

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, July 22, 2010
Town Hall - Joseph Harvey Hearing Room
WINTHROP, MA 02152*

RECEIVED
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TOWN CLERK

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:06 p.m. Also in attendance at hearing were the following Board Members: Darren M. Baird and Brian J. Beattie. Also in attendance were Captain Ned Hazlett, Winthrop Fire Department, Board Secretary/Clerk, Mal Jones and successor secretary/clerk Joanne DeMato.

The following matters were heard:

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

01.	23-2004	200 Pauline Street	Luigi Guarino & Ann Mulvaney	PM/BB/DB
02.	15-2010-S P*	66 Woodside Avenue	Wai M. Chiu	PM/BB/DB

***Continued from June 24, 2010**

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

Sitting: PM/BB/DB

(PM) At our last meeting, put this off because we were going to look at it even further. When they originally filed, they filed for seating for 46 and now they want to increase it to 70.

(DB) 70 even I think. Total seating 70.

(PM) From 46.

(DB) This is less than 3000 square feet.

(PM) Biggest thing here is parking. There's parking on Woodside Ave.

(DB) They can satisfy all their parking by municipal on and off-street parking spaces because they are located within 1000 feet, because they're less than 3000 square feet gross area.

(PM) But less than 3000 combined?

(DB) Commercial establishments of less than 3000 square feet.

(PM) I suspect that is a combined square footage.

(DB) I assume the whole thing is 3000 square feet.

(PM) I would think so looking at it. What they didn't have the first time through is an architect's lay-out which they have now. Lay-out everything dimension wise. Go through and count. (Reviews plan.) 56 spaces I find here.

(DB) What about the bench? Bench is 5.

(PM) Two chairs here, you have two people here. 13x4 is 52. (Counting seats.)

(DB) 28.

(PM) 24 is correct. 30 is wrong.

(DB) I have 70. I missed one of these. 70 even. They are required to have 1 space for 4 employees, plus 1 space for 5 seats. 1 for 5 would require them to have 14 spaces for customers. I can't imagine there's more than 8 employees there at a single shift. Don't know how many employees they have at a max shift, but can't imagine it's more than 8.

(PM) Kitchen help.

(DB) They'll have 2 servers.

(PM) Seating you've got 5 into 70 goes 14. 16 spaces. Looks like they're going to have, the kitchen remains the same.

(BB) All they're going to add is a dishwasher.

(PM) Everything else on the other side is new. They have handicapped bathrooms. They have unisex woman's room.

(DB) Interesting provision in the code though. Crazy result.

(PM) This makes it. May be that's a provision we should look at.

(DB) We should. There's certainly, arguably, within 1000 feet, there's clearly 16 spaces that on and off-street parking.

(BB) You've got the municipal parking lot.

(PM) Parking in the back on Hagman Road.

(DB) Up and down Woodside. Around French Square and Bartlett Road.

(PM) Mostly their business would be in the evening, where other businesses would be.

(DB) Except for *La Siesta*. Those two would generate a lot of parking.

(BB) Actually went there the other night for the first time. I looked around. You've got Lilly's, got the tapes, video store Lou's, laundromat I think it closes at 7 o'clock.

(DB) Karate school is closed by 8:30.

(BB) Public shoe is gone now, nothing there. So only thing you have over there is Pizza Center and liquor store.

(DB) Most of business at Pizza Center is take-out. Deliveries.

(BB) Nothing down that stretch. Down the back there once you go by there, all the way down where they're going to knock that building down supposedly, everything else around is closed.

(DB) Even if they had to provide for it which I don't think, I was just pointing to all the provisions of 17.20.020(b) says notwithstanding anything in section 0.10, the alteration or change or extension of a use of a non-residential structure of less than 3000 gross square feet will not require an increase in the provision of off-street parking. Arguably, they don't have to - argue that they don't have to park it anyways.

(BB) Will help it revitalize the center.

(FD) Once it's granted and it's classified under the building code, they just have to meet the fire department requirements. Don't see a problem at all.

(PM) I don't see anything else in the lay-out. Only thing that I'm concerned with is that the entrance there, that the entrance material are consistent for both store fronts and they don't put one material on one and one material on the other.

(DB) They said that they were going to continue the awning so that it looked the same.

(PM) They're going to modify their existing entrance here and then they would do the same thing over here, use the same material. That's what they said they would do. Bar in the area is going to be a service bar, it's not going to be a bar to come in and have seats on.

(DB) This supposedly needs a special permit. SP-1.

(PM) Kitchen. Rest room. They have a rear egress out the back. Steps coming up and rear egress for both stores, both halves. Their entrance is going to be on Woodside Ave., not on the back here. This is just emergency egress coming out the back. There won't be any entrance here for people coming in. I don't know if that's good or bad. We've said *La Siesta* what they would do, they didn't have this provision to do that. They would were going to come up and walk around. Come up the alleyway and come in the front. Whether we should put something in there this provision that is not an entrance, only emergency egress. If somebody parks back here, they'll have to walk around.

