

Zoning Board of Appeals

499 Plymouth Street • Halifax, MA 02338 • 781-293-1736

**HALIFAX ZONING BOARD OF APPEALS
MONDAY, JUNE 12, 2006**

The Halifax Zoning Board of Appeals held its regular monthly meeting on Monday, June 12, 2006 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Jean Reilly, Kozhaya Nessralla, and Michael Schleiff.

Richard Gilcoine arrived at approximately 7:20. Robert Gaynor arrived at approximately 7:43.

Garrett Walsh was not in attendance.

Chairman Tinkham called the meeting to order at 7:02 p.m.

APPROVAL OF MINUTES:

It was duly moved (K. Nessralla) and seconded (J. Reilly) to approve the minutes of Monday, May 1, 2006.

Chairman Tinkham: All those in favor of approving the minutes of May 1, 2006, please signify by saying aye. So VOTED 4-0-0

BILLS

A. Memorial Press Group - \$330.00

The Board reviewed the mail and discussed other matter issues;

- A. Reappointment/Appointment – Robert Gaynor
- B. Board of Selectmen – Notice of Public Hearing – Alcoholic Beverage License for 550 Monponsett Street
- C. Board of Selectmen – Notice of Public Hearing – Steven & Wendy Corkren – Class II License
- D. Town Collector – Non-payment of taxes on 6 Standish Street, Halifax, MA
- E. Board of Selectmen – Summer Schedule
- F. Charles Seelig – Memo regarding CPTC Workshops for Fall of 2006

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Discussion:

The Board discussed the fact that they have not been notified in writing by either the building inspector or Charlie regarding 732 Old Plymouth Street. Chairman Tinkham is upset that no one has responded to the Board and she plans on calling the Selectmen's office.

#667 – PETER GAMACHE – 6 STANDISH STREET, HALIFAX

The reading of the public hearing notice was delayed until 7:20 pm while the Board waited for Mr. Gilcoine to arrive.

The secretary read the notice of public hearing:

The Halifax Zoning Board of Appeals will hold a public hearing on June 12, 2006 at 7:15 pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Peter Gamache, 10 B Beals Cove Rd, Hingham, MA to raze & rebuild a home at 6 Standish St, Halifax, MA. Said property is owned by James & Marguerita Fitzgibbons, 29 Governor Long Rd, Hingham, MA as shown on Assessor's Map #19, Lots 1443-1446. The applicant seeks a special permit to continue and extend a non-conforming use and make alterations to the structure that exceed 50% of the value in accordance with the Zoning By-laws of the Town of Halifax under Section 167-8 Non-Conforming Uses, page 16726.8. Area is zoned residential. Petition #666

Chairman Tinkham read a letter from the tax collector's office into the record. She then went on to explain to Mr. Gamache that due to the fact that there are taxes owed on the property, the Board would not be rendering a decision at tonight's hearing.

Mr. Gamache understood and agreed to begin his presentation with the understanding that the hearing would be continued until July 10, 2006.

Tinkham: What would you like to do?

P Gamache: I am going to have my Dad present.

J Gamache: I am Pete's Dad, Jack Gamache. I am also the architect.

Mr. J Gamache reviewed the history of the property. The house had been in his family for about 40 years and Peter and his brother inherited the property from his grandmother.

J Gamache: We have gone through Conservation and the Board of Health. We received approval of our plans.

J Gamache: I am not sure what we are looking for as far as a front setback.

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Traynor: You are staying within the same footprint and therefore do not need a variance. You are not encroaching any closer to the lot line. You have requested a special permit to knock down the house and rebuild it in the same footprint.

Traynor: It was my understanding that it is a prefab house (according to the Conservation Agent) and there would be no foundation under it whatsoever.

J Gamache: We will have a crawl space under it.

J Gamache: The septic system is somewhat elevated.

J Gamache: This is a 2 bedroom home with 1 bath. It will be 2 stories. The home is roughly 1200 square feet. I have been through Board of Health and Conservation.

Tinkham: How old is this house.

J Gamache: It is approximately 40 years old.

Schlieff: I'm reviewing the porch and it looks like the 9'7" was existing with the house and that the proposed porch encroaches onto the lot lines.

