



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

RECEIVED

2013 DEC 30 A 9:00

Held on Thursday, December 5, 2013
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152

Chairman Brian Beattie 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: Darren Baird, Irene Dwyer, Thomas Chiudina, and Joanne M. DeMato, BOA Clerk. Also Chief Paul Flanagan, Building Commission John Barrett.

Absent: Fred Gutierrez and Michael Power, due to other commitments.

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.	#017-2013	SFP Lending Trust	47 Pico Ave.	Special Permit – 17.28.030 Nonconforming uses, structures and lots	BB/DB/ID
2.	Old business				
3.	Approval of meeting minutes				

Adjournment

#017-2013 – SPF Lending Trust, 47 Pico Ave.

Sitting: BB/DB/ID

In Attendance: Attorney Robert Noonan, Architect Michael LaVecchia, Sebastian Bittitieri, Frank Poppi, and Paul Cucchinardi

BB: Opened meeting at 7:10 PM.

RN: Representing SFP Lending Trust, the new owners of 47 Pico Ave. I've been instructed by the court that the prior case is still pending – that case is scheduled for a conference in early January. The new owners have taken over and wanted to do a re-submission of new plans, taken in consideration of some of the concerns that were raised by the Board last time. By reducing the scope of what was proposed. The architect can answer any technical questions on the new plans. You should have the new plans before you there was some kind of mix up with the old plans being mixed up with the ones submitted, not going thru the entire history of what took place before as most of you are familiar with it and the decision of the Board for a SP that was denied. According to the law there can be a re-submission and the court has allowed that, the original application is still alive and will proceed absent a resolution with the new plans,. The new owners are here tonight, they have taken over the owner ship and want to get the building repaired as it is unsightly in its present condition and they would like to have the Boards consideration of what they would like to do. This is not an expansion of the building or the footprint it is simply a request for a SP to do the upstairs bedroom to make more user friendly to walk without bending over. The plans have been submitted to the BI and would like to re-emphasize that these plans are not a substantial detriment to anybody, it's a small repair to the upstairs and it is not an expansion. Mr. LaVecchia can show the plans to you and explain what is proposed.

Architect Michael LaVecchia, 54 Essex St, Saugus, MA. Please review the plans. If you have any questions? We don't have the final floor plans as of yet, we are working on the elevations just to verify heights, dormer locations and sizes and once we got the approval for that we would have the floor plan work.

DB: The way that it works is that you present and then we open it up for people for and against and then we ask our questions.

ML: We are going to be removing the 2nd floor now which is approximately 9 ft in height, exterior wall, and adding dormers that will be 7 ft tall, so we are reducing it by 2 ft. instead of a flat roof that is there now we will create a gable roof – A frame roof - the dormers will be coming off of those so it's a little more in tune with the neighborhood.

DB: Can you walk us thru originally, what was over built, and what you are proposing and how those 3 are different? From a contextual standpoint that would be important for me to understand and I don't necessarily think these plans and the site plan tell me that.

ML: I can only tell you what's there now and what we're doing.

DB: What's there now is subject to the lawsuit to tell us the difference between that and this.

ML: The difference is going to be in terms of the existing conditions that 2nd floor area has an exterior wall from the 2nd floor to the top of the roof approx. 9' 10" on the exterior. What we're proposing is we are only going to be going 7', take down that existing exterior wall and build a roof system there and add dormers that are only going to be 7' high off that floor not 9' that's there now.

DB: Instead of having a flat wall that goes all the way up you'll have angular with dormers and will be more esthetically pleasing to the eye than a giant blank wall?

ML: That's correct.

DB: That's enough contexts for now we'll get more into questions but that will help me understand.

ML: You can tell by the measurements that I have on there it's pretty close to what's there now but in terms of overall height but again the biggest thing was that wall reduction to 7' from 9'.

RN: That was the concern before it was going to be a flat roof with a deck coming off so we reduced it.

TC: So the previous work there was no new foundation mark?

RN: The footprint is staying the same.

TC: Towards the rear and the back, it's all existing?

RN: It's a very small lot there's no footprint expansion.

BB: Is there anybody here that's in favor of this? The petitioner's right? Is there anybody here that's not in favor? Please stand and give your name and address and tell us why you're not in favor of this.

