



# Halifax Zoning Board of Appeals Meeting Minutes Monday, January 10, 2022

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, January 10, 2022 in the Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with all Board members in attendance: Chairman - Kozhaya Nessleralla, Clerk - Peter Parcellin, Members - Gerald Joy, Robert Durgin, Tina Kenyon and Associate Member - Dan Borsari.

Chairman Nessleralla calls the meeting to order at 7:00pm and informs the audience that this meeting is being recorded.

## **APPOINTMENT**

**7:00pm – Hearing – Petition #962 – The Party Trust, 11 Amanda's Way – Appeal of Denial of Plumbing and Electrical Permits**

*Applicant Amanda Monti is present.*

Parcellin reads Public Hearing Notice into record. Monti states that they (The Party Trust) would like to withdraw their Petition without prejudice, referencing the letter sent by Attorney Adam Brodsky on 1/10/22, as they have received their plumbing and electrical permits. Parcellin reads Attorney Brodsky's letter into record. Parcellin reads the Letter of Request for Recusal written by Gordon C. Andrews dated 1/6/22 received by the Board into record.

BORSARI: I think this letter is a clear indication of the problem in this town. Before the meeting in question when I brought the documents in, it was the same day, I work three jobs, this is volunteer and at the last minute I said oh yeah, I want to bring this up as new business. I said 'Charlie, can I?' (He said) 'yes you can.' I also went online, and this is from the Massachusetts Attorney General's website. (Borsari reads) "May a public body consider a topic at a meeting that was not listed in the meeting notes? Yes. IF it is a topic that the Chair did not reasonably anticipate 48 hours before the meeting. If a meeting topic is proposed after the meeting notice is posted, the public body is encouraged to update it's posting to provide the public with as much notice as possible with what subjects will be discussed during the meeting. Although a public body may consider a topic that was not listed in the meeting notice if unanticipated the Attorney General strongly encourages public bodies to postpone discussions and actions on topics that are controversial or may be of particular interest to the public if those topics were not listed in the meeting notice." I don't think these are particularly controversial, it's either zoning violations or it's not. So yeah, I could bring up the topic. In the letter other than my name and the fact that I brought a piece of paper with me, everything else regarding me is completely incorrect. I did not bring this in front of the Board. As we said before, this was brought up by two different residents of the Town, during the Curtin special permit open meetings.

NESSRALLA: True.

BORSARI: Right? True.

NESSRALLA: True.

BORSARI: So I didn't bring this up. I'm just doing the job I'm supposed to do. And whether there is a procedural...I didn't vote, I'm just an associate member. This Board voted, and I'm not throwing them under the bus, these are outstanding people. If there was a procedural error, fine, it's a procedural error. But what bothers me, we've got a Town where the tone has been set to threaten—this is a threat—if I don't recuse myself and try to slant the vote in a way a particular person wants to get favoritism, I'm gonna be exposed to this thing I supposedly did wrong over here. That's terrible. I'm disgusted by this letter. That's not how things are supposed to work. I think someone, in this Town we should be able to come to each other and say, 'Hey Dan, I think you screwed up.' I'm gonna tell you right now for anyone that doesn't know me, if I made a mistake, I'm gonna own it. It's just a mistake. We're lay people. Some of us don't have the time to spend, you know, 24/7 nitpicking things. We try to do the best we can do. I think that's fair. Does everybody think that's a fair statement? That we try to do the best we can do?

JOY, NESSRALLA and PARCELLIN agree.

BORSARI: So I'm disgusted by this threat and this coercion. Listen to this (reading from Gordon C. Andrews' letter) "If you refuse to recuse yourself" ...on a matter that has nothing to do with his parents' property, "then I am going to bring this matter to the Ethics Commission." I think they only have 30 days to do that anyway but that's a moot point. The threat is still there, it's a threat. I'm very interested in this...according to what he said, and I'll take Tina for instance. I'm not singling her out, but the next meeting where Mr. Gordon Andrews, Jr. says that meeting was also in error, because his parents weren't notified, they *were* notified, public notice is notification, so he's wrong there also. She (Tina Kenyon) brought the same documents I brought. She brought property cards to the next meeting so why isn't she asked to recuse from this? What he said to us, whether the person is favorable or negative, it doesn't matter what her opinion is, I don't know what her opinion is, but if he's being even-handed—

KENYON: Mine was on the agenda. That was on the agenda...

BORSARI: No, he's saying--according to him, he's saying it's invalid because his parents weren't notified. He's incorrect, but in his mindset, why doesn't he put you on? And I'm not singling you out, I could do the same thing for every member here. But the point is, you did exactly what I did the next meeting. But you're not being threatened, why? I could beat this with a dead horse, how many things are wrong here. I didn't vote on it. He says I voted to instigate, or whatever his term was, how is it retaliation? So, my question—is he here? Is Mr. Andrews here? My question is, to the Chair, if Mr. Andrews has any relatives, friends or business associates in town who are violating Zoning Bylaws, is it his position that we can't enforce any Zoning Bylaws against any of his associates?

NESSRALLA: I don't...I...

BORSARI: Well I think I'd like an answer.

NESSRALLA: I can get you an answer, but right off the top of my head I don't...I couldn't tell you. Anybody has an opinion...?

BORSARI: That's how ridiculous this is on its face.

