

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

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TOWN CLERK

Held on Thursday, January 9, 2014
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 7:04 p.m. In attendance at the hearing were the following Board Members: Darren Baird, Fred Gutierrez, Irene Dwyer, Michael Power, John Barrett, Building Commissioner, and Joanne M. DeMato, BOA Clerk. Absent: Thomas Chiudina 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.	#018-2013	Joan Roth	100 Sargent St.	B & B Special Permit 17.49.10	BB/FG/MP
3.	Approval of meeting minutes				

Adjournment

Continued from December 5 & 19, 2013

#017-2013 – 47 Pico Avenue, SFP Lending Trust

Sitting: BB/DB/ID

In Attendance: Attorney Robert Noonan, Architect Michael LaVecchia

RN: This was continued for the applicant to do some calculations and I will let the architect address the calculations of the percentage increase. (Passes out to Board Exhibit #1) Before we start the case is in land court presently and we did have a conference and the Town attorney was representing the town on Monday. Based on our representations that this is currently before the BOA with our application that part of the case was continued to the beginning of March where we would report back to the court of any resolution if any is made. Mr. Baird had requested some calculations and Mike LaVecchia the architect & the applicant has done that for the percentage increase based on the original plans for as far back as he could go. I will ask him to address that and answer any questions that the Board has on that.

DB: Is there an extra copy that the abutters can take a look at?

Michael LaVecchia, Architect: I can give them my copy if they want to pass this around. Essentially what we did was provided a set of plans requested for the proposed. I was able to locate an existing conditions that was done by someone else prior to me reviewing this job so that's why I actually got some of those calculations. This is dated May 2012 and it shows an approximate existing conditions. With that I was able to scale off and get some dimensions, some square footages, and I had approximately a total of 990 sq. ft. Adding 25% of that would have bumped us up to 1207 sq. ft. and I believe that would be proposed 1st & 2nd floor we're at 1205 sq. ft. so we are 2 ft short with that 25%.

DB: On the 2nd sheet of the plans that you gave us the on the 2nd fl. Crosshatching is that the old configuration of this house how it looked height wise of 6 ft. on the 2nd floor there was sort of a box flat roof there?

ML: According to these plans there wasn't a box flat roof, it actually shows a ridge, what I show that hatching, as is the actual living area. Anything above the 6 ft they consider habitable sq ft.

DB: 7 ft.

ML: OK I thought it was 6 ft so I basically showed that on the plan and that is what is on the existing conditions.

DB: Process – if we were to approve this and to grant the relief requested how quickly could you expect what I consider an unsightly condition built so its done and looks more like a habitable property opposed to what it is today?

RN: They are ready to go tomorrow so they would like to do this as soon as possible.

DB: That's helpful for me to know.

BB: Is there anyone here that's in favor of this petition? Hearing none, is there anyone that's opposed?

Atty. Robert Indrisano, 63 Paine St.: I'm here in behalf of the abutters of 47 Pico. Were these plans filed with the clerk today? Nobody's had a chance to look at them prior to this meeting.

RN: At this meeting they were filed. The plans are the plans what we're doing is the calculations.

DB: Right, the plans haven't changed they just did the calculations based on

what you provided.

RI: The assessor's records have this at 810 sq ft, and it's advertised this property for 1200 sq ft it still makes it a non-conforming, I have the ad – submitted as Exhibit #2 (coldwater Banker listing).

DB: The listing is showing 1210'?

RI: (Inaudible) Its still non-conforming and increasing the sq ft they're increasing the living space, not sure, are they going to be putting on decks? Is there a deck on the side of that?

DB: A deck on the side and a deck on the back.

ML: We readjusted those floor plans we removed the decks they weren't going to work with the lay out in the 1200 sq ft so the front deck is no longer there and the rear deck is no longer there. We had to remove it if you look at that floor plan on the 1st & 2nd floor.

BB: So there has been a change in the plans because there have been modifications as of today?

DB: Can you walk us thru what has changed in the plan since there have been other changes since the last time that we were here?

ML: The only things that have changes are not having a front deck, not having a rear deck however extending the 2nd fl living area over that rear portion of the 1st floor so we can accommodate a 2 bedroom.

DB: So here is a detail question for you, I'm looking at the right side elevation of what was presented previously, this the right side elevation what we have now, how far is that from the property line as opposed to this. I don't have this in context on the site plan it looks closer to me than what the existing condition is.

ML: Were not adding anything to the 1st floor on the 2nd floor we are just going over the first floor so essentially we are not overhanging we are just staying within that footprint.

DB: So is this a drafting error that looks like it overhangs?

ML: It might be part of the roof or the vent – the roof that is coming out 6".

DB: So you are not getting any closer and not creating any further encroachment into any of the other yards?

ML: No I'm staying within the footprint.

RI: How far is the overhang as opposed to what it presently is? It says that you are increasing the 2nd floor.

ML: Correct.

MI: So you're not staying within the footprint on the 2nd fl.

ML: We are staying within the footprint of the foundation.

MI: What is the 2nd floor?

ML: Approx. 99 sq ft.

MI: The abutters on that side - you are encroaching on that side. It's a privacy thing.

ML: That I don't know all I know is that we are adding 99 sq ft.

Thomas Honan, 49 Pico Ave: In light of the fact of all these changes in the plans I can't see effectively how we can go through this and weigh in on the

decision unless we've had a chance to look at the plans, it was the problem at the last meeting and it had to be adjourned for the very same reason and now we are back to square one on this. In my opinion we should adjourn again until we've had ample time to look at the plan, review the sq. footages, and see if we have any questions before we come back to weigh in on this, I don't want to keep this going but you can't look at this and make an informed decision.

Robert Honan, 32 Francis St.: Without all the information how can you make an informed decision? That property is within 100 ft of the ocean beach so it has to go through environment don't they?

