

Members Present: Scott Lees, John Krebs, Karl Ogren, Denny Anderson (A), John Quigley (A)
Members Absent: Jake Stephan, Craig Niiler
Others Present: Janice Zecher, Recording Secretary, Don Harris, Zoning Officer, Anne Cunningham, Les Babb

Transcript of ZBA Meeting held December 17, 2019

Case # 38-3-3-19 Linda Worthen

Applicant seeks an appeal for an Administrative Decision regarding the rescission of a building permit issued on October 24, 2019 to build a deck at 28 Houle Drive. Deck is being built within common area of condominiums. Map 38, Lot 3-3.

My name is Robert Trepsas and I will be speaking for Ms. Worthen. Ms. Worthen purchased the property at 28 Houle Drive in August, wanted to put a deck on. It is a condominium association.

John Krebs – Did you want to put a deck on or replace and expand?

Trepsas: There was a small set of stairs on the side that we took off and we just expanded. So, she wasn't familiar with the rules and procedures of the condo association so we read through the documents and we found a section in the document that said if you wanted to any sort of repair or improvement, that you had to get approval from the association. So, we spoke to one of the gentlemen in our association who tried to organize a meeting, we have spring and fall meetings, and he had 4 people that were available and one that wasn't and kept refusing to come, refusing to come, refusing to come. Eventually we had a roundtable discussion, very informal because it wasn't a formal meeting. We asked the other board members, the other association members if they would have a problem if we did it. They said no, so we assumed we would have the votes to carry when we did have a meeting. We went through the permit process, got the permit, started the procedure, and then the one gentleman that wouldn't show up for the meetings, was opposed to it and next thing you know we got rescinded, and here we are.

Lees: Why did it get rescinded.

Worthen: Good Question.

Trepsas: We are not privy to that information but I guess the gentleman complained to the Zoning Officer and the Planning Board that we were building it on common area of the association, but if you look through the documents, I don't know, if you look through the documents, there is a provision in our condo association that says if we meet certain criteria, we can put a deck on the house and we do meet all the criteria and I believe that is why the permit was originally issued. So, if you ask me, my opinion, it is one person in the association that doesn't really want it done. That is the way I see it, but that is not for me to decide.

Zecher: Could you give me your name again.

Trepsas: Robert Trepsas.

Lees: Are you in this association Robert?

Trepas: I am a common partner of this lady.

Lees: Ok.

Lees: So we have a letter dated November 21, 2019 from Don Harris the Zoning Officer about rescinding the building permit. It says "By a majority vote of the Board of Selectmen during the November 18th Board of Selectmen's meeting, building permit # B-19-76 is rescinded. You have 30 days from the date of issue to appeal to the Freedom Zoning Board of Adjustment. I have included a copy of the ZBA application for you to submit if you choose. Please contact me if you have any questions concerning this matter. My office hours are 9-2. Thank you for your cooperation". Did you call Mr. Harris?

Worthen: Yes, and I went and met with him after that.

Lees: And did he tell you why the town rescinded the permit?

Worthen: Um, not really. I don't think it was clear to me why it was rescinded.

Anderson: If you read their agenda, a number of people reviewed the restrictions in the condo documents, it does not appear to be admissible.

Worthen: I'd like to see, we have read the condo docs and we have never found anything in there that..

Anderson: I'm just reading what we got from the meetings, from the Selectmen's meetings.

Trepas: So, I think, if I may speak. I think that maybe the Selectmen weren't given all the information. They were just given part of the information, because if you look in the condo docs, Berry Bay Association, section 9.2. Page 6, section 9.2 reads that "neither the unit owner nor the association shall make any alteration to a unit, or a unit building which would expand the footprint of the unit or the unit building". With that exception, a unit owner may remove any portion thereof or make any additions thereto or construct a garage as provided blah blah blah blah, as long as the same complies with all the requirements of the Town of Freedom. We got the Zoning Officer and the Building Inspector to approve our permit, would not not jeopardize the safety or soundness of the unit building, which I just added a deck, I didn't alter the structure of my home. I did not impair any easements, um, there is an easement going across my property, across the, I'm sorry not my property I misspoke. There is an easement running in front of the deck that was there previously and that will still be there that is 5 feet wide. I do have pictures of that in the folder. And I did not change the aesthetics of the condominium. And I do have the approval of the Board of Directors of the association which I said we had an informal meeting, it passed, 85-0, and we had a formal meeting on December 14th, and it passed 85-15. So, based on that, I believe that section 9.2 does state that if you meet all those requirements, you are able to add. And I will also add in this page here. I am not sure it is numbered but everybody has it in their package, and I quote. This is from the Town of Freedom, it says "the total footprint area of all structures of the same lot of record including porches and decks covered by roofs shall not exceed 15% of the total area of the lot. The footprint area calculations include portions of the lot covered by roof overhangs, but excludes previous structures like decks". So, although I am going to make the argument that I am not covering 15% of the total land mass of the entire property, my deck is actually not even an issue because a deck is an impervious structure that does not fall under the guidelines of a footprint of a home because it does not have a roof on it.

