



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

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, September 13, 2021 in the Great Hall of Halifax Town Hall, 499 Plymouth Street, Halifax, MA with all Board members in attendance: Chairman - Kozhaya Nessler, Clerk - Peter Parcellin, Members - Gerald Joy, Robert Durgin, Tina Kenyon and Alternate Member - Dan Borsari.

Chairman Nessler calls the meeting to order at 7:04pm.

APPOINTMENT

7:05pm – (Continued) Hearing – Petition #938 – Anthony Curtin / Curtin Bros, 640 Plymouth St – Amendment to Special Permit for existing underground fuel storage to above ground fuel storage (Filed: 4/1/21, Continued on 5/3/21 to 7/12/21, Continued to 8/9/21 and again to 9/13/21)

Applicant Anthony Curtin, engineers Robert Coluccio (WEB Engineering Associates) and Joe Webby (Webby Engineering) are present.

Parcellin reads Attorney Kwezell's letter of opinion dated 9/18/21 into record. This opinion was requested by the Board at the meeting on August 9, 2021. Coluccio has nothing further to add.

The Board opens to the public.

Karen Fava, 66 Clyde O'Bosworth confirms that sound study was done by Coluccio and states that it should have been done by an outside source. Coluccio considers himself an outside source. The Board and Coluccio discuss sound-proofing the pumps to dampen any noise. Joy was hoping for additional information and feedback on noise once pump is sound-proofed. Coluccio explains that a simple doghouse built over the pump would dampen the sound, however his sound study shows it doesn't need it.

Steve Adams, 22 Cranberry Dr states his concerns for noise from the entire process, not just noise associated with the motor. Adams states Coluccio isn't an expertise in noise and adds that he heard the noise of the truck pulling onto the property while running by. Chairman asks Adams if he can hear that from his home, Adams responds "that is an unfair question."

Resident (no identification given) asks, if the special permit is approved, who will be "policing" the property to make sure any potential limitations are met. Chairman responds that if complaints come in, the applicant will need to come back before the Zoning Board. Resident is concerned about how things will be controlled. Chairman clarifies to resident that Curtin is currently a fully operating business, this application is for a special permit for storage which the Board can put restrictions on to satisfy everybody. Parcellin responds to resident by adding that the Building Inspector/Zoning Enforcement agent is able to receive complaints, does not require anyone to wait for the next ZBA meeting.

Karen Fava states that she called the Building Inspector a month and a half ago and never received a return phone call. Kenyon states there is a new Building Inspector. Parcellin responds that the Board hasn't even met the Building Inspector yet. Coluccio asks if there are any direct abutters of Mr. Curtin at this meeting with concerns. Fava responds that a direct abutter, who had previously attended a couple of meetings ago, could not attend as he could not have a say and was advised by Town Counsel to "watch what they do." The Board responds to Fava informing her that this is not true, everyone has a say, direct abutters included. Fava states her concerns for appearance, cleanup in case of spill. Borsari responds that the applicant is responsible for their own cleanup as it's their own property.

Chairman asks what the pleasure of the Board is.

Durgin states that, in his opinion, this facility does not meet all the criteria for issuing a special permit according to the Halifax Zoning By-Laws as Durgin feels this proposed facility would be detrimental to and would not fit within the current established character of the neighborhood and would be better suited for the Industrial area of town. Durgin is also concerned about fuel delivery times as he is not confident that dispatch fuel delivery times can be controlled. Coluccio states that they can do landscaping to help the above ground fuel storage tank fit in better. Durgin responds that this would require much landscaping which could affect how trucks enter and exit the property.

