



Halifax Zoning Board of Appeals

Meeting Minutes

July 11, 2022

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, July 11, 2022 in the Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with all Board members in attendance: Vice/acting Chairman - Kozhaya Nesseralla, Clerk – Peter Parcellin, Members – Gerald Joy, Robert Durgin and Tina Kenyon (by Zoom) and Associate Member – Dan Borsari (by Zoom). Associate Member – Marline Amedee is absent.

Vice / Chair Nesseralla calls the meeting to order at 7:00pm.

APPOINTMENT

7:00pm – Pet #971 – Linda & Raymond Sluhocki – 175 River St, Halifax MA – Special Permit & Variance for porch and garage

Applicant Linda Sluhocki is present.

Parcellin reads Public Hearing Notice into record. Sluhocki presents project which is a proposed garage and second-floor master suite with farmer's porch along the front of the house. The Board reviews plans. Special permit and variance of front setback required for farmer's porch and a special permit for a three-car garage with master suite which exceeds 884 square feet. There are no neighbors across the street as it is Conservation land and therefore not buildable. Porch will be flush with garage layout. Due to conservation land the addition cannot be placed in any other location; cannot do anything in the back of the house. Sluhockis have lived at this location for eight or nine years. The Board determines that the hardship is topography and conservation land, thus allowing the Board to grant the requested variance of the front setback from 50 feet to 42 feet and the garage will not be detrimental to the established character of the neighborhood and does not derogate from the intent of the by-law.

- M/Parcellin, S/Durgin. Unanimously approved (5-0-0) to waive the on-site inspection. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Parcellin – Yes; Nesseralla – Yes)
- M/Parcellin, S/Durgin. Unanimously approved (5-0-0) Petition #971 as presented. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Parcellin – Yes; Nesseralla – Yes)

The Board signs Decision Form.

APPOINTMENT

7:05pm – Pet #972 – Wendy Corkren – 792 Old Plymouth St – Special Permit for In-Law Apartment

Applicant Wendy Corkren is present.

Parcellin reads Public Hearing Notice into record. Corkren presents project, which is to build a small, 640 square foot in-law apartment for her mother onto an existing three-bedroom house. The Board reviews the plans. All utilities will be shared as well as a living room for shared living space with a six-foot opening that will remain open. The Board agrees that this in-law will not be detrimental to the established character of the neighborhood and does not derogate from the intent of the by-law. Parcellin reads letter from abutter Gary Ellis in favor of the project.

- M/Joy, S/Durgin. Unanimously approved (5-0-0) to waive the on-site inspection for Petition #972. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Parcellin – Yes; Nesseralla – Yes)
- M/Joy, S/Durgin. Unanimously approved (5-0-0) Petition #972 as presented. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Parcellin – Yes; Nesseralla – Yes)

The Board signs Decision Form.

APPOINTMENT

7:10pm – Pet #973 – Joseph Kehoe – 145 Cranberry Dr – Appeal of Building Inspector’s Decision

Applicant Joseph Kehoe and Building Inspector James Perry are present.

Parcellin reads Public Hearing Notice into record. Kehoe just moved to Halifax last year and is a sole proprietor with no employees. Kehoe’s primary mode of transportation is one of his two dump trucks, his equipment is primarily stored on the job. Kehoe has been working on his yard taking down 30 trees last year. On the weekends he sometimes has a small machine, a small excavator, bobcat to spread mulch. Kehoe isn’t sure what he wants to do with his property at the bottom but has been using extra fill from his jobs to fill in some of the area possibly for his kids. Kehoe is not running a business out of his home; he leaves in his truck in the morning and returns at the end of the day. He doesn’t have people meet him at his home, does not sell or store materials on the site. Kehoe has his tools but there is no increase in traffic. Kehoe states Building Inspector Perry set a precedent allowing the owner of 688 Plymouth Street to park whatever he wants on his property with no violation.

