



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, AUGUST 14, 2006

The Halifax Zoning Board of Appeals held its regular monthly meeting on Monday, August 14, 2006 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Michael Schleiff, Garrett Walsh, Robert Gaynor and Richard Gilcoine.

Kozhaya Nessralla arrived approximately at 7:50p.m. Jean Reilly 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 (R. Gaynor) to approve the minutes of Monday, July 10, 2006.

Chairman Tinkham: All those in favor of approving the minutes of July 10, 2006, please signify by saying aye. So VOTED 5-0-0

BILLS

- A. Memorial Press Group - \$165.00
- B. Expense: Nelson Office Products/Office Supplies - \$23.89
- C. Expense: MA Federation of Planning and Appeals Boards, Inc./Annual Membership - \$60.00

The Board reviewed the mail and discussed other matter issues;

Mail

- A. 40B Technical Assistance Program

Other Matters:

- A. Capital Planning – Office Space
- B. Town Accountant – Signature Delegation Form/Authority Fiscal Year 2007 Sign-up Sheet
- C. Deutsch-Williams – Lounge vs. Town of Halifax – Motion for Sanction
- D. Charlie – Guide to Town Government
- E. Charlie – Mark Bagge’s Violation of By-Laws-Use of RV as Office or Residence
- F. Charlie – Incident Command Structure 101 Course
- G. Planning Board – Notice of Public Hearing on 8/16/06 for Raymond Messier, Petition #674

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#667 – 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: Now, Mr. Greeley, I understand went before the Planning Board?

Fitzgerald: Correct.

Tinkham: Do we have anything in writing from the Planning Board?

Traynor: No.

Fitzgerald: They said they would forward that to the Zoning Board.

Traynor: They did not.

Tinkham: What was the end result of this said meeting?

Fitzgerald: The end result was a two minute meeting, they approved it, & told me they would forward it to the Zoning Board & come back up in front of the Zoning Board.

Tinkham: Is that what you heard too?

Traynor: Yes, but that wasn't why he was suppose to be there. He was supposed to be there to discuss the entire site with the Planning Board.

Tinkham: Richard was?

Traynor: Yes, not Brian.

Traynor: The reason the selectman was there was to discuss the entire site, not just Brian's particular case. So, I don't know if the Planning Board did not understand why he was there but as far as I am concerned, what was suppose to happen did not happen...not that that is Brian's fault.

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Tinkham: You know I felt bad not being able to do anything for you the last time you were here because of that.

Tinkham: So, what you want to do...if you would just go over what you want to do again, please? You want 5 cars to be outside.

Fitzgerald: Outside.

The Board requested Mr. Fitzgerald to show on the site plan the manner in which the cars would be displayed.

Tinkham: So, once this is approved, then he will rewrite your lease and designate that spot yours?

Fitzgerald: Yes.

Gaynor: How long is the lease for...one year, two years, three years?

Fitzgerald: Well, right now, I had a lease signed up for a year. That lease is up right now. I'm kind of waiting to see what goes on with this, if I renew the lease...and then I will renew the lease.

Gaynor: Can we give him a renewable permit?

Tinkham: Yes.

Gaynor: Does this special permit run with the applicant or is this going to be part of the lease?

Tinkham: No, it can only run with the applicant.

The Board discussed in length that the permit will be effective upon the signing of the applicant's new, one year lease. The permit will expire and subject to renewal at the end of his lease. Applicant will be required to re-file for a permit with the Zoning Board only.

The Board further discussed the distance from the property line, frontage and distance from the pavement. The Board addressed with the applicant that he will need to designate this specific area with crushed stone or gravel.

It was duly moved (R. Gaynor) and seconded (R. Gilcoine) to grant your petition (#667) to amend your original petition #610 in order to allow for the outside sale of five (5) motor vehicles at 940 Plymouth Street, Halifax, MA as shown on assessor's map #58, lot #3E.

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The Zoning Board of Appeals grants this special permit to allow retail sales for motor vehicles in an industrial zone with the following conditions:

1. All conditions from petition #610 will remain in effect with the exception as noted above.
2. The special permit is to run with the applicant and is not transferable.
3. The special permit is only valid for one year following the applicant's renewal of his lease with the property owner.
4. The 20 foot by 50 foot area, to be used for the display of the 5 motor vehicles, is to be covered in crushed stone or gravel.
5. The 20 foot by 50 foot graveled display area is to be located forty (40) feet from the property line, as shown on the plans.
6. A letter from the Planning Board approving the site plan change must be received by the Zoning Board of Appeals prior to the permit taking effect.
7. The special permit was granted based on the presentation and plans presented at the hearing. Any changes from what was presented and approved must be brought back before the Zoning Board of Appeals.

