



Town of Winthrop Planning Board

MINUTES

January 10, 2024

7:00 PM

Harvey Hearing Room

Roll Call:

Chris Boyce-Chair	Present
Gina DiMento, Esq.	Present
Honor Merceret	Present
Kimberly Hirsh	Present
Sarah Jane Fourness	Present
Alyssa Gamble	Present
Jason Pollutro	Present

The meeting was called to order at 7:00pm by Chris Boyce, Chair, followed by roll call.

1. 50 Somerset Avenue:

The applicant is withdrawing the application at this time because of National Grid and will resubmit. There will be a community meeting on 1/31/24 and abutters within five hundred' of the building will be invited. There will be a business round table meeting held in the future too. No vote needed.

2. 40 R Banks Street:

Rebecca Edmondson Korom, Esquire, and Rick Salvo, Engineer, were representing the applicants, Jason, and Glen Calla. This is regarding an easement that has been present for more than 37 years. The land was originally divided off, but not done in the correct way. The land was never developed prior because of the Subdivision Control Law. There have been six prior applications for larger complexes, and they have all been denied; this is for a single-family dwelling.

Applicants spoke with the fire department and there have been no issues since 2021. The building will be sprinkled, and a hydrant will be added to the land. Applicants spoke with the Board of Health and there were no risk issues identified. There were two successive site plan reviews, and a private way will be created; if approved and there will be frontage created. Conservation Commission approval will also be needed. The Planning Board requested mitigation plan for the area for drainage and, if development happens, the Applicants will install extra drainage as needed. The waivers requested are Section 16.12.010 A.1.h, rounding of intersections; Section 16.12.010 A.4. b. Dead End streets be provided a turnaround; Section 16.16.010 C, sidewalks.

PUBLIC TESTIMONY:

- Jay Tyler-This resident is scared of the sanctity of his home. They have ambition of condominiums. The neighbors have kids, they all enjoy the animals and birds and feel this is irrational.

- Nicholas Gomes- Attorney in Massachusetts (67 Barry March St.) Representing Diane Spicer (40 Banks Street, direct abutter). She has lived there for 38 years and shares the 29-foot easement. The Applicant is trying to use this as an access to the road and this has come to the Board on five other occasions. In 2022, there was significant opposition, and nothing has changed except that Winthrop's population continues to grow. In 2022, everyone opposed in the neighborhood and in the greater community too.

What is at stake today? A no vote is in accordance with Massachusetts law and Winthrop Bylaws. How are we here again when two years ago nothing has elapsed since the last unfavorable decision was granted? The Board is looking for a material change in the petition, and nothing has changed.

Drainage- This is ambiguous and there is supposed to be an Environmental Study and there is not one submitted. There is no waiver for the size of the easement and access to the road is twenty-nine feet and it is supposed to be forty feet. The board rejected three waivers before with no new reasons given.

Sidewalks- There is full authority to require sidewalks; how is this development going to impact the community?

A personal impact statement was submitted from Dianne Spicer's husband who is ill and unable to make it. This falls to the public health, safety, and goodwill of the project.

Neighbors have been coming forward for years about this. It would be detrimental and substantively derogative from the intent of the bylaws and state laws. The application is trying to circumvent the law. We are asking for the project to be denied once again. There is a petition from neighbors provided to the Board.