Perry states he drove by the site and reports that he saw a 10-wheel dump truck, one-ton dump truck, mini excavator, trailer, skid steer loader, piles of materials like stone dust. Perry submits photographs to the Board with timestamp every quarter. Perry states he sent Kehoe a letter to “break the ice with him” which “went by the wayside.” Perry received a business certificate application Kehoe received from the Town Clerk which includes a questionnaire regarding home businesses. Kehoe states on the application that he would not have any supplies or products on the premises or any evidence of business outside the residence which Perry states is not truthful. Kehoe states he is a Title Five examiner however, according to the Board of Health Kehoe is not licensed in the Town of Halifax to inspect Title Fives but is licensed to install septic systems which, Perry states, seems to be primarily what Kehoe does as Perry has seen a decent sized excavator on other jobs. Perry has three septic system applications Kehoe completed in the last year. Perry has a trench permit pulled by Kehoe from the 29th. Per Perry, Kehoe’s neighbor’s deck is about 100 feet from where Kehoe stores his equipment. Perry presents photos to the Board that he took of the property prior to Kehoe purchasing the residence, eight days after Kehoe purchased the property, etc. The Board reviews all photos submitted by Perry of Kehoe’s property. In response to Kehoe’s reference to the owner of 688 Plymouth Street, Perry states that’s “apples and oranges” as the owner lived on his property for 35 years. Perry adds that four building inspectors before him did nothing about it and “my ruling was that it wasn’t legal, but it was grandfathered” for 688 Plymouth Street.

Kehoe asks the Board if he isn’t allowed to work on his own property. Kehoe responds that it seems Perry only took pictures of when Kehoe’s equipment was on the property, which, per Kehoe, is only there when he’s using it for his property to clear trees, etc. Kehoe states he wouldn’t park his equipment continuously and that his equipment is usually parked on the job or at his uncle’s property in Scituate. Kehoe states he has a big excavator and a big trailer that he doesn’t bring to his property as he is not running his business from his home. Kehoe states he has the little machines on his property sometimes. Nessralla says to Kehoe that “a picture is worth a thousand words.” Kehoe states if the Board were to drive by now there is only his one small truck for transportation. Perry adds that, in reference to 688 Plymouth Street if “we didn’t want things like this to happen in the future, we need to nip it in the bud and that’s what we’re doing.”

Borsari states that the owner of 688 Plymouth Street applied for a special permit in 1987 to run a business out of his home. It was denied but the owner ignored this because there is a massive amount of equipment and material on the property, per Borsari. Borsari adds that Perry’s denial letter to Kehoe is the opposite of Perry’s ruling of 688 Plymouth St and the storage of equipment has been allowed on Carver Street as well. Borsari states he believes there is an underlying motive here. Borsari doesn’t remember Perry saying that what was happening on 688 Plymouth St was illegal, Borsari remembers Perry saying there was “nothing there” and that Perry is “changing his story.” Perry responds that he said it was grandfathered and asks the Board if they “want to throw the guy out of his yard after 35 years.” Borsari states it’s obvious what’s going on as the story and narrative are changing.

Parcellin asks Perry how Kehoe is conducting his business from this residence as it seems that something disruptive is happening on the property and asks how the connection to Kehoe’s septic installation is made. Perry responds that Kehoe claims he’s a Title Five examiner and Perry knows a lot of people that inspect Title Fives and all that’s needed is a shovel and some small equipment to dig up a septic system, inspect it and write a report. Perry states that Kehoe is storing heavy equipment on this property. Perry is not against Kehoe making a living but Perry states it’s a residential neighborhood

with a lot of children and expensive homes and “if you give an inch, they take a foot. Next thing you know he's going to have two dump trucks, two ten wheelers, maybe a tractor. Then what are we going to do?”

Joy asks Kehoe if he has a timeline for the work he’s doing on his property. Kehoe isn’t sure what they’re going to do yet, but he has cleared trees as he’s “not a big fan of trees.” Kehoe filled out his business certificate in Pembroke and does Title Five inspections and his certificate was transferred to Halifax. Joy states the Board is interested in what is being done on the property and is looking for a timeline. Kehoe responds that he just works on the property when he can as he works seven days a week but states that the equipment is not on the property all the time. Nessralla confirms with Kehoe the location of his trucks and excavator and trailer. At one time, Kehoe states that there are one to three trucks. Kehoe has cleared the area and is in the process of leveling. Parcellin states there is a lot of “stuff” on the property and that it doesn’t seem out of the realm of possibility that some of this stuff is for storage for his business. Kehoe references the photos and explains what is currently there and that he’s been trying to organize the area. Borsari asks if the materials on the property are for the property or for the business. Kehoe responds that a lot of it is for the home, other than some shovels that he uses on his jobs.

