



**TOWN OF WINTHROP
ZONING BOARD OF APPEALS
MINUTES OF SPECIAL MEETING
Held on Thursday, January 16, 2020
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152**

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TOWN CLERK
WINTHROP, MASS.

Darren Baird, Chairman of the Board called the special public meeting of the Board of Appeals to order at approximately 7:01 p.m. and explains rules of procedure and conduct at hearings. In attendance at the hearing were the following Board Members: Irene Dwyer, Thomas Chiudina, Jason Wright, Fred Gutierrez, Marcus Cantu, and Joanne M. DeMato, Clerk.

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 old and new business:

Item No.	Appl. #	Applicant	Address	Appeal	Voting
1.	Chairman opens hearing at 7:01 pm				
2.	#021-2019	JB Capital, LLC	130-140 Shirley St.	Variances Chapters 17.12.130 17.16.030 17.20.060 Non compliances with setbacks, distance, height, off St. parking	ID/TC/MC Cont. to Jan 30, 2020
3.	#026-2019	Frank Ferrara	45 Tileston Rd.	Variance Chapter 17.16 Dimensional Regs, 17.16.020 (C) Gen. Regs.	DB/ID/MC Cont. to 12/18/2019
4.					
5.	#003-2019 Appeal	Shirley Near the Sea, LLC (appeal)	590 Shirley St.	Appeal from a cease & desist work order issued by the BI	DB/MC/TC
6.	#032-2019	Nadiya Pavlychko	28 Buckthorn Ter.	Variance Chapter 17.16.020 J.1. Dimensional Regs. Setbacks & 17.16.020 C.1 front yard pkg	DB/ID/JW
7.	#033-2019	Stephen Babine	191 Court Rd.	Variance Chapter 17.52.030 Table of Uses, 17.20.060 Req off St parking	ID/FG/TC Cont. to 1/30/20
8.	#034-2019	Dan McInnis	283 Shirley St. Lot 1	Variance Chapter 17.12.130 Table Use Regs, 17.16.030 lot requirements and	Cont. to 1/30/20 – case not opened

				setbacks, frontage, 17.20.060 off St parking	
9.	Approval of minutes				
10.	Adjournment				

#003-2019, Shirley By the Sea, LLC, 590 Shirley St.

In Attendance: Atty. James Cipoletta, Ed Amirault

Sitting: DB/MC/TC

DB: New plans supplied and need explanation of plans and will take open comment.

JC: Conferred with arch John Lloyd and contend with massing, and its less intensive than one before than one submitted.,

John Lloyd, Arch.: Left off, deal with head house, bldg. pushed up 3.5 feet. For mechanical space between two headhouse, stairwell areas. Floor plans show what was removed, was only 6 ft wide and removed middle portion, changed renderings, actual photo front, actual photo right side wouldn't see headhouse, left side rendering without showing adjacent neighbor to see what was removed. It's the shark fin effect.

DB: Anything further?

JC: No unless we have questions.

DB: Will reopen to public comment due to the change of plans, limit comment to change in the plans and not everything.

JC: We did supply copies to abutters.

Gia Casale, 19 Forest St: Read statement from Roger Beckert, 600 Shirley St Winthrop, letter of opposition granting permission.

Rich Crossman, 27 Crystal Cove Ave.: Complained of ruined view.

Barbara Survilas: Daughter was designer of bldg. Doesn't expect to right of view and doesn't understand why abutters are doing this to this developer. Bldg. below 35 ft. and they went to every Board needed. We need to embrace change. Reads letter from daughter describing design of project.

DB: Anyone else? Seeing none. I will entertain a motion to close public comment section.

Motion: (TC) – Motion to close public comment section.

DB: Questions from the Board.

MC: Are we being asked to approve the modified plan as in this rendering?

JC: Yes, originally came to board to approve modified plan, we are now amending motion to approve an amended modified plan which is less intensive asking permission that the modified plan is to be approved.

EA: Concern with headhouse, and took out the area where it stood and opened it up, photos showed head house of what it looks like, Photo Exhibit #1 showing what looks like now, Roger Beckert started all these issues, coming down to address you'll see it can't be seen. Roger B. hasn't been here and we have a letter that he wouldn't opposed, we didn't work on weekend, but now that it's don't he had friend go on Social network and cause these objections and doesn't live here, but is now complaining the 2-3 feet. Everything he's asked for we've done, cleaned his pool, accessed other damage without question and has been paid, but has created a mountain out of a molehill. I've mortgaged my house for this project and its almost done and I have respect for the Board with how through and understood the massing and took it down. So now it'll be down and hopefully completed.

