



**BOARD OF APPEALS  
TOWN OF WINTHROP  
MINUTES OF MEETING**

Held on Thursday, October 27, 2011  
Town Hall – Joseph Harvey Hearing Room  
WINTHROP, MA 02152

Chairman Paul W. Marks, Jr. called the public meeting of the Board of Appeals to order at approximately 7:05 p.m. In attendance at the hearing were the following Board Members Irene Dwyer, Brian Beattie, John Rich, and Fred Gutierrez. Also in attendance were Joanne M. DeMato, Board Secretary/Clerk, Building Inspector Jim Soper, and Fire Captain Ned Hazlett.

The following matters were heard:

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

|           |                                    |                         |   |                 |
|-----------|------------------------------------|-------------------------|---|-----------------|
| <b>1.</b> | <b>#016-2011</b>                   | <b>82 Faun Bar Ave.</b> | <b>Clearwireless , LLC</b>                        | <b>PM/BB/ID</b> |
| <b>2.</b> | <b>#013-2011</b>                   | <b>41 Argyle St.</b>    | <b>Anthony Martucci Tr./ M &amp; M Realty Tr.</b> | <b>PM/FG/JR</b> |
| <b>3.</b> | <b>#019-2011</b>                   | <b>165 Tafts Ave.</b>   | <b>Semyon Dukach/ East of Air Realty. Tr.</b>     | <b>PM/BB/FG</b> |
| <b>4.</b> | <b>#020-2011</b>                   | <b>75 Pond St.</b>      | <b>John &amp; Carole Zuffante</b>                 | <b>PM/FG/JR</b> |
| <b>5.</b> | <b>Approval of meeting minutes</b> |                         |   |                 |

**#016-2011 – 82 Faun Bar Ave., Clear Wireless**

Sitting: PM/BB/ID

In Attendance: Scott Lacy, Don Hayes, and Curtis Young

**PM:** This is a continuance from August.

**Scott Lacy:** Good evening my name is Scott Lacy from the office of Prince Lobel representing the applicant. When we last went before you there were a few issues that the Board requested follow up on. One of those was with respect to the letter from EBI consulting that we had submitted and the Board had asked whether or not that the engineers had actually visited that site in preparation of that letter. They did go out to the site to check out the railing and check out the antennas and stand by the report that structurally it meets codes and can accommodate the weight of Clearwireless' antennas.

**PM:** This was the engineer that went out?

**SL:** This was the engineering consultant so their employees went to the site they prepared the letter. So they are standing by the letter.

**BB:** Clearwireless?

**SL:** They're the engineering firm, they're consultants. The second question was whether or not the antennas are operating. I contacted my client and they are in operation. The third was.

**PM:** They are not in operation?

**SL:** They are operational.

**PM:** Why are they operational?

**BB:** Was there a permit ever given?

**SL:** There was originally a permit that was given and it was their understanding that they would remain operational while this process played out and if they were not going to be given a permit.

**PM:** Mr. Soper did you issue a cease and desist?

**JS:** Yes I did.

**PM:** Should they have been disconnected?

**JS:** Yes they should have.

**PM:** They should have been disconnected.

**SL:** I will contact my client and follow up with respect to that. I'm just relaying what my client told that it was their understanding that they would be allowed to go through this process to see.

**PM:** By whom?

**SL:** Their initial discussions with town council. Again, I will follow up with them and confirm if they received anything in written or anything else but.

**BB:** Were they put up after the cease and desist?

**SL:** No this was part, originally given a building permit and they were installed then, that's when they were given a building permit and that building permit was challenged and subsequent to that this application is coming out of that decision. They were given a building permit, they were installed they were turned on and that's what I confirmed with my client that they were actually in operation and have been in operation and have remained in operation.

**PM:** I see a bigger problem here than what's being represented and it's my recommendation that this hearing not continue until the antennas are turned off and get back to us and find out people instructions to do things when the Building Inspector had a cease and desist on that I expect that something would happen with that and conform to that. Now you're coming to us and sitting down and want us to make a decision on something that your client is completely flaunting the laws and doesn't seem to give a darn on what's going on.

**SL:** I will certainly follow up with my client with respect to the cease and desist order and with respect to the issue. There is a separate application before you for the special use permit from our perspective if we could submit the evidence and address those issues. Obviously the Board I wouldn't to vote with this issue outstanding in terms of the cease and Desist order but that is a separate issue in terms in taking the evidence that the Board had asked for with respect to the special use permit application and closing the loop on that particular application. Obviously the Board is not under an obligation to vote on that until this other issue is resolved. That is separate because the third issue that the abutter's report that was submitted. The abutter had submitted a report that according to their calculations the proposed antennas would be in violation of emissions standards by the FCC. I have with me Don Haes who's an expert in the field who has prepared a response if you will addresses that specific point and addressing the abutters calculations how they were done and if you will the difference between the original report submitted by Don and how the abutter came to his conclusions. At the end of the day this proposal and the existing conditions on site do comply with the FCC mission standards. So that was one of the issues that the Board had asked and that we respond to.

**PM:** OK, his original proposal was dated July 20<sup>th</sup>?

**SL:** Correct and there was an abutters submitted on at the August hearing saying basically that it was a calculation sheets saying it was in violation of FCC standards. So that report was presented to Don who then analyzed that report and I can let him explain it.

**PM:** Does he have something in writing?

**SL:** He does which he is going to explain.

**PM:** OK and we're seeing for the first time?

**SL:** Correct. This entire area in respect to health I understand is a real concern for neighbor but from a practical standpoint is not something the Board would factor into their decisions just based upon the telecommunications act is written but it is something we understand is a concern both to the Board and the neighbors so we did want to address it.

**PM:** OK. Just for everybody's information sitting on this case as we started is Mr. Beattie, Ms. Dwyer, and myself.

**Don Haes:** Good evening, I have an office in Hudson NH, and here this evening as an independent radiation safety expert. I can go through my credentials if you'd like. I do have my MA services provider registration, which allows me to

do these types of services in the Commonwealth. If you'd like I can go through my report or explain it very simply in an analogy.

**PM:** Why don't you give us a summary of it?

**DH:** The summary of this particular site in the last several years beginning back in 2004, I've been familiar with the site working for AT&T and Verizon wireless. In that aspect I made numerous calculation and measurements of actual field values around particular sites so I am familiar with this. There was a request by Clearwire for me to perform a theoretical analysis what the potential RF emissions where if the site were to be built as proposed. This was the July 20<sup>th</sup> report that I prepared which included both measurements of ambient fields and theoretical prediction of what the site would be like if Clearwire was in fact in operation. At that time the conclusion was the subsequent RF fields in addition to the measured RF field were less than 1 & 1/2 % of the allowed standard in this case. The calculations that I reviewed from the abutter made some basic overly conservative assumptions in the calculations. My response in the Sept. 7<sup>th</sup> report outlines in detail what the problems were in the types of calculations and basically they were the abutter failed to take into fact that these are directional antennas and do not give off light in all directions. For example the lights over our heads are sources of non Ionizing electro-magnetic energy or radiation that can see and there is some that we cant see and there is going in this direction here and if we were trying to calculate the amount of light that would be up against the wall then we wouldn't come here and calculate it because that would give us an amount that would be too high and is called overly conservative. We have to go over there into part of the shadows of where the lights are to get a better understanding of predicting what the lights would be. Of course it's easier just to go measure it, which is what I did. In addition if I were to consider the contribution of each one of these lights I wouldn't put them all in 1 and aim it straight down and make that calculations because that would be again overly conservative and it would look that there was way too much light on the wall but if I do it realistically and account for all the shadows and then do that theory and then compare that against my predicted if there's relatively the same or very close then we know that it was a valid prediction. And that's in fact what I did for this particular site the analogy of course you'd have to rotate the antennas aren't pointing down there pointing out so take the whole room and rotating it in 90 degrees that how the analogy fits with the pictures being on the ground. So thru this type of analysis and my measurements and also my predictions I think this report that I prepared Sept. 7<sup>th</sup> clearly shows the type of calculations that I do which are guided by the FCC themselves and how to properly do it show that the site is well compliant with FCC and State regulations regarding RF issues.

**PM:** Has the abutter had a chance to look at this, did you give him a copy?

**SL:** I did. Those were the main follow up questions in terms of the actual proposal for an application for a telephone exchange put before you. Obviously we still have to resolve the issue with respect to the cease and desist order but in terms of the application itself what the antennas are looking like whether or

not there are structural concerns, concerns with the emission form the neighbors those were the outstanding issue with respect to the specific application itself.

**PM:** OK, the information that you've presented here, we have this report, and we'd like to digest this. Is there something that you referred to on the structural?

**SL:** That was already submitted, that was the June 24, 2010, the special letter that you got. That was submitted at the August meeting. It looks like this.