Lees: Where did you get this from?

Trepsas: It is in the package.

Lees: Yes, but where did you get it from? It is in our package but you must have, you submitted this. What is the origin?

Trepsas: I do not know, I just know it came from the town of Freedom. I do believe if you take Section 9.2, along with section 310, paragraph 1, section 6, saying that a deck is a pervious structure and is not included in part of your footprint, I am not expanding my footprint in any way shape or form.

Lees: That is interesting.

Anderson: What is the difference, I am asking this because I don't know, the way I read this, it was rejected because it was in the common area, but by your unit, they have an area that is called a limited common area. That we are into a legal thing.

Trepsas: So, I can explain to you that the entire property is 3.67 acres of property which pans out to 160,000 square feet. There are 5 unit owners, and all 5 unit owners own the entire 160,000 square feet, nobody has an individual property line. So, you own the area inside your 4 walls. And then the way the condo docs were set up, everyone has a limited common area. So, in other words, I can't come sit 5 feet from your house and look in your bathroom window. So, they give everyone a limited common area around their own property to prevent other people from encroaching on their property. I merely taking 14 feet of the limited, excuse me, I am merely taking 14 feet of the common area on the front of the house, which is 94 feet from the lake.

Anderson: What is your limited common area?

Trepsas: My limited common area is where the original steps were and I am just adding, see I had a set of steps there coming out of the house.

Anderson: But see this here? It says this....

Trepsas: It says, it says limited common area, it has an arrow pointing to the...

Anderson: That is your limited common area.

Trepsas: that was the limited common area on the front of my house facing the beach, all I did was, you can see by the yellow line, that I extended my limited common area.

Krebs: But this is the limited common area, that little box?

Trepsas: That little box is my limited common area. It was a 4 foot by 4 foot deck with a set of stairs.

Krebs: So what is the rest of the area?

Trepsas: The rest of the area of the entire 160,000 square feet is common area, which everybody shares. So, if you open up the entire plot plan, of the subdivision, or condo division, whatever you call

it, you will see unit A, B, C, D, and E, and each of them have their own limited common area, then you will see other common areas. Some are bigger, some are smaller.

Anderson: And that is where I am having a problem. Whoever was involved with the rejection is saying that you cannot build in the common area. Somewhere in the documents did somebody find...

Trepas: Well I just read in the documents, it says you are not allowed to alter your footprint unless you meet these 5 provisions, and we met those 5 provisions. So, it states in section 9.2 that you are able to use common area to...

Anderson: I know what you are saying, I'm not a lawyer I am just (foreground noise).
I haven't had one of these before. In my opinion, this is more of a legal question than being brought to us.

Krebs: They aren't asking for any kind of a variance, they are asking us to reverse the decision.

Anderson: I know, but it was rescinded because supposedly it was built in the common area.

Krebs: Well, we have a Selectman and a Zoning Officer here, so we can certainly ask them.

Anderson: Ok.

(Rustling of paper interfered with comments between ZBA members)

Lees: Is it ok to open it up to the floor? Do you guys need more time?

Krebs: Well I don't want to open it up to the floor, I'd like to talk to Don Harris and Les first.

(Invited Don Harris to approach the board).

Krebs: Come on up. Don, can you give us some information, or background, about what...Should we be asking you, or asking the Selectmen?

Harris: About the Rescension? You will have to ask Les. Because I approved it.

Krebs: Please sit down. (laughter). Maybe we should ask Les.

Babb: Anne, I am going to defer to you, because she has the homework on it if you don't mind.
(Nodding to Anne Cunningham, Chair of the Planning Board).

Krebs: Oh, sure.

Cunningham: Is that alright? Well, my signature is actually on the plan. I joined the Planning Board in April of 2007, the Houle Condominium application was an ongoing application at the time. During the discussion, I was not in favor of the development, I thought it was way too dense a development, and being so close to the shorefront, during the deliberations, there were a number of conditions that were put on the approval on this, and the attorney for Mr. Houle at the time said you don't have to worry about anything, we are going to put the conditions on the condo docs, and then everything will be fine. I was very new to land use laws so I read the condo law, and it said the majority of the shareholders of the condo association could change the terms of the condo docs, so I brought it up at

the next meeting, and the Chair, Paul Dorian at the time said we are not going to get into that (foreground noise) solution. we are going to put the conditions of approval on the plat so they can be enforced by the town, and the condo association in the future cannot decide that they are going to change what is happening here. And I understand that the condo association has made this approval, but having been there at the time, condition #7, where it says there can be no expansion of the unit or unit building, the purpose of that was not to (foreground noise) any further development of this site given how dense given how dense it was in a very sensitive area on the shorefront. The point I would like to make is I think that it is not the condo association, but the town of Freedom who has the say (foreground noise) and I hope that we would comply with what is on the conditions.