This petition will not be detrimental to the neighborhood as the surrounding area is zoned industrial and the business has been in existence for several years.

Please be advised that all variances and special permits shall comply with all the rules and 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 Clerks (8/22/06) 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: G. Walsh, YES; R. Gaynor, YES; R. Gilcoine, YES; M. Schleiff, YES; and D. Tinkham, YES.

The motion to grant petition #667 passed 5-0-0

Ms. Tinkham reprised Mr. Fitzgerald of the procedure following approval of the petition.

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#671 – RAYMOND & MAUREEN KINGSTON – 6 TWELFTH AVENUE, HALIFAX

Chairman Tinkam read aloud a letter of withdrawal from the applicant, dated 7/18/06, stating, “I, Ray Kingston, hereby request that my petition #671 be withdrawn without prejudice. Raymond Kingston, 7/18/06.”

The petition is now considered withdrawn.

#672 – ROBERT & SALLY BAKER – 24 HOLMES 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 7:30 pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Sally Baker to construct an eighteen (18) foot by twenty-four (24) foot bedroom and bathroom addition with a one car garage under and a twelve (12) foot by eighteen (18) foot deck onto the front of her non-conforming home at 24 Holmes Street, Halifax, MA. Said property is owned by Robert & Sally Baker shown on Assessor’s Map #54, Lot 4. The applicant seeks 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 167-8 Non-Conforming Uses, page 16726.8. Area is zoned residential. Petition #672

Tinkham: Okay, who wants to speak today?

R.Baker: We were here two years ago to buy the house.

Tinkham: What do we want to do with it now?

R.Baker: We want to add an 18 by 24 foot addition. It will be going out towards Holmes Street, rather than towards the pond, obviously; and actually, the structure becomes more conformant because it moves farther away from the now, non-conforming property line.

S. Baker: If you have 2 maps, it’s because one of them, the scale was wrong & the surveyor redid it.

Tinkham: Which one is the right one?

S. Baker: The 30. This one because he redrew the 100 foot line. The person, what I think happened, was when he reduced it, it changed the scale and the conservation lady called me & thought we were building it within 100 feet and I knew we weren’t. I thought it was crazy.

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Tinkham: One to thirty is wrong?

S. Baker: No, that's correct. One to twenty is wrong and that was in the original packet. So, this is the proposed addition. It's a bedroom for my mother. She can't walk the stairs to the other bedroom. So, this would be on the main floor of the house.

Tinkham: Is this an in-law apartment?

S. Baker: It's a bedroom and a bathroom.

Tinkham: No kitchen?

S. Baker: No kitchen. She doesn't cook. She's waiting for me to cook for her.

Tinkham: In the addition, we are just putting on the bedroom, the bathroom?

S. Baker: And a big closet.

Tinkham: Okay.

S. Baker: And it's on a hill kind of, so they have to dig out, so there will be enough room for a garage underneath for it to be on the main floor.

Tinkham: Okay.

R. Baker: The approximate difference of where we park may be nine-ten feet.

S. Baker: So the bedroom is on the same floor as the living room but because it's kind of on a hill, it will be dug out and there will be a garage under there; and then, there will be a stairway up in that garage by her bedroom door.

The Board reviewed the plans. Mrs. Baker mentioned downsizing the deck but did not want to go through another hearing. Melissa Traynor informed her that it can be amended at this time. Bottom line, Mrs. Baker decided to leave the plans as is as there is no penalty for downsizing, but not to exceed it.

It was duly moved (R. Gilcoine) and seconded (R. Gaynor) to grant your petition (#672) for a special permit to construct an eighteen (18) foot by twenty-four (24) foot bedroom and bathroom addition with a one car garage under and a twelve (12) foot by eighteen (18) foot deck onto the front of your non-conforming home. The proposed addition will be located at 24 Holmes Street, Halifax, MA as shown on assessor's map #54, lot 4.

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The Zoning Board of Appeals granted this petition due to the fact that the changes will not be detrimental to the neighborhood as several homes in the area have been upgraded. The home is pre-existing non-conforming and the additions will not derogate from the intent of the bylaw because they will not encroach any further on the lot lines.

