



# HALIFAX ZONING BOARD OF APPEALS

## Meeting Minutes

### Monday, November 12, 2018

The Halifax Zoning Board of Appeals held a public hearing on Monday, November 12, 2018 in Meeting Room #1 of the Town Hall with the following Board members in attendance: Chairman: Robert Gaynor, Co-Chairman: Kozhaya Nessralla, Member: Gerald Joy, Member: Robert Durgin and Associate Member: Daniel Borsari. Clerk: Peter Parcellin is absent.

Chairman Gaynor calls the meeting to order at 7:16pm and reprises the audience that this public hearing/meeting is being audio taped. He also explains the procedure and the protocol at the public hearings.

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#### **Appointment:**

#### **7:05pm – Petition #883 – Robert Bergstrom, - Special Permit for Mudfest**

Present: Robert Bergstrom (applicant); Chris Alphen (Mr. Bergstrom's Attorney – Blatman, Bobrowski & Haverty); Charlie Seelig (Town Administrator)

Co-Chairman Nessralla recuses himself. Chairman Gaynor reads Public Hearing Notice into record. Attorney Alphen presents the petition referring to the Supplemental Memorandum he submitted via email earlier in the day (11/12/2018). Mr. Alphen reviews the prior history of Mudfest and the civil solution due to the new bylaw 167-7D(16) passed earlier in 2018 regarding commercial outdoor amusements allowed by special permit in Agricultural-Residential zones, among others. Mr. Alphen reviews each condition of the law and confirms that Mr. Bergstrom will continue to abide by each of those requirements.

Chairman Gaynor asks Mr. Bergstrom how Mudfest went this past November. Mr. Bergstrom answers there were no complaints, issues or problems and the event went very well. Mr. Gaynor reads into record an email from abutter Sue McCallum (Sanctuary Director of Mass Audubon South Shore Sanctuaries) with her concern regarding the back-left corner of the lot where there is a cut in the hedgerow that allows access onto Audubon land from 139 Hemlock. She wants to make sure that Mudfest activities are not in this area. Mr. Bergstrom and Attorney Alphen address this issue by stating that Mudfest activities take place about 2,500 feet from this area. Mr. Nessralla explains this hedgerow area is about a quarter of a mile away from activity. Mr. Seelig confirms that there were no complaints regarding Mudfest.

#### **Motion to waive the on-site inspection for Mudfest Petition #883:**

MOTION: Daniel Borsari

SECOND: Robert Durgin

Voice Vote: Gerald Joy – Yes; Robert Durgin – Yes; Daniel Borsari – Yes; Robert Gaynor – Yes

Passes: 4-0-0

The length of the Special Permit is brought up by Mr. Borsari. Mr. Bergstrom believes it is two years. Attorney Alphen corrects Mr. Bergstrom and states that it is open-ended.

The Board agrees that they will grant this petition for an Open-ended Special Permit with the applicant, Robert Bergstrom, to hold Mudfest at 139 Hemlock Lane as the use involved is not detrimental to the established or future character of the neighborhood or the town with the following conditions:

1. Mudfest will occur on a portion of Nessralla Farm greater than five (5) acres in size [167-7D(16)(1)].
2. All the activities involved in Mudfest, including the parking, toilets, storage and infrastructure will be located more than one hundred (100) feet from all lot boundary lines or residential dwellings [167-7D(16)(2)].

3. Mudfest has been held and will continue to be held twice a year [167-7D(16)(3)].
4. Mudfest’s duration will not be greater than ten (10) hours, having typically public open hours from 8:00am to 5:00pm [167-7D(16)(4)].
5. Mudfest is located in a unique location where noise will not be detected from any surrounding properties [167-7D(16)(5)].
6. The applicant will provide, at its own expense, public safety personnel to control traffic and crowds and to provide medical aid and fire protection [167-7D(16)(6)].
7. Mudfest will provide sufficient sanitary facilities [167-7D(16)(7)].
8. The applicant is willing and able to post a reasonable surety with the Town for the insurance that debris from the Mudfest be removed after the conclusion of the event [167-7D(16)(8)].
9. No alcohol will be served or permitted to be consumed at Mudfest [167-7D(16)(9)].
10. If there are complaints from the Halifax Fire Department, Halifax Police Department, Board of Health and/or abutters the applicant must re-appear before the Board for review.
11. If there are any legal or medical/health instances making this event an unsafe environment, the applicant is in violation of this Special Permit and must re-appear before the Board for review and/or reapply for a new Special Permit.

