



# Halifax Zoning Board of Appeals

## Meeting Minutes

### Monday, March 8, 2021

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, March 8, 2021 via Zoom hosted by Town Administrator Charlie Seelig with all Board members in attendance: Chairman Robert Gaynor, Vice Chairman Kozhaya Nessralla, Clerk Peter Parcellin, Members Gerald Joy, Member Robert Durgin and Alternate Member Dan Borsari.

Chairman Gaynor calls the meeting to order at 7:05pm and reprises the audience that this public hearing/meeting is being recorded. He also explains the procedure and the protocol for public Zoom hearings.

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#### **APPOINTMENT**

7:05pm – Hearing (continued) – Pet #927 – Matt Grosschedle, Outback Engineering, 0 Walnut St – Special Permit for Horse Barn  
A request for 30-day extension was sent to the Board on 3/8/2021 by Grosschedle.

- M/Durgin, S/Joy. Unanimously approved (5-0-0) by voice vote to accept the request for 30-day extension and continue Petition #927 to April 12, 2021.

#### **MEETING MINUTES**

- M/Nessralla, S/Parcellin. Unanimously approved (5-0-0) by voice vote to accept Meeting Minutes for February 8, 2021 as presented.

#### **BILLS**

Amory Engineers Invoice #15545A dated 2/11/21 for CC Estates = \$1,406.00

- M/Parcellin, S/Nessralla. Unanimously approved (5-0-0) by voice vote to accept invoice and pay bill.

#### **CORRESPONDENCE**

Board reviews mail.

Board of Selectmen Public Hearing Notice – 3/9/21

#### **OTHER BUSINESS**

Board reviews Talent Bank Form for Niel St. Croix.

Conflict of Interest forms for Parcellin and Nessralla needed at Town Clerk's office.

#### **RECESS**

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) by voice vote to recess to 7:30pm.

#### **APPOINTMENT**

7:35pm – Hearing – Pet #931 – Robert D'Agostino, 596 Monponsett Street – Special Permit & Variance for single-family dwelling  
*Applicants Robert and Kathy D'Agostino, Joe Webby (Webby Engineering) and Building Inspector Rob Piccirilli are present.*

The Chairman confirms that this project can exist in the business district. D'Agostino confirms that the demolition permit is dated December 7, 2011. Water main and electricity remain on the property. Chairman confirms that the foundation is considered a structure. Piccirilli discusses Bylaw 167-8B, Alteration. Piccirilli's states his opinion that tearing the house down would fall under an alteration which was included in D'Agostino's denial letter from Piccirilli. Piccirilli states his opinion that D'Agostino is coming before the Board for a Special Permit for an alteration. D'Agostino states that the plan to build house within foundation footprint makes the most sense for this lot and for the applicant rather than changing the house. Piccirilli states that, in his opinion, if the Board decides that the foundation is considered an existing structure, the applicant is proposing to stay within that footprint which makes the front and rear setbacks and dotted lot line more conforming. In Piccirilli's opinion, the Board must determine if the applicant requires variances or if he needs a special permit for 50% alteration. Piccirilli's opinion is that if the properties are being merged, the lot line disappears, and the applicant is proposing to build a house in the same or lesser footprint of something that is already there. Piccirilli does not know if there is a Purchase & Sale from the applicant to show there is an intent to purchase both lots. Chairman states that currently, there are two separate lots with two separate owners which would require a variance from Title 5 (septic). Piccirilli agrees. Chairman states that the Board cannot grant a variance conditioned on a future action. Piccirilli responds that a signed Purchase &

Sales with the intent to merge lots in the same entity as the application may suffice to grant a variance on a future action, but the Board should confirm this with Town Counsel. D'Agostino sent Seelig, who forwarded to the Board, a signed Purchase and Sale Agreement with intent to merge lots. This is also stated on the plans. D'Agostino is adding 17,000 feet to property. Seelig recommends to the Chairman that he confirm with Town Counsel that a Purchase and Sale is sufficient. Piccirilli doesn't believe the applicant will need variances if the lot line is removed and the applicant is making it more conforming by staying within the footprint. D'Agostino states that he is going to purchase the property regardless of if the Board approves this special permit.

