



# 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, April 22, 2013

The Halifax Zoning Board of Appeals held a public hearing on Monday, April 22, 2013 in Meeting Room #1 of the Town Hall with the following Board members in attendance:

Debra Tinkham, Kozhaya Nessralla, Robert Gaynor, Richard Gilcoine, Sally Wells and Peter Parcellin were in attendance.

Chairman Tinkham called the meeting to order at 7:00 p.m.

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The Board reviewed the mail and other matter/issues:

#### **I Correspondence/Mail/Email/Fax**

1. CDM Smith - "Notice of Intent-Silver Lake Water Treatment Facility-Surge Control System" filing [received 1/22/13]
2. OCPC - "Agenda for Meeting No. 495" January 30, 2013 [received 1/28/13]
3. OCPC - "Agenda for Meeting No. 496" February 27, 2013 [received 2/25/13]
4. OCPC - "Agenda for Meeting No. 497" March 27, 2013 [received 3/25/13]
5. Jennifer Harmon to ZBA to be placed on the March 11, 2013 public hearing [hand delivered to Secretary on 3/4/13 & included in Petition #744 packet]

#### **II Bill(s)**

1. Expense: "CPTC" Registration fee (for Peter Parcellin's course on 3/16/13) = \$50
2. Expense: "Peter Parcellin" gas mileage reimbursement (CPTC conference on 3/16/13) = \$64.18
3. Revolving: "Gatehouse Media MA" Petition #787 & #788 Legal Ads = \$165

#### **III Approval of Minutes**

Pending Approval = May 24, 2012; August 13, 2012; August 20, 2012; October 15, 2012; November 5, 2012; December 10, 2012

#### **IV Old Business**

1. Fieldstone Farm-2013 Shows [Secretary to confirm amount of shows permitted annually]
2. 7:25pm - Petition #744, Jennifer Harmon, 7 Plymouth Street, Halifax, MA

#### **V New Business**

1. 7:15pm - Petition #787, Irene Alden, 82 Carver Street, Halifax, MA
2. 7:30pm - Petition #788, Robert & Debra Durgin, Map 98/Lot 5X [8 Bourne Drive], Halifax, MA
3. 7:45pm - Petition #783, Tony Giannetti, 413 Plymouth Street, Halifax, MA
4. Richard Gilcoine - Appointment on the ZBA Board Expires 6/30/13 - Discussion

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**VI Other Matters**

1. BOS to ZBA – re: “Complaint-Jennifer Harmon Dogs” [dated 1/23/13]
2. Planning Board to ZBA – re: “Form A Distribution-Map 63 lots 6 & 30” [dated 2/8/13]
3. Planning Board to ZBA – re: “Form A Distribution-Map 103, Lots 3A” [dated 2/22/13]
4. Charlie Seelig to ZBA – re: “Duffy Property and Related Issues” [dated 2/21/13]
5. Charlie Seelig to ZBA – re: “Town of Halifax-Medical Marijuana/Special Town Meeting” [emailed 2/21/13 & Secretary emailed to ZBA members on 2/26/13]
6. Charlie Seelig to ZBA – re: “Food Truck – 82 Carver Street” [dated 2/21/13 & included in application packet/Petition #787]
7. ZBA Secretary to Fire, Police & Highway Depts – re: “Petition #787-Public Hearing Scheduled for Monday, March 11, 2013 [dated 2/25/13 & included in application packet/Petition #787]
8. ZBA to All – re: “2013...Meeting Schedule-Revised\*\*\*\* [revised on 2/27/13 & emailed to ZBA members on 2/27/13]
9. Charlie Seelig to ZBA – re: “Town of Halifax-Special Town Meeting-April 8, 2013 [emailed 2/28/13 & Secretary emailed to ZBA members on 3/4/13]
10. Secretary to ZBA – re: “Town of Halifax-Special Town Meeting-April 8, 2013” posting of meeting due to potential quorum by the Board [stamped on 3/4/13]
11. Charlie Seelig to ZBA – re: “Town of Halifax-Special Town Meeting-May 13, 2013 [emailed 3/1/13 & Secretary emailed to ZBA members on 3/4/13]
12. Planning Board to ZBA – re: “Articles for 2013 Town Meeting” [dated 3/11/13]
13. Charlie Seelig to ZBA – re: “Talent Bank Form – Julie Cummings” [dated 3/7/13]
14. ZBA Secretary to All Depts/Committees/Boards – “2013 Zoning Board of Appeals Meeting Schedule-Revised [distributed on 3/12/13 & emailed to ZBA members on 3/12/13]
15. ZEO to ZBA – Inlaw Apt Special Permit renewal w/an approved affidavit=Ronald & Carl McLeod [of 109 Holmes Street, Halifax, MA 02338] & Mark Sturge & Jeannine Neumeier [of 244 Holmes Street, Halifax, MA 02338]
16. Planning Board to ZBA – re: “Form A Distribution-Map 98 lot 1” [dated 3/22/13]

**VII Upcoming Hearings, Seminars &/or Conferences**

**VIII Open Comments /Open Business**

**IX Possible Executive Session**

**X Adjournment**

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**Petition #787 – Irene Alden, 82 Carver Street, Halifax, MA**

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, March 11, 2013 at 7:15pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Irene Alden for a Special Permit for an “Open air business/outside sales” to her property located at 82 Carver Street, Halifax, MA. Said property is owned by Irene J. Alden, Brian K. Alden, Sr. & Danuta Jastrzembki, as shown on Assessor’s Map #71, Lot 32. The applicant seeks a Special Permit under Commercial Uses for “Open air business/outside sales” in accordance with the Zoning By-laws of the Town of Halifax under Section 167-7 Schedule of Uses, page 167:29. Area is zoned Commercial-Business. Petition #787

Applicants Irene & Brian Alden came in front of the Board to speak to their petition.

Mrs. Alden shows a poster of pictures of the property to assist in the visual aspect of the petition.

There is a little area in the front of the yard, where she shows where customers could enter and exit the property on a one way direction. She also has additional parking in her circular driveway that can hold approximately eight cars. Crushed gravel has been put down on the ground. They have a dumpster, a fence will be covering the dumpster and a cart. The applicant points to the Board from the picture where the cart would be situated. The trailer is on wheels but will remain stationary. Mr. Alden proceeded to speak to inform the Board that the Fire Chief had been to the property to inspect and said extinguishers are required, along with any other mandatory requirements. It’s a newer trailer.

The Board asked what the applicants will be serving. The reply was hot dogs, grilled cheese, sausage lobster rolls, chips and soda. They will not be offering French fries as that would require a frierlator. They want to start small and not go overboard.

Chairman Tinkham opened it to the public for questions and reminded the audience that the public hearing is being audiotaped.

Chairman Tinkham read aloud a memo from the Town Administrator, Charlie Seelig, dated February 21, 2013 (-see attached-).

Vice-Chairman Gaynor asked the applicants to show the manner in which the egresses to/from the property as it pertains to customers and Mr. Alden explained there are 2 ways coming in and going out with a regular tar edge.

The applicants said that not knowing how the business is going to go, they felt this be a good time to try it, help their income and include their 14 year old and 16 year old boys in helping with the business. The building is 75 feet long and used to be a food service place. Vice-Chairman Gaynor asked if the police department expressed any concerns to which Mr. Alden replies that the office of

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the Zoning Board of Appeals sent a letter to the department and received no reply. Mr. Alden also stated that the Mobil gas station is more a liability than the food cart, based on locale.

Chairman Tinkham read aloud a letter from the Halifax Fire Department, dated January 28, 2013 (-see attached-), along with a letter from the Board of Health, dated January 29, 2013 (-see attached-). Vice Chairman Gaynor asked what are the requirements from the Board of Health should this business move forward. Mrs. Alden replied that the Board of Health has the authority to pop in whenever deemed fit to assure that protocol is being adhered to.

