

**BOARD OF APPEALS  
TOWN OF WINTHROP**

**MINUTES OF MEETING**

*Held on Thursday, April 29, 2010  
Town Hall - Joseph Harvey Hearing Room  
WINTHROP, MA 02152*

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

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.	32-33/2007  See Also #10-2010	70-74 Woodside Avenue	Martin B. Vasquez  Motion for Modification	
02.	20-2008	2-4 Highland Avenue	Terry P. Vazquez  Petition to Modify	PM/BB/DB
03.	07-2010	71 Grovers Avenue	Olivia Sillari	
04.	08-2010	82 Otis Street	Sean M. Foley	
05.	09-2010	158 Main Street	PJP Realty, LLC	
06.	10-2010	70-74 Woodside Avenue	Martin B. Vasquez	

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

**Sitting: PM/BB/DB**

Attorney James Cipoletta of Revere for applicant.

**[Counsel]** Before Board awhile ago. Granted variance with conditions to Mr. Vazquez. Effort to clear up ongoing confusion and planning to get actual concept and original idea as a whole before Board. Address certain conditions that were set out in decision by way of petition to modify or amend decision to fall in line with Mr. Vasquez' initial plan. Not physical plans which have had certain elements on them that he didn't attend to have which gave rise to misunderstanding by applicant of what Board was telling us we could or couldn't do. Take them off as they appear in legal notice.

**Condition #2** - Asking for leave to amend condition #2 to allow 6 foot fence at rear of property to blend into existing fence of abutter. Initially Board wanted us to put 7 foot down there in back. Out of scale. At time didn't know what height of fence was installed by abutter. Since learned it is 6 feet. Whatever height of fence, asking Board to grant leave to install a fence at that height, believe it to be 6 feet. Board had also asked us to install fence in front part of lot as coming into driveway at right between Terry's house and white house, plantings there. Board asked us to erect a barrier fence. Doesn't make a lot of difference aesthetically. Abutter to east of property does make a difference. Conversations after granting of variance and after imposition of conditions, approached neighbor and advised what planned to do. They wanted a softer barrier between driveway and their house and what Terry discussed with abutter was rather than put a solid barrier fence was to put a green fence, softer and more in keeping with residential neighbor Board anticipated for this location and surrounding properties.

**Condition #3** - collectively takes into account driveway surface and parking area. With purpose in mind and retaining residential and softer green atmosphere there in middle of residential area, Terry did not think it was a very good idea and speaking with Mr. Carney and others to actually pave back parking area. What Mike had suggested was they put down some sort of hard pack, rather than tar or cement that could also give rise to aesthetic problems but other problems which they would not

be able to predict. Right now have a permeable surface there and Terry is hesitant and asking Board for leave to not make it impervious surface, that could give rise to collection of water, ice, don't know what pitch would be. Has been working very well during storms of past couple of months and during winter, not a significant accumulation of ice and surface as it is with that hard pack and whatever put down described last time we were here crushed stone to be rolled and smooth, actually worked out well in those storms that we had. Handicapped parking entrance is shown on plan. Terry and Pat have been to Architectural Access Board and they are about ready to wrap that up. Sketched out where lift would go in rear of building and they have also purchased lift. Not on original plan, but we did have preliminary discussion around that. As the what if situation, what if we have to make it handicapped-accessible by putting a lift in. Determined that this spot in the back was the best spot to put it. They did buy lift. Not gotten objections from AAB. Think good to go with that if BOA allows us to amend plan to show installation of lift in spot in rear where it is indicated on plan. Because we're losing one space by installation of lift, believe we showed 7 parking spaces plus HP, still within parking regulation, but need to eliminate one space in order to accommodate lift. Plan has been changed to note 7 spaces, 6 of which are regular parking spaces and 1 is a handicapped parking spot. Should show on latest iteration of plans by Mr. Bamberg. Lastly, on condition #3 much debated and never ending saga of driveway to right of property. Originally Charlie had apparently shown on plan live parking in driveway to right or from easterly side of the home. Never meant to be parking and don't think counted those spaces in our parking count. What Terry had always thought that was going to be a continuation of driveway as it had existed for 15 more years being used by tenants of 2-family house for access and egress as well as exit onto Quincy Path. Know that there was matter was referred to Traffic Safety Advisory Committee, did not go to that meeting, but TSAC may have issued a recommendation. My reading of TSAC recommendation to Board fell into 2 categories: (1) whether or not use and continued use, historic use even, driveway on east side of property posed any problem in terms of vehicle or pedestrian safety or contributed to accidents, police department and TSAC had determined no in all three, did not pose pedestrian or vehicular safety hazard and has never contributed to escalation or additional accidents in area. Important to Terry and Pat for her business and tenants who have been using it forever and ever to be able to come and go and eliminate any parking, obviously would be willing to put some *no parking* and *do not park in driveway* signs there to

keep that a live thoroughfare on and off the property for several reasons. Primary is TSAC said they recommended it. That is bottom line from their recommendation and adopted by town manager. Just for safety and real world perspective, if can't use driveway, have people coming and off Quincy Path which is a private way, may or may not be maintained by town, don't know how much they do in plowing, seems like they do precious little in terms of maintaining road surface, roadway repairs. Right at bottom of pedestrian public stairs coming down from Quincy Street above, pedestrians come down those wooden stairs on Quincy Path and they can go onto Revere Street. Basically a pedestrian thoroughfare. TSAC may have taken that into consideration too. To make Quincy Path the only access and egress point would actually create some pedestrian danger, would certainly create vehicular problems because if tenants living in house or people Pat or her employees or if somebody came to see them and had to exit out of Quincy Path and you could only take a right there, they would have to have to go up the street, make a u-turn at end of Short Beach and come back or they're going to do what people generally do as the path of least resistance is cross the yellow line and make a left across on-coming traffic and try to merge with the traffic that's coming in from Beachmont. That would create a disaster. If there were somebody coming to make a turn onto Quincy Path or somebody is making a turn out of Quincy Path and there's a pedestrian, you've got the perfect storm. TSAC has said we have to take into consideration public safety and concerned by the prospect of there being one access or egress point to property. By sitting and listening to traffic studies and traffic engineers talking at other hearings, like the hospital, Atlantis, Crystal Cove, always said that the more access and egress points that you have to a lot the safer it is. Trying to avoid a funnel effect into a private way that runs into pedestrian public stairs. That might be difficult. On top of that, any time you have a road closure or flooding or something that happens on Beachmont end when they open that MDC or Army Corp. installed to let water wash in and wash out, they close parkway and they close Revere Street, where do they close it, right there, at Quincy Path. If there's street sweeping or anything that town or flooding or road construction up on west side of Revere Street or to parkway, they put big DPW sign right there. Makes for some real difficult situations on a day-to-day basis coming in and out of property. Perhaps Charlie didn't draw as specifically as would have conveyed Terry's desire on the plan. Had some go-around, some difficulty with plan originally submitted. Always Terry's anticipated use of that driveway to come and go and also for Quincy Path for people to leave if they're going out to Revere or coming in from

