



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes

Monday, September 9, 2019

52020

The Halifax Zoning Board of Appeals held a public hearing on Monday, September 9, 2019 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Chairman: Robert Gaynor, Vice Chairman: Kozhaya Nesseralla, Clerk: Peter Parcellin, Member: Gerald Joy, Member: Robert Durgin and Alternate Member: Daniel Borsari are absent.

Chairman Gaynor calls the meeting to order at 7:00pm 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, July 8, 2019:

MOTION: Gerald Joy
SECOND: Kozhaya Nesseralla AIF
Passes: 4-0-0

Bills:

The Board signs bills.

- Plympton-Halifax Express, Petition #901 Advertisement = \$84.00
- Plympton-Halifax Express, Petition #902 Advertisement = \$84.00
- Plympton-Halifax Express, Petition #903 Advertisement = \$84.00
- Plympton-Halifax Express, Petition #904 Advertisement = \$84.00
- W.B. Mason, Office supplies = \$40.68

Appointment:

7:05pm – Petition #901 – Austin Beatty – 24 Pine Street, Special Permit to build In-Law Apartment

Present: Austin Beatty, owner

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Beatty presents his petition. He is building a small, one-story in-law for his mother with no full basement, crawl space only. The property is three (3) acres. There is a shared entry-way and living room and the opening will be made bigger and door will be removed. Mr. Beatty submits photographs of the outside of the property to the Board. There will be a living room, kitchen and simple deck. The existing house has a full foundation and walkout basement. All utilities are shared. The entry-way on the existing side is three feet, four inches. This will be removed, and an opening will be framed in. Mr. Beatty opened it as far as he could but had to stop due to the cabinets. There is an existing deck off of the existing house. Mr. Gaynor explains that the concern of the Board is the door being replaced in the future. Mr. Beatty understands. Mr. Nesseralla suggests making the stipulation that there will be no door between existing house and new addition. Side lot lines are all within the guidelines.

Motion to waive on-site inspection:

MOTION: Kozhaya Nesseralla
SECOND: Gerald Joy AIF
Passes: 4-0-0

Motion to accept Petition #901 with the condition that there be no door between the existing house and the new addition:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy AIF

Voice Vote: Robert Gaynor – Yes; Kozhaya Nessralla – Yes; Peter Parcellin – Yes;

Gerald Joy - Yes

Passes: 4-0-0

Decision Form is signed by all members.

Appointment:

7:15pm – Petition #902 – David A Rota/Scroll Contracting – 292 Thompson Street, Special Permit to build In-Law Apartment

Present: David A. Rota/Scroll Contracting Co (applicant/contractor); Mirna Habib (owner)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Rota presents the petition. He is constructing a 24 x 36-foot addition and a 16 x 18-foot sunroom to the existing home to allow for an in-law apartment. Mr. Rota presents printed photos and the Board reviews the plans. The view is not impacted from the street. The new design is within the side-yard setbacks. The proposed addition, not including the sunroom, is 860 square feet. The sunroom is replacing the existing deck, is set on a concrete patio and pushed up against the house which will be accessed from both the in-law and the existing home. There will be two walls of glass connecting the existing house and in-law. There will also be access to the garage. The sunroom will be shared. The in-law will also have access to the bulkhead. The kitchen is not shown in the drawing but is pointed out. Mr. Nessralla explains there needs to be a six-foot common entrance without a door of any kind. Ms. Habib explains that her mother is a “snowbird” and asks if there must be a six-foot opening with nobody living there in the winter. The Board answers that this is in the By-laws.

If the requirement is a six-foot opening, Mr. Rota states that it cannot be into the sunroom (as a sunroom is unheated) so the rooms (i.e. kitchen) will need to be shifted to allow for this shared opening. Ms. Habib shares her issues with not having any privacy if a six-foot opening is required. She states that this proposed plan could never be a home that could be used for rental property as she and her mother will be sharing an entrance, a garage, a sunroom, basement and utilities. The Board responds that is the difference between an in-law addition and a two-family. Mr. Rota explains that he did not interpret the By-law the way the Board is stating. He explains that openings with doors and no locks is considered shared. Mr. Nessralla states again that having a door-less, six-foot opening is in the By-law.

The square footage of the existing house is about 2,500 square feet. Mr. Gaynor and Mr. Rota discuss 167-7D12(f): “The size of an in-law apartment shall be no larger than 50% of the first floor living space of the main residence or 900 square feet, whichever is greater.” Mr. Rota explains that this plan was designed to be less than 900 square feet; the in-law is 860 square feet without the sunroom. Mr. Gaynor explains that the sunroom counts in that square footage as it is a structure. Mr. Rota disagrees that the sunroom, as discussed, is no longer the shared living space. Mr. Rota explains that the shared living space is going to be moved to allow for the six-foot cased opening. Because of this, Mr. Rota feels that the sunroom is no longer considered part of the square footage involved as it isn’t heated therefore cannot be taxed on and isn’t living space. Mr. Nessralla points out that because it is an attached structure to the existing home it becomes part of that building making it 1,152 square feet. Mr. Gaynor argues that of course it is taxed living space and agrees with Mr. Nessralla.

