

**BOARD OF APPEALS  
TOWN OF WINTHROP**

**MINUTES OF MEETING**

*Held on Thursday, August 26, 2010  
Town Hall – Joseph Harvey Hearing Room  
WINTHROP, MA 02152*

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Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:03 p.m. Also in attendance at the hearing were the following Board Members, Irene Dwyer, John Rich, and Darren M. Baird. Also in attendance were Captain Ned Hazlett, Winthrop Fire Department, Joanne M. DeMato, Board Secretary/Clerk.

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.

<b>01.</b>	<b>021-2010</b>	<b>3 Bartlett Road</b>	<b>Cindy Levins and Margaret Morris</b>	<b>PM/ID/DB</b>
<b>02.</b>	<b>022-2010</b>	<b>61 Birch Rd.</b>	<b>David &amp; Stacey Ferreira</b>	<b>PM/ID/DB</b>
<b>03.</b>	<b>023-2010</b>	<b>115 Plummer Ave.</b>	<b>M/M Paul Chmielinski</b>	<b>PM/ID/DB</b>

#021-2010 – 3 Bartlett Road, Winthrop, MA 02152 – Cindy Levins and Margaret Morris.

Sitting: PM/ID/JR

PM: Please tell us what you want to do.

CL: Were here to request a special permit for 3 Bartlett Rd, our retail space in Winthrop center, we have been renting the space sine 2004, we don't own the building, Steve Merolla, owns the building, and he's signed off on out application.

What we are requesting is to put in a small café area, the building is about 1,000 square feet and we are requesting about 300 feet to be used as a café area. We'll be serving coffee; espresso beverages and pastries in the café area and the rest will remain retail. You should have a site plan; you can see the on the site plan, the whole space as well as the area that we're going to be using as the café. We'll have a total of four tables and ten seats and there's also a service counter, which will have all of our coffee equipment, espresso, grinders, brewers. There is currently a kitchen in the back and has an attached bathroom, we'll be moving a dishwasher and a convection oven and that area will be used for food prep and baking. 3 Bartlett Rd is in the CB Zoning district and according to the table of use regulations Section 17 of Winthrop Zoning By-Law; a restaurant is a permitted use with a special permit by the Board of Appeals. The proposed use will not impair the integrity or character of the center business district since the property is already zoned for business use and it's located in a designated commercial area. The site is surrounded by restaurants and retail stores, service businesses and there are no dwellings in the immediate area. We will not cause any additional noise. Any activity on the site will be regulated by myself and Maggie Morris. The requested relief will not cause any undue traffic and there's plenty of on street parking in the center area as well as two municipal parking lot pretty close by. Maggie Morris and myself have been business owners in Winthrop for six years, we open Luna Boutique in 2004 and Moonstruck Café in 2007. We're in the process of selling our building that houses Moonstruck and the Board approved a special permit for the new owners, for their BBQ restaurant. If the special permit is granted we'll be basically moving Moonstruck into a smaller area of Luna. In addition to being businesses owners, Maggie and I are also residents, I've lived in Winthrop for almost 20 years and Maggie has been here for almost 10 years. We are very involved in this community within the business community within the center and are very active with the Chamber of Commerce, who couldn't be here tonight but do support our project. We've had extensive conversations with Jim Soper, in the Building Dept. with Eric Moore, at the Board of Health, the Plumbing Inspector, the Electrical Inspector, with Capt. Hazlett so that everybody knows what's going on and we had our plans according to the feedback from everybody we spoke with. We have submitted many support letters from the public as well as a letter from the Chamber of Commerce and we ask that you grant our special permit. Thank you so much.

PM: Anybody in favor? Any want to speak or just a show of hands?

Chris Thompson: I'll speak. My name is\_\_\_\_, I live in Dorchester, I am opening up the Black Strap BBQ restaurant with my business partner Jim Economides. I drink coffee everyday and their coffee is particularly good and I can't do my job to the best of my ability without their coffee. So I want those guys close by.

PM: Thank you, anybody else?

Mary Lally: I own 5 Petals Flower Shop; I worked for\_\_\_\_ Florist before hand for 26 year and bought the business 6 years ago. When I bought the business, the

same time Luna became Luna, and it has turned the struggling center into a beautiful area. There has not been life, and I've been there since 1969, in the center businesses. Business owners have lost a lot; they truly care and take pride in both of their businesses. I don't think that I could survive without their business and I am all for it.

PM: Thank you, anybody else?

Madeline Shea: 142 Washington Ave., I think that this is a great idea, I've seen this done before in other places and think its great for the business owners and the concept is wonderful.

PM: Thank you, anybody else?

Maureen Dalton: 24 Girdlestone Rd., I've been a Winthrop resident for 58 years and I think it's the best thing that's happened.

PM: Thank you

Cynthia Huff: 550 Pleasant St, I'm a new resident to this town and I think they've done an incredible job for the center.

Paul Dalton: 24 Girdlestone Rd. My wife and I patronize Moonstruck several times a week, it would be really sad for them not to be able to transfer the business, its nice to be able to come down the center and have a cup of coffee and a pastry and just sit there for about an hour or so. It would be great if they get this. It would be a real asset to the Town.

PM: Thank you, anyone else? Hearing none, anybody not in favor of this application, hearing none. Any questions from the Board?

JR: As far as the fire department what would you require?

