



**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 February 24, 2022

Meeting opened at 7:02pm. Members present are Chairman Baird, Irene Dwyer, Tom Chiudina, Jason Wright and John Young.

Case 005-2022 90 Quincy Avenue withdrew their case without prejudice. Chairman Baird asked for a motion to approved the withdrawal. Jason Wright made the motion, Tom Chiudina second. Roll call all yes voted to withdraw.

Next case to be discussed with case is 016B-2021 Michelle Harkins 23B Almont. There was a question regarding case 016B-2021 vs case 016-2021. 016B-2021 is asking for a variance. 016-2021 was a request for a special permit to consolidate.

Case number 10 of 2021 was disposed of because it was withdrawn. So there's nothing to consolidate there. But it's between 16 and 16. B. I'm just curious as to procedurally where you think we are.

Attorney Cipoletta addressed the Board- Gentlemen, it seems that the latest filing is for a special permit under the provisions of 1736. And that is requesting the board of appeals to set forth in 17.36.040 by special permit allow location of a pool within the above required side yard setback area to within one half of the required distance. If it finds that a literal enforcement of the required setback would involve a practical difficulty, or unnecessary hardship. It seems that that's what is in play before the Board of Appeals at this point. I believe the original filing was for a variance that was done by Attorney Turco. And I think that was argued procedurally at that first hearing. And it was refiled, or it was amended to conform with 17 .36.040

Chairman Baird-the request right now is for a special permit.

Attorney Cipoletta-I believe that is what is required under the ordinance.

Chairman Baird- Okay. All right. So why don't we why don't we just as a procedural matter, we'll start there. Why don't you get into the presentation of what it is if you can talk about what you know what's changed, if anything since you were here last, and then we'll open it up to questions from the public. And I'm sure board members will have some questions as well. So the floor is yours.

Attorney Cipoletta- Thank you, Mr. Chairman, not to think we can beat this horse at any debtor on the facts. They haven't substantially changed. But a couple of things have changed from the perspective of arguing the law. Number one is questioned whether or not the fence is a structure. And I'm going to submit to the board that it is not a structure. And the reason that I'm of the view that it is not a structure is that structures need to be set back off dimensional regulations off boundaries, and off dimensional points, fences, fences aren't structures, they are generally set on a boundary and there are no setback requirements for the fences. And I believe that this was one of the items that was argued during the last hearing, and was unresolved as to whether or not the board had made a finding that the five feet of setback of the pool from the fence was actually required to have to have relief. If it is required to have relief, then 17 366.040 is written in the disjunctive the board can find that either that it may reduce the setback by one half, which would be five feet the point at which the pool is currently proposed to be set. If it finds that the required setback would involve a practical difficulty, that's different from an unnecessary hardship, which is different from the hardship that would be set out a half have to be achieved in arguing a variance. So a practical difficulty is what is proposed is argued by the petitioner. What we have a seven a 12 by 17 foot pool, the pool is about is required to be setback from the front boundary of the property by 15 feet. Obviously it is it needs to be setback on this side yard setback. By 11x 10 feet, it's setback on the left side by 11.3 in the rear is only required to be set back by 10. This pool is proposed to be set back by 19.4 feet. If we're looking for relief on the order of five feet, that five feet doesn't relate to the 19.4 Or does not relate to the boundary between the Dean Winthrop house and the pool. It's a setback. That would be, arguably, from the fence, if the fence is found to be a structure, not the boundary between the two properties that are oppositional in this in this particular matter. The other element that needs to be found and addressed under 17.36.040 is that the granting of the relief would not result in a detriment to the public safety, health or welfare. We've read a lot in the submissions and heard a lot of presentations about how there is some fear from the neighbor down, down range about you know, bursting of the pool and the running of water and all of this and that, that is a job that is was tasked to the engineering company and Mr. Fodera, the engineer who submitted the engineering plan for the forefoot maximum height retaining wall, which is part of the record of proceedings in this matter is on resume, so I think it would necessarily follow that his presentation, but would come at this point with leave of the chair.

