

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, May 27, 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 6:30 p.m. Also in attendance at hearing were the following Board Members: Darren M. Baird, Brian J. Beattie, Irene Dwyer and John Rich. Also in attendance were Board Secretary/Clerk, Mal Jones, Building Commissioner James Soper 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	Guarino Site Visit Remand	PM/BB/DB
02.	20-2008*	2-4 Highland Avenue	Terry P. Vazquez Petition to	PM/BB/DB
03.	07-2010*	71 Grovers Avenue	Olivia Sillari	
04.	11-2010	1 Pond Street	Clear Wireless, LLC	
05.	12-2010	33 Nahant Avenue	Philip Baldi & Elizabeth Baldi	

***Continued from April 29, 2010**

MOTION (Darren M. Baird) 6:30 p.m. - to go into Executive Session for purpose of discussing litigation strategy.

SECOND (Irene Dwyer)

VOTED All in favor.

7:00 p.m.

#07-2010 - 71 Grovers Avenue - Olivia Sillari - continued to June 24, 2010 to hear three matters at same time.

#23-2004 - 200 Pauline Street - Luigi Guarino -

Sitting: PM/BB/DB

Michael Markoff Esq. representing Luigi Guarino. Submitted letter dated May 26th addressed to Attorney Lane. Mr. Guarino bought property in 2004. At time there was a pre-existing garage, it had six separate bays, rented out for people to use as individual garages. People using garage did not live at 200 Pauline Street, they lived in neighborhood. They could rent a separate bay, almost like a self-storage unit, except you could drive a car into it. Situation had existed at least for in excess of 20 years and probably back to 1920s. Say probably to 1920s because garage had a heating system in it and garages typically don't have heating systems because cars have antifreeze. Appears that this garage was built before antifreeze became popularly used, but after cars became used. Basically it's the 1920s. Garage exists prior to the 1920s we know that because of the heating system. It had 6 separate bays, 6 separate locks. Prior to buying the property, he learned that these 6 units had been rented out, probably a commercial enterprise. What Mr. Guarino has done is expand the building and changed, limit the use that used to be there. As you saw when you made your tour, there are no separate walls now between the separate bays and what that means is that the building is no longer rented out as separate bays because the separate bays aren't there anymore so the only people who can keep vehicles in the garage are people who Mr. Guarino knows and as you noticed there were nice cars. There were nice cars there, two were sort of back-to-back, so you would have to move one to get the other out. Obviously not in daily usage. Owned by people that Mr. Guarino trusts to be able to use the garage and that they trust that no one will interfere with their property even though they don't have separate bays. Mr.

Guarino is storing boats, one was hung from ceiling, that boat is obviously not coming in and going out everyday. It's stored and once or twice a year, it's moved and put in the water and then it's put back, not coming in and going out on a daily basis. Garages are used for storage, normal use of garages. Mr. Guarino in preparation for hearing did a survey in the neighborhood to see what people were using their garages for and survey said storage is actually primary usage. Parking of cars in garages is done in less than half and mainly it's because the people that own the garages have so much stuff in them, they can't get the car in. That's one of the uses that Mr. Guarino is now using, typical usage of garages. Used back when it was 6 separate bays and rented out to individuals, they did the same thing. They would rent a bay, it was theirs, they would put a lock on it and put whatever they wanted in it. Mr. Guarino is essentially doing the same thing. It's a normal everyday common usage of garages, nothing different about it. The other thing Mr. Guarino uses his garages for are hobbies, non-commercial activities, main one is that he restores—works on some of the boats that he owns. You saw there was a little work room there, believe that was issued under a separate permit that has nothing to do with case that brings us together today. Not a commercial enterprise. It is a space in a garage where Mr. Guarino does the kind of things everybody uses their garages for. One of issues that we have laid out in letter that you need to look at is whether the current usage of the garage is any more detrimental to the neighborhood than historical use was, the parking of 6 cars. Neighbor here who has lived on the street since the 1990s who can tell you what it was like before and after. Big difference is that before Mr. Guarino bought the property, cars were coming and going with frequency. Now they're not. The people that keep the cars in the garage tend to keep them there for longer periods. They are nice cars that are not everyday cars. Impact on neighborhood is a lot less. To the extent that it was an inconvenience to people on Pauline Street in years past, it's much less so. Relatively little traffic going in and out. There's nothing really that interferes with neighborhood and one of neighbors can tell you. Essentially what we have is a large garage. Among other things that the Land Court decision did a few things, one of them was that it clarified that the preexisting garage, much to everybody's surprise, was not a non-conforming building, it was a conforming building and expanded garage is a conforming building. Discovery that the Land Court judge made was made that the provision of by-law that essentially says which was interpreted to mean that you could not be within 5 feet of the side-line, judge decided it meant exact opposite, that you could be within 5 feet of side-line and that,

consequently, pre-existing garage was conforming and the expanded garage is conforming. Only dimensional aspect that judge left open to an extent has to do with square footage. Is a garage limited to 1200 square feet. Judge noted in footnote says that no, he doesn't really think so, but he wants to hear what Board has to say. So it's 1200 square foot area limit is only issue concerning the size of the garage. Everything else that's currently before the Board is what the garage can be used for.

[Mr. Guarino] Been through this a couple of times now. Already told the Board that when I purchased this property, there were separate bays. There were different people who used the property. There was a lawyer about town Bob Indrisano when I purchased the property who gave me his assurance that he would be able to get the people out of there because the people who had been using those spaces had been using them for so long that even though the woman who had rented to them had died off, she didn't even, rest of family didn't know who she was renting to. This was essentially as I had said before a self-storage facility back then. Already said that in my opinion certainly lessened that self-storage facility type use. Only new thing I have with regard to my position in neighbor is I went around and made a survey. Actually talked to 25 different people and I recorded information here. I asked them a series of questions with regard to garage use in general and their particular garage. I asked them if they used their garage for their car. I asked them if they used it for other things and if they used their garage for hobbies. Quick little summary of what I found: absolutely everybody uses their garage for what they want. 100% of people out there store things in their garage in addition to their cars. There was only a third of the people who use their garage for their cars and when I asked that, they said well we have so much stuff in there, we can't even fit our cars. I asked the question am I an impact to the neighborhood. Nobody called me. I agree I didn't ask Anne Baldwin and I didn't ask my next door neighbor Fiandaca. But everybody else I asked, no body called me a negative impact to the neighborhood. 80% of people who have the garages use them for some sort of a hobby or another, whether it's messing with kids and making kids or potting or anything, basically use them for whatever their hobbies are. My particular opinion is that I fit right in with what everybody else uses their garages for. Want to make clear that Tarrantino family was the family who had been renting out this garage for the period of time before I bought property and I believe they owned that house from the 40s to 2004, that was source of information I had on prior use.

[Counsel] Mr. Mescal here. Lives on street. Listen to what he has to say.

[Mr. Mescal] John Mescal, I live directly across the street from Lou's house since 1998. House was in disrepair then, eye sore to look at. Constantly cars there mostly on weekends in and out, cars, motorcycles, jet skis, for hobbies. Since Lou's bought house, it's polar opposite, renovated house outside, he's made it look 100% better, curb appeal is great, garage is basically exactly what he says. Lou is the only one in and out of there on a regular basis. I'm not there during the day all the time during the week, but weekends, nights.

