



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, SEPTEMBER 11, 2006

The Halifax Zoning Board of Appeals held its regular monthly meeting on Monday, September 11, 2006 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

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

Kozhaya Nessralla was not in attendance.

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

APPROVAL OF MINUTES:

It was duly moved (M.Schleiff) and seconded (R. Gilcoine) to approve the minutes of Monday, August 14, 2006.

Chairman Tinkham: All those in favor of approving the minutes of August 14, 2006, please signify by saying aye. So VOTED 5-0-0

BILLS: N/A

The Board reviewed the mail and discussed other matter issues:

Mail

- A. Charlie Seelig - Citizen Planner Training Collaborative/Fall 2006 Workshops
- B. Ken Stein – Candidate for MAAO Executive Board
- C. The HRP Advisor – August 2006
- D. Floodplain Management Workshop

Other Matters:

- A. Planning Board – Notice of Public Hearing on 09/07/06 for Raymond Messier, Petition #674
- B. Planning Board – Notice of Public Hearing on 09/21/06 for Curtin, Anthony & Lyn, Petition #675
- C. Department of Housing & Community Development – 2006 Subsidized Housing Inventory Biennial Update
- D. Rose Campbell - Halifax Highway & Cemetery Department – Blackledge Farm Project
- E. Deutsch-Williams – Joanne F. Lounge vs. Town of Halifax
- F. Old Colony Planning Council – Agenda for Meeting No. 434, scheduled August 30, 2006
- G. Charlie Seelig - Recruitment and Employment Account

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- H. Gerald Co-Wallis, Jr – Letter of Complaint regarding “houses being built abutting my property”
- I. Planning Board – Letter of approval for Clare Island Motor Co. and meeting minutes from July 20, 2006
- J. Planning Board – Definitive Subdivision – 66 Circuit Street
- K. Selectman Assistant – 40B Attached Information

#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: We went to the on-site inspection and I know a bunch of you guys had been on the board before. So, there was 3 of us that did show up. You had talked about a couple of things: moving the shed five feet over so it would be five feet off the lot line and not ten. Is the dimension going to still be the same, 12x20? The proposed greenhouse was going to change. That was going to be smaller?
- S.Thomsen: That’s going to be smaller. Rather than 4 foot, 9 foot, 9 foot and 4 foot. It’s going to be now 4 foot, 8 foot, 8 foot and 4 foot.
- Tinkham: It’s a little off the existing shed. Were there any other dimensions that we’re changing?
- S.Thomsen: No.
- Tinkham: Where’s the platform that the gas grill was going to sit on? Is that different than the new deck? Is that like a separate little platform?
- S.Thomsen: its part of the deck, you just can’t leave it out based on where it’s left on the platform.

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- Tinkham: Is there any questions of the board?
- R.Gaynor: Yes. Is the application changed the numbers to reflect the new dimensions and what not?
- S.Thomsen: I have submitted no...any paperwork.
- Tinkham: No.
- R.Gaynor: What are the dimensions again? The existing deck is going to be what? Instead of 20 by 16, it's going to be what?
- S.Thomsen: The deck remains the same. It's the greenhouse. The greenhouse is shaped like home plate. It comes out from the existing shed four feet from both ends. Then, it was going to be nine feet that was two long ones. Those two are now going to be eight feet.
- M.Ryan: So, it's going to be 8 by 8?
- Tinkham: 8 by 8 by 8 by 4; the proposed shed?
- S.Thomsen: It's going to be 4 by 12 plus 32.
- Tinkham: The shed is 12 by 20. Instead of 10 feet off the lot line, 5 feet off the lot line. From the map, it shows the shed fairly close down by the water but that's further up. It's like halfway down the lawn, isn't it?
- S.Thomsen: Right. If you remember between the shed and the water...remember the tree that I had the string I had tied to? That string is exactly 100 feet from the water line.
- R.Gaynor: What's the dimensions are what? 12 by what?
- Tinkham: 12 by 20.
- R.Gaynor: Oh that's a 20 right there.
- Tinkham: Yes, but it's further up here. So, on this map, it shows it down here but it's further up this way.
- S.Thomsen: No...no...no.
- Tinkham: No? I'm trying to not to make you stand up.

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S.Thomsen: This is the water here...right here.

Tinkham: It's not this?

S.Thomsen: No, this is hay bails.

Tinkham: Alright.

R.Gaynor: So, why are we going from 10 to 5?

S.Thomsen: Well, the first thing I did was brought them into my house with the game room & the picture windows that we put in the corner. The shed is blocking the view of the lake and the beach; and it would be important to us to be able to see the beach from the water and there is nothing but woods to the right. I figure if we can move it an extra 5 feet, we could see the complete view of the beach and you know, anybody down there.

R.Gilcoine: This is all woods, Burt. Up here is woods. The other house is over here...it's actually up in here.

R.Gaynor: Have we just been doing 10 feet or does the by-law say 10 feet?

M.Schleiff: It says 50 feet.

R.Gaynor: For a shed?

Tinkham: No, not for a shed...10; 10 for a shed.

