

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, March 25, 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 and Irene Dwyer. Also in attendance were Winthrop Building Commissioner James Soper, Fire Department Captain Ned Hazlett and Board Secretary/Clerk, Mal Jones.

The following matters were heard:

01.	04-2010	18 Hale Avenue	William B. Mills	
02.	06-2010	17 Belcher Street	JoAnne & Florence Schisler	

#04-2010 - 18 Hale Avenue - William B. Mills - for a variance or special permit to construct a 7'x16' porch with roof in the front-yard of the dwelling located at **18 Hale Avenue, Winthrop, Massachusetts 02152**. Permit was denied on **February 25, 2010** in accordance with Town of Winthrop By-Laws 17.16.020(J)1, *Table of Dimensional Regulations* requiring a 15' side-yard set-back. Relief needed from the front-yard set-back of 7'.

Sitting: PM/DB/BB

[Applicant] Construct a 7x16 porch with covered roof on front of dwelling. In middle of re-hab and need a 15 foot set-back from property, for 7 foot porch will not be enough.

[PM] Need an 8 foot variance.

[Applicant] 8 foot porch with 7 foot set-back.

[PM] Need 7 foot variance in front and 4 foot variance on right

side, minimum is 10 feet. L side you have 15-7.

[Applicant] Standard country porch, 4 column front, access through middle, directly into house.

Patricia McGee, 29 Hale Avenue, in favor. Neighbors very much in favor. Badly neglected property. Summer cottage when she was growing up. No basement, crawl-space. . . . Abutter 16 Hale Avenue. No persons heard in opposition.

The following exhibits were marked:

Exhibit #1 Letter of neighbors in favor

[BB] Change relief needed, add 4 feet to right side.

[PM] Correct.

[DB] Can add it. Not any closer to house than already is to this side line. If it's cleaner to do it, completely within our power to do. No pressure-treated showing. Finish materials for roof consistent with rest of house. Porch itself is going to be open.

[PM] No permanent foundation, open underneath. Will be closed in. One of conditions that it will remain open, won't be able to be closed in and made a part of house. Materials consistent with rest of house. Ambitious project to do whole thing over.

MOTION #04-2010 (Darren M. Baird) pursuant to provisions of Winthrop By-Law and provisions of M.G.L. c. 40A, § 10 to grant variance requested of 7 feet from required front-yard set-back as well as 4 feet from side-yard set-back on westerly lot line of property, finding that strict enforcement of the zoning by-law would cause undue hardship to applicant and that it will not be more detrimental to community than existing condition, subject to conditions as to finish and to keep it open and not enclosing porch.

SECOND (Brian J. Beattie)

VOTED All in favor.

#06-2010 - 17 Belcher Street - JoAnne M. Schisler and Florence M. Schisler for a variance or special permit to install an in-ground swimming pool at premises located at **17 Belcher Street, Winthrop, Massachusetts 02152**. Permit was denied on **February 25, 2010** in accordance with Town of Winthrop By-Laws 17.36.040, *Location of Swimming Pools*. Relief needed of 1' from side-yard and 1.4' from the rear-yard.

Sitting: PM/DB/ID

[Applicant] Surveyor surveyed land. More feet on other side of fence. Wanted to know exactly what could be fit in yard. Told him I was getting a 5 foot variance. Said this will be fine, give to BI. Brought to BI. Did get another plot plan from surveyor with 5' variance on it. Clearly states that this is a variance. Confused how original plot plan could be used without saying it is a variance, inexperience, don't know what I am doing. Came in with plan from pool plan, apparently not plan he is going by. For some reason, he looked at original plot plan and gave me foot and a foot and a half in back. Did put in writing on third page of application, asks what is exact nature of variance requested and I put to obtain 5 more feet for a small swimming pool, for a total of 11' if obtained for widest part of pool. No body told me that I needed plot plan with variance.

[BI] Approached me with plot plan done by Alex Crucoli. From that see dimension of pool and wrote decision to deny and dimensions needed. She said no that is not what I wanted. Under swimming pools, in our chapter, it allows in 17.36.040, allows BOA made by special permit, allow location of a pool within above required yard set-back area to within one-half required distance if it finds that the literal enforcement of the required set-back would involve practical difficulty and unnecessary hardship. In sequence of things, application would be submitted after my denial so application came in after my denial, application clearly indicates she's looking for Board to issue what would be a special permit for relief to be able to go from 10' required 10' to at least 5' side-yard and rear-yard set-back instead of 10'. Public notice went out, says my dimensions, so that, therefore, is the confusion. Mal writes public notice off my denial. Confusion. Method for it, Board should may be consider confusion here, have some clarity at end on what she is actually asking for, could be available under what could be a special permit, rather than a variance. 17.36.040. 145-65.

The following exhibits were marked:

Exhibit #1 - Plot Plan showing 5' variance from property line.

Exhibit #2 - Photographs (3) - boarded by two garages, not much land there, but enough for private swimming area, have a handicapped mother who needs to get outdoors more often.

[PM] Looking for variance.

