



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

Held on Thursday, February 27, 2014
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152

RECEIVED

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TOWN CLERK
JOANNE M. DEMATO

Chairman Brian Beattie called the public meeting of the Board of Appeals to order at approximately 7:05 p.m. In attendance at the hearing were the following Board Members: Darren Baird, Irene Dwyer, Thomas Chiudina, Michael Power, and Joanne M. DeMato, BOA Clerk.

Absent: Fred Gutierrez due to a work 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.	#002-2014	Joseph & Christopher Young	63 Almont St.	Petition to vacate or Modify Decision (Chapter 145-24)	BB/DB/ID
2.	#003-2014	Linda Brassard	550 Pleasant St. Unit 109	Special Permit Chapter 17.12.040 Restaurant Use in WF District	BB/MP/TC
3.	Old business or previous cases T/B/A				
4.	Approval of meeting minutes				
Adjournment					

#002-2014 – 63 Almont St., Joseph & Christopher Young

Sitting: BB/DB/ID

In Attendance: Attorney James Cipoletta, Joseph & Christopher Young

JC: Joe & Chris bought this piece of property in May, 2013 and its actually 2 lots, 1 lot on Almont St and 1 lot being on Shirley St. The lots are separately described; the Shirley St lot has 6600 sq ft and it has a 2 family home and the Almont St has 6819 sq ft and it is vacant. When the Board last took up this matter it was 2005 and with then owner the Matarazzo's was sent to the BOA to get a variance and the variance was a right side yard variance from the 15 ft side yard set back and the then BI thought that they needed. At the same time there must have been some discussion but the record is not quite clear that the lot on which the 2 family house sat did not have sufficient sq footage so the owner at that time agreed (being under a misconception, I'm sure) to combine the 2 lots to make 1,300 sq ft and to sort of validate or legalize his 2 family home on the erroneous legal assumption that he required 10,000 sq ft of land. If he were building then in 2005 a 2 family house would have required 10,000 sq ft of land it also would have required as 15 ft side setback however, as should be clear from the attachments and the application this piece of property is actually governed by the provisions of Sec. 17.16.020 (J) 1. Now 16.020.J s the protective part of the zoning ordinance that protect undersized lots from merging and you can see that referred back to 40A sec. 6 paragraph 4 of the legislature adopted this merger statue but also kept in place a protective measure in place by which a town could write an ordinance to extend some grand fathering while less restrictive regulations on the doctrine of merger, and that's what the town of Winthrop did. They did that in sec 17.16.020. (J) – 16.020.(J) 1 refers to 1 or 2 family lots that were subdivided prior to 1955. This lot as you see on the plan that is attached was subdivided sometime in the 1800's it was prior to 1955 so therefore the then current ordinance did not apply to the property back in 2005. (J) 1 applied and what was required of a 2 family house in 2005, 5,000 sq ft of land, 50 ft of frontage, 15 ft side yard, a 10 ft side yard not 15. The plan that was submitted to the BOA is a mistaken impression in that they needed a variance and shows actually a 10 ft side setback on the right hand side. The BI at that time said you need a 15 ft set back and that where the confusion came into play on the first. So our first argument was in 2005 variance was actually not required by law because he actually had a 10 ft side yard set back the 2nd is there was no merger between the 2 lots to create a 13,000 sq ft lots because both of those lots are (1) separately identified and were (2) separately conveyed and they had (3) separately in each sufficient sq footage for a 1 or 2 family house. Not withstanding the fact that they never should have gone to the BOA in the 1st place for a variance they didn't need the fact that they caved and misunderstood the application of the statue and acceded to the BI or the BOA's

interpretation that there was mergering was erroneous. And so by the petition of the current owners we're asking that BOA either vacate or modify the decision the part that we're asking to be vacated the decision at least in part is defining that the 2 lots have merged and the directive that they never be subdivided and based on the statutory mandates and our own zoning law that does carved out a grand fathering section for 1 & 2 family preexisting lots. In the case law it's sited thru out the memo, which tends to support right down to the letter both the Town of Winthrop's intent and the passing 17.16.020 (J) and also finding against the conclusion that there was merger of these 2 lots because the were not nonconforming. So based on that we would ask the BOA to (1) vacate the decision as to the finding that there was merger and (2) remove the condition that requires that the lots not be subdivide back to their original description. Any questions would be happy to answer them and in regard to what the plan would be going forward these gentlemen should answer them.