Engineer addressed the Board- Good afternoon, members of the board, Giovanni Fodera, with our engineering, if I can just share my screen and love to do that. So I'll do that right here. Right, first, I'd like to show the site plan that we're referring to the 11.3 feet on the side right here. 19.4 feet from the rear, and 10 feet from the deck, and five feet from the fence right here. This is where the pool was proposed to be located in the fencing, I'm sorry, not the fencing, but the wall is located right here along the side yard and the rear, as well as in the middle of the lot right here. This is the detail of the retaining wall. So very standard retaining wall that's four feet at maximum height. And these are commonly used than

weeping holes, there. There's gravel for any groundwater that seeps into it. So it's controlled for all the purposes of being a four foot retaining wall. If there are any concerns about this retaining wall, being able to withstand the weight of the pool, is totally out of the question. And I'll tell you, I'll explain why. Basically, the weight of the pool is accelerating onto the soil right around that. And the soil, the pressure of that weight, distributes in at a 45 degree angle, generally 45 degrees is a pretty, you know, conservative by it's the line of influence. This is a good image, I guess, was that anywhere, so it's this image right here, right? It's kind of a good example. this is an example showing the wall or footing any weight that's exerting from the footing. And in this case, it would be the pool down. So all the weight would be experienced from this line and under everything that's above it is not affected by any way of the pool. So going back to the plan, if you go 45 degrees out, we're at 19 feet from the rear for the weight of the pool to reach them line of it for the line of influence from the weight of the pool to reach that wall, it will go down 19 feet deep 19 feet horizontal. And just looking at this, the wall, for example would be located like right here, right? That line of influence is totally out of solely out of picture. It's not even affecting the wall. It's totally out of picture. So basically what I'm trying to tell you is that wall is not split, its not a structural wall for the pool. And everything that's going to be holding up the weight of that pool is just from the soil itself. So really, it's just a question of zoning definitions of is that pool? Is that wall a structure or what kind of areas is where special permits are needed? And I believe the attorney discussed that.

Attorney Cipoletta- No Chairman, but I'd like the chance to respond if any issues arise. Thank you. Of course. Yep.

Chairman Baird did open this up to the public.

Lauren Mazzuchelli- 132 Winthrop Shore Drive. I have a question for Mr. Fodera. Before I comment on other things, he mentioned the retaining wall could withstand the weight of the pool, how would it fare up under erosion? That area sees pretty extensive erosion and continues to from rain and whatnot. So how would that well hold up? the rest of my comment is that as a member of WIHA, I'm concerned for the safety of the house and the effects of erosion and water and losing the sort of water sink will have on the property. I noted that this year we did experience or the House did experience more flooding than usual. With the little bit that has already been done. So I would just like to register those concerns.

Larry Hayes I'm a civil engineer address 40 Harrison Ave, Woburn. I was asked to come out and look at the property back in April of last year, as there was some concerns when the rear of the lot of 23 a 23. B was cleared. And some grading modifications have been done to that property. And it's been documented both in pictures and in actual board of appeal decision when they added the addition on the back that there was a drainage swale that existed along the back of this property which has been filled in due to the grading modifications on that lot. You know, where there was no stormwater coming on to the Winthrop house property there now is and we just like to obviously this concerns with all this water, especially if the walls are constructed as they're proposing now that all the water from 23 A and 23B Almont Street is going to be heading directly to the rear of the existing barn structure, which is apparently located less than approximately two to three feet off this rear property line. And we'd like to know, you know, with legitimate concerns is how they intend to handle this increase in runoff. It's now

entering this property where there was a drainage swale prior to mark draining, trying to prior to modifying the grade on this property. There was no water coming onto the property and appears now, all the water from 23 A 23 B and 23 Almont Street is coming into the backyard sitting against the rear and rear corner of the barn structure. And also, we brought up in one of the other, you know, meetings that one of the provisions of the town is that they, they have to have a way that the in zoning requirements 17.36. 60 Water Supply treatment and drainage systems, it states the swimming pool equipment shall be equipped to be completely emptied of water discharge water shall be disposed of in approved drain. And I don't believe that's been addressed by the applicant. So not only the surface water runoff from every rainstorm, you know, this potential when they have to this bullet, this water is going to be directed right on to the with ripples property. And there's legitimate concerns because the rear edition of The barn was put on, as it says in, you know, writing the decision of the board in 2008, which I included with a letter report today that was submitted today. That, you know, the addition was put on to house artifacts, pictures, documentation, letters and whatnot, from the property both for the property and for the town of Winthrop. And obviously, there's legitimate concerns that this is getting impact by water, which we had not been prior to the grain modifications on this lot. We would like to know how this is going to be dealt with. I mean, and the, you know, well, this new plan is far superior to what was submitted on prior submittals. You know, they don't show where the structures on the width or pulse property is located. There's no spot elevations for the bottom and top of wall, you know, they're showing a four foot high wall. But it still shows failure on the plan that this property is sloping directly back onto the Winthrop house property. So where there was no water coming onto the property, there is now a substantial amount of water coming on this property in every rainstorm. And again, in the decision of the board in 2008. You know, one of the conditions was that they address the drainage concerns, which obviously had been addressed when structure was built. And the reduced setback was granted. And so the people are around you or they should be have the right to, you know, have a have a little bit of leeway as well, which is which is true. I mean, they can build a pool on this property. However, if it's going to have a negative impact on the property that's downhill, we obviously have issues with that

Stephanie Honan in from 12 Pico Avenue in Winthrop. I'm the long-suffering treasurer of Winthrop improvement and Historical Association and a proud one. I've sent a number of letters I trust that you received the letter that I sent today, I am in complete support of our attorney Sean Donahue. And what my colleague Lauren Mazzuchelli had to say, there really is nothing else more to add other than we're vehemently opposed to the swimming pool. Thank you for this opportunity to speak.

