



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

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TOWN CLERK
WINTHROP, MA 02152

Held on Thursday, March 29, 2012
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 7:10 p.m. In attendance at the hearing were the following Board Members: Brian Beattie, John Rich, and Fred Gutierrez. Also in attendance was Joanne M. DeMato, Board Secretary/Clerk and Jim Soper, Building Inspector.

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.

1.	#023-2011 */***	100 Sargent St.	Joan Roth	PM/BB/FG
2.	#004-2012	15-21 Perkins St.	Paul Ferrara, PJF, LLC	PM/BB/FG
3.	#005-2012	64-64 Woodside Ave.	Wai M. Chiu (Hong Cong Drago)	PM/BB/FG
4.				
5.				
6.	Approval of meeting minutes			

#005-2012 – Wai M. Chui – 64-68 Woodside Ave. – Hong Cong Dragon

In Attendance: Diane Weng

Sitting: PM/BB/FG

PM: Tell us what you're planning to do at 64-68 Woodside Ave?

DW: We are planning to expand the dining area and add a lounge area due to customer requests. While people are waiting for their take out orders they can have a drink at the bar.

PM: Anything else? Is there anybody here that is in favor of this petition?
Yes, state your name for the record please.

Leonard Adler, 42 Bartlett Rd. – I'm in favor of the expansion, I have been a customer since they opened and they do a fabulous job down there.

Angela Boncore, 8 Putnam Place: I've been a customer since day one and think it's a good idea to expand. Other people from out of town come to our restaurants and that the first thing that they ask if there is a bar to have cocktail before or after dinner. The place is extremely clean and the food is excellent.

PM: Thank you. Closing that anybody not in favor? Hearing none, are there questions from the Board?

BB: It seems like you are putting the bar area in the middle, have you already renovated?

DW: Yes, the reason for that is to accommodate the customers for takeout. It's easier to let the customers know that their order is ready.

BB: Same doorway?

DW: Yes.

FG: In terms of the egress with the additional seats and customers the architect has reviewed the requirements for the egress doors I just assume that he will be stamping the drawings?

DW: He already did.

FG: I see it here but I want to make sure that's been considered.

DW: Yes it's the same architect that we used the last time.

FG: Do you have the maximum number of occupants?

DW: Yes it'd 98 seats.

PM: How much is this going to increase from what you have now?

DW: Right now our capacity is 70, so it will increase by 28 seats.

PM: Have you been before the Board of health or the licensing board?

DW: Have we approached them? Yes.

PM: Have you gotten the license from the licensing Board?

DW: We were told to get this first.

PM: I see and how about the Board of Health?

DW: My husband did it and I don't think they have a problem because he goes to the town hall to Eric and if there's any issues, but so far we haven't had any issues at all.

PM: At your busy time is your restaurant full?

DW: At the busy time only full on Saturday after 7:00 for only an hour. A lot of people come in and expect to see a bar so instead they get take out so it hasn't been really full.

PM: You said that you approached the licensing Board and they said to come before the Board of Appeals first before they talked to you?

DW: Yes.

PM: I would like the other way around. I would like to get some input from them. Yes sir?

Don Kearny, Chairman of the licensing Commission: They currently hold a full service liquor license for the two premises that they are currently in. Should this be granted and they want to expand the license in the third building they then have to come before us for a new license to go through the ABCC process to grant. Currently they do have a license but just for the 2 buildings that they are in they both need a new one if you grant the variance to expand.

PM: The last time that they were in before us the idea was that we granted this because they wanted to expand their restaurant and there wasn't going to be a bar or anything like that and now they are coming before us and doing that and that is unusual to have it other than one of the clubs in town that have a bar. I only know of one other that you can go in and sit at the bar and have something to eat the other clubs in towns or restaurants have a sit down bar, they just go in and they are able to serve liquor to somebody sitting at a table.

DK: I believe that there are 2 that you can sit down at the bar and eat and that are La Siesta and Paisans. I want to say Kasbah but can't say yes but there is no lounges per say.

PM: I've never been in there. Is that a requirement that you have?

DK: I can't answer that; we're doing more investigating on that. I did pull the record from 1972 that actually creates the serving alcohol in restaurants so we're doing some research on that as well. I don't know whether it's allowed or not.

PM: Because this is the first time that this has come before us for somebody come up to entertain a lounge its always been a restaurant its never had a bar drawn up in the plans or anything.

DK: You're absolutely right this is the first one I've heard.

PM: Any other members of the Board have any feelings on this?

FG: I have one more question on this plan, there is a existing ramp identified on the middle section but for the new area there's no change in elevation going to the new wall in any location is there going to be a step in one of these locations?

DW: I believe there are no steps, but there's going to be an opening for handicapped access so they can access both sides.

FG: It doesn't make sense to me.

PM: It's not answering the questions.

