

**BOARD OF APPEALS  
TOWN OF WINTHROP**

**MINUTES OF MEETING**

*Held on Thursday, May 6, 2010  
Town Hall - Joseph Harvey Hearing Room  
WINTHROP, MA 02152*

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TOWN CLERK

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 hearing were the following Board Members: Darren M. Baird, Brian J. Beattie and Irene Dwyer. Also in attendance were Board Secretary/Clerk, Mal Jones, and Town Counsel, Attorney Elizabeth A. Lane, Kopelman and Paige, P.C.

The following matters were heard:

**AGENDA: Hearing of the following application(s) for variance and/or special permit and deliberation of pending matters and discussion of new and old business.**

01.	23-2004	200 Pauline Street	Luigi Guarino Executive Session	
02.	32- 33/2007	70-74 Woodside Avenue	Martin B. Vasquez  Motion for Modification	PM/BB/DB
03.	10-2010	70-74 Woodside Avenue	Martin B. Vasquez	PM/BB/DB

**70-74 Woodside Avenue - Martin B. Vasquez**

**Sean F. Donahue, Esq.** - proposing an outdoor patio in the side-yard of 74 Woodside. Last here asked that we come up with suggestions or recommendations with respect to lighting and sound. Since we last met, we met, Martin Vasquez, wife Anne, myself, met with some of neighbors in that area to seek their concerns and recommendations. Packet of

information. Dimensions of patio are 13x37, framing is to be 2x8 pressure-treated wood, composite decking which we have a sample here for deck, initially proposing poured concrete. As a result of concerns of Board and some of neighbors how that might heighten or increase sound effects, Martin and wife did shopping and came up with sample. Composite decking to mitigate sound impacts, in addition to flooring, also suggesting planting of arborvitaes along fence, which grow quite high which would help mitigate sound as it may impact particularly residential dwelling next door owned by Mr. Visco who is here today. As far as lighting goes, what is being proposed is called chilly pepper lights which go underneath umbrellas. Planning on putting up some umbrellas not too high, but again to mitigate sound impacts and to keep sound within that area and use chilly pepper lights along with decorative chain lighting that goes around fence. So they are not having any lights where it may shine on neighboring lands. Actually placing lighting within patio area itself along fence, underneath umbrellas so we won't have any significant impact on neighboring land. Some of suggestions we had discussed, some of recommendations we discussed with neighbors, more concern that was discussed at meeting, what if Martin and his wife decide to sell premises and a new owner comes in, certainly Board has power to enact or place whatever conditions may be appropriate. As a suggestion or recommendation, if the property is to be conveyed that new application for special permit, which I believe ought to be done anyway, must be approved granting of a new special permit for new owners. This would help Board monitor or supervise situation. Do have letters we received.

**[PM]** Give us more information on meeting with neighbors, you talked about what if the property was sold and what else transpired at meeting.

**[Counsel]** Discussed impacts that it may have on neighboring lands. What was expressed at meeting, at our initial meeting here a week ago, there were same issues raised about potential adverse noise impacts to neighbors, impacts of light on neighborhood. Those were again discussed. Some of neighbors we met with are here.

**[Abutter]** Soundproofing on all sounds, not just on Mr. Visco's side. Trial period.

**[Counsel]** We talked about placement of canvas perhaps. Discussion about a canvas being utilized to absorb noise.

**[Abutter]** Mr. Beattie mentioned at last meeting that concrete conducts or reflects sound, does not absorb sound. All neighbors were in agreement. Patricia Harrison, representing parents at 79 Woodside Ave. Concerned that sound be contained within patio area itself, not traveling

across street to living room. Talked about other materials that could be used, such as type of material that is used in awnings. Subfloorings that could be used, vinyl just like Pink Panther, sound proofing material that goes between floorings. Talked about controlling cleanliness, rodents and insects. Talked about lighting, party lights that under the umbrellas and shining down, wouldn't want any lighting to shine across the street or into Mr. Visco's home because there is no buffer between the two things. Trial period to reassess, end of August, after there was some usage that we could come and meet. Go through composite materials, not having cracks between slats, tongue and groove, barriers so that patrons are not looking into living room windows across the street. Seat last party at 7:30 so they would be finished dining at 8:30-9 o'clock so that noise. If opening for lunch, it's a 12-hour period of noise, so seating last party early. Did not get into any issues about set-backs from the street or handicapped access. Did not touch upon if there's a construction period, what would keep debris and dust from blowing into people's homes. . . .

