

Zoning Board of Appeals  
 One Liberty Lane  
 Norfolk, MA 02056  
 July 17, 2019  
 7:00 P.M.

Christopher Wider – Chair ----- Present	Medora Champagne – Associate Member-- Present
Michael Kulesza – Vice Chair ----- Present	Amy Brady – Administrative Assistant----- Present
Joseph Sebastiano – Clerk----- Present	
Donald Hanssen – Member ----- Present	
Devin Howe – Member ----- Present	

The duly posted meeting of the Norfolk Zoning Board of Appeals convened at 7:09 P.M. Room 124 of the Norfolk Town Hall. Mr. Wider announced that the meeting was being video- and audiotaped

**PUBLIC HEARINGS:**

4 & 6 Hill Street Special Permits (cont'd from 6/5/19)

Mr. Wider said that the applicant had asked for a continuation until they have their hearing in front of the Planning Board

*Mr. Sebastiano made a motion to continue the hearings for the 4 & 6 Hill Street Special Permits to August 21, 2019, at 7:00 P.M.; Mr. Kulesza seconded the motion; the vote on the motion was unanimous.*

The Preserve at Abbyville (cont'd from 6/19/19)  
Abbyville Commons (cont'd from 6/19/19)

Mr. Wider said that the applicant had asked for a continuation while they continue to negotiate with the Mann family. Mr. Wider said that the letter from Mass Housing regarding site control had been received, which stated that since he had a P&S upon application, he can continue with the 40B project.

*Mr. Sebastiano made a motion to continue the hearings for The Preserve at Abbyville and Abbyville Commons to September 4, 2019, at 7:00 P.M.; Mr. Howe seconded the motion; the vote on the motion was unanimous.*

194 Main Street F.11 Appeal (cont'd from 6/19/19)

Mr. Wider recused himself. Mr. Kulesza called the continued public hearing to order, and recognized Bob Bullock, Building Commissioner and Zoning Enforcement Officer. Mr. Bullock passed out a packet of information. He explained that the Fire Chief does annual inspections of all the commercial buildings in town, and where there are mixed uses that may require Building Department inspections, he asks Mr. Bullock to come along. On November 28 [2018] he and the Fire Chief were doing an inspection at 194 Main Street and found approximately 18 cars stored in the lower level; he said over the years, most of the time there are no cars there, but at times there have been 2 or 3, which were incidental to the person who owned the building. The Fire Chief called the owner (Al Quaglieri) who said the cars belonged to him; the Fire Chief made a comment about the fire protection that was put in over the cars, and they finished their inspection of the building and left. A little later, Mr. Bullock got a call from Christopher Wider who said they were his cars. A couple of days later, Mr. Bullock called Mr. Wider and said he needed to file an F.11.a. for new tenancy in a building; Mr. Wider did not agree. Mr. Bullock said he that in addition to the F.11.a., this was not an allowed use in the B-1 district, and Mr. Wider would need a Class II license. Mr. Wider did obtain a Class II license, but did not file an F.11.a. After a letter dated April 23, 2019, advising Mr. Wider to file an F.11.a., a violation was ultimately issued on May 6, 2019. Mr. Bullock then read excerpts from a letter sent by the Fire Chief in response to a 12/20/19 email sent from Mr. Quaglieri to the

