



Halifax Zoning Board of Appeals Meeting Minutes Monday, December 13, 2021

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, December 13, 2021 in the Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with all Board members in attendance: Chairman - Kozhaya Nessralla, Clerk - Peter Parcellin, Members - Gerald Joy, Robert Durgin, Tina Kenyon and Associate Member - Dan Borsari.

Chairman Nessralla calls the meeting to order at 7:01pm and informs the audience that this meeting is being recorded.

APPOINTMENT

7:00pm – Hearing (Continued) – Petition #955 – Emile Bussiere, Jr. / R&J LLC “True Storage”, 314 Plymouth St – Special Permit for storage building Withdrawal

No one is present.

Kozhaya Nessralla is recused.

Parcellin states that there is a Letter of Agreement dated 11/30/21 to Withdraw this Petition Without Prejudice.

- M/Durgin, S/Joy. Unanimously approved (5-0-0) to accept the Letter of Withdrawal without Prejudice for Petition #955. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Borsari – Yes)

Nessralla returns as Chairman.

BILLS

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to pay all bills. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

MEETING MINUTES

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) the Meeting Minutes for November 8, 2021. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)
- M/Joy, S/Parcellin. Unanimously approved (4-0-0) the Meeting Minutes for November 17, 2021, Country Club Estates. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Borsari – Yes)

CORRESPONDENCE

The Board reviews mail.

OTHER BUSINESS

Nessralla informs the Board that he spoke to Town Counsel regarding the Curtin Oil lawsuit against the Zoning Board of Appeals. Mr. Curtin's appeal was not filed with the Town within the appeal period and will be withdrawn.

The Board decides unanimously not to renew their subscription to Land Court Reporter for 2022.

The Board reviews their Meeting Schedule for 2022.

Joy gives the Board an update on the Zoning By-Law Review Committee. There has only been one meeting but Town Counsel did not attend. Joy doesn't like the idea of putting the *Definitions* section at the end, as an "appendix" of the By-Laws and would like *Definitions* to remain at the front. Board agrees. Section on *Signs* and *Parking* requirements will be

clarified. Joy doesn't feel Town Counsel is necessary to approve three or four sections. Reorganization will be done to improve searching and remove ambiguity.

APPOINTMENT

7:30pm – Hearing – Petition #958 – Kurt Marble, 275 Wood St – Special Permit and Variance for addition and attached garage

Applicant Kurt Marble and wife Courtney Marble are present.

Parcellin reads the Public Hearing Notice into record. Marble informs the Board that, per the Board's recommendation, updated plans were submitted to show the front of the proposed garage had been moved back one foot by shrinking the garage, thus no longer requiring a variance. Board reviews updated plans. Doors will be 10 feet. Living area will be above the garage. Existing garage will remain on property. Septic was updated to four bedrooms. Garage will be used only for personal use. Foundation will be added underneath the addition. No comment from abutters. The Board agrees this project will fit within the established character of the neighborhood.

- M/Parcellin, S/Durgin. Unanimously approved (5-0-0) to waive the on-site inspection for Petition #958. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)
- M/Parcellin, S/Kenyon. Unanimously approved (5-0-0) the Special Permit for Petition #958 to build a 1,055 square foot garage to be used for personal use only, no commercial use. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

APPOINTMENT

7:30pm – Hearing – Petition #959 – Helen Corcoran, 5 Eleventh Ave – Special Permit (Filed 11/2/21)

Applicant Helen Corcoran present.

Parcellin reads the Public Hearing Notice into record. Corcoran presents project. This is an older converted cottage with original bathtub that was located in the jut-out of the bathroom. When bathtub was removed, opened up a big set of problems. Things needed to be brought up to code. It was as if the outside walls were built around the bathtub. They are extending the existing jut-out with an overhang of the corners in order to allow for fixtures, to bring things up to code – electric and plumbing – and make room for vent pipe that is required and can only be in one place according to regulations. Addition of 2' x 2', however due to structural issues, more had to be done. The roofline is to clear certain area to allow for vent for heating system, etc. The corner of her house extends past this and wouldn't be extending any further than what's already there. Doesn't encroach on neighbors. This is already non-conforming. Nothing else on the house is being changed. Currently, Corcoran has only had a toilet since September. Structural work had been started but was informed that she had to go through the special permit process so she has not moved forward. There will be no foundation under the added jut out. Parcellin confirms that Corcoran is not increasing the non-conformity or increasing the setbacks. Durgin adds that she is altering the non-conforming use. Parcellin states he is struggling with why Corcoran needs to go through this Zoning process. Durgin responds that it's because she is altering the size of the structure. Borsari agrees with Parcellin and states the Board has allowed this before. Borsari states she is extending the non-conformity.