DB: It doesn't have to go there first, any decision that we would make would be subject to any other permits or relief that we would need, so if they needed to go to Con. Comm. we can condition it on any other permit or any other approval that is necessary.

Peter Gill: Question about the 2nd floor previous to this addition – where the calculations are from, the usable living area is 6 ft but was corrected to 7ft I wonder where the calculations on the sq. footage on the back section to the front going back ward where the roof is lower the ceiling or usable height is going to be post plan so isn't the increase in sq ft in useable space, the removable of the deck in back and then take that as living space, I'd like to know what's the increase in living space with a 6ft or 7 ft ceiling, The square footage would need to be re-calculated.

DB: Good question, from the standpoint of the previous calculations to determine whether the proposal was under the 25% cap as far as what we can do by special permit the clear height that was measured as space where they consistent with one another, is the interiors living space on the 2nd floor getting higher than it was is the 6 ft going to 7 ft? I don't know what it was before going by what I have as existing plans.

ML: Unfortunately there are no dimension son there so everything has to be scaled at 1/8 that being said in figuring out the calculations if you look at the plan I did not take the back half of the building, it might have been a little crawl space possibly so that wasn't even figured in to the calculations, just the front part of the building.

DB: So what wasn't figured into their calculations?

ML: That area behind that?

DB: These are like eaves that could have been crawl spaces but you didn't figure that into it.

ML: Where that window is essentially I didn't have any of this to that calculation, it was just the front area because from what I can see on those plans it didn't seem that it was actual living space it just didn't make sense.

DB: He saying from this eave, to this eave and this hallway were not include in the sq ft calculation that got him to the original 960 sq ft of habitable space that is the basis of the 25% calculation?

ML: Correct.

Ann Murray, 116 Sunnyside Ave.: This is a fire hazard that was brought up,

what I'm looking from is a comment from March 20, 2012 is a stop order when they first got he said he took the dimension after when they increased the livable space so he's wrong on the sq ft – the original sq footage was 844' so I realize that he wasn't there but every one of us that have been in the house knows that its tight in that back room.

DB: Just so we're clear but backroom you mean this area or this area?

AM: The whole back half.

DB: So basically from that window over?

AM: Yes.

BD: But you didn't put that into your calculations anyway?

DB: There's 2 things in the world that I never rely on when I'm doing due diligence are Assessors records and MLS listings. They are notoriously incorrect. Maybe seeing the building jacket would help if its here or not.

BB: John do you have the jacket?

JB: Yes.

DB: Could I steal it while the questions are going on for a few minutes?

Jack Honan, 108 Plummer Ave: The first 39 years of my life were on 26 Pico, I grew up in that house, there was 1 bedroom in the front, the room that everyone is talking about is just an A frame room in the back, we'd always bump our heads when we were little kids, it went up in the center and that's all it was, it had some dark paneling. I went thru the house after the bank took it over and the rooms are still the same and the previous couple that lived there they just had some weights and some storage in there that's all that was in there, that's all you could do with it with wasn't a bedroom. You could walk down the center of it but you couldn't do anything else with it, that what that room was. The room in the middle where the stairs come up the top there was a landing and a very small area and then there was the 1 bedroom in the front. That's the way the top of that house was before it was torn down against the building code and the BI stopped the project.

Elaine Chiampa, 45 Pico Ave.: I lived there for the first 21 years of my life – (inaudible).

BB: Anyone else before we close that part of the meeting? Hearing none that part is closed. Questions from the Board?

ID: A clarification - because we have to rely on this record later on in looking at the plans that we've been talking about for the last few minutes are the first couple of pages of the calculations submitted tonight by the applicant's architect correct? The reason that I'm saying this is that people have been saying this, this etc. and pointing to things and that's not going to show up on the record if we ever have to go to court on this thing, and we might have to because we already have a date on it. People have been talking about if the 2nd fl layout before the 2nd fl was torn out and the prior owners began to build it up to a full 2nd story and it shows floor space. Floor space of a bedroom and it looks like a big T with a roof on it. People who have been in the house say it was a bedroom and a long narrow space on either side, is everybody clear about what

we've been saying?

BB: The original – when this was taken out on Feb. 2012 the original permit, this is what the permit said, 'Install new siding, relocate windows, install sliding door, install front deck, cut into sloped roof, and install rear deck, misc. interior framing. When it was stopped the side walls had gone up 8 ft and now here we are almost a year later and it been in court for a while and for someone to come in and ask for A, B, & C and go all the way to A-Z, I don't think its fair to the neighbors, I don't think that its fair to the town, I don't think its fair to the BI, to do al, the work that they had to do, that's the way that I look at it right now, I know that if it goes to land court, it's a crap shot, someone is going to win, and someone is going to loose, but if we give into this with the next one are we going to start a precedent, if whatever contractor comes into town and you can build 80% of whatever you want and you can be guarantied 30-40% of it? I just can't see it. You were given one thing to do in the beginning and you went completely above it.

RN: This is a different hearing, a different application; you're talking about something you already made a decision on.

BB: And the building is still there.

RN: This is a new application that's the difference; this is a reduction in the plan.

BB: It's a reduction but its still above the original.

RN: You have to have reasons to deny this separate from the previous case.

DB: Realizing procedurally where we are, the decision that we denied back in 2012 has been in land court and is still in land court, its still pending to go to trial depending on with what we do here and now the lenders have taken over the property from the developers that did more than his permit said, so we have a new application and we're constrained by determining whether or not assuming that we agree and acknowledge that 25% has not been exceeded our questions is from a finding under a special permit standard is this substantially more detriments to the community than what was there previous, than the existing non-conforming. That's all we can decide. That's what we are constrained by as a matter of law, so the past is the past and while its not a great story and it's a story that a lot of us are still not happy about we have the facts in front of us and we are constrained to make a decision based on the parameters of what the law allows. That's one of the big problems of the law, the law is not fair, and so that's where we are.

