



**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 6-10-2021

Chairman Baird- Opened the meeting at 7:02pm on Thursday, June 10, 2021. Member's tonight are Irene Dwyer and Jason Wright. This is a special meeting of the Board of Appeals. So, we have two cases on tonight. The first is 207 pleasant Street and the second is 23B Almont Street. I am going to call case number 017- 2021 207 pleasant Street. The petitioners are Kelly O'Hara and Jason Fisher and attorney Cipoletta I believe this case is yours so sitting on this Chairman Baird, Irene Dwyer, and Jason right.

Jim Cipoletta, good evening, members of the Board of Appeals for the record Jason represented the applicants. Members, this is an application for a variance pursuant to the provisions of 17 you will do to construct a third apartment in a two family residential dwelling in a zone that limits the number of residential dwellings to two, according to the zoning review letter issued by the building partner, the variance for is a use variance for the third small studio apartment there's also a variance from 17.16.02 and sorry, the parking said 17.20.601 a minimum off street parking. There is a modification amendment in the paragraph number 11. The request is not grateful for its story that story is not being built out, nothing is being built out. Everything is being built with it. And I had recent discussions with the building about that. So that was a miswording in the application that says the by creating a full third story what it should say is thereby creating a third unit kind of third story. So that is not a various that is required in this set out in the zoning review matter. The parking or there is currently a garage there in the back. It's shown on the plans, and the parking that is proposed to be utilized there would require a curb cut

and would be adjacent to where that that garages with the chairs permission that I have architects from Phoenix architecture either drew or Peter, I'm not sure they want to zoom. If one of them could indicate their presence there is in with the Chairman permission, Peter addressed the board with respect to these project plans. Thank you. That's fine. Thank you. So, Phoenix architects are going Okay, go ahead. Very good. Thank you.

Andrew Jones at Phoenix architects. I'll start with what's existing. As you can see, and as Attorney Cipoletta mentioned, we are not building out anything in the roof. It's all staying existing. Right now, there's two units, one on the first floor one on the second, with this little bonus space above. As you can see, there's already like a little bathroom here. Also, a little room up front, and then towards the back there just won't leave space. So and as you can see, in the back, we also have back in a porch, what we are actually proposing is creating a new deck in the back with existing porches to get a second means of egress up to the third proposed unit. As you can see, this is the new pose unit here, we got a little kitchenette, living area, bathroom where it is and then towards the back is where this where the bedroom studio area will be. We are preserving the existing stairwell down in the front. So that's the first means egress. And as you can see towards the back, we are proposing that deck with the stairs down the from elevation. This is what we are proposing the deck and there any questions? Would you like me to go to any page?

Jim Cipoletta, while that's happening, Mr. Chairman and members, I just wanted to point out where the curve would be removed or relocated, and also the orientation of the nine by 18. parking spaces.

Andrew Jones- so here are the two parking spaces in front of the garage as you guys can see. And then this is the new proposed deck where the existing porch was. They've actually flipped the stairway from the left-hand side. Just to make it a little bit more functional and easier to get to from the parking spaces.

Chairman Baird, So with that, I will open this up to questions or comments from members of the public that would like to be heard on 207 pleasant Street. If you'd like to be heard on 207 pleasant Street, please raise your hand. Second Call for 207 pleasant street third and final call for 207 pleasant Seeing no hands I'll take a motion from either Mr. Wright or Ms. Dwyer to close public comment. Motion to close public comment by Jason Wright. We have a second. Irene Second. All right. All those in favor by roll call. Chairman Baird-Yes Irene Yes. Jason Yes. Public comment is closed

Irene Dwyer- I'm having a hard time seeing how we can do a variance on this is doing something that's prohibited in the zone. And then after allowing something that's already prohibited we're being asked for what I consider a sizable waiver of the parking requirements, and this is you can see from a plot plan this is tight. Adding another two cars the other two cars are going to be on the street There is no way that you can. I don't know if the rest of you have gone out and took pictures. If that driveway and garage take two ordinary sized cars I guess see it says nine foot and there's supposed to be a little bit more than that. Especially there's nowhere to go either side of the driveway there's a 18 inch or so curb. Now you can take those out and give yourself a little more room. But that's for the four cars that already you know for these units. I can't see any hardship for the property except for the fact that it's small and that's not in our value work. I also wonder whether just we said this to somebody else looking for a third unit a couple of you know last month or a month before and that was you can use that space on the top floor to me make that second floor says floor to unit a three-bedroom two bath without asking us for anything, basically. Um, I'm open to persuasion, but I'm having a really hard time.

Jason Wright- what's the what's the square footage? So I'm just trying to look at the plan of the top unit.

Andrew Jones, roughly 600 square feet 608

Jason Wright-and the application states to Irene's point, regarding the hardship it's the states the lot itself is shaped is irregular. I mean, what's irregular about the lot? It looks like a rectangle to me.

Jim Cipoletta, it is a right. rectangle, It actually does have the hardship that we can actually address by removing and relocating currently open up those parking spaces back in the rear corner of pleasant street and cottage Park. So, in order, you can't get to that parking, unless we do any work through those modifications, and we do a lot of engagement or try to talk well, but that would then still leave us. Quite inefficient. You're right, it is small.

Irene Dwyer- that's one way traffic on that street already. So you can only Park headed as on this plan, you'd be going essentially North to the northeast. But you can't park or by the building where it says cottage Park Road extension,

Jim Cipoletta, So if this were let's say the house quite a lot to the left of what showed on this plan, and there was a house on either side of it. We wouldn't, we able to provide the parking that we are proposing by removing and re locating a curb. T

Irene Dwyer- only if you have three units. I mean, I think the parking thing we get to after we get to whether we allow something that is presently conforming, to become non-conforming, for reasons that have nothing to do with the actual property that the project proposal is for. I mean, in the sense that the land the lot that it sits on.

Kelly O'Hara, My husband and I are sitting here in our garage right now on Pleasant Street. I apologize if this is unorthodox for us to be speaking. Never done one of these things before. No, we live here. Clearly we're living here. Now we just want to be able to have the third floor, we believe, and I believe Jim is believed was already being used as the legal unit. And we just wanted to be able to make it legal and go through the proper procedures. When we moved in, we discovered a lot of writings and like one of the walls, you know, so and so was here over the course of a year. So we believe it was being used as the legal unit, because it had the two rooms and the bathroom, we sincerely just want to be able to use it to where you can afford to live here. we anticipate family moving into the second floor. So that would be a studio rental space. And that's all we're happy to accommodate whatever parking concerns that you have, but we as a couple only have one car. So we're happy to address whatever concerns that you have or not talk at all.

Chairman Baird Thank you. That's that is good to know. It's helpful. So I actually I had two quick items here. When I look at the deck, I think this is there's an existing porch. But then there's, the deck needs to get built, obviously for egress to have legal egress down from the third second means of legal egress down from the third and also to create a better looks like a better amenity. I would say that the expansion of that deck is, from a nonconformity perspective would expand the side yard nonconformity. So, I think the denial letter missed a variance that's required. And that variance is required for relief of that extension of that side yard encroachment, Attorney Cipoletta. I think that's one, two, on the third floor, we'll have a clear height in excess of seven feet.

Kelly O'Hara I think the entire thing. I mean, it's, we were going to pitch the ceilings and or they're already one of us already pitched. And, I mean, there's more than enough ceiling height.

Chairman Baird- it's actually a question is to the reason I'm asking is and so under the gables of a roof. The question is, how much area under the gables of the roof would have a clear height of seven feet or above? You don't want the answer to be more than 50%. Okay, so I'm asking you to make sure it's not more than 50%. Because if it's 50%, then you have a three-story house, not a two and a half. So I guess that's a quote, that's a question for the architect from a calculation standpoint. What percentage of the building that's under that roof now will have a clear rate of seven feet when you're done?

Phoenix Architects So we haven't done the calculation. But just by looking at it right now, I think we're going to fall under 50%. If you want I can share screen again, just to give a better idea. As you guys can see right here, this is a six foot knee wall. So if we're at seven foot three is the minimum. As you can see in this part right here, less than half of it would be 50%. Going over to the front once again, we got a 60 inch knee wall here. So once again, the upfront would be 60 would be less than 50% as well. Just looking at it right here. I can in the background if you want I can pull up the CAD and as you guys kind of continue talking. I can get you the exact percentage on it.

