



# HALIFAX ZONING BOARD OF APPEALS

## Meeting Minutes

### Monday, May 6, 2019

5-0-0  
Pass

The Halifax Zoning Board of Appeals held a public hearing on Monday, May 6, 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 7:00pm 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, April 8, 2019:**

MOTION: Kozhaya Nessralla  
SECOND: Gerald Joy                   AIF  
Passes: 5-0-0

##### **Motion to release the Executive Session Meeting Minutes from Monday, March 11, 2019:**

MOTION: Gerald Joy  
SECOND: Peter Parcellin  
Voice Vote: Robert Gaynor - Yes; Peter Parcellin - Yes; Gerald Joy - Yes; Robert Durgin - Yes;  
Passes: 5-0-0

#### Appointment:

##### **7:05pm – Petition #895 – 99 Hudson St, Special Permit for In-Law Apartment**

Present: Tami St. Andre (applicant)

Chairman Gaynor reads the Public Hearing Notice into record. Ms. St. Andre confirms that there have been no changes to the structure and no changes to the family members living in the home and in-law. Due to a 30-day overdue recycling bill of \$105.00 for 2019, the Board decides, going over the Town By-Law Chapter 183 Section 2, that they would like confirmation from the Tax Collector that the bill has been paid before voting on the petition.

##### **Motion to continue Petition #895 to June 3, 2019:**

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

#### Appointment:

##### **7:15pm - Petition #896 -- 214 Elm St., Special Permit for an In-Law Apartment**

Present: Kathleen Pray and Evelyn O'Rourke (applicants)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Gaynor confirms with Ms. Pray and Ms. O'Rourke that there have been no changes to the property, only up-keep (painting). Ms. O'Rourke states that she has always lived in the home as well as her brother and her mother. Her mother, Evelyn King, has since passed away and Ms. O'Rourke's sister is moving in. There will continue to be all immediate family members.

##### **Motion to accept Petition #896 for a Special Permit which will be reviewed in five (5) years:**

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

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: Kevin Solli (licensed professional engineer, Solli Engineering); Casey Birch (civil engineer, Solli Engineering)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Solli introduces himself and states that the newly submitted Letter and Variance Narrative in support of their request for relief, history of the site as well as the number of parameters and the requested variances are something that the Zoning Board can approve with established hardships. The three variances are: 1. number of parking spaces, 2. parking space size and 3. loading area dimensions.

Mr. Solli gives history on the area. A developer out of Tennessee chose Halifax as the community they wanted to invest in for O'Reilly's Auto Parts. According to the GIS mapping system, the parcel of land (330 Plymouth St) for the location of O'Reilly's was anticipated to be much larger which was what their original analysis was based on and they were able to comply with the parking requirements. However, when getting further into the project, they found that the parcel of land was considerably smaller than what the GIS map showed. The second, more accurate plan showing the smaller parcel is recorded at the Registry of Deeds. The site plan that has already been submitted to the Zoning Board has already received approval from Conservation, Planning Board and the Board of Health. There are some site limitations and hardships on the property. There are some goals in the 2010 master plan to reduce the parking requirements in association with some of the storm water issues in underdeveloped areas in the town of Halifax.

Mr. Solli references and discusses the Zoning regulations of Section 167-14 and, more specifically, 167-14(K). Projects like this in municipalities have different parking requirements. Due to industry standards, parking requirements are created based on specific uses. Retail merchandise stores, grocery stores, medical offices and nail salons all have different parking requirements, for example. The Institute of Transportation Engineers has a parking handbook and, based on national or regional studies, look at actual parking generation for various retail uses. There are 31 retail categories that they break down individual parking requirements for. Halifax has one category that consolidates everything. Solli Engineering conducted a parking study for O'Reilly's specifically to see what their actual demand was based on their operation. The results were consistent with what industry standards are which are 13-14 parking spaces occupied at any given time based on the gross floor area. Even though 167-14(K) allows the Planning Board, on a case-by-case basis, to approve a lower parking requirement if the specific use isn't defined, the Planning Board liked the project but wanted Solli to come to the Zoning Board to comply with 167-14(L).

Industry standards support far fewer parking spaces than what is required from the code. Empirical data from auto parts stores supports the same. This is why Solli Engineering feels that strict adherence to these regulations would create a hardship in trying to develop this property for the intended use. Solli Engineering feels that the Zoning Board can take comfort in that this is a unique application that wouldn't create other issues. They are proposing a specific retail use with a specific parking requirement that the Mr. Solli feels the Board can consider.

Mr. Gaynor asks about the hardship for the variance requested for the loading area. Mr. Solli responds that as for the overall square footage, they are within the adequate area as stated in the Zoning By-Law, however from a dimensional standpoint, they are slightly reduced. From an operational standpoint the site can accommodate standard operations of the intended and desired use.

Mr. Gaynor opens discussion up to the Board.

