



Winthrop Planning Board
Town Hall
One Metcalf Square
Winthrop, MA 02152

Robert Carroll, Chair
Christopher Boyce
Gina DiMento, Esq.
Sarah Jane Fourness
Alyssa Gamble
Kimberly Hirsh
Steve Koutalakis
Honor Merceret
Julia Wallerce

DECISION

Definitive Subdivision Plan Application

Project: 40R Banks Street
Location: 40R Banks Street, Parcel 54, Map 71
Submitted by: Glen Calla and Jason Calla, Winthrop, Massachusetts

I. PROCEDURE:

- A. Glen and Jason Calla of Winthrop, MA (“Applicant”) filed plans and documents for a Definitive Subdivision Plan application from the Winthrop Planning Board (“WPB”) on November 23, 2021 acting for the Town of Winthrop under the Code of Ordinances of the Town of Winthrop, v8 updated 09-01-2006, Part 1 Bylaws, Chapter 145 Zoning, and particularly, Title 16 Subdivisions (sec 16.04.010 through 16.16.010) (the “Code”). The Applicant proposes to create a buildable lot by creating frontage on a private way for the purpose of market rate residential. The application shall be referred to herein as the Definitive Subdivision Plan. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Code.
- B. Plans and documents submitted for the Definitive Subdivision Plan include:
1. Cover letter, dated January 20, 2022 noting the contents of the submission package from James J. Cipoletta council for the Applicant and filing fee.
 2. Definitive Subdivision Plan application, dated 11.22.2021 and filing fee. It is noted that section 3 (Proposed Project) and 4 (Traffic and Town Services) were not included. Continuation Sheet, which included a request for three (3) waivers for curb radius, dead end turnaround, and sidewalks.
 3. Ethics Commission Disclosure of Steve R. Calla, dated June 17, 2020.

4. Town of Winthrop DPW Permit Application for Street Excavation, Obstruction and/or Driveway Apron for Glen Calla, dated August 17, 2020. It is noted that no curb cuts dimensions are provided.
5. Town of Winthrop Street Opening/Obstruction Permit issued by DPW Supervisor Aaron Armitstead, dated August 26, 2020.
6. Town of Winthrop Site Plan Review Updated Report and Recommendation, dated May 11, 2021.
7. Correspondence of Former Winthrop Fire Chief Paul Flanagan, dated May 12, 2021.
8. Correspondence of Winthrop Fire Chief W. Scott Wiley, dated October 6, 2021.
9. Chart of Past Development Projects Proposed for 40R Banks Street, not dated.
10. Plans in 5 sheets entitled “DEFINITIVE SUBDISION, REAR BANKS STREET (TAX MAP 54 LOT71), Winthrop Massachusetts,” prepared for Glen Calla of Winthrop Massachusetts, date issued as October 4, 2021, and prepared by Engineering Alliance, Inc of Saugus, Massachusetts. The plan set includes:
 - a. Cover Sheet, Drawing number - 1 of 5
 - b. Existing Conditions Plan, Drawing number - 2 of 5
 - c. Lotting Plan, Drawing number - 3 of 5
 - d. Roadway Plan & Profile, Drawing number - 4 of 5
 - e. Construction Details, Drawing number - 5 of 5
11. Other submissions:
 - a. [For reference only] Previously Withdrawn Application Plans in 5 sheets entitled “DEFINITIVE SUBDISION, REAR BANKS STREET (TAX MAP 54 LOT71), Winthrop Massachusetts,” prepared for Glen Calla of Winthrop Massachusetts, date issued as December 30, 2019, and prepared by Engineering Alliance, Inc of Saugus, Massachusetts. The plan set includes:
 - 1) Cover Sheet, Drawing number - 1 of 5
 - 2) Existing Conditions Plan, Drawing number - 2 of 5
 - 3) Lotting Plan, Drawing number - 3 of 5
 - 4) Roadway Plan & Profile, Drawing number - 4 of 5
 - 5) Construction Details, Drawing number - 5 of 5
12. Correspondence included in the record includes:
 - a. Letter - Applicants’ Request for Recusal (Board Member J. Wallerce), not dated.
 - b. Opposition Letter from Atty. Gomes (representing Diane Spicer).
 - c. 2009 Suffolk Superior Court Decision and Truck Turning Studies from N. Agri (abutter).

- d. Historic Data on Private Road Construction, Block History, Past Flooding Info and Talking Points Memo from N. Bucholtz (abutter).
- e. Opposition Letter from Winthrop Housing Authority.
- f. Meeting Minutes, documenting public comments.

All of the foregoing are entered into the record of proceedings, incorporated by reference, and made a part hereof.

C. The following procedures and process were completed in this Definitive Subdivision Plan review:

- 1. Application received by Winthrop Town Clerk on November 23, 2021.
- 2. Notice of Public Hearing was published on December 30, 2021 and January 6, 2022
- 3. Public Hearing held January 24, 2022.

D. Findings

- 1. The Definitive Subdivision Plan for 40R Banks Street acknowledges it does not meet the requirements of Title 16 Subdivisions found in the Code and requires waivers for the following requirements:
 - a. §16.12.010.A.h – “Property lines at street intersections shall be rounded or cut back to provide for a curb radius of not less than twenty (20) feet.”
Curb radius less than 20 feet are proposed.
 - b. §16.12.010.4.b – “Dead-end streets shall be provided at the closed end with a turnaround having an outside roadway diameter of at least one hundred (100) feet and a property line diameter of at least one hundred twenty (120) feet.”
An alternative hammerhead turnaround is proposed.
 - c. §16.16.010.C – “Sidewalks. Sidewalks of not less than eight feet in width shall be constructed on both sides of the street in conformity with specifications of the town council when, in the opinion of the board, such sidewalks are necessary.”
No sidewalks are proposed.
- 2. The parcel is currently undeveloped and contains no improvements, such as structures or paved surfaces.
- 3. The existing lot area is 19,825 sq ft. The proposed plan showing 15,556 sq ft of lot area with the remaining 4,283 sq ft used for proposed right-of-way (hammerhead).
- 4. The Definitive Subdivision Plan shows a single-family residential structure accessed by an existing right of way (easement at 40 Banks Street). However, the lot could be developed differently.
- 5. The Definitive Subdivision Plan does not meet the Minimum Frontage required of a residential lot per §17.16 Table of Dimensional Regulations of the Code:

- a. The lot does not have “frontage on a public way or a way which the town clerk certifies is maintained and used as a public way; or a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law; or a way in existence when the subdivision control law became effective, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use.”
- b. Current lot has zero (0) frontage on Banks Street and zero (0) frontage on Douglas Street. Frontage of 75 feet required for single family or 100 for 2-family and above.
- c. Private drives do not constitute a public way.

E. Decision

1. The Winthrop Planning Board hereby determines that the Definitive Subdivision Plan does not conform with the requirements of Title 16 Subdivisions of the Code.
2. A motion was made by Member Boyce, seconded by Member Gamble, to reject the following three (3) waivers. **This motion to reject the three applicant waivers passed by unanimous vote.**
 - a. “Waiver of §16.12.010.A.1.h of the Winthrop Zoning Code. This provision sets forth that street intersections be rounded or cut to provide a curb radius of not less than 20’ [feet]. The existing Right of Way does not include roundings at Banks Street. However, an adequate curb radius upon Banks Street has been provided for in the Plan.”
 - b. “Waiver of §16.12.010.A.4.b of the Winthrop Zoning Code. This provision sets forth that dead end streets [are] to be provided with a turnaround with an outside diameter of at least 120’ [feet]. The proposed roadway is designed with a “hammerhead” turnaround that provides for more than adequate turning.
 - c. Waiver of §16.16.010.C of the Winthrop Zoning Code. This section sets forth sidewalks of not less than 8’ [feet] in width on either side of a street [be provided]. The proposal does not provide for sidewalks.

Rejected by: Winthrop Planning Board, January 24, 2022

Voting Members: Robert Carroll (Chair), Christopher Boyce, Gina DiMento, Esq., Sarah Jane Fourness, Alyssa Gamble, and Honor Merceret.

Respectfully Submitted,



Robert A. Carroll, AIA
Chairperson
Winthrop Planning Board
January 28, 2022

**B. Plans and Documents Submitted
for the Definitive Subdivision Plan**

JAMES J. CIPOLETTA
Attorney at Law
Citizens Bank Building
385 Broadway - Suite 307
Revere, Massachusetts 02151
Telephone 781.289.7777
Email jim@cipoletta.com

January 20, 2022

Denise Quist, Clerk
Town of Winthrop
Winthrop Town Hall
One Metcalf Square
Winthrop, MA 02152

Robert Carroll, Chairman
Winthrop Planning Board
Winthrop Town Hall
One Metcalf Square
Winthrop, MA 02152

Re: Application of Jason Calla and Glen Calla for Approval of Definitive Subdivision

Dear Clerk Quist and Chairman Carroll:

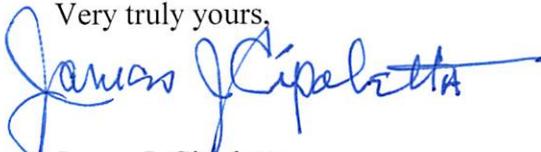
In advance of Monday’s public hearing on the above-referenced application, we are herewith submitting supplemental information and documentation that may assist the Board. We request that these submissions on behalf of the applicants be made part of the official record of proceedings of the public hearing.

Included in the submission package are the following:

1. Town of Winthrop Site Plan Review Updated Report and Recommendation;
2. Correspondence of (former) Fire Chief Paul Flanagan, dated May 12, 2021;
3. Correspondence of Fire Chief W. Scott Wiley, dated October 6, 2021;
4. Curb cut application of Glen Calla, dated August 17, 2020;
5. Curb cut permit issued by DPW Supervisor Aaron Armitstead, dated August 26, 2020;
6. Ethics Commission Disclosure of Steven R. Calla, dated June 17, 2020; and,
7. Chart of previous applications for development of 40R Banks Street lot.

Please accept same for filing and consideration by the Planning Board.

Very truly yours,



James J. Cipoletta

JJC:lt
Enclosures as above

Town of Winthrop
Planning Board

1 Metcalf Square
Winthrop, MA 02152
Tel: (617) 846-1077
Fax: (617) 846-5458



Definitive Subdivision Plan Application Form C

RECEIVED

Received by Town Clerk 2021 NOV 23 P 12: 11

TOWN CLERK
WINTHROP, MASS.

