



HALIFAX ZONING BOARD OF APPEALS

Meeting Minutes

Monday, April 8, 2019

The Halifax Zoning Board of Appeals held a public hearing on Monday, April 8, 2019 in the Great Hall of the Town Hall with the following Board members in attendance: Chairman: Robert Gaynor, Co-Chairman: Kozhaya Nessralla, Clerk: Peter Parcellin, Member: Robert Durgin, Member: Gerald Joy and Associate Member: Daniel Borsari.

Chairman Gaynor calls the meeting to order at 7:09pm and reprises the audience that this public hearing/meeting is being audio taped. He also explains the procedure and the protocol at the public hearings.

Meeting Minutes:

The Board signs the approved Meeting Minutes from Monday, February 11, 2019.

Motion to accept the Meeting Minutes from Monday, March 11, 2019:

MOTION: Robert Durgin
SECOND: Gerald Joy AIF
Passes: 5-0-0*

*Robert Gaynor abstained from voting as he was not present at the March 11, 2019 meeting. Associate Member Dan Borsari was present and voted to accept these minutes.

Motion to accept the Executive Session Meeting Minutes from Monday, March 11, 2019 (These minutes will not be released until disclosure no longer defeats the purposes of the Executive Session):

MOTION: Gerald Joy
SECOND: Robert Durgin AIF
Passes: 5-0-0

*Robert Gaynor abstained from voting as he was not present at the March 11, 2019 meeting. Associate Member Dan Borsari was present and voted to accept these minutes.

Bills:

The Board signs bills.

1. Plympton-Halifax Express, Petition #892 Advertisement = \$84.00
2. Plympton-Halifax Express, Petition #893 Advertisement = \$84.00
3. Plympton-Halifax Express, Petition #894 Advertisement = \$84.00
4. Pitney-Bowes Postage = \$355.00

Appointment:

7:05pm - Petition #892 - Barewood Renovations / Tia O'Meara - 30 Oak Place, Special Permit to raze and rebuild existing house due to fire

Present: Karl Miller (applicant- Barewood Renovations); Ken Harrington (architect)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Miller presents the petition. He explains, with handouts of the plans, his proposal to center the new house on the property so that it will be 16 feet on both sides. The footprint will expand a little. This will be less non-conforming as the proposed house won't be as encroached on one side as the pre-existing house was. The existing home was a single-family, single-story home. The proposed home will be 1.5 stories and single-family which is why a variance is needed. The height is not more than the building code requirements. It's only a bit bigger than what was existing. The septic system is fine and passed inspection. There will be a full basement in the proposed home as opposed to the half-basement in the existing home. The driveway/access will remain the same. The front setback is 99 feet and the rear setback is proposed at 42 feet, rather than the existing 46 feet. The existing bulkhead will be removed and there will be a walkout basement. The existing deck will be rebuilt

with no changes in size. The non-conformity will not increase. The existing square footage is 627 square feet and proposed is 745 square feet.

Abutter Kelly Atkinson, 115 Crystal Lake Road, speaks for her neighbor who lives on Oak Place across the street from 30 Oak Place. She is concerned with the view becoming obstructed, any encroachment on the wetlands due to the deck being rebuilt and how much bigger/closer this building will be to the neighbor. Mr. Miller confirms that the view will not be obstructed for the abutter across the street, will not encroach on the wetlands and will only be centering the house on the lot.

Abutter Peter Townsend, 32 Oak Place, is concerned about the large oak tree on the property being affected by the new build. There is no plan to remove any trees, according to Mr. Miller.

Mr. Gaynor feels this new build would increase the established character and property values of the neighborhood and would not be a detriment to the area. The Board agrees.

Motion to waive on-site inspection for Petition #892:

MOTION: Robert Durgin

SECOND: Kozhaya Nessralla

Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes;
Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

Motion to accept Petition #892 for a special permit as presented:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy

Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes;
Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

Decision Form is signed by all members.

Appointment:

7:15pm - Petition #893 - Robert J. Piccirilli - 340 Monponsett St., Special Permit to the extent necessary for a non-conforming structure

Present: Robert Danbrozo (attorney for owner); Robert J. Piccirilli (owner); Amy Kwesell (Land Use Counsel)

Chairman Gaynor reads the Public Hearing Notice into record. Attorney Danbrozo presents the Petition and explains that he is standing in for longtime Attorney Serkey who is ill. Attorney Danbrozo gives the history on the property and past Special Permit which was granted in 2014 and allowed Mr. Piccirilli to continue and extend the pre-existing, non-conforming use on the site and also alter the structures internally more than 50% of the structures' value. Attorney Danbrozo understands that the abutters and parties of interest are pleased with the project, is a betterment to what was previously on site and has provided rental units which were needed in the town and for tax revenue. There have been no complaints about tenants or any other issues, which Attorney Danbrozo views as a successful project to date.

Attorney Danbrozo explains that the reason for this hearing is due to Condition #3 on the original special permit which requires the applicant to return for the extension of the Special Permit. Since completion of the project under the original special permit, there have been no alterations of the structure, no changes in use, no changes in the number of units and no issues. The applicant is in compliance with the conditions of the special permit and Attorney Danbrozo states that they are here as a formality to request an extension. Attorney Danbrozo also confirms that there has been no change in ownership.