Chairman Baird Yeah, I would if you could. I'd like the exact percentage just because if we needed to add a piece of relief, I don't want to miss it. Materials for the decking will be? I mean, it wouldn't be better if it was a composite or so it was a little more sightly than pressure treated.

Kelli O'Hara I know I, I did a project in Wakefield. And it was pressure treated, and also some of the Aztec lumber as well. And it was gorgeous. It was written up actually in the Boston Globe. So and we did two story decks, and, we're happy to accommodate, whatever, what you guys would prefer, but, you know, it's, we're, you know, again, this is my first,

Chairman Baird I mean, you don't, you don't want to look at pressure treated if you can shield it. I mean, we're not saying there can't be any pressure treated in the construction, because obviously you want pressure treated, but it's more of a visual aesthetic look. So we'd prefer not to have it visible This is one where the I think we probably already have in correct me if I'm wrong, Attorney Cipoletta, given the size of the lot. We probably already have a preexisting nonconformity on that site as a two family anyway. So this would be expanding a nonconformity from a two to a three, we have to do it by variance, not by special permit. But yeah, we would be increasing the nonconformity by adding another unit. So that's, you know, it does not it is non-conforming in that respect already, with regard to the number of units just based on the purely the square footage is a lot.

Phoenix Architects I, I'm good here. So the total square footage is 1200. And there would only be 470 square feet at the 7 3 mark.

Chairman Barid So just from the standpoint of the relief that would be needed, if the board was inclined to act favorably, or at least offer a motion, the first would be a variance for use to allow three family use in the RA zone, under Section 17.12.130 and 17 point 52.030. The second would be a variance from section 17. 20.060, the table of required off

street parking, to allow for a three family to only have four off street parking spaces, which is a variance of the required of two, bringing you down from six to four. And the third is a variance from the required side yard setback, which I believe is 10 feet in the ra, it would be bringing continuing that three and a half foot setback, 3.6 feet, that setback to continue for the sort of westerly face of the building to include the deck at the first second and third floor. So that would be a variance with regard to the side yard continuance vertically and horizontally of 6.4 feet. So those would be the three variances. So I mean, if there are no further questions, I will take whatever motion the board wants to make, unless they have further things.

Irene Dwyer, I'm going to have to make a motion that we deny the request. if we just told him polling these things we're being asked to do something for a forbidden use. And that and not forbidden but prohibited, that makes something it's already non-conforming, more non-conforming. And then because we've done that we have to add, we have to grant another sizable variance for parking. That would be actually like a 30% increase in the variance on the part of parking. And then, you know, things for the decks in the back end, I'm sure somebody did live up there, they wouldn't have put a bath up, but they didn't. It wasn't rented out as a living space, because there's no kitchen. Believe me, you can find you know, Kilroy Was Here on the walls of a lot of attics. It's too much work. Like I said, you could just incorporate it in the second-floor unit. And you'd have, you know, you wouldn't have to ask us for anything, and you'd be using what's already there. Um, so anyway, my motion is to deny that relief requested.

Chairman Baird Okay. Do I have a second on the motion?

Jason Wright, Second, that motion.

Chairman Baird those in favor of denying the variance by roll call? Chairman Baird? No. Let's get to it.. And I voted in the negative. So if you want to vote? If you want to vote no, then you have to vote in the affirmative. I mean, if you want to vote against granting the variance, you have to go in the affirmative. So we're doing it a little bit backwards. So I voted no.

Jason Wright- Is there any appetite to make this an enlarged apartment? And would that change the relief that we're being asked for? And I apologize for the late question, because I do recall on another property that we try to provision to it that a family member, whatever removed would be allowed to, to occupy the unit, but it won't be a separate dwelling unit per se that will be rented out on its own.

Attorney Cipoletta So I think what Mr. Wright was referring to, I think that was in two occasions, I think there was one I Grovers and one on Highland. Where it was conditioned in the chairman, dug back into the ancestral archives of someplace to come up with numbers of relatives, so many degrees removed. It was brilliant as I should rephrase that. He made me do so. Yeah, I would have to defer to Kelly on that.

Jason Wright Well, I asked that. And I apologize again, for us being late but I thought I heard her say that was going to be in a relative

Kelli O'Hara, We love Winthrop, like you don't understand, like all these developers are coming in here and their condo in your community. We literally love this community. And we want to live here and raise our children here. But the problem is, is we cannot afford to be here, not because it just because of the taxes and also the price of just trying to buy any sort of dwelling near but also the water bills is you know, every single month, so we have to rent the second floor up to family. And the third floor would be a rental unit. It is already being used as any legal unit. I understand Irene what you're saying is like that's crazy if there's no kitchen. Well, it was. So we're trying to do the right thing and go to go through the city. We hired an architect of the city is used. We sought counsel from attorney simple letter to say what should we do? So we're trying to go about things the right way. We're not trying to be shady and do an Airbnb or have a problem down the road. So we're willing to rebuild the decks. We are willing to curb cut whatever have again, we told you we have one car, the Times have changed. Times have changed. People aren't using two to three cars a family. We're literally on a bus line. So we're just saying please give us this variance allow us to succeed like to proceed. We will work with you. We will work with the building department. We already have been we're trying to do things the right way and not be like many people in your town which is lovely and do things the wrong way. I'm a local gal. I get it, but we're just trying to make sure that we're okay financially as well. So we don't have to sell because guess what was Am developer with more money with buyer home with a sudden address and then they come in condo we're not going to condo this, we don't want to put that as a stamp on our permit, or deed to our home. We just want to be able to afford to live here and have our children here. And as you saw no one in the neighborhood is objective because we're very authentic. And we're very real. And we went around to every one of the neighborhoods. I read I met you briefly earlier, I told you how much we can, you know, we're wondering how we can afford to even do the lighting work on the exterior. we bought this home in September. And we've struggled to do the work because of the cost of, of lumber and materials and everything with a pandemic. And we are just coming to you and saying please help us guide us. We'll do things the right way. But we want to be able to get this so we can make

sure that our lives financially are okay. And we can afford to live in a wonderful community where we want to have our children.

Irene Dwyer, I'm very sympathetic to the idea and I'm even sympathetic to the idea of allowing units that have been illegal units be legalized.

Chairman Baird, but are we going to allow a third unit to either whether we're legalizing one that existed historically and was illegal or not? there's no external changes being made to the house except for safety egress. There is no neighbors here objecting to it. And there is an instance where there will be adequate off-street parking and room to have adequate off street parking. Normally, I would say, you know what, I don't I don't like three. I don't like three families. I'm inclined to grant this because I do think you'll you won't know this is a three family when you look at it, right? Unless you're driving down cottage Park Road extension, and you see the third deck, right? There's no neighbors here. They've all gotten notice of it. the relatively small nature of this lot and it being on a corner does make it a little bit different than the lots that are otherwise around it. And that maybe from a soil shape and typography standpoint, maybe that's a reach. But again, if you're going to balance the equities here, then I think that in that in this instance, to me, if you have a corner lot, and it's undersized, and it's already, non-conforming as a two, maybe even as a one, then no matter what there, what's there is non performing. I think that's, it's not totally unusual for Winthrop, but you know, that corner lock condition, I'm sensitive to it, I live in it, I have a corner lot I'm inclined to grant this now that's me. Other people aren't, that's okay, too. But I think we should just, you know, I, I don't want to be so draconian every time we look at this, that we say three families No way, because there are instances where it's appropriate. So that's me.

Irene Dwyer Okay, I would like to withdraw my motion. As long as long as I get a sufficient explanation, and I certainly have just received it from our chairman, who knows a lot better about these things than I Well, certainly a lot better at this than I am. I, I guess that I'm sympathetic to the idea of this. It's the idea that you're not making the thing into McMansion is telling for me. So I will withdraw my motion since it hasn't been seconded or voted on yet.

