



MEETING MINUTES

Wednesday, February 26, 2020 – 1st Floor Conference Room

Call to Order 7:10 pm

In Attendance:

DAVID HATFIELD, CHAIRMAN
AMI WALL, CLERK
JAMES H. MCBAIN
CHARLES L. TARBELL, JR.
JOSEPH PRIDE
THOMAS J. LUCEY, ALTERNATE
MICHAEL L. FEELEY, ALTERNATE
GREGORY W. MCINTOSH, ALTERNATE

Ami Wall read the Legal Notice.

REQUESTS FOR CONTINUANCES:

(19-65, 19-66, 19-67) – 119, 127, 135 NAHANT STREET – NAHANT STREET DEVELOPMENT, LLC.

Request from Attorney Brian McGrail to continue the hearing until March 25, 2020.

VOTE: Chip moved to continue and Ami seconded the motion, the Board unanimously approved the request.

(19-68, 19-69, 19-70) - o CHERRY LANE/o GREENWOOD STREET – NGHI LUU

Request from Nghi Luu to continue the hearing until March 11, 2020. Mr. Luu also made a request to extend the time to render a decision to March 25, 2020.

VOTE: Chip moved to continue and Ami seconded the motion, the Board unanimously approved the requests.



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CONTINUED HEARING:

(20-28) – 343 ALBION STREET – DAVID A. KELLY AND MARY A. KELLY

Attendees for the Petitioner: Attorney Kimberly Bielan, David and Mary Kelly

Purpose: Party aggrieved; for a review of a decision made by the Building Inspector.

Discussion: Board member Gregory McIntosh recused himself.

Attorney Bielan represents Kelly's, and explained that they would like to change the use of this property. Attorney Bielan gave the Board a history of the property. It used to be a gasoline/service station. They argue that the service station was an accessory use to selling gasoline. Over the years there has been an abundance of cars and equipment stored on the property which is more in line with an auto repair shop, Mr. Kelly had complained to the Zoning Enforcement Officer several times over the years. On November 13, 2019 Mr. Kelly appealed to the Building Inspector to enforce the use of the property and Mr. Roberto refused in a letter to Mr. Kelly dated November 25, 2019. Attorney Bielan argues that the principal use was gasoline sales with minor repairs and over the years it has turned into an auto repair shop. There has been outdoor storage of trucks and cars. The use has changed and the sale of gasoline has been abandoned. Jim asked Attorney Bielan where the proof that auto repair was not the principal use. Attorney Bielan argued that the principal use was the sale of gasoline and the auto repair was minor and just an accessory use. Jim said back in the 1920's there was no real definition in the bylaw. Chip said there is no real proof that auto repair was the accessory use to gasoline sales. Attorney Bielan argued the neighbors and Mr. Kelly has testified about their observations, Chip said there is no proof. Attorney Bielan said there are pictures and documents to show the use now. Attorney Bielan said that auto repair has taken over the site.

Mr. Kelly pointed to the Boards decision of 1993. Auto repair is more restrictive than gasoline sales and it was in the decision that the use was gasoline/auto repair and there has been no gasoline sales since 2011. Mr. Kelly's brother-in-law owned the gasoline station and still lives across the street. The use has changed. Dave said in 1993 it was determined that it was a pre-existing non-conforming use as a gasoline/service station. Tom grew up in the neighborhood and his father brought his car there in the 1970's to be repaired. Chip said he does not think the service has ever been abandoned. Mr. Kelly said "service station" for minor repairs has been abandoned. Dave said that is what the Board has to contemplate. Joe asked why then when they stopped selling gasoline Mr. Kelly did not ask for this then, Mr. Kelly said he thinks in 2006 he asked Mr. Roberto to look into it and he did not. Attorney Bielan said

the auto repair has taken over the property which has changed the use. Michael asked if there is long term storage on the property, Mr. Kelly said U-Haul rental trucks have been stored there.

Plans/Documents Presented:

- Exhibits 1 through 12 from Mr. Kelly's letter to the Zoning Enforcement Officer dated November 13, 2019.
- Letter from Attorney Brian McGrail to the Chairman and Members of the Board of Appeals, dated February 21, 2020.

Public Testimony: The owner of the property Acorn Spruce Properties, LLC (Ken Parlee) hired Attorney McGrail to represent him against the Kelly's.

