

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, March 11, 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: Paul W. Marks, Jr., Darren M. Baird, Brian J. Beattie, Irene Dwyer and Romeo Moreira. Also in attendance were Winthrop Fire Department Captain Ned Hazlett and Board Secretary/Clerk, Mal Jones.

The following matters were deliberated upon and discussed:

01.	20-2008	2-4 Highland Avenue	Terry P. Vazquez	PM/BB/DB
02.	02-2010-SP	71 Jefferson Street	Nadia Aboulmal	PM/BB/RM
03.	03-2010	1 Pond Street	T-Mobile Northeast, LLC	BB/ID/RM

#03-2010-1 Pond Street-T-Mobile Northeast, LLC

Sitting: BB/ID/RM

Counsel present.

[BB] That part of hearing closed. Take it up for discussion. One objection at the time.

[ID] Actually two people, same household. Comments were rather general about health of neighborhood. Based on things Mr. Peabody had taken from internet about negative possibilities that cell phone towers. Board already noted that that is outside of our jurisdiction, comes under FCC liabilities. Mr. Baker asked how we would get generator up on roof. Drawings and submission only in event of power outage.

[Counsel] Battery backup for 7 hours, beyond that might be generator deployed and there may not. Ground level. Would be removed as soon as power were restored. No guarantee. They only deploy to about 70% of their sites to keep critical network functioning, site may not be in that 70% plan.

[ID] Temporary. May not be subject to that anyway.

[Counsel] If we were to deploy, run from the ground. Power would probably already be restored.

[ID] Signage. Put in writing.

[WFD] As a condition, signage in lobby, signage at top of stairs on roof and on equipment just to let anyone know in case of emergency even though building may be shut down that equipment is energized.

[Counsel] That could be made a condition, no problem, great idea.

[WFD] If ever decided to use generator that is already there at 1 Pond, other condition would request on that is that there would be a shunt switch installed only if pre-existing, this would be new. Only if you were using permanent generator that is there. If they kill the power, generator is on, need to shut generator off because we're shutting building down.

[Counsel] No objection to conditions. Normally do signage at door to roof and equipment. Additional signage at lobby makes sense, no problem with that.

MOTION #03-2010 (Irene Dwyer) to grant relief requested based on findings for a use variance under MGL c. 40A, Section 10 and subject to written conditions regarding signage and other requirements by Fire Department.

SECOND (Romeo Moreira)

VOTED All in favor.

#02-2010-SP - 71 Jefferson Street - Nadia Aboulmal

Sitting: PM/BB/RM

Applicant present.

[PM] Received scaled floor plan from petitioner laying out premises indicating area of preparation, seating area and exits marked. Had conversation with BI on plan. Up at rear exit, as you go out door after sign, you take a left. He wants to exit to right directly to outside and not have to go through building where there are electric meters and other equipment and that space is not sprinkled. That was a comment BI made

to me. If this passes, that would a condition that egress for the building.

[WFD] They have carbon monoxide detectors, don't know why. If they are eliminated, don't have a problem—shows on the plan, three sinks, prep, carbon monoxide detector here, haven't figured out why they put that in. Not a building of habitation, meaning residence. If this gets fine-turned and eliminated, don't have a problem. Don't want it to present problem for young lady. Doesn't fall under my code. Mentioned under building code. It is a fully-sprinkled area, fire alarm tested not long ago. Fire Department does not have a problem. Not increasing any problems for fire service. Egress not a problem for Fire Department, strictly under building code. If accepted by BI, would be. If they go out door, trying to remember if there was a pull station there or not.

[PM] Yes there is. P I assume is pull station, one by front door.

[DB] Anything blocking that egress right now?

[WFD] No. Inside or outside?

[DB] Outside.

[WFD] Did speak with owner of property regarding dumpster. If dumpster is stationary, fire department does not have a problem. Not much room in that area. Talked to him about how to handle it. There is fire department connection and dumpster.

[PM] BI would have say on that as far as location and how far away it has to be from egress door.

[WFD] Have to have signage so it is pointing out to rear instead of walking through.

[PM] Have you been before licensing commission yet?

