



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

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Meeting Minutes 12-2-2020

Winthrop Board of Appeals opened at 7:08pm. In attendance are Chairperson Darren Baird, Tom Chiudina, John Young, Jason Wright, Irene Dwyer and Jaime Stern. Per Chairman Baird he wants to make people aware of some continuances and one withdrawal. One case, case 028- 2021 17 Seaview Avenue. The applicant through its attorney has submitted a request for withdrawal. We also have four matters that are being continued to our January hearing, and one to a special hearing that will be held next Thursday, December 8 at 7pm. Case number 016B-2021 Michelle Harkins, 23 B. Almont Street. If the board is so inclined, I'd like to tell the petitioner that they really need to come in on or withdraw if they're not here at that January hearing, because we've been holding this case open for a very long time. I think we'll continue it to January, but I really think this should be the last continuance on this case. And we'll let the applicant's attorney know that. Chairman Baird asked for a motion to continue this case to January. Jason Wright made a motion to continue, seconded by John Young. All in favor by roll call. Case number 26 -2021 66-70. Shore Drive. James in June Realty LLC. Motion to continue by Irene Dwyer, Second by Tom Chiudina. All in favor by Roll call.

Case 021-2021 has been continued since August. Motion by John Young to continue to 1/27/2022, second by Jason Wright. All in favor by roll call.

The Last continuance this evening is case number 31 of 2021 138 Tafts Avenue. I move that this case be continued to as the next meeting, especially on December 9 2021. Irene Dwyer made a motion. Second by John Young. Vote by Roll call all in favor.

So the first matter is case 027- 2021 125 Pleasant Street. This is continued from our hearing on October 28, 2021.

This case was chaired by Irene Dwyer, John Young and Jason Wright. This was continued to review the plan for the parking. I think that was the last order of business. Attorney Cipoletta was the Attorney and will be addressing the Board.

Attorney Cipoletta- Good evening, Madam Chair, and members of the Board of Appeals. When we last reviewed this case, as was correctly stated by Mr. Baird, and others, the board had requested some clarity and an updated parking plan. Also, some discussion around the feasibility of utilizing a driveway on the right-hand side of the property. We were before the Board during the last hearing, this area over here to the right hand side of the house was talked about with respect to the installation of a driveway and the feasibility of locating it in that direction. In the interim, the applicant has obtained a driveway and a curb cut, the driveway will accommodate two cars. There was some concern about whether this telephone pole was going to be an impediment to access and egress here. It appears on this photo that it is not so on the plan that has been updated to show parking. Two spaces are shown here on the right-hand side of the house. The total number of spaces shown on the updated plan are six, two in the driveway and four on this side on the Woodside Avenue side of the home, one is in the garage, and then we have three of them staggered here. Obviously, this garage space would go to these two spaces number one and two would go to one handed or owner, these would be to a second one, and this would be the third. And in an effort to avoid all kinds of confusion over here, the surveyor staggered these so if car number two is gone, car number one, and then back out and exit onto Woodside. There was also some discussion relative to well, you know what happens and this is always what if, when we talk about parking, what if someone does not want to park or can't park in that driveway on the Woodside Avenue side? What do you do? Well, there is parking. That's a shot of the parking available on the street at night on Woodside Avenue here would be the probably the safer place to Prague. But people do Park as you can see here on both sides of Woodside. So, there is parking on the street here and it is plentiful from here back to the to the corner, which would be the most logical place to park the vehicle. Here again is the house. We see here. This is a daytime shot with activity going on around the neighborhood. There are some cars parked here. But all this is open for parking. And of course, when he's pulling back this tree, this is the entrance to the to the driveway in the garage. And this is the newly constructed driveway on that side to remind but just to reiterate very briefly the request that is being made, according to the zoning review letter written by the building inspector, a special permit to alter our extended on preexisting non-conforming structure, as we know and I think we've seen the dumpster there in the driveway and it's not the same dumpster, it's being emptied on a regular basis that Daniel has been doing quite a bit of work inside that house, not substantially extending any of the footprint. But nonetheless, it was called out

by the building inspector that a special permit to alter or extend a preexisting non-conforming structure. To convert this from a two unit to a three unit. We would be requesting a variance under Section 17.1 2.130 commonly referred to as a youth rereads. Third, that was pointed out by the building department was a parking variance. What is shown on the plan does comply. I know there was some trepidations expressed by some of the board members whether or not that was something that would be a reasonable parking scenario. And would it be better to maybe remove one of those spaces to unclog that, if the board is inclined or disinclined to accept that parking scenario, we have the four parking spaces on the Woodside Avenue side of the house, then it would might make sense to move one of those cars off to the street, in opposite the house on the opposite side of Woodside Avenue, where in that scenario, the building inspector would be correct, that we would need a variance for parking, but that we would leave to the judgment and the wisdom of the board. The building inspector found that the word proposed would qualify as an alteration or an extension of a preexisting non-conforming structure. Because as it sits on the lot now, it doesn't comply with all of the dimensional requirements and setbacks. of oh, we're really not increasing them or adding anything to the that. So that would be a special permit to alter to alter the preexisting non-conforming structure. And the variance would be the use variance from two to a three.

Alright, I'll there are no more comments or questions from the board. I'll entertain a motion from one of the other voting members to approve the parking plans and finalize the approval. Jason Wright made a motion on Case number 2720 21 125 Pleasant Street. I'd like to make a motion to grant special permit to alter a preexisting non-conforming use, I would like to also make a motion to grant a variance pursuant to 1712 130 to allow for the establishment of a three family home and RA zone, finding that conditions of the property as such that specifically the shape of the lot, granting said relief would deprive the applicant of reasonable use of the land, also finding that the granting of the variance is necessary and when not will not be detrimental to the neighborhood. I'd also like to approve not that it's necessary, but the parking plan as shown. John Young second Jason's motion.

Roll call done. Irene, Yes, yes. John? Yes. And Jason Yes.

Next case. Case number 29 of 2021 which is 19 Neptune Avenue Stetson Realty, Mr. Chiudina was chairing this matter, and which is a continuation from our October 28. Hearing. Jason Wright and John Young were sitting members. To recap, we close public

comment, we began to discuss the matter, we requested some additional drawings from the applicant. Those drawings were submitted.