NESSRALLA: Well, as far as I'm concerned, I've never met Amanda Estate people before. Only when they first came in in 2014 when they came in front of the Board, and we voted for them, I have no interest in this thing. Mr. Scott...is it Scott? Ed Johnson? Ed Johnson deals with my cousin, and he's (Gordon C. Andrews) accusing my son...that I got the piece of land from my son. My son used to go fishing with...your father, yes? (Looking at Amanda Monti.) They used to...they were buddies. I didn't know Corrie Merritt from a hole in the wall. I didn't know her until 2014 when they came in front of the Zoning Board. Mr. Gordon C. Andrews brought me in front of the Ethics Board three times. I voted for O'Reilly, I voted for the Farmhouse and he brought me to the Ethics board. I called the Ethics Board and they called me, and I told them what I was doing. I said I have no interest in this because I went from Mr. Peck. But I do business with his father. I've been doing business with his father for the last 10, 15 years. Isn't that a conflict of interest? If I send a letter or want to bring a petition to the Planning Board does his father have to recuse himself? No. We're businessmen, we do business in this town together. If we put an application in front of the Board, he's my friend, you're my friend, we're all friends in this town. We're not going to kill each other over something...I have no interest in this Party Trust. None whatsoever. My son stands on his own two legs. He's 28 years old, he can do what he wants. The piece of land that Mr. Corrie Merritt sold him is landlocked. The only access to it is through my property. He (son) made the deal with Corrie, he didn't make the deal with me. There's no way on this God's creation that I put my signature on it. I told him; I have no part of it. This is between you and this gentleman. This is the way it stands. I'm not gonna recuse myself, I'm voting for this Petition. He can go in front of the Ethics Board any time he wants. I have no hard feelings against the man.

BORSARI: I don't respond to threats and coercion. I just don't. Especially when you haven't come to me and explained to me why you think I'm wrong.

NESSRALLA: You want to give him the chance?

BORSARI: I want my question answered.

NESSRALLA: We can call the lawyers and try to find out...

BORSARI: My question is, is it his position that if you have a lawsuit against any Board in town, let's say the Conservation Commission and you could have your relative or business associate break those rules. And if they try to enforce their rules then you can say, oh no, no no, I'm gonna report you, you're violating my rights and you're retaliating against me. Is that what we seriously think is happening? Is that the standard? I think we need to request from the Selectmen an attorney to find out what's going on here because if that is, and he's a knowledgeable person and, you know, obviously, he's the Chairman of the Board of Selectmen. Is he right? Or is he wrong? I think we need to request our own attorney and find out what's going on. Especially since, I and you (Nessralla) have been threatened with some type of action here. So that's what I think.

NESSRALLA: If we vote on it, we're gonna go in front of the Ethics Board. They're gonna be calling us. I'm going to tell the same story...

BORSARI: But we're gonna be called on another issue, which is past 30 days.

NESSRALLA: And for the record, I did not call on his father. When somebody came in here and requested to check on his father's property, or anybody else's property, we have the right to ask the Building Inspector to check on it. Anybody does.

BORSARI: Anybody does, of course.

NESSRALLA: To put me and you out front and say we can't do that. That's illegal.

BORSARI: Well, I didn't. You five did. As a Board.

NESSRALLA: Right, as a Board we did.

BORSARI: I'm gonna stand right with you shoulder to shoulder. I'll take the same punishment all day long. But let's get things right.

NESSRALLA: Anybody else have a...

PARCELLIN: I don't know if anybody else responded to the email from Arlanna. I thought it was important if he wanted to come and speak to it, to come and speak to it.

NESSRALLA: Mr. Andrews, would you like to speak to it?

GORDON C. ANDREWS: I don't think there's anything to speak to...(inaudible)

BORSARI: We haven't made a motion on that.

PARCELLIN: I guess my thought is this is a petitioner who has had multiple petitions before the Town and I assume that every time they petition for any sort of appeal or variance or special permit in town the same issue will come up.

GORDON C. ANDREWS: The only thing that I can file on is something that abuts me. This abuts me, I filed on it.

BORSARI (to Board): Can I ask him a question?

NESSRALLA: Go ahead.

BORSARI (to Andrews): So is that your contention, what I'm proposing here, you believe that anybody in your family can possibly violate Zoning Bylaws and anything we try to...do our job, that would be retaliation against you?

GORDON C. ANDREWS: I think you should call the state ethics, if you have questions over what you can do.

BORSARI: Well, I'm asking you, man-to-man, face-to-face, I'm asking you.

GORDON C. ANDREWS: And I'm telling you, I think you should call state ethics and find out what you should be doing.

BORSARI: So you don't have an answer from what you've threatened here.

GORDON C. ANDREWS: I think that you're asking me to try and put me on the spot and I'm not gonna respond. I put it in writing and if you don't wanna recuse yourself, you don't...don't. It is what it is.

BORSARI: I just want to know the standard because I think this Board should be going to the Selectmen to ask for an attorney to clarify 'is this mindset, is this opinion (referring to Andrews' Letter of Request for Recusal) correct or not?' Because this could come up in the future where somebody else could be suing this Board or any other Board in Town's gonna need to know that, geez, if somebody's suing us, than their relatives or their business associates can do whatever they want because then we can just claim retaliation. There is nothing ever written, said by me, that would give you an inkling that what your parents may or may not have done has anything to do with your own personal lawsuits. Nothing. Tell me what it is, if you have it, I'm sitting here right in front of you, looking at you face-to-face.

GORDON C. ANDREWS: This Board doesn't investigate complaints. If somebody made a complaint, it's supposed to go to the Building Inspector. That's what Mr. Seelig told you guys at the November meeting. That you shouldn't be making a complaint. You filed a complaint; I have the letter from October 6<sup>th</sup> that says this Board filed a complaint. You took part in those proceedings. You brought it before the Board. You acted on it. You're saying you didn't vote on it, you acted on it.

BORSARI: Well, you say I voted on it, so be accurate. And number two, this Board can request from the Zoning...it went exactly where it should have gone. It went to the Zoning Enforcement Officer who, by the way, to my concern, has not responded to that issue yet.

PARCELLIN: From my perspective, and it's all on YouTube so you can see our entire conversation about it. I'm sure you watched it. We were referring it to him to investigate.

GORDON C. ANDREWS: But the problem is that your Board hears appeals of his determination, so you just made it so there's no due process.

BORSARI: That's ridiculous.

