



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

Held on Thursday, May 29 2014
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152

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Chairman Brian Beattie called the public meeting of the Board of Appeals to order at approximately 7:08 p.m. In attendance at the hearing were the following Board Members: Fred Gutierrez, Irene Dwyer, Thomas Chuidina, and Joanne M. DeMato, BOA Secretary/Clerk.

Absent: Michael Power and Darren Baird.

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.	#004-2014	Laura Ryan	32 Billows St.	Special Permit Chapter 17.16.J.1 Dimensional Regulations	BB/ID/TC
2.	#006-2014	M & M James Polo	10 Eleanor Ct	Variance Chapter 17.36.040 Location of Swimming Pools	BB/ID/TC
3.	#007-2014	Patrick O. Butler	9 Faun Bar Ave.	Special Permit & Variance Chapter 17.28.030 Non- conforming Uses & 17.16.030 Dimensional Regulations	BB/ID/FG
4.	Approval of meeting minutes				
	Adjournment				

#004-2014, Laura N. Ryan, 32 Billows St.

In Attendance: Pat D'Agostino, Jay Kelley, Contractor

PD: As you can see on the plans that we plans we wanted to take of the north or left side of the house which consist right now of a kitchen, bathroom and garage and want to replace garage and put a kitchen in and on the 2nd flr 2 bedrooms and a bathroom and on the 3rd floor a great rooms with a roof deck of the great room and a front porch.

BB: What you're looking for is relief of 5 ft. for a right side yard 11.9 from the front yard

JK: It's the left side of the house that he's looking for relief of.

BB: On the 5 ft.

PD: The 5ft comes into play in the left area nook on the house.

ID: I think this is the same looking at it this way.

PD: It would be the right

BB: You're also looking for 5.7 on the driveway?

PD: I don't think we need relief on the driveway, the BI said we need a parking variance because the driveway is only 13 ft. long.

BB: It's supposed to be 19 ft., you need 5.7 ". Do we have anyone in favor of this? Hearing none, do we have anyone opposed to it? Hearing none, that part is closed.

ID: The plan that proposes for the 3rd floor to be a great room on the 3rd floor, the plan that I have has 2 bedrooms and a half bath.

PD: That's the 2nd flr. if you go to the next page you'll see the 3rd flr room with the ½ bath.

ID: The plan that I have page A102 shows 2 bedrooms and a ½ bath.

PD: No those aren't bedrooms.

ID: The plan that I am looking at says 2 bedrooms.

PD: Those aren't bedrooms. I didn't realize that he put that on there and carried it over from the 2nd floor.

ID: There are 2 rooms and ½ bath, you read the summary of what you are looking for you said the 3rd room floor would be a great room and a deck and it's not one room it's 2 rooms and its labeled bedrooms.

BB: The 2nd floor plan has 3 bedrooms, and existing master bedroom, and existing walk in closet, existing study, existing master study.

ID: Page A101 submitted May 6 the black lines shown are the existing structure.

PD: Yes

ID: The bedrooms and bath shown on the existing structure you are taking done the old garage and kitchen and building a one solid addition to the house which would contain a one car garage and a better laid out kitchen and above that you have 2 bedrooms and a ½ bath.

JK: Those shouldn't have been labeled.

ID: I'm saying the 2nd flr.

JK: The 2nd flr. is a 2 bedrooms and a full bath. And then the 3rd floor A102 is going to be an open concept room, when he made the plans for whatever reason he carried the new bedroom words up on the new plan and copied the same layout and just changed the bathroom. Come upstairs open railing and a small ½ bath and the rest of the room is wide open. The 3rd floor is actually not going to be bedrooms, when the architecture made the plan he copied the new bedroom from the 2nd flr plan over cause they are laid out in the exact same spot.

TC: What about the stairs on the 3rd flr you say one going up and one going down?