Parcellin agrees with Durgin and states that in his opinion, the light industrial use in a business zone for this property is inappropriate. This is because, in Parcellin's opinion, this proposed facility—the installation of a 50,000-gallon tank—would negatively impact the neighborhood as it would not fit within the established character of the neighborhood, it would depreciate the value of homes in the neighborhood, there would be an increase in traffic and an increase in the size of trucks being used for fuel deliveries, thus causing an increase in noise. Curtin asks Parcellin how he would define what Curtin is doing now. Parcellin responds that it sounds like Curtin is going somewhere else to get what Curtin is proposing to have on his property, so fuel is kept in his truck. What is being proposed is that the transfer of fuel is going to happen in Halifax instead of Quincy and fuel is now going to be delivered to his property. Coluccio responds that Curtin is doing it now with smaller trucks which means more trips. Parcellin understands why Curtin wants to do it but still concerned. Coluccio responds that a traffic study was done and shows that traffic won't be affected. Curtin confirms again that these trucks will not be driven through abutters neighborhoods, they will enter and leave the property from Route 106. Nessralla confirms the changes that will take place with this proposal. Right now, Curtin has a permit for 50,000 gallons of underground fuel storage, now he's just moving it to above-ground. He states that all Curtin is adding is two trucks a week to fill tanks. Curtin wants to have above ground to better monitor. Curtin states again that he has a license for underground storage now and asks if he wanted to use that instead, would he need to come before the ZBA. Parcellin responds probably, as Curtin would need a special permit for light industrial use in a business zone.

Joy states that Routes 105 and 106 already have heavy trucks, one more tanker truck won't make any difference as this happens already on a daily basis. Coluccio states there will be one tanker truck a week, can silence the pump even more by soundproofing; there will always be traffic and noise during the day. Any noise that comes from the new pump or truck will be canceled by Route 106 traffic, per Curtin.

Borsari refers to Attorney Kwesell's opinion regarding abutters concerns having no evidence associated with the complaints to make his point that he's looking for credible complaints. Borsari reminds the public that Zoning is a police power, the Board takes every application seriously. Borsari states that an above-ground fuel storage tank is a much safer system than underground. Curtin has several letters of support from direct abutters and no complaints from direct abutters. It is Borsari's opinion that this does fit within the established character of the neighborhood as there are already two gas stations on one side of Route 106 in that area and also, further along down the road heading west on the other side of Route 106 there is a large truck parked along Route 106, right on the road and states that he doesn't hear anybody complaining about that truck and all of the other trucks entering and exiting that property which is being used for large excavating equipment.

Kenyon doesn't believe the noise is an issue as she states that this is Route 106, a state road, it's not a neighborhood and when she attended the on-site, they couldn't hear each other talk. Kenyon doesn't think the look of this proposal is affecting the neighborhood as this is a main road, it's not some beautiful, pristine neighborhood.

Joy confirms that there have been no concerns from the fire or police department from this facility.

Bert Gaynor, Pemmican Way asks the Board, if they put restrictions on noise, are there decibel restrictions on other properties in town or is this property going to be singled out? Gaynor states that there are four residential homes on the west side of Cranberry Drive that are closer to a business; Gaynor adds that one of these properties has a tractor-trailer, diesel, backhoes, excavators, front-end loaders, commercial trucks entering and exiting this property and is zoned residential. Gaynor asks where the Building Inspector is and where the complaints are for this property from residents of Cranberry Drive. Curtin's property, 640 Plymouth Street, is zoned Business and can have a special permit with the ZBA's approval. Gaynor would use caution when putting restrictions on Curtin's special permit, if approved.

Chairman states that the main concern are the hours of operation. Coluccio states that the By-Laws, in his opinion, weren't written for a seasonal business but geared towards year-round businesses. Coluccio asks the Board to consider Attorney Kwesell's opinion, that these types of businesses are allowed in this zone and Mr. Curtin shouldn't be turned down for this when there are two gas stations right down the street. Coluccio adds that this is the most benign of what is allowed for a special permit. Parcellin responds that he agrees with Coluccio but part of the issue here is that this is a light industrial use in a business zone so the neighborhood, the lot, the use is not an automatic grant. The By-Laws want the ZBA to look at these things to decide whether it's appropriate. Parcellin states the issues as being sound, time and looks. Refers to a resident's email suggesting conditions to be put on this special permit. Parcellin asks the audience, if there are severe conditions applied, why would anyone still be opposed? Fava responds that it's the character, the depreciation of the value of their homes, if there's a fuel spill, they would have to evacuate within half a mile. Chairman somewhat disagrees, Fava argues that this is true. Fava states there is a health concern, smell is a nuisance. Chairman asks what about if there is a spill at a gas station. Fava responds that it's not the same and reiterates her concerns.

