

Town of Norfolk
Zoning Board of Appeals
One Liberty Lane
Norfolk, MA 02056

December 6, 2017

Zoning Board Members	Others
Michael Kulesza –Chairman ----- Present	Amy Brady – Administrative Asst. - Present
Robert Luciano –Vice Chairman --- Present	
Christopher Wider – Clerk ----- Present	
Joseph Sebastiano –Full Member --- Present	
Donald Hanssen – Full Member ---- Present	
Devin Howe - Associate Member --- Present	

The duly posted meeting of the Zoning Board of Appeals convened at 7:00 P.M. in meeting room 124 of the Norfolk Town Hall. Mr. Kulesza announced that this meeting was being audio and video recorded.

APPOINTMENT:

Village at Norfolk – Atty. Daniel Hill, Hill Law, reviewed steps taken to finalize the decision since the close of the hearing. Regarding Stormwater, Section B.8. of the decision, Atty. Hill stated that he had spoken with peer review engineer Bill McGrath, and would expect there to be a final, post-permit review of the plans, and he would include this condition in the decision. Atty. Christopher Agostino stated that this is a fully-engineered set of plans, and that the final submittal would be reviewed to ensure consistency with plan submitted to date, but would not be a design peer review; Atty. Agostino stated there is already language in the decision regarding this, and Section B.8. is not necessary. Atty. Agostino also stated that the reference to the Stormwater Management Regulations is unnecessary because there are not wetlands on the property. It was agreed to slightly modify the last line of B.8.

A series of other changes/edits were reviewed and agreed upon. Section F.4. of the decision states that 10’ between building is adequate, as long as there are no obstructions, such as decks, balconies, patios. Atty. Hill stated that the plan as approved shows bulkheads and other structures within 10’, and the 10’ separation relates only to the buildings, not the appurtenances; Atty. Agostino stated that the Fire Chief has seen these plans. Discussion ensued and agreement was reached as to wording. Another series of changes/edits were reviewed and agreed upon.

Mr. Wider made a motion to accept the decision as discussed; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

PUBLIC HEARINGS:

144 Seekonk Street – Appeal – Present were Bob Bullock, Town of Norfolk Building Inspector/Zoning Enforcement Officer; Ted O’Harte, applicant; Steve O’Connell, Andrews Survey & Engineering; Rob Knapik, attorney for the applicant

Atty. Knapik began by referring to his letter to the Board, dated December 5, 2017, stating the applicant’s belief that he has not violated the bylaw cited in the Building Inspector’s letter (D.1.a.1.), and the Building Inspector has not met the burden of proof that he has. In response, Mr. Bullock submitted pictures taken the day of his inspection of the property.

Mr. Wider responded that it is Mr. Bullock’s opinion that D.1.a.1. was violated, and the Board has hired a consultant, at the applicant’s expense, to review the plans to ascertain the extent of work performed, and

will not be commenting until that review is received. Mr. Wider invited the applicant to show the most recently submitted plans, indicating work that has been done on the property.

Mr. Kulesza stated that Norfolk's Town Counsel is reviewing Atty. Knapik's letter of 12/5/17, and opened the meeting to public comment.

Monica Cullen, 150 Seekonk Street, stated her belief that the evidence lies in changes observed during the sitewalk in March 28, 2017.

Atty. Hill asked if satellite images could be provided for prior years; Mr. O'Connell referred him to Google Earth. Mr. Howe asked about contours on the plans, and Mr. O'Connell detailed the various sources; Atty. Hill asked that these be detailed on the plans.