[BB] What is exact use of garage right now? Way it is set up right now?

[Guarino] It's my entertainment location. Where I want to go when I want to get away from my kids. Place that I can do my hobbies. I make rock sculptures, I made a boat, one of boats that was hanging up. I keep after my other boats. I enjoy myself down there.

[BB] Historically it was always.

[Guarino] There was actually 7 doors, 6 of doors were 8 foot doors that were when I purchased that had had a beam down the middle and a beam at the specific boundary points so there were separate bays. 6 of the bays were 8 feet wide by 19 or 20 feet long that they were and then there was another door that went down into a pit where there was a coal-fired boiler and there was a set of pipes that went along the entire back wall of the garage and then turned up the right wall and returned and that was the heating system that was in the garage. And the driveway was as wide as the entire--when the driveway came down, it widened out to the whole width of the lot because--asphalt driveway all of that was accessible--come down the driveway without getting on any grass, you could turn into it more.

[BB] And the connection between the house and garage. Is there any connection between the people that live in the house and the garage?

[Guarino] No. I use the garage for myself.

[Counsel] You mean historically or currently or both?

[BB] Both.

[Guarino] Historically when I purchased it, the person who lived in the house used--I don't know how long that use was--in particular, within a year of when I purchased it, I'd have to ask them how far back it went, the person who lived in the house used one bay and rented out 5 bays. Then I purchased it from that family and they vacated and as I said it was a lawyer about town Bob Indrisano who was going to vacate the other people in the 5 bays.

[DB] We were done on site visit. Want to get some idea of this.

Looked like there were 3 courses of brick wall. Height of the old building, the block had been raised.

[Guarino] Yes. Yes.

[DB] Was that done after you acquired it?

[Guarino] No. I did that.

[DB] You did that.

[Guarino] I did that. I built out the garage in sort of two phases. I had two permits. The first permit was issued by Gauthier and I told him what I wanted to do as an overall plan. Ernie Gauthier—I don't know if you know him—but he wasn't someone who could look at what was written down and go along with it. He had his own idea. He said to me listen why don't you just take a permit and do this portion of the work first and then you can come to me and I'll give you another permit to do the next portion of the work. I did that. Essentially the first section of the garage, I raised the height of the roof—the whole roof portion needed to be replaced anyways, so I raised the back wall and I raised the front wall to a little under 16 feet. Later on I did the second section to it.

[DB] What's the primary use of this property as a whole?

[Counsel] Well there's a house that's residential and then there's a garage. I think that's probably it.

[DB] Primary use of the property is residential then. It's a residential lot.

[Counsel] It's a residential lot.

[Guarino] Residential. There's no commercial things that go on there.

[PM] The cars that are in the garage, are those your cars that are in there—stored in there?

[Guarino] You mean the Ferrari and Corvette?

[PM] Right.

[Guarino] Those are not mine. The other car is just a friend of mine was just using it for a couple of weeks.

[PM] Do you rent to those people to store the cars there?

[Guarino] The Ferrari and the Corvette?

[PM] Yes.

[Guarino] Yes. He rents space from me.

[PM] At any given time, in the winter time, how many boats do you store in the garage?

[Guarino] Storage of boats. May be 9, may be 10, sort of depends what my kids are doing and what I'm doing and what I'm working on, what I'm playing with.

[PM] Are those all your boats—do you own all those boats?

[Guarino] Yeah. One of them I don't own, but all the others I do own.

[PM] Do you lease a space out to store a boat?

[Guarino] I store one boat, one row boat. I don't know if you noticed. It's a very long thin boat, like people row in the Charles that kind of boat. I rent space for that. I don't really call that leasing a full space. I do rent that space out, some space.

[PM] Question was asked by Mr. Beattie: what is the principal use on the site and we talked about it is a residential site.

[Guarino] It's a house. Residential.

[PM] Residential. And is the garage that you have there of that building is that accessory to the house?

[Guarino] Yes. I believe in this town a garage, shed and a barn are called accessory uses. Is that the correct?

[Counsel] I think you're asking a legal question. Not sure what you're getting at.

[PM] Do any of your tenants that live in the house use any of the garage?

[Guarino] No.

[PM] Question is it's your space. So it's not accessory to the house. People in the house do not use it.

[Guarino] When you read the Winthrop zoning by-laws and you see if you get a house, what do you get to do. There's a whole list of things. You get to have a yard sale, but only two of them a year. You get to have a pier, a barn, a shed or a barn rather, a garage and a garage is called an accessory use to a house. I don't know exactly how to answer your question except I was told you couldn't have a loft with just a garage on it, the garage has to be. If you don't have a principal house, you can't have a garage I believe is the way it goes.

[Counsel] I think your question is do people in the house use the garage.

[Guarino] The answer is no.

[PM] Garage is strictly

[Guarino] My space.

[PM] Your space there.

[Guarino] I could rent it to them, but I am not really interested in doing it.

[PM] You mentioned the garage previous to your purchasing it had a heating system in it.

[Guarino] It did.

[PM] What kind of heating system was in there?

[Guarino] It was originally coal fired, but then it had been changed to oil fired. It used to be an old oil line that went out there and there's an

old water line that went out there and the boiler that you see out front fired--oil fired that boiler, that boiler heated water and that water moved by a gravity system to a series of two inch pipes so the entire garage would have stayed warm. Heating system would have been for the whole garage, not for any one specific bay and it could not have been turned on or shut off for a specific bay. So your choice was you either heat the whole garage or you heat none of it.

[Counsel] The furnace used to heat the garage is one of those sculptures out front of the house.

[PM] Source of fuel was originally coal which was a bin underneath the end of the garage.

[Guarino] At extreme left of garage there was a man door that you would go through, you'd walk down a series of stairs, it was about 5 feet below grade and it was evident when I got some light in there, you could still see coal in there and at the back of that garage, back of that particular space, that chimney that you saw in my work room was existing, that was not new, and that was the chimney for the coal-fired and subsequently oil-fired burner.

[PM] Once it turned over to a fuel source, where was that fuel tank?

[Guarino] I never found. To my knowledge, I don't have any buried fuel tank. I did notice a tube at one point going out of the basement of the house. I also noticed when I redid the chicken coup, I noticed an oil line there, one of those thin copper kind of hoses, tubes that one characteristically sees with oil-fired systems, but the house had been converted to gas and I never saw any other indication of a buried oil tank on my property.

[PM] Was it in use at the time you bought it?

[Guarino] The heating system?

[PM] Yes.

[Guarino] No. The heating system was not. It was full. You could have used it if you wanted to. It was a complete system that had water in it, but it was no longer being used. It's probably residual water. It must have frozen. I do remember water pouring out of there.

[PM] How long have you lived in the town? You don't live there at that residence. You live someplace else in town.

[Guarino] I grew up in the Highlands. I live in the house that my grandmother used to live in. 55 years in round numbers.

[PM] You mentioned that previous owner of property rented out the 6 bays.

[Guarino] Tarantino. 5.

[PM] 5 bays. Was there any evidence of a lease with anybody? Was there any evidence of payments made to anybody for lease of that?