Tom Honan, 49 Pico Ave.: I just wanted to say and I think the Board knows this, these plans just came down yesterday at 3:30 they were received in the office and essentially all the neighbors here have not had a chance to look at the plans and we really feel that we can't comment on this but we would to comment on this after we have looked at the plans and feel we are at a strong disadvantage, we also feel that the plans should have been in by the first Thursday of the month if they wanted to be scheduled for this hearing and these plans just made it in yesterday. The plans that were attached were plans from last year when they originally tried this project from last year. These were the plans that they submitted with this application, and you cant read the plans you will find that they are illegible and they are completely different form the plans that were just submitted on the 4th of December. It's a different architect and a different design. As far as considering calling it a supplemental plan you can't call it that because it's 2 completely different animals. I would like to kindly request that we adjourn to the next meeting until everybody in this room has had a chance to get these plans. I just got these plans at 4:00 today and the rest of the neighbors and abutters have not had a chance to review these plans and according to the Town's website and what their format is making sure the paperwork is here in order to get a meeting those plans are suppose to be accessible for the public to look at that prior to this meeting getting set up. I

would think that would be in the applicant's best interest that we all have a chance to look at these plans and we can weigh in.

DB: Given the issue that's raised about the timing of the plans I think the best thing for us to do is to hear other public comment there is about the plans and the impact to the neighborhood and what other people have to offer and assuming I would like to have an agreement from the applicant we would move at that point to continue the hearing leaving the public comment open so when we reconvene at the end of the month to continue we can still have the public comment period open and we can continue our questions because these are new plans to us as well, so this instance where the plans arrived late, I don't feel that we can fairly hear the public who has a right to comment of this stuff that they can't be heard on the plans.

BB: We will continue to hear the other people who are not in favor. Anybody else not in favor? Please stand and give name & address?

Anne Marie Murray, 160 Sunnyside Ave.: I do have issues with these plans given that this being the back of the house and these windows on both sides and this deck that's over looking 4 family backyard and given the small lot its looking right over the yard, we have a right to privacy, this is too close the house that was there previously had one small window that looked towards my houses and the scaling of the roof came right down so they could not overlook the backyards on either side, all the houses around this house have 3 bedrooms, they are all family homes, they are all going to have young kids in them, this is for a single person or a young couple, or a pervert who want to look into family yards, we have a right to privacy, our kids are in these backyards.

BB: Thank you. Anybody else?

Peter Gill, 125 Plummer Ave.: Disclosing that I am the Town Council President but I am speaking as a neighbor, I am opposed to it and it is a detriment to the neighborhood, the previous plan that we submitted was a significant increase in density, it is an increase in floor space, it's to increase the bedroom, and I think it's a detriment and I'd like to see it brought back to what it was.

Dan Honan, 12 Pico Ave.: One thing that I don't understand is you said the previous plans were not completely dead yet?

BB: You have to talk to Mr. Noonan.

DH: Mr. Noonan said that so I don't understand how you can accept another set of plans if the previous set is still a possibility of getting through or being modified?

DB: I can explain that, originally we denied the original request for a Special Permit, from a legal procedure standpoint right now it's the Land Court, you have pending litigation based on the denial of the last Special Permit, they came before us when they got the cease & desist and we denied it and they appealed to the Land Court, with a case in the Land Court, someone will win and someone will loose. The Land Court says why don't you go back to the BOA and try to do something else and settle this matter so we don't have to continue to pursue the

litigation. So that is why those plans are still live but they're subject to litigation, so what they are doing is coming back to us to see if we will approve something short of those plans to settle that law suit, those plans will go away if these plans are approved.

DH: OK, so if these plans are approved then the others are gone?

DB: The others are gone.

BB: Anybody else?

Robert Honan, 32 Francis St.: I abut the property to the south, that property was only a 1 bedroom house, in the back that was not a bedroom, and you couldn't even walk into it, there was an A frame with no closet, the only bedroom was in the front of the house, and now they're trying to make it into a 2 bedroom and it was only a 1 bedroom.

BB: Anybody else like to speak?

TH: The gentleman on your left was looking for some original pictures?

DB: If you have something to submit then we can mark it as an exhibit and then the applicant can get a copy.

TH: I can make a copy and get it back?

DB: You can make a copy of it and because we are probably going to have a second session on this I would suggest making a copy of it and delivering it to the clerk and add it to the file and then we can look at it the next time around but if you want to submit it Joanne can get it to the Board members and we can look at it at the next hearing.

BB: Anybody else?

John Biggio, 23 Francis St.: Its unfortunate that this parcel of land is so small and its causing a lot of congestion and would like to see it made as something that it was previously and be the most appropriate.