BB: Do we have anybody that's in favor of this? Hearing none, do we have anybody that's opposed? Hearing none – closing that section. Any questions from the Board?

DB: Was there actually a consolidation plan that was recorded?

JC: It was not recorded. And by the way the 2 things that I did miss in my presentation was (1) it was never recorded and the other..

DB: Because it's never been recorded they're still being assessed separately?

JC: Exactly.

DB: What would be the plan going forward?

JC: A two family house.

DB: From the standpoint of our variance the 2005 variance was a variance from the required 15 ft side yard on the property presently?

JC: On Shirley St. somehow it morphed into this whole merger issue.

DB: If the unit merger applied it wouldn't affect the setback __you'd only use a merge to remove a nonconforming and define lots for separate ownership and then undefined them to create a nonconforming new establishment.

JC: Right.

DB: It sounds like the folks that merged because of ownership, if you get a 2 family on the Almont Side of the property you would not have to come here for any relief?

JC: Right as a matter of J 1 or J2.

DB: It's a weird situation when someone is trying to undo a variance; they are usually trying to get a variance.

JC: It's a first for me as well. The plan that was submitted show the house would be compliant under J 1.

DB: What number in the side yard is if it's a 9 or a 7 or 11 but it's the condition that's always existed there?

JC: Right.

TC: When they came the propose of zoning variance was originally they were doing something on the side of that house on the Shirley St side was it encroaching on the side setback?

JC: I wasn't involved in the 2005 one but for historical review of the record but somehow they were told that they needed to validate the 2 family house by the BI and he looked and called out a was 15 ft side yard but my contention was that its wrong it's a 10 ft setback for J1 not J2.

ID: The 1st sentence in your packet (#18), says the applicant's proposal seeks to confirm the occupancy as a 2 family dwelling, they weren't actually building anything, they hadn't gone to the BI to ask for or build a porch or anything like that.

JC: That's the 2005? – I don't know how they got there but any time somebody uses that word validate it tells me that someone in the Building Dept. red-flagged them.

ID: It says the building permit was denied on 9/27, I don't know what Mr. Matarazzo was doing but nothing in the decision tells us.

BB: He was getting ready to sell the property.

JC: He probably had to make it what he thought was conforming.

DB: If I had to guess he probably had a purchase & sale agreement and came for a condition (Loud banging makes it difficult to hear what is being said) – how do we know it's a 2 family - -- trying to figure out what been for how long. Its unusual to vacate a variance, its technically – this was recorded as a variance?

JC: It was and I'm wondering if that could be cured by just removing the condition. Anything that speaks about merger or the prohibition against subdividing in the future.

DB: Would you have any objection for a short recess to get the file and figure out what's in the file?

JC: No.

MOTION: DB – move to take a short recess to get the file from '05 to find out what the basis was for the BIC denial was to send it to the BOA.

SECOND: MP

VOTED: ALL IN FAVOR (Short recess taken)

MOTION: DB – To return to session

SECOND: MP

VOTED: ALL IN FAVOR

DB: We have the file. So owners would like the 2 family dwelling - Denial was in accordance from bylaws 145-24 for relief from right side yard setback. So they went under the current code they didn't look at the old lot the way that they were subdivided. It is my opinion, Mr. Chairman that a variance wasn't needed at all. I agree with Atty. Cipoletta's interpretation. In looking at the variance for a second, the variance was for the side yard setback, and if you don't need the side yard setback then the variance is pretty much null.

MOTION: (DARREN BAIRD) – To vacate the variance on granted by the BOA on Jan 26, 2006 on case #32-2005 and treat the variance as void ab initio and

have it treated as like it never existed and that would take care of the conditions on it.