DB: Realistically, you would never see this – referring to photo. Zoning doesn't not protect views, what does is the height limits in certain areas so people can go to a certain height, this bldg. is under the max height, the other thing it doesn't protect is property values, only protects health, welfare, and safety issues. Town counsel would feel comfortable with us approving and if appealed and went to court the court would kick it back to us even though it says null and void we have the ability to make changes to plans.

MC: This is as is? Reason for the rendering is different.

EA: Shows existing rendering as will be. You can see what was approved with the headhouse but the only thing that has changes is that these people have caused me grief.

MC: I need the taking out of the headhouse to happen to approve plan.

Motion: (TC) – Motion to approve the applicants request of the additional height as indicated in the plans as well as the removal of the center of the headhouse which consisted of the storage unit.

DB: So, your motion is to approve the plans with the modified changes and we're approving the plans that were modified?

Second: (MC)

Voted: All in favor

#026-2020, Frank Ferrara, 45 Tileston Rd.

In Attendance: Atty. James Cipoletta, Frank Ferrara

Sitting: DB/ID/MC

DB: This is a continuation to do some fact finding how the subdivisions or legal divisions of the property over time. Atty. Cipoletta submitted a memo and walk us through the history of land assembly for the Board members.

JC: Issue that arose Over the course of hearing have to do whether or not the lot he seeks to build was subdivided prior to 1955 or more recently subdivided. As indicated in memo, this lot that was acquired 45 Tileston Rd, part of subdivision entitled Winthrop, MA Whitman & Power Engineers, dated 1931. That plan was recorded in Suffolk Deeds Book 5460 page 451. It contains 3 parcels and according to that the aggregate sq. ft is 13,185. Created in 1931 subject only to dictates of sec 17.16.020.J.1 as preexisting to 1955 created by subdivisions. 1955 -1982 lot area only requires 5,000 sq. ft. Other plans referred to such as topographical plans which is not subdivision lots and different create any lots. When owned by Winthrop Hospital a small portion of #45 was give to #412 to gain access to hospital parking. But then that land was given back. This is the same lot from 1931 it comes to 12-13,000 sq. ft. Only prohibition was in Res A that only 1 & 2 homes shall be placed on lots. This is the RB district clearly so does not apply. First denial letter indicated we needed front yard parking closest to Tileston Rd. We have removed them and do not fall below required number so there is no deficit. The rear yard setback variance is actually the side yard, Ferrara said to slide back and wont need either yard variance relief. We have one extra space for parking and do not encroach on the side yard initially referred to side yard, so we have a plan that does not require relief.

DB: Last time I said I would keep public comment open on subdivision plans only and not on street parking.

Marcy Hamilton: We are pro development and we've done history on lot, there was an issue on subdivision and the BI has sent this out to outside counsel and haven't heard results and there is a petition before town council to have property in current conforming regulations frontage to street. The TC will take up after this. Questions regarding that lot of land, frontage, lot size. Want a delay of decision until TC findings.

Collen Murphy, 44 Tileston Rd.: Been in contact from BI and haven't heard from KP Law. Speaks of subdivision from before. Its about what fits into neighborhood and done properly. Asking to have it continued and decision not made.

Bob Marino, 36 Tileston Rd.: Though lot was tied to Arbors. It was supposed to be developed but wasn't so can that be sold. It was supposed to be green space but there is none.

Jim Davis, 30 Marshall St.: Issue how would a fire truck get around there?

DB: Anyone else want to be heard, 3x's. I will take a motion to closed public comment section.

ID: So, moved.

Second: MC

Voted: All in favor, public comment section closed.

