



**TOWN OF WINTHROP
ZONING BOARD OF APPEALS
MINUTES OF MEETING
Held on Thursday, January 30, 2020
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152**

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TOWN CLERK
WINTHROP, MASS.

Thomas Chiudina, Acting Chairman of the Board called the special public meeting of the Board of Appeals to order at approximately 7:03 p.m. and explains rules of procedure and conduct at hearings. In attendance at the hearing were the following Board Members: Jason Wright, Fred Gutierrez, Marcus Cantu, and Joanne M. DeMato, Clerk.

Absent: Darren Baird & Irene Dwyer

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				
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 Con. To 02/27/20
3.	#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
4.	#034-2019	Dan McInnis	283 Shirley St. Lot 1	Variance Chapter 17.12.130 Table Use Regs, 17.16.030 lot requirements and setbacks, frontage, 17.20.060 off St parking	Cont. to 02/27/20
5.	#001-2020	Jes Magarinos & K. Goodwin	45 Birch Rd.	SP Transient Lodging Chapter 17.49	TC/JW/MC Denied
6.	#002-2020	142 Washington St, LLC	16 Elmwood Ave. (Lot #120)	Variance Chapter 17.16.020.J.1 noncompliance proposed structure with respect to mini. lot area requires 5,000 sq. ft.	TC/FG/JW Cont. to 2/27/2020
7.					
8.					

#034-2019, Dan McInnis, 283 Shirley St.

Motion: (FG) – Motion to continue this hearing to Feb. 27, 2020

Second: (MC)

Voted: All in favor

#021-2019, JB Capital, LLC, 130-140 Shirley St.

Sitting: ID/TC/MC

In Attendance: Atty. Richard Lynds

Motion: To continue due to lack of original Board members to Feb. 27, 2020. JW & FG recused themselves.

#033-2019, Stephen Babine, 191 Court Rd.

In Attendance: Stephen Babine, Atty. James Cipoletta, 285 Broadway, Revere, MA

Sitting: TC/MC/FG

JC: A site visit took place today, submission as exhibit #1 & 2 – Appraisal Report and pictures taken by MSA Appraisals of 3 units showing vintage of units. Also submitted are pages of street listing of residents and years back to 1938 obtained from Town Clerk's office stamped and certified for #191 Court Rd. 2 issues are if the 3 units existed over the years, telling by the utilities and construction inside and can validate the existence more than 15 years, in regard to parking because it was legally existing NCPE 3 family to validate.

TC: Disputes 3-unit validity from street listings. I don't believe it as built as a 3 unit, what's there now as electrical is making it look like 3. There's an old panel put up to make it a 3rd.

JC: Those were compiled from street listings which weren't all returned - gave years 85 to present. Just purchased building, wouldn't have any utilities bills.

SB: My gas bill comes as 1 and 2-3. There was another meter but took one out otherwise they wouldn't have put 2-3.

TC: Still looking for site plan. Questions plans for driveway on side and expresses the challenge of getting cars out thus creating need to have to move all cars to get out. Why if common driveway they can't access to use that driveway?

JC: Don't see why they can't.

TC: Why proposing to put driveway on that side? Are there restrictions on that passway?

SB: No.

TC: It doesn't go all the way down, not nearly as far.

MC: Is there parking there today?

SB: No.

TC: No other 3 families on street, plenty of 2 families. Clearly this was an illegal, no separate stair to 3rd floor. But also there was an apartment there, much smaller, a very small legal 3rd, probably a single person living there, no parking for any. Is this legitimate, to park down there? You have no grade at the top. Wish they would have put elevation at the top of the street. It would help if they had the grades on it. Question as to whether the parking was feasible, if not, then a problem because it's a bigger structure.

FG: Don't see clear information to make it historically a 3 family. I would need more information on it.

MC: If parking on beach side are there any environmental issues with the Comm. Con. Review?

JC: We have been here and have to pull an order of conditions.

FG: Would like to see the plumbing and electrical inspectors write a letter of evidence of a 3 family, and agree it was set up, have gas com ID as 3 families, design of parking for the grading, engineered designs, and confirm an order from Con Comm.

JC: Conn Comm. is aware.