somewhere else. Easy way to get out and take a right and go on your way. Taking all of that into consideration, Terry will do whatever we need to do to make sure that we don't have any parking in that driveway and we use it as a live access and egress point and do what he needs to do to keep it safe. Always been safe, being used now, used last week and last year before Board gave them permit, used as a driveway. Trying to keep things as close to the way they were as possible without drastically changing this residential piece of property.

Parking lot illumination is shown on plan taking some steps. Jim Soper was at last meeting where we addressed Board, said there were certain state regulations and town by-laws regarding illumination. He can go down there and measure lumens at any time of evening and make sure that we have illumination that we're suppose to have. One thing we did hear at one of hearings from neighbor was concern that there were going to be lights shining on back part of property all night. Realizing that this is a residential house, at least half of it is residential house, people going to be living in there. Concerned as was neighbor that's a really kind of convenient place for kids to go and drink or hang out, wanted some sort of light there to discourage that. Terry has proposed a motion detector to turn on those lights after a certain hour to keep it illuminated while Pat is in office and people are coming and going. Night time hours, taking into consideration sensitivity of neighbors not having those lights lit up like it's a parking lot. Asking Board to consider lighting shown there and also put those on motion detectors so that they would only go on only when they needed to be on and not shine in somebody's window all night.

Did put signage up at Quincy Path. Jim Soper may have gone down to see it and may have reported back to Board as to whether or not it complied with conditions. Have a pedestal sign which had been affixed to fascia board between first and second floor and took that down. May have been Board who suggested us trying out there as a pedestal. It's there, doesn't seem to be blocking or obscuring any vision of anybody looking down lane of traffic or obscuring pedestrians walking on street. As you face building, it's on right hand side of lot. Would like to leave it there if Board has had enough time to drive by and see it, if it's not offensive or there aren't any issues that might immediately jump to mind that involve public safety and would like to keep sign as is and where it is.

In favor: Joe Melchionda, 60 Quincy Avenue, directly behind. Subject to 2 conditions. Condition #2. Not my fence. Your fence. Chain link. Fencing [on back of lot]. Existing chain link fence is placed on back of rails. Would like to see it taken down. Believe fence is on your property, not mine. [Applicant]: will incorporate into plan when we finish off grading and paving. Condition #4 - haven't seen plan for illumination. Would like to see it.

Lee \_\_\_\_\_, Chairman, Commission on Disabilities. Suppose to comply with Architectural Access Board which has notified them they are in violation. Would like to see it resolved. Lift. In favor since beginning. Would like to see it resolved.

No one heard in opposition.

**[DB]** On original plan and decision, referenced 9 spaces, now going down to 7, 6 parking spaces and 1 handicapped accessible space.

**[Counsel]** That's what current plan is, yes.

**[DB]** Handicapped space sitting here in immediate proximity to lift. Other box which shows length of space being 20 feet or plan on stacking, no stacking here.

**[Lee]** That's dimensional size of handicapped spot.

**[DB]** If we are to allow this driveway to continue to be used, don't want someone parking out here, don't want someone parking out here, no way going to get around that and make turn into parking lot. Will become a nightmare.

**[Applicant]** That was drawn because there are some requirements with paving and flat hard surface for access from the vehicle.

**[DB]** Will at end of day have bituminous concrete out here, paving.

**[Applicant]** Will be hard paved, not sure if it will be concrete or hard top. Actually that space and also walk-way to lift and area under lift all has to be paved.

**[DB]** Something that will compact under wheel of a wheelchair. From standpoint of use of this driveway coming into site, concern with this has always been because you have a number of turning maneuvers happening there because you have Crest Avenue, road to Highland, Revere Street, all those coming into an intersection there and this driveway sort of slightly off to the left of that, facing up Revere Street back toward McGee's Corner. Concern not so much movement into the parking lot, but movement out of the parking lot into that, if you're coming into parking lot here, there's a number of different ways you can go into it and you're not going to create a traffic hazard. Coming out of and going into that intersection, someone not paying attention or fiddling

with their radio is a recipe for disaster, especially the way traffic comes out of the Highlands around that corner. That's the traffic movement I'm most concerned with. Ingress I'm find with. Egress not so great about.

[Applicant] Coming out of driveway is least complicated/most safe maneuver that anyone makes in that intersection. Driveway is controlled by traffic light that is only green for people coming down Highland Ave. Only traffic that light controls is people coming down Highland Ave. When you pull out of driveway still behind the light. Still being controlled by that light.

**[DB]** Assuming something thinks they are--when they look up at that light and have to go like this and see what color it is and they believe it actually applies them. Worry about someone isn't familiar with property, may not be familiar with Winthrop coming to commercial use there, coming up to that light and saying I don't have a light and taking a right and getting t-boned by someone coming down Highland Avenue. Not a traffic engineer, but have seen enough bad intersections in my career, do worry about that.

**[Applicant]** Issue is the alternative coming out of Quincy Path. Never be the only one with a green light. Always somebody whose going to have a green light further away from you, who is traveling and not expecting you to come out. When you're leaving parking area via driveway, you're coming to a stop because you're crossing a sidewalk and all you really have to worry about is somebody coming down Highland Ave. They're either stopped or they're waiting for the light to turn.

