



**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, December 2, 2010
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152*

RECEIVED
TOWN OF WINTHROP
DEC 30 2010 12:03 PM

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:04 p.m. In attendance at the hearing were the following Board Members, Darren M. Baird, Brian Beattie, Irene Dwyer, and John Rich. 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.

01.	#022-2010 **	61 Birch Rd.	David & Stacey Ferreira	PM/DB/ID
02.	#025-2010*	10-26 Somerset Ave.	East Boston Neighborhood Health Center Corp.	PM/DB/BB
03.	#024-2010*	82 Faun Bar Ave.	Rachel Gray & James Clark	PM/BB/DB
04.	#027-2010	294 Bowdoin St.	Charles S. Tewksbury	
05.	#028-2010	18 Winthrop Shore Dr.	Rebecca & Howard Ross	

#022-2019 – 61 Birch Road, David and Stacey Ferreira*

***Continued from October 28, 2010**

Sitting: PM/DB/ID

David Ferreira, Sean Donahue, Esq., Representing applicants was in attendance as well as Donald Sullivan and Atty. Indrisano.

SD: Mr. Chairman and members of the Board, Good evening my name is Sean Donahue I am representing the owners David and Stacey Ferreira. We last appeared at hearing the Board requested that the applicants speak to the neighbors and property owners at 57 Birch Rd. Which is adjacent to the subject property regarding their concerns, we did that, we believe that we've come up with the proposal that is acceptable to what the applicant and the neighbor has presented that. I apologize to the timeliness of the submission but this just came available.

PM: Do you want to walk us through this and tell us what you want to do?

SD: At issue is you may remember is the patio that was constructed in the rear yard of 61 Birch, which was close to the property of 57 Birch. My client agreed to scale back the moving encroachment the question was how far back to we have to come? Our zoning district is ten feet and in our application we asked for an 8 ft variance. What we proposed now is a set back of 5'6" as you can see on the site plan, which is the second page in.

DB: So your looking for a 4'6" variance, is that correct? Are you talking inches or tenths of feet? You talking 6/12' or 6/10"? 5.6 or so you'd want 4.4 for a variance?

DF: We come 5.6 off the property.

DB: 5 foot 6 not 5.6 feet? Correct?

DF: Correct

DB: So you'd need a variance of 4.6" not 4.4'?

DF: Right

DB: OK

SD: Included in this plan is a proposal for a drainage, a storm water run off, the proposal is also included in the plan on the third page the drainage in the plan. Run a pipe under ground right along the boundary line, which will take the water, if you remember the rear yard at 61, Birch is pitched considerably, so we'd run the water down underground to the Ferreira yard. My client has also agreed to tie in the new ____ from 57 into that pipe so that the water from the roof will flow down.

PM: Anything else?

SD: That's it.

PM: Questions from the Board?

ID: The same question as before on page 2, 2 arrows on is 5.6', which is that, should require feet of 6.6"?

DF: Correct

ID: And the 4.0, I'm not sure

DB: I'm not sure what the 4.0 is myself to be perfectly honest with you.

PM: That looks like that's the distance from the to the pipe. The dark black line what is that representing?

DB: That is the new location of the retaining wall, Mr. Chairman.

PM: Ok, so the retaining wall is just off the foundation?

DF: Correct

ID: Which makes it that the first arrow – the black line is 5.6' from there to the property line?

DF: 5.6 to the property line.

PM: A 4.6 variance is what they're looking for.

DB: I'm not sure what that 4 feet is?

PM: The 4 feet from the pipe but what were saying here is the 5.6 dimension from the foundation to the outside edge overlooking the property there would be a 4'6 variance.

DB: Correct

PM: There would be a 4'6 variance for the location of the retaining wall.

DF: Correct

ID: I understand the plan but the next question was the drafts of

DF: The email was just a memorialization of myself and the owners of 57 took and just a summarization reflected in those drawings.

SD: I'm happy to the tell the Board that the applicant and his neighbor are communicating once a again, as you may recall at the last meeting there was a break down of communication and they refused to speak to each other and it deteriorated. Eventually they sought to come up with a plan that was mutually acceptable by both.

PM: That is summarized by the email that we got from Don Sullivan, correct? And it contains 6 items.

DS: Only 2 are relevant.

PM: Right, to us. So we will accept this email as an exhibit. On the drain that's going to down and underground and its going to come up to the surface it going to have 2 outlets on is going to be on 61 and one is going to be on 57.

DF: Correct

PM: And you're going to tie 57 into that drain?

DF: Correct

PM: Mr. Baird do you see a problem with that in the future with selling the property being tied into another property?

SD: You can simply detach it.

DB: It's not really for us, it we want to make it a condition to this variance then it would be on record when it gets recorded and somebody will find it in the Registry it's not an easement, they're not asking for as easement.

Atty. Michael Indrisano: That's what my concern that it gets recorded.

PM: We'll have it as a condition that reads into our variance, I don't think that it going to effect realistically it benefits the owner of 57. I don't think we should worry about that too much.

BB: The one thing I can say about the positive side since he's moved in he's improved the house about a thousand percent and he's also improved the neighborhood about a thousand percent.

DS: Absolutely. I don't think there's anybody who would begin to argue that.

PM: Anyone else? Pleasure of the Board?

MOTION: (Darren Baird) To grant a variance from the side yard requirements of 10 feet of 4'6" from the easterly side yard of the property finding that soils shape and topography of the site is sufficiently unique and granted that this does not create a substantial hardship or is not substantially more detrimental to the community than the literal enforcement of the zoning by-law would be against the applicant and otherwise generally finding its consistency with granting this is consistent with the provisions of 40A Section 10. I would grant the variance subject to conditions consistent with the email that we received from Mr. Sullivan with regard to the tie in the installation of the drainage along the common property line on the applicant's land and the tie in of the roof leader from 57 Birch Rd in to the common drainage system and that all this work be consistent to the Board by Dana F. Perkins Inc. dated May 28, 2010. And Allen Major containing three sheets dated November 15, 2010.

SECOND: (Irene Dwyer)

VOTED: ALL IN FAVOR

PM: Decision is granted, based on the documents here. Do you want to write the decision?

SD: I will.

PM: Can we get that within?

SD: A week.

PM: Alright and the procedure will be we'll get it and record it with the Clerk and it'll be recorded with the Registry of Deeds after that a Building Permit has to be issued for the work and you will begin I expect in the Spring.

DF: I've already spoken with Mr. Soper and he's agreed accept the ____.

DB: And obviously between the filing with the Town Clerk and the recording there's a 21-day appeal period.

#025-2010 – 10-26 Somerset Avenue, East Boston Neighborhood Health Center

Sitting: PM/DB/BB

Atty. Richard Lynds, Steven Fraser, and Kevin Wyrsh representing E.B.N.H.C. is in attendance.

RL: Good evening Mr. Chairman and members of the Board, for the record Richard Lynds on behalf of E.B.N.H. C. with me is Steven Fraser who is the NHC Develop Director and Kevin Wyrsh from Ingenuity who is the architect in case this Board has a few questions. As this Board knows we were before the Board

