



**TOWN OF WINTHROP
OFFICE OF THE BOARD OF APPEALS**

100 Kennedy Drive, Winthrop, Massachusetts 02152
Telephone (617) 846-1740 Fax (617) 539-5814

Meeting Minutes May 27, 2021

Initials are- DB- Chairman Baird
TC- Tom Chiudina
FG- Fred
ID-

Gutierrez
Irene Dwyer
JW- Jason Wrigh

Chairman Baird opened up the meeting at 7:06pm on May 27 2021. This is a meeting of the town of Winthrop Board of Appeals. Irene Dwyer, Tom Chiudina. Members, as well as Fred Gutierrez and Jason Wright associate members. And Sharon Sicurella, the clerk of the Board, as well as Laurisa Wojick all present via zoom. We're we are still in a remote environment, at least for now. these matters pursuant to the emergency declaration issued by Governor Baker, So for the time being, we're going to stay remote until that order is lifted. The first matter is case numbers 016-2021. Michelle Harkins, 23. B Almont Street, seeking a variance with regard to the location of a swimming pool. That is being continued with Attorney Cipoletta.

Chairman Baird- to open this meeting to continue on public record. Sitting on this is going to be Chairman Baird, Irene Dwyer and Jason Wright. Chairman Baird would like to take a motion to continue to continue this matter to June 10. At 7pm. Zoom link will be posted on the town website. Irene motioned to continue this case to June 10th. Do I have a second? Jason? Second. All those in favor by roll call to continue to June 10 at 7pm.

Chairman Baird called The next case for continuous is 207 pleasant Street, Kelly O'Hara case number 17 of 2021. This has been continued due to personal circumstances where

someone that's involved in the case had a death in the family. Attorney Cipoletta had no issue to continue this case. Members will be Chairman Baird, Irene and Jason. Motion to continue to June 10 at 7pm.

Chairman Baird- Case #'s 007-2021 and 015-2021 (132 and 183 Highland Ave) will be called at the same time I think they should be heard together .

Sitting on these two cases are Chairman Baird, Fred Gutierrez and Irene Dwyer.

Attorney Cipoletta- Good evening, members of the Board of Appeals. This consolidated hearing concerns numbers 132 and 138. Highland Avenue, the vacant lot, which is adjacent to number 138, is set out on a plan and described in a deed as but number 11. With respect to number 132, that is the vacant lot where it is proposed to be built a one family house zoning issues and the construction issues. 132 is part of sort of a consolidated do a lot of 132 and 138. Each of those lots has 4500 square feet. So with regard to 132, what we're talking about is a 4500 square foot lot, which derives from a subdivision predating 1955, which would require 5000 square feet for the construction of a one or two family home. Pursuant to that the building inspector indicated that a variance would be required for relief from the minimum lot size under 17 .16.02. the minimum side yard setback on the right side of the proposed house, which is adjacent to the house which Miss Dirosa-priest owns, it's a greenhouse on the corner of Highland Avenue. That right side yard is required to be 10 feet and the proposed house sets seven point five feet off the boundary line, therefore, a variance of 2.5 feet is requested. Notable to mention is that that setback that is sought to be relieved, is actually adjacent to the property that's owned by the same property owner. The home that's proposed to be dropped, constructed on 132 Highland Ave. Does comply with the setback with respect to the left hand side of that home, which abuts another neighbor, regarding the use a one family home and a two family home as a matter of fact, So with regard to the use of one family home is, is allowed as a matter of right in the IRA district, going up and down. Highland Avenue, one would notice that there's a mixture of one or two family homes smattering of three family homes. As a matter of fact, directly across the street. On the corner, is the Highland house condominium that is a three unit home. Adjacent to that is another three unit home. And each of those is built on what probably would not be considered compliant with respect to the current code. Minimum lot size, parking for two cars is shown on the plan at 132 Highland. So cars would be parked within the structure. And that is set out on the plans, the architectural plans which have been submitted to the board Moving to 138 Highland Avenue, which is the green house on the corner, owned by