[Guarino] No. I had never asked. It didn't matter to me at all. In talking to Bob Indresano, because I bought this place specifically—I didn't need to own another single-family house. I bought this because I wanted the garage. I read what I could do with a garage and that was that. It was one of my thought processes when I was buying this is why are people still in my garage. I'm buying this. I'm giving you my money. I want it vacant. Bob Indresano told me he would get the people out of there. Quite honestly, they didn't even have phone numbers for a lot of people. This was something that had been going on in a casual manner for a long time.

[PM] Did this attorney have to move these people along and get them out of the garage?

[Guarino] I called him a few times. I think all I had to do was wait and wait and eventually people left may be by 3-4 months later. They kind of came and some people paid me a little bit of money for whatever they were paying for rental for their particular bay and they took their stuff and left.

[PM] This matter has come back to us from the courts from a decision and they're asking us to come back and study this again and make some findings here. I know one of abutters here was involved in court case, Miss Baldwin, who is an adjacent neighbor and you are represented here by an attorney and do you have any comments which I will allow at this time.

[Attorney Rebecca Sipowicz] Copies of submission to Board. Couple of issues we would like to address: first is customary use of a garage. Unfortunately by-laws say what they say and by-laws in this case specifically authorize only certain uses for a garage or actually one use for a garage and by-laws state that whatever uses are not specifically mentioned in the by-laws are prohibited. What people use their garage for on their own time is their own use. When you're applying for a permit, you have to fall within the dictates of the by-laws. And if your stated purposes do not fall within the allowed uses in the by-laws, then it is a nonconforming use. This Board found originally that storage or repair of boats in a garage was a non-conforming use and the original decision should be upheld. The by-laws only allow the parking of motor vehicles or automobiles in a garage, not boats. Other issue that I would like to address is an issue mentioned by Attorney Markoff in his submission to the Board which is the applicability of by-law the old number is 145-44(b)(3).

The correct number is 17.28.090 (provided to Board). This by-law applies to two things: applies to non-conforming accessory use of a portion of a structure regardless of whether that structure is conforming or non-conforming and separately it applies to a conforming use of a non-conforming structure. In Mr. Markoff's submission, he mentions that this by-law no longer applies to the garage because the Land Court found that a structure was conforming. That is simply not the case. This by-law does limit the amount of square footage that could have been added to the garage because it is a non-conforming use. The non-conforming use is the original grand fathered-in use of the parking of 6 cars and, we submit, based on the papers that the storage and repair of boats is also a non-conforming use and is a new non-conforming use. Because of that not only could a building permit not issue of right, addition to the garage a special permit would have been needed because he is seeking to increase the non-conforming space and he could only have increased it by 300 square feet. Land Court found as fact that the original garage was approximately 1200 square feet. Under by-law, it could only be increased 25% which would be 300 square feet and addition was 1000 square feet. Have photographs of what property looks like in a normal day beside what we have seen today with boats all over the yard. There may be some in the record from previous hearings, do have more if Board is interested.

[Tape 2-A]

[Counsel RS] Also as the Board noted in its questions to Attorney Markoff and Mr. Guarino, the garage is not used in an accessory manner. Primary use of property which is a single-family residence rented to tenants who have no access to the garage, under by-laws, only accessory buildings are allowed. Only buildings allowed on a residential lot are principal building and accessory buildings. As garage is not accessible to tenants of house, it is not accessory to the principal use. It is a separate structure and it is, therefore, in and of itself a non-conforming use, non-conforming structure, which again requires special permit process or variance in order for any addition to be conducted to structure itself. There are also a number of neighbors who would like to speak to the Board this evening.

[PM] Part of hearing process, we take testimony or we hear from people who are in favor or not in favor of petitioner. Where this is coming back as a remand hearing and we're listening to various information given, I will open it up to is there anybody here who is in favor of this petition? We have already heard from you sir. Hearing none, is anybody here that is not in favor of this petition?

Heard in opposition: Theodora Fiandaca, 190 Pauline Street. Next door neighbor to 200 Pauline Street. Not in favor for Mr. Guarino's garage. He has come over to my home on my front steps and asked my daughter and myself if we would speak to Anne Baldwin, this was in the fall, and to have her back off from this situation; otherwise, he would build something so much monstrosity, he would be running her out of town.

[Guarino] I didn't say that.

Michelle Fiandaca, 190 Pauline Street. Take into consideration since we are referring to Mr. Guarino's garage, portion of garage is registered land. We have registered land. His is not registered land. Portion of garage on our property. We have never enforced it, but since then he has built up from the original structure as you know and then built out and if you were to come to our yard, there's nothing about shade, storage and the antics that occur inside the garage are something unto themselves. Once he did use the stove and he didn't put it out correctly. We had smoke and a small fire. The firemen had to come, knocking on the garage. Mr. Guarino was not in there. Other times the garage is used for teenage drinking parties in which the teenagers proceed to pee on our lawns. Many times these parties occur and the police are called.

Anne Baldwin, 204 Pauline Street. Abutter to Mr. Guarino's property. Mr. Guarino is not assessing activities that go on there properly in terms of how they impact on the neighbors. Tonight the gentleman who keeps his cars there brought at least one of them out probably because they are not used regularly and they're obviously fine cars. He lets them run for 10-15 minutes. Revs the engine. I get noise, noxious fumes. There has been actually more activity in and out of that garage than there was in the past. I've been there since 1949. Tarantino's bought property in approximately '54 and it was rented, garages were rented. Most of the time there was very little activity in and out of those garages. One gentleman rented most of them to keep classic cars that very rarely left the garages. Would also attest to the parties. There have been at least 5. Police responded to one. There was threat of a large fight. Boys ran through adjoining yards and this happened frequently. There are boats stored there. The boats go in and out. One gentleman fogged his boat. Think the term is. Again, blue noxious fumes coming into my yard. Really not able to use my property in a manner that I would like to because of activity that goes on in the garage. Compressors running outside the garage. Tried to locate noise. Believe Mr. Guarino was building a boat at

that time. Finally found the noise. It was at the edge of the garage right next to my property. That went on for the better part of the weekend. There have been logs split for most of the weekend into the evenings, log splitter. This is the kind of stuff that goes on there on a regular basis. It has gone on there. It all involves noise. Don't know these people. Don't say for a moment they're not honest people that go in and out of the garage. People do have access to that building. Some of them come in quite late at night. Overhead a conversation between gentlemen I believe it was two years ago on the 4th of July, came in on motorcycles, went into the garage, said this is a really great place, we should bring the lights in here to work on. You get to the point here whether it's a hobby or a business, if the activity makes it seem like there's a shop of some kind being operated there, it's not appropriate for a residential district even if there's no commercial enterprise involved.

Diane Barsotti, 210 Pauline Street. Use limited to fixing boats. Who owns boats, owner of property or just _____. How many boats will be allowed there at one time. Who will be working on the boats. People giving access to the property. Will they have keys to get in and out of window in back on their own or will owner have to be there to supervise that. When will work take place, at night, in morning. Are there tough safety regulations in place? Who will be monitoring equipment or chemicals? . . . How long is boat allowed to be parked on property? Concerns about traffic, property values. Should I increase fire insurance policy? When I bought my property in 1985, I had to apply for special permit, doctor's office there. . . . [inaudible]

[PM] Close that part of hearing.