at the end of October on a quest for a number of variances from the Winthrop Zoning Bylaw with respect for the proposal to demolish the existing structure 10-26 Somerset Ave. and construct an approximately 9200 sq. ft. new health care facility which would be the Winthrop Community Health Center. Since that meeting the Board's decision to continue this evening was pending a couple of things first our ability to go before Site Plan Review and have some review and input from Site Plan Review as well as complete the planning board process we have applied for this time and secured an SP3 from the Planning Board in respect to this project. We also spent a considerable amount of time and having very comprehensive Site Plan Review session, 2 sessions actually and I know that Mr. Hickey is here and if there's any extra input he may want to add to what we think came out of that process I will hope that he will do so. Unfortunately I know that the Board at the last meeting wanted to wait for a recommendation from Site Plan Review I would point that out that a recommendation is not mandatory from Site Plan Review although no recommendation was made, I would suggest to the Board that nothing should be read into that. This was also addressed at the Planning Board meeting in which the Planning Board made a very comprehensive decision on the SP3. It's my understanding and correct me if I am wrong Mr. Chairman that the planning Board has forwarded it's decision to the Zoning Board. Instructions they have requested that we have made was that they provide you with the conditions that they have proposed as part of the SP3 which I am guessing which will quite helpful. I do have a copy of it. It's my copy with markings for the record with what their particular conditions were for the SP3. I'd be glad to hand it off to the secretary to mark as an exhibit. Some of the highlights and its really important to reiterate why we're in before this Board based upon what's in the Winthrop Zoning Bylaw we would be required we feel based upon discussions with the BI and his refusal letters there is a number of items that we require relief from for the record ____yard set back the relief we are requesting is 14 ft. We can review that on the Site plan and we can provide the Board with an updated Site Plan. On site parking relief is what the parking spaces, 15 ft. landscape strip adjacent to the street right of way we're requesting for no strip on that particular side of the building. 15ft landscape street and buffer strip in a residential area the relief requested is zero or such other amount that the Board deems appropriate. And then a minimum of 24 ft aisle for two-way traffic. The relief that we are requesting is for 18 ft or such other amount that the Board deems appropriate. With respect to all of those items except parking I believe that we've addressed to the satisfaction top the Site Plan Review committee as well as to the Site Plan Review alternatives and appropriate mitigation for that type of buffering and that type of screening and issues that may need to be addressed. I can have Kevin touch upon briefly some of the solutions that we've proposed for the rear of the property, which we believe goes to the variances are required for. I'll speak to the parking and provide the Board a copy of a letter we've submitted to the Town Council President as well as the Town Manager and I'll explain how that ties into the Planning Board's decision.

One of the most important issues with respect to the proposal to address the need for parking for not only the employees but also the patients who would utilize the facility. Under the Winthrop Bylaw we would be required to provide a total of 15 parking spaces. We arrived at that number based upon the calculation that's permitted for the center business district that allows us to deduct one third of the whole number of spaces which would technically be required. I believe 23 based upon 400 square feet of each 400 sq. feet of gross foyer area we are to provide one parking space with this type of use. Based upon the 9,000 of so square feet it comes up to about 23 or so spaces. The center of business district recognizes that there is municipal parking in other lots in the area and therefore the bylaw allows for one-third reduction. And that is how we arrived at the 15. We are proposing a total of 4 parking spaces they will all be designated as handicapped spaces and they will be available to patients for those using the facilities requiring handicapped parking. We figured that was the most feasible use of those spaces. One of the issues that came up in Site Plan Review is whether or not is that we should make 2 of those non-handicapped and 2 handicapped. I think there are plenty of examples in this town where you have a level of confusion and I don't want to single anyone out in particular, Winthrop Marketplace with their handicapped parking located at the front door the question whether one is handicapped and one isn't. We just think it makes the best sense to have all these spaces handicapped with appropriate signage marking that handicap parking only in this particular area. So that raises the question about what to do with the parking requirements with the remaining 11 spaces. We looked at a number of alternatives for addressing the parking issues based upon the existing conditions of this site and the existing structure that is there and the prior use of being a prior retail use. Any use that goes in here, Mr. Chairman, would require some parking variance if we would to not do anything with the building. So the prior retail use which was Family Dollar actually would require more parking if we would be trying to re-introduce more retail at this particular location. Because retail requires at least 1 space for every 350 square feet. With the use that we are proposing it would be 1 space for every 400 square feet. So with that we looked at some of the areas in and around the center as to whether there were viable alternatives. There's a number of challenges with some of the lots in and around the area some seem much more feasible than others. In particular the lots behind the Bank of America location, we were instructed by the Planning Board to take a look at that whether that would be a viable alternative. While it seems like it makes a lot of sense because of the proximity the challenges in trying to negotiate with owners and all of the leases who have rights to that parking lot and not to mention the additional the zoning implications that may present to those businesses. We felt that that would present an immediate challenge by displacing a number of parking spaces that were already being used into the center by tying them up with any spaces that we may use. So we didn't believe that that was the best alternative. We also looked at the CVS parking lot, which again presents some of the same

challenges, and we also looked at a private property owner in close proximity to the proposed facility. Although that would also present a good alternative because of its proximity the capital investment that would be required either from the owner and the health center at this time did not present the best alternative. We did approach the town as to any solution that they may have and discussions with the Town Manager and the Council President there was a lot on the corner of Walden and Pauline Street which is unimproved at this time and being used as a staging area but there is a possible solution there which is contained and outlined in the letter proposed that we submitted to the town. We've informed the Site Planning Review but also the Planning Board and although the Planning Board can't require use to enter into an agreement with the town we feel that maybe at this time the most viable alternative one of the conditions that the planning board did require that we at least secure property prior to the building permit being issued was that it was located within 1,000 ft of the proposed facility for at least 12 spaces. If we are not able to do that we're probably going to be required from the planning board that we pay into a parking mitigation fund at an amount that is determined by the town manager. Which would go towards trying to improve the parking conditions or situations in the center. We have no objection to doing that. I guess the details of that would also have to be worked out. That's in a nutshell the most significant issue that this project presents to this Board of Appeals at this time. As the dimensional and buffering issues I can let Kevin give a brief overview of what we're going to do to the rear of the property.

KW: To summarize the outcome of the Site Planning Review Committee and some of the updates that we've made to respond to those. Two of the primary challenges, one of the run off concerns both from the adjacent property and the ponding which occurs at the bottom of the intersection of Cottage Park and Somerset and then the parking access into the rear of the space. Speaking first toward the parking I think we have the numbers matching here we have a 20-½ floor isle.

RL: I think it was actually a 20 or a 21-½ foot, I think we got higher than the ½. It might have been 21 we were looking for 18 in our petition but through site plan review and certainly Mr. Dime's recommendations we got it closer to 21. Which the Planning Board said they could look at.

KW: OK and that was Mr. Dimes and a couple of suggestions he had that we could work with overhangs and vehicles and to introduce some curb stops here at the end that we could really maximize the parking spaces. Then the other element we looked at was storm water run off that'd introduce some infiltration chambers into the site. We have provided a stone trench system along the back to capture some of the runoff to the adjacent property which will ____ the infiltration chamber and then initial proposal was to connect that directly to the town storm but the concern was brought up about the ponding at the corner of the site and the HC has offered to participate in helping improving the city by

introducing a manhole and catch basin to help catch some of the ponding effects.

RL: We'll do that at our cost.

KW: Was there any other specific things?

RL: Just on the buffering we talked the treatment on the fence of the abutter on the rear property side, their side property side, and our rear property line. Just talk about what we're doing.

KW: So there was a discussion of introducing a fence which would be proposed that we work with the neighbors to pick a fence that is esthetically pleasing to them as well work to mitigate any light pollution or any headlights pulling into a parking space this would be a solid fence and then there would be a planting buffering on either side of the fence, and I think again we'd work with the abutting neighbor to get a solution on the thing.

RL: If I can just get over some of the conditions that the Planning Board had recommended we would again have no objections should this Board decide to grant the relief we're requesting to have these also incorporated in the entire decision of the Planning Board and the SP3.

PM: I don't think we've seen that. Is there a date on it?

RL: It's November 8th.

PM: Joanne, you never got anything from the Planning Board, Tanji upstairs?

JD: No.

RL: My understanding they were going to actually issue a recommendation or a letter of support to the Board of Appeal they knew you were coming back on December 2nd. I do have some markings on it, I don't mind if Joanne takes a copy of it.

PM: Can you give us a synopsis of it?