DB: To clarify - What's front/side yard. Noting to do with front door of bldg. is, where lot meets the street. Unless 2 abutting streets, then what happens at 90 degree is front yard and one closest is parallel is rear yard. Initially when this came before us the BI said there was parking in the front yard but that wasn't correct because while there were parking spots in front of their front doors, and maybe 2 to the side unit, those have since been removed because they didn't need them so there is no parking in the front yard so that clarifies that. As a matter of procedure K & P is not reviewing the subdivision components, they weren't asked to but they are looking at the petition that was filed today with the TC which seeks to have the TC effectively try to rezone the property even thou it is a lot prior to 1955 have it be treated like a lot that is in 2020. So, they are looking at that and I spoke with K&P today and they said it doesn't affect our process for today, but the petitioners can continue with the TC. The TC is a legislative body, we are a quasi-judicial body we make decisions based on law they make policy and rules. So, if we have a petition that's before us, we have a shot clock on that petition to make a decision or someone could make an argument that its constructively granted. We can't and shouldn't wait for the legislative body to make changes to zoning that can interrupt a development that's already applied for. They can't tell us what to do and we can't tell them what to do. TC is under the belief that we are able to make a decision or not make a decision and ask for help and we may or may not make a decision depending on where the Board is and the questions we have but that process step with the TC does not stop this process. It can't or shouldn't from a legal perspective. Questions from the Board?

TC: Question about the agreement with the developer and the Arbors that would have had to be conditioned in the SP or you would have had some legal agreement.

JC: I addressed it in the memo, we did look at that and went back to look at the SP for the Arbors and there is a provision in there that says the former Tileston St parking lot will be landscaped and preserved for the potential future use as additional parking as needed of the bldg. And its residents may evolve subject to the determination of the Winthrop BC. The Winthrop BC on March 14, 2019 made a determination to the Planning Board regarding nonuse of overflow parking and not against development of this lot. This lot is more than 12,000 sq. ft. I've not seen petition referred to TC.

DB: Why did the do an A & R plan?

JC: I don't know. Its repositioning the land. I represented the hospital and that was all determined by land court. It just needed to be re-conveyed that back.

DB: Is this lot 1B or 1B & 1C on the plan? Looks like 1B & 1C was conveyed.

JC: It was done by an A N R.

DB: When did it go back?

JC: In 2019.

DB: Subdivision of 41 not 45.

JC: Done 2019. Discusses plan with Darren. 1C is not part of this plan.

ID: What did the 1931 subdivision did generally? Did it lay out the lots on Tileston Rd?

JC: It created the lots on Tileston Rd.

ID: To abutters, the promise of landscaping was not what they planned to do but only if they needed it. They didn't need that lot anymore, so they sold it.

DB: Speaks about zoning laws, subdivision, and protection of older lots.

TC: What's being asked for?

DB: A determination needs to what plan controls and what year determines adequate sq. ft. of lot? 1931 as of right, if 1989 asked to grant variance for deficient of sq. ft. for 2nd bldg. I'm wrestling with an issue if there was ever a zoning merger, but I don't think it's an issue. Do we have a motion? Determining which plan actually created the subdivision when the lot was "created", if it's 2019 that controls then ready to make a motion on a variance, or, if it's the 1931 plan that controls, make that determination that plans as filed subject to removal of the triangle to show the lot that's consistent with that 1931 plan would be the plans that control this development that's modified and does require zoning relief.

Motion: (ID) – Move that the Board determines that the 1931 subdivision by Whitman & Howard subdivision contains the proper boundaries for this lot #45 Tileston Rd. based on plans submitted and that no relief is required from this Board.

DB: Motion to amend – before a building permit can be issued that a revised site plan be filed with the Board that shows the final layout and design without that triangle of the actual property owner's – I move to amend.

Second: (ID)

Voted on amendment to Motion: All in favor

Second on Motion: (TC)

Voted: All in favor

DB: Does not have to be recorded as it is an amendment. The 1931 plan controls and his plan is as of right.

Motion (ID) – Motion to approve minutes of Executive session on Dec. 5, 2019.

Second: (JW)

Voted: All in favor

Motion (ID) – Motion to approve minutes of Regular session on Dec. 5, 2019.

Second: (JW)

Voted: All in favor

Motion (ID) – Motion to approve minutes of special session on Dec. 18, 2019.

Second: (JW)

Voted: All in favor

Motion (FG) – Motion to adjourn meeting.

Second: (JW)

Voted: All in favor

Meeting adjourned at 8:43 p.m.



Darren Baird, Chairman

02-27-2020

Dated:

Respectfully submitted by: Joanne M. DeMato, Clerk