



# HALIFAX ZONING BOARD OF APPEALS

## Meeting Minutes

### Monday, March 11, 2019

The Halifax Zoning Board of Appeals held a public hearing on Monday, March 11, 2019 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Co-Chairman: Kozhaya Nessralla, Clerk: Peter Parcellin, Member: Robert Durgin, Member: Gerald Joy and Associate Member: Dan Borsari. Chairman: Robert Gaynor is absent.

Clerk Parcellin calls the meeting to order at 7:00pm 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.

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#### Meeting Minutes:

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

MOTION: Kozhaya Nessralla

SECOND: Robert Durgin

AIF

Passes: 4-1-0\*

\*Gerald Joy abstained from voting as he was not present at the 2/11/19 meeting.

#### Bills:

The Board signs the bills.

1. Plympton-Halifax Express, Petition #889 Advertisement = \$84.00
2. Plympton-Halifax Express, Petition #890 Advertisement = \$84.00

#### Correspondence:

The Board reviews all mail items.

- Letter from Attorney General to Gordon Andrews dated 2/15/19 regarding 10/2/18 complaint closed
- Email complaint sent to Charlie Seelig/Board of Selectmen dated 2/20/19 regarding 330 Plymouth Street, O'Reilly's Auto
- Planning Board Memo dated 2/12/19 with attached site plan review for 330 Plymouth Street
- Planning Board Memo dated 2/22/19 regarding Mudfest with attached updated site plan
- Planning Board Memo dated 2/22/19 with attached plot plan review for 330 Plymouth Street
- Planning Board Memo dated 2/25/19 with attached site plan review for 330 Plymouth Street
- Old Colony Planning Council Agenda for 2/27/19
- Planning Board Public Hearing Notice dated 3/21/19 for a Special Permit for 925 Plymouth Street
- Planning Board Memo dated 3/8/19 inviting the ZBA to 3/21 Planning Board meeting regarding 330 Plymouth Street

#### Appointment:

7:05pm - Petition #889 - Kozhaya Nessralla - 318 Plymouth St, Special Permit for Temporary Sales Stand

Present: Kozhaya Nessralla (applicant)

Kozhaya Nessralla recuses himself as he is the applicant for this Petition. Mr. Parcellin reads the Public Hearing Notice into record. Mr. Nessralla explains that because his last permit (three years) is now up, he needs a new special permit/renewal and requests the permit for five (5) years rather than three (3). Per the Board, there has been no record of complaint and the location always looks good.

Motion to approve Petition #889 for five (5) years:

MOTION: Gerald Joy

SECOND: Dan Borsari                   AIF

Voice Vote: Peter Parcellin - Yes; Gerald Joy - Yes; Robert Durgin - Yes;  
Dan Borsari - Yes

Passes: 4-0-0

Decision Form was signed by Peter Parcellin, Gerald Joy, Robert Durgin and Dan Borsari.

**Appointment:**

**7:25pm - 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 (Thibeault's Attorney); Richard Murley (owner); Damon DesRosiers, Ralph & Meredith Goodwin, David & Janice Nickerson, Joe & Diane Pedini, Geo Crompton, Ellen Murphy, Peter Stuart, Richard Gray (abutters); Robert Piccirilli (Zoning Enforcement Officer/Building Inspector)

Mr. Parcellin reads the Public Hearing Notice into record. Attorney Ohrenberger speaks to the Petition. He explains that Mr. Thibeault wants to run the same business as is there now. Mr. Thibeault worked in Idaho for the US Forestry Service fighting wildfires and also running a forestry business. Currently, he works for the Marshfield water department and has a tree cutting business producing lumber. Mr. Thibeault is hoping to make 280 South Street/Silver Leaf Farms his full-time job as it is his and his wife Cassie's lifelong dream and wants to be part of the community. Approaching retirement, Mr. Murley is going to "show George the ropes" of the business and introduce him to some folks around the town. There is no proposal of changes to the greenhouses or any of the buildings. Mr. Webby is in the process of doing some perk tests for a septic update for the bathroom as well as surveying. With an update, Mr. Thibeault has a new sawmill with new technology that is faster and quieter than the existing sawmill. He is also going to speed up the process of drying wood by having a kiln. He's cognizant that this is a residential area. He'd like to reach out to high school kids who are interested in the forestry business. As there's a real need in this area for good-quality lumber, there's a need for tree cutters for processing. Mr. Thibeault feels it will be nice to keep this activity in the town for traditional agricultural/horticultural business and will continue to use the greenhouses for vegetables.

