



Halifax Zoning Board of Appeals

Meeting Minutes

Monday, February 8, 2021

The Halifax Zoning Board of Appeals held a public hearing on Monday, February 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 7:00pm and reprises the audience that this public hearing/meeting is being recorded. He also explains the procedure and the protocol at the public Zoom hearings.

Appointments

7:05pm – Hearing – Pet #931 – Robert D’Agostino, 596 Monponsett Street – Special Permit & Variance for single-family dwelling

Applicants Robert and Kathy D’Agostino and Engineer Joe Webby (Webby Engineering) are present.

The Chairman reads the Public Hearing Notice into record. Robert D’Agostino presents his proposed project. D’Agostino is proposing to raze and replace an existing commercial building with a single-family home. He explains that he has been trying to purchase this property for 13 years. Only up until three years ago was Ms. Joan Caddigan, current owner of property with existing building (theater), in a position to sell. Proposing to replace a 3,300 sq. foot existing building with a 1,680 sq. foot home in the footprint. Asking for variances: front setback used to be two (2) feet off the street, now it will be 23 feet, rear setback from 40 to 13 feet, side lot (if approved) wouldn’t need a 3 feet variance as it would be 123 feet from the lot line as they are combining the two lots. Going from 10,400 sq. foot lot and adding 17,000 sq. feet to the lot to make it 27,487 sq. feet total. D’Agostinos are trying to add a lot (#65) that D’Agostino already owns to make something out of the old theater. They have been approved by Conservation and Board of Health. Has agreement with Ms. Caddigan to purchase her property. Property has been cleaned up and landscaped as much as possible. D’Agostino sees this as a positive for the town and neighbors. Existing building was around 92 feet long which has been scaled down drastically. Caddigan has kept it up and paid the taxes. Neighbors have been supportive as they have been putting up with this property for years. Chairman reads Building Inspector’s denial letter (12/30/20) into record. D’Agostino confirms that the existing building foundation still stands but a portion of the existing building was razed December 2011. D’Agostino confirms he has been the owner of Lot #65 since December 2019. Joan Caddigan is the owner of the movie theater lot and D’Agostino is under agreement to purchase, subject to this approval.

D’Agostino confirms to Parcellin that the process to merge the two lots has begun as he has the septic design on Lot #65. Conservation is all one piece. Plans reflect the merging of two lots. Webby states he is prepared to combine two lots but the deed has to be conveyed from Caddigan to D’Agostino however they are ready to do this. D’Agostino confirms that only the side setback will be necessary once lots are combined. Chairman states that if ZBA grants the side setback variance from 30 to 3 feet and the lots are then combined, the applicant has a granted variance of 3 feet even though it isn’t needed. Parcellin states this is a moot point. Nessralla states that it would make more sense for D’Agostino to merge the lots first. Parcellin agrees. Discussion of granting a variance of side setback to three (3) feet. Parcellin states they can grant this if the Board makes a determination but wonders if they need to vary 167-8B (alteration). This is a commercial lot. There is a residential home on the right-hand side. The house will be within the existing foundation. Durgin thinks that if D’Agostino combines the two lots and places the majority of the home on Lot #65 there would be a decrease of required variances. D’Agostino states that it didn’t seem to work on that lot being parallel to the road. Durgin suggests spinning the proposed home which he believes would allow a better fit and setbacks would increase. There is further discussion of abandoned exposed foundation which could be an increase of non-conformity. Chairman states that the Board may need to discuss with Land Use Counsel as once variance is granted, the applicant will purchase the second lot for merging and the Board cannot take back this approved 3-foot variance. Chairman does not want to create more problems and D’Agostino is trying to fix a problem.

Chairman asks if there is an easement on the property for the boat ramp. D’Agostino responds no easement, it is privately owned. D’Agostino verified that it was 1968 that this existing building was cut from a small strip mall. Parcellin reads the definition of Abandonment from the Zoning Bylaws and states that it depends on what the non-conforming use was. Parcellin states that the question is: was owner Caddigan actively using the existing building and did that change over the last two years? Per the Bylaw, a residential structure is allowable in a commercial zone by special permit. Parcellin still believes applicant needs a variance for the 50% 167-8B which would make this decision a lot easier.

Joy agrees with Chairman that granting the 3-foot variance before the applicant purchases the property is giving the applicant the right to build without purchasing the other property. D'Agostino states there is a septic system on his lot (#65). When someone is putting a residential structure on commercial property the Board must determine if it meets the criteria for a variance:

1. detrimental to established character of the neighborhood?
2. does (foundation) derogate from the intent of the Bylaw (abandonment?) and
3. what is the hardship?