Attorney Danbrozo discusses future conditions of the special permit and makes two requests if the Board grants the special permit: 1) If there are no complaints or compliance issues, the next "renewal" be done administratively to save time and cost. He references a similar relief done for in-law apartments; (2) The special permit run with the land rather than with the applicant.

Land Use Counsel, Attorney Amy Kwesell explains that the Zoning By-law doesn't require that this type of special permit run with the land. The By-law does require certain types of special permits run with the

owner or with the land, such as in-law apartments, which run with the owner. This is a special permit for a non-conforming use and extending a non-conforming structure. Because this is not an in-law apartment and has operated for five (5) years without complaint, there really is no benefit to keeping this special permit attached to the owner. In regards to the terms of the special permit, she would suggest a five (5) year administrative check-in and specifically state that it is a public meeting rather than a public hearing. If this five (5) year check-in does not happen, there is cause for revocation.

Mr. Gordon Andrews, 244 Elm Street, brings to the Board's attention that in 2014 when this special permit was brought up, it was stated that Mr. Thomas Miliias was the Zoning Enforcement Officer and recused himself during the meeting due to the friendship and familiarity with the applicant. Since, as a member of the Board of Selectmen, Mr. Miliias has stated he has an interest in this property (340 Monponsett Street) and Mr. Miliias and Mr. Piccirilli have a business together called Paradise Properties, LLC. Mr. Andrews further explains that the Zoning Enforcement Officer brought in to look at 340 Monponsett Street in 2014, Mr. Frank DeFelice, was a former business partner of Mr. Miliias. Mr. Andrews has copies of documents with this information. Mr. Andrews wants the Board to be aware of this information and feels that there are ethical issues that haven't been disclosed.

Attorney Danbrozo responds that he and Mr. Piccirilli are not here to re-hear the 2014 petition, they are only here pursuant to the terms which requires them to make an appearance for renewal. Mr. Gaynor asks Mr. Andrews if this matter was brought to anyone's attention in 2014 within the 20-day appeal period. Mr. Andrews answers that he has only found this information out recently. Mr. Andrews, in response to Attorney Danbrozo's inquiry of what Mr. Andrews' interest is in the proceeding, states that he is an elected officer of the town (School Committee) sworn to uphold the bylaws of the town.

Mr. Parcellin feels that the reason the Zoning Board wanted to renew this special permit in five years is because there were several lengthy hearings and on-sites for this property/2014 special permit as the Board wanted to make sure that hearings were done thoroughly and there were no lasting issues with the properties, which there doesn't seem to be. Mr. Borsari feels that there is a tremendous need for rental properties in this society and this property fills that need.

Motion to accept Petition #893 for a special permit with an open meeting, five (5) year review:

MOTION: Kozhaya Nessralla

SECOND: Robert Durgin

Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes;
Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

The decision form is signed by all members.

Appointment:

7:25pm - Petition #894 - Campbell Lewis (O'Reilly's Auto) - 330 Plymouth St., Variances for off-street parking and minimum loading area

Present: Casey Burch (civil engineer, Soley Engineering)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Burch presents the petition. He explains that the property is located south of Nessralla Farm, north of Mutual Bank, east of Plymouth Street and west of the farmlands and wetlands owned by Mr. Peck. They are proposing three variances: First, a variance is requested for 34 parking spaces down from the required 73 parking spaces (Section 167-14F) for the 7,225 square-foot retail facility called "O'Reilly's Auto Parts," similar to an AutoZone. O'Reilly's generally has 32 to 36 parking spaces, which is why they are asking for a variance of only 34 instead of the required 73. At their peak hour, O'Reilly's only requires 14 spaces. Second, a variance is requested for 17 parking spaces with a paved area of 180 square feet down from the required 200 square feet (Section 167-14). (The front 17 parking spaces conform at 200 square feet.) Third, a variance is requested for a proposed loading area with dimensions of 20.5 feet wide and 35 feet long as opposed to the required minimum loading area dimensions of 14 feet wide by 45 feet (Section 167-3). They are only reducing the total length. Loading is done by pulling in at an angle and then using pallet loading, no loading dock necessary.

Mr. Gaynor asks about the delivery trucks. Mr. Burch responds that they are trucks with a 50-foot sized truck. The driveway is designed to maneuver these trucks. The square footage of the lot cannot accommodate 73 parking spaces due to the strict storm water design. Mr. Burch refers to the map of the infiltration retention basin. Due to the abutting wetlands they want to be able to store and recharge as much water as possible. To do that, they needed as much space as they could get. The 73 parking spaces is unnecessary for O'Reilly's. Total floor space is 7,225 square feet, sales space is 3,000 square feet. Mr. Burch confirms that the back parking lot will not be used for any kind of storage or maintenance. There will be one egress.

