

received

7/2 16/15 18

ZBA Case No.:

910 A

**TOWN OF LITTLETON
BOARD OF APPEALS**

37 Shattuck Street
P.O. Box 1305
Littleton, MA 01460
Tel: 978-540-2420



APPLICATION FOR PUBLIC HEARING

Pursuant to MGL Chapter 40A, 40B and 41 and the Littleton Zoning Bylaws

TOWN USE ONLY

Received by the Town Clerk Office

The filing is not official until stamped by the Town Clerk

Filing Fee paid: \$ _____ Check # _____

Pursuant to the provisions of Chapter 40, §57 of the Massachusetts General Laws as adopted by Town Meeting 2003, this document must be signed by the Tax Collector verifying payment of taxes.

S. Lord

Signature of Tax Collector

The undersigned hereby submits this petition for the following action (check all that apply):

Appeal of Decision of Building Inspector or other administrative official (see page 2)
 Special Permit (40A) (see page 2)
 Variance (see page 3)
 Comprehensive Permit (40B) Complete additional application (see page 2)

PETITIONER: Signature

Joseph Cataldo, Trustee

Print Name

563 King St.

Address

Littleton, MA 01460

Town, State, Zip

Date: 16/11/18

978-501-6831

Phone #

j.cataldo6@mjcataldo.com

Email Address

Deed Reference: Bk 15934 Page 186

FEES
 Residential Property \$200 filing fee + \$75 recording fee + \$25 abutter list = \$300 to Town of Littleton
 Commercial Property \$350 filing fee + \$75 recording fee + \$25 abutter list = \$450.00 to Town of Littleton
 Comprehensive Permit \$1000 + \$100/unit over 10 units

ADDITIONAL FEES: ALL APPLICATIONS:
 Legal Notice publication fee to be paid prior to opening the hearing

PROPERTY OWNER: include authorization of Owner for Petitioner to represent Owner, if unsigned

Signature

Date

Phone #

Print Name (if different from petitioner)

Email

Address (if different from petitioner)

ASSESSOR MAP & PARCEL NUMBER U7-2-19

ZONING DISTRICT: (R) VC B IA IB (Circle all that apply)

Check box if applicable **AQUIFER DISTRICT**

WATER RESOURCE DISTRICT

Appeal

Under MGL c. 40A §. 8

The undersigned hereby appeals a written order or decision of the Building Commissioner / Zoning Officer or other administrative official alleged to be in violation of the provisions of MGL c. 40A or the Zoning By-laws to the Board of Appeals for the Town of Littleton.

1. From what Town Official or Board is the appeal being sought?

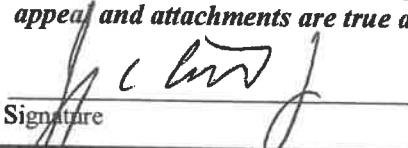
Mandatory: Attach copies of written order or decision under appeal

Administrative Official Michelle Cobleigh Date of order / decision 9/25/2018

2. Which statute or Zoning Bylaw do you rely for your appeal?

MGL c.40A § 15 Zoning Bylaw § 173-78 and 173-26 Code of Littleton § _____
You may also consider whether you qualify for relief under any other authority of the Board to grant a Special Permit or Variance.

3. I hereby certify that I have read the Board of Appeals Instructions for Appellants and that the statements within my appeal and attachments are true and accurate to the best of my knowledge and belief.

Signature 

Print name Joseph A. Cottolico Jr

Special Permit 40A

Under MGL c. 40A §. 9

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to grant a Special Permit for the reasons hereinafter set forth and in accordance with the applicable provisions of the Zoning By-law.