**ID:** Do you know what the tab number is?

**SL:** That was submitted at the August hearing so it wouldn't be a tab number.

**BB:** So who did the structural?

**SL:** DBI Consulting.

**BB:** Hired by?

**SL:** The applicant, Clearwireless. Obviously the BI can correct me if I am wrong, when it went through its original building permit application the antennas had to comply with State building code to actually be installed and be attached to a facility so that's generally within your determination.

**JS:** I can Mr. Commissioner, I would like to answer that question, they have not received an occupancy permit as of the issuance of that building permit that they originally got the installation for so there's no occupancy permit there's no final inspection going on over there. They are operating without that occupancy permit.

**SL:** Did they submit, I don't know if they submitted structural information to you.

**JS:** Yes, there have been submittals. There have been some small issues as to where the cabinet is located; the cabinet is too close to a railing in violation to electrical code. Railings were installed on the stairs a violation of the egress code, so we started to move through the process to get those corrected, I don't know where that stands as I haven't been up there since.

**BB:** Did you read what the structural test that they did on the tower?

**JS:** No I have not seen that and cannot say that I have seen that.

**ID:** I'm looking to see whether it was submitted at the August hearing.

**SL:** Here's a copy of it. I know its been submitted because it prompted the question, one of the Board members had commented that it said the paragraph has commented about calculations and one of the board members whether if they had actually visited the site.

**PM:** Id like to give the opponent to digest the report from Mr. Haes here and have a look at it and I think to take up the issue of the antennae's being operational, if the permit was issued the permit was rescinded by a cease and desist there's no certification of occupancy to be using that space up there I think that needs to be addressed and think that needs to be taken care of and by the meantime we have a chance to digest this new information and review everything you have come back with us on and take a look at that structural again. I must have another folder at home. Any other questions from the Board, Mr. Beattie?

**BB:** The cease and desist would that mean taking down the antennas?

**JS:** I think it would be advisable to lock out the electrical supply for that antenna for the time being until this is decided and if they don't succeed with their special permit and variances then that antennas should be removed. But we'd like to make a witness test with my electrical inspector that that electric supply has been discontinued so it's no longer operation for the concerns of the neighbors.

**BB:** If it doesn't go through should they put some money aside to have that taken down?

**JS:** I believe its not in our bylaw to do so but I'm not sure if its your prerogative to issue such a bond in place but that's good advice otherwise I'm not sure that would happen given the disinterest in my letters at this point.

**SL:** I can confirm but would have to check but I thought that the town since it's a municipal site had required removal provisions in the lease because the town is receiving money for the facility so I can confirm that if its in the lease and there's no legal right and there's no legal right and under the terms of the lease its not, it would have to be removed. Because obviously its not in operation and there's no space anymore that the town is renting to Clearwireless because they would lack the authority to do that.

**PM:** Have they made a payment to the town yet?

**SL:** The town has been receiving money.

**BB:** Have they been receiving money since July?

**SL:** Since whenever the lease was signed. So I can confirm that if there's a lease provision that can trigger that well obviously that's something separate that the Board could on its own explore. But if it's already in the lease they would need to get out.

**ID:** I have a question about the EBI letter dated June 24<sup>th</sup>. I understand they're the ones that prepared the original report. This does not specifically say that the structural engineer had been out to the site it just says the calculations say it should be ok.

**SL:** Right, that was the question.

**ID:** Pardon?

**SL:** That was the question that we were asked last time and what we were told by EBI that someone did go out to visit the site when they prepared this report.

**ID:** Could you ask EBI who the engineer was and when he'd been there? Because the paper trail could be read as just.

**BB:** Does this person work for Clearwireless?

**SL:** Again, he's a contractor; he works for EBI who is a subcontractor that works for Clearwireless. It would be no different than you own your house and you hire a contractor to come in and do work on your house.

**BB:** Does he seem to do all the work for Clearwireless?

**SL:** No the EBI does work, to my knowledge I've dealt with them for ATT, Cingular, Verizon and I think that have done Metro PCS, they're just an engineering firm company.

**ID:** I see his credentials, like I said, this could be simply theoretical the equipments in front of him but he actually hasn't been up on the deck. I would like a letter from him saying that.

**PM:** Questions?

**BB:** I have no other questions.

**PM:** We would like to digest the information you have given us, if you could get Clearwireless get their electrical contractor go out and disconnect the electrical and verify and report back to the Building Dept. so they can go and verify that and we'll reschedule this for November.

**PM:** When is it Joanne?

**JD:** December 1<sup>st</sup>.

**PM:** December 1<sup>st</sup>, Thanksgiving is the last Thursday in November. I'm sorry I'm not taking any more testimony or questions from the audience, we've already done that part of it and we're just digesting the information that we've asked him to come back with. Mr. Soper is there anything else on your side?

**JS:** No that would be sufficient if Mr. Lacy can contact our office and once its been disconnected we can verify that.

**PM:** Capt. Hazlett anything on yours?

**NH:** No, nothing.

**PM:** So we'll continue this on the November meeting, on December 1<sup>st</sup>.

### **#013-2011 – 41 Argyle St., Anthony Martucci, Tr., M & M Realty Trust**

In Attendance: Atty. Jerome Falbo, Anthony Martucci

#### **Sitting: PM/FG/JR**

**PM:** This hearing goes back to June or July, the hearing was opened and it was closed. There was no testimony take so we'll start from the beginning.

**JF:** Mr. Chairman, members of the Board I am Jerome Falbo, representing Anthony Martucci trustee of the M & M Realty Trust. I have here a list of exhibit so you can refer to when I make the presentation. I have also here photos and the side plan and I also have the schematic drawings of the proposed structure, which I will show after the make the initial presentation. The petitioner/applicant here, Mr. Martucci, is seeking a special permit pursuant to Chapter 17.24.010 of the Winthrop By Law ordinance specifically under the paragraph ordinance titles "Drive in retail or sales establishment".

**PM:** Did you say drive in retail?

**JF:** It's in that one column it says drive in retail or service establishment, we are going under the service establishment. The petitioner needs to add to the existing building, which currently houses commercial vehicles 3,472 sq. feet. At 41 Argyle St. A request for permit was denied by the BI and that's exhibit 3 in your packages. The lot is owned by A. Martucci of M & M Realty Trust, he

initially purchased the lot and constructed a building back in 1969 for the storage of commercial vehicles, as business expanded over the years he required more space to park the commercial trucks. In 1998 I came before this board with a very similar petition that was for his first addition to the building and I came before you seeking a special permit under the same title, Service establishment and also for a variance of the rear yard setback. I have here a copy of that decision that was rendered by the Board. Now back in 1998 that Board granted the special permit and the variance for that first addition. The existing building at present is 8,658 sq. ft located on lots 10 & 11. The proposed structure will be 3, 472 sq. ft to be located adjacent on lots 12 & 13. That lot contains 11, 405 sq. ft. you'll note that in exhibit 2 of your package. It is planned with this construction this will house 2 trucks approx 22 ft. in length and 8 ft. in width plus 3 pick up trucks approx. 15 ft. long and 8 ft. wide. In addition with this added space they were able to store truck tires, barrels, sheds, truck parts, and miscellaneous other material that is accessory to their business. As we know that Argyle is the lot is surrounded by years old auto repair shops and this particular lot is adjacent to a substation of NationalGrid. It entirely commercial in that area. If the petitioner is allowed to build the structure it will remove trucks that are presently parked on the street and will not increase traffic because those trucks are on the street now and due somewhat cause a traffic congestion in the early morning when everyone is departing and in the early evening when everyone is returning. Also it would remove an eyesore and take away the opportunity for vandalism and most important to the petitioner and his drivers it will make the vehicles start quicker and easier in cold weather. Importantly there will be no increase in municipal service. The requirements for the water and sewage are in the present existing structure and not in the addition. Any waste material that emits from the trucks will flow into a drain that is on the premise, which in turn will flow into a trap that is on the premise. Every month or as needed that trap is drained with the company's own vacuum truck and the materials is then trucked to a disposal in the Boston property. In addition to that, the request for a special permit, the petitioner seeks a variance to as the requirements of Chapter 17.30 said requirement is that the rear yard setback should be 24 ft. or 1/5<sup>th</sup> the depth of the lot whichever is less in this case the dept 1/5<sup>th</sup> the dept of the lot comes out to 23 ft. Because of the unusual triangle shape of the rear boundary of the lot, it starts off in the N.W. corner 15 ft setback it gradually increases till you get to the N.E. corner where it is 35 ft. Because of that small amount of land that the apex of the triangle we would require in the end an 8 ft. variance. Because of the irregularity of the lot the petitioner loses approx. 23 ft. The petitioner further submits that he can satisfy in this petition the 6 requirements for a variance that come under the Winthrop bylaw 17.24 and also the requirements of MGL Chapter 40A section 10. In those requirements as follows: A literal enforcement of the provisions of the zoning ordinance concerning rear yard requirements that would involve substantial hardship financially or otherwise to the applicant. Two, the lot is



irregularly shaped in the nature of a triangle and increasing in sq. ft. in the North Easterly direction. The majority of the lots on Argyle Street are square in size and that is shown on exhibit 5 of your package. Again because of the shape of the lot he loses app. 23 ft. in the rear of the lot and has no opportunity to extend the property. The configuration of the lot is such and would be impossible to house trucks unless the petitioner is granted the rear yard variance. The hardship of which the applicant complains is inherent in the operation of such a use on that parcel of land and in effect constitute a hardship that runs with the land. A granting of the variance desires may be granted without nullifying or substantially derogating from the intent purposes of the zoning bylaw ordinance. The nature of the proposed expanded operation has little if any noticeable effect on the commercial neighbors in that area which consists of the auto repair shops and other truck stalls. I have here photos of the area in question; this would be the area where the building would be attached to the existing building.