JK: No, For whatever reason he's showing coming up and going down and the same thing on the 2nd flr but there's not really 2 coming up and going down either, so you're actually only coming up one.

TC: The 2nd flr would show a coming up from the 1st and an up from the 2nd but the 3rd flr will only have one staircase?

JK: Yes.

TC: So what's between the staircase and the bathroom on the 3rd floor?

JK: A wall.

TC: But there's a stair there now.

JK: Yes, there's only going to be one stair where the stair ends the 1.2 bath is going to be right up against it.

TC: This is a single family house?

PD: Yes sir.

ID: Let me go back to page 2 this is the overall site plan for the 1st floor. Comparing to the BI denial letter which says - if what you're planning is a 1 car garage with a driveway in front of it and the hopes to squeeze a 2nd car in.

PD: Yes, ma'am.

ID: I can't tell from your drawings you're probably going to need a bigger drawing, where are the dimensional lines that tell me how many feet to the curb and the garage and how many feet the garage goes along the .. if you start at the back of the proposed garage how many feet are you going along the sideline of the house how big is that garage?

JK: 19 ft. long.

ID: OK, where's that shown on the plan?

JK: It doesn't.

TC: A question to that, a follow up to that, the front porch shows 6 steps, 6 risers, going up from the sidewalk to the 1st flr, the garage shows 2.

JK: I see 3.

TC: There are 4 on the front porch, turn and there are 2 more and then that's 6 right there.

ID: Excuse me Thom but I didn't get the word you're calling it.

TC: The number of risers up the front 1,2,3,4, turn 5, 6 and most likely there's one at the door.

JK: Mine shows 3 steps coming off the.

FG: That's showing a footing plan, that's showing a dash line for the footing on page 2.

TC: There are 1,2,3,4 risers.

JK: Oh, ok.

TC: 5, 6 those are risers there I'm assuming?

JK: This is just 1 step up here.

TC: That's 5 and there's the door and on the garage you put 2 I guess the point that I am getting at is you're going to need more stairs in this garage because that garage is not going to be 19 ft. deep. Look at it in the elevation; you're probably 3 ft. off the ground?

PD: I would probably say 2 ½ because its 3 steps up this shows level with the door.

ID: Actually if you go to A105 which is the elevation it shows 3 risers up to the porch from the street level to the deck.

JK: It's 3 on the existing porch now and there are 3 on the new plan.

BB: Could that be a footing?

JK: It could be.

BB: On page 2 its 3 steps.

JK: It could be the footing line of what they are putting there, yes.

ID: Drawing number #4 which is the existing plan show 3 risers on the deck.

BB: A105 shows 3.

ID: Page A105 is the one he just put in and the previous one agree that its 3 steps up to the deck.

JK: Yes.

ID: Once again I am comparing drawing #4 with the first set of plans that were submitted in April. The existing porch goes.

PD: There is no existing porch; there are only 3 steps up to the front door.

ID: Oh, ok, so presently there are 3 steps up to the entry of the house and what you're going to be doing is building a porch out front at the same height.

PD: Yes.

FG: So just to be clear, page 2 from the Dec. 6, that's you're proposed floor plan?

PD: Yes, sir.

FG: Is there a reason that the architect from May 6 chose not to re-draw that? It's a little confusing that way. And just the perimeter of the house is very different between that and in the back line of the house is very different; I don't know if that applies to what we're sitting on.

PD: The 1st flr back perimeter?

FG: There's a bay window.

PD: If you go to page 4 you'll see that that is the 2nd flr there's a box window and a bay window on the 2nd flr but it's not on the 1st.

TC: Are we missing an elevation - There's no right side elevation?

PD: There is no right side elevation. But on Page 105 it carries the elevation via a dotted line across to the right side of the house.

TC: But there is no actual drawing right side?

PD: No sir.

ID: Going back the BI letter, you need 5 ft. from the right side yard and 11 ft. from the front yard for the porch that is going to go around to the front and side of the house? That's 2 variances within the same work that's being done on the house?