SB: Concern with going down? My next door neighbor has driveway going down.

TC: Said she doesn't use its too steep.

SB: Is there limited use on driveway? Either it is or it isn't.

TC: It is feasible, not usable too steep neighbor as example haven't shown full picture of what proposing, Convert 2 family with illegal apt., names, families and lone person. 1st unit 3 bedrooms, 2nd 3 bedrooms, 3rd unit 3 bedrooms, that are my concerns, may have 3; existing floor plan shows 2 boilers.

SB: 3rd unit had electric.

TC: Concern about what this does to the neighborhood/ parking substantial increase, if feasible may to condition that residents cannot get parking permits.

MC: Issue with grade for parking in the rear without design will there be run off to the beach, fluids and impervious materials not there before?

JC: That was discussed at Conn Comm. and is in the file, I can provide that.

TC: How did they approve that without seeing the design?

JC: Con Comm. had concern of oil leakage with rain into protected area, and how to stop car with barrier, order of conditions for wall, how to keep cars from going into water. Bldg. jacket doesn't indicate 3 family, actual permit pulled over years and some indicate 3 family but CO doesn't exist and say 2 family.

SB: Con Comm. happy to hear upgrades to wall from 6x6 to 8x8.

FG: I'm inclined not to support the way it's designed now and a detriment to the public, either continue or deny.

JC: Keep open to receive information on driveway design will take time. I will sign a continuance to waive the days in between.

TC: Won't change opinion on limit parking permit.

JC: Will have to think through.

Motion: (FG) Motion to continue to date to be determined.

Second: (MC)

Voted: All in favor

#001-2020, J. Magarinos & Kenneth Goodwin, 45 Birch Rd.

Sitting: TC/JW/MC

In Attendance: Jes Magarinos & Ken Goodwin

JM: Just purchased and spent money, here in front of Board with ABNB, 4 years ago, want to make an Air BnB, where Jes' primary residence with mother in law, for 2 rooms.

TC: Are you separating?

KG: No, mother living there, so it will be owner occupied, someone will always be there. Will either be I myself, Jes, or my mother.

TC: You have 2 rooms and 1.5 baths? I will open up to public comment portion of hearing. Would anyone like to speak about this application?

KG: Were being mindful of the neighbors and broad impact of the town and the integrity of neighbors renting out on ABNB and positive impact on town.

Enzo Leone, 48 Birch Rd.: This is a nice residential neighborhood and Transient lodging will raise questions and quality of life. Issue with supervision owner always being there, appears that they're not there. Will guests be vetted what is recourse, quality of life, like to continue quiet neighborhood, always supervised by owners.

TC: Address issues, Town Council felt that it would help owners get additional revenue to keep their homes, drafted an order, required owners on premises, require signage, 18x18, with contact number, and we encourage to register to Air BnB website for better sense of who is coming, registry book for guests.

KL: How will it be enforced?

TC: That falls under the Bldg. dept. must have all inspections, 2 year permit given, still new process, not a lot registered. It's good that they are registered versus not be registered.

KL: Quality of life not changing.

TC: Haven't seen it, can't limit to part of town. TC was hesitant to limit to certain parts of town.

Mrs. Leone: I was told that house rented to flight attendances. Listed online, in operation, seeing strangers, it's not same neighborhood, different cars from different states.

Matt Emanuelson, 57 Birch Rd.: Told for airlines, they've done a great job fixing up house, very uncomfortable with this, have 2 young children, Air BnB not regulating very well, burden on kids on street and doesn't see people at home, very concerned.

Mike Bertino, 74 Birch Rd. It's a small quaint street and Parking difficult. Was for people to stay but this was bought for this purpose business entrepreneur, this explains out of state license plates.

Robin Bertino, 74 Birch Rd.: Lived here longer, parking mutual respect, having others won't work with strangers on the street if something wrong how is it handled, I don't feel safe and don't feel that his Mom is in charge, wouldn't feel comfortable if my mom, but not on my street.

Peter Gill: K & J were the pioneers of drawing up ordinance, Council was very clear is owner occupancy and that the owner must be present when guests are there, and they won't be there, and doesn't fit into this neighborhood.