**[PM]** Was there consensus?

**[Abutter]** No consensus.

**[PM]** Interested in results of meeting, consensus or still disagreement on it.

**[Counsel]** 4 people present at people in addition to Mr. Visco and Patricia Harrison, also a Donald Sullivan, 83 Woodside and Jim Sullivan, 87 Woodside, across the street from site. Didn't get any feeling that Mr. Sullivan, Jim or Donald, had any strong feelings one way or the other.

**[PM]** Was there agreement with neighbors that if this went forward, they would go along with it? Would there still be problems or objections from neighbors. I will poll neighbors that are here to hear from them on that.

**[Counsel]** My understanding in talking with Mr. Visco is that he doesn't necessarily oppose, don't want to speak for him, from what I'm hearing, he doesn't necessarily oppose proposed project. He just wants to make sure that impacts on his property are negligible. Hearing same from Miss Harrison as well. As far as Mr. Vasquez goes, his running of business has been impeccable right along in last few years since he has opened business. That's what I was hearing. As far as Donald and Jim Sullivan, didn't hear any opposition from either one of them. We sat down basically utilized it as an opportunity to come up with suggestions or recommendations. From that, Martin went out and shopped around, flooring that may be available. He had proposed a tree, bushes that he has in restaurant, pointed them out at meeting what he was proposing. Not as high as arborvitaes will grow. Potted plants. Down at restaurant

now along fenced area to absorb sound. Discussion of canopies or canvasses, other materials to lessen sound. Didn't hear any strong opposition in terms of lighting being proposed, on inside of fence, chain lighting along fence along with lighting underneath umbrellas, contained in that area. Hours of operation and impacts it may have on neighborhood insofar as late night services may be involved, possibly setting a condition of not serving after 7:30. Had discussion about this last week with Board as to setting condition as to time of use. Not adverse to probationary period as Miss Harrison pointed out to come back in August for review period to see how this thing is working. Mr. Vasquez is a business man, also is sensitive to needs and concerns of neighbors and he has demonstrated that from time he has done business there to present. As far as recommendations go, as presented, all pretty sound and would help alleviate impact on neighbors. Just looking for a few tables out there for people to sit outside, it's a restaurant, Martin doesn't run a bar. They have liquor service, but doesn't cater to crowd that wants to drink, caters to people who want to come in and have a meal and have a drink and then leave. That's the type of business he wants to continue to operate. Letters that were received from Paul Roy, business man here in community, owns Elliott Whittier Insurance and Christine Millerick, both members of Chamber of Commerce, who couldn't make it here this evening. 2-½ pages of signatures of people in support of proposal.

The following exhibits were marked:

Exhibit #1	Packet
Exhibit #2	Arborvitaes
Exhibit #3	Letters of Support Paul Roy, Christine Millerick
Exhibit #4	Petition
Exhibit #5	Aerial of Site
Exhibit #6	Section 17.16.020F
Exhibit #7	Plot Plan 04/29/2010

**[DB]** Make available to abutters.

**[Counsel]** There is a fence down there. No plans in changing fence now. Possibility of increasing height of existing fence which is presently 6 feet, may seek a variance to go upward of 8 feet. This isn't unprecedented. Yacht clubs have outdoor seating. Gary's has outdoor seating. This is a restaurant. Looking to put 3-4 tables out there to offer services that doesn't existing in center area. Do have Café Delight. Outdoor seating there as well. Serve food and drink. Not a bar. Not going

to run it as a bar or nightclub.

**[PM]** Ask neighbors to speak if you agree with materials.

**[DB]** From standpoint of what you are proposing, this particular property is in center business district. 76 Woodside is first property in Residence A district, that is not in center business district. This lot is the last lot in center business district, is that correct?

**[Counsel]** Don't know specifically, but guess is you're probably right.

**[DB]** Wish that zoning map is better. That's what it appears to be. Makes logical sense that that would be the case. If that is the case, then don't you need something more than what you've applied for. Under 145, 24, you still have set-back issue. Now you're expanding the actual use of that property into that side-yard. It's not like you have a passive use of that side-yard anymore. Now you have an active commercial use of that side-yard which is suppose to serve as a buffer. Would seem to me that beyond which you have applied for, you probably need a dimensional variance. Because you are putting improvements in that side-yard, it's an increase in that business use. You're not making passive use of a side-yard anymore which is really what side-yards, rear-yards, front yards are suppose to be all about.

**[Counsel]** The minimum side-yard set-backs would be for encroachments, not necessarily for the use.

**[DB]** But you're putting a deck here with tables. It's not a passive use like you have a piece of playground equipment. It's not. You're serving. Your business footprint has gone to the side-line. How is different from someone building a deck on the side of their house in the set-back?

**[Applicant]** This is a business. You can call a playground in the house. This is a business. You can call it a different way.

