



Town of Halifax Commonwealth of Massachusetts

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

HALIFAX ZONING BOARD OF APPEALS

Monday, October 17, 2016

The Halifax Zoning Board of Appeals held a public hearing on Monday, October 17, 2016 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Robert Gaynor, Kozhaya Nessralla, Peter Parcellin, Gerald Joy, Robert Durgin and Daniel Borsari were in attendance.

Chairperson Gaynor called the meeting to order at 7:00 pm and reprised the audience that this public hearing/meeting is being audio taped. He also explained the procedure and the protocol at the public hearings.

The Board reviewed the mail and other matter/issues:

Procedural Matters

I Correspondence/Mail/Email/Fax

- Newman & Newman, P.C. letter, dated & emailed 9/20/16; responded by ZBA on 9/21/16
- OCPC: "Agenda for Meeting No. 530/September 28, 2016 [received 9/27/16]
- Commonwealth of Massachusetts, The Trial Court, Land Court Department; Scott M. Clawson (Plaintiff) vs. Town of Halifax Zoning Board of Appeals, Jennifer R. Harmon (defendants) [Land Court Filed 2016 OCT-3 AM 10:50]

II Bill(s)

- Revolving: "Express Newspapers" : Legal Notice for Petition #857 = \$80

III Approval of Minutes

- August 8, 2016; July 11, 2016; August 22, 2016

IV New Business

- 7:30pm: Petition #857, Robert Bergstrom, Land on Hemlock Lane, Halifax, MA

V Old Business

- 7:15pm: Petition #847, R&J, LLC & Halifax Country Club, LLC, Land off Plymouth Street, Halifax, MA
- 7:45pm: Petition #744, Jennifer Harmon-Choate, 7 Plymouth Street, Halifax, MA

VI Other Matters

- a. ZBA to BOS – re: "Recommendation of an Associate Member" memo [dated 9/13/16]
 - Email response from Charlie Seelig [dated 9/26/16]
- b. Planning Board to ZBA:
 - "Site Plan for Review" at 355 Plymouth St./ Dunkin Donuts [dated 9/15/16]
 - "Notice of Public Hearing" at 355 Plymouth St. / Dunkin Donuts [received 9/16/16]
 - "16-SPR-162 894 Plymouth St., Halifax, MA" decision letter [dated 9/21/16]
 - "Petition #855" decision letter [dated 10/7/16]
- c. Secretary to ZBA – All to be acknowledged during the continuances of the designated public hearing:
 - Petition #847:
 - 1)"File 16-SPR-159 314 Plymouth Street, Halifax, MA" Site Plan Review approval of request for Site Plan Review" [dated 9/21/16]
 - 2)Email from Attorney Brennan [dated 9/22/16]
 - 3)Planning Board cc'd to ZBA – "Proposed Multifamily Development, Assessor's Map 63, Lots 6A & 31 and Map 73, Lot 5" memo from Amory Engineers, P.C. [dated 9/7/16 & received 9/26/16]

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

- Petition #744:
 - 1)Email from Petitioner, J.Harmon to Secretary [emailed 10/10/16 at 4:21pm]
 - 2)Email reply to J. Harmon from Secretary [emailed 10/11/16 at 11:48pm]
 - 3)Email reply to Secretary form J.Harmon [10/11/16 at 11:48pm]
 - 4)Email to J.Harmon from Secretary [emailed 10/12/16 at 9:54am & 2:21pm]
 - 5)Letter sent to J. Harmon from Secretary [mailed 10/11/16]
- d. BOS cc ZBA – re: Letter to Ms. Jennifer Choate [dated September 28, 2016]
- e. BOS to ZBA – re: “Talent Bank Form” [dated 10/6/16]
- f. BOS to ZBA – re: “Appointment-ZBA Associate Member” [dated 10/12/16]

VII Upcoming Hearings, Seminars &/or Conferences

- CPTC: “Fall 2016 Workshops”

VIII Open Comments /Open Business

IX Possible Executive Session

X Adjourn

Petition # 847, R&J, LLC & Halifax Country Club, LLC, Land off Plymouth Street, Halifax MA

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, July 11, 2016 at 7:30p.m. in Meeting Room 1, 499 Plymouth Street, Halifax, MA on the application by Attorney Edmund J. Brennan, Jr., on behalf of R&J, LLC and Halifax Country Club, LLC (c/o John Peck, Manager) for a Special Permit for a Multifamily development, to build four (4) buildings, with four (4) residential units per building (16 units in total), consisting of two (2) bedrooms per unit; a condominium development on land located on the southeasterly side of Plymouth Street. Said properties are owned by R&J, LLC, as shown on Assessor’s Map 63, Lots 31 & 6 and Halifax Country Club, LLC, as shown on Assessor’s Map 73, Lot 5. The applicant seeks a Special Permit in accordance with the Zoning By-laws of the Town of Halifax under Article III, §Section 167-7D (2) (a)-(d), Specific Use Regulations, page 167:23. The applicant seeks Variances of the Units for the development to reduce the frontage from the one hundred fifty (150) feet required to one hundred forty three point three (143.3) feet requested. The applicant seeks Variances in accordance with the Zoning By-laws of the Town of Halifax under Article IV, §Section 167-11, Table of Dimensional and Density Regulations, page 167:31 & under Section 167-12.A. (1)-(7), Density regulations for specific uses, under Multifamily development, page 167:31. Area is zoned Residential & Commercial-Business. Petition #847

Kozhaya Nessleralla recused himself. Ed Brennan, an Attorney from One Church St. Taunton was representing Mr. Peck along with Joe Peck and Rebecca Baptista from Silva Engineering.