Chairman Baird But can I just interject one thing here, I think we can. I think it's within our power, when we grant a variance to condition, we can add a condition like, you know, no visible pressure treated, or we could add a condition that this cannot be submitted to a condominium regime unless they come back to the board and get approval. We can condition that. And we can add that condition.

Jason Wright Okay, case number 17 of 2021 207 Pleasant Street . I'd like to make a motion to grant relief to allow for a three family and an RA district. So it's section 1712 130. I would also like to grant relief for parking pursuant to 720 060 to allow for park for parking spaces instead of the six. I'd also like to grant relief for the side yard setback to allow for the deck. I believe those 6.4 feet. granting said relief will not be detrimental finding that granting steadily will not be detrimental to the community due in large part to the no exterior changes taking place to the footprint as well as the small nature of the of the third dwelling unit said zoning relief is conditional on said units not being sold as condominiums. If the applicant wishes to do so, we ask that they return to the board.

Chairman Baird so we have a motion, I would actually make a motion to amend the motion. to state the variances granted are pursuant to Mass General laws chapter 40, a section 10. And that, given the findings, Mr. Wright mentioned, due to primarily the shape of the lot of being a corner lot and being undersized for any residential dwelling due to the shape soil topography of the lot, that a literal enforcement of the use and other dimensional limitations and off street parking requirements of the ordinance that we're granting relief from, would create a substantial hardship for the applicant, and that substantial hardship outweighs any public safety, health or welfare concerns that may arise as a result of granting the variances and also conditioned no visible pressure treated and lumber and a condition that obviously there'll be no condo conversion permitted without coming back to the Board of Appeals for an amendment to this decision. So with that amendment. I'll take a second on that amendment if someone's inclined to second.

Irene Dwyer Second.

Chairman Baird So seconded by Irene, on this on the amendment to the motion.

By roll call. Chairman Baird? Yes. Irene? Yes. Jason? Yes. So as amended. Jason has a motion as amended. Do I have a second? Irene? Second. All right. All those in favor on the motion to grant the relief requested. By roll call? Yes. Chairman Baird Yes., Irene yes, Jason. Yes.

Good. So we have granted the request for variances. We will issue a decision or Attorney Cipoletta will submit a decision. We will review it. We may have changes to it, but we will issue it. Once it is issued and signed by the chair. It will be filed with the town office, once filed with the town clerk there is a 20 day appeal period. Assuming nobody appeals it you have to record that variance a certified copy of that variance saying there were no appeals with the Suffolk registry of deeds and then you can pull a building permit.

case number 16 of 2021 23B Almont Street. Richard and Michelle Harkins. Sitting on this is Chairman Baird. Irene Dwyer and Jason Wright.

Attorney Cipoletta to address the Board- Good evening, Mr. Chairman, members of the Board of Appeals of deja vu. This is a reapplication from Mr. And Mrs. Harkins, which had been withdrawn after discussion of a couple of months ago. With respect to the placement of a swimming pool that Mr. & Mrs. Harkins would like to install. It is an aboveground swimming pool with dimensions of 12 feet by 17. Required setback mandated by the zoning ordinance is 10 feet from the side yard boundary and 10 feet from the structure. The proposed installation will set the pool of five feet from the permanent structure and five feet from the side yard. The provision governing swimming pools which requires a special permit for private swimming pool says in pertinent part that the Board of Appeals may a special permit allow location of a pool within the above required yard setback to within one half of the required distance, if it finds that the literal enforcement of the required setback would involve with practical difficulty or unnecessary hardship, and that the granting of relief will not result in a detriment to public safety, health or welfare. As is already part of ensure the collective knowledge of the Board of Appeals. The structure involved in the question of variance is our zoning structure. The side yard is able to be reduced by 50%. If, under the standards of a special permit, the swimming pool is not one of those buyers at Costco swimming pool, it's not something they bought on Amazon. It's wide from a reputable professional food company and will be installed. Professionally, it's been engineered. We've been sending engineering reports, installation reports, specification sheets, and so forth to the Board of Appeals. I don't want to anticipate issues that may or may not arise and try to argue against them at this point. But we'll reserve some time at the leave of the chair, to do that if it's required that we respond to some concerns. There is a letter from we have an engineering report, which is a matter of record that's been filed to be a permanent part of these proceedings. And we also have the report. And I think we have the cooling scholar on those zoom call is well, who can explain in a little more technical sense, to the court of appeals follow the safeguards the way that it's, it's going to be installed the manner in means of construction, and so forth, which would be part of my presentation, and I would argue, would be pertinent to the findings that the board makes was made under the under the special permit standard. Therefore, I see Mr. Rivera, there will ask permission, and we live with him to address the board to give more technical portion of the presentation.

Giovanni Fidera from Fidera engineering, I went to go inspect the site in the area of interest, the slope, obviously was there. But I ran my calculations, I didn't see any issues with adding a pool there and having the added loading, even with the conditions as it is right now. But my recommendation was to add geo grid, and which is pretty much just, you know, a filter fabric that you lay over the slope and you stabilize it into the ground, and it helps slope stabilization. So it's kind of an added feature that will help the stability of the slope in the area in the pool. So I don't see any problem with having that pool there from an engineering perspective.

Attorney Cipoletta, I would expect that it would that the evidence would be about the finding that the special permit conditions would be met. And that granting a review would not result in a detriment to public safety. Which I believe were the concerns. Hearing number one a couple of times.

Chairman Baird to open it up to questions and comments from members of the public on case number 16 of 2021 23B Almont Street

Anthony Ferullo, 28 Almont Street. I've been Richie's neighbor for two and a half years now. I've been in his yard 20 to 25 times. And I would just like to state. I think it's absolutely safe. All the neighborhood kids have played in there. And I see absolutely no reason not to let Ritchie go forth and build this pool. Thank you. I'm in full support. Thank you.

Stephanie Honan. I live at 12 Pico Avenue in Winthrop. I am the treasurer of Winthrop improvement and Historical Association and have been for 10 years. We are directed butters to this property. And while we certainly don't wish any neighbor to have less than what they want, we have some real concerns. We have a 400 year old house, and we have 100 year old barn that would directly be impacted if the swimming pool should fail. We have had to cancel as an organization, all of our all of our events this year because of the pandemic, revenue is going to be thin, but we're okay. We're a small but mighty organization of about 250 members, mostly from winter, but some as far away as Florida and California. I don't I can't speak to the topography of the area. There are experts who will do that for you. But I will tell you, the dean Winthrop house is on the National Park Service, National Register of Historic Places, a window treasure, I recognize national treasure. And we have important artifacts in our barn in our home, damaged from a preventable flood would be catastrophic to us, and devastating financially, I humbly ask that you deny this variance request. Thank you. Thank you.

Christine Riley. I live at five Floyd street in Winthrop. I am a member of the winter improvement and Historical Association and a member of the board of directors, I oppose the granting of this permit. Um, I don't think it meets the conditions of the process, it is a very clear process laid out about the Board of Appeals may buy a special permit allow the location of a pool, I'm not going to read the whole thing. But basically, it says they may allow a variance on a pool. But it has to meet two conditions. And the two conditions are that there would be practical difficulty or unnecessary hardship. And that granting the relief would not be detrimental to the neighbors in the neighborhood. So I don't think that in everything I have read in the write up on this case, that it shows that there would be any difficulty or unnecessary hardship. And I think that there would be potential harm to the neighborhood by granting this relief. I mean, the owner of the property has cut down a number of trees that the without the support that root system, the sloping yard of that property could be subject to erosion. And I think that's a factor. Thank you.