DW: I'm not answering the question?

PM: No. It looks like the front area the reception where the proposed bar is one elevation and you go to the back of it and there's a ramp that goes down and is showing us the front coming in at the same elevation.

DW: I see; we're going to be leveling the floors if that's what you're asking.

FG: But it still wouldn't work unless it was sloped.

PM: This ramp here is going from this elevation down to this elevation.

DW: There is still going to be elevation here as well?

PM: The way its drawn it is that this elevation is the same as this so if you come around the back and go through an opening you would have to either step or go down to meet this elevation.

DW: That is correct, they are going to level it, I'm sorry I didn't understand the question.

FG: So there'll be a ramp located in this location?

DW: Yes.

FG: That might be tricky in there because you'll need about the same dimensions as this ramp and once you go past this you'll be obstructing this egress here.

PM: And this is one of your main fire egresses to get out to the back here so there is something inconsistent in here the way this is drawn.

DW: I would have to talk to the architect about this because he was the one that drew the plan and according to him everything was the way it was suppose to be according to the law.

PM: Mr. Gutierrez is pointing out that it could create a problem of egress through here interfering getting to the bathrooms back here if you had to do a ramp onto this level the way this is drawn here it has to be wide enough and it has to start back far enough to be able to come back and get to the handicapped. A handicap ramp can only go up a certain distance in so many feet.

DW: How about the opening over here? There's going to be a big opening over here.

PM: It's saying these are at the same elevations. You come in here and go from here to there and it's the same elevations there's no step or ramp but when you come down the back you're saying there is a ramp going down so how to you get from this area down to this area?

DW: I think that ramp the opening is a little bit over here not over here. I need to have him update this plan for me because I think he just did it that way. Because the ___ is over here so the opening is over here not at the ramp.

PM: Anything else Board? Is there any work being done to the kitchen with this plan?

DW: There's no need to do any work.

PM: On your take out business I assume its busier on week-ends in the evening?

DW: Yes usually because everybody works downtown we should get busy after 6:30.

PM: On the weekends? And how about the week?

DW: During the week its pretty slow its just dinnertime after 6-7:00.

PM: So would you say most of business is takeout versus going in and sitting down?

DW: Yes.

PM: What I would like to entertain to the board is that we continue this and you go and speak to your architect and get squared away on this elevation change and how this is going to be done and bring it back before us and move forward on it.

MOTION: (BRIAN BEATTIE) –To continue this to the next meeting on April 26, 2012 and to have a new set of plans that will show the exact footage.

DW: That's the only thing with the ramp right?

PM: To look at this with the ramp and square that away. Mr. Gutierrez you mentioned that you would not be able to make the April meeting?

FG: Correct.

PM: We have an alternate and Ill ask to change it to Mr. Rich to sit on this one here so we can move forward and not hold you up next month.

FG: Can I amend that motion to also request clarification on how many parking spaces you are asking for a variance to determine how many tables you have added and to describe how that might be address in the area?

DW: Parking has not been an issue because when we are busy on the weekends all the other businesses are closed especially for our busy rush hour which is after 6:30 the bank and the nail salon everything is closed so I see a lot of empty parking in the center area because right now its pretty much the Mexican restaurant and us that are operating at that time.

PM: When somebody comes in to make a petition for so many tables within the bylaws there is a requirement for a number of parking spaces and usually that is looked at with the set of business district if there are public spaces so many feet within so many feet of the business that is something to consider when we do it but Mr. Gutierrez is saying that that should be part of our decision here that we do when we grant something like that for the relief for the number of parking on that as well. What Id like you to do is to put how many seats in the existing restaurants and how many you're going to expand to. SO the architect can list how many seats you have existing and what you're going to.

DW: Should I just prove you with the old plan?

PM: No put it right on the right here.

DW: On the plan?

PM: Down on the bottom you have floor plan seating 98 seats but the calculation, normally what you'll do is they'll put how many seats that you have and if you go into the zoning they'll show you how many parking spaces you have to have per seats and all I'm asking to do is have the architect put that on the plan so we see everything on it so if we passed something and give it to you everything is right on it what there is so they'll be no questions about it and if somebody came in and say you didn't consider how many seats or parking or anything ok? Thank you.

DW: Sure.

PM: Any more discussion on the motion?

SECOND: (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

#004-2012 – Paul Ferrara, PJF, LCC, 15-21 Perkins St.

