

**BOARD OF APPEALS
TOWN OF WINTHROP**

MINUTES OF MEETING

*Held on Thursday, August 12, 2010
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152*

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Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:03 p.m. Also in attendance at the hearing were the following Board Members, Brian J. Beattie, Irene Dwyer and Darren M. Baird. Also in attendance were Associate Members, John Rich, Romeo Moreira, Captain Ned Hazlett, Winthrop Fire Department, and 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.	018-2010	191 Washington Ave.	Bell Atlantic d/b/a/ Verizon Wireless	ID/RM/JR
02.	07-2010	71 Grovers Ave.	Olivia Sillari, Tr., Salvatore Sillari family Trust	PM/BB/JR
03.	14-2010	111 Grovers Ave.	Celeste Sillari Trustee, C&A Realty Trust	PM/JR/ID
04.	20-2010	63 Centre St.	Nancy & Richard Boudrow	PM/DB/ID

***Continued from July 29, 2010**

#018-2010 – 191 Washington Ave., Bell Atlantic d/b/a Verizon Wireless.

Daniel D. Klasnick, Esquire, was in attendance representing Verizon Wireless.

Sitting: ID/RM/JR

DK: I would like to give hand outs to follow with power point presentation. Before the Board this evening is a proposal by Verizon Wireless to install wireless telecommunication facilities at 191 Washington Ave., the Winthrop Elks Club Building, just to walk you through the slides, I skipped ahead to slide number three, in conformity with the town of Winthrop requirements initially submitted a building permit application to BI and he issued a determination of the zoning requirements of the particular installation. It was Mr. Soper's determination that a use variance would be required because the facility is proposed to be installed in residential A zoning district and Winthrop zoning ordinance allows these in only light manufacturing districts and Business A districts. In addition to that Mr. Soper made a determination that it would be necessary to obtain a special permit for the telephone exchange to that allow use within this particular residential A zoning district. That's the relief we are seeking and the special permit. We did appear before the Conservation Commission just to get a determination from them. I submitted their letter to Mal; do you have a copy of that? I have a copy of it. This is the original. Basically what the Conservation Commission _____. That was dated July 14th. Based upon that with the acknowledgment there's no need for additional relief.

Moving onto the next slide #4, of the presentation as I indicated Mr. Soper made a determination for use variance in allowed under the Town of Winthrop, zoning by-laws and special permit for a telephone exchange is also allowed pursuant to Section 17.24. The facility itself the design of the facility that Verizon Wireless is proposing is a roof top facility totally stealth facility which will deploy 12 antennas on the roof-top, in detail, Verizon Wireless is planning on installing these antennas in a stealth cupola so the antennas wont be visible from the outside and will be designed to incorporate itself into the architectural design of the building and you will see these photo illustrations will show that very well. In keeping with the Town By-Law requirements Verizon Wireless had attempted to do is make a stealth facility that blends in. In addition to that, the electronic equipment is necessary to operate the facility will be located inside the building on the second floor so it wont be any exterior ____ for the electronic equipment which is a little different from the existing Metro PCF facility may have some electronic equipment on the outside. Verizon Wireless will also be employing an emergency back-up generator that will be located on the lower roof a natural gas generator and will only be used for emergency purposes in the event of failure of the electricity services.

The next slide is the site plan of the proposed facility; I thought it would be helpful to illustrate this to you because all the property is located in the residential zone; It has some very unique attributes just given the size of the lot itself, the location of the very large structure on it that allows for the attachment of Verizon Wireless antenna at the designated height. Under the criteria of the variance itself the parcel I think its clear does have its attributes because of the very size of location and the need network for a particle height of the antennas. In the next slide in your packages sort of a bird's eye view of the proposed facility as I indicated earlier Verizon Wireless is proposing to install these two stealth cupolas inside there will be the antenna.