NH: Because of the change they would have to have a fire alarm. Other than that the Fire Dept. has no other problems.

ID: I have a question about what you're going to be doing about serving food?

CL: We had Eric Moore into our space, and he has told us that we have a sink in the back of the kitchen area and there's another sink in the kitchen existing and we're putting a dishwasher and there's also a hand-washing sink. Eric has these plans and he's fine with that. So we'll have a total of 3 sinks.

MM: The dishwasher is a commercial grade-sanitizing dishwasher.

PM: Hours of operation?

CL: Right now the boutique is open from 10 am to 7:00 pm but we'll want to open a little earlier. We actually want to open at 7:00 am to 7:00 pm and we do occasionally have open houses where we stay open a little bit later till 9:00 pm. Maybe once a month but we generally will be open from 7-7.

JR: What are Moonstruck's hours.

CL: 7-7. We would like to request that for Friday and Saturday's hours in the summer we do extend our hours for the day light until 9:00.

PM: Looking at your floor plan, the layout, there's a double table and chair fairly close to your display case with no dimension between it, my concern if somebody is sitting in that chair with their back to your area, they'll be fairly close to that.

CL: Frank Constantino made sure to leave enough room, I'm not sure what the dimension is, one thing that we did, we are going to put a railing in here were leaving an opening on this end so that the staff can get through the opening into the boutique rather than having to go all the way around. So there will be another opening, so Frank did leave enough room, he left at least 3 feet between the tables and enough room for staff to get by that display case.

MM: Was your question that those seats would be close to display area and that would be too close, that's actually going to be a...

PM: Not close to the display but close to the display case. I think with somebody sitting in that chair you're not going to have enough room to get by to behind your counter.

CL: I think that's why we'll be leaving some space open.

PM: It doesn't look like there's 3 feet there I question that chair if there's going to be enough room there and point that out to the Building Inspector and have him take a look at that.

CL: OK and then if we have to move it or take a chair away when the BI comes to inspect us let me know. We'll do whatever is code. But with that opening will probably allow that space so no one will have to walk that way, they'll walk this way not to come around that way.

ID: Concerns about hot coffee spilling on someone sitting in that soft chair by a server.

CL: Our business is mostly people coming up to the counter and getting there own, we don't do table service. It does happen once in a while but we'll talk to Jim about it, well push it out or move it to the side or take the chair out.

PM: Menu items, you're going to serve coffee, pastry? Just want to know if you're not cooking anything?

CL: We actually buy our batters for our cookies and scones, we buy it already made and bake them off every morning, so the most we're doing is baking in the kitchen. It'll be baked on trays, put into a cabinet, and served so all we're is serving. There's no cooking or prepping in the front at all. It's coffee and service.

PM: Do you have to have a vented hood?

CL: No, we've been told we don't for a convection oven.

PM: Capt. Hazlett do you have any concerns?

NH: No, they're fine, what it says in the code it doesn't require a hood. No not a problem.

PM: With this you're just going to do coffee and pastries? Sandwiches as well?

CL: No, sandwiches, we're actually downsizing a little bit.

PM: Just pastries and desserts? I have nothing else. Anything from the board?

ID: Move to grant the special permit as requested according to the plan shown on the conditions, that the hours are 7-7 Monday thru Thursday, 7-9 Friday and Saturday, that all conditions of the Board are upheld and the Fire Department be met.

CL: Could we actually make it 7-9 on Thursday as well because we have open houses on Thursday also.

ID: Amended hours to be 7-7 Monday through Wednesday, and 7-9 Thursday through Saturday.

JR: Seconded

PM: Any discussion on it? No discussion, all in favor?

Voted unanimously 3-0. We'll get you out the decision.

CL: Could we actually write the decision because we are under a time constraint?

PM: Get that into Joanne M. DeMato.

#022-2010 – David & Stacey Ferreira – 61 Birch Road, Winthrop, MA 02152

Sitting: PM/DB/ID

Representing Applicant is Attorney Sean F. Donahue, Esq., 88 Black Falcon Avenue, Suite 272, Boston, MA 02210

Representing Owner of 57 Birch Road, Winthrop, MA is Attorney Robert Indresano

AI: I'm Atty. Robert Indresano and I represent the 57 Birch Rd, and wanted to point out a couple of things before we start. The legal ad in the paper had the set back at 10 foot and also my people never got notice, I happened to see it in the newspaper.

PM: What address is it?

AI: 57 Birch

PM: Are they a direct abutter?

AI: Polsonetti at 57 Birch Rd is on label list. Those are Polsonetti, Robert Sullivan.

PM: They're on the list. There was a notice sent out.

AI: They're here. They'll testify they never received it.

PM: I can't help the Post Office, our job was done, it was submitted and sent out.

JD: If I got it back it would have been in the file.

DB: There's another more fundamental issue which sounds like the notice was defective as far as what it said was, the relief being sought was, is that the concern?

AI: Right

AD: What we're looking for sake of clarification is an 8 ft variance.

DB: Right you're asking for a relief required for 8 ft from the east yard set back, So you're looking to encroach 8 ft into that 10 ft side yard.

AD: The notice went out as 8 and the BI denial letter said 8 we are asking for 8. The notice from my understanding said 8 ft.

DB: This is the legal notice, right, what went out? A relief required of 8ft from the east side yard set back from the retaining wall greater than 48 in. in height.