RI: The land court docket says 9/17/2013 says a motion to replace McCarthy as the plaintiff and substitute this trust as the plaintiff, then it says the motion to stay pending the resubmission so that's in land court now.

DB: Right so when the lenders took the deed away in foreclosure, when they did the foreclosure they stepped into the shoes of the developer that pulled this permit and appealed our denial and implanted themselves into that law suit and to hold their position in that appeal and to adjudicate those rights but rather than adjudicate those rights they came back to us with a reduced plan hoping to settle that so that's why we are here.

RN: In terms of the law you are correct and I have argued that in the past, I think Mr. Chairman you thinking, regardless of the past these are new owners, it's a new application and if they were trying to do the same that the previous owner did, they aren't trying to do the same thing, the fact that he didn't do it correctly shouldn't be held against them, it's a separate hearing and a separate finding and they have reduced it substantially. We are talking about a pretty good reduction here and I don't think it's a big secret what they want to do here.

ID: The plans dated Jan. 8, 2013 show that on both the left and right elevations you have removed several windows?

ML: Yes

ID: The entire plan you have both the right and left side you have a dormer on the rear of the property on the 2nd floor you had windows that were removed that now have a plain wall on the dormer?

ML: The wall goes up 6 ft so.

ID: You removed the windows both on the right and the left die?

ML: Correct.

ID: What was the purpose of that just to simplify?

ML: Essentially we didn't need the dormer there any longer but we just needed the headroom for the stairway so they could make their way up the stairs.

DB: The prior version of this house, I don't remember, was there a deck on the house previously? No deck on either side?

ID: I think you have a picture in the building jacket.

RI: This is something that should have been submitted (Exhibit #3 – petition signed by neighbors Exhibit #4(previous) & #5(current) – Assessor's office house pictures).

DB: Nobody is here from the fire dept. right? At this point we are not having anymore-public testimony, if you want to have a conversation go outside, right now any conversation is between the Board and we want to make sure that the microphone picks up any conversation because we are talking about what the next step is for the Board in this matter. Any fire suppressions, sprinklers, fire detectors?

ML: What ever is required by the fire code.

FG: Was the previous house occupied with 1 or 2 bedrooms?

ML: I never saw what the house looked like prior to today.

DB: The assessor's information has it as 2 bedrooms.

FG: I'd like to make a statement, I'm not voting on this case I sat on the previous case before the town I missed the last session where this was continued from just reviewing the drawing after receiving them today and what was presented at the last meeting and one I sat on it does look that there's been a substantial energy to make it a smaller house I think their architect was challenge to make it a valuable house that's the challenge for anybody who owns this property getting their investment out of it. It's going to court something is going to be there sometime in the future; the question is how do we get there? I think its getting close and I open it up to the owners if there is some additional

course to make it smaller to appease the neighborhood, and I don't know what that is but I think its getting close and I just think that something needs to be built there and we're not at the point where we can negotiate that now but if there is something about the plans that might make it smaller.

RN: Even from the first hearing when the decks were proposed they were taken out so it's been a downward spiral from the application to what they want to do there. It has to be somewhat of an investment for any owner to live there and all they're trying to do is make that more livable upstairs. What they're doing doesn't really denigrate the neighborhood, that house the way it is now is denigration and in that condition doesn't help anybody.

ID: Just to confirm this not having an in deterrent pronoun, in concluding when the architect calculated the sq footage the best he could the area where the lines shown 22'6" by 11'6" this being the 2nd floor that was the area on the 2nd fl that you could actually stand up and walk around. The T that comes off this is not included in your sq. ft. calculations?

ML: The only thing that was included in the calculations was that first box. Again I'd never been in the original house so I'm going off of what I had,

ID: You stopped your line here at the end of the square and that is where you added to the first floor to come up with the 965 sq. ft.?

ML: Correct.

DB: where I am on this as far as the Board discussing this case is for me I have a hard time getting to a point seeing that they appear to be under the 25% based on the reliable totality of evidence that we have and being that I just have a hard time finding a way past what the standard is to deny this. I don't think that allowing this plan as shown in these updated for the public welfare of what was there previously there and what's there now. That just where I am mentally, I really don't think we have, being that they scaled this down, I have a hard time getting to appoint where I deny this. And that's not an easy decision for me to make because I want to deny it but I don't think I can legally deny it because we'd just be in court again. And this time around I don't think we have as defensible a position that we had the first time around.

ID: I feel that same way that Mr. Baird does I don't see how under the standard of not being more detrimental with this plan which is in the same footprint and it doesn't have the high walls up all around its going to look a lot better than the ram shackled shack that was there before they raised the present – When we make the decisions here they are appeal able as the prior denial was appealed and other cases in land court and when they go to court they court has the same set of standards that they're going to use, if you denied something you have to have the reasons for denying if there within the scope of what you allow as far as the 25% increase floor space there has to be some other reason to deny that has to be a greater detriment to the neighborhood. This is not a sizable house and you're not going to have a lot of living space or a lot of people living in it. I feel the same way that Mr. Baird does.

BB: Personally I think that its more detrimental to neighborhood, I don't see any

parking here, I don't see how anyone could have 2 bedrooms here and have at least 2-3 people living in the house in day and age with 2 cars. I think its more detrimental to the neighborhood.

ID: I have one other comment we had a case very much like this on Hawthorn where the house was literally on the lot line and I don't think there was any space between on one side of the property and three in the rear. In this case a prior owner had started work and abandoned it and it was hanging around for several years with Tyvek flapping driving the neighbors crazy and it was hard but we basically allowed this even though it was tight and they don't have parking cause they couldn't get parking right in front of the property we allowed it and it got built and it looks a lot better than it did before.

DB: I don't think that taking more evidence or testimony is going to make a bit of difference here, I think we herd what we are going here and seen the plans and we've had enough time to digest them. I would offer a motion Mr. Chairman.