TC: Would anyone else like to speak – 3xs, seeing none public comment section closed.

KG: We have been 200% open, honest, and transparent, we have integrity with intentions house bought in April, and father died in June, mother in hospital, I'm a flight attendant, it is a legal 2 family house. We spent a lot of money made legal with separate utilities. It's been inspected, we have the permit on Tileston Rd., same size street with children, want to unify the neighborhood, and people feel threatened. On revenue, tax, water, Birch Rd was in disrepair, State passed law, town gets money for roads, will be owner occupied does include definitions, not marital issues, gone through the process all other people are continuing to do without permit unless there is a whistle blower, that's offensive. Have 8 years of doing this, being mindful of parking situation on property, out of state pilots before and parked at airports. We have parking. Out of state plates are not all from us.

JM: Understand concerns it is our home, 2 rooms, we don't wasn't transient, 1st went to neighbors, is for airlines, change of circumstances, with mother, not illegal apartment anymore and mother permanent,

parking not an issue, most do not have cars, use Uber. People are afraid, scaring kids, we won't allow parties, and people must be educated to Air BnB look at our reviews. Look at our reviews in the last 5 years.

KG: Our immediate abutters are in support.

JM: If problems can always report to the bldg. dept. or the police. Or they can come over and if there is evidence they can shut us down.

MC: Getting away from term owner occupied, if you have one on Tileston Rd, Primary residence, is this your primary residence, can't be checked off on both applications -big red flag for me, is Property on Birch Rd being rented today?

KG: No. I shut down but not now.

TC: It is being rented?

KG: We put a sign up and the Fire Chief said to cover it.

MC: Rented before license, illegally.

JM/KG: Needed to recoup money up. Ken's primary residence is 30 Tileston Rd; Jes primary residence is 45 Birch Rd. We're being as honest as we can.

MC: Don't say you're being honest; you skirted the process for 2 months.

JW: Mom moving up, no mention of mom on deed, its misleading to say 1 each as primary. Nothing in ordinance that says her name has to be on the deed.

JW: Questions if listed in Moms names, then she's the full time occupant, but when not renting you living at other home.

JM/KG: When being occupied, can put her name on deed as formality, would you be happy if Shirley's name on deed.

JW: 3 couples against, would be nice if neighbors in support were here.

KG: Our immediate abutters were in support of it.

TC: You have been exemplary owners, no one from Birch Rd complained at other case hearing.

FG: When occupied where staying?

JM: 3rd floor attic room.

TC: There is a technical question and may have to talk to council on it as far as owner occupied.

MC: Language is clear the way it is written.

Motion: (MC) – Motion to deny requests for TL on grounds of bylaws stating must be primary residence and applicant already has a license to run a TL on Tileston Rd.

Second: (JW)

Voted: All in favor

TC: For Special Permit can bring before again.

KG: What do you want, mother on deed, change wording in zoning?

TC: Confirm but changing zoning is whole other ball game, confirm that this is your primary residence.

MC: Can't have 2 primary residences. That's the issue, property on Tileston Rd, you stated. Permit is for both names on Tileston Rd. have to take name off.

#002-2020, 142 Washington St, LLC, 16 Elmwood Ave., Steven Stoddard, Principle

Sitting: TC/FG/JW

In Attendance: Atty. James Cipoletta, Steven Stoddard

JC: The lot in question was denied by the Bldg. dept. as shown in plans; indicating lot created subdivision Jan 1882, prior to 1955 required sq. ft. is 5,000, and this lot has 4,286 on this lot, typical on Elmwood less than 5,000 sq. ft. Stoddard applied to build 1 family home with off parking, floor plan, elevation plan, site plan shows off street parking, for parking concerns getting 2 cars off street. Chapter 17.202, Table of Dimensional controls front, rear, right, left setbacks all in compliance, only wanting is # of sq. ft. shy 700+, very consistent with other lots contained in subdivision. He has cleaned up shrubs, hedges, trees, appropriately cleared in anticipation request a variance to construct 1 family home with 2 parking spaces. View of elevations and happy to answer questions and why it should be granted.

TC: Anyone wants to be heard?