Attorney Cipoletta addressed the Board again. So just to review the plans here, there was a porch in the rear of the building, and it has a set of stairs, that asterisk denotes a section that is going to be removed, and it's down here in the footnotes, existing porch to be removed, as will be the stairs. So that would clean this up. And the board had talked about a buffer, we have installed the buffer here in the back, we've installed the buffer here, along the right side, as well. And Patrick is shrinking the back of the house. So we're not going outside the footprint. He's reducing that by a bit. And there's a proposed porch on this side on the right-hand side of the building, as shown on the plan. This is the plan. But you can see that there is a market difference, at least with the architectural elements here in the front of the building. And here's the side, the right elevation, the rear and in the right-hand side are shown as well there. And that is going to, in our view, much improved the look in the style of the home, make it more livable, and being a good addition to the neighborhood. They are proposed to be 2 two-bedroom units, small units, small bedrooms master and a smaller one, as shown in the interior plan.

Tom Chiudina did open this up to Public Comment which there was 1 person.

Carol Homeyer- Yeah, just had a quick question on parking. What will the parking situation be on this property and how many spaces for parking?

Answer-So as a two family, they're required to have four spaces. And they've submitted a parking plan that shows the four spaces in the back. So they're removing a portion of the back in order to get the four spaces. So they have the required parking. So what they're actually requesting is a special permit to alter a preexisting non-conforming, and they're non-conforming, because the building is within the current setback. But they are not encroaching any further on it. They're just modifying the existing structure.

John Young made a motion to close public comment. Second by Jason Wright. Roll call all yes.

Motion made by member Jason Wright. Mr. Chairman, case number 2920 2119 Neptun. Ave like to make a motion to sew into 1728 030 to grant a special permit to author a preexisting non conforming structure for all the reasons previously stated. Also being built as shown on certain plans filed with the application. Second, by John Young. Roll call done, all 3 members voted yes.

63 Summit Avenue. Case number 030-2021. John & ViKtoria DiVincenzo sitting on this are Chairman Baird, Irene Dwyer and Jamie Stern

Applicants spoke to the Board. They want to improve our recently purchased house, single family dwelling, so that we can have a garage in the back of the house, and I'll show you what the plans are and what the layout looks like. It's on a very steep slope, the plan is to put a extend the existing driveway down this slope here and put the garage at the basement level down here in this part of the property. Okay, and by the way, these trees would be unaffected by the construction. So then, to orient you to the plans themselves in a more detailed fashion, this is Summit Avenue. This is the front of the house here, the footprint of the existing 1917 built home is here in this schematic, and that footprint will not be altered at all. As you can see, that footprint of the existing 1917 house is built approximately 3.6 feet from the eave to the border from the neighbor property line, we are proposing to add what's in the green, which is a connected structure by connected by this little tiny bridge here, and this would be the garage, two car garage. And the variants that we are seeking relief on is this particular distance right here, which is basically the same distance as the existing 1917 structure is from the property line. I will show u how the access would occur. So this right here is the existing driveway, it's a shared driveway with our neighbor here to the east. And this driveway would then be extended down this steep slope here to the existing foundation and retaining wall. And then there would be a turning in to the garage, a right angle turn into the garage. The reason that we are placing the garage on this side of the property is because this is a very steep slope. There's actually almost a 30 foot drop from up here to down at this level. And in order to prevent us from having to back up a very steep driveway that some sloped, which would be dangerous. The fall off here, we need to have a turn around to back the car here and then head out face first onto Summit Avenue. The two car garage height would be the same that would be a single story height, and it would the floor of the garage would be the same level as the floor of the basement of the existing structure. Because we don't want to uproot any trees and we don't want to break down any of the existing retaining walls. We have constructed it to make use of existing retaining walls that have been in there, since we believe 1917, which is one retaining wall here and one retaining wall there upon which some of the structure will actually rest. So that this is the turnout and then down on this level is a way to get down from the from the driveway, elevation down to the backyard. this particular distance here, is calculated based on known turning radiuses for

medium sized cars. And that's why the dimensions are such we have an existing property limitation because of its only 50 feet wide. And that forms one of the bases for our requesting relief. That and the severe slope. We've obtained 18 letters of support within our community. We think that the garage will relieve some parking congestion on the street and is designed to have a nice architectural tie in with the existing 1917 architecture existing on the front and the back of the house.

Chairman Baird opened up to public comment.

Alexandra Perrin, Maynard 69 Summon Avenue, Winthrop, Massachusetts. I'm calling here from an address of my family is occupied for over 45 years. And I have just five points to make. And I respect capital improvement. But there's an inverse impact that could impact happen, as John has said, because of the slope of the hill. So should this building be approved, I really feel that it will impact not only a complete loss of life for the bottom floor condo, and that will just take away value, it will really affect my wellbeing of all the occupants. We have a tree that's 100 year old years old, that's really holding on to what's left after the property at 63 summit over time, and very many renters has been kind of deforested. So the slope on the right hand side, unfortunately, at 63, has been sort of flattened out where it's 69, it's still tiered, and I feel that oak tree that's been there 100 years by having it, if you put the wall up that's proposed a 10 foot wall between the two properties plus a seven foot wall in the driveway, that's going to affect that, oh, you know that it? Well, I don't, I would think I'm sorry, I shouldn't say you know that it well. And that will affect moisture and light filtration. We've also have a significant snow drift issue that could be really impacted by this 10 foot wall, down the entire length of the property and the seven foot wall defriending excuse me, defining the driveway. With the snowdrift potential. It would really affect the egress for condo 1, because it will fill in because it's on the slope and we have a fire escape that we need to have by law. There was a patio pulled in that's already falling down wherever it is. And I'm afraid if we keep digging out, it's really going to affect that. So there's also a sewage issue, all of our pipes go from the top, from our buildings all the way down to locust. So if you need to access your sewage line which and they're 100 years old, off and on over the years, we've had to fix them. There's no way of actually doing that once you put a garage on top, the sewage lines going under the garage? So I'm concerned about any breaching might affect having raw sewage. I also want to say that, in the simplest terms, this is a three-month issue about parking, you made an amazing investment on crest Avenue, I think that we really could work together a little bit more and not have this radicalness of taking away all the light jeopardizing a tree that's holding a slope together. It's kind of like, you know, the weight of objects is determined by the pull of gravity. I'm pleading physics, please. Please consider this. I've

been here for a long time, and I don't want to leave. And I don't want to be impacted by no bite. No tray, and a situation that just could fall down. Thank you.