PARCELLIN: I wholly disagree with that because we didn't make a decision on whether or not there was a violation. We voted—

GORDON C. ANDREWS: You actively reviewed information...you didn't have the parties before you. Just like with Winiewicz making the complaint on Cled's. In that case, there was a determination by the Building Inspector. He didn't appeal it, so you shouldn't have listened to him at all until he filed an appeal. It's supposed to be...you guys are the Board of Appeals, you listen to appeals, you guys don't hear complaints.

BORSARI: When somebody tells us at an open meeting that there are violations, we can send that, 'hey, there's an accusation from private citizens, can you go look into it?' What's wrong with that? That's how it's supposed to work. And in addition, this issue about your parents' property was tasked to your Board.

GORDON C. ANDREWS: I recused myself from that matter and I recuse myself from any matter that has to do with the Zoning Board right now.

BORSARI: And do you recuse yourself from things from the Planning Board?

GORDON C. ANDREWS: When necessary, yes. And I file a public disclosure.

BORSARI: So, like you do with the Zoning Board, do you recuse yourself from everything with the Planning Board also? Because you're suing the Planning Board too, right?

GORDON C. ANDREWS: Yup. But there's nobody named individually on that.

NESSRALLA: But the Zoning Board is.

GORDON C. ANDREWS: Yes. So, I was advised by state ethics not to participate in matters with the Zoning Board and I didn't. And I didn't act previously, so...

BORSARI: Don't you think it's better if somebody you have an issue with something, wouldn't you think it's better as a human being and as a person and as a man to say "hey, Dan, you know, I think this is kind of wrong," you know, to make me a better Zoning Board member, you know?

GORDON C. ANDREWS: So, you want me to have an ex-party communication with you about this matter not in front of the Board? About the issue that's before you?

BORSARI: If I'm wrong, I'll say it right here that I'm wrong.

GORDON C. ANDREWS: I can't talk to you about a matter that's before the Board unless it's in front of all of you. Right?

BORSARI: Your assertion that there's a procedural error or an ethics violation isn't...was not before the Board until you wrote this letter. What I'm saying is, as a person, and how we want this town to be, the good old town that it used to be, isn't it better to try to work things out person-to-person instead of now we need a lawyer. And the Town's going to pay for it. And it's my opinion it's because of you. So, all I'm saying is maybe you should rethink how you deal with people.

GORDON C. ANDREWS: I just told you, I can't talk to you individually, right?

BORSARI: Sure, you can, why not? I don't have a problem with that.

NESSRALLA: Let's uh...try and get information from the lawyer.

PARCELLIN: Yeah, I think we can refer this to...(inaudible) My biggest concern in seeing this, and this is what I wanted to hear if there was something that we didn't see in the letter to be able to respond to this, I don't know how great it went but, very clearly, if two members of this Board that has currently six members, one of which is an associate member. If two of those members are not able to vote because they are, it's suggested they should recuse themselves, that leaves us with four members. I guess my concern is less about who needs to recuse themselves and more about how this has been a situation that's been created. My concern on any petition that comes up, now that we're talking about this, any petition that comes up with these people filing a petition, there is going to be this crafted response that is set up in reference to existing litigation that's going on, but it also then sets up our Board to only have four members voting on it, which, if there is and there's reason to believe if you watch a lot of the Youtube videos of these meetings and the Selectmen meetings and the interviews for this specific Board, you can see that there's a relationship already that exists so my worry is that there was an intent—we sent a letter to the Selectmen, we asked the Selectmen to fill the Associate Member position that's been empty for decades. They ignored our letter, have not filled that position, leaving this Board with only four members if two are forced to recuse themselves, which means if any one of those four members decides to vote no for any reason, they will never be able to have a special permit or a variance or an appeal voted in favor if that is the case. And I worry a little bit that it's been crafted that way. There's no evidence to that situation at all, so I'm not even gonna entertain that but if there was a conversation between two people, if you have had a personal relationship where you talk about how frustrated you are with this lawsuit and how frustrated you are with this Board and that person just believes that they should continue to advocate against that petitioner and decides to vote no on every single petition they bring up and there's only four votes, that petitioner is consistently set up in this Town during the entirety of the number people on this Board and who's been appointed to this Board, they will never succeed. And that is not a scenario I ever want to have for any petitioner. I think that's unfair. *(To Andrews)* So again, and I know you recuse yourself and I'm actually impressed by how well you know the rules and how well you follow them. I'm impressed

by that but I also know you recuse yourself in all the matters with the Zoning Board, but you are the Chair of the Selectmen, I'm going to ask again, publicly, can you fill that position so we don't have that? We had five or six people who interviewed for the Zoning Board, none of them got a permanent member and they didn't revisit it again to be able to fill that position. If that was the case then we'd have five members and there were five members of the Town who came on a 7 o'clock meeting to the Selectmen, answered all your questions and none of them get a position. So, I don't know why that's the case. We wrote a letter; it got no response. It was in the newspaper; it got no response. It was on Facebook; it got no response and now we're in this awkward position where any one person, based on a personal relationship with you that we don't know about, could just decide to vote no all the time. And I worry about that for the...

NESSRALLA: That puts us in an awkward position that we can't perform our duties.

PARCELLIN: I don't know who needs to recuse...I know my crap, I don't have any relationship with any of this stuff so I wouldn't need to recuse myself but, everybody has to kind of deal with it on their own, but I worry about the effect of what that would have on this Board. That's a very long conversation...

NESSRALLA to JOY: Your opinion?

JOY: It's really...what Peter just said is important. And I did attend the meeting and I asked, whether the Selectmen just ignored the letter or not, and they said no, they were going to bring it under consideration but that's been...three months? And we still haven't heard.

PARCELLIN: There's a letter of Withdrawal that we can probably discuss.

NESSRALLA: Does anybody want to discuss the Letter of Withdrawal?