**PM:** We will mark them as an exhibit then take a look at them.

**JF:** This is merely shown to show you how congested the existing garage is. These two photos is merely to give you a broad perspective of the lot and that was shot from standing on the corner of Revere St. looking straight down on the lot. I have also here a large plot of the lot; I have several copies if you want more than one. That's a larger blown up it gives you a better shot at it. My one final exhibit, which I am sure, you'll want to see here is the diagram of the proposed addition. Do you have any questions?

**PM:** Anything else?

**JF:** No.

**PM:** OK, so you've completed your presentation?

**JF:** Yes, I have.

**PM:** Following the protocol of the hearings, we'll close that part of it. Is there anybody here that is favor of this petition? Stand up and give your name for the record.

**Nick DelVento, Councilor Precinct 3:** The piece of land is actually town surplus piece of land that Martucci bought approx about a year and a half. It is for commercial usage. It is a great facility, immaculate inside and out, because there is a high concern for spillage in that area it's better to keep the vehicles inside than outside.

**PM:** OK, thank you. Anybody else?

**Phil Ronan, 80 Prospect Ave.:** I'm a longtime friend of the family, I know that they do a wonderful job there, they employ Winthrop residents and anyway that we can help expand their business obviously that they be opportunities for people in this town to get employment from their family and in addition they've always been faithful servant of the Town of Winthrop and always have been involved in activities and I think it would be doing the town a service helping these people out.

**PM:** Thank you, anybody else? Closing that part, anybody here not in favor of the petition? Hearing none, questions from the Board?

**JR:** You're building to the right of the existing building? I've been on the Fire Dep't. 26 years and go down there minimal. They do run a great operation, I know the family and they do 110% what they say they are going to do. It is beneficial to keep these trucks in house with the one office in which goes into a basin, clean it out, and goes into Boston. I'm in favor of their proposal today.

**PM:** OK, Mr. Gutierrez?

**FG:** I don't have any questions today regarding that, I just got this information so it's a lot to digest right now but I don't see anything that's striking in questioning.

**PM:** OK, this proposed addition is on a piece of land and you also have the adjacent piece of land that is going to be paved, is that correct?

**JF:** No the engineer is here to explain it. They are putting in porous stone all along there.

**PM:** So the land runs beyond the building footprint out and encompasses a lot that is out here?

**JF:** That's part of the lot I believe.

**PM:** Correct but you're not putting a building on it that's what I am trying to get at.

**JF:** Not on the porous section.

**PM:** Right, so the piece of land that you have purchased from town runs from the existing building out to this lot here so you are looking to occupy part of it with the building, the rest is going to be open to service parking?

**AM:** It's going to be parking for the employees and stuff like that along side of the building. We've got 15 employees down there.

**PM:** OK, Mr. Falbo you've you gave us tonight from the site plan? (Tape change) That wasn't from you that was from Mr. McKenna who was the acting Chairman.

**JF:** I didn't get a copy, maybe I'll speak to Joanne she can send me a copy.

**PM:** I just briefly had a chance to look at it when the hearing started. Through this hearing they ask for a determination of applicability by the Conservation Commission as the property abutter an AC/DC and it says that you have agreed to file with the Conservation Commission?

**JF:** Let me call upon the Environment Consulting who can answer much more adequately than I can. This is Curt Young.

**Curt Young, Wetlands Preservations, Inc.:** We've been involved with looking at the particular property for a period of time and there is a small piece of flood zone elevation 9 that comes up at the back of this property and we had a meeting as part of the Site Plan Review with a member of the Conservation Commission and agreed to file a request of determination of applicability to see whether they wanted to see a full application. This property is well away from what we would refer to as a wetland resource area of \_\_\_\_ marsh as Belle Isle is. It's a piece of area that floods because its low and its not vegetated as a wetlands or you would call it a wetland but it does have a flood zone associated

with it and for that reason its jurisdictional under Conservation Commissions regulations. But we're not really having an impact to that area so we're going to file a request for determination applicability to determine whether it is jurisdictional, we hope to get a condition on the negative determination, that's a good thing. By virtue of that being able to continue work without a filing of notice of intent but if we do have to file the notice of intent we'll file that. Its part of the process and we simply haven't gotten to the point where we have a final site plan that we want to file with the Conservation Commission. We expect to have that within the next couple of weeks.

**PM:** Mr. Falbo was there something else you have a DEP order here?

**JF:** Yes, what happened was this, the DEP issued a complaint, Mr. Young submitted a proposal of the clean up I believe it was?

**CY:** A restoration program

**JF:** The restoration program, sub sequentially the DEP accepted and there's a letter here.

**CY:** Yes, we actually submitted a letter to Mary Kelly, Con. Comm. that includes both the restoration program and the DEP's approval of the restoration.

**JF:** Do you have that letter?

**CY:** I have a copy of that.

**PM:** You submitted this to the Conservation Committee?

**CY:** Yes, and that was the restoration program that was approved by DEP.

**PM:** Does this involve the footprint where the building is?

**CY:** No, not really. It involved the flood zone in this area elevation is 9, and historically elevation 9 wrapped up in thru the site just nicked it about 6 or 8 feet right in the edge of the printer and extends off site and during the process of moving some material around the material was pushed onto this property as well that is why the DEP came out and told us to take care of that and they'll approve the restoration program.

**PM:** For this piece of property?

**CY:** For this piece as well as this piece of property so we're going to do both at the same time, meaning the restoration.

**PM:** And when did this come forward?

**CY:** When was the original complaint? 2009 or so, I wasn't involved with that plan. I wasn't involved with that plan, I got involved after that, we've been working with NationalGrid on the access agreement and that's been the challenge.

**JF:** That is the only issue right now, we have a plan and the plan has been approved as soon as we get permission from NationalGrid we will go in and clean it all up.

**ID:** The circle is owned by NationalGrid?

**CY:** Most of it is. Is the line, there is some grading. That's the property line and they are towards you that has green lines on it is going to be restored on the Martucci property the other property located away from that building is National Grid property.

**PM:** And when do you anticipate that work to be done.

**CY:** As soon as we can get that access agreement done, we got some discussions going on with contractors. I was hoping to do that very quickly after we get the access agreement taken care of. I have emailed the women over at the DEP who is responsible for it today and gave her a status report so Jerry is working on that. So maybe we can wind this up.

**PM:** have you made the filing to the Conservation?

**CY:** No we'll be making that probably in the next two weeks maybe three weeks, we've go to finalized that plan with some erosion control on it, the things that the Con. Comm. wants to specifically see. It would a little clutter if we gave you folks all the information we'll give the Con. Comm., because they like things a little different that you like them. So that plan will be pulled together in the next week and a half and make a filing and request for determination. I think that the, I'm not a betting person in the sense of whether the Commission is likely to want jurisdiction having notice of intent or say fine with the erosion control you're going to implement with that design that you got this will take care of it and it could go either way and if we have a notice of intent or a formal permitting process we'll do that.

**PM:** You won't know until you meet that?

**CY:** Correct. Based on the current local, under the state regulations it would be jurisdictional, interestingly enough, there is no buffer zone on flood zone, we would be working the flood zone after its restores there's no jurisdiction on the state regulations. The local regulations are a little vague with regard to that and we just want to be sure that we are cover and they are too in the process.

**PM:** So basically in front of us tonight you are looking for a variance on a 3 yd. set back.

**JF:** Yes, 8 ft.

**PM:** There's no right side yard set back, left hand side you are going up against the existing building, you're putting the addition on the existing building? Correct?