Krebs: Anne, do we have sheet 2 of 2.

Lees: We have it right here. Let's see if it says (foreground noise)

Krebs: Are the conditions on sheet 1?

Lees: They must be.

Cunningham: They are right here. It is #7. (Cunningham gave the board the page of the plan stating conditions).

Lees: No alterations will occur to any unit building which would expand the foot print of the unit or unit building. With the exception of the unit owner may remove any portion thereof, or make any additions thereto, so long as the same complies with all the requirements of the Town of Freedom. The Unit Owner will be required to obtain such permits as may be required by the State and the Town. No alterations will occur to any building which would expand the foot print of the unit or unit building. There is a period.... With the exception, a unit owner may remove any portion thereof, or make any additions thereto, so long as the same complies with all the requirements of the Town of Freedom. Period...The Unit Owner will be required to obtain such permits as may be required by the State and the Town.

Trepsas: If I may, sir, A) what Ms. Cunningham just said. This is basically just speculation because she says I was assured by the lawyer back then. Well, who was there for that. Just because some lawyer assured her that somebody was going to do something, means nothing. There is nothing in writing. The paragraph you just read is the same paragraph in our condo docs, section 9.2 that I read that says and addition or an alteration may be made A; but B it's not even a point. I am doing a deck. A deck is an impervious structure that's not part of your footprint. It says it right in the Town of Freedom bylaws. I don't even think it is an issue. I think the Board of Selectmen....

Ogren: Those aren't the bylaws, it is in the Zoning Ordinance.

Trepsas: Zoning Ordinance. Sorry, I misspoke.

Ogren: When this was approved, decks, I believe were considered the structure, and not impervious. And not part of this whole thing.

Lees: Anne, I am looking at the second sentence, "With the exception, a unit owner may remove any portion thereof, or make any additions thereto, as long as the same complies with all the requirements of the Town of Freedom." What was the board's thinking at the time of that was being...

Cunningham: Well, I went back and looked at all the minutes. The intention was that there be no expansion of these units, and, as Karl said at that time, a deck was an impervious surface. I have been on the Planning Board nonstop since that time and we just changed that um, I don't know, about 4 or 5 years ago. But it was the intention that there be no further development on that site.

Trepsas: If I may sir. First of all, she is talking about intention. How does Ms. Cunningham know what the builders or developers intentions were. It is all hearsay. And second of all, she talks about the dense nature of the property, the property is 159,865 square feet. If you add up the 5 buildings that are on the property, the garage, and the 3 outbuildings, they add up to 5,200 square feet which is less than 3% of the entire property. OK. My unit, our unit is 94 feet from the beach, so we are not encroaching on the waterfront. There are 2 other units there that are less than 40 feet from the beach. They are not encroaching on the waterfront at all, and to use less than 3 ½ % of the entire property when it says in the condo docs that no more than 15% can be used. 15% of the entire 160,000 square feet would be close to 25,000 square feet. We are using 5,000 square feet for all the buildings, garages, and outbuildings on the property. We aren't even close to the 15% that they say we can, so for her to talk about, for anyone to talk about the denseness of this entire association is...

Krebs: Well, I think Anne is just saying is when the project came in, she felt it was too dense.

Cunningham: Let me say the requirement for a regular subdivision in that district is 2 acres per (foreground noise). So that is 86,000 square feet per unit, times 5. This is a much more dense development that was allowed then, or is allowed now in Freedom. The conditions of approval that were placed on this plat were by the Planning Board was to prevent (21:15) further development that would make the area even less conforming to the mutual zoning regulations which still exist now; 2 acres in the waterfront.

Trepsas: Well, if that were the case...

Lees: Hold on, hold on. I am just wondering about that second sentence, you know, why did the Planning Board have that there?

Babb: Which sentence?

Lees: So the first sentence says "No alterations will occur to any unit or building which would expand the footprint of the unit, or unit building. (foreground noise) Am I loud enough, can you hear me Les?"

Babb: Yes

Lees: Ok, the second sentence says with the exception, a unit owner may remove any portion thereof, or make any addition thereto, so long as the same complies with the Town of Freedom.

Babb: When we approved this...

Lees: were you on the board then Les?

Babb and Cunningham: Yes, and we are still on the board. (muffled).

Babb: When we approved this, these were not brand new buildings. So, understanding that and how they were built and how they are there, we were trying to make it so if someone goes in and decided

their building was rotted off, or the sill was gone, and they need to rebuild their building. Maybe replace...

Trepsas: That's not what it states, it states addition. It doesn't say replace existing.