Mr. Dorsa-priest. That home has been there for more than 50 years. The lot size is identical to the one that's proposed to have the one family home, that's 4500 square feet. So what we have here is 2 4500 square foot lots each individually and separately described in a deed and deriving from a plan on record and Suffolk registry of deeds, it is reasonable to infer and by the substantial evidence that the board has and will have in front of it, that it was always intended for each of these 4500 square foot lots to be their own lot and buildable for purposes of residential use. Otherwise, we would have a 9000 square foot bought, which I think would be very hard pressed to find another 9000 square foot lot at Highland Avenue or anywhere up here on the highlands as the subdivision that was what was recorded indicates while smaller lots. So what are we what do we require for a 138, the existing home for relief. Three different variances, but only one of them actually is, is effective. And by effective I mean that it's it comes as a creature of 132 being proposed as a buildable lot. So the first would be minimum side yard setbacks if you look to the right side of the existing home on the corner, you see that we require 10 feet from the from the corner of the intersection, there exists a setback of 6.9 feet, so we're looking for would require 3.1 foot variance and that is not adjacent to any home that is adjacent to the intersecting street so nothing changes there because there is no proposed construction at number 138. A side yard setback on the left hand side of the line. Let me back that up. I'm sorry, minimum front yard setback. The required setback in the IRA zone would be 15 feet on the current code. We have 13.5 a request for a variance to the tune of 1.5 feet. Nothing's changing that is that exists now. It's existed since the house has been constructed. The one that I do point out and have indicated as being the future Active variance has to do with the side yard on the left hand side of the greenhouse, the residential home that exists. It currently sits 4.2 feet off the boundary line of 138 and 132. That boundary lines not going to change. What changes is the construction of the proposed house. But for purposes of zoning, still a 10 foot side yard setback on the left hand side of the existing home is required on the current code. It's shown on the plan is 4.2. Relief sought is 5.8. Notable again to mention that it what's on the screen now is the existing home that's owned by Ms. Dirosa-Priest. So what we see there is the intersection of Grovers Avenue and Highland. And when I speak of the 6.9, right side setback, that's the setback from Grovers. And on the left, which is the one that is probably of more concern about her own property at 132. And that's showing 4.2 which is deficient under the code, but again, is four it does exist as a 4.2 foot setback from the boundary line between the two, the two lives. So, Mr. Chairman and members of the Board of Appeals, according to the recorded plan, and the plans that are submitted with respect to the proposed house at number 132, a lot number 11. It would appear that at all times these lots were intended to be built upon their purchased as such, they are there are

deficiencies in the topography and the slope, whereas this is probably at the low end, or at the dip of Highland Avenue where the where the greatest is a steeper grade, and where it intersects Grovers Avenue. It is different from the grade of goes uphill from on Highland Avenue. There was also a concern and I believe one of the members missed Maybe Mr. Chuidina has spoken to Mr. Cimino with respect to the elevation in the in the Grade as it pertains to the driveway in the entrance to the garage. Mr. Cimino sent to me today in elevation showing the grade from Highland Avenue up to the up to the garage and I sent it to to the clerk. So I would ask Mr. Chairman and members of the Board of Appeals to approve the relief above 132 and 138, which would allow for the construction of a one family home on model 11 known as 132 Highland Avenue as it meets all the conditions preceding to the grant of a variance under our code of the town of Winthrop

Chairman Baird - opened these 2 cases up to the public: The first speaker is

Christine Riley, my address is five Floyd street unit 1 Winthrop, Massachusetts. I am very much objecting to the fact that the board decided to hear these cases together. These are two separate cases. I'm going to speak first about 132 Highland Avenue, you need very clear reasons for granting a variance. It's spelled out very clearly on the application. The variants on that property, those conditions are not met, those conditions are not considered as I'm going to specifically refer right now to number 12, okay, describe the soil conditions shape topography affecting the land or structure in question, but not affecting Generally, the zoning district in which the land or structure is located. The answer given to that is the building lot is irregular topography, uneven sloping. That is the whole neighborhood that is not specific to this piece of property, that does not give any reason why the topography is different. So this does not meet condition number 12. The whole Highlands is uneven and slope in the entire neighborhood. Going on to number 13. Describe how the enforcement of the provision of the zoning ordinance would involve substantial hardship, financial or otherwise. The answer again, doesn't make it doesn't even apply here. The question is what is the substantial hardship. And then he says the lot sizes, the lot is of similar sizes on this in the immediate area, all of which are built upon. The houses were built before the zoning law was enacted. So the hardship has been upon the title mentor for not getting the revenue of land valued at that high amount. So the hardship cannot be considered. The next thing how can the desired relief be granted without substantial detriment to the public good? The answer is lots and uses in neighborhoods are of the same and similar size and usage. There will be no additional requirement for street parking is all parking is on site. And then describe how the variance decided desired may be granted without nullifying a substantially derogating from the intent and purposes of the zoning law. The purpose of the zoning ordinance is to promote

