

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

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

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TOWN CLERK

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:00 p.m. Also in attendance at hearing were the following Board Members: Darren M. Baird, Brian J. Beattie, Irene Dwyer and John Rich. Also in attendance were Building Commissioner James Soper, Captain Ned Hazlett, Winthrop Fire Department and 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.	07-2010**	71 Grovers Avenue	Olivia Sillari, Trustee, Salvatore Sillari Family Trust Site Visit at 6:00 p.m.	PM/DB/JR
02.	13-2010**	18 Dolphin Avenue	Anthony D. & Celeste Sillari Pino, Trustees, MP Realty Trust Site Visit at 5:30 p.m.	PM/ID/BB

03.	14-2010**	111 Grovers Avenue	Celeste Sillari Trustee, C&A Realty Trust Site Visit at 6:30 p.m.	PM/JR/ID
04.	15-2010- SP**	66 Woodside Avenue	Wai M. Chiu Plan Review	PM/BB/DB
05.	16-2010	137 Winthrop Shore Drive	Robert A. & Rachel B. Darman Deck Plan Review	PM/BB/DB

****Continued from June 24, 2010**

**#16-2010 - 137 Winthrop Shore Drive - Robert A. & Rachel B. Darman
- Deck Plan Review.**

Sitting: PM/BB/DB

Applicants present.

The following exhibit was marked:

Exhibit #1 - Deck drawing

[PM] Wanted to look at details, asked for drawing to look at detail on the railings and what you were going to do on the columns. Have a sketch that shows the railings on the second floor. You're going to put a railing on the first floor as well?

[Applicant] Working to avoid it. Right now we're about, currently sits at anything ranging from 28 to 31" and so I'm going to pitch the deck slightly lower.

[PM] I think building code, you might have to do it.

[Applicant] Building code is 30", so I'm going to try and keep it below 30".

[PM] 30" high?

[Applicant] The drop off.

[PM] I still think it's - do it.

[Applicant] There isn't one there existing now.

[PM] The posts are going to be enclosed with PVC?

[Applicant] Every bit of framing on the entire deck will be enclosed in either PVC or bead board, so there will no structural elements. Looking at trying to copy the detail of the arches that are existing into the deck, the _____ down below with C&C router work that I can probably cut those out on. It's in the original house detail.

[BB] Going on the outside, going on the perimeter on the first floor. All the pictures you've showed us, doesn't really conform to rest of neighborhood, nobody else has a deck that expands over their second floor. You come out, overhang on the sides.

[Applicant] It's going out 24".

[Applicant] Are you concerned about the asymmetry?

[BB] It's non-conforming to the rest of the neighborhood. I know there's a lot of things that are different down there, but it just. If some neighbor pulls into that driveway to turn around, a truck, or u-haul or anything like that.

[Applicant] I've pulled a u-haul into the driveway myself.

[BB] Without the deck though.

[Applicant] I bring a boat in there. To me it's a concern, because I'm bringing my boat in there and there's plenty of room.

[BB] No. No. I'm talking about the height. See where car is here. There's a million moving trucks in that area. If somebody turns around there, they miss a street, they're going to take that with them, that deck.

[Applicant] On the side of our driveway, they're going to be hitting the house.

[Applicant] or the planter. The flower box in front of the house.

[Applicant] Have to stay to the side of that anyway or hit the fence.

[Applicant] in addition the curb cut.

[BB] Do you know what the height is actually from the driveway to the bottom of the deck that comes out.

[Applicant] About 12'.

[Applicant] It will be higher than the overhanging roof.

[Applicant] The overhanging roof is - it's probably going to be 12-13'. It's over the height of most trucks.

[BB] I would like to see it stay conforming with the rest of the house, come straight out.

[Applicant] The reason we want that is because it's very narrow up there. It would be difficult to walk by if we put a table in there and that is, although it increases the non-conformity along the street, we're not

getting closer to any other boundary that's over our driveway.

[PM] I like the way the roof ties in now to the house on each side, it doesn't come out and overhang it. This will come out and overhang it. I thought about the same thing too. You make a valid point on a truck coming in. Not sure if you'll be up 12-13'. I think you'll be up closer to 10 or 11' on the height of it.

[DB] I don't think we can worry about what happens if Stimpson & Sons Movers pulls into their driveway and turns around because it's private property, it's not a turn-around. They shouldn't be doing that anyway. I can't worry about what happens. Somebody could pull into my driveway and take out some of my wires. That could happen to anybody, anywhere. People shouldn't be using driveways as turn-arounds in any event, even though people do. I don't think that's a legitimate concern for us to take into account when we're rendering a decision. That seems a little bit arbitrary.