Babb: (Muffled) Having been on the board that long, and working with Totem Pole and other condominiums in town, and having just built one myself, limited common area is your space, common area is common area. And I don't know through NH law, of any common area that you can build on. So, when they came and made their argument about the expansion of this (muffled), and I also know that building in the common area is never allowed.

Lees: is that what you were saying earlier Denny?

Anderson: Yes that's, but I hadn't heard that sentence either. You know, the way that is written.

Lees: So, I am going to open this... Don, would you like to say anything before I open this to the public?

Harris: Me? I'd like to say the reason I approved it while reading that section, it says by a majority of the association, they can do it. The other thing they talk about is expanding the footprint. In our ordinance, a footprint, that is our footprint, the deck has to be covered by a roof. So, you are not expanding the footprint. Or a pervious deck not covered by a roof. It's kind of hard me not being there, I have been here 3 years, I haven't been on the board for 15 years unless somebody (muffled) what it said. They got a majority of the members of the condo association to approve it, and the ordinance says it is not an impervious area. By definition within the current ordinance, it's under expansion of a footprint, footprint is impervious, covered by a deck, the only time you can call a deck part of a footprint is when it is covered by a roof. That's what currently in there. So in my mind, looking at things, I say ok, you have got permission to do this. When I got told to rescind it, (muffled).

Lees: Right. So, I am assuming others may wish to speak to this. There is a process and that is, we are going to do people who are in favor of having this move forward to approval, or rescinding the Selectmen's, ah, overturning the Selectmen's, and those who are against that, or, siding with the Selectmen. We need you to state your name, say your piece, you will get two chances. The way it works is that it goes out to the abutters and the public, we hear from you, we ask questions, then come back and give the applicant the chance, we ask them questions and give them a chance to respond, and then we go back out again to the public. So, those in favor I guess of building the deck. Does anyone wish to speak to that?

Lees: Please state your name.

Shawn White, I am at 31 Houle Drive.

Lees: is that part of the condominiums?

White: Correct. So, what Mr. Babb said about (muffled) rot or anything like that, that's why it was put in there, it doesn't make sense. It says if you are going to expand the footprint. If you are replacing rot, you aren't expanding anything, you are replacing. As for common area and limited common area, I was told, I mean (muffled) allowed, when the place was turned to condos that they could build a garage. It's not on the plan yet where the limited common area is for that, so what I was

told is that you can actually, if you guys did approve it, his next, or their next step is to go to a lawyer, draw up the plans, and have them change 2 limited common areas, they would either pay taxes on it, or it would be on the plans, and be changed. There is already a garage built in the last 10 years that is in the same situation. It was already a condo complex, the garage was built on common area, and changed from (muffled) to limited common area.

Krebs: Where was that, which unit?

Trepsas: D

White: The old one has a garage.

Krebs: Unit D had a garage provision on the plan.

Worthen: mm hmm.

Krebs: So, I think the issue is that...

White: Unit E I believe it is, the one almost to the road.

Krebs: We don't have that plan.

White: It is on plan 1.

Lees: Yea, we have it right here.

White: That was also allowed to build a garage previous. (foreground noise)

Krebs: The 2 units that had garage provisions were unit E and unit D.

White: (Muffled).

Ogren: Yes, it shows them on the plan.

Krebs: There is unit E and there is a garage, and there is a garage and unit D. So those were different.

Ogren, and it says in the minutes in the documents that those weren't built yet but there was a plan for them. It shows on the plan anything that was going to be built was already on the plan. I'm sorry, this is public comment.

White: I was told by a real estate attorney (muffled) that (muffled) that you can change...

Lees: Anybody else in favor.

Trepsas: Can I speak to what he said?

Lees: No, (muffled) Anyone who wishes to speak to, are in favor of the selectmen rescinding this permit.

Adam: My name is Bob Adam and I live at 33 Houle Drive which is right next door to 28.

Lees: Which unit

Adam: I'm not sure

Trepsas: B

Adam: We are about 25 feet away from each other, these two units were built in the 50's before zoning was even done. So right now, they are really existing, nonconforming. The deck that is being installed is encroaching even further (**foreground noise**). The second thing is that common land is supposed to be used by everyone. If we want to put a playground in, we all vote for it and everyone can use it. Common area shouldn't be used for one particular unit. Everyone should be able to enjoy that area. It doesn't encroach on my ability to get to my camp, because I have to walk right by this thing, there is a set of stairs on the left, there is a railing on the left. It is my only egress in and out of the camp. On the proposal that they filled out, it asks if it is a nonconforming building. I believe it is a nonconforming building. Mine is too close to the property line beside me and theirs is too close to mine.

Krebs: Yes, it is nonconforming.

Adam: So, we are expanding a nonconforming part of it, as well as there are two underground power lines, there is an underground power line running right alongside of their camp, right underneath that deck that services Shawn White's camp next door. And the only reason I am opposed to it is that everybody else is scattered all around the property. I mean, I am right beside it. If they are sitting on their deck, and I am sitting on my porch, they are right in my face. It's just too close.