Select Board and provided to the Fire Chief that same date; the chief's letter included excerpts from 527 CMR Fire Safety Code and MGL 148, §4 & 5. Mr. Bullock said that he read the letter to emphasize the reason that the Fire Chief and he sometimes enter buildings for inspection together, and have done so for a very long time. Mr. Bullock took this opportunity to address allegations that he had entered the land of another property (81 Pond Street) without permission; he said that he had visited the property, with the Town Planner, in the course of reviewing an F.11.a. for that property, where they needed to observe the parking area, which was behind a fence. In response to Mr. Hanssen, Mr. Bullock said he had never received a written request from a building owner not to go on their property, prior to the day before this meeting, when he received one from the owners of 81 Pond Street. Mr. Kulesza asked what percent of people who should fill out an F.11.a. are actually asked to do so; Mr. Bullock said they try to get 100%, but they don't always know about changes inside of a property; all of the ones they know about, they address. Mr. Bullock also clarified that he doesn't go through all properties with the Fire Chief, only the ones that require Building Department inspections (i.e. some require only fire inspections.) Some discussion ensued with regard to the resolution of the 81 Pond Street issue. Mr. Kulesza asked what triggers the requirement for an F.11.a. and how does a person know they need to do it; Mr. Bullock said the building owners should know what applies to businesses in their properties; sometimes a change of use is so insignificant, that an F.11.a. is not warranted (i.e. a new person takes over an office to do the same type of work; that would not necessarily apply in the case of a "few incidental" vehicles being parked in the basement of 194 Main Street, versus 18 non-incidental cars. Ms. Champagne asked if rent was being collected, saying increasing the number of cars being stored, and charging rent for them would seem to indicate a change of use. Mr. Hanssen asked that, since the applicant obtained a Class II license, could he then have filed the F.11.a. and been approved; Mr. Bullock said yes, he had mentioned that in a letter.

Mr. Kulesza recognized the applicant, Mr. Wider. Mr. Wider said he has permission from the owner of 194 Main St., Mr. Quaglieri, to act as his agent. Referring to the F.11.a. form, he noted that it must be filled out by the owner or legally recognized agent for the owner. Since Mr. Wider is a tenant, not the owner, Mr. Quaglieri should have been the one required to fill out the F.11.a. He said that in the current zoning, auto storage is not allowed, but the B-1 district was established in 1993, and anything existing prior to that is a pre-existing nonconforming use. He said 194 Main Street has had cars stored in it since 1980, and he introduced letters from Mr. Quaglieri and a previous owner, Glen Coulter, stating such. He noted the Mr. Bullock has no written records of previous inspections of the 194 basement. He said Mr. Quaglieri never had the opportunity to either file or not file an F.11.a. because the letters were sent to Mr. Wider, not Mr. Quaglieri, and that an F.11.a. form is not required anyway, because this is a pre-existing, nonconforming use.

Mr. Howe asked Mr. Bullock on what basis did he determine there was a change of use; Mr. Bullock said that any cars that were down there previously were "incidental" and not really a use, including the 2 boats stored by Bourques. He reiterated that there were not so many vehicles down there on any of his previous inspections of this property. He added that a pre-existing, nonconforming use can only be extended by 50%, and that is by application to the ZBA for extension of a nonconforming use. There are no records of vehicles observed in the space in past years, because it was always considered "incidental" and not a violation. Mr. Bullock said the request for an F.11.a. was reasonable, and pointed to a subsequently revised F.11.a. created to help avoid potential errors, such as sending it to a tenant rather than an owner.

In response to Mr. Kulesza, Mr. Wider said that he believed this was a pre-existing, nonconforming use based on Mr. Coulter's stated use of the building for vehicle storage prior to 1993 when this portion of the bylaw was adopted, as well as Bourque's storage of boats; Mr. Wider also said that the Wayside Building is used for storing and working on vehicles.

Ms. Champagne repeated her question about whether or not this use has changed into a more commercial use of the building. Mr. Bullock referred to a period of time between Mr. Coulter and Mr. Quaglieri owning the building, and Mr. Wider responded that it was for a period of less than 23 months. Mr. Wider said the cars are just stored there, they are not for sale. In response to Ms. Champagne, Mr. Wider said he does pay rent for the space, and he does not know if rent was paid by any former entities storing vehicles there.

Mr. Kulesza opened the hearing to public comment. Al Quaglieri cited §1.7.7.4. from the 527 CMR Fire Prevention Regulations that was not cited by Mr. Bullock, and which requires occupant approval to enter the premises. He said that he hasn't complained about the inspections previously, because he was not made aware of them. Mr. Quaglieri also said that the excerpts read from MGL 148 do not apply. He also said that he has stored several of his cars, as well as construction and snow plow equipment, and has never received a report. Mr. Bullock said any reports would have come from the Fire Chief, whom he was accompanying; his focus would have been on the restaurant; he also said that he is there only once a year, and doesn't know what goes on the rest of the year. Mr. Quaglieri added that prior to Mr. Wider, the space was rented to B.I.G. Septic.