PD: Yes.

ID: 6 ft. will be needed for the left side for the garage and second story dormer –is that the existing garage that's already well into the – the existing garage already needs the relief because it's on the lot line?

PD: Yes. Its 3'4" from the lot line.

ID: It needs official relief but the structure is already on that lot line?

PD: Yes ma'am.

ID: The final paragraph is involving the calculations for 2 car spaces in the garage or the driveway.

TC: Second story dormer relief on the left side? There's no dormer on the left side. That's the 3rd floor.

JK: The BI calls the addition a dormer for whatever reason because you're getting the existing relief from the 1st flr he's calling the 2nd flr and the 3rd flr a dormer but it's still just another level of what the existing 1st flr is.

ID: It's the same as the 2nd floor relief. The amount of side yard variance that you need is for the footprint of the garage and kitchen area and it's the same going up.

TC: These plans don't make sense, there are too many inconsistencies. The 3rd flr plan show a room in the front and a room in the back, the elevation shows dormers so it's a story and a half – 2 ½ stories, if you have the bathroom and the space that's not a stair, the space that's shows windows, how are you going to have windows there? How are you going to have a toilet there if there is roofline there?

PD: If you look at A105 there's going to be a couple of dormers - shed dormers on there.

TC: These are the dormers and those are the windows so how do you get a bathroom there?

JK: Inside.

TC: How do you get a window?

FG: Your elevation should be showing a full shed dormer across there.

TC: Is this going to be a full shed dormer all the way across?

JK: Yes.

FG: I think what it comes down to and for me the situation we're in is there has to be a proven hardship in order for us to grant relief and it's not clear that that hardship exists here and I think it's because the drawings are a little inconsistent and hard to read.. The hardships are basically on the one side of the building where the existing garage happens to be non-conforming and the architect has kind of chosen to keep that in place and kind of fill in around it. Now my interpretation is you re-design that so it was deeper and taking some space out of the kitchen basically grown some amount. Now an argument that there's a hardship there which it is unusable the size that it is now and that space can be granted but it would be good to have the architect here and give a history of somebody exploring trying to make this more compatible with the setbacks and the requirements for parking and the driveway.

JK: The way the existing building is now the bump out for the kitchen and the bump out for the garage so there's actually only a little bit of square footage area that's already not imposed on the property line anyway, do you understand what I'm saying?

FG: I understand that but to me why couldn't the garage be deeper rather than the kitchen be wider?

TC: Set back more.

ID: That's why I confused because there are so many places that you need variances for one of them is the garage and driveway being 2 cars deep. Mr. Gutierrez is correct in pointing out that.

JK: Even if the garage is deeper it doesn't mean that you're getting 2 cars in the garage.

TC: Set further back.

JK: It's down the point.

ID: That's not what I was going to ask about, Mr. Gutierrez makes a major point of why we make these decisions as to whether there's a hardship in enforcing the absolute requirements of the setbacks which we certainly agree there is among the town as there is a lot of undersized lots. One aspect of the hardship in this case is you're addressing the plans but not really calling out and that is the existing old metal garage can't be used for anything so you can't get proper parking on that lot right now.

JK: Exactly.

ID: Well that's what you should be your reason for requesting it and its not spelled out which is how I can only get parking space in is to take down the old garage and put up something new. And the plans are not only inconsistent they are incomplete they are missing the full elevation and if we approve variances and setbacks and stuff like that and we're approving a set of plans.

JK: It has the elevations on it.

ID: Not the side it showing.

JK: He doesn't have the elevation of the existing house.

TC: You're missing your entire elevations and you're not even accurate on what you've submitted.

ID: There's a 3rd calculation that the BI hasn't addressed in this letter but I would need if I was approving this I would need the calculations of the living space that you're creating on the 3rd flr. – how much living space can you get on the half of the 2 ½ story? You can't have a third floor or over 35 ft. but you can go up the half story as long as you – I can't do that calculation in my head but there is a calculation.