Borsari states that when he looked at the location, he thinks this project will fit in with the established character of the neighborhood and is an improvement. He adds that this will increase the value of the neighborhood. However, he references a prior project of roof restoration that came before the Board last year regarding height concerns. Borsari asks if the proposed plan for this home shows the same height as the existing building. Parcellin references Borsari's concern as 8G – vertical extension of a non-conforming building, pitch of the roof. It shouldn't expand the building horizontally and increase the floor space. Durgin responds last year's project was a restoration, this is a rebuild which is different. Borsari responds that he just wants to make sure the Board is being consistent. Parcellin states that D'Agostino could ask for a variance from the 50% rule and a variance from all the setbacks and his argument for hardship could be that he can't build because of topography and all the setbacks/size of lot. However, Parcellin goes on to say that an extension of a non-conforming use inside of the footprint opens up confusing pieces. Borsari states that in his opinion the Grandfather status would make everything okay. But if there is no grandfather for the entire foundation, there is an issue.

Parcellin states that from his perspective this project is an improvement, and he wants to find a solution. However, he adds that with the lots being merged the applicant needs a special permit to build a residential building in a commercial space, need variances from setbacks, there is a question to the non-conforming use as there's a 50% restoration they would need to apply for if they're increasing the non-conforming use. Parcellin adds that it might be easier if the applicant had both lots together and made their case at the same time. The total square feet of combined lots is 27,480 so Borsari states this is not a buildable lot and the only way this can happen is if the applicant is grandfathered in to the location or made smaller in that same location. Parcellin adds that the applicant can establish a hardship (lot size too small), as nothing can be unbuildable. Borsari doesn't think lot size can be taken into account for a hardship. Webby informs the Board that there is currently a cesspool to the northside of the theater. If Caddigan came in on her own and under Title 5 wanted to revitalize that, Webby would probably prepare some type of denitrification system and build the best type of system they could on the 10,000 sq. feet of lot she has. This is done all the time. Worst case scenario would be a tight tank. D'Agostino states that the foundation has never been left. The front of the building has been painted. The foundation is already in place, so D'Agostino is going to work inside of this foundation which makes more sense for the property. He adds that there's a sophisticated septic system designed for his boat ramp property (Lot #65) that was approved by the Board of Health. There is further discussion of a possible hardship. Durgin considers lot size as the hardship and thinks if D'Agostino moves the proposed building, they can decrease the amount of variance for setbacks if lots are combined. All taxes are up to date. If an owner is paying taxes, they obviously have a use, and this would be an argument for no abandonment which would create a hardship. Abandonment definition is discussed, and Board agrees is vague. Board discusses if there is a non-conforming use and the owner's intent of building. Parcellin reiterates that merging the lots would help a lot of the argument.

Chairman suggests contacting Town Counsel regarding granting a variance on side setback on separate lot before merging and alteration variance. Parcellin states they aren't increasing the non-conforming use, so he doesn't think they need the 3-foot variance as they are increasing the side setback. Borsari states that this all hinges on the grandfather status of existing building. If so, the applicant doesn't have an issue. Joy does not think the Board can approve something on a lot that is not owned by the applicant. D'Agostino reminds the Board they are and have been under agreement for two years with Caddigan, contingent on the Zoning variances, and has included this agreement in the application.

M/Parcellin, S/Durgin. Unanimously approved (5-0-0) by voice vote to reach out to Town Counsel for clarity on Petition #931 regarding non-conforming use, abandonment, if 50% valuation applies - will they need variance, will applicant need special permit for a residence in a commercial zone and is lot size a hardship.

M/Durgin, S/Joy. Unanimously approved (5-0-0) by voice vote to do an on-site inspection at 596 Monponsett Street Saturday, March 6, 2021 at 9am.

M/Parcellin, S/Durgin. Unanimously approved (5-0-0) by voice vote to continue Petition #931 to March 8, 2021.

The Board takes a five (5) minute break.

7:30pm – Hearing (continued) – Pet #927 – Matt Grosschedle, Outback Engineering, 0 Walnut St – Special Permit for Horse Barn
Matt Grosschedle (Outback Engineering) and Alan Dias (Vice Chairman – Board of Health) are present.