1. Special Permits are expressly permitted in the Zoning Bylaws. Which Zoning Bylaw section do you rely for your appeal?

Zoning Bylaw § _____

2. Why are you applying for a Special Permit? Attach a written statement that specifically describes existing conditions and your objectives, along with necessary exhibits as listed in the filing instructions. *You may also consider whether you qualify for relief under any other authority of the Board to grant a variance.*

3. I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.

Signature _____

Print Name _____

Special Permit 40B

Under MGL c. 40B

See supplemental instructions: Littleton Zoning Board of Appeals Rules for the Issuance of a Comprehensive Permit under M.G.L.c40B



KRISTIN A. BULLWINKEL
WILLIAM F. BROOKS

CHRISTOPHER C. WORTHY
KATHRYN E. YATES
AARON J. BULLWINKEL

October 11, 2018

BY IN HAND DELIVERY

Town of Littleton Board of Appeals
Sherrill Gould, Esq., Chair
37 Shattuck Street
P.O. Box 1305
Littleton, MA 01460

Re: 563 King Street, Littleton, MA: Appeal of Decision by Building Department

Dear Littleton Board of Appeals:

This statement is submitted to the Town of Littleton Board of Appeals in support of Mr. Joseph Cataldo's Appeal of a Decision of the Littleton Building Department dated September 25, 2018 (the "Decision"), attached hereto as "Exhibit 1." The Decision specifically relates to the property known as and numbered 563 King Street, Littleton, Massachusetts, which is owned by the J&D Realty Trust (the "Premises"). Mr. Cataldo is the Trustee of the J&D Realty Trust. On September 25, 2018 Michelle Cobleigh, the Assistant Zoning Enforcement Officer for the Town of Littleton, delivered a letter to Mr. Cataldo, ordering him to "cease and desist the operation of the landscaping business" at 563 King Street.

Mr. Cataldo's wife, Dale Cataldo (President and CEO), operates Cataldo Nurseries, a horticultural nursery and garden center on the Premises. Mr. and Mrs. Cataldo have operated Cataldo Nurseries since April 1986. As reasons for the cease and desist order, Ms. Cobleigh states that since October 6, 2017 several noise complaints have been reported to the Building Department by a single abutter to 563 King Street, specifically that construction noise is beginning before 7 a.m.," and complaints "relative to the 'landscaping/construction/sand sifting operations.'" In response, the Building Department investigated the complaint and according to the Decision, determined that operations on the Premises have violated Article XVII of the Littleton Zoning By-Law, regulating noise in the Town. The alleged noise violation specifically references the operation of a loam screener and loader (1994 John Deer Loader) on the Premises and the use of trucks operated by Cataldo Nurseries. No other violation of the Zoning By-Law or any other By-Law was alleged in the Decision.

Over the past several months, after being informed that operation of the loam screener and loader were creating complaints from neighbors, Mr. Cataldo has worked to modify the operation of Cataldo Nurseries so that the loam screener and loader would not be of further need for the business. While the process took longer than expected, both the loam screener and loader were

removed from the Premises on September 22, 2018. Neither piece of equipment will return to the Premises, and as such, the primary sources of the noise complaint have been removed.

The loader has been replaced on the Premises by a newer, smaller model (Takeuchi WA65 Loader) that is equipped with noise suppression devices. The Takeuchi Loader operates well under the decibel limits under the By-Law. Even if it were determined that the decibel levels were found to exceed the limits under the By-Law, the operation of the loader is exempt as Farm Equipment under By-Law Article XVII, §173-78 B(5), in direct support of the nursery. The loader in this instance does not fall under the category of construction equipment, as it is used for agricultural purposes.

The abutter further complains that the operation of trucks on the Premises are too loud. The Decision only speaks to the noise generated by the trucks during their general use on the Premises. The Decision further states that "although registered motor vehicles are exempt from this bylaw, the exemption only extends to travel over open public road." Zoning By-Law Article XVII, §173-78 B(3) states, "This regulation shall not apply to the following: Any noise produced by a registered motor vehicle, provided that such vehicle is equipped with all noises suppression devices required for legal operation under such registration by the laws of the commonwealth." There is no provision in the By-Law stating that the exemption only extends to travel over open public road. As a necessity, any and all motor vehicles must travel from private property to open public roads as part of their regular operation, and it would be nonsensical for the exemption to be limited to only travel over public roads.

