



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes

Monday, June 4, 2018

The Halifax Zoning Board of Appeals held a public hearing on Monday, June 4, 2018 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Robert Gaynor, Kozhaya Nessralla, Gerald Joy, Peter Parcellin and Daniel Borsari. Robert Durgin was 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, May 18, 2015:

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

Motion to accept the Meeting Minutes from Monday, May 7, 2018:

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

Correspondence:

Chairman Gaynor and the Board review and read into record all mail items.

- Letter from Brooks & DeRensis dated 5/7/2018 with an update on Land Court Civil Action No: 16MISC000681: Town of Halifax v. Halifax Zoning Board.
- Invitation from Old Colony Planning Council regarding the 51st Annual Meeting and Reception on Tuesday, June 5th.
- Letter from the Building Inspector/Zoning Enforcement Officer Rob Piccirilli dated 5/16/2018 to Lawrence & Joy Marble of 16 Cedar Street regarding the neglect of property deemed unsafe.
- Memo from the Planning Board dated 5/18/2018 informing the Zoning Board of a Form A approval for 179 Thompson Street with attached site plan.
- Memo from the Planning Board dated 5/18/2018 informing the Zoning Board of a Form A approval for 178 Franklin Street with attached site plan.
- Memo from the Planning Board dated 5/18/2018 regarding the Final Site Plan for Pope's Tavern.
- Memo from the Selectmen's Assistant dated 5/23/2018 informing the Zoning Board of the Reorganization of the Board of Selectmen.
- Memo from the Town Administrator, Charlie Seelig, dated 5/24/2018 asking if any Zoning Board members are interested in joining the Zoning By-Law Review Committee. Zoning Board Associate member Dan Borsari informs the Board that he has already turned in a written letter of interest to the Board of Selectmen to join. Peter Parcellin will also send a written letter of interest to join.
- Copy of a letter from NGM Insurance Company to Town of Halifax dated 5/29/2018 to inform the Zoning Board of Halifax Trails Bond Cancellation.
- Letter from Brooks & DeRensis dated 5/30/2018 informing the Zoning Board of the scheduled date for Oral Argument for Land Court Civil Action No: 17MISC000507: Gordon C. Andrews v. Members of the Halifax Zoning Board of Appeals and Robert Piccirilli.

Appointment:

7:10pm – Petition #793 – Thomas and Marianne Shirikjian, 73 Hemlock Lane – In-law Renewal

Present: Thomas Shirikjian, owner

Chairman Gaynor reads the Public Meeting Notice into record. The Board reviews and reads into record Mr. Shirikjian's Special Permit In-Law Renewal Form and Renewal Affidavit into record. Mr. Shirikjian confirms to the Board that there have been no changes made to the in-law and occupant to the In-law (Marianne's mother).

Motion to renew the special permit for Petition #793 for an In-law apartment as stated:

MOTION: Gerald Joy

SECOND: Kozhaya Nessralla AIF

Passes: 5-0-0

Appointment:

7:15pm – Petition #877 – Thao, Mai and Hiep Pham, 395 Plymouth Street – Special Permit Authorizing Existing Six-Apartment Use

Present: Attorney Lee Alfieri (representing Thao, Mai and Hiep Pham); Thao and Mai Pham (owners); Zoning Enforcement Officer/Building Inspector Rob Piccirilli; Chairman Gordon Andrews (Planning Board)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Alfieri presents the Petition. He notes that Hiep, Thao and Mai are all owners of the property. Mr. Alfieri submits a written presentation to each member of the Board before verbally presenting. He begins by giving a timeline of the property at 395 Plymouth Street, Halifax.

The Phams originally acquired the property in 2013 from a trust established by longtime owners Richard and Barbara Harrison. The property consists of two separate parcels: 73 Lot 1B (395 Plymouth Street, site of the building at issue in the application) and adjoining estate lot 73-15 and 73-15A (behind 1B). The estate lot parcel contains 50 feet of independent frontage on Plymouth Street and is more than 120,000 square feet of land. Lot 1B contains, in excess, 150 feet of frontage and 29,300 square feet of land. The Harrisons acquired Lot 1B in 1965. In 1968 they applied for and were granted a special permit to convert the then-existing building on that property from a two-family, one-office use to a four-family use. In January 1969 a special permit variance was recorded with no particular type of relief specified on the notice. The Harrisons added the back lot (estate lot) in 1972. The Harrisons passed away in 2009. The trustees sold the property to the Phams at public auction on November 15, 2013. The public auction advertisements indicated that the primary building was a six-family structure. Mr. Pham inspected the property prior to the auction and it was a six-family structure. (Floor plans are included in the application showing the condition of the property in 2013.) By physical observation (age of the cabinets and bathroom) Mr. Alfieri and the Phams estimated the property to have been configured as a six-family for a substantial period of time and gives an educated guess of 20 years. After the Phams purchased the property in 2013, the septic system failed in 2016 and they were required to install a new one. After investigation of the property, the Board of Health determined that the septic system would have to provide sufficient capacity to service 16 bedrooms. The Phams installed this \$79,000 septic system in 2016/2017.