SECOND: (IRENE DWYER)

VOTED: ALL IN FAVOR

#003-2014, 550 Pleasant Street, Linda Brassard

Sitting: BB/MP/TC

In Attendance: Atty. James Cipoletta, Linda and Kenneth Brassard

JC: This is a petition for a special permit to operate a restaurant at the mixed-use facility containing residential condominiums units and commercial space at 550 Pleasant St. Atlantis Marina condos. This matter comes to the BOA from a referral from the Planning Board and for jurisdictional reasons referred it to the BOA. The application states that the Brassards intend to open up a small coffee shop rest at unit 109 at street level in the WF district of Atlantis Marina Condo. When Atlantis was built the commercial space was anticipated and in accordance with the zoning mandates in the WF district no residential uses could be on the ground floor so as part of the mixed-use development all of the commercial space was on the first floor and it was point out as retail/office/restaurant and certainly there are more condo units than commercial units. As stated in the application, the applicants do not intent to nor do they have the ability to cook or prepare meals for anything more than making coffee and warming muffins that would be coming from elsewhere. They will need to go to the license commission to apply for and receive a common victuallers license. I believe that all requirements proceeding to the issuance of the special permit are met and are called out as a special permit use. It's designated as commercial restaurant use on the 1st floor and is anticipated and asked by the Planning Board when the permit was granted. Given the small sort of confined nature of the proposed use I would suggest that it is in harmony with the uses on site but the uses in the surrounding area. We've had ongoing meetings and communications with the Condo Assoc. I believe in general concept the Condo Assoc., which many of those members of the assoc. and members are here and will speak to their concerns. We did agree to a number of conditions that we felt are beneficial to both the residential and the restaurant use to be imposed. We do have one matter that is not in full square agreement and that is to in going forward that there be a condition imposed by the BOA that Linda & Ken and don't ever intend or plan to do it and its not in their business plan to do it now but they should be prohibited from selling lottery tickets, cigarettes, or alcohol. All of those would be within the purview of other boards and permit granting authorities after public notice and public hearing as well although they don't see this as part of their business plan now I would never advise them to waive or surrender any rights to

sell any legal products in the future especially any products are license by the local or state and would be subject to a public hearing were they to change their business plan. I think there are a couple of conditions and I'm not sure they are under the authority of this Board such as insurance to impose and the metering of water use, I think that is an agreement between the unit owners who are the petitioners and the Condo Association. In regards to the dumpster, the parking deliveries, pest control, hours of operation and so forth that's within the authority of the BOA and we don't object to those conditions that's proposed by the Condo Assoc. If you have any questions we will answer them.

BB: Do we have anybody that's in favor of this petition? Please come up and give us your name & address.

David Kelston, 550 Pleasant St.: I'm an attorney and I'm in cautious favor of this petition. I'm a member of the Board of Trustees and there are 3 members here and 2 are residents of the Condo. This has been a long and contentious process and we have come to an agreement on a series of conditions. And those conditions have been endorsed and agreed upon by our Board of Trustees. Let me begin with what I think is a fairly simple point - restaurant use was never approved for Atlantis Marina Condo, if you look in your file you'll see that a restaurant was proposed in 2004 and was removed from the proposed Condos for an additional permitting requirements. This space is retail and retail under the zoning code is distinctly different from restaurant. Its allowable restaurant requires in the WF a special permit. So this is a change of use from retail in an 800 sq ft space to restaurant and this is a significant change of use and very contentious within our building and we've come to an accommodation but these are conditions from the Board and ask the Board to impose pursuant to 17.24.010 B which reads the Board shall impose additional conditions as it finds reasonably appropriate. I think the discretion of this Board is very broad in terms of conditioning this special permit. I just want to make sure that the Board did receive my letter of yesterday Feb. 26, 2014 and that it's in the record. At our initial meeting of Oct. 16, 2013, the restaurant applicant showed up at my unit gave a presentation as exhibit #1 to the letter of Feb. 26th, relates various agreements and possible agreements we came to. We later went before the planning Board and 3 of our trustees raised significant problems and concerns about the restaurant there after we met on Jan. 22, the restaurant attorney, applicant, myself, and we came to agreement on a series of conditions and what I'd like to do is give the Board a summary of those conditions written in a way that we believe can actually impose. And then I'd like to go over one of the conditions that we are not in agreement with.