The Metro PCF antennas are installed here on this particular chimney but what Verizon Wireless is doing is putting them inside so there will a total of twelve antennas so they wont be visible. The cabling that runs from the equipment room that mentioned on the second floor will be run through the attic so that wont be visible either so that will come up through and behind the stealth cupolas so that wont be visible, telephone, electric, will also be taken from the existing service to the building. I indicated that VW will install an emergency back-up generator on that lower roof I talked about it will be tied into the natural gas service. This is the Metro PCF external mount equipment and addition to that will be two condensers also installed. The next slide in your package, This is an elevation view, these cupolas that I have been discussing, they are going to be designed, and you'll see with the photo simulation, it will blend in with the existing roof. So that the Metro PCF antennas are installed right now externally on these two chimneys, VW will add these to stealth cupolas and install their antennas inside there, once again this elevation view shows you the emergency back-up generator and the two condenser units. All cabling will be inside the building by coming up through the stealth cupolas. The facility itself has been designed with consideration and very much with the esthetics. What VW will be providing you with an application also four photo simulations and that starts at page B of the hand out. The first photo simulation is taken from Washington Ave, on the left is the existing photo on the right is the proposed. You can see peeking up above the trees is the stealth cupolas. The next is another photo taken from Shirley St. taken from across the harbor, the one on the left is the building as it is and the one on the right is was VW is proposing. The next one is taken from Washington Ave, the left is the existing, the right is the proposed, and you can see the lower roof. The Metro PCF equipment is right next that existing chimney and then VW condensers are immediately to the right and the emergency generator back up painted to match the building is also there. There is a final simulation from River Rd. looking at the facility, left is before and right is after. VW has been working with them for some time to site a facility to address the need we deem to be a significant gap in coverage in the Town of Winthrop and we included with our application a detailed affidavit certifying the need covering the objectives at sheet 12 of the hand out I included the existing coverage maps and basically VW is attempting to really improve

service along the SE portion of Winthrop so the slide on page 12 the green represent the existing coverage and turn to sheet 13 you can see how the installation of the proposed facility will really augment the coverage and address the existing gap.

So the final slide 14 is a recap and what VW is attempting to do is design a facility that blends in with the existing building, meets the by laws requirements for a roof top facility, that it be a stealth facility, we obviously have done our due diligence to the Town for a couple of years trying to get something sited so this is the alternative.

ID: Do we have anyone besides the applicant here to speak in favor? Is anyone here to speak against it?

NH: My name is Capt. Hazlett, Fire Inspector for the Town of Winthrop. After I spoke with counselor, his construction manager called me and I had three concerns. One was because we are attaching to a building that already has a fire alarms system we wanted to make sure that this equipment will be attached to their existing fire alarm. Two, because it's a sprinkler building, whatever they were going to do and speaking to the gentlemen who said they were going to install a MV 200 which is a compression system, that's why it could be attached to the fire alarm. If they were at any time, going to do anything with the sprinkler system in others words, cut it off, we would want to make sure they are in contact with the Elks sprinkler system contractor. And last but not least, was we want to install a shunt switch on the generator for obvious reasons, if we have to shut power to the building we don't want the generator to come on. So, they agreed it was not an issue. Those three issues with the Fire Department have addressed and I would like it as part of the minutes of the meeting.

ID: I have a question about the interior stealth conduits.

DK: It's a pre-fabricated material that's basically an RF friendly fiberglass material, it isn't, doesn't become part of the building when the facility ever goes that would go with it. It's an RF friendly fiberglass type of material that allows the antennas to continue to propagate their signal. It would be pre-fabricated, delivered and assembled on site.

ID: How high is this going to get?

DK: It extends up to 14 feet the cupolas. Ten feet above the existing roof. I have a height of 47 feet overall height of 57feet and based upon the by-law requirements as interpreted by Mr. Soper, the wireless facility is allowed to be up to 65 feet. So we felt we were within the requirements.

BB: If you do put this at the Elks will there be any need for anything else along this area? Along Washington Ave, or going up towards the cliff going up. Will there be any other need for any other antennas?

DK: No this is intended to address the existing coverage gap.

BB: All through the water tower hill? Along Washington Ave.

DK: At this time this is the sighting to satisfy that coverage gap.

ID: Any questions? The relief requested is a use variance by the zoning by-laws regarding deep-dish or telephone exchange RA zoned and also a special

permit because the telephone exchange is a special permit use in an RA zone. I would move to grant you what is requested and since there is no opposition, no need for further approval from the Cons Comm. As for their letter provided their conditions.