M.Schleiff: 10 for a shed. That's a 10 by 10 or an 8 by 8.

R.Gaynor: So, the regional application showed it 10 feet. Now, you want to move it...change it to 5 feet.

S.Thomsen: I was under the impression that I was...because he want...he could put it at 10 feet, and I'm already looking for a variance for you guys to vote on, I'm just asking for another 5 feet.

The board discussed prior cases/scenarios regarding the setbacks, various from the lot line. We proceeded to go to the Code of the Town of Halifax Massachusetts booklet for the guidelines regarding the regulations of accessory building or structure.

Tinkham: Well, while we're looking that up, is there any other questions? The other thing on this lot. This piece over here is considered wetlands...closer to the woods.

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- G.Walsh: The intended use for that was going to be the screen room or is that going to be a year round use? Is it going to be a porch...just an enclosed porch?
- S.Thomsen: It's 12 feet wide & 20 feet up from the water. The bottom 12 by 12 facing the water is going to be a screen room.
- G.Walsh: No...no...no...no. I'm talking the porch that you want to enclose in.
- S.Thomsen: Oh, the porch that's year round.
- G.Walsh: Because, in your reasons, you say the winds too strong and blows the grill and furniture off the deck.
- S.Thomsen: Right.
- G.Walsh: So, that's your reason for wanting to close it in. But, yet, right beside it, you're putting a spot for the grill and I assume a deck where the furniture that's being blown around that you want to enclose in the other area for.
- S.Thomsen: But the wind blows right over it. Now, the deck will be in a corner. Nowhere for the wind to go.
- G.Walsh: Fair enough.
- Tinkham: The 12 by 20 shed. Half of the front; half is going to be a screen house?
- S.Thomsen: Most of it a screen house. A little bit of it is a shed. 8 feet by 12 is the shed. 12 by 12 is the screen house. For storage, water skis and tubes and stuff like that for the boat.
- Tinkham: Electricity?
- S.Thomsen: Yes.
- Tinkham: Water?
- S.Thomsen: Nothing more than a bubbler and a spigot on the outside; and I'm hoping for an ice maker.
- R.Gaynor: An ice maker on the...what surface? On a refrigerator?
- S.Thomsen: Yeah.

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- R.Gaynor: What else would you do besides a refrigerator?
- S.Thomsen: An electric stove. We have lots of parties...cookouts. It just helps to heat up the broccoli casserole down there.
- Tinkham: A cook stove...is that what you said?
- S.Thomsen: Yeah.
- M.Schleiff: I mean is that considered a shed when you have a screened porch room? Wouldn't it be more an accessory building?
- S.Thomsen: I couldn't see us going out there to heat anything up there in the winter. Its 200 feet from the house. I remodel kitchens for people. I get a lot of stoves, refrigerators, dishwashers, stuff. I just want to put up an old stove that I got out of a job and put it out there to help with the parties.
- M.Schleiff: We got to look down the road if you guys decide to ever move.
- S.Thomsen: The stove can come out.
- G.Walsh: That 4 by 6 by 6 on the other side of the shed, opposite the greenhouse?
- S.Thomsen: That's the concrete pad.
- G.Walsh: That's right. So, your abutter down where you're putting the shed, is that part of the private way down there? Is that what that is and that's a private way or public way?
- S.Thomsen: That's controversial. The surveyor, you guys came out and surveyed, you know? He swears that we're entitled to ownership to the halfway marker and the other people are. During all the battles with the Conservation Commission, Bob Woodbury (sp?) swears up & down, it's not a paper road, it's not an easement, it's Baker Street.
- R. Gaynor: Wasn't originally taking the street?
- S.Thomsen: No. I can tell the reasoning for it. The reasoning was when it was designed, when old lady Baker gave the land or was dividing the land to sell, there came to that was the last lot and it was too short a frontage to allow for an extra lot there. So, the other lot would have to be bigger. So, someone got the brainstorm of continuing that down to the water and making a two corner lots which would give that house next to us the frontage it needed to be a lot.

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- R.Gaynor: Was it listed as a boat ramp at some point...at one point?
- S.Thomsen: Well, I mean even though...say even if it was a boat ramp, the severe woods ruin the part. It's only 30 feet wide. It would be no place to stand the shed. It would be around setbacks.
- G.Walsh: The distinction being that if it's a private way, you're right. A private way entitles the abutters right to the mid-line of the road, provided they don't do anything within that road that would obstruct the other abutters' rights to that road. I assume it's 40 feet wide way. Is that how wide it is?
- S.Thomsen: The concrete bound that's on the top there.
- G.Walsh: Right. The distinction being that, practically speaking, if it were a private way, I could rationalize, thinking of your setback, thinking another 15 feet from set point. You know, you have legal right. But if it's public way, then it's no different than having your shed right along the street.
- S.Thomsen: Well, there is nothing but trees on it. I know what you're saying. My question is the purpose of this board. Can you vote on it? Certain circumstances because I believe that there can't be too many more, if anymore, lots in the town that fall under the same problem we have. Isn't each on identical or?
- G.Walsh: No. It depends on how and the processors or the sketch that the town took at the time that they were subdivided. Did they actually take ownership of them? There's a legal ease for it. There's a phrase that escapes me right now on what process in which the town says okay we've drawn this paper street. We're going to take it for the common good for the residence of the town or maybe they didn't and maybe that was the intention. The town didn't take it. Maybe, this is an entirely different thing.
- S.Thomsen: Do you have a right to vote on each individual case?
- G.Walsh: Every case is treated differently based on its merits and hardships.
- R.Gaynor: How big is the lot?
- S.Thomsen: One and a quarter acres.
- R.Gaynor: How big is the house?
- S.Thomsen: The house is 25 by 80...76.