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to waive the on-site inspection for Petition #950. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

Contractor (Eric, no last name given) is present. He states he was involved in the project and that Corcoran is not being upfront with the Board. Eric informs the Board that he spoke with Mr. Perry (Building Inspector) and states Mr. Perry's exact words were "Helen lied to you right out of the gate" which is why Mr. Perry scrutinized things. Eric adds that the Building Inspector acted on a complaint that Corcoran was constructing an addition rather than a bathroom remodel. Nessralla informs Eric that the Board is voting on a remodel, not an alteration. Corcoran informs the Board that Eric was fired from her project, doesn't live in Halifax or own property in Halifax. Corcoran states that she had a stop work order from the work Eric was doing. Nessralla informs Corcoran that the Board cannot get involved in their personal issues. Parcellin states "Honestly, I haven't seen the Building Inspector scrutinize anything, so I'd be very shocked if this was the first thing he's scrutinizing. And he's not here tonight to speak to that. And you haven't identified yourself or..."

Contractor states his first name as Eric and that he entered into an agreement with Corcoran, did the work, let Corcoran get way ahead of him, the job was shut down by Mr. Perry “for Corcoran’s negligence” of not coming to the Zoning Board first and she fired him. Corcoran states, “don’t forget that the police had to be called...” Nessralla informs Eric that his problem is with Corcoran, not the Board. Corcoran states that Eric led her to believe he had filed a permit to do the work, which he had not.

- M/Joy, S/Durgin. Unanimously approved (5-0-0) to approve the Special Permit for Petition #959 as presented. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

APPOINTMENT

7:45pm – Hearing – Petition #960 – Joseph Podgurski, 49 Carver St – Special Permits for Pole Barn and Commercial Building with welding equipment use in Business zone

Applicant Joseph Podgurski Jr. and Joseph Podgurski, Sr. and Engineer Eric Dias of Strongpoint Engineering Solutions are present.

Parcellin reads Public Hearing Notice into record. Dias presents the project and the request for two special permits. Dias starts out with the first special permit request for a welding use, explaining that they are proposing a commercial business bay building with 5 (five) bays and an open-space area. The building is just under 7,500 square feet. The Podgurskis are welders and will be occupying a portion of the building, which is why the special permit for welding use is being requested. Outside of the welding use, this building is allowed in the commercial-business zone by right. The second special permit is for the proposed 2,000 square foot pole barn with an additional 1,500 square feet of lean-to on either side to be located on the right side of the property (indicated on plans). The lean-to is mainly going to be used for storage of materials. Aside from that, the site is very open with very little vegetation and on-site septic. Also proposing a gravel area for housing of trucks and equipment, a proposal of landscaping berm at the front of the property to shield the property from the road. A portion of the berm has already been constructed and trees will grow very tall, about 2 feet a year which will screen this property from abutters. Podgurski Jr. lives next door at 37 Carver St so proposing a connection to that property for ease of travel back and forth. The proposed project, Dias states, keeps within the established character of the neighborhood and within the intent of the By-Law as the building is not a stretch under the By-Law. Pole barns are all over town, per Dias.

Dias informs the Board, and Podgurski confirms, that they will occupy the rear section of the proposed building. The other 4 (four) bays will be occupied by tenants that can only use the space for use that falls within the By-Laws and, if it goes beyond that, they will have to come back before the Board. The pole barn will be used only for storage and nothing else, no commercial business. Joy asks for clarification of welding business, structural work, etc. Podgurski Jr. responds that they do just about anything, 90% is repairing heavy equipment. Podgurski states they have a couple of service trucks, trailer, forklifts, skid steer, snowplows which will be stored under cover outside, possibly some inside. The Podgurskis will go to customers and customers will come to them, it’s 50/50. Small fabrication will be done inside building, small structural steel jobs. Borsari asks about welding equipment. Podgurskis have small iron worker, no break press and nothing large. Sometimes exhaust work is done. The Podgurskis will occasionally be outside welding if it’s a larger project. No sandblasting on site.

In response to Parcellin’s inquiries, Dias responds that the welding area in back is about 3,500 square feet, including the open space. Roughly 3,500 square feet is unknown. Parking will be focused in back. Gravel area proposed is for anyone who may rent the bays that may need space for keeping any kind of landscaping equipment. Dias confirms that vehicles and materials related to the business will be stored in the pole barn. Parcellin asks for confirmation that doing this would be contrary to the use in the residential zone. Dias states that this was not verified in the Building Inspector’s denial letter as a conflicting use so nothing specific was applied for. Podgurski Jr. states this pole barn is to store a lot of his own stuff, as he has a lot of it. Parcellin states that the Board needs to decide if the welding use is appropriate in the business zone where the building is being proposed and if the pole barn in the residential zone, which will house equipment tied to the welding business, is appropriate. Kenyon asks about a previous Petition regarding an Industrial zone not extending more than 50 feet into the residential zone portion of the property. Parcellin confirms this to be true and the Board discusses whether this applies here. Dias states that this pole barn is not necessarily a commercial use.