As for hours of operation and the times of the year, it would be contingent to the weather. As for signage, Mrs. Alden was given an A-frame signage that will be located on the cart, a flag and no lighting. At this time, no additional employees except their children. There will not be off-street parking and Mr. Alden just took the fence down to include more parking on the property. There will be one parking table. It's more of an eat and go versus hanging out to eat on the property. Mr. Nessralla said that if a patron orders food and wants to eat on the property, they are obligated to give them a place to eat. The Board and applicant agreed to barrels and on it, stating that there is "No Parking On The Street".

It was duly moved (K.Nessralla) and seconded (R.Gaynor) to waive the on-site inspection. So VOTED 5-0-0

It was duly moved (K.Nessralla) and seconded (S.Wells) to grant your petition (#788) for a Special Permit for an "Open air business/outside sales" to your property, located at 82 Carver Street, Halifax, MA, as shown on Assessor's Map #71, Lot 32 under Commercial Uses for "Open air business/outside sales" in accordance with the Zoning By-laws of the Town of Halifax under Section 167-7 Schedule of Uses.

The conditions for granting the special permit are as follows:

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1. The days of operation will be 6 days a week (i.e. Monday thru Saturday, excluding Sunday).
  2. The hours of operation will be from 10:00 a.m. to dusk.
  3. The Zoning Board of Appeals is to be notified of any change of conditions on the property.
  4. The applicant must maintain the property and sanitary conditions, along with the removal of trash.
  5. Signage(s) conveying to the public that there is to be "No Parking On the Street" and/or "No Parking This Side Of The Street" need to be visual in order to prevent a poor traffic flow due to the location of the business.
  6. The special permit is to run with the applicant only and is not transferable.

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- 7. The special permit has been granted for a period of six (6) months. The applicant(s) must come before the Board before the expiration of this special permit in order to extend the special permit on this same petition. The applicant must come before the Board no later than the Monday, November 4, 2013 scheduled public hearing. This will be the responsibility of the applicant(s) to make an appointment with the office of the Zoning Board of Appeals to be placed on the agenda in written form.
8. The special permit was granted to the applicant with the stipulation that the applicant is within compliance of the conditions set forth by the remaining Departments, Boards and/or Committees in the Town of Halifax, whether the conditions are pre-existing or forthcoming; specifically with the Planning Board, Board of Health, Fire Department and Police Department.
9. 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 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 (4/23/13) 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.

Petition #744 – Jennifer Harmon, 7 Plymouth Street, Halifax, MA

BOARD/COMMITTEE: ZONING BOARD OF APPEALS
MEETING PUBLIC HEARING (Please circle appropriately)
DATE: APRIL 22, 2013 TIME: 7:25 PM
LOCATION: TOWN OF HALIFAX, 499 PLYMOUTH ST., HALIFAX, MA, MEETING ROOM #1/2ND FL
PURPOSE: PETITION #744
REQUESTED BY: MARION WONG-RYAN, SECRETARY

NOTE: All meeting notices must be filed and time stamped in the Town Clerk’s Office and posted on the Municipal Bulletin Board no later than 48 hours in advance of meetings (excluding Saturdays, Sundays and legal holidays). Please keep in mind the Town Clerk’s hours of operation and make the necessary arrangements to be sure posting is made in an adequate amount of time.

\*Per changes to the Open Meeting Law effective 7/1/2010, “A listing of topics that the Chair reasonably anticipates will be discussed at the meeting” are to be listed on the agenda.

LIST OF TOPICS TO BE DISCUSSED

- 1. Based upon a ZBA public hearing held on Monday, February 12, 2012, the applicant is requesting to be placed on the March 11, 2013 public hearing agenda, per condition #6 stated in the Decision Letter (dated February 15, 2012):

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- a. There may only be twenty three (23) adult dogs on the property. The applicant will need to come before the Board for an annual evaluation/status regarding the increased number of adult dogs permitted on the property & may represent to the Board on the same petition. The applicant is to return at the March 11, 2013 Zoning Board of Appeals meeting & is responsible for being placed on the agenda by contacting the office of the Zoning Board of Appeals.
2. Due to an unexpected lack of quorum at the 3/11/13 ZBA public meeting, this hearing was moved to April 22, 2013 at 7:25pm
3. See below letter hand delivered by applicant on Monday, March 4, 2013:

Ms. Harmon came before the Board to speak to her request to extend her Special Permit.

Ms. Harmon distributed a packet to each board member, describing in detail, her proposal to amend her special permit, photo copy of the dog kennels, photo copy of the no bark collars, parcel of her land and overall offering of her kennel services (-see attached-). The board members need a few moments to review the packets before discussing the matter further with the applicant.

The applicant addressed the Board and basically reiterated her proposals and changes she would like to make to her special permit, one being boarding to only puppies birthed on her facility. She would like to have to have the number of adult dogs increase from twenty three adult dogs to fifty adult dogs. Ms. Harmon said that she finds it difficult to keep up with the demand based on the limitations from the special permit with its current conditions.

The Board wanted an update regarding the dog barking matter that was addressed by a neighbor with the Board of Selectmen. The status was that matter appeared to be going fine in favor of the applicant. Vice-Chairman Gaynor asked if the applicant made any modifications to alleviate the dog barking and she said that she had not. For some reason, the particular neighbor retrieved from his/her complaint. Chairman Tinkham said that she had been at the property regarding the dog barking issue and did not hear any concerns that were revolting. She was on the property and met by an abutter Scott Clawson and Selectman Kim Roy. Mr. Clawson kept stating to listen to the dogs but there was no sound until all of them reached the top of the berm, which is when the dogs can be heard. However, the barking was a natural instinct of the dogs from a protection standpoint and only because the dogs were aware that there were people close by.

The Halifax Animal Control Officer, Annie Brown was present for the petition and spoke to the Board about the property and her findings. She evaluated the property and saw no problems. Vice-Chairman Gaynor added that he has gone to the property, sat in his car to listen and heard nothing too exasperating. He had spoken to a couple of the applicant's customers and their responses were that yes the dogs can be heard but it's not obnoxious that one could not ignore it. The barking was not offensive and not long.

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Ms. Harmon reviewed with the Board her plans based upon her submission packet and the kennel/shelter. Ms. Harmon discussed doubling the insulation of the shelter, sound proofing the shelter to a degree which was discussed at the Selectmen's meeting she had attended. The question regarding sound proofing was addressed to Ms. Brown and she stated that she does not find this to be an issue, that the applicant has an acceptable location and facility for the dogs. Ms. Brown has visited Ms. Harmon's home on several occasions and currently, is pleased with the way Ms. Harmon controls her dogs and the current location.

Chairman Tinkham asked Ms. Brown about the significant jump to the request of fifty dogs and her opinion on the matter. Ms. Brown said that she does not see a problem as it is not a number that would occur on a daily basis; normally the number fluctuates. At times, such as holidays, would it bring the applicant to the max but not all the time. Ms. Harmon stated that she would only board dogs that came from her kennel, so the boarding would be exclusive.

In a doggy daycare center, the norm is a twelve dog to one human ratio but for sleepovers, the number can be more and it's not uncommon. Seasonal help may be needed during vacation time but that's it. Ms. Harmon currently still has five horses personally.