**Motion to accept Petition #883 as presented with outlined conditions (above):**

MOTION: Gerald Joy  
 SECOND: Robert Durgin  
 Voice Vote: Gerald Joy – Yes; Robert Durgin – Yes; Dan Borsari – Yes; Robert Gaynor – Yes  
 Passes: 4-0-0

All Board members sign the Decision Form.

**Appointment:**

**7:15pm – Petition #880 - Karen Cooper & Courtney Pereira, 624 Plymouth Street – Special Permit, pre-existing In-law Apartment**

Present: Karen Cooper (owner/applicant); Susan and Sal Basile (abutters – 581 Thompson Street)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Gaynor apprises the other members of his and Mr. Joy’s findings at the on-site inspection on 11/10/18.

As Mr. Durgin and Mr. Borsari were not present at the 10/22/2018 meeting (when Petition #880 was presented) nor the on-site inspection, they signed a statement to certify that they read the minutes from the meeting on 10/22/18.

Mr. Gaynor asks the Board for their thoughts and if they have any questions. The Board does not.

**Motion to accept Petition #880 as presented on 10/22/2018 and based on the on-site inspection on 11/10/18:**

MOTION: Gerald Joy  
 SECOND: Kozhaya Nessralla AIF  
 Passes: 5-0-0

All Board members sign the Decision Form.

**Appointment:**

**7:20pm – Petition #881 – Brian and Tara Tonello, 425 Elm Street – Special Permit/Variance to build a garage approximately 962 square feet with a ground floor area of over 884 square feet**

Present: Brian Tonello (owner/applicant)

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Gaynor discusses the Board's findings at the on-site inspection on November 10, 2018. Mr. Gaynor states that everything was well staked for the garage, however, he was unsure of the four stakes in the back right-hand side of the yard. Mr. Tonello confirms that these are for the septic system. There have been no abutter complaints or concerns regarding this project.

Mr. Gaynor confirms with Mr. Tonello that this garage:

1. will only be used for storage of personal and recreational vehicles
2. will not be used for commercial reasons
3. will have electricity, no running water and no living areas

As Mr. Durgin and Mr. Borsari were not present at the 10/22/2018 meeting (when Petition #881 was presented) nor the on-site inspection, they signed a statement to certify that they read the minutes from the meeting on 10/22/18.

**Motion to accept Petition #881 as presented with the above outlined conditions:**

MOTION: Kozhaya Nessralla

SECOND: Dan Borsari                      AIF

Voice Vote: Gerald Joy – Yes; Kozhaya Nessralla – Yes; Robert Durgin – Yes; Dan Borsari – Yes; Robert Gaynor – Yes

Passes: 5-0-0

All Board members sign the Decision Form.

**Appointment:**

**7:25pm – Petition #882 – TD Design and Development Corp/Antonio DaSilva and Adrienne McDougall, 32 Hillside Ave – Special Permit to construct a keystone retaining wall**

Present: Adrienne McDougall (owner); TD Design & Development/Antonio DaSilva (applicant/contractor); George Paulin (resident of 32 Hillside Ave);

Chairman Gaynor reads the Public Hearing Notice into record. Mr. Gaynor discusses the Board's findings at the on-site inspection on November 10, 2018. Mr. Gaynor confirms with Ms. McDougall that the stockade fence to the right of the driveway is not hers. He also confirms that the stone wall in front is not Ms. McDougall's, either. Mr. Gaynor does not believe the new retaining wall is detrimental to the established character of the neighborhood but will add to it, does not derogate from the intent of the by-law, as it is a continuation of a non-conforming use and that the hardship is pre-existing of the design of the streets and topography of the lot. There will be more room for plows and emergency vehicles with the setback changes; it will be an improvement in space.

