

BOARD OF APPEALS TOWN OF WINTHROP

MINUTES OF MEETING

*Held on Thursday, January 28, 2010
Town Hall - Joseph Harvey Hearing Room
WINTHROP, MA 02152*

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:00 p.m. Also in attendance at the hearing were the following Board Members: Darren M. Baird, Brian J. Beattie, Romeo Moreira. Also in attendance were Building Inspector James Soper, Winthrop Fire Department Captain Ned Hazlett and Board Secretary/Clerk, Mal Jones.

The following matters were heard, deliberated upon and discussed:

#	BOA #	Address	Applicant	Sitting
01.	01-2010	190 River Road	Darin Bufalino	
02.	02-2010 SP	71 Jefferson Street	Nadia Aboulmal	

#01-2010 - 190 River Road - Darin Bufalino - for a variance and/or special permit for property at **190 River Road, Winthrop, Massachusetts 02152**. Applicant seeks relief from an August 18, 2009 order of the Building Official to "Cease and Desist" construction of a rear deck being constructed within the required side-yard set-back and without a required building permit. Applicant's subsequent request for permit was denied in accordance with the Town of Winthrop Ordinance 17.16.020(J)(1) *Dimensional Regulations* requiring a ten (10') foot side-yard set-back. Relief needed from the west side-yard set-back of 4.8'.

Sitting: PM/BB/DB

[Applicant] Looking for a variance on side set-back, deck of two-family residence. 4.8 feet on west side.

[PM] Letter from BI cease and desist of rear deck with required permit.

[BI] Partially in, not totally completed at this point. Received call

from neighbor. Went around and investigated rear of dwelling, took photographs of deck in place. Notified Mr. Bufalino in violation of building code and local ordinance requiring permits, issued cease and desist order. Met Darin in backyard, further investigation revealed he had encroached on a side-yard, 10 foot side-yard set-back encroached on that as well. Letter cease and desist. Partially completed. Rails were not completed all the way around it. Advised him because he had access to back yard through a door, finish any rails that would cause anyone to fall off back deck at this point in time. Various other repairs that he has to make to structure to satisfy building code.

[PM] Rails are complete. Stairs?

[Applicant] Yes. No stairs.

[PM] Stairs are blocked off?

[Applicant] No stairs period.

[PM] Just deck off back of your house?

[Applicant] Yes.

[PM] According to site plan, it's on left side. 2 dimensions on site plan: 5.2 and 4.4 dimension.

[Applicant] 4.4 refers to original dwelling of house and 5.2 is for deck. Deck is actually within side of house.

[PM] But not within side-yard set-back of 10 feet which is zoning. What you need is 4.8. That projection that is there, what does it do, cover window or door?

[Applicant] Just a jog-out, nothing there whatsoever.

[PM] If that were taken off and squared-off, you wouldn't have the need for a variance.

[Applicant] Right. Intention is though looking at set of plans, side-door going into house, which goes into a mud room. Intention is to put a door on other side of mud room, going out to deck.

[PM] Where is access to deck right now?

[Applicant] There's a set of sliders off bedroom.

No persons heard in-favor of or in-opposition to application.

[Captain Hazlett] No problems from fire department.

[PM] Is deck in conforming with code?

[BI] No. Joists robber span, posts not plumb, not secured to concrete, joist hangers are not properly fastened, ledgers not properly fastened to house. A lot of work that needs to be done to bring it to code compliance if zoning allows deck.

[PM] What has been policy at your office as far as work being

done without a permit.

[BI] Double permit fee.

[PM] What is value of work?

[BI] Value of work based on square footage of deck at \$40 per square foot.

[Applicant] 16x36.

[BI] 640 x 4. \$20,000. \$40 per square foot. Take permit fee of \$12 per \$1000. 16x36. 576 square feet x \$40 per square foot is fair market value. \$23,000. \$23,040 round off to nearest thousand. 24x12. Plus \$30. \$636.00 would be total permit fee. \$360 fine.

[DB] \$276.00. Double would be \$552.

[DB] Materials?

[Applicant] Pressure-treated.

[DB] Cannot get permit until variance is actually recorded--new case law.

MOTION #01-2010 (Darren M. Baird) to grant requested variance from side-yard set-back as shown on site plan owing to soil, shape and topography of lot and fact that strict reading of by-law, or application of by-law to this property, would cause undue harm to petitioner, and finding that it wouldn't cause substantial detriment to surrounding community, move to grant subject to payment of permit fee of \$636.00 which is double the permit fee and subject to bringing it up to code requirements.

SECOND (Brian J. Beattie)

VOTED All in favor.

#02-2010 - Nadia Aboulmal, Lessee for a variance and/or special permit for property at **71 Jefferson Street, Massachusetts 02152** owned by **Roberta Barbarisi and James Zullo**. Applicant seeks a Special Permit to operate a restaurant in the Center Business District allowed under Town of Winthrop Ordinance 17.12 Use Regulations.