- M/Durgin, S/Joy. Unanimously (5-0-0) accept the Letter of Withdrawal without Prejudice for Petition #962. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

#### **APPOINTMENT**

**7:15pm – Hearing (Continued) – Petition #960 – Joseph Podgurski, 49 Carver St – Special Permits for Pole Barn and Commercial Building with welding equipment use in a building zone**

*No one is present.*

Parcellin reads Public Hearing Notice into record. Request made by applicant to continue until they go before the Planning Board for Site Plan Review. On Site inspection did not take place due to weather conditions.

- M/Parcellin, S/Joy. Unanimously accepted (5-0-0) the applicant's request to continue Petition #960 to February 14, 2022 at 7:05pm.

Abutters (50 Carver St) are present with questions and concerns. Board informs them that the applicants must go through site plan review with the Planning Board first before anything can be addressed with the Zoning Board. The Board assures the abutters that if there is activity on site it is most likely just minor site work i.e. clearing the site but no buildings will be going up at this time without approvals. Kenyon suggests that abutters attend the Planning Board meetings with their concerns, especially with the location of the gravel driveway.

#### **APPOINTMENT**

**7:20pm – Hearing (Continued) – Petition #961 – Barry Gates, 145 Monponsett St – Special Permit for single-family dwelling with attached, oversized garage**

*Applicants Barry and Mari Gates are present.*

Parcellin reads Public Hearing Notice into record. B. Gates informs the Board that after the last meeting, he contacted Mass Farm Bureau (Brad Mitchell) who provided him with the Agricultural Law on building Farm Worker Housing. Gates then spoke to the Building Inspector who, per Gates, stated "if I saw this a while ago, I would have issued you a permit, like, today." Gates asked the Building Inspector if he still needed a special permit for his proposed oversized garage. Building Inspector informed Gates that Building Inspector needed to get Town Counsel's opinion. Per Gates, Town Counsel's opinion to the Building Inspector was that the Building Inspector cannot issue a building permit as he already issued a denial which was appealed by Gates to the ZBA; Zoning must hear and issue a determination on Gates' application first. Gates provided the ZBA with copies of Agricultural Law Memo ALM 10-03 regarding Farm Labor

Housing and Zoning prior to the meeting which, per Gates, it states that he can build a single-family residence on his property.

NESSRALLA: As long as agricultural use, it's used for agriculture you can put a house on it for your use. And you can build a barn for your employees, you know your housing workers. You can put a barn—they call it a barn—you can put a barn, house employees into it, you know? You can only put one house on it. That's it.

BORSARI: Does this have anything to do with us?

NESSRALLA: The Building Inspector could have issued a permit, but he didn't know...

PARCELLIN: He denied, it's an appeal.

NESSRALLA: ...because it's under Industrial land; it's an industrial zone and that is agricultural. He has what, 80 acres of land there?

BARRY GATES: Almost 90.

NESSRALLA: 90 acres of land, I mean, you could put a house on there. I mean, a lot of people do a lot...a lot of the cranberry bogs do that, they put a house on their property and—

BORSARI: Do they need a special permit?

NESSRALLA: They need a permit to build a house.

BORSARI: A permit. But do they need a special permit?

NESSRALLA: No, they don't.

BORSARI: So, there's really nothing we can do with this.

KENYON: I think his question...the Building Inspector's question seemed like it was for the garage, is that correct? (to Gates)

B. GATES: Well, that was my question. Am I exempt from the garage because that is agricultural also? He needed to look into that and then come back and say—

NESSRALLA: The garage could be used as a barn. You can call it a barn or...

B. GATES: It's attached to my house but it's big enough so I can keep my tractors right there.

NESSRALLA: It's going to be housed for your tractors, not something they're going to do, open up a business in there or anything like that?

B. GATES: No, no.

MARI GATES: He said because we started the process here, appealing his denial, then you guys needed to finish it, but he can't go back on his denial...

NESSRALLA: We can't put any stipulations on it.

DURGIN: So why didn't he just withdraw?

M. GATES: He (Building Inspector) said he was told by Town Counsel, because he denied it and we started this process, that this is how we finish. He can't give us the permit even though he could give us the permit.

BORSARI (to Gates): He (Durgin) is asking why didn't you withdraw?

B. GATES: Because he basically said...

NESSRALLA: He already denied the application...

B. GATES: He denied it and that's why I ended up here. When I left here the first meeting, I was thinking that was what I was going to do. But Monday I provided him (Building Inspector) with this, and he read it and he said 'oh, if I had seen this I could have issued you a permit tomorrow.' I said 'great.' So I talked to him for 10 minutes on the phone, we hung up. Oh, the garage. I asked him about the garage and he said, 'I'll get back to you tomorrow.' So he called Town Counsel, got Town Counsel's advisement, who said he issued the denial and it's at Zoning, so just let Zoning figure it out.

PARCELLIN: I mean, you applied for it, so...

M. GATES: That's because he told us to apply for it.

PARCELLIN: For the garage.

M. GATES: And the house.

PARCELLIN: Yeah, yeah.

BORSARI: And no stipulations either way.

DURGIN: You're asking for a variance and special permit, correct?

B. GATES: I don't know if you'd call it a variance. I was coming for a special permit...I need a variance because I can't build on my Conservation land? It's wetlands...

DURGIN: It's not allowed because it's in the Industrial zone.

NESSRALLA: How far are you from the wetlands?

B. GATES: The conservancy line?

M. GATES: But it's 61A.

DURGIN: But what are we voting on?

KENYON: I believe we have to vote to reject it.

NESSRALLA: We have to vote because the Building Inspector denied it.

KENYON: We reject it because it falls under Farm and then because it falls under farm, they can go back to him to get the permit because it's closed here.

NESSRALLA: But the Building Inspector denied the application. Unless...

BORSARI: Based on the size of the garage?

B. GATES: Based on not knowing the farm thing...based on the zoning.

KENYON: I think because it's open here, he doesn't wanna...