From the standpoint of notice, I don't see how there's necessarily see how there's a defective notice here, unless I'm missing something.

AD: The application in one section does say 10 ft set back is being sought but

DB: Seeks a 10 ft variance right, but you're seeking for a zero lot line.

AD: Were actually asking for a 2 ft off the lot line, were asking for a variance of 8 ft. in the east side yard set back. The proposal of the map that was submitted does reflect that the laws can be positioned 2 ft off the lot line.

PM: I don't see a problem of it, do you?

DB: I think that the application may have a technical error in it, but I think the purposes of giving notice to the abutters and the general public is correct and the abutter is here so, I don't see any reason not to be a defective so that maybe so have the jurisdiction that can hear it and make a decision based on the fact that notice was given in a way to be respondent to the abutters, and while it may differ a little with what's in the application is consistent with your actually seeking.

AD: I would ask respectfully when notices are mailed to abutters, by the Board, I just want to clarify that.

DB: Everything that we have in our file indicates that it was.

PM: We don't send it out certified so we don't have a return. We send it out on regular mail.

RS: Is there a date on the mailing?

DB: When would these have been sent out?

PM: When the notice went in the paper so the notices has been in the paper for two weeks, so probably it went out 3 weeks ago.

JD: As soon as it went in the paper, I would have sent it out.

DB: It would have went out August 9<sup>th</sup>.

RS: It just interest me because I read the code it says that it goes out before the date of the hearing so I was just trying to get a sense of if its in the mail now or was mailed 3 weeks ago.

PM: It usually goes out 3 weeks ago

DB: It was published on the 12<sup>th</sup> and the 19<sup>th</sup>. I have to believe that it went out somewhere around the 9<sup>th</sup> because that is when you would have had to have it in for the 12<sup>th</sup>. But all indications say that a notice was sent.

JD: The 9<sup>th</sup>, I sent them.

DB: If there becomes a reason to appeal I guess notice might be grounds to appeal on it but that's a premature discussion.

PM: Mr. Donahue, proceed.

AD: Were here seeking an application for a variance on an existing structure.

Mr. & Mrs. Ferreira purchased the property back in 2003. The condition of the property at time of purchase was such that the property principle structure located on the property was virtually in deplorable condition. It had been neglected for years, with the respect to the exterior, the interior, the rear yard and the front yard. Everything about that property was neglected. David & his wife came in as first time homebuyers, purchased the property, and did

extensive renovations. Principle property on the structure is a 2-1/2-story wood frame dwelling and the land consists of approximately 2800 square feet of land. The rear yard slopes downward and there's a significant slope in the back yard from the foundation and it slopes down to the rear of the yard. When David & his wife completed the renovation they decided to build a patio in the back, and that was built approximately 5 or 6 years ago. It was his thought that the construction of the patio would not be subject to zoning regulations. More recently as a result of the potential for cut backs at his place of employment, which coincidentally he works for a land development company. He's a project manager, so he comes here that he excited that he's got himself a beautiful home but humbled and embarrassed that he finds himself in the position. That being when he decided to sell and put his house on the market recently a neighbor, Donald Sullivan, informed him that they structure was on the land of 57 Birch rd, a portion of the structure was on the land of 57 Birch. David spoke with the BI who informed him that the topography of the land would require retaining walls greater than 48 in that the structure is such that the zoning should have got the requisite feet at the time of construction. When David was informed that he filed the application seeking a variance. Right now, the structure is sitting on the neighbors land or at least that is what we are lead to believe sitting on the land of 57 Birch Rd. or a portion of it and were looking to scale or cut it back a distance of 2 feet from the boundary line to remove it from the land at 57 Birch Rd, and bring it to the footprint of 61 Birch Rd. which David and Stacey own. We do have a pack of photographs. May we have this packet marked as an exhibit?

PM: Yes, please mark these as an exhibit.

AD: If I may just take you through this packet briefly. The first page shows 2 structures, one blue in color and one white in color. The subject property for purposes of this application, 61 Birch Rd. is the bluish colored house. 57 Birch Rd. is the white colored house. There is a view of the frontage of the land or the area between 2 structures if you put page the same photo just closer view. On the 3<sup>rd</sup> page you'll notice there is a red vehicle on the second page, which you could see, just looking at the same area from the opposite view of the yard looking out towards Birch Rd. To the forefront of that picture of the bottom you can see a railroad tie and on the railroad tie there's an orange marking. That is the boundary line between 57 Birch Rd and 61 Birch. On the 4<sup>th</sup> page there is a closer view of the boundary marking on the railroad tie. Note on the 5<sup>th</sup> page you have the same photograph with bluish color tape is where we are looking to cut back the structure, that'll be 2 feet off the property line. We're looking to cut it 2 ft., which would leave approximately 3 ft between the structure at 61 Birch Rd into where the patio would end. On the 6<sup>th</sup> page you'll just get a closer view of the marking and the tape between the cut off. On the 7<sup>th</sup> page we got our back to the roadway Birch Rd. actually entering into the backyard you get an idea of the layout of the land and the structure of the question. On the 8<sup>th</sup> page you just get a closer view, same thing with the 9<sup>th</sup> page. On the 10<sup>th</sup> page from the

back in the rear of the yard at 61 Birch Rd looking at the structure you can see the structure from the backside. If you were standing in the back at the rear lot line 61 Birch Rd looking at the house you get a view of the patio structure. And again looking at the last page you get a pull up picture of the structure at the house at 61 Birch Rd along with the patio situation behind us. The position of the BI because of these retaining walls that surround the structure exceed 48 ins. in height requires our subject to the zoning regulations here in the Town of Winthrop and at this point of time, with respect to that retaining wall is anchored in with dead man anchors in back to stabilize the patio area. The side of the patio situated on the side the 57 Birch Rd. you say what?