1. Dumpster – Unit 109 is only 800 sq ft and there's no room for a dumpster and there is not room outside for a dumpster because the spaces outside can only be used for vehicles. At our Oct. 16 meeting we suggested that the dumpster can be located at Pleasant Court, a couple of blocks away on a property that is controlled by the restaurant sponsor and be transported daily to there.

BB: That's the land owned by Atlantis Marina?

JC: Yes and we agreed to that.

2. Parking – This was a contentious issue as to where the trustees compromised there's are 40 outdoor spaces and we are concerned about whether the restaurant parking would inconvenience both the resident and the neighborhood and we agree so as long as the restaurant post signs protect our covered parking for other use that are acceptable to us.
3. Deliveries – raise questions of noise and inconvenience. The back entrance to the unit 109 is on courtyard. There's an agreement that deliveries will be by van and not large truck no earlier than 6:30 in the am and no later than 4:00 pm and that deliveries will be quiet.
4. Pest Control – We have agreed and attached the last two pages of the pest control program that we found the applicant agreed to.
5. PROBLEM WITH TAPE – MISSED SOME RECORDING.
6. Insurance _ this is something we agreed it and its in within this Boards jurisdiction. We agreed to it back in Oct. and again on Jan 22. There are no additional insurance cost now I confirmed that with the applicant and in the future our agreement is the restaurant will cover those additional costs. Our re-dress is before this Board, if we don't get re-dress and conditions before this board our only redress is going to court. As a litigator I know that going to court is expensive, frustrating, and slow and not something that we can afford to do with our Condo Assoc so we need the assistance of the Board.
7. Operations – in the original proposal submitted by the restaurant on Oct. 16 it stated that there will be no cooking of food or meals on the premises and will be warming food and coffee or tea only. That what was presented to the Planning Board and I see that is not in the application presented but it is critical to us. If we thought food is going to be prepared on site we would have had a completely different reaction to a restaurant because of the odors, pests, and the like.
8. Change of Operations – the restaurant will notify the Trustees and return to permitting authorities if it wishes to cook food on site.

JC: And we agreed.

DK: Here are the conditions that we don't agree on. At the Oct 16th meeting, Exhibit #1, letter of Feb 26th, the notes I prepared accurately and sent to restaurant applicant, the applicant never disputed the accuracy of those notes, my letter to restaurant applicant first page to Exhibit #1 to the letter of 2 days ago and the notes read as follows: Ken & Linda plan to sell a few "convenience" items, like milk and eggs. They agree to give our trustees a list and agree they will not run a convenience store and will not sell cigarettes, lottery tickets, etc. This agreement was essentially withdrawn on Feb. 22nd when we met, the atty. For the applicant, states that he wished to have a gentlemen's agreement on these matters, we don't think a gentlemen's agreement is sufficient to protect us. We proposed the following language and respectfully ask that the Board impose it – that the restaurant may sell basic food items, milk, bread, & eggs and similar

for consumption but will not sell non-food items such as cigarettes, lottery tickets and alcoholic beverages. Let me review quickly why we think that is an important condition - 1st it is what was agreed to and actually proposed to at the Oct. 16 meeting by the applicant and relied on for about 20 condo owners who were at that meeting. If the applicant hadn't made that proposal there would have been opposition tonight for the SP issuing. This condition is consistent with our condo documents, which specifically provide that the use of commercial spaces will not detract from the 1st class ambience of the condominium. We are asking you for a condition that would prevent us from going to court to enforce our condo documents. This proposed restaurant will serve the marina and is now advertised at the marina as an amenity at the marina. The owner of the marina was co-developer of the Marina, we don't have a problem with that but we do have a problems with the developer saying we're going to make sure that commercial space is used in a way that doesn't interfere with the first class ambience of the building and then he proposed to sell lottery, cigarettes and alcohol. Those items are not consistent with restaurant use they are not in the words of the zoning code essential or desirable in the neighborhood but a detriment to the neighborhood, they cause traffic problems, they will cause trash, they are simply not consistent with the residential neighborhood, we live 2 blocks away from a Mobile Mart which sells alcohol, food, cigarettes, e-cigarettes, lottery tickets in an appropriate setting where there's parking and its on a busy commercial street, not a residential neighborhood. For of all of those reasons beginning with the fact that this was what the applicant proposed on Oct 16th we asked that this condition for this restaurant be added to the conditions where the applicant was in full agreement. We ask that all these conditions be imposed that are necessary to the zoning code purpose to protect the neighborhood and not to be detrimental. Thank you very much.