On February 22, 2018 the Building Inspector issued the Phams a cease and desist order asserting that the six-family use of the property exceeded the scope of the special permit issued in 1968 which authorized only four units. Mr. Alfieri states that this is correct, however, the Phams purchased the property in good faith that it was a six-family and by all appearances had been a six-family for many years prior to 2013. The existing configuration of the building is: two apartments facing the building from Plymouth Street, two apartments on the left-hand side of the building each containing two bedrooms, two apartments in the middle of the building each containing two bedrooms, an apartment attached to the rear of the building that has one bedroom and a large, single-family home at the far end of the property that has not been used since 2013 as it needs work but could accommodate five bedrooms. The Harrisons also constructed a pool house and swimming pool in the back of Lot 1B. The Harrisons converted the pool house into a two-bedroom apartment where they lived and rented out the remainder of the house until they passed.

Mr. Alfieri explains that he and the Phams are asking the Board for a special permit to authorize and legitimize the existing six-family use of the property. Mr. Alfieri points out that contrary to what the Public Hearing Notice states, Lot 1B is not in the residential zone, it is business zoned. There is no significant difference, however, as both zones would require a special permit for multi-family use. There is a large paved parking area between Plymouth Street and the primary structure as it supplies parking space in excess required to support six-family use; twice as many as the By-law provides. The Phams are asking for the special permit to prevent having to convert the building back to a four-family for cost reasons. If the Phams were forced to convert, Mr. Alfieri thinks there would probably be the same number of bedrooms that currently exist. He sums up stating that present parking and septic have supported a six-family use for some time and, thus, is no detriment to the existing or future character of the neighborhood.

Due to Mr. Alfieri's interpretation of the Zoning By-Law regarding multi-family use requiring a 40,000-square foot lot, the Phams made changes to their boundary lines to conform. The boundary lines between the front multi-family lot and the rear estate lot were reconfigured to increase the lot size of the front from 29,300 square feet to 43,100 square feet, thus making Lot 1B conforming. This has not adversely affected the validity of the estate lot as it was 120,000 square feet and only 80,000 square feet is required for an estate lot. Mr. Alfieri was advised by the fire department that if this property is recognized as a six-family under the state fire code, the Phams are required to install a sprinkler system. Mr. Alfieri and the Phams would be willing to add a condition to the special permit to install a sprinkler system within one year or convert the property back to a four-family. The Phams are waiting to acquire the funds to do a major renovation to the large building that was once a pool house which has been vacant since 2013. One of the five rented apartments on the backside of the property is now vacant and the Phams are waiting on the Board's decision before finding another tenant.

Mr. Gaynor asks the Building Inspector, Mr. Piccirilli, his thoughts. Mr. Piccirilli agrees with the update of events given by Mr. Alfieri. Mr. Piccirilli states that the Pham Family are in the process of acquiring an Approval Not Required (ANR) from the Planning Board to increase the lot size, however this has not been approved yet due to the encroachment of a building slightly over the lot line. The Board reviews the plan with Mr. Piccirilli who points out the boundary lines. Mr. Piccirilli explains that there were some issues with the ANR presented to the Planning Board; It didn't meet all of the requirements for 235-6F. In Mr. Piccirilli's opinion, if the ANR is approved there needs to be an easement shown. Mr. Alfieri responds that the technical problem is that you cannot grant yourself an easement. Mr. Alfieri also states that there's nothing in the Board of Health regulations or the State Sanitary Code that prevents you from having a septic system on one lot servicing another lot. Mr. Alfieri is willing to continue this hearing until the Planning Board decides on the encroachment issue.

Mr. Piccirilli points out the building on the property that was condemned, because of its extreme disrepair, in November to which Mr. Alfieri wasn't aware but is not surprised. Mr. Nessralla inquires about the lot, with the Pham's septic on it, being sold to someone else. Mr. Alfieri doesn't know the Phams' long-term plans. Mr. Nessralla points out that if the lot were sold to someone else the Phams would need to move the septic system. Mr. Alfieri answers that either the dilapidated building would be raised, in which case the lot lines would be readjusted and there would be no problem, or the Phams would reserve an easement if the building is determined salvageable, as it is separate ownership. Mr. Piccirilli confirms that the building is still standing but is condemned. Mr. Piccirilli's understanding that the reconfiguration of the lot, as it stands, was to maintain the 50-foot setback. Mr. Alfieri confirms this to be correct. Mr. Piccirilli feels a better reconfiguration of the lot would be to shoot the lines straight back to get everything on to the same lot, bring it back to commercial-residential and therefore become a better-shaped lot. Mr. Alfieri agrees and explains that he doesn't know the reason for the location of the septic system as he wasn't representing the Phams at that time.

The Board discusses the encroachment shown on the plans submitted for this Petition. Mr. Alfieri explains that there was no encroachment shown on any previous plans on record but he has no reason to question this survey and points out that this is not a Zoning issue. Mr. Alfieri feels the only real consideration in a Form A plan is to determine if the proposed parcels have the minimum frontage required under the Zoning By-law and that that frontage is real and not illusionary (if the frontage exists on the plan but does not exist on the ground). Mr. Alfieri is confident that Town Counsel will advise the Planning Board of the same and that this Form A will be approved by the Planning Board.