Lees: OK, anybody else? Ok, you had a response?

Trepsas: So, in response to Mr. White's comments, I think that what he said is if you take common area and turn it into limited common area, you then go back to a lawyer who changes the plot plan to make it part of your tax record, so I guess what I am trying to say is that Mr. White's comment was that I understand that we are building in a common area, but I then go to a lawyer and have the document changed so that it becomes part of my limited common area and I get taxed on the property which we know that is going to happen and we don't have a problem with that. So I was just reiterating Mr. White's point because I think it got lost when he said that units D & E had proposed garages put in at the time they saved the space for them to put in a garage, and I think, but I am not 100% sure, but if I may make a statement, unit D put up a garage and now probably pays taxes on that property as limited common area. Unit E has a space for a garage, right now it is common area and he is not paying taxes on it, but if he does put a garage on that property, in that spot, he would then have that changed to limited common area and also pay taxes. So, I guess my point to what Shawn White said is that there were provisions made for D & E, knowing that they could add the garages, have the document changed from common area to limited common area, and have their taxes increased however it works, so what we are trying to do is take a small portion of the common area that we already have, expand it, and then have the document added saying it is now part of our tax record and we now pay taxes on the amount of the limited common area that we do have. That is what I will say about Mr. White's comment.

Lees: Anne, do you know if a common area, if a document like that is going to be changed, does it have to go back to the Planning Board for approval?

Cunningham: I believe it would have to come back to the Planning Board. As we noted, the two garages that were approved (muffled) that's limited common area.

Krebs: Affiliated with those units.

Lees: Right.

Krebs: So that is limited common area for unit D, so when someone bought unit D, they got that, so it wasn't transferred later. (foreground noise)

Lees: So, if you are going to do something in the common area, you would have to go back to the Planning Board.

Krebs: I would say so, yea.

Ogren: (muffled) over again, (muffled) is approved. (34:30)

Lees: Right, go through the process of approval.

Cunningham: Right, it would come back to the Planning Board for approval of the (muffled) configuration.

Lees: Well I have to admit, I get hung up on that second sentence.

Worthen: Yea

Ogren: (Muffled)

Krebs: And the other thing is that this is not a...a lot of condominiums have a, they may have limited common area of 15 or 20 feet around the buildings, these follow the dripline. The limited common area is the house. That's it. They didn't give them room to, there is no yard, no nothing.

Worthen: Right

Krebs: So, if there was going to be provisions for expansion, I would think they would have drawn the dotted line around the unit that is bigger than the unit. That didn't happen. Now I don't know why the limited common area includes the steps.

Trepas: Mr. Chairman, I would like to respond to Mr. Adam's comments if I may.

Lees: OK, go ahead.

Trepas: If you take the package of pictures I have stapled and provided in each package, if you flip to the third page, you will see, this is the third page, everybody, this is the third page, if they are all in order? That's the fourth page, I'm sorry, if you flip to the 4th page, you will see the deck was previously started based on the fact that a permit was issued and there is a very faint yellow spray paint line on the ground that shows the outline of the deck. At the very bottom of the picture, that is the easement to Mr. Adam's house. From the corner of my deck, the easement is 5 feet wide, which, if you flip to page 6, you'll see, I am standing there with a tape measure from the yellow line on the right hand side of the page, all the way over to the edge of the easement. It is 60 ½ inches. The building inspector only requires 3 feet for an easement. There is 5 feet there. If you flip to page 5, that

easement continues all the way down to Mr. Adam's house. He has a fence on the left hand side, and you can see that he only has 4 feet at the very end of his easement and even less from his fencepost to his grill to go through, which is this picture here. So if Mr. Adam would like to state that I am encroaching on his easement, and that is the only way to get into his house, I would suggest Mr. Adam make his easement a little wider at the far end where he goes into his house because I am giving him 5 feet for an easement...

Krebs: You aren't giving him anything.

Trepsas: I'm not giving him...

Krebs: This is common space.

Trepsas: It's common space, but he has 5 feet at one end and less at the other, and he says my deck is encroaching on his easement.

Worthen: It's not changing,

Trepsas: It's not changing, he has had the easement since he has been there, it is the same exact easement as before I started the deck and it will be the same exact easement when it is done. You can see the lot...there is another picture in here, I'm not sure what page because I have now lost track of the numbers, but that is a picture of Mr. Adam's easement, or walkway, standing on his porch looking back to where he parks his car and you can see a very faint yellow spray paint line...

Krebs: You are using the word easement. There is no easement shown on this plan.

Trepsas: There is an easement. If you ask Mr. Adams, he will tell you he has an easement across the front of that house to get to his house.

Krebs: ok.