BB: Is there anybody else here that's in favor of this?

David Zurega, 511 Pleasant St.: I live across the street from the condo, me & my wife think it would be fantastic to have a small coffee shop and I didn't know that they would sell eggs & bread but that would be great when it starts snowing cause it would be convenient across the street.

BB: Thank you, anybody else in favor?

Deborah Kuhn, 550 Pleasant St.: I'm conditionally in favor of this I was at that first meeting and I'm hear to say that I personally have a different view of the restaurant but for the proponents promises that there would not be food cooked on the premises and there would not be the sale of alcohol, cigarettes and lottery tickets. If that hadn't been promised to us the first time we met I would have taken a different tact with the regard to this proposal and you would have seen a lot more people here tonight. Thank you.

BB: Do we have anybody who is opposed to this? Ok, closing that part of the hearing, I will open it up to the Board.

DB: Wasn't the issue of the restaurant one of where they wanted to site it for Chapter 91 jurisdictional area and private use wasn't allowed? They took it out

of ___ so they didn't have to go to the DEP? So that was the reason why a restaurant wasn't included, it wasn't in the plan we are taking about now.

JC: We had to take up the non-water dependent use.

TC: This is a multiuse space?

DB: Mixed use yes.

TC: BY right they are entitled to a retail use, they don't have to come to us.

DK: It's designated on the plans and on the map attached to the application that its retail space under the zoning code retail and restaurant are distinctly different requiring different permission. Mr. Goldberg has instructed the Planning Board that they had to come here because it is restaurant use, there is no question that restaurant and retail are different and would required different approvals. Retail does not require a SP in the WF district.

TC: That's my point you're asking the Board to compromise or limit a use that is allowed by right.

DB: But they are asking for it's a hybrid situation that a portion of the use is a restaurant because they are serving food that is somewhat prepared, bagels, coffee, that requires a SP so as a Board even though some may be selling lottery ticket or cigarettes may be more inline of a retail use we can always condition our approval on the restaurant use side to provide that those things are not sold.

TC: I'm not convinced that we shouldn't.

DB: I'm not sitting on this.

TC: How many seats are there?

JC: 16.

TC: You only have on bathrooms.

LB: One bathroom.

TC: I'm not sure the zoning doesn't require 2.

KB: There's actually no seating or table at this time so that would be whatever required. The table some are on site some are off site, whatever you decide the number of tables will go according if you decide for seating for 2 then its 2.

TC: I'm just questioning whether there are enough bathroom facilities.

KB: It's an extremely small space a total of 800 sq ft. for the four rooms total, one room where you would come in and there's a main room, which is about 15x18 ft and a very small room 10x15, and final room is storage room.

TC: Does the Marina have public space to the waterfront is that correct?

KB: Yes.

TC: It has to have that, there's some benches out there some lawn areas I don't know if that's included in the public space, but there is no outdoor seating so what if a customer comes and takes their coffee out to the public space, will that be discouraged or how does the Board feel about that?

DK: Everybody at the Oct 16th meeting spoke strongly against that and we assume that there are no plans for the outdoor service of food.

TC: I wasn't referring to that as much as that I go and get my wife a cup of coffee and we go out and sit.

DB: You can get a roast beef sandwich at the place on the corner and eat it today and threes not much they can do about that. Because part of the property is I public tidelands you have to have public access to it its a public area.

DK: We agree with that completely but disapprove of the notion that restaurant itself might have tables outside and they have no plans to do that.

DB: And I would say that that is not actually permitted cause it's a private use of a public area and would not be permitted without a license.

TC: How do you designate the parking? How much parking is there?

JC: What's covered is dedicated to the residents and what's outside is for the use of the Marina and the peripheral commercial users and we agreed that we would post signs and limit parking to the general uncovered area.

TC: I see someone shaking their head no. So you have this complex with commercial spaces but you have no parking for it?