The site plan has been sent out for Peer Engineering and Silva Engineering has addressed the issues sent back by Armory Engineering. The Planning Board approved the site plan on 9/15/16. They are back before the ZBA for a Special Permit for multifamily and a Variance from the frontage to 146.7’. Having already addressed the Planning Board issues, there are three issues remaining.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

One is how to handle the bylaw as it relates to the lot for development. The bylaw states each building needs its own lot and a lot is 10 acres. Atty Brennan believes that the bylaw refers to the ownership of the lot. It must be single ownership for multifamily developments. It does not refer to each building having its own lot. The 10 acres is the minimum lot size for a multifamily and the 10 acres has to be under single ownership. Atty Brennan strongly believes that is what the bylaw is talking about, not that each lot has to be 10 acres. One unit per acre would be the density. He would need 16 acres as he has 16 units. Chairman Gaynor asked if there would be 16 condo owners on 16 acres. If so, how does that apply? Atty Brennan explained that they would be taking a piece from the Country Club to make up the full 16 acres, thus making it 16 acres under one ownership. Chairman Gaynor asked for further clarification on what happens if the Country Club gets sold. In the case that the Country Club is ever sold, the condo owners will own the units and the trustees of the condo unit own the common area. Some of the golf course will spill over but they will have an easement for the fairways. They will be allowed to accept the deed from the golf course and have an easement on that part that has the fairways. It will be a transfer from the golf course and the other two entities to one single entity that owns the 16 acres.

The cutting and combining of the parcels has not been done yet due to the cost and the intense paperwork that it entails. There is no sense doing it if it does not get approved. They will be looking for a variance and special permit subject to them putting the acreage under single ownership. Mr. Parcellin had concern that they are building on only 5 acres of the 16 acres and those unit owners will never be able to use the land as the Country Club will have an easement for a large amount of it. Atty Brennan explained that it would be the same if it were wetlands. The fact remains that they meet the guidelines. It looks tight, but it really isn't as dense as it looks, as it meets the Town's bylaws. Mr. Parcellin asked if there were other complexes in town that were similar to compare. Halifax Trails would have been, however it has not been built yet. There is 100' feet between buildings; they have their own driveway and their own access to the buildings.

Chairman Gaynor brought up the variance for the access roadway. He feels that the applicant has created his own hardship by not wanting to use the property next door to complete the footage. He explained that he would have a hard time approving a variance where they create their own hardship. Atty Brennan reminded the board that the Alger property had frontage however it was impeded by wetlands, therefore they were unable to use it. The applicant does not feel that is an option and would like to ask for the variance. Mr. Joy asked how the traffic would be impacted. Atty Brennan said that the traffic consultant, Brian J. Biesel stated that the alignment with Stop and Shop would not cause an issue; instead it would handle any traffic flow coming out of the condominium and be beneficial at a traffic light intersection.

Rebecca Baptista from Silva Engineering stated that two NOI filings went in to Conservation today for the drainage on the sites. The design has not changed since the last time it was presented to the ZBA. However, it may need to be tweaked a little bit more. If Con Com will allow them to go into the Wetlands then they will have a lot more options. The best plan would be to keep everything flowing away from the Alger's property.

Chairperson Gaynor would like to have Deutsch Williams, Town Counsel, review the changes and see if in fact it does adhere to the bylaws. He feels that the frontage needs to be addressed as the hardship was created, and not preexisting. He personally feels that currently he would not be able to vote in favor of a variance on the frontage for that reason. Joe Peck asked if the frontage had to

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

be continuous and is it just for access. Chairman Gaynor stated that the 150' for access to the property has to be continuous frontage.

He suggested that they put that question in front of Town Counsel as well. There is 150' of frontage on each of the two front lots and 140' or so on the third lot. They will also have to maintain a 30' vegetated buffer from the buildings on each side of the road. The roadway itself is 24' wide.

Joe Peck would like to know what defines a hardship. You need 150' and you only have 142'. Peter Parcellin explained that a hardship occurs when there is no possible way that you can build what it is that the bylaw allows you to build on your property because of this hardship, the other is a financial hardship. Financial hardship deems your land completely; financially unfit to alter the land to make it usable according to the bylaw.

Chairman Gaynor would like to ask permission from the Selectmen to contact Town Counsel. In the letter to Attorney Hucksam, outline the areas of concern, self-created hardship, 11.3 acres coming from Country Club as an easement, 30' buffer requirements as affecting the access roads. Attorney Brennan will provide another set of plans to send to town counsel for ease of understanding the project.

Motion to send a letter to ask permission from the Selectmen to contact Town Counsel. In the letter to Attorney Hucksam, outline the areas of concern, self-created hardship, 11.3 acres coming from Country Club as an easement, 30' buffer requirements as affecting the access roads. Set of plans to accompany.

Motion P. Parcellin, Second G. Joy, AIF 5-0-0

Motion to Continue to 11/14/16 @ 7:15pm.

Motion P. Parcellin, Second G. Joy, AIF 5-0-0

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Petition # 857, Robert Bergstrom, c/o “Mudfest” (of 56 Spofford Avenue, Hanson, MA)
The Halifax Zoning Board of Appeals will hold a public hearing on Monday, October 17, 2016 at 7:30 p.m. in Meeting Room 1, Town Hall, 499 Plymouth Street, Halifax, MA on the application by Robert Bergstrom, c/o “Mudfest” (of 56 Spofford Avenue, Hanson, MA) to the land located on Hemlock Lane, Halifax, MA. Said property is owned by Samera Nessralla, as shown as Assessors Map #51, Lot 1. The applicant seeks to Appeal the Building Inspector’s “...determination that the Mudfest show that is being promoted is a commercial event with the intent of financial gain. The site would be used as an outside area of assembly and recreation and therefore would fall under the commercial use of 167-7 Summary of Use Regulations, allowable by right in the B zone and by Special Permit in the Conservancy and Industrial Zone. This use is not allowed in the AR district”; as stated under Summary of Use Regulations, Commercial Uses (page 167:22). The applicant seeks an Appeal of the Building Inspectors decision in accordance with the Zoning By-laws of the Town of Halifax under Section 167-21A (1) (page 167:64). Area is zoned Residential.
Petition #857

Member Kozhaya Nessralla recused himself.