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The board continued to review the request from the applicant, referring back to his past petitions from July and August of 2000 (petition # 475 and petition #479) in hopes to find any paperwork that would help clarify the matter at hand.

Tinkham: Also, back in 2000, Ralph Hayward submitted a letter that he visited the property. "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 of one resident."

S.Thomsen: Does he have a follow up to that because I can tell you what happened?

Tinkham: That's the only letter I have in this file.

S.Thomsen: Okay, well he lived in the neighborhood. So obviously, driving by and stuff, he saw it. I widened the existing driveway that went around back. He thought that some of those trees were underlined. I got a letter from them. So, I went to the Selectman first and said that, you know, I want it known that I'm here to clear this up and they didn't come chasing me; and my surveyor, Alan Vautrinot, said that, you know, I have definitely not touched any tree on town property. And...so, they sent their own town engineers out and they put the concrete bounds that you saw; and because of that questioning and I showed you or tried to show you at the top of the driveway where the other one was and as you saw, our driveway is completely on our land and we didn't cut any trees on it. They concluded that, you know, all was well and that was that.

G.Walsh: Do we have anything definitive from the town or from Mr. Vautrinot about the description of that?

S.Thomsen: No. He just told me to go to the Town Clerk's office and I got to research through the town clerk, starting with Town Hall, starting w/the town clerk's desk; and I don't know how.

G.Walsh: Well, your research doesn't carry as much weight as a licensed professional who has both credentials and a legal responsibility behind his findings. That carries, certainly a lot more weight, than what you determine.

S.Thomsen: Well, I haven't found a reason yet to have to pay someone to do that.

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- G.Walsh: Well, if what Mr. Hayward said was that the subdivision was accepted as a whole, than that's a public way. What Mr. Vautrinot is that or what you're telling me he's saying is true and that's a private way, two completely different situations, in my opinion. I feel a lot more comfortable voting favorably on a shed if that were a private way that only you and the only abutter had rights to as opposed to a public way that should be everyone.
- S.Thomsen: Is that your area? Are you a civil engineer?
- G.Walsh: I work for the municipality in the state office.
- S.Thomsen: I mean you obviously have the intelligent questions. You know the way to go research.
- G.Walsh: It's research. You need to go back to when in that area was a whole. From there, follow the paper trail & the d-trail and then, figure out if anyone in the town dropped the ball and their responsibility as far as taking the land. If they didn't take it and it was left as a parcel, they still might have rights to it through just tax delinquency. But, if there was something written down that it was a private way, then the rights to it are to you and the abutter.
- S.Thomsen: Would it be on any map?
- G.Walsh: No, it doesn't appear. That's the unfortunate part of it. I mean, it's drawn up as a road and then, the legal description of that is somewhere in the deed record; and the actions of the town subsequent to the subdivision of the land.
- R.Gaynor: It could be a road. It could be an easement.
- G.Walsh: No, it's very unlikely that it's an easement because it has a turning radius and everything off the street. But, the town has the responsibility to...and again I explained that the legal ease for it escapes me right now, but there's...they need to take it. They need to say, okay you drew it up. We'll accept your street as you drew it up. Or, if in the deed it says no, we're going to draw up this road for the benefit of the abutters and keep it as a private way, then that's a different thing.
- S.Thomsen: If they had done that, would they have been able to claim that as a corner lot and use that as frontage for that house.
- G.Walsh: Some towns allow, at different times, you to have frontage on private roads. Halifax certainly did at one time. I don't know if they do anymore. I mean they must.

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- S.Thomsen: Well, judging from you said then is this something I can or legally can do or just something that carries more weight if a surveyor does it?
- G.Walsh: If you were to come back, you would have a....
- R.Gaynor: Book and page number and all that...
- G.Walsh: Yeah, but even with all that, I mean, it really comes down to a legal opinion. You know there is wording and certain words that you know lea man's terms, mean one thing. But in survey and land surveying means something else entirely.
- S.Thomsen: When all is said and done and I go through you know, days and days of research doing all this and still come back to you where there is still a grey area and you still have to make a decision.
- G.Walsh: I'm not going to take your word on it if that's what you're coming down to.
- S.Thomsen: No. No, not taking my word on it. I would have to show you documents.
- G.Walsh: Yeah, but even at that. I don't have a good enough. I mean, I have a POS in my office that I defer all that stuff to & he makes the ultimate call as to whether it's town property or not town property. I mean I'd accept Vautrinot's word. I mean he's got a stamp that lists he can put on it.
- S.Thomsen: He works for his father-in-law when he originally did that neighborhood.
- G.Walsh: Then, he probably has the plans.
- S.Thomsen: Well, that's right. He told me. Now, with that being said, is it still within, like even tonight, is it within this board's jurisdiction to simply vote on it and say yes, you can raise it one foot, two foot, eighty feet? Is it up to this board to decide what it can be?
- G.Walsh: I hope I'm not speaking out of...
- S.Thomsen: No, I'm not putting words in your mouth.
- G.Walsh: No. No, I think we have to vote on this hearing; and this hearing, you know, is 5 feet off the property line. Right now, I have to assume that is public property. I have to go with the worse case scenario. To me, that would be public property and you got to be 5 feet away; and could I look the next guy in the eye and enforce to look 5 feet from a road way that's being used because legally, there's no difference.