Susan Taylor 75 Summit Ave Winthrop . And I would just like to second Alex's comment about the tree. I do have a master's degree in horticulture from Michigan State. And anytime you start doing excavations, you will affect the tree roots. And they're awfully resentful of soil compaction. And I'm fearful that could become a dangerous tree for you in the future. And that's my whole thing. Thanks.

Chris Bodkin a unit owner at 69 Summon Ave. So I just wanted to also touch on this. John, it stated that the existing walls would be used and that nothing would need to be additionally constructed. However, the walls that's already there is already crumbling, and Split, and the shared driveway that we have, that also has a shared retaining wall. And that would need to be cut or altered in some way. With also construction vehicles going up and down to try to try to get through there. The tree also has roots underneath. So you're altering that land, vehicles driving up and down back into soil. And also, the 10 foot wall at the back corner of the lot would completely ruin the backyard view, diminish the resale value of our property and just overall ruin the enjoyment of the backyard. And then lastly, you know there's not really any hardship here to gain a garage. The current property has two off street parking spaces. So you know, this is really just to just have a garage in the backyard. Then last point is just that, you know where the vehicles are going to be driving along our side property where the walkway is, it's, it's going to be about six -10 feet above our walkway. So to have vehicles coming up and down, they're turning around. It's just really dangerous.

Charlotte Streeter, my husband and I were the previous owners of 63 Summit Ave. And we bought the property in utter disrepair in 2004 and poured hundreds of 1000s of dollars into it. Our plan was to move into it. We weren't able to do that because an elderly relative needed to be taken in basically. And so we stayed in our multifamily on Winthrop Shore Drive, and we rent we have the house rented from let's see, let's do the math here. 19 years, we have the house rented to a succession of very nice, classy people. And in the comments about deforesting the property is absolutely untrue. What we did was rescue the backyard it was overgrown with that knotweed. And I personally went out there and eradicated the knotweed all by myself. When we put the property on the market this past year, we had nothing but trouble from the two neighbors that you just heard from they were horrible to us. Alex Perrin does not even live in the house. She lives in Old Orchard Beach, Maine, she just visits occasionally. She was talking about a fire escape that they

have, which is completely unnecessary. It's a series of unpainted porches, in disrepair. And that consists of the view that 63 summit house, out that side of the house. So if you can go take a look at her fire escape. My husband's a plumber. All those allegations about sewage are completely unfounded. And let's see, I guess that's all I wanted to say. But these are lovely people and we know that capital construction would never do a design that would be unsafe in any way. So I just want to have my say, thank you.

Carol Homeyer I'm not local to the area. I'm in Washington Ave, I know, one of the hardships is the safety issue.

Motion to close public comment by Jaime Stern, second by Irene Dwyer. Roll call
Chairman Baird. Yes. Jamie? Yes, Irene. Yes.

Applicant addressed the Board again after public comment: We appreciate our neighbors. And we've shared the plans in advance with them, just to try to inform them of what we were proposing. So we appreciate their concerns, and we want to be, you know, good neighbors and want to litigate those types of potential problems as much as possible. Let me address a few of the specifics. If I if I can, first of all, the tree, and I think it's fair to say that, you know, we as a family are very interested in maintaining all the existing, especially the old trees in that in that vicinity, and we have no intention of trying to damage any tree. We've gone so far in that regard, as to look up the possibility of using foundational helical piles, which are minimally invasive, because they're not, you don't have to dig to place them. And so where possible within the garage construction and the retaining wall construction, our plan is to use where possible helical piles, which are the same types of piles that were used in the Wetlands Park project in the Winthrop wetlands walkway. With respect to the, you heard mentioned many comments about the retaining wall, and I'm just going to show you some photos of that now, so that you can kind of get an idea of what we're talking about. If I can share the screen, that would be great. Okay, so again, as you can see here, the right side of the property line with all the trees on it, right there is where the driveway will be situated, as per plan. And you can see on the house to the right, that's the pink color, that is the stairway, the outside stairway that they were talking about. That leads to all the different levels and different separate apartments within that building. And here's another view of the house from the back. This shows you the steep slope, and it shows you the existing retaining walls, which we are going to maintain. That large retaining wall there, the highest part of that which is adjacent to the neighbors who have spoken already. That height is I believe, eight feet right now existing. Here is a close up view of where the driveway would go. And this is the 1917 Vintage retaining wall that you can see stretches across the shared driveway. The driveway on the left is partially

viewed and the driveway on the right is the is on our property. So we would keep this retaining wall and use cutting tools to not damage the retaining wall but to allow it to have a driveway built through it. Then there were many mentions of the retaining wall that the tree in question is next to. The property owner to the east who you've heard, voiced some concerns actually asked for this retaining wall that you see it in this photo right here, She asked for it to be reconstructed and we will do that in this project, but the reconstruction will be involving a driveway, not just a reconstruction with a patio. The tree in question is to the left of the existing chair here. So it's a I don't know exactly the distance from the property line. But I think it's probably about five feet from the property line, I don't know, maybe someone can correct me, I haven't measured it personally. But the existing retaining wall is affecting that tree to some extent, as well, we plan to replace the crumbling retaining wall in a tree friendly way as possible. And to build the driveway on the opposite side of that retaining wall. Then I wanted to also point out, the fire escape that was previously alluded to this photo was taken not too long ago. And you can see the condition of that fire escape and how close it is to the property line as well. It's approximately five feet if I measured it correctly, from the existing property line. And lastly, I'm just going to apologize up front for potential construction headaches. We'll try to minimize those as much as possible, but they're just something that that, you know, every construction has its temporary headaches. And I apologize in advance for that. But I think we do need to have a garage. And there's no way around temporary inconveniences from construction. So the sewer, I think has been answered. There's obviously there's no reason that we would want to disturb a sewer line. This the sewer line in question, if I'm remembering correctly, each houses sewer line, goes down the slope, and meets the main sewer line at the back of all of these properties. So the sewer line from the house that you see on the left here, goes straight down there Hill and meets up with the main sewer line that runs at the base of this hill, I don't believe that the sewer line that that service is their house has anything to do it even closely related to any construction zone at all, our sewer line runs through the construction zone. And of course, that has to be taken into account when we plan the more detailed construction plans, which we've already located the sewer line on. So I think that that concludes kind of our response to that to those comments. We respect those comments. And we have, we want to be good neighbors. And we love the neighborhood. And we appreciate everybody being neighborly enough to actually be concerned about things in the neighborhood, which is actually a good sign.