Town Use Only

Date Stamped Received by Planning Board

Application Number: _____

1 Location

40R

BANKS STREET

54

71

No.

Street

Parcel

Map

Name

Address

Telephone No.

Owner(s):

GLEN CALLA & JASON CALLA

Applicant:

SAME

2 Zoning Information

Zoning District: RESIDENCE A (RA)

Total Site Area (acres or sq. ft.): 19,825 SF

Lot Frontage: 128.10

Present Use: VACANT LAND

Proposed Use: ONE LOT W/SINGLE FAM.

Is property located in Historic significant area? Yes No Wetlands? Yes No

Flood Plain? Yes No

Is any zoning relief being requested? Yes No

If Yes, please explain: _____

Is the property identified in the Open Space Plan? Yes No

Does the property contain any former or abandoned railroad right-of-way? Yes No

Site Characteristics and Drainage

Proposed amount of grading: 0 cut (cubic yards) _____ fill (cubic yards)

Will the project require the removal of soils from the site? Yes No

If Yes, how many cubic yards and where is soil being relocated: SOIL REMOVED FOR FOUNDATION WILL BE REMOVED. EXCAVATED SOIL WILL BE UTILIZED ON-SITE AND TO IMPROVE RIGHT OF WAY EASEMENT

Will the project impact surface and groundwater quality and level? Yes No

If Yes, explain how and what measures are taken to mitigate impacts: _____

What is the capability of soil, vegetative cover, and proposed erosion control measure to support proposed development without erosion, silting or other soil instability:

SURFACE IS FLAT. PROPOSED CONSTRUCTION WILL HAVE NOT NEGATIVE IMPACT ON SOIL EROSION.

Is there an increase of peak run-off caused by altered surface conditions? Yes No

If Yes, estimate increase and methods to be used to recharge this water to the ground: RUNOFF TO BE CAPTURED AND CONTAINED ON-SITE VIA COLLECTION TANK. WATER WILL BE DIRECTED TO THE EXISTING TOWN STORMWATER COLLECTION SYSTEM. SHEETING OF WATER WILL BE DIRECTED AWAY FROM EXISTING HOMES AND PROPERTIES.

Does the project proposes to alter a 1 00-year flood plain? Yes No

If Yes, explain how and what measures are taken to mitigate impacts: THE PROPERTY LIES PARTIALLY WITHIN THE FLOOD PLAIN. MITIGATION MEASURES ARE SET FORTH ABOVE.

6

Habitat, Wetland and Historic Information

Does the project affect important wildlife habitat and/or outstanding botanical features? Yes No

If Yes, explain how and what measures are taken to mitigate: _____

Will the project affect a scenic site? Yes No

If Yes, explain how and what measures are taken to mitigate: _____

Does the project affect historic sites or buildings listed in the Town Historic Survey? Yes No

If Yes, explain how and what measures are taken to mitigate effects: _____

Does the project affect historic sites/buildings eligible or listed on the Fed/State Historic Register? Yes No

If Yes, explain how and what measures are taken to mitigate: _____

Is proposed work located within 25 ft. or 100 ft. of a wetland and/or 200 ft. of a stream, ocean or river?

If Yes, explain how and what measures are taken to mitigate impacts: **NO**

7 Requirements for Improvements and Design

The application shall be filled out completely and in accordance with ??? of the Winthrop Subdivision Rules and Regulation and the Definitive Plan Checklist so that there will be no ambiguity or uncertainty as to the applicant's intent in seeking approval of this application.

In order to provide for streets of suitable location, width and construction to accommodate prospective traffic and afford satisfactory access for police, emergency, fire fighting, snow removal, sanitation and road maintenance equipment; to coordinate streets so as to compose a convenient system; to avoid undue financial burdens for present and future taxpayers; and to avoid potential natural or technological hazards or nuisances, including the problems associated with uncontrolled storm water run-off, the Planning Board has established the design of subdivisions set forth in Section 6 of the Subdivision Rules and Regulations for the following requirements:

- * Character of the land as it relates to the subdivision
- * Lots and their arrangement, size, shape, grading and drainage
- * Construction Specifications
- * General Construction Procedures
- * Construction Methods and Materials
- * Streets, Improvements and Signage
- * Utilities
- * Storm Drainage
- * Water and Sewer Facilities
- * Trees and Other Plantings
- * Reservation of Land for Public Purpose

Applicant is advised that all subdivisions shall conform to the provisions of the Winthrop Zoning Bylaw and Regulations of the Winthrop Board of Health.

8 Certification

The undersigned hereby certifies that he/she has read and examined this application and that the proposed project is accurately represented in the statements made in this application

Owner(s): _____
(Signature)

Date: 11/22/21

(Signature)

Date: 11/22/21

Date: _____

Applicant: _____
(Signature)

Date: _____

Date: _____

** The signature of the property owner(s) is required for the application to be accepted.

CONTINUATION SHEET:

**APPLICATION OF GLEN CALLA AND JASON CALLA
DEFINITIVE SUBDIVISION PLAN APPLICATION**

The applicants respectfully request the Winthrop Planning Board to approve the Definitive Subdivision with the following waiers:

1. Waiver of § 16.12.010.A.1.h. This provision sets froth that street intersections be rounded or cut to provide a curb radius of not less than 20'. The existing Right Of Way does not include roundings at Banks Street. However, an adequate curb radius upon Banks Street has been provided for in the Plan.
2. Waiver of § 16.12.010.A.4.b. This provision sets forth that dead end streets to be provided with a turnaround with an outside diameter of at least 120'. The proposed roadway is designed with a "hammerhead" turn around that provides for more than adequate turning.
3. Waiver of § 16.16.010.C. This section sets forth sidewalks of not less than 8' in width on either side of the street. The proposal does not provide for sidewalks.

This application is not intended to contain the full scope of the Applicants' arguments, evidence, exhibits, or presentation in support of the application. It contains responses to specific questions in the application. . The Applicants reserve the right to present further arguments, memoranda, and any other relevant and material evidence in support of their request for approval of the Definitive Subdivision at the public hearing.

DISCLOSURE OF STEVEN R. CALLA
Pursuant to G.L. c. 268A

To: The Clerk Of The Town Of Winthrop;
Winthrop Town Manager; and,
Massachusetts Ethics Commission.

Please be advised that I make this disclosure in compliance with the provisions of G.L. c. 268A and in connection with my official position with the Town of Winthrop as the Director of the Winthrop Department of Public Works.

My brothers own a parcel of vacant land located at 40R Banks Street, Winthrop. Their plans are to develop the property for residential housing purposes. I have no interest, financial or otherwise, in the property.

In order to develop the property, they are required to obtain a curb cut permit from the Department of Public Works.

By virtue of my position I am a "municipal employee" as defined in G.L. c. 268A, § 1(b) and have "official responsibility" that includes approval or disapproval of such permits.¹

Pursuant to the statute, I give notice that I do not intend to "participate" in any department action in any matter pertaining or relating to the property.²

Further, in accordance with the provisions of G.L. c. 268A, § 6(a)(1), I intend to assign all matters concerning the property to another qualified employee of the DPW.

Respectfully,



Steven R. Calla, Director
Winthrop Dept. of Public Works

Dated: June 17, 2020

¹ G.L. c. 268A § 1 (i).

² G.L. c. 268A § 1 (j)



TOWN OF WINTHROP
DEPARTMENT OF PUBLIC WORKS

DATE RECEIVED: 8-17-20

PERMIT APPLICATION FOR
STREET EXCAVATION, OBSTRUCTION
AND/OR DRIVEWAY APRON

In accordance with the provisions of Massachusetts General Law and subject to regulations adopted by the Board of Selectmen of the Town of Winthrop, application is hereby made for a permit to open, occupy use and/or obstruct a portion

<p>PART A</p> <p>OWNER INFORMATION: (i.e. property owner, public utility, etc for whom work is being performed.)</p> <p>OWNER'S NAME: <u>GLEN CALLA</u> Company, Corporation or Individual</p> <p>OWNER ADDRESS: <u>40R BANKS ST</u> Street Number and Address</p> <p>City/Town, State Zip Code <u>WINTHROP MA.</u></p> <p>TEL NO 1: <u>(508) 328-2692</u> Business <u>CELL</u> Emergency</p> <p>CONTACT: _____ Name of individual responsible for project if other than owner</p>	<p>PART B</p> <p>CONTRACTOR INFORMATION: (Contractor performing work)</p> <p>COMPANY NAME: <u>RIGID ROCK</u> Company, Corporation or Individual</p> <p>COMPANY ADDRESS: _____ Street Number and Address</p> <p>City/Town, State Zip Code</p> <p>TEL NO 1: <u>(508) 965-3182</u> Business Emergency</p> <p>CONTACT: <u>DEREK</u> Name of individual responsible for project</p>
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<p>PART C</p> <p>PERMIT TYPE: Permission requested to perform work on or in the Public way as follows: (Check as many as applicable)</p> <p><input type="checkbox"/> PUBLIC STREET <input type="checkbox"/> OPEN / EXCAVATE <input type="checkbox"/> OCCUPY / USE <input type="checkbox"/> OBSTRUCT</p> <p><input checked="" type="checkbox"/> PUBLIC SIDEWALK <input checked="" type="checkbox"/> OPEN / EXCAVATE <input type="checkbox"/> OCCUPY / USE <input type="checkbox"/> OBSTRUCT</p>	<p>PART D</p> <p>DESCRIPTION OF WORK: Provide a complete and accurate description of all work to be performed under this permit if the work is of an emergency nature, be sure to state the cause and the nature of the emergency. For companies not classified by Type, please indicate the classification of my proposed emergency work.</p> <p>«PURPOSE» <u>CURB CUT APRON REQUEST FOR THE PURPOSE OF ACCESSING MY PROPERTY THROUGH MY EASEMENT.</u></p>
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<p>PART E</p> <p>LOCATION OF WORK:</p> <p>STREET(S): <u>BANKS STREET</u> Identify the Street or Streets to be worked on by name.</p> <p>Beginning at: _____ Closest actual street number and address.</p> <p>Ending at _____ Closest actual street number and address.</p>	<p>PART F</p> <p>SCALE OF PROJECT:</p> <p>1. DIMENSIONS: Depth: _____ ft Width: _____ ft Length: _____ ft</p> <p>2. TOTAL SQUARE FOOTAGE: _____ sq ft = Length x Width</p>
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<p>PART G</p> <p>NATURE OF WORK: (Check as applicable)</p> <p><input type="checkbox"/> EMERGENCY WORK</p> <p><input checked="" type="checkbox"/> NON-EMERGENCY WORK</p>	<p>NOTICE: For large-scale projects (over 300sq. ft.), applicants MUST submit a detailed list of areas to be affected. This MUST include the total square footage of the area to be excavated as well as a copy of any scaled drawings and/or plans or street maps indicating the location of the work to be performed.</p>
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PART H

1. **DATES:**

BEFORE 7:00 AM
OR AFTER 6:00 PM
EXCEPT FOR EMERGENCY

a. **START:** 8-22-20 8-26-20
Monday, Day and Year

b. **FINISH:** 8-22-20 8-26-20
Monday Day and Year

2. **TIME:** (Except for emergencies, no work is permitted before 7:00 AM or after 6:00 PM.)

a. **START:** 7 AM PM

b. **FINISH:** 4 AM PM

NOTICE: Applicants must abide by the Town of Winthrop NOISE REGULATIONS and all other applicable bylaws controlling the conduct of in public streets. No permit will be issued that is not in compliance with the same with regard to the hours during which work may be performed and the dba.