Carol Ferrullo, 132 Washington Ave.: I've owned for 24 years, we continue to maintain property and want to recognize what he's done. We are concerned with 2nd lot 1400 ft. shy, it's a problem and abuts that property, under impression it was 1 lot when was lot split to 2? And why weren't we notified?

Fred McGrail, 20 Elmwood Ave.: When purchased knew lot couldn't be built on, lose privacy, street very narrow, adding 2 spots cars parked on that property already. Consistently cars parked on street.

Rich Shifley, 15 Elmwood Ave.: Concerns with parking, narrow street, from Washington & Elmwood. Not that many houses there, this is not how River Road go, this isn't accurate and it's a conceptual drawing. I'm sure some of the houses fit on this map but some don't. Conceptual layout house size can relocate change size, won't work cause of a utility pole.

Tracy Martuccci: Didn't know there were 2 separate lots, there have been 2 previous owners before, thought it was 1 lot didn't think could build there was used as a yard.

Lisa Lopes, 265 River Rd: Elmwood Ave. is extremely narrow street for parking. With additional house parking will be a nightmare.

Peter Gill, Not an ordinance if 2 properties are subdivided common ownership automatically merges?

TC: I don't know the answer on that. Asks 3xs if anyone else wants to comment, seeing none public comment section closed.

JC: Plan by Belcher Brothers in recorded in plan book is latest deeds, shows there are 2 parcels mirror layout of lots #2 which says has 4,286 sq. ft.

TC: Confused 3rd lot in house with garage on it redone, is actually 2 lots?

SS: Garage actually on 16 Elmwood Ave and has nothing to do with 142 Washington

TC: Corner lot Washington is 4055 and next lot 4358 and then lot in question.

SS: Somebody combined to build 1894 house already built in picture on corner of Elmwood and Washington.

JC: Deed parcel #1 & parcel #2 has lots taxed separately, raised by Mr. Gill the Doctrine of merger only apply other circumstance not separately identified under 3000 sq. ft.

TC: Deeded separately?

JC: Yes.

TC: Deed does match up what has makes me wonder what other properties are if not this, based on this this property is bigger than most on street might not be accurate.

JC: Taxes differently on assessors for codes and sq. footage.

TC: Not looking at tax looking at lot undersized what other lots are? Have to look at this as a lot and undersized and only relief they're looking for would like to know what these other lots are, other lots have driveways. Every house has a driveway; do they all use their driveway? If you own a property that has street frontage you have right for curb cut and can't deny him that, I wanted more accurate picture.

FG: Garage on parcel 2, by removing has impact on parcel 1.

SS: Driveway on parcel 1 - 3 car parking concrete driveway, garage not far from falling down.

FG: Precedent of merging not prepared to make a decision before talking to an attorney.

JC: Helpful memo on Doctrine of merger in cases before this Board can submit.

TC: What is clear there are 10 lots on that side of Elmwood and no more than 9, 7 houses plus this lot. Clearly these are not accurate and want to see the sizes of other properties.

JW: Is lot bigger than 4286 sq. ft.?

TC: No, deed matches up something is not accurate, clearly off.

FG: Other corner lot combined 3 similar to the other side.

TC: Easy to find out and give us a chance to answer questions with counsel. Looking at continuance. Anything else we need from the applicant?

FG: Can get parking on same side of existing driveway?

TC: Based on this plan looks like you're putting a driveway on both side actually in front yard. Not going to deny a curb cut but for 2 for a single family you're unnecessarily taking away parking on street,

SS: Enough room left side of driveway on right next to 20 have enough room, hurt would esthetics on house , won't put a duplex in neighborhood, will put driveway on 1 side , there are 3 spaces on existing home now.

TC: We've had several in front of us; I've looked at other properties surrounding, anxious to look at this one.

JW: Nice addition to street, we need to clarify issues.

Motion: (JW) – Motion to continue to 2/27/2020.

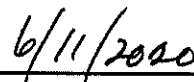
Second: (FG)

Voted: All in favor.

Motion: (FG) Motion to adjourn meeting at 8:58 p.m.

Second: (MC)

Voted: All in favor



Thomas Chiudina, Acting Chairman

Dated:

Respectfully submitted by Joanne M. DeMato, Clerk