RL: So for the conditions of the planning board had imposed as part of it's SP3 the first thing they want us to do is to present a structured management plan to review and approve by the Public Works Director and Police Chief of the Town of Winthrop. The construction management plan has to specify the hours of operations and procedure for mitigation of noise and dust during construction, a traffic management plan to protect pedestrians and avoid the necessary congestion during construction, and to plan to control rodents, insects, and all in compliance with town ordinance. No objection with that at all. They would like the placement of exterior trash receptacles at the 2 public entrances of the building, maintenances and screening and all exterior receptacles in trash storage units to be screened from public view and maintained in accordance with local ordinances. We have no objections. Recommendations or actually requirement that the exterior dumpster has a alternate generator to be secured against public entry maybe screened so as to be invisible to abutting property owners. Invisible might be a strong word, not visible or not as as visible. We'll do our best to try to make it disappear. We also need to design and install a storm water retention system to design as Kevin said as far as the off site storm water discharge. To present a detailed grading and landscape plan to the Public

Works Director for approval, the landscape plan was to provide for attractive vegetative facility parking area and the adjacent parcel on Cottage Park Road. We'll also make the drainage improvement on the intersection of Cottage Park Road and Somerset Ave. so as to prevent the current pooling of storm water. Within the handicapped public ramp area. We are doing that at the cost of the Health Center and with at no of the Town. We are also required to construct new decorative sidewalks consist with the center of business streetscape. Along Somerset Ave. frontage and along Cottage Park Rd the rear lot, I'm sure the Board members know they decorative sidewalk does not extend presently past the old Family Dollar, It think it stops just before that where that crosswalk is. So we'll incorporate that into the sidewalk as well. We have to provide survey and photo documentation of the building conditions for parcels that about the proposed construction zone. Provide a detailed parking plan for review and approval by the Public Works Director and Police Chief demonstrating our commitment to secure adequate public parking for employees and customers. The way the Planning Board had approached that was saying that evidence that satisfaction of this condition should include purchase of long-term lease and of construction of at least 12 new parking spaces within a 1,000 radius of the building. Or, negotiation of parking mitigate strategy with the Town Manager including contribution towards current or future addition to set up business district parking spot and then the last condition is the approval of the variance by the Town of Winthrop Zoning Board of Appeal. With that Mr. Chairman, I would be glad to get a copy of this to Ms. DeMato for the record. With that, we feel that many of the issues that are brought up by the Zoning variance that we are requesting for this petition have been addressed in Site Plan as well as the condition for the SPO3 by the Planning Board. With that I'd be happy to answer any questions of the Board.

PM: Before we do, I see that Mr. Hickey is here and I'd like to have his input on your site plan review, there was not a complete report issued on that and just some background on that if you please.

Dave Hickey, Director of Public Works: As the applicant has indicated in 2 or 3 previously site plan meetings all as which I would describe as very productive the input that we gave and saw in revisions. The issues that we raised primarily concern of abutting properties protection of the public and drainage seemed to all be addressed. In fact we were all working diligently towards producing a report however we kept stumbling on the issue of parking. Clearly they are trying to resolve it but the application itself doesn't have a full solution to it. Our concerns were that it is sort of an outlier in the center of business area in that if its not addressed to the extent that it can be an there's impact to abutting residential areas. So that was our concern and after working really hard at 3 meetings maybe about a month's worth of time looking at various revisions we felt that we couldn't produce a report simply because it was an unknown. The project itself I think that the building compliments what's down there I think the effort put into protecting the public, we saw some early

management stuff public safety an interest in having a clean property was clearly as presented with their offer of trash management and drainage upgrades in thing of that nature. But the parking was a concern and we didn't feel that we could complete our work without knowing where it is and what it was. One thing interesting to the tell the Board that in the process we reviewed at least 2 center business areas studies one specific to parking that is 20 years old and it is amazing in reading it the some of the traffic standpoint not a lot is changed that if you changed Liberty Market to CVS and MacDonald's to Nick's Place the traffic study would almost fit today. It indicated today that there is parking; it indicated that mix is maybe not everything that it should be as far as private/public relationship as available parking but it also strongly indicated that the community perception is that there is adequate parking. So clearly parking was an issue that we visited their facility in East Boston, it is a beautiful facility, architectural, nice features to it, but another traffic spot so at times can be a problematic there but we're worried about that there is only 2 roads into this site and they are residential areas. So if there is a back up of parking or a shortage of parking the impact is likely to fold back into those neighborhoods. We wanted something strong in the way of where, we think the plan as far as finding parking for the employees makes a lot of sense. Employees aren't parking here the size of the building, the volume and the likely rate of turn over works very good. But absent that we think that there's a potential impact that we're not quite comfortable with. Does that help?

PM: Thank you.

RL: If I could, that last phrase, you're not quite comfortable with an issuing a site plan recommendation? But no disagreement with the Planning Board recommendation to ensure that parking is addressed as part of any permit that is issued? If I could just respond briefly, we certainly appreciate Mr. Hickey's time and effort that he put into the Site Plan review meetings that we did have and the input that we got was very helpful in determining what would be best for this particular project. The concern over traffic being an issue for this facility based upon experience based upon the East Boston facility I think should be distinguished because there are distinctions. There is no urgent care emergency rooms associated with this facility, this is simply primary care and pediatrics. Generally people with appointments would be coming here not just showing up for general sick calls. In addition I think upon what Mr. Hickey did say there is available parking in the center. Certainly there's a problem with a lot of the employees who either work for in and around the center using center parking spaces for long term parking and that really comes down to enforcement issues and we sentenced to that whether we give the employees to private parking to ensure that we are not adding to any part of that problem that may exist in the center. But we also look at the economic benefit and the improvement that this makes to the center and people are coming to HC or coming to the center for whatever reason, whether to do some shopping, hair appointment, pick up something and then go to there appointment they can be using multiple

businesses at the same time. So the people are parking in the center may not just be for the HC, may not be coming just for that. We feel that that if taken into account with the desire to provide employee parking whether at some private off site location or public location that the town enters into arrangement with we believe that that would adequately address the 11 parking spaces we are asking this board for a variance. I'd be happy to answer any other questions.

PM: Anything from the Board? Mr. Beattie?

BB: What would be the average stay for a person who wants to make an appointment to go into the HC be?

Steven Fraser: About ½ per session for adult medicine and pediatric is about 15 minutes. The appointments are in ½ blocks.

BB: No matter how you look at this there is no perfect solution to parking no matter what you put there you are never going to have a perfect solution as far as I can see. But I think your hours are only 8 or 9 to 5 or what ever you may be you're not going to interfere any nights. You're going to bring a lot of people to the center and I think that its probably one of the best things that going to happen to the center in years. You got a total dump down there now and the building would have to be knocked down so this is a great way of revitalizing the whole center area. You're never going have a perfect, whether you go there or if they put another CVS or a Stop and Shop or whatever they put in there, its never going to be perfect. We really have to work on this and get this in there.

SF: Thank you. In terms of use from a parking standpoint is one of the advantages of a clinic use is that there is scheduled appointments which smoothes out the traffic and you don't have people running in there at lunch time.

JR: How many offices are there?

SF: Twelve offices total.

DB: Are there going to be Saturday hours?

SF: Not initially but in response to the demand we've talked about that, maybe a pediatric walk in.

DB: That's when the traffic scares me the most, is a Saturday morning, the condition there, I know on a Saturday morning it is can be a little mayhem down there. That's the one time I'm most concerned without. The bottom line that if someone were operating retail there you'd have arguably a bigger problem there with a successful retail but leaving a blighted condition there is unacceptable.

PM: Mr. Hickey when you and the Site Plan review looked at this just past the corner of the building up to where the corner of the building is a handicapped parking space of the street and around the corner is a florist is a handicapped spot? I know that is for those businesses there the close proximity of that handicapped spot on Somerset to the front entrance there where I'm coming from there is to not to make all those spaces in the back handicapped but if you could relieve some of those regular spaces and take away the relief to 10 or 8 maybe and utilizes that handicapped space on the street as one of the

handicapped spaces that you need for this facilities or for doing business in the center it's located close to the entrance there. And if that were the case maybe make one space in the back handicapped and give 3 to regular parking that might help the situation.

RL: Mr. Chairman, we did talk about that extensively in Site Plan Review and again I am using by example of what I know going to Winthrop Marketplace is a perfect example that front area where they have some spaces we think it would probably be problematic if people were fighting for spaces in there. Especially if people weren't aware that there were either 1 or just 2 handicapped spaces that anyone can just parking in. I think it would cut down on the amount of activity of people using that particular part of the lot and whether we are going to be at either 8 or 9 or 10 spaces I think the Planning Board recognizes that we'll have the requirements are 12 spaces. 4 handicapped spaces, the 11 we are required to have plus the additional one off site if we find a location off site. As for the handicapped space out front my only concern that that would available to just about anyone in the center and likely to be used by anyone utilizing any business in the center so it may actually reduce the availability of handicapped spaces. These would be exclusive only for the center. We feel the way the way we would mark that part of the lot would be handicapped parking only so there's no confusion about anyone pulling into the lot to either tie up the space for a long period time or what have you. I think more importantly there will be a rear entrance in that portion of the building and makes it very feasible for handicapped parking so that they have the ability to get right into the building as opposed to finding a spot in center and then having to trek their way through especially in ht winter months.