MOTION: (DARREN BAIRD) – Under 17.20.030 to grant the relief requested making the specific findings that the building as shown on the plans dated January 8, 2013 for 47 Pico Ave, Winthrop, MA would not be substantially more detrimental to the health and safety welfare of the surrounding neighbor that what was there previously therefore allowing the extension of the nonconforming structure with conditions, that the structure being competed in accordance with their plan, and if there any are changes no matter how minor you have to come back and amend the plans. It seems that a property building permit was never paid and I would like to have the plans resubmitted to the BI and a new building permit be paid with this plan. I don't think a building permit was paid for this plan; it was paid for siding and other stuff. What was the permit fee the last time around?

JB: The last time around was for on 2/8/12 was for \$774.

DB: But that wouldn't necessarily cover what is here for the additional sq footage? How is it calculated?

JB: \$100 a sq ft. under Winthrop ordinance just adopted 3-4 months ago.

DB: So it seems to me that we don't a building permit that was paid at \$100 sq ft correct?

JB: That's correct, there would be a few fees off of that.

DB: So this seems to be a new building permit anyway correct Mr. Noonan?

RN: Right.

DB: So resubmission a new building permit and payment of what that would be and the finished materials be such that there are no pressure treated materials shown anywhere and unsightly and consistent, and while I cannot make this a condition I would like to make it a condition the work be competed as soon as humanly possible so the neighbors don't have to look at what's there now. That is my motion Mr. Chairman.

SECOND: (IRENE DWYER)

Voted in Favor: Darren Baird and Irene Dwyer

Voted against: Brian Beattie

DB: The motion doesn't carry because we need a unanimous decision.

RN: Will you put this in writing?

DB: It will be put in writing and it will be a denial because it was 2-1.

RN: In terms of the written decision will it reflect the votes?

DB: We will issue you a written decision and it will reflect the vote 2 for 1 against, the motion did not carry and unfortunately you remain in land court or you can appeal that denial. Thank you.

Motion (Darren Baird) – Move to take a 5-minute recess.

Second: (Irene Dwyer)

Voted: All in Favor

#018-2013, Joan Roth, 100 Sargent St.

Sitting: BB/FG/MP

In Attendance: Joan Roth, Atty. William DiMento, and Sara Oosten

WD: Representing Joan Roth and her application for a B & B. As an introduction when we were last here the Board members asked for a more articulated parking plan and a bed plan, which we had provided to the Board. To make things very clear relative to any question about the parking and definition of parking we'd like to inform the Board we'd amend our application from 4 guests rooms to have 3 guests rooms and reflective would be the less of a requirement for parking. I have additional plans for any member who is not sitting to interpret.

DB: Are these revised plans?

WD: Yes they are.

DB: Have they been submitted as part of the record already?

JD: They're new.

WD: Also there was a question at the last meeting relative to what the permit showed on the plan whose writing and all and at Joan Roth's request, former BI Jim Soper is here this evening to make it perfectly clear as to what is on this plans that you people have seen relative to the driveway on Johnson Ave and the is prepared to answer any questions the Board might have in regards to that and what the definition of driveways are. There is also question if this is a corner lot and I have the definition of it – it unequivocally meets all the definitions of a corner lot in the Town of Winthrop. And therefore the driveway could go all the way into the side yard under the Winthrop Zoning Bylaw the owner gets to designate where the rear yard is but that is not a central issue here and wouldn't be a central issue at all in our requests for only 3 Guestrooms rather than 4. Any questions we want to address them. Here is the plan by Hancock Surveyor (Exhibit #2) showing the 9x18 although there is nothing in the bylaws that defines a parking spaces as 9x18 for a residential use and there is no open space

requirement from the bylaw for residential use so that has no factor when paving the entire lot the bylaws does not prohibit that. My clients would be willing to accept any restrictions, she is more than happy and wants to get this B & B in operation with 3 guestrooms so she can become a businessperson at that address. It meets all of the criteria of the B & B, we went through it all of the special permit criteria that also applies. The guidelines she meets every single one of them without any question, I don't know where to go as a parking plan, she is willing to accept a permit with a sunset clause with less than the years allowed in the other permit on Shirley St. she is willing to accept conditions of inspections and look backs and she is willing to work with this Board and with the Town in anyway possible. It is a mixed neighborhood with many 2-3 family in the neighborhood, some of them legal some of them illegal but they are there and we are very aware of that. We've gone through and said the reason for a B & B in the Town of Winthrop is provided right in the purpose clause is to discourage the current illegal and possible unsanitary operations of unlicensed boarding houses by providing clear standards to the operations of B & B establishments defined therein. We provided evidence of 14 other residences in town that are un-enforced and on the Internet for people to do it. This location has moved forward and said they want to take advantage of the Winthrop B & B Bylaw passed in 2011 has provided and they want to run a B & B from this location. For all of the provisions in the bylaw, they want to promote tourism, Joan's daughter has a recently owned business in the center, she's looking to bring in more tourist, the town has just bought its own ferry looking to bring in more people. These are things that are demonstrated in the bylaw it is an underutilized residence. If there is a house in this town perfect for a B & B this is it. There is no exclusion, it isn't a matter that you can't have it in the R1, R2, R3 zone, its all out by Special permit in every zone. There's no prohibition because it's the old Court Rd area, there's no exclusion for that, and it meets the criteria. We're asking you to give her a chance. Give her an opportunity to be a business woman and show that she can run as good a B & B as the one that has been running beautifully and very successfully on Shirley St. on a less private site by the Morris family. If there are any questions we would be happy to address them.

BB: Ok, thank you. Do we have anyone that in favor of this petition?

Cindy Dell'Isola, Medford: I've know Joan for well over 20 years and I'm in favor _ I sell real estate on the north shore and I think it's a wonderful opportunity and they need to bring more people into the area and I don't see why there is any opposition.

Sara Mahoney, 53 Pleasant Park Rd.: I'm here to re-state my support for Joan Roth and her _ to open up a B & B in her very unique home and I see it only as a positive.