[DB] We can certainly do this by special permit. Can go either way with it. Dislike issuing a variance when there is another mechanism under code, either way it's a discretionary permit. From standard of review perspective, always better from applicant's side, issuing a special permit is better for applicant, than issuing a variance. If someone wanted to appeal, variance standard is very hard to defend and a special permit is much easier, assuming nobody is heard in opposition who got public notice. Would do this as a special permit.

[Applicant] Know all neighbors, came over and said good luck with everything.

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

[Captain Hazlett] Looked at plot plan. In emergency situation, referring to a fire, driveway to left, if cars in driveway, only way that Fire Department could gain entrance would be in front. Have reservations. For the record, there are concerns of Fire Department. Ability to ladder building is coming less.

[BI] Clear in 17.36.40 that ordinance sets out 10' from permanent structure, a pool, she's not asking anymore what by-law is asking for. That 10' had to be taken in consideration for safety concerns for circling that house in any manner for Fire Department. Otherwise, that 10' would be 20-25'.

[DB] Is this a two-family dwelling?

[Applicant] Yes.

[DB] What is not apparent to me from looking at this plan, see some chain-link fencing along property line, how are you enclosing this?

[Applicant] Enclosing it with fence in front, going to be L shape.

[DB] Will tie into existing fence on back?

[Applicant] Yes.

[DB] Completely enclosed swimming area. Is second of two family, relative.

[Applicant] Tenants. I'm the only one who uses drive-way. Only one car that will be in drive-way.

[DB] Not that I get nervous based on dwelling units in building with

a pool. Worry about that it is secure in event that there were little kids.

[Applicant] No kids.

[DB] Could be at some point while pool is there, want to make sure that you have proper chain-link fence around pool. Condition that you have chain-line fence around pool.

[PM] Looking for 5' on side-yard, correct?

[Applicant] Yes. Want to go closer to fence.

[DB] 15 - 5 - 5. Rear and side are the same.

[BI] Section of definitions under lot-line rear, parallel to or within 45 degrees of front line, called a rear line, parallel to front line or within 45 degrees.

[DB] Think it's a rear-yard.

[Applicant] Very small rear-yard.

[PM] Within 45 degrees.

[BI] Less than is good, but when you start to go 90, you're perpendicular.

[PM] If you took this as rear, and swung 45 this way, less than 45. 45 would be out here.

[DB] So that's a rear-yard.

[PM] Relief is 5' side set-back and on rear, 5'. Originally on plan it was 8.6'.

[DB] I see a 5 right here though. Looks like it is the same.

[PM] I see a 8.6, this what was on original drawing, 8 foot and then 8.6.

[Applicant] We have property on the other side of the fence. That's what the 1.4 is referring to.

[DB] 8.6 that came over another 3.6 to here, now only have 5' left.

[PM] 5' on rear and rear set-back is 20'.

[DB] For swimming pools, it's 10 from side, 10 from rear. 145-65.

[BI] In wording 145-65 by special permit.

[PM] What will your access be to get into pool yard?

[Applicant] 2 gates, one in front and one in back.

[PM] Go out your front door and go in through that way and one in back, looks like set of stairs that comes down.

[Applicant] Would be after the stairs.

[PM] Don't see how you're going to get in after the stairs. Looks like you're a foot and a half from property line here. Is fence going down there?

[Applicant] Stairs are right here, fence would be right here and gate.

[PM] Is there a fence down here.

[Applicant] Tight between stairs and fence. May be a foot there. Don't

know why he made stairs so close to fence. Going to have fence come down like this and over like that and have a tiny gate here. L shape and 4' fence.

[DB] Existing short chain-link fence here along Belcher anyways.

[Applicant] Going to change it.

[DB] 11X19X5X16X9, 4-½-5' deep.

[Applicant] Built by Cosmo.

MOTION #06-2010 (Darren M. Baird) after public hearing, the Board *sua sponte* despite the fact that applicant brought this in the form of a request for a variance, Board finds that more appropriate thing to grant a special permit pursuant to zoning ordinance, Section 145-65 of Winthrop by-law, finding that where a 10' side-yard and 10' rear-yard are normally required for this sort of pool, allow that to be reduced by half pursuant to 145-65 allowing for a 5' side-yard set-back from the northerly edge of the pool to northerly side-yard and 5' set-back from westerly edge of pool to rear-yard of property subject to conditions for proper enclosure and constructing pool consistent with plans provided as *Exhibit 1* in this case finding that the literal enforcement of required set-backs would involve practical difficulty and cause unnecessary hardship to applicant and would not substantially be more detrimental to public safety, health and welfare of community surrounding it.

SECOND (Irene Dwyer)

VOTED All in favor.

MOTION (Darren M. Baird) - to approve *Minutes* of March 11, 2010.

SECOND (Brian J. Beattie)

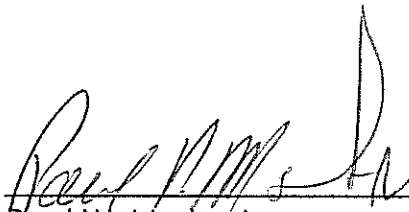
VOTED All in favor.

MOTION (Darren M. Baird) - to adjourn.

SECOND (Brian J. Beattie)

VOTED All in favor.

Adjourned at 9:00 p.m.



Paul W. Marks, Jr.,
Chairman