Joy makes a motion with conditions that the applicant agrees to. The applicant also agrees to landscape to improve property.

- M/Joy, S/Borsari*to approve Petition #938 with the following restrictions: 1) All fuel deliveries from this site will be on company's own vehicles; applicant must own the vehicles making a delivery but the fuel is for applicant's own use by applicant's own trucks 2) No idling of vehicles on site from 8:00 p.m. to 6:00 a.m. 3) Tanker deliveries must call applicant one hour ahead of delivery to make sure there is someone on site to receive delivery 4) No delivery vehicles are allowed to park or idle on Route 105, Route 106 or Cranberry Drive to enter the company site 5) If the company changes ownership or partnership with another company, said company will come before the Zoning Board of Appeals and commit to the restrictions as currently stated 6) Sound-proofing of the pump. Borsari votes yes, Joy votes yes, Parcellin votes no, Nessralla votes yes, Durgin votes no. Motion fails, and Petition #938 is denied 3-2-0 (super majority is needed).

*Dan Borsari votes on this petition as Tina Kenyon was not a member when these hearings began, therefore was not present for all meetings, explained by Parcellin.

APPOINTMENT

7:15pm – Hearing – Petition #949 – Daniel Harding, 46 Paradise Lane – Special Permit and Variance for addition to existing house (Filed: 7/21/21, 100 Days for Variance: 10/29/21)

Applicants Daniel Harding and Nancy Trop are present.

Parcellin reads the Public Hearing Notice into record. Harding presents his petition. He would like to put an addition onto his current house by adding a one-car garage with a woodshop for personal use. Will be eliminating a bedroom and adding a bedroom. The Board reviews plans. The footprint will be increased, but the porch is decreasing to allow for addition. The addition is slightly less than 5 feet higher than the original house due to where the roofs meet. There will be a living area and bedroom above the garage. There is currently no garage. The bedroom count is staying the same. The addition will be lined up with the current house. Parcellin states a couple of the issues: Harding is proposing to increase the non-conformity (Harding states this is due to aesthetics) and the variances require a hardship. The Board asks Harding to stake out the addition for an on-site inspection.

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to do an on-site inspection for October 2, 2021 at 9:00am.

Harding has spoken with one of his abutters who has no issue. Another abutter (unidentified) is present and states her concerns regarding the parking of Harding's vehicles – two large vans – as she doesn't know if there would be room on the property. Abutter shows Board a photo of these vehicles. Harding explains that one of these vehicles will be returned to his brother. After much discussion between Harding and unidentified abutter, the Board confirms with Harding that these vehicles will be present at the on-site inspection.

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to continue Petition #949 to October 4, 2021 at 7:00pm.

APPOINTMENT

7:30pm – Hearing – Petition #950 – Thomas Smith, 434 Thompson St – Special Permit and Variance for garage addition with 2nd floor In-Law apartment (Filed: 8/10/21, 100 Days for Variance: 11/18/21)

Applicant Thomas Smith along with wife Carol Smith and son Steve are present.

Parcellin reads Public Hearing Notice into record. Smith presents his petition. Would like to build a 3-car garage with an in-law apartment above it and a shared mudroom. Smith gives family background and explains that there isn't enough room for all three family members including granddaughter to live comfortably. The garage is oversized to accommodate family's vehicles and pick-up trucks for Steve's business and would contain a workshop and storage area. Carol passes out drawings to Board members. Lot is 60,000 square feet. Max allowable building to land ratio is 25%, current home is 2.5%. Proposed addition takes it up to 5%. Mudroom addition between the current home and garage, no livable area above mudroom. In-law will be the second floor of added garage. Shared living area would be mudroom and the dining room, which is open to the mudroom. Shared utilities – electricity and water. First floor living space is 1,490 square feet. Shared entrance is through the proposed mudroom.

