



# Halifax Zoning Board of Appeals Meeting Minutes August 8, 2022

The Halifax Zoning Board of Appeals held a public meeting/hearing on Monday, August 8, 2022 in the Selectmen's Meeting Room at Halifax Town Hall, 499 Plymouth Street, Halifax, MA with the following Board members in attendance: Vice/acting Chairman - Kozhaya Nessralla, Members – Gerald Joy, Robert Durgin and Tina Kenyon and Associate Member – Dan Borsari. Clerk – Peter Parcellin and Associate Member – Marline Amedee are absent.

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

## **APPOINTMENT**

### **7:00pm – (Continued) Pet #973 – Joseph Kehoe – 145 Cranberry Dr – Appeal of Building Inspector's Decision**

*Applicant Joseph Kehoe and Building Inspector James Perry are present.*

Kenyon reads Public Hearing Notice into record. Nessralla states the findings of members Joy, Borsari and Nessralla at their 8/6/22 on-site visit. They saw the bobcat, one-ton truck and trailer. There were a couple of piles of  $\frac{3}{4}$ " stone and mulch. Joy states that there was enough material there to show that something is going on at the property but hopes this meeting can help neighbors to get along and come to an agreement. Joy adds that Kehoe is allowed to drive his truck back and forth to work and to have a backhoe on his property only to be used for his property, but other than that Kehoe cannot continue doing what he is doing now as that is not a neighborhood. Borsari agrees that this type of business cannot be run from a residential home. Borsari asks if the trailer is part of Kehoe's vehicle, but states Kehoe cannot store materials or vehicles on the property and adds that there are no signs or employees on the property. Perry states that Kehoe cannot load and unload equipment with constant coming and going. Kenyon asks if the neighborhood has a covenant.

Kehoe is willing to work with the Board and keep the 10-wheeler off site. Perry states that Kehoe also has a large excavator on site. Perry recommends that the Board clarify exactly what should and shouldn't be on site as there is much more than a 10-wheeler.

Kate Tempesta, 135 Cranberry Drive – would like the Board to clarify what is allowed on the property. There are employees coming and going from the house every single day. They can live with a one-ton truck on the property. Tempesta thanks the Board for their time and states she is looking to protect their investment and their property.

Mrs. Kehoe – states she doesn't understand what Tempesta is talking about. There are no employees, nobody is coming and going. She states Kehoe leaves for work at 7am. She primarily helps Kehoe herself. They have a two and a five-year-old and she would not let Kehoe wake the kids up if he was loud. She doesn't understand the accusations. Thirty (30) trees were removed from their yard to create a backyard for their kids to play. This is not a construction site, it's their backyard and their home. All materials are sent to jobsites. Mrs. Kehoe asks why neighbors didn't talk to them first before blowing things out of proportion.

Tempesta, 135 Cranberry Drive – they spoke to Kehoes on two separate occasions, and nothing has changed. All of Kehoe's equipment is branded with his company name.

Borsari states there is a difference between storing and parking. Perry states that the problem is the storage, loading and unloading of equipment and operating a business during the day. Perry states it's not a problem if the trailer stays on the truck and is backed in at night, leaves in the morning. Kenyon states that they should see a covenant. Borsari responds that has nothing to do with this Board. Perry adds that a covenant is more of a civil issue, not something before this Board. Perry adds that everyone is here to protect the by-laws of Halifax.

- M/Durgin, S/Joy. Unanimously denied (5-0-0) Petition #973 to overturn the Building Inspector’s determination. (Voice Vote: Durgin – Yes; Kenyon – Yes; Joy – Yes; Borsari – Yes; Nessralla – Yes)

The Board votes to uphold the Building Inspector’s determination with a “yes” vote which unanimously denies Kehoe’s appeal. The Board gives Kehoe 30 days to clean up his property by removing equipment and the storage of materials, other than materials being used on Kehoe’s property.

Maureen Thayer, 127 Cranberry Dr – asks what the consequences will be if Kehoe doesn’t abide by the Board’s request. The Board informs Thayer that this will be up to the Building Inspector/Zoning Enforcement Officer, Perry.

The Board signs Decision Form.

### **APPOINTMENT**

#### **7:05pm – (Continued) Pet #975 – Robert & Kelliann Haggerty – 8 Christmas Tree Ln – Special Permit for In-Law**

*Applicants Robert and Kelliann Haggerty are present.*

Kenyon reads Public Hearing Notice into record. Haggertys present updated, revised plans to the Board for their review. Changes requested are highlighted in red. The in-law was decreased from 1,300 square feet to 1,091 square feet. The shared area is clarified on the revised plan, at least 50%, shaded in red. There will be no doors and all open space with shared utilities.