Sara Oosten, 100 Sargent St.: I am Joan Roth's daughter and I live at the residence with my mother, my son, and my husband. I am a new business owner and I just opened up a boutique in the center of town at 21 Somerset and

I think that any hotels, B & B, or any type of establishments that would bring people into this town is only beneficial to the town and for the businesses in the town. I've made it a point to go to the different hotels and try to get the tourist to come into the center and visit our businesses. I opened in September and it's important to target not only the people from Winthrop but outside Winthrop.

Robert Sasso, 73 Billow Ave., Revere: I've worked on this property for a previous owner Mr. Jackson and Mrs. Roth the property has been well maintained and I can speak to Mrs. Roth's integrity about keeping it up.

WD: I meant to explain that he's the fellow that built the driveway that was my error in not introducing him.

BB: Anybody else? That section closed, is there anybody opposed to this? Martin Klim, 91 Sargent St.; I live right across the street; my driveway is facing the front entranceway of that house. Right next to me is Frank DeMarco and there is a 20 ft separation between this driveway and mine. It's a very tight separation and the tenants often block the driveway especially when they arrive in the middle of the night and block my driveway, it's kind of a dark area. It's a big problem and has been for the last 15 years. We were here the last time and I don't see what major change has occurred other than the driveway was put into the other side and it's consternation to the neighbors on Johnson Ave. Mr. Dimes could speak to that and I would ask also what would be done for the additional rubbish be generated or are they going to put a dumpster in and that's going to occupy some of the parking spaces. Right now the property is still being rented out on a regular basis and it's not unusual to see 8-10 trash cans on Sargent St. on Thursday trash day that he moves some of them down in front of Harold Hamm's house to make it look like there aren't as many. If you're talking about making a decision about somebody who's been detrimental to the area she certainly has been for the last 15 years, she never paid any income tax and you said that at this hearing. She is just somebody who said she's going to rent 3 rooms she'll rent 10 rooms.

WD: I object to this testimony, it's scandalous and it's maligning her in a way that this Board allows he can't say this.

MK: I'm telling the truth.

DB: With all due respect let's not making this personal.

MK: I'm not, I'm telling you what goes on.

DB: You're telling me what goes on but having testimony on the record as to whether she pays taxes is completely irrelevant to this hearing. I'm just saying please refrain.

MK: A member of the Board asked her if she paid and she said no that the money goes back into the property. Look at your record I'm not being personal.

DB: I'm not here to argue with you. Thank you.

BB: We're going to continue. Next?

Mary Forristall, 104 Johnson Ave.: My main concern is safety. I don't know if what I'm about to say is right or not but there are lots of people in and out of that property. And I have 2 young teenage daughters and I work all the time and I'm

never home so to me I ____ it's a nightmare. It's a residential area and it has been a long time that this is going on. If it's legal I understand her desire to that it is a beautiful home but I don't want it in this residential area where there is a lot of children, families, I feel safe but I don't.

BB: Thank you anybody else?

Steve Buonopane, 97 Johnson Ave.: I have 3 young children 5,7, & 9. While I like the idea of a B & B I just don't think that it would work well in this neighborhood for safety besides I like to know who our neighbors are. The thought of strangers coming and going often and is disheartening and wouldn't make me feel safe to let the kids in the backyard. Just the fact that we don't know who's there and looking at the kids it doesn't feel right.

BB: Thank you anyone else?

Ted Conley, 295 Court Rd.: I live across from them on Sargent about 50 ft. We concerned about the unknown and the constant transition about what could happen during the course of the next months and years. Basically that's it, we're somewhat removed from the property but I was notified and that was our concern the transition and the cost of the unknown for us. It's a neighborhood where everyone know each other and who's coming by your house and who's not coming your house.

BB: OK, Thank you. Anyone else?

Kristen Reynolds, 104 Johnson Ave.: I live directly across the street from the driveway. I also have teenage children and have concerns about having different people in the neighborhood all the time and who's going to be around. I spent the summer on my porch-watching people coming & going from the property. Families, single people, groups of young men and just having concerns about who is in the neighborhood. We all know each other and to see strangers all the time also whether the driveway is legal or not, be narrowed I know the weather has been conducive to that but my understanding is there was going to be a discussion about the narrowing on the side of the driveway and I haven't heard that yet.

BB: Thank you, anybody else?

Susan DeFelice, 85 Sargent St.: I've lived here all my life and I wanted to repeat the fear of the unknown and the transient nature of having people coming and going also I'm assuming the sign would go up.

David Reynolds, 104 Johnson Ave.: My concern is should this Board sign in favor of the applicant what guarantees would the neighbors have in regards to the adherences to the ordinances and laws as stipulated as to the agreement she has shown history of just completely disregarding that in the past with illegal driveways, operating a B & B until she was court ordered to shut it down this summer so the concern is that even should the Board deny this request we are going to see another B & B operate there this summer as it did illegally this summer.

BB: OK, thank you. Anyone else?

Robert Porter, 135 Sargent St.: With the way its set up here with 6 guests –

King sized bed, a Queen sized bed, and 2 singles any specs to be put in there that its not to be used and otherwise the way the law is written ___ and what Atty. DiMento said is a residential he said about the parking it's a B & B business – parking on Johnson Ave (inaudible). I can see where the 3 ft setback is from the Dimes legally she should only have (inaudible) – the swimming pool is illegal.

BB: It was grandfathered in; we already went through that before.

MP: We reviewed that last meeting, you are correct, you cannot have enclosed swimming pool on the property. (Inaudible)

WD: That house has had more inspectors in it than any other.

