



Town of Halifax Commonwealth of Massachusetts

Zoning Board of Appeals

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

HALIFAX ZONING BOARD OF APPEALS MONDAY, OCTOBER 2, 2006

The Halifax Zoning Board of Appeals held its regular monthly meeting on Monday, October 2, 2006 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Jean Reilly, Kozhaya Nessralla, Robert Gaynor, Richard Gilcoine and Michael Schleiff

Garrett Walsh was not in attendance.

Chairman Tinkham called the meeting to order at 7:15 p.m.

APPROVAL OF MINUTES:

It was duly moved (K.Nessralla) and seconded (J.Reilly) to approve the minutes of Monday, September 11, 2006.

Chairman Tinkham: All those in favor of approving the minutes of September 11, 2006, please signify by saying aye. So VOTED 5-0-0

BILLS:

- A. Expense: Nelson Office Products/Office Supplies - \$19.99
- B. Expense: Citizen Planner Training Collaborative / Fall 2006 Workshops - \$150.00

The Board reviewed the mail and discussed other matter issues:

Mail

- A. 2006 Massachusetts Smart Growth Conference
- B. The Massachusetts Federation of Planning & Appeals Boards – Annual Meeting, “Things You Need to Know”

Other Matters:

- A. OCPC Agenda
- B. Charlie Seelig – Response Letter to Mr. Gerald Co-Wallis, Jr. (read into the minutes)
- C. Gerald Co-Wallis, Jr. – Thank You Letter to Charlie Seelig (read into the minutes)
- D. Charlie Seelig – Blackledge – Developer’s Answers to Questions by Highway and Fire
- E. Charlie Seelig – Wetlands/Resource Area Delineation for Blackledge – add this report to the booklet
- F. 40B Attached information received from Selectman Assistant – add to booklet

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Discussion with Stephen & Phyllis Tirrell – former petition #609 – 363 Plymouth Street, Halifax

- Tinkham: Mr. Tirrell, what are we up to? We don't have a regular hearing schedule for tonight? Is this a little in formal thing?
- Mr. Tirrell: Basically. My wife, both and I; I talk to Tom Millias, okay; and couple of years ago when I came to you...before you people and you granted my permit; and at the time, Melissa had me draw up a diagram...a sketch of what the building would probably look like; and I specified in the meeting and it should be in the minutes that I wasn't sure whether I was going with a steel building or a wood building. I didn't know at the time. Well, since that time, okay, you know, we all went to court and I won my case. I was obligated to put in fourteen trees to bump up...
- Tinkham: Oh...up here? Okay, I got you.
- R. Gaynor: Where is this?
- Tinkham: Mr. Harrison...Harrison sued us.
- J. Reilly: He has a house in the back.
- Mr. Tirrell: Behind Cushman Insurance and the kitchen place...Coletti kitchen. Anyway, we're going through court, I was obligated for a hundred forty feet, which would have been fourteen trees. I planted forty trees. Tom came down, inspected it and passed off on it. Ah, then I had a couple of personal losses so it kind of slowed us down a bit. But, I approached Tom about a building permit and my design that Melissa had me put in was for a steel building. Now, I have decided, and I did say at the time, whatever I did, I wanted to compliment the house. Well, the house is finally done and I'd like to have it the same as the house. So, I have gone with a wooden building, all vinyl sided to match which I think is really going to look nice. The problem being, now, with the snow load, I've gone to a wooden truss and with the snow load, you get a six (6) pitch. It's going to be a higher roof. So, Tommy said that I should bring it all before you to make you aware of what's going on. I haven't changed anything. I can give you an idea. This is the drawing that Melissa has of the draw of with the fourteen (14) foot doors, all facing which you can't see from the street. That's if I went with the steel building.
- Tinkham: Facing your house?
- Mr. Tirrell: Ah...yeah. This would be facing the bogs, okay? So, I haven't changed anything. Everything is still the same which you gave me the permits for. The only thing is...it's going to have a pitch. For a six (6) pitch, it's going to be like this.
- Tinkham: The footprint is the same? There's no change?
- Mr. Tirrell: The only change in it, that I am going to make is...right here. Tom said I have to have two (2) passage doors and one of the things was I...you people had reminded me that I would have no door facing the street. So, rather than have a passage door on the side here, I pushed the doors over and just put the passage door in front, rather than have it on the side of the building.
- Tinkham: And then there not enough air here?
- Mr. Tirrell: I'd lie and have the second passage here.
- M. Schleiff: Why did he say you needed a second passage?
- Mr. Tirrell: Tom said I had to.
- Tinkham: Just in case there's a fire. You have to have two (2) egresses.
- M. Schleiff: Well, look at all those doors.
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- Tinkham: Yeah, but if the fire is all up at this end?
- Mr. Tirrell: But the doors are over here, so they're saying I have to have two passes which I don't mind. I was just trying to put it out front. Well, this is what I'm calling the front. This is part which faces my back here. So, there would be no activity in my driveway.
- Tinkham: So, how does this...this raises the building up how high?
- Mr. Tirrell: If this was a steel building, it would be twenty one (21) feet, at peak. And, with a six pitch, it's going to be thirty one (31) feet.
- M. Schleiff: It went from what to what?
- Tinkham: Twenty one (21) to thirty one (31), so ten (10) feet more.
- Mr. Tirrell: Tom said its forty (40) feet from original grade that's allowable. So, I'm well under that. It was more or less just to make...he was worried someone would come down, pull the original plan, you know, and say, "Oh gees. You know this is more than twenty feet (20), but thirty (30) feet". So, he said to run it by you.
- R. Gaynor: Well, this is such a substantial change. When we give you a permit for something and there is a substantial change, you are obligated to come back before the board.
- Mr. Tirrell: I just wanted you to know that I specified from the beginning that I wasn't sure whether I was going wood or steel and Melissa had said just draw something up so the board can see what you are talking about.

While Mr. Tirrell was conversing with Mr. Gaynor, I mentioned to Chairman Tinkham that I had reviewed the minutes from July 12, 2004, to clarify that there was no mention from the applicant that the structure may be wooden. In the minutes, he confirmed that the building would be a "metal" structure.

The board began a discussion of what is considered "substantial" change. We referred to the Code of the Town of Halifax Massachusetts and read from page 16726.15, paragraph (7), which states, "Any deviation from Subsection F(1), (2), (3), or (6) above shall be by a variance from the Zoning Board of Appeals, which shall consider the area and height of said structure and its proximity to the lot lines in determining whether such a variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of this Zoning Bylaw."

- R. Gaynor: Are we opening this to questions?
- Tinkham: Yes, go right ahead.
- R. Gaynor: More importantly than the height being under the forty (40) feet and what not. What's the extra ten (10) feet going to be used for?
- Mr. Tirrell: Nothing. That was one of the conditions of the board.
- R. Gaynor: That was specifically stated in the conditions.
- Mr. Tirrell: I can't do anything. They wanted no second floor.
- R. Gaynor: Fine with me.
- K. Nessralla: The height when you put it on a wooden building instead of a metal building, the height to carry a snow load needs to increase. The metal building doesn't have that issue. There's more slant to a metal building. On a wooden building, the snow load could cave that building in.
- Mr. Tirrell: They're saying I have to have a five or six pitch for that roof.
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Chairman Tinkham proceeded to read back into the minutes the original ten conditions back in 2004 from the original petition (see attached decision letter, dated July 13, 2004)

Tinkham: So, everything is still going to be the way it is like it was before?
R.Gaynor: So, is there going to be a second floor or is it going to be open?
Mr.Tirrell: There can't be because...I'm not sure if you're aware what a truss is? It's like this.
There's no way a second floor can be there.
Tinkham: Well, that's pretty good.
Mr.Tirrell: Well, I actually have a picture of the truss. Maybe I didn't explain it right.

