



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

Held on Thursday, August 8, 2013
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152

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TOWN CLERK
WINTHROP, MASSACHUSETTS

Chairman Brian Beattie called the public meeting of the Board of Appeals to order at approximately 7:04 p.m. In attendance at the hearing were the following Board Members: Fred Gutierrez, Darren Baird and Thomas Chiudina. Absent: Members - Irene Dwyer and Michael Power due to a previous commitment.

The following matter was 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.

	Case No.	Applicant	Address	Type of Appeal	Voting Members
1.	#011-2013	Linda & Frank Costantino	82 Main Street	Variance – Chapter 17.16.020 (A) & 17.16.020 (J1) General Regulations	
2.	#012-2013	Margaret Morris	2 Terrace Ave.	Special Permit – B & B Renewal Section 17.49	
3.	Approval of Minutes				
Adjournment					

#011-2013 – Frank Costantino, 82 Main St.

Sitting: BB/DB/TC

In attendance: Frank Costantino & Noel Costantino

FC: I am the homeowner with my wife, my son Noel Costantino is here. Noel is the licensed contractor and builder; he has done work around the town. He is here to answer any technical questions that may arise. I have put together a preliminary design of which we are submitting by BOA application and to the Building Inspector. He had reviewed it and rejected the permit based on the fact that it was on an accessory building. We wanted to point out the worth of this project in the fact that his consideration of it being a second house that was not really the case in our opinion. Since it is going to be a small 600 sq ft addition on top of an existing garage. The existing lot that we have is over 8000 sq ft and just had it surveyed again does allow for a 2 family so living in the one structure however is too small as it is right now. This project will not impact the siting of the 2 different structures that are on there at the moment. And the set back dimensions and the property lines are un-changed. The original garage function will also be unchanged and the upper portions will provide the living quarters that we are looking for to be primarily for myself and my wife as explained in the expanded addendum in the application which I'd like to review again with you. The 600 sq ft layout is far below the allowable the 1200 sq ft, which is allowed for such a structure on this property. The existing property could also accommodate parking spaces for all the occupants including the space in the garage for one car. We feel the new building would also upgrade the property providing a tax base for the town. We did show in the design some other points, I have 2 copies that I would provide the board. These are existing photos. The top left photo is the approach on our common shared driveways along with other adjacent properties has belonged to my wife's family back into the 1850's. Right now, my wife's home where she was brought up as a kid, is to the left of the top left picture and the property where we are right now used to belong to her parents, we purchased the house. In the driveway you can begin to see the garage in the back, the picture directly below that shows the common entry of our home and begin to see the garage past the vegetation, in the upper right hand picture comes in closer and you can see the garage set back as indicated on the plans are quite a distance away from the house. And then, another view from the middle right showing the front of the garage the door access and the garage door. The lower left hand photo shows the view from across the driveway where it expands and opens up to the shared property to both owners and gives a vista back to the back of our homes on the right hand side and shows the profile of the roof. The roof height is 10 or 11 feet and we are proposing the forward elevation as shown on our drawing would be around 7 ft high, you can see the elevation on section A20 and also on A23. It shows what the front would look like and the height would be lower than the ridge line as you see on the existing garage. The other picture the 3rd one on the left is the view from across Main St looking to the front of our house and you can barely see the garage in the back of the driveway tucked behind the building. The lower right hand photo with the car in it is the view further back on our property showing the space for the 3 cars to the left of the garage. There is a