DF: The landscape contractor explained to me that compacted earth would be tied together with landscape ties and they longer as they go higher.

AD: The reason that David & Stacey built this patio was two fold:

- 1) They wanted an area for their children to play because the topography slopes down the yard and it had long been neglected. My understanding is when David and Stacey bought the property it was dirt essentially and overgrown trees, they cleaned it out and planted grass and there was also noticeable erosion.
- 2) To provide some stability to the foundation of the house and the land. I wish we had before and after photographs of the property at the time of purchase. It was in very poor condition at the time of purchase.

I just want to say that at no point was it intended to disregard the requirements of the zoning code here at least it was then when David built this property. He obtained all required permitting when renovating the interior and exterior of the house. The building patio wasn't subject to local zoning regulations as I stated before via the BI and Mr. Sullivan that the structure was subject to zoning regulation. He promptly came here to seek relief, he's embarrassed and humbled to have light of the violation especially as project manager of a land development company and would expect he might know but he didn't. At the time he constructed this property he wasn't employed in this capacity. He's a first time home buyer and in hindsight should he have had the land surveyed, yeah, the easy answer is yes, unfortunately we learn hard lessons in life and this has been a hard lesson with him and his wife that are going to have to spend additional monies at a time when the two of them are trying to make ends meet raising their children. We have been speaking to the neighbors more recently in the last couple of week or two in order to address some of their concerns in an effort to try and reconcile their position which I am sure you'll hear there position shortly. In short they oppose what we are asking for they want us to cut it back further, they had asked that we cut it back to at least the house line. I know why, never the less that is an imposition. Here we are approximately 6 yrs after this patio was built having read of the violation David and his wife now how to expend monies to cut it back.



DF: Depending on what happens here this evening the original landscape contractor remorseful as well is going to short cut the landscape ties and short cut the concrete 12 ft off the \_\_\_\_ and essentially feed that line down to that lower level planter and relocate the land and rebuild the wall. I've applied for a building permit with the BI whom I've spoken with and if the BI is happy the contractor will meet with him. We'll rebuild it to code and rebuild that wall.

AD: We're just asking for reconsideration from off the property line and we apologize to the neighbors and the board, what has been done has been done, we can't change that. We are trying to \_\_\_\_ against the situation as appropriate. But that is our intention, the neighbors are opposed and they can speak on their behalf I can say that there was discussion about coming back a little bit further and our hope is that we could obtain some relief we are requesting here.

Pointing out that if you notice on the map, the drawing that accompanied the application, the house is presently situated approximately 5 ft off the property line, were looking to cut 2 ft off the property line to the patio so essentially the patio will extend out 3 ft off the line of the house. We would extend the patio 3 ft closer to the property line and the existing house.

DF: As Sean mentioned, again with regards to the interior and the replacement of the porches I went through the proper channels. I never wanted to do anything illegal or non-compliance I am just trying to mitigate this. My wife is a stay at home mother and were trying to mitigate the expense occurred and trying to do it in the most cost efficient manner.

PM: Anything else? Closing that part of the hearing, is there anybody here in favor of this petition? One at a time, your name for the records please?

Mike Bertino, 74 Birch Rd: I've lived in Winthrop over 40 years. I was subject to the conditions of that house before the current owner bought it and quite frankly it was a crack house, they sold drugs out of there, my wife who had to leave who was also here live at 80 Birch Rd as a child grew up there and my in-laws still live there, we were subject to those conditions, we're ecstatic that the condition of the house now brought the whole street back and we can't be happier that a nice young family is there, we hope that some kind of compromise there can be made because it has made a tremendous difference, not only in the quality of life but of the values of the houses in and around the area.

PM: Thank you.

Ralph Duplin, 56 Court Rd: I can say exactly what Mike just said, that was my house while growing up, the family that used to live there and that back yard was bad.

He's turned that around 100% and I have a couple of issues but can work it out with them. What he has done for that house, I live right below him so I can see everything right off the back.. Its just 100% difference what he made.

PM: Thank you, anyone else.

Julie Mei, 58 Birch Rd.: Exactly what they said, before the work was done in that backyard, I saw the house just last week and it's beautiful.

PM: Anyone else in favor, closing that side of the meeting, anyone not in favor.

Atty. Robert Indresano, 50 Meridian St., East Boston, MA and Mr. Donald Sullivan, 197 Woodside St. representing the owners of 57 Birch Rd, Robert Polsonetti who also lives at 197 Woodside St. along with Mr. Sullivan and Christine White who lives in Arizona. They are the children of Lois, Bob's sister.

DS: The house was inherited from Catherine Polsonetti, and as with this family it is a house that eventually ....

PM: Anybody living in there now?

DS: Yes, we have a tenant living in there. And have had since prior to, there's a different tenant living there now.