**PART I
INSURANCE / BONDING**

In applying for this permit, the applicant submits and/or has on file with the Selectmen's Office a current, valid:

- CERTIFICATE OF INSURANCE
(with the Town as a named or additional insured)
- LETTER OF CREDIT AND / OR CERTIFIED BANK CHECK.
- BOND ISSUED BY _____

**PART J
DIG SAFE NOTIFICATION:**

The applicant certifies that he has given notice to all public utility companies of the work to be performed in accordance with MGL c. 82, § 40.

DIG SAFE NUMBER: _____

**PART K
RESTORATION GUARANTY:**

In signing this application, the applicant herein guarantees to return all public ways opened, occupied, used or obstructed under this permit to permanent restoration standards and specifications as promulgated by the Winthrop Department of Public Works. The applicant further warrants and guarantees said restoration work performed on both emergency and non-emergency work for a period of two years from the date of acceptance by the Director of Winthrop DPW. In making said guarantees, the permit holder may be required to completely re-excavate, refill and repave any permanent restoration that falls within the two year period.

If at any time, whether during or after the two year guarantee period; it is discovered that the permanent restoration was not made in accordance with Town specifications as set out in the Town of Winthrop Rules regulating Street Excavations, Obstructions and Driveway Openings, the permit holder shall be responsible for making proper restoration within twenty-four hours of being notified of said defect. Should the permit holder fail to repair said defect within the twenty-four hour period following notification of the same, The Town of Winthrop reserves the right to undertake such repair work at the expense of the permit holder. Failure to complete such work will furthermore result in the immediate revocation of all other active permits and denial of all additional permits until such time as the matter has been resolved to the satisfaction of the Town of Winthrop.

**PART L
CERTIFICATIONS:**

The applicant herein agrees to conform to all statutes, bylaws, rules, regulations, and/or specifications of the Town of Winthrop now or hereafter in force relative to opening, occupying, using or obstructing any portion of the public way. The applicant further agrees to indemnify and hold harmless the Town of Winthrop and its agents from any loss, damage and expense sustained by reason of any act or omission by the applicant licensed hereunder.

APPLICANT'S SIGNATURE: [Signature] **DATE:** 8/6/2020

LICENSE

A license is hereby granted to Open, Occupy, Use and/or Obstruct a portion of the public way as described above. This license is subject to all conditions set forth in this application and in the Town of Winthrop Rules Regulating Street Excavation, Obstructions and Driveway Aprons.

REVIEWED FOR APPROVAL BY:

[Signature]
DPW Director

DATE: 8/18/20

FEES: APPLICATION FEE: \$50.00
 PERMIT FEE: \$175.00

225



TOWN OF WINTHROP STREET OPENING / OBSTRUCTION PERMIT

Issuing Authority:
Office of the
DEPARTMENT OF PUBLIC WORKS
Phone: (617) 846-1341
Fax: (617) 539-1545

Effective Date(s) From: 8/26/2020 To: 8/26/2020

Property Owner: GLEN CALLA

Site Address: 40R BANKS ST

Contractor: RIGID ROCK

Scope of Work: CURB CUT/APRON

OBSTRUCT
OCCUPY/USE

OPENING

Date of Issue: 8/25/2020

AUTHORIZED SIGNATURE

This Permit must be kept at the job site during the progress of work and must be shown upon the request of authorized Town personnel.

**TOWN OF WINTHROP MASSACHUSETTS
SITE PLAN REVIEW COMMITTEE**

**SUPPLEMENTAL SITE PLAN REVIEW REPORT
40R BANKS STREET, WINTHROP**

On May 11, 2021, the Site Plan Review Committee convened a meeting to review the revised plan submitted by Glen A. Calla and Jason Calla for the property located at 40 Rear Banks Street. The Committee had previously reviewed the plan reflecting two single family dwellings set upon two independent lots. Each lot contained sufficient square footage pursuant to the Winthrop Zoning Code as it pertains to the Residence A (RA) District.

The latest plan reviewed shows a creation of a single residential lot containing approximately 15, 556 square feet of land upon which a two unit townhouse is proposed to be built. Frontage is proposed to be on the private way created by the plan.

The Committee notes that significant modifications have been made to the plan, at least two or which were to satisfy or improve access and public safety concerns. The paved access area has been increased to 25 feet, the vehicular and emergency vehicle turnaround has been modified to accommodate the backing and turning radii of fire apparatus, a fire hydrant has been added to the plan, and the overall green space has been significantly increased.

An analysis of the zoning requirements indicates that if the building is constructed in accordance with the plans submitted, all use and dimensional control regulations will be satisfied and no relief is necessary from the Board of Appeals. However, since a portion of the subject lot is within the jurisdiction of the Conservation Commission, an Order of Conditions must be applied for and received prior to the issuance of a building permit.

Based upon the above, the Site Plan Review Committee voted unanimously to favorably recommend the proposed plan, as modified, subject to Planning Board action.

WINTHROP SITE PLAN REVIEW COMMITTEE

By: 
Albert Legee, Director of Inspectional Services
Chairman of the Site Plan Review Committee

Dated: May 11, 2021



TOWN OF WINTHROP
MASSACHUSETTS



PAUL E. FLANAGAN
Chief of Department

FIRE HEADQUARTERS
40 Pauline Street
Winthrop, MA 02152

Telephone
Center Station: (617) 846-3474
(617) 539-3401
Fax: (617) 539-3247
Email: pflanagan@town.winthrop.ma.us

May 12, 2021

Winthrop Planning Board

1 Metcalf Square

Winthrop, MA 02152

Upon review of the new development plan for 40R Banks Street, the Winthrop Fire Department (WFD) is fully satisfied that adequate fire protection will be met based on the following reasons. The owners of this parcel (Glen and Jason Calla) have agreed that all future structures will be sprinkled. The plan set also shows a new hydrant placed on the property within 100 feet of the dwelling. In addition to adequate fire protection, the WFD feels that the proposed private way provides adequate width to access the site as needed and that the hammer head style turn-around, in lieu of a standard cul-de-sac, will accommodate all public safety vehicles entering and exiting the premises.

Respectfully submitted,

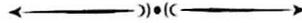
Paul E. Flanagan

Chief of Department



PAUL E. FLANAGAN
Chief of Department

TOWN OF WINTHROP
MASSACHUSETTS



FIRE HEADQUARTERS
40 Pauline Street
Winthrop, MA 02152

Telephone
Center Station: (617) 846-3474
(617) 539-3401
Fax: (617) 539-3247
Email: pflanagan@town.winthrop.ma.us

October 6, 2021

Winthrop Planning Board
1 Metcalf Square
Winthrop, MA 02152

Upon review of the new development plan for 40R Banks Street, the Winthrop Fire Department (WFD) is fully satisfied that adequate fire protection will be met based on the following reasons. The owners of this parcel (Glen and Jason Calla) have agreed that all future structured will be sprinkled. The plan set also shows a new hydrant placed on the property within 100 feet of the dwelling. In addition to adequate fire protection, the WFD feels that the proposed private way provides adequate width to access the site as needed and that the hammer head style turn-around, in lieu of a standard cul-de-sac, will accommodate all public safety vehicles entering and exiting the premises.

Respectfully submitted,

Wm Scott Wiley
Acting Chief of Department

DEVELOPMENT PROJECTS PROPOSED FOR 40R BANKS STREET

1988 **FOUR UNITS** **NO FRONTAGE**

2 TWO-FAMILY HOMES
ON TWO LOTS
TOTAL OF FOUR UNITS
FRONTAGE PROPOSED = ZERO
DENIED
REASONS/CONCERNS: DENSITY, NEGATIVE IMPACT ON STREET PARKING,
FIREFIGHTING CONCERNS

1990 **FOUR UNITS** **NO FRONTAGE**

2 TWO-FAMILY HOMES
ON TWO LOTS
TOTAL OF FOUR UNITS
FRONTAGE PROPOSED = ZERO
DENIED
REASONS/CONCERNS: ABILITY OF FIRE APPARATUS TO REACH, FLOODING,
WATER TABLE, STREET PARKING