The Zoning Board of Appeals granted the special permit to continue and extend a non-conforming home with the following conditions:

1. A kitchen is not permitted in the new addition.
2. The deck is to remain open and may not be enclosed.
3. 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 and 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 Clerks (8/22/06) 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: G. Walsh, YES; R. Gaynor, YES; R. Gilcoine, YES; K. Nessralla, YES; Tinkham, YES.

The motion to grant petition #672 passed 5-0-0

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

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#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

Tinkham: Okay.

R.Gilcoine: Please repeat the dimensions of the greenhouse that you have on there?

M.Ryan: 9x9.

S. Thomsen: Now, it's kind of like 12 at its widest and 10 behind. It's shape like home plate. In the back of home plate deems 12 feet and goes out to the point 10 feet.

M.Schleiff: One side looks 9 feet.

S.Thomsen: Right. The side of it is 9 feet.

M.Schleiff: Then, it's 9 foot on a 45 degree angle. That's more than 10 feet forward. If you go 9 feet and then, 9 feet on a 45 degree is half that dimension which is 4 ½ feet.

R.Gaynor: Thirteen-five.

M.Schleiff: So, even if it's shaved off like you say, home plate, it's 12 by 13.5.

M.Traynor: It's 12 by 13.5?

M.Shleiff: It's 9 and half of 9 feet is 13.5.

S.Thomsen: It sounds long but it sounds like engineering to me.

R.Gaynor: If you are coming 9 feet out...

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S.Thomsen: No.

R.Gaynor: If you're coming 9 feet out here, according to that dimension there, it looks like abutting to me.

S.Thomsen: No, that's 4. That's 4 feet.

R. Gaynor: So that's 8 ½ ...that's 9.

M. Schleiff: Where's the 4 feet?

S.Thomsen: It's coming out from the existing structure 4 feet on each side & then it's angling 9. The 4 looks like a 9.

M.Schleiff: One looks like a 9 and one looks like a 6.

S.Thomsen: It's 4 feet-4 feet-ultra 9 feet and then 8 ½ feet.

M.Traynor: Oh, you know why? It's the way it's worded. It's 7-6 for whatever that grieving is and the 4 is underneath it. That's what it is.

G.Walsh: Okay. It's 8 ½ by 12.

Tinkham: Is that what the shed is?

M.Traynor: That's the greenhouse.

Tinkham: The greenhouse. What did you say Garrett?

G.Walsh: 8 ½ by 12.

There continued to be a lengthy discussion regarding the measurements of the greenhouse as the drawings were difficult to make out and comprehend. Further discussion was of the existing shed and the way the greenhouse will attach itself to it. He was asked for his lot size, which is listed as 1/15 acres.

M.Traynor: Scott came before us before for the shed that's down by the water but his permit has since expired, so he is coming back to ask for the same variance again that he was granted a few years ago.

S.Thomsen: If you people don't mind, can we save the shed for the last focus.

R.Gilcoine: This 6 by 6 platform...what is that made out of?

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S.Thomsen: Just framing stuff...probably 2 by 8's or 2 by 10's.

R.Gilcoine: And that's over your septic tank?

S.Thomsen: Yeah...well maybe over a quarter. It's not blocking it. It's not excluding any access to it. I purposely gave mulch, grew a garden over it so I just have to move 2 weeks of mulch and 2 covers.

R.Gilcoine: And the stairs to your deck are going to be over your septic tank?

S.Thomsen: No. Those are next to it. Those steps going up by the wall and at the top of it, there's a little walkway going to the deck that curves right around the septic tank.

R.Gilcoine: Does the Board of Health approve the stone?

M.Traynor: Not that I am aware of.

S.Thomsen: I believe that they have these plans something because I just had a new leaching field put & I've been before the Board again with these same prints.

R.Gaynor: With these same plans?

S.Thomsen: Yes, the same plans, no different.

R.Gaynor: The driving platform and all that?

S.Thomsen: Maybe not the drive platform.

M.Traynor: Normally, the Board of Health doesn't have a problem if like a deck is kind of over the septic system or kind of over this; but, when, if this is approved & it goes to full building permit, that's when they will catch & if there's a problem, they'll call him in & make it change it. There's a picture of how he's drawing it.

M. Schleiff: They're more concerned about the leaching field, right?

G.Walsh: Yeah. But you can't be setting a footing on top of the box either.