AI: I'm giving these plans, with the encroachments,

DS: You might be able to see by looking at these. I was trying to get copies of, some of the things I have copies of some I don't. I have a record copy for the secretary. I just wanted to make it brief it's not anywhere near as formidable as it looks. And with most of this I will just assume cover this with as little detail as you are comfortable with.

PM: Why don't you just highlight here what you have and move on.

DS: OK, for the record and again who want to follow the entire process here are all of the email and letters that went back and forth between the Ferreira's and us since April 28, 2010, when we notified them that not only was the patio structure encroaching on 57 Birch Rd but they had encroached our driveway and they had encroached the patio stones you see on those pictures there and they had encroached with a chain link fence. Obviously, the issue with the patio was one of zoning and primarily a town enforcement petition. The others we recognized as the property encroachment and not a town issue as such. We did asked the BI to conduct a survey to see whether in fact the patio conformed to the code which we believed it did not and none of us is a licensed contractor but we asked people, so, what we have here, if you look here, at the email package, one of the things you will see is that we sent the letter which on April 28, 2010, and what happened was we saw the for sale sign and we knew there was an encroachment on the driveway, we didn't realize because we're not there regularly and we're almost never in the backyard because as correctly pointed yard the backyard in that stretch of Birch Rd, and is unusable for any purposes other than sledding. So we sent a letter saying there are these violations and we require that you correct these violations and please let us know what you plan to do. Mr. Ferreira calls me the following day upon receiving the letter and said that in fact he had a survey done to make sure that he was not violating property line and his survey showed he was not violating the property line. You will see an email from me to my wife and Bob Polsonetti saying that I had my doubts about that but I hoped it was true because otherwise it was going to be very difficult to negotiate. As it turned out we got an email on the 3<sup>rd</sup> or 4<sup>th</sup> of May, saying that not only could he not find that survey but he doubted that he would ever find that survey. Obviously if he had a survey that showed he was within the property line that either his or ours would be wrong and the correction to this problem would be born by the insurance. Clearly one of them screwed

up. This went on and I'm not going to get into it but this went back and forth for a number of weeks, on the 19<sup>th</sup> of May, the BI sent a cease and desists to Mr. Ferreira with a copy to his realtor and said that he needed to get a permit that he appears to be in violation of the zoning laws etc. He did not respond to the BI, up to the 4<sup>th</sup> or the 7<sup>th</sup> and said that he'd been busy, so it wasn't the prompt running up to Town Hall that we heard. On June 3<sup>rd</sup>, we notified Mr. Ferreira that our patience had run out after 6 weeks of seeing nothing corrected the driveway wasn't corrected the chain link fence wasn't corrected and those were independent of anything to do with. When we saw no progress we said that you need to make progress or we are going to take the next logical step. He told us that he now had a survey but for the next 4 or 5 days you will see in here a mishmash where he says on the 4<sup>th</sup> of June, a day after he acknowledges receiving the plot plan you have that clearly shows the encroachments of 57 property on the right, he said at this time he was ensuing the permit process and this was the only formal directive I've received. He said you have offered no proof that I am encroaching on the 57 property. The day after he has got his own survey and that survey telling him that he has encroached. I'm baffled by the attitude. It leads to two basic reasons for opposing this, the first is; that we are old school, if there are rules you follows the rules, if someone brings it to your attention that you have a problem, you verify it, you apologize, and you correct it. Here we are 4 months in to this process, the chain link fence is still up there, the encroachment on the driveway is still there, nothings been done, and there's no reason for that. They're not major changes, it just disdain or a refusal to respond, so that's part of our objection, the other part of our objection is that the Polsonetti bought this house in 1954, in the 51 years up to 2005 which is around the time that this structure was built, the house never had water in the basement, since this structure was built, there have been at least 4 or 5 times theses been water in the basement. Coming up from under, the water table, and the water flow have all been affected by this structure. Last week, we met with the Attorney Donahue and we offered to allow the set back to start at the house and to work out to the 10 ft set back cause we felt that likely it was the source of that water. Because they said specifically in their application that it reduces the amount of water flowing down, I've been doing this too long to not to realize that water is going or not going someplace. Right now what is happening is its going into 57's basement. Merely moving it back 2 ft isn't going to fix that. The other thing is if you look at what we have here, that's a picture that was taken about the time that the patio structure was built and what it shows is no patio behind 61 Birch Rd and it also shows the way in which other properties are maintained. You can see for instance the Fielding property as you can see they have the same wavy decline in that backyard to handle the rain. In their case they put some stone blocks.

ID: Excuse me, can you tell me which one that is?

DS: Actually this is Birch Rd up here and this is the backyard, this is Fielding right here, this is 57 Birch, and this is a lot right here. We were told he was going to

replace the patio but it wasn't just a replacement. In one of the emails you will see that he says to the BI that he appeared to the previous inspector and told him that he was going to replace the patio but he neglected to mention that he was putting up a retaining wall. These things are all a concern to us and we're not comfortable with giving away that ... the water down the hill and that sort of infringement on the property. That's what's happening and this is why we feel this way, we have tried to work it out and we have made acceptable proposals in terms of acceptable level we are starting at and should be at. We hope that this can be resolved.

PM: Thank you anybody on this that is not in favor?

Lois Sullivan: I'm one of the owners, having lived at 57 for most of my life, the Ferreira's have done a fabulous job, so we know what kind of shape that house was in. They have done a fabulous job, there's not doubt about it, but the fact that they came onto our property and they have had no regard for the 10 ft set back is a concern for us.