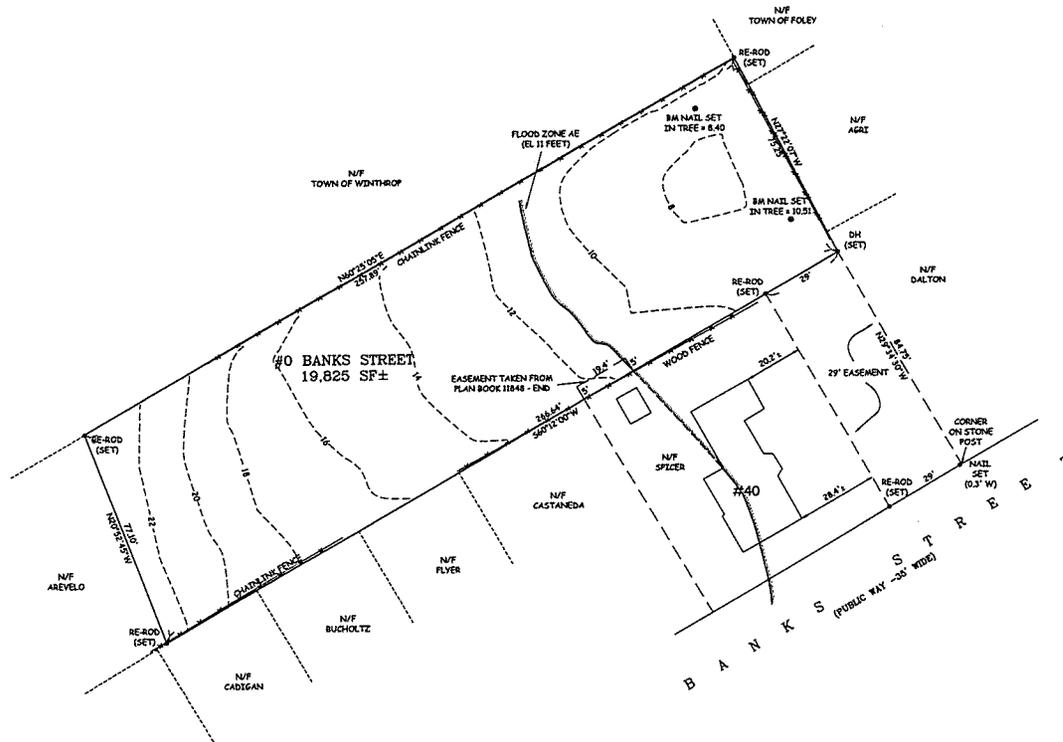
2005 **FOUR UNITS** **NO FRONTAGE**

2 TWO UNIT TOWNHOUSES
FOUR UNITS TOTAL
FRONTAGE = ZERO
DENIED
REASONS/CONCERNS: FIRE DEPARTMENT ACCESS

2017 **THREE UNITS** **NO FRONTAGE ON LOT**

2 TWO-FAMILY HOMES ON ONE LOT
1 SINGLE FAMILY HOME ON ONE LOT
3 UNITS TOTAL
FRONTAGE = ZERO
PROPOSED USE OF EASEMENT AS FRONTAGE
FIRE DEPARTMENT CONCERNS RE ACCESS

BASIS OF BEARINGS
END OF PLAN BOOK 11848



I CERTIFY THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LOCATION OF THE BUILDING AND DIMENSIONS AS SHOWN.

DATE: DECEMBER 30, 2019

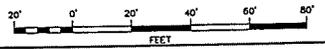
**PLAN OF LAND IN
WINTHROP, MASSACHUSETTS**

OWNER: GLEN CALLA
0 BANKS STREET, WINTHROP
COUNTY: SUFFOLK

REFERENCES:
DEED BOOK 60879 PAGE 157
END OF PLAN BOOK 11848
PLAN BOOK 4141 PLAN 339
PLAN BOOK 6797 PLAN 203

JOB#: 18F587.5B
CAD BY: MJC

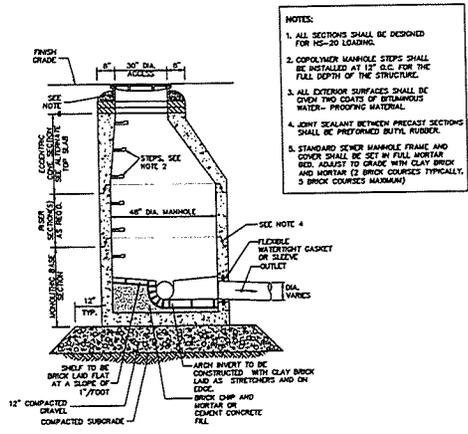
SCALE: 1" = 20'



DATUM: NAVD 88

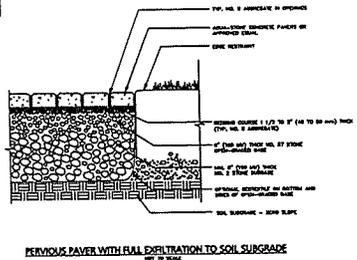
THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO ALL RESTRICTIONS AND ENCUMBRANCES THAT SUCH A REPORT MAY REVEAL.


**New England
Land Survey Inc.**
710 MAIN STREET
NORTH OXFORD, MA 01537
508-987-0025

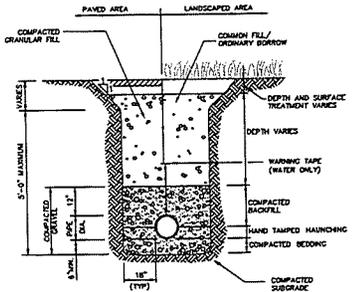


- NOTES:**
1. ALL SECTIONS SHALL BE DESIGNED FOR 150-20 LOADING.
 2. COPOLYMER MANHOLE STEPS SHALL BE INSTALLED AT 12" O.C. FOR THE FULL DEPTH OF THE STRUCTURE.
 3. ALL EXTERIOR SURFACES SHALL BE OVER TWO COATS OF BITUMINOUS WATER-PROOFING MATERIAL.
 4. JOINT SEALANT BETWEEN PRECAST SECTIONS SHALL BE PERFORMED BUTYL RUBBER.
 5. STANDARD SEWER MANHOLE FRAME AND COVER SHALL BE SET BY FULL MORTAR BED, ADJUST TO GRADE WITH CLAY BRICK AND MORTAR (2 BRICK COURSES TYPICALLY, 3 BRICK COURSES MAXIMUM).

SANITARY SEWER MANHOLE
NOT TO SCALE



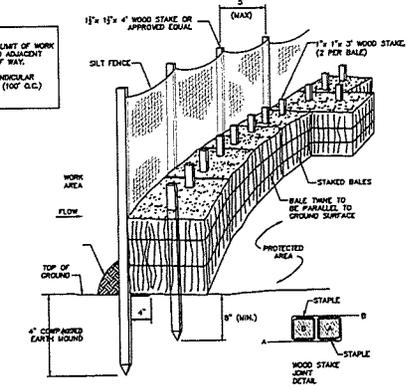
PERVIOUS PAVER WITH FULL INFILTRATION TO SOIL SUBGRADE
NOT TO SCALE



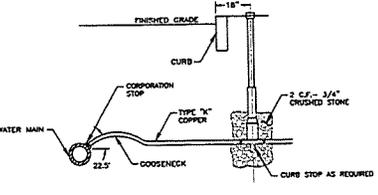
UTILITY TRENCH
NOT TO SCALE

- NOTE:**
- 1. METALL HAYBALES ALONG LIMIT OF WORK TO PREVENT COLLISION ONTO ADJACENT PROPERTIES AND RIGHTS OF WAY.
 - 2. PUT ONE HAY BALE PERPENDICULAR ALONG HAY BALE BARRIER (100' O.C.).

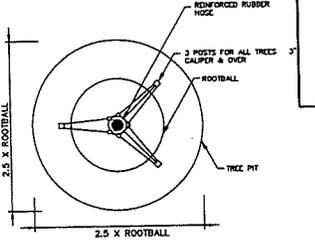
TYPICAL ELECTRIC/TELEPHONE/CABLE UTILITY TRENCH
NOT TO SCALE



SILT FENCE / HAYBALE BARRIER
NOT TO SCALE

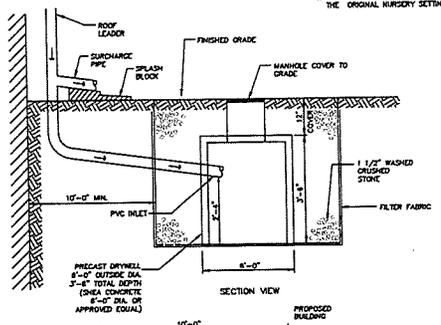


TYPICAL WATER SERVICE CONNECTION
NOT TO SCALE

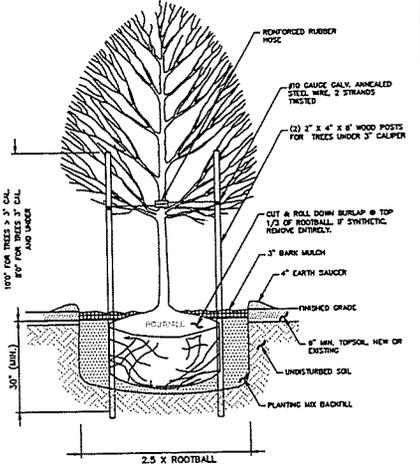


TYPICAL TREE PLANTING DETAIL
NOT TO SCALE

- NOTE:**
1. ALL TREES SHALL HAVE THE SAME RELATIONSHIP TO FINISHED GRADE AFTER PLANTING AS THEY HAD AT THE ORIGINAL NURSERY SETTING. ROOT FLAKE SHALL BE 2" ABOVE FINISH GRADE.



SUBSURFACE INFILTRATION FACILITY (500 GALLON ROOF DRYWELL)
NOT TO SCALE



STABILIZED CONSTRUCTION ENTRANCE
NOT TO SCALE

- CONSTRUCTION SPECIFICATIONS:**
1. STONE FOR A STABILIZATION CONSTRUCTION ENTRANCE SHALL BE 1 TO 2 HIGH STONE, RECLAIMED STONE, OR RECYCLED CONCRETE EQUIVALENT.
 2. THE LENGTH OF THE STABILIZED ENTRANCE SHALL NOT BE LESS THAN 30 FEET, EXCEPT FOR A SINGLE RESIDENTIAL LOT A 30 FOOT MINIMUM LENGTH WOULD APPLY.
 3. THE THICKNESS OF THE STABILIZED ENTRANCE SHALL NOT BE LESS THAN 8 INCHES.
 4. THE WIDTH OF THE ENTRANCE SHALL NOT BE LESS THAN A FULL WIDTH OF THE ENTRANCE WHERE WIDENESS OR EXPANSION OCCURS OR TO FEET, WHICH EVER IS GREATER.
 5. GEOTEXTILE FILTER CLOTH SHALL BE PLACED OVER THE ENTIRE AREA PRIOR TO PLACING THE STONE. FILTER CLOTH IS NOT REQUIRED FOR A SINGLE FAMILY RESIDENTIAL LOT.
 6. ALL SURFACE WATER THAT IS FLOWING TO OR DEPOSITED THROUGH THE CONSTRUCTION ENTRANCE SHALL BE PIPED BEHIND THE ENTRANCE. IF PIPING IS IMPRACTICAL, A BERM WITH 3% SLOPE THAT CAN BE CROSSED BY VEHICLES MAY BE SUBSTITUTED FOR THE PIPE.
 7. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT DRAGS OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS-OF-WAY. THIS MAY REQUIRE PERIODIC TOPDRESSING WITH ADDITIONAL STONE AS CONDITIONS DEMAND AND REPAIR AND/OR CLEANOUT OF ANY MEASURES USED TO TRAP SEDIMENT. ALL SEDIMENT SPILLED, WASHED, OR TRACKED ONTO PUBLIC RIGHTS-OF-WAY MUST BE REMOVED PROMPTLY.

