

Holliston Zoning Board of Appeals  
Meeting Minutes of May 14, 2014

**Present:** Chairman Henry Dellicker, Vice-Chairman John Love, Scott Stanwood and Associate Member Brian Liberis

**General Business**

**Special Permit Public Hearing – Jacqueline Phelps, 245 Fiske Street**

Chairman Dellicker opened the public hearing at 7:15 p.m. Brian Liberis read the petition into the record. A comment letter from the Fire Chief (dated May 7, 2014) was entered into the record.

Allyn Phelps was present to discuss the petition. Mr. Phelps stated that they are proposing to subdivide the current lot into two lots. Mr. Phelps further stated that both lots would be conforming.

John Mahan of 230 Fiske Street asked if the newly created lot would be buildable. Mr. Dellicker responded that that does not render into the decision. They are not approving a sub-division. A special permit is required because the present lot is non-conforming to front setback requirements. Mr. Liberis further commented that this pertains to the lot that the dwelling is already on. Mr. Mahan commented that since a subdivision was built in the vicinity of his house he has water in his basement.

Given no further questions or comments from the board members or audience the hearing closed.

**Use Variance Public Hearing – Daniel Regan, 1508 Washington Street**

Chairman Dellicker opened the public hearing at 7:30 p.m. Brian Liberis read the petition into the record. A comment letter from the Fire Chief (dated May 7, 2014) and a letter of opposition from Joe Bardolini of Mulch N More were entered into the record.

Due to having no representation from the petitioners the hearing was continued to June 18, 2014 at 7:15 p.m.

**Appeal of Administrative Decision – Hometown Automotive Service & Sales, Inc-1670 Washington St.**

Chairman Dellicker opened the public hearing at 7:45 p.m. Brian Liberis read the petition into the record. A comment letter from the Fire Chief (dated May 7, 2014) was entered into the record.

Attorney Michael Healy was present on behalf of the applicant, Michael Ibriham. Attorney Healy stated that Hometown Auto Service and Sales, is appealing an administrative decision made by the Building Inspector regarding a proposed expansion of use.

Prior to discussions concerning the appeal, Building Inspector Peter Tartakoff asked that Chairman Dellicker recuse himself from the hearing due to concerns regarding conversation held prior to the Hearing with the Appellant. After some discussion, the Board members determined that it was not necessary for Chairman Dellicker to recuse himself from the Hearing.

Approved: August 13, 2014

Attorney Healy explained to the Board that Mr. Tartakoff denied the applicant the use of rental u-haul trucks on the premises. Attorney Healy submitted a letter to Mr. Tartakoff dated March 11, 2014 stating that the proposed use should be allowed as an auxiliary use to outdoor retail sales of used cars. Mr. Tartakoff opined that Attorney Healy will need to petition the ZBA to amend the prior special permit. Attorney Healy addressed two of the following issues:

1. Can the Zoning Board of Appeals amend a prior decision? Attorney Healy opined that the Board has a statutory authority to issue a special permit and has the inherent statutory authority to amend that special permit. The special permit expressly states that the Board reserves the right to amend the special permit in the future if the conditions warrant.
2. Does the Building Inspector have the authority to override procedures established by the Zoning Board of Appeals? Attorney Healy opined that the Building Inspector does not have this authority.

Zoning Enforcement Officer Peter Tarakoff presented to the board his reason for denying the use of rental u-haul trucks on the premises is that he does not consider it to be a normally recognised auxilliary use for used car sales operations, and should have been included in the special permit. Since Town, ZBZ and Planning By-laws or rules and regulations do not provide a means to alter special permits, the only method, under State law, is through the full Special Permit application, notice and hearing process.

## **DELIBERATIONS**

### **1. Special Permit – Jaqueline Phelps, 245 Fiske Street**

The Board reviewed the application materials and testimony provided by the Applicant's representative, Allyn Phelps as well as a comment letter from the Fire Chief (dated May 7, 2014) which stated that there were no objections to the proposed permit. The Board found that the application is consistent with Section I-C(3) of the Zoning By-Laws. The Board made a finding that the proposal will not be substantially more detrimental than the existing non-conforming use to the neighborhood. The Board also found that the granting of this special permit is in harmony with the general purpose and intent of the zoning by-law.

### **Zoning Board Vote**

The Board's vote to approve the petitioner's Special Permit application for relief under Section I-C4(a) for the property located at 245 Fiske Street was as follows on a motion by Mr. Liberis and seconded by Mr. Love.

Chairman Dellicker	Aye
Mr. Liberis	Aye
Mr. Love	Aye
Mr. Stanwood	Aye

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Conditions

- This Special Permit is not valid until recorded and indexed at the Registry of Deeds in accordance with the provisions of MGL, c. 40A, s. 11. The copy of the decision to be filed must contain a certification by the Town Clerk that 20 days have elapsed since after the decision was filed and that no appeal has been filed or if such appeal has been filed, that it has been dismissed or denied.
- The front setback shall be no less than 23' to the Fiske Street right of way.

**2. Administrative Appeal – Hometown Auto Service & Sales, 1670 Washington St.**

The Board reviewed the application materials and testimony provided by the Applicant's representative, Attorney Michael Healy. To counter the appeal, the Building Inspector/Zoning Enforcement Officer Mr. Peter Tartakoff provided the basis for his decision to prevent the rental of vehicles under the existing permit. The Holliston Zoning By Laws do not specifically describe uses for outdoor sales in the Commercial District, therefore the uses must be called out in the required special permit. This use was not. Furthermore, no local By Laws or rules and regulations, which apply to the Zoning Board of Appeals, specifies the process to amend existing permits. Because of this, any modifications or changes must be in accordance with the Mass. General Laws governing the conduct of a ZBA. Lacking any other procedure the MGL requires a formal application to make these changes no matter how little or much effect the changes have on the permit.

Zoning Board Vote

The Board's vote to deny the Appeal of the decision to not allow the use of Rental U-Haul trucks as an auxiliary use to outdoor retail sales of used cars on the premises was as follows on a motion by Mr. Love, and seconded by Mr. Liberis:

Chairman Dellicker	Aye
Mr. Liberis	Aye
Mr. Love	Aye
Mr. Stanwood	Aye

The meeting adjourned at 9:30 p.m. The next scheduled meeting is June 18, 2014.

Respectfully submitted,

Donna Donovan

Approved: August 13, 2014