**[PM]** Then you get situation where somebody is going to come out and wants to exit and is not going to pay any attention to light there and come into that intersection. I was at TSAC meetings and they said there was no history of accidents there, but it is still from we talked about at original hearing, it is a dangerous place to exit a property and that was our concern about it at the time. At TSAC hearing, there was not complete 100% agreement with it. One person I know that did not agree with this and was not in favor of granting this. What they said at the time this was the lesser of two evils they thought of use of driveway versus Quincy Path. As Mr. Cipoletta pointed out, it got passed onto the town manager. He sent a letter in favor of it, but he said it's up to the Board of Appeals as to what their feelings were on it. Had some specific feelings before on this. Mr. Baird has expressed it. I expressed it and Mr. Beattie did. What he is proposing here is egress there is a problem, I would agree with him. Ingress I don't see as a problem, going in there.

**[DB]** My concern is while there may not be a history of accidents here, it's been used residentially. Now we're going to a commercial use

where, arguably there will be times where the volume of traffic in and out of here is much higher than a residential use would throw off. Logically makes sense. Busy real estate market, hopefully that happens soon. When it gets busier, there is going to be a traffic volume here. There will be a higher frequency of maneuvers out of this driveway and I worry a little about lack of data about what can happen here when it gets busier. That said, from the standpoint of--my hesitancy to do something about this, was there were too many open-ended things that were still on the table and I wanted to address everything all at once. Wasn't necessarily feeling one way or the other about the driveway, just wanted to have a discussion about everything. Hopefully get your final CO. Everybody's happy. If I were to vote in favor of this, it would be subject to revisiting it if it becomes an issue once this is really--once things get busier and you have a higher volume of traffic in and out. May be that's some middle ground here we can all live with. That's just my thought.

**[Counsel]** I follow that logic. When we first addressed the Board, we all realized that the real estate business putting the economy aside was a lot different than it was in years past, most of this stuff is done electronically. There are very few people who go to a real estate office, granted some, hopefully people will come to drop off checks, sign P&S Agreements and so forth, generally what you're going to have, have Pat and whoever the people are she would be working with and tenants upstairs who will be using that property and coming and going 95% of the time. Given really that the small percentage of real estate customers who actually go there and look through books like we used to do when we were looking for properties and looking at listing cards and all that, that just doesn't happen anymore so even in a good economy and a good real estate market, not sure we're going to have a greater number of people actually showing up, visits essentially to Pat and the woman that works with her and the two people who live upstairs.

**[DB]** Not to offer any testimony about whether Mr. Cipoletta's characterization of the real estate profession is correct, but I can tell you the number of clients actually have come to my office for a closing is in last decade has changed dramatically. Nobody does anything in-person anymore. It's all electronically or on the hood of a car. It's not the same as it was. It could be that--may be I'm over thinking the volume of traffic that will come through here. Hopefully, it's for the right reasons. I'd still like to have the ability if we were to grant this to revisit it if it becomes a problem.

**[Applicant]** If and when.

**[DB]** If and when.



**[BB]** On lift in back, is that suppose to have a roof over it?  
**[Applicant]** I don't know the answer to that one.  
**[Lee]** Don't think you are required to. No.  
**[Applicant]** Lifts are weather proof.  
**[Lee]** Made for outdoor use. Do hang off edges of porches without being covered. Not required.  
**[Applicant]** Once the person is at the top and on the porch, porch is covered.  
**[PM]** You might be referring to residential where that might not be requirements. Here it's still a residential area.  
**[DB]** I don't know from a commercial code perspective there's any requirement to put a covering over that. As long as it's functional in all the weather, that's all that matters.  
**[PM]** Going back to condition #2, 6 foot fence in rear. Reason that we had that before on the rear and the side was to contain any headlights or anything like that within the property and not have it shine beyond that because there were residential buildings adjacent to driveway to back yard and then rear of it shines into the hill. Originally they showed 4 spaces back there and there were 4 spaces pointing toward adjacent neighbor in the back probably going towards the east. I don't have a problem with the fence going to 6 foot versus 7 foot, but I think it's important that a fence be installed. And a fence wasn't installed last time we had the conditions.

#3 on this, the hard packed material. Original plan called for bituminous concrete and we approved it based on that, thinking that would be an ideal parking situation where you can line out the spaces and designate them, parking spaces, the handicapped and everything. That was not done and, therefore, the spaces weren't identified. I have a problem with this now. We had 9 spaces before. Now we're going down to 6 plus the handicapped.

**[Lee]** Handicapped actually takes up the amount of 2 spaces.  
**[DB]** Didn't show any HP spaces before.  
**[PM]** This plan was superceded by another one that is not in this pack that had a handicapped over here. Having a problem with the number of spaces because it is residential/commercial and again reason that we talked about it before and allowed it was because of the number of spaces and we felt it could be used. Now coming back with less space. I think that is a question. Original one they changed it to this. This came in later.  
**[DB]** This wasn't an HP space. That was a compact space. They

changed the angle of the drive.

**[PM]** They changed it to get that space in. This is September 19<sup>th</sup>. This is September 17<sup>th</sup>. So that superceded this here. Again the number of spaces. Can something be looked at to maximize spaces back there.

**[Applicant]** That's what has been done because we originally had spaces along the left side of the property. That was anticipated. Quincy Path side of property.

**[PM]** No. If your spaces were going to be towards the back and then where your abutters are.

**[DB]** Can't have these and have this.

**[Applicant]** Right. Spaces on that side didn't work with change of plan on driveway. The only place to have them is on back or on the left side and with the placement of handicapped space, which really has to be there. There really isn't much flexibility with that where you need the double space. Only way to get spaces which don't conflict with handicapped space are along the back and two of those are designated for the residential tenants which has been done. That's basically it. There's six across the back and the double handicapped space.

**[PM]** Two for the tenant, leaves you 4 spaces for the first-floor use plus a handicapped. That's one of my concerns that I have. The hard packed surface I don't have a problem with that. Probably a good idea. But there must be some way of identifying the spaces, to mark them out, to identify where you have it for tenants and for your commercial vehicles.