Attorney McGrail said the 1993 decision of the ZBA is a very important component and also the definition today is very relevant. Mr. Kelly mentioned that the auto repair bays were once leased out. Attorney McGrail said there has been two separate uses on the property, who is to say it was more gasoline sales vs. auto repair. There is no evidence that it was just a "service" station as stated in the letter dated 11/13/2019 to the Enforcement Officer to enforce an abandonment. The petitioner is asking to put the owner of the property out of business. Attorney McGrail is requesting that this Board uphold the decision of the Building Inspector and the previous decision of 1993. Attorney McGrail presented evidence that the Kelly's are not abutters within 300 feet and in our bylaw it states that they must be. Attorney McGrail pointed out to the Board that all they are looking at is the appeal of Mr. Kelly to the Building Inspector, not previous issues. The burden of proof rests on the petitioners. Attorney McGrail discussed the merits of the case and all four of Mr. Kelly's correspondence. The petitioners said this is a "new" use. Brian pointed out the activity that goes on there today falls under the definition of the bylaw. Jack referenced in his letter back to Mr. Kelly that the word "or" is disjunctive. The failure to pump gasoline has no bearing on just doing auto repair – you can do either/or. Attorney McGrail went through all the misstatements he felt the petitioner made in his letters to the Board and the Building Inspector. McGrail pointed out that Attorney Bielan said you cannot get rid of one of the uses, Attorney McGrail disagreed. Also, by the elimination of gasoline brings less cars to the neighborhood. Attorney McGrail pointed out the Powers case in Brockton which is the exact situation they are in. You can eliminate a use on the property.

Attorney Bielan disagreed with Attorney McGrail that this Board should only look at the letter Mr. Kelly submitted to the Building Inspector she pointed out that this Board can look at other evidence. The current definition in the bylaw is not relevant to what is going on now. Their argument is that auto service has expanded on the site. Ms. Bielan would encourage the Board to look at the Brockton case because they are saying that the use has changed. She also said the burden is on the person using the pre-existing non-conforming use – the property owner.

Brian said the burden is totally on the petitioner.

Chip feels like he wants to go back to the Brockton decision and have more time to read all the evidence. Tom feels the same way – he needs more time to read all the material in the case.

VOTE: Chip made a motion to continue to March 11th. There will be no more public testimony – closed. All were in favor of continuing to March 11, 2019.

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NEW HEARING:

(20-31) 73 VALLEY STREET – JANET A. ENO

Attendees for the Petitioner: Attorney McGrail, Janet Eno and Peter Sandorse

Purpose: Determination and/or Finding to construct an addition to convert into a two family dwelling.

Discussions: Attorney McGrail submitted an existing and proposed plot plan. This property is in the General Residential District (two family dwellings are allowed). Ms. Eno would like to add on an addition on the back of the house that will comply with the setbacks and it will become a two family house. Peter Sandorse presented elevation plans on what the addition would look like on the house. It will be a one story apartment. The non-conforming garage will be removed. This house was at one time a two family dwelling. Chip said that the site plan does not show parking. Ms. Eno said there are two driveways and right now they are parking 4 cars off the street. Brian said Paul Finocchio will put parking on the plan. Brian reviewed the existing non-conformities with the Board.

Plans/Documents Presented:

- Existing Plot Plan, dated 9/24/18, prepared by PJF Associates.
- Proposed Plot Plan, dated 9/24/19, prepared by PJF Associates.
- Elevation Plans, dated 8-7-19, prepared by Phoenix Architects

Public Testimony: None

VOTE: Chip made a motion based on the facts presented tonight and from the plans by PJF Associates dated 9/24/19 and the plans by Phoenix Architects dated 8-7-19, they move to Find that it is not more detrimental and it has been made better based on what was presented. There is no intensification and not more detrimental to the public. The condition is that the site plan must be updated to show the parking.

All were in favor – voting members – Dave, Chip, Jim, Ami, Joe

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OTHER MATTERS:

642 MAIN STREET - SIGNAGE

The new tenant in the Lawton building (a barber) installed signage that was not approved by this Board. He did not get a building permit. He did not get permission from his landlord to put the signage up. Chip suggested that the owner of the building be notified and he can choose whether to come to this Board himself or send his tenant.

The Board agreed to continue this matter to March 11, 2020, Attorney McGrail said he will get the tenant or the property to come in.

CLERKS REPORT

4 Wakefield Ave - Peter Sandorse and Jim McBain reviewed the lighting lanterns for 4 Wakefield Ave. The Board approved The E-BBD Series for bollard lighting, SKU E-BBD02A-40B8RK, Neutral White (4000K) and exterior lighting Model Z575-05, post mount, 24" H, 8.5" W, Bulb Type Candelabra, Finish Matte Black (05).

Jim updated the Board on the following projects -

- 178 Albion Street – the Harvard Mills project – additional vents and size changed on the construction set, they need to come back if they want to keep the change or change the plans.
- 69 Foundry Street – the mock-up for roof needs to be done.
- 404 Lowell Street – plans are in the building department, Jim has reviewed the plans and they look good except for the plan with the landscape drawings – incorrect schedule on the plans.

Wednesday, February 12, 2020 – 1st Floor Conference Room

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APPROVE MINUTES

Chip moved to approve Minutes of February 12, 2020, Ami seconded the motion it was a unanimous vote to approve.

The hearing adjourned at 9:10 pm