Mr.Tirrell proceeded to show a sketch of the roof truss to the board.

M.Ryan: Are these for us? So, these are for us for our records?
Mr.Tirrell: I have copies. Yes.
Tinkham: Okay, any other questions from the board.
K.Nessralla: As long as the upstairs isn't going to be occupied, that's fine.
M.Schleiff: Can we stamp these - put them in the folder as revised?
Tinkham: Can they stay in the folder? Yeah.
M.Schleiff: Can we stamp them, received tonight?

The board requested from the applicant copies of the revised plans to the building, along with a letter from the applicant requesting to change the original petition #609, specifying the change of the building material and the reason for the change in the height of the roof from peak.

Tinkham: But I mean. It's you and your wife before us tonight and not your neighbor next door submitting this request.
Mr.Tirrell: Okay.
Tinkham: So, if you could just get...
R.Gaynor: Can we vote on that?
Tinkham: Yeah.
K.Nessralla: Do you want to write it right? You can do it right now.
Mr.Tirrell: Sure.
R.Gaynor: You want to call for a vote on #609?
Tinkham: Let's call for a vote. I don't know who's here. Kozhaya originally...Jean, Richard, Michael and myself included. Okay, pending we will get the letter; I'm going to accept or deny the request before us tonight to modify petition #609.
K.Nessralla: Motion to accept petition #609 with changes. Twenty one (21) feet to thirty one (31) feet in height and original structure be constructed in wood.
Tinkham: Do I have a second please?
J.Reilly: Second.
Tinkham: And all the stipulations that the first petition.

It was duly moved (K.Nessralla) and seconded (J.Reilly) to amend petition #609 to change the height of the structure from twenty one (21) feet to thirty one (31) feet and to change the material of the structure from metal to wood.

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

The motion to grant petition #609 with changes passed 6-0-0.

Tinkham: It passes. I'm not sure if this has to go down to the Registry of Deeds. Probably does not but you'll get a letter from Marion in a few days. You can just bring that down to Tom or Tom can just call up here and we can let Tom know. We have a little wiggle room in this since it's not a full blown application. So, you can just...

Mr.Tirrell: Tommy's not back 'til Thursday, I guess.

Tinkham: Okay. So, Thursday, you can go see Tom.

Mr.Tirrell: It's been a long road.

Tinkham: It has and I'm sorry. That really should not have happened.

Mr.Tirrell: Tommy just said that it's been a couple of years; it'll be good to run it all. We're all on the same page, right?

Tinkham: Absolutely. We were on your side to begin with.

Mr.Tirrell: I'm going to give you copy of those truss' for your records.

Tinkham: Okay. That's fine.

#673 – SCOTT & KAREN THOMSEN – 12 BAKER STREET, HALIFAX

The secretary read the notice of public hearing:

The Halifax Zoning Board of Appeals will hold a public hearing on August 14, 2006 at 7:45 pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Scott Thomsen, 12 Baker St, Halifax, MA to enclose his existing deck and build a new 16x20 deck with 6x6 golf platform to his pre-existing non-conforming home, attach a 9x9 greenhouse to his existing shed, and build a 12x20 shed/screen room. Said property is owned by Scott & Karen Thomsen as shown on Assessor's Map #43, Lots 328A, 329 & 330. The applicant seeks a variance of the Baker Street Ext front set back from fifty (50) feet to ten (10) feet for the construction of the shed/screen room and special permits in accordance with the Zoning By-laws under Section(s) 167-11 Table of Dimensional & Density Regulations and 167-8 Non-Conforming Uses, and 167-12 Density Regulations for Specific Uses page(s) 16726.8, 16726.11 & 16726.13. Area is zoned residential. Petition #673

Following the reading of the public hearing, Mr. Thomsen passed around a packet containing the following: a letter from the applicant requesting both to change the measurements of the greenhouse and change the front set back from ten (10) to five (5) feet, a copy of the last page of the applicant's said deed, and a letter from Alan C. Vautrinot of Vautrinot Surveying, Inc. regarding his professional opinion pertaining to the issue of the westerly property line at 12 Baker Street, Halifax.

Tinkham: Would you give us a couple of minutes, seeing we just got this?

S.Thomsen: If you recall, remember you wanted to see how it read on the deed and how they described that area. The last page, Alan Vautrinot researched the deeds going back to 1967 where they voted the street remain a public way, but the forty foot way was not a part of Baker Street.

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- Tinkham: Any questions or comments? Are you guys finished or what?
- R.Gaynor: Which shed are we talking about being four foot nine? This one up here? The one closest to the house?
- S.Thomsen: Yeah...the greenhouse. Adding a greenhouse onto the deck.
- R.Gaynor: And this is the new shed?
- S.Thomsen: The new shed that would be down closest to the water...yes.
- Tinkham: We did write to the Highway Surveyor but did not get an answer back from her regarding that forty (40) foot piece right there. Ralph Hayward said, back then, said that it's town property and that is where the lot line to your property ends is right where that forty foot private way is. Correct?
- S.Thomsen: I don't know if that's what it said.
- Tinkham: But that's where your property line is. It runs parallel to that forty (40) foot strip between you and your neighbor. That's what the deed says.
- S.Thomsen: That's what the deed says?
- Tinkham: Right.
- S.Thomsen: When I first bought the place, the very first thing I did, before I even mowed the lawn, was hire a local surveyor, which ended up being Alan Vautrinot that I went to, who was also the original surveyor, to tell me where my property lines are. So, I'm not mowing my neighbor's lawn. I wanted to know and he staked out to the center of that way and he told me that I had the right to that center. That's how he staked it out and told me when I first bought it; and then, when I started making my other driveway...my second driveway for access to the lower end was when Ralph Hayward saw that I was doing that and he was a selectman and he said that he thought I was cutting trees down on town property. In which case, I went to the selectman and said I would like to get this cleared up. That's when they brought in their town surveyors and put in the concrete bounds that show the stakes. So, to answer that question, I can't say. Ralph Hayward never told me that was, per say, town property. That I can't cut down or do anything to it.
- R.Gilcoine: Are those surveyors' stake you put in? Are those the center of that way or those the one on your property line?
- S.Thomsen: Surveyors' stakes? Okay, but you're talking about the one that I banged into the street, you referring to?
- R.Gilcoine: Yeah.
- S.Thomsen: I hammered that in but the one that's just inside the trees, that's what the town surveyors had put in.
- R.Gilcoine: At the center of the road?
- S.Thomsen: Not the center of the road.
- R.Gilcoine: Okay...the right of way. Whatever it is.
- K.Nessralla: So, the forty (40) foot right of way has to stay open, right?
- S.Thomsen: Well, that's what the grey area is here.
- K.Nessralla: Well, if it's a forty (40) foot right of way, it has to stay open.
- S.Thomsen: It doesn't say "right of way". All it says is "way" and according to the letter from Alan Vautrinot, the two abutters have the right.
- K.Nessralla: You're right and anytime you have a right of way, it has to say a "way" or a "right of way". It has to stay open to whomever whose got access to it.
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- S.Thomsen: Well, which it still is and will. It hasn't changed and will not change. I just want the shed five (5) feet from...
- K.Nessralla: From the forty (40) foot mark?
- S.Thomsen: Correct.
- R.Gaynor: So, from the middle of the right of way?
- S.Thomsen: No. Five (5) from the...that would be twenty five (25) from the middle of the right of way.
- K.Nessralla: The edge.
- S.Thomsen: I'm not looking to do anything on that way. I'm not looking to clear it. But Garrett Walsh was very concerned on just how they called it and that had a direct impact on how he was going to vote on it. He wanted to see what they called it.
- K.Nessralla: Well, he also didn't want to be in a lawsuit 10 years down the line where someone can say hey, the right of way is ours.
- S.Thomsen: Well, I don't know what his thinking was on that.
- Tinkham: Well, according to Ralph back in 2000, he visited the property on August 26, 2000, "...It appears that many improvements have already been made to the property. I question the property line as being the center of the road layout as this whole plan or subdivision was accepted by the Town, unlike other so-called paper streets. In any case the only problem I see to Mr. Thomsen cutting trees and constructing the boat ramp is that this is Town Property and should be able to be used by any residents. I believe that if the Town property is to be improved it should be so that all residents can use it..., not for the exclusive use one resident". He's calling it town property. Which is only going to make that a little bit muddier? But, right, I'm not sure if maybe we should take the buildings separately and vote on each.
- K.Nessralla: It says over here that you just passed to us. It says "a forty (40) foot way" It is a right up. It is a forty (40) foot right up. So, it's town property.
- R.Gilcoine: It doesn't say that.
- K.Nessralla: It states its town property.
- S.Thomsen: I'm not looking to take it over.
- K.Nessralla: No...no. I'm just saying...the stipulation. No matter what, it's the right of way to whoever wants to travel that road.
- R.Gilcoine: But the surveyor says he is not too sure if it's a right of way.
- K.Nessralla: The only way you can confirm it is to go back to your old records.
- R.Gilcoine: I mean I would take the surveyors word over the highway supervisor. I have no problem.
- S.Thomsen: In the old records, there's something on the last page, which has the number to the deed, if you go there back on 1967.
- Tinkham: Oh, to accept the road.
- M.Schleiff: I mean the only concern I have is the impartiality of this letter. He did work for you and you paid him and he's making a judgment based on what...you know what I'm saying?
- Tinkham: Yeah...no, he would had to go here and pulled the deed and it's his reputation on the line.
- S.Thomsen: He's not going to risk his license or anything.
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Chairman Tinkham proceeded to read the letter submitted by the applicant “This is to notify you that I have changed my intentions on two items now before you. Change measurements to greenhouse from 4-9-9-4 to 4-8-8-4”. Applicant apologized for the way he worded the change of the measurements of the greenhouse. He went onto explain what he actually gave were the measurements around the addition (meaning on all four sides), which the board acknowledged and understood.