Mr. Joy asks if there is enough land available for the rest of the parking spaces. Mr. Burch answers that no, they could probably add another 17 spaces but this would still not reach the required 73. Mr. Parcellin asks what the hardship is. Mr. Burch responds that it would probably be the shape and size of the property which is a little less than an acre. Mr. Parcellin points out that this wouldn't be the hardship as 34 spaces is just what O'Reilly's wants. The only way to meet the By-law requirement of 73 spaces would be to reduce the size of the building. Mr. Parcellin also points out that O'Reilly's is choosing to shrink the size of the loading and maneuvering space. Mr. Burch suggests, if it is okay with the Board, that they remove another parking space (34 down to 33 parking spaces) to meet the minimum loading area dimensions of the By-law. Unless there is a substantial hardship, Mr. Parcellin feels that the applicant should meet the By-law even though it's not necessary to have 73 spaces for O'Reilly's.

Mr. Gaynor asks for an explanation of how delivery trailers will pull in. Mr. Burch explains a typical maneuver of trailer trucks by referring to the map to show the Board how/where the trailer will pull in and tilt into the space. Mr. Burch refers to the map to point out the dumpster pad enclosed by a portable fence, where the wetlands end and where there are two small portions of conservation land on the property. Mr. Burch further explains that they have one more Conservation hearing this week but generally O'Reilly's has been well-received by Conservation. Storm water quality is an important aspect of the plan, therefore this project had three Planning Board hearings to make sure they were not increasing the volume or run-off to the neighboring properties. One neighbor has flooding issues from Mutual Bank property which has been addressed and Planning is on board with the design. Building Inspector Mr. Piccirilli confirms that there is a requirement of 150 feet of frontage. Mr. Burch confirms they have 162 feet of frontage.

Mr. Borsari asks if the Zoning Board can grant these requested variances as there is no hardship. Attorney Amy Kwesell responds by referencing 167-21A(3) of the Zoning By-law and Chapter 40A Section 10. It doesn't appear that the wetlands are impacting this project; it's the size of the building that is generating the parking spaces, so the applicant can reduce the size of the building. Attorney Kwesell asks Mr. Burch if it's possible to have one (1) space for each 175 square feet and 45% of the lot be green space, which is an option of the By-law. Mr. Burch answers no as he thinks they calculated that possibility and it came out to 60 spaces which is not that much of a reduction from the 73 spaces required.

Planning Board Chairman Gordon Andrews, 88 Plymouth Street, confirms with Mr. Burch that there is 3,000 square feet of retail space in the building with the rest of the floor space being storage not available to customers. On behalf of the Planning Board, Mr. Andrews explains that the By-law doesn't specify retail space vs. parking space. The Planning Board attempted to mitigate the situation with green space. Mr. Burch shows where there is green space: a strip near the retention basin and a lawn area on the side and in front - 30 feet of lawn - and some shrubs.

Mr. Parcellin explains to Mr. Burch that the argument the Town could make is that they don't want a building of that size on a lot that small (0.987), which is why the requirements of parking and variances are set the way they are set. The issue of the size of the building being the hardship may be the intent of the By-law. Mr. Burch asks if the Town would want 73 parking spaces for this project. Mr. Gaynor responds that that is the tradeoff and that the more asphalt, the more drainage.

Former Halifax Building Inspector Tom Miliias, 57 South Street, gives some historical perspective: the 1/100 square feet parking space requirement in the By-law was an attempt to preclude big box stores.

Mr. Borsari wishes the By-law specified retail/customer space vs. storage space to determine parking spaces. He feels Mr. Gaynor made a good point about the drainage and feels the Board's hands are tied. Mr. Joy wonders if the Board would consider the warehouse a hardship. He can't picture 73 cars in the parking lot, that would mean more asphalt which would cause more of a problem in the runoff. Mr. Gaynor responds this would be a detriment to the neighborhood. Mr. Durgin feels the same. Mr. Parcellin wonders if there is an

example of a building this size on a similar lot in town. Mr. Burch uses The Happy Dragon and Lyonville Tavern as examples but states that restaurants require more parking. Attorney Kwesell interjects that restaurant parking spaces are determined per table. Mr. Burch states that this O'Reilly's store compared to others is the smallest location they have. Compared to AutoZone, O'Reilly's is the same, standard size. Mr. Borsari asks Mr. Burch how much smaller the building would have to be to make 73 spaces. Mr. Burch answers that the building would have to be reduced by 3,000 square feet.

Peter Marcio, 16 Tenth Ave asks if the look of O'Reilly's fits with the town. Mr. Burch explains the colors of the building. Mr. Marcio prefers green space over too much asphalt. Mr. Burch goes over the green space again. Mr. Joy would like to know the total square feet of green space and wonders how close it is to the required 45%. If the building is made smaller and green space can get closer to 45%, it could work.

Motion to waive the on-site inspection:

MOTION: Robert Durgin

SECOND: Kozhaya Nessralla

Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes;
Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

Gordon C. Andrews asks Mr. Burch what the typical evaluation is of what O'Reilly's would bring in for tax revenue for the Town. Mr. Burch will ask his client and get that information. Mr. Parcellin feels the Board might benefit continuing this petition to give the applicants some options to either come up with some similar situations in Town or to make the building smaller to fit into the requirements of the Town. Mr. Parcellin would like tax revenue as well but feels O'Reilly's could work to fit into the expectation of the Town.

The Board agrees they would like the applicant to revise their application.