DK: Unit 109 has 4 spaces. The 6 spaces shown, 2 are handicapped spaces that are required and can't be dedicated to the restaurant.

JC: That's what I said we are not dedicating these spaces.

MP: So these 4 spaces are actually assigned to this retail space?

DK: They are subject to a 99 yr lease conveyed to unit 109.

JC: And the rest of the spaces are share by the Marina are public.

MP: Public?

JC: Yes they're not associated with any of the residences the residences are covered the parking that we have is uncovered.

ID: How many spaces are there that you are referring to these covered spaces?

JC: Its on the plan there are more than 4 but 4 are associated with this unit. There are general outside spaces.

DB: That is available to general common condo available for use by the condo owners. Does that mean the houseboat people are using that?

JC: It's for the Marina use and overflow for the condos.

DK: The 40 outdoor spaces are available according to the condo documents for use by Marina visitors and occupants and available for condo residents within 1,000 ft of the Condo between the hours of 7:00 am – 11:00 pm pursuant to the decision by this Board and have incorporated into the condo documents.

DB: What are the hours of operation here?

KB: 7-9.

DB: Is this space currently vacant or is this space occupied?

JC: It was the development office.

MP: Is it on the pleasant St side right on the street? So this door on the bottom of the page is the Pleasant St side a double door? So people could be walking down the street is they're going to be sit down service or counter service and seat myself after getting coffee?

KB: Counter.

DB: Not to quibble with the conditions that you have agreed to but to throw something out here the term of commercial reasonable insurance sounds squishy to me from an enforcement standpoint. I assume when you say resonale

insurance there are also insurance at commercial reasonable rates? IS that in agreement to the party and does that specifically say that?

DK: Yes and right now we are agreed on insurance matters, no additional problems.

DB: I would expect there would be any.

JC: If they tripped the trigger and proposed to cook there.

TC: They would be required to get a commercial stove. If you decided to sell cigarettes or alcohol.

MP: The only concern hat I have is I don't see where the seating would be and if it would comply with the bathroom regulation and I do see where some of the conditions are a little bit squishy and ambiguous for some who does contracts for a living to enforce that. I would ask that there be some more concrete placement of that condition or be removed.

TC: I agree there's a lot of that, you both mentions alcohols and lottery and cigarettes so what happens next year when there's something else you don't feel that meets your standard. You have to live harmonious in that space whether its parking conditions I see that as in issue with only 4 designated spaces in the summer are the people at the Marina going to feel that the people form the outside are coming in and taking their spaces? I love the use and think its an under utilized space and I think I t would serve the complex and the neighborhood as well.

DB: I think its one of those retail/restaurant uses can help activate that storefront in the way that its not now and it kind of feels like a dead space, when driving that's one of the first building that you come into that ground level is sleepy and needs something.

MP: I agree and in favor of and I want to approve. The only 2 things that I request is have you come back to us is to show the seating and how many customers sit at one time and to either remove or firm up the terms of the attorneys. I actually don't feel that we have any issues of cigarettes belong to other boards and don't see how that necessarily a condition that would apply to us.

ID: My concern is that I'm not finding like others of restaurants that have come before us, this is not enough of a plan and we have to have an architectural plan so we can see how everything in that space fits and even if your sticking to the café concept it has to include 3 things and if one restroom is enough to have an handicapped accessibility its just a floor plan and not giving us what the business will be doing in there. Its up to the Board of Health to give ok but our requirements for a special permit do say it has to be a proper plan showing where all those things are. I'm not even sure about the parking plan. The space regulations for eating & drinking its way more than 4 parking spaces so we would be asked to give SP not only for the use but some waiver of the parking requirements. It has to be addressed more.

JC: In regard to the parking I think when they did the total parking allocation in summer the planning Board and I think the BOA was involved for the Marina

parking variance those spaces for the commercial along Pleasant St. were figured as adequate and not required to have a variance because we had a lot those free for all spaces for a number of uses that encompasses the building. I understand you want a seating and utility plan then we need to give you one.

ID: And the issue on the parking thing but I do see a big distinction between restaurant and retail and we don't have called out the uses exactly how many spaces you would need for say for a book store.