Fire Chief Paul Flanagan: Our only concern with the area is that pacing it off its only 7' wall to wall, the house that's under construction now doesn't have a soffits on it and if you add 18" to both soffits you bring the 2 houses within 4' of each other. Again, we're charged with protecting sins of the past in town and I feel this would be a sin moving forward, that being said as they built out the new Pico Park, DPW took the opportunity to lay new water main, we have a water main that is out on the beach along Francis St to Woodside Park, one of the storms last spring jeopardized that failure of that water main. We lost the other water main that feeds the Pico Park area from the lower end of Winthrop St. at Sea View that ruptured going across the Corhina Beach area. So Fire flow at best s fragile at best at Pico and this isn't something that is fabricated for this evening its well documented and future capital plans and it already is and one of the top priority plans for DPW is to put some redundancy for fire flow in the Pico Pk. are. So as far as the Fire Dept any large mass, we saw what happened at Orient Heights, that's a congested area, a SW wind on a beautiful simmer day on Francis St. blowing 40 MPH a good fire in that area puts us at a tremendous disadvantage.

Elaine Chiampa, 45 Pico Ave.: (Inaudible)

BB: Anybody else? With that part closed.

DB: Mr. Chairman, I think we should keep the public part open because we want to make sure they have the right to comment at the next meeting.

RN: Any application is going to be anytime up to the time you make a decision, I understand that it could be submitted at any time, but I don't think that anything is going to satisfy the neighborhood relative to mostly objections that we've heard tonight. We haven't heard from the Fire Chief, we didn't hear from him his support tonight but I don't think that the redundancy of fire capability would change with that house in the safety issue if they did that change in the house, the problems with fire fighting are going to be the same and should not be an issue and the thing that you have to decide is to continue for a real purpose cause everybody knows what the real issue is they do not want this and we can continue with the court case, I don't want to waste your time, their time and my client's time and expense. Were prepared to go forth with the court but the issue under the law is a substantial denigration of a neighborhood, its not changing from a single family home, the footprint is not changing, it's a very small expansion, the previous one was 350 sq. ft. this is less, there are many places and cases that are close to this but Winthrop is very dense, the fire safety issues are all over this town and the Chief has mentioned the sins of the past but the sins of the past doesn't mean that you can't upgrade the issue, so keep this over to one meeting then come back and deny this again I don't think that is fair to anyone so I would rather have you make a decision so we can proceed.

DB: In response, I don't think that anyone here is pre-disposed on this matter, I'm not, I'm looking at this subjectively, I do land use and run into this stuff all the time, the reality of the court unfortunately, someone is going to win a court case and someone is going to loose a court case. And they may well succeed because it is a gray area, and its not like a slam dunk where the town will succeed in the denial and its a slam dunk if they win, if they win you get something that you really don't want, if they loose you get what's there now and you have to force them to remove it and put it back the way it was or try to, my hope was, when you go and look at these plans and come back with comments realize that this is an offer to compromise, this is maybe something better than if you lost in court, putting that out there in the context and the lens that you look at these plans with and come back and tell us what you think of the plans but try to be constructive and try to think about is this something that would be better than something we could be stuck with and could we live with it as a worse case? That's all I saying, Imp not saying that we pre-judged this in anyway, the Board hasn't deliberated in any way and in fact, I don't remember who sat on this the 1st time around but if this goes back to court its out of your hands, then its litigation, the town is spending money, and it could take a while and until somebody wins or looses that court case you re looking at exactly what you're looking at there now, listening to the tarp and boards coming off the building, that's the conditions and that's the reality of court.

ID: As a point of order I was not there the first time this came around so this is a whole new thing to me.

RN: I can appreciate that, when we were in land court, this case is important to my clients, and the neighborhood and the town but on a scale of how they view it its not the biggest case and how they view it so that's why they suggested that maybe we could work it out. So that's why were back here with new clients and take that approach to see if it could be worked out, the reason why I said that we don't want to waste time if the same objections are being made of the privacy and esthetics while they concern the neighborhood they have no relative to the law. They are not provable so we have a strict zoning case.

DB: I appreciated that I want to have time to digest these plans and understand them, look at pictures, understand the context and the one thing this is where the law isn't fair, the law is the law, in this instance the question is this substantially more detrimental to the neighborhood that what was there previously? Any that's the determination we have to make, one question I would like answered, why we need to continue it, is I need to know what your proposing as the finished build is more than 25% increase in the total floor area than what was there originally. In our by-law we can make a section 6 finding on an enlargements of a non-conforming structure but we can't make that finding if its more than 25% more than it was previously, then you're into a variance. So I need an answer to that factual question, I actually can't make a decision on a special permit until I know that. That's one gating issue for me.