[Counsel MM] Cased going on for years. Fairly long summary judgment record which I copied for Attorney Lane and asked that it be made part of record for background use. Virtually all of what Miss Baldwin said is not anywhere in this case, first of what I've heard of a lot of her complaints. Issue about garage is not actually on Mr. Guarino's lot again I've been dealing with this case for several years and this is the first time I've heard any question about whether the garage was located on the lot. That is not part of Land Court decision. That's not an issue that was before the Court, doesn't think it was ever before this Board, don't think it's before you now. If in fact there is some kind of incursion, that's the subject of a different lawsuit, but it's not this one. On issue that Miss Sipowicz brought up about what uses can be made. Miss Baldwin doesn't park her own cars in her garage from what I understand. She parks them

outside. Best Mr. Guarino is able to see on occasion, her garage is full of stuff. For Miss Sipowicz to say that the only purpose of a garage is parking cars is nonsense. Her own client doesn't do that. On the issue of by-law 145-44(b)(3) it is discussed in the papers, would point two things out: our reading of this section is that it applies to existing structure, not to the new structure and secondly Land Court has bypassed it entirely. That wasn't my interpretation, that was the Land Court's interpretation. That can't be a basis for again reversing original decision of Building Inspector.

[DB] Given amount of information we've heard tonight coupled with the view, coupled with the papers we've gotten in last 24-48 hours, we want to make a well-informed decision on this. It is a remand hearing from court and court has asked us to issue decision. Would like to continue this to deliberate session to be held not at next hearing, but prior to that.

[Counsel MM] Previously told Attorney Lane that we would join a motion to extend time Land Court had imposed if you want additional time. No problem. Will join it.

[DB] Next hearing is the 24th, but we want to have a real deliberative session and not delay this thing any longer than not. Would suggest June 10th at 7:00 p.m. deliberative session.

The following exhibits were marked:

Exhibit #1	-	Submission by counsel for Luigi Guarino
Exhibit #2	-	Submission by counsel for Anne Baldwin
Exhibit #3	-	Photographs submitted by counsel for Anne Baldwin
Exhibit #4	-	By-Law 145-44(B)(3) / 17.28.090 submitted by counsel for Anne Baldwin

MOTION #23-2004 (Darren M. Baird) to continue this matter for deliberation by Board at our meeting at 7:00 p.m. on Thursday, June 10, 2010.

SECOND (Brian J. Beattie)

VOTED All in favor.

#20-2008 - 2-4 Highland Avenue - Terry P. Vasquez - Petition to Modify

Sitting: PM/BB/DB

[Attorney Cipoletta] 5 changes illustrated on pages 1-2-3. First one is rudimentary change in pavement area by building and handicapped access construction shows hard pack and shows what is happened in and around side drive and circulation road that comes through back. Part of it is paved coming right hand side turning around to rear and then out onto path, that is paved.

[PM] When you say paved, you're coming in from intersection, right side of building.

[Counsel] Yes.

[Applicant] Circular line to right of that.

[DB] Bituminous concrete.

[Applicant] To be paved.

[Counsel] When we first presented, we weren't sure where this handicapped access was going to go and when we found out shortly before the last hearing that it was going to be installed in its location as indicated there, then Terry was able to go back and figure out what the surface was going to be and how the circulation was going to work. We may have addressed some of pooling of water and sheathing from the hill and it was determined after Terry and Mike Carney had discussed that rather than make it impervious of the back that they do some sort of a hard pack so as to allow water to drain and avoid possibility of some ice and puddle formation out there and from looks of things and discussing that with Mike that seems that pretty much to be the most efficient way to approach it and probably the most residential friendly approach, rather than having something bituminous or tar or asphalt back there. More in keeping with residential effect.

Second was parking signs on rear fence. They were not noted the last time when we came up because we again weren't sure where we were going to put those parking spaces. Those parking spaces are now designated along the rear lot area and those are where the signs are going to be in accordance with the conditions set forth by the Board's original decision designating parking for certain vehicles that are distinguished from residential parking.

[PM] You have 6 spaces indicated here. And you were going to

indicate 2 for residential.

[Applicant] 2 on the lower left. Note up on extreme left, white space on that plan with lines reserved for residents.

[Counsel] Third some discussion about lighting in rear. Decided that it was not going to be solar powered. Lights were going to be installed on 12 foot posts on a timer so as not to disturb residential uses. Terry has a product description of light, shielded so it shines down. Uphill neighbor was concerned about reflection so that his concerns would be taken into account. In any event, it is the product that he is going to install, shielded in back so the light shines down.

[PM] Is there a spec or something on that type of light.

[Applicant] There is. Got the hood on it.

[PM] Mark as an exhibit.

[Counsel] More lighting shown on page 2. Give you mine highlighted in green. 2 lights will be affixed.

[PM] These are on the building?

[Counsel] Yes. Also called out on page 3 security light on second floor. Those will be over and under.

[PM] They on a timer as well?

[Applicant] Going to do motions on those, more for security and the stairs. Do motions on those, timers on ones on the poles.

[Counsel] We had some discussion as well about certain variety of signage that would blend well with the residential character and still be able to call out the business that is on the first floor. Proof sheet here showing various types of signs and they are all facsimiles at most, but it shows some different options that Terry has and wanted some feedback from Board. Monument sign that is shown there is existing sign. Pat's preference at this point if it fits with Board's thinking is get rid of big one that is on the ground and replace it with something that is stenciled or lettered professionally done on fascia board. If the economy turns around and there is a need for some different signage, we could always petition Board to do something else. Pat and Terry are trying to sort of reach some harmony between residential character and real estate business on first floor and not be offensive to any of surrounding uses. It's a matter of preference. Pat's preference would be to ask the Board to allow something that is inoffensive.

[PM] Have different opinion from Board as to what it is. My own personal opinion is something on the building, it's a residential building, not a commercial building, something lettered on the building is going to make it seem like a commercial building. Something on the lawn is going to still keep the residential flavor of the building, but still identify the

business. Other Board members might have some different thoughts on it. This is something that we talked about in general a little bit way back when it first came before us. Looking for something on that line and not something that was on the building. I know something was not going to be on the roof. Just an example, go down here to *Nick's*. *Nick's* has a sign on the roof down there that's a commercial building and identifies his business. This is something different. There are some other business up there that do identify their businesses in a different way than this. I think that was the flavor that I was thinking of back when they had it.

[BB] That's what we talked about right from beginning, something similar to be on lawn, not on building.

[DB] Ideally a monument sign of some sort was what we suggested initially. More sensitive to economic realities of real estate right now. Realize that that sort of monument sign is going to be an expense that probably is something that is not bearable at the moment. Don't like what's there now. Middle ground in my opinion would feel better with something that is a tasteful lettering on board above stairs going up into entrance of actual office would be okay with me. I see that as something tasteful, identifies the location and structure of commercial use without being overbearing. Important to identify in a tasteful manner business enterprise going on there and if that means getting rid of monument sign that is there now, would be willing to accept that as a middle ground until such time as economy has turned and a monument sign is something that is a little bit easier to swallow.