Mr. Gaynor would like to see an updated, certified floor plan conforming to the By-law. The Board agrees. Mr. Nessralla insists that the Board needs to see a six-foot opening, per the By-law. Mr. Rota disagrees.

Mr. Gaynor gives Mr. Rota his options: continue the meeting and return with a revised plan showing exactly what they will build showing that the 1,152 square-foot addition is 50% of the first-floor living space or withdraw without prejudice. Secretary Ms. Snow hands a copy of the Zoning By-Law Section 167-7D12 to Mr. Joy to review. Mr. Rota asks

Mr. Joy if there is anything in the By-law about a required six-foot opening. Mr. Joy answers no. Ms. Habib decides she'd like to postpone and continue with a revised plan.

There is discussion and it is confirmed that this will need to be re-advertised to include a variance. If the sunroom stays it will need to be shown that it is less than 50% of the first floor living space of the main residence or it will need to be varied if 1,152 square feet. Ms. Habib has spoken with the abutters and none have had any problem with this plan. It has been decided this will be continued until the next meeting with a re-advertisement for the variance to waive 167-7D12(f).

Motion to continue Petition #902 to October 7, 2019:

MOTION: Peter Parcellin
SECOND: Kozhaya Nessralla
Passes: 4-0-0

Appointment:

7:25 – Petition #903 – Stephen & Heidi Boardman – 829 Plymouth St, Special Permit (renewal) for In-Law Apartment

Present: Stephen and Heidi Boardman, owners/applicants

Chairman Gaynor reads the Public Hearing Notice into record. Mr. & Mrs. Boardman are seeking a new Special Permit for a pre-existing in-law apartment. The apartment was built in 1983 and the Boardmans purchased it in 1999. There have been no changes made to the apartment. Currently a friend of a friend is living in the apartment, not blood-related. Since the Boardmans have owned it there has been no shared living space and no shared entrance. The in-law is above the garage with an outside entrance only. When the Boardmans bought the house Mrs. Boardman's mother lived in the in-law apartment, she has since passed, and Mrs. Boardman's brother moved in. For the past year there has been a temporary friend of a friend living in the apartment. Mr. Gaynor explains that to be an in-law apartment, only a blood-relative should live there.

Mr. Parcellin reads the original special permit (Petition #450) granted to the Boardmans in 1999 which reads that the Zoning Board approved the special permit for an in-law without the proper in-law requirements. Mrs. Boardman's brother moved out of the in-law last year. Mr. Gaynor explains that this cannot be used as a rental apartment and an immediate family member must live in the apartment. The secretary presents a copy of a letter sent to the Boardmans from the Zoning Board dated 2014 explaining that they were due for their third renewal. The secretary explains that this would be an entirely new special permit for an in-law apartment. The Boardmans confirm that utilities are shared. The Zoning Board feels that because this is pre-existing, non-conforming and it has been renewed three times since 1999 with no changes made since the first special permit was granted, this should be a "grandfathered renewal" with a condition that no new tenants move in unless they are blood-related. Mr. Boardman asks if they could they sell the home with an in-law apartment. The Zoning Board answers yes and the special permit for an in-law would travel with the home. Mr. Boardman asks if it's possible to make this a legal apartment. The Board explains that it would be a new application for a multi-family dwelling or possibly a duplex and the building code would need to be approved by the Building Inspector. The property is 1.4 acres.

Motion to renew Petition #903 as presented as an in-law apartment with a review in five (5) years with the condition that the temporary tenant only be replaced by an immediate family member:

MOTION: Kozhaya Nessralla
SECOND: Gerald Joy
Voice Vote: Robert Gaynor – Yes; Kozhaya Nessralla – Yes; Peter Parcellin – Yes;
Gerald Joy – Yes
Passes: 4-0-0

Motion to waive the on-site:

MOTION: Kozhaya Nessralla
SECOND: Gerald Joy AIF
Passes: 4-0-0

Decision Form is signed by all members.

Appointment:

7:30 – Petition #904 - David and Kelly Pitts – 10 Ash Rd, Special Permit and Variance for deck

Present: David Pitts, applicant/owner

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Pitts presents the petition and photos of the deck that has already been built on to the front of the house. Mr. Pitts built the deck because he didn't want his grandson to be near the street. There is a pre-existing deck on the back as well. The deck is six (6) feet off the house. It doesn't increase the non-conformity. There are two frontages as it is a corner lot. The deck is within the established character of the neighborhood and there is no further encroachment. The Board feels there is a hardship because of the topography and layout of the property (6,467 square feet) and does not derogate from the intent of the bylaw, therefore the Board can grant a variance for the deck. The deck is built on sonatubes. There is no overhang and there is a gate on the deck.