MOTION #018-2010:(Romeo Moreira) to grant special permit and variance relief requested subject to condition set forth by Capt. Hazlett, fire suppression and other matters.

SECONDED:(John Rich)

VOTED: Unanimously 3-0

#07-2010 – 71 Grovers Ave., Olivia Sillari, Salvatore Sillari Family Trust

Voting: PM/BB/JR

Attorney William DiMento present to represent applicant.

PM: The last contact we had a site visit, Mr. Baird did not make the site visit. On 71 we reviewed the house and there were five apartments. Mr. Rich you saw the property.

JR: The information from the building jacket it was a legal two-family.

PM: There was a letter in there establishing it as a tenement notice it was two family. That was the earliest document in the building jacket. Then it went from 1946-1982.

JR: In 1951 it went from a two to a three.

PM: Correct, in 1953, there was a letter from the building inspector, anything over two-families was a violation, and then there were some violation notices of unsafe conditions that were issued. In 1977 a letter to obtain a cfo, none filed, and the last item in the building jacket in 1982 a letter from the BI stating the two-family, first floor and second floor. There doesn't appear to be anything in the building jacket to put bathrooms, kitchens, or anything more than a two or anything other than to build a dormer in 1982.

DB: Mr. Chairman, I'd just like to add from my own experience, the only less reliable is assessing records, in so, when we are looking at a totality of the circumstances, I think that its wrong, well at least in my opinion as one member of the Board, I would never have the building jacket be the cause of this matter of use over time because a lot of time they are not actually filed by the applicant, they're field by a third party, a lot of time the BI, especially then didn't necessarily look at things all that closely, they got their fee, and off the person went to do their work, and sometimes when you're paying a fee for a building for something you're paying it based on a lower number of occupants. So, there's a lot of reasons why they are not accurate records necessarily at least in my view. People may have a different view on that and so when we are looking at the facts here of purposes of overturning the BI decision is which what's before us. When I look at the actual pages from the street book and people who lived

where in the Town of Winthrop going back to the early 90's, I'm seeing a lot more than a two-family here, and that's what I am wrestling with. Granted in '82 the owner had the right to seek amnesty with regard to a multi-family use in '94 they had the right in existing prior to '82. But, the problem is there is no here, there's not necessarily clear and convincing evidence that it was a five-family but then again there's nothing that's clear and convincing that it hasn't been used that way. I'm really wrestling with this in my head.

PM: I think that normally we use the building jacket as guidance to try to build a little history of what is going on. Sometimes there permits taken out to add addition to add utilities and different things to a building and viewing the building jacket what we had was records going back to 1925 is nothing in there that gave evidence to add for the number of units that are contained in the house right now. Even though there might be records in the assessing department that or such that have it might have been picked up by somebody going along to look at it and say I assumed it was the house and maybe contact an owner. And determine how many families would be there by how many mailboxes or how many electric meters, or gas meters. So that's another thing to look at and see what it was. But with that put in correctly for the permit? It doesn't indicate it to me that it was.

DB: In order to plead preexisting non-conforming use they would have to be an offer of proof that prior to the by-law adopting a restriction for multi-family of this many units in this neighborhood in this district that this use was in use at that point in time and would have to be shown to us. I'm not sure that we have that. I'm not sure if it was in '82 the Town of Winthrop adopted a by-law that said you can't have more than a two-family. Assuming that it was '82 and in '94 they had an amnesty program to clean stuff up, but, I can't based on what I have before me I can't tell you that directly, I just don't think we have the evidence in the record on that score. But, the burden of proof isn't ours it's the applicants.

ID: Do we know what the taxes and how it was assessed?

DB: We do have assessing records in the file, just making sure I'm looking at the right property.

WD: It's assessed as a six-family, 6 two bedrooms.

DB: It's assessed as a six-family, 6 two bedrooms.
Occupancy 6, 4 units.

ID: Addressing the point that Mr. Baird just made about building jackets not being dispositive which I agree with, how the town has handled some of these issues and that property, 71 Grovers Ave, has several letters of complaint from the BI at the time saying you have a two-family here and you're in excess of it.