Parcellin states that if the proposed addition were smaller, the in-law would be smaller and wouldn't be over 900 square feet and probably wouldn't need variance for side setback and wouldn't need a special permit for size of garage. These requested variances are more difficult for the Board to grant as there needs to be a hardship that isn't self-created and would be due to topography or financial hardship, etc. Parcellin goes on to say if the location were different on the lot or the addition were smaller, these variances wouldn't be needed. The Board agrees. Smith responds that the hardship is the lot configuration, where the current dwelling is placed on the lot. The Board agrees that the hardship is self-created with having to garage three vehicles. Durgin asks if Smith can reconfigure the addition. Parcellin believes the biggest issue is the requested variance for 4 feet. Parcellin again states that the two issues are the in-law, in reference to the By-Law 167-D12(F) – In-law can't be more than 50% of the living space or 900 feet, 900 feet is the cap and the requested variance of 4 feet of the side setback. Kenyon makes and presents to Smith a drawing of possible change to plans to prevent issues. Applicant informs the Board that the in-law apartment is a couple feet smaller due to the gable ends.

Chairman informs Smith that the plans need to be re-drawn to remove the requested variance. Smith can have those plans redrawn and the Board can continue with revised plans or Smith can withdraw. It is agreed between the Board and Smith that they will continue with the submission of revised plans.

- M/Durgin, S/Parcellin. Unanimously approved (5-0-0) to continue Petition #950 to October 4, 2021 at 7:15pm with revised plans.

APPOINTMENT

7:45pm – Hearing – Petition #952 – Bonnie Fistel & Patricia Conn, 16 Old Farm Rd – Special Permit for Commercial Kennel License (Filed: 8/19/21)

Applicants Bonnie Fistel and Patricia Conn, owner of property Gary Mahler and real estate agent are present.

Parcellin reads Public Hearing Notice into record. Conn presents their petition. Looking for a special permit as they have Golden Retrievers that they show and compete with. They would keep these dogs in a paddock area and will only be unleashed if in a confined area. Looking to have one or two breedings a year, not looking for a business, not looking to profit off their dogs, just want to keep their pedigree, keep their lines going. Conn confirms that they have 14 Golden Retrievers, some are seniors and are pets so wouldn't be bred. Not looking to do more than 1-2 breedings a year but due to Halifax By-Laws, require a commercial license to breed. Have license in Bridgewater, where they currently live. 16 Old Farm Road is 10 acres. Looking for a privacy fence and proposed paddock will be on the side of the property that is wooded. Fistel explains her history, background and experience as a breeder for 30 years. They are in the top 5 most referred breeders, not just a backyard breeder. Dogs are not kenneled outside, barking all day. There is no noise factor as the dogs don't bark. Fistel does pet therapy to give back to community. Traffic is not a factor as they are not a boarding or grooming kennel. Allergies wouldn't be a problem for abutters as the dogs will be in the home other than being walked during the day.

Chairman informs Fistel that the Board has had a bad experience in the past with dog kennels. Chairman totals the possible number of dogs kept on this property at a time – 14 dogs, two litters a year (could be 2 or 10 puppies) which totals to a possible 34 dogs. Fistel explains that these dogs wouldn't stay, they would be sold. Chairman states this would then be a business. Fistel plans to invest money back into her own dogs but does not consider this a business, considers this a hobby. Averages a litter to be 7 puppies. Parcellin references By-Law 167-7D(5) which have restrictions. Parcellin asks Fistel questions associated with this By-Law. Fistel confirms there will be no employees, 10 x 12 room will house the litters, basement and family room will hold the full-size dogs with kennel area and crates. Area would be under 400 square feet, there will be no equipment or products displayed from street, no increased traffic from truck deliveries or pickups from premises, no deleterious effects such as noise, fumes, etc on premises, no signs for the business, no evidence that there is a business being conducted from the exterior of the premises, no complaints from the police at their current Bridgewater residence. Roughly \$21,000 income/year would qualify as a small business. Conn describes the two systems that they use to rid waste (outside company removes waste in containers). Joy explains that in the past, the Board had a lot of trouble with a kennel in town where neighbors tried to be good neighbors but eventually had many complaints. Borsari confirms that there is an existing house on this property that Fistel and Conn would be purchasing. Dogs will be in paddock area when Fistel and Conn are home and are never left unattended. Borsari would like to see a plan of property and house to show where dogs will be located.