Motion to waive the on-site:

MOTION: Kozhaya Nessralla
SECOND: Gerald Joy AIF
Passes: 4-0-0

Motion to accept and approve Petition #904 as presented:

MOTION: Peter Parcellin
SECOND: Kozhaya Nessralla
Voice Vote: Robert Gaynor – Yes; Kozhaya Nessralla – Yes; Peter Parcellin – Yes;
Gerald Joy – Yes
Passes: 4-0-0

Decision Form is signed by all members.

Appointment:

7:40pm – Petition #900 – Green Apple Farms, 0 & 241 Franklin St, Variance for access via different location

Present: Mike McGonigle (Project Engineer, Coneco), Jon Novak (Engineer, Coneco), Attorney Wes Morris (Syncarpha/Green Apple Farms IV - applicant)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. McGonigle explains that there were two areas open for discussion at the end of the last Zoning Board meeting (July 8th): 1. the circumstances in which the Planning Board reviewed the project and 2. whether they had the correct/appropriate information in front of them when they granted the permit. First, the actual permit approval from the planning board shows that both lots were reviewed and approved based on two lots. This parcel was carved out in 1973 so they didn't create their own hardship by picking one, single, contiguous lot, splitting it in two and putting it back together. The reason for this impression is because the Department of Energy Resources (DER), at one point during this solar project, requested Coneco to merge the lots as DER said any generation resource must be on one contiguous lot with the same owner. A month later, DER told Coneco they made a mistake and only the generation portion (the solar modules of the inverter) must be on the same physical lot (north parcel) but distribution lines and access are okay to be on a separate lot. That is when it was split back into its original, two separate parcels. This has always been two difference parcels with two separate ownerships.

When this project began it was on two separate lots owned by Springer (larger lot) and Coneco Energy (smaller lot). This was presented as a singular project with access road and utility access always through the smaller lot during the

Planning Board approval process, meetings with Conservation and to all abutters. There was a very short period of time that it was merged in error.

Mr. McGonigle goes on to discuss the hardship referencing the site plan. When the project was conceived, both entrances were looked at. When the topography was done, the environmental impacts were assessed, and the wetlands were delineated, and it became clear that the wetlands would be severely impacted and would isolate a portion of the wetlands from the main wetlands. The applicants are limited by the topography, the soils and the nature of the land that connects the frontage to the main part of the upland site where the development is. Right from the beginning is when they moved over to the access through a separate lot, not owned by the same entity as the main lot. The project was conceived, drawn and went through the permitting process as two separate lots. Because of the major impacts to the wetlands from trying to create access through the wetlands, it was decided through Conservation that the best access was through the front lot. Conservation approved the project and the applicants have an Order of Conditions with the access presented through the front lot, as it has been presented. They did not create their own hardship, it was always two lots.

Mr. McGonigle states that Bowker is a separate entity created for financial and legal reasons for the south lot only. Bowker has granted an easement which is recorded at the Registry of Deeds. Attorney Morris supplies the Board with a copy of this easement. Mr. McGonigle shows the Board a copy of the original easement "Alta" dated 4/2019. The north parcel has 170 feet of frontage. The south parcel has 70 feet of frontage. The southern lot is considered an estate lot. The frontage requirement is a minimum of 50 feet under Section 167-16B for an estate lot.

Mr. Gaynor asks Mr. McGonigle to address 167-10L. Atty. Morris explains that this is the By-law from which they are seeking relief by way of variance and this project meets all Zoning criteria (three-prong test). He further explains this access will be better for abutters due to traffic at the start of the project. Mr. Nessralla asks about the southern lot. Mr. McGonigle answers that it will likely be sold for a single-family home. Mr. Nessralla states that it needs 150 feet of frontage. Bowker owns the southern lot (3.76 acres), Syncarpha owns the northern, larger lot. Mr. Gaynor states that according to his records, the Form A approved by the Planning Board with no easement is dated November 19, 2009. Mr. McGonigle states that July 25, 2016 is the date of the plan approved by the Planning Board as two separate lots.

Mr. Joy asks if both parcels were owned by one owner at any time. Mr. McGonigle responds yes, Bowker was the owner when the lots were merged in error for state regulations and code only for a period of 2-4 months. He is unsure if this occurred before or after the easement was needed. Mr. Gaynor confirms with Mr. McGonigle and Atty. Morris that the northern parcel is useless without the easement. Mr. Gaynor confirms that the northern parcel is not an estate lot and has legal frontage which Mr. Parcellin points out means that therefore has access. Mr. McGonigle adds that this is a hardship access. Mr. Parcellin states that granting the easement will make the southern lot no longer an estate lot.