Trepsas: It may not show it on the plan, but he told me it was his easement. I didn't encroach on it when I built the deck. Or when I laid out the deck. Also, if you look at the picture (counts pages) ok, it is the last page, oh, it isn't the last page, it's in this book. I'll show you the picture, I'm sorry, (he and Ms. Worthen discuss location of picture). That's the picture right there. That is Mr. Adam's house on the right side of the picture, and standing at his house looking back towards my house, it is over 40 feet from his house to my house. My house on the other side is also 40 feet from Mr. White's house, which you can see, he has the big white house in the center. So, I'm not really encroaching on anyone's property. I'm sorry, we all have the same property. I'm not really encroaching on anyone's easement, or their house or anything. You can look at the distance from Mr. Adam's house to my house. It's a great distance. In my opinion, it is one person who doesn't want someone to have a deck. I don't see why he is...and by the way, this is what we look at when we sit outside of our house.

Lees: Thank you.

Worthen: Good job.

(Board is reading materials and question of % of votes is asked. Discussion not picked up by recorder).

Worthen: Is that the voting power?

Trepsas: Is that the voting power that you are looking at?

Lees: (Reads) value of each unit and percentage of....

Worthen: That is how much their votes count for when we have an association meeting.

Trepsas: The way the condo docs were set up is the voting power in the association...

Worthen: Shawn has 39%

Trepsas: And each unit owner has that much voting power based on the square footage of their home.

Ogren: So that includes (muffled), what is included in that number. So, Unit E, first floor and deck, Unit D First floor, proposed garage and deck. Unit C first floor, second floor and porch. It is listing what is counted towards their numbers, which translates to their voting powers. So, if they are counting decks in these two buildings, if the decks count towards their voting power, and these two buildings have decks, then you can't add on to a building, because that would change all these appendixes that go along with the condo documents.

Trepsas: No. I believe you might be wrong. I believe the percentages of the vote is based on the square footage of your home.

Ogren: It calls out the buildings that have decks in the appendixes. I haven't done the math...

Trepsas: Is that in the condo docs? I don't know which page that is.

Ogren: It is appendix C & D.

Lees: I am feeling like this needs to go back to the Planning Board.

Krebs: I don't think so.

Lees: You don't think so?

Ogren: Well, to do something.

Lees: yes, to do something, it needs to go back to the Planning Board.

Ogren: Because appendixes A,,,

Lees: I feel like there is a lot of cleanup that would have to happen to all these documents.

Ogren: That's what I am saying, it changes this whole document.

Anderson: Where is that in our pile?

Ogren: It is in our packet, Appendix A, Berry Bay Condominium, Description of Submitted Land is the first page. Looks like this in the front. And in that, appendix C talks about the total amount of the

land, and I am sure they found this somewhere, it is on Cooper Cargill & Chant. But it lists each unit, and it lists what is in the number of stories, and in 3 of them it calls out the decks. On the other two it doesn't call out the decks, has porches, or whatever, then they come up with the square area feet. Then the next page, it puts that size unit, and gives them their voting power when they meet and vote.

Lees: Does anyone have any questions for the applicant? Can we go back out to the public? Do we need more time to think? Anne, anything you would like to add?

Cunningham: Whether this gentlemen (muffled) it was very clearly the intention of the Planning Board to have no further development on site. Sentence number 2 notwithstanding. And I don't know how to tell you how the two words "and additions" got into that.

Lees: Les?

Babb: When this came before the planning Board, we had just gotten done with a lengthy application from Totem Pole, and the Planning Board did not want to see this broken into individual units, but the law in the state of NH at the time said we had to allow for change of ownership, but we did not have to allow for the expansion of what was existing on the site at the time. Which is what we used (muffled).

Lees: Don, anything? No? ok. Going back to those in favor of overturning the Selectmen.

Shawn White: As regards to the changing of the voting power in the percentages, that has already been done once when they added the garage (muffled) was 41%, now it is 39% as the garage obviously got bigger. E if they added a garage, they would go from 10% to whatever, 12 or 15, whatever their voting rights will go up. Everybody else will go down. It can be changed in regards to (muffled). So that would be the way we would figure that out, we would change the documents. Um, it's already been done once.

Krebs: It was done once because the garage was built that was originally provided for.

Shawn: Correct, but he was asking if it could be done, it seemed like a big issue. It has already been done.

Krebs: I know, but it may be done again when unit E builds a garage, but that was anticipated when this was approved.

White: In understand that but I am not asking about, I'm not talking about what can be done, what is anticipated, what people are guessing on, I am saying it can be done because it already has been done. Nothing to do with what is anticipated or anything else, they aren't going to know exactly (muffled) all of a sudden they have 12 ½ %. They will have to figure it out. It has to be done.

Lees: Anything else?

White: There was something else, but I forget. Ms. Cunningham was saying about the intention back then. Intention doesn't mean anything. It is what is written on the documents. (muffled) they aren't going to go off intentions, they are going to go off of what is written off the documents that say you can add (muffled) Freedom laws. I'm not a lawyer but that is what they are gonna....None of us were there in 2008 (muffled) but the intention wasn't written in there and we can all guess.