Tinkham: Why are we closing in the porch, which is going to be where the deck is now?

S.Thomsen: The existing deck right now, you cannot leave anything on it. The grill blows right off. The furniture blows right off. The only thing that stays up there is the picnic table. It's like a wind tunnel coming up off the lake.

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Tinkham: What is it going to become?

S.Thomsen: It's going to become like a back den TV room. It's got a rubber roof on it now, so we can use it to for plants in there, water the plants.

K.Nessralla: What's the deal w/the shed?

S.Thomsen: The lower shed? Okay, the deal and sticking point is that no part of it can be within the 50 feet of the wetlands, which is the woods, not the water. I'm no way near the water. The other side is the lot line which, the last time, I was granted a 10 foot variance by this board. I have a few feet to deal with. As it's drawn on the plans, it shows the shed parallel to the lot line, but if you actually look at it, it looks funny and it's not parallel with the woods. I'd like to make it parallel with the woods but the points still stay outside the 50 and the 10 feet away from the lot line. I'd just like to shift it. I made a mark up of the shed with strapping and I positioned it on there and if you look at the base...some pictures are better than others...if you look at the base of it, you see the little irrigation flags, those little green flags, those are where it would be if it were as on the plans. The little flags represent being parallel to the lot lines and the...where it is now, where the strapping is now is the way I would like to have it and this is a view. I've got a string running out the property line. It's a bright red fluorescent string running over the property. So, I'm away the 50 feet and outside the 10.

K.Nessralla: Where is this place?

S.Thomsen: 12 Baker Street. When you're driving on 106 and you go by 58 and you go by the cemetery, the little cemetery, you look straight across, you're looking right up at my house.

K.Nessralla: Do you have any pictures of the pre-existing deck that you have there now or any other pictures?

S.Thomsen: No. I'd figure that was a ...this is the property line and a non-issue. That's the property & right now, from that string to the corner of the shed is 10 feet.

K.Nessralla: That's 10 feet from the flag?

S.Thomsen: Right...from down here, yes.

K.Nessralla: So, the pre-existing deck that you want to put up with walls is going to be heated as a three season room or no heat?

S.Thomsen: Heated.

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K.Nessralla: Heated.

S.Thomsen: I'm planning on put a...

K.Nessralla: Living area, then, right?

S.Thomsen: Living area...yeah...planning on putting a TV out there and some point a spa in the corner because it's got the rubber roof under it, so you just have to sleep underneath it so the water can splash.

M.Schleiff: Is that all electrical conduits coming out of the ground that you have in that shed?

S.Thomsen: Yes. That was done years ago?

M.Schleiff: What was that for?

S.Thomsen: That was for the future...just hoping to do the shed. That was after...before when it was granted by the Board to put the shed there.

Tinkham: I don't know about anyone else, but I would like to go down for a visit.

S.Thomsen: The reason why I didn't do was that the conditions back then...you're Mr. Gaynor, right? You sat in that corner the last time. You were the one that had the issue about it and the reason why I didn't do it. I'm working on the house by myself since I bought it and it's an ongoing thing and the condition was that I couldn't build it because it didn't meet the 25 percent rule of the first floor space. I have to finish the addition. Then, by that time, it had expired and I'm bringing it back up again.

M.Traynor: Deb, did you make a motion for an onsite?

Tinkham: I threw it out there. Does anybody else want to go down and look at this?

M.Schleiff: I would. There's a lot going on here. A lot going on.

K.Nessralla: I make a motion for an on-site.

R.Gaynor: I'll second it.

Tinkham: We're coming for a visit.

M.Traynor: Our next meeting is the 11th. Would you like to do it Saturday, the 9th at 9:00am?

Tinkham: Is the 9th okay with you? Saturday, September 9th before the next hearing?

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S.Thomsen: Okay, September 9th. Would like or require that the strapping structure be up?

Tinkham: That would be lovely, just go around the other side.

M. Traynor: The meeting will then be continued 'til Monday, September 11th at 7:15.

Tinkham: Is that okay with you?

S.Thomsen: Sure. The 9th...September 9th.

The on-site has been scheduled for Saturday, September 9, 2006 at 9:00am.

The Board continued the hearing until September 11, 2006 at 7:15 pm.