**[Applicant]** What has been done to date. There are signs identifying resident spaces. Think they're on the fence.

**[PM]** If there is a fence there, you can identify it on the fence and do something like that. We talked about existing driveway. Illumination. When I was down there and we looked at it and it was during, we looked at intersection before TSAC hearing, there was one light on the back. I didn't think that light was sufficient to light your back up. When we talked about it initially, we didn't have the lights designated but you said you put enough lights in to be able to light up the property in the back there. I didn't see that when I saw that. What we are looking for is something specific for lighting in the back to be able to, if you're going to put parking in the back against back fence, there's got to be some lights back there to light that area up.

**[Applicant]** What we didn't want to do was have lights that would affect Joe up above.

**[PM]** That's what we talked about last time, lights that weren't

going to affect your neighbors.

**[Applicant]** We looked into lights on the National Grid poles, but that would have meant they were on 24-well all night long which wasn't feasible. Plan is to put 2 or possible 3 lights on back of the building up high enough so that they're shining down and be motion activated.

**[PM]** If that's the case then please show something on the drawing.

**[Counsel]** That might be on page 3.

**[PM]** Shows the lighting beside double door. A light.

**[Counsel]** We'll have to beef that up.

**[PM]** That's not going to be enough lighting. Thought intent when we talked before that there would be some type of lights out in the parking area to illuminate the area, not coming from the building because you would have to have a real powerful light to come from the building to illuminate the back there which might be objectionable to neighbors. If you have something up high, you're going to get some glare from it, so something in the back that would come up and shine and give some light, but not project horizontally.

**[Counsel]** Might be able to do that with a shield as well.

**[DB]** Down light them on top of a fence post to get appropriate spray without glare upward.

**[Applicant]** Now that we've found out that fence. We can get rid of that fence and put something else there.

**[PM]** Signage on Quincy Path. That signage was installed per what we had talked about before.

**[Counsel]** Reason we had addressed is that BI months ago. Ticked off his concerns as well. When he went down there to inspect, he found it was there.

**[Applicant]** No parking has been there quite awhile.

**[PM]** I think that and *right turn only* that was the requirements we had.

**[Applicant]** And designating residents. Those have been there.

**[PM]** Signage in front. When we had the last hearing, we had recommended that some type of pedestal sign be put in that was similar to other businesses in neighborhood. We objected to the sign being put on the building and we object to the large scale sign that is presently there now. Would like to see something smaller scaled that can do the same thing but not as large. Would like to see items addressed and come back and show something on various questions that were raised on this. To show fence in the back.

**[Applicant]** Are we still talking about right hand border?

**[PM]** No. Right hand border. Fence that's in the back.

**[Applicant]** That Mr. Melchionda had talked about.

**[PM]** Yes. When we had a site visit, you showed us coming in the driveway on the right, there are existing plantings that you wanted to leave. Beyond that I don't think there are plantings and that's where I thought we would see a fence.

**[Applicant]** Right hand lot line as you come in the driveway. At very front there's nothing because we were directed not to block any traffic. Then we planted, Harry, our general contractor is here, about 20 feet, planted 6 foot alpha bides for a green fence. Then there's may be a large run of fence which is the neighbor's fence and then what we need to add in back corner is from that fence to back lot line.

**[PM]** Correct.

**[Contractor]** Approximately 18 feet.

**[DB]** Extension of 6 foot high fence in this area.

**[PM]** Hard pack. We said it is agreed as long as the parking spaces have some way of being identified on there. If it was hot toped, you'd mark it on that. If there's a fence there, you could mark it. Put the signs there on the fence. Signage in front. Lighting.

**[DB]** Want to see something a little bit more developed with the lighting.

**[PM]** Original plan you had some plantings on the site on the side and in the back. Assume you would do it inside the fence, put some plantings to dress it up and we're seeing something on this, want to make sure that's what it is. So plan that we stamp is the plan that is going to have the actions taken on it. Like to see that information. Showing it now. All the other information we talked about is to show it on a document.

**[Applicant]** What exactly are you telling us on the back lot line as far as fencing?

**[DB]** This being the back lot line. Here. The hillside.

**[Applicant]** We didn't realize that fence was on our property. We were just going to put plantings in front of it, but we are now hearing otherwise.

**[DB]** There was never a graphic of any sort of fence going back there. Showed some plantings.

**[PM]** Showed some plantings up against the hill. I don't have a problem with the chain link fence, but putting some plantings in front of it is what was originally shown on this and I think it's shown on this as well. It's already shown on there. Talked about the lighting and signage in front. If you can get us back a plan.

**[DB]** With revised plan, I would be prepared to vote on this matter.

**[Counsel]** We'll have it drawn up.

**[PM]** Do you have an idea of time wise?

**[Applicant]** Assume he could do it in a month.

**[PM]** Special meeting here on the 6<sup>th</sup>.

**[Applicant]** That's not going to happen. Talking about a local sign company.

**[PM]** End of month. May 27<sup>th</sup> is next meeting.

**[Applicant]** Did do another alternative on sign. From awhile back. Had Honan do a photo of it. That was individual letters up on the building, smaller, not a sign, just individual letters as a possibility.

**[PM]** Let us take this under consideration. Originally talked about pedestal sign on front lawn area. Thought you had something in the works about that, but never saw anything.

**[Applicant]** Honestly cost on a pedestal sign was beyond tenant in this market. \$4000 which is one reason why they have been using existing sign which was approved across the street for years on a pedestal as you directed. Letters on the building was an easier, cheaper alternative if you weren't happy with sign on the ground as it exists now.

**[PM]** Let us look at it and discuss it and talk about it.

**[Applicant]** Will you get back to us on that or should we incorporate something else into revised plan.

**[DB]** If this is what you are showing as an alternative, this is enough for me to make a decision on when we make a decision on the rest of this. Don't see the need to go and spend any more money designing a sign. We get it.

**[Applicant]** When economy turns around, sign might be rethought. Logistically we couldn't plan on a pedestal sign until we were sure how handicapped access location was going to work. Until we got this settled that a new main entrance in back could be done and the access in back, still weren't sure we were going to have to do it in the front. Both of those wouldn't work in the front lawn, sign and handicapped access wouldn't have worked together.

**[Counsel]** Agree to waive and exclude days between now and then.

**MOTION #20-2008 (Darren M. Baird)** to continue this matter to our next meeting which is on May 27<sup>th</sup> at 7:00 p.m. to review revised plan and hear any questions or discussion with Board on plans as revised subject to Applicant waiving statutory period that may be applicable.