M.Schleiff: Change voters?

Tinkham: Garrett in the room? Garrett wasn’t on this one. Burt, Richard, Kozhaya, Michael and myself.

The board discussed the members that were in attendance for the first and/or the second meeting for the applicant’s petition.

Tinkham: That’s why you asked me the question. But you did read the minutes? Okay. We have a little dilemma. This is the third time we met. Kozhaya was here for the first meeting and tonight but he was not for last month’s meeting.

S.Thomsen: What does that mean?

Tinkham: You have gone down to the site? You haven’t gone down there? Were you there last time?

M.Schleiff: Well, he doesn’t have to go down to the site.

Tinkham: Well, it means two things. We could go on a four person vote tonight. We really can’t wait another month because it would be past...the deadline. Yeah.

K.Nesralla: When is the deadline?

Tinkham: It would be a hundred days to act on this petition and we can’t wait for another month because we go beyond that timeframe. Okay.

S.Thomsen: I don’t understand that. Is that some town law?

Tinkham: State law. We have a hundred days unless you... we get it in writing from you and it’s okay to wait another month.

S.Thomsen: How are you going to know? Because I strongly believe that Garrett Walsh favors this based on my research and he would be my best ally at this point.

R.Gaynor: Because he needs a unanimous vote.

Tinkham: No...oh, for four? Yeah, I’m sorry...yeah, it is unanimous.

S.Thomsen: So, how do I get a unanimous vote tonight? Because I feel that someone here is not going to vote in favor and ...wondering what Garrett would have to say.

R.Gaynor: Can I ask a question?

Tinkham: The chair is still open.

R.Gaynor: I would like you to explain, especially from this position, umbrella, missing this and that, and for my own purposes on how my vote would go, the use of the shed and the discussion we had at the last meeting. What’s being called a shed, the debate went on. In my opinion, I thought it was more a accessory building because it’s being called a shed, a 12 by 20 shed. But there is electricity, there’s water, there’s a refrigerator, there’s ice, there’s a sink.

S.Thomsen: There is no sink.

M.Ryan: Spickett.

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- M.Schleiff: What is actually is going in this? What are you asking for?
- Tinkham: Wait...wait...wait...
- R.Gaynor: Exactly. That's what my question was? How it's being used? Used as living space, but for purposes here, we're calling it a shed.
- K.Nessralla: A meaning of a shed is something you can store some things in.
- R.Gaynor: Right and as the discussion went, nothing was going to be stored in here for the most part.
- S.Thomsen: Burt, do you want me to explain?
- R.Gaynor: That would be great because we have, it so I know too and you can include in the explanation if you would, up here, the other shed is being used for lawn mowers, etc...
- S.Thomsen: Garden stuff...
- R.Gaynor: Garden stuff but this one was basically...well, you can explain it. Stuff for the boat...water skis.
- S.Thomsen: Alright, because we are on the lake and we have people over quite often, we're hauling down napkins, salt, pepper, paper plates, everything...every week; and, going up to Tedeschi's and wiping them out. Going to Cumberland Farms here...going to Lindy's and getting ice to replace it. We're calling it a shed. It's going to have two rooms in it. It's going to be twelve (12) by twenty (20). Eight (8) by twelve (12) of it be storage for the boat - he water skis, the tubing, the tubes, the vests, that stuff, paddles. All that stuff. I mean it got stolen a couple of times. The other part of the shed room would be a twelve (12) by twelve (12) which would basically have a patio table in it with chairs around to sit and the wall would be open. Like storm door panels, thick glass out with a screen and you put your storm door panels in for the winter to store all the lawn furniture.
- R.Gaynor: And how would it be used during the summer?
- S.Thomsen: During the summer, it would be there as basically; a...I don't know what you call it. A central point, something for storing all the paper goods, salt and pepper...
- R.Gaynor: Do you cable down there?
- S.Thomsen: Pardon me?
- R.Gaynor: Do you have cable down? Has the cable been pulled?
- S.Thomsen: No.
- R.Gaynor: So, what is down there now? The electricity?
- S.Thomsen: There's pipes coming up out of the ground. Part of the chase way is going up to the upper shed into the house...
- R.Gaynor: For?
- S.Thomsen: To run an electric line down. There's already a water and air compressor line coming up.
- R.Gaynor: And that was my concern. My concern that it be living space and accessory building but it's not a shed.
- S.Thomsen: It's not going to have eight kids. All the lawn chairs would be stored in there all week long and taking basically, filling up that room. Taking them out and put on the lawn. The furniture does not stay out all the time.
- R.Gaynor: Didn't you want a stove down there or some kind of heating unit?
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- S.Thomsen: I would like to put an electric stove in it for helping, you know the parties, cooking the casseroles. Something just to warm them up when people come. Instead of running up all the way to the house.
- R.Gaynor: So 12 by 12 would be used as a...
- S.Thomsen: Like a screened in porch.
- R.Gaynor: Okay. Screened in porch; and the other 8 by 12 would be for storage.
- M.Schleiff: Where's the description of that?
- R.Gaynor: Bottom left. No. Great. Thank you.
- S.Thomsen: There wouldn't be any sink in it. Yes, there's running water but a spicket on the outside for the lawn or washing the boat. And then, on the inside, nothing more but a line pumping through an icer.
- Tinkham: What is that you're talking about? What did you call it a chase line?
- S.Thomsen: The pipe chasers. Yeah, to be able to run things done...through.
- M.Schleiff: Is there hot and cold water? Hot water and cold water.
- S.Thomsen: No. Just cold water. That's already there. That's just lose, hanging out.
- M.Schleiff: Now Burt, I talk to Tom about the definition he has. There is no definition for shed. A shed is essentially an accessory building in itself.
- R.Gaynor: Right. I'm concerned with the use. Its use. You know we've had plenty of instances in the past. I don't know if you were here or not where we had commercial property with a mix use of living space. If this a room, a building, an accessory building, a shed...call it whatever you want. It's being used. Its use is living space. That's my opinion.
- M.Schleiff: Regardless of any.... of any toiletry.
- R.Gaynor: Regardless...exactly. Right. No different than as we discussed in our last meeting. What's basically different between that and an in-law apartment. That afterwards, not being used by the immediately family members, after the five year permit has expired, we have the kitchen and the stove and the sinks and everything removed. Right?
- Correct?
- M.Schleiff: Right.
- R.Gaynor: So, why would we do that? What's the difference? It's because of its use and that's how its being used and that, as a board, is what we should decide on.
- K.Nessralla: What's to prevent that into turn that into a little media town?
- D.Tinkham: Or not necessarily Mr. Thomsen, but the next owner.
- S.Thomsen: The fact that the septic system is one hundred fifty feet up the hill. Anybody in this side of town can turn anything at any time.
- K.Nessralla: No, I know.
- R.Gaynor: You're right. You're absolutely right.
- K.Nessralla: We're not...we're not singling you out. We're just trying to find out.
- S.Thomsen: If anybody does turn anything into anything later on and they get caught at it, they get fined and they get penalized. Whatever.
- M.Schleiff: Enforcements.
- S.Thomsen: I mean I've been on the up and up with you for every minute telling you exactly what I've been doing with it.
- R.Gaynor: Yes, you have. Yes, you have. I'll agree with you.
- S.Thomsen: I don't want any surprises down the road.
- K.Nessralla: Neither do we.
-