PM: Thank you. Questions from the Board?

AD: Mr. Chairman, may I have a moment to respond?

PM: Please.

AD: Its my understanding that communication dialog began between Mr. Sullivan my client, and things sort of went down hill quickly, no pun intended, Mr.

Sullivan was putting himself as an attorney to my client, here's some writings with a letterhead Donald Sullivan, Esq. And its, my understanding that he is not a licensed practitioner here in the state of Massachusetts, recognizing that my client was a little leery speaking with Mr. Sullivan, the relationship had some what deteriorated for a while. I got involved with this within the past month and met with Atty. Indresano and Mr. Sullivan and we had a second meeting with my client and tried to address some of the matters. I think these are matters that can be resolved. However, I did take exception to the statement made with respect to drainage, construction, and compression as Mr. Sullivan has provided to the Board in that it's my understanding I don't see any evidence that might qualify Mr. Sullivan as an expert on these issues. The flooding that's occurring on Mr. Sullivan's property he claims is a direct result of this patio; I don't see any evidence to support that intention. I submit that foundation of Mr. Sullivan's property sits up hill from the patio and we all know water travels to its lowest point not back up hill but downhill but despite the conditions that are involved here Mr. Sullivan's contention that the water is backing up into his basement and I don't see any evidence to support that contention. He also states the owners of the house would stipulation the certain aspects of his position but I any evidence to support any type of stipulation made by the former neighbors, I don't see any evidence that there's even flooding in his basement, we take him at his word, yes, but, I have spoken to Mr. Sullivan, he's been a gentleman in my discussions with him, but respectfully, I would just ask if there was flooding in the basement where is the evidence of such flooding. I would just submit that those contentions are based simply on spies and speculation.

DS: May I address the esquire situation?

PM: We're not going to go back and forth, this is for objections.

DB: For the public record I would like to actually hear about the esquire issue, if your holding yourself as an officer of the court troubles me a great deal so I just want to know why, Esquire is used.

DS: Number 1,

DB: I know what the Honorific is. Go ahead.

DS: There are 3 ways that it is used, first thing is that if you look at the emails, is very specific in there I say there repeatedly because he repeatedly raises the issues whether I am a lawyer or not. The Polsonetti's did not consult with a lawyer, I'm not the lawyer for the Polsonetti's and I am not a lawyer. It is said in there repeatedly. The other part of it, again, I'm in the wrong century, most attorneys don't use Esquire on their stationary or business cards because Esquire in the use of it is honorific and other people climb to the assumption of being a gentleman

DB: Quite an assumption, but yes.

DS: Actually that is not true in the UK, where attorneys aren't \_\_\_\_\_ honorific usage. The second usage and these are in order of, the third usage is an attorney and in some states it is illegal to use the term of esquire, MA is not one of them, second usage is certain consulate officials of states foreign service, they are authorized to use the term of esquire and not only while they hold that office but after they are out. And the third, in terms of both prevalence and the honorific in which we spoke, is applies to anyone that held the rank of Captain or above and I earned the honorific doing that. I am proud of it, as long as it does not and it all intent and purposes signify that I am not an attorney because don't use it on their stationary and I am not an attorney, I'm proud to use it.

DB: Well that clarification is helpful and I think I just learned more about Esquire that I care to know. The only time I see it is when people write me letters.

So going in back in time here to when the wall was originally built was there a building permit issued for the wall itself? For the patio or was it part of just a greater construction project that was going and not necessarily specifically called out in the building permit.

DF: No it was not, what occurred was the interior and went to the outside. The porch redone pulled a permit for the wire; I did all the landscaping that included the construction of this patio. Again, I wasn't aware that we needed a permit for the landscaping, I didn't do the landscaping I hired some one to do al the work.

DB: Was the patio and landscaping up when the BI came to do the final inspection on the house?

DF: Actually he only came out to inspect the footings on the porch he never actually came into the back to see. As aside that, from my point of view being a first time home owner when I was doing that work, in my mind, from the property line to 61 there was their lawn and from that point all the way over to my other neighbor was all dirt so I just assumed that was the property line and that's where that wall landed. To Mr. Sullivan's point, I was not with my current

company who has an easement sort of stuff about development and at the time I bought the house I wasn't working there.

DB: People make mistakes and mistakes happen and its hard sometimes in my view I would wager to guess anyone owns a home in Winthrop because the houses are on top of each other it hard figuring out where their lot lines not withstanding a bunch of factors, short of having an actual survey done. I guess one of the questions I have was when you're looking at the property line at the top of the driveway where the concrete and the bituminous separate? Is that roughly the lot line?

DF: Its about the 9 in towards the red car over the lot line, the reason that was done, when I put the driveway in the asphalt contractor left a little beyond the property line such that in the event that they decided to do their driveway a soft cut would be a nice neat soft cut would be done on the property line so that their new asphalt could be married back up to it.

DB: I was just curious to get a lay of the lot, that's all I have Mr. Chairman.

PM: Ms. Dwyer?

ID: What was the date of the original building? 5 years ago?

DF: The patio?

ID: The patio

DF: Yea, roughly about 5 years ago.

ID: And even if the Board granted your request cutting back the lot line that when you're moving the fence a little to, it's your intention to do all of this at the same time?