APPROVED BY THE WINTHROP PLANNING BOARD

DATE OF ENDORSEMENT

DATE OF ENDORSEMENT

THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS FOR RECORDING ADOPTED BY THE REGISTERS OF DEEDS IN 1978 AND AMENDED JANUARY 12, 1988

RICHARD A. SALVO, P.E.
ENGINEERING ALLIANCE, INC.

Engineering Alliance, Inc.
Civil Engineering & Land Planning Consultants
1950 Lafayette Road
Saugus, MA 01906
Phone: (603) 810-1100
Fax: (603) 810-1011

Definitive Subdivision Plan
(Tax Map 54 Lot 71)
Between Banks & Douglas Streets
Winthrop, Massachusetts

PROJECT #: 121805
SCALE: AS NOTED
DESIGN BY: Glenn Anderson

DATE: OCTOBER 4, 2011
DWG FILE NAME: 121805.dwg
CHECKED BY: RICHARD A. SALVO, P.E.

DATE OF ENDORSEMENT

DRAWN TITLE: Construction Details

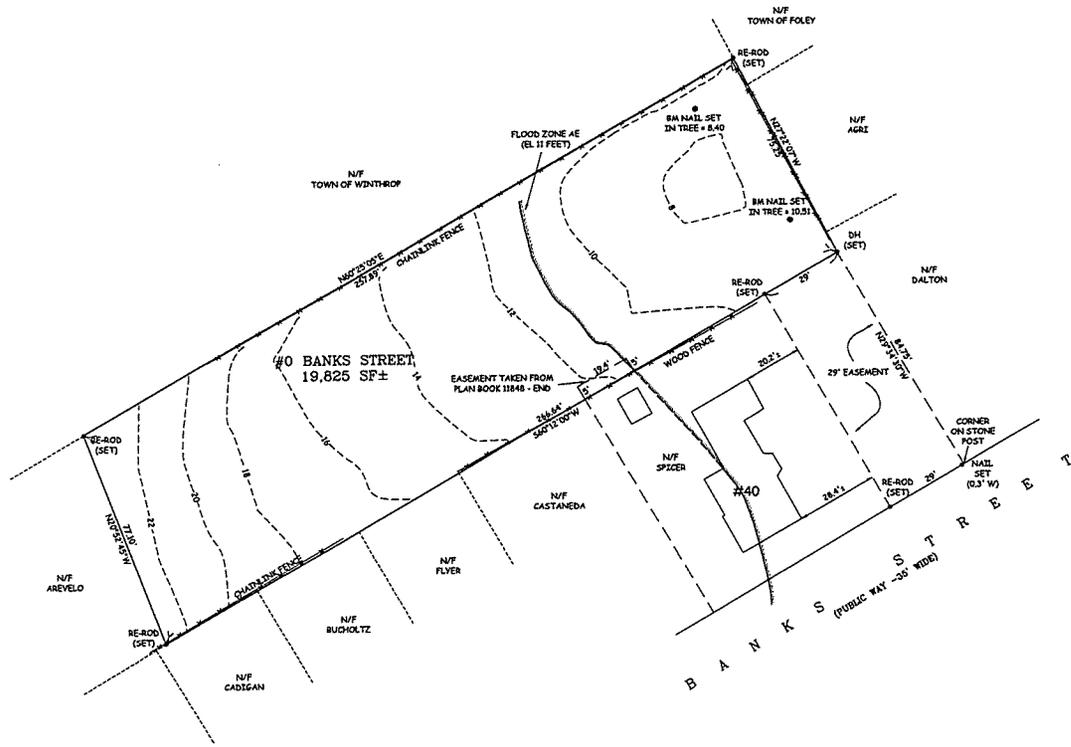
DWG. NO.: 50f5

DATE

DISCUSSION OF REVISION

11. Other submissions:

BASIS OF BEARINGS
END OF PLAN BOOK 1184B



I CERTIFY THAT THIS PLAN FULLY AND ACCURATELY DEPICTS THE LOCATION OF THE BUILDING AND DIMENSIONS AS SHOWN.

DATE: DECEMBER 30, 2019

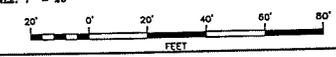
**PLAN OF LAND IN
WINTHROP, MASSACHUSETTS**

OWNER: GLEN CALLA
0 BANKS STREET, WINTHROP
COUNTY: SUFFOLK

REFERENCES:
DEED BOOK 6079 PAGE 157
END OF PLAN BOOK 1184B
PLAN BOOK 4141 PLAN 339
PLAN BOOK 6797 PLAN 203

JOB#: 19FS67.5B
CAD BY: NJC

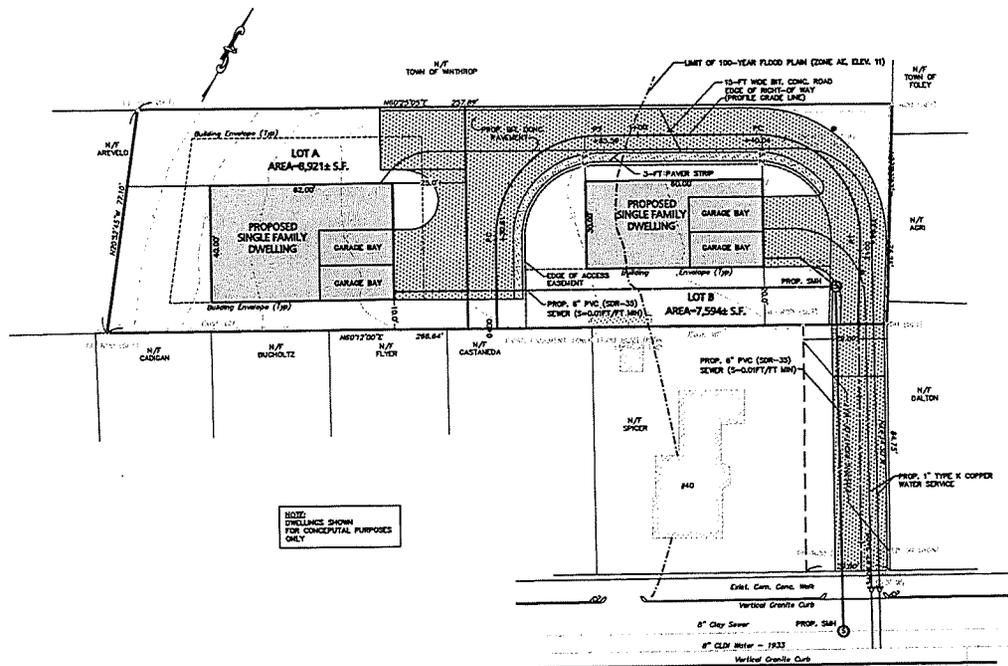
SCALE: 1" = 20'



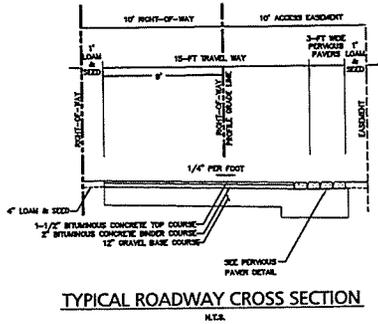
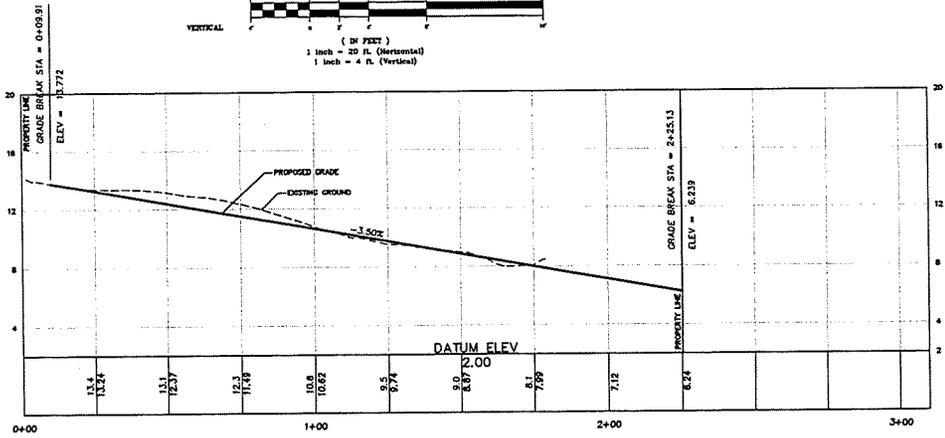
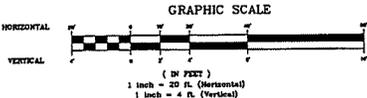
DATUM: NAVD 88

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**New England
Land Survey Inc.**
710 MAIN STREET
NORTH OXFORD, MA 01537
508-987-0025



NOTE:
DWELLINGS SHOWN
FOR CONCEPTUAL PURPOSES
ONLY.



TYPICAL ROADWAY CROSS SECTION
N.E.A.

APPROVED BY THE WINTHROP PLANNING BOARD

DATE OF ENDORSEMENT

THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS FOR RECORDING ADOPTED BY THE REGISTER OF DEEDS IN 1978 AND AMENDED JANUARY 12, 1988.