Chairman Baird- did open it to any questions from members of the board. I just have a quick question. Jaime Stern- it seems like this tree is really important to the neighborhood? Was there any consideration given during the construction plans of trying to protect the tree?

Applicant--Certainly at the stage that we are right now, you know, the detailed construction plans have not been created yet because we're waiting for approval. But you can rest assured that we would try to protect that tree as much as possible. Even though it's not on our property. It adds value to our property too. So there would be no reason for us to try to do harm it in any way.

Jaime Stern- And just a confirmation. it seems like majority of the walls already exist, you're going to have to almost rebuild a lot of these walls. So there's the existing retaining wall, there's the wall that the garage is actually going to be built upon, you know, the border, all of that you're going to have to almost reinforce or rebuild, is that correct?

Applicant- Yeah. First of all, the existing retaining walls, if they're structurally intact, the parts of them that are structurally intact, we will we have plans to use them, because we don't want to destroy the we won't don't want to disturb the soil that's existing there and cutting them down in various spots, cutting a concrete cutting, like I just mentioned about the that one driveway access part of the retaining wall will be, I believe the method, but Mr. Luna can probably speak a lot more eloquently about this, but my wife actually was going to say something as well. Yeah, I want to say that in general, we want to make the place beautiful, because right now it looks better on down backyard, it looks better on down. And what we plan to do will add value to the properties that we have and the properties that are there in a testable life to make things aesthetically beautiful. And above the garage with certain cars, they cannot be stored outdoors under certain temperatures. So we cannot have three months or four months out of cold climate to have them outdoors, if they need to be in a garage. So there is a lot of reasons for that. But in general, the place would look beautiful, is to be able to beautify the community and places around so neighbors who like it, and this is a result. We just need to be able to do that. Okay, great. Mr. Luna, did you want to add to any of that?

Mr Luna addressed the Board as well. Yeah, a couple of points I want I want to note, it was mentioned in the public presentation about them already being a two car. My client has a shared driveway. So it's not a two, there's not two, legitimate side by side off street parking. It's a tandem parking configuration. Because if you look at the site plan, you'll see that the property line runs right through the middle of the driveway. The next point about the existing retaining wall that is on that can that tandem and you'll see audits as block paving on the site plan, we deliberately did not start our slope until we cleared that driveway. So we did not affect the shared driveway between both of that we are starting as John mentioned from the first retaining wall off of the street, and then sloping down to

our to our elevation that slope is that the maximum safe slope we can we can put in at 15% We could have had a more gradual slope from the street to that but not to disturb the shared driveway, we pushed it all the way all the way back to that existing retaining wall. We will be reinforcing and or reconstructing the retaining walls a lot along that we are investigating helical piles and great beams rather than digging a footing underneath that. But we are not at that point in terms of the design and engineering of this. Pending there's no point of designing this if we don't know we actually have a need to put the retaining wall in and the garage. We have made the garage as tight as we can in terms of dimension in terms of its depth. It's only 21 feet. A standard garage is 22 to 24 feet deep. And we have a 22 foot backing out driveway. But in addition to that we actually have a turnout on that. Some of the concerns were raised about snow drip at a 50% slope. We were concerned about that. But we do plan on putting a heated driveway system inside there as well. At the bottom of the driveway, we have a drain and in the rear any walls that surround that will be an overflow scupper as well. So we're very concerned about all these, these things are being raised, we realize that the retaining wall is high, and it will have to be a couple of feet higher for what the great elevation to avoid any, basically like a jersey barrier, because we are extending over this, but the one thing that we are most concerned about is the Paramount safety, first of our client, and of the neighbors over there. So we have taken every step to address the neighbor, the tree is a concern, we'll try to minimize that with using helical piles and grade beams along that wall. But likely a good part of that wall is going to be reconstructed. It's not in terrific shape as it is. And then the other question raised about using existing retaining walls, a lot of that was referred to the retaining walls that are perpendicular to this main wall that's running more south. Those are existing retaining walls that are currently on the property that we're going to use to support the garage. This is probably the best example in terms of a diagram. As far as where we are coming in where the retaining wall starts, you can see the 15% slope, where the first retaining wall off of the street begins, the leveling off spot. And then so there's some utility out of the out of the yard, we plan on filling in the yard. And having a level spot, we have, as John said, a 29 foot drop along 130 foot length from the street to the back of the property, which makes most of the yard essentially unusable. So what this does is level off level off the yards, which it's more usable for the property. Since there's not a lot of even though it's a large backyard, it's not a lot of usable backyard. So we use the roof of the garage as essentially an outdoor terrace space that our client could enjoy as well. But this just gives you a very good cross section of what we're dealing with the topography of that. And again, I want to point out, it is not a standard two car off street parking scenario, because it's a shared driveway, the cars are currently parking tandem.

Tom Chiudina- I'm going to ask a couple questions if it's okay. So in this plan that's on there. Now this elevation you have, I think it says new retaining wall height, shown desk for clarity. I can't find a plan here that shows the top of the wall elevation. In fact, it doesn't even in plan view, it doesn't even look like at the sloping law. But it looks like it is in the elevation. So I'm trying to figure out, what's the actual height of where

Applicant- you're looking, you're looking at the cross section through the driveway, not the retaining wall. The intent is as we move down the slope to step the wall to follow the follow the line of the slope, we're not going to build just a tall wall along that we're going to, we're going to integrate that into a natural progression following the natural slope of the site.

Tom Chiudina- so maybe you can go over those elevations with us or point out where they are on your plan.