Lees: Anything else?

White: I don't think so.

Lees: Anyone else in favor of overturning the Selectmen? Opposed. Oh, I'm sorry, Don?

Harris: I am in favor of overturning the Selectmen, yeah.

Lees: In favor of overturning the Selectmen Because of?

Harris: Not adding to the footprint. And it does say they have a majority vote and they can do that. I am going by what is written. That is the only thing that I can go by. It's not like they are building a new building like a garage. They are putting a pervious deck, and a very small one at that, not covered by a roof. In my mind, it is not increasing the footprint.

Lees: Ok. Thank you. This is a little different than how we usually do them so... Those who are in favor of keeping, who agree with the Selectmen.

I read that a little differently.

Lees: Name please.

Robert Adam: 33 Houle Drive, right next door. I read it as um, the line that says no footprint change and/or an addition. In order to put a deck on, you have to show the setbacks. Where it's going to go, and after it is on there, it is shown as a percentage, I would consider that an addition. It is no different than if they want to take the roof off and go straight up, you are not changing the footprint there either but that would be an addition. So, since the deck has to meet the setbacks, and can infringe on property lines after it is up, it is an addition to the footprint. If you don't want to call it a footprint, that is fine, but it is an addition. It has changed the setbacks of the property. Of that building. And that is how I read that. It is not and/or.

Lees: Thank you.

Barry Rollins: There is talk here tonight of getting lawyers to change the condo documents and that can possibly be done. But lawyers can't overturn the plat of the subdivision that was approved by the Planning Board. And there is talk about going back to the Planning Board. (muffled) legally that the only one that can apply to the Planning Board is Robert Houle himself.

Trepas: Well that doesn't make any sense. What if he dies?

Lees: Thank you. Anyone else. (none) Alright. Any thoughts, board members?

Anderson: (first part muffled) Like Don says, it can be built, however, I still think it is being built on common area and that is something the condo association has got to deal with. It's not us. If that area was showing as a limited common area instead of that little square, I would be for them building because I can't see (muffled). Common areas is my thing.

Lees: John?

Krebs: I think I was a Selectman but I wasn't on the Planning Board when this thing was done but I remember it because I don't live very far from here. I think you have to take a step back and....that

second sentence and aside from that, does this thing pass the straight face test. We all know that when this thing was condominiumized, it was very controversial and a lot of people were opposed to it. But it got done because they had the right to do it. But if you take the position that these people put decks everywhere, now we have got 5 houses on a small lot, people are going to be building decks on everybody's houses without restrictions. I think the original intent, and it seems to me that the condo docs are pretty clear that limited common area is the house, and that is it. If they wanted to make provisions for expansion, then they would have drawn a 10 foot dotted line around the house and said you can do whatever you want in that box. They didn't do that. They said the dripline is the house. With 2 exceptions, those being the 2 garages. I don't think that they can expand it.

Lees: Ok. Karl?

Krebs: And I understand the guys point behind it. Sure you only need 2 or 3 feet to walk into your house, but do you want to walk into you house right by someone's deck? It changes the character of...

Trepsas: He walks right past my family room window now.

Krebs: You bought it though. I mean, that is what you bought.

Trepsas: Ok.

Krebs: When you have 5 houses in a close proximity and you start changing it, then everybody else starts....

Worthen: But we thought reading 9.2 that if we got a majority vote, we could make a change.

Krebs: This is just my opinion.....

Trepsas: Also, actually, if I may speak I'm not sure I can.

Krebs: Lets go through the board

Trepsas: I'm sorry, go right ahead.

Ogren: I am a lot on John's thought process on this. I think they went through a lot of pains to note buildings on the plan, that they were planning for the future. And, it is my understanding that some of these garages are not even built? You know what I am saying? This is the plan, and this is what we are putting on there, and this limited common area is kind of walking around saying you can't just build on your house unless you went out to the common area. There are references in here, and it doesn't say, but the minutes as I am reading, it's kind of saying, the spirit is, ok you can't build on this. That was the theory. It's got to be on the plan.

Lees: That is the minutes of the meeting in which it was approved?

Ogren: Different minutes that it was on. And that is the spirit of what it is saying. The lawyer says. It's got to be on the plan. Or something like that. Said they should write expansion potentials on the plan and that it should be defined. So, they went out of their way, now this isn't out of their approval but it is in the minutes. It is the lawyer who was advocating for this plan saying that everything has to be on the plan. So, I think you have to change the plan, and that is a process that goes through, and I don't know, that's me looking at the short version. Is there anything else?

Krebs: The only other thing that I want to say is also an underground utility line going from unit A to unit C and your deck would be over it. That doesn't make any sense either.