Durgin states his concern for the gravel area where they will be storing commercial equipment on the residential side. It is questioned whether the zoning line can be moved. Dias states the argument can be made as it wouldn't constitute spot zoning, but it's a process. Kenyon thinks the gravel surface can be used but could be reduced. It is confirmed that there will be some grinding.

Abutter Gary Villiard states that he owns the property next door and that this would be light industrial.

Abutter (name inaudible) from 50 Carver Street is concerned with the other bays and who will occupy them as they are already having issues with sand and gravel from the property next door. She is also concerned about the view of the equipment from her property. Durgin states that the applicants are taking the abutters into consideration by installing the berm and landscaping. Nessralla informs abutter that the Board can put conditions on the special permit to prevent noise, etc. Abutter is concerned about trucks backing into her home--Nessralla assures her this won't happen--and debris coming in her windows and doors. The abutter asks about the lights on the property – parking lot lights, etc. The applicants respond that there will not be any lights. The abutter asks about the operating hours. Podgurski Jr. states that he starts his truck at 5:00am. Abutter disagrees and states that the business is constant, all hours of the day, weekends. Podgurski's guess for completing the project after securing all permitting is about six or seven months but doesn't know exactly. Abutter is shown access to property on plan.

The applicant is informed that they will need a site plan approval from the Planning Board before securing permits from the Zoning Board of Appeals. Dias states that the Building Inspector never told him this and instead said they would go to ZBA first, then Planning Board for Site Plan Review. The Board informs him that it is the other way around.

John Shea, Halifax resident, asks what the building is made of. The Podgurskis confirm it will be steel. Berm has already been constructed.

Podgurski confirms to Borsari that the building will not be air-conditioned. Borsari talks about his extensive background in welding and informs the Board of his concerns, as he will most likely not be voting on this Petition. Borsari recommends that the Board put more restrictions on this property as it borders the residential zone. Borsari would not allow any outside uses as welding is loud, there's grinding and banging, torches going.

Jonathan Sorocco, direct abutter of Podgurski property on the residential side, speaks in favor of the applicant's proposal. States that Podgurski is thoughtful about noise, even with starting his truck in the early hours. States Podgurski has never run a chain saw late at night that would constitute any kind of aggravation. Adds that Podgurski's woodchipper is going but had acres of land to clear out. Sorocco trusts Podgurski to respect his neighbors as he always has and states Podgurski is an honest person in the town.

Bosari understands that some noise is temporary but it's different when there is a business being run next door using equipment that can only be used outside. Borsari reiterates that this property and business borders residential. Podgurski Sr states that the berm has been constructed, they are down in a hole and want to be good neighbors so noise will be kept contained. Borsari responds that he understands but is just trying to be realistic as he has owned a business. Borsari is mostly concerned with outside business.

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to do an on-site inspection for Petition #960, 49 Carver Street, on January 8, 2022 at 9:00am. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)
- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to continue Petition #960 to Monday, January 10, 2022 at 7:15pm. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

APPOINTMENT

8:00pm – Hearing – Patition #961 – Barry Gates, 145 Monponsett St – Special Permit for single-family dwelling with attached, oversized garage

Applicant Barry Gates and Joe Webby of Webby Engineering are present

Parcellin reads Public Hearing Notice into record. Gates presents his petition. He's a 4th generation cranberry grower. Owns a 28-acre farm where he actively farms which sits on an 84-acre parcel. Recently purchased six (6) acres of frontage from abutter to make roughly 90 acres. Looking to erect a single-family residence on his family farm with an over-sized 32' x 50', 1,500 square ft, three-bay garage. Part of property is Conservancy, but that portion is all cranberry bogs and swamp. Only available upland is in Industrial zone. One side of Monponsett Street is Residential, a little sliver of Residential at his entrance. House would be about 800 feet off the street. Requesting two special permits: one (1) for dwelling, one (1) for garage. Did not need to go before Conservation as he states he meets all setbacks. Parcellin informs Gates that the Health Agent informed the Board there is no septic plan. Webby tells the Board that the second page of the plan is the septic plan. Proposed garage is not bigger than the proposed house. House would be about 3,700 square feet, two-story ranch with walkout basement. Joy asks if Gates would be running a business out of his home. Gates responds no, he's a farmer and if it snows, he might park his tractor/plow in the garage. No outside companies coming in. The back portion of land is Conservancy, house would be on Industrial. Borsari states that a single-family home is not allowed in Industrial zone. Discussion. Webby thinks Gates will come under the Farm act. Webby asks Gates if this is under 61A. Gates confirms and adds that the tower on the property is on Industrial, but the rest of the land is under 61A. Industrial/Conservancy line is around 250 feet from the Residential line. Discussion of applying for a variance for the use. Parcellin states that a variance would allow him to build this house in Industrial because of a hardship due to topography of the land. Borsari states you cannot vary a use. Nessralla states under 61A you can build a house on your farm as long as you live there. Borsari states that he believes there is an avenue here, but it's not a variance. Webby confirms that Gates can request a special permit for the garage from the ZBA, but the home would be by right under 61A. Nessralla recommends Gates call the Farm Bureau. Gates asks what he does once he has the information. Webby states he would need to file it with the Building Inspector. Gates responds that he tried that and the Building Inspector denied it. Kenyon states he may have not been thinking of 61A. Nessralla states Gates would need approval from the Board of Health for septic. The Board informs Gates the garage may fall under 61A as well. Gates agrees to speak with Farm Bureau. If Gates falls under 61A and doesn't need ZBA, he can withdraw his application and get his building permit from the Building Inspector.