(BB) More of a delivery.

(DB) Delivery and emergency egress.

(PM) Signage. If a fire here and you came into here, which way do you go, you go this way or you go this way to get out. Sign on this door, this door, and this door here. I see some conditions in here that we will put in.

(Clerk) Signage on the doors?

(PM) We'll talk about signage. We'll talk about awnings in conditions. Conditions: storefront on Woodside Ave., both stores have to be same materials.

(BB) Back entrance going to be for emergency exit only, not going to be an entry.

(PM) Deliveries and emergency exit on Hagman Road. Conform to all provisions of Building Code.

(DB) Signage is to be consistent with existing. What they said to us - wasn't it said when applicant actually submitted this and had hearing that as far as an awning was concerned, it would match what was there currently. It would just be continued.

(Applicant) Yes. Going to match awnings. Want it to look nice. . . .

(PM) Is there lettering on the awnings?

(Applicant) I think there is. (Looks at pictures.)

(PM) Are there letters on the window?

(Applicant) No.

(DB) Awning does have lettering on it.

(PM) Signage is going to be on the awning, not on the glass.

(Applicant) Little bit of designs at the bottom. Special tempered glass.

(PM) You're going to put some signage in there. The signage will be on the awning only. That's consistent.

(DB) That's consistent with how *LaSiesta* is too. Have it on the awning, have it match what's there, lettering and otherwise, so it doesn't look out-of-place or funny.

(BB) Blends in with the existing.

MOTION #15-2010 (Darren M. Baird) - pursuant to Section 17.24.010 of the Town of Winthrop Zoning By-Laws to grant the requested special permit for SP-1 for restaurant use for a 70-seat restaurant in the Center Business District at 66 Woodside Avenue finding that the use is consistent with the district and will not create undue traffic congestion or unduly impair pedestrian safety, will not overload any of the infrastructure in the area and will not impair the integrity or character of adjoining districts nor be more detrimental to the health, safety, convenience or welfare of the surrounding area and that the requested use will not by its addition to the neighborhood cause an excess of that particular use that could be detrimental to the character of the neighborhood. Grant the special permit subject to conditions that signage and finish materials on the exterior of the building be consistent with existing materials and signage that are currently there, no signage or advertisements be placed in the windows, any signage will be done on the awning consistent with the existing awning at 68 Woodside and that the rear entrance out to Hagman Road shall be a service entrance only. Rear shall be for deliveries

and service entrance only, not for use by customers except for as an emergency egress.

SECOND (Brian J. Beattie)

VOTED All in favor.

MOTION #15-2010 (Darren M. Baird) - to amend motion to have a condition that the bar be a service bar only and not have any seats or bar stools for use by patrons in that the lay-out of the improvements shall be consistent with the plan submitted to the Board dated June 14, 2010 entitled *Demolition/Floor Plan* prepared by M.J. Tavares Architects as amended.

SECOND (Brian J. Beattie)

VOTED All in favor.

#23-2004 - 200 Pauline Street - Luigi Guarino & Ann Mulvaney

Sitting: PM/BB/DB

(PM) Did you have a conversation with Elizabeth?

(DB) She didn't call me. I had one back when she was going to Land Court.

(PM) After she went to the Land Court?

(DB) No.

(PM) She sent me an e-mail and said she was when she couldn't get me on e-mail, she was going to call you and talk about what she did with the judge.

(DB) No. I didn't hear from her.

(PM) When they went in there, she thinks the judge is confused on this because he was asking for what would we consider a special permit and she said to him she couldn't verify that because the Board could not say if they would consider it. The only thing they could consider is if they applied for a special permit, that we would have to sit and hear it. She wanted to hear that plus in the meantime Guarino's attorney.

(DB) He filed an appeal.

(PM) Yes. Basically it's saying that all the decisions that we have rendered. We've rendered three of them. He wants them thrown out because we didn't really address the primary one which was a decision of the Building Inspector way back in the beginning. What we did in our last appeal was we basically answered what the judge's questions were. I don't know if he has seen this and if there's any comments on it. This might come up at their August 24th hearing.

(DB) It would seem to me that the time to make this argument passed a long time ago and the judge already rendered a decision in this case and

remanded it back to us. The only thing before us was what was remanded, not anything before that. I don't care about anything we've done before, whether it was done right or wrong. He had his day in court. He should have argued it. He didn't. Tough. Here we are.

(PM) The only thing we have to do tonight. There was a mistake in our decision.

(DB) About the bathroom.

(PM) We should amend that. Take it out and that's it. And then would we consider a special permit. If they make an application, we have to hear it.

(DB) We have to hear it. We can't pre-judge. We can't say whether we would grant it or deny it. The judge should know that. If they want to come back here and try to get a special permit, we'll have a public hearing and we'll hear all the evidence.

(PM) In our decision we said that he would require a special permit based on.

(DB) In our decision didn't we say that he would require a variance. I thought we said he would require a variance, not a

(Clerk) It's right here.