Attorney Donahue addressed the Board- Good evening, Mr. Chairman, members of the board. My name is Sean Donahue. I'm an attorney you're my office is at 21 Pauline Street Winthrop. I represent the Winthrop improvement in Historical Association, which owns the Dean Winthrop House, which is a direct butter to 23 b Almont Street. Mr. Chairman, as you know, I filed a motion to consolidate in large part because, I guess where the subject matter and all of these petitions are these three petitions, a case number 10 -2021, case number 16 of 2021 and 16, B of 2021 all involve the same subject matter, different requests for relief, in some instances, but all essentially involve the same subject matter that is the pool located at the rear of 23b Almont Street. I think that, you know, in trying to figure out

procedurally where we're at, I'm know this opened 16 B, case number 16. B, if you will, motion was allowed back in June of 2021. To add a request for variance. And that was to case number 16. of 2021. That motion was allowed. And from that evolved, case number 16, be of 2021. And Mr. Cipoletta filed an application in connection with 16 B 2021. I note that in that application, there's no request for a variance. But then again, you had asked Attorney Cipoletta. Tonight, whether he was seeking a variance, and I guess in light of the proposed move of the pool, from a distance of 10 feet from the house whether a variance would be needed. And his response, correct me if I'm wrong was that he's here for a special permit. If that's the case, that special permit, if you will, falls under case number 16 of 2021, which was never noticed. The notice notices that without in connection with this hearing is a relation of 16 B, which I understand it to relate to the variance. I'm just totally confused. And I suggest that what do you consolidate or not, there's a notice violation. As far as whether or not the fence is a structure, I direct your attention to zoning bylaws on chapter 17.04. Under definitions, a structure is defined structure means a combination of materials for permanent or temporary occupancy, or use, such as it lists out a different number of items that would constitute a structure included in there is a retaining wall and a fence. So the question is whether or not that fence that's in the yard is a permanent or temporary structure. And I would suggest that that fence is not easily movable, and not much more than the pool would be removable. they don't have an indefinite shelf life, everything has a definite period of time, which, you know, sort of exceeds its usefulness even a dwelling or a house, a pool. A fence is similarly situated. I my contention that the fence is a permanent structure, as is the retaining wall that's being proposed is also a permanent structure in both the wall of the pool, and the retaining wall itself is approximately five feet from those permanent structures under 17.36. It's states that I just wanted to highlight the location of the pool. Board of Appeals made by special permit allow location of the pool within the required yard setback area, let me just go private swimming pool shall be minimum of 15 feet from the street property line 10 feet from the side property line 10 feet from the rear property line, no wall a swimming pool to be constructed under this chapter shall be located less than 10 feet from any permanent structure. And I suggest to you that this pool is within 10 feet of a permanent structure, namely the fence and the retaining wall. To grant a special permit under this under this provision, you'd have to find that there's practical difficulty or unnecessary hardship to the applicant and I suggest just because the applicant wants a large pool 12 by 17 doesn't constitute a hardship when they're pools available less than size that might be able to comply with current zoning ordinances. So with that being said, Mr. Chairman, I'm asking you to, to deny the request presently before you are the zoning relief that's presently before you. It's my understanding is you're not entertaining a variance but you know, entertaining a special permit, and it just doesn't fly. It doesn't matter where the side yard is. Whether it's the delineation between A or B or not, that fence is a permanent structure and can't be easily removed. It's going to be there for as long as that pulls there. Unless it should rot out before then. Thank you.