Mr. Thibeault loves this community and wants to be a part of it. Atty. Ohrenberger explains that Mr. Thibeault and his wife's life savings are going into this and they hope to be in this community for a long time. They want to make sure everything they're doing is cop esthetic under the agricultural and horticultural forestry bylaws so they are not proposing anything different that has been the traditional use of the property. Atty. Ohrenberger explains that Mr. Webby's plans are in process which will enable Mr. Thibeault to close on the property with Mr. Murley if he gets a favorable decision from the Zoning Board. In the interim, Mr. Thibeault is applying to the US forestry service. However, the deed must be recorded under Mr. & Mrs. Thibeault's names before submitting the application.

Mr. Thibeault explains that he is going to be planting and in the meantime he would like to bring in some logs until the trees are ready to be harvested. He will not be encroaching on any of the wetlands, everything will remain the same. He is going to utilize the greenhouse for vegetables and flowers. He will be using the barns for the sawmill and to keep the equipment out of the weather. The wood will be brought in. Once he owns the property, the forestry will be done with the United States Foresters. Mr. Thibeault graduated with a forest recreation degree and has been in the forestry field for over a decade. Mr. Thibeault is not going to add any more buildings to the property, everything will stay the same.

Mr. Webby (Webby Engineering), using a map from 2006 that was done for Mr. Murley, explains that at that time, the wetlands were delineated. Mr. Webby points out the shaded areas as useable areas. Mr. Webby also went through the Conservation Commission and got a crossing. He points out a couple of greenhouses, some "out" buildings, a maintenance barn and a construction trailer used for an office. The first thing Mr. Thibeault would like to do is get a septic system and bathroom and water into the property for facilities and hand-washing facilities. Webby is going to be updating the plan. He will be doing the perk test on Wednesday (March 13<sup>th</sup>) and he doesn't expect anything other than sands in the perking area. He will be coming forth with an existing conditions plan. Mr. Webby explains where the new tree planting will be done out back in the open fields.

Clerk Parcellin asks Mr. Thibeault to clarify what he's asking for. If there are no changes being made but Mr. Thibeault is asking for an alteration of the use, what is the alteration exactly? Atty. Ohrenberger answers that the only alteration is that Mr. Thibeault is bringing in a kiln to dry the wood, so it's more of an update. There will be a newer, more efficient, quieter sawmill. The goal is not to cut trees down but to modernize the current operation. Mr. Parcellin asks for a comparison of what is currently happening on the property to what will be happening. Atty. Ohrenberger answers that currently, Mr. Murley is using a greenhouse, does woodwork and saws logs into lumber. These processes will be the same with the addition of the kiln and a new sawmill. Mr. Murley currently has a sawmill.

Mr. Borsari asks about the current sawed wood on the property. Mr. Murley states that it's for personal use. That will not continue to be the case with Mr. Thibeault - his wood will be sold to the public. He would like to cut the same amount, but it will be sawed on other people's property. Mr. Borsari asks for clarification on the processing of the logs on the property - will the volume increase? Mr. Thibeault answers that yes, he would like to increase the volume. Mr. Borsari thus responds that because of this, there will be people coming in and out of the property purchasing lumber, it will be more like a lumber yard. Mr. Murley uses his sawed wood to create his own products. With Mr. Thibeault, this will change as he will be selling lumber; that is the major change here. Atty. Ohrenberger states this would be an agricultural use under Zoning - processing, cutting, selling and transporting lumber in and out is all agricultural use under the state statutes. Atty. Ohrenberger thinks this can be done by right but Mr. Thibeault would like to be as transparent as possible. This is how he is going to make his livelihood. He'd like to grow his business so that he can give up his Marshfield job and make this his full-time job. Atty. Ohrenberger confirms that the changes will be more employees, more traffic and more trucks delivering to the property. Mr. Parcellin feels that this is a significant change for the residents in front of the property. Mr. Murley explains that there was always heavy farming going on during the day and things were shut down at night.

Zoning Enforcement Officer/Building Inspector Mr. Piccirilli asks Mr. & Mrs. Thibeault and Atty. Ohrenberger to confirm what they're asking for as, according to him, they are asking for a Section 6 finding, not a Section 3 Exemption as an exemption wouldn't be asked for under agriculture. Mr. Piccirilli explains that the finding would be what the legal use is now. He doesn't know what the legal use is as he's never been to the property. Mr. Piccirilli contends that it's an illegal agricultural use as it is in an agricultural district.

In (Board member) Mr. Durgin's opinion, this is not an agricultural use as the Thibeaults are not harvesting the lumber from the land as the majority of the lumber is being brought in. This does not fall under the definition of agricultural. He reads the definition of agriculture in the Zoning Bylaws. Atty. Ohrenberger responds with references to 167-7D1 which references MGL c.40A the Zoning Enabling Act which references Chapter 128-1A which allows what Mr. Thibeault is proposing under Section 3. Mr. Murley references 61B: Forestry.