**JF:** Right.

**PM:** If you're going on the existing building that means it will become part of that building that means the other end, the left end of the building would now proceed, I don't think that is in the zoning requirements for the side yard set backs

**JF:** I don't believe there is a side yard setback. It doesn't say.

**PM:** You had mentioned in the front it is 27.7 feet? Any questions from the members of the Board?

**ID:** I would like to make the observation that the only way, the side yard rear set back which is 8 ft. is the only variance that is required that all the others dimensional requirements are the boundaries. It's a portion of the property. Is there a side yard set back for Business "A"?

**JF:** Mr. Chairman I suggest this; first point would be that that is asking for a special permit for a preexisting nonconforming lot and on the other hand that doesn't fly we can then request part of the variance for the side.

**PM:** A variance on the rear yard and if this building is attached to the existing building then this should also include a variance to the side yard because this is becoming one big building.

**JF:** I have no argument on that, my personal thought is that its not required because use it's an existing nonconforming, that my personal opinion, I have no objections to that to request a side yard variance. It doesn't affect it one-way or the other.

**ID:** By connecting to the existing building you're increasing the amount of nonconforming, you're increase the amount of the building that is part which is already nonconforming, its like adding something to an existing house.

**JF:** When you do that you eliminate the side yard completely, if you look at the addition there will be sufficient side yard requirement, in other words you attach the building, and you eliminate that side yard.

**ID:** No we're talking about the one over here, the far left.

**PM:** It's like adding an addition to your house, if you added an addition to your house then the whole structure then becomes one then you have to conform to the front side and rear setbacks of the whole building, so that what I'm mentioning here about the side yard and where this was previously grated to do the building, I'm just thinking a little bit about whether its required. We have the Building Inspector here?

**JS:** In my opinion is I did look the file over completely and the existing building was permitted under a special permit and variance back in 1998. I read through that and actually took that use off of that it was a service establishment that was allowed by Board of Appeals and in this Business A district and that's why I sought the need for relief for an increasingly nonconforming use to increase that use into this proposed structure. The structure is only violates the rear yard setback. I see no need to go into the existing building because this is attached to it. I don't see this as we're increasing the nonconformity of that existing building. My opinion, that's been voted on and issued a special permit/variance to operate, the concern is the addition on that building.

**PM:** OK. Capt. Hazlett?

**NH:** I wasn't at the site review but I think that all the issues were brought up. I think the only thing that was not brought up was the housekeeping as it is was granted because he want to park vehicles in there and has to go for a license, other than that I think the Chief brought up all the concerns.

**PM:** Does anyone else have any questions and what's the pleasure of the board? Would someone like to make a motion?

**MOTION: (JOHN RICH)** – To grant the variance on the rear yard setback.

**SECOND: (FRED GUTIERREZ)**

**PM:** Any discussion? Going through this and looking at it there would be some conditions that we would put on this. Some conditions I see is that you've been

asked by Site Plan Review to go to Conservation; I don't know what they'll come up with. You would have to comply with that, we would also like to see a copy of the DEP order that has been. I would see that the conditions being complied with the DEP order to have your hearing with the Conservation Committee and do you have to get back to the Site Plan review?

**JF:** Not that I know of.

**PM:** There was a question raised by Mr. Calla on the storm water infiltration and adequately captured and controlled on the site plan. Mr. Soper raises it regarding the egress and the emergency signage in the application that we comply. What I am going to say in this here that you have to show us evidence that you're complying with the Site Planning Review and the Conservation Commission and the DEP.

**JF:** OK. With regards to the issue raised by Mr. Calla, my understanding is that is why we have the order to satisfy the porous material here and all along here. Paul Finocchio, the engineer might be able to explain that, Paul?

**PM:** Was this plan created after your hearing?

**JF:** Yes we had another plan but after the hearing we revised the other plan and got rid of it.

**PM:** So is this plan addressing all the issues raised by the Site Plan review?

**JF:** I believe so.

**CY:** It takes care of the storm water, it takes care of the size of the building, and it'll form the basis we're filling for Conservation.

**JF:** Well, Paul the engineer, does it satisfy the issue that was raised?

**Paul Finocchio, PJF Associates:** We do drainage analyses on the site of the proposed addition and we tell the requirements for the storm \_\_\_\_.

**PM:** And was this presented to anybody other than us here?

**CY:** No that was going to Conservation and they actual looked at storm water and they make that a regulation now that storm water is taken care through Conservation.

**JF:** So the only issue that remains unresolved at the moment is our status with Conservation, correct:

**CY:** Correct.

**PM:** And we'll put this under the conditions that will have to be satisfied.

**JF:** I understand.

**VOTED: ALL IN FAVOR**

**#019-2011 - 154 Adams Ave., East of Air – Semyon Dukach, 165 Tafts Ave.**

In attendance: Attorney James Cipoletta and Semyon Dukach

**Sitting: PM/BB/FG**

**PM:** Good evening.

**JC:** Good evening Mr. Chairman. This is on the agenda as 165 Tafts Ave., but the property is actually Adams St. The owner on record's address is 165 Tafts Ave., so the record is clear.

**PM:** That's what we have on the application here, 165 Tafts Ave.

**JC:** Is the owner. And the premises that is described in the Building Inspectors correspondence is correct. I believe that he addresses as Adams St. but nonetheless I think we all know what property we're talking about.

**JC:** Does the Board have a copy of the Building Inspectors letter dated August 17<sup>th</sup>, 2011?

**BB:** Yes it's in the packet.

**JC:** That is interpretation that is appealed from East of Air, and this is Semyon Dukach, he is the trustee of East of Air, he owns the land and lives at the house at 165 Tafts Ave. We are not asking for anything. This is an appeal from the notice of the BI dated Aug. 17, 2011, in which he points out a number of issues some of which the BI indicates that we need permits and we don't think we need and other that there are violations to we allege do not exist. This is actually matter of interpretation of the town Bylaw where there is a disagreement between the town and the owner. The first issue has to do with the alleged violation to wit trailer used for storage prohibited by 17.12.070 Trailers and/or Mobile Homes. I sited in full the ordinance, which appears, in our town ordinance book describing the trailers and motor homes. What Semyon keeps on the property are a couple of storage pods in which he stores the kayaks, the bicycle and the wind surfing. The bicycles and used to ride off the property, the kayaks are used in the bay and harbor and the wind surfing is probably the least amount of what's there. Our contention is that the ordinance as it appears on the books does not pertain to these bins or storage pods, they're not trailers, they're not trailer coaches, they're not mobile homes, they're not vehicles or portable buildings. That ordinance was adopted to stop people from living in trailers from putting them in their side or back yard and not being businesses out of them and in general littering the town with trailers and mobiles homes. And it even talks about what a trailer is a trailer is a vehicle and you can stop right there because these are not vehicles these are storage pods and in support of our position we site 17.12.120 Accessory uses in the resident "A" district includes #5 a storage shed or barn not exceeding 1200 sq. ft. of area or 16 ft. in height these are basically shed. They don't have wheels, you can't drive them, you can't move them other than by being picked up by truck and they are as we submit included in the definition of 17.12.120 storage shed or barn. It's for storage that's what it's for, it's not for living, it's not for mobile, it's not for driving, it's not for anyone of those things that are in the statute or in the ordinance that is reference by the BI. The second issue that appears in the BI letter in regards to a parking lot, it says that a parking lot is not a use allowed by right in the RA district. We don't have a parking lot, we are not operating a parking lot like you see at the MBTA or down by Fenway Park or over by Boston Garden its an area like every other home or business or residence has its an area