DB: For me using the handicapped spaces on the street at the corner in the winter months to make someone actually have to come back the corner and come down that side walk where there is, from a pedestrian safety standpoint, it's not at least in my opinion Mr. Chairman the best place to put that handicapped spot in keeping the back of the lot HP especially given a medical building there a higher likelihood that someone going into that building to see a doctor has a mobility issue than someone going into the Pizza Shack.. I think that keeping that strictly HP makes a lot of sense. Even if you made it one HP in the back what are you going to gain parking space is out there by non handicapped spaces because your still going to have to have the requisite width for handicapped space plus the area for a chair to come out of the car. You might pick up one compact space, the way that looks like it is arranged maybe. So I think you are better leaving it 4 handicapped and just keeping that traffic and the pedestrian traffic generated by it off the street where there can only be hang-ups and problems and issues for the person who had mobility issues getting out of their car and into the facility.

RL: That was discussed extensively as I am sure Mr. Hickey can add.

DH: We didn't specifically look at moving HC stuff around the center but I know there was another discussion that lot in the back is ____ it's only about 4 spots

and needs to make sense to us to particularly if we can do a better job landscaping the fence so the big concern was you're sending someone down a dead end street to compact spaces you're adding a lot more confusion than there already is. It's probably not the best way to go. I don't know if we're going to gain again at the end of the day in moving HC spaces around and response to this you might not gain much. One other thing with the Police Chief's concern from the enforcement standpoint that continued to be re ____ from the Site Plan there are certainly a fair amount of signage and some of the regulations as far as what the limits are there are resource levels that probably not going to be routine levels of enforcement so that was his big concern.

DB: Is this all 2-hour parking or something otherwise limited during the day?

DH: There's a 2-hour and some sections are 1 hour.

RL: That section of Cottage Park Rd is 30 minute parking.

DB: Is that going to work for you guys? I never wait when I go into a doctor's office.

PM: Was there any thought of adding a handicapped space down that end of the center. The reason I'm asking this because you're asking someone to pull in whose handicapped driving to make a turn like that to get in if you had something they could pull into or back into on the street would it be easier for that person to maneuver? What I'm looking is at the end of Cottage Park Rd just before the end of the building if that last space is handicapped space it would be easier for someone to pull into and get out of it and then come into either door of the center.

DB: The cars are parked on both sides of Cottage Park or on Somerset that's still tough to parallel park any vehicle of any size.

DH: I think what we heard was that's going to be the spot where the van has access to that.

RL: There is an area halfway down Cottage Park midway down the building that shows an area for the drop off. It was certainly not to create congestion in the center or at least on the Somerset side. Cottage Park Rd is certainly more or less intense when it comes to traffic and it has a better ability to the drop off they can then enter through the rear or the front. I'd also point out that I think that part of Cottage Park Rd is wider than Somerset. There's not a lot of parking on that side of Cottage Park Rd.

PM: I'm glad to see that they have a retentions basin to take the water from the roof, to bring it down to there. The roof drainage lines that show on you site plan I presume those are going to be new? Is the manhole in the street?

KW: This is a slightly updated version from civil plan he has.

PM: Are the retention basin you have a line coming out and tying into a manhole?

KW: Correct

PM: You have another drain coming into the manhole? Is that existing?

KW: No that's new.

PM: That's new? It's going to come down and pick up a catch basin?

KW: Correct.

PM: And come down and tie into Somerset?

KW: Correct.

PM: Have you thought about what type of a fence you're going to put up?

KW: We talked about a material with low maintenance, so that would either be a composite Trex material.

PM: Would you object to staying away from plastic?

PM: That the headlights shine on.

KW: Right, so I guess the two that we're looking at was kind of like Trex that has a grain like wood on it and it would not be vinyl white shiny.

RL: More of a texture, it almost looks like wood.

PM: But not plastic?

RL: Not the cheapest PVC white plastic. It would be brown or something.

PM: Any questions from the Board? I'm concerned about the parking and finding parking, this is what I haven't ___, I saw this letter for the first time that you sent to the Selectmen or the Council President and the Town Manager and a question on this you have asked them here that as part of the permitting the EBNH is requesting relief from the BOA with respect to certain parking requirements that are contained in the Winthrop Bylaw. So what specific are you asking here that we by pass the BOA on this?

RL: No we're explaining, we still require variance because we're not providing the parking onsite. This proposal is intended to strictly mitigate any zoning relief that this Board may grant. We're not simply asking for the variance we don't have to provide any parking this is the intent or our effort to show the intent to provide the parking. I will point out it is in the interest of the HC to be able to provide parking for it's employees, they don't want to be in a situation that the employees have coming to the location and not being able to find a place to park. I'm sure that they will be able to but to try to be a good neighbor as well with their EB facility and which they're doing with the EB facility is under construction now employee parking is a critical component to their operation and do not want to have that impact on the surrounding neighborhood that's why we stress, I point out that at this point the Planning Board's condition and the SP# requires us to arrange for parking or appropriate mitigation. We could take the easy way out and write a check to the town but I can assure this Board that this is not the intent. We want to have parking we're more interested in working out an arrangement either with the town or a private owner for the parking. I'm guessing that we won't get a permit from Mr. Soper until such time as we've addressed the parking anyhow. So I think the condition is intended to mitigate any zoning relief that we asking for but the zoning relief is still necessary.

PM: You mention on the 2nd page this enter a lease for a parcel of at least 5 years and how many spaces would that parcel give you and how close is it to the facility?

RL: The parcel that we looked at is on the corner of Pauline and Walden almost directly diagonally across from Nick's. We had some additional discussions the

town manager about this and there's a few things going on there. The re-use of the EB Newton School in my understanding is they're all looking for additional parking, the town is. The town being in the condition it's in financially probably doesn't have the capital wherewithal to make an investment to do substantial improvements to that site. We proposed to be that partner in helping the town redevelop that into available parking. The town is looking for something more than 12 spaces we wouldn't look to be the exclusive operator of that lot. But if we're able to assist the town in doing some redevelopment there of the parcel and gives the town the ability to have more than 12 spaces that provides a dual benefit. It takes it off the budget sheet as a capital improvement and more importantly makes some available for the school. We wouldn't be looking for exclusive use sort of a secured lot 24-7 just during the hours that the facility is in operation. We would want just a number of those spaces to be designated exclusive to the HC but after that can be shared weekend use. With the improvement that we are proposing to make there the town would have an additional facility associated with the school. That's in essence the proposal we've made, the details are still to be discussed and nothing is formal at this point. We have not reached any agreement or understanding with the town as to that facility. It certainly our intent to look to that location as probably being the most feasible alternative if the town is so willing we would enter into an agreement with you guys.

PM: Did you have any luck with talking with CVS?

RL: Talking with CVS or talking with Bank of America or any of those is probably more difficult a task than I think _____. CVS leases that property; they are not the owners of that land. They probably have a long-term ground lease. CVS is unlikely to be in the position to consent to any arranged parking it would have to be the call of the landlord. Just based on my experience dealing with commercial real estate I think that CVS would be in a very awkward position to have to do an arrangement to do a shared parking under their lease. Especially considering that they for purposes of whatever lease arrangements make they've ventured into with that landlord. They're going to be real limited to what they may want to do. The same applies with other facilities like BOA would share with EBHC and they share with a physical therapy facility that is already over there. There's a lot of gymnastics that'd have to be done to make arrangements to make that happen. I think in the interest of time it makes more sense at this point to make something happen quicker, at least for our schedule of approvals. That's not to say that we foreclose any of these opportunities if things change that are closer to our facility we're going to want to pursue those and that's why we've indicated in our proposals a 5 year option. I don't want to call it a penalty I guess a disincentive to want to continue leasing the town land for purposes (tape end).

PM: Anything else from the Board?