Sitting: PM/BB/FG

In Attendance: Attorney James Cipoletta, Paul Ferrara

JC: There is a request before the Board for 2 variances by way of Mr. Ferrara having been to the Planning Board to talk about subdividing the lot, 10, 000 sq. ft. on Perkins St. to 2 different lots each containing 5,000 sq. ft. The purpose of the request this evening is to seek a variance for relief for the minimum frontage and the minimum square feet for the purpose of building 2 one family homes instead of a 2 family home or a side-by-side townhouse structure. I've given to the members and to the secretary to mark as an exhibit for the purposes of this hearing a greater depiction of what Paul plans to do. On Perkins St. there exists one big lot containing 10, 000 sq. ft as a matter of right he is able to build either a 2 family house over and under with maximum height of 2 ½ stories or 35 ft or he can make a townhouse side by side. All of the dimensional requirements are the same other than the frontage and the lot square footage. Parking is the same, height is the same it's a matter of massing and if you look at the last page this is what he has the right to do and it would be perfectly fine for him to do so simply by applying to the building dept. for a building permit and he could build a 2 unit townhouse and would be a condominium but instead what he would like to do which is depicted on the pages before that to 1 family homes which would still house 2-family units, would have 4 off street parking spaces and would provide more in terms of light, air, circulation, corridors, privacy and perhaps be in more harmony with the character of the neighborhood. We have a smaller lot of 5, 000 sq. ft. with one single family home on each it seems to make an enormous amount of sense it gives a little more character and a little more harmony to the neighborhood and gives the impression of less of this monolithic structure on the 10,000 sq. ft and when you get to the bottom and do the calcs. what you really have is still the same 10,000 sq ft and you still have 2 dwelling units, you still have 4 off street parking spaces and the added benefit is that you have the separation of the family homes to the left and right more in harmony of the general character and providing less of a bulk to that lot and the ones to Perkins St and behind. We were before the BOA several months ago with respect to a variance pertaining to the church that backs up to this and is always the case when an applicant puts his or her signature to an application they put their creditability on the line and you also should know when it's a part of the boards innate calculus, what's the track record, are we going to be able to give

some relief, are we going to be able to trust and do what he says and I would suggest that this was born out not only by the magnificent job he did with the church conversion but also with his building where his office is on Revere St which is also a property that had the benefit of this Board. I think his name and his work and his word speaks for itself. So that's an added quality to the application and type of property the Board would expect to see coming out of the end of this were the Board in its wisdoms see fit to grant the variance. If the variance is granted we can then proceed back to the Winthrop Planning Board and they would endorse the subdivision plan and that would allow according to Mr. Ferrara to proceed with 2 one family homes as opposed to the bulk of the side by side townhouse. Paul is immensely able to answer any questions in regards to construction or his plans, he's has this pretty well thought out. If there are any questions on the subdivision or public legal issues I'd be happy to address those.

PM: Thank you. Closing that part is there anybody here that's in favor of this proposal?

Richard Dimes, former member of the Planning Board: The lots are characteristically divided into lot of anywhere from 2500 to 3000 sq feet and there probably isn't a house that is close to 5,000 sq. ft. 5,000 for that area is a lot from what is there now. I believe it is a good step, and the whole presentation is much more attractive with single houses on the 5,000 sq ft.

Jim Soper, Building Commissioner: In my experience when a 2 family get built and becomes condoed that we have 2 separate owners that live very close together and there is often tension between those owners and I find that those types of properties tends to turn over very quickly. Different owners in 2 years out and it become not occupied and these types of properties tend to devalue the other properties in the neighborhood when they are not kept up and my sense that 2 single family homes will bring more pride in that neighborhood and be more steady and people will care more about that property and that's just my over view on it whether you approve it or not I think its good for a neighborhood rather than a 2 family.

PM: Thank you, anybody else? Hearing none, anybody that's not in favor of this petition? State your name for the record please?

Christine Vecchia, 29 Perkins St.: The 4 of us here represent the neighborhood and wanted to know more about what the plan was and get some information. We're looking at a church parking lot and I appreciate the fact that he's looking to do something there and we were very concerned about the parking and we were all here the last time. I am happy to hear that there are 2 parking spots for each of these and that makes a huge difference because we have a terrible time on the street parking so that a huge issue for us. This is new to us that they would consider 2 single families as opposed to 1 big one and I agree that 2 single homes designed rather than one big monstrosity. We're concerned with the variance how closely its going to sit to the street and that's why were here to listen.

PF: It clearly shows the setbacks and you have the requirements pertaining to the frontage and approximate 8' porch if that comes a reality but today's codes requires a 15' frontage, 10' side yards, and a 20' rear yard. It will have a 45' rear yard and 10' 6" on one side 11' 6" on another so we have a little more space approximately 6" more than we need on the sides and we have more than ample space on the rear yard and so we're very conscientious of that as part of the code we cannot build a house without those strict requirements. We're not sure of the actual design and we need to find a buyer first to choose his or her own style but it would conform to everything in the neighborhood as to style. They are relatively small homes - 3 bedrooms and 2 baths.

PM: Anybody else, state your name for the record. Are you in favor or not in favor?