All trucks that operate on the Premises are registered with the Commonwealth, and are equipped with noise suppression devices. These trucks are used for the delivery of new material to the nursery for the care and growing of new plants, and for delivery of plants and plant care products to the customers of Cataldo Nursery. Pursuant to the necessary use of the trucks, their ordinary operation is to travel to and from the Premises. No permit is required for this use as the operation of the trucks is accessory to the operation of the Nursery. As such, the use of the trucks is exempt from the Noise By-Law as they are properly registered motor vehicles, operating in the ordinary course of the business, which in itself is an allowed use.

While the operation of the nursery was not specifically cited as violating any By-Law, the Decision does order Mr. Cataldo to "cease and desist the operation of the landscaping business." Mr. Cataldo uses the Premises as the location of Cataldo Nurseries. The use of the Premises as a nursery and garden center is a use that is allowed as of right as an Agricultural Use, pursuant to the table of uses (By-Law §173-26), as has previously been determined by a finding of the Littleton Board of Appeals dated March 3, 1988 (Case No. 242 A), attached hereto as "Exhibit 2." The operation of the nursery includes bringing in new plant and soil material to grow and maintain the nursery stock, organizing and storing that material on the Premises, and delivering product orders to customers. As previously mentioned the use of the loader and the trucks are an integral and necessary part of the operation of the nursery.

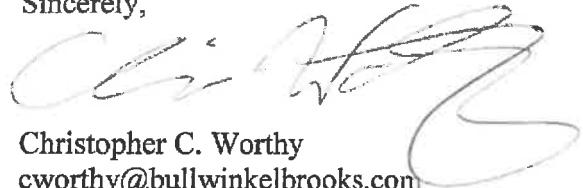
Littleton Board of Appeals
October 11, 2018
Page 3 of 3

The Agricultural Use is also allowed as of right pursuant to M.G.L. c. 40A § 15, which states "No ordinance or by-law shall . . . prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture..." Cataldo Nurseries engages in several of these commercial agricultural activities. The ongoing operation of the loader and the registered vehicles (trucks) on the Premises is a necessary and integral part of the operation of the company in order to service its customers, and prohibition or unreasonable regulation of said operation is prohibited.

Cataldo Nurseries has made every effort to reduce the noise on the Premises, including removing several larger pieces of equipment to a new property in Ayer, Massachusetts, and purchasing a new, smaller, and quieter loader, but the new loader and the commercial trucks must remain at the Premises for Cataldo Nurseries to be able to operate. This continuing agricultural operation directly complies with the Littleton Zoning By-Law, does not violate the "Noise" sections of the By-Law, and is subject to the provisions of M. G. L. c. 40A § 15. Due to the compliance with the By-Law and protection under Massachusetts statute, the Littleton Building Department does not have the grounds or authority to issue the "cease and desist" order dated September 25, 2018. As a matter of right, the Order must be set aside, and Cataldo Nurseries must be allowed to operate as it has been for the past thirty-two years.

In further support of this Appeal, please find a copy of the current Deed attached hereto as "Exhibit 3," and a Subdivision Plan showing the Premises and abutter properties, attached hereto as "Exhibit 4." Please do not hesitate to contact me should the Board of Appeals have any questions in advance of the hearing on this matter. Thank you.

Sincerely,



Christopher C. Worthy
cworthy@bullwinkelbrooks.com

cc: Mr. Joseph Cataldo

EXHIBIT 1

EXHIBIT 2



OFFICE OF THE
LITTLETON BOARD OF APPEALS
LITTLETON, MASSACHUSETTS 01460

Petitioner: Joseph A. Cataldo, Jr.
Case No: 242 A
Date Filed: December 27, 1987

The Littleton Board of Appeals conducted a public hearing on February 18, 1988 (postponed from January 21, 1988) at the Town Operations Center, Ayer Road, on the petition of Joseph A. Cataldo, Jr. to appeal determinations of the Building Inspector regarding zoning violations at 41 Robinson Road. Notice of this hearing was given by mail to all abutters and parties of interest. Notice was also given by publication in the Littleton Independent, a newspaper published in Acton and circulated in Littleton, on January 7, 1988 and January 14, 1988. The meeting was continued to February 24, 1988 and March 2, 1988. Members of the Board involved in this decision also visited the premises on their own to take a view. Present and voting were: Charles O'Neal, Chairman; Raymond Cornish, Clerk; Sally Bowers, Kenneth Ammenwerth, David Rowse.