Mr. Wider made a motion to continue the hearing to January 3, 2017, at 7:30 P.M. at King Philip Middle School auditorium; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

43 Rockwood Rd – Appeal (cont'd) – Present were Bob Bullock, Town of Norfolk Building Inspector/Zoning Enforcement Officer; Bruce & Marie Simpson, appellants; Philip Macchi, attorney for appellants; Thomas Nannicelli, attorney for property owner

Plans and documents presented were a letter dated August 17, 2017, from appellants to Mr. Bullock; letter dated September 6, 2017, from Mr. Bullock to appellants; Memo from Atty. Macchi, dated _____ to _____

Mr. Bullock began by giving an overview of the history of the property, which he described as a dilapidated house with an accessory building that once was run as a restaurant, and in 1972 was granted a Special Permit (SP) to be changed to a less nonconforming use as an office; the house itself was recently demolished. Mr. Bullock's opinion is that as long as the accessory building has continued in use as an office, without being vacant for more than 2 years, it would be grandfathered under that Special Permit.

Mr. Sebastiano asked if the Special Permit ran with the property or the owner, and Mr. Bullock responded that he believed it ran with the property. Mr. Bullock added that he had run his decision by Town Counsel, who he stated concurs with the decision.

Atty. Macchi passed out copies of his memorandum, and stated that he has already distributed to the Atty. Nannicelli; also entered into the record were two letters from abutters. Atty. Macchi stated that he agreed with the facts as presented by Mr. Bullock, but opinion diverges on what has transpired since 1972. First, the appellants do not believe the property has continuously operated as an office. Atty. Macchi stated that in 2011 a Special Permit from the Norfolk Zoning Board of Appeals (ZBA) was applied for. The ZBA forwarded a memo to Town Counsel at that time, which stated that both the house and the accessory building had been vacant for a period of 6-8 years. Atty. Macchi referred to case law from 1987, reaffirmed in 1997 and as recently as 2013, which holds that a property need not be vacant, but simply not used in its nonconforming capacity for a period of 2 years, in order for the Special Permit to lapse. Atty. Macchi stated his opinion that the question is whether this accessory building has ever not been used as an office for a period of 2 years, since the time that the Special Permit was granted in 1972. Atty. Macchi stated that the 2011 Special Permit Application was withdrawn, but the building did begin use as an office. It is the appellants' opinion that this was an illegal use, although at the time, they thought it was allowed under the Norfolk Bylaw which allows for a home occupation; if it were a home occupation, this would be an allowed use, and not a continuing nonconforming use under the 1972 Special Permit. In short, they believe that prior to 2011, there was a long period of no nonconforming use, and since then, it has been used either illegally, or as a conforming use; there is no issue if it is sold and used for a home use business, but it should not be marketed as a stand-alone commercial use building. Atty. Macchi turned it

over to Mr. Simpson, who stated that the Special Permit does not go with the property, it goes with the applicant; in this case, the applicant has not occupied the premises for 25 years.

Mr. Sebastiano asked about documentation on the history of use: When did the Prudential Realty officially cease, and when did the new business show up. Mr. Bullock stated that he has permits from signs, and it is his understanding that unless the lights go out and water is shut off, it is still operating; the house was abandoned. Mr. Sebastiano asked about the issue of a Special Permit staying with the applicant or with the property, and Mr. Bullock responded that he would need to go to Town Counsel. In response to a question from Mr. Luciano, Mr. Bullock referred to a plan submitted with the application (engineer information not visible on the plan,) and pointed out the 2 buildings that had been demolished (the house recently, and a garage previously,) and the accessory building still standing.

Atty. Macchi stated that the onus of proving continuous use is on the applicant, as Mr. Bullock suggested. Also, the lights and water on shows that the property was not abandoned, but does not prove that it was in use as an office.

Mr. Wider stated that he was aware of the business a Mr. Boomer ran, and then Prudential Realty, which a Mr. Cahalane ran; he recalled that Prudential Realty was run until the late 90's or early 2000's when Mr. Cahalane left; the next operation Mr. Wider recalled was an asphalt seal coating company and an arborist. At some point the property was sold by Mr. Boomer to Kevin O'Loughlin; Mr. Wider referred to the Norfolk Bylaw G.4. which states "Any use permitted by Special Permit that is discontinued for a period of one year or more shall cause the Special Permit to lapse." Mr. Wider stated his opinion that when Mr. Cahalane left, and the office ceased to operate for a period of more than one year, the Special Permit lapsed, and would have had to have been reapplied for; the business later run out of that building were probably illegal as the home was unoccupied, and there was no special permit attached to the building. If someone chose to build a house there, and apply for a new Special Permit to use the accessory building as a business, which may or may not be allowed, based on the business and current zoning bylaws.