Angela Boncore, 8 Putnam Place: I have questions about it; I'm very leery about it because of the kind of variance in that area. How much space is that going to take up? 2 single houses or one in the middle? It seems like it would be more with 2 separate house, and porches, and driveways than one structure.

PF: Answers her questions (inaudible background noise)

PM: Anybody else that's not in favor? Closing that, questions from the Board?

FG: Question concerning a new curb cut and an existing curb cut. There are no dimensions on the existing and the new but my concern there might be more of an efficient way to take up less frontage off of the street. Have you looked at those numbers? For example the distance between the 2 curb cuts doesn't look quite large enough for 2 cars so it doesn't seem the most efficient way to parking cars. I know that parking is a concern in this area.

PF: The present parking cuts is really extensive where it was a parking lot they need to have as much access as possible and we're going to shorten that up and give some leverage in the front for parking and we are going to make a 2nd cut to the building on right that you see and my thought behind that is that I would rather not all of the cars parked in the middle of the structure and it would take away from the overall project and look like a parking lot and that's why we developed the space on either side to the right of each building to create a proper driveway as the case of most homes. You very seldom see the parking some into the middle of a property its always on one side or the other.

FG: I agree with the concern that you have but I do feel that there is someway to maximize the more street parking. I don't know what the minimum curb cut dimensions are. Jim do you know that?

JS: 12.

FG: 12'? Do you know what these were drawn at?

PF: Well we have to meet code so they would have been 12.

FG: I might want to look at that distance between the 2 curb cuts to ensure that might be ample enough for 2 cars rather than 1 car. Its hard enough for me to know where the curb cuts are on the adjoining properties nut that would be a concern and I think that's a fair gesture to the neighborhood to try and maximize that parking that's what I would like to see.

PF: Yes I think you make a good point and if we were to take the cut on the right and bring it as far over as possible so that you can turn in tight and run up along side of the building that would increase that span between the 2 that you are referring to so there would be 1 space there.

PM: Any other questions from the board? You said there's no basement here?

PF: That's correct.

PM: The building would 2-1/2 stories?

PF: That's correct.

PM: There'll be a walk up to the attic?

PF: A pull down.

PM: the attic will just be storage?

PF: Correct.

PM: Utilities I presume on the 1st floor?

PF: Yes here is a bump out on the first floor for each house drawn housing and the mechanical is in that space.

PM: OK. Materials you are planning to use?

PF: The house would be constructed per code. Full bearing construction, plywood exterior, vinyl siding, I always use a 40 yr. architectural roof.

PM: You have a porch on both structures?

PF: We show a porch at this time yes and then again based on cost and need I like to be able to present this to individuals and perhaps according to their needs someone might prefer to have a rear deck as opposed to a front porch and I want to leave that open for possibilities for folks.

PM: I think most houses do have front porches down there.

PF: That's my personal preference aesthetically I think a beach front property you want to converse with your neighbors.

PM: If you present this as a plan we would like to say this is what you showed what you're going to build and we'd like to say ok do this and the aesthetics of it with the front porch I think it adds a lot to it versus something just having something with nothing on it it doesn't seem inviting when you don't have a porch.

PF: Point taken and we can certainly agree to that at this point in time that there will be a porch.

PM: Ok, thank you. Material would be non-pressure material that you could see.

PF: Just within the framing of course and then we like to use mahogany decking.

PM: You don't have a layout of the final plan?

PF: No we haven't don't the final plan on the house, I would like to leave that to the buyer but it would certainly be within the guidelines that you see here but I would like to make a point that if the house needs to be slightly deeper I want to have that option seeing that this is a relatively small house I can't go anymore on the width but is going to be approximately 26' deep and if I need to go to 28 or 30 that is not unreasonable that is still not a huge house but it would help a lot with the interior design.

PM: I would ask in our conditions here that if you do that when you get a plan that you have a copy sent to the board of the layout so we have a copy here. Have you been to the DPW for utilities cuts?

PF: No but they would be brought in from the street.

PM: I assume this would come up when you go before the planning Board for your subdivision?

PF: I'm not sure what they'll require from us but we would certainly meet code.

PM: I don't know what the existing utilities are there on the street. Are you planning on going with oil or gas?

PF: Gas.

PM: I don't have any further questions. Anything else from the Board? What is the pleasure of the board?

MOTION – (FRED GUTERRIEZ): To approve the variance for 5,000 sq. ft. versus the required 7500 sq. ft. also to approve the variance for minimum 50 ft frontage versus the 75ft. Condition that the curb cut be the minimum 12 ft. and that the distance between the curb cuts be between 34-36 (a good dimension for two cars).

SECOND: (BRIAN BEATTIE)

PM: Conditions on the plan on the way you have the orientation, your materials for vinyl siding, roofing, porch be visible paint grade material, and the item Mr. Gutierrez mentioned about the curb cuts and even though its set up we'll put it here that you're going before the Planning Board to get the subdivisions and like to have a copy of that. Anything else?