**[PM]** But it has set-back requirements that you have to met.

**[DB]** But you're talking about the active use of the property now going into the set-back. Center business district has a set-back requirement of 10 foot side-yard, except--only in instances where it abuts a residential district. Otherwise, there's no side-yard requirement. But where it abuts a residential district, you have a side-yard requirement. Want to know if we grant this that we've granted all necessary zoning relief required. Question is do you need a side-yard variance from a conventional standpoint?

**[Counsel]** The way I viewed this it was a patio. When we came in here, the plan was to construct a patio. In my view, a patio isn't necessarily a structure as a structure is defined under our code and thus wouldn't trigger zoning requirements.

**[DB]** Putting something on joists and putting decking down and

putting tables on top of it to me seems like it's active use and it's a structure of sorts in that side-yard.

**[Counsel]** Don't necessarily disagree with you. This sort of evolved. When we came in here, we were talking about construction of a patio in traditional sense as a patio would exist on the ground, poured concrete. Now we have sort of shifted gears in terms of how it will be constructed as a result of our prior meeting. Don't necessarily disagree with you.

**[PM]** That is something we have to look at and think about a little bit to see how it would affect this if there's a decision made, it's in the right direction.

**[BB]** You spoke about moving it off the street, moving it back towards edge of building, towards rear, moving patio so Mr. Visco wouldn't have bedroom, up in here. Move it to rear of building.

**[Counsel]** Ground level is pitched, not a flat surface. If you sue the wall in the pictures there as a guide.

**[BB]** It tilts down.

**[Applicant]** Kitchen is in this area. Close.

**[Counsel]** Didn't have any discussion about it.

**[DB]** Arborvitae, if you were to use those plantings, when you first buy them and plant them, how tall would they be? Assume you're not putting in mature ones.

**[Counsel]** What we're proposing is to plant them in a planter. Actually have them in restaurant right now. Grow 5-6 feet.

**[ID]** Can buy them 6 feet very easily.

**[DB]** I want to know what intention is When you first install them, they will be 5 or 6 feet tall, won't grow to that.

**[Applicant]** Believe they are 4 right now, can get 5-6 feet.

**[DB]** If they are being used as a noise buffer, 4 feet is not tall enough. Noise bounces off ground or off walls and projects up. Not going to make a difference to Mr. Visco if it's 4 feet tall. Can't imagine it will actually suck up that much sound if they're only 4 feet tall, 5-6 feet yes, starting to get to a meaningful height.

**[Mr. Visco]** Still have a question. If variance is granted, what kind of can of worms might that open up in future for possible future owners.

**[PM]** Treat each thing as an individual case and circumstances are different for everything. It's like somebody applying for a variance on a two-family down the street want to do the same thing. All depends on conditions and what input might be from neighbors.

**[Mr. Visco]** If Martin is granted variance and decides to move to another place, someone comes in and buys it, will new owner have to re-apply?

**[PM]** I would think he would. Normally when we do something like

this, it goes with owner of property as it is now. If somebody were to move, it would trigger to have to re-apply again.

**[Mr. Visco]** What if the noise mitigation doesn't work.

**[PM]** It would come back to Board of Appeals because we would take this up and have provision to re-visit it again at some point-in-time. With meeting that you had and conditions that they propose, would you be in favor of this?

**[Mr. Visco]** Hard to say because we don't know if it would work or not. Other technical considerations.

**[Miss Harrison]** Concerns that I previously had already mentioned. If it was further back to Mr. Visco's back yard. That would be the preference. It didn't come up at meeting we had. That would provide more of a buffer zone and alleviate aggravation. Would like it re-visited.

**[Mr. Hughes]** Remain opposed to project. At first meeting, requested drawings. Drawings and pictures tell a thousand words. Application is incomplete. Search of properties in general. Subject property here. 13 foot wide patio proposal. 13 feet. 4 foot difference between Mr. Visco's property at 76 Woodside and edge of house. These are all pre-existing, non-conforming structures. All maintain a 4 foot set-back on left side of property. These structures, all the way up hill, are shifted toward restaurant. Already 6 feet difference. This is not an appropriate location for out-door patio because we don't have buffer. By-law requires a buffer. 17.16.020F are general requirements for patios or anything in that nature. Until I see some drawings, it's incomplete. Looking for details. . . . No drawings, details, hearsay. . . . without further documents, more information, exit door from side of buildings. Until then, opposed to project.

**[PM]** Talked about moving it farther back on site so it would be towards rear of Mr. Visco's property and rear of existing building. You did not consider that because of slope of land.

