



## **TOWN OF LEICESTER ZONING BOARD OF APPEALS**

**LEICESTER, MA 01524-1333**

**Phone: 508-892-7007 Fax: 508-892-7070**

**[www.leicesterma.org](http://www.leicesterma.org)**

The Zoning Board of Appeals of the Town of Leicester, Ma. will hold a public hearing on **Wednesday, October 26, 2016** at 7:30PM in Room 3, Bottom Floor, Town Hall, Washburn Square, Leicester, Ma. on the petition of Paul Thibeault of 1001 Stafford Street, Rochdale, Ma. for an Appeal of the Building Inspector's Enforcement Order to Cease & Desist operation of a firewood sales business on the property.

All those wishing to express their opinion on this petition are urged to attend this meeting or express their views in writing to the Board of Appeals no later than October 26, 2016.

**PLEASE RUN IN THE WORCESTER TELEGRAM**

**WEDNESDAY, OCTOBER 12<sup>TH</sup> AND WEDNESDAY, OCTOBER 19<sup>TH</sup>**

David Kirwan, Chair  
Leicester, ZBA

## Leicester Zoning Board of Appeals

PERMIT TYPE: ☐ Special Permit☐ Variance APPEAL

Date:

9/26/2016

<b>Owner Information</b>			
Owner Name:	N/A		
Owner Signature:			
Address:			
Phone:		Fax:	
		Email:	
<b>Applicant Information</b> APPELLANT			
Applicant Name:	Paul Thibeault		
Applicant Signature:	<i>Paul Thibeault</i>		
Address:	1001 Stafford Street, Rochdale, MA		
Phone:	(508) 769-2531	Fax:	N/A
		Email:	N/A
<b>Project Information</b>			
Project Address:	1001 Stafford Street, Rochdale, MA	Zoning District:	R2/I
Assessors Map & Parcel #		Deed Reference (Book & Page):	33836, 88
Applicable Zoning Bylaw Section(s):	See Enforcement Order of September 6, 2016. (Exhibit A)		
<b>Brief Description of Application:</b> APPEAL:			
<p>This is an appeal of a Cease and Desist Order, issued by Mr. Jeff Taylor, Zoning Enforcement Officer, and dated September 6, 2016. Attached hereto as Exhibit B is a Statement of Facts and Points on Appeal.</p>			
<b>State Briefly Reasons for Variance or Special Permit:</b>			
<div style="text-align: right;"> <b>RECEIVED</b>  <b>2016 SEP 27 PM 5:51</b>  <b>TOWN CLERK'S OFFICE</b>  <b>LEICESTER, MASS.</b> </div>			

Attach additional pages as necessary to fully describe the application.



**Town Of Leicester**  
**OFFICE OF THE INSPECTOR OF CODES**  
3 Washburn Square  
Leicester, Massachusetts 01524-1333  
Phone: (508) 892-7003 Fax: (508) 892-1163  
**Building & Zoning Enforcement**  
Jeff Taylor

**Plumbing & Gas Inspector**

**John P. Dolen**

**Wiring Inspector**

**Paul A. Sarro**

Date: September 6, 2016

To Paul Thibeault  
1001 Stafford Street  
Rochdale, ma 01542

Re: Wood business and complaint;

Dear Mr. Thibeault;

After trying to work with you and Ms. Shivick it appears this was neither taken seriously nor have you complied with any orders or suggestions. Complaint letter is attached.

At this point in time you must CEASE and DESIST with your business which by the way was applied for under the guise of a Home Occupation. Your paperwork is attached for your perusal along with the zoning by-law definition. You never applied for a logging business to operate outside of the home, the home Occupation was to have an office within the home only.

I have tried to work with you in this regard hoping the noise/smell complaints would stop,, they have not. They have gotten worse and I will not be party to any further complaints in this regard.

Do not bring any more wood to the property, you must find another spot where this business is allowed. Failure to abide by this order will result in legal action by this office and the town of Leicester.

According to the Town of Leicester by-laws, you have the right to appeal this order to the Zoning Board of Appeals, section 6.4.01

Jeff Taylor, CEC  
Inspector of Buildings  
Zoning Enforcement Officer

Cc  
Kevin Mizikar, Town Administrator  
Joseph Cove, Town Counsel

August 26, 2016

Mr. Jeff Taylor, Zoning Enforcement Officer  
Town of Leicester  
3 Washburn Square  
Leicester, Massachusetts 01524-1333  
RE: 1001 Stafford Street

Mr. Taylor,

I write in regard to your correspondence of June 13, 2016, regarding the property located at 1001 Stafford Street and the activities there that appear to be a flagrant violation of Town Bylaws. You wrote in your letter that you took pity on Mr. Thibeault, a renter at the property, and did not "want to put a man out of business." Those types of colloquialisms may sound fine, but seemingly take for granted many things, up to and including my many years as a homeowner and taxpayer in the Town of Leicester, my property value and that of other abutters, as well as the Bylaw itself and the definitions contained therein.

