

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

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

RECEIVED

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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, and Darren M. Baird.

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.	022-2010	61 Birch Rd.*	David & Stacey Ferreira	PM/ID/DB
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* Continued from August 26, 2010

#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. Applicant David Ferreira and Civil Engineer Carleton Quinn are both in attendance.

Representing Owner of 57 Birch Road, Winthrop, MA is Attorney Robert Indresano. Also in attendance is Donald Sullivan.

PM: This is a continuation meeting of the property at 61 Birch Rd. We just came from a site visit at 61 Birch Rd, attended by Paul Marks, Darren Baird, and Irene Dwyer and representatives from the proponent. This is a continuation of the hearing and there is an attachment that Mr. Donahue sent out and I'll let him briefly explain. We are not taking any testimony tonight, what we will do is

discuss the letter and drawing from the engineer. Did you people see this? You haven't seen this? Do you have an extra copy Mr. Donahue?

DB: Mr. Chairman let me clarify that we are taking testimony on this engineering letter from the applicant, correct?

PM: Correct. Mr. Donahue, please proceed.

SD: Thank you Mr. Chairman. I'm Sean Donahue, and I am representing the applicants in this matter. I do have a copy for the Board members that was previously filed with the Board. It contains a report from the civil engineer I guess I can leave it to my client to explain a little bit about the civil engineer.

DF: The civil engineer with me tonight representing from the result of the last hearing the Board expressed a desire to for me to engage a civil engineer to look at the water on our specifically and what is the present condition and occurring to the set back of the problem. They came out and did a site visit and came up with a drawing and design. It was a direct result of the Board's request.

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PM: Anything else Mr. Donahue on this?

SD: That's it, Mr. Chairman.

PM: Any comments from Atty. Indresano on the engineer's report?

ATTY INDRESANO: Yes, I would like to ask the engineer if about the drain? Is that going to go on the property of 57 Birch?

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AI: Are they planning to remove that portion of the concrete?

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AI: I would say yes.

PM: Our next hearing is the 28th of October.

ID: I'm not going to be here.

PM: You're not going to be here?

ID: No, that's why we changed September around because I knew I was going to be gone in October, so, we'll have to put it off to November.

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DB: We have the ability to deny or approve the variance requested. That is what is in front of us, I think what is in the best interest of everyone here because you're neighbors and that doesn't necessarily means that everyone is going to get along, believe me I know first hand, but if there's not an agreement reached between the parties then someone is going to be disappointed by our opinion, could be both parties going to be disappointed by our opinions, who knows, but its not certainly not in the best interest of the town to be litigating something when it doesn't seems that the parties are all that far apart on what the solution is, it just doesn't make any sense to anybody, so whether it makes sense to continue so you guys can come back to us in a couple of weeks to tell us yes we've reached an agreement or no we haven't. I guess its up to you guys whether A: you want to spend more time on this or B: you guys want to have the ability to talk to each other and have a dialogue and come to a reasonable agreement between the parties and not just I want this and I want this and both of you sit there with your arms crossed. That wont work either.

DS: Don't mistake that, we're willing to accommodate, part of that has to come down anyways so its not a huge issue to us, but the fact is that the ___ of 57 it moves, there's no other word for it, so were going the right way, as opposed to what we would do at land court is what we would say that we want the 10 feet that the by law calls for.

AI: So there's a proposal on the table from us and I suspect that the when the proposal is accepted that we will accept their proposal.

SD: In our proposal that he promised never to ...

DB: The law is the law, promising to never violate a law, is that really enforceable? Nah.

DS: Any actually the words specifically were put in the material and the fact is no one is going to actually agree something with material violations.

DB: These two refrain from future violation in the building code in the Town by-law present prior implementation of any future plans for property modification of tenth the set back of the owners.

AI: Isn't that what were suppose to do anyway? There's a by-law there.

SD: To enforce a bylaw by settlement.

DB: So here's what we can do, either we can continue this and you guys can come back in a couple of weeks or we can close the hearing and take this under

advisement and make a decision. I don't care either way, I don't. There has to be some settlement on this before I pull my own hair out.