Motion to continue Petition #894 to May 6, 2019:

MOTION: Peter Parcellin

SECOND: Kozhaya Nessralla

Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes;
Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

Appointment:

7:35pm - Petition #890 - George H. Thibeault - 280 South St, Special Permit/Variance to change, alter or extend existing use of property

Present: George H. and Cassie Thibeault (applicant/spouse); Joe Webby (engineer); William Ohrenberger (Attorney); Richard Murley (owner); Robert Piccirilli (Zoning Enforcement Officer/Building Inspector)

Mr. Gaynor reads the Public Hearing Notice into record. Attorney Ohrenberger takes responsibility for being too verbose in the original application which is why he filed a letter to the Board stating that there will be no composting. The intent is to modernize what is already on Silver Leaf Farm with new technology. Attorney Ohrenberger gives the Board a handout explaining the new technology of a sawmill that George Thibeault would use.

Mr. Webby explains that since the 2006 plan he presented at the first hearing on March 11, 2019, the wetlands have been re-delineated, buildings were located and included and perk tests have been completed by the Board of Health. Mr. Webby submits the new plans to the Board and refers to these plans to explain what is shown: a string of greenhouses, a large garage, a mobile office and a couple of out-buildings. Mr. Thibeault intends to utilize all these buildings. There is sufficient soil available.

Attorney Ohrenberger explains that Mr. Thibeault is not planning to build anything new. Mr. Thibeault is planning to file for a forestry permit once he owns the property, if the Board approves his petition. For agricultural purposes, there is a real need for usage of the whole tree which Mr. Thibeault has a plan for. Mr. Thibeault respects the buffer zones and all the wetlands, so he is not cutting any of the timber. He will be growing his own trees and bringing in lumber from his own jobs and from others.

Mr. Gaynor asks Mr. Thibeault where the wood will be coming from. Mr. Thibeault answers that trees will be coming in from his other jobs, salvaged from the woods or brought in after being left behind by other tree companies. Mr. Thibeault will be repurposing trees from a couple of other tree companies (not by contract). It won't be a massive lumber yard, it's going to be very small. Mr. Thibeault explains that the new sawmill and kiln are both very quiet. With the kiln you can use the lumber within two to three days. Attorney Ohrenberger explains that the location is zoned residential and that's why they are keeping all the trees and not constructing any more buildings. The small kiln and sawmill will be housed inside buildings in order to stay out of the weather.

Mr. Webby confirms that there are ten (10) buildings on the property: seven greenhouses, a barn, a storage building and an office trailer. There are also two small sheds. Building Inspector Mr. Piccirilli is asked by Chairman Gaynor about the greenhouses. Mr. Piccirilli answers that he has not been out to the property so he isn't sure. Mr. Nessralla answers that the greenhouses are plastic, temporary structures as he has six (6) of them on his own property. Mr. Gaynor asks Mr. Piccirilli if the buildings have permits. Mr. Piccirilli answers that he has seen no permits for these buildings since he's been in office and doesn't know what's on the property. In the property file Mr. Piccirilli sees permits for gas, electricity and a trailer, which Mr. Piccirilli is assuming is an office trailer, but there are no other permits for structures. Current owner, Richard Murley, states that according to 61A anything under 4,000 square feet doesn't need a permit. Mr. Piccirilli responds that a building permit is still needed and other than greenhouses, he isn't sure of what other buildings are on the property.

Attorney Ohrenberger reviews Mr. Thibeault's background and intentions for the property. Mr. Joy confirms with Mr. Thibeault that he is not cutting any trees but will be harvesting his own in 15 - 20 years and in the meantime will be trucking in outside lumber.

Mr. Borsari feels it's the Zoning Enforcement Officer's responsibility to determine the use of the property - whether it's conforming or non-conforming. If it is non-conforming it would then come to the Zoning Board. Mr. Piccirilli responds that he has not been asked to make a determination on the property and has not been presented with anything by the applicant as far as use of the property. Mr. Piccirilli asks if the applicant is looking for a Section 3 (farming) or a Section 6 extension of a legal use. Mr. Ohrenberger responds Section 3, Agricultural Use. There would be off-property lumber processed on the property. Mr. Ohrenberger feels it's impossible to ask for the Zoning Enforcement Officer's determination as they don't know what the Zoning Board of Appeals would want. Mr. Gaynor responds that it's Mr. Ohrenberger's application, so asks Mr. Ohrenberger what he/they want.

Mr. Gaynor asks Town Counsel Attorney Kwesell her opinion on whether this is an Agricultural Use or a changing of the use. Attorney Kwesell responds, referring to 40A Section 3, that Agricultural Uses are exempt from Zoning. Whether the property is in 61A doesn't matter to the Zoning Board as it a tax savings and has nothing to do with an Agricultural Use. Under 40A Section 3, it is a fact-specific determination whether the application is an Agricultural Use or not. There is a provision that a majority of the Agricultural Use has to occur on the property from products that were grown on the property. This petition could be exempt because it's agricultural and that would be the Board's determination based on facts. Currently there is a sawmill on the property and that use will be expanding which could be considered a Section 6 Finding: a special permit of a non-conforming use being expanded, if that's what the Zoning Board finds. To do that, the Board needs to know what the current use is. Currently it's a much smaller sawmill but is lumber is coming in from other properties? If so, it must truly be a non-conforming use and has been occurring for a certain amount of time. Mr. Murley states that all the lumber he has used has come from Halifax. This has been the case for the last 10 years and only in the winter as he works in the greenhouses In the summer. Attorney Kwesell responds that it is the petitioner's burden to show that this is a non-conforming use. It is also the petitioner's burden to show it is Agricultural. This requires, under 40A Section 3, receipts from products grown on the property which the petitioners would provide.