DB: To me fortunately or unfortunately depending on how you read 40A, unlike a building that built under the cover of permit, it's not right, it's not like after ten years it's just an illegal nonconforming use that's not subject to an enforcement action or anything like that. Use is different from structure in that

regard. I don't have enough evidence to say that the BI is not correct. Or that we should overturn the BI based on the evidence we have but the practical side of me hates that result.

PM: It seems like the assessing records and building jacket are far apart on that.

ID: The assessing records and the building jackets do not line up, but you've but neither of them line up with the actual present use, you've got five units here not four. It seems to me, that it would be a different issue if the assessor said four and Mr. Soper letter of March 2010, addressed the four versus two but we saw the property and there's five units.

BB: I don't see how anybody can make that into a two family, just looking at the parking. There's no parking.

ID: I'd like to ___ the property of non-conforming use of four-family back in the day when very few people had cars; you've got multi-family units and don't have enough parking for everybody.

PM: We don't know what was in the back of this property because there's a building that seems to be right in the backyard and we don't know if they sold it off

ID: I think it was pretty obvious that it was subdivided.

PM: I don't know, you find that not only down the beach but it existed in areas.

ID: It was pretty obvious that it dates back in the 20's.

PM: It could have been I think the building in the back was clearly added on.

BB: Did the BI have any comments pertaining whether there were any egresses missing? Incorrect window sizes for that particular building?

PM: No, he didn't make any mention of it going through it.

BB: Assuming it was 4,5, or 6 whatever family there wasn't anything missing, no stairways, no back porches sticking out? Basically I know the paperwork can fluctuate but when we were there did the BI make any comments about light hazards or anything like that?

PM: No

BB: Capt. Hazlett you made a comment the first time that they were willing to update their fire alarm?

NH: That would be a certain amount of units and the only reason that I spoke to attorney regarding this was to the best of my knowledge, I know that the fire department has no permits for the installation of smoke detectors, saying that, whatever the decision of the Board is, all I would ask is that they put in a condition that this particular residence #71, meets the present code for hardwired code for smoke and carbon monoxide.

DB: Where we are procedurally right now and Atty. DiMento you can correct me if I am wrong, but, we don't have before us the petition right now to make any sort of Section 6 finding or to ask for a variance or looking for a special permit or anything in that regard, that we are merely being asked to overturn the BI on the grounds that the building confirms with the by-law or is otherwise

now a preexisting non-conforming use. We make that finding we make no conditions we can put on it. Were just saying the building as it is of a preexisting non-conforming use, BI is wrong, the BI issue your permit or remove your cease and desist order. That's where we are procedurally.

WD: On that subject, if I could, that is not an issue, that building does meet code in every aspect. I find it hard to believe that there aren't any records of any fire inspections of the house, in any of the buildings, the fact is there aren't, I asked for them and they haven't been able to produce them.

ID: Excuse, me, you used, you said that...that meaning fire suppression systems or the entire building being up to code?

WD: The building is up to code.

ID: What is up to code in what respect?

WD: The building code, that the way a means of egress, all of those things that the BI has not had any problem with. That is not the issue, this came out of it, the main point, when I hear you talking about this stuff, there are at least several hundred buildings, hundred in this town that didn't apply in 1991, when you did the allowance to prove certain conditions, there isn't, up and down the street, we looked at the building behind this at the time and the BI said there are obviously more units in that building that are allowed, you could do this all over town. My main point that came from an incident at #111 and the Fire Department and BI pulled everything with the Sillari name on it and said let's look at all of those buildings as to usage. What I am suggesting is that you can do this all over town, the main thing is, is that its been used as a either a five or a six unit building or a four or five unit building for at least sixty years. Whether what happened in 1982 or not, I tried to show you some building permits that were pulled that had the number of units, what that means is, Mr. Baird, as to protecting abuse, I don't know, we'll find that out. But the same thing applies, the town had no problem assessing this building for almost a million dollars, look at the amount of assessment that the town has been getting all these year, no one has any complaints about those. It was because of this one thing that happened at #111 that this particular name, I would suggest you could do this for a couple of hundred in the town, you have to get practical.