- M/Joy, S/Kenyon. Unanimously approved (5-0-0) Petition #975 with adherence to all standard in-law by-law regulations. (Voice Vote: Durgin – Yes; Borsari – Yes; Joy – Yes; Kenyon – Yes; Nessralla – Yes)

The Board signs Decision Form.

### **APPOINTMENT**

#### **7:10pm – (Hearing) Pet #976 – Dish Wireless LLC – 920 Plymouth St – Special Permit for Wireless Communications Facility**

*Applicant is not present. Building Inspector James Perry is present.*

Kenyon reads Public Hearing Notice into record. Perry explains that, per the by-law, when any construction/reconstruction is done—adding antennas, removing antennas—to a cellular tower that was built under a special permit must come back in front of the Zoning Board of Appeals to have that special permit modified which is the only reason Perry denied their building permit. He goes on to say that there are also FCC regulations that prevent a denial of these changes. Perry adds that, per Legal Counsel, to err on the side of caution it is best to have any of these facilities apply for a special permit or modification to their special permit under the Zoning Board. Perry informs the Board that they can approve the special permit as applied for without the presence of the applicant as the Board cannot deny it. Planning Board member Bert Gaynor informs the Board that the same applicant was before the Planning Board for a site plan approval which the Planning Board waived. Gaynor informs the Board that there will be no changes or construction being done to the site. Perry informs the Board this is really a formality.

- M/Kenyon, S/Durgin. Unanimously approved (5-0-0) Petition #976 as presented. (Voice Vote: Durgin – Yes; Borsari – Yes; Joy – Yes; Kenyon – Yes; Nessralla – Yes)

The Board signs Decision Form.

### **APPOINTMENT**

#### **7:15pm – (Informal Discussion) – Bruna DiCosta, 22 Colby Drive – special permit for a two-family**

Bruna DiCosta is present. DiCosta shows Board plans of the property and explains that she would like to turn her in-law apartment, that she purchased a year ago, into a two-family home for rental, with no changes. DiCosta is looking to make sure she acquires the proper permits to do this. Currently, the grandfathered in-law, as it was built before the by-

law was written, has its own electric, gas and septic and no changes have been made. Perry informs the Board that Halifax allows two-family homes by special permit and DiCosta is not doing any construction on the building. Durgin asks Perry about firewall separation. Perry will inspect the premises to see how it's constructed. DiCosta informs the Board the two homes have no shared entrance. The Board informs DiCosta she will have to apply to the Board for the special permit and Perry will do an inspection of the property. Kenyon informs DiCosta she will need a plan stamped by a certified architect as it will need to be recorded at the Registry of Deeds. Perry doesn't know why DiCosta would need a denial letter from him as DiCosta isn't going to be making any changes.

## **APPOINTMENT**

### **7:30pm – (Informal Discussion) – Cheryl Howell (42 Second Ave) – Morse Brothers Planned Earth Removal Project**

Cheryl Howell is present. The Board informs Howell that there is nothing in front of the Zoning Board at this time so they cannot offer any information on this topic. The Board and Howell discuss that the application has been withdrawn from the Selectmen but there is still much activity going on. Nessralla informs Howell that the activity is related to agricultural use and is allowed – going from one bog to the next--as long as they own the properties they are traveling back and forth to and as long as they're using it for the same purpose. Perry informs the Board that because it's agriculture and a right-to-farm community, material is allowed to be moved from one farm to another farm. Perry is going to send a letter to Town Counsel tomorrow to get clarification on what the Town's rights are as this is taking place in Zone 2, aquifer protection district. Perry states that agriculture shouldn't trump water supply, in his opinion. Perry wrote a letter to the Selectmen telling them they shouldn't approve the permit as they are directly violating the by-laws due to Zone 2. Kim Cavicchi, Conservation Commission – completed a site visit with Morse Brothers due to so many complaints from residents that proved false. Perry is mainly concerned with the aquifer, but they have their water removal permits. Kenyon states that the traffic seems to be the main concern among residents. Perry doesn't believe that Morse is currently continuing the project that was originally proposed. Cavicchi explains that Morse is not looking to build a new bog but are making an existing bog into their reservoir. Again, Nessralla informs the audience that there is nothing in front of the Zoning Board for this project at this time, therefore the Board has no say on anything.