Board opens to public. Several abutting residents state their concerns. Mark Carmody, 18 Old Farm Road is concerned for his privacy as backyards abut each other, 16 Old Farm Rd home is placed towards back of property, away from road, concerned about smell of 14-plus dogs and care of 14-plus dogs in an area of less than 400 square feet, noise of dogs barking, traffic. James Sorocco, 15 Old Farm Road states similar concerns.

Gary Mahler, owner of 16 Old Farm Road shows photo to Board of area where paddock would be placed on property and states that it is nowhere near abutters. Mahler informs the Board he lives at this property for 10 years and is moving with his family as it is too secluded. Adds that neighbors on either side have dogs and Mahler never heard them, there is a lot of power equipment used in the neighborhood but was never heard either. States it is the perfect location for kennel.

Conn confirms that they do not use vendors to deliver dog supplies, she does this herself. Do not sell products. Not trying to add dogs. Conn is a dog trainer and both work for PetSmart.

Abutter on Lamppost Drive opposes this petition due to concerns for noise, doesn't believe this type of business belongs in this type of residential area and concerned about sanitation. Another abutter on Lamppost Drive asks how many dogs a commercial kennel license allows. Chairman responds that the ZBA sets a limit. Additional neighbors of Lamppost Drive and Old Farm Road voice their concerns about smell, noise, and so on. It is confirmed by Conn that nobody will be bringing their dogs to their home as all training is done at another facility.

Scott, Real Estate Agent for Compass representing Gary Wahler, addresses the question of dog count allowance by referring to the Halifax By-Laws, stating there is no cap. He addresses the noise concerns referring to By-Laws that says there cannot be any nuisances like noise regarding commercial kennel licenses and adds that the applicants have supplied the Board with positive letters from their current neighbors in Bridgewater supporting that kennel.

Borsari suggests Fistel and Conn speak with the Board of Health as 14 dogs is excessive. Borsari adds that residents have highly credible concerns but feels Fistel and Conn are the exception, not the rule, but if he is wrong, the neighbors will suffer which is why he needs more information. Parcellin states that if the Board approves this, they have to first make sure this won't be detrimental to the established character of the neighborhood and prove that there's no deleterious effect of the business. Parcellin would be concerned about 36 possible dogs in a house regarding noise, etc., they aren't using much acreage on this property and they are adding a business to this residential neighborhood. Parcellin thinks more evidence is necessary and a site visit would be a good idea. Board agrees. Joy suggests that Conn and Fistel invite some of their potential neighbors from Old Farm Road to visit Conn and Fistel's current property / kennel in Bridgewater to show them and convince them that there is no need for concern. Chairman agrees. Board explains to applicants their choices – site visit, continuance, withdrawal or vote.

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to do an on-site inspection of 16 Old Farm Road on October 2, 2021 at 9:30am.
- M/Durgin, S/Parcellin. Unanimously approved (5-0-0) to continue Petition #952 to October 4, 2021 at 7:30pm.

APPOINTMENT

8:00pm – Hearing – Petition #953 – Emile Bussiere, Jr. / R&J LLC “True Storage”, 314 Plymouth St – Special Permit & Variance for storage building (Filed: 8/23/21, 100 Days for Variance: 12/1/21, Withdrawal 9/13/21)

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to accept the withdrawal without prejudice of Petition #953.

DISCUSSION

Chris Winiewicz (129 Circuit Street) – 450 Industrial Drive, Halifax, MA – Zoning complaint regarding placement of machine on property

No one is present.

MEETING MINUTES

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to accept 8/9/21 Meeting Minutes.

BILLS

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to pay Plympton-Halifax Express bill.
- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to pay Harding & Sons bill.

CORRESPONDENCE

The Board reviews mail.