were people park. It's not a parking lot, parking lot I would agree if we using it as a use as a primary use, this is just a place where people leave their cars, their bikes, their scooters, they go and they walk on the trails. It's not a parking lot use as is defined in 17.12.130 of the Use Regulations of the Winthrop Code. And you can see the 17.08.572 actually talks about it's modeled after several other common definition and the one that I pulled out there is several and on is Revere it talks about what a parking lot or a structure is and this does not meet that criteria. The third that a parking lot is required to be designed for specific dimension to provide safe access or buffer zones to reduce impact to abutters and that the reference to the design of off street parking facilities. Again, it's not a parking lot, it's not an off street parking facility, it's no different from our driveway, your driveway the place where people might park to go to Winthrop Marketplace or to CVS. The fourth and this is an interesting one the property has a use described as outdoor recreation. Outdoor recreation use on the lot exceeding 6,000 sq. ft. requires a special permit under the table of uses 17.12.13, the outdoor recreation, this is a vacant lot and for years before Semyon got there it has natural rubble, which still exists, it has vegetation which still exists, and it has walking paths and sand, seashells and so forth, over which you can walk to get over to the beach. That's all he's done is make a little definition of where these walking trails are. Yes he has bicycles that you can use as recreation but they used off site we are not using 6,000 sq. ft. for recreation this is just where the base is, and if the property across which people will travel to get to the beach, to get to where they kayak or where they windsurf, none of this really happens on site, it happens off site except for the walking trails to get to the beach and those are natural we've defined them and made them a little more sturdy so just to make them safe and to comply with the Con. Comm. requisites. That is actually allowed in all districts and in the RA district, none commercial signs, wildlife management areas, paths, and bridges. That's what he has, anything that takes place on the property is paths and wildlife management areas. It was specifically order by the Con. Comm. both Boston and Winthrop that we have to maintain and Semyon's main goal in this is to preserve the wildlife habitats and conservation type area along the beach. Number 5 is the property residential "A" district is being used for business and commercial development, well no it's not and even if it were there is no prohibition against, there is no definition of business or commercial development either in the definition of the code or on the table of uses and I think it's a reference to whether or not people pay to use the windsurfing equipment or pay for the lessons, they certainly don't pay for the bicycles and whether or not this would be a further refinement or subset of outdoor recreation, and if it's not in the code then you can't enforce it. And we don't have a definition of whether or not there is any restriction on any outdoor recreation that is paid or has a dollar value attached to it as opposed to outdoor recreation that doesn't. So as much as this is a square peg into a round hole situation meaning that if the drafters of the code wanted to differentiate then they would have done it but they didn't.



The rest of them are state building code and architectural access board section #6 requires a building permit for temporary structures, I think that East of Air may have applied for a permit for the storage pods, if they haven't they will we don't take issue with the BI that some sort of a permit is required for those. Number 7 is means of egress illumination, and again the entrance of this property is across the right of way and is adjoining the abutting neighbor and that is somewhat used as his driveway or the approach to the house and as in keeping with Semyon's plan of keeping the natural habitat he's not about to stick all of these light about the neighbors driveway or the right of way besides he doesn't operate at night. This is a natural occurring activity, you windsurf and kayak during the day it would be saying that you have to go light up all of Winthrop Beach or Yirrell Beach down on the sand or where you pull in you just don't need to do it there us natural light there from the overhead and from the surrounding residences and again the entrance is across property owned by someone else over which Semyon has right of way. The AAB handicapped requirement for residential facility we are already at the these different items one has to do with restrooms, its alleged that Semyon doesn't have a rest room and toilet well he does, they wanted the walking trails the natural rubble to be handicapped accessible, I don't get that, it's natural, it's a trail it exists, we didn't build it and we're not deconstructing it so that a matter that's being taking up with the architectural building board, yes there are accommodation there on the property but this would say that Semyon would have to make the whole beach handicapped accessible and take the natural hiking trails and the rubble and make that all handicapped accessible. They may want us to do that that's currently pending in the AAB, as are these other 3 issues, handicapped requirements for parking and loading. We don't have defined parking Con. Comm. didn't want us to do and we didn't want to do it to define the parking pout down a hard surface pave it put down lines, we don't so that we want to keep it natural that what he does. There is plenty of room for a van to pull in there or a bus, you just open up pull in the middle of a place and let someone get out. So again, we're not looking here for relief here from the BI or the local board that matter is pending at the architectural access board and we actually have a meeting in January with them. So with regard to the zoning thing I think it's a matter of interpretation those first 4 items that the BI sites and we just have a disagreement over the legal interpretation and its up to the Board to make a determination of the inclusion of law as how that applies to a natural occurring natural kept hiking and recreational basically empty lot and whether or not these pods require permits such as with a mobile home or a trailer, your sitting as a quasi board so as judges you're going to have to interpret the law because we have a disagreement with the BI and its honest disagreement as intelligent minds will sometimes have but the code is not written with that much specificity so you now are the 3 judges to make an interpretation of the law.

**PM:** Anything else?

**JC:** Only if you have questions.

**PM:** Closing that side is there anybody here that is in favor of this petition. State your name for the record please.

**Claire McManus, 10 Grovers Ave:** I didn't know these guys. I'm a Winthrop resident, I've rented from them and used their free bikes and I think that what they've done for Winthrop is wonderful. I live down there on Deer Island, I walk the dogs, and my relatives come over from the North End on the ferry and use that area. I want to support them.

**PM:** OK, anybody else in favor. Closing that part of it. Anybody not in favor of the petition? One at a time please. The young lady in front?

**Janice Gillette, 125 Tafts Ave.:** I am not in favor mainly because the parking and since they've been there we've had a lot of vandals in our neighborhood starting with the cars blocking the street and not getting a ticket, there's no parking on Tafts Ave. but people park there every weekend all the way down the street and sometimes on the sidewalks.

**PM:** Does that mean the lot there is full?

**JG:** I assume. We never had problems before. The Deer Island parking lot was adequate for walkers in the past but now it's probably quadrupled with cars down there on the weekend and they try to park in the street which is where our houses are on Tafts Ave. extension. Through the summer we had people coming there sometimes late at night urinating on the fence right next door to me right outside my bedroom window. There's been quite a bit of beer cans and trash left besides where the cars are parked and some people park \_\_\_\_\_. I had a conversation with the Town manager and if we all have our houses assessed at a lower rate the town will lose money if they allow this.

**PM:** OK, thank you, anybody else? OK, sir, state your name?

**Joel Stern, 138 Tafts Ave.:** These statements that were just made by the attorney not only bordered on erroneous but I'm going to go as far as to say that they are lies. I have some photographs that I can show you also. I've lived in that property on and off since 1954 what the Green property used to be was nothing more than a field. There was never a path, a walkway there at all. Those have been totally manufactured in the last 7 or 8 months by Semyon. The property has containers, which are nicely called storage bins, shed, but they are containers that you would put on a ship or on the back of tractor-trailer. I'll show you pictures of those as well. Out of those trailers where Semyon is conducting a business East of Air, whether it be a non-profit business, it's a business, this property is zoned residential. It's not farm land, I talked to Semyon on the street one day, there was a violin concert going on, he thought some of the neighbors liked the violin concert, and I said "Ya, and when does it escalate to electric guitars?", well it escalated 3 weeks later on a Sunday morning at 11:00, and I went to the Police Station and I said 'kindly go down there', they had sound system speaker set up, Candice you heard it, we were standing in front of her house hearing it, and they were preparing for a concert, at 11:00 on a Sunday morning. The definition of a parking lot, if you own a car or a number of cars and you parked them in an organized manner in an area,

hey guys that's a parking lot, ok, it's a parking facility, if you park vehicles on it, and its being used for parking, if it walks like a duck and talks like a duck, it's a parking lot.

**JC:** Anything he shows you I want that marked as an exhibit I want a copy otherwise I don't want it admitted.

**JS:** Fine, I'll get you a copy.

**JC:** No, I mean now. I want to see it simultaneously. I want a hard copy.

**JS:** I don't care what you want. There's a picture of a parking lot and the containers.

**PM:** But we can't accept that.

**JC:** I want it marked as an exhibit.

**JS:** Ok, I'll get a hard copy and I'll submit it to you and to you as a hard copy of the facilities that you use for a parking lot. In the residential area you are allowed to park 3 vehicles there, the day that I was there, there were probably about 20 vehicles parked there on that Sunday morning. The kayaks are being rented, this young lady enjoys kayaking, that's fine, Boston has provided a beautiful walkway around Deer Island and a parking facility so if she and her cousins want to come across the ferry and use the facilities they can. What you need to understand that this is a residential neighborhoods and a zoned residential lot, we have a neighbor that is trying to conduct a business down there, so that so much so the steps that he had to prove to the water conservation board outside the bags of \_\_\_ we're down to the hardware he's also putting gate at the \_\_\_ house and he allows people to carry the kayaks because I've been there watching them and they take the kayak from the storage pods take then across the street go thru his gate thru his residence to launch into the bay because without doing that there is no other way of putting a kayak per say in the bay unless you want to try to climb over the rocks at Deer Island. So what we really have here is a business and I don't care if it's profit or non-profit, with concerts going on, parking. Traffic, noise, beauty is in the eye of the beholder I understand, ok, if I wanted to smell cow dung, I would in an area that was zoned farming, ok, this is a residential area, we have zoning rules and regulations for a given purposes and those that have lived there for many years want to keep it a residential area. As it is we have to put up with the traffic and the aggravation some of which Janice referred to which is just coming because of the walking facility at Deer Island. Again the traffic, the fireman would tell you here, that in an emergency situation with all the vehicles parked along the side of the road on Sunday illegally parked, if they had to get thru with the vehicles coming from the opposite direction from the Island they couldn't. Impossible. So that's a hazard. So adding traffic to the area and putting in shipping containers and 2 porta-potties which sits on Terry's backyard that's what her view is, its just that everything about this project would be wonderful if it was in a properly zoned area for commercial usage so that people knew that they were buying a home in next to a commercially zoned property that could be used for a business. We were there, we've been there its not property being used for the

zoning that exists. And I don't care what you want to call it but the parking lot is concerts going on and there are containers no footings, etc. they're just plopped there on the land. I could go on but I won't, it's the whole facility is rubbing us the wrong way because of the zoning etc. Thank you.