Barbara Harrison, 6 Kennedy road unit one Winthrop. I have had the pleasure of being a member of the Winthrop improvement Historical Association. Since about 1993. My entire family went in we were hands on and participated in things and from a historical place and the knowledge you know of information, learned a lot. So then what happens? I serve for six years on the board of directors and new growth new information constantly changing. So then I decided to live in the property officially title is caretaker and it's my kid figure for house. It's cut caretakers for all structures, grounds, driveway, plants. sayings, trees, and all catastrophes that can come up. I would say that I know the splinters of that house very well. And I would not want to see it harm. It is a treasure is a treasure that we need to look at. Now as I'm looking at, I'm seeing children, beautiful, beautiful children. And I think that they would really, really enjoy a swimming pool. But what I don't get a swimming pool is one thing, and that is great. Um, and then I think in a technical sense, Mr. Chairman, Mr. Cipoletta, it would go to the engineer. Does the pool need to be so close to the house? Why can you not do a 10 foot setback, according to multiple documentation that I have read pools under 10 feet, two homes, create problems. One is gutters. And it went on because you're in a pool and you're splashing pools to stay clean, have chemicals in them. And that ruins the exterior and the gutters of the home. So I don't get this, I get a pool. I just don't get the setback. And I do understand your treasures just as much as 40 Shirley street is my treasure. But I am in opposition to the special permit as proposed. My confusion is I don't understand your hardship. What is your hardship that you need variance from the code? It's not like we've just made these codes up. Councilor Ruggiero has just re done all of the rules and ordinances. So this is not an antiquated rule. It's here for a reason. Just like your prior case, those ordinances were there for a reason. And so I don't understand from the document that I thought that Mr. Cipoletta letter put to the Meeting Minutes 6-10-2021

town clerk's office state stamp dated May 4 2021, add to 2:37pm I the hardship in the application, to me doesn't seem a hardship. And I apologize on this because you need to know a definition of a hardship. And in 2013, I became a below the knee amputee. I can't wear a prosthetic. I am in a wheelchair. I face hardships every day. And there are things that you can work around and work over. So I'm just politely asking, Can you make a smaller pool? The building inspector denied your permit because of the setbacks. He's based that on the ordinance code. I had to search what a site plan was and needed to be certified and there is no stamp certification on the site plan. Is this site plan valuable? is it accurate? So is this really where the pool is in the yard? Can it be moved down? further? Does the property go all the way we hear that the engineer says that the slope is not a problem so you have room to move it down? Barbara Harrison, oppose a pool at 23 b Almont Street.

Michael Herbert, president of the winter improvement in Historical Association, located at 40 Shirley Street. I want to thank you for your time listening to our honest concerns. I love our tiny little town of 1.6 square miles and eight miles of coastline. I had the best childhood ever. Anyone could ever imagine growing up here. My mother took us to the beach all summer long. We are all very lucky to call winter our home. We all have to cohabitate and get along in these tight quarters. What's happening here is they're trying to put a square peg in a round hole. And it doesn't fit according to the town law. And that's why we're here tonight, following Robert's Rules of Order. And I hope I don't see any unfair advantages being given to opposing counsel. We are asking for the provision in the ordinance to be enforced. We see no hardship, or safety issues. They have other options. That land is not valuable. We do however, have concerns of safety as our engineer has submitted to you. All that land is filled land, the bottom of the hill and it's already been altered. Changing the grade right now it's the water's running right on to the land. Near the shed. I know this process works when my sister was seeking a side yard setback and five feet from my oldest sister who live right next door, wrote a letter that she was in favor of the setback of five feet. My youngest sister was denied and had a stick with a 10 foot setback. There was no hardship there. She just wanted more. Now they're living happily with the laws that we are governed by. Again, I don't see what the town ordinance would cause any unnecessary or unusual physical hardship. The boundary line that was set up in 1874 has some gray areas where the two properties meet, and they were separated in 1985. We've hired an adverse possession attorney and got some great coaching from federal government agencies that protect historical sites and have a global reporter following our story Zba should be aware that this potential future outcome of the watershed could possibly have an effect on the decision. As winter improvement, and Historical Association houses invaluable, irreplaceable records of Winthrop history, we ask

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that you deny the appeals request and enforce the provision of ordinance. So written and established for the community of Winthrop.

Brian Bartoli. 25B Almont. Street. I just wanted to speak on behalf of my neighbors Rich and Michelle. You know, we've been neighbors for quite some time now. I have two children as well. And Rich has been an absolute welcome addition to our neighborhood. I've lived here for almost 35 years now. I just wanted to say that, you know, we are happy that the kids would enjoy a pool, the pool should go in there. This is a wonderful neighborhood with wonderful neighbors and I completely 100% agree with the installation of the pool and have no issues whatsoever. Thank you.

Larry Hayes. My address is 40 Harrison Ave Woburn, Massachusetts. I'm a civil engineer and I was asked by the Winthrop house to come out and do a site visit on the property. It has been stated by Michael earlier, the applicant is clear cut the whole rear of that property and started regrading which is filled in an existing drainage system along the back of all those properties along Almont Street. Currently, it's draining all stormwater runoff from that site directly on to the property of the Winthrop house. I've got a number of issues with this submittal as it's been put in the sketch plan and they put together show the proposed 12 by 17 foot above ground pool with dimensions to property lines, that was not prepared by the engineer or the surveyor record. I mean, that was that is not done on his. On his plan there was sketched on there I imagined by the homeowner, or someone else. And it doesn't accurately depict the actual dimensions of that pool. That's 17 foot length is an inside dimension that's not the outside dimension of that pool. And it's clearly shown on the pool company's correspondence that's been included in the packet. In my opinion, this site plan is completely incomplete. I mean, it's really not even a site plan. They had a survey done. Someone shows the sketch of a pool, which is an accurate dimensions. There's no grades, there's no indication as to how far that pool will be from the top of that existing slope. They have no indications of existing grades or proposed grades, how much Phil is going to be brought into that yard? What is going to be the final conditions of that. And just stating that you got to put Geotech fabric on the back of the slope, in my opinion, it's completely inappropriate. I mean, there has to be a plan, not just put something on the slope and hope it stays. So, in my opinion, this this, this, to go forward would need substantially more detail. It needs a real site plan, with grades with measurements that are put on the plan by the professional of record. And that's, that's about all I have to say for now. I mean, they they've got a little more work to do before they go forward. Thank you, Mr. Hayes. Thank you.

Steven Wojcik I live at 87. Washington half. I am not an A butter. But when I heard what was going on here, I have a comment. These people want to put a pool in for their family. All these people are calling in and saying that it shouldn't happen. If this was your grandchildren, or your children. I bet you wouldn't have that to say for all of you people who keep talking about the dean Winthrop house, this is a mess. You've had brick and fence on your property for 18 months and you haven't done anything but that. So I'm all in favor for this family getting to pool. Thank you. Thank you.

My name is Sean Donahue. I'm an attorney. I represent the Winthrop improvement and Historical Association. My address is 21 Pauline street here in Winthrop. My apologies. With the confusion about accessing this hearing. But nonetheless, I have several points I'd like to make. First is, I guess, more of a procedural matter. And that is I've been sitting here watching this meeting now for probably at least a half hour. And interestingly, Attorney Cipoletta, the applicant and Giovanni Fedora are all present physically on the screen. Yet, despite having one to at least four or five officers from the Winthrop improvement and Historical Association calling it in and in speaking, none of their faces are shown on the screen. And I think that's inherently unfair. It may sound somewhat trivial, but putting a face to a voice, I believe creates more credibility than just having a voice alone a faceless voice. So I'd ask in all fairness, that when anyone speaks, either in favor of or opposing the project that they be also shown on the screen. And that also sort of ties into the fact that I don't understand I've watched several meetings and have participated in several meetings over the past several months. And I note that the way the board conducts its meeting I also believe is inherently unfair in that it hears from the applicant, then opens public comment to hear from both proponents and opponents, and then goes back to the applicant basically to allow the applicant to either trivialize or dismiss any objections that may have been raised in connection with the application. Understand that the abutters, especially direct abutters have a vested interest in the outcome of a proceeding. Here the Winthrop improvement and Historical Association has a vested outcome or interest in the outcome of this proceeding. Everyone ought to be given the same opportunity to be heard regardless of whether they're at the applicant APR proponent or an opponent. And if some people's faces are going to appear on the screen, I say then let everyone's face appear on the screen. It was my understanding that in conducting a hearing, the applicant is heard from and then the board hears from proponents and opponents during the public comment period. And then members of the board have then given the opportunity to ask questions, not to go back to the applicant to dismiss the trivialize any objections that have been raised by the opponents. On our substantive note, I have submitted a written opposition in titled, opposition to application for special permit by Winthrop improvement and Historical Association, owners of the