JK: I know that but the existing house the roof is coming off so I think its I don't know the exact percentage of the added space that you can use but because the existing roof is coming off the entire house so you're only adding the square footage onto the third floor left side of the house you're actually way under the percentage of the square footage. Because you would actually include the entire square footage of the existing house as what you're saying to add living space on the third floor which we are not doing because there is a roof deck up there.

TC: And the roof deck is literally 15 x 35ft?

PD: It's 32 x 20.

ID: I would have to suggest that we continue this. The plans are incomplete and they are inconsistent.

JK: You guys approved him for the original variance.

ID: And he didn't build it.

JK: Wait a sec; you approved everything that he's asking for except the third floor already. That means you approved the parking, the garage, that add on kitchen, the front porch and everything nothing has changed on that all the only thing that

he is changing is that he is eliminating the roof system that he had there and they are putting that great room up on the left hand side of the 3rd floor. That's the only thing that has changed from the original variance that you guys have already approved 3 years ago.

BB: Yes but that has gone beyond it's time. The last month you were here you withdrew without prejudice.

ID: I want to clarify for procedure, what they withdrew last month was the application because it didn't show any part of the proposed plans – the variance that we granted a little over 2 years ago had expired because they didn't do it.

JK: Right but now we are re-arguing the existing variance which was already approved so I'm not trying to argue apples & oranges everything that you approved on the existing variance nothing has changed on that everything is still exactly the same.

TC: Except you're asking for more relief now. The third floor is new and that means the same variance the same relief that the lower levels need,

JK: Right the only thing that has changed.

TC: This whole proposal; seems overbuilt for what you're asking and you haven't shown any hardship as to why you're asking for a third floor and that relief for that third floor.

JK: OK, but then we were back & forth arguing about the height of the porch but I'm just saying that nothing has changed from the original variance, the only thing that we're adding is basically the one room on the third floor with a stairway going up to it and a half bath and a roof deck. It's hard to say that he needs a hardship for it.

TC: But that's the point of a variance. You need to prove the hardship to acquire a variance that's not our rules that's the state's rules.

PD: Well the hardship was already proved if the variance was already approved once.

TC: This property is being built right up to the left side of the property.

JK: Yes.

TC: A full 3 stories.

PD: Basically. Yes.

TC: I'm of the opinion that that is being overbuilt. And I don't see why or how you've proven a hardship and need that space.

PD: Well it's not that I need the space, I'm willing to pay for the space, I'd like the space it would give me a view of the harbor and give me a view of the ocean. Give me a view of downtown Boston and it's going to enhance the neighborhood.

TC: That's a matter of opinion.

JK: It's no more obtrusive than the original roof line.

TC: It's a whole other story.

JK: Yes but the height of it and everything there's pitch on the existing roof plan and stuff like that.

PD: There's no one in my neighborhood that's opposed to it and they all have copies of the plan and they all seen it and nobody is opposed to it at all.

FG: I'm not sitting on the case and I won't say that I'm opposed to it but the situation where we are is that we have to be clear to us to prove it and a think some time with an architect to make the drawings complete and not try to shuffle two sets together from different periods of time, different architects, I think, so your new architect to show existing elevations and new elevations and make a case for why he's done what he's done. Maybe a new architect looking at the first floor plan can say I could do it differently and make the parking more reasonable. I'm just saying that I would be nice to have a clear set of drawings that we could with confidence say we understand it and we feel that the neighborhood would understand it because it's the record now.

JK: Well there is a cost to it and the first and second floor has not changed what we are basically doing is he re-drew the third floor so we didn't have to have to pay another architect a huge fee to draw the entire thing from scratch and copying the first architects thing from the first time, I mean if everything from the original drawing if everything in the first variance that was already approved in 2011 nothing has changed on that, that's what I am trying to say.