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- S.Thomsen: Oh really?
- G.Walsh: I mean if it's town property and the town decides they want to put a boat ramp in, they could.
- S.Thomsen: Okay. Well, even if they did, our shed would be in their way. It's just simply 5 feet away.
- G.Walsh: It's just 5 feet. No, I understand that.
- S.Thomsen: The chances that we being hit by some idiot or someone that can't back up a trailer.
- R.Gaynor: So, is this the view from the game room?
- S.Thomsen: Pretty close. Well, actually, no, that's the view from the back deck. The game room is over here from what you're looking at. Sticking out into that lake a little bit.
- R.Gilcoine: I would check with the town and see what they have to say about private roads.
- G.Walsh: Do you have a copy of your deed at home? I mean in a lock box or whatever. I mean it may very well say in your deed bound by a private way to the east. It could be that simple. That, along with, you know, a one paragraph from your surveyor based on the research he found. You might go to the Assessors and check back and they may say it's a private road. All of which would make your life a lot easier.
- S.Thomsen: When they came to the house, they parked out in front of the driveway and I asked them to come into the house first. I showed them from that same window.
- G.Walsh: I can't find based on your view because you can opt not to build there.
- S.Thomsen: But, that's our reasoning.
- G.Walsh: No, I understand. I don't fault you at all.
- Tinkham: Garrett, those 2 windows there. The lake is down here.
- G.Walsh: Right.

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- Tinkham: Does anybody else want to see the pictures? You guys were there. Okay, do we have anymore questions?
- M.Schleiff: I'm still confused. The deck, where it is now, stuff blows around it. But if you move it closer to the lake, there will be less stuff blowing on it?
- S.Thomsen: Yes. It's not going to be less stuff it. Right now, it's out in the open and the wind blows right by.
- M.Schleiff: From the lake?
- S.Thomsen: From the lake. It comes up like a wind tunnel, okay? Now, with it being in the corner, picture this wall being my house, that wall being that room where the deck is now will be enclosed. This will be the deck. The wind has no where to go. Just like when you open 2 car windows. 2 car windows, everything is gone. You shut one window and the wind has nowhere to go. Help me, Mr. Engineer. You understand earlier.
- G.Walsh: Sounds like it can work.
- M.Schleiff: Oh, I understand what you're talking about. It's just kind of odd you say, yeah, I want to enclose this because the wind is blowing my stuff around. Then, now, I'm going to put another deck on. You know what I'm saying?
- S.Thomsen: Well, it's got nowhere to blow right off. It's got nowhere plus – with the pergola...
- M.Schleiff: It's easy enough to put a cinderblock on the bottom tray to hold the thing down.
- S.Thomsen: I wouldn't want to do that. I would think I have a little more class than to do that.
- R.Gaynor: Does the zoning by-laws allow a number of sheds on the property? Or limited to a certain number?
- Tinkham: It would be by how much of the lot it takes up.
- R.Gaynor: I agree with Mike on the fact that it kicks up. One's a shed and the other must be a accessory building or out building. Whatever you call it.

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S.Thomsen: Well, if you drive up route 36, there's some off to the right around the houses, double streets. You'd see some.

R.Gaynor: I think all the new dimensions and everything has to be spelled out for petition #673. Because...you know changed, amended, amended to read or...because once we vote on this, we just don't fill in the blanks as we go. We vote on specifics.

Tinkham: Do you want just a letter?

R.Gaynor: Yeah. Anything would be fine. I letter would be great.

M.Schleiff: Is this an enclosed room? I mean it's an enclosed room, right?

S.Thomsen: Ah...yeah, we want it to be enclosed.

M.Schleiff: It's got to be room now?

S.Thomsen: Correct.

M.Schleiff: It's going to be an indoor, not a three season, a fully enclosed...

S.Thomsen: Heated.

R.Gaynor: Which one is that?

S.Thomsen: The existing deck being enclosed.

R.Gaynor: The existing deck?

The board proceeds to review the current plans submitted by the applicant to further understand the proposed layout of the existing deck.

R.Gaynor: What are we doing? Do we have to vote on this tonight?

M.Gilcoine: I would like to see something from the town explaining what they require for private roads. I don't know if I agree with this. I'm having trouble.