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dean with oppose. The opposition of essentially consists of, you know, claims, if you will, there are seven that I've listed in the opposition. And then there's also a memorandum in support of the opposition to the application for special permit. Which I included several arguments. I just wanted to make sure if you could acknowledge after I speak at some point in time, whether or not you've received each of you individually, members of the board whether you've received the opposition to the application for special permit that I prepared on behalf of my clients, the Winthrop improvement in Historical Association. The proposal here, really, in my opinion, includes or requires both a special permit pursuant to chapter 17.3 6.040 of the Winthrop town code and a variance pursuant to Massachusetts General laws chapter 40. A section 10. Reading chapter 17.36.040, namely a location of a pool. I can see that the board has the authority by special permit to allow the location of a pool within the required yard setback area to within one half the required distance so long as the board makes requisite findings. yard setback areas include front yard side yard in rare yard exclusively. yard setback areas, which coincidentally are specifically defined in chapter 17.0 4.050 of the ones of town code do not involve distances between two inanimate objects such as a wall of a pool in a building. According to chapter 17, points three 6.040 no and I quote no wall of a swimming pool to be constructed under this chapter shall be located less than 10 feet from any permanent structure. In this case, the permanent structure being 23 Almont Street. There's no language in chapter 17.3 6.0040 that confers authority on this board to allow the location of a pool within 10 feet from any permanent structure. The issue of distance between a wall of a swimming pool and a permanent structure has nothing to do with the yard setback area. Thus, no wall of a swimming pool to be constructed under this chapter shall be located less than 10 feet from any permanent structure means just that. This board is without authority to reduce the required distance between a wall of the swimming pool and a permanent structure. Absent any formal request for variance, including but not necessarily limited to the filing of an appropriate application, the payment of associated fees both for filing and publication of a legal notice. And of course compliance with all notice provisions as required pursuant to Mass General laws. Chapter 40 a section 11. Secondly, according to the Board of Appeals instructions, which are posted on the board's internet webpage, and original application filed with the board requires a registered land surveyor or civil engineer to certify the plan under consideration by the board according to the instructions in their initial floated in the opposition that I submitted to the board. on page three of the memo, actually, they're attached, the actual instructions are attached as exhibit one at the end of the memo. according to the instructions, the original application must include the following. And it goes on. It names a litany of different things. But the last sentence of that is that uncertified plot plan, a registered land surveyor or civil engineer must certify the

plan. In this case, we have a plan, as Mr. Hayes had stated, which is, I guess, better characterized as a sketch plan, without any name on it. Yet in the application in the applicants application in Section five, when they ask about such a plan, it says See plan attached by Alex Criuoli but yet, Alex's name doesn't appear at all on the plan that's been submitted to the board, notwithstanding the fact that there's no stamp on it either by Alex, or by a registered land surveyor, or civil engineer. Now, you heard from Larry Hayes, who's a professional engineer of Hayes and associates of Woburn, Massachusetts, who's speaking on behalf of Winthrop Improvement and Historical Association. He mentions in his letter, which is marked as exhibit number two at the end of the written opposition that I submitted today, he writes that the application should contain a site plan that adequately addresses the concerns of adjacent property owners that will be impacted by the construction of the proposed pool. He also states in his letter, that I do not believe that the sketch plans submitted by the applicant for this application for special permit accurately depicts the actual setback dimensions to the proposed pool. Larry Hayes is a professional engineer. He has qualifications. And I'd ask that you give the weight to the information he's providing, because the information that he's providing in my opinion, is based on education, training, qualifications and knowledge of Mr. Hayes, who's highly qualified. He also writes the plan should consist of a full topographic survey that contains spot great elevations of the property that clearly indicates both the existing and proposed grades. This plan should also indicate the actual dimension, and location of the proposed pool to the top of the existing slope and property lines. The proposed finish grades propose slope stabilization method proposed slope stabilization methods, construction details in any proposed patio, walkway, or other impervious surface details should all be indicated, none of which have been presented to this board. According to Giovanni Ferdero, he states or agrees I guess that something needs to be done at the rear of the Harkins property to stabilize the steep slope and bank behind the proposed pool. His recommendation is simply to throw down some geo grid to help stabilize the slope. I would suggest that the risks to the weather improvement and historical associations property, ie the Dean winter posts, which is situated below the elevated yard of the Harkins is presents a tremendous risk. Thirdly, Harkins fails to demonstrate compliance with many of the provisions of chapter 17.36 swimming pools of the town code, swimming pools of the town code. Amongst other requirements, the chapter 17.36 requires the approval of all town authorities having jurisdiction over swimming pools. Those should be obtained before applying to the building inspector for permit. copies of these approvals shall be filed as part of the supporting data for the application for this permit. And then a quote from chapter 17.3 6.030 permits and plants. Yet despite this requirement, Harkins is application is complete completely devoid of any such a approvals. Also plans shall

actually show accurately show dimensions and constructions of the pool in APA 200 says improperly established distances to lot lines or buildings, walks and fences, details of the water supply system drainage and water disposal systems and all apartments is pertaining to the swimming pool. detailed plans of structures vertical elevations and sections through the pool showing depth shall be included. Yet despite this requirement, Harkins application includes a sketch plan, we're in the dimensions of the proposed swimming pool are questionable at best, without any details of the water supply system drainage or water disposal systems and without any vertical elevations. Furthermore, the requirements also include the swimming pool and equipment shall be equipped to be completely emptied of water and discharge water shall be disposed of in an approved drain. That's according from sec chapter 17.3 6.060. subsection C. Title titled drainage systems. Yet despite this requirement, the Harkins' application is silent on the issue of drainage. The concern of the Winthrop improvement and Historical Association is this. We're talking about a plan a proposal of putting a pool on a small swatch of land which is unstable at best. There's a sloped embankment at the end of the yard, that no lateral support whatsoever. Putting a pool of this size with has is placing a tremendous weight on that land. Has anyone looked into whether or not it's capable of holding a pool of that size and magnitude? Interestingly, last time we met when we were last before the board back on March 25 of this year, when Michelle Harkins had an application before the board, asking for a variance to install the pool. During the hearing, before this board had the opportunity to take a vote, they withdrew their application and informed the board that they were going to do they were going to install the pool April, as a matter of right. I guess their plan was to reduce the size of the pool and put it in in as a matter of right. One month later, they refile. And they're now asking for a special permit and not a variance even though in my opinion, a variance is required. For the reasons I stated prior, I'd ask you to take the time to read the written opposition that I've submitted, including the exhibits that are attached most notably exhibit number two, which is a report by Larry Hayes of Hayes Associates. Mr. Hayes's is a professional engineer. Furthermore, I also submitted today 10 pages of a petition in opposition to the proposed installation of the pool. I guess, if you had obtained if you had received if each of the members have received a copy of this, as well. Just to point out that the copies that I scanned and forwarded to Miss Sicurella, the clerk of the board, I could only scan letter size documents when the fact of the matter is the petition itself is actually illegal size documents. So some of the signatures have been cut off. But nonetheless, I have delivered copies of the original petition to Ms. Sicurella at her place of employment earlier today. In all in total, we have approximately 150 signatures and I was all that I've submitted to the board and I was told that there are additional signatures that will fit that will also be submitted. But again,

this is a petition in opposition to the proposed installation of the Pool states that we the undersigned oppose the installation of a 12 foot by 17 foot aboveground swimming pool, in the rear yard of 23B Almont Street, we believe that it's such a pool presents significant risk of damage and injury to a property that lies directly adjacent to and downhill from the rear yard of 23B Almont Street, the property that lies directly adjacent to and downhill from the rear yard of 23B Almont is the Dean Winthrop House. The Dean Winthrop's House, it's been discussed here by many other speakers here tonight is a historic house at 40, Shirley Street and Winthrop. It is on the National Register the register of deeds, it's a place where events are held public visits. Having an event in the rear yard of the dean Winthrop House, with a pool with the volume of water that that pool will contain, if the land should fail, or four walls of the pool should fail. The potential for injury to people in the rear yard of the dean Winthrop house, is quite significant. It's easy, I guess, to fluff off those concerns. But those concerns are legitimate. And so I would ask briefly, if I could just share that my screen with you? I just want to show you five photographs.