TC: I hear you that its money but I'm looking for a clear set of drawings.

JK: You're not going to get 2 cars in the driveway there, I mean for the extra 5 feet of driveway.

FG: I'm saying that we need confidence to approve a variance and a set of documents that are clear and we're arguing about what's here and the dormers aren't clear, you know some of the elevations aren't clear, it's just not clear and that's unfortunate.

TC: This is a nice elevation there's some character but it's not going to look like this, you're going to have a full 3rd floor dormer there, it's a big difference and you're going to have one on the other side and that's all part of your relief.

ID: We can't approve something that is inconsistent and incomplete, we can't make the motion for you but you can make the motion to continue this.

TC: Would you consider making these dormers like this or perhaps cutting back some of this addition so you could get a second car, there's a lot of relief being asked for on this little piece of property.

PD: I understand but if I cut that back to get a second car in there I am losing a bedroom on the second floor.

ID: We've been on this for a while.

PD: I'll make a motion to continue this to next month and I will bring in clearer drawings.

ID: The applicant has agreed to a continuance to the next scheduled meeting on Thursday, June 26th.

#006-2014, James Polo, 10 Eleanor Ct.

In Attendance: James Polo

Sitting: BB/ID/TC

JP: I'd like to install an above ground swing pool in my backyard and we have a 12X12 deck added on to a cape and the reason that we are applying for a variance is that we don't have enough setback to the fence. We need 5 ft. from the edge of the fence to the pool and the fence which borders my neighbor Mike McManus and I spoke with Mike and we've been neighbors for quite some time and I asked him if there would be any issues if we put in a pool and he said absolutely no and I'm sure that his kids will come over and use the pool as well. In fact he actually offered to come and support my proposal and I told him that I didn't think it wasn't necessary hopefully. The pool is really for myself, I just had knee replacement surgery on my right knee and hope it will be therapeutic and my wife is a nurse and works long shifts and it would be good as a way for her to relax and we have 2 granddaughters, they don't really have much of a yard, they live in Winthrop and we're hoping that they can come over and enjoy the pool as well. So that's really what we are hoping for.

BB: Ok, thank you, is there anybody here that's in favor of this, hearing none, is there anybody here that is opposed, hearing none that closes that part. Any question from the board?

ID: The plan and the pictures are pretty explicit.

TC: How do you plan to get into the pool?

JP: We are going to have a ladder from the yard, so we're going to have a ladder that goes up and down, but I just installed a brand new 6 ft. fencing with a lock on the gate and when the pool is not in use, I'll just take out the ladder. You still have

3 ½ ft. of the edge of the pool to the deck and 5 ft. to the edge of the fence and length of the yard is over 60 ft. and the pool is 19 ft. so the pool would only take up about a 1/3 of the yard.

TC: What's the width of the pool?

JP: The width of the pool is about 10 ft.

ID: It's about 5x10 oval shaped?

JP: It's going to be an oval.

ID: One dimension is 10 and the other is 5?

TC: No 10x19.

MOTION: (IRENE DWYER): I move to grant the relief requested on the side yard and rear yard setbacks for the location of a swimming pool on a residential lot and finding that there isn't any other possible location and that the property owner has installed a 6 foot perimeter fence around the entire yard.

SECOND: (THOMAS CHUIDINA)

VOTED: ALL IN FAVOR

#007-2014, Patrick Butler, 9 Faun Bar Ave.