The Board reviewed the plans. The building inspector was not made aware that there would be a farmer's porch added to the house. The applicant did not request a variance of the front set back to accommodate the porch.

The farmer's porch was not drawn onto the certified plot plan.

The Board reviewed the plot plan and the house plans. The plans do not match.

The applicant was notified that he would either have to re-file and request the variance of the front set back or he could come back with a new set of plans without the porch.

The Board continued to discuss the discrepancy of the plans with the applicant.

Mr. Gamache wishes to proceed with the application as presented. He will come back to the next meeting in July with a new set of house plans without the farmer's porch.

Mr. Gerald Co-Wallis an abutter to the property has several concerns. He asked the Board if he could see the plans.

Co-Wallis: I want to know how close this is to my property line.

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Mr. Co-Wallis reviewed the plans with the Board. Mr. Co-Wallis' land abuts Mr. Gamache's in the back.

The Board reviewed the plans with Mr. Co-Wallis.

Mr. Co-Wallis is concerned with the location of the septic system and leaching fields. He thinks that the house being built is too large for the lot.

Mr. Gamache reviewed the plans with Mr. Co-Walls.

The Board continued the hearing until July 10, 2006 at 7:15 pm.

Mr. Co-Wallis left the meeting.

Mr. Gaynor arrived at the hearing at approximately 7:43 pm.

Mr. J Gamache requested that he be allowed to review the plans with Mr. Gaynor. Mr. Gamache and Chairman Tinkham reviewed the plans with Mr. Gaynor.

Gaynor: What are your intentions with the property.

P Gamache: We are going to renovate it.

Gaynor: How many bedrooms are there now?

J Gamache: There are roughly 3 in there now.

P Gamache: The septic system will be where the boat is now.

Mr. Gaynor reviewed the layout of the lot.

The secretary reminded the Board that Mr. Co-Wallis was not present and that the meeting was continued until July.

It was duly moved (R. Gaynor) and seconded (K. Nessralla) to waive the on-site inspection.

So VOTED 5-0-0

The hearing will continue on July 10, 2006 at 7:15 pm.

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#668 – BRIAN FITZGERALD – 940 PLYMOUTH STREET, HALIFAX

The secretary read the notice of public hearing:

The Halifax Zoning Board of Appeals will hold a public hearing on June 12, 2006 at 7:30 pm in Meeting Room 1, Town Hall, 499 Plymouth St, Halifax, MA on the application by Brian Fitzgerald - Clare Island Motor Cars, 610 South Franklin St, Apt D-204, Holbrook, MA to amend his original special permit #610 in order to allow for the outside sale of five (5) motor vehicles at 940 Plymouth St, Halifax, MA. Said property is owned by V. Richard Greeley, PO Box 494, Halifax, MA as shown on the Assessor's Map #58, Lot #3E. The applicant seeks a special permit to provide retail sales for motor vehicles in an industrial zone in accordance with the Zoning By-laws of the Town of Halifax under Section 167-7 Commercial Uses, page 16726. Area is zoned industrial. Petition #667

Tinkham: One of the things that was brought to my attention (although I do not have anything in writing from the Selectmen) is that the Selectmen want Mr. Greeley (the owner of the property) to go before the Planning Board for an amendment to his site plan.

Ms. Traynor explained to the Board that she had spoken with Mr. Fitzgerald and he is aware that the Selectmen and the Planning Board are expecting Mr. Greeley to contact them regarding an amendment to his site plan. Ms. Traynor was told by Mr. Seelig that he sent Mr. Greeley a letter informing him of the situation. Ms. Traynor went on to explain that nothing should be granted to Mr. Fitzgerald until Mr. Greeley updates and amends his site plan.

The Board reviewed Mr. Fitzgerald's file. The Board is concerned that the cars are going to be located near the street and Mr. Fitzgerald's office is quite far away.

Gaynor: Which way do the oil trucks come in?

Fitzgerald: They come up the main driveway which is right in front of where the cars will be parked.

Gaynor: What is separating the cars from the driveway.

Fitzgerald: There is a small berm.

Gilcoine: Are these classic cars?

Fitzgerald: The outside cars will be less expensive cars. Originally the cars I sold inside were more expensive cars.

The Board discussed the layout of the lot and the occupants of the property.