Chairman Gaynor addressed Mr. Bergstrom and asked if he would be speaking on behalf of this matter. He also asked for a zoning map of the area. Marion made available the map that was provided with the application. Chairman Gaynor again addressed Mr. Bergstrom and asked what we were talking about, Mudfest, calling Mr. Bergstrom jokingly “Mr. Mudfest”. Then asked Mr. Piccirilli, Building Inspector to speak to the matter first and address his concerns and state what decisions he has made.

Mr. Piccirilli stated that he had made the decision that Mudfest does not conform to the zoning bylaws as far as the use intended.

Chairman Gaynor specified that was in reference to Lot 51 and not including the parcel up front. It provides access through the property but otherwise has nothing to do with Mudfest. That parcel will not have concessions, port-a-potties, or anything else on it. It is strictly for access to the Mudfest event.

Mr. Piccirilli believes both Lot 51 and Lot 224 are zoned A/R.

Mr. Bergstrom is appealing the decision as he feels that it should be allowed because it is farmland and farmers should have the right to supplement their income. Mr. Bergstrom provided a copy of the Right to Farm Act from the Town of Halifax and several other things that state incidental activities in conjunction with such like that. Mr. Bergstrom stated that he highlighted areas in Halifax’s very own that had... etc. in them. He feels Mudfest falls under all of those categories. He could not find anything saying that Mudfest could not be done either.

Chairman Gaynor said that Mr. Bergstrom specifically referred to Mudfest under a farm exemption 40A Section 3.

Chairman Gaynor asked Mr. Piccirilli for any information that he may have on this exemption.

Mr. Piccirilli said that exemption is specific to certain things in farming. It is more along the lines of things ancillary to farming such as going to market, delivery from the farmland. It doesn’t specifically say that outside events such as this would be allowed in farm exemption 40A.

Chairman Gaynor asked if there is any language regarding supplementing income to a farm as an exemption.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mr. Piccirilli explained that the exemption describes supplementing as is the supplemental activity secondary to the primary source. If you are growing vegetables, if you are growing corn, is it secondary to growing corn? A corn maze is secondary because you are using the corn. If you are taking things and putting them in jars and bringing them to market, that is secondary to what you are doing. How is driving trucks secondary to farming and having a Mudfest? I didn't see the connection. I didn't feel there was enough proof to prove that connection.

Chairman Gaynor mentioned that Mr. Bergstrom cited some case law.

Mr. Piccirilli stated that he believed that it was not actually case law that was referred to, but an incident that happened to a town in a specific bylaw and it was against an ice cream stand, not a truck event.

Chairman Gaynor asked Mr. Bergstrom if he spoke with Mr. Brad Mitchell, Director of the Massachusetts Farm Bureau Federation.

Mr. Bergstrom submitted an attachment to the Board. Mr. Bergstrom stated that the attachment shows there are corn mazes, weddings etc. that are being held on farm land to supplement. It also mentions Farm Aid and concerts. He said that even though it is not written that you can have a Mudbog, it is also not written that you can't have a Mudbog and he is the one that pointed out to me the "ect, ectera's". incidentals are not the major part of, in conjunction with. If the trucks are running tractor tires, because mudboggling started on cornfields, by farmers.

Chairman Gaynor asked if it was like a tractor pull type of event.

Mr. Bergstrom confirmed. He also offered at three minute video of what they do at his event.

Chairman Gaynor read a paragraph from Brad Mitchell's submission. It read as follows "further submissions with Brad Mitchell (Director of Mass. Farm Bureau Federation) also informed me that with the growing popularity of mud bogging events in Ma. On farm land, requests of certain special permits ect. Is common and shall conform with local fire-Police-Board of Health guidelines, in which, Mudfest has always done and will always do. Also, Mr. Mitchell said that it is correct that such entertainment is not spelled out in M.G.L. Chapter 40A-Section 3 but is allowed and wording of it should, and soon will be, changed (because its outdated) so that all will understand that farmers, on their farm land, can hold festivals and entertainment that increase local farm awareness in the area to promote local farmers. It was also brought to my attention that I Robert Bergstrom as a lessee of property still have grounds, but if it makes the process easier, permit can be written up in land owner's name."

Chairman Gaynor checked with the Police Chief and tried to find out if there have been complaints over the last 3 years. He found that the first year there were a few complaints of speeding up and down Hemlock Lane. In the subsequent years thereafter, there have been three years total, there have been no arrests, there have been no formal complaints after the first year. Mr. Bergstrom has complied with the eight detail officers plus whatever else the Chief wanted. The Fire Chief was the same way as far as ambulance on site; number of EMT's and Firefighters on scene and it has always been handled by Mr. Bergstrom as "whatever you need, whatever you want". There has only been one year, Chairman Gaynor stated he was personally familiar with it, there was a young lady riding in one of the trucks and she hurt her back and was taken out on a backboard. There may have been one other woman taken out for a seizure from not taking her medication but as far as alcohol, there has never been anyone taken out for alcohol problems.

Chairman Gaynor also spoke with some of the neighbors on both sides of the event. He stated he is one of the neighbors on one side and you can hear the sound system more than the engines. On Cranberry Drive, they can hear the engines, but it was a one day event so that was just his own personal input that he did some research on. The meeting was opened up to members of the Board.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mr. Durgin asked if the farm would be returned back to its natural state after the event and Mr. Bergstrom responded yes. The corn comes down and he follows with an event and immediately after he is done in June it is replanted.

Mr. Joy feels that it is a part of the land and he doesn't have any issues.