Mr. McGonigle confirms that currently, the land of the northern lot has been cleared, erosion controls have been put in place, a rough road has been drawn and all work has since ceased. Mr. Parcellin is concerned that by having the access, this will nullify the ability to have the frontage to build the road. Atty. Morris responds that it may. Mr. McGonigle responds that this is the reason they're requesting a variance. Mr. Parcellin points out that the applicant is asking for a variance from 167-16D, not 167-10. Mr. Parcellin clarifies that the applicant is asking for the Board to grant a variance for access from another lot (southern) that would greatly impact that lot which is against the town By-laws even though the owner of the southern lot has already granted the easement.

Abutter Mike DiBona 229 Franklin St (abutter) informs the Board that the original owner of the property, Mr. Springer, created his own hardship as he developed all of Kenzie's Path and left the northern property with only one access. Mr. Springer sold it to another entity who knew of this one access. Mr. DiBona explains that according to the Registry of Deeds the owner bought both properties with Bowker in September 2016 (2.5 years, not months) and during this time filed with the Planning Board July 25, 2016 and recorded the easement March 29, 2018. Mr. DiBona feels the southern lot will be sold as a house lot which will require a variance for access to the property as it will be a hardship on whoever the new owner is.

Abutter Robert DiBona 229 Franklin St states that when Mr. McGonigle applied to the Planning Board, both properties were owned by the same entity. Mr. McGonigle responds that when he applied to the Planning Board, as the Planning Board approval shows, there were two owners: Conceco Energy, LLC and Springer Construction, Inc. Mike DiBona asks why 241 Franklin Street is on the application and not 0 Franklin Street. There is no response. Mike and Robert DiBona explain that they want this project to go through, but not as the southern lot being sold as a single-family, buildable lot missing a retention pond, which they feel was never proposed initially to the Planning Board.

Attny. Morris suggests that he can go back to his client, Syncarpha, and see what their interest is in purchasing the southern lot. The Board and Mr. McGonigle agree. The Board explains that the applicant can ask for a continuance or the Board can vote on the project tonight.

Mr. McGonigle asks the Board if these issues would go away if Syncarpha purchases the second lot. The Board responds that most of them would. Mr. Novak asks if the variance would still be necessary if the lots are combined. Attny. Morris responds that it would be treated as an estate lot as that is what it is. Mr. Gaynor agrees. Mr. Parcellin states that there may be a variance needed for a side setback.

Letter of Agreement for Extension of Variance for 60 days is completed and signed by Mr. McGonigle.

Motion to continue Petition #900 to October 7, 2019:

MOTION: Kozhaya Nessralla
SECOND: Peter Parcellin AIF
Passes: 4-0-0

Mail/Correspondence:

The Board reviews all mail items.

Other Business:

- Amended Comprehensive Permit Regulations and Checklist to be reviewed and discussed at the meeting on October 7, 2019.
- Signature Authority Fiscal Year 2020 Signature Sheets – signed by Peter Parcellin, Robert Gaynor, Kozhaya Nessralla and Gerald Joy. Robert Durgin and Dan Borsari to sign at next meeting.

Adjourn:

Motion to adjourn:

MOTION: Kozhaya Nessralla
SECOND: Gerald Joy AIF
Passes: 4-0-0

It was unanimously voted to adjourn the meeting at 9:02p.m.

Documents:

1. Agenda – 9/9/2019
2. Meeting Minutes – 7/8/2019
3. Signed Revolving Bill Schedule – Petitions #901, #902, #903 and #904
4. Signed Expense Bill Schedule – 9/9/2019
5. Invoices – Plympton-Halifax Express advertisements – Petitions #901, #902, #903 and #904
6. Public Hearing Notice – Petition #901
7. Application Packet – Petition #901
8. Decision Form – Petition #901
9. Public Hearing Notice – Petition #902
10. Application Packet – Petition #902
11. Public Hearing Notice – Petition #903

12. Application Packet – Petition #903
13. Original Special Permit/Decision Letter dated 1999 – Petition #903
14. Decision Form – Petition #903
15. Public Hearing Notice – Petition #904
16. Application Packet – Petition #904
17. Decision Form – Petition #904
18. Suggested Findings of Facts for Variance – Petition #900
19. Access and Utilities Easement – Petition #900
20. Letter of Agreement for Extension of Variance – Petition #900
21. Amended Comprehensive Permit Rules & Regulations and Applicant Checklist

Respectfully submitted,

Date: _____

Robert Gaynor, Chairman
Zoning Board of Appeals