Mr. Ohrenberger provides the Board with handouts explaining the Agricultural Act. Mr. Ohrenberger explains that this isn't just a processing lumber operation, it's a full-blown Agricultural farming. All Mr. Thibeault is doing is modernizing the current farming operations. The applicant is willing to put some parameters on hours that don't presently exist which would be more restrictive. Mr. Thibeault will utilize the greenhouse and use the logs from his own tree business. There's a real need for local builders to have good lumber and because of the way it's processed, it will be better than what builders could normally find at a lumber yard.

Mr. Borsari feels there's potential for problems and he doesn't want Mr. Thibeault to go down a road where he is stuck with a property that he can't use in the way he intended to. Mr. Borsari also doesn't want residents regretting a decision where they can't enjoy their own properties, which he feels they have every right to do. Mr. Borsari interprets MGL Ch 128 Sec 1A "the growing and harvesting of forest products upon forest land...any forest or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations..." as, if Mr. Thibeault has wood to process as a result of his growing trees, that's called "farming." If he's bringing wood in, Mr. Borsari wouldn't call this "farming." However, Mr. Borsari feels that this is a determination needed to be made by the Zoning Enforcement Officer. If the ZEO makes the determination that this is Agricultural, the Zoning Board has nothing to talk about and Mr. Thibeault can do what he's asking for by right. Attorney Kwesell confirms this to be true. Mr. Borsari goes on to say if the ZEO decides this petition is not an Agricultural Use, which Mr. Borsari feels it is not, the Zoning Board has a determination to make. Attorney Kwesell points out that under 40A Section 3 this situation would fall under the Agricultural Exemption. Her understanding is that the petitioner is requesting a special permit because they want to expand on a non-conforming use that is existing. Mr. Ohrenberger states that they are looking for what the Board is comfortable with and points out the use of the word "and" and "or" used in 128-1A.

Mr. Murley knows of at least six (6) other sawmills and asks if these are registered with the Town. These possibly unregistered sawmills are taking in and selling lumber while Mr. Thibeault is trying to do this legally as a craftsman.

Mr. Borsari asks Attorney Ohrenberger/Mr. Thibeault where they are proposing the sawmill and kiln to be located on the property. Attorney Ohrenberger responds inside the building that is beside the office trailer building. As the applicant is proposing that he isn't going to be changing anything, Mr. Borsari asks about the storage location of the lumber after it has been dried. Mr. Thibeault answers it will be stored inside the building. Mr. Borsari asks how many employees Mr. Thibeault will have. Mr. Thibeault answers that as the business grows he plans to hire others. Mr. Borsari asks if Mr. Thibeault will be selling on site or making deliveries because currently, Mr. Murley uses his wood to make his own products to sell while Mr. Thibeault is going to be selling lumber and this is quite a change. Mr. Thibeault responds that he will be doing both selling on site and delivering. Mr. Borsari asks what type of machines he will have. Mr. Thibeault responds that he has a skid-steer. Mr. Thibeault confirms that his goal is to grow the business and have employees which may result in owning more operating machinery. Mr. Borsari asks if Mr. Thibeault will be operating his business seasonally as Mr. Murley is doing now. Mr. Thibeault responds that it will be open year-round. Mr. Borsari states that there would be a lot of changes. Although Mr. Borsari feels it would be a tremendous operation, he is looking at the homes in front of the property and how it will impact them. There will be traffic in and out, beeping operational equipment when backing up all day long. Mr. Borsari is concerned that the petitioner is presenting this as no changes being made when, in fact, there will be many. This needs to be clear to the abutters.

Attorney Ohrenberger responds that they are trying to be transparent. He disagrees with Mr. Borsari's statement that the Zoning Board is not able to do anything if this falls under Agricultural Use. Attorney Ohrenberger feels that under the Agricultural Act the Board can set regulations. This property is about 400-500 feet off the road. Under the Agricultural Act he doesn't feel a sawmill being present changes the traffic situation. The Thibeaults want to have friendships with the neighbors. Mr. Borsari responds that he doesn't want to see an incorrect presentation given to the public. It's a stark change that would be made. Mr. Ohrenberger states again that there will be no composting, which is what most abutters were concerned about at the last meeting.

Mr. Gaynor confirms with Mr. Thibeault that there will be an increase in traffic. Mr. Gaynor agrees with Mr. Borsari that this would be a big change to an Agricultural-Residential area as the years go on. This is a concern with neighbors. Mr. Nessralla feels the use will remain the same and will be increased. Lumber on the property will not be harvested until the applicants produce the 61A status which would be 15-20 years from now. At this point Mr. Thibeault has to bring in lumber to the property to operate. Mr. Nessralla goes on to say that Mr. Thibeault will have income from the greenhouses and the tree business.