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- S.Thomsen: Yeah. This is...this is how we live.
- R.Gaynor: So now, what does it come down to? Comes down to his decision at this point if he wants to try to get a unanimous vote by the four voting members? Are we going to include Kozhaya and make it five? Or do we have to wait and post...maybe he can submit a postponement 'til next month? A request for postponement 'til next month when Garrett is here?
- Tinkham: Well, actually, it's going to end up the same thing because next month, Garrett would vote on it but then Garrett wasn't here for the first hearing. So, we're going to run into this again. But, there was a...Chapter 79 the Acts of 2006. Chapter 39...basically it came out because of 40B and because of all of the involvement with 40B. (Chairman Tinkham proceeded to read Chapter 79 of the Acts of 2006 – An Act Further Regulating Meetings of Municipal Boards; Chapter 39 of the General Laws is hereby amended by inserting after section 23C the following section:-) “Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing . Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements”.
- M.Schleiff: So, if he writes a letter saying I certify.
- Tinkham: Or he's gone through the minutes because he wasn't here.
- M.Schleiff: He's read the minutes and comfortably up to speed and he has to give us...he has to give the Board a letter. How do you certify that? What is the definition because it doesn't sound like that they are really it has to be certified by.
- Tinkham: No.
- K.Nessralla: It only means that I missed a meeting.
- M.Schleiff: Certified by a notary public.
- Tinkham: Which is the minutes which we just accepted.
- R.Gaynor: So, the transcript would meet that requirement would fulfill by the fact you're recording the transcript or the minutes are the same thing.
- Tinkham: Says the law, the transcript or audio; and Mr. Garrett is not here tonight.
- M.Schleiff: We have to go back to the minutes from...
- Tinkham: From the first hearing...August 2006. But, either way, we're going to run into the same problem. The next month, if Garrett's here, Garrett's still going to have to do the same thing.

Discussion went back and forth with the Board regarding the attendance of the board members for past two hearings and the current hearing.

- Tinkham: So, if you want to postpone this tonight and come up with the abutter by asking us to postpone this until November...
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The secretary reviewed the Zoning Boards of Appeal calendar and confirmed that the next hearing for the Zoning Board is scheduled for Monday, November 13th.