Mr. Borsari feels that this is more like racing or motocross whereas a corn maze may be more like a Christmas Tree Farm where you grow something and you have a seasonal event. Don't quote him on this but he thinks if you look at MGL 60A or 61A it defines some of these terms and the activities are to promote the cultivation of the soil. Horticulture, Floriculture, Viticulture, it gets very specific about what the uses are. So, when he sees on this gentlemen's letter that "they can hold festivals and entertainment that increase farm awareness" he doesn't know how that increases farm awareness.

Mr. Bergstrom responded that Halifax is on the map, Nessralla Farm is on the map, and it brought awareness to Nessralla Farm and this area.

Mr. Borsari, but I think when you combine it with the rest of the definitions; I think what they are talking about it farming.

Chairman Gaynor, I think that is what Mr. Piccirilli was referring to, farming being the primary use, how if Mudfest secondary to farming as the primary use.

Mr. Bergstrom, it is an incidental, it is not a major part of and it is written into the bylaws as an incidental or in conjunction with. The definition of incidental is meaning not the major part. The simplicity of an ect... which is Mudfest, weddings, and anything not listed. People hold weddings in town and weddings have nothing to do with farms. Mr. Piccirilli said there is specific language to weddings and most of that stuff falls under equine which would only allow up to 100 people.

Chairman Gaynor verified with Mr. Piccirilli that the language actually specifies.

Mr. Parcellin verified with Mr. Piccirilli that he said a corn maze would be ok.

Mr. Piccirilli said that there is specific language and code for corn mazes.

Chairman Gaynor asked if Mr. Piccirilli was referring to the Town Bylaws or in general.

Mr. Piccirilli in the state fire code.

Mr. Parcellin asked if it was because it was written like that or because it is secondary to the primary use.

Mr. Piccirilli responded because somewhere along the lines it was determined that it was secondary to farming. By using the corn for the maze...

Mr. Parcellin said so I guess it really hinges on that. So the purpose for that event is secondary to the farming that goes on. If it was a concert or something that would...

Mr. Bergeron inserted if you stick to the laws that are incorporated in this meeting so far, no we couldn't even do a concert.

Mr. Piccirilli, the concert has specific language also.

Mr. Parcellin, I am trying to find the difference between the corn maze and a concert and I am trying to figure out where this would fall and why it would fall there. I think that is where our decision kind of hinges.

Mr. Bergstrom, it comes in to the Right to Farming, I believe, with the use of the land to help the farmer out in tough times and things like that. It goes back to the Aids thing with the concerts, people could just throw concerts up in the poor farmers land so they could draw

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

more people and make money. I don't read that a Mudbog can't be done. It doesn't say it can be and it doesn't say it can't be. What I keep on referring to and what I keep on getting told is it falls under the ect...

Mr. Parcellin what this says is that we as a town, if I am not mistaken, can't tell a farm or zone a farm out of doing things as a farm. But our zoning, zones people out of having festivals like this if it is not related to farming, so that is what I think the issue is. So, what we need to figure out and what our decision is based on is whether or not that specific event helps or is related to the farming of the farm.

Mr. M. Nessralla asked, how can it not, it is substituting our income.

Mr. Parcellin, but you could have a Wal-Mart on the property and say you are supplementing your farms income.

Mr. M. Nessralla, I think that is far off the path.

Mr. Parcellin, but we are limited in our decision. To get me to vote yes, I am interested to find out how this helps.

Mr. M. Nessralla, It generates money for us, we don't grow anything in the winter time and we look for that money to help pull us through the winter time.

Mr. Parcellin, not everything would be approved if that was the answer for it.

Mr. Bergstrom I just believe it is an introduction to the farmlands the cornfields, the whole everything.

Mr. Durgin, how many people have gone to the farm and never realized there was a farm there and their business has grown.

Mr. Parcellin, but they could put up a billboard for the same reason.

Mr. Durgin, what is that going to bring to the members of the town.

Chairman Gaynor called on Mr. K. Nessralla from the audience.

Mr. K. Nessralla, in 2000 the state of Massachusetts implemented that law, Chapter 40A Section 3 to help the farmer supplement his income any way he sees fit. You can have a Mudbog. Tractor pulls are considered Mudbogging. You can have Mudbogging with tractors. Yes? As long as the Selectmen approve it, I would follow the rules by the Selectmen. To supplement my income for the winter months I can have festivals, I can have a music event, I can apply to have concessions, people come in to hold a rally, certain people. All these rallies that were done in the eighties, on parking lots or buildings were done on farms and it was done so that people were coming out of buildings and choking the farmers out. You couldn't live next to a big farm. You couldn't live next to a cow farm. They built houses on the borders of them and that is how they choked the farmers out. The farmer was forced to sell his land. They put that law in there so he could provide for himself through a mudbogging, through a corn maze. I mean, a corn maze, who ever heard of a corn maze in the eighties? Nobody. After 2000 they started creating corn mazes and having functions and weddings on farms.

Chairman Gaynor, just so we know, I want to set some ground rules so everyone knows. All questions and all responses come through the Chairman. If you have a question for someone I will find out the answer for you. What we are going to eliminate is everyone yelling and jumping on each other so if I give you the floor, you have the floor and you have the ability to speak and give an answer to someone without being interrupted. So I am going to open it up to everyone now and I will recognize Mrs. Roy.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mrs. Roy, I just want to clarify that the Board of Selectmen has not had any issues with Mudfest. As Mr. Gaynor stated, there has never been a problem. The Board of Selectmen has been supportive of issuing the entertainment license because that is what we needed to do. That is the only process that we thought needed to happen. So there is no question of whether or not anyone likes Mudfest. It is not our intention to end Mudfest and I think I have explained to many of you in the room that we definitely have a zoning issue here. It is in direct contrast of what our zoning says so, over the last few months I have been trying to find out the way Mudfest can happen, but it has to be something that we can stand on because it's the gift that will keep giving. Meaning, if we make a decision that is not within our bylaws, we are opening the doors for any other kind of thing to walk through. So I think it is that important that we get Town Counsel's opinion. I think that Charlie has talked to Atty Hucksam before, trying to work this out, and again it is not our intention to try to end Mudfest. Our intention is to save Mudfest, but do it in a way that is within our bylaws so we are not opening the town up to other things. Mr. Bergstrom, I know you talk about the etc. and I know what it is because you showed it to me, but it's the introduction to the bill. Etcetera is not in the bill it's the introduction paragraph to the actual chapter. So I just need to point that out because we can't hang our hat on etc. and I love you Mudfest Bob, but I have said this to you before. We need something we can all stand strong on because again, whatever decision is made by this committee is the decision that other people will be coming in saying that you granted this. So we want to make sure it is correct.