Atty. Nannicelli, representing the applicant, James Lorusso of LOBO Realty Trust, stated that the property was sold by Mr. Boomer in June of 2007, to Kevin O'Loughlin, who then sold it in August, 2007, to Mr. Lorusso of LOBO Realty Trust. At that time, Mr. Lorusso made repairs to the building and occupied it himself as an office in which to do business for the properties he was leasing in Wrentham. In 2011, he rented it to the asphalt and tree service companies, who moved out in May or June of 2016. Atty. Nannicelli stated that the property has not been vacant for 2 years, it's only been vacant for 1-1/2 years. Although Mr. Lorusso is marketing it, Atty. Nannicelli stated that he is not marketing it as commercial property, but as a nonconforming use office use. Atty. Nannicelli stated that Mr. Lorusso has been approached numerous times by people who want to open various businesses there, but has explained that it can only be used as an office use.

Atty. Nannicelli said that this property has been used in a nonconforming capacity since 1953, referring to a plan submitted with the application that shows a "store," and that the only change has been the change to office use by Special Permit in 1972. Mr. Wider reiterated Section G.4., which states one year, rather than two years, of inactivity before a Special Permit lapses. Mr. Nannicelli argued that if the Special Permit lapses, the property simply returns to its original, 1953 non-conformity. Some discussion ensued, and Mr. Kulesza opened the hearing to public comment.

Mr. Anderson of Rockwood Road discussed his recollection of the series of owners and uses, and related to his similar experience in another town. Nina O'Brien, 36 Boardman Street, direct abutter to 43 Rockwood Road, stated that she has sent two Certified letters and emailed Mr. Lorusso after attending a Historical Commission meeting. Ms. O'Brien questioned what the owner's plans are for the property, and stated that she was told by the Historical Commission, that if a new structure is built on that parcel, it could only be a single family home. Mr. Nannicelli responded that he understands his client has 2 years to rebuild upon the footprint of the recently demolished home, but whether he intends to do so is

uncertain, but he is trying to lease the building for office use. In response to a question from Mr. Luciano, Atty. Nanicelli indicated that if the building were used as an accessory use to the house, then the house would have to be there, but they were considering it a nonconforming use on its own. Mr. Wider asked for clarification on that term, stating that this is a residential area, and the building was one nonconforming use, changed to another nonconforming use while the house was there, and that only a single family house can be built on the footprint of that now-demolished house. Discussion ensued again regarding the original status of non-conformity before the SP of 1972. Mr. Bullock referred to F.3.b. Cessation of Nonconforming Uses, which states "Any non-agricultural NONCONFORMING USE that has been discontinued for two years may not be renewed."

Marie Simpson, appellant, stated that in 2011, noticing activity at the property in question, she asked Mr. Bullock about it, and documented the information she received. Chris DelGrosso, owner of the asphalt and tree service companies moved in, in 2011. In March of 2014, she spoke with Mr. DelGrosso as he was moving office furniture into the parking lot; Mr. DelGrosso informed her that Mr. Lorusso wanted to use the building for himself, indicating that the tree and asphalt office was no longer operating there. Ms. Simpson stated that the building remained vacant from that time forward. Ms. Simpson also stated that the ZBA file for the SP granted in 1972 also contained a copy of the 1968 bylaws with stated that you could have a real estate office as a home occupation; in addition, the SP stated that "since the new use is allowable by law." Ms. Simpson stated that once you have a conforming use, you cannot change it back to a nonconforming use (F.2.b.). Ms. Simpson also stated that used as an ancillary real estate office with owners in residence at the home is an allowed use, but the use since 2011 as a general office building with no one living in the residence is not allowed, and would require a Use Variance, which is not allowed in Norfolk.