Discussion of 8/25/21 email from Charlie Seelig/BOS regarding Regulatory Department Meeting with Selectmen tomorrow night, 9/14/21 at 8:05pm. Supervision of the ZBA Secretary currently falls under the Building Inspector. Parcellin asks who the Building Inspector is and if he’s planning on attending any ZBA meetings to introduce himself. Secretary informs the Board that his name is Jim Perry but does not know if he’s planning on attending any meetings. Borsari clarifies to the rest of the Board that the Building Inspector has requested that the supervision of the Planning Board and Conservation Committee fall under the jurisdiction of the Boards, while the Building Inspector would like to remain the supervisor for the ZBA Secretary. Borsari asks Selectmen Andrews, who is present, for more information. Andrews responds that he isn’t sure as he isn’t sure he will be allowed to act on this. Parcellin asks several more questions about the Building Inspector and directs his questions to Andrews as Parcellin states “you guys hired him.” Andrews responds “I did not hire him.”

Kenyon informs the Board of her conversation with the Building Inspector, Mr. Perry, when she was inquiring about a permit of her own. Explains that Perry told her that everything was just left for him and he had no help from the secretary, no information and had a lot of permits to catch up on . When Parcellin asks if Kenyon talked to Perry about coming and introducing himself to the Board, Kenyon informs Parcellin that Perry said he’d see them soon. Kenyon adds that she believes there may have been an “adversarial relationship” between Perry and his former secretary and that he was dealing with some “internal office strife.” Parcellin responds “I’m sure, the situation is terrible. I agree.”

Chairman asks the Board, if the Board has a need for Zoning Enforcement, who would do it? The Board agrees that it would be the Building Inspector as that is his job, but he wants to supervise only the Zoning Board secretary. Borsari explains that tomorrow night’s Board of Selectmen’s meeting is to discuss amongst different Board members their input on the supervision of their secretaries. Joy states that “he has no problem going at all.” Parcellin states that he can probably be there.

The Board inquires about the Department Head meeting. Andrews explains that this is a meeting with him so he can speak about that. He explains that whoever the Department Head is, so the Chairs of the Boards, will meet with him to find out what the different departments are dealing with, if there are issues that are similar to other departments, etc.

to see if there's a solution. The secretary points out that the Department Head for Zoning, however, is Jim Perry, as he is the Department Head for the Regulatory Department currently.

The Board discusses reorganization to officially choose a Chairperson as Nessralla has only been acting as Chair since Robert Gaynor was not reappointed. Parcellin states that he would rather wait until they get any appointments for the associate position as it has been open for years. Joy feels the same, would like to find out what is going on. Parcellin doesn't understand what the Town and the leadership of the Town wants from the Board as the Board hasn't even met the Zoning Enforcement Officer who was appointed in July. He attempts to confirm with Selectmen Andrews who states he doesn't remember when the ZEO was appointed. Parcellin goes on to say that there have been multiple meetings and the Board hasn't even been informed that there is a new person, Parcellin finds out through YouTube videos and the (news)paper. Without any public comment or reasoning, Parcellin states that there were interviews and selections for the ZBA and he doesn't understand why the Associate position wasn't filled, why the ZBA wasn't involved in the formal process, a letter was sent by the ZBA to the Board of Selectmen and wasn't addressed which Parcellin states has been kind of the norm. Because of this, he doesn't feel comfortable voting on a Chairman for this Board or making any decisions outside of the Petitions before the Board without feeling like there's "a target on their back." Borsari states "tonight was a perfect example of how this Board works. Everything happens right here." Joy adds "we don't all agree, there's no question about that." Parcellin states that "it's the worst it's ever been, volunteering for this Board."

OTHER BUSINESS

ADJOURN:

- M/Joy, S/Durgin. Unanimously approved (5-0-0) to adjourn at 9:47pm.

DOCUMENTS

1. Agenda for 9/13/21
2. Application Packets – Petitions #938, 949, 950, 952 and 953.
3. Meeting Minutes – 8/9/21
4. PH Express Invoices - #12704, 12705, 12706, 12707
5. Revolving Bill Schedules for Petitions #949 - #953
6. Harding & Sons Invoice #62934
7. Correspondence 8/25/21 email from Charlie Seelig/BOS

Respectfully submitted,

Date: 10/4/2021



Chairman, Kozhaya Nessralla
Halifax Zoning Board of Appeals