VOTED: ALL IN FAVOR

#023-2011 – 100 Sargent St., Joan Roth

In Attendance: Attorney William DiMento, Joan Roth

Sitting: PM/BB/FG

PM: This is a continuation from a previous hearing.

WD: On behalf of Joan Roth, my address is 25 Pittman St., Swampscott. We are here as a continuance from last month for the purposes of providing the board for the architectural plans that you wanted and the municipal liens that you wanted. Preliminary to that you said that you had an email from the BI pursuant to Chapter 30 sec 23A of the MGL I d like to request copies of all emails that have been exchange by any Board member and the BI regarding this matter. If there are none Id like the Board to tell me that there has been no communications from the BI. That was fast. Thank you. I'd like to read into the records if I could with your permission the section dealing with this case.

PM: Yes.

WD: This is an email from James Soper to Paul Marks, dated 3/29/12 at 4:36 pm regarding the meeting. "Paul, I will be attending the meeting this evening to

speak in regards to some specific safety concerns I have with the B & B at 100 Sargent St., I am not opposed to the Special permit being granted but if granted I feel that hardwired smokes and emergency illumination is necessary to protect the lives of the transient occupants.” The rest of it, there is other parts of the email that does not involve this project. If there are any questions you have the new architectural and municipal lien certificates, I know you’ve been hearing this for 3 months now and Joan is here and will address that but we don’t know what the BI concerns are.

PM: I think the BI concerns were listed in this email, the concerns about the safety of any occupant of the structure should anything occur.

WD: Did the BI appear on the hearing at 2 Terrace Ave?

PM: I don’t remember if he did.

WD: Were those concerns expressed on the other B & B?

JS: I don’t know if you address that email but the reason why I was here at the initiation and the writing of this B & B ordinance with the Planning Board as well as the Town Council in my efforts with the Fire Chief was to require that every home would get the illumination and the smoke detection for the transient occupants safety. We ere unable under the advise of the council to do that because they didn’t want to write in things that weren’t pertinent to code because the code wouldn’t let us do that so were trying to overstep and make these a little more safer than we think they should be.

WD: If I could ask through the chair what he is asking about? What are they?

JS: Hardwired smoke detectors so if there is a fire in the basement of the structure and someone is in the top floor of that structure would be warned when that fire began and they could take leave of that structure as soon as possible rather than having to wait for battery operated smokes to actually ring at that floor and wake up the occupants and then when the occupants wake we have an issue with lighting and as long as the lights are on in the house its fine but if not emergency lights would be able to be provided to exterior stairways and inside the dwelling as well so were pushing public safety on it when we couldn’t get it in the original ordinance because there is bedrooms on the 3rd floor seems to be that I need to be here stressing on it.

WD: So this was not imposed on the other B & B?

JS: No we didn’t impose it.

WD: Just for the record, I understand where you’re coming from but this has been a difficult process having nothing to do to with B & B we’ll move on through here, that’s the reason. If it isn’t included, I’m not sure you have the legal authority to do, if they chose not to do it.

JS: Exactly, I do not have legal authority as the BI or as the Fire Dept so we seek the condition here we warn the Board of the condition we’d like them as much as we can and would happen and we try to prevent it.

FG: I’d like to say that I wasn’t on the previous request for a B & B and I wasn’t even on the board at the time and I wasn’t aware of the email before I came to tonight’s meeting and this was a concern I had a motion that I would probably

bring up as a condition to the project as well I think it a very good thing to do regardless so I just wanted to point that out.

WD: I appreciate that.

FG: I believe that the hardwired smoke required in construction by code now so if you were to build a new building the state decided to do it now and that does make a lot of sense because you can't hear the smoke detectors a floor away let alone 2 floors away so it would really save lives. The egress lighting can be a big issue if you choose to but it's a design condition or subject to design and you can design it so its relatively inexpensive there is a cost to it so there are expensive units that are battery packs and are tied into your smoke system and then there are more expensive ones too so its relative as to how competitive you are soliciting them.

PM: I'm just reading through this municipal lien certificate and looking at the plans is there anything else to present Atty. DiMento on this?

WD: She's overpaid her axes on the municipal lien.

PM: I see that here it's a \$612 balance.

WD: Credit.

PM: Credit, yes not a balance. Again sitting on this is myself, Mr. Beattie, and Mr. Gutierrez. Questions from the board regarding the documents presented to the Board this evening? Mr. Soper have you seen these? Not having anybody here from the Fire Dep't I would ask the question of them- where would they consider the smoke detectors should be placed in a structure like this and where about on each floor would they consider it something that has to be in every bedroom or the hallway.

WD: The code is outside the bedrooms.

PM: I think that is where it would be a residential structure.

WD: It hardwired, the equipments would be fire dept ____.