Applicant- So let's essentially we start at a ST elevation of 82. You can see that the undisturbed grade at that point is 81. Our first retaining wall starts at 80.7 and that's and that's where we're starting our slope. Then you'll see along that we go from at point seven and That's 15 degrees. Hello, are 50% Slope takes us down to an elevation of seven of 75 at the bottom, okay? Opposite that you'll see then the natural grades on the opposite side, you'll see where the tree is an elevation of 73 should be 75,74, 73,72. So those, those are the differences in your heights along that retaining wall.

Applicant- I think we're the neighbors seeing it's a 10 foot wall, which was actually passed the house where it's at the lowest point.

Jaime Stern- If they're worried that the yard, there's a big wall, basically

Applicant- because that will be level that off, okay, because we've taken it, we've taken it down from street level to the driveway level of roughly eight feet in that time, well, the site keeps sloping. So we've created a level pad as the site continues to slope, and that's where your elevations get the highest, it's not up against the edge of the house, we're following the progression, we're following the progression of the slope, albeit adjusted, so we have a 15% grade, it's where we're at the driveway, where the height of the wall becomes the issue, which is then into the yard, not into the house, it's not affecting light into the house,

where it's no different than the current configuration. For the most part, at that point, it's where we level it off in order to have a level surface for the entry into the garage at the elevation of 70 of 75 74.5 in our garage, while the site continues to slope on the neighbor's side, that's where you have the height.

Tom Chiudina= I want the elevation of the wall. So right now I'm seeing an elevation of 76, the new elevation of 76. That's in line with the existing elevation of 71. So that's a five foot difference. I'm assuming the wall is at least three feet high above that. 76,

Applicant= two feet We two feet for a wall, we can we can articulate, we have to have a three foot high barrier., but we will only have like a two foot high Jersey barrier height. As far as retaining wall

Tom- so at that height. you're going to have an eight foot wall at that point.

Applicant- Yes. If words, yes, if we're at 74, we're at 74.5, our top of wall is going to be at seven at 76.5. Because our driveway is at 74.5. Has to be a consistent wall height at one at one level.

Tom-so your wall will be 76.5 So that whole stretch along the driveway, I'm sorry, the whole stretch of the bottom of the driveway across from the garage is 10 feet, or nine and a half feet at the lowest and then it just continues to get bigger.

Applicant- And then at that at that point, then it starts to stepping down as as we go around the stair and then we then then we start stepping down rapidly.

Tom-Right but there's 30 feet of 10 foot wall or more.

Applicant-Yes, roughly r between 25 and 30 feet of that height on that wall.

Tom-And then what's the lower section that drops down after the stair?

Applicant- After the stair what we're doing is you can see at the bottom at the bottom of the bottom of this site Natural grade is at 53. We're raising it to level off that backyard and putting in a rear retaining wall as well. And bringing that up So there's, there's a more of a level

Tom-that's going to be at least 12 feet high back there.

Applicant No, because we're down significantly, we're you're down, you're down from 74 to 64, you dropped 10 feet.

Tom-a natural grade, you just said the natural grade is at 53. You're adding your wall and you're bringing the grade up to 63 plus your two foot above the grade of the wall. That's 12 feet.

Applicant-Yeah, I don't have The grading I have on the neighbor's property. I don't know what it is at that point, the top that we have stops at our I don't believe I don't.

Tom- It doesn't appear to go up. That's for sure. If anything needs to drop down.

Applicant Where we are, we're at the edge of the driveway. We're at 74 74.5 elevation to that to that backup area. And then it then it falls off. Yeah. I mean, there will be another retaining wall along that side at the rear of the property.

Chairman Baird-What's the current height of the retaining wall out there today? On the lower part of the property yeah, the South, east and west, as you're at the bottom of that elevation, working your way up? What's that retaining wall that's there today there? Is there one, and how high is it?

Applicant So currently, there's a retaining wall on the south side where my pointer is going up and down. Yep. And where you're measuring that from the height from but it's pretty high, but it goes stepwise into a terrace here on the property. And then another step wise, a couple of steps down to their parking garage. On the sides, currently there are no retaining walls on the sides. right here. And right here.

Jaime-is that where the fence was?

Applicant yes a fence, there's a fence there. So what happens you have the retaining wall toward the north side of the property. But then the two base basically the natural grade just flows from yard to yard. Along the property line. Yeah. So what we want we want to do there so there is a usable yard on this is to raise is to raise the grade?

Chairman Baird- But you're going to put a retaining wall on top of a town sewer line that doesn't have anything on it today, is what you're saying? Yes, in a significant retaining wall.

Tom- Have you even talked to DPW? To see if this is allowed to say I'm sure there's an easement back

Applicant- is that any different from the sewer line that's running currently underneath the house?

Chairman Baird-Yes, because the sewer line from your house to the town line is your line. But the sewer line of towns that runs across the sort of bottom of the grade at the property is the town's line that everybody ties into. So if that gets damaged, it's catastrophic.

Applicant-Okay, but we're not building a retaining wall over that we're offset from that line, we're just filling over that existing east west retaining east west drain line.

Chairman Baird- where it says concrete retaining wall and goes up the entire side of the property, right, there's definitely passing over it.

Tom- I think the bigger issue is you are literally adding 10 feet of Earth on top of one section of that easement.

Chairman Baird- And there's I think that a real DPW question issue that a lot of times with those easements, you can't build within 10 feet of that in either direction, or put any load on top of it.

Applicant- that would also be without that's awful. That's a solvable problem, because we tried to maximize the full use of the property. And if worst came to worst, we could just put we could leave the natural grade 10 feet 10 feet from that and then just build a build a east west retaining wall in our property away from that line.

Chairman Baird Yeah, I guess I guess the point is, we don't know what that right is back there.

Applicant Okay. And that's something that needs to be investigated.

Chairman Baird- We need to know that At least I need to know that before we can vote on something where DPW or a town agency has an interest in the property. Um, I'm not comfortable approving a plan that shows anything crossing that easement. That's me. I'm one board member. But I can tell you that it's not a conversation I want to have with Mr. Calla or anybody in DPW.

Applicant- Is that something that you would continue to have the same amount of concern if the retaining wall was built over rather than a foundation done? Because of the use of the grade beams?