[Counsel] What Pat and Terry have been struggling with a little bit is that we know that Board was not quite overwhelmed with prospect of us putting another physical sign back up on building. In speaking with their sign maker who thought they might be able to do something that was not a sign, but lettering in a tasteful script thought that they might soften the appearance.

[PM] Talking about lettering on building. What if you did this type of lettering on a board that was there and you hung it from underneath here. Hung it there and it identifies building and then we make an agreement on this that in some point in time take that off and do monument sign on the lawn.

[Counsel] Pat says fine.

[Applicant] Those are the options from *Honan Sign*, local sign maker. Trying to work with us and you. . . .

[Counsel] Will have Richard draw something.

[Applicant] You would rather that there were a sign hanging down, sign hanging down, rather than mounted on that fascia.

[PM] Porch structure itself. Underneath there.
[Applicant] Don't see why that wouldn't be doable.
[Counsel] Have bullet points from last time plus sign.
[PM] Time frame when looking forward to move on these?
[Counsel] Soon as we can get down there and do site work. Ready to go.
[Applicant] Handicapped lift is on site ready when it is time to be installed, ready to be installed. Talked to electrician about--run an in-ground conduit power to back lights. Ready to go. In conjunction with Sea Coast Construction who is site work contractor. Ready to go.

The following exhibits were marked:

Exhibit #1	-	Amended Plan
Exhibit #2	-	Lamp Specifications
Exhibit #3	-	Signage Proof
Exhibit #4	-	Index of Changes

[PM] Deliberative session in 2 weeks. Can probably act on it then and get things in the works. Counsel to sign an extension.

MOTION #20-2008 (Darren M. Baird) to continue this matter for deliberative session.

SECOND (Brian J. Beattie)

VOTED All in favor.

#11-2010 - 1 Pond Street - Clear Wireless, LLC -for a special permit and/or variance to construct telecommunications equipment consisting of four (4) antennas, cabling and appurtenant equipment cabinets located on the roof of **Fort Heath Apartments, One Pond Street, Winthrop, Massachusetts 02152** within a Residential "C" District. Permit was denied on March 11, 2010 in accordance with Town of Winthrop Zoning By-Laws, Section 17.13.130 *Table of Use Regulations*, a *Telephone Exchange* is not allowed in a Residential "C" District and Town of Winthrop Zoning By-Laws, Section 17.12.120C(8) allowing "Antennas and Satellite Dish Antennas" in Business "A" and Light-Manufacturing Districts only with restrictions of maximum height of 65'.

Sitting: DB/ID/BB

Chris Swiniarski on behalf of Clear Wireless, LLC. Seeking a variance to allow telecommunications installation at Fort Heath Apartments, 1 Pond Street. Property is located in Resident C district which allows for maximum height of 65 feet. Fort Heath apartment building is approximately 126 feet tall including pent house on roof. Unique topographical relationship of the building compared to rest of Resident C district makes it only viable candidate for applicant to use to provide coverage for area within approximately half a mile of Fort Heath building. This is because of applicant's network requires line-of-site links to other sites within network. This particular site at Pond Street would be linking up to three other sites, one of which is in Winthrop, one of which is in Revere and the other which is in Chelsea. Because of that literal enforcement of the 65 foot height restriction would mean locating applicant's installation on another building in the Resident C district, none of which has the ability to reach the three sites that are the other parts of the network that have to be reached. Literal enforcement would basically mean that this area could not have any coverage whatsoever.

In opposition: Allen Peabody, 50 Pond Street. Against zoning by-laws. Residential neighborhood.

[Applicant] These antennas will be façade mounted. Will not be protruding above roof. Actually mounted on side of pent house that is on the roof. Painted to match. Very difficult to see this installation from anywhere from pedestrian level unless you know these antennas are there and you're looking by some sort of artificial means, either with some scope or binoculars. If you were walking down the street, you would not see these antennas.

Hear in opposition: Betty Peabody. Quality of life, antennas of any sort. Not sure I would want to look at them because I live there. Not a business area. People live there.

No persons heard in favor.

[BB] Show us where antenna would be going up side of building.

[Applicant] Best graphic representation would be on plan. Almost impossible to see them in pictures. To take picture close enough.

[BB] All the ones prior to this have shown us exactly where it is going to be. Type of coloring, materials going to be used. Pictures of. Where it is going to be exactly. How it is going to blend in with building.

[Applicant] I can point out on photo simulations. Because it is on top of roof, you're going to get.

[BB] It's going up side of building also.

[Applicant] Side of penthouse which is on the roof. Will approach and point it out to you. Façade mounted to penthouse. Small structure on top of roof. About 18 feet tall. It is mounted on wall of penthouse. Penthouse itself is brick façade. Will be painted to match and have same texture of brick façade. Can see it from a few feet away, not from 30-40 feet, in this case 126 feet at least.

[BB] People that own the penthouse.

[Applicant] Penthouse isn't residential.

[DB] It's a mechanical penthouse I would imagine.

[BB] All these people have been notified.

[Applicant] We would have to notify everyone that is an abutter. I don't know whether building owner notifies every single tenant.

[DB] It's not a condominium. Notify the owner-of-record.

[Applicant] To see the penthouse which is not on the edge. It's toward the center. Can't take a picture standing here. Can't see penthouse. Have to get far enough away before you can even see penthouse at all because.

[BB] You have to back up.

[Applicant] Once you back up to that distance, almost impossible to see any of these antenna installations. Going for more height.

[DB] Any generator?

[Applicant] This one does not have a generator. There will be some equipment. Not a generator. It's simply a remote radio head. That will be located. There is an equipment cabinet that will be mounted to penthouse wall. Plans showing there is a power conduit for proposed generator receptacle. But I think there is an existing generator already. Don't think that there's any proposal to install a generator. Not something that I really have any expertise in. Typically leave that up to discussion between our electrical engineer and electrical inspector in the town.

[DB] Generator is always an additional use from roof always bothered me. Would like to know whether there is a generator or not that's proposed. Based on plans, not seeing one proposed here.

[Applicant] I would say there is none. However, I leave all that stuff up to electrical engineer to be sure, because it is not an expertise of mine. What I have applied for variance for is what is shown on the plan. There is none shown on the plan so I'm not seeking any permission for one.

[Tape 2-B]

[DB] Anything from fire department?

[WFD] No.

MOTION #11-2010 (Irene Dwyer) to grant relief consistent with findings necessary to support a dimensional variance under MGL c. 40A, § 10 with condition that there is no variance from plan because of low profile because aesthetically it works; to issue decision.

SECOND (Brian J. Beattie)

VOTED All in favor.

#12-2010 - 33 Nahant Avenue - Philip Baldi & Elizabeth Baldi - for a Special Permit to remove and reconstruct a single-family dwelling pursuant to G.L. c. 40A, § 6 and variance of approximately 5 feet from the left side-yard set-back and of approximately 4 feet from the right side-yard set-back requirements as set out in Section 17, *Table of Dimensional Regulations*, for property located at **33 Nahant Avenue, Winthrop**, all as determined by the Site Plan Review Committee.