**PM:** Thank you. Anybody else?

**Bob Massa, Precinct 3:** Couple of things, first of all I agree with everything he just said. Also, the entrance to that property they just built a cut thru a sidewalk on Tafts Ave. that's the entrance to the property now it doesn't go down what was I think that they referred to it as Adams St. Jr., or something like that a little area, so he's cut his own way into the parking lot and I would also agree that if you're parking more than 4 or 5 cars in there it becomes a lot, it's a business and if you go to any business and go into the business and you put your automobile and park it there it's a parking lot for the business. The other part of the safety issue, I ride my bike down there almost every day and the cars do park illegally, but part of it is the attraction that he has down there, they want to see it and use it and they don't always park in his parking lot they park in the street and if the bus parks in the street you can't do anything else down there. I'm trying to ride a bike down there and if someone is coming with a car from Deer Island, it's a Kamikaze issue. There's no place to go. So he's created a nuisance in what was nothing. It's an empty lot with an old house that eventually burnt down and it didn't bother anybody. Now he's got this whole operation going on and it's a nuisance.

**PM:** Thank you. Anybody else?

**Robert Massa, 129 Tafts Ave.:** I'm also against the property. As everyone has said it's a zoned residential A. He is running a business out of it as it appears. He dragged in his 3<sup>rd</sup> piece of property on Tafts Ave. as Joel has spoken earlier, taking his equipment across the street to his existing home and entering the harbor on that side as everyone has said it's an attraction to it. Hurricane Irene, nothing really happened, everyone was driving around, the attraction everyone knows that it's there, the fire dept. had to respond to that night, for the chemical spill, was it that night?

**NH:** No it was a separate night.

**RM:** Well, they couldn't get down there, there were so many cars parked along Tafts Ave the ambulance was stuck at Tafts Ave rear for a few minutes and when so many minutes counts. That's safety. There's one road in and one road out, it's residentially zoned and there really shouldn't be a business there.

**PM:** Thank you. Anyone else?

**Richard Dimes:** I'm going to speak as ex-Chairman and member of the planning Board, what I am saying is that I'm not representing the Planning Board it's my own thoughts. First of all the land in question is zoned for residential "A", a single and a two family house. But it's fine he put on this lot no matter what Mr. Cipoletta is saying it cannot be put into a commercial use. Now the thing about the containers, and they are containers, they are exactly what has been described, they could be out on a ship. We went thru two town meetings and

we banned containers in this town you are not allowed to have a container in this town, the reason was at the time of the town meeting everybody thought it could end up in their own backyard. So it was voted down. Secondly, people are beginning with this type use of the law and a cut thru at least 30-40 cars in that lot that also means that there 30-40 people in the street to put the kayaks in the water. My question is in one respect, what right of way does this man have to go over a town street secondly what right of way does he have to use that land and use the beach on the ocean side to bring commercial people to use that. It's a lot of permitting processing if you ask me. And the major problem here is and I'm not against the use of kayaks but it doesn't belong on this particular lot and I cant believe that the Mass Water Resources hasn't almost come up here screaming and hollering cause we cant even get into the island and these cars are going to be blocking the big chlorine trucks that are going down there all the time I just don't understand that at all. But the \_\_\_ side in an area that is not allowed, in the residential "A" you are allowed an accessory building to your home. It has nothing to do to with outing an accessory building on an open lot. The problem here, with this presentation, it should not even get off the ground and if this gentlemen wants to sincerely do something right he should spend some money and get an architect and see if you can lay out something that blends into the neighborhood might consider because it is a use but to give out special permission to everything that they're looking for is not right at all.

**PM:** Thank you, anybody else?

**Nick DelVento, Councilor 3:** I guess I'm getting old because I was actually the town meeting when we made the bylaws on the storage containers. The shed or storage container should be an accessory use to a business; this is being operated on a residential property. Residential parking 3 spots per unit if there were a 2 family on there we could have 6 spots, there is a parking area that in front of Con. Comm. was a designated as a parking area. An order of condition from Con. Comm., at that time it was presented as a parking area. Parking for catering trucks, for a wedding, for friends, whatever. There was a presentation made in and reality it's an accessory use for the business or the accessory use the commercial property owners I believe talked about it the abutting property is also the same proponent and is zoned commercially for Boston. Even if he is zoned in Boston the accessory use for parking facility in Winthrop on residential "A" lot is not allowed. Again there is no permanent residential structure on the lot to support the justification to have it a shed although they are storage containers. I asked them to please look at the site and I will say that the site is cleaner it does look better than it may have in the past but you still have to follow the bylaws of the town.

**PM:** OK, Thank you. Anyone else?

**Lee Dzedulilonuis, Comm. on Disabilities:** There are several violations that are filed with the \_\_\_ access Board and I was told that this Board would make a

decision on whether it would be decided on negated or granted. The hearing was on January 8<sup>th</sup>.

**PM:** Anybody else? New?

**ND:** I will say one thing that at the Con. Comm. Hearing there were some items that were suppose to be done there were some trees and buffers that were suppose to be planted but never done from the proponent. The cease and desist order the storage container issue was brought up at the Con. Comm. and specifically read that the bylaw and the Con. Comm. understood that all permits need to be in place before – to be utilized and occupied. The portable toilet was brought in without permits and storage containers were brought in without permits. They were never obtained and have known about this since June and to this point in time the BI issued a cease and desist order and went to court to enforce them.

**PM:** Anybody else, you've already spoken.

**CM:** One last thing, I don't know if this comes under your jurisdiction or not but the people who owned the lot had a helicopter on July 31st came over my house so close it scared me. So if he can have a helicopter land on his land why can't I have one on mine and then before you know it everyone will have helicopter in their backyards. Massport I contacted twice and got nowhere with them as far as being permitted. I guess you just top things first and then ask permission later.

**PM:** Shortly.

**JS:** When I was talking to Semyon in the street the other day he assured me that Mr. Cipoletta had told him that recreational use of the property, what I told Semyon is that I looked at the building codes, recreational use of the property is permitted as being used as a residential home in other words if you want a swimming pool or a tennis court to use it as a recreational are for your residents, that's what the code says the building code, it doesn't mean that you can put in a baseball diamond or have a kayak rental business.

**PM:** Anyone else?

**ID:** Is there a date for the Con. Comm.

**ND:** June 8<sup>th</sup>.

**PM:** Ok, closing that part of the hearing.

**Jim Soper, Building Inspector:** Mr. Chairman I would like to speak about directly about interpretation of the bylaws and how we can interpret them differently, I can interpret them one way and the applicant has interpreted them in another way. We will start out with the trailers, my interpretation is they are storage trailers, storage trailers are not allowed, storage trailers for business use, specifically states business use are not allowed, the definition of a trailer means any vehicle we don't have to stop right there, continue which is immediately portable and that can picked up by fork lift and put on wheels as it was brought in on wheel and let go with a forklift or is it arranged intended or designed or used for sleeping, eating or business. So I would like to submit a photograph of them conducting business in the trailer as an exhibit, pass those down there are

5 of those. In that trailer you'll see a couple of people at tables and chairs what they are doing at that table are renting equipment. Now I say renting equipment, because I am going to submit another exhibit, which is the contract, which they had each user of, their equipment sign and you will see specifically and I will wait till you get it, on the second page of the contract and this is the contact on the table that day I took the photo, the second page of that contract under release and waiver of liability you can see the first sentence, I the undersign and my heirs representative next of kin in consideration of the rental of equipment to me. On the third page in the paragraph just before the participant signature the last sentence I agree that no oral statement or representations apart from the language the above agreement has been made. Next sentence, I will be responsible for the full replacement cost of any equipment that I have rented from East of Air, LLC. So I would like to establish the trailers as a business use. Until they did forth fit the definition of trailer in our bylaws. And they did fit the definition of a trailer in our bylaw then they should be permitted by the town council, they're limited to a certain amount of days as a temporary trailer in our bylaw and they can be extended and I think that hasn't happened and its been explained over the course of the last 3-4 months to Semyon that this is how we needed to take care of these trailers that I saw down there. The second issue is a parking lot is not allowed by right in a residential "A" district, well in our bylaws we have dimensional regulations and we have use regulations and in our use regulations one of thing we find is 17.121. Use regulations 1<sup>st</sup> paragraph. Under a prior code 145-10 it is the purpose and intent of this chapter use regulations to list the uses that are specifically allowed or specifically prohibited in the various zoning districts listed. Any use not listed in this chapter is prohibited, so we go to our bylaw and table of use regulations and I looked for the use as a parking lot in the residential A column and I see nothing so therefore I interpret a parking lot is not a permitted by right use in a residential A district. Third issue parking lots are required to be designed to specific dimensions to provide for access, safe access, buffer zones, so we don't impact the neighbors with noise, beer cans, doors slamming, trunk closing. The town under conservation commission issued an order of conditions based a site plan that clearly had parking area, a parking area. That area was specifically let for 24 vehicles originally intended for 48 there was some negotiation agreed upon for 24 cars. That is in fact a parking area or parking lot. If it is a parking lot in which vehicles enter and exit we need to have safe aisles for people to back out. We need to have lights when it's dark out for people to see when they are backing out. We cant be running children over in the parking lot at night without enough illumination and care. We can't expect handicapped people to just pull up and get the backspace in the parking lot that's why it needs to be marked and that's why architectural access board required that. So there are several areas in our bylaws that require widths of parking spaces, 9' lengths of parking, 19' aisle width, and 24' when it's too wet. These things haven't been addressed by conservation naturally; they should be