That's the first photograph. This photograph here depicts the dean winter posts directly in the forefront of the photograph. This is looking north to Northwest. This is taken from the southeast side of the Dean Winthrop House property, looking north to Northwest, the house in the rear of the dean Winthrop House. The orange or brownish colored house, one of which has a white railing and pickets on the rib deck and the other having a brown colored railings around the deck that's 23 Almont Street to the right side is the property of the Harkins the unit with the white, red deck in the in on the left side is the 23 A Almont street which I believe is occupied by Mr. Mrs. Italia. We go on to photograph number two. In photograph number two, this is a photograph taken from Shirley Street, the roadway looking at this is taken from the southwest side of the property, looking north to northeast. As you can see the dean Winthrop house is located on the right side of the of the photograph. It has a framed yellow, yellowish colored work of art on the side of the house. And into the left of that use of that structure is the barn which has large orange or brown, orange or brownish colored doors 23 Almont Street, which is the Harkins properties located behind the barn from this particular elevation. Moving on to photograph number three. This is a partial view of the rear yard of the Dean Winthrop House. It's a side view of the barn, which you just saw in the preceding photograph. This photograph is taken from the right side of the rear yard of the dean Winthrop House. looking west to the left side of the property. If we're looking at the barn, as a matter of perspective, the front of the barn would be located to the left. This again is the right side of the barn if you're looking at it from surely street level seeing here in this photograph, the front of the barn would be around to the left and the surely street roadway would be out there as well. to the rear of that barn, you can see an addition that was put on back in

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2009. That addition houses historical valuable historical documents and artifacts. More in the forefront to the rear of the of the barn. If you move to the forefront of the photo you see a brownish colored shed. That's a storage shed belonging to the dean Winthrop House, the Harkins property is located behind the shed. You can see a portion of what appears to be a trampoline I believe that's what it is. Right behind the shed. Picture number four. looking straight ahead, you see the property rear yard of 23 b Almont street that's the Harkins yard. To the left of the photograph here with the staircase is that side of the barn that we had just looked at in the previous photograph. Looking at the at the bottom of the embankment you see a sloped embankment, looking at the Harkins side yard, you see a sloped embankment to the left of the Harkins more so behind the 23, a newer some perhaps behind 23B Almont Street, or trees that were recently removed from the area. There's a discussion in there in a Larry Hayes's letter about the trees, the removal of the trees and the impacts that that will have to the dean winter post property. Again, if you'll notice the sloped embankment at the rear of the Harkins his yard, there's absolutely no lateral support. You can see what appears to be quite a bit of debris in that slope, which Larry Hayes points out in his in his letter, he mentions that that the existence of the debris but I think Mr. Federer, in his letter stated that the land is all soil, but you can see there's a considerable amount of debris in there. I know that Frank Constantino and I spoke with a local contractor who actually filled in the area where there were four houses that were built on Elm Street 1985 and he informed us what they were doing is taking the fill from up at Fort Heath in dumping it on these Elmont street properties. And as you remember, Fort Heath was a developed parcel of land that was owned by the federal government. At the bottom of the embankment there was a swale that extended to the right of the Harkins his property down behind the houses that that uh, but the rare of the deme with a post that's well is no longer exists. Where the Harkins property is concerned. A swale is essentially a ditch that serves a very useful purpose. It's used to slow and control water runoff to prevent flooding, puddling and soil erosion. As here, the swale has long served this particular area by controlling water runoff from the Almont street properties that directly in what the rear yard of the deem what the posts from the time that those properties were developed in 1985 through the present, however, and as mentioned in the letter from Larry haze, the swale directly behind or on the Harkins, his property has been filled, and already graded in that the act of filling indoor regrading of the swale in that particular area will impact the property of the dean with their posts. To reiterate the goal of a swale is to slow and control water runoff to prevent flooding, puddling and soil erosion without it. One can only assume that the water runoff from the Harkins property will make its way onto the property of the dean Winthrop House. Furthermore, the creation of impervious surfaces such as walkways, patios, compacted

gravel solid decks and the light around the pool, and throughout the yard of 23 Almont Street is a huge concern to the Winthrop Improvement in Historical Association. Since the creation of imperfect impervious surfaces will likely result in greater impacts to the property of the deme. With their past impacts such as increased flooding, puddling and soil erosion. Without any lateral support on the sloped embankment at the rear of 23 Almont street, the chances of experience experiencing significant soil erosion on that embankment is likely. So it seemed that a full pool that is a pool completely full of water would be considered impervious. The issue here is determining how much stormwater runoff the lot will experience and If adequate steps have been made to infiltrate X percent, whatever that percentage might be on site and allow X percent whatever percentage that might be to flow into the property of the dean Winthrop House. A full pool will not hold any additional water. Well, maybe a small bit, but let's not quibble about those details right now. And so that rain will have to go somewhere. I would imagine during rain and offseason, there is a cover on the pool and that would also make the pool surface equivalent to something like a deck, patio, or other hard non permeable surface. So if you're looking at photograph number five this is the last photograph I want to show. If you see behind the tree on the right hand side of the tree trunk, you see a trampoline that situated at the bottom of the embankment. And then at the top of the embankment you see a postage stamp area where the Harkins want to install a 12 by 17 foot above ground pool. I urge this board strongly urge and encourage this board to deny the Request for Application in this particular matter.

So I'm Rebecca Atia. I'm here with my husband Benjamin. We live at 23 A, which was the other half of that house shown in those wonderful pictures. And we just wanted to call in and say that we support the Harkins his efforts to get their pool their lovely neighbors. And we have no issue with the plans as very direct abutters Yeah, we are directed butters. In fact, joint property owners and we have no issue.

Hi, I am neighbors of the Harkins Stephanie Ferullo I live at 28 Almont with my husband Anthony who spoke earlier. I'm not to be argumentative, but I don't understand what putting a pool in their yard will really do to affect anybody else's life. Yes, it's a historical place behind them. But in the almost three years I've lived here, I've never seen it active. Some of my greatest memories as a kid was the summertime at my pool. So I'm in 100% support of them getting it. I think it's memories to be made with their kids. It's not going to harm anybody. It's not going to harm the neighborhood; anybody you know their

property. If you guys can come up with a happy medium meet a balance somewhere. I'm 100% and supportive of them getting it. Thank you.

Royce Stubbs I am the current occupant at 27B Almont Street. I'd like to say that I fully support the installation of a pool on their property. It will not be an issue for myself or anybody else on the street. I think that it will do them very well. I think that the folks who are doing the pool installation are more than capable of determining whether the earth can support the weight of a pool. And I believe that the comparison of the size of their plot to a postage stamp is a bit of a mischaracterization. I believe that the land is more than capable of fitting the pool that they are planning. Thank you for time.

Toni Titemore- 632 Pleasant Street, I also wanted to call in in support of the Harkins pool. As many have said before, I don't see any issues. If a pool company said that they could put a pool in I would hope that a brand-new pool structure would be sturdy enough to hold the water they're putting in it. Another quick fact is when water runs into a wall, it usually looks for the open space. I don't believe that will cause any damage to the barn or the artifacts that are in that building. I also believe that the Harkins will do their best to make that property look perfect to enjoy their pool in and that would be an asset to the Dean Winthrop House considering what the backyard looks like right now.

Lauren Mazzuchelli 132 Winthrop Shore Drive. That's kind of sad that I'm on the opposite side of so many people I know. But I am a member of the Winthrop improvement and Historical Association. And a lot of my points have already been made. We are a group of volunteers who work really hard to make sure that this property in this house and these artifacts remain and remain for future generations. And we believe this pool poses an unnecessary risk. It's seriously you have a lot of people working really hard to make sure we have stuff preserved for my children for future generations. And just putting a several tons of water on top of it is really not helpful. That's all. Thank you.

Toni Titemore I just wanted to state that there is currently a pool to the right of the barn that hasn't posed any problem to the barn as it stands. And I don't see why this one to the left of the barn would cause any issues.