Chairman Gaynor agreed, that is the point. Let me also say this, that I agree with Mrs. Roy. If this was your first rodeo, no pun intended, and you were coming in I would have a real concern with this and that we are opening the door. I think the biggest thing and the biggest advantage that I see is their track record. It's not their first time her with us, this is probably the 5th and they do have the track record. If the place was destroyed, Mr. Nessralla certainly would not be able to be planting his crops again year after year if I'm not mistaken. It's a well-organized, well run function.

Mrs. Roy said she did not question that and she totally agrees with all he is saying. When it comes to this thing we can't use that as our decision. Mr. Borsari, I love that you were looking that up because it has to be what we can stand on. I want you to know Mudfest Bob that we want to work this out but again if our bylaws don't say it I don't know how you can.

Chairman Gaynor and you don't understand how you have done it the last five times.

Mrs. Roy, because we didn't know Mr. Gaynor, that's why. What happened was we thought the Board of Selectman was just issuing an entertainment license. It wasn't until Mr. Clawson came to us and said he wanted to do a concert on his property, I don't know if most of you had heard about this concert that Mr. Mudfest Bob was involved with in the beginning. It was a result of that that we found out that it wasn't the proper use. We said oh my goodness, Mudfest has the same situation, is it true that the bylaws don't allow Mudfest if they don't allow the concert and we were told yes. We told Bob that he needed to work with us to try to work it out and figure out how to do this and here we are today because we haven't found a mechanism that would allow it.

Mr. Piccirilli I have nothing against Mudfest, it has a clean record and it has been a good event. I made my decision based on our bylaw. It's not allowed in the A/R under commercial use indoor/outdoor recreation or places of assembly. My concern is that if you grant the special permit and you vary the use anybody else in line, if you can prove this is related to farming, you set precedent.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Chairman Gaynor called on Walter Brown to speak.

Mr. Brown from East Bridgewater, if you have a garden at our house, you turn soil every year. So couldn't you argue the fact that ripping the soil is helping to turn the soil. Couldn't you argue that fact?

Mr. Parcellin, that was my point of asking that question. Then we can say no to concerts because they are not tilling the soil. If the primary purpose or benefit is bringing people in and having these events so that you don't have to spend the money to the land then that may be a benefit to farming. I don't know if that satisfies this or if the attorney is going to say that, but if the purpose is related to using that event, the primary purpose being the side effect is advertising or the side effect is making money for the farm so they can stay open. The real purpose is to bring giant trucks in so you don't have to; I think that might be an avenue to look at. That is avenue that would qualify you to skirt the bylaws of the town based on the farm. I don't know what Mudfest looks like; I don't know how much that does that.

Mr. Brown, In your personal opinion could you argue that fact.

Mr. Parcellin, There would be an argument there, I don't know if it would be a valid argument. My first thought in reading all of this mumbo jumbo is that if it's related to the farming of the land, which is why my question was concert probably wouldn't work. I have to be honest, when I first drove by it; I was like oh that is probably a good idea to turn stuff over. I don't know if that is the purpose, maybe it is a laughable purpose.

Chairman Gaynor, Mr. Piccirilli is there any portion of this land that we are talking about that is in Conservancy.

Mr. Piccirilli, I believe that there is a portion in the back that is Conservancy.

Mrs. Roy, back in the Spring when we were talking to Mr. Clawson, and we first realized there was an issue we thought maybe there was Conservancy land. It was a couple of weeks from Mudfest and we were trying hard to figure it out as we didn't want to cancel. We thought that perhaps where it was on Conservancy land that would give it approval, but it was not the case. It is all uplands.

Mr. Borsari, what size parcel in town could claim right to farm. What is the smallest size parcel?

Mr. Piccirilli responded with an answer of 5 acres.

Mr. Borsari, five acres, so if we go with one of the thoughts out here that farmers can do what they want to supplement their income, now we are saying that anybody in any zone in town can do whatever they want.

Chairman Gaynor clarified that it would be in A/R.

Mr. Borsari disagreed, and pointed out that in fact it states in any zone. Any zone with 5 acres you can claim right to farm. This is a huge precedent that we are setting in town and we have to be very, very careful with the precedent we set. The first year they had it I was sitting at my house saying that they can't allow that, but you know... As the uses are listed, we don't even have the choice here. It is a no. And we can't change the allowable use.

Mr. Parcellin, it does say "by allowing agricultural uses and malayed activities with minimal conflict to abutters" so if this wasn't five acres that could be something that could be used.

Mr. Borsari, As Mrs. Roy said, we have already had an attempt at the other end of town for another huge event so we are completely changing the complexion of the town. Now I am the green one and I am all enthusiastic so I go and I read every line and every sentence in the

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

zoning bylaw and our charge is to make sure the intent of each zone as voted in by the people that whatever variances or special permits we allow do not change the character of the zone. Again, I try to go to uses where I will just repeat it one more time; corn mazes are similar to a Christmas Tree Farm. You have to cultivate the soil. It goes along with the state law definitions in the 40A Section 3. You need to cultivate the soil, grow things, grow animals and promote selling those products. This is more like a motocross track or demolition derby; I don't know I don't go to them. But it is certainly not promoting farming. Which is what, if you go through all of the laws, we are talking about.