Mr. Parcellin feels that the Board doesn't have the power to grant these variances. The Bylaw ties the number of parking spaces to the square footage of the building. The hardship seems to be that the applicant economically wants a building of a certain size on this lot. Mr. Parcellin feels that if the variances are granted to this applicant, they could be granted to anyone for any lot of this size in town which is specifically what the Board is not supposed to be granting variances for, under state law.

Mr. Solli responds that he thinks Massachusetts State Law empowers Boards like this. This variance does not need to be a blanket across retailing uses. Mr. Solli feels this Board could consider this application in that an auto parts retail facility can operate at a lower parking requirement which restricts the ability for any other retailing use to come on to this property and benefit from this variance in the future. The applicant's request is specific to the use prescribed that should provide the Board with a comfort level to grant these variances. As for the way the building is constructed, the amount of area dedicated to the retail sale is very small. Most of the space for O'Reilly's is dedicated to storage area

that is unique compared to other retail buildings and the way they are constructed. This is a very specific, unique user. Parking relief is requested for a specific use.

Mr. Burch explains that Solli Engineering has been working on this project for three months: three Planning Board meetings, three Conservation meetings, one site walk and one Board of Health meeting. Mr. Solli explains that they are not asking for a blanket variance, they are only requesting a parking variance for a specific use.

Mr. Burch explains that Solli Engineering used meter readings to design the septic and a waiver was obtained against the Title Five. The Halifax Board of Health required a deed restriction on the land so that if any other use came in, a new applicant would have to go back to the Board of Health for a complete re-design. Mr. Solli adds that this Board of Health agreement is unique to this project and designed for this specific operation which is similar to what the Zoning Board can do with an approval for parking variances being requested.

Mr. Solli responds to Mr. Joy's question regarding purchasing additional land to make the project work. Mr. Solli explains that due to the wetlands the other town Boards (Conservation and Planning) all felt this was the best design for this project and really, not much more could be done. Mr. Joy points out that buying additional land would have been green-space which would help their cause and help to meet the Bylaw regulations for green-space. Mr. Solli explains that it would be unusable space and there would be other implications and challenges to try and add additional open space. Mr. Solli would hate to overbuild to meet a requirement when it doesn't necessarily provide any benefit. Expansive parking lots create additional storm water runoff that need to be treated.

Mr. Parcellin voices his concern for land use. In his opinion, the Bylaw is there because the town doesn't want to see the size of a building as big as O'Reilly's (725 square feet) on a lot that small. As mentioned in the Letter and Variance Narrative submitted by Solli Engineering, the hardship could be that O'Reilly's wouldn't make enough money without a building of these dimensions. Mr. Solli responds first about Land Use. He explains that they are not requesting a variance for the amount of coverage, they are requesting a variance for the amount of parking spaces. If they were to have a smaller building with increased parking spaces, there would be an increase of traffic due to more turnover. This would be to accommodate any other particular type of use. They are proposing an alternative type of use which has a lesser parking requirement which would have less of an impact from an overall environmental standpoint as they wouldn't need to have additional parking spaces. Trying to strictly comply with the regulations would create a hardship as it creates a need for more disturbance than what is necessary to accommodate the intended use.

Mr. Joy explains again that if they were to add green-space, they could keep the 34 parking spaces to the number they're asking for. The Board is not looking for more parking, they are looking for O'Reilly's to adhere to the regulations of the Bylaw which is 45% green-space. Mr. Solli responds that they could not have 34 spaces, they would need 42 parking spaces if they were to use the 40%. They want to develop a less intensive use.

Mr. Borsari doesn't feel that the Board disagrees with what Mr. Solli is proposing but explains that the Board is bound by the Bylaws. Mr. Borsari asks if there is any state legislation that can be referenced that supersedes the town Bylaws to allow them to approve what Mr. Solli is proposing. Mr. Solli states the Zoning regulation 167-14(L) says any deviation from the Bylaw comes before the Zoning Board of Appeals. Only the Zoning Board can grant that relief. The state statutes that create the mechanisms for the Zoning Board of Appeals allows and gives this Board the ability to vary and waive parts of the Zoning regulations on individual applications. There are unique opportunities where the Zoning Board can and should consider waiving certain requirements. O'Reilly's hardship is strict adherence of the parking requirements for general retailer for a specific auto parts retailer creates an undue hardship. The Board points out that this is an auto parts retailer with specific square footage. The Board agrees that you cannot create your own hardship, which they feel is what is happening here. Mr. Solli clarifies that 1 parking space per 100 square feet is the hardship based on the actual use. They are asking for 1/224 square feet.

Building Inspector/Zoning Enforcement Officer Mr. Piccirilli asks Mr. Solli if he is asking for a use variance. Mr. Solli responds that they are not asking for a use variance because auto retailer falls in the parent of retail use. Mr. Solli is looking for a specific parking requirement for the subsection of auto parts retail. Mr. Piccirilli clarifies that Mr. Solli is stating this fall under one section but they are asking for a variance for a specific use. Mr. Solli agrees. Mr. Piccirilli isn't saying that the Board can't provide this variance as long as they speak to Land Use counsel, he wants to make sure the applicant is asking correctly.