Atty. Macchi summed up his understanding of 3 questions to be reviewed: 1) was this property's use made conforming in 1972? 2) if not made conforming in 1972, then has nonconformity been discontinued for two years, and 3) if not made conforming in 1972, has the SP lapsed for one year?

More discussion ensued with relation to interpretation of various bylaws. Mr. Kulesza requested that Mr. Lorusso submit proof of continued use in the building. After discussion ensued regarding upcoming schedules of ZBA hearings, and calendars of the key players, as motion was made to continue the hearing.

Mr. Wider made a motion to continue the hearing to February 7, 2018 at 7:00 P.M.; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

13 Shire Drive – Special Permit – Present were Dan Campbell, Level Design Group

Plans presented were entitled "As-built site plan, #15 Shirelane, Shire Industrial Park, Norfolk, MA, for CEI Boston," dated August 28, 2007, prepared by Sugrue & Assoc., Inc.

Mr. Wider read the public notice into the record. The applicant is seeking a Special Permit (SP) in accordance with MGL 40A s.9 as amended, and Section J.7.a.2.B of the Norfolk Zoning Bylaws, to allow outdoor storage of more than 3 (three) commercial vehicles, limited to the rear yard. Mr. Kulesza recognized Mr. Campbell, who gave an overview of the project. Mr. Campbell stated that his client, Trident Environmental Group, LLC (Trident) has entered into a Purchase & Sale Agreement with the previous owner of the property, CEI Boston, Inc., who had been previously granted a SP for this purpose .

Mr. Kulesza opened the meeting to questions from the Board. In response to a question from Mr. Hanssen about trucks, Mr. Campbell responded that as an environmental company, Trident is required to keep their trucks in clean condition, in contrast to the previous owner, who was a concrete company. Mr. Hanssen asked if this was a use permit, in which case a new SP may not be required, but Mr. Campbell responded that he had spoken to the Bob Bullock, Building Inspector/Zoning Enforcement Officer, and out of an abundance of caution, would like to obtain a new SP, in order to avoid any potential future legal

problems. Mr. Wider asked about lighting, curbing, fencing, noise, etc., and Mr. Campbell that everything is essentially the same style of use; some minor repairs will be made. There were no abutters or other members of the public present with questions.

Mr. Wider made a motion to close the hearing for 13 Shire Drive; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.

Mr. Kulesza stated that the case would be deliberated immediately.

Findings of Fact:

- Trident Environmental wishes to purchase the property from CEI Boston
- Applicant plans to make repairs to curbing and fencing on the property, no changes to lighting
- Similar vehicles will be used and stored on the property
- Similar or lower noise level
- Notice of hearing was sent to all town departments; Conservation Commission responded “no concerns,” no other departments responded
- Special Permit is allowable for this purpose in this district
- No residents or businesses objected to the Special Permit

Mr. Kulesza reviewed Appendix B, Special Permit Criteria and Worksheet, a copy of which will be attached to the Decision. Conditions of the special permit will be consistent with those of the previous Special Permit issued for this property.

Mr. Wider made a motion to grant the Special Permit for Trident Environmental, LLC, in accordance with MGL 40A s.9 as amended, and Section J.7.a.2.B of the Norfolk Zoning Bylaws, to allow outdoor storage of more than 3 (three) commercial vehicles, limited to the rear yard.; Mr. Sebastiano seconded the motion; the vote on the motion was as follows:

*Michael Kulesza – yes to grant
Robert Luciano – yes to grant
Christopher Wider – yes to grant
Joseph Sebastiano – yes to grant
Don Hanssen – yes to grant*

16-18 Sharon Avenue – Special Permit – Present was Rick Goodreau, United Consultants, Inc. (UCI)

Plans presented were entitled “Lots 11 and 12 Shire Industrial Park, Norfolk, MA, prepared for A&A Soggi, LLC,” dated October 16, 2017, prepared by UCI (9 pages); “Lots 11 and 12...Photometric and Lighting Plan,” dated October 16, 2017, prepared by UCI (2 pages)

Mr. Wider read the public notice into the record. The applicant is seeking a Special Permit (SP) in accordance with MGL 40A s.9 as amended, and Section F.7.e. of the Norfolk Zoning Bylaws, to allow parking in the front yard. Mr. Kulesza recognized Mr. Goodreau, who gave an overview of the project.