**SECOND (Brian J. Beattie)**

**VOTED** All in favor.

**#08-2010 - 82 Otis Street - Alyssa C. Foley (Davis) and Sean M. Foley** for a variance or special permit to construct a 8'x16' deck on the west side-yard of the dwelling located at **82 Otis Street, Winthrop, Massachusetts 02152**. Permit was denied on **March 24, 2010** in accordance with Town of Winthrop By-Laws 17.16.020(J)1, *Table of Dimensional Regulations* requiring a 10' side-yard set-back. Relief needed from the side-yard set-back of 4.4'.

**Sitting: PM/BB/RM**

**[Applicant]** Single-family residence, trying to get a 4.4 set-back to put deck in, small 8x16 south side. Don't have access to back yard. 3 and 6 year old that play in back yard. Only way to really get to back yard, is out side, down and around. Can look out bathroom to check on them. Give us access to back yard and seating area, place to enjoy short summer months. Adjacent to parking lot, large size half-round parking lot that extends out. Won't block any neighbor's view. Shouldn't impact anyone's view.

**[PM]** Looking for variance on side-yard set-back. Don't see a dimension plan. 13.6 less 8. 5.6 looking for 4.4

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

**[BB]** What is height?

**[Applicant]** Foundation is about 30 inches. Walk out level with first floor. Window facing. Window will turn into a door.

**[RM]** Steps off of deck into back yard?

**[Applicant]** It's a square, whether we cut them into deck. Will be the same size. Railing without access. That was the only question. Kids want a deck to play, it's safe, but there's still no access to the yard. Such a small deck, put a set of stairs will take away from it. If we add the stairs to it and the stairs were bigger than the deck, that would be.

**[PM]** If the stairs encroached upon your side-yard, that would be a problem.

**[Applicant]** It's not the side. If they came straight off back.

**[PM]** No. There should be no problem on that. You have enough set-back on the back. There's 27 feet back there.

**[Applicant]** We want access to the yard. It's on the fence with stairs or not.

**[RM]** Just to clarify, you come out of here to get into back yard, on

side.

**[Applicant]** The complete other side. The only window facing back is small bathroom window.

**[PM]** Conditions. We will list down materials. Prefer not to see any exposed pressure-treated material, can do it for framing or posts if you cover it.

**[Applicant]** We have an existing PVC roofing which we are going to match, Trex, weather-proof.

**[RM]** As far as framing of deck, pressure-treated?

**[Applicant]** Deck but not visible on posts going down.

**MOTION #08-2010 (Brian J. Beattie)** to grant relief requested with conditions.

**SECOND (Romeo Moreira)**

**VOTED** All in favor.

**#09-2010 - 158 Main Street - PJP Realty, LLC** - for a variance and/or special permit to raze the existing single-family dwelling located at **158 Main Street, Winthrop, Massachusetts 02152** and re-construct a new two-family dwelling. Permit was denied on **April 7, 2010** in accordance with Town of Winthrop By-Laws 17.16.030, *Table of Dimensional Regulations* requiring a dimensional variance for relief of 1,122 square feet.

**Sitting: DB/BB/RM**

**[DB]** Disclosure: my brother-in-law is an abutter-to-an-abutter and was actually given legal notice. He's not here. Not predisposed on this either way because of it. Want to make that disclosure. If you want to disqualify me or not.

**[Counsel]** No objection. George Bernstein, Attorney, represent petitioner/appellant, PJP Realty Trust. Here on appeal from denial by BI to issue a permit for construction of a two-family dwelling at site. Dwelling proposed and site meet all of requirements of zoning laws with exception of square footage of lot. 1122 square feet short of that. Actual dwelling will only covers 24.3% of lot and as I understand it, the zoning maximizes 30% so we are well below that. With me is Robert Ianello, manager of the project and our architect, Charles Basile. Two-family dwelling that we would like to construct would be a handsome addition to neighborhood in place of a piece of property which is not in the greatest asset for neighborhood. Neighborhood itself will benefit and I know town will having a much more valuable piece of property. Bob will be able to

address questions regarding set-back and size of lot. Picture of proposed dwelling. Mr. Ianello has had conversations with BI who in his view saw no problem with size and dimensions.

**[Ianello]** When first brought to Mr. Soper and had lengthy discussion of what requirements were, spent time with architect to make sure that we didn't infringe on set-backs, rear, front, the side and again weren't looking for relief anywhere, but just that we were short about 1100 square feet on size of lot. Rear set-back is in accordance with existing codes, front set-back, driveway, we have a 2 foot buffer that is required. Working with BI and architect, he had said if we were coming in, if we wanted to do anything in addition, we could ask for relief in those areas as well and we decided to just stay conform with what we have, stay in existing lines as we said and ask for relief in that one area. It is a corner lot. We have the driveway. We have enough parking. We have the buffer between the other lot. Just looking for relief in that one area, 1122 square feet short. Existing dwelling is a bit rundown, been there for quite sometime. Done projects in town in past. Can assure you that this will be a welcome addition. Will be done properly and aesthetically pleasing to neighborhood.

**[Counsel]** Particular lot is really close to almost being a square. Proportioned very well to accommodate this type of construction. Fact that we're coming much less of the lot than we're allowed to do and clearly we meet all set-backs is because this lot sets up very nicely for that type of construction.

**[Ianello]** In this particular neighborhood, directly across the street, there are three-family dwellings, two-family dwellings, so what we are looking to construct would fit in with existing construction in area.

**[DB]** Across Main, not across Reed.

**[Ianello]** Yes.

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

**[RM]** Is it intended to be a modular home?

**[Ianello]** No not intended. Stick form. Did preliminary budget numbers on construction. A lot of people interested in area on working on project with us.

**[BB]** Owner-occupied, sole or keep property to lease it, rent it out?

**[Counsel]** Intention is it's going to be rented out at this time. It isn't going to be owner-occupied.

**[Ianello]** Would like to reserve the right to want to sell this property down the road as a two-family. Do not plan to live there myself. Lay-out



did come out rather nicely, bathrooms, storage, height will be well within conformity to neighborhood, within the code. Will conform with everything as far as a two-family dwelling, except that one issue of 1122 square feet short.