Sitting: PM/DB/JR

Attorney James Cipoletta for applicants at 64 Somerset Avenue who bought property at 33 Nahant. Made application to exactly take down the existing home which is in complete disrepair and also raise garage that is in front of property and to rebuild in accordance with plans that were approved by Conservation Commission who issued an *Order of Conditions* within the last couple of weeks. I am told by BI and Site Plan Review Committee that we need some relief from BOA and that is appropriate. First order of relief would be a special permit to remove and reconstruct a pre-existing non-conforming building. Second is a left side-yard variance and third is a right-side yard variance. After we had filed the application and having attended the Site Plan Review Committee meeting, I got a letter of denial from BI that indicated that we--regarding linear feet of frontage. To the extent and if we need a variance from frontage requirement, I would ask the Board to entertain a motion

[PM] You mean a lot width?

[Counsel] yes - to allow us to amend the application to the degree and extent that we may need that variance. I don't think we do. If we do, however, it doesn't change overall plan--what you see is what we are proposing; what you see is what we've gotten the *Order of Conditions* from the Conservation Commission and plans haven't changed since we gave them to Site Plan Review Committee and likewise to BI. I will defer

to BI's call on that and judgment of Board. Who are applicants--good to know who is before you and especially if they haven't been here before. Bill and Betsey have lived on Somerset Avenue for a very long time and raised a family here. Phil is a lifelong Winthrop residence. These folks can probably go to anywhere and live in any town in the country and they want to stay here. They found a piece of property. Meets their needs to be constructed and be able to keep their family here. Knowing applicant and people involved in case, sort of frames perspective of what's to come, whether or not you would have confidence in abiding by any decision you might make special permit or variance or both. These are the type of people you want to keep in Winthrop. Turn to plan itself and suggest that as we discussed with Site Plan Review Committee and Conservation Commission, these plans were developed with the most amount of recognition, thoughtfulness and consideration for surrounding neighborhood. Talked to people on both sides of street. Mike Carney who is doing seawall and all bolstering of water side and then will be working land side as well has spoken to some of neighbors and Phil and Betsey are well aware of some of the buildings that have gone up there in the past and what neighbors will and will not tolerate, what they will not be bothered by. Worked with set of plans of what you have before you and consists of first of all take away garage that is in the front. Front right side of property is also in disrepair and work not only within footprint and would point out that variances we are asking for because lot is so narrow, very much longer than it is wide. With regard to left side, right side placement of the house, this is actually within the envelope of existing house. We encroach less into the side-yard requirement than existing property does. Tightening it up just by a little bit, may be a foot and half on each side, but it's on both sides. Being cognizant of crowding and density considerations, what we have asked architect and engineers to do is to place the house so that it's not sitting between the other two houses on the left or right, but in moving it back from the ocean, not to move it all the way back, to stop it before it gets the rear footprint of the house on the left that is shown on the plan and the house on the right that is shown on the plan, thus, try to avoid that real cluttered, too dense, in your neighbor's side-yard effect. This was the best way we could come up with after a number of options and amendments to the plan. This was the one that we submitted.

[PM] That plan you have there.

[Counsel] No it's not. This is a little larger. This is the one that we used as an exploded version. We used this at Con. Comm. It is the same plan. We have a full set of plans here. Happy to give this to Board, only a partial.

This is just a part of that plan.

[Counsel] Going to be within the height limit and it's going to be less intrusive on the left and right, side, although we do require a variance. I do note that on one side of I believe it's the left side, we're showing 11 feet and in talking to Bl, we weren't quite sure we were going to need a variance because of bump out.

[Bl] Not quite sure of dimension of bump out, so we surmised it was 2 feet beyond the wall. Should be clear on that. Going to ask for an as built when we're done.

[Counsel] Some of this stuff is done in an abundance of caution. Would rather ask for it than not need it and need it and then have to come back. To the extent that on left hand side we do have that little bump out, there's a bulkhead. We actually call that an encroachment into the side yard. To the degree or extent that we may need it, we're asking for the variance. On right hand side we do know that the encroachment is by about 3 feet and then may be another 2 feet. Bump out that is shown there I now know which I didn't know at Site Plan is the fire place. So that's why we would require a side-yard set-back there as well to the degree that we do. The home that is proposed is substantially less detrimental to the surrounding community, homes in the neighborhood than the existing, that to raise the garage and home, reposition the home in the more favorable I hope way both for conservation purposes and neighborhood purposes with specific relationship to the homes on left and right, that it is substantially more beneficial, less detrimental than what is there now. To the extent that there is a hardship with regard to topography and shape, this is an extremely narrow lot and to put anything that is even habitable, we would need some sort of variance to get it located in lot where it is shown on plan. Not sure again since we are reconstructing a non-conforming, replacing a non-conforming structure within the footprint of the current preexisting non-conforming structure that that would be any impediment to a finding that there would be an entitlement to a variance.

[PM] If you're using the same foundation, you are right, if you change the foundation, it opens up a whole new can of worms.

[Counsel] We're using the same envelope but we're not using it in the same place. So we are moving it. We probably are more cautious in asking for a variance. We've applied for one. Think we're required to have one. Not sure it's subsumed by special permit. If it is so be it. If it's not, then we're asking for a variance on left side and right side. Looking at project as a whole, consideration is does this work, is it better than what's there, is it appropriate to the neighborhood, is it in harmony with the

surrounding homes and is it essentially an improvement to the neighborhood. Answer to all those questions is in the affirmative. It would be an outstanding project for the neighborhood. This is going to be a stick built house, isn't going to be brought in on a trailer. We know there are environmental and other concerns. Those have been taken up and issued, including *Order of Conditions* issued by Conservation Commission. We know there is some surface work that needs to be done there. We know that integrity of seawall and slope and other elements need to be reinforced and addressed. Those are being reinforced and addressed. All the site work is going to be done by Sea Coast. _____ is going to be doing the building. Reputation of owners, engineers, architect, contractors, collectively, sort of speaks for itself. If you approve this, that your confidence that it will be carried out in the best possible manner will not be misplaced.

No persons heard in favor.

Heard in opposition: Tom Komarek, abutter on one side. 23 Nahant. Would like to begin on complementing Mr. and Mrs. Baldi on designing house is much more fitting to neighborhood than any recent super-sized houses. Not happy that I don't have a 10 foot space between property line and house. The more space you have the better you will be. Concerned that house as you look at it. Not sure back side of house faces my lot. Assuming that is where air conditioners are going to go. If they are large air conditions, house on other side of me, sounds like an airplane was taking off when air conditioners go on. Concerned about any air conditioners placed in the side on 23 Nahant Avenue side of property.

The following exhibits were marked:

Exhibit #1	Plan with elevations
Exhibit #2	Photographs of existing structure and property.

[JR] Exterior of the building?

[Applicant] top floor and face of roof going to be a bleached cedar shingle and first floor a hardy clap board plank.

[JR] Captain Hazlett wants to sprinkle?