Richard Dimes, 105 Johnson Ave.: I'm a direct abutter; my side yard faces her rear yard. For the last 10 years my bedroom window and the condition of her backyard is such that one time I had to call the Health Inspector and inspect for debris that she just left that way and she continues for this 8 years never kept the backyard in a ___. She has at any given time 4 – 15 people, I have been woken up at midnight when a whole clan of airline hostess' and pilots have taken rooms because she had advertised that they could stay at her's at very low rents and she would pick them up and they would come home after their flight and they would go out in the back where I could see and keep my family up until 12-1:00 am. This neighborhood is a very well established neighborhood, with very nice people and families growing up and it has never been used to the use of the woman after she bought the property she did whatever she felt that she could do. She broke every bylaw in the town all while not paying 1 cent to this town and knowing that his town does not allow boarding houses and did whatever she wanted and I believe that this is not the type of person this town should let run a B &B not in this neighborhood or any other.

BB: Thank you, is there anybody else?

David Reynolds: Question regarding the swimming pools fin this becomes a public business what other regulations has the state provides the operating the pools to the pubic. I am sure there are certain guidelines whether life guards required or safety equipment, the inspections to the cleanliness of the water. I understand that its been grandfathered in but if this becomes a public business, I am sure there are state regulations the hotels have to have guidelines to operate a pool.

DB: This Board doesn't speak to those regulations. While it becomes a commercial use from their standpoint it becomes a B & B and not a pure one family use its still a private use it's not a public use. You have to pay for your room and its a private business so like a hotel I'm sure there are health and safety regulations that go along with a pool but its not up to this Board to dictate what those are regulations that are under the state building code or health code or whatever and they have to comply with them. I can't tell you if there is a lifeguard required I would guess in hotels that I go to they're not you swim at your own risk but there are health and safety regulations that they would have to comply with just like they would in opening any business that had something like that. The grand fathering of the pool does not alleviate them from those

state code issue only as a matter of zoning.

DR: So who would be the person responsible for monitoring that in the town because I believe that it is the only in door pool?

DB: Probably the Board of Health.

JB: I'd like to correct that on the pool grandfathering that was issued a variance. I have a copy of it.

DB: So that was issued a variance so it was not grandfathered at all it's subject to a variance ok.

JB: The pool itself would fall under various building and health regulations that would be monitored with periodic inspections and stuff.

BB: That's helpful. OK is there anybody else? That part of the hearing is closed. Are there any questions from the Board?

MP: You have a change in your request to remove one room, which room will you be removing?

JR: At first thought I would assume that it would be the small corner room.

MP: That would be guest room 4?

JR: Yes. That's the small room.

MP: And your intentions are to have no more that 2 guests in the other rooms, is that correct?

JR: yes.

MP: A question for Mr. DiMento - do you have an interpretation for the parking requirements for the house?

WD: The parking is the 2 for the residential use of the property and the parking requirement would be for one for each under the B & B bylaw.

MP: One per room?

WD: Correct.

MP: Your allowed to park 5 cars there?

WD: That's correct.

MP: And that is your interpretation of the stacking of cars?

WD: Stacking is allowed and the only permit that has been allowed for double stacking is the one on Shirley St. It is within the discretion of the Board to deny the right to stack under the B & B bylaw but it does have a provision that stacking is allowed.

MP: On your plan you have stacking of 4 cars in the main driveway and then double stacking on the new driveway assuming we agree that the new driveway is conforming to the bylaws there would be double stacking in the backyard?

WD: Correct there is no provisions in Winthrop that forbids stacking in any driveway, the driveway and the 2 parking and the 1 car garage is allowed just as parking is allowed in a when a driveway is a front yard in a residential district the bylaw specifically allows the parking when it describes a registered or unregistered vehicle. You can't have unregistered vehicles in a front yard so stacking is allowed under the Winthrop zoning bylaws. The only time that you see stacking is under the B & B provisions and the Board certainly has discretion but I'm not saying they have a right to stacking.

MP: Ms Roth has not been renting out this building at they moment right?

WD: Absolutely not.

MP: Has she rented it out previously?

WD: Yes she has and there is absolutely no question that she has people sharing the cost of operating that room there s no disputing this is one of the homes that there is now 14 homes that you can rent a room in Winthrop today if you need to rent a room we can get you one tonight with my iPad. Her was one of those but it is no longer.

MP: When did she cease to rent?

WD: Last June. People said that there were in August but there was not any as there is a strong court order in effect that the town.

MP: So there was no renting going on, do you understand and I'm looking for on behalf of the Board is reassurances going forward that there is not going to be any illegal use of the property I think you can understand why we would have some reservations on this.?

WD: We understand it ask I understand it particularly and I know that many of the people that have spoken here tonight and have know for a long time and understands that it is why when I presented this that this petitioner is willing to accept extraordinary conditions. In the last hearing you heard that Mr. Baird said that "Well I don't think I can impose that kind of conditions in particular case relative in hopes that the project will be done as fast as possible'. We're telling you that we are willing to go month to month to prove that she can do this and if she doesn't follow the rules that you have every right in the world to rescind that permit whereto its a month or two months. She is looking for an opportunity to proves that she can be a good citizen and a good neighbor and not block Mr. Klem's driveway and those cars will be in that designated parking area. She is willing to say no one is coming home from the airport at midnight because she is gong to agree to a restriction that she can't rent rooms after a certain hour, there are regulations on 14 days and that sort of thing presently but she is willing to say that she will accept further restrictions that she would not contest if the Board chose to give her a permit and a chance and she knows the situation that she has gotten herself in with her neighbors. This bylaw came in 2011 and it came for a reason and the reason stated clearly but its genius because they're right and we know there are 14 out there and we know sooner or later the BI is going to chase them down so they can go out of business and if there are 14 there is probably 50. If this Board can consider it or not to give her a chance you certain have every right to cease any operation.

BB: A question about the driveway - on the Dimes' side of the driveway there is supposed to be a buffer we discussed this before? I don't see anything, there is supposed to be a 2 ft buffer?

WD: I think it shows 3 ft in the plans.

BB: Its hard topped right up to the fence.