## **MEETING MINUTES**

- M/Joy, S/Borsari. Unanimously approve (5-0-0) Meeting Minutes for July 11, 2022. (Voice Vote: Durgin – Yes; Borsari – Yes; Joy – Yes; Kenyon – Yes; Nessralla – Yes)
- M/Joy, S/Borsari. Unanimously approve (5-0-0) Meeting Minutes for June 13, 2022. (Voice Vote: Durgin – Yes; Borsari – Yes; Joy – Yes; Kenyon – Yes; Nessralla – Yes)

## **BILLS**

- M/Joy, S/Durgin. Unanimously approve (5-0-0) all bills. (Voice Vote: Durgin – Yes; Joy – Yes; Borsari – Yes; Nessralla – Yes; Kenyon – Yes)

## **CORRESPONDENCE & OTHER BUSINESS**

The Board reviews all mail items.

The Board has no comment on Kennedy K9 Creations site plan from Planning Board.

Board signs Signature Authority Fiscal Year 2023 form. Still need Peter Parcellin's signature.

Joy gives an update on the Zoning By-Law Review committee. Trying to consolidate information to the Use tables instead of in other areas of the by-laws so information can be found in one spot.

The Board discusses their most recent letter response from Attorney Hucksam dated 7/26/22 regarding the Board's request for Attorney Hucksam's attendance to this meeting and his refusal to attend. The Board expresses their disappointment as the Board would like several questions answered which they agree were not. Borsari suggests the Board keep requesting Attorney's presence at a future meeting. Joy found Attorney Hucksam's letter confusing with no

offer of resolution. Durgin feels that the Board was brushed off and states there is a reason behind it. Nessralla states that they didn't want to answer the Board's questions. The Board doesn't believe the Attorney addressed any of their questions. Borsari thinks there may be a procedure for the Board to seek independent court-appointed counsel. The Board would like to request, again, that Attorney Hucksam attend the next meeting on September 12, 2022, as they would like to discuss protocol and ask for clarification on Hucksam's letter as the Board collectively feels that discussing in person is the best way.

Nessralla announces Dan Borsari's resignation from the Board. The Board thanks Borsari and expresses their appreciation for his time and expertise. Borsari thanks the Board in return and explains that his resignation is due to work commitments forcing him to miss meetings which he doesn't think is fair to applicants. The Board wishes Borsari good luck and Borsari offers his assistance if ever needed in the future.

### **ADJOURN:**

- M/Joy, S/Kenyon. Unanimously approved (5-0-0) to adjourn at 8:25pm with all in favor. (Voice Vote: Durgin – Yes; Joy – Yes; Nessralla – Yes; Kenyon – Yes; Borsari – Yes)

### **DOCUMENTS**

1. Agenda for 8/8/22
2. Application Packet – Petition #973
3. Application Packet – Petition #975
4. Application Packet – Petition #976
5. File – Petition #940
6. Meeting Minutes – 6/13/2022 and 7/11/22
7. Revolving Bill Schedule – 7/25/22, PH Express – Pet #976
8. PH Express Invoice for Ad #13527
9. Revolving Bill Schedule – 7/26/22, R&J LLC Escrow Refund
10. Refund Letter Request from Robert Peck, R&J LLC Escrow (Country Club Estates, Pet #920)
11. 7/25/22 – Memo from Planning Board w/ site plans for Kennedy K9 Camp – 416 Plymouth St – Map 72 Lot 10 for comments
12. 8/1/22 – Email from Conservation Commission – 175 River St – Conservation determination
13. 8/2/22 – Email from Conservation Commission w/ attached letter (7/27/22) from the Commonwealth of Massachusetts: Executive Office of Energy & Environmental Affairs re: Morse Brothers, Inc. Winebrook Bog Renovation, Halifax, MA
14. 8/2/22 – Email from Conservation Commission w/ attached plans and RDA filing– 275 Wood St – for comments
15. 8/2/22 – Email from Planning Board w/ attached denial letter for 0 & 592 Plymouth Street
16. 7/6/22 – Email from Town Counsel Attorney Hucksam
17. Signature Authority Fiscal Year 2023 form

Respectfully submitted,

Date: 9/12/2022



Vice-Chairman, Kozhaya Nessralla  
Halifax Zoning Board of Appeals