Mr. Durgin, Kozhaya has your business increased since having Mudfest?

Mr. K Nessralla answered yes.

Mr. Durgin, so it has brought more people to your farm.

Mr. K. Nessralla, yes it has. As long as you have more than adequate acreage to hold a function like that. If someone came into this town and wanted to have Farm Aid, where would they put it? They would hold it on farmland. They didn't hold it in a parking lot. Zoning is going to change sooner or later. You have to start somewhere. We have had a track record for five tries already and it is supplementing our income. As long as you can supplement a part of your income out of a part of that land.

Mr. Durgin, it's not only supplementing your income, it is bringing more business to your farm.

Mr. K. Nessralla, which we do with Mudfest.

Chairman Gaynor which is an excellent point too, again on a five acre parcel you are certainly bringing in considerations on whether or not it would be detrimental to the established character of the neighborhood. If it was in direct conflict of the intent of the bylaw and I think in those cases as opposed to 242.5 acres which is certainly a significant difference between a 5 acre function in my yard just to go crazy. I do see your point.

Mr. Bergstrom, the definition of a farmer is if you have over 6 acres. That is what you need to get farm plates etc. Anyone can do that, but to be labeled as a farmer, you need to sell produce or a product to the public. Some Joe Schmoie with produce on his truck is not a farmer. When you come down to someone who actually grows stuff from their fields and sells it and pumpkins and corn mazes, that is a farmer.

Chairman Gaynor, However there is a distinction between the example the Selectmen had given about being zoned A/R. In my opinion, Fieldstone Farms is no more a farm than the man on the moon but yet it would qualify by definition to have the exact same venues as a real farmer.

Mr. Bergstrom, he is still A/R vs. a farmland. If he doesn't sell produce he can say that he raises his horses and so on and so forth and that can put him into a different category.

Chairman Gaynor, you have to understand Bob, with the precedent we are setting.

Mr. Bergstrom, I understand and with that all said I still don't understand why no one else attached definitions to words that are written in there like incidental. I am stuck on that, it is in our bylaws for incidental and in conjunction with. It is written on our home town bylaws and our state bylaws and I am standing strong with Mudfest as an incidental. It doesn't say mudboggging or anything like that, but the definition of incidental is not a major part of and I am stuck there. To me, that is like the holy grail.

Chairman Gaynor called on Dan Borsari.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mr. Borsari asked if the number of events they could have could be limited.

Mr. Bergstrom, I just request the two.

Mr. Borsari, but that is not my question. If we can't say no to this, I don't see how we can limit the number of events because they are going to claim the same thing.

Chairman Gaynor, they have already claimed the same thing because they have done this five times.

Mr. Borsari, what if they said that they would like to do ten this year. How could the town say no?

Mr. K. Nessralla, you can't because the farm has to operate. We allow him to do it before we plant and the last harvest that is it. He can't do it any more than that.

Mr. Borsari, you couldn't do it 4 weeks in a row?

Mr. K. Nessralla, no, my brother and I would not allow that.

Mr. Borsari, I appreciate that, but that is them. They are personally not allowing it. But someone else may want to do it as much as once a month. We have to look at what we can support legally.

Chairman Gaynor, I look at that to be incidental and secondary to the primary use of the property. I think that is an obvious example that the primary use of the property is to grow corn. This is definitely secondary because nothing interferes, and correct me if I am wrong; nothing interferes with the growing of produce or corn. This happens to be able to meet a schedule where it can fall in and meet a schedule where it does not conflict the primary use of the property.

Mr. Borsari, right but I guess I didn't explain it correctly. What I am saying is that in that particular case on that particular parcel, they are having it twice a year with those particular owners. If another owner obtains it or there is another parcel with a different type of farming and incidentally horse riding is considered incidental, My initial question is how can this town or the board of Selectmen or this board or the Zoning Officer limit it.

Chairman Gaynor, going by these laws, we have to comply with each permit and each application that is submitted to the board is judged on its own merit. We can't lump everyone together. Those are the guidelines that dictate how we function.

Mr. Borsari, that is exactly my point. If you allow it once with one person your position becomes very weak when someone else wants to do it.

Mr. Piccirilli, along the same lines, and I know with Bob your theory is that monster trucks could be tilling the soil. For that event how about horses riding around tilling the soil or motocross bikes riding around tilling the soil or people stomping their feet at a concert tilling the soil. You have to use realistic thoughts of why you are going to allow it if you are going to allow it.

Mrs. Roy, because this is such a huge decision, is it something that we should get clarification from Town Counsel.

Chairman Gaynor, that is where we are too in this whole permit process. By the time we submit to Atty Hucksam and ask for a legal opinion, our next meeting is November 14. The Mudfest is November 13. So we are wiping them out. There is no chance. Prior to this in the spring when you mentioned that this was brought to the Selectmen's attention, we had months to be able to get an opinion. We don't have months without cancelling.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mrs. Roy, we left this with Bob as this was something that needed to be explored. Is there a way that your board could meet before the 13th? It is very important to be sure we are making the right decision.

Mr. Parcellin, if we overturn the decision, what are the permits that they will need to get. If we decide that Mudfest is a secondary event to the primary purpose of Nessralla farm, does that mean that anyone with 5 acres can run right out and do this or will they need to get certain permits.

Mrs. Roy, I am not 100% sure that we would still just issue an entertainment permit, because that is all we were doing before. An entertainment permit is not just coming before the Board of Selectmen. It also has to be signed off on by the Fire and Police Departments. I do think we should still do a live entertainment permit but that is just my personal opinion, not a legal opinion. I get where you are going Peter. What you would be approving is the Zoning. The Board of Selectmen would be approving whether they think it would be a good thing for the town and public safety, which has already been proven. In this particular case we feel confident that it would be run correctly. Our question was zoning. In the case of the of the concert that Mr. Clawson wanted to put on, that was all new to us so we were exploring all of the safety issues and all those kinds of things. It wasn't until we realized that we had a zoning issued that we had to back away and say sorry it doesn't conform.