RL: Mr. Baird had asked at the last meeting about signage the intent is to comply with the bylaw we have no problem making this as part of the condition

to make a decision that any signage will be reviewed by the Board and final approval by the BI. We can do the same thing thru the Site Plan Review as well. We have enough frontage and we will do a very tasteful esthetically pleasing sign as required by the Board.

PM: You would bring back any signage before the Board?

RL: To the extent that it doesn't comply unless the Board doesn't see any sign that we put there we intend to comply. I'm guessing it going to look like something similar to the reference here. Very low profile.

PM: As a practice this is something we like to take a look at.

RL: Sure, I can make that a condition.

PM: What is the pleasure of the Board?

DB: I would like to see a copy of the Planning Board's decision if possible. DO you have one?

RL: I've marked it. The one notation that I should point out that was that they had it 500 the vote was actually 1,000.

DB: All right.

RL: That was filed with the Town Clerk well over 20 days ago. You'll note the dollar amount has been scratched out, I'm sure you'll agree that the Planning Board is not in a position to be suggesting any amount of litigation.

DB: This wasn't obviously the final signed decision.

RL: The final signed decision is on file with the Clerk's office, the only thing that changed was the vote of who voted and it reflects that properly.

DB: You took out a dollar amount and to be determined.

RL: Took out a dollar amount and changed it to a 1,000 foot radius of the facility for parking.

MOTION: (DARREN BAIRD) Finding that consistent with provisions of 40A section 10 of the general laws with regards to standards for granting variances in finding the soil, shape and topography of the lot is sufficiently unique that strict enforcement of the bylaw against the applicant would create a substantial hardship and would not be more substantially detrimental to the neighborhood than what is there presently. To grant the following relief from the rear yard setback of 14 feet, relief from the required on-site parking spaces of 11 spaces requiring 4 handicapped spaces on site. Relief from the requirements of 17.16.020 (C) requiring a 15 foot landscaped strip adjacent to street right of way. The relief requested of 15 feet subject to conditions around landscape plan approval and other things that are in the Planning Board's decision. Relief from Section 17.16.020 (F) requiring a 15 foot landscape screen and buffer strip abutting a residential area, granting a relief of 15 feet there or subject to appropriate fencing and conditions of finished materials on fencing. Relief of the requirements of 17.20.050 (B) 4 requiring a minimum of 24 foot aisle width for two way traffic and requiring a relief consistent of the plan of 3 ½ feet requiring a 20 ½ foot drive aisle to compensate for the two way traffic. Subject to the construction and the finished materials and everything being consistent with the plans that have been submitted including the updated plan issued by Ingenuity

dated 10/25/2010 and subject to the actual satisfaction of the requirements contained in the Planning Board's decision regarding satisfaction of parking requirements and concerns with regards to the 12 parking spaces off site. Did I miss anything?

RL: The Board could make a finding and I've asked for a belt and suspenders for Section 6 finding don't believe, we're taking the building down and constructing an entirely new facility so we can dispose of the Section 6 request that would be Alteration of a non-conforming structure.

DB: Why would that be?

RL: Dispose of it.

DB: I would further move to take no action on applicants request pursuant to 40A section 6 relative to this being a renovation expansion or addition to a pre-existing nonconforming structure. Based on the granting of the variance that was given it's not required with conditions consistent to this decision.

SECOND: (Brian Beattie)

PM: Any further discussion?

DB: I have nothing, Mr. Chairman.

PM: The information was sent in by Mr. Hickey on the Site Plan Review that would be referenced in the conditions there. I think the conditions I would like to see is that the conformance with the Planning Board and that the parking is resolved and again reiterated here before the Building Permit is issued.

DB: So moved as amended by the Chairman.

PM: Anything else?

VOTED: ALL IN FAVOR

RL: Thank you very much I have already drafted a decision and will send to the clerk to be distributed.

#024-2010 – 82 Faun Bar Avenue – James Clark and Rachel Gray

Sitting: PM/BB/DB

PM: This is a continuation from our October 28th hearing.

DB: We closed the public part of this hearing and we are deliberating?

PM: Yes.

PM: There was discussion about the health issues and how about it affects the zoning and how this board has to look at specifically the zoning that's what our charge is to look at zoning and how it affects the zoning and we were cautioned on this by counsel and others about looking at this and the power that the utilities have on this legislation in the courts should they decide to not have a substantial reason for doing this would come back and throw it out and grant the utilities what they're looking for. We had several discussions about it and the concern of the Board here about this and wanted to have time to think about this and talk about the health issues and see what else was facing us on this issue before we went forward.

DB: To clarify Mr. Chairman, while it bothers me tremendously we can't think about the health issues we have to look at the zoning.

RG: That's not what we are here for.

DB: I know but there was a lot of testimony about potential health effects. My recollection on the ones that we've had before on this co-location on this water tower they've come before us and they've requested relief under the zoning code for location of antennas on this water tower and for the most part those have been granted on their own merits and we had one recently that was before us we had a nice public hearing on it at the senior center and that one got withdrawn and went away. I'm just confused that why it is exactly that no one thinks that this particular had to come before us.

RG: They should have a condition and variance or a special permit to put them up.

PM: I think what they did then is they the antenna company to get a permit and the town issued a permit to them without first coming to the BOA without hearing the concerns and the pros and cons of the antenna before issuing a permit.

DB: So if they can do that what's to stop anybody else from doing that who wants to come into town and stick up a wireless something on the Elks club or on a school? They can put them anywhere now?

PM: They can't.

BB: They have to get a variance.

PM: It doesn't make a difference if it's on town property or private property

DB: Never has before?

PM: No still has to come and be looked at before the Board.

BB: There a couple of variances on church several of the churches

RG: One or two antennas they are making a bay station next to our house.

JC: The ones on the churches and some of the other areas on town...

RG: A bay station on a residential area one or two might not be a big deal but bay stations don't belong in a residential area.

PM: I think there was one that came before us the one that pulled out they were going to expand the building and make it a large building there and increase the generator. And that went away.

BB: They withdrew their application.

PM: But that was one of the ones that came before us to look for that. They were making substantial changes up there to the facilities that they have. These people are not coming back to ask for that.

RG: They put a lot more cable on the water tower. Big black cable, they put the shed and a lot more equipment and a big generator.

JC: 6. Instead of building the shed out back more cabinets outside to the foyer area....

RG: Now they're packing everything in the foyer area and it didn't fit in there so they built it out.

PM: They didn't do anything to the generator?

RG: They added.

DB: I'm trying to find the section in the zoning code that deals with placement of antennas or tower function.

RG: The Winthrop zoning ordinance 17... and also Light manufacturing 17.12...

DB: It's not an accessory use it's now a primary use. The problem with the zoning code is that it doesn't particularly deal with wireless facilities. What are the thoughts here? What do we want to do?

PM: In viewing this, there were a number of antennas they're outing up, 12 antennas. I think they were adding ...

RG: What they've added had intensified what's up there, its quadrupled.

PM: I thought it mentioned how many they were adding.

RG: When we bought our house there was nothing up there now that we've been there in four years I never would have bought the house.

PM: There is 7 proposed antennas, they all seem to be facing the side of the tower.

ID: One of the things is kind of limited in FCC regulations, one of the things that do come into force is a thing like the equipment ___ and if they're extending that and overloading that is definitely ___. One of the big issues we had with the Verizon application they want to take a building for equipment and its really a building issue. It would increase runoff that a pretty sharp drop off, and a report that there was always icing and water issues that come from that property caused by that shed and was making it bigger are things in our authority.

DB: The problem is the Federal Telecommunication Act is really federal preemption so it's really bothers me because as a state's right guy they should be telling us where we should be locating stuff and where we cant prohibiting them from location stuff. But its all about whether there's gaps in coverage and the way out bylaws are written it only allows this sort of use in districts and by doing that our bylaws may very well be unenforceable. Because if we only limit it to certain districts we can say well, I have a gap in coverage and that doesn't serve all my needs in this are as a provider. So, I think the way our bylaws written it arguably unenforceable. That's the problem I have but I don't want it to be that way. But the building issue is a real issue that we can deal with. Because that is an intensification of a nonconforming use that is the equipment there.