Sitting: PM/BB/RM

[Applicant] Request special permit for a restaurant. Was doing business as *Tutsie Fruitsie*, 6 Somerset Avenue last year. Moved business to 71 Jefferson Street. Would like to add seats and serve cold drinks, pastries, candy and chocolate. Floor plan. Store is divided by a wall inside, keep one area to sell candy, cases there. Counter and three cases. Other side want to do expresso with counter, here storage room. 25 seats. Breakfast

in morning, no eggs, muffins, cones. 1,200 square feet including storage area. Does not know hours yet.

Exhibits marked:

Exhibit #1 - Floor Plan

No one heard in favor. In opposition: Anna DaSilva, owns *Café Delight*, 82 Jefferson. Opposite from where she is opening restaurant, coffee shop. Everyone is allowed to open what they want. Concern is if she has 25 seatings, where is parking? Concerned about her business. Economy tough right now. Another business same thing she sells will affect my business. Debbie Spinazola, owns candy store, 205 Winthrop Street. Same concerns, parking, handicapped, where delivery will come from. Same thing I had to deal with.

[RM] Right now space is vacant?

[Applicant] Yes.

[RM] Existing bathroom?

[Applicant] Yes. Serving _____, for that very important to have seats for everyone. In other store, selling _____, ice cream. Everyone asked for seats. They would like to sit and have [ice cream].

[BB] Does this have to be handicapped accessible?

[BI] Handicapped accessible does not apply here because this was already a building of public use, did not change from private to public requiring handicapped accessibility. Business is structured to be used as a business, as a public use, and it can remain that way. If she does anything to bathroom, took tour of building with her, if she renovates bathroom, bathroom will have to be handicapped accessible. Renovates entrance, entrance will not have to be handicapped accessible.

[DB] She can renovate bathroom and make it handicapped accessible and still not have an accessible front door.

[BI] 521 CMR handicapped accessibility Architectural Access Board. Hope is down the road, someone will make a more substantial investment in over \$100,000 trigger, that would require some of work that be done, front entry way. Without that trigger being met, \$100,000 which I don't see here, been in there, walls are there, lighting is there, sprinkled building at this point as well, has a sprinkler. Less than 50 occupant load which only requires one egress. There's a second egress out back, but does not qualify as an egress out back, shouldn't be used as an egress, will have her take exit signs off, don't want public be directed to that

area, goes out to an unsprinkled corridor with all the electrical meters and panels in one area. Front satisfied exit. As far as parking goes, in center business district, off-street parking regulations are as follows: commercial establishments of less than 3000 square gross floor area may count municipal on and off-street parking spaces within 100 feet of such establishment to meet the requirement. Commercial establishments of 3000 square feet or greater may use municipal off-street parking spaces within 1000 feet of such establishment to account for one-third of the requirement. 1128 square feet here, under 3000 limit, basically able to use parking spaces beside Citizens Bank as well as parking behind Kazba, all public parking as well. Growing problem in Center, someday will be addressed, probably isn't enough parking to accommodate by-law, but that is the by-law.

[PM] Second egress through an area that is not protected with sprinkler, electrical panels in that area.

[BI] Can see that - looking at storage area out back, working counter is, two exits labeled one on top, one on bottom. One on bottom exits out parallel towards Putnam, that's the exit that goes to corridor that has meters for the building.

[Applicant] The one on the top.

[BI] The one on the top goes vertically up the page, turns a right, parallel to storage area wall, then comes down behind working counter wall and then that area becomes unheated, unsprinkled, unprotected corridor with utilities in it for power source. Does not qualify as an exit. Under 50, this building wouldn't carry. Would have to see exactly tables and chair sitting, so we can get correct count, but under 50, we wouldn't have situation where we require two exits. It is a sprinkled building as well.

[PM] What about exit as you go into that vestibule and go out to outside.

[BI] Not even sure where that goes.

[Applicant] Goes out to the street.

[BI] That's right. That's another door that goes right to the street. Had lock across, bar across it, opened it once and closed it. Did go down there with plumbing and electrical inspector and myself, made a visit down there, to make sure that we give applicant some direction.

[PM] When I went down there to look at that in front of door that exits out, this door opens in, which I assume would have to open out for an exit. Saw a dumpster in front of that.

[BI] Health Dept. permits all dumpsters, Salari's. May have to be relocated.

[PM] Store next door.

[Hazlett] Where dumpster is is because they didn't use it as an exit. May have to change it because fire department connection. Wall that says storage off candy, fire department connection is between corner and sink. May have to change dumpster location. This is an alarmed building, master box on it. Only thing that may have to change and may not, may have to look at whether there are smoke detectors, heat detectors, any heating, may not have to, wouldn't have to change location, may have to change type of detection. If it's a smoke, may have to go to a heat. That is something that is granted. Have a meeting and fine-tune it. Fire Department doesn't have a problem with it, it is a sprinkled building and alarm with master box on entire building.