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The Board discussed Mr. Fitzgerald's original special permit; which allowed for the sale of 4 cars inside of the building.

Schleiff: How will the people interested in the cars know where to go?

Fitzgerald: I will have stickers on the cars telling people where to go.

Schleiff: So you still want your four cars inside and your five cars outside.

Fitzgerald: Yes.

Schleiff: Do you need to go before the Planning Board.

Fitzgerald: I went before the Selectmen and they said I needed permission from the ZBA and the PB.

Mr. Fitzgerald showed the Board a letter from the Selectmen's office (dated May 23, 2006) stating that they needed Mr. Greeley to update his site plan with the Planning Board and that Mr. Fitzgerald needed ZBA approval before they would grant his class 2 license.

Chairman Tinkham read the letter into the record (see file).

Mr. Fitzgerald was concerned that the ZBA wanted to wait.

Tinkham: Until the Planning Board has approved the site plan changes or amendments with Mr. Greeley, the class 2 license will not be released. The ZBA can not make any decisions on this until Mr. Greeley has met and made his arrangements with the Planning Board.

Tinkham: I think we should continue this hearing until Mr. Greeley meets with the Planning Board but it is up to Mr. Fitzgerald.

Mr. Fitzgerald agreed to the continuance.

The Board agreed to the continuance.

Tinkham: Is there anyone here to speak to this petition tonight.

Rich Green – 925 Plymouth St: I am curious. Does he own all the cars?

Fitzgerald: Yes.

Rich Green: All the cars will be under your name. You will own them.

Fitzgerald: Yes.

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The Board will continue the hearing until Monday, July 10, 2006 at 7:30 pm.

The hearing was continued until July 10, 2006 at 7:30 pm.

#668 – JOHN & HEIDI BADOT – 165 WALNUT STREET, HALIFAX

The secretary read the notice of public hearing:

The Halifax Zoning Board of Appeals will hold a public hearing on June 12, 2006 at 7:45 pm in Meeting Room #1 of the Town Hall, 499 Plymouth St, Halifax MA on the application by John Badot to build an in-law apartment in the conservancy zone at 165 Walnut St, Halifax, MA. Said property is owned by John & Heidi Badot as shown on Assessor's Map 88, Lot 2A & Map 88, Lot 68T. The applicant seeks a special permit for an in-law apartment and a special permit to build in the conservancy zone in accordance with the zoning bylaws of the Town of Halifax under Section 167-7 Schedule of Uses and Summary of Use Regulations, pages 16723 & 16724. Area is zoned conservancy. Petition #668

Mr. Badot presented the Board with pictures of the property.

Badot: We are located a 1,000 feet off the street and own an almost 20 acre parcel. We are pretty secluded.

Tinkham: What are we proposing.

Badot: My father was diagnosed with lung cancer and I don't want my mother living alone. I offered to do this for her if I could get this through the town. I will be well within the setbacks.

Badot: I made some adjustment's to the plan and made the home 2 feet bigger – I made it from 24 by 24 to 24 by 26.

The Board reviewed the layout of the property and the proposed addition plans.

Badot: I was speaking with Tom and told him I would like to build a new deck and screen it in. (the plans did not show the proposed changes) Tom told me I would have to come back before the Board because I am in the conservancy zone.

Tinkham: Yes, you would.

Badot: Can I add them on now.

Traynor: We can continue the hearing and Mr. Badot can bring back new plans.

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The Badot's do not want to continue the hearing. If they decide to add a deck or a screen porch, they will come back before the Board.

Tinkham: Let's review the shared space.

Badot: The in-law will be wide open. The living room will be shared along with the mudroom and the laundry area.

Mr. Badot reviewed the interior and exterior plans with the Board.

Gaynor: What utilities will be shared?

Badot: We will have shared water, heat, and septic. The electric will be separate.

The Board reviewed the in-law apartment stipulations with the Badot's.

Schleiff: I think the opening between the two homes is too small. I think it should be bigger. I would like to see a bigger opening.

The Badot's are concerned with heating the existing house and the in-law apartment and would like to have a smaller opening.

Badot: I can increase the opening if we need to increase it.

The Board reviewed the plans.

It was duly moved (R. Gaynor) and seconded (R. Gilcoine) to waive the on-site inspection.