RICHARD A. SALVA, P.E.
ENGINEERING ALLIANCE, INC.

FOR REGISTRY USE ONLY	
DATE	DISCIPLINE OF ARCHITECT
PREPARED BY: Engineering Alliance, Inc. 140 Central Street Southwick, MA 01096 Tel: (413) 441-1100 Fax: (413) 441-1000	
PROJECT:	Definitive Subdivision Plan (Tax Map 54 Lot 71) Between Banks & Douglas Streets Winthrop, Massachusetts
PROJECT #:	19-38605
DATE:	December 30, 2019
SCALE:	AS NOTED
DRAWN BY:	Richard A. Salva, P.E.
CHECKED BY:	Richard A. Salva, P.E.
APPROVED BY:	
DRAWN TITLE:	Glen Calla Winthrop, MA 01890
DRAWING NO.:	40f5 Roadway Plan & Profile

11. Correspondence included in the record

JAMES J. CIPOLETTA
Attorney at Law
Citizens Bank Building
385 Broadway - Suite 307
Revere, Massachusetts 02151
Telephone 781.289.7777

January 23, 2022

Denise Quist, Clerk
Winthrop Planning Board.
Winthrop Town Hall
Winthrop, MA 02152

*Re: Application of Jason Calla and Glen Calla
For Definitive Subdivision, 40R Banks Street*

Dear Clerk Quist:

Attached hereto is the request of the applicants for the recusal of planning board member Julia Wallerice as her participation would be a violation of G.L. c. 268A, § 19 which reads:

Section 19. (a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

(b) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

Also attached is the Massachusetts Secretary of State's Summary of the Conflict of Interest Law for Municipal Employees. Attention is directed to pages 3 and 4 of the Summary and the examples set out therein.

We respectfully request that this correspondence be forwarded to the planning board and that it be made a part of the official record of proceedings of the public hearing. Thank you for your kind assistance in this matter.

Very truly yours,
Jason Calla and Glen Calla
By their attorney,

James J Cipoletta

JJC:ms
Encs.

Law Office of Nicholas A. Gomes, P.C.

226 South Main Street, Suite 6, Fall River, MA 02721
67 Batterymarch Street, Suite 100, Boston, MA 02110
257 Union Street, New Bedford, MA 02740
**Please Send All Correspondence to Fall River Address*

T: (508) 901-9120
F: (508) 674-3488
E: ngomes@ngomeslaw.com

January 24, 2022

Sent via Email Planningboard@town.winthrop.ma.us

City of Winthrop Planning Board
Robert Carroll, Chair
Winthrop Town Hall
1 Metcalf Square
Winthrop, MA 02152

**Re: Opposition of Definitive Subdivision Plan Application for 40R Banks Street
Parcel 54, Map 71**

Dear Members of the Winthrop Planning Board:

INTRODUCTION

Please be advised this office represents Diane Spicer, who has been the longstanding owner of 40 Bank Street, Winthrop, Massachusetts since 1986. *See Deed as Exhibit 1.* My client is a direct abutter to the 40R Banks Street Subdivision proposal before you as the purported easement runs over her land and the proposed development is directly behind her home. *See Overview map with easement in red and development area in green as Exhibit 2.* The proposed way and development area is known for flooding as well as housing migratory birds and other wildlife. *See Photographs as Exhibit 3.* The proposed development is approximately 350 feet from the Belle Isle Marsh which is a unique coastal asset to the City. *See Belle Isle Map as Exhibit 4.* The proposed development area is currently vacant densely forested growth completely landlocked in the center of the block bounded by Banks Street, Main Street, Douglas Street, and Morton Street. The thicket of trees provides a natural habitat for wildlife and the protection of privacy for the neighboring houses. This block formation of development is common throughout Winthrop and helps serve the communities interests of having responsible residential growth while being conscious of the environment and resident quality-of-life. These sentiments of responsible growth, environmental protection, and increasing resident quality-of-life are consistent with the Town Master Plan

CURRENT OPPOSITION OF THE 40R BANK STREET PROJECT

As exemplified in factual detail below with legal support, the proposed development has consistently been heavily opposed because it does not serve the communities interests and amounts to irresponsible politically motivated development at the expense of the environment and neighboring residents. I therefore respectfully request you consider the Town's Master Plan and follow the Planning Board's objectives and evaluation criteria to disapprove this proposal. A denial of this proposal will be in accordance with the wishes of the abutters, the local community, and the zoning and planning decisionmaking of the Town for the last thirty-four years. The Master Plan and other recently approved projects indicate a need for development of the city center and creative renovations such as the Pleasant

Street nursing home to residential unit condominium conversion. In that project waivers were granted because they were in the public interest of promoting an existing building to a new use. The same analysis can't be applied to the 40R Bank Street project which is a completely new use in vacant raw land. There are several development opportunities available in Town conducive to the desires of the townspeople, but the 40R Bank Street project is simply trying to force development for profit in an area where it has been consistently denied for over thirty years. To contrast, there may have been an argument for public interest in developing the site when the entire neighborhood was being laid out and constructed, but that is not what is before the board. With this group of parcels, the common owner developed and/or sold out several small tracts of land leaving the disputed 40R Property almost landlocked, but for an easement. This land was not a part of the original development of land which makes up the present day neighborhood which people commonly know as "a subdivision." The benefit of being able to look at all the land consisting of the neighborhood for purposes of creating a subdivision. The owner of the property chose to develop the property as he did, and this board is stuck with having to make a decision based on his flawed approach. The past owner created the issues the new owners are now trying to deal with. This board can't apply equitable principles in making this decision and must stick to the regulations.

The proposal requests waivers to remove the rounded intersection at the entry, the 120' turnaround, and all sidewalks. These requirements were created to provide public safety and the allowance of these waivers will cause a safety hazard. These waivers are not in the public interest and are inconsistent with the subdivision control law under title "16.04.030- waivers from title provisions." A decision to approve this proposal will be an appealable offense for noncompliance with the subdivision and zoning laws of the Town of Winthrop and the Commonwealth of Massachusetts. Further, such a decision will jeopardize similar neighborhood blocks with an interior green space such as this one from future development.

The current townspeople of Winthrop are opposed to this project just as generations of townspeople have come together in opposition. My client has created a petition in opposition to the 40R Bank Street project detailing her reasoning for the opposition in detail. *See* Petition in Opposition of 40R Bank Street as Exhibit 5. My client has obtained 200 signatures from current residents of Winthrop on her electronic petition through the website www.change.org. *See* Online Petition as Exhibit 6. At the most recent Planning Board meeting in June of 2021, several of the direct abutters and townspeople spoke in opposition to the project. The current opposition to this project by the townspeople in 2022 is consistent with the historical opposition to development of this site in 1988, 1990, and 2006. The combination of the current opposition with the opposition of their predecessors strongly indicates the proposal is not in the public interest, amounts to a nuisance, and is unable to meet the criteria of the Subdivision Rules and Regulations, Winthrop Zoning Bylaws, nor the Regulations of the Winthrop Board of Health.

HISTORICAL OPPOSITION

My client and many individuals in the neighborhood are adamantly opposed to this project now just as the neighborhood and community has been against similar projects over the years at the same exact property. It is beyond reasonable comprehension except for the politically motivated underpinnings of this petition, that a person would seek to develop this property when past attempts have been denied more than once. In 1988, the Zoning Board of Appeals denied a variance finding the proposed development to have a detrimental effect upon the neighborhood and derogate the intent of the zoning bylaw. *See* ZBA 1988 Notice and Findings as Exhibit 7. The neighborhood community of 1988 submitted a petition of opposition to the project. *See* 1988 Petition of Opposition as Exhibit 8. In 1990 the neighborhood community again opposed the project and upon belief was denied again. *See* 1990 Petition of Opposition as Exhibit 9.

From 2005-2009, the former owner again tried to develop this project and was denied by the zoning board resulting in an unsuccessful appeal pursuant to G.L. c. 40A, § 17. *See* Superior Court Decision as Exhibit 10. The Superior Court judge went through the details of past failed attempts to develop this lot including in October of 2005, when the Zoning Board of Appeals denied a variance, in large part, based on testimony of then Winthrop Fire Department Captain, William Hazlett, who said “there was concern for the fire departments ability to gain entrance to the back lot through the easement and even if they could gain entrance, the ladder trucks would be unable to make the turning radius onto the second lot, and there was a concern for life safety.” The Zoning Board denied the variance chiefly on the ground that to grant it would cause substantial detriment to the public good and either nullify or substantially derogate from the intent or purpose of the zoning by-law. The Superior Court Judge specifically found:

Banks Street itself is narrow (22 feet wide) and one-way. Cars park along the side closest to 40R, reducing the usable width of the road to 16 feet and even less in winter when cars have difficulty getting close to the curb. There are utility poles and a fire hydrant near the easement entrance. Winthrop’s fire trucks are approximately 42 feet long, with 100 foot ladders. Their curb to curb turning area is approximately 37 feet... These turning ratios, coupled with the narrowness of the street, the obstructions created by parked cars, the utility pole and hydrant, and the sharp turn necessary to get onto the easement from Banks Street, would make it extremely difficult for the fire department to get their apparatus up Banks Street and then to make a right-hand turn onto the easement... In light of the testimony of [the fire captain], which I find both credible and well-founded, I find and rule that the zoning board did not act arbitrarily and capriciously in denying [the petitioner’s] appeal of the building inspector and in denying the variance. A rational board could come to the conclusion that the access to [the petitioner’s] proposed residences was inadequate and unsafe. It is also consistent with the zoning board’s previous decisions about this property.

Superior Court Justice Keith C. Long was correct in 2009, when he agreed with the Zoning Board of Appeals decisions to deny development of the subject property in 1988, 1990, and 2006. This Honorable Planning Board should follow the predecessors of this City and deny the current petition. The problems of yesteryear still exist today and are substantially increased with the amount of motor vehicles and traffic on the road. The former owner again sought a variance to develop the property in 2017, but it was unanimously denied again. *See* 2017 ZBA Minutes as Exhibit 11. Notably, board member Daren Baird stated, in relevant part:

As a volunteer Board when a petitioner comes before the Board again & again and we keep saying no and they keep asking you are wasting our time and then it gets appeals to the land court and your wasting community resources for an appeal, I’m sorry, I was on the Board in 2005 and I don’t want to see this case again ever. I’m happy that I’m not sitting on this because I don’t want to be on another case that we get sued on . So someone should pick up the case file and really read it that we mean no from my standpoint.