**[PM]** How are your driveways set up on this lot?

**[Iannello]** There is an existing driveway on the Reed Street side of the property and went to see Mr. Calla and he issued a letter saying that upon approval of this Board that he can do a curb cut there no problem on Main Street side.

**[DB]** Opposite end of intersection with Reed.

**[Iannello]** Exactly.

**[DB]** Would that allow for car to actually turn through it. Probably not. Don't have radius back here to make that turn.

**[Iannello]** Right.

**[PM]** What are building materials you are going to use?

**[Iannello]** Stick frame.

**[DB]** Vinyl, shingle, what is finish on outside?

**[Iannello]** Looking at architectural type vinyl siding that looks similar to cedar shingle. Done that on few of properties, looks nice. Just did that at 224 Bowdoin Street. Not 100% sure on that yet because still waiting to do approval for final budgets.

**[DB]** What is on property now. Little yellow house.

**[BB]** Existing driveway on Reed Street side. Where is car going. Doesn't give you. Is that 20 feet there on back, Reed Street side.

**[Iannello]** We have a 25 foot set-back to the home. In the existing driveway

**[DB]** Idea here is not to just have a paved macadam area in back, actually going to have grass.

**[Iannello]** Absolutely.

**[DB]** Don't see any detail on site plan to show where pavement would stop and where grass would start. Don't want a big paved area in back so immediate abutters behind you are looking down on a big parking lot.

**[Iannello]** Not at all. Plan was to be able to stack two cars in driveway and rest would be landscaped.

**[PM]** Are these the final design plans that you are going to use? They will be stamped from Board here and that is what we expect to see.

**[Iannello]** Yes. These are them. Look at attached letter from Mr. Calla [read into record].

**[DB]** As you go with something that looks like a clapboard or a shingle, not just plain vinyl, no need to come back. If you're going to

change finish material, have to come back. Going to stamp plans submitted.

**MOTION #09-2010 (Brian J. Beattie)** grant relief requested subject to conditions, with appropriate findings under 40A, § 10 necessary to grant a variance, soil, shape, topography of lot being irregular, typical findings which are warranted here and subject to finish materials, update plan to show us what that is and to get Board's approval when finish material is decided from aesthetic plan, vinyl shingle that will look like cedar or clapboard.

**SECOND (Romeo Moreira)**

**VOTED** All in favor.

**#32-33/2007 - #10-2010 - 70-74 Woodside Avenue - Martin B. Vasquez - Motion for Modification**

**Sitting: PM/BB/DB**

Attorney Sean F. Donahue of Boston representing Applicant.

**[Counsel]** Approximately a year ago, before Board in February 2009 decision was issued by Board granting Mr. Vasquez special permit and variance in conjunction with a restaurant at 70-74 Woodside Avenue named *La Siesta*. What we are here for this evening, asking Board to consider proposed open patio in side-yard. Building commissioner denied request for building permit on basis that seating is limited to 99 seats at premises which we agreed to, acknowledged, agreed 100%, maximum seating which as we represented back at first meeting over a year ago, don't intend to increase seating. Mr. Vasquez who is with me, owner of *La Siesta*, essentially seeking to modify a condition in previous decision, decision that issued in February. Condition #4 with respect to side-yard in that it should be a walk-way shall be constructed in side-yard which connects Woodside Avenue with the Agman Street extension which is the public parking area behind the buildings. Asking you to modify that, eliminate that and allow Mr. Vasquez to use that area as a patio. Have revised plot plan which depicts where proposed patio is going to go. There's a fenced-in area outside building. Essentially looking to put a patio in that fenced-in area and asking to consider use of that area for restaurant purposes, serve food, liquor outdoors. Do have a picture in event you are not familiar with area you are talking about. Site plan marked as an exhibit. What is being proposed, refer to floor plan that was approved by Board in granting special permit. When you enter into

restaurant here, reception area. Right beyond reception area, there are 4 tables. Looking to put a doorway in in that area where 4 tables are and then use those 4 tables and bring them outside during the times when patio is in use which isn't all the time, during seasons, late spring, summer and early fall. Not looking to increase seating capacity at all. Looking to take seats from indoors, tables, 3-4 tables and bring them outdoors on patio so people can enjoy fine summer evening. There are people here who live in area. Mr. Vasquez runs top-notch operation. Went on internet to see if there is any information on *La Siesta*. Information was overwhelming. Different websites with reviews on there. Have nothing but positive feedback about restaurant, food. What Mr. Vasquez is proposing is unique. A lot of restaurants in town. One other restaurant in community that has outdoor seating, Gary's on Shirley Street, believe they have outdoor seating in rear overlooking water front. Mr. Vasquez is proposing use that would help generate business for himself. During summer months, people are on vacation, golfing, looking to provide a service that would motivate people to come out and visit his establishment. *La Siesta*, winner of best Mexican restaurant in Boston area in 2009. Write-up on it. *Chow Hound* someone wrote in about experience there. Another commentary entitled *Memorable Dining Experience at La Siesta, Winthrop*, printed up on *Chow Hound* website. *YELP*, 26 different reviews. Most interesting not only positive feedback, from people and locations received from, as far back as 2008, Revere, Boston, Waltham, Arlington Heights, Illinois, Salem, NH, Brookline, Boston, Lowell, Winchester, Cambridge, New York. People coming from out-of-town to patronize *La Siesta* restaurant. Spoke with local officials, hasn't been any problems with operation of business. Not a business where people are out in street hooting and hollering late a night. Mr. Vasquez has been in restaurant business his entire adult life. Worked at *Café Escadrille*. Have opportunity to go to business, walks around and talks to people. Constantly monitoring restaurant and his patrons to make sure that it's a positive experience but also to ensure that there is no one leaving that business establishment and getting behind the wheel of a car in any condition that they shouldn't be. Mr. Vasquez did provide rendition (marked as exhibit), give you an overview, explanatory as far as how lay-out would be. Fenced-in area adjacent to building which lies on property that Mr. Vasquez has an interest in. Simply looking to use that for purposes of the restaurant for outdoor seating, dining during specific certain times of the year. As far as walk-way goes, condition of walk-way currently in existence on decision that previously issued, there's not a whole lot of foot traffic that uses that walk-way. If you've had opportunity to experience a walk from front door of *La Siesta* down street to Dr.