In Attendance: Attorney Richard Lynds, David Jacquith, Architect, and Patrick Butler

Sitting: BB/FG/ID

RL: On behalf of Patrick Butler and David Jacquith who is the architect on this project it involves the property on 9 Faun Bar Ave. this is a preexisting 2 family dwelling which is presently undergoing substantial renovations by permit issued by the Town of Winthrop. The proposal her is to construct a modest dormer on the right side of the building which is approximately 490 square feet, Mr. Jacquith

can go into detail with any respect to the plans. We're asking the Board for a number of items with any respect to the relief under the code specifically because this is a nonconforming preexisting structure we are asking for a finding pursuant to MGL Chapter 40A section 6 with respect to the nonconforming structure. The BI has identified in his refusal letter 3 items for which he indicates that we need relief for. We believe these are the minimum items that we would require relief for and we are not based upon the plans any additional or more nonconformity with respect to the existing structure specifically the right side yard presently is at 3 ft. and we would maintain that 3 ft. setback and the proposed dormer would not breach that setback that is nonconforming however we would require a 7 ft. variance with respect to the dormer the one that's being proposed. In addition the height of the building would exceed 2 ½ stories and I would also point out based upon the existing conditions of this property this building presently exceeds 2 ½ stories we would not be going any higher than presently exists. Lastly although somewhat of a disagreement with the BI none the less cited the front yard which is presently nonconforming we do not anticipate any relief although it was cited in the denial letter to the extent that the Board believes that is necessary then we are asking for a variance for that as well. I would point out that this is a nonconforming structure it presently existed in a state of disrepair there's only one garage that services this building for some time and the proposal and the modifications to this structure would actually bring it into a more conforming nature and we would be adding one additional parking space. The intent is to utilize the premises for 2 condominium units and I think based upon the conversation we've had with the neighbors it is viewed as a favorable change to this property as you can see from the drawing provided by Mr. Jacquith the materials and the design and the features that are being proposed here are a marked improvement from what has existed for this property. With that I can address any questions that the Board might have and if there are any specific questions relative to the plans I can turn those over to Mr. Jacquith.

BB: Is there anybody who is in favor of this project? Speak your name please and your address.

Steve Green, 32 Faun Bar Ave/24 Faun Bar Ave.: The house that they are renovating, I've been watching the work and they are using the best materials, doing a great job, the house was falling apart, it was rotted so this is going to improve the neighborhood and I think they should be able to do it because it was just a mess before and already it looks pretty good.

BB: Thank you.

Jim Marr, 72 Crystal Cove Ave: Also representing 76 & 78 which abuts the rear of the property and it's been disheveled for years, it's an eyesore. They're improving it and it already looks better and I think they be go ahead and do it. The inside was in really bad shape and the Butler Brothers have done a really good job with other projects in town and I think you should give them the relief they need to finish this project improving the neighborhood.

BB: Thank you anyone else?

Jim Polino, 125 Cottage Park Rd.: I want to second Mr. Marr's statement, the Butler's have developed many properties in Winthrop over the years and each time they have taken a dilapidated building and enhanced the neighborhood by creating a property that is desirable for a family to move into and in this case the hardship would be on the neighborhood not to grant the variance because what they're going to do there will enhance the property in the area and what Winthrop needs this kind of development to come to Winthrop. Thank you.

BB: Thank you, anybody else?

Phyllis Kay Larson, 5 Faun Bar Ave.: I just have a question about which side they are extending out to otherwise I think it's a great project.

RL: You should address that through the chair.

BB: Do you want to address that?

DJ: I can, as you face the right hand side, is that clear enough?

PL: If you face the house?

DJ: If you stood on the traffic island it would be the right hand side.

TC: They're not extending the actual footprint; they are just extending the upper level going up to the first floor right side.

PL: Ok.

BB: Is there anybody else in favor?

RL: Mr. Chairman, if I could add one point of clarification we provided the Board with a substituted plan for sheet 2, I believe, Sheet 2 that was submitted with the packet shows a dormer to the side of that as well that has been eliminated in this plan and actually reduces the size of the dormer that's being proposed

TC: This dormer here on the right side is actually going away.

RL: Through the chair, to Ms. Dwyer this elevation has been removed on this elevation as well so you don't have the additional dormer on that site.

BB: Is there anybody opposed to this plan? Hearing none, that part is closed, are there any questions from the Board?