DF: Yes, it that's why its certain nothing to be defiant I was trying to do it all once we had this hearing and I got a directives from the Town and do it all once and the fence obvious would move with the wall as you see its depicted in the drawing. As I mentioned to Sean in our conversations reached by the Board I'll remove it immediately it that makes folks more comfortable.

AD: We have also discussed with Mr. Sullivan and Atty. Indresano and that was in respect to the pavement we did have a pre-discussion yesterday about the possibility that pavement can all look as one with the rest of the driveway at 57 and my client is willing to bear the cost.

PM: I have a couple of questions, Mr. Ferreira in the pictures you presented the second to last there is a picture looking up hill, there is a large tree and a chain link fence and I see there is a round open in the bottom of the wall I presume that is the drain?

DF: Yes

PM: OK, is that the only drain that is in the wall or are there other drains?

DF: That's the only drain.

PM: So there's no drain in the upper wall?

DF: No.

PM: Just the lower wall at that point, there's nothing over to the right?

DF: Over to the right , the wall doesn't continue all the way over.

PM: In the picture the wall doesn't continue to the right?

DF: Right, it goes in to the ground

PM: The drain here there's nothing over here?

DF: Correct

DB: If you were to move the wall back would there be anything that you could put along that base of the wall along the 57 property line that would give you some sort of drainage that would help with the erosion issue there? What I can't tell from this picture if there is water running down the side of your wall or water sheeting off there land running up against the land causing the erosion, So your blocking water that use to flow across your property from theirs, its probably theirs is higher from a topographical standpoint that the wall is now stopping and that is why if there's any erosion at all it not everything running down your driveway necessarily. So, just from a drain perspective to control an erosion issue is there something that you could put there whether it's a French drain or something like that just so to hold the water away so its not eating up the grass?

DF: Absolutely, the reason the gravel is like that in those picture because I attempted twice unsuccessfully to lay grass on both sides of the house but because of the incline it all sheets down, so that why we opted for crushed stone up there. Yea, I can absolutely put crushed stone along the entire front of the new location of the wall.

DB: Would that be something from standpoint of the owners of 57 would help to regulate the condition out there?

DS: I don't believe so for several reasons, one is if you look at our pictures, instead of those pictures you look at in front of you, look at the nature of the grass that is coming out there, its clearly coming off the structure, the nature of the material itself. Therese a fair amount of it and its not exclusive to.

DB: My question is if they pull it back to where they want to pull it back so its 2 feet off the property line and they drop a French drain in there to catch the water to deal with erosion issue does that help satisfies some of your concerns of 57? One of the big things I heard was erosion besides not liking the wall I get that, erosion.

DS: I never said it was ugly.

DB: I didn't say you said it was ugly, but if you didn't say you didn't like it if it wasn't direct, but I get when I put all those words together in emails I get you don't like it.

DS: I'm not convinced it addresses the flow problem if it corrects a lot of that stuff that is next to that wall, from the patio structure. It means that its filling up inside and backing up so it doesn't address the backing up issue.

DB: But Im talking about the erosion issue and you're talking about the backing up issue which is a subsurface issue in the basement which we don't have any evidence except verbal in the record. There's no picture, there's nothing. And basements backup in Winthrop, it happens, I have one that backs up from time to time. It didn't back up when I first bought it, I've been there 8 years, it backs up now so who knows. Not that I'm discrediting it, you can see the erosion plainly here, I don't know what's causing it but to the extent that there is some

sort of middle ground you guys can get to while were here, you guys don't want to be in land court mitigating a variance for the next couple of years, it doesn't help anybody. So, there's got to be, you're talking 3 feet, you're talking about a structure that has been there for 5 years that no one has complained about which if you looked at the property you might be able to say "Geez, we had this property for 40 odd years maybe that on our side of the line, that not to place blame but there's a practical result here as between the 2 parties that at least in my mind, I'm not speaking for the Board, but, I have a hard time necessarily penalizing the home owner all the way and I don't want to penalize you guys either so it's a tough position for both but if you go to land court someone going to win and someone is going to lose and both of you are going to spend a lot of money getting there.

DS: I guess the issue I have with that approach and the issue the owners have is the by-laws are very clear, the set backs are clear, we offered to meet them halfway and was rejected outright, we offered to finance thinking they might be in a position they now acknowledge, we offered to finance the corrections to address our concerns and theirs and was rejected outright.

DB: I understand and don't know that the characterization and having read the emails was that anything was rejected outright I think there a lot of very careful on both sides discussion that complicated.

DS: This was the offer that was made last Thursday.

DB: All right, I have nothing further at the moment anyway.

ID: If I'm understanding you right Mr. Sullivan what you're suggesting is the patio started building in the corner and would have to then go in an angle, when your talking about while you're correcting the present setback is 10 feet on the side yard the house is in the prior, Mr. Baird said 3 feet, he's referring to the amount of the new structure comes into the preexisting, perhaps it would have to be a little bit less than 5 feet set back then there's both those houses were built I mean changing the patio even if you went all the way back to the 10 feet is going to do something but its not going to nothing what's going on here its going to change the fact that those largest part of the lack of preexisting non conforming use of the whole house at 61 sits within 5 feet of the property line which was legal when it was built. I'm just saying when Mr. Baird characterizing the relief that was requested here is 3 feet you say no its 10 it's the whole situation is 10 foot.