DEUTSCH-WILLIAMS – LOUNGE VS. TOWN OF HALIFAX – MOTION FOR SANCTION

The following people were in attendance per the request of the Board members:

Charles Seelig - Executive Administrator and Tom Millias - Building Inspector

Tinkham: What's going on with Mr. Lounge's place, please?

T.Millias: Pretty much business as usual. It's uh...it kind of really been established. I can't tell if he's actually living there or not living there or living in the trailer or not living in the trailer. Unfortunately, a new vehicle has materialized down there on the site.

R. Gaynor: Which is?

T. Millias: Unregistered.

M.Traynor: A bus.

M. Schleiff: Was there a plate on it?

T.Millias: Yeah, the bus is on the road. The bus is on the road.

M.Traynor: Like a shuttle bus.

K.Nessralla: Who's out there digging there behind the place?

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T. Millias: Although they put a septic in. They got a permit from the Board of Health to put a septic in.

K.Nessralla: Even though while we're in litigation, they can do that?

T.Millias: Board of Health didn't seem to think it was eh, anything they couldn't do.

Tinkham: I think what our frustrations is for the past two years, we have filed complaints and we have made comments and we have made phone calls and then, when we got the note a couple of months ago that well, I haven't gotten comments or complaints against this...we've been basically ongoing and I kind of disagree, Charlie about the painting on the outside because part of this whole lawsuit was restoration of the building. I mean, not only painted, he's put up shutters, he's put up electric lights now on the fence.

C.Seelig: In terms of what he allowed and what he's not allowed, right now, the only thing that's outstanding is the matter of the court. And that was what? When they came in, what did they ask for?

Tinkham: They asked for a special permit to restore the building that was beyond 50 percent.

C.Seelig: And in your opinion, unlike Tom's I guess or maybe Tom would agree. The work. First, of all the work that painting, for instance, doesn't require a building permit and I don't therefore, it can fall under Tom's jurisdiction in terms of a building certificate. If you painted your house today, you don't need to go Tom to get a building permit.

Tinkham: Correct, but I am not under litigation with the town.

C.Seelig: I understand that but the thing is even if you are under litigation, you're still allowed some certain things. I'm not being facetious here but, there is some sort of dividing line about someone being still able to use their property or do something with their property than not being able to do something. If it's a matter under the litigation then, yes, I agree with you but given that the whole matter was a zoning matter before you folks were hinting that this doesn't require a building permit, it also can't be zoning. Then, it can't be a matter of litigation. Same thing with the septic system. The septic system is not a zoning issue. It's a Board of Health issue. Therefore, they are allowed to do that.

M.Schleiff: Why would they put a septic in if there's not suppose to be any running water or bath?

R.Gilcoine: It's supposed to a warehouse.

M.Schleiff: Warehouse is storage. Storing his supplies.

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T.Millias: Just for the record, I did get into the premises. Might be 3 months now. Time goes by so fast. I had asked him for permission to get in there. I threatened him with an administrative search warrant if he didn't let me, but he was forthcoming, so he reconsidered it and said come on in.

M.Schleiff: After you threatened him?

T.Millias: Well, I just threw that in there. I didn't know if I needed it but I wanted him to understand that if he said no, that it wasn't going to end there and to make it easy for me; and I was in there and honestly, he hasn't done a thing inside except store junk. He may be living there but it isn't in any fashion that would be recognizable to anybody.

R.Gaynor: No kitchen? No room?

T.Millias: No-no. I mean he may throw a cot out from time to time. I've not seen that. I'm just saying but honestly, if you walked in there, you'd go...there's nobody living here. It hasn't been transformed in any way. It looked pretty much the way it did the last time I did several years ago, other than there's more junk.

Tinkham: Is it okay to be living in the RV?

C.Seelig: No. In fact, we sent him a certified letter again which was a week ago on two issues – on living in the RV or even using the RV for an office or day to day types of...if you're doing your cooking there or your bathroom or whatever there, but also, number one registered vehicles. I know he's got in the certified mail; I got the green card back. I'll wait another week. See what the property is like. He's been warned before. The next step is just our time. Now, on the use of the property, unless we have evidence that we can in fact that will hold up with a court magistrate. I don't really want to go to court.

M.Schleiff: How do you put a septic in and then have... tell the Board of Health what your intentions are for it without them asking is a this house or?

M.Traynor: Can they inspect a septic system?

The Board continued to discuss the frustrating situation regarding the septic system.