TC: Are there any existing plans for the previous structure.

DB: The photos in the file that we have are all not showing the footprint of the existing building its showing when the cease and desist happened what it looked like, so you can sort of see what was there but you cant tell what was above it, we would need some photographic evidence. If you Google it the image was probably old enough right? From an architectural zoning definition of sq footage understanding what the difference would be a critical thing for me to understand.

RN: The previous plans leaves the total square feet at 350 sq ft and we don't have bulk zoning.

DB: We don't have an FAR density regulation when you look at the non-conforming structure and use provisions of the by-law they say you are allowed to enlarge a non-conforming structure and we're entitled to make a section 6 finding as the special permit granting authority but we are not allowed to make one if you expand the nonconforming structure if its an increase of ore than 25% of the floor area.

RN: Total floor area?

DB: Total floor area. From the standpoint of our jurisdictional ability to issue a special permit I would need to know that.

RN: The floor itself would not going to increase, they are doing an A frame as opposed to going up the other way.

DB: But if you're volumetrically increasing it and pulling the walls out or doing anything like that not that you're expanding the footprint you're coming up vertically and making it bigger you're adding gross floor area.

RN: You don't need ___ for that?

DB: No cause it's still an increase in floor area. You would measure the area of each floor. And that's enclosed occupiable space, its not porches.

RN: So we would have to run calculations?

DB: From the inside of the exterior wall of the habitable space.

AM: The part that yore saying would need a variance?

DB: Because the building is nonconforming you couldn't build that building today even the original building, most houses in Winthrop you couldn't build today because no lots are big enough, nobody meets a setback requirements but because the building is nonconforming you're allowed to come to the BOA and say we wanted to add on our house even though it has a nonconforming setback and maybe our lot is too small and we have the ability to approve that but our ability to approve that is limited so if they want to add say that their house was 1,000 sq. ft. if they wanted to add more than 250 sq. ft. to that house we couldn't approve that through a special permit we would able to grant them a variance. They're here for a SP for a nonconforming structure so in order to grant that they can't be increasing it more than 25%; otherwise they would have to come to us for a variance.

RN: So we are talking about the total floor expansion of what's there now as to what we are proposing.

DB: No what was there originally to what you are proposing.

RN: Originally?

DB: Yes, the original structure is the nonconforming structure.

John Barrett, Building Commissioner: I'd like to clarify that, the plans that were submitted recently, the sq footage of the structure has not change, it's the occupiable space that will change and that's based on ceiling height, anything less than 7' is not counted. Its not occupiable, its not habitable, habitable is a different animal so according the plans now, and another situation that is getting lost here is they have a building permit that was issued in Feb 2012 and that was for new siding, relocation of and install front deck, install rear deck, and a new sliding door to the deck, and various interior, electrical, plumbing, Jim Soper wrote a note on the permit that its not to leave the existing footprint, they have not. As far as the actual sq footage it has not changed I the new plans, the old plans and the existing plans. I have a picture of the existing house and the only difference I see is the difference of 3 ft. in the exterior wall and if in fact that brings it up to 7 ft. and climbing because of the 1/3 pitched roof that's they're proposing that would be occupiable, so the occupiable space on the 2nd floor is probably going to double but not the sq. footage, so the building has not expanded.

TC: Wasn't there a bedroom on the 2nd floor?

AM: Only in the front.

DB: This right here is the original structure?

JB: That's the original prior to the building permit.

TC: If you can do a 2nd floor plan that indicates the line where 7 ft hits the sloped ceiling then we can easily determine the sq ft difference between the 2nd floor.

DB: This came out of the BI file, correct?

JB: We petitioned the Assessors dept, that's on the website if anyone would like to see it. On Vision works.

DB: We should mark this exhibit so we have a copy for our file. That ones the cleanest one that shows the old structure and give a floor plan lay out of what the old building looked like so that is a helpful thing for us to look at when we are looking at these plans. What would the total living area be in the finished condition?

RN: I don't have that.