[WFD] Common vic.

[Applicant] Scheduled April. Paid fees, when everything is done, to give her a call, to send people to check the place.

[WFD] If approved at this end, then can put food to go before licensing board.

[DB] Separate issue from what we are doing.

[PM] Should be a condition that if this goes forward, have to - list it down on here because if it's not, could come back on us. How much construction is going to be done based on plan. What is existing for petitions and how much more building.

[Applicant] Not going to do a lot of changes, counter for bar.

[PM] Bathroom is there?

[Applicant] Yes.

[PM] And all these petitions are here?

[Applicant] Yes.

[PM] Will candy be made on site or you bring it in?

[Applicant] Buy it.

[PM] Will you be doing any cooking on site?

[Applicant] No.

[PM] Don't see any stoves, hoods or anything like that.

[Applicant] Offer drinks and other side espresso drinks and pastries.

[BB] Chocolate, candy, ice cream, slush brought in.

[PM] BI in speaking with him, in area where you have cash register, and you have ice cream in freezer, think he is going to require a sink in that area.

[Applicant] He told me. Thinking to put a sink inside storage area close to counter, asked me to change that to area here behind counter or corner.

[RM] Deliveries coming through exit or through another door.

[Applicant] Use back door.

[RM] Is that exit or is there another door?

[Applicant] Door here.

[RM] Plan needs to be revised with new exit sign showing egress.

[PM] Whatever comments BI had, that was one of his comments and also added sink in here. Always been a specific time for deliveries, not during a peak period in morning or whenever traffic down there. Seen trailer trucks parked in middle of center down there making deliveries to stores. A condition would be put on that.

[BB] What are hours going to be?

[Applicant] Probably 7 to 8. 7 days. Sundays close early.

[PM] Summer as well?

[Applicant] Summer don't have hours in mind.

[PM] That would be one of conditions hours that this would operate. Wouldn't be something you be free to change hours. If you have certain hours, want to know about it so we can put it in here so it is established.

[Applicant] Need to give you hours for summer?

[PM] Because you have ice cream and that would run later in evening.

[Applicant] Usually summer is quite.

[PM] Hours are 7:00 a.m. to 8:00 p.m.

[Applicant] Chance to think about it or decide right now.

[PM] Hours will have to be put on common vic. license.

[RM] Bathroom is very tight and if you get someone in a wheel chair, won't get into that space.

[DB] Can't get into building to begin with. Front is not accessible.

[PM] Plan subject to Building Code, Building Department, Fire Department and Licensing Committee. Also requirements comments made tonight, come back in with revised plan to be stamped on file here, so everyone is working on same plan. Change egress out to back, lit egress sign. Person who did plan knows what he has to do, check with BI as far as where sink is placed. Don't see anything for signage. Condition to come up with sign plan. Any signs that you are going to put in here. Size requirements. Allowed to put in 2 signs. Sign going outside on building, store is at corner. [Applicant provides sign drawing.] Raised letters. Signage is okay, but confirmation on size, double-check with code. No awnings.

The following exhibits were marked:

Exhibit #1	Floor Plan dtd 01/02/2010
Exhibit #2	Tutti Fruitti Signage

MOTION #02-2010-SP (Brian Beattie) to grant relief requested pursuant to MGL 40A, Section 9 with conditions.

SECOND (Romeo Moreira)

VOTED All in favor.

#20-2008 - 2-4 Highland Avenue - Terry P. Vazquez

Sitting: PM/BB/DB

Prepare letter to applicant.

Letter by BI conditions were not met.

Temporary CO issue of handicapped access up there

Debating how to handle access. One way to get in building was in front, have to put some type of ramp or lift. Talking about lift in back of building. Going to take windows out in back. Where handicapped parking is, take that out and put a lift there. Approved site plan, second site plan that came in, came in with one and made changes to it. Site plan that was approved when eliminated parking in driveway, have to pull in and have to back out, that was eliminated. No signage, no signage ever presented to us. Sign was put on building, asked them to take it down twice, then put it up on 4x4 posts in front as a temporary measure. Chosen not to come back with specific sign plan either that addresses our concerns, sign sits there. Both business people in community. Don't want to make it

harder for people to do business in town. But give us a site plan and we make a decision based on site plan, then live with it or appeal it. We agreed with site plan except for parking spaces.

