

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

April 12, 2018

Zoning Board Members	Others
Christopher Wider –Chairman ----- Present	Devin Howe - Associate Member ----- Present
Michael Kulesza –Vice Chairman --- Present	Medora Champagne – Assoc. Member --- Present
Donald Hanssen – Clerk ----- Present	Amy Brady – Administrative Asst. ----- Present
Joseph Sebastiano – Clerk ----- Present	Robert Bullock – Zoning Enforcement Officer
Robert Luciano – Full Member ----- Absent	David DeLuca – Town Counsel

The duly posted meeting of the Zoning Board of Appeals convened at 7:05 P.M. in Room 124 of the Norfolk Town Hall. Mr. Wider announced that the meeting was being audio and video recorded. Mr. Wider also announced that all item agendas were deliberations only, and the hearings had been closed to public commentary.

DELIBERATIONS:

82 North Street, Appeal

Mr. Kulesza made a motion to grant the appeal of the Building Commissioner’s decision for 82 North Street; Mr. Hanssen seconded the motion;

Mr. Wider stated that 82 North Street is a non-conforming use lot, historically operating under the name of Family Florist.

FINDINGS OF FACT:

- The owners of the Family Florist have not been in business for 4 years.

According to Norfolk Bylaw F.3.b., Cessation, “Any non-agricultural nonconforming use that has been discontinued for two years may not be renewed.” Mr. Wider stated that any commercial items on the property such as donation bins, construction equipment, etc., will need to be removed if the appeal is not approved, and the property will revert to R1 zoning.

*Mr. Wider repeated the motion as stated above. **The vote on the motion** was as follows:*

Christopher M. Wider	–	No to grant
Michael J. Kulesza	–	No to grant
Donald M. Hanssen	–	No to grant
Joseph Sebastiano	–	No to grant
Devin P. Howe	–	No to grant

144 Seekonk Street, Appeal

Mr. Wider reviewed that this was an appeal of the Building Inspector’s Stop Work Order decision with regard to Norfolk Zoning Bylaw D.1.a.1. The Building Inspector felt that too much preliminary

excavation had been done on the site at 144 Seekonk Street without proper permitting. Mr. Wider turned the discussion over to Attorney DeLuca, who stated that it was noteworthy that the Stop Work Order was complied with immediately, and an appeal was filed in a timely fashion. Atty. DeLuca also noted that the future possibility of a 40B project should not be taken into consideration in deciding this appeal. He had spoken with the appellant's attorney, and he has submitted a memorandum, for consideration by the ZBA in their disposition. Atty. DeLuca noted that MGL 40A, Section 14, states that the Board can essentially confirm, deny or modify an appeal. Mr. Wider asked Atty. DeLuca to clarify why fines have not been imposed, and he said that there was compliance as soon as the Work Order was issued, indicating that the bylaw is working the way it should work. Additionally, there was payment of the cost of an expert paid by the applicant in the course of the hearing.

Mr. Kulesza made a motion to GRANT to modify the Building Inspector's Order by imposing no fine, or penalty, or requirement for replication, for violation of the aforementioned bylaw [D.1.a.1.]. The applicant's adherence to the terms of the Cease & Desist from August 17, 2017, to date and continuing, and in further consideration of the applicant's agreement to pay the costs of the town peer review expert in the amount not to exceed \$4,250.00, which the applicant has already paid. The applicant waives any right of appeal of this finding and further agrees to provide a reasonable (minimum 48 hours' notice) and scope of work consistent with the provisions of Norfolk Zoning Bylaws, Section D.1.a.1. to be performed, and allow photographs of such work by the Norfolk Zoning Enforcement Officer, or other appropriate authority. Notwithstanding this waiver, nothing herein shall limit the applicant's right to raise any defense or argument regarding this matter to any 3rd party appeal of the Zoning Board's disposition. This disposition shall not prejudice the applicant in any other proceedings before any Board or Commission, or in the course of any hearing on an application, complaint or appeal considering property located at 144 Seekonk Street, it being noted that the finding is limited to the Zoning Enforcement Officer's August 17, 2017, Stop Work Order only; Mr. Sebastiano seconded the motion;

Mr. Hanssen said that he felt the applicant, who had previously brought forth a large development to the town which was approved, should be aware of what the bylaws are. Quoting from the subject bylaw, and referencing a photograph of a section of the subject property where gravel was removed and then used to fill another area, as well as soil that was removed (perhaps from a wetland area) and used to create a roadway; referring also to the peer review expert who stated that equipment necessary for testing would not have required such activities, Mr. Hanssen said that he is not in agreement. Mr. Kulesza answered that there are two issues, and the wetlands question is not within the ZBA's purview. Atty. DeLuca referred to the paragraph in his memorandum, which states that if the ZBA finds there is sufficient evidence that the determination of the Zoning Enforcement Officer of a violation, it should be affirmed. Mr. Wider stated that although the Board does find that the applicant is in violation of D.1.a.1., he did stop work immediately upon request, and that daily fines since then can't be imposed simply to make money. Mr. Kulesza said he felt that the requirement for 48 hour notification of any activity adds strength to the proposed disposition. Mr. Wider said that although the attorneys did have discussions before Atty. DeLuca crafted his memo, the applicant and his attorney are not happy with the proposed disposition. Mr. Wider also said that the goal of ensuring that zoning bylaws are enforced is being met.