DB: I don't disagree with that point, I think there are a number of houses, in fact we've had a number of houses come before us on plenty of occasions that didn't apply for amnesty, that have a stronger record in building permitting assessing that line up more so at least you feel more comfortable that there is proof that it goes back far enough that where it was a pre-existing nonconforming use and you feel comfortable saying that, I guess here the problem I have is I don't here, I don't have enough to say that yes, its definitely a four or definitely a two even. So, to overturn the BI you'd have to make the finding that the burden of proof has been make, more likely than not, that was used as a five family back in 1982, 1970 and it's a preexisting nonconforming use and therefore its in conformance with the code and you have to overturn the BI.

WD: Is there some reason why you couldn't find it a four family? The assessor's office certain could, there was a number of permits that were submitted, and the work was done, is there some reason why, why does the BI say two, he says its two because he's looking at the zoning district and a two is allowed there.

PM: I don't think so, Atty. DiMento, I think he's looking at it based on what is in the building jacket, that he has.

WD: That building jacket has been all over America, and we don't know what's been in it and is in it.

PM: There is information that in 1925 it was listed as a two family, a permit in 1946 that listed it as a two family, there are letters in there from the BI back in '51, '53 that state it's a two family and other than that.

WD: Are you suggesting you see one thing in either of these building jackets having to do with anything having to do with the zoning board of appeals or any record?

PM: Yes

WD: In 1982, but you don't see anything else, do we know if they were there or not there or all the records in this town that good that you can say well, is that when we went before the BOA then?

PM: I don't know.

WD: It's very difficult to reconstruct history when these people didn't own it; they bought it as a five family house.

DB: What I always worry about is even though we are not a board of precedent is precedent. And so, I wrestle with this one because practically speaking in looking at that house and looking at the records that we have here, whether or not there was a violation in the past I think that we know that going back to at least the 70's that this was probably used as a four-family house. I don't necessarily have a hard time getting there, but others might. I don't ever get to five, I have a hard time saying it's a two, because clearly it hasn't been a two for a long time, so you going to penalize the owner that has owned it now and say no, you only have a two family? But at the same time I don't want to set a precedent and say to everyone come on in and pick a fight with the BI. I don't necessarily think we are doing that either, in situations like this I think penalizing the owner for something like this is a long standing, even if it's a use that goes back a number of years, and who knows what the violation is, was it because the right permit wasn't pulled on some gas or electrical work that was done, I don't know that, its hard to tell.

ID: I have a hard time going any farther going than any of our other written documentation of use of this building and voting lists and mailing list mean nothing, they carry no weight. You can have a two family house and have 13 people in.

WD: You just said you wanted to go by things in writing

ID: But that's just how people look at it, it doesn't say of they were related. But the other records, those records don't say how many family or units, just

people are there. The assessor's records are the town records and the town needs to be bound by them to some degree so if we are handing out tax bills for four family we are doing something that indicates..

WD: Don't you have some responsibility to let me know what the tax bill is?

ID: I'm agreeing with you, the building jacket has records and then we get to the view and we go in on the view and we see that this is more than a two family for some time, the problem I'm having is , there were egresses with railings around them that you would have to jump over in event of a fire. But that is not the issue, the issue is the amount of units.

WD: We are willing to meet code if any public safety violation. The records are so bad. I advise clients to keep all records of permits for future reference.

PM: I think that if the building jacket didn't contain the information that it did on this one I think you have a valid point, but you don't, this clearly was built as a two family and things were added onto it. And nothing in the jacket shows, there is only a permit to add a dormer since 1925.

WD: That's in the jacket, we don't know that that's the only building permit, I've asked the BI where the stubs are for the last fifty years and he doesn't have them, and I don't expect him to have them. I don't accept just what is in the jacket, anyone can go into the jacket and who knows what the filing system is and its not Winthrop, building jackets are extremely unreliable.

PM: But when we sit down and look at it that's the information that information we have to go by. It makes it very difficult.