After re-reading 527 CMR §1.7.7.4., Mr. Hanssen considered whether whatever was found upon entry without occupant approval is actionable; Ms. Champagne noted the statute also states "or as otherwise permitted by law," which could apply, but is outside the purview of this board; the zoning issue is one of whether there was continuous use.

***Mr. Sebastiano made a motion to close the hearing for the 194 Main Street; Mr. Hanssen seconded the motion; the vote on the motion was unanimous.***

Mr. Wider resumed the Chair.

81 Pond Street, Appeal (cont'd from 6/5/19)

Mr. Wider said the applicant had requested a withdrawal without prejudice; they had filed a new F.11. with Mr. Bullock. Mr. Wider questioned why the applicant had to pay a second fee for filing the second F.11.

***Mr. Sebastiano made a motion to withdraw without prejudice the appeal for the 81 Pond Street; Mr. Kulesza seconded the motion; the vote on the motion was unanimous.***

6 Hill Street Appeal (cont'd from 6/19/19)

Mr. Wider said the applicant had requested a continuation to August 21, 2019

***Mr. Sebastiano made a motion to continue the hearing for the 6 Hill Street Appeal to August 21, 2019, at 7:00 P.M.; Mr. Kulesza seconded the motion; the vote on the motion was unanimous.***

**NEW BUSINESS:**

Minor Modification to Special Permit for 9 Chestnut Rd. to specify 3 bedrooms in Condition #8

Mr. Wider noted that it was discovered that this dwelling is recognized by the Assessors as a 3-bedroom dwelling, but the Special Permit referred to it as a 2-bedroom dwelling.

***Mr. Sebastiano made a motion to make a minor modification to the Special Permit, Case #2019-02, change "2-bedroom" to "3-bedroom"; Mr. Howe seconded the motion; the vote on the motion was unanimous.***

Vote Board Reorganization

***Mr. Kulesza made a motion to nominate Devin Howe to continue serving as the ZBA's representative to the B-1 Zoning Committee; Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.***

***Mr. Hanssen made a motion to keep the Board positions as they currently stand:***

Chair - Chris Wider  
Vice Chair - Mike Kulesza  
Clerk - Joe Sebastiano (Don Hanssen, backup)

***Mr. Sebastiano seconded the motion; the vote on the motion was unanimous.***

Ms. Champagne noted that she will serve as Associate Member for 6-8 more weeks.

**DELIBERATIONS:**

194 Main Street, Appeal

Mr. Wider recused himself from these deliberations, and from the remainder of the meeting.

Mr. Kulesza said that since this was an appeal, there were no "Criteria" to be met. He expressed that in his opinion trespassing is not a solid argument; the Fire Chief must inspect properties for the safety of the town, and to get consent for every one would be an onerous process; he said that the fact that the notice was sent to the tenant instead of the owner was pertinent; he said he heard enough testimony to convince him of the continuity of use, and whether rent was paid or not paid is not important in his opinion; he said he didn't know how a 50% increase in use would be measured. Mr. Sebastiano concurred that the continuous use has been there, as did Mr. Howe. Mr. Howe also said renting the space as opposed to the owner using it for storage of his own vehicles doesn't change the use that is "storage of vehicles." Mr. Hanssen said he thought the use had been continuous, and that the number of vehicles didn't actually change the space they were stored in; Ms. Champagne said she believes the use has been continuous, and the number of vehicles is not necessarily relevant, and didn't trigger a safety concern from the Fire Chief; testimony was presented that other tenants have paid rent, it was not solely the owner's vehicles.

*Ms. Champagne made a motion that the board determine, based upon testimony and evidence submitted, that the filing of an F.11.a. was not required in this circumstance due to pre-existing, nonconforming use; Mr. Sebastiano seconded the motion; the vote on the motion was as unanimous.*

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

*The meeting was adjourned at 8:35 P.M.*

  
Joseph Sebastiano, Clerk