T.Millias: I'm not assuming he's putting the RV right on top of it so he is able to dump in the RV but again, you know. He's allowed it, an unregistered vehicle under certain circumstances.

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- C.Seelig: Well, he's allowed an unregistered vehicle under certain circumstances. In terms of the lot, he's not, in fact, going to be allowed to have any unregistered vehicles. Because every single one... all three sides are like a normal lot where he might have unregistered vehicles behind the house and it can't be seen from a public ways. All three sides of his property are a public way and therefore, wherever he puts the RV or any other unregistered vehicle, it can be seen from a public way and the lot does not allow for that. And the lot does not allow for that union. It allows for one so one can be seen on a public way.
- Tinkham: It's just that...we've going through this, it seems like so long and so many other things are happening on the property at play. What are you here for?
- C.Seelig: Well, I guess the question is in terms of the list...the painting part. Give us your list in fact where he is violating the situation. What is in particular violation right now?
- R.Gaynor: Well, the line I guess is the definition would be what is he restoring? Is he painting it...the windows...the roof...or shingles? I should think that would be restoring.
- T.Millias: Roof? He did not do a roof.
- R.Gaynor: Okay...I mean don't get me...we're ongoing. I mean that's the general idea. You know, if he cease and desist from restoring the property, you know, where was the restoring start and stop? I guess that's what it boils down to? And like you said, painting?
- C.Seelig: Anything that requires a building permit and if he does something that requires a building permit, Tom can threaten him with the law, but putting on shutters does not require a building permit?
- M.Traynor: But the light should require?
- T.Millias: Well, he could, infact, put a low voltage...lower light or something like that which requires nothing. If he actually wired some stuff in, I don't...I'm knowledgeable of any wiring permits that need to be pulled. That's another issue.
- C.Seelig: That's one we can shut.
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- T.Millias: Right. That's something we can use against him. I had somebody call and suggest it done; you know why would he put a basketball hoop up? There's nothing that says you can't put a basketball hoop up on each property. I mean I didn't know where to go with that. There wasn't really anything written, short of it not being on the town, not being on his own property. Perhaps infringing on the town layout. Dangerous there...bouncing a ball but honestly. He stripped some asphalt shingles off the side to do some painting to the building but he didn't need a building permit. He didn't do anything structurally. He didn't do anything. He did some cosmetic stuff. Certainly he doesn't cause a conflicting sum or value of the building and frankly I was using a well value. I was using the assessor's value currently. But even then, it doesn't rise to that occasion.
- Tinkham: Is anything he's doing now increasing the value of the property?
- M.Schleiff: The septic?
- T.Millias: The septic for sure.
- C.Seelig: I can't deny him a septic system.
- T.Millias: I actually tried to do something...to stop that process but the Board of Health felt they were within their right to issue the permit.
- M.Schleiff: Well, how did they plumb it? I mean where is the plumbing going to?
- C.Seelig: Basically, a dumping tank.
- M.Schleiff: To the RV...motor home?
- C.Seelig: Yep.
- T.Millias: The only thing I did insist with the Board of Health and they did follow through was that there no connection to the building...and that determined it. That's the start of it.
- R.Gaynor: What happen to the lawsuit this whole thing and what not?
- C.Seelig: You get the same paperwork we did and where it is right now is basically our attorney is telling the judge that they haven't done did lee and they keep refusing to do did lee.
- Tinkham: They're dragging it out.
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C.Seelig: So, well, the town can take one or two poignant roles. One, you could ask our attorney to basically say we want the court order summary judge on this to reside over this and do something or two, not doing anything at all; not spending any money at all because they're the one's that have persued. They're the plaintiff. Right now, until a judge reverses the DPA's decision, the DPA's decision holds. They're the ones who would want to it to get changed.

M.Traynor: She's asked for a motion for sanction and she's asking for damages from their attorney.

Tinkham: Right.

M.Traynor: I don't think everybody else knows that.

R.Gaynor: I haven't seen paperwork in eons or awhile or regularly.

T.Millias: I'm pretty agitated over the whole thing but just can't seem to get anywhere. The judge keeps scheduling conferences.

C.Seelig: The next one is what...the middle of this month or is it this week?

Tinkham: I think it's the middle of the week. I think it's this week...coming up soon.

Discussions continues about how frustrating the ongoing situation continues to be among the Board, Tom Millias and Charlie Seelig regarding what the RV is being utilized for, the reason for the septic and if it's being used as a bathroom.