- Ryan Bradshaw- 34 Bank Street- We are newcomers to the neighborhood and have some young kids. This creates an additional burden on the neighbors. There is not a lot of parking and there are a lot of kids on the street, and it is not a very wide street. There are no sidewalks, and this is adding impervious surfaces where there are already floods. They are going to collect a lot of water and dump it somewhere else. We request a peer review of the water mitigation efforts. The driveway in question has more than eighteen inches of water already. This creates a financial burden, and it devalues the properties and the house values. The Board is supposed to take that into account. We are requesting it to be denied.
- Nadine Calla - Jason Calla and my brother-in-law take pride in our houses. As far as the traffic, how much traffic does a one family home bring in? We do not understand why this is changing the integrity of the neighborhood. It is not going to be condominiums. It is going to be a one family house. I had to remove myself from social media because of the things being said about our family that are not true (i.e., like that it is corrupt). They sat with all the Departments to get guidance from all the appropriate departments. We are here today because the original decision was not in compliance with the Bylaws.
- Tony Collosum- George Street- I feel like we're being strong armed by the MBTA for the 800 units. Here we have two homegrown guys; we should be encouraging them.
- Peter Gill- Precinct 5 Housing Authority- A meeting was held this week and wanted it part of public record. The Housing Authority Board of Commissioners had a meeting on 1/8/24 and we cannot support a resubmission for the plan for 40 R Banks Street.
- Yoli Morocco Polly- Morton and Douglas St.- We had a fire on the corner of Bank Street before and had to get help from neighboring towns. I cannot imagine how help would get down there in a timely manner. There were recent fires where people were displaced. What happens when the police must respond? Also, in a recent letter from the Town, in November, a letter from Woods Hole Green International is looking at the Morton St. and Belle Isle Marsh trying to help the salt marshlands. This project is going to remove mature trees. This feels like harassment. This is the sixth time I have come here now for this project. Winthrop got a lot of money to preserve what we have instead of removing nature. I oppose.

- Anonymous Speaker- Is not in favor of this project; does not want cars in her backyard because it has wildlife now and if this project goes through, it will have a house and a car.
- Chris Correa- Lewis Avenue- To comment on the previous resident, we live in Winthrop not rural Mass; there are planes, cars, trains, etc.
- Kevin Foley- 51 Banks Street- We have done this before. My wife spoke before. (Resident provided photos to the Planning Board). We were referring to previous owners and runoff of water earlier and a neighbor had to dig a trench to let water out of the yard and this was not counting his pump. Once again, we are here about the breach. One house is not worth the aggravation of the whole neighborhood.
- Nicholas Agri-149 Morton Street- (Online)- He is a new neighbor. This is unique landlocked property (gave specifics of the code) the width of the sidewalk and noted that waivers requested did not include one for a narrower roadway it is only twenty-nine feet. He paid out of pocket for an assessment to have trucks and fire trucks go down and turn around on the roadway; and they could not make the turn onto the current street. Without new construction, the Board can waive in a public interest and the driveway that does not have a sidewalk public parking no accessibility for emergency vehicles is not in the public's interest, and he opposes.
- Richard Vivolo -79 Lincoln Street. I am a lifelong resident. I know Jason Calla and hear complaints about the easement and the twenty-nine feet; that seems wider than some of the streets in Winthrop. I also heard about the flooding; and maybe newer developments would help that.
- Diana Veins- Precinct 2- I oppose the development. They bought an unbuildable lot at an unbuildable price- because it is unbuildable! This has been denied five times because it is non-conforming. The configuration and disruption to the abutters is the reason families continue to show up. Despite the developers' attorney's untrue comment that the Town is required to purchase unbuildable lots, the Town should step in and find a way to come to an agreement perhaps be sold to homeowners or made into a park hope the Board makes a definite statement here it's harassment at this point no changes to the plan just a different approach the state's flood mitigation goals are natural and man-made mix removing them would be harmful and need to be preserved and would damage the homes around them. The Planning Board should require an environmental study of anyone who comes forward with a plan like this.

Motion to close Public Testimony Honor Merceret.
Second by Gina DiMento. All members voted in favor.

Comments from Applicant:

- Letters from the Fire Chief were submitted with the Application.
- The material used for the driveway and easement is a permeable surface. It is not asphalt.
- In response to the trees, 30- 40 percent of the trees near the Marsh will not be touched.