Chairman Baird= I mean because I don't know what the easement is there. I don't know, if that's an easement that says Thou shall not build anything his area period. Or if it's a you, as the property owner have certain rights to build in that area, if you do X, Y, and Z? I don't know the answer to that question. So without knowing the answer to that question, I can't tell you what's okay. Right.

Applicant at that point, if DPW said, No, you can't do any anything, then your approval would be moot anyway. Because we wouldn't be able to allow to do it by DPW.

Chairman Baird= I'm not approving something that we don't know what that is. I'm just I'm not, I can tell you that would not get a positive vote for me. Okay. I think I need to go out and see the site. I mean, I know some of the properties on Summit. I know, the typography out there, sort of, but, you know, when you grant the variance, it's extraordinary leap by board. And it's, there has to be a substantial hardship, that relates to the uniqueness, not just the soil shape and topography, but the unique soil shape and topography of the lot or the structure. I would say that your soil shape and topography is not necessarily now going out, seeing it may change my mind, unique to this part of Winthrop. Along Summit, it's a steep fall off on all those properties you all have about the same topography. That's one . 2 You know, I, I get the desire to have a garage, the need to have a garage, but it's not having a garage of substantial hardship. That's a harder sell for me. I'll just be honest, under variance law, I mean, it's a variances are things that are to be given sparingly, as a matter of law and zoning practice. So I need to go out and see the site and understand how it fits in what's being asked for, to get comfortable saying there's a substantial hardship associated with the lot.

Applicant=So first of all, there are other properties, actually four houses down to the east, that has a similar garage placed on that type of slope. And I don't know the history of their application or anything like that, but obviously, it's built there. And second of all, this is a very narrow lot, it's 50 feet wide. And the variance that we're seeking is, is a variance of a position of the garage with respect to the property line on the east, it's not a variance that we're seeking with respect to building a wall or covering a sewer line. So it with respect to the narrowness of the property, and the requirements of the dimensions of a normal garage with a house that was built before cars. Don't you think that that represents a topographical hardship for this property, the slope and the narrowness. And the fact that the placement of the garages is attempted to be as sensitive as possible to the neighbors and the dimensions with the restrictions that we have placed on us by the topography.

Chairman Baird So that's why I want to see the site because I want to understand it in the context of the things around it.

Tom Chiudina= All right, can I point something out there into not only the applicant but maybe other board members. Most of Winthrop has detached garages. One of the reasons you're here is seeking a variance is because you're attaching the garage to the house. You can easily put the same sized garage, right where those stairs are five feet off the property line by right. You didn't even have to come in front of us. I don't know about the wall and the retaining wall. That's something else because I mean, we have a I believe our zoning doesn't allow a fence more than six feet. So I don't know how you could justify a wall that's 12 feet. But my point is, is you're allowed by right to have an accessory use a garage that detached from the structure. If it's 10 feet away from the structure and five feet off the property lines. That's by right. You don't you're not even here in front of us. How do you weigh hardship versus that? Because you want to have things like this?

Applicant= So we took advantage of the slope of the site, the height of the garage and said, Let's make this a usable space since most of it. And even if you said you know what, we can't fill in the back, right? You've got this property that's 85 feet deep, but you're only able to use a third. So let's take that space and make it a usable outdoor space. The questions about all the technical aspects. We know they're hard, it was hard enough to get it to this point.

Chairman Baird- I think before I would entertain a motion on this, I'd want to go out and do a site visit and just look at the property and understand it.

Applicant did ask for a vote on this tonight since he's not currently living at the house.

Chairman Baird asked the Board to individually walk the property, then come back to a meeting on December 9 2021.

Chairman Baird asked for a Motion to move this continuance to the ninth. Motion made by Jaime Stern, seconded by Irene. Roll call all yes.

Applicant=Yep. So let's have an informal site visit. We'll do the DPW. If we decide later to do a formal site visit, they will request a continuance for that.

Chairman Baird- yeah, that's right. I think that You know, we'll be able to go out and look at the site and ask appropriate questions. we appreciate the plans and the thoughtfulness that's gone into this. So we'll see in a week.

The next matter is case 32 -2021 45B Taft's Avenue. Petitioners John Stasio . Sitting on this Chairman Baird, Tom Chiudina and John Young.

Applicant John Stasio addressed the Board. We're just looking to get approved for Airbnb.

Chairman Baird asked if there were any questions from the public. No public comment was made. Motion made by John Young, seconded by Tom Chiudina. Roll call voted all yes.

Jason Wright asked Does he um, does he live on the premises?

John Stasio= yes I've been here for 45 years?, we actually what it is we have two single family units that detached but we live on the property.

Chairman Baird Okay I think the question is, so don't if they're to single family units. Does the does the unit that you're talking About having available for Airbnb had its own cooking facilities.

Applicant It was it one time we rented it out. Full time year round. We do have an occupancy permit going back for 34 years issued by the town. So at time what we're doing right now was just doing Bed and Breakfast is no cooking on the premises. We had it inspected by the Board of Health, the fire department and everything. They came down and said everything was good.

John Young- I'm looking at the Google Earth myself. Is it the small structure there? Behind your parking behind your parking space?

Applicant-Yes, That's correct. It's a detached studio. It's been. I've had an occupancy permit for a long time on it. And like I said, we've rented it up before, full time year round with no problem with an occupancy permit. But now because it's Airbnb, and it's short term rental, we would notify that we need to have a special permit to run the Airbnb. And we've had no complaints from the neighbors or five star.

Tom Chiudina-How many bedrooms is this?

Applicant it's a studio. it's got a bath a small kitchenette. But it's basically just a one room studio.

Chairman Baird So it has a kitchenette. So that just means a fridge but no cooking surface or anything like that. Correct?

Applicant That's correct. There is there is there's a microwave in their coffee pot and a refrigerator.

Applicant= I have documentation from the billing department stating that it's two single family units on one property. So it's not a piece of it's not about the land.

Tom Chiudina-That's where lies the problem or the conundrum. So Darrin in the file in 1986 the building inspector may you know had a decision upon inspection of records at the town hall it was found that the so called garage was used as a summer residence prior to 1939 therefore this property is to be considered as two family in two separate buildings.