The hearing was held to allow the appellant to present arguments that certain acts of the appellant, doing business as Cafaldo Nurseries and Cataldo Landscaping, are within the requirements of the Littleton Zoning Bylaw, and not violations as determined by the Building Inspector.

The violations cited by the Building Inspector in his letter of December 7, 1987 to the appellant which are of concern to this Board are:

Conducting a Retail Store and selling articles which are not incidents of a nursery i.e., crafts, Christmas tree decorations, garden tools and equipment etc. (Art. 2, Sect. 2300)

Sale of cut Christmas Trees and wreaths not produced on the premise but obtained elsewhere (Art. 2, Sect. 2300)

The use of the premise as a headquarters for a contract landscaping business which does not concern the transplanting of the nursery stock (Art. 2, Sect. 2300)

Quantity and type of signs advertising business in excess of allowed (Art. 3 Sect. 3200)

Findings:

After hearing the arguments of the appellant and his counsel, and after reviewing the requirements of the Littleton Zoning Bylaw, the Board finds that:

- 1) The subject property at 41 Robinson Road is in a Residence District.
- 2) The Littleton Zoning Bylaw permits agricultural uses in a Residence District, including the sale, under the designation of a "roadside stand," of agricultural products as an accessory use to agricultural uses without regard to their origin. The operation of a nursery falls within the category of an agricultural use.
- 3) Customary home occupations are allowed in a Residence District, including the sale of such items as are so produced. The sale of other items is not allowed within a residential zoning district.
- 4) The operation of a contract landscaping business not in connection with the transplanting of nursery stock is not permitted in a Residence District.
- 5) The size and number of signs is regulated by the Zoning Bylaw.
- 6) There was no wilful intent on the part of the appellant to violate the Littleton Zoning Bylaw.

OFFICE OF THE
LITTLETON BOARD OF APPEALS
LITTLETON, MASSACHUSETTS 01460



Decision:

The determination of the Building Inspector is confirmed by this Board, with modifications as follows:

- a) The sale of nursery products may include, in addition to plants, such fungicides, pesticides, agricultural chemicals, peat moss, humus, mulches, fertilizers and plant containers as are intended to be used in preserving the life and health of the plants sold.
- b) Cut Christmas trees and evergreen wreaths are judged to be the products of agricultural use and their sale as an accessory use is allowed, notwithstanding having been grown, cut and prepared for sale elsewhere.
- c) The sale of other items which bear the same relationship to products of the land as those noted in a) and b) above are also allowed as an accessory use.
- d) The appellant is allowed to dispose of the non-qualifying merchandise presently on hand, but none other, by sale on the premises up to and including December 31, 1988. After that date, such sale is in violation of the Bylaw and this decision.

Signed: Raymond M. Cornish
Raymond Cornish, Clerk

Dated: March 3, 1988

EXHIBIT 3

BOOK 2579 P 363/25
X-179

BK 15934 PG 186

118-25-

TR 610 RE 2800

Mr. John N. Robinson and Edna M. Robinson, husband and wife, as tenants by the
entirety, both Littleton, Middlesex County, Massachusetts,
being executors, for consideration paid \$380,000.00

11/20/84 grant to J & D Realty Trust, Joseph A. Cataldo, Trustee, u/d/t dated December 20,
1984, to be recorded herewith