Mr. Gaynor opens the meeting up to the public. Abutter (name unclear) presents his concerns and a petition with 24 signatures from abutters who are against this petition. Abutter discusses with the Board his concerns about traffic, especially with children in the area, odors, noise, decrease in value of the neighborhood,

chemicals, fencing around the area to keep children out, old buildings being brought up to building codes, the road needing to be worked on due to gas and water increase.

Building Inspector/Zoning Enforcement Officer Mr. Piccirilli informs the Board that nothing has been presented to him as far as equipment and where this equipment will be located. Mr. Piccirilli asks what the plan is for the by-product—the sawdust. He asks what the board lengths will be and the dimensions of the kiln. Mr. Gaynor asks Mr. Piccirilli about his opinion on the change in use and since Mr. Piccirilli doesn't have the facts, Attorney Kwesell reiterates that this burden is on the petitioner. Mr. Gaynor states that this information will be required by the applicant to the Building Inspector.

Attorney Ohrenberger explains this operation is exactly what fits into a Right to Farm Community and feels that if the community doesn't want this it would be a tragedy. He feels all the facts have been presented as truthfully and explicitly as possible in the last two meetings. Mr. Murley has tried to do what's right for the community.

Abutter Peter Stuart feels that the size of the trucks loaded with lumber will not help the recently redone street. He is concerned about fire with sawdust and compost. Mr. Murley responds that he had a permit for composting. Mr. Thibeault talks about his sawdust plan. He is not looking to leave it in a pile but will be using it.

Gordon C. Andrews reads Chapter 137-2 of the Halifax By-Laws: Right to Farm which he feels supports this petition to be allowed on the property. Attorney Kwesell responds that a Halifax By-law doesn't supersede Chapter 40A. Yes, the Right to Farm By-law does support farming but doesn't mean one can farm wherever they want. One must be in the parameters of 40A Section 3.

Attorney Ohrenberger states that they could get the fire permits and the water service, etc. all lined up but it's putting the cart in front of the horse - they need the special permit from Zoning first. Mr. Gaynor explains again that the Zoning Enforcement Officer must be presented with information in order to make a determination on if there is or is not a change of use. Attorney Ohrenberger states that they aren't asking the ZEO, they are asking the Zoning Board. Attorney Kwesell interjects that the relief being sought according to the application is 40A Section 6: Extension of a Non-Conforming Use. Without a determination from the Zoning Enforcement Officer/Building Inspector the only thing the Zoning Board can do is issue relief that's provided for in the By-law which would be a special permit or a variance. If the applicant is asking for a Section 3 determination, that must be done by the Building Inspector first. If he determines it is Agricultural he can issue a building permit if that is necessary. If he determines it is not agricultural there is room for an appeal. Attorney Ohrenberger responds that they are asking for whatever relief the Board feels is necessary.

Mr. Parcellin feels the applicant is trying to do a good thing that the Town could use, however the concern is the location. Mr. Parcellin feels the abutters have legitimate concerns. Mr. Nessralla states that it should be taken into consideration that when 280 South St was a farming operation when Mr. Murley took it over there was heavy traffic of tractors and trucks coming in and out of the area with no complaints. Mr. Nessralla believes there will be a minimum of two to three trucks a day. It was always a busy location. An abutter disagrees and comments that there were complaints back then and he doesn't believe it will be only two to three trucks a day in the future.

Abutter George Compton doesn't mind being the Thibeaults' neighbors, he just doesn't want their sawmill. He and his neighbors want a residential neighborhood.

Attorney Ohrenberger states that he thinks the Board has made up their mind at this point however Mr. Borsari doesn't feel the Board has enough information yet to make a decision. Mr. Borsari would like to do an on-site inspection and hear the Building Inspector's determination. He feels he has to be fair to both sides. The Board agrees.

Attorney Ohrenberger informs Attorney Kwesell they are going to submit a request for an extension to the Board. He also tells the Board that if there are three members who are not in favor of this petition, he and applicant George Thibeault won't take the Board's time. Attorney Kwesell informs the Board that if the applicant is not seeking a special permit for an extension of a pre-existing, non-conforming use, they are looking for a determination from the Zoning Board whether this falls under 40A Section 3. The Board cannot

make that determination without a determination from the Building Inspector as they don't have the jurisdiction, so this would be a procedural denial by the Board. As the applicant is going to be putting a sawmill and kiln inside of a building, Attorney Kwesell informs Attorney Ohrenberger that building, gas, fire and electric permits are all needed as it could be a public safety disaster.

Motion to do an on-site inspection on Saturday, May 4, 2019 at 8:00am:

MOTION: Gerald Joy
SECOND: Robert Durgin AIF
Passes: 5-0-0

Motion to continue Petition #890 for 30 days to Monday, May 6, 2019:

MOTION: Peter Parcellin
SECOND: Robert Durgin AIF
Passes: 5-0-0

Appointment:

7:45pm - Petition #886 - Thao, Mai and Hiep Pham, 395 Plymouth St - Special Permit to continue, alter and extend the existing apartment from a four-dwelling use to a six-dwelling use

Present: Mai Pham (owner/applicant), Jose Guzman (architect) and Quat Tran (spokesperson); Charlie Seelig (Town Administrator); Rob Piccirilli (Building Inspector); Michael Marchand (Environmental Demolition Contractor)

Robert Gaynor signed a certified statement that he reviewed the Meeting Minutes from 3/11/2019.