Michael Herbert I'm the president of the Winthrop improvement in Historical Association. I strongly oppose this because there is no hardship point of reference when you drive into Winthrop. From Revere, you look over to the Boston skyline. And you see the Belisle Marsh, you see a bunch of canals in the salt Bay, that is a erosion, long term. Now when you squeeze a pool in between five feet, a fence in the pool, the water's going to come off the roof that's going to come down the hill, you're going to

funnel all that water, you're going to channel it just like that Belle Isle Marsh, it's going to eventually cause erosion. I don't care how long it takes, it's eventually going to cause failure of that wall. That wall is not a good wall. When you have freeze, thaw, freeze thaw. The ground is very unstable. You've walked on ground all around town, and you've sank and you're like, Oh, my yard is soft. That's what's going to happen to that wall. There's no footing there's no four foot below the thaw line, the freeze line. That wall is going to feel it's Mike Carney he just said that. There's no way that that wall will hold. He says you got to go down. You got to dig deep. We already have problems. The water is already coming into the yard. It's pouring in the yard. is pooling in the yard. Where is this water coming down the hill going to go? You'd now you're displacing water. There's no way the 12 by 17 pool that it can seep into the ground. Now you're channeling it to a funnel. You're funneling this water back to Belle Isle Marsh. This is going to create problems, the Grand Canyon effect, it's going to happen, it's going to feel who's liable. You know, what are we going to do? If there's problems? I've seen these walls fail before you all around the state they these walls fail. I don't care what engineer tells you at the bottom of the hill with the water runoff, it's going to happen there's no hardship here. There's no hardship. Tom, I'm sorry. They took your advice and move the pool closer to the barn. So do you have any recommendations for us with the present flooding problem? We're experiencing this for the first time ever, ever since the ground has been leveled. This is a real problem I strongly oppose it. And I asked the board to deny this pool, please.

Motion by Jason Wright to close public comment, second by Tom. All yes votes.

Attorney Cipoletta addressed the board one final time. I believe that the building inspectors original denial site 17 36.40 non compliance with proposal proposed pool to the minimum side yard setback that was April 1 of 2021. And what happened after that, I think was an application for a very it was an appeal from that book seeking a variance It was argued that a variance was not the appropriate Avenue. I was not on the case at that time. But I was waiting for a case behind it to be heard. And I think procedurally that was what happened. And then following that the application for relief was for a special permit under that very section. The other thing that I think needs to be, well, I'm not going to address the drainage that's above my pay grade. And I think the board is very quite enough of it. So I'll leave it there.

Tom-There was mention of a plan that was submitted that showed an original swale that was created when this when this property was built. Does the does the board have that? And is that something we can share? On the screen?

Chairman Baird- I don't believe I have a plan that shows that drainage swale. I know that it's been talked about, I don't think we have one that's part of the record. And I don't think there's any easement there that requires the continued maintenance of a drainage swale. But unless someone I don't think we have anything in the record on a drainage, swale, a definitive document on a drainage swale, I have no reason to believe it wasn't there. But it's just I don't think we have documentation, documentation on it in the form of an easement or anything else.

Fodera Engineering: So just going back to the plan that we submitted, and I'll share it again on the plan on the screen. So the existing contours from when we survey the property are the gray lines right here? Yep. Let me zoom into it. So it drops down from about nine five elevation down to 91. But in that it drops down to 90 in this back corner. So I also don't see any swale On site, at least on the subject property. I'm not sure if there's a swale located on the abutting parcel. But as for what's on the subject property, I don't see any swale according to the contours that were from whatever was, you know, a survey. And I'm unaware of any feeling as well. I'm not sure if any of this was filled in. But this these contours, they do not look like as well. It's not graded like a swale and grades more towards the, in this corner, maybe this rail over there and on aware of. And I just want to mention that. I also want to address some questions. There was a question about the retaining wall and being able to withstand the pool, I did not say that the retaining wall was, you know, designed to withstand the pool. And I mentioned the line of influence earlier, how the weight of the pool is just repeated downwards at a 45 degree angle, so the weight of the pool would be, it would not affect any anything of, of the retaining wall. So it's not, it's not holding up that retaining wasn't holding up the pool. And as for added runoff, I'm unaware of there's no added impervious area on the property. It's just if the added runoff is a discussion about me the potential pool to fail. That's something we'd be able to directly address maybe at a later time. But as for the swale? I don't believe there's a swell on the site.

Chairman Baird=Just from an engineering, just a question about the engineering. but from the standpoint of bringing up the grade across the back of the putting the retaining wall bringing up that backyard to 94-95. That's going to all be fill. So Won't there be additional inundation and sort of the ability to recharge that to groundwater through the site above what's there now because we're now it just sort of shots across the property, you're getting more volume for soil for that to attenuate any surface water? Correct.

Mr. Fodera= So what would happen and I can share the screen? Once again, what would happen if you're talking about the water as if the pool did were to fail?

Chairman Baird-what happens if, you know, just regular rainstorm, so you have not even 100 year storm, right? So you have a 50 year storm. So you got a good amount of water hitting this. Now this is all pervious that's going to be around this pool, right? The fill, bringing these grades up to 94-95 feet, that's all pervious material, right? So doesn't that help absorb the rain flow, so it doesn't shoot across the property?