Parcellin discusses the issues he believes the Board has. The Board does not want to approve a project when there is an unresolved Title 5 issue. He needs clarification on if the lots must be officially merged or just have the intent to be merged. Doesn't know if non-conforming use is going to get the Board and the applicant to a point where this project can be approved, even though Parcellin would like this project to happen. D'Agostino states that Conservation has already given him the Order of Conditions for the house to be located where it is proposed. If he can't build the house, the septic plan goes out the window. If this project gets approved, the line will disappear as the lots will merge and the septic will be used. The building going inside the foundation is the key. The hardship is that the Zoning changed. Piccirilli doesn't know what the deed says as far as the grandfathering on Lot 65A but it appears to him that the applicant is presenting something that is keeping the structure on the northern lot and he doesn't believe merging those lots will create an issue with grandfathering, although he recommends talking to Counsel. As far as septic, Piccirilli doesn't believe this is an issue with grandfathering. If lots are merged, does not affect the loss of grandfather ability as the applicant is making the lot more conforming. Parcellin states that the problem is, if the lots are grandfathered, the intent of the bylaw...the alteration is that the applicant can continue to use that grandfathered use but cannot increase that use so that he's re-building something that is worth 50% or more of what it is currently valued. If that rule wasn't there, one couldn't build anything on top of that foundation. Piccirilli states that if the Board is going to take that stance, anyone who wants to do a complete interior remodeling of a rundown home won't be able to. Piccirilli adds that reasonably, it would make sense that this bylaw was put in there for a special permit so abutters could be notified, attend the meetings, and voice their opinions. Piccirilli goes on to say that it doesn't make sense that one would need a variance to remodel the interior of their home, in his opinion. D'Agostino states that there are no restrictions on the deed for Lot 65A (south side with septic).

Piccirilli confirms a single-family dwelling is allowed in the Business District. Chairman asks Piccirilli if 167-8E Abandonment is not applicable. Piccirilli responds that if the Board determines the foundation is a structure and that the applicant had no intent of abandoning the structure, that is a judgment the Board can make, in his opinion. Piccirilli states that he would recommend the Board check with Town Counsel on the merger, whether a Purchase and Sales in the same entity with the intent of merger suffices. Piccirilli reiterates that these are his opinions.

Chairman believes the Board should contact Town Counsel on the Purchase and Sales being sufficient with the intent to merge lots. Parcellin asks Piccirilli if what the Board needs to get to be able to allow the applicant to build in that foundation is the grandfathered use of that structure. Piccirilli refers to the definition of a non-conforming use which includes "a building, structure or use of the land...existing at the time of enactment of this chapter of subsequent amendment thereto which does not conform to the regulations as to use or dimensional requirements." So Piccirilli's opinion based on this definition is that the structure itself is a non-conforming use. Parcellin refers to 167-8B Alteration. Parcellin agrees that this prohibits the applicant from doing what he wants to do. Piccirilli responds that the Board needs to decide under 167-21(A)(2) if that is an exception the Board can grant a special permit for. If the Board is going to say that all non-conforming uses under continuation, alteration and extension need variances, he believes the Board will find themselves in a hard situation. If the Board finds those require special permits, which he believes has been done in the past most of if not all the time, that gives the Board the opportunity to grant certain special permits to allow abutters to come in and voice their opinions. Joy believes that if the Board doesn't allow anything to be built on an existing foundation, nothing will get built. Chairman states that you cannot deem a property useless. Durgin agrees. Parcellin wants to find a way for the applicant to do this as he believes this will make the property better.

Borsari states that the ZBA is appointed because they must make judgments as bylaws can't be written for every situation, which is also part of the bylaw. Borsari feels that the Board is shellshocked from what has happened over the last few years. Borsari states the applicant is tripling the size of the lot, increasing the setbacks, approved by Conservation and Board of Health, increasing everyone's property value and making things better for the pond as it's a high-tech system (first class septic system). Borsari states that this shouldn't be this difficult. He agrees with the Board members but states that at some point, the Board needs to make a judgment call and people need to remember that. The Board has the right and responsibility to make judgment calls sometimes. Nessralla states that with two lots being joined, there will be no variance, they will be putting the home inside the footprint...the Board should ask Town Counsel's opinion and then make their decision.