[WFD] Captain Hazlett is on vacation. Due to the building being moved forward still believe it to be 100 feet off the street with 14 foot driveway. I have minutes of April 22nd meeting that says fire department has expressed concern with inordinately long front yard and possible difficulty with fires, applicant is aware and is willing to install residential

sprinklers, considered an acceptable option. Captain Hazlett's other option was to make the driveway of highway specs which that was his alternative. More comfortable with residential sprinklers. Residential sprinklers pretty much average out to a dollar, dollar fifty being on the high side for a single-family home per square foot. Residential sprinklers don't require a separate fire feed into the building. They can be tapped off pre-meter of domestic water. Considering this type lot, we feel in the remote area it is, it's a huge advantage to fire department, cannot reach it with any of our aerials, all of our ladders would have to be carried in what we believe to be a 14 foot driveway and at any given time you can legally park cars. Would be a difficulty for fire department. We would like it put in a condition that residential sprinklers be installed.

[Counsel] I actually represented clients at Site Plan Review meeting we had at DPW. I didn't agree to do any of that because I didn't have the client with me. However, I do know that Captain Hazlett said the fire department is going to recommend that you sprinkle it and I said go ahead recommend it. If he took that as an acquiescence or an agreement, he may have misunderstood the comment.

[DB] Would you have an issue with sprinkling the building?

[Applicant] Absolutely.

[DB] Absolutely you would have a problem with it or you would have no problem?

[Applicant] I really don't think aesthetically it is something I would want in my home. God forbid something were to set it off. The entire interior of my house would be ruined for may be something as simple as something going off on the stove which people may have happen once a year in their house. I don't know if there are other single-family homes in the town that have sprinklers. I do know that the existing home that is there has no access whatsoever to the fire department. There's no way to get to the home that's there presently. It's also 4 feet about grade. Once you get in there, so if they were try to access the existing home. We looked extensively at keeping the existing foundation, worked extensively with Mike, and because the existing building is so non-conforming, we chose not to go that route and rehab it, but in addition, the driveway we have specked is 18 feet, not 14. We had talked with Mike about making it even wider to 21 feet, but we thought that would be just a little too much driveway for the aesthetics of the property and the neighbors. We would be willing to do that if we needed to. We are going to have the property alarmed for both burglar and fire tied into a system, so it's not going to be just a stand-alone smoke detector system that's located just within the property. Because the extraordinary cost, the aesthetics within the home

and the potential for it just ruining our house, we absolutely do not want to do it.

[DB] As far as the location of the house, doesn't look like it's any closer to the side-yards or to the actual rear-yard than the previous home. It crept down toward the street a little bit. 40 feet toward Nahant. Even from the standpoint of the patio on the back, looks like the existing patio goes to the limit of the coastal bank and this will actually come back off that a bit. What is existing height of structure that is there now?

[Applicant] I think it is virtually identical to, it will be real close. I don't think we have the answer. Off the street it's going to be almost identical.

[DB] This is the property that has the garage right almost on the street line. It's a narrow path that goes back to the house.

[Counsel] Right. There will be nothing in the front yard between this and the front of the house other than a driveway and some landscaping. Won't be any other structures in the way or anything like that.

[Counsel] No.

[DB] Do we have elevations in the file of what the structure will look like that you're proposing to put here? I just didn't see plans with elevations.

[PM] Couple of questions on these pictures that have been submitted. Is this the existing house?

[Counsel] Yeah.

[DB] I was looking for elevations. We don't have any in file here. Copy for record. This is not going to be 3 stories. It's going to be 2-½.

[PM] Tell us how you figure 2-½ stories.

[Counsel] We had engineerings put on that plan after we talked to the BI.

[BI] I did request them at Site Plan Review. I had a conversation with the builder at my counter and I did not get anything from the engineer, only a verbal as to what. What we really need here is an average grade line, an average grade you can then measure the ridge down for maximum height as well as question about how you do figure 2-½ stories. The number I got from the average grade. I'm looking for my plan. I have a couple of numbers on my plan. My hand scribble. These plans should contain an average grade line for the building and from there, we can do the math. For purposes of definition, a story basically is a story if average grade line from bottom of floor joists basically ceiling in basement is at 4.6 or greater. You take that average grade line and you get an elevation of your below-floor height on the first floor and it's under 4.6 inches then it's not a story. But if it is and it is a story, then you've got 3

stories here. So it was critical and it was close the number I got as to where we were. What happens at the end of the building, when it's done, I'm going to ask for an as built. Someone is going to have to hit the grades around the points of the building to get an average number. If it doesn't work, you're coming back here.

[PM] We don't want it guaranteed. We want it on the plans here to indicate what we're looking at.

[Mike Carney] If you look at any elevations on all 4 sides, it's all within the height restrictions. _____ basement elevation.

[BI] There was some sort of an average grade taken by somebody. Someone took 6 points.

[DB] Looks like it is the 4 corners. We have elevations. Building height 33.15.

[BI] It's on this one right here. Writing here on revised one. There it is right there. There's an average of the heights of corners taken, gives us 30.63, highest point of roof elevation 63.75, subtraction 33.15. What math we really did was to find out the basement because I don't think there's a number - first floor on page A-2 there's an elevation or A-6. On A-6, we've got a first floor, finished floor 36.76. Based on 36.76 and other number on big plan average proposed finish grade. 30.63 as our average finish grade, we've got a top of floor of 36.76. If you do math there, subtract width of floor joist, go to floor joist.

[DB] Basement finished ceiling height isn't that what you're working from. 35.72.

[BI] Yes. So take 35.72 and subtract average grade height, 30.63.

[DB] 5.09.

[BI] 5.09. That's not good. We need to be 4.5 or less. 4.6. Doesn't sound right. Basement finished ceiling elevation 35.72. Average grade. Essentially what that means that from the average finish grade, we have if the math is correct, little over 5 foot. We have to somehow bring the height up, the average height. Figure out what height is at bottom of floor joists on first floor.

[DB] What is there now as far as structure itself. Is it 3 useable stories height wise? Looks in the photographs like there's 3 stories on that house presently.

[Counsel] Yes. There's the lower story, middle and top.

[DB] All occupy able space?

[Counsel] Oh yeah.

[Applicant] There's actually an apartment in the basement that shouldn't be there. But there is one.

[DB] So from the standpoint of pre-existing non-conformity of the structure that you're replacing, at least logically to me, doesn't seem like it would be to be much of a reach to say that the new building wouldn't be increasing that non-conformity because you already have 3 stories there. I'd hate to have you artificially change the finish grade if you left what is there now doesn't comply with it anyway.

[PM] Mr. Baird, this clearly was something that was added onto several times to create that and whether it was done legally with a permit we've found several instances. We have to get this question answered and shown on the drawing. On the section you have a drawing that is A-10, normally this is where they would put dimensions, showing you dimensions, grades, and that should be defined on here the grade. You're showing an average grade. There is a grade being shown on here. Grade level varies, it says. If we establish the average grade of 30.63 around the building, right now it does not conform and it's a 3-story building which is not in conformance with the by-laws.

[Mike Carney] Grade on the downhill side, that sidewalk walking out to the back yard, that's the area in question. All the other grades are higher because they're uphill. That left hand side, the sidewalk has a slope 6 inches higher, plenty of concrete to raise the grade up. That's all it is. It's that simple. When we grade in back and pour the concrete, we're just going to raise the elevation up as necessary. I think what the architect and engineers were aiming at, they didn't think of that that ceiling height in the basement. They were just aiming at the overall height of the roof to finish grade. That's all in compliance. There's an elevation in question on the height of the basement opposed to the outside grade if it's another story, but by raising up the elevation on the sidewalk, on the left hand side, the downhill side, if we raise that up, we can go a foot if we want to, it's going to be wide open to our discretion . . .