addressed by zoning or planning to come down to a safe parking lot. So it's a matter of process. The fourth issue, the property has a use describes as outdoor recreation and Atty. Cipoletta did provide a letter that clearly stated that it was outdoor recreation. Now when I go to my table of use regulations I find that 'Outdoor recreation' Outdoor uses and recreation uses that occupy over 6,000 sq. ft. the lot is clearly over 6,000 sq. ft. and they may make a contention that that use doesn't comply here, hats not about the lot well lets go to our bylaw and look up the definition of use. When we do that we find the definition of use to be Use means the purpose or structure or lot is arranged, designed and intended to be use occupied and maintained. The purpose for which a structure or lot is arranged. So when we go to our table of Use regulations we find that recreations use which includes the lot or the structure which occupy over 6,000 ft. are required to go through a special permit of the Planning Board, SP3. So I contend that the process has been ignored. The process has been brought up at the May 11 when I attended the Con. Meeting and spoke of these same issues at the request of Mary Kelly, the chairman. And at that meeting I handed counsel a letter detailing all these issues. And I sat on it for 3 months and did nothing, and they made lots for parking and they made paved ways for access to and back from Deer Island, the Carousel and storage trailers. At one point I was told by the Town Manager under the direction of the Councilmen to move forward on this and at that point I moved forward and here we are today I believe back at square one.

**PM:** Thank you. Closing that part of the hearing. We'll have questions from the Board. Mr. Rich, anything? Mr. Gutierrez?

**FG:** Is this a business, a public business? Yes?

**SD:** It's a recreational use.

**FG:** The question is that is it a public business?

**SD:** I don't whether it's a public business, it's a public business, and it's a public asset.

**BB:** Do I have to pay you; do I have to give you something?

**SD:** Yes, absolutely, some of the equipment is rented for cash. Ya, definitely.

**BB:** These trailers are permanent trailers.

**SD:** These are containers, these are not trailers.

**NH:** I know that when this was brought up at Conservation the one question I had was there going to be any storage of flammables or combustibles etc and obviously not and I don't think in this case the bikes, or kayaks fall under the category so in that sense the Fire Dept. has no regulations over as far as permitting goes. Other than if somebody got hurt on that lot it would have no bearing we would do what we normally do, so as far as an adverse affect of the parking other than having access down to Deer Island in case of an emergency that's really the only true concern right now that the Fire Dept. would have.

**PM:** Anything else Capt.?

**NH:** No.

**JC:** Mr. Chairman, may I respond to a couple of different comments?



**PM:** Yes, let's go through the questions from the Board. Mr. Beattie anything else? Mr. Gutierrez anything else? Mr. Beattie?

**BB:** If I'm paying you for something it is a business.

**SD:** It's a recreational and it is specified to not be commercial if there is going to be recreational use commercial or otherwise.

**BB:** It's a business though.

**PM:** Anything else?

**ID:** I have a question; we have a section on the parking thing that calls for even --- open recreational taking to the extreme little league park. That we actually have parking regulations for that in calculating the spaces needed by the amount of playing field measures, Mr. Soper?

**JS:** 17.20.060 there's a table in that section.

**ID:** There's also more the area too.

**JC:** Does that apply to residential property?

**ID:** It applies to a parking facility. I'm just questioning that.

**BB:** It goes over stalls, drainage, service, and maintenance, one of the laws adjacent to residential shall be screened to abutting property as provided in subsection F above.

**ID:** That's the mitigation issues. They actually have a thing to calculate the spaces needed even if you were just doing...

**JS:** 145.30?

**ID:** I'm looking at the new one not the old one.

**JS:** The new one is 17.20.060.

**ID:** Thank you. 17.20.060? That's the table but we actually have a warning in there if you're calculating.

**BB:** It says right here "Off street parking shall be provided in accordance with the following table of off street parking – determining the number of parking spaces required calculating the number of parking space required for each use on the site banded together, any fractional spaces shall be rounded off to the next whole number not without understanding the standards in 145.25. Cases where different uses will be used parking spaces at different times and the BI shall determined the maximum number of parking space required to meet peak demand.

**ID:** I have a question about something I'd like to see before we go any further which is a better map of the subject property because the one attached to your , because its certified land, the deed is pretty simple, the parcel and the attached plot plan is it doesn't say, because the deed just says were conveyed party numbers 143365B, that would have all the additional information called out in the deed and the plan doesn't make it clear how the owner has access here, I am assuming that he has easements here but its not showing.

**JC:** Would it be helpful to get you the Con. Comm. or the DEP plan?

**ND:** The Conservation Comm. would have a pretty good one.

**PM:** I would suggest that we have a look at the Con. Comm. report their plan we haven't seen anything on that it wasn't part of the package to take a look at

that to digest the information that's come back and forth tonight, I did promise Atty. Cipoletta to say something, what I would recommend to the Board to get the information from Con. Comm. and have a chance to digest what's going on here I don't feel that I have enough information to be able to make an intelligent decision with this back and forth and it's a lot information to go through.

**JC:** I'd be happy to give the following, which I think comprising the entire record, the order of condition issued by the Winthrop Con. Comm. that were attached to those were recorded those at the Register of Deeds and they referred to the plan stamped BI should have it I would be happy to give the Board a smaller version because the larger version.

**PM:** We can go to Con Comm. And get a copy of that.

**JC:** You can do that but you're not going to have a Boston I've got the Boston as well and you sort of have to read them together and I can get you those as well if you need those. This is the plan that actually goes to the deed and I agree because its Boston and Winthrop land and this is the one, that's the plan that's registered and that's one we gave you but there is more detail on the Con Comm. plan and Marcia probably has 11 extra copies. Couple of things so we don't lose sight of what the issue or are, not looking for a Special Permit or looking for a Variance and I still disagree with the BI he, has his interpretation I have mine, I think I'm right, he thinks he's right, so you're going to have to decide but I think you need you can't just do this in a vacuum, you need to take a look at the sections that I've reproduced in the application and in the appeals and with all deference and affection to my good friend Mr. Dimes - Where have you been? We've been doing this since April or May and you think we're here looking for a special permit and if you and the planning board and the town meeting members vote some sort of by law or an ordinance.

**RD:** He's out of order.

**JC:** I'm not going to sit here and be called things.

**RD:** He criticized me on something as no nerve.

**JC:** Here's my rebuttal, he opened the door I ordinarily wouldn't do it but I have to walk through the door with all due respect Mr. Chairman here it is if the planning Board and the town meeting which the name of both has been invoked had a purpose of adopting a trailer or a container or whatever other ordinance or bylaw then they should have written it better and you've got it in its in the plan and I suggest as the lawyers on the Board know where there's is ambiguity in a statute or a court ordinance or a contract or a document the ambiguity is interpreted against the drafter and when you look at that this isn't really a parking I just want to focus now on what the issue really is, that if the town ordinances were better drafted we probably wouldn't have disagreements over them but that's what happened and I have my interpretations and Mr. Dukach's in-house counsel has his interpretations and we agree and we disagree with the BI and when you have to operate within the 4 corners of the ordinances and the ordinance say and the BI omits that outdoor recreation and recreation a uses are allowed in the residential A districts and I think its allowed in all districts its just a