G.Walsh: Well, I think the setbacks are the same...private road...public road. But I think...

M.Gilcoine: The road I live. The private road I live on, I own to the center of the road. However, I cannot obstruct it anyway. That's my property and that's what I pay taxes to.

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- G.Walsh: Really?
- M.Gilcoine: And I have a paper road right beside me which is also a private road; and it's fenced all different ways but has a gate in it so it has to be open to the public to use. But I own to the center of that road.
- G.Walsh: So, the private road that you actually have physical ownership to the center of the road that is an easement across your property? Is that what it is?
- M.Gilcoine: The private road? That's the street I live on and a non-accepted road from... by the Town of Halifax.
- G.Walsh: And you pay taxes to the center line of that road?
- M.Gilcoine: The center of that line. I own to the center of that road. First Ave...Eighth Ave., everybody who lives on those streets own to the center of that road.
- R.Gaynor: That use to be that way until it was accepted.
- G.Walsh: Then, the road is an easement.
- M.Gilcoine: I don't know the official word.
- G.Walsh: Yeah...not that that changes anything that you said.
- M.Gilcoine: It's listed as a private road maintained by the Town of Halifax.
- R.Gaynor: It has to be emergency vehicles.
- M.Gilcoine: They plow it. The private road...the paper road is still a public way. People use it all the time.
- G.Walsh: But the difference being that a paper road that goes to nowhere that only has 2 abutters....

The board discussed the situation that board member, M. Gilcoine has regarding his property and how the special circumstances correlates to the current petition. Board member, R. Gaynor brought up properties on both Lake Street and Ocean Avenue and were discussed in regards to the similarities to the current petitions relating to whether they are considered easements, boat ramps and/or town property.

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- G.Walsh: They can be as complex but each one is individual. That's what I'm saying because it might say public access for a boat ramp which doesn't allow a resident in the town to set up his beach blanket and do any of that; and because there's trees there, they could never back a boat until the town enact. These private road issues and private easement issues...everyone of them is unique and everyone of them is complex. But, if, sir, your property has been surveyed, half of the work should have been done by now.
- R.Gaynor: Everything should have been spelled out.
- S.Thomsen: It's been surveyed by our engineer and the town engineer. It was actually the town engineer that surveyed both sides, towards our land and towards Kelly's land.
- G.Walsh: Right, but the paper trail of the legal ownership is more important than the actual physical boundary as far as...
- R.Gaynor: Doesn't it show the actual physical boundary as 100, 300, so whether it's on the road, it's on the road?
- M.Gilcoine: Somebody has to own that property.
- S.Thomsen: Yeah, it's just hard to believe that it all falls on us to prove that.
- M.Gilcoine: Well, you want to use it.
- G.Walsh: No...no...no...right here. Whether he's saying it's a private way and he actually owns to the center line of that road which may or may not be true. Depending on how it was written.
- R.Gaynor: But his deed is going to say one point whatever acres fronted on Baker Street by one hundred thirty....
- G.Walsh: ...along the private way...one hundred...could say something like that...or it could say along the public way or it could say along the parcel; and then, what the town did with that parcel back when they accepted the subdivision as ramifications for what type of road it is.
- M.Gilcoine: But didn't you say it had a name. Isn't that Baker Street? Is that what it is?
- Tinkham: Baker Street Extension
- S.Thomsen: No, not even an extension, I don't think.

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Tinkham: Where did I see that?

M.Gilcoine: Baker Street Extension is right on the public hearing notice.

S.Thomsen: That's just all mumbo jumbo from Vautrinot regarding paper stuff.

Tinkham: That's why you pay big bucks for him to put that stuff up/down the side.

S.Thomsen: Just sticky back. Something they already have twenty years ago. Um, could I ask you a question? How long are you guys here tonight? If I go home, I can get the plot in and fax it to you. You got a fax machine here?

G.Walsh: Again, you're it. You're it.

The board continued to discuss the matter and came to a conclusion as to what they should proceed based upon the public hearing notice.

M.Schleiff: I mean we have to go by what this...he's asking us here on the public hearing notice.

G.Walsh: Right.

R.Gaynor: Exactly.

G.Walsh: What we're getting at is that I think it would behoove you to...cause you don't want a negative vote; and there isn't enough here; and with some of these changed dimensions, I'm not getting a good feeling it's going your way tonight.

S.Thomsen: Okay. You want me to put it in writing and just write a paragraph, changing the existing dimensions and asking the for the set back to be five. Okay.

R.Gaynor: The only thing I would disagree with that. You certainly know more about it. But like Mike said, we're voting on what's proposed in front of us. And whether he has a right to the middle of the street or not, I, personally...my vote is going to be determined by the distance from the property line. Now, if he's got another 30 feet, got another 50 feet and has the rights to that, that's fine. But, my vote, would be giving consideration to the distance between property line and the proposed thing. So, whether or not, he has legal rights to or ownership of, my vote is going to be determined by how I feel about the distance between the shed to the property line. Now, if he's got another 15 feet or another 30 feet or another 100 feet, my view is going to be based on how I feel from the shed to the property line because that's what in front of us. I agree with Mike.