Mr. Piccirilli asks where the original GIS map came from. Mr. Solli responds that it is the current Halifax GIS which is how the parcel was depicted. Mr. Solli thinks it was based on the parcel prior to subdivision. The GIS was not recorded and is just a tool that the town has. The proposed building is completely within the setbacks. The parcel is 43,012 square feet and is a buildable lot. There is an approved Form A from the Planning Board to this specific lot.

The Board reviews the truck turning movement map included in the Letter and Variance Narrative. The hours of delivery would be during off retail peak hours as to not create conflict, around opening (8am) or closing (5pm).

Mr. Gaynor asks Tina Alger, 340 Plymouth Street, if she has any questions. She states that she's there because she is attending all meetings for this project - 330 Plymouth/O'Reilly's. She is mainly concerned with drainage. Mr. Burch discusses the drainage system and confirms that Conservation passed Solli's design for drainage.

The Board agrees that they would like an opinion from Town Counsel whether it's in the Zoning Board's rights to grant the parking variances being requested by Solli Engineering.

**Motion to continue Petition #894 to June 3, 2019 to obtain advice from Town Counsel:**

MOTION: Gerald Joy

SECOND: Robert Durgin

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

Robert Durgin - Yes; Kozhaya Nessralla - Yes

Passes: 5-0-0

**Other Business:**

**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 (closed hearing)**

Present: Mai Pham (owner/applicant), Jose Guzman (architect) and Quat Tran (spokesperson);

Due to no posting on the Agenda, the Board is unable to discuss this Petition. This is explained to the applicants and they are informed that they must return on June 3, 2019.

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

The letter of Withdrawal was read into record.

**Motion to Accept Withdrawal of Petition #890:**

MOTION: Robert Durgin

SECOND: Gerald Joy

AIF

Passes: 5-0-0

**Bills:**

The Board signs bills.

- Plympton-Halifax Express, Petition #895 Advertisement = \$84.00
- Plympton-Halifax Express, Petition #896 Advertisement = \$84.00

**Correspondence:**

The Board reviews all mail items.

- Response dated 4/10/19 to Gordon C. Andrews' Open Meeting Law Complaint on 4/2/2019
- Decision Letter dated 4/19/19 from Planning Board to O'Reilly Auto Parts - site plan
- Letter dated 4/22/19 from Building Inspector to Halifax Resident regarding "transient accommodations"
- Decision Letter dated 4/22/19 from Planning Board to RG Auto
- Old Colony Planning Council Agenda for 4/24/19
- Letter dated 5/1/19 from Attorney Ohrenberger/George H. Thibeault - Petition #890, 280 South Street
- Letter dated 5/1/19 w/ attached Variance Narrative from Solli Engineering/Casey Burch - Petition #894, 330 Plymouth
- Planning Board Public Hearing Notice for 5/9/19

**Adjourn:**

**Motion to adjourn meeting:**

MOTION: Peter Parcellin

SECOND: Kozhaya Nessralla

AIF

Passes: 5-0-0

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

Documents:

1. Agenda - 5/6/2019
2. Meeting Minutes - 4/8/2019
3. Executive Session Meeting Minutes - 3/11/2019
4. Signed Revolving Bill Schedule - Petitions #895, #896
5. Invoices - Plympton-Halifax Express advertisements - Petitions #895, #896
6. Public Hearing Notice - Petition #895
7. Application packet - Petition #895
8. Public Hearing Notice - Petition #896
9. Application packet - Petition #896
10. Decision Form - Petition #896
11. Public Hearing Notice - Petition #894
12. Application packet - Petition #894
13. Letter and Variance Narrative - Petition #894
14. Signed Revolving Bill Schedule - Petitions #895 and #896
15. Invoices - Plympton-Halifax Express advertisements - Petitions #895 and #896
16. Response dated 4/10/19 to Gordon C. Andrews' Open Meeting Law Complaint on 4/2/2019
17. Decision Letter dated 4/19/19 from Planning Board to O'Reilly Auto Parts - site plan
18. Letter dated 4/22/19 from Building Inspector to Halifax Resident regarding "transient accommodations"
19. Decision Letter dated 4/22/19 from Planning Board to RG Auto
20. Old Colony Planning Council Agenda for 4/24/19
21. Letter dated 5/1/19 from Attorney Ohrenberger/George H. Thibeault - Petition #890, 280 South Street
22. Letter dated 5/1/19 w/ attached Variance Narrative from Solli Engineering/Casey Burch - Petition #894, 330 Plymouth
23. Planning Board Public Hearing Notice for 5/9/19

Respectfully submitted,

Arlanna Snow  
Zoning Board of Appeals Secretary

Date: 6-3-19  
[Signature]  
[Signature]  
D. Boreau  
[Signature]  
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