the health safety, convenience, morals and welfare of the inhabitants of the town to lessen congestion in the streets to conserve health. But again, his answer to this is granting the relief will not create undue stress on municipal services or parking and will not unduly increase density in the zoning district, but will enhance the location surroundings by construction of an upgraded modern home. So I don't think the Board of Appeals wants to have to suffer through their long drawn out process of justifying their decision in front of the Land Court. And moving on to 138. That's a sham. First of all, that was that was some type of application written up only to justify breaking the law of merger. Okay. They submitted a request for a permit to the building department. And the denial letter states, the building department denied the request for relief from the provisions of 17 point 16.020 j, one. For minimum lot size minimum front yard setback, minimum side yard setback, it states that this request was denied. However, that is not a request that the building department has any authority over. They have no business with this. It has nothing to do with the building department because nobody is building anything on 138. Nobody is requesting a building permit. I think I'll finish because I'm getting really angry.

Chairman Baird- Thank you. So from a procedural standpoint, the way that we came to have these cases being heard together was when 132 first came before us, I believe back in March, if I'm remembering correctly, might have even been February, when we first heard it. We looked at the case. It's interesting that you're coming forward with a variance but we believe that 132 and 138 are merged. And the reason they are merged, is because 138 had deficiencies from a zoning perspective with regard to setbacks, with regard to frontage, with regard to minimum lot size, that needed to necessarily be cured or dealt with by merging because they were in common ownership 132 with 138. So for all intents and purposes, under zoning under 40. A, they are considered one lot from a zoning perspective. Now, if we said to the petitioner and the petitioners counsel, you need to bring forward 138 as well. So we're dealing with the whole lot, then we can consolidate, and we can consider whether by variants, because by variants, you can vary the zoning with regard to a lot and do things that wouldn't necessarily be conforming with zoning otherwise. And so the reason why 132 and 138 are being heard together is because they are a single zoning lot. And we are considering whether or not to grant variances, and of course, we're hearing testimony both from the public and from the applicant as to whether that would be proper. So they're necessarily merged because they are a single lot. There is no procedural misstep here. There is nothing that the board is doing that's untoward or on or on, you know, inappropriate. In this instance, we have to hear them together. They're a single lot. So they are a single lot from a zoning perspective. So when

you're hearing them together, the question before the board is, in each case, will we consider them to be a lot one with an existing structure that doesn't comply if we allow a resub Division of these lots. That would have to get a number of pieces of relief as it relates to frontage as it relates to the square footage of the lot setbacks. That's just one lot. That would be 138. If we if we separate the lots, and creating buildable lot at 132 that will also need relief. There was some dimensional nonconformity if we granted relief on 132. And that they needed to view it as to get as being together and at the time, we asked them to submit. We asked them to submit a new case in 138. And that we would consolidate it with 132, as opposed to amending the application for 132 and re noticing it, so it gets you to the same result.

My name is Eric Gaynor. My address is 127 Quincy Avenue. I live in just a few blocks away from this property. I just want to say, , I do strenuously object to this application for relief. I'm very familiar with this property. I think that as Ms. Reilly made some very valid points, in that, it's just not necessary to grant relief. There really is no valid or good reason for this. The neighbors are against it. And it just doesn't seem like this would be an improvement to the neighborhood or to the town at large. And I please ask for you to consider this seriously and take into account those that would be detrimentally impacted if this were to be approved. And to please reject this request for variance. Thank you. Thank you.

My name is William DiMento. 1008 paradise road Swampscott. I am an attorney and I represent my brother and sister in law. Phillip and Margaret Dimento. The owners nine Floyd Street I'm opposed to a case. But I am. This isn't a case that meets one or two of the four prongs standard for a variance. It's one that meets none of them. I don't want to waste your time. But that the owners of the property at nine Floyd street strenuously object and asked you to come to an immediate decision

Kelly Again, 127 Quincy Ave, But I just wanted to speak up and speak up very much against granting the granting the variances. It's not something that this neighborhood needs. This is a lovely neighborhood, I'm proud to call it my home. And this would this would be detrimental to the neighborhood.