TC: So the BI believes that this a nonconforming extension of a 2 1/2 story, you feel this meets the requirements of a 2 1/2 story? I'm guessing that's because the grade on the left and the back is probably up at the 3rd floor level so do you have a percentage or a calculation of how much of a grade of where the mean might be for the grading?

RL: Didn't prepare.

TC: So the whole front which is the short side is at the lower level, the right side it appears 2/3, the back is first floor is grade level and the left side so more than half of it is at grade level?

RL: Through the Chair, I don't know if we disagree on the 2 ½ stories but we have asked for the relief no less understanding that if looking at the building from the front it appears to be clearly in excess yet again pointing out that there is an existing condition presently for the building so we are not exceeding the existing

nonconformity that is already present so we have asked for relief if the Board deems it present we have noticed that and asked for it in our application. The area that is involved contained the front setback disagreement we are not encroaching into the front setback any further it's already nonconforming.

TC: Does that hold true for that third floor addition?

DJ: The 3rd floor addition does not come out to front setback. It is setback from that.

RL: No disrespect to Mr. Romano I think his site plan shows something that would suggest a setback but the architectural rendering shows that it is actually setback further – Mr. Roman is showing an overall footprint. If you look at that elevation on Sheet 2 it shows that the actual elevation of the deck is there presently existing its set back to where the dormer is being proposed.

ID: Asking the question again, the updated page 2 the right side elevation outlines in red is going to be there as opposed to the upper elevation is the existing side elevation the lower one is what you proposed to do and someone has red penciled it?

RL: To Ms. Dwyer that is correct we have identified that area being modified with respect to it.

ID: And on this plan where we see towards the right side of the rendering that where the grade of the property rises in the back?

RL: Correct and you're seeing the rear portion of the building.

FG: He asking for 2 setback reliefs? What is the 3rd relief that you are asking for that is not clear to me?

RL: Exceeding height.

FG: Explain that again to me?

RL: The code permits 35 ft. – 2 ½ stories, exceeding on the 2 ½ story based upon the proposed dormer with the front elevation would exceed 2 ½ stories.

FG: How much would it exceed?

RL: ¼ of a story, I think it is below the 35 ft. Below 35 ft. is the actual definition of story, I know that Winthrop has a quirky provision that of getting into stories and feet and I've certainly gotten into that issue a few times.

ID: That would only be true if you were calculating the elevation from the street in the back you're only 2 stories?

RL: Correct the ___ of ___ says ask for the relief to the extent that we need it.

TC: The issue really become a question of the lower level the garage level which is under the code the basement shall be deemed a story when its ceiling is 4'6" or more above the finished grade so the challenging part here is figuring out the mean grade because its topography. More than 50% is well below that.

ID: I understand what's being asked just not sure how we would word the roof height area.

RL: Might I proseed alternative to the Board? The Board can interpret the zoning code to say that no relief is necessary based upon the plans that were presented in its digression of its interpretation, that the BI was in error, reverse the BI's decision to cite excessive height or excessive stories or in the alternative the Board deems that a hardship exists based on the topography of the site to comply with the 2 ½ story requirement as a variance.

ID: Personally I think the second option is preferable because it's very clear in the case that you do have a dramatically stepped up elevation on the lot and it's one of these things that statue speaks to directly. So to summarize this again the permit was denied to add the dormer and the front deck for 2 dimensional reasons, the 7 ft. from the side yard and the 2 ft. from the front which are existing nonconforming but because you're adding onto the building the BI wants the existing variance declared to reinforced.

RL: With respect to the dormer only so the existing building to the extent that's non-compliant is not getting a variance it's just really where we're building a

dormer so the existing building that is already inside of 10 ft. on the side setback continues a pre-existing nonconformity the dormer itself would be authorized by variance if this Board would grant it based upon.

ID: I was just saying it a different way.