[Applicant] One of the things I considered originally was to extend it further and then to have it overhang over the whole driveway and then to have a parking space type of thing and I decided I didn't want to do that because it was going to change the looks of the house too much and I really tried to minimize the impact to the house, but that was another consideration and if I wanted to do that 2' further back in the driveway, that would be fully within building code because I'm back from my set-backs and there's plenty of room. Really the only question we're here for is because it's too close to the set-backs on the front. This doesn't decrease the set-back of the rest of the structure or non-conform over the driveway.

[PM] It's a point Mr. Beattie brought up and it's a valid point, and like Mr. Baird said, it's not something we will worry about. I think it's a valid point.

[DB] The existing porch. You're not coming any closer to the street line with this deck than the existing porch, so you're maintaining the same line to the street.

[Applicant] We're maintaining the same line to the street.

[DB] The only place where you're sort of exceeding what there's from an existing standpoint is sort of pushing it over the driveway, cantilever it a little bit over the driveway.

[Applicant] It's not that we're cantilevering it over the driveway, it's that we're extending the set-back along the street, the distance that we increase along the street. The rest that goes over the driveway is fine. We have more than enough set-back from the neighbor's house so we're not getting too close to the neighbor's house. We're just staying too close to

the street. Whereas, we're having a porch across the edge of the street. Other people actually have their houses at that distance. There is a difference between a house and porch in terms of where the set-back is.

[PM] One of the conditions I would like to see on this that the porch on the first floor does not get enclosed. We will put as a condition it remains open. That is what we're seeing in some other areas that's just not right.

[DB] That's probably less for you than it is for someone you sell it to down the road who decides oh there's a porch here now I'd like to enclose it and push out my first-floor living area. That's happened in town in a number of instances and we want to avoid that.

[Applicant] Just to keep things open, would it be possible to say we won't do it as close to the street, but may be in the wrap-around areas it might be possible to do it in the future.

[PM] I don't think it should be done. It takes away from the house. We needed a style here and I think it affects it. My choice would be.

[DB] Nothing is to prevent you from coming back before us and apply for an amendment or something along those lines.

[Applicant] I have no intentions on doing this on any point in the future. I just don't like blocking off future possibilities. . . .

MOTION #16-2010 (Darren M. Baird) - to grant relief requested pursuant to Town of Winthrop Zoning Ordinance, Section 17.28.030(B)4 that allows the extension of a non-conforming structure provided that such alteration shall not cause the structure to violate dimensional and density regulations of the district in which it is located finding that the increase or the extension of the deck does not create a new non-conformity nor extend the existing non-conformity because it does not encroach further into the front-yard set-back than the current porch does and moving that in any event, even if it did, the addition of this deck and the configuration as shown on the plans consistent with the plans is not substantially more detrimental to the neighborhood than the existing non-conforming structure and that the relief sought is granted with the conditions that the construction be in accordance with the submitted plans entitled 137 Winthrop Shore Drive dated June 28, 2010 and submitted and marked as Exhibit #1 and consistent with that rendering that no pressure-treated material shall be visible from the street and that all coverings shall be consistent with the plan.

SECOND (Brian J. Beattie)

VOTED All in favor.

[Applicant] Talked the other day about possibility of doing pressure-treated decking and not being - all siding and everything encapsulated.

[DB] Will it be visible from the street?

[Applicant] The decking?

[DB] Yes.

[Applicant] Not really because you're sort of on eye level.

[DB] Condition was no exposed pressure-treated visible from the street, that's how we've been doing it consistently.

[BI] Has to be in my hands to determine what that means, so I'm searching for clarity too. I would read this as that not allow pressure-treating decking. I would read this if you're walking by the house and I can see your deck, pressure-treated decking and I would have to say no you've violated the conditions.

[DB] You're going to use bead board on the bottom so if you're looking up.

[Applicant] Bead board on the upper. I'm just saying from the street looking up. The decking that you walk on I was considering using pressure-treated for that because I like it better than the plastic wood. And on the first floor. I would like to make them match. On the second floor I have the issue that there's going to be a rubber roof and then a very shallow difference and I don't want to put something like EPAY (?) there where it may rot, whereas pressure-treated lumber is cheap enough that if I only get 15 years out of it, I'm going to be okay with that.

[PM] If you have a detail and you can convince the BI that it's hidden.

[BI] So you're proposal is for pressure-treated decking on the first floor as well.