Trepsas: I called digsafe and they marked out the property. I am nowhere near it. That is a proposed underground line. If you read it, it's all proposed underground lines.

Krebs: It doesn't say proposed. It says underground utility lines.

Worthen: Digsafe came out and said we were fine.

Trepsas: It says, over here, proposed utility line, so I believe that is for. (talking with John Krebs and reviewing the plan, recorder did not pick up entire conversation.)

Krebs: I meant this one over here.

Trepsas: I have already dug. Digsafe came out on the property and I haven't hit anything and they didn't even have a powerline there.

Worthen: They didn't mark anything.

Trepsas: They didn't mark anything on my entire property.

Lees: John?

Quigley: I have to agree with them. I don't have anything to add.

Lees: I understand where Don is coming from. I read that second sentence and to me it's maybe a bad sentence. But I get hung up on the fact that the plan did outline the limited common area, and it was very small going right around the building. Everything else was considered common. I am not an attorney at all, but I would imagine you would have to get all those documents changed and approved by the Planning Board in order to do something like this. I don't know if that is true, it is just a feeling I have.

Trepsas: If I may, I don't believe it states anywhere in the condo docs that you cannot build on common land. It does not say that. There is not a line anywhere in those condo docs that says you may not build on common land. 9.2 says that you can add to your footprint with all the necessary procedures in place, which we meet every single one of them. Every single one. There is 5 of them there, and we meet all 5.

Lees: I understand what you are saying.

Trepsas: Ok.

Lees: Is there anything you would like to add. (no response). How would the board like to move forward. We have a couple of options that I see, and there may be others. One is to make a decision tonight, move forward to uphold, or overturn the Selectmen's decision, another option is to postpone for a month to give people a chance to talk, not talk. Obviously we can't talk, to think about if you feel you need more time, or to give the applicant more time if there is something the board feels that if it had additional information, it might make them change their mind. I am all set to go tonight.

Krebs: I am too

Anderson: I would like to have someone point out to me if they can build in common area like you are saying. I didn't see that in there and that is a question for me that I would like more information on. I understand what the intent is, but it's not black and white, this one.

Trepas: May I speak?

Lees: No, not yet. Karl?

Ogren: I hate that second line, it seems a little different here, um, I don't see anything thusfar, and I feel lousy about this, but there is nothing here that makes me think that I would overrule the selectmen. Is the right word I am using.

Lees: Yes

Ogren: Thank you. There is not enough information that tells me the Selectmen were wrong by putting the cease and desist, or whatever they did to stop the building. Is that what we are supposed to. Is that what we are talking about now?

Lees: Yes

Ogren: Now, if there were something that could come down to change that, but I haven't heard that tonight.

Quigley: But we won't hear it unless we postpone.

Lees: That is right, so are you ready to move forward tonight?

Quigley: I think I am.

Lees: So we are going to move forward tonight. Before we do, you have a chance to speak.

Trepas: I actually don't believe that I have to prove that I can't build in the common area, cause it doesn't say I can't in section 9.2. You have to show me where it says I can't build there.

Lees: Ok.

Trepas: I don't think I have to prove to you that I can't build there. It says in 9.2 that I can. And it says in your zoning bylaws that a deck is an impervious structure that does not count towards footprint.

Worthen: And you were issued a permit to do so.

Trepas: And I was issued a permit. For the Board of Selectmen to overstep their jurisdiction and rescind my permit.

Worthen: And we are into it for \$7,000.

Trepas: And we are into this for several thousand dollars right now.

Worthen: No 8,000 dollars.

Lees: Cost does not affect this board.

Worthen: It will.

Lees: Money is not a factor in decision.

Worthen: It will very soon.

Lees: Yup. NH is very strict on that. No decisions are made on anything financial.

Trepsas: Ok.

Lees: Alright. Going into deliberation. Anything else the board wants to talk about before we move forward? It's been a long time since we have done one of these.

Town of Freedom Zoning Board of Adjustment Appeal from Administrative Decision. Case 38-3-3-19, does anybody have their RSA book? 674.33.

The sides appeals if it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16. Does the board feel that, well, what it says is that based upon the evidence received by the board, the requested appeal from Administrative decision should be granted. that based upon the evidence received by the board, the requested appeal from Administrative decision should be granted

Quigley: or denied.

Krebs: you aren't receiving information from the board, you are receiving information from the applicant. Let's just make a motion to uphold the Selectmen's decision.

Lees: I agree. Is everyone ok with that? I'm ok with that. Say it again John so I can write it down.

Krebs: I make a motion to uphold the Board of Selectmen's decision to rescind the building permit.

Ogren, I will second it.

Lees: Any discussion? All those in favor signify by saying aye. (Aye) Opposed? (none) Carries 5-0. This board has upheld the Selectmen's decision to repeal your building permit. And that's really it.

Worthen: That's this step.

Lees: Yes. I'm sure you have other options, but (muffled)