Your letter was striking not only its seeming shrugging off of my complaint, but further its seeming lack of reflection of the actual Bylaw of the Town of Leicester. For example, you made a big point that there was no noise bylaw in Town and therefore noise is somehow not a consideration you may take into account when adjudicating a complaint between parties. However, Sections 3.2.02(4)(B) and 3.2.04(1) specifically illustrate noise as a reason that an offensive use shall not be permitted.

Further, it seems there is no real reason to allow the tenant next door to store and "cure" the wood because 1) it could be simply left at the site to cure and 2) the curing season is apparently very short based on the manner in which product is delivered and removed from the property. The property is almost devoid of the wood storage in the winter months and has recently been almost doubled in capacity. This recent surge is visible from the road, certainly from my property, and is within 10 feet of my property line.<sup>1</sup> Please also know that him stacking wood by hand is not silent by any means and is instead very audible and rhythmic from within my house.

I am also concerned that the tenant next door is using the residential means of ingress/egress as a main thoroughfare for his industrial equipment. Section 3.2.08 of the

---

<sup>1</sup> Please be aware there was a prior complaint to the Board of Health, who forced the tenant next door to clean up the sea of wood surrounding the entirety of the property at the time.

**RECEIVED**

**AUG 31 2016**

Bylaw specifically enumerates that a backhoe, dump truck, or similar vehicle is absolutely not a commercial vehicle, which may fall into one of the exceptions enumerated in the Bylaw. In fact, these are by definition industrial machines that are used freely throughout the property, as you are already aware. Based on your experience, it is hard to imagine you would be mistaken in classifying those vehicles. Also, any such use of those vehicles is barred at least within 30 feet of the residential district, in addition to the fact there has never been a survey of the district line to my knowledge. It may be that the Town inadvertently zoned a residential home or two into an industrial zone. That would be interesting to see if that is the case upon such survey.

Most importantly, the tenant next door is barred from operating the business out of a residential premises pursuant to Sections 3.208 (regarding permitted vehicles) and 3.2.02(4)(B) as Mr Thibeault is no artisan by definition of his business as a wood storage company. If he asserts he is some sort of lumberjack, there is no such lumberjacking business being displayed, permitted, or otherwise noted at the premises, as well as this being the first mention of any such artisan exclusion.

I have restated the main relevant parts of the Bylaw for your convenience, with all accentuations added for your convenience, as well:

(Residential Uses)

3.2.02(4): *Accessory uses customarily incidental to a permitted main use on the same premises, including but not limited to:*

3.2.02(4)(B): *Use of a premises or building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber or other artisan provided that no offensive noise, vibration, smoke, dust, odor, heat or glare is produced. Not more than one person other than residents of the premises is regularly employed in connection with the use. No stock in trade is regularly maintained except for products of the occupation itself or for goods or materials which are customarily stored, used or sold incidental to its performance. From the exterior of the building so used, there is not visible any display of goods or products, storage of materials or equipment, regular parking of commercial vehicles, or any other exterior indication that the premises are being utilized for any purpose other than residential, except for an accessory sign as hereinafter permitted.*

(Industrial Uses)

3.2.04 (1): *Any manufacturing or industrial use, including processing, fabrication and assembly, providing that no such use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire.*

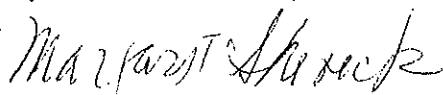
*3.2.08: Parking of Commercial Vehicles: Commercial Vehicles Accessory to Principal Residential Use (1) The continued and regular parking of one (1) commercial vehicle owned or operated by a resident of the premises is permitted by right in all zoning districts. Commercial vehicles in this bylaw do not include tractor trailers or construction vehicles (backhoes, bulldozers, dump trucks and the like), but shall include tractor trailer cabs. Nothing herein shall be construed to authorize a business at the location where such vehicles are parked. The commercial vehicle shall be parked in a driveway or in an enclosed structure.*

It is worth restating the initial complaint that the tenant next door is seemingly running an unregistered industrial business out of a residential property. The manner in which he conducts himself is calloused and I have spoken to the homeowner many times, but the tenant always reverts to his old ways, as he is again here. This is not a new story, as you are aware. The smoke from his dumptruck and front end loader is a thick smell of diesel fuel and exhaust that permeates my house. I should not have to be incarcerated in my home because some tenant moves in and decides he is going to do whatever he wants. The vibration and noise and odor from the front end loader are as bad as ever, he loads the truck with a resounding BOOM, despite that we have confronted him many times. Most recently you confronted him about the issue and here we are again, back in the same place again. He parks his dump truck and tractor anywhere on the property because he believes he can do whatever he wants as long as he is behind some imaginary line that has not been surveyed or otherwise marked.