- S.Thomsen: I question about Garrett not being here.
- R.Gilcoine: We're all volunteers. We're not obligated to be here. We try to be. We're not paid officials so to speak.
- S.Thomsen: I'm overly convinced that he would be my best ally because and... I mean I would guess you would all agree with me that he is the most educated on the board regarding this circumstance. He's a civil engineer. He's familiar with this.
- M.Schleiff: He works with civil engineers. He's not a civil engineer. He works in an office that has civil engineers.
- Tinkham: Your call.
- S.Thomsen: My call? You're not giving me any indication about how you're voting.
- Tinkham: We can't.
- S.Thomsen: I've got a shot because of Garrett Walsh.
- Tinkham: We can't until we vote because once we vote, that's it. I mean if you don't like the outcome, you can't say, "Never mind. I'll wait next month for Garrett". It's...
- S.Thomsen: I haven't, tonight anyway, I haven't got any...you know arguments against...
- R.Gaynor: I'll right tell you I'm voting against it.
- S.Thomsen: Which...
- R.Gaynor: Oh, you said you had no indication. I'm telling you. My indication how I am not voting in favor.
- M.Schleiff: Was that in whole or part? In whole or in part?
- R.Gaynor: It's petition number 673. If you want to break it down which I don't know if you can because its...you don't petition 673A, B, C or 673,674.
- K.Nessralla: Or you have to vote as a whole...
- R.Gaynor: Exactly. I mean if you want to put amendments on it and put stipulations that he agrees to in different parts of it, then certainly I'm open to certainly anything like that. But, we are voting on petition number 673.
- M.Schleiff: But now if we put stipulations on any petitions, we say not to do this. Couldn't that be one of these things in here?
- R.Gaynor: Absolutely. That's just what I just said.
- M.Schleiff: Okay.
- S.Thomsen: Just like what it was the last time. You put a stipulation that I couldn't have a sink in it. You put a stipulation that it couldn't be built until my addition was done on the house. And you know...
- R.Gaynor: I'm just trying to help because you said you had no kind of inkling how the board was going to go, so I'm telling you.
- S.Thomsen: Actually, I had that it in the back of my mind.
- R.Gaynor: Well, you said. That's what you said. You said you did not know.
- S.Thomsen: I mean it just seems like no matter what I came out with...the outcome, you already had your decision made up.
- R.Gaynor: That's not true. I've been sitting on the board for sixteen years and I take every one, one at a time. I kind of have an idea of what I think is part of...
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- S.Thomsen: But if you're afraid I'm going to be using it for an in-law apartment.
- R.Gaynor: I never said that. See, I never said that. I don't think that.
- S.Thomsen: No, but the use.
- R.Gaynor: But the use, I do have a big problem with the use. Yes, I do.
- S.Thomsen: Now, that use that I described, you find that at fault or not right.
- R.Gaynor: I just said that. Yes. The use. The way you used it.
- S.Thomsen: The way I would use it for a party.
- R.Gaynor: The shed is being used as living space. What you call a shed, I consider living space.
- S.Thomsen: But, it was also a big discussion as to no difference calling it a shed or an accessory building. There's no cut and dry definition from one or the other. I find that odd.
- R.Gaynor: Absolutely. The use. I'll explain it again is living space. I mean with electricity and water and a stove and uh...
- K.Nessralla: Ice-maker...
- R.Gaynor: Ice-maker. The phone. I'm considering...in my personal opinion. It's just my own. I'm not speaking for anybody but Burt Gaynor. What you're calling a shed, I consider living space.
- S.Thomsen: I can almost also do that to a tree. I can mount a water spickett to a tree. I can put a phone jack to a tree. Electrical on a tree.
- R.Gaynor: Like you said, you can change anything you want. You can change it and call it whatever you want.
- K.Nessralla: So now, you're going to sit inside of it.
- R.Gilcoine: It's pretty much a kitchen without a sink.
- R.Gaynor: There you go.
- S.Thomsen: Pardon me?
- R.Gilcoine: It's pretty much a kitchen without a sink. Right? It's got a stove.
- S.Thomsen: Well, it's just something...like I explained. We have a lot of parties down there and wheeling and carrying everything down. It's just convenient. I'm a taxpaying citizen of the town.
- R.Gilcoine: Well, I mean. I had a problem where it was so close to the edge of the road.
- S.Thomsen: I mean if you want to put in. I mean you were drawing pictures of us kind of dividing it into rooms and stuff.
- R.Gilcoine: Oh yeah...I do that all the time.
- S.Thomsen: And that was totally wrong. But if you mean if you want to put any stipulations that this one room can't be subdivided or something?
- R.Gaynor: Why don't we move on with that? Sure. Let's move on with that.
- M.Schleiff: As is?
- R.Gaynor: I make a motion to accept petition number 673 as is...as presented.
- R.Gilcoine: I'll put a stipulation that no living space. No...that it can't be like insulated and made into a living area. No bed...no cot or anything like that.
- S.Thomsen: Well, that's right but I do need to...
- R.Gaynor: He has the floor. I don't think you can speak now before voting.
- R.Gilcoine: I'm not saying as not to put a stove in it. I'm saying nobody is to live in it. No beds.
- S.Thomsen: I need to insulate it because it kills the heat. You know what I mean. It kills the heat coming in, they get caught...insulated even though it's all screened.
- R.Gaynor: Just so I...for my own clarity now, who's voting on this now, please?
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- Tinkham: Richard Gilcoine, Kozhaya, Michael, you and myself.
- R.Gaynor: So he needs a unanimous vote in order to pass?
- M.Schleiff: How does he get the votes to pass?
- Tinkham: Burt, Richard, Kozhaya, you..
- M.Schleiff: But he...he hasn't certified the last month.
- Tinkham: But he has...he has read the minutes.
- M.Schleiff: Okay. So, is he submitting a letter? Is he going to give us a letter stating that he read the minutes and that?
- Tinkham: Well, he's the one who approved the minutes but he definitely has read the minutes
- R.Gaynor: So, what is it again? What is the..
- Tinkham: It would be four. It would still be four. Burt, Richard, Michael and myself. It would probably be four next month.
- M.Schleiff: I don't have any problem with any of it except the shed.
- K.Nessralla: Order it up with stipulations.
- M.Schleiff: I mean the one stipulation was no insulation and he wants the attic insulated...the ceiling insulated.
- Tinkham: Well Richard, finish your stipulations and then we will... We have a motion to accept. We have stipulation that it does not become sleeping areas.
- R.Gaynor: I'll make a stipulation that the electricity and the water and the stove and the refrigerator is removed from the place, from the room, from the shed, from the structure.
- M.Schleiff: On a separate transfer to...
- R.Gaynor: No. There's no electricity; that there's no water; that there's no refrigerator; that there's no cable. It's not being used as living area.
- M.Schleiff: Inside. Inside the structure...
- Tinkham: That it's strictly a shed.
- R.Gaynor: Correct.
- M.Schleiff: Can he even have it outside the structure? I mean he's already got it out.
- Tinkham: So, in the 16 by...no 12 by 20.
- S.Thomsen: This doesn't sound fair.
- R.Gaynor: Well, after we do the stipulations, it's up to you whether you can live with them or not. You can say yes, no, you can, you can't. You can withdraw. You can postpone. You can withdraw your application without prejudice.
- S.Thomsen: I want what I want and that's what I want. So, if you deny me of that, what's my next case? My next option? A lawyer and taking you to court because that's where I'll go. This is what I want. This is crazy that I would be denied something as simple as this. I'm a taxpayer. I'm not having living guests. I'm not...
- M.Schleiff: I mean if everybody come up here and said, "I want this and if you don't give me it, I'm going to get a lawyer"...and this and that. I mean that's not the whole idea of the board.
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- R.Gaynor: We have criteria that we determine our votes on to review. It has to be a hardship. It has to be ah...can't derogate from the intent of the bylaw and it cannot be detrimental to the established character of the neighborhood. And, like I said, you know, sitting on the board for this long, this is the criteria I've used from day one which is what we are obligated to do; and it's an opinion. Like you said, you're a citizen. Like the petitioner said through the chairman. You know, you can apply for whatever you want. It's up to this board to make those determinations in order to give a variance that that criteria is met and that's what our decisions...individual decisions are based on.
- S.Thomsen: Well, the last time, you approved this shed going in with electricity in it. It's already been recorded at the registry of deeds and all that. Just a stipulation that there is no sink in there.
- M.Schleiff: There will be one set parked place for the exterior of the shed. No plumbing shall be permitted inside the building. And we don't know exactly what was asked for except that...just by reading this one letter.
- S.Thomsen: There wasn't anything. The reason...

(The tape needed to be turned over at this point.)

- Tinkham: You know. When you talk about the sink. When you talk about the refrigerator and...
- S.Thomsen: The sink?
- Tinkham: Alright...the ice-maker. I mean it's no longer a shed. It's almost a room of a house. A cash flow in the house and that's what the board has been trying to get from you. I mean I don't see anything from in last one where there was going to be...I mean it said no plumbing, back then. I mean you're asking now for it to be five feet off the lot line.
- S.Thomsen: That is the biggest change, wanting to move it over because, we discussed, it would block the view. You discussed in the last meeting that that is the hardship, blocking the view. It was the hardship.
- R.Gaynor: It was discussed but it was not determined.
- S.Thomsen: No, I know. Right, but not so much because of hardship that I need this in order to live. I mean that's reasonable...fair. I mean we all have to live.
- R.Gilcoine: Where is the wetland that's to hardship?
- Tinkham: On the other side.
- R.Gilcoine: Over here...on the other side of the shed down there. This is the wetland?
- Tinkham: Yeah.
- R.Gilcoine: The wetland was the hardship.
- Tinkham: Back then it was only an outside water hookup was to be allowed. Electricity may be connected to provide interior lighting. Now, you're talking screens. Now you're talking...
- S.Thomsen: Now you're talking screen? Well, that was always from day one, five years ago. That was always the intention. The whole idea behind it was to sit down there and have a screen room.
- Tinkham: Well, I have a motion.
- R.Gaynor: There's a motion on the floor with stipulations as we need to finish to moving along.
- M.Schleiff: Finish the stipulations?
- Tinkham: No sleeping areas. No bed or cot. No electricity, water, plumbing.
-