Nessralla asks Kehoe if he minds if the Board does an on-site inspection of his property. Kehoe says he doesn’t mind. Borsari reminds the Board that a property on Carver Street had construction going on with equipment that the neighbors were complaining about for over a year, possibly two. Borsari thinks he remembers setting restrictions but states the Board has to be fair and consistent or the Board will open themselves up for litigation. Borsari states it is okay for Carver Street and Plymouth Street and that there is no grandfathering for a use. Parcellin responds that he immediately thought of the Carver Street property as well and every application is supposed to stand on its own merits. Carver Street was an intense hearing however the Board came to an agreement and the aggrieved neighbors are now speaking on the owners’ behalf. Durgin states the applicant on Carver Street had timeframes and a plan.

Kate Tempesta, 135 Cranberry Drive - informs the Board of her concerns about Kehoe’s property. Other than no signs appearing on the Kehoe’s property, Tempesta states that the basis for this appeal is not true. There are workers coming to and from Kehoe’s property to load, pick up and drive Kehoe equipment. These workers are starting their day at Kehoe’s. All of Kehoe’s vehicles have Kehoe’s corporate name on them: a 10-wheel dump truck, small landscaper-type truck, large and smaller backhoes/excavators, commercial flatbed trailer used for hauling equipment, snowplows, construction materials, cones, chains, and pipes that have not been moved. The trees are being cleared to make space for Kehoe’s equipment and for the rubble. All vehicles are parked in the Kehoe’s residential driveway. Trucks and materials are noisy. All of Kehoe’s signs are advertised as his Pembroke commercial business. All equipment is branded with Kehoe’s company name in a Halifax residential neighborhood. Cranberry Drive is a residential neighborhood. The Tempestas are trying to protect the sanctity and value of their home.

Tony Curtin, 640 Plymouth Street – asks the Board how a property gets grandfathered; who does it, where is it recorded? Perry responds Mass General Law Chapter 40 Section 7. Curtin asks Perry what that says. Perry will get Curtin a copy.

Lou Tempesta, 135 Cranberry Drive – informs the Board they’ve been in the neighborhood for 30 years. Tempesta informs the Board that the activity and equipment on this property is not temporary.

Nessralla explains to the audience that the Board will have to do an inspection of the property. Kate Tempesta asks the Board if there will be random drive-bys in addition to the inspection. Nessralla responds that the Board can each do their own drive by as well.

Maureen Thayer, 127 Cranberry Drive – informs the Board of the noises she hears from Kehoe’s property, and she feels bad for the Tempestas because they see it *and* hear it.

- M/Durgin, S/Parcellin. Unanimously approved (5-0-0) to do on-site inspection Saturday, August 6, 2022 at 9:00am. (Voice Vote: Durgin – Yes; Kenyon – No; Joy – Yes; Parcellin – Yes; Nessralla – Yes)
- M/Durgin, S/Parcellin. Unanimously approved (5-0-0) to continue Petition #973 to August 8, 2022 at 7:00pm. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Parcellin – Yes; Nessralla – Yes)

APPOINTMENT

7:15pm – Pet #974 – Clement Fillion – 35 Crystal Lake Rd – Special Permit & Variance for storage garage

Applicant Clement Fillion is present.