space in the garage itself and there is a space in front of the garage if need be. So back when they designed the landscaping of the yard this was all part of the accommodations. We also want to point out we are careful to minimize any obstructions to our neighbor who's house you can see in the middle right hand photograph there is a brown roof on it. And it's a 2-story house and its also elevated about 4-5 feet above the back part of the garage. The average height of the sloped roof designed would equal 17 ft, which is within the guideline of accessory structures that is one code point that caught my attention. With this design the site changes we would make on the property is on the cover sheet of the preliminary set that you have. The deep setback is about 70 feet to the garage itself there is not going to be any visual impact from Main St. to indicate what we are doing with the house and the addition on the garage. If there are any concerns about how the property is going to be used and the fact that it is going to be remaining in the family for its use we would be willing to provide any proviso in order to obtain a permit to proceed. There seems to be another precedent in town with another garage projects on Pauline St., there is a precedent for garage expansion. The other points that I want to make is points 13, 14 & 15 for being here before the BOA and that the enforcement of the provisions of the zoning ordinances it would cause a hardship financial or otherwise to cost the home owners and to repeat what was submitted on application on 13: Given the BI's interpretation of the zoning guidelines that this would be a second home on the property necessitating an enclosed breezeway structure physically connecting the new additions to the existing house to conform to such a decision would substantially increase the cost and the disruptions of construction of the existing house and the garage alterations. The connecting breezeway component would also occupy and reduce open space on the property, and further encumber adjacent properties with a much larger structure. Operating expenses for the increased space would also be a lengthy cost factor. Since the existing garage is now in place with some services, the proposed vertical extension would cause minimal disruption to adjacent parties. On the Application on #14 - describe how the desired relief may be granted without substantial detriment to the public good: The new structure will simply extend the existing perimeter walls up to the necessary heights to accommodate the modest living spaces. Since the garage - as stated in the zoning guidelines, is described as an "unattached accessory building" - it would require that the new second floor addition will conform to applicable standards for such a structure. The intended, low-profile design was carefully laid out to maintain reduced heights and minimal volume, and avoid creating any encroachments on existing setbacks, and for immediate abutters. The garage structure is also set back from the street, and will not have any visual impact on the Main St. corridor. And last on #15 describe how the variance desired may be granted without nullifying or substantially derogating from the intent of the Zoning Ordinances: Given the Board's approval in obtaining a variance for this design, and by conforming to the conditions of an accessory building (with a fuller

envelope of the new design), as stated above, the completed structure would meet the conditions and intent so indicated in the Town's guidelines. The relief will also allow us to remain on a property that has been in my wife's family for generations (back to 1860), allow our son and his family to relocate it Winthrop for the benefit of his children and their education, and allow us to have secure living quarters for our retirements years, with the reassurance of future assistance from family members. It would create the privilege of living our lives out at home. I think I've covered all the basis of your concerns and I hope the BOA will find our appeal is agreeable. My son can address any issues in implementing this design.

BB: Is there anybody here that's in favor of this? Hearing none, IS there anybody that is opposed to it? Hearing none. Closing that part of the meeting questions from the Board?

DB: This has always been as far back as 1860 a one family residence?

FC: That is correct.

DB: Going from a 1 family to a 2 family you have a lot that is big enough, I am moved by the fact of but for the technical connection of a breezeways you have you would be coming in for a side yard set back.. I heard in your presentation that you would be providing if the variance would be granted that the use of that particular area above the garage dwelling would be limited to family members otherwise occupying the house. That's all I have for questions at the moment, the garage will stay in use correct? You're not going to have any dwelling on the first floor and the second floor would be occupied. And you would have all the appropriate venting and all that good stuff above your garage and so your not falling asleep with a running car. Where is the driveway that comes to the back of the house, it seems to me from the plot plan that its half on this property and half on the adjoining property.

FC: That's correct.

DB: Is there an easement that allows that to continue? Are you aware of is the property still in the family?

FC: It's in the family and it will continue to be in the family.

DB: My concern will be Id want to know that that driveway if one of those properties ever went outside the family do you have something in place that allows that driveway to stay open and accessible the way it is now whether be easement or something along those lines because I want to make sure there is always the ability a life safety perspective from that back dwelling to get a hose out there we don't want to loose half of that driveway.

FC: I think in the original purchase & sale agreement with my in-laws there was an understanding and stipulation of a common use of the driveway, and I think that is the case with my sister in law who also bought property from her parents that that be the case. I don't have the document with me but I can check to see if that is in fact stipulated.

DB: In the package is the Declaration of Homestead not the underlying deed so your reference is on plan from 1947 the passageway is the driveway if that's the

case the references is expanded with those rights I'd feel a lot better if I know that those rights can't be shut down in the future of that driveway. So I would want to see a copy of the deed in that 1947 plan to see that is not an issue.