I hope this, in accordance with the enclosed thumb drive containing more evidence of the tenant next door's seeming willful disregard for the Town's Bylaws, your authority, the property of the homeowner at 1001 Stafford Street, as well as the other abutters, my own property, and the taxpayers of the Town of Leicester. I understand we need business in town but this seems to be an odd variation of what seems allowable in a residential zone. It would appear there should be no question that this quasi-business, or whatever is going on at 1001 Stafford Street is not even resembling compliance with Town regulations, assuming no other violations of law.

Please enforce the Town's Bylaw and stop this terrible blight on our neighborhood.

Sincerely,



Margaret Shivick

999 Stafford Street, Rochdale, MA 01542



**Town Of Leicester**  
**OFFICE OF THE INSPECTOR OF CODES**  
3 Washburn Square  
Leicester, Massachusetts 01524-1333  
Phone: (508)892-7003 Fax: (508)892-1163  
Building & Zoning Enforcement  
Jeff Taylor

Plumbing & Gas Inspector  
John P. Dolen

Wiring Inspector  
Paul A. Sarro

## APPLICATION/ZONING PERMIT

### FOR HOME OCCUPATION

The undersigned hereby applies for a permit to operate a home occupation under Section 1.3.06 of the Leicester Zoning Bylaws.

#### PLEASE PRINT

Name Paul Th Leonard Phone 508 892-5151

Location of Home Business 100 State St. Needham, MA

Owner of Property Lydia Leonard

Name of Business Leonard's Type of Business logistics

# of Employees 1 # of Commercial Vehicles 1

# of Commercial Vehicles Parked Outdoors 1 Garaged 0

Type of Material Used Tree

Storage of Materials (locations) wood mill

Where will Occupation be conducted?  
Home wood mill

Accessory Building ---

I agree to conform to the Home Occupation Bylaw of the Town of Leicester under penalty of forfeiture of this permit, if granted.

Signature Paul Th Leonard Date 1/3/08

\*\*\*\*\*

Approved ✓ Permit # H8-001 Fee N/A

Denied --- Date 1-3-08

Signature Jeff Taylor  
Zoning Enforcement Officer



# OFFICE OF THE TOWN CLERK

## TOWN OF LEICESTER

3 WASHBURN SQUARE • LEICESTER, MASSACHUSETTS 01524  
TELEPHONE (508) 892-7011 • Fax (508) 892-7070

DEBORAH K. DAVIS  
TOWN CLERK  
E-mail: [davidd@leicesterma.org](mailto:davidd@leicesterma.org)

LINDA A. ROWDEN  
ASSISTANT TOWN CLERK  
E-mail: [rowdenr@leicesterma.org](mailto:rowdenr@leicesterma.org)

### BUSINESS CERTIFICATE

February 27, 2014

In conformity with the provisions of Chapter one hundred and ten, Section five of General Laws, as amended, the undersigned hereby declare(s) that a business under the title of

Thibeault Logging

is conducted at 1001 Stafford Street, Leicester, Massachusetts,  
by the following named person(s).

Full Name

Residence

Paul B. Thibeault

1001 Stafford Street

Rochdale, MA 01542

Signed

Paul B. Thibeault

### THE COMMONWEALTH OF MASSACHUSETTS

February 27, 2014

WORCESTER SS

Personally appeared before me the above named

Paul B. Thibeault

and made oath that the foregoing statement is true.

Linda A. Rowden  
Linda A. Rowden, Assistant Town Clerk

This Certificate expires Four Years From Date of Issue February 27, 2018



### **STATEMENT OF FACTS AND POINTS ON APPEAL**

1. The property at issue is located at 1001 Stafford Street, Rochdale (the "Property").
2. The Property is zoned R2 for 300 feet from Stafford Street toward the rear of the property. The remaining approximately 2.5 acres of the Property is zoned Industrial.
3. For approximately 10-11 years, Mr. Paul Thibeault has been conducting a business of selling firewood from the Property, which firewood is stored on that part of the Property zoned Industrial.
4. Mr. Thibeault cuts the firewood off-site and transports the wood to the Property in a dump truck, where he stores the fire wood on that part of the property zoned Industrial.
5. When the firewood is brought onto the site, it is in its final form. Mr. Thibeault does no cutting of the firewood at the Property.
6. On September 6, 2016, Mr. Jeff Taylor, Zoning Enforcement Officer, issued a Cease and Desist Order to Paul Thibeault, 1001 Stafford Street, Rochdale, MA. The subject line of the Order was "Wood business and complaint."
7. In pertinent part, the Zoning Enforcement Officer wrote:

At this point in time you must CEASE and DESIST with your business which by the way was applied for under the guise of a Home Occupation. Your paperwork is attached for your perusal along with the zoning by-law definition. You never applied for a logging business to operate outside of the home, the home Occupation was to have an office within the home only.