Donna Riley 30 Cottage Park Road here in Winthrop. if the appeals board grants, any variances to this merged land, sets a dangerous precedent for Winthrop as a whole.

Peter McNeil 55 Floyd street Unit Two. And just to concur with all the previous speakers I totally oppose the building of the law of building a house next door and I need not say more.

Public Comment was closed.

Attorney Cipoletta- Just briefly, Mr. Chairman, yes. First of all, I believe this was the correct procedure to effectuate the functional, functional equivalent or resub. Division. The second point is that with regard to the typography and the shape of the lot, and how, whether it affects the zoning district in general, the RA district, and that's what this this is the RA district, not every street in the RA district is a sloping street with a house and a vacant lot at its lowest most point. And not all, watch in the are a district suffer from that, from that deficiency. With regard to the hardship, hardship financial or otherwise, this woman owns both of those lots, she owns the house that she lives in, she owns the buildable lot of a lot that she thought was buildable and through the chain of title had been buildable. If it is in my response was if the variance is not granted and 138, it essentially keeps it as the backyard or the side yard, in this case 132 being in the backyard of 138, that is a financial hardship, she can't build on it, she can't sell it, all she can do is pay people to mow it. And that would that would be an additional, an additional hardship. Whether apparently, in some cases, people think that parking is a great factor. It appears to be in every case somewhat of a factor. But apparently in this case, it's being diminished as a factor because the house is proposing to wash street parking spaces. And that is sort of almost irrelevant. And I think it's one of the more relevant aspects of the proposed home at 132. But since parking is not an issue, I guess we don't need to talk about it. The question, is whether or not when it appears that all of the individuals who oppose this, this application are saying, well, this is going to drag down the neighborhood, you can't build it and do it in a in a fashion that's not going to be in harmony with zoning ordinances, and it's not going to fit into the neighborhood. We'll take a real quick look at what we what we supply to the board, probably back in March, maybe April. Could be even before that and see that this is a small house. It's not an overlay. The modern cutting edge

type house, it's a house, it's a one family house with a couple of bedrooms, Those are the high points that I wanted to respond to. I think the legal points.

Chairman Baird- I understand why people want it, I get the desire to densify I get the desire to use this lot. I do think that when you get to effectively to sort of a budding walls of this, this the faces this house being about 11 to 12 feet apart. I guess that's the condition in certain places in Winthrop. I don't think that's particularly sightly. I don't think that that is particularly frankly safe. I just don't think I'm comfortable granting a variance on. But again, that's me, the other board members mean differently, but that's where I am on this one. I have no further questions. Let I'm not sure if you have anything to add, because it sounds like the board is out of questions. And I don't know if the board is inclined to have a member of the board is inclined to make a motion but I wasn't sure if you Attorney Cipoletta had any comments that you'd like to make based on what you've heard.

Attorney Cipoletta- A couple of things, Mr. Chairman, it was one mention that this was always a large lot laid out in 1910. In fact, No, It's it was established 1889, But it's the proposal is no different from what you see going up and down those streets on Grovers are one on Floyd or on Highland. And I thought it was prudent to address the financial hardship, because the hardship here is that the owner of the house is would now have essentially, a worthless piece of property that is an unused Well, maybe it's usable, maybe it's unusable as a side yard. And that was the point I was trying to make, it becomes an unbuildable lock to the to the current owner and selling it to somebody else. Does that make sense? Unless somebody was just wanting to test lawnmowers or something, I can't see that it would be saleable.

ID-the point you make, for example, about the driveway. Now that's something if the lot were conforming, that would you would want a variance for those. It's different from everything else in the neighborhood. The degree certainly by which you'd have to go down is pretty steep. And so you might ask for a I don't know that you know, anything. But it's not a conforming lot.

Chairman Baird-Does someone want to offer a motion on either or both of these cases, if they do want to offer a motion, we would have to take them, individually for motion purposes, because they are two separate cases, technically, from a movement perspective and decision perspective.