So VOTED 5-0-0

It was duly moved (R. Gaynor) and seconded (R. Gilcoine) to grant your petition (#669) for a special permit for a one-story in-law apartment to be built in the conservancy zone located at 165 Walnut Street, Halifax, MA as shown on assessor's map 88, lot 2A and map 88, lot 68T in accordance with the Town of Halifax Zoning By-laws under Section 167-7 Schedule of Uses.

The permit was granted due to the fact that the project meets all the criteria of the by-law for in-law apartments. This project does not derogate from the intent of the by-law and is not detrimental to the neighborhood at this site. The project has a shared common entrance, shared utilities (water, heat, septic), shared living space (common living area) and meets the requirements of the Halifax Zoning Board By-laws for In-law Apartments.

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The conditions for granting the special permit for the in-law apartment are as follows:

- The in-law apartment will share all utilities listed above.
- The Board shall be notified if the in-law apartment is no longer needed.
- The special permit for the in-law apartment is granted for a period of 5 years. Upon expiration of the permit the petitioners shall come back before the Board and apply for an extension.
- If any change in tenancy takes place, the applicant is to come back for review.
- The special permit shall run with the owner and is not transferable.
- The in-law apartment can not become an income producing apartment.
- The in-law apartment kitchen appliances are to be removed when no longer occupied by a family member.
- The seven (7) foot entryway between the homes is to remain open.
- The special permit was granted based on the plans and testimony presented at the hearing. Any changes from what was presented and approved must be brought back before the Zoning Board of Appeals.

Please be advised that all variances and special permits shall comply with all the rules, regulations, and codes of the Town of Halifax.

This decision shall not take effect until:

- (a) A copy of this decision certified by the Town Clerk to the effect that twenty (20) days have elapsed since this decision was filed in the office of the Town Clerk (6/20/06) without any appeal having been dismissed or denied has been recorded in the Plymouth County Registry of Deeds, or with the Assistant Registrar of the Land Court for Plymouth County, and
- (b) A certified copy indicating such Registry Recording has been filed with the Board.

Chairman Tinkham called for a voice vote: J. Reilly, YES; K. Nessralla, YES, R. Gaynor, YES; R. Gilcoine, YES; and D. Tinkham, YES.

The motion to grant petition #668 passed 5-0-0

Ms. Tinkham reprised Mr. & Mrs. Badot of the procedure following approval of the petition.

#669 – KATHERINE BARTUCCA/MADELINE REED – 26 HILLSIDE AVENUE, HALIFAX

The secretary read the notice of public hearing:

The Halifax Zoning Board of Appeals will hold a public hearing on June 12, 2006 at 8:00 pm in Meeting Room 1, Town Hall, 499 Plymouth St, Halifax, MA on the application by Katherine Bartucca, 57 Jacap Dr, N Attleboro to raze and rebuild a home at 26 Hillside Ave, Halifax, MA. Said property is currently owned by Madeline Reed, 57 Jacap Dr, N. Attleboro as shown on Assessor's Map #51,

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**#669 - KATHERINE BARTUCCA/MADELINE REED – 26 HILLSIDE AVENUE, HALIFAX
cont.**

Lot #62. The applicant seeks a variance of the front set back from fifty (50) feet to nine-tenths (0.9) of a foot, a variance of the right side set back from thirty (30) feet to eight (8) feet, a variance of the left side set back from thirty (30) feet to three (3) feet, a variance to vary the lot coverage, and a special permit to continue and extend a non-conforming use in accordance with the Zoning By-laws of the Town of Halifax under Section(s) 167-11 Table of Dimensional and Density Regulations and 167-8 Non-Conforming Uses, page(s) 16726.11 & 16726.7. Area is zoned residential. Petition #669

Tinkham: Who is going to speak to this?

Mark Casey: I am Mark Casey from South Shore Survey, I will be presenting.

Casey: We are putting a log home on this site.

Mr. Casey reviewed the plot plan with the Board. He reviewed the location of the existing house and the location of the newly proposed log home.

Mr. Casey also reviewed all the decks with the Board.

The Board discovered that the proposed floor plan does not match the footprint on the certified plot plan.

The Board reviewed the plot plan and the proposed house plans.