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- G.Walsh: I don't disagree with you at all.
- R.Gaynor: Basically, I guess what I'm saying is...whether it's a right of way, a private way or whether he owns the damn thing, you know. Bottom line, this is what's in front of me. This is what I'm voting on. You know, so if you're faxing myself personally a document that says I have rights to the paper road...whatever you want to call it, that doesn't make...
- G.Walsh: I would need a legal opinion myself anyway. But, in that, you may find that it might be in your best interest, if it is a private way, to go through the process of abandonment.
- R.Gaynor: Oh, for yourself, I definitely agree with that. You'd be crazy not to, to be honest with you.
- S.Thomsen: Well, okay. First thing and I think that point is...you know, I understand or respect it there of. Also, isn't there the legal right of this board to grant variances and that's why we're here for a variance?
- R.Gaynor: Right and the variance applied for is to the property line. I think that's our consideration.
- S.Thomsen: Well, what if I changed that amendment to move it over an additional 5 feet and not even mention any abutters behind me?
- M.Schleiff: Yeah, I'm curious if now, the abutter next door say yeah 10 feet is fine and all of a sudden, it changes to 5 feet.
- G.Walsh: But...and this gets right down to...how...if we don't know who owns that piece of property, how can the abutter be properly notified?
- M.Schleiff: They're notified now. They're notified before they come here.
- Tinkham: It's been...300 feet of 12 Baker Street has been notified.
- G.Walsh: Right, but if this is public property? Is that not still in question?
- S.Thomsen: I can get a letter from our next door neighbor stating there's no problem. I mean if that's 2 different things going on?

The board reviews the site plans of how the street is drawn, the subdivision is drawn, how it's not addressed if the road is public or private.

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- S.Thomsen: Are we, at least, in any kind of agreement right now at to what I need to do?; that letter from Vautrinot? Look up the deed?
- Tinkham: A letter with the new dimensions.
- S.Thomsen: Do I need to do new drawings or just a paragraph?
- M.Schleiff: When he goes to the building department to start building this, Tom needs an updated drawing. So, he knows what he's looking at when he goes out to inspect any construction. So, he is going minimally need enough that they've set. He's not going to read through...woe, this is 10 feet. He's going to look at the drawing.
- R.Gaynor: But more than that, he's going to look down here & he has listed, say 11 feet like it is there, if that's whited out and put 5 feet in. Agreed, it's not to scale.
- M.Schleiff: Well, as long as he's got the most recent drawing.
- G.Walsh: I'm okay with that.
- R.Gaynor: I am too to be perfectly honest with you. I don't think a whole new plan is...but other than, like where you have 11 feet right here but that was whited out and shown 5 feet. Granted it's not to scale but still, it's indicated as...you can get all that on the lot and stuff.
- M.Schleiff: As long as he has an up-to-date drawing in his file to look at; and we have an updated to coincide with what he has, that's all that's needed.
- R.Gaynor: I think that's required by the building inspector.
- S.Thomsen: I have a very good rapport with Tom and I'm a carpenter. I'm a builder and usually what happens is it gets laid out. It gets staked out by the engineer and then you can do the construction. Like, say, pour the foundation or in this case, pour the slab and the engineer has to come back and do an as built and then, Tom...
- G.Walsh: You're going to pay the money to get an as built plan on your the slab but you're not going to pay the money to get the legal definition of the...
- S.Thomsen: Well, I have to. Don't I have no choice but to...
- G.Walsh: I don't know if Tom would require an as built?
- Tinkham: On a shed?

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- M.Schleiff: He inspects footings. So, he'll be out there inspecting the footing.
- G.Walsh: But he's not going to require an as built plan for that?
- M.Schleiff: No, he is not.
- S.Thomsen: Well, believe it or not, I would though because I want an exact plot plan on everything that's going on my property. I want to always have one. I want to have an updated one just for my own use. My own sketches. My own reasons. On my drawing, I'd draw right where it is, on the d-box and things like that. If I have to dig it up later, I know where it is.
- M.Schleiff: Debbie, granting variances? That's a hardship, right?
- Tinkham: Yes.
- M.Schleiff: So, what's the hardship?
- R.Gaynor: The hardship is the view.
- M.Schleiff: The whole project...other than the greenhouse.
- Tinkham: The moving of the 5 feet is the view but he is kind of restricted of where it can go. Because, over here, it's all wetlands and he's got the 50 feet buffer zone here. So, he can't really go much further than where he is. There, see there's the 50 foot buffer zone. This is all wetlands all through here.
- M.Schleiff: So, the only place on the property for the shed...the hardship for the shed is that's the only place from the property he can put it; including getting the variance. He needs the variance, but that's the only place he can put the shed?
- Tinkham: No.
- S.Thomsen: Yes and no. The reason behind this...when we first applied for this through ConCom, we had originally wanted the shed over here so that we had a view of the water and it was out of the way of the view of the house. Conservation, obviously, had a problem with that because of the delineation. Okay...so, we get the 50 foot rule here and we got the property line here. So, it comes to a V. This is the furthest point down closest to the water that all the boards were happy with where we can put it. Yes, the board can go here, here, here, here. That's not the point. We want it down there and as you saw on my yard, I've got that elevation change right there. But, if I was to move it even back right here, then it would be 4 feet higher and it'll be

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even worse. So, that's the furthest down that we can get away with without any problems.