Board member, Mr. Nessralla was concerned about the proposed litter to permit Ms. Harmon to have a limitless litter annually. It was explained that puppies are not concerned adult dogs. Ms. Brown explained the difference of adult dogs versus puppies and that the mother dog would be kept in a separate area. Ms. Brown spoke to Ms. Harmon about the bitches she has on location and the length of time it takes for a bitch to mature versus the older bitches. Ms. Brown stated that based on her observations, the puppies are very contained and not permitted to roam. She finds Ms. Harmon to be ethical and that the limitations are hindering Ms. Harmon's business, especially when bitches are only in heat for certain periods; Ms. Brown does not find Ms. Harmon to be a crazed puppy breeding. Also, based on changes in the status of the law, Ms. Harmon would need to go through annual inspections maintained by the state. To reiterate, fifty dogs and boarding of dogs is in total of fifty; a maximum of fifty dogs over the age of six months of age.

Ms. Brown stated that Ms. Harmon's property is maintained, along with hours of operations, makes it possible for her to control her dogs. Ms. Brown's recommendation would be to propose a six month trial basis, as other abutting towns do (and that Ms. Brown herself has with her boarding licensed in Whitman, MA). Ms. Brown believes that the applicant can control it, especially where she picks her clientele. Ms. Harmon replied that no bark collars are placed on the adult dogs, unless her client does not prefer it. Her litter consisting of four female dogs, go into heat around the same time; she has four German Shepherds, wanting to beat, which is why they are called bitches because they are in competition.

Chairman Tinkham asked the Board how they would like to proceed and that, personally, she is leaning towards being in favor of the applicant's requests as she has been on the property several times and believes the applicant would not do anything to ruin her business.

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Ms. Brown said to the Board that she would not put her reputation on the line to speak in favor of an applicant should the applicant not meet that standards, if not be an applicant that should be setting a precedence for other boarders/kennels.

Chairman Tinkham spoke in favor of Ms. Harmon’s reputation and the minor issue with the abutting neighbor (Scott Clawson) which was resolved. Mr. Clawson was the only one to complain but no other abutters have had any issues. Board member, Mr. Gilcoine confirmed with the applicant that she is staying with the same two breeds.

It was duly moved (R.Gaynor) and seconded (K.Nessralla) to grant your amendment to the conditions of petition (#744) to allow a special permit to “Kennel for the breeding or boarding of dogs” at your property at 7 Plymouth Street, Halifax, MA, as shown on Assessor’s Map #66, Lots 1A, 1B & 17.

The Board granted the special permit to allow the “Kennel for the breeding or boarding of dogs” with the following conditions to remain intact and have **boldfaced & underlined the amendments &/or addendums:**

4. There will be no boarding of outside animals allowed on the premises. The dogs must all be licensed to Jennifer R. Harmon.
5. There will be no breeding of outside animals allowed on the premises. The dogs must all be licensed to Jennifer R. Harmon.
6. The special permit is to run with the applicant and is not transferable.
7. If the newborn puppies do not sell within 6 months of being born, they are to be removed from the property.
8. **A maximum of twenty six (26) litters allowed per year between the two breeds, consisting of twenty (20) litters for the German Shepherd breed and six (6) litters for the Pomeranian breed.**
9. **There may only be a maximum of fifty (50) adult dogs on the property. The applicant will need to come before the Board for an annual evaluation/status regarding the increased number of adult dogs permitted on the property & may represent to the Board on the same petition. The applicant is to return at the April 14, 2014 Zoning Board of Appeals meeting & is responsible for being placed on the agenda by contacting the office of the Zoning Board of Appeals.**
10. The applicant must maintain the soundproofing; and dogs must stay within the applicant’s property line.
11. **The applicant must adhere to Massachusetts General Laws, Chapter 140 (Licenses) and its particular sections of the law as it pertains to the applicant’s “Kennel for the breeding or boarding of dogs” special permit.**
12. **Records must be maintained.**
13. 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.

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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:

- (c) 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 (5/1/13) 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
- (d) A certified copy indicating such Registry Recording has been filed with the Board.

Chairman Tinkham called for a voice vote: P.Parcellin, YES; R.Gilcoine, YES; K.Nessralla, YES; R.Gaynor, YES; D.Tinkham, YES

The motion to grant petition #744 passed 5-0-0.

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**Petition #788 – Robert & Debra Durgin, 8 Bourne Drive, Halifax, MA**

The Halifax Zoning Board of Appeals will hold a public hearing on Monday, March 11, 2013 at 7:30 pm in Meeting Room #1 of the Town Hall, 499 Plymouth Street, Halifax, MA on the application by Robert & Debra Durgin (of 10 Pemmican Way, Halifax, MA) to request a Variance of both the left and right side setbacks from thirty (30) feet to twenty six (26) feet to build a new single family dwelling to a location to be known as 8 Bourne Drive, Halifax, MA. Said property is owned by the Perk Realty Trust/Trustees, Peter & Rita Lehtola (of 1199 Auburn Street, Bridgewater, MA), as shown on Assessor's Map #98, Lot 5X. The applicants seek a Variance of the setback requirements, under Section(s) 167-11 Table of Dimensional and Density Regulations (page 167:43) in accordance with the Zoning By-laws of the Town of Halifax). Area is zoned residential. Petition #788

Applicants Robert & Debra Durgin were present to speak to their petition.

Board Members: DT=Debra Tinkham RG=Robert Gaynor KN=Kozhaya Nessralla  
RIG=Richard Gilcoine PP=Peter Parcellin SW=Sally Wells

Applicants &/or Abutters: RD=Robert Durgin DD=Debra Durgin NG=Nicole Burgess  
JM=Jennifer MacPherson

DT: Robert, are you going to speak to this? Would you explain to the Board what you want to do?

RD: We are proposing to build a colonial style house with an attached garage and separate entryway between the garage and the house. But due to the shape and the topography of

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the land, we need the setbacks to fit the house on the property so we can back peddle through those within the character of the established neighborhood. Because of the shape of the lot and the line drawn in the angle, it produces a buildable side down to sixty one (61) feet which a lot of the houses are just pretty...about that; some just go over so some setbacks are being reduced a little bit. So, we are looking for three feet, three inches on the opposite corners of the house; not even the whole length of the house, but just the corners of the house. I do have some architectural drawings of the proposed house. Marion wanted full size.

(The secretary explained to the Board that the regular size plans was a bit difficult to read.)

RG: This is the same one you that you had an informal discussion on that you came up with?

RD: Yes.

RG: And anything that change since then, Bob? Any dimensions? Anything like that?

RD: No. Nothing's change. We tried for seeing...purchasing a portion of the lot next door, which is an unbuildable lot. They're not willing to sell us, of course, none of that lot. We're trying to get that so we build the house so we don't need a variance but that couple won't sell.

RG: This is the one that uh...I don't know for those of you that weren't here, unless you were here on this night; the one hundred fifty (150) feet, and correct me if I misunderstand this, if you look at the lot line where it hits Bourne Street, it kind of goes up and bangs off to the left. It's the only way the buildable lot is to angle it instead of having to go straight back. So, basically, the...the only real way every other house in the neighborhood is a colonial with a garage.

RD: Yeah, I have pictures of the houses.

RG: And the only way that they are basically, said you could put that same type of house with everybody has in the neighborhood is if you have the house sideways. You know & face the front door into the wood which...because there's a retention pond?

RD: Yes.

DD: Yes.

RG: To the right hand side or retention water area. That goes for the rest of the houses. I'm pretty familiar with the neighborhood. I've been there a couple of hundred times.

DT: Like the corner area?

RG: That's pretty much the standard...the house down there.

DT: Tape snaps.