Questions/ Comments from the Board:

- Chris Boyce: Is it correct that you are looking for three waivers why are you not asking for a waiver for the roadway with?
 - Attorney: My understanding is that is for a public street, and we are not asking for a public street. This is for a public way and that was according to the town council.
- Alyssa Gamble: Please clarify- you just said you are not touching trees closest to the marsh, but trees in the plans look as though they are touching those that are closest to the marsh.
 - Attorney: Attorney noted that her client corrected her that the trees being removed would be nearest the marsh. The structure is not within the flood zone. The efforts

and obligations are to try to maintain as many trees as possible and to replant trees after the structure has been placed. A lot of effort has been put into the collection and control and redirection of water and flooding. The neighbors spoke about their driveway and pooling of water for the past 38 years, but they have done nothing to fix that. However, this easement will be graded to help with that. The sidewalks we do not feel that anyone would want sidewalks because they are not permeable, and they are less aesthetic. It is doable. In terms of backyards people do not want this in their backyard because every parcel will have a neighbor, but this property abuts their parcels.

- Alyssa Gamble: Requested language clarification, “It’s an existing right of way” versus a “private way.”
 - Attorney: An easement is a private way, and it is a real estate law term. The difference is the recognition of it in the town.
- Chris Boyce: So, it will not be maintained by the town?
 - Attorney: No. It will not be maintained by the town.
- Chris Boyce: You’re asking to qualify for frontage?
 - Attorney: Depending on the deed the Applicants would have access and rights into that private way. For it to go public, it must be accepted by the town but here, it is just a private way.
- Chris Boyce: Is the ownership of it private? But right now, it is just an easement/ right of way owned by Mrs. Spicer?
 - Attorney: It is also owned by my clients.
- Honor Merceret: You could create a mutually agreed upon easement and recorded at the registry of deeds?
- Attorney: Yes, and get input from the town. To create a way, you must file with the planning board under Subdivision Control Law to create right of way with different standards. Where this was only access in one lot, in our opinion, it was more detrimental to the neighborhood to put in sidewalks and a full roadway with impervious surfaces.
- Chris Boyce: Just for clarification, the easement is only twenty-nine feet wide, and you could not do that because the road requirements are forty feet.
 - Rick Salvo: Correct, that’s part of it. But a 24-foot-wide driveway for one family house is extraordinarily large.
- Honor Merceret: So how is this not a driveway?
 - Rick Salvo: Because we created it as a right of way.
- Honor Merceret: So, this way connects from 40 Bank Street over the easement to 40R site. So, it is not a way in that spot. It is the easement at a point which would require you to subdivide the lot to have a property line the way the frontage is written.
 - Rick Salvo: The way the frontage is written, there is a property line between the way and the piece of property. You cannot subdivide their line unless you get them to agree to subdivide the property.
- Honor Merceret: My concern is we are putting something on someone else’s property that would require their property to divide and be nonconforming in size.
 - Rick Salvo: Or what the nature of the easement is.
- Chris Boyce: We are not debating it is a right of way access agreement. You have the right to pave it, put a driveway on it, to access the rear lot. None of those provide frontage.
 - Attorney: Except the Subdivision Control Law. You can access the private way as a body of the municipality. There is case law that supports why the Subdivision Control Law was created. To access land over land easements, get paved and then they turn into private ways. Many private ways are in Winthrop and throughout the Commonwealth that go over other people’s land.