Tinkham: Okay, so we want a letter with the new dimensions.

M.Schleiff: Is there hardship on the addition? There's no variance on that? So, why do we have anything to say about that?

Tinkham: Because it falls under non-conforming.

G.Walsh: You had a hierarchy of those things you wanted. You said can we first speak of the merits at hand. Where does that screen in come in on the things you wanted?

S.Thomsen: Down near the water?

G.Walsh: Yeah. When you were here last month, you said first I want the porch, then I want the deck, then I want the greenhouse, then I want...you know. There was an order to them.

S.Thomsen: Only because I believed that the deck...that this greenhouse shed was going to take longer to discuss.

G.Walsh: Well that's...I think it may take longer for me, personally, to feel comfortable voting on it and I wouldn't want to hold up other things for a screen house.

S.Thomsen: To answer your question, in order of importance what I would want to get started on first is either put the footings in for the new deck before it gets cold. Then I could work on it anytime during the winter. That's what I want to do now. I want to put the tubes in and get all the footing work done. And then, keep working on the deck. I can take my the temporary stairs and move it around so the dog can get up and down and I can work on the deck and then, enclose the room, so we can have access to the garage.

G.Walsh: The way this is worded, this is one petition. So, we either take it all or take it none of there and you're putting me, personally in a hard place with that shed with the information that I have right now.

R.Gaynor: I agree with you. You see, I personally, as far as my vote, you know. That's not a shed. It's not a shed. You can call it a shed. It's not a shed. It's got electricity. It's going to have a stove, it's got a refrigerator. Yes, we're going to store stuff down there but it's not a shed.

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- S.Thomsen: Well, how many sheds are there in town that have electricity or not have electricity?
- R.Gaynor: I'm just saying it's not a shed. I mean we can call it a shed. This, I think, is a shed because we're putting the lawnmowers and snow blowers. This is not a shed. That is an accessory building and it's an addition to the house; and I see Mike's point and I see Dick's point also. The only real hardship allowing the shed there, in my own personal opinion, is you can't see the water.
- G.Walsh: I mean its main purpose is entertainment.
- R.Gaynor: The other double sheds in town don't have a stove, an ice-maker, a refrigerator and electricity. In fact, none of them. It's not a shed.
- Tinkham: But we have no definition of shed in the by-laws.
- R.Gaynor: Yeah, but we have a definition of an accessory building.
- Tinkham: Accessory building...they're both accessory buildings.
- R.Gaynor: This is not an accessory building.
- Tinkham: Now, what difference does that make?
- R.Gaynor: That's a shed because a shed, like dimension-wise is used for storage, could be allowed on any property.
- Tinkham: But what difference would it be if it's called an accessory building or a shed?
- R.Gaynor: Because, it's livable space. That's exactly what it is.

The board members, G. Walsh and M. Schleiff spoke to applicant regarding places, which resembled in similar dimension, they have lodged in and/or see occupied on a strip on Route 6A, near the Cape.

- R.Gaynor: It's use. It all comes down to use and a shed would, therefore, not qualify. I mean, yes, technically, we use the same term "accessory building" but it's not livable space. It's storage space. That's why you can put up certain dimension sheds without meeting permits and that type of thing. Remember, way back years back? That's where we developed a specific definition for a barn because people were putting them up and say the same thing, "no, it's just a barn". We're calling it a barn. That's why we had to come up with that.

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- M.Schleiff: We do the same thing for in-laws. I mean certain things - garages.
- Tinkham: Barn is a building used or intended to be used for the storage of animals.
- S.Thomsen: You got to admit. We're not talking massive. We're talking about a different width.
- G.Walsh: But we try to be even handed across the board to what we allow.
- R.Gaynor: Right. That's exactly what we're trying to do.
- G.Walsh: For you, we need to be able to defend the next time and this issue being 5 feet off the property line that...and I think Burt and I may differ a little bit, but you know, if that's a private way that you have shared access to, I'm good with it from that point on.
- R.Gaynor: But even going to the same comparison as in-law apartments. I mean we issue permits on in-law apartments based on use and how it's being used; and once it's not being used that way anymore, stoves have to come out, kitchens have to come out, refrigerators. We're avoiding duplex, the 2-family, the rental property. What's the difference? Only, it's down from the house, separated and it's a lot smaller and no, you couldn't live in there; there's no bedroom partition. But, bottom line, we're giving the in-law apartments only a 5 year term and it has to be renewable based on family use only. But, this is electricity, water, stove and every other thing.
- S.Thomsen: It doesn't have every other thing.
- R.Gaynor: Well, that's just my opinion.
- S.Thomsen: Why would anyone else in town care that we like to heat up our broccoli casserole down there or keep the spaghetti sauce warm on the cooktop in the summer?
- G.Walsh: Because the guy you invite to your next swaree is going to you know, go home and say, "you know I can put something like that outside my backyard"; and his neighbors are going to have a problem with that and his neighbors are going to be here. But, he's going to say you guys found favorably for a guy just last year. I know because I was there and it puts us in an awkward position without being able to defend our reasons for allowing it.
- S.Thomsen: Doesn't it become individual cases? You say no we can't grant you on yours because of his neighbors or he was off the road so far? I mean each

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case is individual. I would say it would have to be considered. The last time we applied, I don't know if you are aware, we were granted this shed but I just couldn't get to it yet because I was building it.