Casey: The septic tank is relatively new and is title 5 compliant. If I were to try to pull the tank back, I would have to go back before the Board of Health. The tank is currently 8 feet from the house.

Gaynor: How many square feet in this.

Tinkham: What is the size of the existing versus the new house with all the decking.

Casey: The existing is 635.8 and that does not count the deck but it does include the porch.

The Board calculated the new house to be approximately 1448 feet.

They are trying to cover more than 25 percent of the lot. Mr. Casey does not agree that the deck should be counted as lot coverage. He does not agree with the lot coverage or the Town's bylaws.

Tinkham: So you are saying that decks' don't count towards variances?

Casey: The deck would count as far as proximity to the lot line but not for lot coverage for area.

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Tinkham: Each Town is different and we consider the decks to be part of the lot coverage.

The Board and Mr. Casey discussed the size of the home with the decks. The plot plan does not match up with the house plans. The plans differ by 10 feet on the porch facing the street.

Casey: I can have the designer redo the plan to match the footprint...

The Board continued to discuss the discrepancies in the plans.

Casey: If you count the decks as lot coverage you are covering more than 31 percent of the lot.

Schleiff: Is there a second story on this home.

Casey: It is a story and a half.

Schleiff: Was there a second story on the existing house.

Casey: No.

Schleiff: Is there a basement?

Casey: There is going to be a basement. The only place we can't have the full basement is near the septic system.

Casey: The septic system has to be 10 feet from the foundation wall. Again, we have to go before the Board of Health for a variance. The system is less than 10 years old.

Schleiff: Does the existing house have a basement?

Bartucca: No, it has a footing.

Bartucca: I would like to speak.

Tinkham: What would you like to tell us?

Bartucca: I would like to request that the Board do an on-site inspection. People in this neighborhood have built homes three times the size of the cottage. You can't see the lake from the front of the house anymore because the homes have been built up. I think what I want to build will bring up the property nicely. The neighborhood is a disaster.

Schleiff: Was the house vacant for awhile.

Bartucca: About 6 months.

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The Board discussed the location of the house.

Tinkham: In that area, there are many small houses on small lots.

Bartucca: I am willing to move on the size of the home. I wanted to ask for a lot.

Tinkham: I know where you are coming from but I don't think this Board has ever approved something that has covered a lot this much.

Bartucca: I was under the impression that you would. There are many houses that cover the lot. You have allowed additions in my area.

The Board discussed the fact that they had allowed some small additions in the area and have also allowed people to add on a second story but they have never allowed someone to be less than a foot away from the front lot line.

Gilcoine: This house is so big you had to turn it sideways to get it onto the lot.

Schleiff: Why is it so big?

Bartucca: That is the design of the house. That's the way it is.

Tinkham: Is there anyone here who would like to speak to this?

There were several people present and Chairman Tinkham asked that they speak one at a time.

Tamara Dwyer – 28 Hillside: I was curious. We (referring to Ms. Bartucca) had talked and she stated that my fence and bulkhead were on her property. I am on the right of her house. How close will she be to my house?

Ms. Bartucca spoke with Ms. Dwyer and explained where the house will be.

Gaynor: According to what is proposed in front of me she will be going from about 14 feet from the right lot line to about 8 feet from the lot line. She will be about 6 feet closer to you.

The house will be encroaching on one of the homes driveways.

Gaynor: On the other side of the house she is approximately 15 feet from the lot line to about 3 feet from the lot line.

Gaynor: I think we definitely need to look at this.

Tinkham: Is there anyone else here who would like to speak to this.

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Jack O'Connell – 27 Hillside Avenue: I am concerned that the structure is going to be .9 feet from the street and I also noticed that there is an 11 foot driveway. How deep does that driveway go.

Casey: Why don't you point to which driveway you want me to discuss.

O'Connell – It is the one on the left side. My question is, how is the parking going to look. How many cars can be parked on that property.

Casey: Realistically it will accommodate 2 cars.

O'Connell – In an 11 foot driveway.

Casey: You have to understand. There is a driveway on each side.

Dwyer: But you are going to take one of them for the house. The house will be built on one of those driveways.

O'Connell – You are building the house 3 feet from the property line.

The Board continued to review the plans – part of the driveways are located in the street.