Parcellin reads Public Hearing Notice into record. Fillion presents proposed project to the Board. Explains that the garage can only be constructed on the area it is proposed due to the topography and a utility pole in the front yard which prevents the garage from meeting the setback requirements, requiring a variance. The building size was reduced to try and make it fit, but the garage still did not meet the setback requirements. To move the pole would require moving the underground piping and wiring and the expense is too high, and the family would be without power and service. The garage will be used to store a small bobcat for snow removal and a small trailer used for pellets. The garage will only be used for personal use. The Board is presented with photos of the utility pole. Garage cannot be placed on the side of the property as that is where the septic is located. Fillion states that he is requesting the garage at the proposed size to store his personal vehicles, boat and small bobcat. There is a much larger steel garage on Oak Place and there are many other homes in the neighborhood with garages similar to this. Durgin is familiar with the property. The Board agrees that the topography of the land dropping off in the back, the septic and utility pole placement on the property and the financial burden to relocate the utility pole are all hardships to grant the requested variance of the front setback from 50 to 40 feet. The Board agrees that the size of the garage is reasonable for the family's needs. Kenyon asks if there are any Conservation issues as it is close to the lake. Fillion states the addition would be in front of the house, way beyond the 100 foot no touch zone.

- M/Durgin, S/Joy. Unanimously approved (5-0-0) to waive on-site for Petition #974. (Voice Vote: Durgin – Yes; Borsari – Yes; Joy – Yes; Parcellin – Yes; Nessralla – Yes)
- M/Durgin, S/Joy. Unanimously approved (5-0-0) to approve Petition #974 as presented. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Parcellin – Yes; Nessralla – Yes)

Decision form signed.

APPOINTMENT

7:20pm – Pet #975 – Robert & Kelliann Haggerty – 8 Christmas Tree Ln – Special Permit for In-Law

Applicants Robert and Kelliann Haggerty are present.

Parcellin reads Public Hearing Notice into record. Haggerty presents the proposed in-law to the Board. The in-law will be occupied by the applicants; their daughter and her family will live in the existing home/main house. The main portion of the existing home and in-law are on the same level, the in-law meets all setbacks, all utilities will be shared, there will be shared living space with an opening that will remain open. The in-law will be ADA compliant for the future of the Haggertys. The in-law is proposed at 1,271 square feet, the house is 2,243 square feet. The Board is concerned that the size of the addition exceeds 50% of the existing home. The entire addition is the in-law. The half-bath and entryway are common space as well as the basement, per Haggerty. There will be a privacy door between the in-law and the main home. This can be left open. The Board informs the Haggertys that entrances, bathrooms, and basements cannot be considered shared living space. Haggerty states the living room can be shared living space. The Board confirms, per the by-law, that a special permit for an in-law is transferrable with the land. The Haggertys ask the Board if they would consider overlooking the size of their proposed addition (greater than 50% of the existing house) and reference an approved in-law on 292 Thompson Street. The Board responds that there were other reasons for that approval such as an additional sunroom, so the in-law was smaller than the overall addition. The Board agrees the applicants will need to reduce the size of the in-law to conform with the by-laws. The applicants will return with revised plans for a smaller in-law and two doors removed.

- M/Durgin, S/Parcellin. Unanimously approved (5-0-0) to continue Petition #975 to August 8, 2022 at 7:05pm. (Voice Vote: Durgin – Yes; Borsari – Yes; Joy – Yes; Parcellin – Yes; Nessralla – Yes)

MEETING MINUTES

Per Durgin's request, the Board continues the approval of Meeting Minutes for 6/13/22 to the next meeting.

BILLS

- M/Parcellin, S/Joy. Unanimously approve (4-0-2) of all bills. (Voice Vote: Durgin – Yes; Joy – Yes; Parcellin – Yes; Nessralla – Yes)* Kenyon and Borsari do not respond with a vote.

CORRESPONDENCE & OTHER BUSINESS

6/14/22 – Memo and site plans from Planning Board – 0 & 592 Plymouth St / Proposed Retail/Office Building site plans – Comments

Residents are present and ask the Board questions and voice concerns. The Board reviews the site plans sent from the Planning Board. The Board informs the residents that this project is not in front of them currently. The Board has no comments for the Planning Board.

40B Comprehensive Permit – Country Club Estates – Petition #920 – Request for Withdrawal and Cancellation of 7/13/22 Meeting

Nessralla recuses himself from the vote. Joy reads letter from Delphic Associates (representing R&J LLC) Paul Cusson with request for withdrawal of application into record.