RG: So, actually...yeah, because it angles off like that. For the life of me, I cannot understand how basically the Planning Board could approve a permit crazy offset like that. I've never seen before in all the years I've sat on the Board. But, I don't know...it would appear to me that the three feet on each side to be able to fit within the criteria of what we need for a variance, if we have discussed this before, I think the hardship is pretty...pretty clear. I think the hardship is...it's certainly not self-created. It would be the topography of the lot. They're limited to the shape, the format and the uh, basically, the run-off where it goes

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down into the lot to the side. I do know, I have discussed with the Durgin's that, again, they had tried to purchase a piece so they wouldn't have to go through this whole thing. That, uh, wasn't going to happen. So, they are basically looking for three feet. It's within the established character of the neighborhood. You could see they're all colonials, they're all garaged and again, the hardship...it would not even make sense to put a house sideways. It would actually be detrimental to the rest of the houses on the neighborhood to put a house sideways on the lot. That would be crazy and for the last thing, I don't think it would derogate from the intent of the by-law. I think, bottom line, this is exactly what the Boards put together to do, you know, to create relief for the odd shapes, the different things. Granted, think it was discussed before, you know private, this is a conforming lot if you want to call that conforming. This is conforming lot, right, as approved by the Planning Board and by us giving them three feet...three point six on each side to be able to build the same house as everybody else in the neighborhood, you are making it non-conforming. But anything else you put on the lot is going to have to come up for a variance anyway and I do think it would only add to the rest of the neighborhood by building something...

SW: So, it's just the corners? It's just a little bit?

RG: That's exactly. If this wasn't there...

KN: What about eliminating the breezeway?

RG: I guess the Durgin's...you can ask Mr. Durgin & Mrs. Durgin about that. But I think that was the purpose of having that. So they have a separate entrance. They wouldn't be tracking mud.

RD: A separate entrance so there's a place where you put your shoes, hang your jackets but also allows us to push the kitchen and the bathroom into that area instead of the living room.

KN: But instead of creating your own hardship, by taking that breezeway out, then your house would fit exactly.

RD: It would but we wouldn't have a family room because if you look at the plans...

KN: You're only losing...your breezeway is eight feet.

RD: Correct.

KN: You'll be gaining a foot on each side of that house.

RD: No, you wouldn't.

DT: Where's the family room?

RD: The family room is here. So, by pushing the kitchen and the bathroom into this area, it allows us to have a family room here where a lot of colonials out there, they either build a family room off the back of the house, which we can't because of the lot lines; or off to the side because of the lot lines.

RG: And in which case, they would be applying to put a variance also, just to put a family room in. Not even something relatively adequate.

DT: Why would they?

RG: Because the lot lines goes off to the side in order to keep the house squared to the street.

DT: See, I have a problem with this. I have a big problem with this because we are taking a conforming lot and we're changing it. We're making it nonconforming to fit that in and I

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- disagree with you that it's a hardship. It's a hardship that...but it's a self-created because I asked you last time, what about a different type of house and the answer was no. So...
- RD: But...
- DT: You don't...no wait...you know, Kozhaya said something about the breezeway..no you don't' want to do that. There's no give and take here. It's I want what I want and I want the variance and I really disagree that we shouldn't be setting a precedence where we have a conforming lot and giving out variances, so it goes against every rule about variances. What is the hardship?
- RG: The topography. There is no other lot in this whole development that's anything like this; that goes up straight and then goes flying off to one side. You won't find another lot in any of the developments in Halifax that look anything like this. Nothing like this. Have you seen anything in the twenty some odd years you've sat on that...never seen anything like this before.
- DT: I...I still..
- RIG: You put a house in there sideways and you're dropping the value of all the rest of the other houses in the area.
- RG: And every other house is a colonial with a two-car garages. I don't think they are asking for anything special or different.
- DT: They didn't have a breezeway. The picture that...the picture you showed, you have a breezeway. It's a two-car garage.
- DT: There's one house that has a separate entryway and actually that house is across the street from that lot. It's 9 Bourne Drive, actually, Ms. Burgess.

Abutter, Nicole Burgess of 9 Bourne Drive was in the audience.

- RG: Did you have to get a variance for your breezeway?
- NG: Ah, no we didn't.
- RD: We spoke to all the abutters within the development and nobody has any issues with it. They welcomed a house there. I have some letters coming in, they're from abutters. We have a couple of abutters here.
- RG: How many houses are they building?
- RD: Five right now, two unbuilt...two empty lots.
- PP: Are there other style houses on that street you could have chosen?
- RD: There only colonials...different style house is if you have a cape in the same footprint...
- PP: On that street, there are capes?
- RD: No, they're all colonials.
- PP: Are there other houses on that street, that's similar that you could have built on that lot that would fit?
- PP: Yeah...no. So, they're all a little bit different. My question is...her issue is kind of that if you are going to build something similar to the rest of the houses on the street, is there a choice of a house on that street that you could have chosen other than this one that would have fit on that lot without a variance?

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- RD: Your other colonial...
- PP: Because you mentioned there's...yeah..
- RD: Without the separate...the breezeway...but those homes have extended family rooms.
- PP: That would have fitted there. So, there's really...if you were to build another house similar to one on that street, you wouldn't be able to do it because of the dimensions of the lot.
- RD: Correct.
- PP: So, it would be derogated from the rest of the character of the neighborhood, you couldn't do it?
- RD: Yeah.
- DT: Any other comments from the Board? Questions?
- DT: Question or comments from the audience.

Abutter, Jennifer MacPherson of 7 Bourne Drive, spoke to the petition.

- JM: And all I want to say is that I would not appreciate looking at the side of a house from my front door. I think it would take down the value of all our houses in the neighborhood. It's just not appealing. I don't even know how it would work the driveway. It would be an odd thing in our neighborhood.

Abutter, Nicole Burgess of 9 Bourne Drive, spoke to the petition.

- NB: I'm the same way. I agree.
- RG: And you have the breezeway or you don't have the breezeway?
- NB: We do. Yeah, we have the breezeway.
- RG: And there's one other house out of the five...two out of five that have breezeways or separate entry?
- NB: It would be hers and I would be the other one.
- PP: The houses that don't have a breezeway have the family room, right? So, it still wouldn't fit even without the breezeway? So, all the rest of the houses in the neighborhood wouldn't fit. You don't have a choice in a different style house in that neighborhood.
- RG: With or without the breezeway, yes, they went for the family room like everyone else, they'd still
- PP: Right, they'd still be the only one...
- RIG: They shrunk this, they're gonna lose that bath. Screw this, you could actually make the front door smaller but the bathroom, it's pretty tight as it is.
- DT: Do we need to go down to look at this spot?
- RIG: There's nothing there.
- RG: It's a big dirt spot.
- DT: I have a letter from (abutter) Mr. Ballerini (of 6 Danson Lane) saying he has no concerns with this. He abuts the property and that's aerial view, not much of one but that's pretty

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much how the lot lines go off. You see that's where the land dip downs a lot, there a retense mope (sp?) but that's not a buildable lot.

RG: And that's the piece you guys tried to buy?

RD: Yes, we tried buying a portion of this.

RIG: That's not buildable.

RG: It's got a retention something...what's it called?

RD: A retention base storm water runoff.

RIG: Oh.

Chairman Tinkham proceeds to read the letter aloud to the audience from Michael Ballerini of 6 Danson Lane, Halifax, MA.

RG: Have you talked to anybody else, other than those three?

RD: We talked to the Wilson's on Danson Road at the cul-de-sac and they had no issues or concerns with this either. Some of the other abutters that were on that road we didn't talk to them. We only kept to those..

RG: In the neighborhood?

RD: Yes.

DT: What do you guys want to do?

It was duly moved (R.Gaynor) and seconded (R.Gilcoine) to waive the on-site inspection. So VOTED 5-0-0

RG: I'll make a motion to accept petition #788 as presented. Again for the same reasons we discussed of previous. I do think it meets the criteria for granting of a variance. I don't see it as a self-imposed. I think the hardship is certainly the topography and the layout of the lot. From the letters submitted in the presentation, I do think it's within the established character of the neighborhood and I don't see how it derogates from the intent of the bylaw. I think this is the reason exactly why the Zoning Board of Appeals is here to grant variances for.