(DB) Thought we said he'd require a variance.

(Clerk) It would be inappropriate for the ZBA to issue a special permit.

(DB) Because we said it would be substantially more detrimental. In order to issue a special permit, one of the findings you have to make is it's not substantially more detrimental to the community and we said hey look right now the way the use is being proposed, it is. That was when you look at what Judge Sands wanted us to find. He asked us three questions: Does the use reflect the nature and purpose of the pre-existing, non-conforming use when the by-law took effect. We said no. Is there a difference in quality and character in addition to the degree of use. Yes. Question was if we found the first two that we found no, if we entered yes and then no, the exact opposite of the way we found, is the current use substantially more detrimental to the pre-existing, non-conforming use which meant okay now you're looking at is a special permit appropriate here. The answer is no it's not appropriate because yes it is substantially more detrimental. Would we consider a special permit if it was brought before us and we had all the evidence and we got more about exactly how it was being used and may be they're going to tell us something we haven't heard before. I find that hard to believe. But we'd have to hear it. It would be a separate application. If he wants to do that, he can do that and we'll hear it. I'm not going to pre-judge and say I'd never find it. Who knows.

(PM) You don't know what the finding would be until you're presented with it.

(DB) Until it's presented to me. The judge is confused and the lawyer is trying to figure out a way to - doing what a good lawyer would do which is try and find a way to attack everything so that hopefully it all gets erased and his client doesn't have to stop using it the way he wants to.

(PM) I agree with you. The things that are brought up in there past history, that's done. They had their chance.

(DB) They already made a decision on our first and second decision. Our third decision is - the third decision cites unproven and unsubstantiated allegations made by Baldwin and third parties - well they may not have any relationship in his mind to the Building Inspector's refusal, but they have everything to do with what the judge wanted us to find. Made erroneous statements of law. Not sure how we did that.

(PM) This is something Elizabeth has to argue.

(DB) Right now we have to amend our decision to remove the finding about the bathroom and kitchen. I never went all the way into that side room.

(PM) I never did, but Irene did.

(DB) Irene did.

(PM) What she saw apparently is evidence of what must have been a sink. Should we leave that in there or should we take it all out?

(BB) Are you talking about to the far left?

(DB) Yes. Where the rocks and stuff.

(BB) I thought I saw something that resembled a sink. I went in to take a look at the rocks.

(PM) I didn't go all the way in. I poked my head in. I think she said she saw a sink and a microwave.

(BB) I think there was a sink in there.

(DB) Those were little additional facts. They certainly aren't what everything turns on so whatever. So did Elizabeth suggest she amend the decision. Is that what she suggested?

(Clerk) Jim Soper did an inspection. He said there isn't one.

(PM) Right. There is no kitchen or bathroom I think is what Jim Soper said.

(DB) I did see on the interior left side wall of the garage a wall hung sink supplied only with cold water which drains into a sump that ejects onto the ground outside of the garage. I will speak with Mr. Streeter to determine if any plumbing code violations exist.

(PM) I think we should amend our decision that we observed a sink.

(DB) Is that what Betsey wants us to do?

(PM) I will confirm with her. I tried to get her by e-mail and called her today and she didn't get back to me.

(DB) I think before we amend our decision though I'd like to hear from her that procedurally that's the right thing to do. If we made an error of

fact in our factual findings, I think the decision stands the way it is. I don't think we can just amend it to make it correct unless Betsey says that's okay to do and the court wants us to do it in which case we're happy to do it, but if our decision has been appealed, second amended complaint, here we go again, then right now at least to me anyways procedurally unless Betsey tells me otherwise my mind would be that they have their appeal rights and if for some reason the judge thinks that that fact blows our decision out of the water, then we have to live with it. I don't think he will but otherwise if we can amend it, we can amend it.

(PM) I will ask Betsey when I talk with her and then I'll get back to you Mal to see if we do that and we'll do it and send it off to her again and she can take it to the new hearing on August 24th.

(DB) Don't think we need to make a motion on this. Did we notice this?

(Clerk) I posted it.

(PM) All we're doing is discussing it. We're not making any decisions on it.

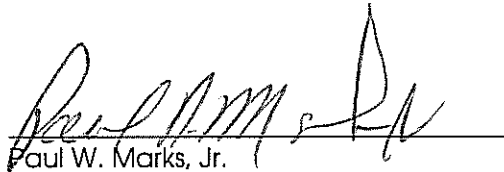
(DB) I wouldn't make a motion on it right now.

MOTION (Darren M. Baird) to approve *Minutes* of June 24, 2010.
SECOND (Brian J. Beattie)
VOTED All in favor.

MOTION (Darren M. Baird) to approve *Minutes* of July 6, 2010.
SECOND (Brian J. Beattie)
VOTED All in favor.

MOTION (Darren M. Baird) move to adjourn.
SECOND (Brian J. Beattie)
VOTED All in favor.

Adjourned at 7:44 p.m.


Paul W. Marks, Jr.
Chairman