ID: There's another thing that cosmetic issues may be considered by the Board that's pretty general but it's getting to be an eyesore and it's going to be more of an eyesore.

JC: That is one of the concerns that I raised to the Board that if I ever do consider selling my house there's a cell tower right next door to the property.

RG: There are big black ugly cables right next to my house. I wouldn't have bought the house.

DB: We do actually allow telephone exchanges in this district by special permit so not to shove a square peg in a round hole so to speak, its not as if they are

completely without recourse. They can come in and ask for a special permit and we can either grant it or deny it and they have recourse in court.

ID: It's a little like ____ they took cosmetic issues in to consideration. I know we cant say anything about the actual telecommunication part to this but the part that's would come under ordinary, I know the cosmetic things are one of the issues. There's a case of seeing towers that we weren't seeing before that the work was allowed to _____. I think we have authority here and you might want to check about the building and exterior stuff that's not ____ we had 2 other special permits and one of biggest concerns was the cosmetics, can you see this was it noisy?

RG: Also safety, the water tower turned 100 this year and when the Clearwire was working on the water tower they told us when they were working up there they shouldn't have been up there and they actually called OCEA the railing wasn't to height, it wasn't high enough, they had been working up there and that it was very windy up. Open to the ocean, we put our trash out there and on a regular day and everything gets blown away. After the first cable fell after a storm, they were all flying off.

ID: I guess what bothers me is that they didn't ask for conditions like the other applicants.

DB: I think the other applicants read the bylaw and come in here because they felt they needed to and for some reason on this one they've done an end around, with that said, I'm not sure that we can force them to come in here either.

RG: They should have a written permit or variance that gives them conditions, there is a sign there that says Beyond this point you are entering an area where emissions may exceed the FCC general population exposure limits but now they are now putting up 7 more antennas and so now your quadrupling the exposure and already it says it exceeds by the FCC. So there should be conditions they're allowed there they should come at peak hours and measure the exposure and that can be done.

JC: It's also noted that the Town brought these guys in they didn't come to us. They put out RFP thru the town hall and they responded, so they didn't come to us, we brought this upon our self not only with Verizon but also with Clearwire. So I think there's an argument to made here that they're the ones that didn't come to us, that whole argument, that we have to do this because there's a reason doesn't hold water because they didn't come to us we asked them. So I think we can make an argument there.

RG: I think the town manager letter last month said that ____ could go which is silly because no one was down Deer Island and built a massive tower on Deer Island. No one built it in the cemetery, that's not in a residential are where there are 1 or 2 antennas now it's a bay station.

DB: That's why I am struggling with it so badly I think the precedent this sets is horrible and our bylaw needs to be significantly overhauled to address this things and I think that as a Board while our bylaw is written the way there may be

questions as to whether its enforceable because there is a such limited area to build these things. Short of town council actually addressing that issue I think there are other issues that are going on that property are within our purview to say to the BI and the town that the providers need to come in and answer some questions about the building. They're overloading a nonconforming use and they're doing things they shouldn't be doing in there that is within our purview and that is within our authority and deny them when they come in or approve them on their merits when they come in here asking for relief. The problem with this one is.

RG: That letter from the lawyer office that was kind of baloney too if you really read that was just a coming from behind letter that looks like the town manager had someone write because they're... they denied it on... its like they pulled something out of not nowhere but kind of one thing to just sneak it it but ignored everything else.

DB: The problem is that I'm not sure that this is an accessory use. That's how they got it permitted. What is this in accessory to? Is the primary use a water tower and somehow this is accessory to the water town by having antennas on it.

Dave Hickey (Public Works Director): I know the hearing is closed it sounds like you are touching on all the issues and I don't know it I can re-iterate. I really have nothing to do with this. As I understand the previous process they all required dimensions zoning rules on a building that eas expanding and or generators being located. They had to come before you. This application did not require any new construction that extended into a set back. In some people opinion they have to come in front of you, the main question is the one that you are touching on is what is the use of the property. What is accessory and what is not accessory, clearly I am not a lawyer, I don't know the answer to that and the determination is I believe as I had it explained to me it that it's primary use is the water tower and the accessory use is a variety of use, like the back up power to our radio repeaters and various telecommunication stuff. Whether that legally sounding or not.... It's the opinion that they got.

DB: Right, understood, and they are entitles to seek opinion from counsel there's the reason why there is so many lawyers ask one question and get 20 million answers. To me when I think about accessory uses, you look at t eh primary use, a garage is accessory to a house, and wireless providers are not accessory to a town water tank. They are just not. Not unless they are serving the towns radio system. That's the problem I have with this,

ID: I have another problem is the accessory adding on to the accessory use is the little improvement shack, is getting crammed, even if that is a property accessory use, which it probably was for the water tower with equipment in there, what we're hearing from different applicants that its getting noisier and noisier. They could have built out a little bit on this thing.

PM: They didn't do it this time they've expanded it before but not this time. They kept going inside of it.

JC: They added a sub panel to the building.

PM: They didn't put an addition on it.

JC: They didn't put an addition but they put a sub panel to the building.

PM: Mr. Hazlett any thought?

RG: Have you been in that little shed recently, there are fire trucks up there but I don't know why they are there?

NH: I think that they are up there is because the towns repeaters are up there.

DB: Right, which is an accessory use.

NH: A necessity.

DB: Right, which is town owned land on town owned use which is the primary use of that property and it would seem to me that to be accessory the same user would have made good use of the property. Singular wire or whomever putting a collocation antenna up there is not accessory use to the town's primary use. In my opinion, subject to being overruled but that.

NH: The only thing that I can tell you to my knowledge was the biggest thing in the past was before they put the generator in they use to bring the rescue up when we lost power in the town so they lost power in the town we lost our repeater. So our radio was down. I guess at one point when they expanded the generator they expanded it went up at the point and part of that expansion included having the repeaters up there to be under the generators. Why they're up there it could be because they're doing radio repair and I'm only assuming that, I don't know for a fact. I know the center house got struck and that affected our radios. Whether it affected it up there I can't answer but if seeing someone up there some of it maybe repair to the radio equipment. If that is accessory use under zoning I can't answer that.

DB: Accessory use – the use incidental and subordinate to the principle use of a structure or lot or use not the principle use, which is located on the same lot as the principle structure. So it has to be incidental and subordinate to the principle use. Hmm. I'd like to make a motion Mr. Chairman.

MOTION: (Darren Baird) A motion pursuant to 40A section 7 on the request for zoning enforcement which was respectfully declined by the Building Commissioner overturn the Building Commissioner's decision finding that the antenna locations on the property and not incidental or subordinate to the primary use of the property by the Town of Winthrop as a water tower and therefore not accessory to the use of the property as a water tower as accessory use is defined in Section 17.04.050 of the Zoning Code and therefore the building permit should be revoked and the cease and desist order should be issued by the Building Inspector forthwith.

SECOND: (Brian Beattie)

PM: Any discussion?

VOTED: ALL IN FAVOR

PM: So moved. We will write up a decision and get it off to them and the town.

#027-2010 – 294 Bowdoin Street – Mr. & Mrs. Charles Tewksbury

Sitting: PM/ID/JR

PM: Why don't you walk us through what you're looking to do?

CT: I'm seeking relief in the form of a special permit and a MGL 40A Section 6 finding. I would like to show you that the relief would not be detrimental to the neighborhood. The residential home in place of a greenhouse would be more in harmony with the neighborhood than the greenhouse or any other business that would go there. The said lot is 7, 171 sq. feet and that's larger than any lot in the neighborhood. The home I want to build can be built honoring all the setbacks. The lots in our neighborhood ranges from the smallest of 1910 square feet to 6400. Four of the homes have less than 4000 square feet and 3 of the others in the direct neighborhood have little over 4000. One is 1910; this lot is more than 3 times the size. A new home on that lot would do nothing but enhance the neighborhood. My only options would be to operate that greenhouse on a year round basis and would have parking issues on a year round. The lots are grandfathers in as a business so they don't have to be operated as greenhouse there are other businesses that can be operated there. That would probably be on a year round basis as well. My other option would build a 3 or 4 bay garage and that would certainly limit street parking. Going back on May 27, 2009, a decision that was granted to grant variances given by the Board of Appeal to 22 Payson Street, Winthrop, this is a very similar circumstance in that case. And I am requested the same consideration. The only other thing I have to add, the property tax that would be generated by a new home would benefit the Town of Winthrop more than the greenhouses do.