Tom=But it's in your application. It said it's considered a two family by the building department.

Applicant-Well, hey, well, if we are but I was told that even if the billing department said it's a two family, that if my tax bill isn't coming at me as a two families at 1090, then it's a 1090. And I was always under the impression that I wanted it to be a two family. But the town refused and said, No, it's a 1090.

Chairman Baird-Here's what here's I think where I'm getting tripped up on this. Tom is Bed and Breakfast needs an accessory home occupation within a private residence. So to me, to your point. I think that procedurally um, because I actually don't have a problem with this use. It's whether procedurally, we need we need to have an interim step here, or amend the application to include. And we would have to, I think we'd have to read notice the this amendment because it wasn't this edition, because it wasn't, it's not in the current application. But I think you'd need to get a variance from the provisions of 1749 to allow this to be treated as a single residence for the purposes of the bed and breakfast requirement. I think I mean, correct me if I'm wrong, But I think the way the bed and breakfast ordinance is written is that you have to be in the same, it's supposed to be in the same principle, building, or dwelling as where the property owner lives, right. And as a technical matter, these things are unconnected. And they're treated as two separate single family buildings on the same lot, which I don't know that ever because I've only seen that a couple other times in Winthrop, they do exist. In the application, there is a letter dated April 28, of 1992. That says, this structure is a single family, the garage size single family dwelling unit that's referring to 45 B. That's a single size family dwelling unit. And then that's what that structure is. And then the other structure is a single-family, two-story building. there are two independent structures on this lot, both which are classified as one family dwelling units each. So that's not different than a two family. I guess it is different than a two family but not logically under the B&B ordinance not different.

John Young-, but I'm just trying to understand something you keeping him to use code 1090. And I just Googled, it says multi houses multi dwellings to mean something on his assessment. So I don't know if that helps or not, but that he's operating under this impression of having this 1090 has meaning something to him.

Tom- we were doing this in his house he's living in it would be no problem. If he lived in this little apartment or studio and was doing it, it'd be no problem. So it's, I'm convinced that this is unique enough. And we have enough history here. That this is acceptable? I'm not sure what, what kind of variants you're referring to Darren that would make this better? I think we just need to think this through so that so that we protect our not only ourselves, but the applicant.

Chairman Baird. So we can look at these things in the history of this one. I agree with you, Tom, that the town has seem to have accepted this arrangement for a long time. So with that, I'll take a motion on this if someone wants to offer one.

Tom -Sure, I'll, I'll motion in the case of 032-2021 45B Tafts Ave, that we issue the special permit, we issue a special permit for the operation of a transient lodging, Airbnb. Okay. And I assume on the standard terms, good for two years, not transferable. All that good stuff, correct.

Second by John Young. Roll Call all 3 yes.

Case number 33 -2021. Lisa LaMonica 17 Walden Street, sitting on this Chairman Baird, Tom Chiudina and Jason Wright.

Attorney Jim Cipoletta addressed the Board What they would like to do is that they have obtained a lease in a portion of the old Muffin town building and they would like to install a restaurant there and run it as their own as a as a family restaurant. The property address is 17 Walden, it also has a 140 Lincoln address, so it sits at the corner there and according to our code, the restaurant use is allowed in the business a district which is by special permit from the board of appeals. So we are here seeking a special permit to operate a restaurant in place of the previous use as the building inspector points out a manufacturing facility. Also in conjunction with that we are requesting relief in the form of a variance from the parking requirements in the code. The original plot plan that was submitted to the building department showed a deficiency showed six off street parking spaces. We revisited that and in conversation with the building department redrew I had

the surveyor redraw the plan so that this parking area over here is near a loading dock. And over here on the corner of Walden and Lincoln also is a loading dock. That's not public parking. There is a requirement to have parking for employees and that's why the parking is situated the way it is and I believe that the parking requirements and I will do this backwards and address the required parking for employee so it would be one space for three employees in the maximum working shift plus one parking space for every four seats. So what the Lamonica's have figured is that they would require to spaces with that would accommodate six working employees. But there may times be, you know, depending on the season or whether or not it's there's something special going on there where they're having a special, they may have more employees, I think they took a headcount and their family figured out there were six of them. And that's the way it rolled out. But there is other parking there. And the beauty of this too, is that the loading docks are accessible, while loading of food and produce and equipment, and things of that nature, during the off-peak hours. So these wouldn't necessarily be taken up by employee parking. This is some parking in a parking loading area over here. But the more important element of this view is that over here you have Ingleside Park. This is a nonresidential section and there's parking all the way down the street and further beyond that photograph. So would this be a benefit to the neighborhood not create in the business district? Any problems that sometimes come associated with the business? And the answer I would suggest is no, because it is a business A district. The some of the previous uses in there involve heavy tracking and manufacturing sometimes around the clock. And it's the desire of the Lamonica family to bring some energy and some life to this part of the business district in Winthrop. It would be really a walk to kind of place it would have to be a destination place. They have chosen the name, And it's on the it's on the application for what it's worth. So walking through some of the requirements in the request that we're making the interior plan, and I can show that as well. And I think the Board has that. It's the layout of how the restaurant would be situated. I've counted up 65 seats, and the building inspector have based the parking requirements upon that, but this is how it's going to be laid out that putting an extraordinary amount of money into this kitchen and some of the prep areas. There's going to be a bar over here and I think it's 11 seats or so. And all of these tables here and most of them will be fours. And there are a couple of deuces over here in the corner. So that that's a layout for the interior and of course the facilities the men's and women's facilities are as they are marked here. I designated over here to the corner on the side of the bar. So with that number of have seats, then we've done the math together with the building department 65 seats would yield on the calculus 16 parking spaces. Another two, four employees, that would mean 18 off street parking spaces. When we made this application on under item number 11. It says according to the

plan, there are six off street parking spaces, actually, they were able to add three more. But if Street for whatever use might be appropriate, though, to that, and we would suggest to the board, that this is an appropriate use, it's a less intensive use than the uses that have been there.