- Honor Merceret: That still does not seem like a way; it seems like an outsized driveway, it cannot meet requirements, turning radius corners and the things tend to be characteristic of roads and would be owed on the property because it connects to the street. It does not do anything more than a driveway.
 - Attorney: We can add sidewalks. We just did not think it was what everyone in the neighborhood wanted, given the plumbing, the turnaround, etc. We worked with the fire department to make it an acceptable alternative. The previous applications submitted were for large complexes and this is for a single-family home.
- Sarah Jane Fourness: My question is subdividing someone else's lot to do this because you said there were examples of lots being subdivided to make ways.
 - Attorney: We are subdividing their lot to make a private way; no one else's.
 - Rick Salvo: This lot is not large enough for a two-family home.
- Chris Boyce: The frontage is measured along the hammerhead turn around.
- Alyssa Gamble: It is not divided. (The attorney provided the land usage.)
- There was a question raised regarding 40 Banks St. property and how there is a difference between the driveway versus a way. Chris moved the conversation because it was a bigger discussion with more information needed regarding the requirements of a private way. Further discussion is needed regarding the merits of the waivers being requested.
 - Waiver 1: per the radius is less than 20 feet their radius being requested is zero.
 - Waiver 2: this is for a dead-end St. They are requesting A hammerhead turn around.
 - Waiver 3: is for sidewalks of forty feet their request is for sidewalks of twenty-nine feet.
- There was a discussion regarding the completion of the application from 2021 and the previous attorney having submitted it. The application had some errors in it. It was remanded by the court so supplemental information was submitted. Updated information will be submitted by current attorney.
- Kimberly Hirsh: Asking a procedural question: the neighbors' counsel submitted documentation that has not been reviewed yet do we defer?
- Chris Boyce: We should make a motion to continue this part.
- Alyssa Gamble: I have a dimensional question to ask regarding measuring the frontage with the hammer head returns. There are a few turns in there it makes the measurements ambiguous.
 - Rick Salvo: I can send the measurements and the figures along with calculations.
- Alyssa Gamble: There are not any precedents in Winthrop with many hammerhead turnarounds.
- Honor Merceret: The lot with frontage has 75% less width on the side lots that are not at the correct proportion.
 - Rick Salvo: The lot width is not included in the side lot lines because it is a way to avoid the lots from blowing up to be bigger than what they should be and to avoid pork chop shaped parcels.
- Kimberly Hirsh: To clarify, we are requesting a corrected application or supplemental information, we are requesting site drainage information, and the water mitigation plan on the lot and for the right of way.
 - Rick Salvo: Yes. We will submit the flood study in its predevelopment condition that will show where it goes now and compare it to where it will go after development including the nearby areas. There will not be any zoning relief because it complies at this time.
- Alyssa Gamble: Is there any option for stipulation that it remain a single family?
- Chris Boyce: We need to ask the council if we can add that stipulation.

- o Attorney: I conferred with my clients, and they would agree to adding the stipulation to the plan our applicants can add that to the plan, but the board cannot.

A motion to Continue to February 12, 2024, meeting was made by Kimberly Hirsh.

The motion was second by Alyssa Gamble.

Roll call vote. Six members in favor. One member opposed.

3. 68-72 Almont Street; Approval Not Required:

The attorney presented for applicant that there are two buildings on one lot built in the 1900s. The applicants want to put one house on one lot each. They are asking for an approval that does not require endorsement to separate each lot based on Chapter 41 subsection 81 L. There are no new buildings being proposed. Both houses have access to the street.

- Sarah Jane Fourness and Attorney: Discussion to clarify that these are pre-existing nonconforming buildings and if anyone ever wanted to do anything they would have to go before the Board of Appeals. They share a driveway and would be an easement if either building were ever sold.
- Alyssa Gamble and Attorney: Discussion clarifying that there is no minimum lot requirement for subdivision because the houses were in place prior to the Subdivision Control Law.

A motion to approve and endorse the ANR made by Kimberly Hirsh.

The motion was seconded by Jason Pollutro.

Roll Call Vote. All members voted in favor.

4. Review of Minutes:

- **December Minutes were reviewed, minor edits were revised and accepted.**

5. 3A/ MBTA Housing Informational Meetings Discussion:

- There was discussion regarding what should be posted on the Town website regarding the presentations.
- It was agreed that caution should be used with sharing information and that it should be presented by the expert consultants and emphasized that it is not the opinion of the Board.
- The Board Clerk will keep the Board updated with the Consultant group chosen by the Town Manager.
- Understanding the state law will be critical and the consultants' input will be critical also.

6. ZCAP Grant:

- The ZCAP plan will be used to develop tangible goals for the NSORS office, both long term and short term.

A motion was made by Honor Merceret to adjourn the meeting at 9:22pm. The motion was seconded by Sarah Jane Fourness. All members voted in favor.