PM: That's right.

JR: What type is there now? Are they hardwired there now or just all battery?

JR: Battery.

PM: I think at the last hearing we had issue with the floor plans that you presented us part of the submission was a parking issue you had a driveway that showed several issues that presented a problem to the board in approving something like that. With the resident normally you have 2 cars and in the past there is 1 car per guest bedroom approved.

WD: We can eliminate 2 parking spaces that no problem. With 4 bedrooms you still have 2 extra parking spaces that are required by law. I don't have any problem with that. There's a large lawn on the corner of Johnson Ave. too that could be used for parking if you wanted.

PM: I would not want to see parking on the front lawn nor do I think the neighbors want to see that. Mr. Soper you expressed about the smokes and about the lighting, and about egresses?

JS: Yes I the first time I seen this maybe we did talk a little bit about, the main entry of the dwelling how would we egress off the first floor to another area?

Joan R: There is 7 doors going off the 1st floor, there is a front door, there is a side door going off the dining room that could be used as an exit that goes to outside.

PM: Where does that go to on the outside?

JR: It goes to a porch and off to the front yard.

PM: Off on the porch are there a railing and a set of steps going off?

JR: Not now cause I've never used it but it could be used as an exit if somebody needed to get out. There is a glass sliding door going off from the kitchen to the outside in the backyard, and there's.

PM: Whereabouts is that?

JR: Match line, there is a glass sliding room going to the back yard.

PM: Is that going onto a porch?

JR: Goes onto a porch.

PM: With stairs to the backyard?

JR: Yup, with a railing. This is the side porch. There is 4 sliding doors going off the 1st floor off from the pool, so you have 7 exits on the first floor.

PM: Those 4 doors going out to the pool?

JR: Yes.

PM: I see 1 adjacent to the fireplace.

JR: Right and then there are 3 on the side.

PM: Once you're in the pool area?

JR: Right.

WD: I think it's the doorway we went out when you were there.

PM: Going out from the pool is that going out to the ground?

JR: Yes.

PM: Is there a step down?

JR: No. It's straight out. And I didn't mention that there are 3 doors going out from the family room also into the pool area that goes right outside.

WD: That's enough.

FG: It's an open discussion not just a general comment. The egress through the pool area I admit is not the sole egress for the property there are other egresses but there is the temptation to use it as primary access to the building because it's adjacent to the parking it's a direct path into it. If we make this into a B & B now were introducing a public use to this building I have some concerns about the pool being in that proximity to a public access to that building. I don't know where I sit on this issue and it's a concern, this access the slider from the depiction is approximately 2' away from the door perhaps it's a safer condition if the new door was placed away from this so you wouldn't be inviting someone into harms ways. I'm just throwing this out.

WD: How about if B & B guests are not allowed to use this they have to go out the front door or the other way?

JR: That's not used as a public access.

FG: But it's a difficult thing to monitor being a slider you don't want to lock it so you have to provide signage I suppose ____.

WD: She's already struggling to survive.

PM: You're showing 4 guestrooms on the 2nd floor.

JR: Correct.

PM: In setting these up for a B & B how many beds would you have in each room? Are there 2 beds in each room?

JR: No. It's just exactly the way it was when you were there. I have a queen in the master suite; guestroom no. 1, there is 1 queen, guestroom no. 2 has 2 twins, guestroom no. 3 I have 3 twins with the intention of setting the 3rd one up as a daybed just in case the guests have a child and the no. 4 is a full size bed.

PM: One full size?

JR: One full size. My feel is that accommodates queen, twins, family or single.

FG: So in guest rooms 3 would you be inclined to have 3 different visitors stay in that room or would it have to be a family or would that be open, I don't understand the use of that room?

JR: It would just be open to whatever somebody's needs were.

FG: So if there were an available bed there you would solicit to sharing a room?

JR: Being in the travel industry there's parties of 3 traveling together, 3 girls, 3 teenagers, 3 guys that want to share the same room.

WD: The definition of family has changed.

FG: So I guess you'd say if they came together.

JR: Or if you had a mother and a father and an 8 yr. old and you didn't want to put an 8 yr. old in another room.

WD: She's not going to approach on other people in there on strangers, that's playing with fire.

PM: My biggest concerns that you've got 4 rooms as guest rooms. You've got 1 with a queen so that would be 2 people there 2 twins that 2 more that's 4, you got 3 twins that's 7, and a full size you could fit 2 more so that would be 9. A total of 9 guests you could accommodate with those rooms, and most likely that they would come with a car and be able to park 4 cars in this area and I'm trying to relate to the driveway issue we had and the number of cars in the driveway and we couldn't fit all those cars in the driveway the way our zoning is and to have your 2 cars in there as well so I am hung up on this part of this with the number of rooms and the number of spaces in the driveway.