Mr. Fodera-It absolutely does. And so say water was to drop in this location, right here stormwater, it would slowly trickle this way towards the 94. And it's actually an improved condition as compared to what's there right now. Because if one were to trickle in this location right here, right now, it would, it would have a sheet flow down this much steeper grade, and then it would have a concentrated flow, kind of like in this area, which would, you know, it's a it's a quicker flow, as if in the existing conditions, rather, this is a lot more level. And so the sheet flow is more gradual, and it's a lot slower. So this is yeah, I mean, from a from a leveling standpoint, and rainwater tripling on this site, this leveled site is a lot better for more concentrated flow. I mean, it's definitely less concentrated as compared to the

existing condition. So if anything, if anything, the peak flow of runoff would probably be a lot less for this condition as compared to the proposed condition as compared to the existing condition.

Chairman Baird-Would doing any plantings near the wall with small root balls towards the back of the property from a screening perspective and from a root, a way to combat erosion be helpful, or is that something that those that do Balls might conflict with the wall over time and end up degrading the wall or is there a way to put something there to create screening and better soil retention through a root ball system?

Mr. Fodera- shrubs, kind of like a hedge type of shrub. I believe it would act as a energy dissipated for any runoff. So it would slow runoff for sure. I don't believe the roots would be detrimental.

Mr. Harkins As far as draining, like completely draining the pool, like every other pool in town, it would probably be the exact same method that they use. I mean, an approved train, I would imagine you just pump it out front into the sewer as if probably 98% of the pools in width or two. Currently, I doubt they have enough drainage in their backyard to empty a pool completely.

Tom=But you're saying that you will pump this up to Almont Street and not drain it off the back of your property?

Rich Harkins-Oh, no, I wouldn't have a drain towards that I would go into a drain for sure. I wouldn't pump into anybody's yard or property. And just one more thing about this. He keeps mentioning swales in that I've changed the grade of the yard. I don't I don't understand even what a swale is, and I haven't changed any grade. The only thing I did was a few years ago is I removed a few unhealthy trees. I've never changed any grade, or filled in any swales. I don't even know what they're talking about. So that's all I have to say about that one. Thanks.

Tom- then this is probably directed more towards the engineer with the retaining wall being right up against the property line, What does that do for the runoff north and south of this property in this retaining wall? Because there is a natural slope, whether you want to call the swale or not, there's a natural slope that goes towards the Governor Winthrop property. And by putting this retaining wall there, clearly, you're going to be pushing whatever water whatever run off with settling between those lots is now going to be pushed onto the onto the governor Winthrop property. And I'm wondering, would pushing the wall further back from the property line, alleviate that?

Mr. Fodera- So yeah, I can I can answer that. And I'm going to go back to the so it's again of you know, the runoff from the existing grade as compared to the proposed grade. So a more level site, like what is proposed to be stormwater runoff would be most likely infiltrated before it actually gets to the wall. And if it's not infiltrated, it has a low, much lower peak rate of runoff so that the flow rate would be a lot less because it's going over a much, you know, leveler, you know, greed right here as compared to what's existing mean, when you have storm water dropping five feet, four feet in a short period of time. So you're going to have a lot more kind of like a waterfall effect from what's existing right now. And by filling the site and having more level site, the runoff is traveling much slower.

Tom- It's about the effect you're having on the other properties now because there's no natural retention area down there So you're disrupting it.

Mr. Fodera- So there the existing contours do not really show a retention area because it continues to flow passes 90 elevation to kind of like towards that corner. So I'm not sure it is it doesn't show any retention within the site itself. And so it's going to consume water in the sewer condition would continue to flow court kind of towards that corner. So the runoff would be, I'm sure less actually in the proposed condition for stormwater to flow over that wall. Because it's not being retained on site in the existing conditions as shown from the existing contours. So the flow rate towards the rear abutter, I believe it would actually have an improved condition just because of the level site.

Tom= So, as I understand retaining walls, the back of the wall that has the gravel, the geo fabric, the perforated pipe, that is all to help maintain the integrity of the wall, allow water to flow and not collect and freeze and what have you. Correct wouldn't creating a similar maybe I should have shared my screen a similar stone filter fabric, perforated pipe on the outside lower level of this wall also help and create sort of a retention area to prevent or to lessen the amount of water that's flooding will get to the to the property to the neighboring property.

Mr. Fodera- See, so if I understand correctly, you're saying if there was kind of like a gravel base on this side, right?