TC: To clarify what exactly is the request for the variance? Is it not to build a single family house on a separate lot, you could do this additional and make it a studio or a man cave and that's not an issue but what your doing is creating a single family house and there are homes in Winthrop that are smaller than this so you're essentially putting a second family home on the same lot and I think it's a slippery slope without some provisions without some sort of provisions to assure us that this doesn't become condominiumized. The concerns without having any sort of agreement that is registered with the Commonwealth so that you couldn't do something like that, there are a lot of detached garages and if everyone wanted to convert to a single family house we would be in trouble.

FC: I understand and appreciate the evaluation of it and the fact that is it going to be more family and we don't have space to expand the current structure, which is pretty much maxed out as far as the square footage. It seems to be the best way for us to have a standard family and to accommodate.

TC: There are a lot of towns that have provisions for in-law apartments and with it comes the agreement in the event it ceases to be an apartment it must be converted back to be living space for that single family residency. I almost feel that it might be what we are looking for.

DB: If the Board was inclined to grant the variance we want to be very careful of the crafting of the conditions to make sure that its really meant to be interim family use, whether its an in-law situation or a child that's living there and the parents live in the main house to make sure it stays within the family and its going to be faded out that someone couldn't just turn around and take out an ad in the paper offering a room for rent above the garage. That's what we want to avoid. We want to turn this into a true two family situation.

TC: And where this is variance that's going to be filed with the Registry of Deeds

DB: The variance would be recorded with the Registry.

TC: And whatever that document is that condition.

DB: If that condition gets violated the variance automatically terminates then they are not in conformity and they will be forced to rip it down. That is why variance is an extraordinary relief, which allows us to give conditions on them.

FC: That is the reason why in my presentation that I give a proviso if the appeal was granted and the other fact because of the unusual nature of the property and shared driveway there is going to be a continuing existing condition for future family members that is something that we hope to pass down to our family.

NC: This is an example that my uncle passed away and my cousin lives there with her husband and kids and they plan on helping my aunt and this is the same thing for my family and myself.

DB: A lot of presentations come before us and they are not quite so thorough.

There are a number things that we can do, close the hearing and take it under advisement and continue it at the next session. That would give you time to get a copy of the deed and that plot plan for the September hearing so we can be in a position to make a decision.

FC: A certified plot plan and a surveyed plan?

DB: No just a copy of the deed and the plan of 1947 that is referenced and the deed.

BB: With the driveway saying its either a common driveway.

DB: The plan will show the passageway that it's a shared driveway. That's probably very close to what the underlying plan shows for a passageway.

FC: That's correct.

DB: So I just want to see the plan that's not a registry plan, just those rights, I feel comfortable to have that.

FC: That was probably done actually in 1925, the house was formerly a barn and was converted in 1925 and probably was deeded to her father.

MOTION: (DARREN BAIRD) – To continue the matter for deliberation for our session on Sept. 26th, and request prior to that hearing the applicant provides us a copy of the deed as well as copy of the 1947 plan and anything that is relevant to the passageway the applicant thinks we should have to make a deliberation.

SECOND: (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

#012-2013 – Margaret Morris – 2 Terrace Ave.

Sitting: BB/DB/FG

In Attendance: Maggie Morris, Joe Carroll

MM: We are here to renew our special permit for a B & B. We've now been operating as a B & B for almost 2 years and have been very successful. Our 1st month we were half booked and now we are pretty much all booked from April to November of every year. We have been bringing business to the local ferry and the restaurants in the area so it's been very successful for us and now we are able to just recently have the house painted so that was a nice addition because it hasn't been done since we bought it over 11 years ago. Basically the application hasn't changed much from 2 years ago and some of the verbiage, we have the same amount of rooms. We have the same parking that we have that was approved. We've gone through how it's not going to affect any of our neighbors in a negative way. Our lighting, our signage our parking, I think some of our neighbors that couldn't be here, I've talked to most of them in person and we have a very good relationship and we keep the house tidy and looking good and we just had it painted. I don't know if there are any questions, if you want me to go through it if there something specific that you want me to go over, the other thing that I did want to bring up is that we had all of our inspectors come