[PM] On drawing, see dimension, don't see scale on it. From architectural point, that this has enough information to represent how the lay-out of seating is shown?

[RM] Lay-out of seating and way it is represented is fine. Assume we will want more finished drawings with dimensioning and direction on what Mr. Soper said there's electrical panels here, what is being demolished, what is not being demolished, what is going to stay. Need drawings to that effect.

[PM] Some scale drawings to detail this out. Also scale drawings to show to scale, counters, seating, spacing between seating. This doesn't show us that. Can't make a determination whether it fits or not within space, don't see dimensions to that effect.

[RM] There's some dimensioning in here, but once drawing is to scale, should be okay, gave us dimensions of tables.

[PM] Dimensions of table, spacing between tables, spaces between free standing tables and counter. Need a plan to scale. This plan, no scale, shows dimensions on it, but can't go and look at and see if counter and seating is, in fact, 2 foot, 4, can't put a ruler on it to say that's what it is. Also are exits labeled down there? She has two exits labeled here.

[BI] Exits are labeled in front and rear as it stands right now.

[PM] If exit at top is going into an area that is panels, can't have that as an exit. That should be shown on here as to where that goes. Doors going to have to swing out for an exit. Entrance door swings out.

[RM] Does door in back in fact swing in like that and is labeled as an exit?

[BI] That is correct. Would it be a required exit is really what we're balancing here. Building Code says occupant load is _____ and she's only required one means of exit. If that other exit swings in, it could be unlabeled, not be called an exit. She satisfies Building Code by having

[RM] Are these exits for property that is neighboring her?

[BI] One that goes out is being used, there's a nail shop right beside her, people from nail shop actually come out and go into that corridor of exit most upper on page, actually joins common corridor, people from nail place, nail place is not over 50 occupant load because it is very small, and that should not be labeled as an exit as well. If someone gets disoriented and there's a fire, they're going to start running for the light, may be the wrong light and end up in back corridor in a bad place, better off not having exit signs. Haven't been in nail place though.

[PM] Wouldn't it be helpful to show adjacent space and how that comes out and how the configuration is for that building?

[BI] That would help. This space is going to change to assembly use, go from business use, Building Code, not zoning, look at this as an assembly building with a sprinkler, check the exits, check all required widths of rest of doors that go from counter area to bathroom as well as counter will have to have handicapped accessibility. New counter and counter will have to have a lower section so handicapped person can roll up to that counter. Will have to do handicapped accessibility there. Would like to see architect's presentation on this. Shouldn't have to be something that I have to get into nuts and bolts of what is right and wrong, somebody with knowledge be able to Chapter 34 review on this and tell me changing from a business use down to assembly use and what effects it has on building and how things have to change. Going to be possibly some relocating of sprinkler heads as well as alarm devices too. Would like to see represented on a set of plans, which will have to be represented on a set of plans. Further work, encourage her to get an architect to get this lay-out for you, probably understand where zoning might not pass, invest a thousand dollars or two thousand dollars into an architectural fee to do this thing correctly.

[PM] In order to look at it and pass on it, will have to see that.

[BI] This is the stuff I will require, space of this size. Once restaurant designation is allowed here, liquor license limit of 25, not saying she's going after that, once designation is given here for load of 25 and restaurant, couple of things that say go to licensing board in future, ten years down road, and she's done with designation, unless taken off with transferability, something fully intend to get scope of what needs to be done.

[PM] Have you been before licensing board for this space?

[Applicant] No.

[BI] Definitely part of process in putting together a business in

Winthrop should she receive occupancy permit.

[PM] Need to have architect, person with knowledge of that, to lay this out to scale and put everything in according to scale, and put everything in according to scale to see how everything is going to fit and then come back. Have another hearing February 25th. Get us plan before meeting.

[Applicant] Yes.

MOTION #02-2010SP (Brian J. Beattie) - to continue to February 25, 2010.

SECOND (Romeo Moreira)

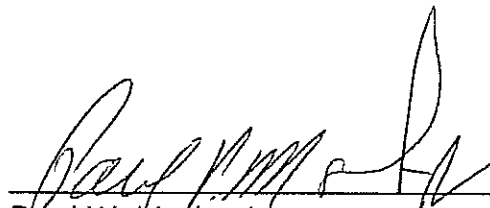
VOTED All in favor.

MOTION (Brian J. Beattie) - to adjourn.

SECOND (Romeo Moreira)

VOTED All in favor.

Adjourned at 9:00 p.m.



Paul W. Marks, Jr.,
Chairman