Abutter Mr. DeRosiers - 362 River Street - comments on the past composting fumes. He's not sure what kind of composting will be going on for Mr. Thibeault but that was a big issue for Mr. DesRosier in the past. There are a lot of wetlands and a lot of nice trees. He finds it hard to believe that Mr. Thibeault wouldn't be harvesting any trees. Co-Chairman Nessralla responds that there will be no harvesting of trees until Mr. Thibeault gets a plan from the FSA office. Mr. DesRosier continues voicing his concerns about whirlpools, streams and wildlife on the property which he feels the past composting threatened. Mr. DesRosiers is concerned about sawdust and noise from the sawmill. Mr. Thibeault responds that the sawdust will run through a channel. Mr. DesRosier thinks a tree farm is a wonderful thing but he is concerned mostly with composting and the effects it will have on the environment.

Abutter Mr. Peter Stuart - 338 South Street - voices his concerns about the noise and odors from the mulch. He references two areas in Middleborough that tried doing something similar to this project that were closed down due to odors from adding food products to the mulch. Mr. Thibeault is asked how he is going to handle mulching and composting. He responds that for the by-product (i.e. tree bark) it will be ground up and decomposed with no food product added to it. Mr. Peters is concerned about the wetlands to which Mr. Nessralla explains again that the wetlands have already been delineated. Mr. Webby refers again to his drawings and explains to Mr. Peters where the wetlands/uplands are compared to where the operations will be. It is clarified that nothing will interfere with the wetlands. Once again, Mr. Thibeault goes over his background and experience in the forestry field and explains that the sawmill will be very quiet. Mr.



Mr. Piccirilli, referencing the new drawings of the property, explains to the Board which building he and the fire chief condemned as it was falling down. This means either the applicants must bring things up to code on this building or tear it down. However, now that there are some zoning problems due to the property line being moved back, his suggestion is to raise the building to be in compliance. The other two structures on the property, which are probably 50 or 60 years old, are probably grandfathered and wouldn't be a problem to keep. There is no water intrusion and they were built under whatever code there was at the time. They are okay unless they become deficient. Mr. Guzman asks Mr. Piccirilli if these structures would fall under non-conforming as in pre-existing non-conforming condition. Mr. Piccirilli answers for the structures, not the use.

Mr. Piccirilli explains that the Planning Board has not made a decision on the new lot drawings. His recommendation to the Planning Board was if the estate lot meets the Form A specifications, the Planning Board should approve it, letting the Zoning Board and applicants know that they have created a non-conformity and violation and thus will be penalized if they don't take it down. This drawing was proposed to the Planning Board and filed but it has not been registered. Mr. Guzman feels the plans should be amended as the applicants would like to keep two buildings and raise another.

Co-Chairman Nessralla explains to the applicants that they have not done anything to raise the building, which the Zoning Board wanted to see. Mr. Parcellin tells Mr. Guzman and the applicant that the Zoning Board has been discussing their requests since the applicants applied for a second time in January 2019 and the only thing that has happened since their first time applying in April 2018 is that the lot line change has been proposed to the Planning Board. Mr. Guzman responds that he will be much more involved in this project going forward and will make sure that communication is clear. Mr. Nessralla asks Mr. Guzman if they can begin raising the condemned building as something has to be done. Mr. Piccirilli tells the Board that he and Mr. Guzman spoke prior to the meeting. During their conversation Mr. Piccirilli suggested that Mr. Guzman provide a couple of reports (due to the size of the building and the number of units): Chapter 34 Report, filed by Mr. Guzman under the existing building code. If the intention is to go with the six (6) units, they would trigger a sprinkling provision which would also require a Chapter 9 Report which is a fire protection under the building code. Once these reports are provided to Mr. Piccirilli in a reasonable time frame (with the Zoning Board in agreement) it will be easier to see what would be necessary to bring the building into compliance for six (6) units. If the Board is willing to give Mr. Guzman 30 days to come up with those reports, there would be a better understanding by all of where things are headed. Timeframes would obviously have to be in line. Mr. Guzman responds that 30 days would be ample time for him to prepare these reports.

Mr. Parcellin voices his concern that this step would just make things compliant for six (6) units but would not address anything to support approving a special permit. There has been no progress since the two units were vacated and the applicant first applied in 2018 and then nothing further since their reapplication in January. From Mr. Parcellin's perspective, this weighs very heavily on his decision to approve this special permit for six (6) units.