Mr. Goodreau reviewed the history of the project. Approximately 7 years ago the applicant purchased the property at Shire Industrial Park, and developed a building with parking lot and outdoor storage. At that time, 2 (two) Special Permits (SP) were obtained from the ZBA, one for front yard parking, and one for use of the property as a contractor’s headquarters. A Special Permit was obtained from the Planning Board earlier in 2017, for site plan approval to build a new driveway and re-configure the parking and storage areas, and is currently in front of the Planning Board for review of stormwater, septic, etc. Additionally, the ZBA did issue a Special Permit in February of 2017, to allow for a contractor’s headquarters, and outdoor storage of more than three (3) commercial vehicles limited to the rear. The

currently proposed parking in the front yard will consist of 16 spaces, 2 of which are handicapped accessible, for employee and other non-commercial vehicles.

Mr. Hanssen asked about lighting for the new parking area, and Mr. Goodreau referred to the lighting plan, and referenced conversations with the Planning Board.

Mr. Wider made a motion to close the hearing for 16-18 Sharon Avenue; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

Mr. Kulesza stated that the case would be deliberated immediately.

Findings of Fact:

- ZBA previously granted a Special Permit #2010-03, to allow use as a contractor's headquarters with parking in the front yard, for Lot #12
- Planning Board is in the process of reviewing the new access road, stormwater, etc.
- Request is for 16 parking spaces; 14 conventional, 2 handicapped
- Adjoining lot has previously approved front lot parking
- Request is consistent with the Master Plan, and with the Zoning Bylaw for this district.

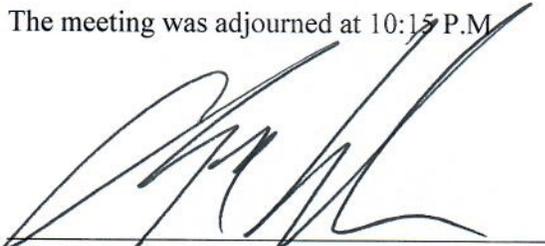
Mr. Kulesza reviewed Appendix B, Special Permit Criteria and Worksheet, a copy of which will be attached to the Decision. Conditions of the special permit will be consistent with those of the previous Special Permit issued for this property. Truck size will be limited to 11,000 lbs.

Mr. Wider made a motion to grant the Special Permit for A&A Socci, LLC, and Buckland, LLC, in accordance with MGL 40A s.9 as amended, and Section F.7.e. of the Norfolk Zoning Bylaws, to allow parking in the front yard; Mr. Hanssen seconded the motion; the vote on the motion was as follows:

*Michael Kulesza – yes to grant
Robert Luciano – yes to grant
Christopher Wider – yes to grant
Joseph Sebastiano – yes to grant
Don Hanssen – yes to grant*

Mr. Wider made a motion to adjourn the meeting; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.

The meeting was adjourned at 10:15 P.M.



Mr. Joseph Sebastiano, Clerk

In accordance with the requirements of G.L. 30 § 22, approval of these minutes by the Board constitutes its certification of the date, time and place of the meeting, the members present and absent, the matters discussed, and the action taken by the Board with regard to those matters (if any). Any other information contained in these minutes is included for context only. Notes memorializing deliberation or discussion of any matter are in the summary form and may include inaccuracies or omissions. Where proof of the content of a statement is required, a tape recording or transcript should be consulted, if available.