FG-I'm not inclined to support either of the requests, given the information I have. grant favorably emotion for leave to withdraw? And I would I would make that motion. I would make that request for leave to withdraw.

Chairman Baird- I'm inclined to accept a motion for leave to withdraw. I assume that's without prejudice. Attorney Cipoletta? Yes. It doesn't, it means I don't I don't expect to see them back here on next month's docket, however. I'll take a motion to accept the applicants motion for leave to withdraw without prejudice. And case 007- 2021. If that is a pleasure of the board.

FG-I'd like to make a motion to accept the applicants proposal to withdraw and without precedents

Motion to approve case 007-2021 passed.

FG-I can make a motion of case 015 of 2021 for the applicant to leave to withdraw without precedence.

Motion passed.

Chairman Baird case number 18 -2021 20 Bank Street. The petitioner here is Craig Doster. Sitting on this Darren, Tom Chiudina and Jason Wright.

Craig Doster- My name is Craig Doster. I'm the owner of 20-22 Banks Street, I'm requesting a variance in order to convert my basement unit, my garden level unit into livable space. Craig did provide background. The property was a fixer upper I kind of recognize the opportunity, with this livable space that was in the basement, the previous owner had had finished the basement included, a bathroom down there had a kitchen. And I recognized that, you know, there was some opportunity there to convert that to a to a third unit. So now I finished both units upstairs on the second and third floor, the basement unit has the proper ceiling height. Two means of egress has everything you need to really get this into a livable space. I'm looking to request the variance, it isn't a residential area, it's a two family home currently looking to convert to a three, I would not be adding anything to the footprint here, And the additional variances to do with parking, I do have a plot plan that's included, plot plan does show four parking spaces, and I do know that it's required to have two per unit for the for the three family home. there are five cars that are in the driveway And that's without using the garage as well. I was able to grant use to tenants for use of the garage to accommodate that, you know, six parking spot as well. They could stack vehicles as well, there's plenty more room in the driveway. Obviously, they have to coordinate that. But like I said, we do have five cars in the driveway now. And it's it doesn't seem to be an issue. So again, just looking through a request the variance there to convert my current living space in the basement to proper living space through the Board of Appeals.

Chairman Baird-opened it to comments from the public on 20- 22 Bank Street.

David Mickelson. I live in 19 Bank Street in Winthrop, our houses across from the property owner discussion. And yeah, we object to this third unit parking is an issue on this street. It's a one way street. There are currently five cars using that space for only two units. So that means if the person people renting the basement unit had two vehicles, then now we've got another car in the street, for which there's no room. we object to this proposal.

Debbie and Steve Trapp, owner of 14-16 Bank Street object to granting a variant.

Motion passes to close public comment. Chairman Baird asked if applicant has any further comment.

Craig Doster- the concerns with parking I got it, you know, I lived on the property for the past, you know, two years. You know, with the current situation there with five cars, just to clarify, without the garage spots, so that's an additional two so so we do have availability for seven spots on top of that. But if you did want to stack vehicles to the end of the driveway, there's plenty more room. And with that said, the basement unit that I'm that I'm looking to construct here is a one bed plus office Or 2 bed at most.

ID- you probably do have enough space for parking. But I'm I think that I'm not convinced this is already a livable unit before it doesn't look like there was much there except plumbing.

Craig Doster=So I, I started this with with the building department. You know, I requested that I renovate a basement unit. And they issued me a letter of denial at that point, and requested that I go to the Board of Appeals. They listed that this was I would need to request a variance strictly for the parking and then also to convert from a two to a three family it's an unfinished now.

TC- You need to have a hardship for the variance. And with the parking. You don't have a hardship. In fact, you had the space to make the parking. So I think it would be hard for us to issue a variance when there's no hardship, you can actually provide the parking that's required. So that said, What's the hardship for adding the third unit? you haven't really spoken to what the hardship is as to why you should be entitled to be considered for a third unit.

Craig Doster- Thank you for that point, I would say it's a financial hardship. I'll just add to that, it was lived in definitely, you know, prior to me purchasing the home, you know, there was it was it was habitable. There is outside of the first bedroom there is one window. It's not the it's not the proper size, and it's facing the driveway.