As Mr. Durgin and Mr. Borsari were not present at the 10/22/2018 meeting (when Petition #882 was presented) nor the on-site inspection, they signed a statement to certify that they read the minutes from the meeting on 10/22/18.

**Motion to accept Petition #882 as presented:**

MOTION: Gerald Joy

SECOND: Kozhaya Nessralla                      AIF

Voice Vote: Gerald Joy – Yes; Kozhaya Nessralla – Yes; Robert Durgin – Yes; Dan Borsari – Yes; Robert Gaynor – Yes

Passes: 5-0-0

All Board members sign the Decision Form.

**Appointment:**

**7:30pm - Petition #877 – Thao, Mai and Hiep Pham, 395 Plymouth Street – Written email request (10/30/18) to Withdraw application for a Special Permit to continue, alter and extend the existing apartment from a four-dwelling use to a six-dwelling use without prejudice**

Present: Hiep Pham (applicant/owner), Charlie Seelig (Town Administrator)

Chairman Gaynor reads a letter from Building Inspector into record in reference to the Board accepting the applicants' Withdrawal of their Petition #877 without prejudice. Mr. Gaynor reads into record the Letter of Agreement for Withdrawal from applicant Thao Pham. Mr. Gaynor asks Mr. Hiep Pham to print and sign this Letter of Agreement to Withdraw also, which he does.

Mr. Pham states that he will not be able to bring the property up to code within 30 days but will work on it and plans to get things done for the future. Mr. Pham confirms that there are currently six units/dwellings but only four are occupied, there are no apartments on the second floor, the main house is not occupied nor is the pool structure in use. Mr. Pham intends to reapply for a new Special Permit within 30 days. Mr. Gaynor explains to Mr. Pham that the Board is requesting that the Zoning Enforcement Officer/Building Inspector inspect the property. Mr. Pham understands.

Mr. Seelig emphasizes to Mr. Pham that the property needs to be up to code within the next 30 days or the Phams need to reapply within 30 days. The Building Inspector is happy to work with Mr. Pham to get things done but cannot wait forever. After 30 days, if nothing happens, the Building Inspector will be sending violation notices and fining the applicants as this situation must be rectified.

Mr. Gaynor explains to Mr. Pham that he should meet with the Building Inspector to remedy the building code violations as soon as possible. Mr. Pham repeats this back to Mr. Gaynor to confirm. Mr. Seelig explains that the Building Inspector will hold off on fines if the Phams reapply for a new Special Permit within 30 days. If the property *were* brought under compliance within those 30 days, there would be no need to reapply, however Mr. Seelig doesn't see this happening.

Motion to accept the Withdrawal without Prejudice of Petition #877:

MOTION: Kozhaya Nessralla

SECOND: Dan Borsari                      AIF

Passes: 5-0-0

**Bills:**

The Board approves three bills.

1. Plympton-Halifax Express advertisement for Petition #883 = \$84.00
2. W.B. Mason for Office Supplies = \$21.56
3. Landlaw Specialty Publishers, Land Court Reporter Subscription Renewal for 2019 = \$235.00

**Meeting Minutes:**

Chairman Gaynor notes that the Executive Session Meeting Minutes for Monday, October 15, 2018 will not be released until disclosure no longer defeats the purpose of the Executive Session.

**Motion to accept the Meeting Minutes from Monday, October 15, 2018:**

MOTION: Kozhaya Nessralla

SECOND: Gerald Joy                      AIF

Passes: 3-0-0

**Motion to accept the Meeting Minutes from Monday, October 22, 2018:**

MOTION: Gerald Joy  
SECOND: Kozhaya Nessralla     AIF  
Passes: 3-0-0

**Correspondence:**

Chairman Gaynor and the Board review and read into record all mail items.