NESSRALLA: Either you go back to the Building Inspector and ask him if you could submit an application for a permit to build a house and over here you would withdraw your application—

B. GATES: I did fill out an application for a building permit.

NESSRALLA: Yeah, but he denied it. So, you can withdraw without prejudice—

M. GATES: We were told that we would come back here, you guys would vote on it...61A Farm and we'd be all set.

PARCELLIN: He denied your application for two reasons. The first is the garage, which you applied for because the garage is over 884 square feet. So, step one, you applied for a special permit to construct the garage. So, we could approve that special permit, if that's what the Board wants to do. The second question I guess is he denied the house for, he said it requires a special permit for a single-family dwelling in the Conservancy Industrial zone, but we learned last time that that doesn't exist. You can't get a special permit. The question is there's no special permit to be issued. It's not a vote.

KENYON: Because of the farm. Except for the garage.

PARCELLIN (pointing to the audience): Gordon has some insight, too.

NESSRALLA (pointing to Gordon C. Andrews): Go ahead.

GORDON C. ANDREWS: I would recommend the Board overturn the decision of the Building Inspector not to issue the permit for the single-family house.

DURGIN: That's not what's applied for.

GORDON C. ANDREWS: Well, that's what he's...they're appealing—

NESSRALLA: But he denied it and now if we, if he withdraws without prejudice, he can go back and get a permit from the Building Inspector, get the permit to build the house without going through all this stuff. If he withdraws without prejudice, it's gone, then he goes tomorrow to file for a--

GORDON C. ANDREWS: I think because he (Building Inspector) filed a decision. He made the decision that he couldn't issue the permit so that starts the window of how long you have to appeal. So, they wrote the appeal to you, you heard the Petition, he (Gates) came back with new information so I would make a finding under 61A and overturn the Building Inspector's determination that he couldn't be issued a permit without a special permit.

PARCELLIN: Yeah and I think the way we probably can do that within...because technically you're not supposed to vote on stuff that isn't in front of you, right, and that's not advertised but I think that in the end, I think what we could do is do that while approving a special permit for the garage and then they don't have to deal with any of that.

DURGIN: But they didn't apply to overturn the Building Inspector's denial. This only applies to a special permit.

PARCELLIN: Yeah but it's still—

GORDON C. ANDREWS: So technically what's supposed to happen is you go to the Building Inspector if you need to apply for a special permit, he's supposed to deny you, then you're supposed to apply for a special permit.

PARCELLIN: And they did exactly.

GORDON C. ANDREWS: So, I think you're overturning the determination.

DURGIN: But then we would have to approve the Petition which is approving special permits which he doesn't need.

GORDON C. ANDREWS: I think what you do is make the finding that it's not necessary.

BORSARI: Does 61A have a restriction on the size of the garage? I guess that's what the question is.

NESSRALLA: You can have a 4,000 (sq.) foot garage.

BORSARI: And what size is it?

B. GATES: 1,500 square feet.

BORSARI: So, it never should have gone down this road anyway so.

M. GATES: No and he (Building Inspector) basically admitted that but said because we already started this process, this is how we need to finish it even though he could've given us a permit.

BORSARI: So, if we deny, then you can start over? Or is there a window after we deny?

PARCELLIN: I think we should deny it.

NESSRALLA: We shouldn't deny it.

PARCELLIN: This is the problem. He (Building Inspector) instructed them to apply for something they can't apply for. So, this doesn't exist.

GORDON C. Andrews: You're overturning his determination. That's what the Board is doing.

B. GATES: What does that mean?

GORDON C. ANDREWS: The Building Inspector made findings. He's brought before you a Petition. You've made findings that are different than what the Building Inspector found. You're overturning his decision based on the findings that 61A applies to this property. So, you're overturning his denial. That will allow him (Building Inspector) to issue the correct permits.

KENYON: And they won't have to pay again.

*(Board talks over each other, inaudible)*

PARCELLIN: And we've had scenarios where somebody asked for something outside of what was denied in the Building Inspector's letter which this isn't. Technically. And we've been nailed for that. So, I just worry about, you know, I'm just trying to make sure that we don't... I don't want to have them have to go through this crap again.

KENYON: I think that's the only way we make it so that they don't pay again. I don't think they should have to pay for another permit, that's...

NESSRALLA: No, no he's already got the...he's already paid for the permit. We're just overturning the...

B. GATES: It's not a lot of money but it's hundreds of dollars...and time. We're not gonna get the time back.

KENYON: You don't enjoy spending your evenings with us?

*(Laughter)*

PARCELLIN: If you did you might be the only one today.

GORDON C. ANDREWS: I would just recommend in the motion that you make a finding that 61A applies.

- M/Kenyon, S/Joy. Unanimously approved (5-0-0) to overturn the decision of the Building Inspector's denial of the building permit for a single-family house with oversized garage requiring a Special Permit from the Zoning Board of Appeals due to the Board's finding that M.G.A. Chapter 61A: Assessment and Taxation of Agricultural and Horticultural Land applies to this Petition and the Board approves construction of a single-family home and the proposed garage with no need for special permits or variances. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

NESSRALLA (to Gates): As long as you have it within that fault zone of that tower, you'll be all set.

B. GATES: This is the third Building Inspector I've dealt with on this issue. We were gonna do it 10 years ago, but the house didn't sell.

## **MEETING MINUTES**

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) the Meeting Minutes for December 13, 2021. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

## **BILLS**

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to pay bill (PH Express Invoice #12933). (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

## **OTHER BUSINESS**

40B Comprehensive Permit – Country Club Estates – Petition #920 – January 12, 2021 at 7pm

Joy informs the Board that the Zoning By-Law Committee never heard back from the attorney, so the committee voted to terminate his contract. This attorney had a town planner who was doing a lot of the legwork, so the committee is going to look to hire the Town Planner first at a lower rate to do the same work that the attorney was going to do. Nessralla asks who took Charlie Seelig's place in Halifax. Gordon C. Andrews informs the Board that Ed Thorne, who used to be the Town Manager in Pembroke, is now the interim Town Administrator. When asked what his schedule is,



Andrews replies that it depends on what the budget will allow for, a couple of days a week. The Town Administrator position for Halifax was posted online last week and it's a six-week request, per Andrews.