Mr. Piccirilli confirms to Mr. Alfieri and the Board that the pool house has a building permit for a pool structure only. Mr. Gaynor asks Mr. Piccirilli about the sprinkler system. Mr. Piccirilli answers that as the special permit being requested is for a six-family, it would require an update of life-safety issues as far as building and fire codes. He has been in touch with the Pham's architect who is willing to work with the Building Department when it's necessary.

Mr. Gaynor asks for input from the Planning Board. Chairman Andrews and the Planning Board had a couple of questions. Mr. Andrews states that the first question had to do with what was previously discussed about why the septic didn't end up on the same lot. Mr. Alfieri answers that it was due to the setback of 50 feet for the retreat lot. Mr. Andrews understands and asks a second question: Has there been any thought of eliminating the encroachment? Mr. Alfieri answers that there is no issue with the encroachment as it has existed openly, notoriously and continuously for 20 years due to the law of adverse possession. Personally, Mr. Andrews is concerned about the square footage for each apartment as he feels the By-law states that 40,000 square feet is required for each family and there is only 29,000 square feet being pushed to 40,000 square feet for this six-apartment multi-family. Mr. Alfieri disagrees and doesn't interpret the By-law that way. Mr. Piccirilli responds that a multi-family dwelling can go on 40,000 square feet. When the By-law was first enacted in 1966 a multi-family dwelling could be built on 15,000 square feet in a business zone, which is why the first special permit was approved at 29,000 square feet. That By-law changed in 1967 stating any structure built on a lot would have to be the same as any other lot in town for a multi-family dwelling. Mr. Piccirilli interprets this By-law as meaning 40,000 square feet for a multi-family dwelling, not a multi-family development. Mr. Alfieri adds that this is a special case regarding an existing property, not a new structure being built. Mr. Gaynor responds that this Petition should be treated as such, however, since this is a new application. Mr. Andrews asks Mr. Piccirilli if the Zoning Board would grant a special permit to an applicant for a multi-family dwelling on 40,000 square feet. Mr. Piccirilli responds that he would advise the Zoning Board to discuss with Town Counsel to make that determination on their own but in his opinion, based on his research, he interprets today's By-law as a multi-family dwelling can exist on 40,000 square feet. Mr. Andrews feels this would change the outlook of the town.

Mr. Borsari asks Mr. Alfieri if the Phams got a certificate of compliance from the town at the time of the purchase and feels, if not, this would be their due diligence. Mr. Alfieri answers no, they did not as their lawyer at the time didn't pick up on that point, which is not unusual, however it was assessed at the time of purchase as six apartments. Mr. Alfieri states that perhaps his clients and their attorney could have been more diligent and discovered this error at the time of purchase but points out that the town did not catch the six illegal apartments before the sale, either. Mr. Gaynor feels the Board would be legitimizing illegal apartments if they made a decision now and asks Mr. Andrews the Planning Board's thoughts on the application submitted. Mr. Andrews answers that the Planning Board just talked about the ANR plan that came before them and how it was strange that it didn't include the septic system but other than that there is very little reason the Planning Board can or will turn the ANR down.

Mr. Parcellin feels that the Zoning Board really can't do much until the Planning Board makes a decision and until Town Counsel advises on the concern regarding a multi-family on a 43,000-square foot lot. Mr. Gaynor explains that the two choices are to continue or withdraw without prejudice until the application is complete. Mr. Parcellin asks Mr. Piccirilli if the Phams are in compliance with the current special permit. Mr. Piccirilli answers that the current special permit really has no language other than that it's four dwellings. Mr. Alfieri answers that there are only four dwellings being occupied. The others have vacated for no real reason and there has been no effort to fill those since.

Mr. Gaynor asks the pleasure of the Board. Mr. Alfieri will give the Board as much time as they would like. The Board decides on a continuance until Mr. Alfieri and his clients bring a plan back before the Board with something more acceptable for the Board to vote on whether it be that the building is raised and the lot lines are changed or something else. Mr. Gaynor would like to find out Town Counsel's interpretation and opinion on the multi-family issue. Mr. Alfieri submits a written, signed statement of his client's request for a 30-day continuance with an inclusion of an extension to the 90-day period of final action by the Zoning Board to the Zoning Board.

Motion to continue Petition #877 until July 9, 2018 and further clarification from Town Counsel on required acreage for multi-family dwellings.

MOTION: Peter Parcellin
SECOND: Kozhaya Nessralla AIF
Passes: 5-0-0

Bills:

The Board approves one bill: Plymouth-Halifax Express advertisement for Petition #877 totaling \$84.00.

Adjourn:

Motion to adjourn meeting:

MOTION: Kozhaya Nessralla
SECOND: Peter Parcellin AIF
Passes: 5-0-0

It was unanimously voted to adjourn the meeting at 8:17 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Gaynor". The signature is written in a cursive, flowing style.

Robert Gaynor - **Chairman, Zoning Board of Appeals**