Grosschedle explains that he met with BOH regarding septic system. They can permit this as a shared system with two lots, provided they meet all requirements with Title 5 dealing with the legal operations and ownership of the system, financial agreements to maintain the system. They are in the process of doing this. Plans have been updated and these will get into the BOH this week. Grosschedle is looking to get approval from ZBA. Grosschedle explains they can still use the building without using the septic. Chairman states the building is before the Board as having bathrooms, laundry, etc. so doesn't know how it can be used without septic. Chairman refers to a letter from Land Use Counsel Attorney Amy Kwezell sent to Building Inspector and Town Administrator regarding Agricultural exemption. Grosschedle has not spoken with Building Inspector. Grosschedle explains there was a possibility of using the Agricultural exemption but decided to seek special permit through ZBA.

Dias states that BOH determined that the proposed use of the building...because it was connected to original property and there was enough capacity in the original septic system...the BOH would consider for them to utilize the shared system provisions in Title 5. To date, Dias hasn't seen anything on paper to show how this connection will be made. Some earlier plans from outside engineers shown to the BOH showed existing septic components that had not been installed. BOH wants to see new plans to show connection of new building to existing septic. BOH has not seen any plans for this yet. Dias adds it is problematic in his opinion to know where all the affluent is going to go from the building and suggests to Chairman that the ZBA wait until the BOH have an answer before moving forward with special permit.

Durgin would like the applicant to get the approval for septic from BOH before the ZBA votes. Grosschedle is hoping to have this completed before the next ZBA meeting. Parcellin doesn't believe the applicant can build the barn until septic is approved as they wouldn't be able to get a building permit. Confirmed by Dias. Parcellin is comfortable with the barn meeting the bylaws for a special permit as he knows the building of the barn won't be allowed if septic isn't approved. Board agrees that everything with this proposal for a Special Permit seems great other than the septic issue which the Board would like resolved first as the barn is presented with bathroom, laundry, etc. which requires septic. Grosschedle states the system is designed, the only change is the new pump chamber tying in with one of the existing pump chambers.

Grosschedle is comfortable with extending this Petition until Board of Health approves septic. Letter of Agreement for Extension of Special Permit will be sent by Grosschedle.

M/Joy, S/Nessralla. Unanimously approved (5-0-0) by voice vote to continue Petition #927 to March 8, 2021.

Meeting Minutes

M/Joy, S/Parcellin. Unanimously approved (5-0-0) by voice vote to accept Meeting Minutes for January 11, 2021 as presented.

M/Parcellin, S/Joy. Unanimously approved (5-0-0) by voice vote to accept Meeting Minutes for January 13, 2021 as presented.

Bills

Board accepts all bills.

- Plympton-Halifax Express Ad for Pet #931 = \$84.00
- Gillon Associates Invoice dated 1/16/21 for Traffic Study Peer Review for CC Estates = \$320.00
- Pitney-Bowes, Postage (Revolving Account) = \$300.00

M/Parcellin, S/Durgin. Unanimously approved (5-0-0) by voice vote to accept and pay all bills.

Correspondence

Board reviews all mail.

- 1/25/21 – Email from Planning Board – Scott Casagrande, 311-313 Plymouth Street – personal garage updated site plan
- 1/26/21 – Distribution Memo from Planning Board – Bud's Goods Marijuana Facility 111 River St. – Site Plan and Special Permit

Other Business

Board will review Talent Bank Form for Pamela Engstrom.

Board will turn in Conflict of Interest Form and Certificate to Town Clerk ASAP.

Board reviews Information Request Form

Adjourn:

M/Parcellin, S/Nessralla. Unanimously voted (5-0-0) by voice vote to adjourn the meeting at 8:55pm.

Documents:

1. Agenda for 2/8/21
2. Application Packet – Petition #931
3. Application Packet – Petition #927
4. Meeting Minutes - 1/11/2021 and 1/13/2021
5. Bill Schedules – Pet #931 PH Express Ad, Gillon Associates Traffic Study, Pitney Bowes postage
6. Invoices – PH Express Pet #931 Ad, Gillon Associates Traffic Study, Pitney Bowes postage
7. Talent Bank Form – Pamela Engstrom
8. ZBA proposed Information Request Form
9. 1/25/21 – Email from Planning Board – Scott Casagrande, 311-313 Plymouth Street – personal garage updated site plan
10. 1/26/21 – Distribution Memo from Planning Board – Bud’s Goods Marijuana Facility 111 River St. – Site Plan and Special Permit

Respectfully submitted,

Date: 3/8/2021



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