**[Counsel]** Didn't discuss at meeting. Focal point of meeting was within fenced-in area. Based on inspection of area, noticed that land as you walk toward back of building pitches more so than it does at Woodside end of land. Relatively flat in fenced-in area, but as you then walk toward rear of building, there's a pitch . . . To have it there, have a pitched land which would make it difficult with tables and chairs could be dangerous.

**[BB]** Could fill it in very easily.

**[PM]** Material for deck is a hard material, not as hard as concrete. Hard material that could possibly transmit sound more than an indoor-out door carpet, if you put that on deck or plywood, mentioned that, some type of material to sound deaden the area. Mentioned canvas on

concrete block wall which is a hard surface that noise does not absorb into, it bounces off, to treat that.

**[Counsel]** Martin and I had some discussion over when initially proposal for concrete patio was to lay turf.

**[Applicant]** Green turf that looks like grass or there is another kind of turf that is sold at Home Depot. Put on top of concrete.

**[Counsel]** There are a few other people here who would like to be heard.

**[DB]** As a matter of procedure, hearing people for or against was when we opened that. When we had first hearing. Not appropriate to pile on for when they had opportunity to show up at first hearing. Procedural issue.

**[PM]** Heard from abutters because they were participating in meeting and have list here, know there are a lot of people for it.

**[Captain Hazlett]** Talked to Mr. Martin before meeting. If so granted, would like to add make sure for emergency, initially only way in and out, and information I had from first night and I wasn't here, was through the restaurant itself. Just wanted another one in case of emergency and they couldn't go through restaurant, that they could go out preferably the rear of building because as the way it is presented now, if you leave it right on Woodside, you would have a door swing in and obviously in emergency, you would never want that. Wouldn't be a normal door, would be used only in the time where situation arose within restaurant that those that are on the patio, if it is granted, would be able to go out. Unless they're burning candles, would have to come to Fire Department for that.

**MOTION #32-33/2007 #10-2010 (Brian J. Beattie)** to take this under advisement and render a decision.

**SECOND (Darren M. Baird)**

**VOTED** All in favor.

**MOTION (Darren M. Baird)** to go into Executive Session.

**SECOND (Brian J. Beattie)**

**VOTED** All in favor.

**MOTION (Darren M. Baird)** to end Executive Session and come back into open session.

**SECOND (Brian J. Beattie)**

**VOTED** All in favor.

**[DB]** Impact to neighborhood is too great. Best intentions in the world, but will be an epic disaster.

**[BB]** Still needs a side variance.

**[DB]** Yard side--yard unoccupied except by an accessory structure or use as herein permitted. This isn't an accessory use. This is the primary use. Putting primary use in side-yard. Side-yard is suppose to be for passive use meaning side-yard, grass, walk-ways, not a patio where you're serving food in a restaurant. Not properly before us procedurally. If they wanted relief they're looking for, need to come before us for a variance. Donahue may say: wait a second. I was denied by BI. There's no reference to the need for a side-yard variance. What were the two grounds this came before us on: amendment to special permit to remove condition that that stay open as walk-way and he also applied for a variance with reduction in parking. I don't agree with fact that variance for parking. Do agree that we need to amend our decision. Based on what I'm hearing and based on fact this will have a substantial impact and that it's right on the buffer of residential and fact that it needs a variance application before us for us to grant relief. Can't amend our special permit, because it's only a special permit. Would have to grant variance and then amend our special permit. Even assuming it was before us procedurally in the correct way, to have that be an active use there would be substantially more detrimental to the community than condition in our special permit which is to keep that as a passive use as a walk-way for people to get from Hagman Road where they are suppose to park their cars to the front of the restaurant.

**MOTION #32-33/2007 #10-2010 (Darren M. Baird)** to deny relief requested requesting a special permit and upholding decision of BI denying request for a building permit.

**SECOND (Brian J. Beattie)**

**VOTED** All in favor.

**MOTION (Darren M. Baird)** - to approve *Minutes* of April 29, 2010.

**SECOND (Brian J. Beattie)**

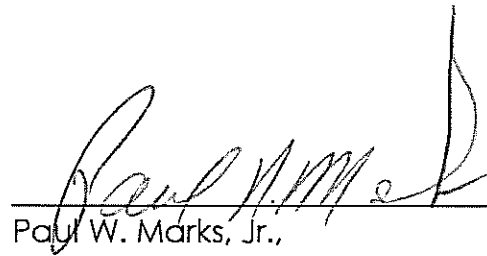
**VOTED** All in favor.

**MOTION (Darren M. Baird)** - to adjourn.

**SECOND (Brian J. Beattie)**

**VOTED** All in favor.

Adjourned at 9:30 p.m.



Paul W. Marks, Jr.,  
Chairman