Brooks' office, take a right to *Café Delight* in that area to Hagman Road extension right to back, no more than a two-three minute walk.

**[Applicant]** Been in business for almost 30 years, always worked as a bar manager. When I opened my place, I have a 11 o'clock liquor license in *La Siesta*. I never opened at 11 o'clock. I always close my place by 10 o'clock for the same reason, very concerned about how many drinks customers have in my establishment when they come in. There are requests before to serve pitchers of Marguerita's or Sangria. Other places do it. I don't because I want to have control of how many drinks or who is drinking on that table. I have my wife, my kids working there. Very concerned. My concern of my establishment is the food which that is what brings people to this town. Love having liquor license, can offer them great Mexican beers and great Marguerita's, but not to point that I want people coming to our place to get drunk . . . Main concern is food. Want to make sure we have a very safe establishment. Patio would really help especially in day time. No business in day time. Have somebody working there getting everything ready. Looking to increase sales in daytime. . . .

**[Counsel]** Asking you to consider modifying decision that issued in February 2009 on condition regarding walk-way. Secondly, appealing from decision of BI denying building permit in that BI finds that we're increasing seating capacity which we are not. If Board would like, Mr. Vasquez has maintained seating of 99 up until today. Would even agree to include condition not to exceed 99. No intention of seeking 99. No intention of doing so. If you want to add that condition, he would welcome it to limit seating to 99. Our position that it would not increase seating capacity, which we are not, than there is no need for a variance for additional off-street parking.

Persons heard in favor: Eric Gaynor, Winthrop Chamber of Commerce.

Persons heard in opposition: Louis Visco, 76 Woodside Ave., next door to restaurant. Painful position of coming here and ask you to deny variance and deny Martin's proposed outdoor eating area. Martin and whole family are terrific people. . . . problem is two buildings are separated by 18 feet. Going to put in patio 13 feet which will bring him within 5 feet of side of my house. . . . Problem is on wall that faces his property, there are 3 windows, small window at foot of my stairs leading up to second floor, at top of stairs a normal-sized window at head of hall that leads into two bedrooms and on first floor 3x5 window in kitchen where kitchen table is set. Martin is going to have 6 tables out - even 4 - talking may be 16 people plus servers. Problem is during warm weather when he would

have people out there, those windows are open in my house. . . . Not talking rock band, normal noise that you find in restaurant . . . volume of sound that carries right into my house. Pervasive sound because it would be going on, lasting all hours that section would be open for dining 6-7 days per week . . . sound carries especially in evening. Noise will carry into windows . . . economic effect. Should deny variance.

Patricia Harrison, 79 Woodside Avenue, across street. Condition or mitigation put on this now. . . . concerned about flooring of patio to muffle sound. Lighting. What happens when dusk comes? . . . light going to disrupt house. . . . parking issue.

**[DB]** Limitation of 99 seats irrespective of where they're located. Not adding any new seats to the restaurant. Just literally moving a table with 4 chairs from the inside to the outside so wouldn't increase parking at all. No increase in parking, no new seats, no new place for patrons. When BI issued denial of building permit, he assumed that that meant there would be new seats and therefore there would be a need for a further variance on parking. Rightfully so, applicant appealed that on grounds that no that's not the case and if you think it is the case, then give me a variance. I don't think there is any variance to be given here because grounds are BI misunderstood but at end of day, there's no new seats here and they are willing to stipulate that. It's not like there would be an increase in traffic by putting these tables outside.

**[Abutter]** Is fence coming down?

**[Applicant]** Fence is going to stay.

**[DB]** From standpoint of fence or similar barrier, if this were to be approved, has to be a physical separation from sidewalk in a way that provides buffering and screening to the neighborhood visually, but is also understand aesthetics of not having a giant wall there too. Would not want it to change all that much other than to address visual screening issues. Want to understand what would be there.

**[Abutter]** Sound, lighting and mitigation to abutters.

Barbara Harrison, 79 Woodside Ave. Right across street. Walk-way. How you can have a stipulate having a walk-way, not having a walk-way for a full year and now have a patio.

**[PM]** Pictures show a walk-way. How long ago was this walk-way built?

**[Applicant]** Couple of years ago.

**[PM]** Are gates locked at all?  
**[Abutter]** They were locked originally. Kids broke them.  
**[PM]** There are no locks on gates now. One of stipulations we had at previous hearing was to have a walk-way pass through between Woodside and Hagman Road and that seems to be what the case is here.

Mark Hughes, 80 Woodside Avenue. Abutter-to-an-abutter. Carefully reviewed documents on file with Town Clerk's office. Absolutely no drawings, no renderings, site plans, illustrations. Neighbors and others have a right to look at what is proposed and not just look at language on documents here on file. Disagree on parking. Still 99 seats. Will have standing people. People standing out in front overflow for a short time. 99 seats is irrelevant. Will have people standing. Will arrive by an automobile. Relief regarding parking is an important one. In all fairness, neighbors should be able to see good drawings, details, heights of fences, illumination, types of surface . . . Agree with Mr. Soper's interpretation, will be additional square footage to restaurant even though people may not be seating down, will be people standing up.

**[BB]** On this, seating would be 4 tables out there. What would your hours be out there? 7 days per week?

**[Applicant]** 7 nights a week. . . . Usually by 9:30 already done, about 5 tables in restaurant. By 10 o'clock, we're all done. Concerned about neighbor. . . . Will try to see if I can keep it as quiet as it can be. Never will be people standing up. On patio just people having dinner or lunch. Latest will be 9 o'clock.

**[BB]** What kind of lighting?

**[Applicant]** Not too bright lights especially on tables, nothing bright that it would be inconvenient for neighbors.

**[BB]** Would it go whole length of side of building. Patio. From sidewalk all the way back.

**[Applicant]** No. Fence in that area. Do have space all the way to back.

**[BB]** Would stop right where fence is.

**[Counsel]** On pictures presented on first page that is elevation there is looking at front of building from Woodside Avenue down. From top photo, you can see outside of fence and area we are talking about. Bottom photo is just inside that fenced-in area of area we are looking to put patio on. On second page is elevation looking from Hagman Road extension. Top photo is looking from roadway at Hagman and then bottom photograph is inside fenced-in area.