The vote on the motion was as follows:

Christopher M. Wider	–	Yes to grant
Michael J. Kulesza	–	Yes to grant
Donald M. Hanssen	–	Yes to grant
Joseph Sebastiano	–	Yes to grant
Devin P. Howe	–	Yes to grant

123 Seekonk Street, Appeal

Mr. Wider distributed a list of findings of facts as he saw them. The Board reviewed and discussed the list. Mr. Kulesza said that 3 areas need to be looked at: 1) Is the activity in- or outside the agricultural use requirements; 2) Is the scope of these events excessive (the court felt it was); and 3) What is the right number of events, noting that the Court Order did state that the applicant could reapply for an entertainment license. Mr. Kulesza felt that if all licensed “events” were cancelled, it would leave the door open for the applicant to have “informal get-togethers” that include riding and shooting. Mr. Kulesza said he agrees with the court that the current scope of the events is excessive, and not incidental to the agricultural use.

Atty. DeLuca reviewed the ZBA’s responsibility to determine if the Building Commissioner’s Cease & Desist letter, issued in response to a Court Order, should be upheld, overturned, or modified; whichever course the Board takes, it will be subject to appeal to the Superior Court.

Mr. Wider said he thinks the property does meet the litmus test as an agricultural property, including Cowboy Mounted Shooting (CMS). Mr. Wider said that CMS is a fast-growing sport, and that it is agricultural event. He said that the court order said the events must be incidental, which he believes they are, since they: a) were computed to take about 4% of the applicant’s time, and b) seem to be a necessary part of raising and training horses for this sport. Discussion ensued with regard to the term “incidental” and the number of events that might appropriately be deemed incidental.

Atty. DeLuca said that the question of agricultural exemption did get discussed at the Board of Selectmen hearings for the Entertainment Licenses, but to a much lesser degree; those hearing focused more on noise, traffic parking, etc. Upon appeal by the neighbors, the court had available to them the written record from those hearings, and not oral testimony.

After a 10 minute recess the Board reconvened to discuss a draft, revised order that was put together by the Chairman and Atty. DeLuca. This included:

- 2 large barrel races, limit of 70 people
- 2 large shooting events, limit of 70 people
- 6 small barrel races, limit of 60 people
- 2 non-shooting floater events, limit of 60 people
- Clinics 1 per month, limit of 20 people
- Events would occur between April and December
- Saturday events would run between 8 A.M. and 6 P.M.
- Sunday events would run between 9 A.M. and 6 P.M.
- No entertainment license would be required for the events

At the suggestion of Mr. Sebastiano, the 6 small barrel races were reduced to 30 people per event. Mr. Hanssen asked for clarification if the number of “people” listed above pertained to participants (horse & rider) only and not to spectators. Atty. DeLuca said whatever calculus the Board used, they should ensure they are meeting the objective of keeping the events “incidental.” The number of participants for the 4 large events was reduced to 60. Question arose as to the time limits on Saturdays and Sundays, and it was agreed that it would mirror the entertainment license. Mr. Wider asked if a 6:00 P.M. end time (for example) meant that all participants were gone and everything was buttoned up, or if that’s just when the event ended. Mr. Brogan said it was when the event ended, but elaborated, stating that participants generally do not hang around after their individual run is over, they leave shortly after, so it is not everyone leaving at the same time. Mr. Hanssen suggested that a requirement to notify police of events

should be added to the modification, and Atty. DeLuca advised that the ZBA would get outside of their charge of determining what is agriculturally "incidental."

Mr. Kulesza made a motion to modify the appeal by Mr. Mike Brogan of the Building Commissioner/Zoning Enforcement Officer's Cease and Desist Order of February 12, 2018. Mr. Sebastiano seconded the motion; after further discussion, the Board voted unanimously to GRANT the modification as follows:

Christopher Wider	-	Yes to grant
Michael Kulesza	-	Yes to grant
Devin Howe	-	Yes to grant
Joseph Sebastiano	-	Yes to grant
Donald Hanssen	-	Yes to grant

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

The meeting was adjourned at 9:20 P.M



Mr. Joseph Sebastiano, Clerk, or
Mr. Donald M. Hanssen, 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.