PM: Ms. Dwyer won't be here on the 28th of October, so. Would the parties like to take a few minutes to discuss this? We can recess for 5 minutes.

DB: Move to recess for 5 minutes Mr. Chairman.

PM: All approve.

PM: We are back on the recorder.

SD: On behalf of my client we are talk to the neighbors to work something out. It certainly can't hurt; obviously the hope is to come to some sort of agreement. I just wanted to state that another concern is that Mr. Sullivan may have about the plan that depicts some berm on his property, I just want to point out that that berm is being proposed for his benefit, if he doesn't want it on there, we can re-design it.

PM: OK, that is something you can work out, if you want to do that then we are meeting again until November.

DB: Mr. Chairman, before you get to that I am assuming that you guys are amendable to a meeting?

AI: Yes we are.

DB: If you don't want to meet what is the point?

PM: December 2nd is the next meeting date that we have selected.

DS: Does that constitute a waiver for the deadline?

DB: We'll ask for them to sign a continuance paper. We wont get into a constructive grand situation.

PM: You'll sign the waiver and what we'll do is continue this to the hearing on December 2, in the Harvey Hearing Room.

MOTION: (Darren Baird): I have a motion to continue this to Thursday, December 2, 2010, Harvey Hearing Room, 7:00 p.m.

SECONDED: Irene Dwyer

PM: Any discussion on the motion?

DB: None Mr. Chairman

PM: All in favor

VOTED: ALL IN FAVOR.

DB: So continued. Move to adjourn.

MOTION: (Irene Dwyer) Move to adjourn.

SECONDED: (Darren Baird)

PM: All in favor

VOTED: ALL IN FAVOR.

Meeting is adjourned at 7:40 p.m.

Paul W. Marks, Jr.
Chairman

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DB: So here's what we can do, either we can continue this and you guys can come back in a couple of weeks or we can close the hearing and take this under

advisement and make a decision. I don't care either way, I don't. There has to be some settlement on this before I pull my own hair out.

PM: Ms. Dwyer won't be here on the 28th of October, so. Would the parties like to take a few minutes to discuss this? We can recess for 5 minutes.

DB: Move to recess for 5 minutes Mr. Chairman.

PM: All approve.

PM: We are back on the recorder.

SD: On behalf of my client we are talk to the neighbors to work something out. It certainly can't hurt; obviously the hope is to come to some sort of agreement. I just wanted to state that another concern is that Mr. Sullivan may have about the plan that depicts some berm on his property, I just want to point out that that berm is being proposed for his benefit, if he doesn't want it on there, we can re-design it.

PM: OK, that is something you can work out, if you want to do that then we are meeting again until November.

DB: Mr. Chairman, before you get to that I am assuming that you guys are amendable to a meeting?

AI: Yes we are.

DB: If you don't want to meet what is the point?

PM: December 2nd is the next meeting date that we have selected.

DS: Does that constitute a waiver for the deadline?

DB: We'll ask for them to sign a continuance paper. We wont get into a constructive grand situation.

PM: You'll sign the waiver and what we'll do is continue this to the hearing on December 2, in the Harvey Hearing Room.

MOTION: (Darren Baird): I have a motion to continue this to Thursday, December 2, 2010, Harvey Hearing Room, 7:00 p.m.

SECONDED: Irene Dwyer

PM: Any discussion on the motion?

DB: None Mr. Chairman

PM: All in favor

VOTED: ALL IN FAVOR.

DB: So continued. Move to adjourn.

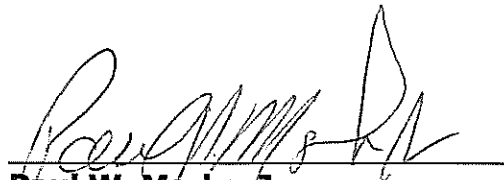
MOTION: (Irene Dwyer) Move to adjourn.

SECONDED: (Darren Baird)

PM: All in favor

VOTED: ALL IN FAVOR.

Meeting is adjourned at 7:40 p.m.


Paul W. Marks, Jr.
Chairman