[PM] What we need to do is to what you're saying here is to indicate it on the drawings and to show it on here what you intent is. A-10 is the section, but what I think what Mr. Carney is saying that you're going to have to show and indicate the grades that are going to be around the building so you can figure your average grade on the calculations that you showed on the site plans here.

[Counsel] What you have there is existing. He's working with the existing slopes.

[PM] Grade around the new structure.

[Counsel] I don't think he's varied that grade. I think he's working with whatever pitch he has. I don't think he took into consideration raising. We'll get that done.

[DB] Central air in this?

[Applicant] Yup.

[DB] Where are the air handlers going to go?

[Applicant] Put them on down slope side which is basically the shady side of the home for efficiency purposes.

[DB] You're going to put something around that to attenuate sound so that it's not?

[Counsel] I think that's in our *Order of Conditions* actually.

[PM] Would you consider putting it underneath your deck in the back?

[Applicant] We did. We were told there's not enough height above the units to give them enough air. I'd love to put them there.

[PM] In consideration of the other gentleman that stood up here and what he is going through now with a different neighbor and how it affects him, you might be able to attenuate the noise if it was located in some type of enclosed structure, other than shrubs. Shrubs are nice to say it will attenuate it, but I don't think it does, nothing to soak up the noise of something like that. If you take a look at that. It's one of the questions that I had.

[Applicant] May be under the front steps. I think there's enough height there.

[PM] Talked about left side-yard and right side-yard needing dimensional.

[Counsel] I am going to defer to BI to determine whether or not we need it. We weren't sure when we were at Site Plan, so we applied for both.

[PM] Looking at building, chimney bump out is part of the structure.

[BI] We just don't have that clearly marked here. We marked the building at 7. I don't know what the bump out is so we assumed that the relief was 5 feet relief, that means the bump out is 2 feet.

[PM] They're not saying it on the foundation plan what the bump out is. So someplace it should state it on the foundation plan and then also on the site plan so it's clear on that.

[BI] On the opposite side of the building, the issue is this: say in our by-law, that you're going to allow a 20 foot landing and steps to grade in the front and rear yard, this is a side-yard, so I felt safer to say let's ask for a variance for that egress. That egress is necessary for the house I believe. It might be the third egress, but it is not required by building code, but it is good to have something that allows you—believe this allow you out the basement.

[Applicant] Yes.

[BI] Other than walking through where there might be doors to the garage, this allows you out the basement, other than going out the garage door. This is an egress from the basement. I'm looking at that as saying we need to cover this. We need to ask for a variance for this egress because it's not in the rear or front-yard. We should clear ourselves and ask for a variance.

[PM] I think you have to because that's the only egress out of the basement is through that area.

[BI] Other than going out through garage doors not that that's required. That's not required.

[Applicant] There is a door going out that way.

[PM] But it's the garage doors, no access doors. So if there was something you had to get out for, you'd have to get the garage door open. Not a door that you would egress out. I agree with Mr. Soper. I think you have to have that as part of the variance on that side as well.

[BI] The other issue is a variance for lot width. This is my opinion on the way I look at dimensional regulations in our by-laws. Dimensional regulations Section 17-16. If you read page 203 of your by-law: there's a section in our by-law that states specifically to preexisting lots. One and 2-family dwellings, Mr. Cipolleta might oppose me on, in our section, in preexisting lots, the street frontage is only 50 feet, but here's how that is read: preexisting lots, one and two-family dwellings on lots, subdivided prior to 1982 shall be regulated as follows: any alterations to existing structures on lots subdivided before July 1, 1982 come under these subsections. It says specifically any alterations to existing lots or existing structures. This is not an alteration to an existing structure. So I go one page over. I look at 17.16.30 which is Table of Dimensional Regulations. All buildings and uses hereinafter erected shall conform to the requirements of the table set out in 17.16.30 in which a single-family dwelling requires a 75 foot frontage and width. Frontage as we know is the _____ on the street, lot width is the line at which you divide, you take the line parallel to the street, move it towards the dwelling, when it hits the dwelling that's your minimum lot width. That's how you measure the width. The lot itself is pretty much a rectangle and it's parallel size on both sides. That's why I'm saying we need a dimensional variance for the frontage. This is how I read it. I've been consistent with a lot of raze and reconstructions.

[PM] I agree with BI because we're looking at a new building here. You're not rebuilding on the old foundation. If you were going to build on the existing foundation, if the building had a fire, and you tore it down and started from the foundation, you could build again. You're taking the whole foundation out. It's like a whole new ballgame here and you've

got to conform with the upgraded zoning on this.

[Counsel] I understand it. When we left Site Plan, that wasn't. in play

[PM] Site Plan might not have focused on that.

[DB] Allowing a motion to amend the filing is appropriate in the circumstance so we don't have to bifurcate it and do one.

Tape 3-A

[PM] Any comments from Con. Comm. Or any problems with their conditions?

[Counsel] We had no problems. Visited them on a couple of different occasions and we have not appealed their conditions. DPE had a comment in middle of hearing. We addressed it. DPE did not issue a superseding. What you have is the order.

[PM] Discuss materials as a run-through.

[Applicant] Biggest thing I want was is 2x6 construction, instead of 2x4 because of where the property is and wind-load it might take.

[PM] That's fine. Materials you're going to see from outside. Our concern is not seeing anything that is pressure-treated. Anything you use for pressure-treating framing that you would see would be covered with another type of finish material.

[Applicant] All of decking and fascia, all trim on house is going to be Trex, Azack, that product. Not going to use any pressure-treated at all.

[PM] Bleached single on upper portion and Hardy plank on lower that would be painted.

[Applicant] Clapboard painted.

[PM] All trim around window is wood or Hardy plank?

[Applicant] No I believe it is going to be Azack. Composite. Too many birds nest over the years.

[PM] Roof shingles asphalt?

[Applicant] Yes.

[PM] Can you make those changes and get a set of documents by the 10th so we can appropriate to pass it then.

[DB] There was a question before we closed hearing, either for or against, there was a question, don't want it go to unanswered.

[Abutter] 35 _____, left hand side. Want to know what the structure is from property line on that side.

[Mike Carney] 11 feet. 12 feet. Less than what it is now. House would be pulled in may be 18-20 inches on each side, won't infringe more.

MOTION #12-2010 (Darren M. Baird) to continue this matter so that plan can be provided to give an answer to our grade question and story question with regard to basement level and continue to our hearing at

7:00 p.m. on June 10, 2010, here in Harvey Hearing Room so we can look at plan, ask any additional questions and go from there.

SECOND (John Rich)

VOTED All in favor.

MOTION (Darren M. Baird) - to approve *Minutes* of May 6, 2010.

SECOND (Brian J. Beattie)

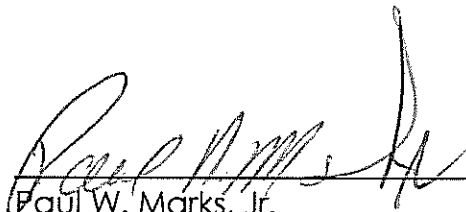
VOTED All in favor.

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