WD: There are 8 spaces in there

PM: In order to do that you have to have tandem parking.

WD: Oh sure, that's the way the configuration was presented for that.

PM: Correct, I think we I've mentioned it before here, as far as the tandem parking goes I'm not a fan of the tandem parking in a situation. To do this and be able to have access people being able to go out unfortunately on here there isn't that space. I'm having a problem with that part of it.

BB: On the 3rd floor you have 2 resident rooms. Both times we were there they were rentals.

WD: They were what?

BB: It looked like they were rentals here. The one time we where there, there was somebody sleeping there, they had their items there.

WD: So you assume that's a rental.

BB: Yes I did.

PM: The indication here is that it's a resident room and it's not a room that's going to be used as a B & B I assume?

WD: That's correct the only rooms that are going to be used is the 4 rooms on the 2nd floor, the driveway follows every provision of the bylaw. We did follow every provision of the bylaws.

FG: I have the same concern about the way the parking was presented, it's more than tandem, its 3 times removed, I can see that the garage is cold storage for your car and you don't rely on them, and there being 4 reasonable spots, in addition to those so like the Chairman was saying I think it's a fair assessment that those 4 usable spaces in there are yours and not necessarily 6. I understand that so with that I see the condition of 4 rooms being the maximum amount which you have I'm concerned that guest room 3 kind of invites more than one car would you be amendable to just having 2 twins in guest room 3?

JR: I have no problem with that.

WD: The answer is yes.

PM: I have no other questions.

WD: Do you want to eliminate parking spaces 7 & 8?

FG: I would yes, that's fine.

JR: That's not the garage.

FG: Can I ask the layout and it may be none of my business for the 2 bedrooms upstairs how many beds are you planning on having on those?

WD: What do you mean on the 3rd floor? She has no idea, she's not going to – the fear is the elephant in the room is the history of the property and what this B & B does is take that elephant out of the room and to allow her to have those 4 rooms and what she should have and it's a matter the rest of the place is her personal residence and what she does in her residence for living room for her own residence and what she does upstairs is really her own business.

FG: I agree and I have to say it make me comfortable to have just 2 full or 2 queens allotted for each room and I agree that if it's not of the plans it's none of my business.

PM: I would think the same would hold true for the bedroom on the first floor adjacent to the bathroom next to the dining room.

WD: We can tell you that but we wouldn't accept that as a condition on the permit. She's going to work hard to redeem this and remember this is 2 year permit that can be issued and there is all the governance in the world and supervisions by a fairly aggressive BI and Fire Dep't and you saw how terribly aggressive they were at the last meeting and over the top sharp aggressive so this is not a piece of property that would go unnoticed and as it operates the B & B and she knows it she's simply trying to provide and maybe for Mrs. Morris who

drew the bylaw and it happened to apply to her and she's trying to take advantage of that and we know that.

FG: I'm not suggesting that it might be a condition that I would like to but I'm saying for a transparency in a relation to the town if you walk in there and saw 4 singles.

WD: I appreciate the ability in which you raised and so does she, she's had a rough time in this town and she's trying to survive in a big old house on Sargent St. and that's what it amounts to. Essentially its really to big for one person to try to, this B & B is how she could exist.

PM: We had talked about conditions here; I know one of the things that the BI would have to come in and would have to inspect for the requirements that he had and also the Fire Dep't.

WD: That's within your right within the law; we certainly don't have any problem with that.

PM: I would write into a condition here that if there are any problems down there or complaints to the Building Dept or the Board of Health that we have the right to reopen this hearing and discuss this because what were doing here is trying to be equitable and fair and at that same time understanding some history here I'd like to see the thing.

WD: If I could address Chapter 40A Section 7 takes any enforcement power away from the zoning Board and gives it to the BI. The zoning Board has absolutely no authority to step into the shoes of the BI unless you have a Chapter 40A sec 15 appeal of any decision by him. Once something leaves the Zoning Board there is not continuing jurisdiction, you can sunset something but just because Dick Dimes picks up the phone and complains. I only used that because he's a neighbor.

DD: He's definitely out of order. I cannot speak.

WD: I didn't say you couldn't speak.

DD: I suggest you go down and sit in my bedroom window and look at the filth in that back yard.

WD: We'll clean it up.

DD: Dogs running around 5:00 in the morning - come on!

WD: I didn't know there was filth in the back yard.

DD: Then maybe you should stay in my house for a week.

WD: Well then we'll clean it up then, that's easy, that's all right.

DD: It takes 10 years to clean it up?

WD: The elephant in the room. And I apologize to you Dick I have more respect for you.

DD: You lost respect when you walked through the door.

PM: I don't want to go back and forth on this.

WD: If a neighbor calls and complain and the BI finds probable cause it goes to enforcement and then Mrs. Roth can appeal it that's what I'm saying.