of Littleton, Middlesex County, Massachusetts

with quidam curands

The land with the buildings thereon, situated in Littleton, Middlesex County, Massachusetts. A certain parcel of land situated on the Southerly side of Robinson Road, Littleton, Middlesex County, Massachusetts, bounded and described as follows: Beginning at a point on the Southerly side of said Road at a corner of land formerly of L. M. Werherbe and thence running Southerly on the wall to land now or formerly of Edwin N. Robinson; thence continuing Southerly by said Robinson land to a point on the Boston Road to a stone bound; thence Southeasterly on said State Road to land now or formerly of Henry J. Couper; thence Easterly by said Couper land along the wall to the parcel next hereinafter described; thence Northerly by said second parcel to said Robinson Road; thence Westerly on said Road to the point of beginning. Containing about seven (7) acres of land. Excepting and excluding, however from the parcel above described so much thereof as was conveyed to Russell K. Dodge et ux by deed of Ernest H. Robinson and recorded with Middlesex South District Deeds, Book 7527, Page 136. Being also another parcel of land situated in the Easterly part of said Littleton bounded and described as follows: Beginning at Robinson Road at land formerly of George W. Whitcomb and running Northerly along the wall to land formerly of Lucy W. Flagg, thence Easterly along the wall to the Westford Town Line; thence Southerly on said Town Line to the parcel next hereinafter described; thence Westerly on said third parcel; thence Easterly by said third parcel along the wall to land now or formerly of Henry J. Couper; thence Southeasterly by said Couper land to land now or formerly of W. L. Proctor; thence Westerly and Southerly by said Proctor land to land now or formerly of said Couper; thence Northwesterly and Southwesterly to the first parcel above described; thence Northerly by said first parcel to Robinson Road; thence Easterly on said Road to the house formerly owned by Edwin N. Robinson; thence Westerly on said Road to the point of beginning. Containing fifty-nine (59) acres, more or less. Also to another parcel of land situated in the Easterly part of said Littleton bounded and described as follows: Beginning at the corner of the wall at the second parcel above described, thence running Easterly on said second parcel to land formerly of Allen Kimball and now or formerly of Decatur; thence Southeasterly along the wall and said Decatur land to the wall at said second parcel; thence Westerly on the wall and said second parcel to a corner; thence Northerly on the wall and said second parcel to point of beginning. Containing seven (7) acres, more or less;

Being all and the same premises to us conveyed by deed of Ernest H. Robinson dated October 22, 1955, recorded with Middlesex South District Registry of Deeds at Book 8593 Page 540.

EXCEPTING and excluding from the above premises those portions of the land conveyed by us to Irving T. Dunn et ux which deed is recorded with said Deeds, Book 9855, Page 166; to Littleton Oil Co., Inc. which deed is recorded with said Registry of Deeds, Book 12271, Page 236; to Charles Richard Mossis which deed is recorded with said Registry of Deeds, Book 12297, Page 292; and a taking for the widening of Robinson Road as recorded with said Registry of Deeds at Book 11815, Page 567.

ALSO EXCEPTING from the above premises approximately 6.35 acres, more or less, located on the Northerly side of Robinson Road described as follows: Beginning at a point on Robinson Road and at land now or formerly of Timothy F. and Karen L. Foote and premises granted herein and thence running Northerly along said land of Timothy F. and Karen L. Foote 579.67 feet to a point at land now or formerly of E.H. Flagg and the said Timothy F. and Karen L. Foote

BOOK 14311 P 436, 5621
BOOK 17333 P 12/1
BOOK 21294 P 332

BOOK 25795 P 118 TR LN.
P 119 TR LN.
1312 8FTN PUR LOT 3
P 26356 P 133 OPTN PUR. LOT 8

and thence running Easterly along land of E.M. Flagg, John Gerbi, and land of grantor as described above 559.32 feet to a point at land of grantor as described above and thence running Southerly along land of grantor as described above 600.96' to a point at Robinson Road and thence running Westerly 370 feet to the point of beginning, said parcel being granted by grantor herein to Clover Realty Trust by deed of even date to be recorded herewith.

ALSO EXCEPTING THEREFROM, approximately 10 acres of land, to be retained by the Grantors, John N. Robinson and Edna M. Robinson, located on the southerly side of Robinson Road, Littleton, Massachusetts: Beginning at a point on the southerly side of Robinson Road at land now or formerly of Warren; thence Southeasterly along said Warren land and land now or formerly of Commonwealth Federal Savings approx. 434 feet; thence Northeasterly, Easterly and Southeasterly along land now or formerly of Old Colony, approximately 378 feet; thence continuing in a Southwesterly direction along land now or formerly of L & B Realty Trust, approximately 240 feet; thence Easterly and Southeasterly along land now or formerly of the Center Mall, approximately 994 feet; thence Easterly along land now or formerly of Flagg approximately 500 feet; thence Northwesterly along land of Grantors herein being conveyed, approximately 1100 feet to the turn around on Robinson Road; thence Westerly along said turn around and said Robinson Road, approximately 535 feet to the point of beginning. All of said measurements being approximate, and taken from Assessors Maps U-6 and U-7 of the Town of Littleton, Massachusetts. A more definite plan of said 10 acre parcel being excepted, is to be recorded.

