

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

February 7, 2018

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 --- Absent	
Donald Hanssen – Full Member ---- Absent	
Devin Howe - Associate Member --- Present	

The duly posted meeting of the Zoning Board of Appeals convened at 7:08 P.M. in the absence of Chairman Kulesza, Mr. Wider announced that this meeting was being audio and video recorded. Mr. Wider made an announcement that the hearings for 9 Fruit Street, 60 River Road and 144 Seekonk Street would be continued at their appointed times tonight.

PUBLIC HEARINGS:

43 Rockwood Road, Appeal (cont'd from 12/6/17)

Present were Bruce & Marie Simpson, appellants; Joanna Giorgio Hilvert, Macchi & Macchi, LLC, attorney for appellants; James Lorusso, LOBO Realty, property owner; Thomas Nannicelli, Esquire, attorney for property owner.

Plans and documents presented and referred to were: Letter from Macchi & Macchi, dated February 7, 2018, to Norfolk Zoning Board of Appeals (ZBA), Re: 43 Rockwood Road; Termination of Nonconforming Use; 2 abutter letters submitted by appellants; memorandum entitled “Town of Norfolk, Zoning Board of Appeals, In re: appeal by Bruce Simpson and Marie Simpson of decision by Building Commissioner pertaining to 43 Rockwood Road,” submitted by Atty. Nannicelli; Part I, Title VII, Chapter 40A, Section 6 of MGL, submitted by Atty. Nannicelli; Part I, Title VII, Chapter 40A, Section 9 of MGL, submitted by Atty. Nannicelli; “Bartlett v. Board of Appeals of Lakeville, MA,” (“Bartlett”) submitted by Atty. Nannicelli.

At 7:56 P.M., Mr. Wider called the continued hearing for 43 Rockwood Road to order, and recognized Atty. Giorgio Hilvert, who outlined the three arguments outlined in the 2/7/18 letter from Macchi & Macchi to the ZBA: 1) Change of Nonconforming Use to Conforming Use, Zoning Bylaw, Section F.2.b.; 2) Discontinuation of Nonconforming Use, Zoning Bylaw, Section F.3.b.; 3) Lapse of Special Permit, Zoning Bylaw, Section G.4. It is the appellants’ position that the office use of the subject building cannot be renewed, and that the subject building/property should not be allowed to be marketed as a Commercial Property, due to any one of these three arguments.

Mr. Wider recognized Atty. Nannicelli, who expressed concern that the Building Inspector and Town Counsel were not present. Atty. Nannicelli stated counter-arguments to each of the above-noted arguments. Regarding argument #2) Discontinuation of Nonconforming Use, Atty. Nannicelli referred to Mr. Lorusso’s check register, which was examined, but not entered into evidence, showing notations of rents received, including the last rent received for 43 Rockwood Road, dated 5/1/2016; Atty. Nannicelli

affirmed that those tenants moved out at the end of that May. Regarding #1) Change of Nonconforming Use to Conforming Use, Atty. Nannicelli referred to the 1972 Special Permit which he states changes it from one nonconforming use to another, less nonconforming use, and not to a conforming use. Regarding #3) Lapse of Special Permit, Atty. Nannicelli stated that he believes that bylaw (regarding lapse of permit after one year of non-use) is in contravention of the appeals court case cited in "Bartlett."

Mr. Wider opened it up to questions from the Board. Mr. Kulesza asked Atty. Giorgio Hilvert for her interpretation of the "Bartlett ruling as it pertains to argument #3, Atty. Giorgio Hilvert stated that the argument is the that Special Permit (SP) that has lapsed for more than one year, not the nonconforming use, in argument #3, and that their position is, in addition to the SP lapsing for more than one year, the nonconforming use has lapsed for more than two years (Argument #1). Atty. Nannicelli responded that although the SP may have lapsed for more than one year, the nonconformity of the building has not changed or lapsed since before the enactment of zoning in Norfolk. Atty. Nannicelli also expressed his opinion that if the discontinued use for greater than 2 years occurred 10 or 15 years ago, that a statute of limitations would come into play. He stated that he had not seen evidence that the property was vacant from 2001 – 2007; Atty. Giorgio Hilvert responded that the burden of proof is not on the incumbent.

Mr. Wider reviewed research he had done regarding use of the building during those years, and said that he was hoping to see evidence as to whether or not it was in use, before being used again as an office in 2015. Atty. Giorgio Hilvert was of the opinion that when it was used again in 2015, it was at that time an illegal use, which could have been shut down at any time by the building inspector, and that to her knowledge there is not statute of limitations on that.

Mr. Kulesza suggested that Town Counsel be contacted to submit a written opinion. Mr. Wider opened the hearing to public comment. Donna Anderson, 37 Rockwood Road, stated that this is the first time they received notification of any potential change in the status of the building, and are afraid now that it will be used as something more intrusive on the neighborhood.

Mr. Kulesza made a motion to continue the hearing for 43 Rockwood Road to March 7, 2018, at 7:15 P.M. at the Town Hall; Mr. Luciano seconded the motion; the vote on the motion was unanimous.

60 River Road, Variance (cont'd from 2/7/17)

At 8:00 P.M., Mr. Wider called the continued hearing for 60 River Road to order, and announced that a request for continuance had been received from the applicant.

Mr. Kulesza made a motion to continue the hearing for 60 River Road to March 7, 2018, at 7:30 P.M. at the Town Hall; Mr. Luciano seconded the motion; the vote on the motion was unanimous.