DB: That's a number we would need because this has a building layout and you can see the old structure (front of it) and what appears to be a 1st flr layout so I think we just need a calculation of that 25% is with the understanding of what hits 7ft and what doesn't. I know the 7ft thing sounds like semantics but that is the rule. Knowing that we have to get an answer on the sq footage piece, I would like to make a motion if the applicant is amenable to this to continue this hearing to out next public hearing to Dec. 26th at 7:00 pm.

ID: I'm not going to be here.

DB: Can we do a special meeting to the first week in January? Or how about 2 weeks before that?

ID: I can do the 19th.

RN: Can I speak with my clients?

Motion: (Darren Baird): I move to take a 5-minute recess on this.

Second: Irene Dwyer

Voted: All in favor

Motion: (Darren Baird): Motion to reconvene to the hearing

Second: (Irene Dwyer)

Voted: All in favor

DB: We had a motion to continue and we are looking for the applicant to consent and we were thinking about dates and on the 26th one of our Board members isn't going to be here.

RN: Same time 7:00 pm?

DB: Yes and if this room isn't available we will send out a notice of where its going to be, but continuing it if we can get that floor area calculation and abutters have a chance to look at the plans and when you come back lets limit our comments to the plans and leave it at that. When you're looking at the plans and raising issues with the plans what you should be offering to the Board is why the plans are more detrimental to the neighborhood than what was there before because that's all that we can consider in this case. So that's how we would like to continue that leave the public comment period part is open and we

will come back and ask any questions we have left, look at the information on the percentage increase and then deliberate and make a decision.

RN: So there is no confusion, I'll ask Mike to get the square footage as it reflects an increase?

DB: As it reflects an increase from the original structure and you may have to rely on the Assessors' records and some of the historic information that you find on the building, do your best with it because that's all we can do with it, we have to assume that those calculations are grounded in fact.

ML: Will scaled plans be available so we actually know what we're talking about?

DB: If we can show roughly that the footprint of the building of what you're proposing is and what we think the original footprint of how it laid out and how it relates to what is there now, from a visual presentation standpoint that would help everybody. If we can do that, I think that would be very helpful for everybody.

MOTION: (Darren Baird) – A motion to continue this December 19th.

Second: (Irene Dwyer)

Voted: All in favor

John Barrett, Building Commissioner: In reference to 2 Terrace Ave., as we all know that it is an active B & B requiring a new licensing and there was some concern between myself & the Fire Chief of the integrity of the existing deck.. The Chief has informed me that he has instructed his men not to fight a fire from the top of the deck in fear of collapse. I contacted the owner, went in, performed an inspection and I determined that the Chief was correct.. The integrity of the structure was very little if any. The owners had agreed to your Board to reconstruct the deck and they requested an extension of time but since then as of yesterday I have performed an inspection and they are substantially complete. The structural integrity of the deck has been brought back to where it should be. There was a problem on the railings where he tried to expand the railing a little bit too much and he couldn't hold over 200 lbs. Of horizontal pressure. So he will split the railings and put additional posts which he agreed and he stated that he couldn't have it completed by the meeting tonight so I told him that I would speak on behalf of him and inform you that he is substantially complete and there's work being performed everyday and I believe that the only way you can help him out is to give him an additional extension.

BB: How long to you think he needs?

JB: I wouldn't say anymore than a week or two.

TC: Just to be clear, the roof on the deck is now safe?

JB: Yes.

DB: You could evacuate onto it, you could fight a fire from it?

TC: Currently the deck is not being used they have it cordoned off?

JB: No, it's not being used; according to testimony of the owner they don't allow their patrons to utilize that deck. I didn't see any chains or gates there.

DB: I would give them the 2 weeks.

JB: They are not going to install the bottom of the deck until the spring and that's for financial reasons.

DB: As long as its safe.

BB: Its 95% complete right?

JB: Yes and the trade off no construction debris and they would have to rake it out and look presentable cause they're on the main drag there.

BB: I'm ok with it. Lets give them to Friday, Dec. 20th.

Motion: (Darren Baird) – To give 2-week extension on 2 Terrace Ave. license.

Second: (Irene Dwyer)

Voted: All in favor

Motion: (Irene Dwyer) – To approve the minutes of the November 7, 2013 meeting.

Second: (Thomas Chiudina)

Voted: All in favor

Motion: (Darren Baird) – Motion to adjourn meeting.

Second: (Thomas Chiudina)

Voted: All in favor

Meeting adjourned: 8:10 p.m.



Brian Beattie, Chairman

12/26/13

Dated:

Respectfully submitted by: Joanne M. DeMato, Clerk