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- M.Schleiff: Well...lighting. You okayed electricity for lighting in the last meeting.
- Tinkham: Lighting...and a water spickett on the outside back in 2000.
- M.Schleiff: One silcock placed on the outside of the structure.
- R.Gaynor: Was it five feet or ten feet back the last time?
- M.Ryan: Ten.
- R.Gilcoine: Was it the same the design back then?
- S.Thomsen: Pardon me?
- Tinkham: Okay, I have a motion with stipulations that no utilities to the screen house at all and no sleeping areas.
- M.Schleiff: Are you allowing no utilities except for lighting. You know that was in the last one?
- R.Gaynor: I'll put accepting the lighting. I'll accept the lighting.
- M.Schleiff: Lighting. Some lighting. I don't know if that includes or excludes another one.
- R.Gaynor: I'll amend my stipulations that lighting only.
- Tinkham: Once I vote on this, there will be two year waiting period. You go back...you go to the planning board with substantial changes or it becomes a civil matter. So, I don't know if you want to postpone this or do you want to go forward tonight. I'm giving you the option before I call for a vote so...
- S.Thomsen: I don't understand what you said about the two years?
- Tinkham: If it's denied, there's a two year waiting period before...
- S.Thomsen: Before I can reapply?
- Tinkham: Yes. That's what the options are right now.
- S.Thomsen: Right...or?
- Tinkham: You go before the planning board, request a hearing that you've made substantial changes to the plan that's before us. And they can determine or deem whether or not it comes back to us within the two years. Or it becomes...
- S.Thomsen: So, I have to wait two years before I can go to the planning board?
- Tinkham: No. You can change your plans, go to the planning board, and they could then instruct us please go through this hearing again or a civil matter. Which...
- S.Thomsen: I would have to change my plans in order to go to them? I couldn't just go submit to the planning board...
- K.Nessralla: It has to have some kind of change on it. The point you couldn't that plan to the planning board the way it is. It has to have some kind of change on it. Differ the shed say 10 by 20 or 12 by 20. The change is 10 by 20. Some kind of change. Something substantial.
- R.Gilcoine: Could he tonight if he wanted to delete the shed? There's that. Tonight, if he could delete the shed and that way we vote on the greenhouse and porch addition. That's an option.
- S.Thomsen: Now, I don't understand how or why you can't vote yes, on this...a, on this...yes, on this.
- R.Gilcoine: Because this is all on one petition. You don't have petition like we said earlier. a, b.
- S.Thomsen: This is how I was told to do it. Knowing what I wanted to do all along. If that's how I should have done it, then I should have been told that; and what would the difference would had been? I mean send out six different letters to the neighbors and stuff.
- Tinkham: No, it would have been on the same form. It would have been petition 673a, b, c...whatever.
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- S.Thomsen: Then that's how it should have been. I should have been told that.
- R.Gaynor: Didn't you say that you wanted it to be all or nothing?
- S.Thomsen: For voting purposes.
- R.Gaynor: Oh...sorry. I thought you said you wanted or nothing.
- S.Thomsen: All or nothing. I don't understand when I said that ten minutes ago regarding the shed. I don't think I'm asking for anything unreasonable or detrimental to the neighborhood or anything that anybody else in town shouldn't be able to be allowed to have. I want a shed that services my needs to have people over in the weekends.
- Tinkham: So, Mr. Gilcoine brought up another option. We could, with your permission, take the shed off here totally and vote on the remainder of the changes on this property tonight. Because I think you have a feeling how the rest of it is going to go if the shed is on there.
- S.Thomsen: So, and then I what? I reapply. I do the same thing. Reapply for the shed on a separate.
- Tinkham: Separate. Yeah. Reapply it later.
- S.Thomsen: What exactly? Who is the five put a sticking point regarding a denial sticking point? We talked about the electricity. Why lighting and a plug wouldn't be allowed inside it? Would a plug be allowed on the outside? Will the electrical department require that it has a plug in it being an out domain that they don't want extension cords running out for safety reasons. Will they require having any wire? There's also, I've got lights down there to the horseshoe pit that I want to light up with it at one or someday.
- M.Schleiff: You can pull an electrical permit. I mean the electric permit in town and once you meet code, you can have wires anywhere you want.
- R.Gilcoine: You can't overrun a code. A code is a code.
- S.Thomsen: Because that's what I'm saying. You are stipulating that it's lighting only. But the electrical inspector may require a...
- R.Gilcoine: If he says it's a plug in, then it's a plug in. Nothing we can do about it.
- M.Schleiff: I mean if you're going to put lights there, you're going to have to pull a permit anyways. An electrical permit.
- S.Thomsen: Yeah. Right.
- M.Schleiff: We're just saying you can't have the whole place wired for sound, you know...bandstand. Two hundred twenty welders out there.
- S.Thomsen: I mean it's not like I having a commercial property here and trying to put on a concert. I mean...yeah, maybe I want a radio there and have a speaker. The only ones that should have anything against that would be my wife and my neighbor. Trust me, my wife is the one that listens to the radio. I can take it or leave it. I don't understand what the problem is what you are afraid of me doing.
- R.Gaynor: I don't understand if I could interject. I don't understand why there's a motion on the floor and there's stipulations put on it that there's discussions on the board; and I don't know why we're still open for discussion.
- S.Thomsen: Because the question was directed at me.
- R.Gaynor: No, it was not.
- S.Thomsen: Yes it was. She asked me.
- Tinkham: Yeah because I asked him what he wanted to do. Because if we go forward, it's over or if it goes forward, I mean if it fails tonight.
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- M.Schleiff: You kind of got an inkling where we're going with this and we're trying to say, you know, we all have different opinions of this, as well as, you own opinion.
- S.Thomsen: Yeah.
- M.Schleiff: Your own opinion is a, b, c, d. Five different opinions.
- S.Thomsen: Well, the last meeting, it seemed like ninety percent of it was what that land was called next to me. That's, you know, Baker Street, then I was going to get shot down right then and there.
- M.Schleiff: Well, that was your...
- S.Thomsen: And now that seem to have tilted another way. And now you're finding another arguing point there.
- K.Nessralla: No. Now we are only arguing about the shed. Do you want to leave the shed out and come back another day?
- S.Thomsen: Will I do that? Fine. But I'm still going to have this same problems with this later. I mean already, I will tell you yes, I will say I would like to separate this and have you vote separately on the shed later and everything up now. Yes, I want to do that.
- K.Nessralla: Then let the board vote. Then let the board vote.
- S.Thomsen: But, I want to know what the problem is so when I come back the next time, what I need to do to get my point across or where the misunderstandings are.
- Tinkham: I don't really think there is no misunderstanding. What you're telling us you want an ice-maker, you want electricity, you want running water down there, you wanted some means of cooking or heating down there; and that becomes living space and that's not what is being applied for and that's not... This is something the board is having a problem with. That's the problem right there. That's the sticking point. Is this now becoming living space?
- S.Thomsen: Okay. Then based on that, I wouldn't find it unreasonable that you might be concerned with that and if you want to put in that I could not put an ice-maker down there or a stove down there, that's not unreasonable. You've got a reason. It feels like it's putting you in jeopardy at some other point should come up later on down the road and you had voted on this and it gets you into trouble. That's okay. If that will push it through that one of the stipulations that I don't put an ice-maker or a stove down there, okay. I'm alright with that but can I still ask for lighting in it. A plug or two. One in the 12 by 12 area and one in the 8 by 12 area; and is it pushing it if I ask for a refrigerator? I'd put the refrigerator in the 8 by 12 area where it's a storage area just to keep the cold drinks having to use up so much ice.
- R.Gaynor: What's the board luxury? There's a motion and then something.
- Tinkham: Well. I mean. It's your motion, Burt and if you would entertain the thought of changing the stipulation that was just mentioned, fine. If not, then we go forward.
- M.Ryan: Are you insulating the entire shed?
- S.Thomsen: No, just the 12 by 20 area.
- Tinkham: We've got to move forward or postpone it or withdraw it.
- R.Gaynor: I withdraw my motion. It wasn't second anyways.
- Tinkham: Yes, it was. Richard seconded it.
- M.Ryan: He seconded it with stipulations. The sleeping.
- M.Schleiff: Can it still be withdrawn?
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- Tinkham: That's okay. Okay. So, we're back to square one. Does anybody else want to make a motion on this? The problem is we have to do something tonight. We'll reach our a hundred days.
- S.Thomsen: Can I ask for proof that Mr. Nessralla is involved in this?
- Tinkham: No you can't. You can't.
- R.Gaynor: I'll make a motion to accept petition number 673 as presented.
- Tinkham: Do I have a second?
- R.Gilcoine: Are you going to go for the whole thing? The whole petition. The way it was presented.
- S.Thomsen: Is there going to be a stipulation ?
- R.Gilcoine: I'll make a stipulation.
- R.Gaynor: How can you make a stipulate on my motion?
- R.Gilcoine: I just did before.
- R.Gaynor: No. No, that's because I agreed to it. You know I said I'd open it up to whatever...that was my motion. But I didn't do that. I'm making a motion that we accept petition 673 as presented.
- Tinkham: Any stipulations, Burt?
- R.Gaynor: No.
- Tinkham: Do I have a second?
- M.Ryan: Does that mean it stays exactly how its being or the eleventh? He's amending it. That the other thing. Not to add anymore complications but.