RL: The variance itself just applies to the dormer itself the building can remain.

ID: The building as it exists already uses up it already has the 2 ft. setback instead of a 5 ft. setback its old setbacks are the footprint of the house and the reason the BI is saying that you have to get that approved because it wasn't approved before for the modern adaptation of this building because you're adding to the living space because you're putting on a dormer to make 2 units so you're really asking for 2 things, the approval of the variance for the footprint of the building and a declaration that the addition of the dormer as shown on the plans is - needs to be constructed because the topography of the lot rises so sharply up the hill.

RL: In addition, I think we're dealing with 3 variances – side yard, front yard, and story but I also need and we've made a request for a finding from Chapter 40A Section 6 based upon the extension of the nonconforming structure. Repeats statement.

MOTION: (IRENE DWYER) - Move to grant the relief requested by the property owner of 9 Faun Bar Avenue as follows, first a variance is permitted from the dimensional regulations awarding a relief of 7 feet from the right yard setback, secondly that, a variance is approved of a 2.05 foot setback from the front yard dimensional variations, and third that, the construction of a 490 foot dormer with an attached 112 square foot deck to the 3rd story right and front side of the structures be allowed because that construction does not in fact violate the dimensional regulations of the height of an addition to an existing structure. I think we should do the finding separately.

FG: I would just amend it as submitted tonight and amended with the drawings dated April 13, 2014, page 2, which amended the elevation of the dormer. With conditions that no pressure treated wood be showing on the elevations.

SECOND: (FRED GUTTIEREZ) – The motion and amended as per plans submitted tonight.

SECOND: (IRENE DWYER)

VOTED: ALL IN FAVOR

ID: I would also make a finding as requested by the applicant that the award to build this plan as submitted this evening and specifically the 490 sq. foot dormer and the 112 sq. ft. deck on the 3rd story and right and front side of the structure are required because of the specific topography of the lot makes it impossible to build any other way for with the lot slightly sloping up from Cottage Hill and Faun Bar Ave.

SECOND: (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

RL: Section 6 finding?

ID: I thought that was what I was giving.

RL: If I could present to the Board. Based upon the facts that this is a preexisting nonconforming structure single or two family the request is made that the extension or alteration to a nonconforming structure is not more detrimental to the surrounding neighborhood and that the current nonconforming use and the Board would have to make a motion to an issuance pursuant to a finding of Section 6 we could incorporate the language into the decision. Through the chair a motion pursuant to the finding of Section 6 would be sufficient for the Board with an affirmative vote of 3 members to incorporate into the decision.

ID: I thought that was what I had done but I guess I put it more in terms of a variance.

MOTION: (IRENE DWYER) – I move that the Board finds pursuant to Chapter 40A Section 6 that the topography of the lot that the preexisting nonconforming use is located rises sharply in the rear of the property and therefore makes the building

of the addition proposed by the plans dated April 13, 2014 submitted tonight is not more detrimental to the neighborhood of a preexisting nonconforming use already at that location.

SECOND: (FRED GUTIERREZ)

VOTED: ALL IN FAVOR

MOTION: (FRED GUTIERREZ) – Move to increase the salary of Joanne M. DeMato, Secretary/Clerk of the Zoning Board of Appeals.

SECOND: (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

MOTION: (THOMAS CHUIDINA) – Move to approve the minutes of the last meeting on May 29, 2014.

SECOND: (IRENE DWYER)

VOTED: ALL IN FAVOR

JD: Discusses prior decision on 49 Main St. - Hot Diggity and letter received from property owner's attorney considering decision null & void due to lease termination.

MOTION: (FRED GUTIERREZ) – Move to adjourn meeting.

SECOND: (BRIAN BEATTIE)

VOTED: ALL IN FAVOR

MEETING ADJOURNED AT 8:45 P.M.


Brian Beattie, Chairman


Dated:

Respectfully submitted by: Joanne M. DeMato