SW: Second.

DT: Okay, I will take a voice vote. Is there any question before I do this?

RG: What do we need? We have five members voting, so we need four out of five.

It was duly moved (R.Gaynor) and seconded (S.Wells) to grant your petition (#788) for a Variance of both the left and right side setbacks from thirty (30) feet to twenty six (26) feet to build a new single family dwelling to a location to be known as 8 Bourne Drive, Halifax, MA. Said property is owned by the Perk Realty Trust/Trustees, Peter & Rita Lehtola (of 1199 Auburn Street, Bridgewater, MA), as shown on Assessor's Map #98, Lot 5X. The applicants seek a Variance of

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the setback requirements, under Section(s) 167-11 Table of Dimensional and Density Regulations (page 167:43) in accordance with the Zoning By-laws of the Town of Halifax).

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The following conditions must be adhered to in order for the variance to remain in effect:

- The Variance 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/or special permits shall comply with all the rules and regulations and codes of the Town of Halifax.

This decision shall not take effect until:

- (e) 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 (04/24/13) 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
- (f) A certified copy indicating such Registry Recording has been filed with the Board.

Chairman Tinkham called for a voice vote: S.Wells, YES; R.Gilcoine, YES; K.Nessralla, YES; R.Gaynor, YES; D.Tinkham, NO

The motion to grant petition #788 passed 4-1-0.

DT: I cannot do it. We are making a conforming lot nonconforming and you guys are setting a really bad precedent. But it passes.

Chairman Tinkham reprised Mr. & Mrs. Durgin of the procedure following approval of the petition.

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**Petition #783, Tony Giannetti, 413 Plymouth Street, Halifax, MA**

BOARD/COMMITTEE: ZONING BOARD OF APPEALS  
MEETING PUBLIC HEARING (Please circle appropriately)  
DATE: April 22, 2013 TIME: 7:45 p.m  
LOCATION: Town of Halifax, Town Hall, Meeting Room 1, 499 Plymouth Street, Halifax, MA 02338

PURPOSE: Petition #783 Request to Amend the Conditions Granted to the Special Permit  
REQUESTED BY: Marion Wong-Ryan, ZBA Secretary

NOTE: All meeting notices must be filed and time stamped in the Town Clerk’s Office and posted on the Municipal Bulletin Board no later than 48 hours in advance of meetings (excluding Saturdays, Sundays and legal holidays). Please keep in mind the Town Clerk’s hours of operation and make the necessary arrangements to be sure posting is made in an adequate amount of time.

\*Per changes to the Open Meeting Law effective 7/1/2010, “A listing of topics that the Chair reasonably anticipates will be discussed at the meeting” are to be listed on the agenda.

**LIST OF TOPICS TO BE DISCUSSED**

Per the applicant, “ I Tony Giannetti agree and want to continue with the current conditions of petition #783. I would like to make the following additions to Petition #783:

General Auto Repair

- Brakes
- Exhaust
- Tune ups
- Rear end work
- Suspension Components
- Tires, Tire repair & mounting
- Oil Changes
- Transmission Repair
- Wiring
- Engine Replacements
- Radiators
- Alternators
- Window Tinting
- Remote Starter Installation

Mr. Giannetti came in front of the Board to speak to his petition.

Chairman Tinkham asked Mr. Giannetti if that is correct...that the applicant wants to include the above listed autowork. The applicant said that is correct and the work would be for any type of vehicle and specifically for the older cars that he works on with his dad. The applicant is sufficiently placed to do the additional automotive work based on customer inquiries. No additional equipment would need to be brought onto the facility. The chassis business is more a

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summer business. Currently the workspace is approximately three thousand square feet. By adding the offerings, it would help with the rent and business during the winter season. There will still be no cars left outside. Oil goes back to be recycled and the work would be on cars only, no motorcycles. Same number of employees. Exterior lighting should be there in case someone wants to drop off their vehicle for servicing. One of the exterior lights does not work so the applicant needs to address that matter with his landlord about fixing it. No used or junk parts will be visible. The trailer will remain outside the property.

It was duly moved (R.Gaynor) and seconded (R.Gilcoine) to grant your amendments to the conditions of the petition (#783) for Special Permit for “Motor vehicle service...” &/or “Repair garages for motor vehicles” &/or “Light industrial uses, including...fabrication, packaging and assembly” to the property at 413 Plymouth Street, Halifax, MA, in accordance with the Zoning By-laws of the Town of Halifax under Section(s) 167-7, Schedule of Use Regulations, Commercial &/or Industrial Uses, Said property is owned by Allied Realty Associates, LLC as shown on Assessor’s Map #72, Lots 16, 16B, 17 & 16C.

The Board granted the special permit with the following conditions to remain intact and have **boldfaced & underlined the amendments &/or addendums:**

- Hours of operation will be Monday through Saturday, from the hours of 9:00am to 5:00pm.
- The applicant is to have no unregistered vehicle(s) on the exterior locations of the property.
- The special permit runs with the applicant(s) only and is not transferable.
- The lighting in the exterior of the property is to remain in its current condition.
- The applicant must maintain an acceptable practice of cleanliness on the property.
- The applicant must maintain a removal practice of discarded material from the property.
- The special permit and/or variance are granted to the applicant with the stipulation that the applicant is within compliance of the conditions set forth by the remaining Departments, Boards and/or Committees in the Town of Halifax (specifically Building Inspector’s Office, Planning Board, Historic Commission and Board of Selectmen’s), whether the conditions are pre-existing or forthcoming.
- **The applicant has been granted to extend the business to include the following work: brakes, exhaust, tune ups, rear end work, suspension components, tires/tire repairs/mounting, oil changes, transmission repair, wiring, engine replacements, radiators, alternators, window tinting & remote starter installation.**
- **The special permit and/or variance were 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/or special permits shall comply with all the rules and regulations and codes of the Town of Halifax.



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has the adjacent lot. So, it might be easier if I can come up front and point out what we're trying to do.

DT: Absolutely.

GB: So, what we have now is we have one large lot. This is lot 5F and this is identified as map 25, lot 5. So, this is one lot. What we have had done and Greg has lived in this house. I think you said you grew up there?

GT: Yes.

GB: So, he's lived there his entire life. This was his father's house. This is where Mike lives, who's right there and then, his sister lives back here. This was originally a 19 acre parcel.

GT: It was all one big piece of land, 19 acres.

GB: So, it's sort of been a family property for many many years. Greg currently works for a medical laser company and he has to relocate north of Boston as part of that. So, what he wants to do is...financially, he can't have this house and the house north of Boston; so, he wants to sell this house, map 25, lot 5. But he wants to retain this so that's a retreat lot so hopefully/eventually, he can return to the town; and that was sort of his plan, to one day be able to build back here. If we create this lot and this lot, if it weren't for the current location of the house, there would both be conforming lots and we would not be here. But because of the location of the house, it is too close...that's the deck which is 17.2 feet, 20.9 feet and 21.8 feet so that is within the 30 feet side setback. We can't create a non-conforming lot so that's why we are here, to get a variance which will allow us to create this lot and then he can sell this with the house and he can keep this lot, which is part of the family parcel and hopefully, someday, give him a place to come back.

DT: Where is????

KN: Who owns that lot right there?

GB: This lot. Mike, he's right there.

DT: So, is this and this piece all one lot right now?

GB: Right now, it's a uniquely shaped lot. So, if you take out...this is all one lot.

RG: Where's the sister's house?

GB: Back here and she has...

RG: I was just going to say, where's her access?

GB: She has access on this side right here. So, this sort of...these are some pictures I took to give you a reference and Greg, maybe you can just explain this better.