- Old Colony Planning Council Agenda dated 10/31/2018.
- Letter from Brooks & DeRensis dated 10/30/2018 with the ZBA's Response to the Post-Remand Decision (*Re: Gordon C. Andrews v. ZBA Land Court Civil Actioin No: 17MISC000507*)
- Copy of the letter/response sent from the Office of the Attorney General to Gordon Andrews on 11/1/2018 regarding his 10/2/2018 Open Meeting Law Complaint to the ZBA.
- Memo to the Building Inspector from the Board of Health and attached letter from Building Inspector, both dated 11/1/2018, regarding the manure management practices at 37 Franklin Street.

**Adjourn:**

**Motion to adjourn meeting:**

MOTION: Kozhaya Nessralla  
SECOND: Gerald Joy     AIF  
Passes: 5-0-0

It was unanimously voted to adjourn the meeting at 8:44 p.m.

**Documents:**

1. Agenda – 11/12/2018
2. Public Hearing Notice – Petition #883
3. Attorney Alphen's Supplemental Memorandum to Petition #883 Application – 11/12/2018
4. Email from Sue McCallum of Mass Audubon South Shore Sactuaries
5. Decision Form – Petition #883
6. Public Hearing Notice – Petition #880
7. Meeting Minutes – 10/22/2018
8. Certified Statement of 10/22/2018 Meeting Minute Review from Dan Borsari – Petition #880
9. Certified Statement of 10/22/2018 Meeting Minute Review from Robert Durgin – Petition #880
10. Decision Form – Petition #880
11. Public Hearing Notice – Petition #881
12. Certified Statement of 10/22/2018 Meeting Minute Review from Dan Borsari – Petition #881
13. Certified Statement of 10/22/2018 Meeting Minute Review from Robert Durgin – Petition #881
14. Decision Form – Petition #881
15. Public Hearing Notice – Petition #882
16. Certified Statement of 10/22/2018 Meeting Minute Review from Dan Borsari – Petition #882
17. Certified Statement of 10/22/2018 Meeting Minute Review from Robert Durgin – Petition #882
18. Decision Form – Petition #882
19. L Certified Statement of 10/22/2018 Meeting Minute Review from Dan Borsari – Petition #880
20. Certified Statement of 10/22/2018 Meeting Minute Review from Robert Durgin – Petition #880
21. Letter from Building Inspector regarding Withdrawal – Petition #877
22. Letter of Agreement for Withdrawal – Petition #877
23. Invoice - Plympton-Halifax Express advertisement for Petition #883
24. Signed Expense Bill Schedule – Petition #883
25. Invoice - W.B. Mason for Office Supplies
26. Signed Expense Bill Schedule – W.B. Mason
27. Invoice - Landlaw Specialty Publishers, Land Court Reporter Subscription Renewal for 2019 = \$235.00
28. Signed Expense Bill Schedule – Land Court Reporter Subscription
29. Executive Session Meeting Minutes - 10/15/2018\*

- 30. Meeting Minutes – 10/15/2018
- 31. Meeting Minutes – 10/22/2018
- 32. Old Colony Planning Council Agenda dated 10/31/2018.
- 33. Letter from Brooks & DeRensis dated 10/30/2018 with the ZBA's Response to the Post-Remand Decision (Re: Gordon C. Andrews v. ZBA Land Court Civil Actioin No: 17MISC000507)
- 34. Attorney General letter to Gordon Andrews – 11/1/2018
- 35. Memo to the Building Inspector from the Board of Health – 37 Franklin St. - 11/1/2018
- 36. Response letter from the Building Inspector – 37 Franklin St. - 11/1/2018

\*Minutes will not be released until disclosure no longer defeats the purpose of the Executive Session.

Respectfully submitted,

Arlanna Snow  
Zoning Board of Appeals Secretary

Date: 12-10-18  
  
  
  