through for the home inspections and I'm sure that you have copies of everything. We did have the BI come in and had a few things and we've addressed every single one of those issues. The smoke detectors, we've put them in all the bedrooms, we removed anything that they thought was hazardous, so the house is safe. The only thing that remains is that we have to redo our front porch so we will be putting in a building permit for that so we're looking to start Nov. 1st., we unfortunately can't start sooner because we have guests booked in the hotel and it's a safety issue because the porch also includes our front entrance so we don't want our guests walking from the parking area through a construction area to the front door. So we cannot start that until Nov. 1st and we have booked off and closed the property to guest for a 3-week period.

BB: Is there anybody here in favor of this? Please stand up and state your name please?

Robert Doris, 12 Chester Ave.

Michael Bacon, 100 Woodside Ave.

Timothy Burgers, 100 Woodside Ave.

Larry Mirley, 12 Chester Ave.

BB: Is there anybody who's opposed to this? Hearing none. Are there questions from the Board?

DB: Is the special permit is it a 2 year permit?

MM: We are just re-doing it, it doesn't go with the house, its with me as the owner and it's a 2 year owner so we are basically renewing, it doesn't self-renew and it doesn't go with the new owners.

DB: I just don't remember the under-lying Special Permit and what the conditions are. I don't have any questions right now.

MM: It says the initial period shall be 2 years and may be extended there after following application at public hearing for a period of up to 3 years. So you can now grant this license to up to 3 years.

FG: Have you had a structural engineer look at your porch?

MM: We have not we have had our general contractor who will pull the license.

JC: When I spoke with John he said that seeing the plan once we see the plan we will go from there. He said a structural engineer wasn't a requirement.

FG: You had someone evaluate it and give you recommendations on it?

JC: Yes.

FG: Can you summarize it here today?

JC: We are trying to get that in place the actual building plan they were looking at the Nov 1st date to get a couple of weeks before hand to turn in the Building permit so now its lit a fire under him to get the plan.

MM: Basically when you see this porch we had the roof redone 2 years ago and at that time we were told that the rood was structural and so what we are looking to do is actually support the roof and take down the part below that's rotted because there was never put any water drainage unfortunately and just rebuild from scratch with cement pads and post the bottom half of the porch.

TC: The actual deck has no scuppers or anything?

MM: It drains down and rotted so that why you can see the roof is sliding down,

JC: So they will jack that back up.

FG: So this is your access to your

MM: The porch is not the access to front door, we have other accesses we have 3 others it's a Victorian.

FG: So which door do you use?

MM: So the front door is physically on the porch, so we would be leaving the back of the house so that why we would do it when we have no guests. SO we have access to the side of the house and we couldn't have guests while we were doing it.

FG: You use this as access and not the guests?

MM: Not the guest, if they use the one side of it.

JC: They use the brick stairwell to the solid section.

MM: The section that is rotted is in the front, which no one ever walks on its closed off to guest.

JC: They built a vestibule, which you can see in the picture.

MM: Right here it is closed off they can't go onto the porch in any way.

FG: They enter from that right side?

MM: They enter from the right side over a brick staircase right into the front door, and the part that is rotted is the two front posts.

FG: I understand that could be somewhat unsightly for guests but are there other reasons why you can't do the work while you have guests?

MM: Because we want to take the whole thing down.

JC: It has to be pulled right out, it's going to be support the roof and tear the whole thing down. So to have to walk into a construction site would be a problem.

MM: It's also right on the sidewalk - For safety reasons.

FG: How long are you planning getting the work?

MM: 2-3 weeks the max.

FG: You have that figured out yet, that's pretty aggressive?

JC: We spoke with the contractor and that accounting for any type of weather delay.

MM: It's also our slowest times and we're not going to have guests until its done and we understand that safety is the number one issue here.