This petition for a subdivision should simply not be before the planning board after being denied by the Zoning Board of Appeals four times and confirmed by a Superior Court Judge. Enough is enough, the decision has already been made and for the petitioner to brazenly disregard these past decisions, is wholly inappropriate. The petitioners, Glen A. Calla and Jason R. Calla, purchased the property in

2019 for \$30,000.00, with knowledge from the public records of the issues with this property. It is my understanding the Calla family is well known in the local community and prior to this application they received a curb-cut approval from the Department of Public Works, where their brother Steven Calla works. Regardless of who the present owners are, the important analysis is the property itself and that it does not meet the standards for development as a subdivision.

WINTHROP DEVELOPMENT STANDARDS AND ANALYSIS

In 2014, the City of Winthrop created a Five-Year Strategic Plan for Economic Development. *See* Relevant portions of 5-year plan as Exhibit 12. From the plan it is clear Winthrop prides itself in its location by the ocean and strong sense of community. *See* Exhibit 12, page 14. The strategies proposed in the plan are designed to “capitalize on several of Winthrop’s key strengths- its natural environment... and the town’s great neighborhoods.” *See* Exhibit 12. The economic development strategies, in order of importance are:

1. Promote environmental resources to encourage visitors.
2. Improve accessibility to/from and within town.
3. Create strong town center and waterfront commercial districts.
4. Increase number of local jobs and improve alignment with skills of local residents.
5. Promote Winthrop as a great place to raise a family.
6. Increase targeted regional marketing.

The proposed project threatens most if not all of the 5 strategies imposed. Most notably, the picture utilized for strategy number 1 is the Belle Isle Marsh which just misses the proposed project location in the map depicted. *See* Exhibit 12, page 23. The second strategy of improving traffic in the City would not be met by the addition of this project with its access deficiencies. The plan carefully chose to prioritize the City Center and Waterfront districts as suitable future development sites cohesive to a better Winthrop for families to live. This idea of focusing development in the City Center comports with Winthrop’s Master Plan. *See* Exhibit 13. The petitioner’s project is creating a well-known problem and is not in line with the public’s vision of Winthrop’s future. If allowed, the project will deteriorate Winthrop’s wish to be a great place to raise a family. With the worse case scenario, it is a disaster waiting to happen and could cause the death of a family because they wanted to squish this house into the vacant lot with complete disregard of public officials and the neighbors. The opposite effect of creating a “great place to raise a family,” will occur and the neighbors closest to the development and Belle Isle Marsh will be substantially negatively impacted.

The Planning Board's objectives are that:

- a. all sites within Winthrop for which development approval is sought under these Regulations shall be designed and developed in a safe, efficient and aesthetically pleasing manner;
- b. the arrangement of all uses and improvement should reflect the natural capabilities and limitations of the site as well as the characteristics and limitations of adjacent property;
- c. the development should be visually harmonious as viewed from both within and from the outside site

The proposed project is not designed or capable of being developed in a safe, efficient, and aesthetically pleasing manner. This development will ruin countless neighbor's back-yards. The unfortunate purchaser of this proposed site is at risk of harm from emergencies and not being able to be reached by emergency services. Even if an emergency wasn't to arise, these new purchasers are in a fish-bowl of having neighbors surrounding their home. This development will not be visually harmonious as viewed from both within and from outside the site. This forced development of the block is not natural nor is it aesthetically pleasing. I point the board to 200 Main Street as an example of an interior lot being successfully implanted into a surrounding block of houses, but that house has plenty of frontage on Main Street and trees surrounding it to be appropriate. That simply is not the case before you with the proposed project. Approving this project will ignore the Planning Board's objective that the development should reflect the natural capabilities and limitations of the site as well as the characteristics and limitations of adjacent property. Simply put, this neighborhood is overcrowded by the small one-way street and adding this development will simply be disharmonious to the neighborhood and community at large. At the furthest extent, it is too dangerous to allow given its past history and learned review by public officials and a judge.

In reviewing a petition, the Planning Board shall use the following criteria evaluating all development proposals:

- a. insure that the development of additional housing and commercial buildings do not detract from the livability, scale, character or economic value of existing residential neighborhoods and commercial areas;
- b. encourage greater diversity of housing opportunities in Winthrop to meet the needs of a population that is diversified with respect to age, number of persons in household, and income levels;
- c. permit greater flexibility and design freedom in land development;
- d. encourage sensitively planned development by:
 1. promoting a high standard in the design of development sites and of individual buildings;
 2. preserving open space for conservation, outdoor recreation or park purposes;
 3. encouraging the preservation, and minimum disruption, of the existing natural features of land and minimizing impacts on environmentally sensitive areas;
 4. preserving, where applicable, historically or architecturally significant buildings or places;
 5. permitting different types of structures and residential uses to be combined in a planned interrelationship;
- e. facilitate a detailed review, by Town officials and by the public, of developments that either:
 1. have an impact on public facilities and services and on adjoining land, or
 2. are large enough to constitute a self-contained environment;

f. promote the efficient and economical provision of public facilities such as utilities and streets;

g. assure that the number of dwelling units or commercial buildings allowed will be compatible with surrounding land uses, and that traffic and public services will not be adversely impacted.

The proposed development fails to meet the criteria of evaluation to receive approval. The development of the additional housing will detract from the livability, scale, character or economic value of existing residential neighborhoods and commercial areas. The Zoning Board of Appeals and the Superior Court Judge already analyzed these issues and denied similar projects. The neighborhood has had to continue fighting this development for years and continues to do so today. This project is simply a money grab and does not encourage greater diversity of housing opportunities. Winthrop's Master Plan calls for development of the City Center where high-density growth is encouraged, not in an outlier already densely populated neighborhood next to the Belle Isle Marsh. The proposed development, similar to the past failed projects, are not carefully tailored or sensitively planned. Rather, it is an attempt to see-what-works and do so at the expense of negative impacts to the neighborhood. The proposed project will specifically eliminate open space ripe for conservation rather than conserving such beneficial land that makes Winthrop desirable. The project does not encourage the preservation, and minimum disruption, of the existing natural features of land nor does it minimize impacts to environmentally sensitive areas.

Based on the totality of the circumstances and weighing all the factors, the petitioner can't assure this Board that the project will be compatible with surrounding land uses, and that traffic and public services will not be adversely impacted. It is apparent from years of continued opposition analyzed against the Master Plan of Winthrop, that this project should not be approved. The by-law criteria the petitioners seek to waive are important for health, welfare, and safety. On behalf of my client and the townspeople of Winthrop in opposition to the project, I respectfully request the board disapprove the 40R Bank Street project.

Thank you for your time, attention, and consideration of this request.

Sincerely,

/s/Nicholas A. Gomes
Nicholas A. Gomes, Esq.

Exhibit 1

12727 071

We, Robert J. Spicer, Diane P. Marino and Raphael P. Marino
of 40 Banka Street, Winthrop, Suffolk County, Massachusetts,

nominal
being unmarried, for consideration paid, and in full consideration of *of (\$1,00)*

grant to Robert J. Spicer and Diane P. Spicer, Huaband and Wife as
Tenante by the Entiraty
of 40 Banka Street, Winthrop, Maaachusetts with quitclaim covenants

~~the whole~~

~~(Description of the premises to be conveyed)~~

SEE DESCRIPTION ATTACHED HERETO.

40 Banks Street, Winthrop, MA.

RECISTER
Paul J. Turner
AUG 1 9 50 AM '86
SUFFOLK & REGISTER OF DEEDS
REC'D ENCL. AERIAL LETTER

Witness *AWK* hande and scale this 25th day of July 19 86

.....
.....
.....
Robert J. Spicer
Diane P. Marino
Raphael P. Marino
Robert J. Spicer
Diane P. Marino
Raphael P. Marino

The Commonwealth of Massachusetts

Suffolk ss. July 25, 19 86

Then personally appeared the above named Robert J. Spicer, Diane P. Marino and
Raphael F. Marino
and acknowledged the foregoing instrument to be their free act and deed before me

RETURN TO:
SMITH & MCNEULTY
150 MARKET ST.
LYNN, MA 01901

William E. Lyman
Notary Public - Suffolk County
My commission expires 4-24 19 92

(*Individual — Joint Tenants — Tenants in Common.)

CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF 1969
Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.

12727 072

A certain parcel of land with the buildings thereon, situated in said Winthrop, being numbered 40 Banks Street, and being shown as the greater part of Lot B on a plan entitled "Plan of Land in Winthrop, Mass. belonging to Ellis F. Wendell, August, 1895, H.P. Whitman, C.E. and Surv." recorded with Suffolk Deeds, Book 2318, Page 332, and bounded as follows:

EASTERLY: by said Banks Street, one hundred (100) feet;
SOUTHERLY: by Lot A on said plan, eighty-five and 10/100 (85.10) feet;
WESTERLY: by land now or late of Douglas, one hundred and 63/100 (100.63) feet;
NORTHERLY: by land now or late of George F. Tewksbury, about ninety and 25/100 (90.25) feet.

Be said measurements and contents more or less and according to said plan.

The Grantors hereby expressly reserve to themselves, their heirs, executors, administrators, personal representatives and assigns, a perpetual affirmative easement and right of way over and across the above described parcel hereby conveyed. Said easement and right of way are described as follows:

Beginning at a point on the NORTHERLY side of Banks Street by land now or formerly of A. Thomas Pellegriti and Nora R. Pellegriti, Trustees, for a distance of twenty-nine 00/100 (29.0) feet; then

NORTHWESTERLY: by land now or formerly of A. Thomas Pellegriti and Nora K. Pellegriti, Trustees, for a distance of ninety and 25/100 (90.25) feet; then

SOUTHWESTERLY: by land now or formerly of A. Thomas Pellegriti and Nora R. Pellegriti, Trustees, for a distance of twenty-nine and 02/100 (29.02) feet; then

SOUTHEASTERLY: by land now or formerly of Tewksbury for a distance of ninety and 25/100 (90.25) feet, to the point of beginning.