matter of whether we interpret what Mr. Dukach and East of Air takes up more 6,000 sq ft or less than 6,00 sq ft you have to make that determination. We made our case in the appeals and we're leaving it up to you to make the decision. I understand the BI can't have it both ways but you can't say that you can't have a parking lot but you need to design the parking lot a certain way. I'm saying to you that the town ordinance, by law then ordinance now, does not define parking lot as a use, it just doesn't exist so as we've said in the appeals we are not using the area as a use of a parking lot such as you would find maybe up in Deer Island because it would stand alone, somewhere else maybe at the MBTA that's a parking lot because it's meant for parking. There is parking on the land, yes it's ambiguous and yes we disagree and we've made our case and it's not personal if we need a special permit we'll go get it if we need to appeals we'll appeal, that's why we're here, we have a healthy disagreement with the interpretation. In a perfect world these ordinances would be more specific and more particular they are not they are ambiguous, this is when you really look at it what's going on at Adams St. it's benign use, it's what Semyon did, he told the Con. Comm. he's told every board he's been before I bought this lot so they would try to build a hotel cross the street from me, he lives at 265 and he wanted to maintain it for outdoor use and conservation I don't know what could be in more compliance with outdoor use and conservation than walking trails and hiking and kayaking and biking, I don't think he rents those bikes, I think he gives them away and lets people ride on them. This is something we've talked about with the town from the day that Semyon came to Winthrop and it was recognized by the town that this whole use dovetails with 2 different things, 1 with the ferry and 2 with the bike and walk Winthrop, and all of the bike and walkways were established in the town. Now I know that people behind me that have been at the meetings talking against this project from the first day and are not going to like what they hear and that's their prerogative and they can make their case but the case is whether or not this is a good use it's not whether or not the kids go out there and drink beer and leave the beer bottles at night, when this place isn't open. It's about whether or not the interpretation of the bylaw cuts in favor of operation without a special permit or a variance or with a special permit or a variance. That's it.

**PM:** We're not trying to have this open up, we've listened to everybody, we can go back and forth here for another half hour or so.

**ND:** I just want to bring one issue to light. As part of future use of not building the owner of the property very recently just submitted a petition to have the property re-zoned as waterfront development district so as for preserving the property of no building or structure.

**PM:** I saw that come in. What we'd like to do is, we've heard from Atty. Cipoletta, there are some documents that we don't have here that we'd like to get our hands on and look at from the Con. Comm. and I'll ask Joanne if you can talk to Marcia so we can get those and look at them. Atty. Cipoletta you had mentioned about Boston?

**JC:** We got an order of conditions from the Boston Con. Comm. as well if you want copies of these I'd be happy to get those over to Joanne I'm not sure that Marcia has them

**PM:** We'd like to get a copy of that. So I'd like to entertain a motion here.

**BB:** Should we postpone to December 1<sup>st</sup>, or to take it under advisement.

**PM:** We'll take it under advisement and get the documents we're looking for and have a chance to read up on them and come back if we have enough information on December 1 we'll talk about it more and bring it up and have it here.

**JC:** So as I understand it the hearing is closed, we don't have to come back and give more testimony or anything else you're going to leave at least the last part of the public hearing open only for the submission of documents not testimony?

**PM:** Correct. No testimony, no discussions.

**JC:** Ok, I just want to make sure that Semyon doesn't need to come back.

**PM:** No.

**JC:** So you'll do this at whatever deliberations you do. I'll make sure that I have them within a week.

**MOTION: (BRIAN BEATTIE)** To continue to December 1<sup>st</sup>.

**SECOND: (IRENE DWYER)**

## **#020-2011 – 75 Pond St. – John and Carole Zuffante**

**Sitting: PM/FG/JR**

In Attendance: Attorney James Cipoletta, John Zuffante

**JC:** Mr. Chairman with your permission I attached Xeroxed copies to the application may I give these two to be marked as exhibits.

**PM:** OK. Atty. Cipoletta you have the floor.

**JC:** Thank you very much Mr. Chairman. My neighbor Jack Zuffante who built a house recently on the corner of Pond St. and Highland Ave. and its right adjacent to Hannaford Park. The photographs of the house speak volumes, he and his wife Carole have been living there for several years, Jack tells me that he is planning to retire, he and Carole have some grandchildren and they have them in the house very often. They have some play facilities there for them and now Jack and Carole would like to install an in ground pool. The house is adjacent to the exit road that wraps around Seal Harbor 3 and does not abut to any residential properties it abuts to the rear of Hannaford Park and the other corner which slopes fairly steeply upward the buffer zone near the access Seal 3 and in order to put this pool so he can have the deck and he and his wife and grandchildren can walk out from the house over the deck and into the pool for obvious for safety requires a variance from the setback from the boundary that abuts the access way to Seal 3 and that would be relief of only 4 ft. and that's all

vegetated now and will essentially not change. It's fenced and vegetated on both sides and he would require a relief of 4 ft. from the side yard setback and 5 ft from his permanent structure so he's going to have it fairly close to his deck and enter the pool area. This is the ideal for the pool if there was another place for the pool he probably couldn't do it because of the grade in back of the lot, because he's done an excellent job with the landscaping it suffers some topographical challenges and soil conditions and shape. So this would be an encroachment on no one, it would be a benefit to everyone and making a very good one family homestead that much better, which I hope, remains a very tight knot residential neighborhood. It's a very nice neighborhood and Jack is very conscientious about that and I suggest that this would have absolutely no impact to grant this very minor relief would be keeping with the purpose intent of the bylaws would not be detrimental. If you have any question of Jack he will tell you all about this.

**PM:** Closing that is there anybody here that's in favor of this petition.

**Sean Donahue, 62 Sewall Ave.:** I have been sitting next to his gentlemen for the last two hours and I didn't know who he was and come to learn when the case was presented that he's essentially my next door neighbor. I see him out there working around his property I see he has his family over quite a bit entertaining I just think that a pool in the yard would be a huge improvement.

**PM:** Anybody else? Hearing none, anybody not in favor of this petition? Hearing none, questions from the Board?

**FG:** I want to talk about the set back in the house and the interpretation of the BI, what the intent that is and how do you render that?

**JS:** The intent, there is a section of the bylaws that gives you the dimensional regulations of 10 ft. from a permanent structure so if it's a deck attached to the house it's a permanent structure so the that's the really the need for a firefighter with a ladder or emergency gear to get around that house not be squeezed in between the pool and the building.

**JZ:** We're asking for the variance because I want to maintain the ladder portion of 6-8 ft. because the land slopes between the pool and the deck. That's why its mostly on that side.

**FG:** My concern is one of the photographs show and it's not on the proposed drawing show a stairway going down to the pool deck.

**JZ:** The stairs will be moved to furthest end, there will be a security gate cut right across to the end of the deck all the way to my opposite fence so my grandchildren will not be allowed near the pool, there will be a self locking gate, there's going to be security cameras on it. You're right, the steps will be moved.

**PM:** Mr. Rich, anything?

**JR:** No.

**PM:** The shed that's here, is that the shed that's showing in your site plan?

**JZ:** Yes.

**PM:** Is that staying in the same position, because it looks like it's in the different position here.

**JZ:** I had 20- 25 ft to Pond St.

**PM:** But the fence is there right behind the shed, that's why it's deceiving. Who's going to build your pool?

**JZ:** Cosmo from Revere.

**PM:** Your playground will stay?

**JZ:** Till my 5-year-old grandchild tells me I can take it away. There are 6 grandchildren from 14 to 5 and he's the last one, that's why I have 6 swings.

**PM:** This is your land behind the fence here?

**JZ:** Yes, between that fence there's a chain link fence that goes up to Hannaford Park, I own up to the chain link fence, and I fold my fence 3 ft. so we can walk behind there and clean it.

**PM:** And this is a stone area?

**JZ:** Yes that's part of that hill.

**PM:** What's the elevation difference from the bottom of your fence to the grass.

**JZ:** On the highest point it's probably 8 or 9 ft. believe it or not then it slopes down to Highland Ave.

**FG:** Is that fence on the property line. No?

**JZ:** No it's in on my property.

**PM:** Mr. Hazlett any concerns?

**NH:** No, no concerns, no turning radius.

**PM:** I have no other questions what the pleasure of the Board?

**MOTION: (FRED GUTTIEREZ)-** To grant the applicant the relief 4 feet from the side yard set back and 5 feet from the house.

**SECOND: (JOHN RICH)**

**PM:** A couple of things brought up here as a requirement as far as the approval of this goes, the things that you mentioned about removing the stairs and the security fence across. Any other discussion?

**VOTED: ALL IN FAVOR**

**MOTION: (FRED GUTTIEREZ) –** To approve minutes of the last meeting of Sept. 22, 2011.

**SECOND: (JOHN RICH)**

**VOTED: ALL IN FAVOR**

**MOTION: (IRENE DWYER) –** To adjourn meeting.

**SECOND: (BRIAN BEATTIE)**

**VOTED ALL IN FAVOR**

Meeting adjourned at 9:55 p.m.

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**Paul W. Marks, Jr., Chairman**

**Dated**