GT: My sister's house, her driveway is here & then there's actually a little roundabout and so her house is here and the Brown's have a house here and there's a pond here. The rest is conservation which I also own and that's, you know, not part of anything.

RG: Does she share a driveway with the Brown's?

GT: She does, yeah. It's just a little...it's, you know, John Wade Drive is off of Hudson Street. It's just the two homes that are setback.

RG: So is it a driveway?

GT: It's a private driveway. They pay to have it plowed and all that, so...

GB: These are two different pictures, slightly different. Picture #2 which is the first one I passed out, it shows...Greg's house is actually, as you are looking at it, to the right; and

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then, the second picture, which is sort of just down the street, this is further, that would be approximately the location of the driveway. That's sort of the existing.

GT: It was an old driveway...old access.

GB: Mike's house...is that Mike's house?

GT: That's the shed. That's the back of the shed.

GB: So these are sort of slight down just to give you an idea of what is out there right now and there is sort of a natural place. The old driveway was right here.

RG: What's the difference of this side setback right here?

GB: Well, this Board actually granted a variance to allow for this construction to go up? Mike, do you know what the side setback is? It's less than thirty feet and it's less than thirty feet because of the variance you needed to do it.

MB: Maybe it's like a 3 feet variance or something.

GB: Yeah, maybe it was 27 feet? Was it because I talked to the Building Inspector when I came in, so...

RG: So lot 5F is existing now?

DT: No.

GB: Well, what's existing now is this whole, this is not identified as 5F. It's just one. If you sort of get rid of this line, right now, this lot is just oddly shaped.

KN: So you want a retreat lot?

GB: Yeah, we want to make a retreat lot and we can make a retreat lot, it complies. It's a form A lot. I mean it's a fully complying retreat lot but if we do that, to get the retreat lot requires a 50 foot access. So, to do that, that's what pushes us into this house. So, we could move the house..I mean...not really. Theoretically, we could move the house because there's plenty of room over here to have this fully complying. It's just the fact that this would feel, family homestead, and that's where...

GT: My father had always said the retreat lot would be mine. Then my brother taking that spot he's in now, my sister has the retreat lot and then, I have the one basically behind my brother & next to my sister.

KN: And you want to sell that house right there?

GT: Not really but I have to. I really don't have much of a choice.

GB: Yeah, he needs to relocate his job taking him north of Boston.

GT: I see it as something that keeps me tied to Halifax. You know, maybe it will be something to give to my son and if he doesn't need it, maybe a niece or nephew, whoever you know, but it'll be a wooded retreat lot that I would be paying taxes on and some time build a house.

GB: So, I guess the three options are we don't create a retreat lot, we don't give him the ability to come back to a town that has been in the family...when did your father buy this property?

GT: A while back.

GB: We move the house which is sort of a hardship or we get a variance, which allows...I mean we can't create a non-conforming lot but with the variance, we can create a separate lot.

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- This is already a conforming retreat lot has been designed so we don't have to do anything with respect to this. You don't have to act on this. You just have to act on the...
- RG: So what do you need for the retreat lot? 50 feet of frontage?
- DT: Yes.
- RG: What's there? 52?
- GB: So, you know, the other option...you know it was not drawn this way? But if you give us a variance from 10 feet there? If you give us a variance from...allow a fifty foot drive to create the retreat lot, then this lot is conforming?
- SW: You mean 40 feet.
- GB: I'm sorry, yeah, if you allow a 40 foot, there's also a square footage requirement.
- PP: You have other options.
- RG: Right. Exactly.
- PP: You have other options to move the house or sell the house as it is, what is the hardship that makes it?
- GB: Sorry, what did you mean? What are the other options?
- PP: Well, if you want us to grant that variance and you have other options, you have three other options? What's the hardship for us to grant that variance?
- GB: Well, the hardship is...
- PP: I just don't want it to be attached to the house and later, somebody says it's an illegal variance, but...
- GB: No, I mean the hardship is it wouldn't allow him to keep the retreat lot...to allow him to move back into the town. I mean this is property that has been in his family and he wants to someday move back to Halifax.
- KN: His sister has a private driveway here?
- GB: His sister...yeah.
- KN: What if she goes this way and comes this way and creates the retreat lot.
- GB: I don't think that would make a good flow.
- KN: She's got a driveway, right?
- GB: She's got a right of way.
- KN: How wide is the driveway?
- DT: Forty two
- KN: Still, it's a lot better than making this an illegal lot and that one will be legal. You're gonna be selling an illegal lot to somebody.
- PP: That's going to be a driveway later that they don't know that when they buy the house.
- KN: If you take 50 feet from the side...
- GT: I wouldn't not say that there's never ever going to be there in the future, down the road.
- GB: You mean take 50 feet off of this and make it L-shaped?
- RG: No.
- PP: No, put the driveway on her land.
- KN: Put the driveway with...common driveway...
- GT: I don't think there's any room to her house from there either.
- RG: The one she shares with Mr. Brown?

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- GT: Yes.
- RIG: The problem is that they don't have common driveways. It's all one line.
- GT: She's in my backyard and there's native cut pine trees, lots of them.
- KN: You'll be cutting down pine trees down there too.
- GT: No, there's really nothing there. It's really open. Up to 10-12-15 years ago, you could drive back there. It's pretty open, just shrubs there.
- KN: So, it's a lot easier for you to share that driveway with your sister and Mr. Brown?
- GT: Yeah, but I know there's no room in between there. There's a pool. I have an above ground pool.
- KN: Where? Right here?
- GT: Yeah.
- KN: You go this way and come out.
- GB: Are you talking about taking 50 feet out of the inside of his lot?
- DT, KN: No, sharing existing driveway.
- GB: This would create...I think this would create a non-conforming lot. You might create a non-conforming lot.
- KN: How big is that lot behind there?
- GB: Here? I do not know.
- PP: 2.7 acres.
- KN: 2.7...you are not creating an illegal fee because it's over 80,000 square feet.
- GB: But if you're saying...I'm not sure I'm understanding what you're saying about creating a common driveway.
- KN: This is the driveway here...
- RG: For your sister and Mr. & Mrs. Brown...that they share right now.
- GT: Okay, hold on..this here.
- KN: This is the driveway for your sister, right?
- GT: I would think so, yes.
- KN: Okay, you come up this way, cut across.
- GT: That's her driveway and the side of her house.
- KN: I understand that but there's plenty of room right her.
- GT: There isn't. This is all wooded back here. Her house is tight to the backyard of mine. She couldn't, you know, there's a driveway, her house and the retaining wall, right there that goes uphill. I know. The original thought of having a driveway would cause more...the thought of cutting all those trees. It would cause more, down the road, I would build the house in the lot, not cutting down all those trees.
- KN: We're just trying to make this as simple as possible so when you sell that lot that you live in right now, it going to be non-conforming with a variance to somebody else.
- GT: Well, then maybe you can give me some type of waiver...I don't know. I don't know.
- GB: But it will be a legal lot as long as there is a variance. I mean if we have this lot with a variance, then it's a legal lot. I mean that's the purpose.
- KN: What's the hardship?
- RG: It's turning it non-conforming.