TC: I would feel better if the BI said that it was safe for the immediate future, the questions the he's suggesting that its not safe now and needs to be corrected but walking over it now its safe to assume..

MM: His issue is not that the floor boards are unsafe its if a fireman ever got on the roof and put a full body on there he was afraid of _____. That wasn't actually the issue at all.

TC: I wouldn't imagine that the deck is supported by the same structure?

JC: No there is four supports and the side that's tied into the house where the stairs are is solid over two supports and it on that – this pan if you look that ones actually solid when you get into the second one that's where the decay started.

FG: If you're not using this porch for a use right now I would think that you could get a licensed structural engineer by top give you some directions on temporarily shoring it this to make it a safe condition for the interim.

MM: We've been told that it is safe.

FG: Who told you?

MM: Both the BI and the general contractor.

FG: They don't have the authority to say that.. I think it would be in your best interest to have a licensed engineer- that's the only person that I would deem credible enough to make a decision on making this safe enough for public use. That's my concern on the project, not the other requirements this one is one that you intend to meet. A 3 weeks schedule is quite aggressive in November but besides that it's been a concern for some time now and it should be address before any ruling is made on your case. That's just my opinion.

TC: hen is the actual expiration on the permit?

MM: I believe that is September 15. It was granted August 29th, but it wants valid until 20 days after that.

MOTION: (FRED GUTIERREZ) – To continue this until the next meeting, Sept. 26, with the intent upon your return the violation is rectified either by the construction that your intending to do or to have somebody of credibility like a licensed engineer to proved that some assurance that this is safe condition the would evaluate it and suggest a temporary shoring plan and you would implement that and that would give me security to make a ruling on that.

MM: Can we still operate?

BB: You can operate until the 20th. Do you have a letter from the Fire Dept. and they said they inspected everything and the electrical and plumbing inspectors and they have documented that the problems during the first inspection have been corrected except for the front porch. So we cannot approve this at this time until the porch has been repaired. So we will have a continuance of the hearing until the repair has been made.

MM: OK so what does that mean? I have guests booked and paid for until the next month.

DB: depending on whether or not you have a structural engineer I would suggest having a special meeting before the 26th so you don't run into an issue where the license expires before the stop clock runs out. We can feel comfortable and extend you for another 3 years but we want to make sure the condition is safe.

MM: We agree.

DB: If something were to happen there it wouldn't be good.

BB: It would terrible for everyone involved.

TC: The inspections done by the fire, health and BI were done in relevance to extending her special permit if they found conditions they felt now they have the authority to close at this point and they didn't, so they can operate until the 20th.

DB: I don't want to have a period of say 6 days where you don't have a license and you haven't been extended I don't think that's the right way to approach it so if it's just a matter of bringing those dates in a bit so you can give us something that we are comfortable with.

MM: Is what you need a structural engineer report?

FG: I would need a letter from a structural engineer stamped that either says it's safe or he recommended some improvements and those have been done and that upon the completion of that and his inspection of it.

TC: We still need additional assurances that the work is going to be done and still suggesting that the work is going to be done Nov 1 and obviously it would be conditional on that.

DB: If it's in need of eminent repair but as long as the condition is ___ we just want to make sure it's not a real life safety issue.

FG: I think you should be clear to the engineer the concerns that the BI and Fire dept have in terms with the roof being the structural situation and he can identify others concerns but those the concerns that they have and I want that to be clear to the engineer.

JC: OK.

DB: Would accept a motion to amend our motion to move that to Sept. 19th?

MOTION: (DARREN BAIRD) – To move meeting to Sept. 19th.

SECOND: (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

MOTION: (BRIAN BEATTIE) – To accept the minutes for the August 1, 2013 meeting.

SECOND (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

MOTION: (BRIAN BEATTIE) – To accept the minutes for the August 8, 2013 meeting.

SECOND (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

MOTION: (DARREN BAIRD) – To adjourn the meeting

SECOND: (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

Meeting Adjourned at 7:55 P.M.



Brian Beattie, Chairman



Date:

Respectfully submitted by: Joanne M. DeMato, Recording Secretary