- M/Parcellin, S/Joy. Unanimously approve (5-0-0) to continue Petition #961 to January 10, 2022 at 7:20pm.

Gates informs the Board that he spoke to the current Building Inspector and the last two previous Building Inspectors. In 2011 Gates put his house on the market in Middleboro and it didn't sell. He got the 61A lot and brought it into the Building Inspector, Tom Millias, who gave Gates a letter stating he would issue Gates a building permit. Gates put his house on the market but when his house didn't sell, he dropped the ball on it. Eight years later, Gates spoke to the previous Building Inspector who Gates stated, was totally against it. Gates gave him the 61A law, but Gates said the Building Inspector said "that doesn't matter for you. This is for if you have immigrants...this is housing for your help, not for yourself." Gates states he is the only one who runs the farm as he works for himself. Gates adds "He said I wasn't entitled to it. And I think this (current) Building Inspector came in with kinda...all the turmoil was going on in the Town and he didn't wanna...just hand a permit out." Kenyon states that she doesn't think that the current Building Inspector is familiar with 61A. Kenyon adds that if Gates can get the current Building Inspector the information, the Board can go over it with him. Gates isn't sure he brought the 61A information to this Building Inspector as the last one said no so he discussed things with Webby and decided to go for a special permit. Gates has the paperwork at home but has to locate it. Nessralla states that Gates will find under 61A that you are allowed one house. Borsari adds that there may be updated rules. Parcellin informs Gates that, worst case scenario, he should apply for a building permit. If the Building Inspector denies it, Gates can appeal his denial to the Zoning Board with the 61A information and the Zoning Board may be able to overturn that denial. Parcellin informs Gates that, if it comes to this point, refer the Building Inspector to this meeting on YouTube to see the discussion that took place.

- M/Parcellin, S/Joy. Unanimously approve (5-0-0) to continue Petition #961 to January 10, 2022 at 7:20pm. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

DISCUSSION

648 Plymouth Street – Zoning violation concerns – update/determination from ZEO

688 Plymouth Street – Zoning violation concerns - update/determination from ZEO

Parcellin asks if there is an update from the Zoning Enforcement Agent on the two Plymouth Street properties. The Board is informed by the secretary that the Zoning Enforcement Agent said he is waiting for his account with the Plymouth Registry of Deeds. Durgin asks what this means and asks, “he doesn’t have access to the registry?” Parcellin states “so we have a Building Inspector that’s worked here since, what, August? And he doesn’t have an account with the Plymouth County Registry of Deeds? Is that what I’m supposed to believe?” Secretary informs the Board that you can find what you need on the website but cannot print documents without an account. Durgin asks “The Town doesn’t have an account?” Secretary informs the Board that the Assessor’s Office does. Durgin asks “he can’t go down to the Assessor’s office?”

ADJOURN:

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to adjourn at 8:49pm with all in favor.

DOCUMENTS

1. Agenda for 12/13/21
2. Application Packets – Petitions #955, 958, 959, 960 and 961
3. Meeting Minutes – 11/8/21 and 11/17/21
4. WB Mason Invoice #22517854
5. PH Express Invoices #12881, 12882 and 12892
6. Revolving Bill Schedules for Petitions #959, 960 and 961
7. Expense Bill Schedule for W.B. Mason
8. Correspondence – 2022 Board of Selectmen Meeting Schedule, Public Hearing Notice – Board of Selectmen – 12/14/21 – 25 A Street
9. 2022 ZBA Meeting Schedule

Respectfully submitted,

Date: 1/10/2022



Chairman, Kozhaya Nessralla
Halifax Zoning Board of Appeals