Tom- Yep, like a three foot gravel base to the left that maybes a couple feet deep. And as a similar effect of allowing any runoff to naturally leach into the ground there as opposed to you know, frozen ground or mud where it's not going to see as quickly it's going to possibly continue on to the neighbor's property.

Mr. Fodera- I yeah, I do agree that it would act as like a trench drain essentially.

Tom-So I guess is the question then for the applicant? Would they be willing because it appears by the proposed plot plan that you have this wall. More or less right on the property line. It looks like it's maybe a foot no six inches to a foot off the property line? Would the applicant be willing to push that wall back a couple of feet and create a French drain there?

Rich Harkins- No, I'm not opposed to that at all. Um, I will do that in a heartbeat. As long as I have the setback. I don't mind moving the wall in. It was only that far, because that was my property line. I have no problem moving in and doing the French drain around the perimeter. I mean, come this far. I'll do anything.

Tom-Mr. Chairman, the only thing I think I'd request further is that you make sure that applicant, the audience, and the board are clear that this is a special permit and does not require hardship.

Chairman Baird=Yeah The relevant language of the ordinance right?

Tom- I will read it to you I have it open, the Board of Appeals may, by special permit allow location of a pool within the above required yard setback area to within one half of the required distance, if it finds that literal enforcement of the required setback would involve practical difficulty, or unnecessary hardship. I agree that language makes it confusing, because that's the language you use for a variance.

Chairman Baird- I think it's interesting, right, we have a disjunctive test with a with totally sort of a practical, sort of a practical type of standard and then a hardship standard, which you never, you're never going to get to the hardship standard. Practical is always a lower bar, right. So and it's or it's not, and so you don't have to prove both. So I think that were, I think the intent of the language in my reading of this language is that we can grant a special permit for any of these items from a setback perspective, whether it's a yard setback, or whether it's from a lot line, or from a structure, a permanent structure. Because I think that it's all sort of viewed as different type of yard setbacks. Now. I will say this, I do agree with Attorney Donahue , that offense is a structure under our zoning ordinance. And I think anything affixed to the earth, that's the distinguishing characteristic to me anyway, have something but that is a permanent structure, meaning a fixture versus a temporary structure, which is you can just pick it up and move it freely. So everything that is whether it's a fence or a building. That's the type of permanent structure, I think we can grant the relief if the board is inclined to five feet off of the fence, as you know, half of what's required from a permanent structure under that provision. So I think a special permit here is the right relief under that provision. And so I don't think we need to have a it's not a variance standard here.

Tom-Right. So I agree. And the other thing I want to point out, because I think attorney Donahue also suggested that well, they could make the sport the pool smaller. Well, they could make the pool narrower. But they could also make the pool longer. Right now that's nearly 20 feet from the rear property line. So this is less than 200 square feet. If they made a rectangular pool to the limits of their were allowed in the setback, they'd have a pool with more volume than this pool and the closer to the property line, the rear property line. So that to me is not practical.

Chairman Baird-And so I think it's actually more than five feet from the fence, it's probably more like seven. And so I do think there's some play if all this would have to do is shift over a foot or two, and you're planning a foot and you're probably almost completely, you know, within the 10 feet on each side. If you measure it to the wall of the pool. I think the reality is, from my perspective, with the retaining wall, the grading, and I think that if there was some sort of screening in the way of shrubs along that retaining wall, I do think that there is, as we think about granting a special permit, I am sensitive to the fact that whatever we need to do, I mean, here's what I would say, right? I think that making sure that we are doing the applicants doing what it can to sort of mitigate the runoff is great. The reality is right there. They're not required to prevent all runoff, they're not even required to lessen the rock. Right, they're required to not do something that's unreasonable as a matter of law, right? Because we don't have a common enemy doctrine in Massachusetts, we have a, we have a reasonableness test since 1979. That's what the test is. And so I think that here, um, you know, I think, the retaining wall, especially with the moving it back, putting the gravel in that you talked about, you

know, that all seems like we're taking reasonable steps to prevent, a major runoff going here, I think that adding shrubs to help screen a little bit wouldn't be a bad thing. I think the applicant should want that too, just from the standpoint of people looking in the backyard, at the pool. It goes both ways. It's the old good fences make good neighbors. the proximity of the Dean Winthrop House the lot line. You know, that that? It is an idiosyncratic type of situation that, you know, we want to make sure that, just because the Dean Winthrop house is there, we're not putting that doesn't put a greater burden on an abutting property owner than if it was just my house. And I think people need to understand that. And I understand and appreciate the historical, archaeological and cultural resource that it is. But there is not greater property rights in due in that structure. And that property just because of its status as historic building, it does not prevent people from building on their own that would be effectively a taking. And that is not a recognized thing as a matter of law. In my mind anyway. So I mean, I'm I don't know. Jason, do you have anything else on this?