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- GB: The hardship is without neither a variance for this as it's currently existing or without a variance to reduce this access point from 50 feet to 40 feet, I mean I think that's a viable option if that's something the Board would prefer. To reduce that down to 50 feet, we could get rid of, if we reduce the driveway down from 50 feet to 40 feet for this section, we could actually get rid of the deck and then, everything else would comply. The house itself would comply and then you could move the deck. I mean we rather not but that's not...we could do that. Then, you would allow this lot to be created with a variance and this would be an existing conforming lot. The hardship is that without neither of those, he's not able to retain and someday, build on this back lot.
- DT: But that's really not...that's a self-created hardship.
- RG: It's pre-existing.
- DT: Yeah. I mean.
- RG: Because this hasn't even been approved by Planning yet?
- DT: No, they're wait for us, right?
- RIG: Is this all one lot right now?
- GB: This is all one lot. If you look at this, it's this irregular shaped lot.
- RIG: This is not part of the lot.
- GB: No, that's Mike's lot.
- RIG: You couldn't move it to the left & start it here.
- GB: That's not his property, that's his brother's property. So, I understand your concern about the hardship but the question I have is...you allowed encroachment over here. This is an existing lot and you allowed an addition to be put on. I'm not sure what the hardship was there.
- RIG: I don't see how we allowed that because this load is here. The lot line is over here.
- PP: No, it's over here.
- KN: When was that variance granted?
- MB: A few years back? About 4-5 years ago?
- GB: What's your address?
- DT: 92 Pond Street.

(At this point, the secretary researched files regarding the petition filing for 92 Pond Street)

- GB: It would be a straight driveway with very little to cut down.
- SW: You can't make that a lot and make it an easement?
- GT: I think my sister has an easement on her side.
- SW: Can this be an easement?
- GB: I think the zoning bylaws require a 50 foot frontage and the frontage cannot be an easement.
- RG: Right.

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- GB: So, it has to be so if the Board thinks this is more acceptable, we can have this redrawn to allow this to remain a conforming lot and to allow this retreat lot created with a 40 foot access here so we would request a variance from the 40 foot section.
- RIG: Does the whole thing have to be 50 feet? So, you'll still need the 50 foot frontage.
- SW: Well, that's what he's saying, to take it back to forty only as far as you have to & then go to 50.
- RIG: Well, you still need the 50 feet of frontage, correct?
- GB: Well, not if we get a variance. I mean Joe Webby drew this. I mean I'm sure he looked at this to be a conforming lot.
- DT: I'm sorry.
- RIG: Is it in the bylaw?
- RG: The definition of a retreat lot is it has to be an X-number of square feet and 50 foot of frontage.
- RIG: 50 feet of frontage but doesn't say the road itself have to be 50 feet all the way back.
- DT: Who was that cranberry owner?
- KN: Harju
- RG: Yep, on Thompson Street. We took a chunk of it.
- RIG: Went around a rock.
- KN: Took a corner of the building, a cut out, it was 50 & short distance, a 40 & then back to 50.
- DT: Yep, I remember that.
- GB: We can't take any, you know try to did a trade because you already got a variance there. So you're already within the 30 feet on that side.
- KN: So you need a variance from...
- GB: So we need a variance from these 3 measurements...17.2, 20.9 & 21.8. I mean the 17.2 we can get rid of because it's the deck.
- KN: You're probably looking at how many...
- RG: 52 feet...52 feet, 10 inches.
- SW: What he's asking is how far back does it have to go back 40 feet before going back to 50 feet?
- GB: It would have to go just back to here unless we remove the deck, then it just has to go here.
- GT: If you take off the deck, it's forced to the ground, it's like a stage. The elevation changes from like three feet or so elevation and from where the property line is and over, it's natural border. That's all.
- GB: So, I understand the Board's concern and just from the standpoint of looking at it, you know, if the Board is inclined at some point to allow relief, I think the variance that we've requested is probably the less problematic because you have plenty of access. The pictures illustrate...I mean even though it's 50 feet, I mean the purpose of the bylaw is that people are not on top of each other. I mean it's just going to be a driveway. It's never going to be a permanent building. It's going to be an access for this. So, even though, you're technically closer to the thirty feet, from a practical standpoint, there's not going to be any building here, so you're really 70 feet apart from the intent of the bylaw is to make sure houses are not build on top of each other and that will never be the case here. I guess if

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you are looking at...do you grant a variance to this lot or do you grant it here? I think it's more important...the reason for the 50 foot access is to make sure that there's adequate to get in/out of the property and if you start narrowing that, from a practical standpoint, narrowing that I think that does more harm to the intent of the bylaw than just allowing these 2 guidelines. We'll get rid of the deck so that's the closest, so the closet is 9.1 feet which is the closet in and this is...would be 8.2 feet but you still have 50 feet on the other end of it.

RG: She has an easement here, right? Her's is not a retreat lot, is it...your sister's?

GT: No..no...I mean what's an easement?

RG: It's a shared driveway, so she doesn't own it & he doesn't own it...the Brown's.

GT: They both split the plow.

RG: So, it's an easement, neither can block the driveway.

GB: I don't know 100% because I did not look to see her access so this is her property and he owns this. She owns most of it and he owns a portion of it. Whether there is an easement, there must be an easement for the last hurdle of the property.

RG: So she wouldn't need an easement if you had an easement for her going through the retreat lot. So, basically, what I am saying if you decide not to come back, and you stay in the north shore and you do not return to Halifax, that becomes a sellable lot. Right now, it is not. It is not buildable, correct?

GT: Right.

DT: Without what?

RG: Without the 50 feet of frontage, it is useless.

DT: The access.

RG: She has an easement on her side.

GB: She owns that & I suspect that is 50 feet because it looks pretty close.

DT: I don't know if that's reliable.

GB: And I don't know it was created because of a variance. I don't know anything about that lot.

Chairman Tinkham read aloud a letter from an abutter, Anne Snyder of 110 Pond Street in favor of the petition.

The Board reviews the application.

The Attorney expresses the intent of the bylaw and that you cannot build here. It can only become a driveway. It will only become a driveway. As to when, that is an uncertainty.

GB: It'll be a driveway...and it may not be a driveway for...you mean, at sometime, it's going to be a driveway. I mean Greg's going to either come back and build here and that's certainly why he wants to create this or he could potentially sell it someday. I mean that's...life's uncertain. I'm not going to tell you he's not going to sell it because that's just not...you don't know for certainty.

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The secretary went to the Plymouth County Registry of Deeds and it states on his sisters deed that it does state that she does have a right of way to her property. Brief discussion of the sister's property occurred.

Mr. Gaynor asked if these plans have been presented to the Planning Board as of yet and the attorney stated it has not as a Variance is required & upon granting of the variance, the next step would be to the Planning Board as all would be in compliance for a Form A retreat lot. Technically, the first stop is the Zoning Board of Appeals as this prefaces the rest of the process.

GB: Part of the role of the Zoning Board, I mean I heard a couple of hearing ago, the purpose of the Zoning Board is to, you've got a bylaw and where there is a hardship, you're to sort of put some reason back in because everything is unique and it's hard to have a bylaw that has every single issue.

RG: But like Mrs. Tinkham said, this is self-created.

DT: Like something else tonight.

RG: Right.

DT: Yeah. That went through.

GB: I think that vote was 4 to 1; and I think that's more self-created than this is. I mean this house is sitting there.

RG: No no. The other one was pre-existing. It was pre-existing. This isn't. You're creating this. The other lot had been created already.

GB: Yeah, but the house wasn't on it. They could have put a smaller house. They had an eight foot breezeway. I mean I think that was Ms. Tinkham's point. I mean we could move this house.

RG: Right...absolutely.

DT: So, I guess we have to grant this. We've set a precedence.

RG: That's crap. There's no precedence.

PP: If every house on the street. If it was going to be similar, every house on the street would look similar and it doesn't. That's the difference between this one and that one. I have a serious problem that we are going to create 2 lots that 2 new people are going to live on that the driveway is right behind another house and the bylaw is there to protect against that; and the variance, I don't think is necessarily there because of a hardship but to create 2 lots.

DT: There are a number of retreat lots in this town.

PP: With that type of variance?

RG: Pre-existing. Not that were created though.

DT: No but a 50 foot driveway to the back, so there would be a driveway behind somebody's house.

BG: It's a conforming retreat lot. I mean the only problem is...

RG: It's conforming, not pre-existing.