DB: Depends on retail use there weren't strict parameters around retail use on the first floor this commercial space, office, retail uses were permitted you wouldn't be inclined for the type restaurant that were talking about is more retail than were talking about. Its more retail than restaurant in a restaurant us people sit down, tables don't turn over so quickly were talking about bagels, muffins, coffee, which means it turns over fast. You're not waiting for someone to get an order. So its more akin to a regular retail use like a book store or like a convenience store that was baked into the numbers so there is.

TC: I would agree with you on that Darren but I do think a parking strategy like where employees would be parking and I think I saw on your application that they might be parking where the dumpsters are located.

JC: Yes offsite.

TC: So perhaps the 4 spaces that are allocated to you could put a time frame on them maybe 30 minutes but you decide.

DB: This type of retail tends to be more activated by foot traffic than vehicular traffic especially if the parking becomes more difficult it's going be more destinations and foot trade Saturday and Sundays will be a nightmare.

JC: That's the time that the Marina on site people will use it.

DK: I wanted to mention about the parking and there is a lot of documentation, there's a major issue, you issued a first variance because the entire complex was short about 6 spaces for the resident and what we needed for the retail and what was needed for the Marina and the Marina was determined to be short and but the argument was that most of the people in the condos had their boats at the Marina so they already had parking so they could be short then they decided to let the Marina go short.

BB: You should be sitting.

DB: We want to be careful here because technically the public portion of testimony has been closed while we will.

DK: Well parking is very important and the Board has considered this carefully in the past and we've reviewed it carefully and think its important that you go back and think about it for a minute. So you gave a variance because the Marina was going to be occupied with people who have condo already and boats at the Marina which hasn't turned out to be the case because a few had boats but not many. Then in 2011 you considered again parking because the operator came back and said the Marina is not opened in the winter one of the conditions that you originally imposed was that the Marina operator had to allow overflow parking near the space behind the car wash and the Marina owner came back

and said I want a new Variance in 2011 and I want a variance on the variance because I'm not going to have the Marina open in the winter. So I want to do boat storage in that space.

DB: Not to cut you off but we have to be careful that we don't take anymore public testimony right now we understand that parking is an issue and always has been on this site I think that 1 of the things that we have to be careful of as a Board the condo use is in place and certain decisions made about parking taking in to account retail use and the extent of a restaurant use is going to drive more parking than retail use you have to solve for that ___ but aside from that the retail use has already been baked into the parking count so it may not be perfect but the condo owners have to live with that to a certain extent subject to us denying it or putting on conditions. If we open on the parking on this site is going to open a rat hole that (a) we shouldn't go down and (b) none of this will happen with the time or inclination to try and figure this out because it already is that convoluted down there and the houseboats don't help it.

BB: Any more questions from the Board?

MOTION: (MICHAEL POWER) – A request to come back – to move to continue this to the next meeting and have them return with a floor plan and to meet with the committee about conditions that would work, the disputed conditions in remain in exactly what insurance is required.

JC: I think its been established now that there is none right?

DB: It's the issue of having it be drafted with a little or higher degree of certain degree of uses for a commercial use for reasonable insurances in the future?

MP: If you're requesting the conditions otherwise I'm going propose to not make it a condition because I don't feel comfortable with reasonable insurance.

DB: It becomes an enforcement issue on us and I wouldn't want to be a lender looking at that from a commercial lending point, it kind of squishy.

SECOND: (THOMAS CHUIDINA) – Try to work together to solve the disagreements.

VOTED: ALL IN FAVOR

Moved to the next meeting Thursday, April 3, 2014.

MOTION: (IRENE DWYER) – To approve the minutes of Thursday, January 29, 2014 meeting as submitted.

SECOND: (THOMAS CHUIDINA)

VOTED: ALL IN FAVOR

MOTION: (DARREN BAIRD) – To adjourn

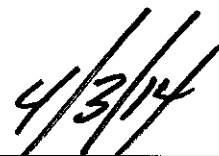
SECOND: (IRENE DWYER)

VOTED: ALL IN FAVOR

Meeting adjourned 8:18 pm



Brian Beattie, Chairman



Dated

Respectfully submitted by: Joanne M. DeMato, Secretary