Mr. Gaynor reads the Public Hearing Notice into record. Architect Mr. Guzman updates the Board on the progress of this petition. The Building Department requested a Chapter 34 Code Review to ascertain the conditions to consider a special permit, which was done. There were some recommendations made for consideration by the Board. (A copy was given to the Building Inspector.) One is to install area sprinkler systems in two units: Unit 5 and Unit 1R. The alterations needed fall under a Level 2 alteration. A firewall is being proposed between Units 4 and 5 or between Units 2, 3 and 4 and Unit 1R to be determined with the Fire Chief and Building Inspector. There will be a fire alarm system, smoke detectors, carbon monoxide detectors installed, kitchen, bathroom and electrical system upgrades. This is a Scope of Work proposal and the Fire Chief may not agree and want a full sprinkler system but that will be determined.

Environmental Demolition Contractor Mr. Marchand informs the Board that a contract has been signed between him and the applicants regarding the demolition of the chicken coop structure and they have started the permit process. Mr. Marchand could probably have the hazardous report to the Building Inspector by the end of the week. Mr. Marchand is licensed in asbestos and he has seen no signs of this but there hasn't been any actual testing done yet. The structure is very unsafe, however he has only done a visual inspection without testing so far.

Mr. Guzman shows Mr. Gaynor the updated plans with moved property lines. Mr. Guzman shows an addition that could be removed. Mr. Gaynor asks if the lot is grandfathered prior to 1976. Mr. Piccirilli responds that the structure has been present for more than 10 years. He does not know if it was there prior to 1976. Attorney Kwesell informs the Board that they cannot approve anything that shows the structure on someone else's property. A plan has to show the structure already removed. Because the applicants are asking for a special permit to continue a non-conforming use, the Board would be approving something that's on someone else's property so there's a due process to share with that property owner. Mr. Piccirilli asks Mr. Guzman if they're talking about removing this structure/addition. Mr. Guzman explains to the applicants that it is too expensive and too involved to just move a wall as they would need new continuous footing and new wall, etc. and it's less expensive to take the addition/structure down, however it's up to the applicants.

Attorney Kwesell explains that this is a private party dispute where the applicants could claim adverse possession, they could claim they own the addition, they could do a lot line change. The Board can state in their decision that the proposal is to have the addition removed but are not permitting anything on a third party's property.

Mr. Gaynor asks Mr. Piccirilli if there was a discussion on the merging of the lots. Mr. Piccirilli responds that once the chicken coops come down there won't be a 50 foot setback non-conformity to that structure so the lot that they redesign will show the septic system on the front property. The chicken coop has been condemned.

Planning Board Chairman Gordon Andrews confirms that the new plan for the property has already come to the Planning Board and been approved. Mr. Andrews wonders if the Board can approve a petition when the other lot is being encroached on. Attorney Kwesell responds that once the building is removed it will no longer be encroaching. There will need to be a requirement in the Zoning decision that the the building be removed by a certain date and if it is not, the special permit would be revoked. Mr. Gaynor informs the applicants that the encroachment has to be resolved. Mr. Guzman informs the Board that once there are some permanent drawings, as there are egress issues, a contractor can be set.

As for timing, Mr. Guzman is asked how long he expects this work will take. Mr. Guzman responds that, to completion where all the stipulations have been met, it would take about a year. If the Fire Chief approves the sprinkler system there will be a waiver requested because of financial hardship as it will take time to have the funds available to install the system. Attorney Kwesell reminds the Board that four units are currently occupied so regardless of the stipulations put in the Zoning's decision, if the Building Inspector feels there is a safety risk he will need to do what he needs to do. It would be great if the stipulations had very strict timelines. Mr. Guzman adds that he isn't sure if there is asbestos in the buildings so that could complicate things with the Fire Chief approving the sprinkler system.

Mr. Piccirilli informs the Board that if they do not approve this petition, he will need to protect this location as a four-family.

Mr. Andrews asks for the Board to clarify what the applicant is requesting. Attorney Kwesell informs him that the applicant is seeking a multi-family dwelling which does not limit the amount of units. They have a special permit for four units from 1968 and would like a special permit for six units. Since there is already a special permit on record for a multi-family use with four units, they're seeking to expand the structure to add two more units. Mr. Andrews responds that for a multi-family they need 40,000 square feet per unit. Attorney Kwesell responds that that isn't part of the use. They're not seeking a new special permit for the use, they already have a special permit for the use. Mr. Andrews asks if they could ask for 10 units if they wanted. Attorney Kwesell answers yes, they can. There would have to be an amendment to the multi-family dwelling definition to limit the number of units. Attorney Kwesell states that the use is staying the same however they now have dimensional issues with the structure because they don't meet setbacks, etc. and are changing these things which is why they are here. Mr. Andrews states that there is a non-conforming structure and there is going to be an increase in the number of units. He asks where the protection is for the Town and also where the public safety comes in. Mr. Andrews continues by saying this structure is built on the lot line, 15 feet from the neighboring house so if there was a fire it could easily catch on to the next house. He feels the 30 foot setbacks are tossed out the window. Mr. Gaynor responds that they are not tossed out the window because they're pre-existing, non-conforming. Attorney Kwesell asks Mr. Andrews what the significance is that it's a new special permit because it's under the same review guidelines for the Zoning Board. A special permit is a special permit, whether it's the extension of something they still need a special permit or whether it's a new special permit, they still need a special permit. The review standards are the same. Mr. Andrews explains that he is on the Planning Board and would like to know where things are going in the Town. Attorney Kwesell feels Mr. Andrews' concern could be addressed by a definition change if he's looking to limit units. She continues to explain that this petition is not a multi-family development, this is a multi-family dwelling.