DB: There has to be an unpaved area.

WD: That's why Mr. Sasso is here.

RS: The fence is actually 5 in thick and the retaining wall is approximately 18" the wall is 14" currently for a total of 19" and its required to cut 6" off the driveway and I'm prepared to do that.

WD: If there are any problems with that asphalt it can be easily remedied and as soon as the weather is done it has to be remodeled regardless of the future use of that property she will restore it. Mr. Sasso is kind enough to come so you can hear it from him as he is the guy that did it ask Mr. Soper is here and he met at the time that this was all done.

BB: Any more questions? Irene any questions?

ID: Not as question but I am appreciative that we have a detailed plot and floor plan. Thank you.

MP: A comment to the board I do feel that we do have the authority to place a curfew and when I travel they have curfews when to return.

ID: A point of information for in the bylaw conditions a B & B there is an explicative authority in the town as how the Building inspector is to enter the property and inspect the records that they have a created legal ability to go in an control that house if they have a property license than if it operates without one. I remember Mr. Soper discussing that one a prior B & B. If you're going to change the number of rooms that are going to be available to rent I would like to see in the conditions that the plans be changed to whatever the rooms would be and not a bedroom.

WD: We would be willing to accept those conditions.

FG: Its obvious that you guys have more at stake in this and understand the conditions more than we do and have thought about what possible conditions that we could put in this to make the neighbors more comfortable and share with us a list of what would help make this case to grant you approval of the special permit that would be appreciated. I'm not saying that we would impose them all.

WD: #1 No on street parking for room guests.

MP: That's not allowed by law anyways.

DB: We can make it an explicit conditions not allowed by the regulations.

WD: There might be some argument that people have the right to park on the street but we are going to say that if your going to be a guest you can't park on the street as a condition.

BB: If you don't have a sticker you can't park on the street.

WD: I don't mean overnight I mean at all, no matter what it is. During their stay they need to park in their assigned spot to this is limiting cars on the street. #2 would be whatever the reasonable curfew would be whenever they come in or leave is a reasonable thing, whatever time the Board thinks for the neighbors, I don't know if you can only sign in by 9:00 pm and if someone calls in at 9:30 pm and says I need a room, we're sorry we can not accept guest after 9:00 pm or whatever the Board feels. Once again we are looking for the opportunity to prove that we can operate a B & B in that location. As far as noise goes there certainly will not be playing of loud music, there cannot be anything that causes a nuance in the neighborhood with noise, it is a residential neighborhood as a

another condition the petitioner is willing to give to the Board.

ID: I don't think we can get that much detail on the record tonight but one place we are not hearing from is the fire Dept. and one of the issues that has been raised several time is appropriate signage and fire suppression and I don't think we have anyone here tonight to make a suggestion.

WD: It's already subject to the code and it is something we have to do whatever it is.

ID: You have expressed a willingness to have conditions on it.

WD: I don't understand what you mean.

ID: One of the things that we are concerned about is this is a large and old fashion layout and for someone who doesn't know where they are and is awakened in the night by a fire might have more trouble getting out and I'd like to see the Fire Dept. have a little input to these conditions with an exit signs or something like that.

WD: I have said I would accept and conditions that the Fire Dept. would put on.

BB: I have a couple of questions what percentage of your business would be coming from the airport?

JR: What percentage? A very small percentage.

BB: From the airport?

JR: From people arriving from the airport?

BB: No how many people you'd be putting up from the airport? Tourists in the town?

MP: Employees. So you're not anticipating?

JR: I'm not saying that I am eliminating them if they need a space but it's not my target.

MP: It would be reasonable to expect that you were an US Air flight attendant and they no longer have a Boston Crew base but they will have one with the merger?

WD: Let me address it this way, we know the history of the property relative to that but because of the nature of the bylaw of the 14 day stay and in fact that Winthrop is going to attract more people for these sort of stays but this is not her target audience and she certainly can't say they can't stay but in the past people should stay 1 or 2 nights, this isn't designed for that. This bylaw is for people to come to the town and use it as a base to go to various places and the city. I know that during the argument that people were leaving their cars on the street and gone to Wash DC for a week and came back to their cars and that is one of the reasons why they eliminated that and when to sticker parking. It makes sense you are adjacent to a major airport but you can't discriminate and say just because you work there that you can't stay here but you can discriminate and by saying if your flight gets in at 10:30 at night you can't stay here that's easy.

SO: Its not the intention to attract the flight crews to the B & B, the idea is to have visitors to visit Boston and to give them accommodations in a charming house. And that is the purpose.

WD: I recently stayed in a B & B in Tampa to watch the Red Sox series, for 4 days and it was an excellent way to attend ballgames in walking distance and I would do it again.

FG: What is your target and your ideal stay for a guest?

JR: An ideal would be 4-5 nights.

FG: Would you be imposed or feel that we would overstepping our bounds by saying that it has to be a minimum of 3 nights?

JR: Well that's tough for a traveler because first of all there are 3 languages spoken in my house, there is fluent French, Dutch, and English. We kept a strong target of Europeans and Australians and the UK.

SO: I think a minimum would be very difficult than a maximum, we would want anyone staying for more than 2 weeks and that is already in the bylaws but to put a minimum some people are just here for a night to visit the city, there are a lot of students around, there are a number of reasons that people visit.

FG: Well usually if someone were staying for a night I would consider that transient by nature. I think a couple of days to be ____.

WD: Listen to his concerns about the transient. (Inaudible) it's a matter of limitations to get yourself approved.

SO: So what you're saying is that I can't have a person staying of one night?

WD: Right.

FG: I'm proposing that I would prefer a minimum of 3 nights. I think that 1 night or probably 2 if the Board wants to talk about it but I think that 1 night is..

WD: We'd like to if the transient raises concerns but if the Board insists and think it has to be 3 we'll accept whatever the wisdom of the Board is.