Jason--Just to clarify, we are we are asking the applicant to install the French drain at the base of the

Tom- Because the detail on the retaining wall doesn't show it, but I'm assuming there is still a fence at the rear property line to conform with the zoning, which is, you know, a six foot fence. So at what elevation is that going to be?

Rich Harkins- originally, we do have a white vinyl fence on backorder. That's the chain link there is just temporary just to have the fence, you know, if we got the pool, so we do have vinyl on backorder that we were planning on putting on top of the wall to not go over the six feet that I believe I can't go over. So if that means a four foot wall and a you know, a couple feet high fence to make it the six feet. That's what I'll do if Darrin prefers shrubs or something

Chairman Baird- A fence is Fine. I mean, it needs to be a fence from the standpoint of securing the pool.

Jason- I would just again, for the record, I just think it's important that we note that per the engineer. The plans itself that these changes, improvements, if you will, won't make the conditions worse. They'll ultimately be improved for all the reasons that we previously outlined.

Irene Dwyer- There are some things valuable, you know, artifacts and records at the addition to the barn. But almost go, the level of things that are being pulled out in objection, which many of which have absolutely nothing to do with the Board of Appeals, or the nature of the constructions planned at this house. I'm I really, I feel very badly about it. I'm a member myself, it's hard to reason I'm not a voting member on this case. Um, and I, I've mentioned a couple times in these cases seem to be getting larger and larger. But this, this is really something if everybody had worked together on this, you could have worked something out pretty easily, you're only talking about a couple of feet. And the engineering of it ought to have been relatively simple, but when every single thing that an architect or engineer is putting up as being questioned by especially by Well, I'm not going to get too far that I we've been told a meet all the paperwork in this thing. The board itself has been told in not very pleasant language on a couple of these things that we err on the side of the applicant and why are you suggesting things to me? Are you supposed to be on our side? We're suggesting it because we would like people to get to a point of Yes. Not because we want one side or the other to win there's a lot of balancing being done here. And

the fact that we may not 100% agree with one side or the other doesn't mean we're trying to force the other side's position, so you know come down a little bit people thank you. Yeah. Questions bricks it I thought it's not a one liner that we had we recently was about, you know, we I didn't have a pool growing up, we went and swam in the ocean. Does that mean you think we should outlaw all swimming pools and Winthrop? I mean, we're surrounded by ocean, so nobody has a hardship if they don't if the neighbors don't want them to have a pool. It's just this getting too a little too global for a simple swimming pool? Thank you.

Motion made by Tom regarding case of 16 B 2021. That the board grant a special permit for a setback of less than 10 feet the required 10 feet from a permanent structure that being the fence that runs west of the pool plan itself as shown on the submitted site plan that the board find that this relief is not impractical and does not jeopardize the intent of the zoning bylaws or create unnecessary detriment to any of the neighbors by creating this pool and that we grant this under the condition that the southern rear retaining wall is held a minimum of two feet off the property line and that a gravel French drains is installed in that two foot area two plus foot area at a minimum of 18 inches deep with filter fabric and that the construction of that wall be detailed submitted to the building department and be inspected by the building department prior to backfilling.

Chairman Baird- Do I have a second? Second by Jason. So as moved in seconded by as moved by Mr. Chiudina and seconded by Mr. Right.

Chairman Baird stated the motion for the board is to approve the requested relief of a special permit allowing for a reduced setback in the yard between the permanent fence structure or the permanent structure of a of the fence along the road would be the southerly white line, or the lot line between 23 or the line the fence between 23 A and 23. B all month and reducing it from 10 feet to the required 10 feet to five feet. So that is that's the motion as moved and seconded and now open for a vote by roll call.

Chairman Baird yes, Tom and Jason both yes.

Chairman Baird- So the relief has been granted. We will decision will issue. And within, you know, you wait to 20 days after the decision is filed with the sign and filed with the clerk. appeal period will run if no appeal is taken. Then you record the special permit with the Registry of Deeds. And you can get your permit from ISD or from build the building Commissioner

this second case is Irene Dwyer and John Young along with Chairman Baird- Case number 004 of 2022. Matthew Gamerman 27 Pleasant Park Road. This is a request to build a second-floor addition.

Matthew- We moved here bought a lovely home on pleasant Park Road. And we are now looking to build an additional master bathroom and bedroom with the expectation of a new child coming to spring. So we are hoping to build a master bedroom master bathroom on top of an existing structure. We are not planning on going outside of the property, or excuse me outside of the structure as is we're only going vertical above a single-story portion of the home. I've asked my architect, Beth McDougal, who's also on the line to share some of the plans if needed. But as of right now, there is a setback issue with

our neighbor on the right-side property line, which I believe is out of code or regulation. And that's the request that we're asking for today. Relief from that setback.