Mr. Piccirilli states that a four-family and a six-family are both multi-family dwellings. Mr. Borsari asks Mr. Piccirilli if this property was used for six apartments originally. Mr. Piccirilli responds that he is sure it was. Mr. Guzman confirms that this property was purchased as having six apartments. Mr. Borsari responds that the Town knew and there were no complaints. Mr. Piccirilli informs the Board that this petition stemmed from the Board of Health finding someone living in the pool house. Mr. Piccirilli investigated the property and found that the pool house was permitted for a pool cabana and there was a kitchen, bedroom had someone living in the building who wasn't supposed to be living there. Further investigation proved there was a special permit for a four-family and it snowballed from there. Mr. Borsari feels this is cut and dry - it's a multi-family dwelling, not a multi-family development. He feels the applicants are trying to do the right

thing and bring their six apartments up to code and things have to be moved along. Mr. Gaynor asks for timing on this petition. It was extended in March for 30 days.

With the advice of their Attorney, Amy Kwesell, the Board decides to close the Petition and work with Attorney Kwesell on the Decision.

Motion to close the hearing for Petition #886:

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy

Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes;
Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

Correspondence:

The Board reviews all mail items.

- Letter from the Planning Board to Robert Bergstrom dated 3/14/19 regarding Mudfest site plan review approval
- Letter from Attorney Ohrenberger dated 3/14/19 regarding Petition #890 stating that there will be no composting done at 280 South St
- Letter from Brooks & DeRensis dated 3/19/19 with attached Motions and Exhibits regarding Amanda's Estates (Land Court Civil Action No: 17MISC000507)
- Memo from Planning Board dated 3/25/19 with attached Form A for Petition #886, 395 Plymouth St
- Old Colony Planning Council Agenda for 3/27/19
- Notice of Hearing from Plympton ZBA dated 4/3/19 regarding a Special Permit for 22 Grove St
- Memo from Planning Board dated 4/8/19 regarding Franklin St with attached Form A

Other Business/Discussion

- Gordon C. Andrews' Open Meeting Law Complaint dated 4/2/2019 to ZBA regarding the March 11, 2019 meeting. Zoning Board Secretary Arlanna Snow explains to Chairman Gaynor that the video recording for the 3/11/19 meeting was cut short before Mr. Nessralla was recused and the Board motioned to go into Executive Session properly but is captured on the audio recording. Ms. Snow informed Mr. Andrews of this via email on 4/2/19. Mr. Andrews addresses the Chairman that he is fine with Ms. Snow sending that same response from the Chairman to the Attorney General.

Adjourn:

Motion to adjourn meeting:

MOTION: Kozhaya Nessralla

SECOND: Peter Parcellin AIF

Passes: 5-0-0

It was unanimously voted to adjourn the meeting at 10:56 p.m.

Documents:

1. Agenda - 4/8/2019
2. Meeting Minutes - 2/11/2019
3. Meeting Minutes - 3/11/2019
4. Executive Session Meeting Minutes - 3/11/2019 (These minutes will not be released until disclosure no longer defeats the purposes of the Executive Session)
5. Signed Revolving Bill Schedule - Petitions #892, #893 and #894
6. Signed Revolving Bill schedule - Postage, Pitney-Bowes
7. Invoices - Plympton-Halifax Express advertisements - Petitions #892, #893, #894
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Meeting Minutes

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13. Notice of Hearing from Plympton ZBA dated 4/3/19 regarding a Special Permit for 22 Grove St
14. Memo from Planning Board dated 4/8/19 regarding Franklin St with attached Form A
15. Public Hearing Notice - Petition #892
16. Application packet - Petition #892
17. Decision Form - Petition #892
18. Public Hearing Notice - Petition #893
19. Application packet - Petition #893
20. Decision Form - Petition #893
21. Public Hearing Notice - Petition #894
22. Application packet - Petition #894
23. Sawmill handout - Petition #890
24. Agriculture Act handout - Petition #890
25. Public Hearing Notice - Petition #890
26. Application packet - Petition #890
27. Updated plans from Webby Engineering - Petition #890
28. Resident Petition for Refusal - Petition #890
29. Agreement for Extension - Petition #890
30. Application packet - Petition #886
31. Revised Site Plans with lot lines - Petition #886
32. Robert Gaynor's signed certified statement of 3/11/19 Meeting Minute review

Respectfully submitted,

Date: _____

Arlanna Snow
Zoning Board of Appeals Secretary

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Respectfully submitted,

Arlanna Snow
Zoning Board of Appeals Secretary

Date: 5-6-19
Robert Gaynor
[Signature]
[Signature]
[Signature]