The Board approves the ZBA's Annual Town Report for 2021.

## **DISCUSSION**

### **Eric Bagge, 5 11<sup>th</sup> Ave, Halifax – Concerns about approved (12/13/21) Petition #959 – Special Permit for Bathroom Renovation**

*No one is present.*

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

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

BORSARI: What are we going to do about the no response from the Building Inspector about the Plymouth Street properties? Should we send him another letter? I mean, this is not brain surgery. I'd like to put it to bed whether these are violations one way or the other.

NESSRALLA: What's the pleasure of the Board?

PARCELLIN: Specifically, to the points we were talking about before. I am concerned that nothing is happening, but I also think—

BORSARI: We can't do anything until he makes a finding.

PARCELLIN: It's also not our...we referred it. If he is struggling with investigating it, that's on him. If he is refusing to do so he's...I guess not...doesn't want to do his job. Or there isn't, and he's just not telling us.

BORSARI: Well, if there isn't, we should know there isn't.

JOY: Well, we should have...request him at the next meeting.

BORSARI: That's what I'm saying. Just request him to come to the next meeting and he can, or he can't. He will or he won't.

NESSRALLA: I talked to him (Building Inspector) about the Bagge case there and he goes, he wanted to sit with the Board and talk to us so we can communicate with each other instead of he goes one way, we go the other. I told him; you're welcome to come to the meeting. He hasn't shown up.

PARCELLIN: I absolutely said that while he was sitting there. You can come to our meetings.

NESSRALLA: I told him, I said you can come to the meeting, we can talk about what you wanna do, what we're doing. What your right hand, left hand is doing and all that stuff.

PARCELLIN: And that's been pretty typical of the Building Inspectors of the past. They show up and tell us why they did what they did.

BORSARI: And do we want to put in a request for an attorney to look into that letter (re: 1/6/22 Gordon C. Andrews Letter of Request for Recusal to ZBA) because I want to know if he's (Gordon C. Andrews) right or not, what we can or can't do when there's open litigation?

NESSRALLA: We can. We can.

PARCELLIN: I don't think it's terrible, it's just the information...

NESSRALLA: The more information we have the better.

PARCELLIN: I agree. I don't think that's...

NESSRALLA: It's not gonna hurt anybody.

BORSARI: We're requesting that we're able to have our own attorney appointed for us. That's what we're asking for.

NESSRALLA: Does anybody want to make a motion to put a letter in requesting it from the...

PARCELLIN: Well, what are we...to refer that letter to our attorney to see what they think? What the right thing to do is?

NESSRALLA: To get information on what our...

PARCELLIN: What the right thing to do is.

BORSARI: Are we in error? Is this in error?

NESSRALLA: Are we at fault? Are we not at fault? How do we proceed? We can't just keep going...

PARCELLIN: Under recusals.

NESSRALLA: Under recusals all the time. If somebody comes up, you know somebody, I know somebody. It should be either black or white, no gray areas. So, we know how we proceed with our Board.

BORSARI: Whenever it's been an issue with me, I either recuse myself or submit a...what are those letters called?

GORDON C. ANDREWS: Disclosure.

BORSARI: Disclosure. I'll submit a disclosure. But I need some clarification on this.

NESSRALLA: We can get the clarifications on anything that, you know, we have a hard time with. We can write a letter and have an attorney that we can call and request information from them. It will benefit us; it will benefit everybody on our Board.

BORSARI: And I don't know about anybody else, but I never have a problem with somebody telling me I'm wrong and showing me that...

NESSRALLA: Nobody does. I mean, if you're wrong, you're wrong. If you're right, you're right.

BORSARI: We should be able to, as a Town and as members in this Town, appointed and elected officials, we should be able to work that way with each other.

NESSRALLA: Should we make a motion to request a lawyer that we can talk to?

PARCELLIN: We have a lawyer, right?

BORSARI: Well, I think we need our own attorney.

NESSRALLA: An attorney, with like...

BORSARI: I know, I'm thinking the same thing you are.

NESSRALLA: It's gonna cost the Town some money, you know, but how often do we use them? Not many times. And we may not even get it. So, all we can do is ask.

BORSARI: What do you think, Peter? I see the wheels are spinning.

PARCELLIN: Well, trust me. I don't like any of this stuff as much as anybody else. I think in a couple of these scenarios people are not doing what they're supposed to be doing or there's a lot more to it than I think I know. And I think I'm happy I don't know. In situations where...we're the Zoning Board of Appeals and if there's some nefarious stuff going on in other places it's on them and I think it's important for us to bring it up like we do but I also think it's not incumbent upon us to solve the problems of other people's nefarious choices. I think it's totally reasonable for us to refer this specific scenario, because I don't know where the conflict of interest necessarily lies but it's fully within everybody's right to suggest something. To which, to his credit, he (Gordon C. Andrews) did. Instead of not saying it ahead of time he did submit a letter saying that he thinks you should, you guys should recuse yourself. I also don't know if that's necessarily accurate but that's well within his rights to do so. I haven't seen any evidence...I think our attorney is Rich Hucksam, right? Which was our attorney in the past. I can't see any evidence as to why he wouldn't be able to give us a fair opinion on that case, you know? But I also...if in all these scenarios...I'm with you, Dan. I'm tired of all the hush-hush conversations and then something happened in here that I don't really understand, but, and I don't even know if that stuff's happening, but at some point, we need to make our decisions and other people will have to figure it out. I spent some time today looking at the background of all this litigation that's been going on forever and it has a lot to do with stuff that I don't know if we are really affected or not. So, I'm fully in favor of trying to clarify what's going on.

BORSARI: There were a lot of questions that were brought up. Why some and not others?