Beth McDougal the existing the existing footprint of the house will not be changed. And what it is, if you look at that right hand side of the house and the right-hand property line, existing houses three and a half feet from that right hand side. So the back has that little, little, I'll call it a dogleg that goes to the left where it says next to where it says deck. That's the section that we are proposing to add. On top of that, a master bedroom and bath. I can show you the plans. So those are the existing ones Hold on. So existing right now on the second floor. This is the area here on the second floor that exists. This is the roof on the second floor. These are skylights for the floor down below. So the first floor if you look at it right now they have a basement you enter or crawlspace you come from the back with some mechanical equipment and there's a basement under the main house. This section right here, that's the main two-story piece, and this piece right here, that rectangle that is the existing one-story family room that we're creating hoping to add on top of for the master suite. So the first floor doesn't change. And so on the second floor, we follow the footprint. And we put a backup a bedroom here, bathroom here with window, two windows to the backhand side, we're trying to focus the light, the natural light coming from the sides that are further away, the back and the left sides that we're not staring at the neighbors next door. And then the roof line goes in same context as the existing home. So this is the front of the building on the you know, the front elevation is the top, the left hand side, which is where you can see the deck. That's the bottom drawing, and then you see the deck with the sliding doors. And then that's where we add on keeping the roof slopes the same so that it looks like it's been there and it's not, you know, an addition quote unquote. And then that the top drawing here is the rear of the building, and then the right-hand side of the building. And then the rest of this is like door schedules and structure and stuff like that.

Chairman Baird-I'll open it up to questions from our comments from the public. On case number 004 of 2022 27 Pleasant Park Road. Seeing no hands second call for 27 Pleasant Park third and final call 27 Pleasant Park All right. Seeing no hands. Motion to close public comment. All vote yes

Chairman Baird asked What's the height of the addition? What will the height be?

Beth McDougal- So we are we're actually going to be building this is the peak of the existing house. We're below that with our addition. If the attic is 18, it shouldn't be more than 24 feet high.

Chairman Baird- where the setback is that we're not meeting. Can you go to the site plan and show me that?

Beth- So if you're looking at there's pleasant Park, and this is our surveyor did this. The right-hand side of the house is three and a half feet away from the right-hand lot line. Yep. We're not changing that. It's existing non-conforming, um, the porch exists, the deck exists, the garage exists.

Chairman Baird-So all you're doing is continuing is extending the nonconformity vertically?

Beth- Yes,

Chairman Baird-I will take a motion.

John I'll make a motion. We approve this. I don't have all the formalities in front of me of the case numbers. I apologize, but I make a motion we proceed with the approval.

Chairman Baird-Okay, I'm going to move to amend John's motion. Thank you. So John has moved to approve, I would say that my amendments would be to approve that pursuant to the provisions of 48, section 10, due to the uniqueness of the structure, and that it's already preexisting non-conforming from the standpoint of the southerly setback, side yard setback, that in the soil shape and topography of the lot that the literal enforcement of that setback requirement against the other an otherwise conforming addition would create a substantial hardship to the applicant, and they cannot make reasonable use of its property. And that that granting of that variance will not Derek substantive would not derogate from the purpose and intent of our zoning bylaw in the town of Winthrop or create a unreasonable risk to the public health safety or welfare of the town of Winthrop for the surrounding neighborhood or abutting parcels. the construction is done in accordance with the very nice plans that we have here, any material deviations have to come back to the board for approval.

Second on Amendment from Irene all 3 yes.

Roll call vote yes.

Chairman Baird- So Relief has been granted in the form of a variance we will issue a decision. Once that decision is issued and filed with the town clerk, you will have there's a 20-day appeal period where parties can appeal the decision. If no appeal is filed to get a certified copy from the town clerk that they do have to record at the registry of deed or the Land Court registry district whichever is appropriate for this parcel before you can get your building permit. Be mindful because I know that construction timelines can fall prey to a number of things variances have to be used within a year of their issuance, otherwise they lapse and so just something to keep in mind I'm sure you're going to be starting well within a year.

Chairman Baird- that concludes the hearings that we have tonight. we have a set of minutes that Sharon forwarded from our January 27. I don't know if people had a chance to review those minutes or not. I did. I'm okay with them. If anyone else wants to offer up a motion to approve those minutes, I will happily take that.

Jason- Motion to approve the meeting minutes from January 27, 2022. Motion to approve all yes votes.

Motion to adjourn meeting at 8:27pm.