DD: Mr. DiMento you were not here the first night when everybody individual in the neighborhood got up and objected to this.

WD: I apologize for opening that up to you and Dick is a much better guy than that.

PM: I apologize Mr. Dimes for having this come up like this. Any more questions from the Board? Mr. Soper?

JS: I'd like to understand which bathroom on the second floor would be the guest bath?

Joan R: Both.

PM: Anything else from the Board? Mr. Rich anything?

JR: I think the parking is an issue I think that good common sense is amazing when they wrote that they should have put in something for a fire alarm, I've been in the Fire Dept 26 years and I'm up the Center Station as a Captain now and it's important. This house is easy to fight a fire cause it's on a corner that's one good thing like the BI said if a fire starts in the basement we have to make sure that everywhere even the resident on the 3rd floor.

WD: That's why we didn't respond to it because it's a reasonable.

JR: If I have one thing to say is safety wise I think it's very important the emergency lighting and the smokes.

WD: Understood.

PM: Anything else from the Board? Mr. Gutierrez? What would be the pleasure of the Board?

MOTION: (FRED GUTIERREZ): To approve the B & B on the conditions that we discussed tonight, we can re-list them, 1st would be the hardwired-smoked detectors and egress lighting tied into that system. The 2nd would be some signage to identify the preferred egress to the building, the 3rd would be on the parking to identify as 6 spots that would be tandem and not 8 as drawn as that allows for basically visitors parking on the property and that would require the layout of the guestrooms you described, 1 queen in guestroom #1, 2 twins in guestroom #2, 2 twins in guestroom #3, 1 full in guestroom #4. In terms of the layout of the smokes that would be in conditionally of the requirements of the Fire Dept in how they deem to be laid out and egress off of the dining room which I think is important egress that should probably be brought up to code so that it's safe and expect the BI to review that. I believe that's it.

PM: I think you have everything that we discussed. Is it your intention to have a guest book for everybody that comes in to sign in?

JR: That's required.

PM: Required, ok.

BB: The Dept of Revenue? 5.7 and the town gets 4% to be added on.

WD: Taxes.

BB: You have to file.

WD: Is the tax dept. of revenue a provision as a B & B?

BB: Is there a room excise return for this?

WD: I have no idea. She'll follow the law whatever it is.

JS: I don't know what the town charges at this point.

WD: Tax for hotels?

PM: Whatever that would be that would probably apply here.

BB: 8.7 and that's to the state the town can get up as much as 4% on top of that.

JS: In my knowledge right now they're not even licensed in the town they haven't become part of the hotel & motel licensing, they should be brought into I believe because then it allows us to access to inspect this and I think they got to do that then they come to re-up after that.

WD: They can't get a fee unless they're under that.

JS: They need to straighten that end out.

BB: You can have an additional surtax of up to 4%.

FG: It's not a condition but I want to point out that I think that a food service permit would be required by the Board of Health.

WD: It is and she's been to the Board of Health and they said that after if she survives this process then they'd give her all those instructions.

PM: That's the motion, is there a second?

BB: I won't second it.

PM: No second, I have a motion on the floor with no second to the motion with that I cannot take a vote on the motion.

WD: Give me some authority for that? Can you give me why need a second?

PM: Authority why you need a second?

WD: You have to take a vote on what it is, there is no requirement under any provision of the law for a second, there is a requirement for a motion, but there's no requirement for a second on any vote. I'm just telling you what the law is.

PM: It's been the history since I've been here and anything I've seen there's always been a second on the motion before its gone forward.

WD: You might want to consult the Town Counsel on that. It means that Mr. Beattie won't vote for it it's not going to make much difference.

BB: Do you want me to second that?

PM: No.

WD: Did Mr. Beattie ask the Chair if he wanted to second it and the chair said he didn't?

PM: You can do whatever you'd like to do.

SECOND: (BRIAN BEATTIE)

PM: There's a motion on it all in favor of the motion?

FG: AYE

BB: NAY

PM: We don't have a unanimous vote. We'll get you out a written decision on that Mr. DiMento.

WD: Thank you for taking the time to listen to us.

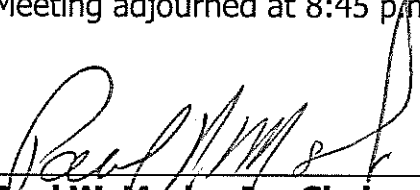
MOTION - (FRED GUTIERREZ): To approve the minutes of the February 23, 2012 meeting as submitted.

SECOND - (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

MOTION – (FRED GUTIERREZ): To adjourn the meeting.
SECOND – (BRIAN BEATTIE)
VOTED: ALL IN FAVOR

Meeting adjourned at 8:45 p.m.



Paul W. Marks, Jr., Chairman

4-26-12
Date

Respectfully submitted by:
Joanne M. DeMato
Board of Appeals Clerk