NH: One thing I will say to Atty. DiMento when he asked being inspected, first of all the fire department will not inspect if a permit is not pulled, and there was no permit at the Fire Department that was pulled, the other thing that says in the code is that the they should be tested and maintained a minimum of once a year, this was the first letter that came about for what ever reason and they didn't have a problem and they did, but all that I ask the electricians to do is test what was in the building not necessarily was it installed according to code so I will dispute that Atty. DiMento, I'm just saying that's why I had said what ever your decision is, that, I'm not necessarily saying that that meets the code because there is no permit for the Fire Dept. so I don't know what code you meant. For the record the Fire Dept. will not go in to do an inspection without a permit we have no reason.

ID: The Capt. has a point, is relative, to the permits for conversions too, if we knew when some of this work was done, the third floor unit has a completely interior bathroom, I don't know where the exhaust is, there is no window and that might just be possibly when it was done, but we have no way of knowing. Mr. Baird makes a very good point, the building jacket isn't as positive, the assessors aren't as positive but the burden of proof is on the owner and the owner isn't giving us anything except generalized argument that this situation exists all over town.

WD: We also gave you the residents records, the only things we had because there is nothing else in existence. I went through the building jacket and I went

through the assessor's records, I tried to get information from the Fire Dept., I can't give you a record that isn't there.

ID: How long has the present owner owned the building?

WD: Mid 80's

ID: So no work has been done on this place since the 80's? If you owned the building since then...

WD: It's a realty company, several members of the family and that has changed from different people, Olivia now is, but her sister managed the property for 10 years, she's not here and involved anymore.

ID: But if she owned it for 20 years and there's no file saying we added a kitchen, bathroom.

WD: I asked the same thing to go through any records they had, and find anything. There were lots of electrical permits, I don't know what those were for, and those aren't building permits.

PM: An electrical goes along with a building permit, if your going to do something to a kitchen, you're going to do plumbing, electrical. Any further discussions?

PM: Your client has had the building since 1980?

WD: 1985

PM: Since then I don't see anything in the building jacket

WD: Doesn't mean there isn't

PM: You think that since those years there would be something in the jacket, but when I looked at the jacket it started in 1925 and went to 1982 on permits. It was specific back in the 40 & 50's that it was a two family and anything over that is a violation and I suspect that something was probably built maybe late 50-60's where the dormer was added to increase the size of the building.

WB: I would find it impossible to add a dormer in this town without having a permit, to do work without is too much of a violation.

PM: There was a permit in 1977 to do a dormer.

DB: Arguably there should be records of some building permits issued in 06, 07, 05 for some repairs, remodeling done, it was the assessing records reference, building permits visits, measurements, reviews. Whether we have that in the building jacket, who knows, but we always assume that the jacket is incomplete anyway.

PM: There seems to be evidence on the assessor's records that list that as a four family. It shows that there was permits taken out, work that was done in '05, '98, '07, '08.

DB: I also think that if you go back to 1990 and you look at the number of people living there all around the same vintage born between 55 and 63, and the way the last names line up, I have to believe the use of this going back in time was at least a four family, I cant imagine that this was a two family going back that far, it doesn't make any sense.

The BI said cease and desist the use as a five family and we've been asked to overturn the BI, I think based on the review of the records I'm convinced or

moved that there is enough evidence to support a finding that there is a preexisting nonconforming use of a four family dwelling, that predates the change in zoning in 1982 to restrict those types of dwelling units. I do not see anything here convinced me that it has ever been a five family, I'd be willing to make a finding based on the fact that we have assessors records and other building records that seem to indicate the use, street records that seem to indicate the use as a four family.

WD: The owner would not contest that.

PM: I think I would agree with you.

DB: It would still be subject to meeting codes.

PM: I can see your point and where you are coming from, the information I saw in the building jacket, the letters I saw going back and forth that over two family was a violation, that is where I am coming from. That was established by the BI and other work was done so it's hard.

DB: We also didn't have any abutters here jumping up and that know that this is a brand new four family saying along those lines saying you can't possibly grant the relief. This was noticed, they had the opportunity to appear, no body appeared in objection, given the circumstances, give the use, its more likely that not that this was used as a four family going back to at least 1982. Based on that I would be willing to issue, I guess this is interesting procedurally though because we are overruling the BI saying cease and desist the use of property as a five family, because it's only a two family, I'd be willing to make a finding and make a motion that we overturn the BI decision finding that there are enough facts and circumstances in the records that there is a preexisting nonconforming use of the property that dates back prior to 1982 when the prohibition against multifamily units in this district came into being but the records only supports a finding overturning to allow the use as a four unit dwelling and nothing more.