Stephen Staff 27 belcher street. So I just wanted to call in support of the Harkins. I'm actually astonished that they're getting such pushback on the fact that they they're raising their family and Winthrop, they'd like to put up an above ground pool. above ground pool, we're talking about the land actually staying pretty much the way it is. They'd like to enjoy their family here and they're just constantly getting this pushback from the historical community behind them. But at the same time, we actually put in a pool recently, it was an

inground pool. And I could understand if they want to dig up the land and do everything like that, because it was a big project that we did. And they've been over there, they've enjoyed it with their family and my family. But they are literally going to construct a pool, which can be taken down at any points, say, in five years, when their kids are all 10 years when the kids are all grown up. And it would be gone, they wouldn't even be a topic. And for you, for you to say that basically, there would be this big water situation. I've owned a pool for many years now. And it holds water, it doesn't actually leak water. So that's not really a good argument. So I'm just in support of the pool. And I appreciate your time.

Christine Riley. I live at 5 Floyd and I did speak earlier. But I want to go back to the points that I was making, because a lot of people are calling in and giving your opinions about supporting or not supporting the pool. But I want to go back to the facts. And the facts remain that the Board of Appeals needs to abide by the regulations. And the regulations state that in order to allow a permit in a case like this two conditions must be met. And they are that there is a practical difficulty or necessary hardship. And that granting the relief would not result in detriment to the public safety, health or welfare. By law, both of those conditions must be met. I have not seen anything or heard anything tonight that would support the requirement of practical difficulty or unnecessary hardship. Nothing has been said that would be supportive of that requirement. And the fact and the other requirement is that granting a relief would not result in a detriment to the public safety, health or welfare. And I think that allowing an above ground pool on a slope close to where many trees have been removed, which allows for more potential of erosion would indeed be a detriment to the public safety and health. So unless the board can show that both of those conditions are met, then they are not by law are allowed to grant such a permit.

Casey Brazell I reside at 40 Shirley Street and went through I too am a member of the Winthrop improvement and Historical Association and I've also been serving as the current caretaker for the dean Winthrop House and grounds for the past two and a half years. Pretty much all of what I wanted to express tonight has already been said. So in an effort to avoid being duplicative, I just want to state my opposition to the special permit for this swimming pool. And as I think you've heard here this evening, our safety concerns are valid. Thank you.

Third and final call for 23 b Almont Street. Going once going twice. Seeing no more hands. I'll take a motion to Close public comment.

Chairman Baird- I'm just going to condition this on one thing. I know that when we get into questions, I do have some questions relative to the site plan, I think we are going to,

at least I'm going to need to see a real site plan in order to move forward on this, that's me. So I'm going to take a motion to close public comments subject to if we do have another night of these proceedings, reopening it to address those updated documents if we need updated documents.

So with that, I'll take a motion to close public comment for the evening. So moved from Irene Dwyer, Do I have a second? Second, all those in favor of closing public comment for this evening's hearing by roll call. Chairman Baird. Yes, Irene. Yes. Jason? Yes. Okay, so public comment is closed. We appreciate all of the input from members of the public. With that, before we do get into questions of the board, we always, always and I think this is true of most hearing settings, give the applicant the ability to respond to comments that they may have heard, not do anything, but to make comments on what they've heard before we get into questions from the board. So with that, Attorney Cipoletta, anything you'd like to respond to that you heard during the comments, your questions?

Attorney Cipoletta, Yes, Mr. Chairman, and thank you for the opportunity, as is customary in these public hearings, decades, just on behalf of the like, some of the concerns and answer some of the questions, I'm not going to hit all of them. But I do want to emphasize a couple of them that I will start with the legal requirements. And the ordinance sets out a practical difficulty or unnecessary hardship. I think we have both. Given the slope in the topography of the land owned by the Harkins. It's a special permit standard. I don't have to tell the chair knows the board does it every day. But there is a practical difficulty in building this pool on a more sloping part of the land, as opposed to closer to his own. We can't lose sight of the fact that what he is requested is to move the pool close to his house and further away from the house. And I think that the distance between the pool where it is set on the plan, and the boundary line is about 26 feet. So it gets a little bit baffling, why there would be an argument that moving it closer to your house is detrimental to someone. But nonetheless, that's a finding of the board. Maybe there is ample evidence in the record for the deliberation on that issue. I don't believe I'm not going to speak for Mr. Fedara but I don't think the engineer said it's a crowd supply far from fine you can see it as a matter of fact, thank you for sharing the screen to allow the photographs to be shown because it does point out specially in photograph number five take a look at how far away the Harkins house is getting where the where the who would be no one wants to quit dealing with the Dean Winthrop House or any other neighboring residents in harm's way or in jeopardy pools exist all over town. I don't know whether or not there's a pool mishaps that have knocked out neighboring structures. I don't see any evidence I even wild speculation as we do a lot of a number of these hearings on both sides and that's just that's just human nature. What if What if, but we don't have an explanation or any

evidence for what Yeah, what if the wall of the pool let's go we don't know that it is going. But what if it does, like go where's the water going to go? It's going to go The same place that the water goes through a heavy rainstorm. And I think there may have been if it's missed, it's in the pipe, it may have been in the presentation by one or the other speakers. Obviously, we need to be effects. And there is going to be a fenced in backyard. It has to be fenced in by all sides. And it's indeed going to be fenced in the direction of the house. I do think that Mr. Federa attempted to speak at one point to answer directly a concern or question. And when I wrap up in a row in a second, I would ask me that Mr. Cordell I have the remaining portion of my time. I've never one thing I will say that looking at the plan, and I try to plan I think that was submitted. Originally, it looks like this happened in March. Last year, I believe the stamp is not there. But whether or not there was a question. Well, that's not a certified plan. Well, yeah, it is a certified plan. Both of the land in where the house owned by the Harkins and also with the Dean Winthrop house is situated where the pool is situated. Whether or not that's exactly shows five feet in a substitute or supplemental plan, I'm sure the voice when asked for that will be measured out in the distance will be entered on the plan. But nonetheless, I don't think it's any secret that the pool is the anticipated are supposed to be within five feet of the back deck of the Harkins house, whether or not that bullet deck shape oval is in scale with five different approval will be granted. If a application is made, whether it was five feet or 10th. Whether it's with relief or low relief, that will can still go there. And the building inspector is going to be required engineered plans and construction drawing and all this other kind of stuff, maybe not to the detail of an inground pool. But certainly he's going to make sure that the pool is next number would be from the dwelling. And I think it's just baffling to me how moving the pool closer to one's house, in a way from his neighbor's house is more detrimental than plopping it by closer Maybe it's just because it's tired.

Mr. Fedara-, I heard a lot of feedback about concerns about public safety and the suitability of the soils. Now, I went to inspect the site, the soils, they seemed like they were native soils, there were some stones and debris of brick in the mix, which I don't see as a concern at all. Usually stones and brick it actually it doesn't decrease the bearing capacity of soil. In fact, if anything increases the bearing capacity, if so, so I'm not concerned about that. If it's native soil, then it's according to online data. it you know, I used the calculations based off of the native soils. I am a registered professional engineer, I ran my calculations for the added weight and the slope stability worked out fine. It's the factor of safety is practical. And I'm not concerned about public safety for the soils, you know, especially adding the geo grid on the slope is it's totally okay 100% and I did also state in my letter that I do recommend having, you know, the pool area be flat, four inch gravel base compacted at 95%. That all is okay. This public safety is okay. So all the concerns that

everyone brought up about public safety coming from a professional engineer, you're okay. I ran the calculations, I certified it. So I'm not concerned about that at all. That's what I was hired for. And that's what my determination was. Thank you.

Irene Dwyer=I have a whole bunch of questions that just want to make sure I'm not getting a vision of where things are going to be that is incorrect. Going back to the opposition file by attorney Donahue, , it's actually the photo the photographs Okay. If you look at the photographs that are have been put up by the Harkins, the first thing you see is a plan of the street and the numbers. And the thing that is highlighted on this in yellow, says 23 Almont Street, two, and then and then if you get it and then next to it is 23 b Almont Street, and the other duplexes on that side of the street are numbered similarly.

Attorney Cipoletta That's the GIS map of the town. And I just outlined that those are my outlines just to show where that two years ago goals to show what we're about to go through unit building yes 23 eight that's okay, but there's somebody looking at it could identify it more easily

Irene Dwyer-Okay. Um, and I so that can somebody fill me in on all the cut down trees, when did that happen in is any part of what we should be looking at. And I wasn't sure that they I didn't understand that that that could be ascribed to 23 b because they are the same lot where we're going to be putting something here and make sure I'm not confused.