1. Does a Purchase and Sale convey enough intent to merge the lots to satisfy Title 5?
2. Is the Board able to grant a special permit if the project is going to be over the threshold for valuation for the alteration?

Nessralla asks what the Board is basing this on – the value of the building that’s already there or what the applicant is proposing? D’Agostino states the current building is assessed at \$28,300.00. The land is assessed at \$201,000.00. This is not the market value. The septic system was designed for a three-bedroom house.

Webby confirms that approvals from Board of Health and Conservation Commission were granted.

Chairman opens to public.

Gordon C. Andrews, 244 Elm St asks if Town Counsel’s opinion can be requested to answer the following question: If someone has a piece of property and wants to change the use, do they need to meet the minimum Zoning Bylaw dimensions of 40,000 square feet and 150 feet of frontage? Andrews is asking because the merge of the two lots will change the size and thus create a new lot. Parcellin responds yes or they would need a variance and, therefore, a hardship. Andrews thinks the Board does need to look at variances, not just the special permit. Durgin confirms that a good question for Town Counsel is if the lots are merged, is there a loss of grandfathering? Parcellin responds that the structure is grandfathered. Parcellin goes on to say that for D’Agostino to build what he wants on that lot he needs to be able to get variances on the new structure or use the grandfathered use of the existing structure and what’s stopping him is this one bylaw (language) that requires the applicant not exceed 50%. Chairman agrees that this question should be posed to Town Counsel.

In response to Joy’s question about the septic on a separate lot, the Chairman responds that Town Counsel explained that one must own the lot with septic. Seelig adds “or the applicant can get a variance, as they have already received approval for septic from the Board of Health.” Borsari states that the Purchase & Sale resolves this issue and that if you’re within the bounds of the foundation, which D’Agostino is, this covers the compliance of Zoning. D’Agostino states that they are improving a non-conforming lot and explains that the bylaw is unclear. If it were clear, he would have gone to Zoning first however this is how the Halifax process works. D’Agostino further explains that this house was designed for the merge of these two lots and septic.

- M/Parcellin, S/Nessralla. Unanimously approved (5-0-0) by voice vote to accept extension from applicant for Petition #931 to April 25, 2021.
- M/Parcellin, S/Joy. Unanimously approved (5-0-0) by voice vote to ask Town Counsel the following three questions regarding Petition #931.
  1. Does a Purchase and Sale agreement convey enough intent to merge the lots and to satisfy Title 5?
  2. Can the Board issue a special permit to allow for 50% or more of alteration 167-21(A)(2) and 167-21(A)(3) based on real market value?
  3. Will the merging of the two lots necessitate compliance with the new Zoning dimensional requirements?

## **APPOINTMENT**

8:00pm – Discussion – James Murphy, 100 and 102 Lake Street – removal of current two structures, replace with cottages  
*James Murphy, real estate agent is present representing a possible buyer of this property.*

Murphy explains that his client is looking for the Board’s opinion. His client would like to purchase two lots, or just purchase the bigger lot and build at least one or two 750 sq. foot houses. The problem is the shared septic and lot size. Can his client build in the footprint? Murphy explains both properties are an eye sore so this would be an improvement. Septic needs replacement, one septic for two current homes which are teardowns. Chairman explains that without an application in front of the Board, without any circumstances or more information it is difficult to give an opinion.

## **ADJOURN:**

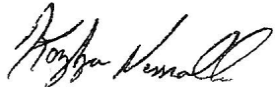
- M/Parcellin, S/Durgin. Unanimously voted (5-0-0) by voice vote to adjourn the meeting at 9:00pm.

## **DOCUMENTS:**

1. Agenda for 3/8/21
2. Application Packet – Petition #927
3. Application Packet – Petition #931
4. Meeting Minutes – 2/8/2021
5. Bill Schedules – Amory Engineers \$1,406.00
6. Invoice – Amory Engineers #15545A \$1,406.00
7. Talent Bank Form – Neil St. Croix
8. 3/9/2021 Board of Selectmen Public Hearing Notice

Respectfully submitted,

Date: 4/12/2021



Robert Gaynor, Chairman  
Kozhaya Nessralla, Vice Chairman  
Zoning Board of Appeals