PARCELLIN: I also know that from your perspective, and I agree with you on a fair amount of that stuff, I don't know if there's something there. So, I understand why you're upset. I also think it's reasonable to ask our attorney to look into it. If that's what somebody thinks, that's what they think. The guy that was in here the other day was upset about something else and I don't know why he was upset either. If the Zoning Enforcement Agent, if we referred something to him and he doesn't want to do anything that's pretty common, I guess. It's not correct, it's not probably ethical, there's probably some stuff that's going on that doesn't make sense to me, but I think people are seeing that and I think that will come out in the wash. I don't know if it's our purview to call the Building Inspector in and ask for an answer from him on his investigation because that's not necessarily our role. And that's been pointed out to us today and I think there's a point to that. And I also don't think it's unreasonable for us, when we hear of something just like anybody in Town, referring it to the Building Inspector. I just worry that the frustration that we have about the last year or so is going to boil over into us kind of overstepping our bounds. You know?

BORSARI: I haven't seen any action. One of these properties was given a denial letter to use a special permit was denied in 1987. Maybe we shouldn't be talking about it right now, but I'm just frustrated that the previous Building Inspector who no longer works for this Town did the right thing and handed it off to the Selectmen.

PARCELLIN: And very honestly...our role is as far as we took it.

BORSARI: Then we'll just sit on it. We'll just sit and wait for his response.

PARCELLIN: I doubt we'll get one.

JOY: The only thing we can do is have him (Building Inspector) come back again.

PARCELLIN: Yeah, sure! But it's also his decision on what he wants to do with this stuff based on what he sees. If he goes out there and tours the place, just like any place, like they did with the guy they suggested put arborvitaes up there next to the other place. If they go out there and find what they find based on the expertise that they have, like we don't go in and tell them he's wrong unless someone asks us for an appeal based on that process right? And I think that we as residents have a right to be upset about some of the stuff that we're seeing. Right? I think we as residents know that there's advertisements and statements that people have made that make it very clear that there's some sort of Zoning violation going on there, but I also don't know if the Zoning Board of Appeals is the appropriate avenue to do that and I think we're going to get smacked on the hand if we do that.

BORSARI: That's fair enough.

PARCELLIN: A lot of people want to make it out like we have some sort of dirty laundry, that we're the dirty laundry people and we are not, and I don't want to use this Board as an opportunity for that.

BORSARI: We're one of the few Boards...

PARCELLIN: I don't know, I don't want to believe that. Regardless of this or anything else if the Building Inspector is terrible and doesn't want to investigate something, we didn't hire him, we're not going to fire him, very clearly there are people with very passionate opinions on who the Building Inspector should be in this Town, and we didn't have anything to do with it and probably will never have anything to do with it. But as a member of the Board when that stuff comes up and as a resident of the Town when that stuff comes up I will be very vocal as I have been at several meetings saying that I haven't seen the Building Inspector, and we've referred some certain things to him, and we've asked him to come to meetings and he doesn't come to meetings and that is on the people who make those decisions and eventually the voters in the Town of Halifax are watching this stuff. But I don't know if, in this...and it's been point—Charlie kind of mentioned it, Gordon mentioned it today and if the Building Inspector doesn't want to do something and someone appeals that decision to us then I think we're...we can vote on what's in front of us, kind of like that Petition today. But outside of that...we can refer stuff to him because, you know, he's our Enforcement Agent but if he doesn't enforce, that's not...

NESSRALLA: What do we do if he doesn't?

PARCELLIN: The people who I would assume hire and fire him would hold him accountable for that.

NESSRALLA: But let's say an application comes in front of us and...

BORSARI: But who's gonna complain about it? Nobody.

PARCELLIN: Then there's evidence for people who are affected by that to take certain recourse which I think that they should, I guess, or...

BORSARI: My concern has actually nothing to do with either one of these, it's other people that we've made...as a Town is making believe that they're gonna claim, and probably rightly so, unequal application of the law. Nothing to do with any of the lawsuits or petitions we're talking about right now. We, as a Town, have to do things fairly and equitably to everybody. That's what's really my concern: to look out for the Town and look out for the residents of the Town to make sure things are done fairly and equitably and if these things are overlooked, because hopefully there's no problem whatsoever, but it has to be, in my opinion, should be addressed in a timely fashion. You know, as a resident, right? As a resident because if not, other people are going to be able to come back to us, and we may not even be thinking of, but may be denied something in the past and say 'hey, as a Town, what's the Town doing? It's, you know, somebody gets a pass, and I don't. So that is, honestly, my concern with all this, is that things are done equitably for everybody who comes before us or any Board in the Town. That make sense?

PARCELLIN: Yeah, 100 percent.

BORSARI: So, what are we gonna do?

NESSRALLA: You want to request the Building Inspector to come next meeting?

PARCELLIN: Yeah!

JOY: Definitely. Yup.

PARCELLIN: Yeah, absolutely. I think he's welcome at every meeting, but we definitely can ask him to come to the next meeting and give us some insight on a lot of this stuff, you know?

NESSRALLA: I asked him to come to this meeting but...

KENYON: Well, she (secretary) said he's sick. Which is very concerning to me. We had a meeting on the Zoning Bylaw Review Committee on Wednesday, and I sat right next to him.

NESSRALLA (to Gordon C. Andrews): Has he showed up for work in the last week?

GORDON C. ANDREWS: He was not in today. Ed told me he wasn't in today.

KENYON: But we can request him. It doesn't hurt to ask.

JOY: It's like any meeting that you have, when you have something that's still on an agenda, it's still sitting there, it has to eventually be cleared. So, we have to invite him every month to get an answer from him. That's all. All you gotta do is say 'it's fine' and we're done! Move on! Just to get an update on it.

PARCELLIN: I'm not opposed to that.

JOY: Alright, so we're going to request the Building Inspector for next meeting. Are we going to send another letter to the Selectmen to find out what's going on with the appointments? We've mentioned it but do we have to formally...?

PARCELLIN: Yeah, the answer you got when you asked was 'yeah, we're gonna take it up' and that was months ago. I don't think...I mean, they (Selectmen) know it's there.