KN: But it's not deeded yet.

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BG: You're correct. If this was drawn, if we didn't pay attention to this house, if this house wasn't here, these 2 lots could be created as a matter of right and there would be no need for a variance. Period, I mean if this was your land and you had this uniquely shaped lot, we could go to the Building Inspector as a matter of right, I could prepare a deed, we could get the Planning Board to sign off because we bear fully compliant with engineering done that says it meets all of your standards, we would have 2 lots. The reason why I'm here tonight is because this house is here and to allow for this 50 foot driveway so that this is a conforming retreat lot, infringe upon the setbacks of the 30 foot setbacks of the 20.9 & 21.8, so that's the setbacks. So the worse, we can forget about the deck. So, the worse that we are at, it's late and my math is getting bad, the closest we are requiring is 9.1 feet. Is that right..that's the difference. This lot, which the Board and I understand it's not a precedence, part of it goes to, & one of the ways you want to look at it, is how is going to be detrimental to the neighborhood which is the point you brought up. So, this Board as the ZBA, as I don't remember how many of you remember back from 2006...

DT: Unfortunately, most of us were.

BG: Well, that was a very wise decision I'm sure. They looked at it and we'll allow it to encroach...allowed Mike to build an addition, we'll allow it to go from 30 feet down to 22 feet if I remember correctly; and that variance was granted and that was perceived as not a detriment and I am not criticizing the decision of the Board but that was 8 more feet of living space, just like 8 feet of breezeway. Here we are asking for 9.1 feet at the worse and most encroaching point and on the other side of it, a 50 foot buffer. You're never going to build a house on this. I mean I don't know what you would ever..you can't.

RG: You can't. Exactly.

BG: It doesn't comply with setbacks.

GT: It's a driveway. It's just a driveway.

DT: But it will never be 50 feet wide.

BG: I know a driveway is going to be 15 feet? 20 feet? I don't what they are.

RG: But it has to be 50 feet.

DT: Well, the frontage has to be...

BG: The zoning bylaws has to be...oh I'm sorry.

DT: But this doesn't have to be 50 feet of driveway. That's what we're saying.

GT: No, it would never be.

RIG: What I'm look at is that we have 2 houses 92 feet apart. If that did not have a driveway there and you put them onto legal setback, you'd have 2 houses.

DT: Okay, what are you saying?

RIG: I'm saying there's plenty of room plus the driveway will be about 20 feet.

RG: Well, when this variance was granted, it wasn't certainly based on, down the road or some future date, this would happen...

Everyone verbally agreed with that.

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RG: Every variance is granted based on its own merit. No different than the last variance we gave. Every variance is based on its own merit. It's not have to give it to them. Good god I don't believe you said that.

DT: And I can't believe... Do we need to go down to see this lot?

GB: I mean I brought... obviously the Board's welcome to do whatever they like. But I mean the pictures are to try to give you a feel for it? I don't know if you've been...

DT: So we won't come?

Laughter transpired.

GB: Well, you know he's got school aged kids, he wants to try to sell the front house. He wants to be able to buy something the Fall so he move up and get his kids in school so time is sort of important and he can't do anything what this Board will take.

DT: You're up for this one.

SW: Did she say you're up?

PP: No, you're up.

SW: I'm up.

RG: I think we should see it only because uh... in the meantime, I would like to do some research on it, too.

DT: Well, do I have a motion to not waive it or do I have a motion to waive it? Take a vote on it?

RG: I'd like to check with legal. I'd like to check with uh...

DT: Why?

RG: with Planning Board.

DT: Why?

RG: Because I'm not comfortable with it, with knowing the requirements. Looking up the definition now and I can't find the definition of a retreat lot.

BG: Retreat lot?

Mr. Gaynor proceeds to locate the definition of "Estate Lot" in the Zoning Bylaws.

DT: Does everybody want to go down and see this?

KN: I don't.

SW: I don't think it will help me to see it.

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

The attorney showed Mr. Gaynor where it was located as it is listed under "Estate Lot".

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Mr. Gaynor reads aloud section 167-16(B) “The access to said estate lot shall be a minimum of 50 feet in width”.

DT: Oh, it is.

BG: And the narrowest point, right there, is 50 feet. So, it a little higher up there just because of the way the lines slope. But that...that is the closest point.

RG: But like you said, that as long as you have 50 feet of frontage, you don't need 50 feet going back there.

DT: But we vary part of it.

RG: Oh, you can vary it but it says...you said oh all you need is 50 feet in the front and then you can narrow it. It has to be 50 feet or you have to vary it.

SW: This little notch right here.

RG: Okay, are you doing looking at that?

S.Wells, YES; R.Gilcoine, YES; K.Nessralla, YES; R.Gaynor, NO; D.Tinkham, YES  
So VOTED 4-1-0

The Board reviewed the plans and before voting, wanted verification that they would not be voting on narrowing the road width but are only voting on grant a variance of setbacks of 17.2 feet, 20.9 feet & 21.8 feet.

RG: Not the width of the road. It's the distance between the lotline and the house. That's the application.

BG: We're not going to build closer, obviously. I mean nothing is going to be built here. We don't want the ability to build anything else.

RG: Yeah, basically you were telling us that we made a mistake here by allowing him a variance like that.

BG: I didn't say...I didn't say you made a mistake.

RG: Yeah, you said, oh well, you gave there, now, you're encroaching on that. So, now you want us to do it on the other side.

BG: I did not say that was a mistake. I said that obviously was a well reasoned decision and you decided, applying all the factors, you waived it from 30 feet to 22 feet. I'm asking for consistent treatment. There's no such thing as precedent. I mean you know that. Every lots unique. But you also know that the purpose of the Board is to look at things & to apply reason & when you think it's appropriate, you grant a variance; and I would it be requested in this case.

DT: Do I have a motion?

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It was duly moved (K.Nessralla) and seconded (S.Wells) to grant your petition (#789), with a vote of four (4) in favor and one (1) to deny, for a Variance(s) of the left side setback(s) from the required 30 feet to 17.2 feet, 20.9 feet & 21.8 feet to your existing single family home, at 72 Pond Street, Halifax, MA, as shown on Assessor's Map #25, Lot 5. The Variance was granted so ... "it will allow for the existing home to remain where it is located on the front lot (Lot 5) after the new retreat lot (Lot 5F) is created". The applicant was granted a Variance(s) of the setback requirements, under Section(s) 167-11 Table of Dimensional and Density Regulations (page 167:43) in accordance with the Zoning By-laws of the Town of Halifax.

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This petition was granted as it does not derogate from the intent of the bylaw and will not be detrimental to the established character of the neighborhood.

The following conditions must be adhered to in order for the variance to remain in effect:

- The Variance 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/or special permits shall comply with all the rules and regulations and codes of the Town of Halifax.

This decision shall not take effect until:

- (i) 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 (04/24/13) 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
- (j) A certified copy indicating such Registry Recording has been filed with the Board.

Chairman Tinkham called for a voice vote: S.Wells, YES; R.Gilcoine, YES; K.Nessralla, YES; R.Gaynor, NO; D.Tinkham, YES

The motion to grant petition #789 passed 4-1-0.

Chairman Tinkham reprised Mr. Tereshko of the procedure following approval of the petition.

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**Board Member, Richard Gilcoine**

Chairman Tinkham informed Board member, Richard Gilcoine that his appointment on the Board expires June 30, 2013 and if he would like to be re-appointed. Mr. Gilcoine replied that he would not be welcoming another appointment as he is stepping off the Board. The Board members were saddened to hear this news but accepted his decision.

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

Respectfully submitted,

Marion Wong-Ryan  
Zoning Board of Appeals, Secretary

Debra Tinkham  
Zoning Board of Appeals, Chairman

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