(The secretary presented the board the letter submitted by the applicant notifying the board that he would like to change his measurements of the greenhouse from 4 by 9 by 9 by 4 to 4 by 8 by 8 by 4 and locate the new shed from 10' to property line to 5' from property line is to be accepted as an amendment to the current petition #673.)

- Tinkham: Because we talked about this last month. I'm going to say yes because we asked him to bring this in last month.
- R.Gaynor: So, it's 4' by 8' and 5 feet.

It was duly moved (R.Gaynor) and seconded (R.Gilcoine) to grant your petition (#673) which failed due to a one (1) in favor and three (3) against vote for your request for both a special permit to enclose his existing deck and build a new 16x20 deck with 6x6 golf platform to his pre-existing non-conforming home, attach a 8x8 greenhouse to his existing shed, and build a 12x20 shed/screen room and a variance of the Baker Street Ext front set back from fifty (50) feet to five (5) feet for the construction of the shed/screen room.

The board denied your application for the following reasons:

1. The applicant could not meet the hardship criteria. The owner felt that this was the only location that would be aesthetically pleasing on the lot to view the lake. This does not constitute a hardship. The hardship was self-created by the petitioner.
 2. "No accessory building or structure shall be used for living quarters".... Evidence presented by the applicant regarding the usage of the 12x20 shed/screen room pointed to a contrary conclusion.
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The granting of this petition would derogate from the intent of the bylaw.

In accordance with the Halifax Zoning Bylaws (167-21) A (2) (3) no petition for a special permit/variance which has been unfavorably acted upon by the Board of Appeals shall be considered on its merits by the said Board within two (2) years after the vote of such unfavorable action, except with the approval of 4 out of 5 members of the Planning Board. The petitioner has the right to request consent from the Planning Board if they feel that there has been specific and material changes in the conditions upon which the previous unfavorable decision was made. The petitioner also has the right to appeal the decision of the Zoning Board of Appeals to the Plymouth County Superior Court, the Land Court or in said Court by bringing an action within twenty (20) days after the decision has been filed in the office of the city or town clerk. (10/10/06)

Chairman Tinkham called for a voice vote: R.Gaynor, NO; Richard, YES, Michael, NO; and D. Tinkham, NO.

The motion to grant petition #673 failed 1-3-0.

Ms. Tinkham reprised Mr. Thomsen of the procedure following a disapproval of the petition.

Discussion with Mr. Thomas Fitzgerald – former petition #599 – 65 Paradise Lane, Halifax

Two of the Board members, D.Tinkham and M.Schleiff, recused themselves from the discussion due to the fact that they are abutters to the property. Vice-Chairman Gaynor is presiding over this discussion.