JOY: I know but when things keep on sitting there, you have to remind people of it. That's all.

KENYON: Hey, I've been on an unfinished road for 14 years and they just keep kicking it down the road.

NESSRALLA (to JOY): You can request, we can request it every month.

PARCELLIN: I'm happy to do that. At some point when you ask for things to happen repeatedly and they don't happen, you either have the authority to make that thing happen or you don't, and the authority comes later, and we might not be able to affect the result that we want because we only have certain...but I agree with you. I'm 100% behind all of this stuff.

NESSRALLA: We will keep asking until we get a decision.

PARCELLIN: Yeah.

JOY: I used to hate it when the same thing comes up every week and it's never resolved.

NESSRALLA (to JOY): How do you resolve it?

JOY: Me, I fire the guy. I'm different but that's business. No answer, he's done. He's gone.

PARCELLIN: But as you know, Jerry, you've sat through meetings, and I've been outspoken, but at meetings I have brought up the fact that I am unimpressed by the level of effort that is put into that position (Building Inspector) where it is at the lowest point I've seen it in this decade that I've been on this Board. I don't know why that is, I don't know what the reality is, it has nothing to do with just these two things. It's been on a slew of this stuff. We just had a petitioner in here that had to print out a law and give it to our Building Inspector who said "oh, if I knew about that I would have approved it for you." These poor people spent time and money because he (Building Inspector) didn't do what he was supposed to do. But here we are, and he is not my employee but as a resident of this Town and as a member of this Board I will continue to express my vast un-impressed-ness with the Building Inspector we have that we didn't meet for months and I will continue to express the fact that I don't know the interaction about a lot of stuff that's gone on around here and I'm unimpressed by it. But I also don't know enough about it, and I don't care enough about it. It's shady and I think it's all going to come out in the wash in the end anyway.

NESSRALLA: We have to do something to change it either way.

PARCELLIN: I agree.

NESSRALLA: We have to write a letter to the Selectmen so we can try to get our own...

PARCELLIN: It seems abundantly clear that the Selectmen are not unintelligent. The Selectmen are well aware of what we asked for. And it seems that the Zoning Board of Appeals has specifically been an intent of the Board of Selectmen so for us to pretend like they didn't notice our letter, they noticed it. This may be by design.

KENYON: How long has it been vacant? Like, 20 years?

PARCELLIN: Forever.

BORSARI: And when we have the kind of discourse with the way people treat each other in this Town, I can see why people don't want to serve on Boards which was the point I was getting at. Things have to change, we have to be more amicable, we have to be able to talk to each other.

NESSRALLA: You've got to have trust. You've got to have trust.

BORSARI: Believe it or not, people are not out to get each other, believe it or not. And believe it or not, some of us don't have ulterior motives, believe it or not. I wear my heart on my sleeve.

JOY: We don't always agree anyway.

BORSARI: Right, we don't agree and that's how it should be. I can see why it's hard to fill things in this Town and it's going to get harder if things keep going the way they're going.

PARCELLIN: But that Associate Member position was not difficult to fill. People showed up to interview as if it was a CEO position. People came in and answered in front of a Board of people asking a bunch of questions and it's now months later.

BORSARI: Right now, this Board's not fun for me to be on. It's not a pleasure to be on, it was a pleasure before to serve. We don't get anything for it. So, something has to change in this Town and this letter (Request for Recusal from Gordon

C. Andrews to ZBA) is indicative, and I'm not just pointing out one person, there's been many instances with other people, I'm not pointing fingers here at one person. But we've had a very contentious Town Hall and people have left and it's a shame because we've lost a lot of good people.

PARCELLIN: But Dan, I also think people are paying attention to that. I don't think that's lost on a lot.

BORSARI: I hope so, I hope so. But I also believe in people, and I even think people who are here even now can change because we have very knowledgeable people here and everybody's gotta get over those personality things and work together. And I think that's what we need. And I think people can do that. Maybe I'm an idiot or maybe I'm a very trusting person but I really think we all should work together from the top down. The fish rot from the head or we're successful from our leaders. That's what we need in this Town. And yes, that position (associate) should have been filled.

PARCELLIN: Yeah, I know.

BORSARI: And there are some extremely qualified people.

PARCELLIN: 100 percent. 100 percent.

JOY: You need to get an answer on the...

BORSARI: Yeah, I want the attorney to read this and say what is correct, what is incorrect, are we in error, aren't we in error? In the future going forward do these scenarios happen and if any other mistakes were made.

PARCELLIN: Because we make mistakes and I think it's important to get clarified.

NESSRALLA: If any one of us makes mistakes we have to own up to it. Simple.

BORSARI: I know for a fact, that if there were any mistakes made from our end it was a procedural mistake.

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to request Legal Counsel's opinion on Request for Recusal letter sent to the Board from Gordon C. Andrews dated 1/6/22. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

- M/Joy, S/Parcellin. Unanimously approved (5-0-0) to invite the Building Inspector to attend the next Zoning Board of Appeals meeting. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

Board would like secretary to write a letter to the Selectmen regarding filling the associate member seat.

#### **ADJOURN:**

- M/Parcellin, S/Joy. Unanimously approved (5-0-0) to adjourn at 8:27pm with all in favor. (Voice Vote: Parcellin – Yes; Joy – Yes; Durgin – Yes; Kenyon – Yes; Nessralla – Yes)

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#### **DOCUMENTS**

1. Agenda for 1/10/22
2. Application Packets – Petitions #962, 960, and 961
3. Meeting Minutes – 12/13/21
4. PH Express Invoice #12993
5. Revolving Bill Schedule for Petition #962
6. Letter of Request for Recusal from Gordon C. Andrews (re: Pet #962) – 1/6/22
7. 2021 Annual Report for Halifax Zoning Board of Appeals

Respectfully submitted,

Date: 2/14/2022



Chairman, Kozhaya Nessralla  
Halifax Zoning Board of Appeals