Mr. K Nessralla, in the last 5 years that we have been holding Mudfest, how many people with 5 acres have come to apply to do anything like that.

Chairman Gaynor, well to have live entertainment at a Graduation Party would be the only thing that I could compare that to.

Mrs. Roy agreed. However, if we are saying to you that it is ok to have Mudfest, how can we say to someone else that has 5 acres that it is not ok to have Mudfest? That is the thing about the precedence.

Mr. K Nessralla, but we are talking about a 42 acre parcel to have a Mudfest on. According to Chapter 40A Section 3, it is more than adequate to have it. It is an activity to supplement part of a farmer's income. It is not going to take us away from farming, believe me. The percentage that we get out of it pays a minor amount, but if you do a little bit at a time in between your crops, like the corn maze, like the Mudfest we are still regulated by everybody. It is not a free for all.

Mrs. Roy, we know that you are not trying to have a free for all. We do not want to try to take away your income, but I just want to say you made a point earlier that it doesn't mean that some other person with 5 acres would come in to the Board of Selectmen often because we could regulate whether they have a Mudfest. If we approve your Mudfest there is no way we can't approve theirs. Bylaws are not just in place for things that we should follow in the sense of, we don't know what is going to happen years from now, but this will become a case where someone will sit here and use as an argument and that is my only thing. I want you to be able to hold it, but as a Selectmen I have to make sure that we are following our own town bylaws.

Mr. Bergstrom, the people with the 5, 10 or 20 acres don't fall into the acreage category to be able to have things like Mudfest, but we do. There is the difference. Again, I am just stuck on the incidentals. We hit everything.

Chairman Gaynor called on Tom Curran from Plymouth.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mr. Curran, by the time someone with only 5 acres were to get insurance and the proper clearances through police, fire etc. realistically there is no way they could hold an event like this.

Mr. Borsari, we are charged with keeping the character of the area. So we have to say, is the intent of farming, racing.

Chairman Gaynor summarized by saying that we wouldn't even be here if Mudfest didn't have the track record that they do have. It has been going on four years and almost 8 events with an impeccable record. In my opinion this would be a complete no until we got a legal decision on it. Phase two of that. We have a choice from the Board here. We can, as it was suggested, ask for a legal opinion to find out if in fact by definition and related strictly to our zoning bylaw we check with Atty Hucksam to see exactly what we can and cannot do under these specific instances. Now, here comes the problem, the sticky part. That would require our Board to meet again very soon because of the twenty day appeal period. The appeal period would bring it to November 8 if it was granted this evening.

Mr. Borsari, is there any way to grant them a onetime permit tonight.

Mrs. Roy, they would still need an entertainment license from the Board of Selectmen.

Chairman Gaynor, so then the question becomes, is that even within our prevue to do that.

Essentially what we are saying is overriding the Building Inspector's decision for one day. I don't know if we can do that.

Mr. Piccirilli, again I based my decision on a bylaw not on the event.

Mr. Parcellin, he based his decision on the bylaw. The bylaw is pretty clear to me. The only thing that would negate the decision based on the bylaw is if the Chapter 40A Section 3 lets them skirt the bylaw which the building inspector made his decision on. I have read it about fifteen times and I am not seeing incidental or anything in here. That is just what the Farm Bureau said to him. It says "you can't restrict the use of materials or construction or you can't unreasonably regulate the use of the land for primary purpose of agriculture, aquaculture and all this other stuff or require the use or expansion of construction structures for the purpose of agriculture." There would have to be something where it is a purpose. I am worried that if we ask Atty Hucksam the answer we will get is no and that will bring us back to our bylaws which doesn't allow this. The town bylaw does not say in conjunction with or incidental and neither does the state.

Mr. Bergstrom stated that is where he saw it but he did not have them with him to point them out.

Mr. Borsari, is it as simple as asking our town counsel if Mudfest is considered Agricultural.

Mr. Durgin, this bylaw encourages the pursuit of agriculturally based economic opportunities which does give them the opportunity and it brings more people to the farm. It is in 137. It does not say that the entertainment has to be agricultural, but the event brings more people to the farm.

Mr. Piccirilli, this event would be allowed in the business zone.

Mr. K Nessralla, we are a business.

Chairman Gaynor, I think it is important that we do get a legal opinion.

I would look for a motion from the board that we do send a letter of to Atty Hucksam and request through the Selectmen and request for his legal opinion on the compliance on the zoning bylaw and the use of the property involving an event such as Mudfest. Let's do that first before anything. Voting on this issue by the way will be the five of us.

Motion: Dan Borsari, Second Gerald Joy, AIF 5-0-0.

Part two, whether you want to continue this until we get an opinion from Atty Hucksam or we vote on petition # 857 right here and now.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Mr. Parcellin, how long is it going to take to get an answer; second question is how much time they reasonably need to get the permits in order.

Chairman Gaynor, they would need to be doing all of that during the 20 day appeal period as that would bring them to November 8.

Mr. Borsari made a motion to wait for Atty Hucksam's opinion.

Mr. Durgin feels that Chapter 137 justifies the agricultural opportunities. He has been able to farm his land more than he has in the past because of Mudfest.

Mr. Parcellin, if we grant this and someone appeals it two things can happen. They can bring it to land court and they can never have it again. Or some other person decides to have a Mudfest and there are seventeen of them within a year. Does this bylaw then negate another section of the bylaw that he decided on. Does it "out do" another section of our own bylaw.

Chairman Gaynor, that in effect would be our vote. Whether or not we feel that this 137 or the state law overrides the restrictions of the A/R zoning for this particular parcel, Lot 51 for this specific event the way it relates to farming.