Lisa did address the Board- I prepared this something little to just talk about our background. But we work together and went through for seven years. My father had having grown up there and my grandparents still living there we came in knowing a few people. But with that being said, we never ourselves lived in Winthrop. But over the course of those seven years, my mother, our brother, my brother Joseph also worked with us. And my brother Michael worked with us for a short while. We've just felt very fully embraced by the community. And we really fell in love with the town and have made a lot of friends for working in the town. So when we made the decision to open our own restaurant, we kind of talked about it and there was really no other place to go other than Winthrop and we really wanted to cater to that community that we fell in love with. So we really excited about this. We named I know there was a little discrepancy about the name. It's called Volos, Austria.

Chairman Baird did open this up to public comment.

I'm speaking on behalf of Maureen Morrow of 33 Walden Street, Director abutter of the property. Okay. I had some parking concerns. They consistently blocked driveways and egress out of Short Street. Asking if Liquor License was going to be obtained? Not yet was the answer from Chairman Baird.

Chris Ferrer. I live at 146 Grandview Avenue in Winthrop. And I have a question about the kitchen equipment that will be installed in the kitchen. Are there any plans to install wood burning pizza ovens or wood burning appliances. The answer is No.

Motion made to close public comment by Tom Chiudina, seconded by John Wright. All vote by roll call yes by all 3 members.

Chairman Baird asked for questions from the Board.

Jason Wright asked what the hours of operation were going to be. The answer was its still be discussed 4-9 weekdays, weekends stay open until 10pm.

Jason asked Could you obviously be a liquor license as well, given that there's a bar? The answer was a full bar if possible.

Tom asked the first question I have is the plan that you provided A100. The shaded area, as I understand it, is what you're referring to, for your restaurant. Right. I can't read it completely. It's a little fuzzy, but it looks like it says see enlarged plan. Something, so I'm assuming it's that shaded area. And he exists. Okay. So and then there's a section says existing building not in scope. Is that a different property?

Applicant No, it's all the same property. It's just the portion on the corner that we're planning to turn into the restaurant.

Tom-So what is that other portion currently, is that unoccupied?

Applicant As far as I know, yeah. Yes, it is.

Tom- So my first question, I guess to the to the chairman is is this special permit? Good for someone to the two year period or is this good for the rest?

Chairman Baird It's a restaurant special permit. So it would be a special permit for the operation of this restaurant. It would not run with the land. It would run with this particular operator in this use. But it's not limited to two years. It's not like a B&B. It's it's there for as long as the businesses like, you know, and we have that and other restaurants here in town as well.

Tom- So that so my concern with that is that 75 occupants is a large number. And although part of me wants to say, well, you know, the parking there's a public light that is within the allowed distance that the center business district offers in zoning.

So that's a good thing. But at the same time, you have not only do you have the little, short road that they pointed out, but you also have the complex across the street, the apartment complex, and you know, that there are going to be, there's going to be issues with parking in there and policing all of that, and that that also could become an issue.

Chairman Baird-I think on that issue, it's, we either have to be comfortable that granting a variance for the parking for this use, is not going to create, I think when you look at this building, at least from my take, when it comes to a parking variance, I can get to the uniqueness of the lot and the building that's there. It's almost a zero lot line building on a funky panhandled shaped lot that sort of lends itself to needing relief. And so from a

parking perspective, if we're comfortable with granting a variance for parking, then the question is, are we? Well, you have to be comfortable with the fact that these are going to park on street, or unless someone really wants to get some exercise and park in the public parking, you know, down at the other end of Walden, right, sit down by the middle of the old middle school. I think we have to make the decision, assuming that people are going to do the right thing and park on the street, or parking, you know, municipal lots, but that's all we can do.

Motion made by Jason Wright regarding case number 33 of 2021 17 Wall Street like to make a motion to grant special permit to operate a restaurant also like to grant requests for said variants pursuant to 1720 Oh 6049 parking spaces, finding that the shape or the while the shape and fact that the structure obviously occupies most of the property, the granting, said relief is in won't be detrimental to the community.

Chairman Baird=I'd like to make a motion to amend your motion only to add pursuant to making the findings under 4810, relative to the variance that it would create a substantial hardship not to grant the relief based on the soil shape based on the topography in the existing building and shape. And I think the other thing I'd like to just add and if the board's willing, is I would like to add that in the restaurant when it opens the operator be required to post a notice that individuals shouldn't Park on short street. Two- just conditioned it on, you know, this being this special permit being personal to this particular operator for this restaurant, and that any transfer of that of the special permit has to be approved by the board. So that would be my those would be the two amendments I would offer up to your motion. Jason. Dan, can you just can you just add not only the street but the Pillar apartment complex as well? I'll include that in my motion and close my motion. So yeah, the second the amendment.

Alright. Well, so the amendment as moved and seconded by roll call. Chairman Baird. Yes. Tom? Yes. Jason. Yes. The amendment carries.

Now the motion as amended. Do I need a second from Tom? So as moved by Mr. Wright and seconded by Mr. Chiudina after amendment by roll call. Yes, Tom. Yes, Jason. Yes

Sharon's circulated meeting minutes earlier. June 24 2021, July 29 2021, September 23 2021. And October 28. Although October 28. We're not going to vote on tonight because I think there's a couple of corrections that need to be made to them. And then there's also some older minutes that are a holdover from the prior clerk that we need to approve as well. And those are the meeting minutes from May 28 2020. And July 30 2020, which are handwritten notes, because apparently zoom doesn't go back that far.

Chairman Baird to take a motion on all those minutes.

Motion to approve minutes from May 28 2020 and July 30 2020 made by Irene Dwyer.
Second by Jason Wright. In favor by roll call. All yes.

Motion for minutes from June 24 2021, July 29 2021 And September 23 2021 by Jason Wright. Second by Tom Chiudina. All in favor by roll call.

Chairman Baird asked to approve meeting dates and times for 2022. 1/27, 2/24, 3/31, 4/28, 5/26, 6/30, 7/28, 8/25, 9/29, 10/27, 11/17 and 12/15. January 27 start at 7pm all others will start at 6:30pm

No more than 5-6 cases on per night.

Motion made by Irene Dwyer, seconded by Jason Wright. All yes by roll call.

A motion to adjourn by Jason Wright at 10:46pm Second by Irene Dwyer. Roll call to adjourn all yeses.