MOTION #07-2010: (Darren Baird) that we overturn the BI decision finding that there are enough facts and circumstances in the records that there is a preexisting nonconforming use of the property that dates back prior to 1982 when the prohibition to multifamily units in this district came into being but the records only supports a finding overturning to allow the use as a four unit dwelling and nothing more.

SECOND: (John Rich)

VOTED: All in favor

MOTION #07-2010 (Darren Baird) – to amend motion to conform to code the four unit smoke alarm system to a hard wire system.

SECOND: (Paul Marks)

VOTED: All in favor

#014-2010 – 111 Grovers Avenue, Celeste Sillari Trustee, C & A Realty Trust

Sitting: PM, JR, ID

PM: I think a lot of the discussion preceding would pertain to this building as well.

Capt. Hazlett from the Fire Dept. stated in a letter that this building has five units in there in this building and the building department indicates that the structure can legally be occupied in separate and no records of building permits occupancy permits issued for work that appears to have been undertaken to convert the structure to its current illegal occupancy. In the building jacket, 1979, the Board of Appeal approved the conversion to a two family from a single. 1980 letter rework being done for more than a 2 family. 1980 Planning Board letter, no more than a 2 family. October 1980, letter from BI 2 family only. June 1981, 2 family only. These are the records going back to the '80's stating it is a 2 family.

ID: This was purchased by Anthony Sillari in 1979. And that owner asked for And noticed and got from this board approve to convert a 1 family to a 2 family, while the work was being done, he's being admonished not to put in more than 2 units.

WD: If you look at these assessor's records, I don't know how to explain it, during the same period they got it listed as a 4 family.

ID: No, if you look at it carefully that says a basement and apt, apt, apt. I think you got it most there is 3 apartments, which is exactly what the BI is complaining about, is the fact that he didn't follow up on it.

WD: I'm looking is 1 bedroom and 3 two bedrooms.

ID: No I'm sorry I don't have that. We have some that says a basement and apt, apt, apt.

WD: I can't tell and trying to figure out what year this is from. It shows 5 apartments. You have what I gave you copies of all that. This says Spencer Fiske revaluation. It's after '87 cause it has the date of transfer 6/25/87. I don't know what to say 'cause it does that those things in that 1982.

ID: Procedurally where are we at the moment, we started discussing the BI letter saying cease and desist the use of this property as a 5 units. There is one piece of written evidence apparently dated '87, not clear at all, that says it has 5 apartments. Every other piece of paper related to this property beginning with the present owners predecessors & title was related. The single family in 1979 the legal permission to convert to 2 family and then there being several letters from the BI saying you're putting in 3 and there's another letter from the assessor's records saying that you have a basement and 3 apartments. Mr. Baird was talking about the burden of proof here the other building was a little vague about it, we have 7 or 8 pieces of paper including a BOA record saying this property was a 2 or possibly not legally a 3 at least up until the '80's. The one Spencer Fiske we're not exactly sure was done for. That's the only piece of paper suggesting that this building was never more than 3 units. There are things that wouldn't be code ever like the doorways. I'm not persuaded that any work was done with permits.

WD: The town records shows it was part of the re-evaluation project and was taxed on a 3-year cycle.

ID: Getting back to the burden of proof, Mr. Baird finds the building jacket not dispositive, I agree, I don't find resident records in themselves dispositive, I don't find assessors records in themselves dispositive, but we have a pile of paperwork on this property that says at most, 3 units and if somehow somebody slid by the them one assessor company went in and reported that still doesn't make it legal and not whether the 6 or 7 pieces of evidence in the file card says.

PM: I got a 1981____ saying it's a 2 family.

ID: There's proof that its also there's consistent ____ there's 2 letters from the BI saying it looks like they're putting in 3 units.