Mr. Guzman explains to the Board that the applicants would like to know whether there's a hope for the approval for a special permit for six (6) units because that will determine how Mr. Guzman approaches this project in terms of doing a six- or four-unit code review. Mr. Joy brings up the encroachment - this property, from what the Board understands, is located on the adjacent property line. Mr. Guzman will contact the applicants' former attorney (Alfieri) to see what needs to be done. Mr. Piccirilli doesn't want to speak for the attorney, but perhaps they would have to do a land swap with the neighbor or pursue an adverse possession.

Mr. Parcellin asks Mr. Piccirilli what the applicants/Mr. Guzman would need to produce for four units versus six units. Mr. Piccirilli responds that it would all depend on Mr. Guzman's reports but one of the major things is the sprinkling provision because of the size of the building and because they're all connected. Four units will be treated differently. Mr. Guzman won't know what else needs to be done until he does the code review.

Mr. Borsari feels the Board should be seeing progress. Mr. Piccirilli states that at some point he will need to start issuing violations. Mr. Joy feels that the Board has given the applicants the benefit of the doubt for a long time now. Mr. Piccirilli discusses the issues he sent to the Board in the past regarding moving forward with this property: The house that is located on the other lot; raising the barn structure which the

applicants can get started by hiring a licensed contractor to pull the demolition permit; the shape of the lot has been changed; the architect has been secured and the lot lines have been submitted to the Planning Board.

Mr. Durgin feels that the report should reflect six (6) units as that is what the applicants are requesting.

Mr. Piccirilli explains that if the Board entertains six (6) units, the Board has to entertain time frames as well.

Mr. Guzman confirms that he is the architect on record through completion of the project.

**Motion to make a final extension to Petition #886 for 30 days to April 8, 2019 with requirement of demolition permit and reports based on six (6) units:**

MOTION: Gerald Joy  
SECOND: Robert Durgin  
Passes: 3-2-0\*

\*The Zoning Board was mistakenly informed that four (4) votes are required to approve a continuation/extension when only three (3) are required. Because of this, the Board then motioned and denied Petition #886. At the end of the meeting, this mistake was corrected and Hiep Pham and Mr. Guzman returned and signed an Extension form. This Petition will continue to April 8, 2019.

### Executive Session

#### **Halifax v. Bergstrom and Zoning Board of Appeals**

Kozhaya Nessralla recuses himself.

**Motion to go into Executive Session:**

MOTION: Robert Durgin  
SECOND: Gerald Joy                   AIF  
Passes: 4-0-0

**Motion to close Executive Session and re-open public session:**

MOTION: Dan Borsari  
SECOND: Peter Parcellin                   AIF  
Passes: 4-0-0

### Adjourn:

**Motion to adjourn meeting:**

MOTION: Gerald Joy  
SECOND: Dan Borsari                   AIF  
Passes: 4-0-0

It was unanimously voted to adjourn the meeting at 9:00 p.m.

### Documents:

1. Agenda - 3/11/2019
2. Meeting Minutes - 2/11/2019
3. Signed Revolving Bill Schedule - Petitions #889 and #890
4. Invoices - Plympton-Halifax Express advertisements - Petitions #889 and #890
5. Letter from Attorney General to Gordon Andrews dated 2/15/19 regarding 10/2/18 complaint closed
6. Email complaint sent to Charlie Seelig/BOS dated 2/20/19 regarding 330 Plymouth Street, O'Reilly's Auto
7. Planning Board Memo dated 2/12/19 with attached site plan review for 330 Plymouth Street
8. Planning Board Memo dated 2/22/19 regarding Mudfest with attached updated site plan
9. Planning Board Memo dated 2/22/19 with attached plot plan review for 330 Plymouth Street
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11. Old Colony Planning Council Agenda for 2/27/19
12. Planning Board Public Hearing Notice dated 3/21/19 for a Special Permit for 925 Plymouth Street

13. Planning Board Memo dated 3/8/19 inviting the ZBA to 3/21 Planning Board meeting regarding 330 Plymouth Street
14. Public Hearing Notice - Petition #889
15. Application packet - Petition #889
16. Decision Form - Petition #889
17. Public Hearing Notice - Petition #890
18. Application packet - Petition #890
19. Public Hearing Notice - Petition #886
20. Application packet - Petition #886
21. Zoning Board's Stipulation Requirements for 30-day Continuance - Petition #886
22. Gerald Joy's signed certified statement of 2/11/19 Meeting Minute review
23. Letter of Agreement for Extension - Petition #886

Respectfully submitted,

Arlanna Snow  
Zoning Board of Appeals Secretary

Date: 4/8/19  
Gerald Joy  
D. Zaccari  
for  
G. Joy  
George D.