Mr. Harkin-the trees that were removed were recommended to be removed by an arborist that I had to check them out. Because every time there was a storm, something would fall onto my property. So it's my property back there. So, you know, at the advice of an arborist, I had them removed. So that's why the trees move on that then it's your question.

Irene Dwyer asked, Maybe the applicant can tell me how long ago the above ground pool on the adjacent property was built.

Mr. Harkins- Honestly, it's I would say probably five or six years ago, maybe you can probably check those records. I think it was like five years ago, and there is somewhat of retaining wall back there. But if you inspect it, I mean, the retaining walls is falling apart, it doesn't really serve its purpose anymore

Jason Wright- just to clarify, we're being asked for a special permit not to grant a variance correct? because I recall, obviously some back and forth onto what exactly is we should be granting what we're being asked to grant?

Attorney Cipoletta- So there's two parts to that answer. Neither one of them is that the ordinance requires a special permit. The building department denied the application saying that we require a variance. An appeal from both was made. And when Mr. And Mrs. Harkins made their initial appeal, It was for a variance only, and it was pointed out that needed a special permit. So we added it when I took the case of attorney Turco who facilities a new role at the statehouse, I began to represent the Harkins and I filed the subsequent special permit. But the denial is set out in the zoning review letter is on the basis of a variance.

Jason- but has the Barnett's cellar flooded during a hard rain? Or the shed? Shall we know?

Chairman Baird- I don't think we know that. And I don't want to I think we could maybe we could ask that question. I'm not sure that it's particularly relevant here. I just want to power water sheets from the property because you know, we can't open it to have that question answered by members of the public. So I think we should if it's if that's an important question to have answered, we should ask that to be answered before the next meeting. If we're going to have another meeting on this, I mean, I think from where I am, there's a couple of things that I see when I look at this that I just I in order to move forward with this. I would need to feel a lot more comfortable than I am right now. And one is I do think, and I and I know that we need to just get a full copy of the certified plot plan, I believe one has been submitted this evening to the Secretary, we just need to have to have time to review and inspect it. So and also to share it with members of the public, so they can do the same. I do think that you probably need both a special permit and a variance based on the current location, the variances for the setback from structures being less than 10 feet. And that would apply to both the deck, the back of the house, and the fence on the sideline between 23A & 23 B Because those are permanent structures. Right. So from that perspective, or at least a deck is a permanent structure. I think from that standpoint, you would need you would need debt, the only way we can grant relief to be within 10 feet is by variance think attorney Donahue memo is right in that regard. So I think I'd like to, I think the filing is on the filing form for I think it's an app, what we got was a an application for a special permit, I think I'd like to just have this be corrected to include a variant because it's hard to take a special permit request and ask for a variance based on a special permit request, I think we'd actually just need to have the filing amended to do that. So I'd ask that that be done if that's what they want to pursue here. And I think it's the way the language in the ordinance is written is not great. But I do think that the ability by special permit to change setbacks is only with regard to yard requirements. It's not with regard to structure. It's just that's the way it's written. And I don't see a real, a real good way or a clear way, at least in my mind, to get to a point

where you get comfortable saying the structure should be treated like a yard. So I think we would need to reform the filing in that regard. And then I think the last piece of this is, you know, I, in my mind, yes, the dean Winthrop House, is historic, it's on the National Registry of Historic Places. It's an important thing sort of historically, and culturally, both the town of Winthrop and the Commonwealth of Mass. That said, that does not give them greater rights to tell anybody what they can do with their property, it just doesn't. And so, yes, we have to protect the public health, safety and welfare. But we do not have to protect individual property owner right? from what another property owner does on their property unless it's going to affect or create a safety concern.

You know, in looking back at this file, in attorney Donahue referenced it, I was on the board when the variance was granted for the addition to the barn. And that allowed them to build that barn and their archive room, five feet closer to the lot line. So to hold that that wall up as being sacrosanct to me when we varied the standards of our ordinance that are supposed to be sacrosanct to allow them to build that where it is, does not mean that they get to then hold that up, and use that as the ability to say you can't do something on your yard because we built closer than we should have. And so I want to caution people a little bit when they talk about, you can't do something that's at odds with the code, there's a there's a statement in law, if you want equity, you must do equity. And so I would just caution people not to pick up rocks and throw them when maybe they've gotten the benefit of this before too. That's, that's just an editorial statement for those people listening. Right? You don't have to like it, but it's true. And but back to the case at hand, I do think there are some questions, I want to see the certified plot plan, oh, I have the ability to read it. I do want to have the ability, frankly, to read both engineer's reports and more details, especially the one from Mr. Hayes, because I haven't had the chance to digest that. We just got attorney Donahue filing today. So I do want to dig into that a little bit and understand it. And that's me, I'm not I can't vote on this tonight for A because we don't have all of the relief in front of us that we need jurisdictionally if we're going to grant this location, and second. I would also say that I need those other factual things, the plot plan, the ability to read the reports, and I would just say that To the extent that, this can be done without requesting a variance. Variances are supposed to be granted. You know, there's something that are, frankly, a bit extraordinary. And they're not to be granted lightly. So if there is a way to design this pool without needing variances as opposed to a special permit for a setback with variances, I would strongly urge that the petitioner consider doing that because I do as I look at this, I can get to a soil shape and topography place here. But I'm not sure this this sites any more unique than the sites that are

immediately adjacent to Almont. And, I do think that from a variance perspective, if that's something that the petitioner wants to pursue, they're free to do that. But I think I have a hard time getting to the approval of a variance. And so because it is a different standard than a special permit, so I was just all over the place. That's for me saying, I really need to digest the engineering report. I don't think there's a public health safety or welfare issue posed by this pool. I don't. I'm not an engineer, I'm a lawyer. I don't see that being the gating issue. For me, I see the gating issue being, you know, the detriment and the hardship. And if you go for a variance, whether the first problem of variance standard can be met. So that's sort of where I am, I need to really look at the engineer report, I need to look at the certified plot plan. And again, we do need to have an amended filing in order to be able to vote on this in a proper way at this point. So that's where I am unless people from the board have anything further or the petitioner their counsel have any questions, I would entertain a motion to continue.

Irene Dwyer- I'm not prepared to vote on this till I see the plot plan and read the engineering report in full, I represented the foundation engineer for a long time so I know what I'm looking at. And I want that confirmed by seeing the whole submission in black and white. And the standard that Chairman Baird set out is a good point to consider. And I'd also like to get this into to bigger. What's the word about irritation level but my feeling about the addition to I member of Winthrop historical society, In fact, I did the presentation at the last meeting they had before COVID closed everything down. But you know that that doesn't give us the right as the US as the association, you just say no to anybody in the neighborhood. And especially as a chairman Baird pointed out, the area they're concerned most concerned with is something that they built too close to the lot line. And if they built they chose to build a wooden addition to hold all this stuff. I mean, if it's a real huge safety issue, what about why put it in, something could burn down? I mean, why not put it in the museum at the library? It has nothing to do with this case. So I'll stop talking. But it's there has been an element of this as bad as some cases we've had that there's been an element of ad hominem stuff going on here that I just keep going on record of this. I don't like it. it doesn't affect how I find on something. But I really don't like it and it doesn't put anybody's position for or against any farther forward, in my opinion. I would really like people to curtail that as much as they can. Thank you

Chairman Baird- I was going to make a suggestion. We're in June. This is a case about a pool. We have a meeting two weeks from now, would it take more than two weeks? We can continue for two weeks.

Irene- made a motion- Move that this case be continued to the regular June meeting of June 24 2021. Again, thereby giving the board time to study the filings that have been made very close to this hearing.

Do I have a second, Jason? Yes

Chairman Baird- All those fate in favor of continuing this matter to Thursday, June 24 2021, at 7pm at the harbor hearing room or zoom? By roll call? Chairman Baird. Yes. Jason? Yes, Irene Yes

Motion to adjourn at 9:39pm by Jason