Mr. Borsari again made a motion to wait for Atty Hucksam's opinion. The motion did not receive a second.

Mr. Durgin made a motion to waive the on-site inspection.

Motion, Mr. Durgin, Seconded by Mr. Joy. AIF 5-0-0

Mr. Borsari made a motion to support the decision of the Zoning Officer. The motion did not receive a second.

Mr. Borsari made a motion to meet Thursday, 10/20 at 7pm &/or Monday, 10/24 at 7pm and Continue Petition #857 in hope that there has been a response from Atty Hucksam.

Motion Mr. Borsari, Second by Mr. Parcellin, AIF by voice vote. 5-0-0

The question to Atty Hucksam is Town Bylaw 137-1 and Chapter 40A Section 3 subject with zoning may not regulate is also exempting in the Halifax bylaw regarding events used on A/R property.

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Continuance of Public Hearing Motioned to October 17, 2016 at 7:45pm

The Halifax Zoning Board of Appeals held its original public hearing back on May 17, 2010 at 8:15 pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Jennifer R. Harmon to request a special permit to “Kennel for the breeding or boarding of dogs” to her property at 7 Plymouth Street, Halifax, MA.

The Halifax Zoning Board of Appeals will hold a continuance of this public hearing on May 2, 2016 at 7:15pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the same application by Jennifer R. Harmon to continue a special permit to “Kennel for the breeding or boarding of dogs” to her property at 7 Plymouth Street, Halifax, MA, as shown on Assessor’s Map #66, Lots 1A, 1B & 17. The applicant verbally stated (at the public hearing continuance on March 14, 2016) that she would like to amend the existing conditions currently set forth (conditions #5 & #6) to the following: increasing the existing condition of a maximum of fifty (50) adult dogs to a proposed maximum of a hundred (100) adult dogs, along with increasing the existing condition of a maximum of twenty six (26) litters allowed per year to a proposed maximum of fifty two (litters) per year, among the following two (2) breeds (German Shepherd & Pomeranian) on the property. Said property is still owned by Jennifer R. Harmon as shown on Assessor’s Map #66, Lots 1A, 1B & 17. The applicant continues to seek a special permit in accordance with the Zoning By-laws of the Town of Halifax under Section(s) 167-7 (C), Schedule of Use Regulations, Agricultural Uses, pages 167:20. Area is zoned Residential. Petition #744

The following letter from the Board of Selectmen was read by Secretary, Marion Wong-Ryan

At the Board of Selectmen’s meeting on September 27th, the Board unanimously voted to place the following restriction on your kennel license:

- 1) That as of September 11, 2016 no more than twenty-five (25) non-juvenile dogs will be allowed on the property at any one time as part of the kennel license
- 2) That as of September 27, 2016, no more than twelve (12) litters per year will be allowed on the property, each year beginning on September 27th.,
- 3) That the Halifax Animal Control Officer or her designee or such person designated by the Halifax Board of Selectmen continue to be permitted on the property without notice in order to inspect the property and facilities, the condition of the dogs and all related matters in connection with this decision and the kennel license.

In addition, please be advised that the Town of Halifax has a leash law (copy enclosed) in effect which requires that your dogs be leashed whenever off your property and at no time should your

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

dogs be running loose off your property. All your dogs must be licensed and up-to-date on their vaccinations at all times. Also note that your facility remains subject to all of the town's dog by-laws including but not limited to chapter 82, Section 2 which states that, "No person shall own or keep in this town any dog which, by barking, howling or in any other manner disturbs the quiet of any person."

Sincerely,
HALIFAX BOARD OF SELECTMEN

Kim R. Roy
Clerk

The following letter was read by Zoning Secretary Marion Wong-Ryan:

I, Jennifer Harmon Choate, am currently in the Office of the Zoning Board of Appeals with Marion Wong-Ryan.

In an email I sent to Marion (dated 10/10/16 at 4:20pm), this is to confirm the same request to, as I stated: At this time I would like to withdraw my request to have an increase in the number of digs permitted at 7 Plymouth St."

I would like to further clarify that I am requesting to WITHDRAW WITHOUT PREJUDICE my request to have an increase in the number of dogs permitted at 7 Plymouth Street, under Petition #744.

Also, in speaking with the secretary, it was further explained to me the Petition #744 will remain as it currently stands, to the last decision meeting held on June 8, 2015 with conditions. I understand that I am currently under a limited amount of kennel licenses granted by the Board of selectmen (25 Adult dogs and 12 litters).

Should I decide to come before the ZBA next year to renew my "Kennel for Breeding or Boarding of Dogs", I fully understand that I will need to re-advertise and have notifications sent to the abutters. It will be my responsibility to submit an updated abutter's list and incur all cost regarding legal notification, via newspaper and mailings to abutter and abutting towns. I will need to meet the necessary deadline to be placed on the June 12, 2017 ZBA public hearing/meeting date. As a reminder to myself, I will need to begin this process at the end of April/beginning of May of 2017 latest.

Thank you,
Jennifer Harmon Choate

This letter is dated 10/17/16 and is time stamped with the Town Clerk at 11:46am.

Chairman Gaynor asked for a motion to accept her request for withdrawal. Motion, K Nessralla, Second R. Durgin, AIF 5-0-0

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

Chairman Gaynor has not received any further correspondence from Fieldstone Farm so he is not sure what the next step will be. As soon as he hears he will certainly let the other members know.

Chairman Gaynor asked for a motion to adjourn.
Motion, Nessralla, Second, P. Parcellin, AIF 6-0-0

It was duly moved, seconded and VOTED to adjourn the meeting.

Respectfully submitted,

Marion Wong-Ryan
Zoning Board of Appeals, Secretary

Robert Gaynor
Zoning Board of Appeals, Chairman