C.Seelig: We're getting excited over nothing.

T.Millias: No.

C. Seelig: So, the only reason....

T.Millias: Well, there was none that I heard.

C.Seelig: You're right. When they went to the plumbing purposes... So, the only thing, in fact, they can use as a septic system is the RV which would be seen enough as a shelter and erosion situation. I could bring that point up to the magistrate without provocation and probably issue the RV. There is no reason to have a septic system if you don't have a bathroom of some sort; and if you have no bathroom inside of the building, then the only bathroom is in the RV.

Tinkham: Right.

R.Gaynor: But you can't beat it.

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- C.Seelig: Well, that's what I'm going to push hard on the RV is since the state is... People can have RV's on their property, obviously, but if the only reason the RV is there is for bathroom. For instance, the reason that the RV is there or in fact, it's being used as a bathroom, then dump their waste into the septic system, I think it's a must better case to against the RV.
- M.Traynor: How do we prove he's living there? I mean I drive by eleven o'clock at night, one o'clock in the morning and there's lights on. He's watching TV in there.
- C.Seelig: Basically, we need to have a log that says all that. That's what it comes down to. Other than call Michael and say, please have your cops go by at two o'clock in the morning.
- M.Traynor: Did you call the police? I thought you were going to do that. Did you call Michael already on that?
- T.Millias: Besides taking pictures, that's going insane? I mean I was in there and there really...he has done anything other than store junk. The place is to store junk.
- C.Seelig: I mean we know no bathroom in there and there's no kitchen. Subsequently, it will be very difficult for me to move him.
- T. Millias: He may slip out a cot or something, but...
- C.Seelig: Again, moving the RV puts pressure on the property owner to force the issue one way or the other.
- T.Millias: That's probably the best approach but then he will have to do something illegal on the inside or he will have to abandon the use of the vehicle for long term overnight thing.
- M.Schleiff: We have to prove he's living in the RV before you can...
- Tinkham: Well, you don't. He needs a permit for the RV to do that.
- C.Seelig: In essence by use of the RV, the town doesn't allow it to be used as an office or approved for day to day living, let alone... So, let's say he says, "Well, I'm not sleeping in it" but you're using it in essence as a portable toilet...sorry. And, the only reason that you need a septic system is in fact you're using it some how; and the waste is going into the septic system while there's no toilet in the unit; the only toilet is in the RV or you using the toilet in the RV?
- M.Schleiff: When's the three years up?
- C.Seelig: It's up.
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Tinkham: It's up.

M.Traynor: This has been going on for three years.

Tinkham: How much longer does he have to...before he readdresses you guys?

C.Seelig: Well, what we will do is he will start getting fined? Usually, you get ten days of fines and then some certified mail about some type of mail fine for ten days worth...whatever the law is per day. Then, you let the court magistrate out so as we continue to...we still...after...in essence you continue his fine gets knocked up. Now, I suspect the court magistrate isn't going to allow him to continue to fine for a hundred days or a thousand days or whatever number of days it is. But, then the question is...let's say that I keep fining him for another count or does the appeal at all bring changes to the court magistrate? That I need to go back to talk to...what's her name?

M.Traynor: Kim?

C.Seelig: Kim. You know what she does but L.A. would say okay. She's ignoring us in terms of the client is helping us. What's the next step?

T.Millias: What the magistrate summons if he so chooses is he can rebel on a case or if it so has merit.

Tinkham: Okay. At least something's getting done. I think that's the frustration of the board. We've been just keeping it between Tom and us; and, I don't know. Maybe I should have emailed or copied you as well...I don't know. You know, maybe it's a mistake on our Board as well. But it just seems like it's been going on for so long and it's frustrating when you drive by there and you see all these little snip its of improvements and it's going to be a house. You know, it was never a house before. Never been a residence but it's going to be now because, he just...he's making all these improvements.

C.Seelig: Well, as we said, these various improvements you've talked about. Unless it's the lights, aren't ones that require building permits and that's Tom's jurisdiction.

T.Millias: And I'm not seeing your scope but I understand what you're saying. He's snipping away at this thing.

Tinkham: I mean that's what he did at here at the hearing. I mean he almost got into a fist fight with the neighbors out in the parking lot.