DB: Just from the standpoint of the headache of enforcement. Imposing a 3 night minimum would be really hard for - a 14 day requiring of keeping a guest register every day who's there when they go there when they left you'll be able to determine that - a 14 maximum will be easy to figure out but a 3 day minimum a little tough and I wouldn't want to put the BI in the position where they have to police a 3 day minimum.

FG: I think the proposal there - we're taking you at your honor but if it seems to be a habitual pattern there of people coming & going that would require that I don't see us being aggressive to in terms of trying to find 1 person staying there at a time.

DB: It's a public safety issue, there are kids in the neighborhood there are families, it's something that's not congruous with the neighborhood.

WD: And with the history, I'm not quarreling with it and would accept it.

FG: When we walked the property at one point and we identified an excessive amount of beds stored at the premises would it be unreasonable to have those removed from the premises?

JR: They're already.

FG: So what beds are on the plans are the only beds that are on the house - rather than in the basement and garage?

JR: Well I have a couple in the garage but they are going to go anyway.

FG: I didn't take note of the backyard or any other outside spaces do you have any outside gathering spaces? There was some talk about people outside late at night talking.

JR: I have a front porch, a side porch and the pool. Nobody goes outside in the yard.

SO: Sometimes my husband and I grill outside in the summer.

FG: So it would be fair to rule out the backyard?

JR: It's not a congregation

WD: For guest, that's not a problem we would accept that condition.

MP: No smoking is allowed right?

JR: No I have never allowed that.

FG: Procedurally, we ask the neighbors what a reasonable curfew time in their mind would be?

DB: No you can't get into that and open it up to more public testimony I think that we can figure out that are all adults and have kids or no kids and know what a good family community is and what is acceptable.

FG: OK.

MP: Mr. Chairman I'd like to make a motion.

MOTION: (MICHAEL POWER) - Pursuant to Section 17.4.9 of the Town Coded to allow a Special Permit for operation of a B & B for the term of 1 year with the following stipulations:

1. The guest rooms will be as defined on the plans to the Board this evening with 3 rooms and no more than 6 guests and any change to those rooms will require a return to the Board.

2. Parking:

(a.) For parking purposes that the driveway will be brought into conformity with the town bylaws including a necessary removal of part of the driveway so it can be used by the fire department.

(b.) Parking will be as defined on the plan as presented to the Board on the 9th of January, 2014 for 6 parking spaces.

(c.) There will be no parking allowed by any guests on the street at any time.

3. The building will meet all fire code requirements and in addition will have lighted emergency egresses so people will be aware of the escape and will be battery operated so not to violate the fire code.

4. Guests will not be allowed after 9:00 p.m. and the building will be closed for guests at 10:00 p.m.

DB: Although I am not sitting on this I would like to offer an amendment to this motion for consideration through the Chair, I think that another condition that the way to make it explicitly especially with concerns raised by Mr. Dimes that there not be any guests in the rear of the property and the guests stay on the porches on the front side of the house to limit the impact of noise to the abutters in the evening hours, that would be the only other condition that I would add at the moment.

ID: I would also like to make a suggestion through the Chair I think for the closed to guests at 10:00 pm I understand the check in for new guests coming that early makes sense but I think for people traveling might find it difficult to get back to the town at 10:00 pm at night so can we get a little more leeway on that?

DB: So you would amend the motion?

ID: I would amend at checking in at 9:00 pm for new guests and the building be closed for returning guests at 11:30 pm.

DB: You can't have dinner in the North End and get back to Winthrop at 9:00 p.m.

ID: Are you saying you can or you can't?

DB: I couldn't but that's just me. You can offer up an amendment. You can move to accept but before you move you need a second.

MP: I can move to accept both amendments as stated.

DB: I actually have one more - at the end of all of these conditions and this is rather than force us to take an action to revoke the social permit if these conditioners are violated I would move to add a condition or proviso in the Special Permit that if a condition is violated the special permit will lapse automatically ipso facto gone.

MP: Accepted.

FG: I would also like to make a motion to accept a minimum stay of 2 days.

MP: Condition #7 shall be that the guests shall stay a minimum of 2 days and a maximum of 14 days.

FG: And a condition that only the beds that are identified on the plans be the beds stored in the house and not stored in the house and there wouldn't be an additional beds.

DB: Those are rented to guests.

MP: We put that in there already that there would only be the 6 beds in the rooms so I guess we should add a number 8 then - so we should ask how many beds are there?

DB: I wouldn't limit it on the residential beds for a point of information.

MP: I don't want get into a situation where we did go into the house and there are 45 beds into the house again.

DB: That's a separate enforcement issue if that starts to happen the Special Permit gets revoked and we are back here again. I think you can restrict the number of beds shown on the plan for the commercial use, I wouldn't want a someone putting a condition on my house that I can only have 5 beds because I only have 5 people living there.

MP: Fair enough. It a legitimate condition and we already put it in #1. Mr. Chairman.

BB: The motion has been made do I hear a second?

SECOND: (FRED GUTIERREZ)

BB: All in favor?

FG: AYE

BB: NAY

MP: NAY

Motion fails.

WD: I want to thank the members of the members of Board for listening, we appreciate it, it was a fair - I want to thank the neighbors here too. We'll go on from here but at least we got a fair hearing please let us know when you file the decision.

DB: Thank you very much for your time.

MOTION: (IRENE DWYER) - To accept the minutes of the December 19, 2013 meeting.

SECOND: (DARREN BAIRD)

VOTED: ALL IN FAVOR

MOTION: (FRED GUTIERREZ) - To accept the minutes of the December 26, 2013 meeting.

SECOND: (MICHAEL POWER)

VOTED: ALL IN FAVOR

MOTION: (DARREN BAIRD) - To adjourn the meeting.

SECOND: (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

Meeting adjourned: 8:45 P.M.



Brian Beattie, Chairman



Dated:

Respectfully submitted by: Joanne M. DeMato, Secretary to the Board