Didn't come in and say can we change it. CO is still open. Open CO here, if there is a fire here. BI sent a letter at my request and they came back in and asked for us to consider changing it. Don't think they ever filed decision. Comply with original decision or come in with filed amendment, come in in procedurally correct fashion, don't just deal with it because you're forced to because all you can get is a temporary CO. Jim Soper did right thing here. Handicapped - one of Board's condition - procedurally open to them that has nothing to do with us. Go to agency and ask for variance because building isn't going to be used us. Building ramp in back wouldn't be a big deal, put a slider door into conference room at back, sure they could go to architectural board and ask for variance based on fact that this is hardly going to come up much, do part of building and not whole thing. Zoned commercial, BI is right requiring it has to have handicapped access. They could go out of business tomorrow and rent it to a store. Go to architectural review board and deal with those issues. They chose not to go down that road and go through and ask for a variance. They were going to go with handicapped access, they said they were just going to do it, deposit on a lift. Since plan was filed, economy has gotten even worse. That was a plan that they thought they could do at that point based on where there business was, may be not something they can do presently. Not going to go away. Too many have come to with us a plan, we approve it and then they build a third-floor. If they came back in, here's what we want to do and here is what we haven't complied with and here is why, looking for special dispensation on x-y-z. May be we were aggressive in what we thought we could do. But to just ignore conditions.

They have not formally come to us. Based on letter BI sent out. Talked about where they are. Said we would go before traffic advisory committee. Came back. Doesn't change my viewpoint of this. Not a good driveway, not a useable driveway. Came in here because they got a letter, almost nine months, haven't done what you're suppose to do. Still haven't - this isn't a schedule to come back in here. Like traffic study takes care of the problem. Procedurally, Soper issued this letter that says you're not in compliance and you have 30 days to file with the board of appeals, haven't done that. Time that they do. Temporary CO is almost a year old. Time to come in here and come in and talk about point-by-point why they haven't complied with our decision, we can take

going to grant dispensation on one thing unless they come and talk to us about everything at once. Letter should say majority is not in agreement with study. Conform to all requirements of decision or come back in here with a plan if you want to amendment something point-by-point what you want to do, addressing conditions of decision. Come back in with real plan. Majority of board does not agree that it is not a safety issue. In any event, there is only one of seven violations cited 6 months ago. Based from letter from BI dated more than 6 months ago, which itself refers to temporary CO issued 15 months ago. Don't know if was extended. Still open. Emphasize time frame, letter 6 months ago relating to temporary CO issued in December 2008. Traffic study addresses only 1 item. Suggest that take all conditions up at once and that procedurally file for an amendment to variance, time has already passed to appeal letter. At some point, if they don't come in here and if not serious about it, say in letter, if not willing to file something within next 30 days, Board may be forced to consider on its own motion *sua sponte* revocation of its own variance, notice it for public hearing, procedurally rather come in for an amendment, than having to defend why they can stay open. Have to file another application. Once do a decision, it's closed. Have a variance that is out there now. Have to file for an amendment and publicly notice it like a brand new application. It's not a new application, but changing substantive conditions that is the basis of decision, not appealed by any abutter, start modifying things like this, have to re-notice it and treat it like a new hearing, abutters may, don't have to have certain screening, someone might appeal, same process as new application.

MOTION (Brian J. Beattie) - to approve *Minutes* of October 29, 2009 and January 28, 2010

SECOND (Romeo Moreira)

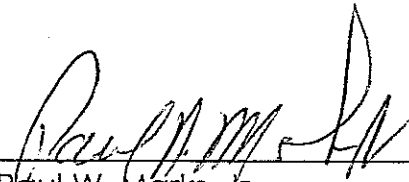
VOTED All in favor.

MOTION (Brian J. Beattie) - to adjourn.

SECOND (Romeo Moreira)

VOTED All in favor.

Adjourned at 9:00 p.m.



Paul W. Marks, Jr.,