PM: 1980 twice, no three times, April, July, and October. A letter that work is being done and should not be anymore than a 2 family, a planning board letter, and a letter from the BI. I think that looking at that in the '80's is current information for the building jacket.

ID: Its important for me too that that one was started with an acknowledgment by this owners predecessors was connected that the building was a 1 family in 1979 because the BOA in 1979 has to be heard for 1 family to a 2 family saying it was run down and would be economical to buy it and he got the permission to do it. We have copies of the notices in the paper.

JR: This was the building with the enclosed rear hallways to get out of the egress in the apartments. The 1st & 2nd floor have to go across the neighbors rear deck to get down to that back staircase. To me its obvious those were 1 unit at one time a single unit cut in half some how. They would never be allowed to be built. As a contractor you'd have to cut across or climb over.

MOTION #014-2010:(Irene Dwyer) Motion to deny relief and to uphold the BI's decision.

SECOND: (John Rich)

VOTED: All in favor

#020-2010 – 63 Centre Street, Nancy & Richard Boudrow
Stephen Babine present

Sitting: PM/DB/ID

PM: We had you appear the last time and asked for a site plan to show us where the deck was located and we received the site plan on this. From the information we had before we couldn't orientate to find out where it was except for some verbal information from the petitioner, we have it now. Looking at it, we can see what they are looking to do is to bump it out beyond the side of the driveway side of the house and pout a stair going down the rear.

ID: I went by on my way and took pictures tonight.

Part of the reason for the bump out is to have stairs going down to the rear of the porch to make it easier for one of the people who lives there.

SB: Correct, for parking in the driveway, it's a covered overhang which was there for the winter time, coming in and out, having to walk up the driveway and walk in front of the building, that was one of the...

ID: I understood you to say that one of the people that lives there has a mobility issue?

SB: A little bit.

DB: For finished materials?

SB: No visible pressure treated.

DB: Any pressure treated will be encased not visible from the public way or wherever. That's all I have Mr. Chairman.

SB: So I can clarify for my own curiosity if it's painted pressure treated?

DB: It's still pressure treated.

SB: That's not acceptable?

DB: Is it acceptable to us, aesthetically it's always been a condition that we put in or at least in the last few years, pressure treated looks horrible even if it's painted, so if you have pressure treated, next to pressure treated, next to pressure treated, we all know if you drive down a street in East Boston and look at some of those decks and it doesn't look good even if it's painted.

SB: But if I put pine up there we're going to have to do it again in ten years.

DB: Aesthetically pine looks a lot better than pressure treated.

SB: It is what it is.

MOTION #020-2010: (Irene Dwyer) Moved to grant the relief requested according to Section 6, the proposed that construction will not be detrimental to the neighborhood than the existing nonconforming use.

DB: Supplementing that existing motion, a finding pursuant to Section 17.28.030 of By Laws, which is any nonconforming structure, may be altered and the use extended throughout the altered portion providing that the resulting alteration shall not cause the structure to violate the dimensional and density regulations of the district in which it is located. The fact that it is built to the interior of the lot does not cause a new violation under our by-law and therefore it is appropriate to make a finding under that section of the by-law as well.

Motion: (Paul Marks) Motion as amended.

SECOND: (Darren Baird) Subject to conditions on finished materials.

VOTED: All in favor

MOTION: (Darrin Baird) Move to go into executive session for the purpose of discussion of litigation strategy with Elizabeth Lane, Esq.

SECOND: (Irene Dwyer)

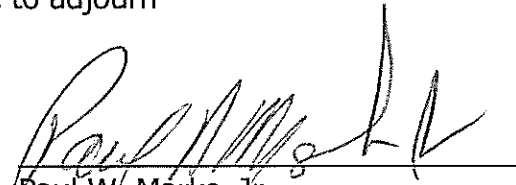
ROLL CALL: (DB, PM, BB) All in favor

MOTION: (Darrin Baird) To return to open session.

ROLL CALL: (PM, DB, BB) All in favor

MOTION (Darren M. Baird) Move to adjourn
SECOND (Brian J. Beattie)
Voted: All in favor

Adjourned at 9:24 p.m.



Paul W. Marks, Jr.
Chairman