R.Gaynor: Did the prior permit state 5 feet?

S.Thomsen: Not 5 feet but 10 feet. One of the conditions was that there would be no sink inside. I was allowed to have a spickett outside. I mean I still don't want a sink inside but I would like an ice-maker outside. I mean I go through so much ice. I keep running up to Tedeschi or Cumberland Farm and buying them out. It's a pain in the butt.

M.Schleiff: Could this be applied as an accessory building?

Tinkham: Well, that would be part of the stipulation and terms.

M.Schleiff: No...he's asking for a shed. Could he reapply as an accessory building?

Tinkham: Basically, it's the same thing.

M.Schleiff: But the usage is different and it taxed different, right?

Tinkham: It shouldn't...well, I can't speak for them. I don't think so because it wouldn't be not livable space.

M.Schleiff: Well, isn't it the same then? Accessory building and a shed are the same?

Tinkham: It falls under the same category. It is all under accessory buildings. Garages are specified under definition. Barn is specified but shed are not. It falls under accessory building or structure. Back in 2000, a 12 by 20 foot shed, 10 feet.

Tinkham: Back in 2000, there was no plumbing shall be permitted inside the building and one spickett placed on the exterior of the shed.

M.Schleiff: Wasn't part of that the greenhouse?

Tinkham: No. Okay, if you would, give us a letter with the new dimensions of the shed with the little addition up there, moving the 12 by 20 to 5 feet from the lot line. What else do we need? Just those 2 dimensions?

S.Thomsen: Something about the road? Whatever we can get.

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G.Walsh: More than whatever you can fall short of a legal opinion from someone with credentials and that's me, personally. It'd make a difference for me. I can't speak for the other members of the board.

S.Thomsen: I'll talk to Vautrinot in the morning.

Tinkham: We can also get something from the Highway Surveyor and get her opinion on this.

S.Thomsen: Okay, is that something you can do and go back?

Tinkham: No...no...no. You don't need to do that. We'll take care of that.

R.Gilcoine: I have one more question. The concrete boundary in the back of your yard, near the boat yard. Did you say your property took a right-handed turn there?

S.Thomsen: It turned to the right. Not a right angle, but it turned to the right.

R.Gilcoine: That extension doesn't actually go to where your boat is. It'd have to go off in another direction.

S.Thomsen: It goes this way...to where I showed you the Styrofoam thing on it and then, cuts across this way.

R.Gilcoine: Yes, so if they were to pave that road, it wouldn't go to your boat. It would go off to the left.

S.Thomsen: Correct.

G.Walsh: Do you have the abutter's plan?

Board member, G. Walsh review the abutter's plan to review the layout.

G.Walsh: Just also so you're aware too so you don't. You could potentially run into a situation where the town surveyor says that's town property and your surveyor says that a private way. Town surveyor says it's town property and your surveyor says private way, in which case we would need a third party legal opinion. It's happened before.

Tinkham: I hope we don't need to have another public hearing.

G.Walsh: No. I trust the word of a credential office.

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- S.Thomsen: Would it help my case if you personally came to look at it?
- G.Walsh: I've looked at enough plans and I am not going to base my decision base on your view.
- S.Thomsen: Well, you got good pictures there.
- M.Schleiff: I would like you to ask if you would reconsider the size of that shed?
- S.Thomsen: 15 by 30? Great...no problem.
- M.Schleiff: Because you can understand what it looks like or potentially could be? It looks like a summer home...summer cottage.
- S.Thomsen: It's the same size...actually smaller from the other shed. But the whole reason why we were putting that squatty roof...the low pitch roof on it is to make it smaller. It's going to have shorter walls. It's not even going to have full head walls because I want it cathedral inside and I'm going to use some of that cathedral to make it the illusion that it's higher on the inside and lower outside. I'm making it to the bear minimum. Trust me, we're not be doing anything to make this a monstrosity either. We're trying to keep it as small as possible and to be perfectly honest, she wants it smaller than I do. She doesn't want her view wrecked. To keep it small as possible. Anything smaller than 12 by 12, you can't be comfortable and you can't have a decent card game.
- Tinkham: We need to let him go home. October 2nd is when we meet again.

The Board will continue the hearing until Monday, October 2, 2006 at 7:30 pm.

The hearing was continued until October 2, 2006 at 7:30 pm.

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

Respectfully submitted,

Marion Wong-Ryan,
Zoning Board of Appeals Secretary

Town of Halifax Commonwealth of Massachusetts

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

Debra Tinkham, Chairman