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- T.Millias: But every year, I tell him several times that it will not become a resident. It can't without turning back up on the original ruling. And, I from time to time, send him out random letters just reminding him of that. I think he thinks he's going to wear everyone down and he's going to do it. Unfortunately, in my opinion, he hasn't crossed any real big thresholds and nearest...anything he's done, other than some exception of maybe some wiring, in fact, if not solely; the paint on the building.
- M.Traynor: But the RV issue has been going on since that beginning.
- T.Millias: Well, the RV issue apart, I would have not necessary known of it.
- M.Schleiff: Could one day that RV end up in that garage?
- T.Millias: I suppose he could.
- M.Schleiff: And you'll never see it.
- T.Millias: He could. He hasn't.
- R.Gilcoine: What if he registered it?
- T.Millias: Well, it was registered.
- C.Seelig: The accrued should not involve the RV. One is registration and there is one by-law. The other by-law is on trailers; and seniority is you can use those for homes where residences living in them or for offices. That's why...say with Stop & Shop was being built, there was one in every trailer, they had to come back to do all of them to get a permit. That's in the zoning by-laws section but there is also a regular by-laws, we have the hachers which continue to be working on the DPW goal and they periodically come before the selectman for renewal. So, the RV could be like two issues. The other vehicles there are obviously apropos. No one's living in the other vehicles. As long as they are unregistered, they're going to fall out by far. The RV would count twice.
- R.Gaynor: When you there, was that young kid there with dark hair... the nephew...the crazy guy?
- M.Traynor: He owns the property now. Mark Baggae. He's the one living in the RV and doing all the work.
- C.Seelig: I'll c.c. you on the letter...it won't be...I'll go back there and check this next week. If there's no violation, I'll start the fining him. Ten days after I start fining him, he'll get a certified letter saying Hi, you've been fined. I'll c.c. you on that letter to let you know that happened and I'll wait for the result.
- R.Gaynor: Quite frankly, what department will he be fined under?
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- C.Seelig: Well, what happens is he pays the fine or disputes it until he pays it at Town Collector's office. But what you really want is...I don't care how much the amount is. I want the RV moved.
- R.Gaynor: Right, but the fines don't do that.
- C.Seelig: No but if your clients takes to account what this officially is. It's equivalent to a parking ticket.
- T.Millias: This isn't really zoning.
- R.Gaynor: Coming from what department. Right. Exactly.
- C.Seelig: It's equivalent to a parking ticket and just as with a parking ticket, if you dispute it, then you can in essence, contact the court magistrate office in Plymouth and say Hi I want a hearing before you.
- R.Gaynor: Our fine process is the same. Only, I understood it that once the appeal or wants to be...get a determination, the fine stops.
- C.Seelig: Well...maybe that will happen. I don't know.
- R.Gaynor: But you afford to. Well, it's like you said. It's forcing his hand. He has got to do something...anything.
- C.Seelig: Well, he doesn't have to do anything.
- T.Millias: Or even nothing actually.
- C.Seelig: Maybe he'll do nothing. He may not go to the court magistrate. He may not pay the fines in which case, he go back to the town and say okay, what do we do now? Do I call the court magistrate's office? This person is doing none of these things. Can we hold him in contempt?
- T.Millias: My conversation with the court magistrate is pretty cooperative.
- Tinkham: I know you guys wanted to meet with me or a member of the board. But, I just felt that it was more important that you addressed the entire board and if anybody had questions, that nothing got changed from...in translation from one office to the next. So, I appreciate you guys coming up here. It's just that it is...it's wearing.
- T.Millias: It's frustrating for everybody. The abutters...they said to be on zoning stuff. We really got two different issues here. We got rid of a by-law. It's always just on the edge.
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R.Gaynor: Are you getting a lot of feedback from abutters and what not?

T. Millias: Yeah. Abutters call constantly. Every time he does anything. Like I said, he put up a mail post thing up there. It's bizarre. There's no question. Unfortunately, we don't necessarily legislate against bizarre. I mean...I'm not trying to be stupid here, but there's no accounting for taste.

M.Gilcoine: Have the abutters keep the log.

T.Millias: Well, they do. I get call from the abutters...I know he's renovating the entire interior of this thing. He's got a complete home in there. I've seen it. Okay. I walked in.

R.Schleiff: How long did you have to go before you got in there?

T.Millias: He let me in the next day. He agitates people. His personality is insightful. He walks into a room and everyone is in sighted. So, I will keep you apprise of what he is doing.

Tinkham: Thank you.

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, August 14, 2006 as presented/corrected.

Debra Tinkham, Chairman