Chairman Baird But just to be clear, the basement does not have its own separate kitchen facilities correct. As we sit here today, for when you purchased it?

Craig Doster- When I when I purchased the property there was an oven and there was a sink in our cabinets. So it was a it was a kitchenette. The seller took the oven with them so it wasn't there when I took ownership of the property. But the cabinets and the kitchen sink and everything was still there, including in the bathroom as well was usable.

Chairman Baird- Was it separately accessible?

Craig Doster-It is separately accessible. The walkout door goes to the driveway that goes direct to the basement unit.

FG-does it have separate utilities? Is there a separate meter for the basement? is there a separate panel gas feed those kinds of things.

Craig Doster-There is not. So I would have to input that I was considering doing an electric heat down there. So we would have to put another gas meter.

TC-that's not a requirement. I mean, you can have a three unit without having three separate utilities. I think what Fred is, is saying is, that is oftentimes obvious, pre existing conditions,

JW- I guess it'll be helpful for us to have an understanding of how long the unit itself was occupied for. Or if there's a way to even find that out.

Craig Doster-I'm not aware of a way unless I could somehow get in touch with my real estate agent, and she could get in touch with the previous seller, to be honest, even that, I don't think I'd get that information out of them.

Chairman Baird- this is actually so this is a true application to convert from five variants from a two to a three. So this is one of those situations where I have a hard time as you go through the variants standards. And while there may be a hardship, that's financial, with regard to the expected return on investment, that hardship is not tied to some sort of odd, you know, configuration of this law, this law is pretty much a square. I mean, there's nothing there's nothing remarkable, about the soil shape or topography of this wall. I think everything on Bank Street slopes. I have a hard time getting from the do to the soil shape and topography of the lot. The literal enforcement of the zoning bylaw would create a substantial hardship on the applicant. And I think we're I have a hard time getting past that first hurdle on this one.

TC- , just for the benefit of the applicant. If he were to show that this was a preexisting non conforming, use, the application is then a special permit, or the request isn't a special permit

Chairman Baird the application would then the request for a special permit, for the continuation to make us basically make what they call a section six, finding a finding under Chapter 48 of the general laws, section six, that this is a preexisting non conforming use, that is allowed to continue. Need to show this was in use as a third dwelling unit, prior to the time that the zoning change, they think in the 80s that prohibited three family uses in general unless you went and got an amnesty license or permit from the town. if the applicant wants to go and see if they can find that information, I'm fine, continuing this to allow them to try to go find that information before we dispose of the case. But before we make a decision on the case, I'm happy to have a motion for a continuance to allow the applicant to try to find that information to see if they can figure out whether or not this was ever used as a true three family. And when that started in when that ended, if it ended.

JW- I think that there's a way to prove residency and I don't know how you go about that, whether there's excise taxes, or you can look at for vehicles registrations or, you know, really how that works. But to the chairman's point, I think, you know, granting the variance, or hardship based on soil shape topography might be, a bit of an ask, but, you know, if we can prove 1980s, or I don't know, the exact year, we're asked for a special permit. And it looks like we may not even need a variance for parking, because, again, from what I can tell, there's room for six cars

Chairman Baird- I'm happy to entertain a motion to continue this to our hearing at the end of June, to allow them to do that and see if they can come up with information relative to maybe a special permit finding. I sort of leave that to the applicant as to whether they want to do that, or if they want us to make a decision or if they want to withdraw, because I think that's where we are at the moment.

Craig Doster Mr. Chairman, when you mentioned the two years, inhabitable in between that time. So if I do find out and you know, as somehow do get news that, you know, it was habitable, it was, you know, rented out, and I can get that information from the previous owner. You said if it was two year timeframe, where it wasn't occupied, then that then I couldn't go forward with that case.

Chairman Baird- I have to find the exact language the idea that because the law doesn't like non conformities, hey do sunset after a period of time. I mean, I think we'd have to understand the facts and circumstances . So we'd have to understand all the facts before we can make a determination as to whether there was some sort of two year lockout period here. I guess I'm Mr. Doster. if you think it's worthwhile to look into this, we're happy to continue this matter to the end of our hearing at the end of June.

Chairman Baird took a motion to continue this case to June 24, 2021 at 7pm. Motion did pass.

At 9:05pm a motion was made to adjourn. Motion passed.