Also conveying the land in said Littleton, shown on plan entitled "Land in Littleton, Mass. surveyed for Albert C. Jackson, Scale 1" = 100' August, 1969, James W. Christholm, Surveyor" recorded with Middlesex South District Deeds, Book 11745, Page 314, bounded and described as follows:

Beginning at a stone wall at the southerly side of King Street and at corner of land formerly of William L. Flagg; thence running S 9° 58' 30" E. 775.89 feet by said wall to a corner of walls at land now or formerly of said Flagg and land now or formerly of one Robinson; thence running N. 86° 36' 18" W. 588.18 feet by a stone wall by said Robinson land to a corner of walls at said Robinson land and land now or formerly of Gerbi; thence running N. 10° 4' 24" 526.57 feet by stone wall by said Gerbi land to a point in the southerly side of said King Street; thence running Northeasterly by curved line having a radius of 5,660. feet, for 157.96 feet to a corner of land now or formerly of Lemire; thence running N. 67° 15' 36", 125.00 feet by said Lemire land to a corner; thence running N. 10° 04' 24" W., 125.00 feet by said Lemire land to a point at the southerly side of King Street; thence running northeasterly by a curved line having a radius of 2,748.73 feet, for 151.59 feet by said street to a point; thence running N. 71° 52' 03" E. 141.94 feet by said street to the point of beginning. Containing 7.34 acres.

EXCEPTED from the above is the following:

The land in Littleton, shown on a plan entitled "Land in Littleton, Mass., surveyed for Albert G. Jackson, Scale 1" = 100' August, 1969, James W. Christholm, Surveyor" bounded and described as follows:

Beginning at a stone wall at the southerly side of King Street and at the corner of land formerly of William L. Flagg; thence running S. 9° 58' 30" E., 270 feet to a point; thence running S. 71° 52' 3" W., 150 feet to a point in land now or formerly of Harvard Finance, Inc.; thence running N. 9° 58' 30" W. 269.55 feet to a point in the southerly side of King Street; thence running northeasterly by a curved line having a radius of 2748.73 feet, 8.06 feet by said street to a point; thence running N. 71° 52' 3" E., 141.94 feet by said street to the point of beginning.

For our title see deed of Ernest E. Robinson, to us, dated October 22, 1955, and recorded with Middlesex South District Deeds in Book 8593 Page 540, and deed of Harvard Finance Inc. to us, dated November 23, 1973 and recorded with said Deeds in Book 12561 Page 001

Witness our hands seal this 20th day of December, 1984

John N. Robinson
John N. Robinson

Edna M. Robinson
Edna M. Robinson

The Commonwealth of Massachusetts

Middlesex

ss.

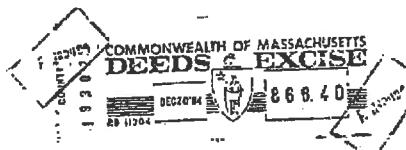
December 20 1984

Then personally appeared the above named John N. Robinson and Edna M. Robinson

and acknowledged the foregoing instrument to be their free act and deed

before me

Alfred E. Clavey
Notary Public - Justice of the Peace
Alfred E. Clavey
My Commission expires July 29 1988



(THE FOLLOWING IS NOT A PART OF THE DEED, AND IS NOT TO BE RECORDED)

Chapter 183, Section 11, General Laws

A deed in substance following the form entitled "Quitclaim Deed" shall when duly executed have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor, for himself, his heirs, executors, administrators and successors, with the grantee, his heirs, successors and assigns, that at the time of the delivery of such deed the premises were free from all encumbrances made by him, and that he will, and his heirs, executors and administrators shall, warrant and defend the same to the grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other.

John N. Robinson
John N. Robinson
John N. Robinson
John N. Robinson

EXHIBIT 4