144 Seekonk Street, Appeal (cont'd from 2/7/18)

At 8:01 P.M., Mr. Wider called the continued hearing for 144 Seekonk Street to order, and announced that a request for continuance had been received from the applicant.

Mr. Kulesza made a motion to continue the hearing for 144 Seekonk Street Appeal to March 7, 2018, at 7:00 P.M. at the Town Hall; Mr. Luciano seconded the motion; the vote on the motion was unanimous.

NEW BUSINESS:

Request for administrative modification to Comprehensive Permit for Meeting House Village

Attorney Mike Khoury gave a brief overview of the project. His client, John Marini, had purchased the last lots of land to be developed at this site, and the 10th modification to this permit permitted the construction of 4 buildings, with 20 units, 5 of which would be deemed affordable. These 4 buildings were labeled #10, 11, 12 and 13, in the Decision for Modification 10, but they were listed at Land Court as 1, 2, 3 and 4. The request is to have them officially redesignated as 1, 2, 3 and 4, respectively.

In addition, the 10th modification, Section III.3. detailed 1 affordable in the 1st unit, 2 each in the 2nd and 3rd, and none in the 4th. However, at Land Court, and as shown on the approved plans for the 10th modification, the distribution should actually be 1 in each of the 1st, 2nd and 3rd buildings, and 2 in the 4th building. The request is for official clarification.

Mr. Kulesza made a motion that the 4 buildings previously approved for the twenty additional units be labeled 1, 2, 3 and 4 so as to match the development permits placed on record in the Land Registration Office at the Norfolk County Registry of Deeds, and secondly, the town approve the distribution of 5 affordable units be established so that one affordable unit each will be located in the first three of the project's remaining buildings, and 2 affordable units in the 4th and last building; Mr. Luciano seconded the motion. Mr. Wider stated that he had spoken with the Fire Department and with the Director of Municipal Housing, and they have no objections.

Mr. Kulesza – yes
Mr. Howe – yes
Mr. Luciano – yes
Mr. Wider – yes
Mr. Hanssen – absent
Mr. Sebastiano – absent

9 Fruit Street, Special Permit

At 8:20 P.M., Mr. Wider called the continued hearing for 9 Fruit Street to order, and announced that a request for continuance had been received from the applicant.

Mr. Kulesza made a motion to continue the hearing for 9 Fruit Street to May 16, 2018, at 7:00 P.M.; Mr. Luciano seconded the motion; the vote on the motion was unanimous.

MINUTES:

Minutes of 11/21/17 - ***Mr. Kulesza made a motion to accept the minutes of 11/21/17 as written; Mr. Howe seconded the motion; the vote on the motion was unanimous.***

Minutes of 11/30/17 - ***Mr. Kulesza made a motion to accept the minutes of 11/30/17 as written; Mr. Luciano seconded the motion; the vote on the motion was unanimous.***

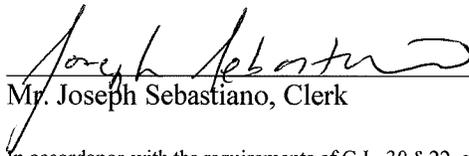
Minutes of 12/6/17 - ***Mr. Kulesza made a motion to accept the minutes of 12/6/17 as written; Mr. Luciano seconded the motion; the vote on the motion was unanimous.***

Minutes of 12/20/17 - **Mr. Kulesza made a motion to accept the minutes of 12/20/17 as written; Mr. Luciano seconded the motion; the vote on the motion was unanimous.**

Minutes of 1/3/18 - **Mr. Kulesza made a motion to accept the minutes of 1/3/18 as written; Mr. Luciano seconded the motion; the vote on the motion was unanimous.**

Mr. Kulesza made a motion to adjourn the meeting; Mr. Luciano seconded the motion; the vote on the motion was unanimous.

The meeting was adjourned at 8:21 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.



**TOWN OF NORFOLK
ZONING BOARD OF APPEALS**

ONE LIBERTY LANE
NORFOLK, MASSACHUSETTS 02056

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CERTIFICATION PURSUANT TO G.L., Ch.39, §.23D
(ACCEPTED UNDER ARTICLE 12
OF THE SPECIAL TOWN MEETING
OF OCTOBER 24, 2006)

DATE: 2/28/18

APPLICANT'S NAME: Bruce + Marie Simpson

PROJECT NAME/LOCATION OF PROPERTY: 43 Rockwood Rd

CASE NO: 2017-15

ASSESSORS' REFERENCE: Map 14 Block 49 Lot 7

I, Joseph Sebastiano hereby certify that I have examined
all evidence received at the one (1) session of the public hearing in the above matter held

2/1/18 including (check all that apply):

An audio/video recording

Minutes

Other supporting plans & documents

Joseph Sebastiano
Signature Board Member



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DATE: 2/28/18

APPLICANT'S NAME: Bruce + Marie Simpson

PROJECT NAME/LOCATION OF PROPERTY: 43 Rockwood Rd

CASE NO: 2017-15

ASSESSORS' REFERENCE: Map 14 Block 49 Lot 7

I, Donald Hansen hereby certify that I have examined
all evidence received at the one (1) session of the public hearing in the above matter held

2/7/18 including (check all that apply):

An audio/video recording

Minutes

Other supporting plans & documents

Donald M. Hansen
Signature Board Member