- M/Parcellin, S/Durgin. Unanimously approved (4-0-0) to accept Petition #920's Request for Withdrawal without prejudice. (Voice Vote: Durgin – Yes; Borsari – Yes; Parcellin – Yes; Joy – Yes)

DISCUSSION

The Board discusses an email dated 7/6/22 from Town Counsel, Attorney Hucksam. This email was in response to the Board's request for Town Counsel to attend this Zoning Board meeting to discuss guidance on protocol, guidance on what to do when a member does not follow protocol and if there is any recourse. The discussion is based on a member of the Zoning Board, as a member of the Board, requesting Town Counsel's opinion without the knowledge of the rest of the Board and without using proper protocol set by the Board of Selectmen to request legal counsel as a Board member. The anonymous requested opinion was regarding possible ethics violations of Zoning Board members Kozhaya Nessralla and Peter Parcellin in connection with voting on Zoning Petition #970.

Parcellin voices his concerns about why an anonymous Zoning Board member would seek legal counsel privately, at the expense of the taxpayers, about Parcellin's ethics without informing Parcellin or asking Parcellin. Parcellin is concerned that the reason behind it could be to sway the votes on certain Zoning Board petitions. Parcellin asks the Board multiple times if someone would like to reveal themselves as the member in question. Members Joy, Durgin, Parcellin, Nessralla and Borsari state it was not them. Durgin would like this conversation and the future conversation the Board is requesting to have with Town Counsel to be public to prevent any suspicion. The Board agrees. Borsari agrees with Parcellin. The Board agrees that they'd like to speak to Town Counsel in open session. Nessralla shares his dislike of the change in the procedure of appointing Zoning Board members and would like to discuss this in open session with Town Counsel. Parcellin expresses his concern that there is a lack of transparency regarding what happened in this instance. Durgin, Parcellin and Borsari wonder if the Board is being deceived by the Selectmen. Borsari would like the Town to hear him ask why the Chair of the Board of Selectmen denied his request to answer who the Zoning Board member was that sought advice from the Town attorney on behalf of the Zoning Board regarding the ethics of other Board members. The Board would like to know how a legal request was approved when no request was made by the Board regarding the ethics of specific Board members. Borsari does not understand why the Zoning Board is having difficulty getting legal counsel. Borsari would like it stated that the Chair of the Selectmen told the Board in an email that they were allowed to speak to Town Counsel on their own if they wanted.

The Board would like to request, by email, Town Counsel to attend the August 8, 2022 Zoning Board of Appeals public meeting to further discuss this matter and for guidance on proper protocol for when a Board member requests legal counsel on other Board members ethics.

ADJOURN:

- M/Durgin, S/Parcellin. Unanimously approved (4-0-0) to adjourn at 9:30pm with all in favor. (Voice Vote: Durgin – Yes; Joy – Yes; Nessralla – Yes; Parcellin - Yes)

DOCUMENTS

1. Agenda for 7/11/22
2. Application Packet – Petition #971
3. Application Packet – Petition #972
4. Meeting Minutes (draft) – 6/13/2022
5. Expense Bill Schedule – 7/11/22, WB Mason
6. W.B. Mason Invoice #230482218
7. Revolving Bill Schedule – 6/27/22, PH Express – Pet #971 - #975
8. PH Express Invoices for Ads #13458 - #13462
9. 6/14/22 – Memo and copy of site plans from Planning Board for 0 & 592 Plymouth Street proposed retail building
10. 6/27/22 – Department of Housing and Community Development – Subsidized Housing Inventory Biennial Update (2nd and final notice) with attached Halifax Biennial Update Mailing 2022
11. 7/7/22 – Email/letter of Request to Withdraw Zoning Board Petition #920 – Country Club Estates
12. 7/6/22 – Email from Town Counsel Attorney Hucksam

Respectfully submitted,

Date: 8/08/2022

A handwritten signature in black ink, appearing to read 'Kozhaya Nessralla', written in a cursive style.

Vice-Chairman, Kozhaya Nessralla
Halifax Zoning Board of Appeals