[Applicant] Yes.

[DB] May be I should have made my motion a little bit clearer. The first floor is where I have the issue only because aesthetically we're trying to eliminate the view of pressure-treated from the streets as you roll by. It's just the way we're trying to do things consistently so that that look disappears. On the second floor, if I can't see from the street, and there's bead board looking up, who cares. First floor I would prefer no pressure-treated that's visible from the street. So if that means if you can do it in a way that it's not visible and the BI agrees, great. If not, then there's no way to do it and it makes it clearer, I just as soon say no pressure-treated on the first floor. Whatever is easier from an enforcement standpoint.

[BI] It's easier to enforce where it says no pressure-treated on the first floor. So that way it's clear to determine.

[DB] Especially if you're going to lower this so you don't need a

railing I think the ability to not see it from the first floor is going to be pretty hard. Aesthetically the determination we have made over time, the look of pressure-treated. One house may be one thing, but multiple houses looking at it, it becomes a little much around the community.

[PM] If it comes some way and hide it and do something with it. Biggest thing is that you see pressure-treated up there and they don't do anything with it and it's left to weather naturally. It turns lousy. It twists and everything and after a couple of years, it looks terrible.

MOTION #16-2010 (Darren M. Baird) - to amend motion to modify conditions on finish materials to say no pressure-treated on the first floor unless it's encapsulated in some fashion.

SECOND (Brian J. Beattie)

VOTED All in favor.

15-2010-SP - 66 Woodside Avenue - Wai M. Chiu - Plan Review

Sitting: PM/BB/DB

[PM] Biggest changes we saw on this one when it was originally submitted, it was 46 seats, now they're talking about up to 70 seats.

[DB] My biggest issue with this is the parking. Where is all.

[Attorney DiMento] Could I interrupt for a procedural issue because I hate to see you sitting here going through something that isn't the case, the three cases that I'm here on, but it's going to come up and that is a procedural issue of when we came up, there was a notice posted that all meetings are cancelled.

[DB] It's not a bad point.

[Counsel] You've been great to look at all our properties and all that stuff, but it is a procedural defect that really works in favor of our client because action taken at an illegal meeting causes constructive approval of a petition and I'm sure you don't want constructive approval of the three Dolphin and Grovers Avenue properties and we don't actually want it either. We want to move on with the process and I sat through the last hearing and said to myself if Dolphin comes up next, I'll raise it at that point. Both 145-70 the zoning ordinance and Chapter 40A, § 11 requires meetings, has all those procedures in meetings and the new open meeting law is as amended Chapter 39, § 23A-C is extremely clear that once a meeting is cancelled, it has to be re- not re-advertised, but re-

noticed for 48 hours prior and all this stuff. I just hate to see. I know all the time you've put in tonight, but at least put it in your court, if you choose to go ahead, we're ready to discuss it with you, but I feel obligated.

[PM] I don't know when that was posted out there.

[DB] It's a good point. Fortunately, the last petitioner was here and I don't think based on where we came out from a disposition standpoint, we're going to have an issue with them. It's a good point. I had forgotten when we started it, there was that notice out there. I don't think we can necessarily have a deliberative session when it's suppose to be open to the public on the remaining matters. It must be re-posted. It does say all meetings are cancelled tonight.

[BI] It says on that door. It says on this door. I don't know if it says on the front door. There was a power outage not too long ago on the street.

[DB] We'd have to continue this. The question is when do we continue it to. Our next regularly-scheduled meeting is the 29th.

[Counsel] We'll sign any extension.

[DB] I think we should push everything to the 29th.

[Clerk] I don't have any new applications yet. Do you have any coming down?

[BI] I can see a couple coming at least 2, may be 3.

[PM] Adjourn or continue the meeting.

[DB] Question of whether we can even continue because. We should just adjourn and be done and sign an extension and come back on the 29th.

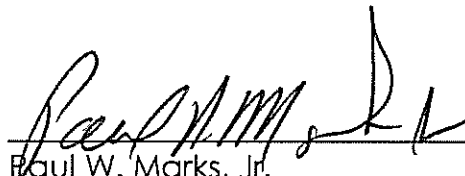
[Counsel] I think that's the law because you can't start a meeting. The law is really simple, the meeting didn't occur . . . All you do is need 48 hours notice for a meeting. That's all for any pending cases.

MOTION (Darren M. Baird) move to adjourn.

SECOND (Brian J. Beattie)

VOTED All in favor.

Adjourned at 7:45 p.m.


Paul W. Marks, Jr.
Chairman