PM: It doesn't exist to be 10 feet, 10 feet is the existing bylaw right now, I would think that both the distance between them is 8 feet if you're lucky one either one. Its enough for a driveway to fit a car in, we don't have that here, you cant take it back 10 feet you have to back to the back of the house to do that.

DB: The set back to 10 feet on the side, they're looking for a variance of 3 feet taking as a compromise.

DS: The new construction was the problem. Maybe new permitting is the answer.

PM: The BOA did that 6 years ago.



DB: Or if they got the permit to do this maybe they wouldn't be sitting here.

DS: I suggested to attempt to meet to discuss with the back up of the water.

PM: I suggest that everyone take a look, I don't see how, if this is reversed, 61 is down hill on a slope, with water drainage, I can't see that happens. Everyone should look and say how it was built, not to say they don't have a problem where the patio is, is the land sloping?

DF: For the most part 57 Birch does slope some.

PM: Here across and parallel?

DF: From what I can recall.

PM: What do you use in case to push the water up?

DF: After yesterday's rain, there should be a puddle.

DB: What Company did you use to build the patio?

DF: Guterras.

PM: We need an opinion of an engineer, to modify what it will do, the Board doesn't want to take a stand on this property to move 2 ft in to the edge of here.

DB: There's the question if the structure is that what's causing the water backup. Coming 2 feet from the property or coming 4 feet where it is now, then back to the house, you're talking about approximately 7 feet.

PM: To Determine the structure the way it is now with the proposal of 2 feet, what will it do, we need to bring this back.

DB: How long will it take to get this info?

DF: I could consult with engineer.

DB: Are you still intending sell?

DF: No, we took it off the market, we've decided to stay.

DB: This should be continued to the next meeting, with info from an engineer after it's looked at, take to the edge of house, don't worry about set back.

PM: So have an engineer look at the water backup, calling back to the edge of houses would solve the problem, get back here with Mr. Sullivan and have these neighbors in agreement.

DS: We should have the attorneys deal with each other.

DB: Prior to next meeting, we should have a site visit on the ground.

DS: Its very dangerous ground it slipping.

DF: You're welcome to go there.

DB: Make site visit part of record.

ID: It's going to be a bigger deal, have the water calculated, info complete, this is more acrimonious they're making us uncomfortable.

DB: Motion to continue matter to Thursday, September 23, 2010 at 7:00 p.m. The Board will start at 6:30 p.m. at the property with a site visit, subject to getting engineers stamped calculation.

ID: Second

Voted: All approved

#023-2010 – 115 Plummer Avenue, Mr. & Mrs. Paul Chmielinski

Sitting: PM/JR/DB

Russ Sanford, Level Line representing applicant

RS: My client wants to modify his house, redo his kitchen and add a bathroom on the first floor for his mother-in-law giving her the flexibility to stay there. The issue is that it's too close to the garage. Not one neighbor has an issue with this project.

DB: What materials will be used.

RS: Same characteristics. as the house

DB: Capt. Hazlett any questions?

NH: Will this be a sleeping area?

RS: No.

JR: Will the new addition have a flat roof?

RS: A shed roof.

JR: Which way is the egress?

RS: Coming out, it'll be a new one.

JR: 4 1/2 ft?

PM: Look for 4 1/2 ft. What about foundation?

RS: Footing will be veneer, stucco finish around.

PM: Is there intent to continue the roof?

RS: Will go the same way.

PM: The concern is the distance between the garage and the house 5 1/2 feet.

Picture #2 looks at from distance the house and garage.

RS: Distance

PM: Where is the egress of the house?

RS: Here on the driveway.

JR: What is the garage made of?

RS: Cinderblock

PM: No further questions, what's the pleasure of the Board?

DB: Motion to grant relief requested for variance from the required 10 foot distance between a principle structure and accessory structure contained in Section 17.16.020 (c) 5 of the Town of Winthrop Zoning Ordinance finding that owing to the soil, shape, and topography of the lot, being unusual and not characteristic of the surrounding properties that with the strict enforcement of the zoning by-laws would lead to substantial harm and that the addition and relief requested would not cause a substantial impairment or danger to the public welfare in otherwise in accordance with 40A Section 10 that the relief be granted subject to conditions with regard to finished materials and plans submitted.

JR: Seconded

All Voted: 3-0 unanimously

DB: Motion to go into Executive Session.

PM: Second

All Voted: 3-0 unanimously

DB: Motion made to come out of Executive Session and return to regular meeting.

ID: Second

All Voted: 3-0 unanimously

DB: Motion to approve minutes of August 12, 2010

ID: Seconded

All Voted: 3-0 unanimously

PM: Discussion of schedule of meetings for remainder of 2010. Next regular meetings scheduled:

Thursday, September 23, 2010

Thursday, October 28, 2010

Thursday, December 2, 2010

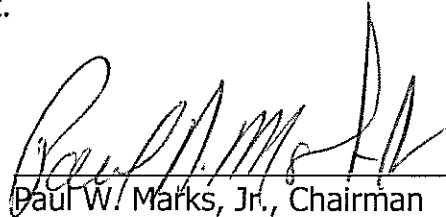
Thursday, December 30, 2010

DB: Motion made to adjourn meeting at.

ID: Second

All voted: 3-0 unanimously

Adjourned at 9:15 p.m.



Paul W. Marks, Jr., Chairman