PM: Anything else? Closing that part of the hearing, is there anyone here in favor of this proposal?

John Marcy, 308 Bowdoin St. – I'm the direct abutter, and my wife Eleanor, we have no objection to the plans two story one family house, what we do have are issues with possible drainage issues. When the Tewksbury's made improvements to the greenhouse there were issues and what this would do is drain 2/3 of the front of this proposed house plus half of the garage that they propose into a small area in the front of the house on Bowdoin St. which now gets walled off by the foundation. So, the water table in the neighborhood with a good rainstorm equals right up. SO what I would like to have something write up that if they did with the greenhouse, some concrete way that the water they drain go into a dry well on their property. Otherwise, it floods my basement, it comes through it's a 1895 house with a brick basement and granite and it comes through the walls. Its fine now but when they put up the improvement to the greenhouse it wasn't because it started to drain all stuff and water. So all that I would like to have is some guarantee that the water from the roof of that house and roof of the garage go into some kind of dry well located optimally in the rear of the house and that be included as part of the lands before you grant a variance.

PM: Thank you. Anybody else in favor? Hearing none, anybody else not in favor of this petition?

DH: Mr. Chairman I'm Dave Hickey, neither in favor or against, but don't know if there's going to be an opportunity to be in that category, just curious as to this is currently two separate lots? Is that correct?

CT: Yes.

DH: And the existing house, the two lots are under the same owner ship, right?

CT: Right.

DH: So does how does the existing house satisfy the requirements of zoning as it relates to dimensional set backs as well as parking? And is that an issue?

PM: I don't think the existing house is an issue. We're strictly talking about the new lot.

DH: Plus they're merged, right?

PM: That's what the Building Inspector said and that's what I'm going to get into.

DH: So this creates a subdivision right?

PM: It could yes. It was specific in his letter about version.

DH: The proposed lot is the small as the parcels are today and the issue of the existing house is not something subject to the review or is?

PM: I wouldn't think so; the existing house is on a lot that per the old zoning satisfied the square footage. Before the zoning, its a preexisting. Its 7600 feet I think the zoning before this on a single family was 5500 square feet. Anything new is 7500 square feet.

DH: Anything by today's standard is 7500?

PM: And the old existing house is 6000. But it used to be 5500.

DH: What is the lot?

PM: The new lot?

DH: The existing.

JR: The one they want to build on?

DH: No the old one.

CT: 6000 feet

DH: So it wouldn't conform to today's set back?

PM: No. The old house wouldn't.

DH: The merger is under a cloud.

PM: Right, this is something that we have to look at and take under consideration.

DH: I'm just looking for a level of consistency.

PM: Anybody else not in favor? Closing that part of it, questions from the Board. Mr. Rich?

JR: Are you willing to have the drainage plan to satisfy your neighbor?

CT: That's not an issue I did it in the past we put a 3-inch burm all the way the side of the irrigation pipe down into a drywell. So I can satisfy that.

JR: I just built a house in East Boston and any new structure has to have a drainage put in by DPW Boston water and Sewer. We have to do it exactly what the neighbor wanted put a drywell back at 6 foot by 8 foot.

CT: There's one there so I have no issues.

JR: There's one on that lot now?

CT: Correct.

JM: As long as the front roof is drained into, I looked at the plans in the Clerk's office and there's nothing specific that addresses that, I would like to have that added in drawing. I would like to have that addressed in the drawings. The existing drywell in the back yard with the construction would have to be added.

PM: It would have to be sited by the engineer to make sure it would take it.

JM: Other than that I think all the neighbors don't want to force them to run a business to run a business that they don't want to run. I know that they also invested in a business that they rather spend their time with. The neighborhood would not want to stand in the way of this happening. I just don't want my cellar flooded.

PM: Ok. Thank you. Mr. Rich, anything else?

JR: No.

PM: Ms. Dwyer?

ID: No.

PM: I'm concerned because we've heard things come before us and the BI has clearly pointed out this what we've got is a merger here on these lots. A single owner of both lots. We had a condition of Payson St. where we had an owner of a 2 family that did not have the required square footage and got the required square footage from an adjacent lot. We had that came before us and my concern here that the legality on this merger, Darren looked at this and he works with this all the time, sorted out the pieces and looked at this before and I will look to him for some input for what his feeling are on this as this is definitely clear in the bylaws.

ID: I would like to get his input on this too because we have factual situation on Payson St. that doesn't apply here. The original on Payson St. the family that owned the house and lot were two originally separate ownership and then they were put into a family trusts.

PM: No one-owner ship.

ID: There is a factual situation. The lot is both in and out of single ownership and when they came they were looking not only to have a building lot on the vacant land but they also rearrange the existing lot line on the existing house to make it more conforming it a very. That's not issue here; the existing house here is on maybe you can change the sidewalk. The other one was under 5000.

PM: Are you intending to build this house on this lot?

Mrs. Tewksbury: We were asked to house plans to present to the Board.

PM: So your intent is not to have a potential house on the lot.

CT: We want to sell the lot.

MT: We have no intention to build this house, whoever would buy the property could build their own house to regulations.

PM: In order to zone this you need to show something could fit on this to meet the requirements of this. Right now the both lots are owned singular right? Not separated out?

CT: Right.

PM: That's my concern that the BI spent quite a bit of time in his denial on this and talks about Lots A & B and common ownership and under the law they merge and its one lot and to come in and separate one lot out for this I would look to some counsel to which way to proceed on this. I would like to entertain an option to continue this and get the input from our colleague Mr. Baird who works with this all the time and get this squared away before we move forward on it. Looking at this and reading this the house proposed here meets the set backs requirements on the rear yard and side yard and front. Also looking at this my concern would be that the enough of the foundation is covered not to create a third story to make this three stories I know you have a full walk out basement in the rear and the way its graded to do that we've had similar conditions here where the grades have to be brought so you cannot consider this a 3 story because we cant allow three stories in Winthrop zoning. This would be something to look at and the way the grade is brought around it might have to continue back as far as the retaining wall on the sides to do it in order to have coverage of that. Otherwise, I don't have any other questions on this. I think it's something that is fitting ideally on your lot here.

MOTION: (JOHN RICH) – Motion to table 294 Bowdoin St., to the December 30th meeting.

SECOND: (Irene Dwyer)

ALL VOTED: IN FAVOR

PM: So what we'll do is to get this answered and squared away. If there is a change I'll let you know if Darren is not available we'll make a special meeting in January to come back and take it up we won't wait till the end of January.

#028-2010 – 18 Winthrop Shore Drive – Howard Ross

Sitting: PM/ID/JR

PM: Mr. Ross why don't you walk us through and tell us what you want to do?

Howard Ross: Simply looking to add a second floor deck that would be off of the bedroom as is shown in the photos attached in the application along Winthrop Shore Drive there are many if not most houses have deck or second floor structures that come right up to the sidewalk with no front yard or space at all. Immediately to one house to our left shown in the photos 23,24,25 second floor building there are decks on the first floor but the second floor buildings are right up to the sidewalk no front yard. I have a picture here of 48 a little bit further a 3 story decks again right up to the side walk the same with 87 and 90

on the next page and the same with 107 and then coming back at 56 the same thing. The house that we were fortunate enough to recently purchase is a small 3 bedroom. The bedrooms size itself are just 10 x 8, 10 x 10, and 10 x 12, and so not only would the relief that we are asking for would give us some space to not only enjoy the view but have a little more living space in season and respectfully submit would be completely consistent with the appearance of the neighborhood and the character of the structures in the neighborhood and all along Winthrop Shore Drive and I would appreciate your consideration.

PM: Closing that part is there anyone here in favor of this proposal? Hearing none is there anyone not in favor of the proposal? Hearing none any questions from the Board?

JD: A letter was submitted from an abutter at 14 Winthrop Shore Drive, Cheryl Tobin in favor of this proposal.

ID: You're building a larger front porch and then going to have pillars?