#### **I. Mr. Thibeault Is Operating A Business As A Matter Of Right On That Portion Of The Property Zoned Industrial.**

8. Contrary to the Zoning Enforcement Officer's Order, Mr. Thibeault is operating a business as a matter of right on that portion of the property zoned Industrial.

9. Indeed, on three or four occasions over the past few years and as recently as earlier this year, the Zoning Enforcement Officer told Mr. Thibeault that he could conduct his business so long as he stored the wood more than 300 feet from Stafford Street in the Industrial Zone.
10. Where, as here, a district boundary line divides a lot, Section 2.3.04 of the Town's Zoning By-Law allows Mr. Thibeault to conduct a use permitted in the less restrictive zone; here, the Industrial zone.
11. Mr. Thibeault is, in fact, operating a business permitted in the Industrial Zone. Section 3.2.03 provides that the following use is permitted in an Industrial Zone in pertinent part:
- Any wholesale or retail business ... not involving manufacturing on the premises except of products the major portion of which is sold on the premises by the producer to the consumer.
12. Mr. Thibeault is not performing any manufacturing, cutting, or splitting of wood on the premises. All cutting and splitting of the wood is done off-site. The only aspects of the business performed on-site are the dumping of the cut wood on the Industrial portion of the Property for storage, and the loading of a dump truck with wood for the purpose of delivering orders. As such, he is operating the business as a permitted use on that part of the Property zoned Industrial.

**II. Mr. Thibeault Has The Right To Park And Use Commercial Vehicles On That Part Of His Property Zoned Industrial.**

13. With respect to Mr. Thibeault's parking and use of commercial vehicles at the Property, Mr. Thibeault has the right to do so pursuant to Section 3.2.08 which provides:

The continued and regular parking of commercial vehicles, tractor trailers, and construction vehicles (including but not limited to tractors, backhoes, bulldozers, dump trucks, etc.), where accessory to a lawfully permitted commercial use, is allowed by right in all

commercial zoning districts (B, CB, I, BI-A, HB-1, HB-2, BR-1, and RIB).

14. Here, the business of selling fire wood is a permitted commercial use in an Industrial Zone. The use of a back hoe and dump truck are accessories to Mr. Thibeault's selling of fire wood. As such, Mr. Thibeault has the right to park and use the commercial vehicles at issue in the Industrial portion of the Property.

**III. Alternatively, The Town Is Barred From Bringing An Action Under The Six Year Statute Of Limitations Set Forth In G.L. c. 40A, § 7.**


15. While in his enforcement order the Zoning Enforcement Officer pointed to an "Application/Zoning Permit For Home Occupation" dated January 3, 2008, and indicated that Mr. Thibeault did not reveal that he was conducting a so-called logging business outside of the home in the application, the application, in fact, supports Mr. Thibeault.
16. In the application which he was given by the Town to complete, Mr. Thibeault specifically stated that he was seeking to do a "logging" business, that he had one commercial vehicle, that the material used was "Tree," that he was storing "wood," and that the occupation would be conducted "wood."
17. The Zoning Enforcement Officer approved the permit on January 3, 2008, as Permit # H8-001.
18. Mr. Thibeault has not hidden the fact that he has sold firewood from his property for over the past approximately 10-11 years. Indeed, it has been open and obvious that he has been doing so at all times.
19. Since the Zoning Enforcement Officer approved the Application/Zoning Permit in which Mr. Thibeault described the business he intended to operate on January 3, 2008, and

which he, in fact, operated, the Town's enforcement action is barred by the six year statute of limitations provided by G.L. c. 40A, § 7.

### **CONCLUSION**

For the above reasons, Mr. Thibeault requests that the Zoning Board of Appeals reverse the Cease and Desist order of the Zoning Enforcement Officer and rule that Mr. Thibeault can operate his business of selling firewood at the Property so long as he stores and loads the wood on the Industrially zoned portion of the Property.

Paul Thibeault  
By his attorneys,



---

Barry A. Bachrach (BBO#025490)  
Rhonda L. Bachrach (BBO# 692529)  
Bachrach & Bachrach  
62 Paxton Street  
Leicester, MA 01524  
Telephone No.: (508) 892-1533  
Facsimile No.: (508) 892-1633  
Email: bbachrach@bachrachlaw.net  
Email: rbachrach@bachrachlaw.net

Date: 09/27/16