Dwyer: I still have another question. Is this going to be elevated up? This is a nice little neighborhood. My house is a single story cottage. The existing house is a single story cottage.

Gaynor: It is going to be 2 stories.

Tinkham: Is the house going to be elevated any further than it already is?

Casey: There isn't going to be any substantial grade change at all.

Tinkham: We are concerned with the elevations. You are saying there will not be any substantial changes in elevation.

Casey: It won't be more than a foot.

Tinkham: We have had people come before us and then it is more than 4 feet off of the grade.

Traynor: How do you know this if the Board of Health hasn't approved this?

Tinkham: We don't. Did this answer your question.

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Dwyer – Yes and No. They are still saying that there are changes to be made.

Bartucca: I want to talk.

Tinkham: We need to give people a chance to talk.

Schleiff: We can suggest that they put a top of foundation grade and they would have to hold to that. Then you would understand where the crown of the road is and where the top of the foundation is. They would have to abide by that.

Tinkham: We won't be making a decision on this tonight. We will be having an on-site visit. It is a public hearing and you are all invited to attend.

The Board reviewed the layout of the home. The neighbors questioned why the front of the home was located sideways on the lot.

Oscar Magnuson – 13 Eleventh Ave: I am concerned with the cars and the parking of the cars.

Tinkham: We would like you to come to the on-site and we can review this.

The Board requested that Mr. Casey stake out the outline of the proposed addition prior to the on-site inspection.

Lois Pento – 15 Eleventh Ave: How many bedrooms will there be in the house?

Tinkham: Three.

Schleiff: It is rated for 3 bedrooms.

Bartucca: Yes.

Pento: I am concerned about the deck on the front of the house. What if someday they decide to enclose it?

Schleiff: They can't. They would have to come back before us if they wanted to close it in.

Pento: I know, but people do it all the time without permits.

Schleiff: If you see that happening, you can inform the building inspector.

Gaynor: If that were to happen, there is a maximum penalty of \$300 per day per offense.

Pento: Does that include sheds, fences, etc.

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Tinkham: Yes.

Pento: I am afraid that it is going to be too high.

Casey: When the old house gets torn down, we will start from the existing grade.

Pento: So you are going to build on the existing foundation that is there and then you are going to add another foot.

Casey: Yes.

Pento: How is it a story and a half; isn't it two stories.

Schleiff: It is a pitched roof and the eave ends basically end up being storage because you can't have living space the whole length of the whole house.

Casey: We are not here in front of the ZBA asking for any height variances.

Pento: How far back is the back of the house going to be?

Tinkham: Maybe a couple of feet beyond the existing deck.

Schleiff: I am concerned with how they are going to make out with the Board of Health.

The applicants have designed a septic plan that requires variances from the Board of Health and they have not approached the Board of Health for approval.

Dwyer: I am concerned that because we have asked questions that we have some impact on the decision. Is that how it works.

Tinkham: We take your questions into consideration but you do not have a say in the final decision.

Chairman Tinkham discussed with the public the way the board works and how Town Meeting passes bylaws, etc. She also explained that what the applicant applies for is what is to be built and the abutters can express their concerns if something else is built.

Ms. Bartucca got upset and began to cry. She wants her dream house.

The neighbors expressed the fact that they had questions and concerns.

Chairman Tinkham then reiterated that they take the abutters comments into consideration but the abutters comments are not the deciding factor for the decision.

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Chairman Tinkham told the abutters that an on-site will be scheduled and the proposed addition and decks will be staked out.

Pento: I have a question for Ms. Bartucca; will her family be living there year round.

Bartucca: Yes, we will be living there year round.

The on-site will be held Saturday, June 24, 2006 at 10:00 am.

The Board continued the hearing until July 10, 2006 at 7:45 pm.

The Board voted to reappoint and recommend Robert Gaynor for another term.

All those in favor, please signify by saying aye. So VOTED 5-0-0

It was duly moved, seconded and VOTED to adjourn the meeting.

Respectfully submitted,

Melissa Traynor,
Administrative Assistant

It was duly moved, seconded and VOTED to approve the minutes of Monday, June 12, 2006 as presented/corrected.

Debra Tinkham, Chairman
Zoning Board of Appeals