HR: Right now there really is no front porch, there's no place to really enjoy being outside the property so and there's really no room to do that.

PM: A side comment, the pictures that you taken and put in here and mentions about their constructions being built out to the sidewalk none of them have come before the Board of Appeals to do this work. This work was all done before our times and I question what permit they had to do it or they were preexisting and going back years they were probably built as some type of summerhouses on the beach. Hotels and how they were allowed to expand like this they do what they've done. None of this has come before the BOA we had one to take an existing a roof over a first floor porch and make a deck out of it that's the only one that's come before us recently to do something like this. Any questions from the Board?

BB: On page 3 you mentioned a lot of pressure treated lumber here?

HR: That will Trex or the Trex equivalent there wouldn't be any pressure cover all treated lumber that would be exposed.

BB: None would be exposed?

HR: Nothing, actually it was suggested I did look at your decision on 137 Winthrop Shore Drive and I saw those conditions about pressure treated lumber and none would be exposed and I am completely amenable to those same conditions. Mr. Chairman at that point I'm sure its well taken and well before my time too I'm just looking at hat and forever its worth 56 Winthrop Shore looks like pretty new, most of them look like new structures, of course I have no personal knowledge of it.

PM: It could have been like that when the house was built and what they did was improved it and probably took down something and put it back up which is what they were allowed to do on repairs.

JR: You're just going to put an open deck? You're not increasing the size of the bedrooms?

HR: No, I was just...

ID: You have limited porch space, the one at 56 Shore Drive, are the type of thing you're talking about with the Plexiglas?

HR: Yes

ID: You're proposing to support yours by...

HR: Two posts.

ID: It's a big improvement than what's there already.

JR: What do you have 3 bedrooms there on the second floor?

HR: Yes. They're all rather...

JR: All the same size windows? That's a life safety issue there anyway. It's against building code the size of the windows.

HR: You mean the size of the ones there? I have no idea why, I guess it started with the storm in the 70's, why anyone would have construction with those tiny windows in the house; they're almost at eye level.

JR: The way the house looks now from what you want to do not only is it safer I think it looks a lot nicer, if you want to cover everything up and make it look nice and put that in the petition.

PM: On the left hand side looking at it are those additional that were put on the house?

HR: No, as were looking at it from the front? No those are all the original house.

ID: It looks like it might have been a small porch.

JR: Are the windows that size the whole entire second floor?

HR: Just those.

ID: It looks like someone got a good deal on that size windows they windows puts were put in sideways.

HR: I think from what the seller told us, the sellers parents they were so blown out from the blizzard that they where sort of creating a fortress with those tiny little windows and maybe they didn't want to see the ocean. I think to respect the structure would be a Trex deck and would be attractive and would be consistent to what is all along Winthrop Shore Drive and thank you for your consideration.

PM: Another question for you, on the right hand side there is a structure that comes out from he side of the house.

HR: The structure on the right? That's a one-car garage.

PM: No it's attached to the house.

JR: No a side window?

HR: Yes there is. There is a side window.

PM: What is the layout of the first floor and the second floor? What's one the first floor of the house?

HR: The first floor is just one long rectangle from front to back the kitchen in the back. If you came into the side entrance, essentially its just one long entrance to the back and in the back is the kitchen stretching along the back.

PM: What else is on the first floor?

HR: There's nothing else on the front door other than the front vestibule that like a little vestibule where the front entrance is.

PM: Is there a living room or a dining room?

HR: It's just like one long open space, there's not a dining room as such, one could put a dining room, right now, so the first floor its one long open corridor. The kitchen stretched across the back and on the second floor is s small bathroom and three small bedrooms. The master is 10 x 12 and this deck would basically go across the width of that room. The room to the side of it the other one is 10 x 10 and then the third room in the back is 10 x 8. Three modest bedrooms.

ID: The drawing that shows the change of roof. As you look at your existing pictures about the second front bedroom not the master bedroom there is a small high window, the drawing there's no window, I assume your going to replace that small window with a more.

HR: Yes, with a window that is just like one to the left of the slider now to match.

ID: OK, if we approve this can that in effect create any problems with the Building Inspector because the drawings technically doesn't show the replacement of that window?

PM: It wouldn't have anything to do with us here that would be the BI.

JR: Is that the only window in that bedroom?

HR: No there's a side window as well.

ID: And the side windows are more, you can expect to see out the window.

HR: As I understand it Massport came in and replace those windows, it's hard to fathom why they came in and put those tiny little windows unless they didn't want to live through that.

PM: Are you presently living there?

HR: No, we haven't presently moved in yet.

PM: But you'd be owner occupied?

HR: Most probably yes.

MOTION: (IRENE DWYER) – Move to grant the relief requested a variance from Section 17.28.030 (C) MGL 40A Section 6 to permit the owner to construct the second floor porch as shown on the plans provided with the application dated October 29, 2010 given that all the conditions on page two with regard that all pressure treated materials being covered with appropriate material finding that the increase of nonconforming structure would not be more substantially detrimental to the existing nonconforming use which is already there.

SECOND: (BRIAN BEATTIE)

PM: Any discussion on the motion, Capt. Hazlet?

NH: No not a problem.

ALL VOTED: IN FAVOR

PM: What we'll do is get you out a decision and that decision will be filed with the Clerk and you have to take that decision after 21 days and file it with the Registry of Deeds before a building permit can be issued.

PM: Mr. Cipoletta has come back on us and filed a constructive grant on Dunkin Donuts. Remember they came in to ask us to reverse our decision. We did reverse it and it never got back to him and he said that it exceeded the ninety days from the date of the hearing and it was no written decision rendered. The appellant therefore claims that law provides a constructive grant of the variance. They came in looking for us to rescind the closing of the drive through in order to get something squared away with the abutters up there. I don't think it affected the original provision that they have to have a detail up there while its open and I think there's some other things that have to happen, when the bridge is reconstructed and there s also some complaints with the Simeone property that is not completely legal and were never permitted and maybe the Town will pursue something. We looked at this and didn't think that forcing Dunkin Donuts to shut the d rive thru was going to solve the problem because the people on the other side were not cooperating. I don't think this relives us from going back to be able to revisit if something else comes up in point of time.

BB: What if they go up there with permits and take land that was part of the Town of Winthrop?

PM: No they've got the huge curb cut up there with no curbs and going into the dry cleaners, into the ATM and going in to the gas station.

BB: They took away those?

PM: Whether they took them out or they were never there when the other property was there. There was a gas station there years ago. SO, again, what was there? I'm not sure what they are going to do, the Town.

BB: Are they going to close the exit for the car wash?

PM: I don't how they're going to do it with the bridge, I'm not sure.

BB: They're supposed to start in the spring?

PM: They're supposed to start in the spring that is my understanding. The other thing that we got from the Conservation Committee on 120 Banks St. They had a meeting with them because they were going to do some work down there and I know they did some improvements there to move his business there they also rented a good part of the space from Marie Hamilton for Jim down there. Originally they came before us with the other owners and we granted it and they couldn't get together with the lease on it and they went down and they approached Michael's Mall down there and they couldn't get together with hem so when the new owners they were able to do something with them down there so that's why they moved. I think this here is just the nothing to do with her; it was just more to do with what he was going to do with the building on his side of it.

BB: There are 28 steps. Especially if they take the dirt out.

NH: We were doing the test the other day and there was someone there but I didn't see anyone trolling other than the fact ____.

PM: I think it's because of the work he did on his side; he maybe kind of opened it to go in there.

NH: Yes he did do some work, he basically tightened it up. He may have put a new door in.

PM: Joanne, This should be filed with 120 Banks St. You could put that with the file for 120 Bank St. maybe about a year ago.

MOTION: (BRIAN BEATTIE) To accept the minutes from the meeting of the Board of Appeals held on October 28, 2010.

SECOND: (PAUL MARKS)


VOTED: ALL APPROVED

MOTION: (BRIAN BEATTIE) – Motion to adjourn.

SECONDED: (IRENE DWYER)

ALL VOTED: ALL APPROVED

Meeting adjourned at 9:30 p.m.



Paul W. Marks, Jr., Chairman

12-30-10

Dated:

Respectfully submitted by Joanne M. DeMato, Secretary to the Board of Appeals

