo dated 6/10/2019 regarding Form A approval for River, Pratt & Thompson Streets w/ attached Form A
3. Planning Board Memo dated 6/20/2019 regarding 395 Plymouth St, site plan review
4. Old Colony Planning Council Agenda for 6/26/2019

5. Letter from Attorney General to Gordon C. Andrews dated 7/3/2019 regarding the closing of 4/2/2019 complaint
6. Amended Comprehensive Permit Rules & Regulations and Applicant Checklist

Discussion:

Present: Gordon Andrews, Planning Board Chairman

The Board and Mr. Andrews discuss mail item #3 - Petition #886, 395 Plymouth Street as well as joint meetings between the Zoning Board and Planning Board on Monday, August 12th (Zoning) and, if necessary, Thursday, August 15th (Planning).

Mr. Andrews states that the applicants for Petition #886 did not have a site plan approval from the Planning Board. Mr. Gaynor explains that there is no specific procedure for each applicant to follow and the Boards would like to join their efforts to create this process to make things go more smoothly. He also informs Mr. Andrews that the Zoning Board added several conditions to Petition #886 that had to be met by the applicants for the special permit to take effect. Mr. Andrews and the members of the Zoning Board discuss a checklist/packet for each applicant to present to every Board as he/she moves through the application process to avoid any confusion.

Mr. Andrews explains the two ways to create a lot through the Planning Board: 1. Subdivision Control (must meet all the subdivision regulations) and 2. Form A (if they have street frontage on an existing private way before Zoning comes into effect or a public way). A Form A doesn't guarantee that a lot is buildable as it is possible to get a plan signed from the Planning Board which gives approval for a plan that doesn't require subdivision control. The Planning Board must approve a plan if there is frontage, but it doesn't always mean that it's buildable.

Other Business:

- Amended Comprehensive Permit Rules & Regulations and Applicant Checklist

The Board decides to review the Amended Comprehensive Permit Rules & Regulations and Applicant Checklist documents again and vote at the next meeting on August 12, 2019 to either accept, make changes or deny.

Adjourn:

Motion to adjourn meeting:

MOTION: Kozhaya Nessralla
SECOND: Gerald Joy AIF
Passes: 5-0-0

It was unanimously voted to adjourn the meeting at 9:00p.m.

Documents:

1. Agenda – 7/8/2019
2. Meeting Minutes – 6/3/2019
3. Executive Session Meeting Minutes – 7/9/2018
4. Executive Session Meeting Minutes – 10/15/2018
5. Signed Revolving Bill Schedule - Petition #900
6. Invoice – Plympton-Halifax Express advertisement - Petition #900
7. Public Hearing Notice – Petition #900
8. Application packet – Petition #900
9. Public Hearing Notice – Petition #894
10. Application Packet – Petition #894
11. Meeting Summary Document from Solli Engineering – Petition #894
12. Meeting Minute Review form – Petition #894
13. Decision Form – Petition #894

14. Letter from Mass Housing to John Peck dated 6/4/2019 regarding Country Club Estates Project eligibility
15. Planning Board Memo dated 6/10/2019 regarding Form A approval for River, Pratt & Thompson Streets w/ attached Form A
16. Planning Board Memo dated 6/20/2019 regarding 395 Plymouth St, site plan review
17. Old Colony Planning Council Agenda for 6/26/2019
18. Letter from Attorney General to Gordon C. Andrews dated 7/3/2019 regarding the closing of 4/2/2019 complaint
19. Amended Comprehensive Permit Rules & Regulations and Applicant Checklist

Respectfully submitted,

Date: 9-9-18

Robert Gaynor, Chairman
Zoning Board of Appeals