**[BB]** Only fenced-in area is the only area you would be using for the patio.

**[DB]** What do you anticipate using as the floor of this patio?

**[Applicant]** Poured concrete.

**[DB]** At least there's not a lot of noise generated by that. Thing that I'm wrestling here with is that this is right on edge of where you from Resident A to Center District. I am concerned with noise level that we've all been in a restaurant or outdoor seating area and we know that just 16 people talking, taking orders, clanging glasses, folks on plates, a lot of background noise. One person is doing it is one thing. Chorus of crickets of 16 people is a little bit different. My problem is the impact of noise on neighborhood, only so much you can do about it. Natural background noise that comes from a restaurant. Where it's so close to the adjoining house, question is, is there—from standpoint that it would be open and available, know that you are only open until 10 o'clock, hate to see it be open if it were to be granted, limiting hours to hours that would not start to impact people's rest, getting ready to go to bed sleeping. I live on a busy street. I know what the noise sounds like at the corner of Washington and Winthrop on a Friday late evening, early night time when you've got kids going wherever they're going to in the center and coming down the sidewalk. My windows may all be closed. I may have the central air on, but I hear them like they're standing at my front door. When you're sitting right on top of the area, I do worry about the noise impacts and that's what I'm having a hard time with at the moment. Past 8:00 p.m., something like that, 7:00 p.m. From the standpoint of neighborhood, is that sort of our limitation more acceptable to the neighbors than having the possibility of having it open until 10. I would imagine that between 8 and 10, it's more of a concern than 5 and 7.

**[PM]** Taking a look at your pictures. First photo on first page, top one is looking from Woodside Ave., you're looking in. Second one on bottom, looks like from back fence or just inside the gate there looking toward Hagman Road. Then you have a fence across the property. Second page, top photo, it is showing back part of building from La Siesta and coming into Hagman Road area. Appears that back part of building is not abutting neighbor's house. Would you consider using that part for the patio that's not adjacent to his house and leaving front part that is adjacent to his house empty? #2 selection of materials that you propose there. Concrete is a hard material. It reflects noise. So that should be a consideration of what you should use should we grant this. Also putting sound attenuation, something that will absorb noise on vertical walls of your building and vertical fence that surrounds area. Something that

would if somebody was in there talking, the noise would muffle. Something to absorb the noise. Also if you did consider it in the back there, where it abuts the house, showing a 6 foot fence is putting an 8 foot fence up that would shield it a little bit more. Again, looking for some consideration from neighbor there, would an 8 foot fence be too obtrusive than a 6 foot fence? Some things to consider here doing. Would suggest get together with the neighbors that are concerned here, talk about some of these things, see what you could do to do it. Sounds as though the Board has got some concerns. Would want to give it a full airing here and give you a good opportunity with neighbors to come up with something. Mr. Hughes said he didn't see drawings. I showed him drawings you gave us tonight and discuss materials on this and get some consensus on this with the neighbors and come back and show us something on this. If you would be willing to do that.

**[DB]** At least I want to know from a noise mitigation standpoint what can be done, what you would be willing to do. Outdoor seating at a restaurant is great and completely appropriate provided that the noise impact to the immediately adjacent residential isn't high. If this were done mid-block closer to French Square, I wouldn't care. Worried about impact at edge of residential neighborhood and how you would attenuate it.

**[PM]** May be there is some type of indoor/outdoor carpet that would not have a problem with rain. Talk to a designer. Come up with something that would be aesthetically pleasing and would work material wise with neighbors and neighborhood and go from there.

**[DB]** We have 2 cases in front of us. It was necessary to file an appeal. I think what we're really talking about here is an amendment to existing condition with regard to walk-way. Whether you have the seating indoors or outdoors, you're not adding new tables and understanding that people may be cueing up to get inside or waiting for a table inside, whatever they're doing, we only govern parking based on seats. I'm wondering if we should keep them together and continue subject to this or dispose of one, namely the variance and deal with this on the modification. Getting rid of the variance doesn't mean that the Commissioner is not going to issue a building permit while we still have this amendment issue because it will be inconsistent with our decision. Don't have to deal with it tonight.

**[PM]** Leave it open until they come back with more information. Based on that and discussions, we would do it based on one or the other, but certainly not both. Does this sound feasible?

**[Counsel]** Yes it does. We'd like to get this started now because of the



season being what it is. Martin has been very sensitive about impacts on the neighborhood, whether it is here or . . . from now until we meet again, take the opportunity to meet with neighbors and get input and come back here with a plan that will work for all of us.

**[DB]** Special meeting on the 6<sup>th</sup>. Is a week too short to get this done? Hate to put you off until almost *Memorial Day*.

**[PM]** Wouldn't object to a special meeting, do something in two weeks if agreeable.

**[DB]** Can we move so that special meeting on 6<sup>th</sup> is a week later, so we don't have 3 meetings in May. [BB not available.] Could we be aggressive?

**[PM]** Set something for the 6<sup>th</sup>. If there's a plan, then appeal period, appeal on amendment is up, if we turn a decision quickly, could be up prior to *Memorial Day*. On record and working and have it open in early June.

**MOTION #32-33/2007 - #10-2010 (Darren M. Baird)** move to continue the hearing to special meeting on Thursday, May 6, 2010, at 7:00 p.m. for petitioner to come with a plan that has mitigation and other things acceptable or discussed with neighbors.

**SECOND (Brian J. Beattie)**

**VOTED** All in favor.

**MOTION (Darren M. Baird)** - to approve *Minutes* of March 25, 2010.

**SECOND (Brian J. Beattie)**

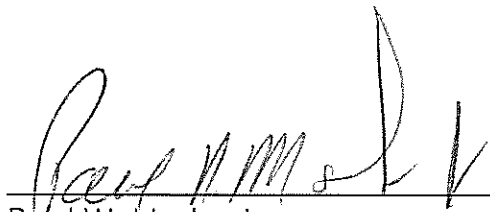
**VOTED** All in favor.

**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