- A.Dias: Why are we here? Tom Millias issued a stop work order on part of Mr. Fitzgerald's project. From my understand, the note said the roof on the deck out front and a portion of the rear deck. That is why we are here tonight. I was not been told. I might have sent you something.
- T.Fitzgerald: Well, let me...what happened so. Why we're here. I went back through my old records today and I found a plan dated March of '02. That's how long I've been trying and looking at this project. That there being that the plan to do there was the work there on the roof shows a pergola over the front door. That was more of an ark, something from the architect and he thought it would look nice coming down the street if it follows us there. After we plan the whole thing, we thought it looked old. We kind of change our minds about it because we wanted to put a porch on it and put the pergola in front of it. That's the way it worked out. What happen was that...I don't think that this board, when we went through the process of getting setbacks and amenities, asked for a copy of the plans. When I went to get the okay from the building inspector, I got a call from the secretary saying we need a copy of the plans, so I brought the plans up. I had more plans between septic, and buildings, 2 or 3 different kind of buildings, 3 different kind of set ups. Anyway, I saw the plans that you had and what I did was...she called me up and asked for a copy of the plans to complete her file. I just grabbed a couple of plans and brought them up. The file shows just a pergola in the front porch. I never had planned that. It doesn't work. The rain seal would be dripping. The snow would be dripping all over. It just doesn't work. So, we just kind of run away from it. I didn't
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- T.Fitzgerald: realize at the time but what I did to the plans a year or so ago I guess it was, I just went right ahead and had the new plans done with a yard and a deck. I put a porch on the deck there and we just went ahead to do it. Then, the building inspector called up and said it was not on the plans, that there was pressure on him and that I should come up to the board and ask if I can include the deck because it was not part of my plans so that's what I'm doing.
- R.Gaynor: I guess my question would be the criteria for eliminating the cease and desist.
- T.Fitzgerald: I don't know.
- R.Gaynor: What is his criteria for him to...?
- A.Dias: His question is this...
- R.Gaynor: I understand the question. I want to know what he needs from either you or from us to remove the cease and desist. I mean why are you here?
- A.Dias: If the board feels as though adding a roof on the deck is not an issue, then we'll discuss the deck and the ravings of the conservation issues. If this board doesn't feel that this is not an issue in front the board, then he will lift the cease and desist.
- R.Gaynor: I don't understand for the life of me how...you know, maybe you can explain to me. I mean there's a specifics rules and requirements in order to come in front of...to get a building permit in this town and to come up in front of the Zoning Board of Appeals. The very first thing is three sets of plans. I mean I don't understand how...either we voted on a variance or a building permit was even issued without plans being in the file. I'm lost at that.
- T.Fitzgerald: We have...
- A.Dias: You do have a set...
- R.Gaynor: We have a set of plans now but what I'm saying is what did we use to vote on?
- T.Fitzgerald: This one. This is the one he submitted.
- R.Gaynor: So then, anything beyond what's in our files is a revised plan?
- T.Fitzgerald: Yes.
- A.Dias: Yes.
- R.Gaynor: And what has been built so far to date is a revision of what was submitted as far as what we used to vote on?
- A.Dias: Actually yes and no. If you see on this original plan, it shows an open deck, okay? This is where the problem is. It shows an open deck here. So, the deck is constructed. It's the fact that there's a roof on the deck.
- R.Gilcoine: You got pergola there. If that's the plan that was submitted, that's the plan we voted on.
- R.Gaynor: That's the plan we voted on?
- A.Dias: Exactly and in your conditions, you requested that a plan be submitted and that if there were any changes to come back in front of the board. This was your decision back in 2003.
- T.Fitzgerald: You saying you need a set plans, Burt?
- R.Gaynor: Absolutely. I mean in order to vote on anything, a completed application for the Zoning Board of Appeals, you need a plan submitted for your petition and that's what we used to base our decision on.
- T.Fitzgerald: Okay. So, you're saying get one of those regular petitions right there and go through the censor's listing and come back in with a set of plans?
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- R.Gaynor: No. That's not what I'm saying at all. I'm saying that, certainly, a substantial or a change can be resubmitted to the Board for a review which I feel is what you're doing now.
- T.Fitzgerald: Yes Burt.
- R.Gaynor: But our vote, if I'm correct on understanding it, can only be based on what's submitted to the Board.
- A.Dias: Exactly. The only thing is that the Board granted certain setback distances, some relief. Twenty feet from the side and forty-five feet from the front. The actual enclosed area here has no impact on any of that. It does meet...
- R.Gaynor: You mean the setbacks?
- A.Dias: All the setbacks are all met. There's no difference at all on that.
- R.Gaynor: Nothing bigger? Nothing smaller? Nothing narrow? Nothing wider?
- A.Dias: No.
- K.Nessralla: You're just worried about the roof over the deck?
- A.Dias: Exactly. This being the front which you granted, get relief from. This being the side. This being the deck with a roof over the deck.
- R.Gaynor: So, he submitted a cease and desist based on...
- A.Dias: A complaint.
- R.Gaynor: That there was a substantial change to what was...
- A.Dias: A change that there was a roof that was not approved by this Board.
- K.Nessralla: So, all you need is a...
- A.Dias: But it has no impact. We can submit a new set of plans.
- T.Fitzgerald: If you want some drawings, I can get you some drawings.
- A.Dias: But we want to also discuss the other issue there too.
- R.Gilcoine: A new set of plans. Something is wrong.
- A.Dias: We can supply the same set of plans we submitted to Tom. The set of plans that the house is constructed by are the plans we are working by.
- R.Gilcoine: But they're not the set of plans submitted before.
- A.Dias: Exactly. So, we can submit them.
- R.Gilcoine: Where I stand, you've been stopped on a complaint on this. We don't know if you've changed anything else in the house.
- T.Fitzgerald: We wouldn't dare.
- A.Dias: No, as far as...
- R.Gilcoine: It tells me you're building the house by a different set of plans that we're looking at.
- T.Fitzgerald: Just the porch.
- R.Gilcoine: Well, we don't know that without the plans. We know that by you telling us.
- T.Fitzgerald: It says that the engineer plans for its footprints has been approved and filed with the building...Tom Millias. The plans for the after the foundation was certified by the workman. There's a stamped set of plans in the building inspector's file.
- R.Gaynor: But, Tom only deals with footprints. You own the property which shows no increases, no further derogation then what was already approved before. The setback.
- A.Dias: Exactly. So, he made a revision on 8/24/05. I don't know exactly what that revision is but it could have very well been an interior wall. But, these plans are basically the same and this is the plan we are working from now. We can submit the exact the plan. The size of the structure will be exactly the same. There's going to be two differences. One
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- A.Dias: will be the roof on the deck. The second because of the conservation and some consideration that this deck had to be extended beyond the chimney.
- R.Gaynor: So, how can that not encroach on the side lot line?
- A.Dias: There is no difference because our setback was on this side. We were twenty feet so we have more than ample footage on this side.
- R.Gaynor: So what is it then? What is the side setback on that side? What's it being changed to? Oh, that's the water?
- A.Dias: No, this is the drainage. This is the water. We're fifty-two feet. This shows you exactly. We're fifty two point two one feet from the chimney jar. This is the foundation aspect. That's the easement.
- T.Fitzgerald: Over here. Plenty of room right here. That's the easement. That's the drainage dish that goes down to the lake from where we own that, as well as this piece here. So, this is twelve feet from here to here. That's our line and putting it five feet to build the staircase doesn't come anywhere near the septic.
- R.Gilcoine: You're not extending the porch? Just the stairs there?
- T.Fitzgerald: Just to put a set of stairs there?
- A.Dias: You can see it from the plans here. Is everyone comfortable with this? Because of the open deck situation, he had to extend the deck out this way to go around the chimney and down. He doesn't have a problem with that. The problem is Tom. There's no question in my mind, you need to get the right set of plans.
- R.Gilcoine: You have to extend the deck out so the stairs don't go this way, they go this way?
- A.Dias: Yes. The stairs have to go this way because we have a concrete retaining wall here with a nine foot drop. It drops from here, to the top of this wall nine feet and that was based on conservation so what they asked us to do and it was in the order of conditions, was to extend the deck over and have a set of stairs at the back of the house.

During the discussion with Mr. Dias and board member R. Gilcoine, Mr. Fitzgerald was discussing the situation with Vice-Chairman Gaynor and board member K.Nessralla.

- R.Gaynor: We can't vote on something that's not in front of us.
- A.Dias: Yeah. The problem is that it's a little unclear. He issued a cease and desist and suggested that we come up and see the Zoning Board of Appeals. Technically, we are in front of you...
- K.Nessralla: To lift the cease and desist?
- A.Dias: No. You can't lift it. He has to lift that. They want to make sure you're aware of what's going on. If you have a problem with the fact that there's a roof on it. That it in a nutshell.
- R.Gaynor: Basically, with a revised plan because our votes has to be whether it derogates from the intent of the by-law. Whether, in fact, it's detrimental to the established character of the neighborhood and if there's a hardship. Bottom line, without a set of plans in front of us, how do we make those decisions when you can just say, here's a roof, here's no roof, here's a set of stairs, here's no set of stairs. We don't give like open-ended permits or variances where you fill the amounts as you go.
- A.Dias: Now, would you suggest... In order for something to be in front of you, we need to file a petition which, I think, at this point...
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R. Gaynor: I disagree. My personal feeling.

A.Dias: Okay. That's fine.

R.Gaynor: An amendment. In order to do that, we have to reschedule a time for next month. You can bring up the set of plans, have the whole entire file completed with whatever is necessary showing the steps, the porch, the roof and as far as my own personal...

T.Fitzgerald: Excuse me. Give you a front profile showing the whole front situation, where the roof is going to be. Giving you a layout, like this one, where the stairs is going to be.

R.Gaynor: Please.

T.Fitzgerald: Not a problem.

A.Dias: Basically, I think that what you asked for from the original 2003 petition.

The Board will continue the hearing until Monday, November 13, 2006 at 7:15pm.

The hearing was continued until November, 2006 at 7:00 pm.

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

Respectfully submitted,

Marion Wong-Ryan,
Zoning Board of Appeals Secretary

It was duly moved, seconded and VOTED to approve the minutes of Monday, September 11, 2006 as presented/corrected.

Debra Tinkham, Chairman