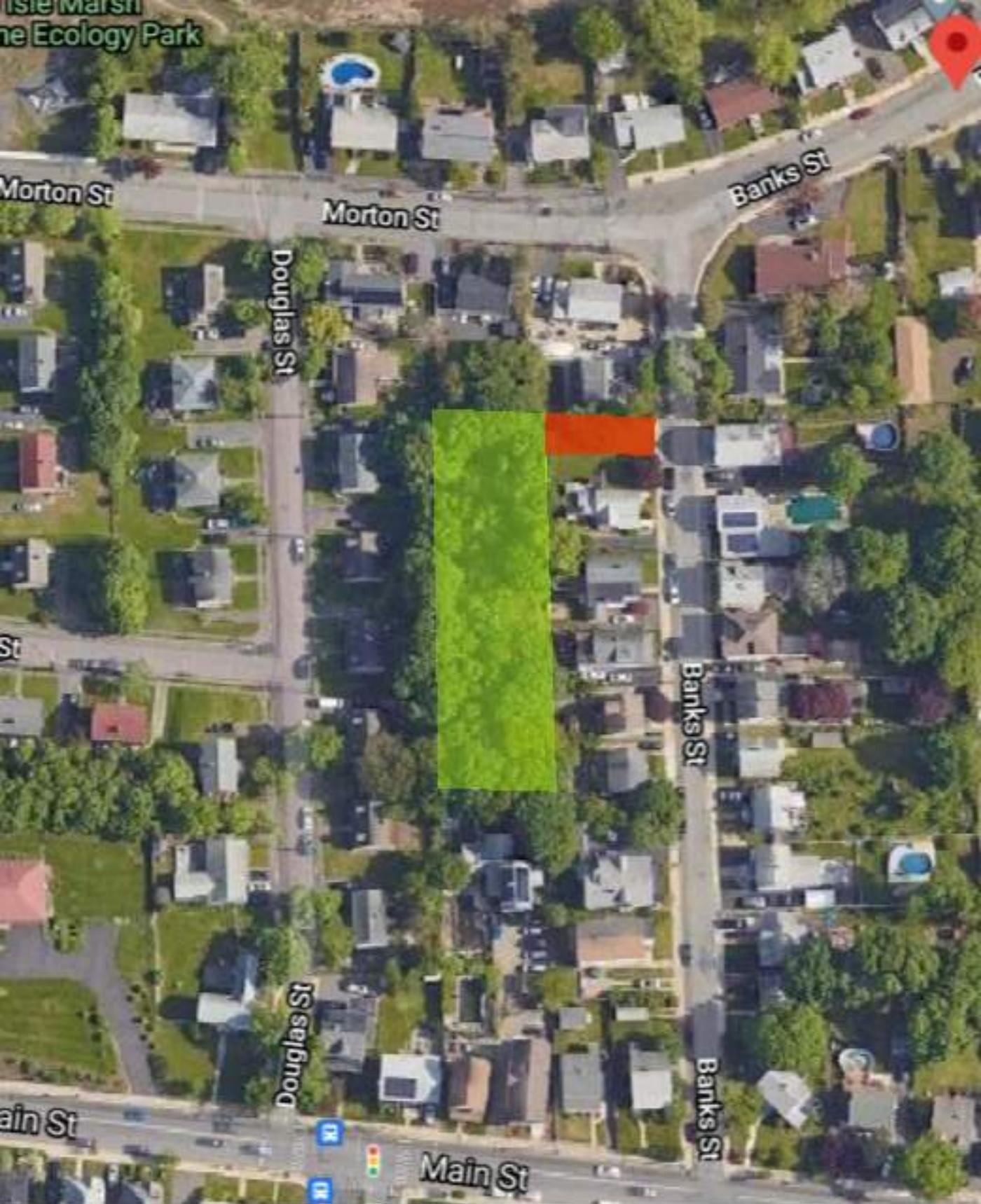
The above described easement contains an area of 2,600 square feet, more or less.

All as more particularly described in a plan entitled "Easement Plan in Winthrop, Massachusetts for A. Thomas Pellegriti and Nora R. Pellegriti" dated July 31, 1985 prepared by Peter A. Gravallée R.E., and recorded herewith.

Subject to all encumbrances of record, if any.

For our title, see deed of A. Thomas Pellegriti and Nora R. Pellegriti, Trustees, to us, dated August 6, 1985, recorded with Suffolk County Registry of Deeds in Book 11799, Page 10.

Exhibit 2



Green: 40r Banks st Property

RED: Easement over property owned by 40 Banks St

OLIVER Website for 40R Bank Street, Winthrop, MA

The screenshot shows the OLIVER website interface for a specific address. The browser address bar indicates the URL is `maps.massgis.state.ma.us/map_ol/oliver.php`. The page title is "OLIVER: MassGIS's Online Mapping Tool". The map displays an aerial view of a residential area in Winthrop, MA, with property boundaries overlaid in pink. A blue location pin is placed on the map at the address 40R Bank Street. The map shows several streets, including Douglas Street, Banks Street, Wilshire Street, and Paine Street. A legend on the right side of the map provides information about the data layers and flood hazard zones. The legend includes sections for "Available Data Layers", "Active Data Layers", and "Legend". The "Active Data Layers" section shows that "Zone A", "Outstanding Resource Waters", and "DEP Wetlands Detailed" are checked. The "Legend" section includes "Areas of Critical Environmental Concern ACECs" and "FEMA National Flood Hazard Layer". The FEMA National Flood Hazard Layer legend lists various flood hazard categories with corresponding colors and symbols: A: 1% Annual Chance of Flooding, no BF; AE: 1% Annual Chance of Flooding, with BF; AE: Regulatory Floodway; AH: 1% Annual Chance of 1-3ft Ponding; AO: 1% Annual Chance of 1-3ft Sheet Fl with Depth; VE: High Risk Coastal Area; D: Possible But Undetermined Hazard; X: 0.2% Annual Chance of Flooding; X: 1% Drainage Area < 1 Sq. Mi.; X: Reduced Flood Risk due to Levee. The map also includes a scale bar (0 to 50 feet) and a scale of 1:1,128. The browser's taskbar at the bottom shows the time as 1:55.

Exhibit 3



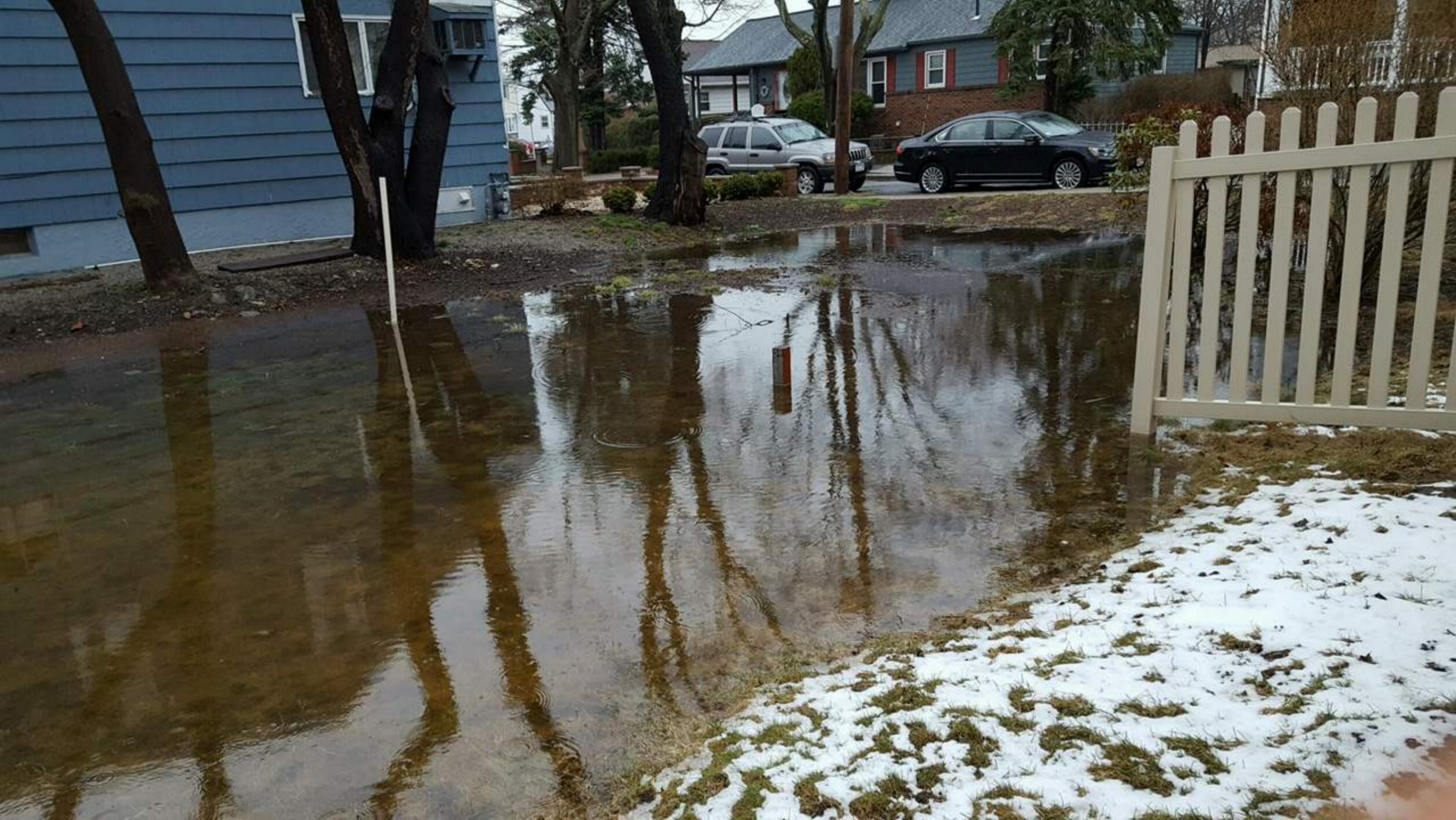


EXHIBIT 4

EXHIBIT 5

Petition in Opposition to Development of 40R Banks Street, Winthrop, MA

We, the undersigned citizens of Winthrop, Massachusetts are strongly opposed to any proposed residential development of the vacant wooded property known as 40R Banks Street, Winthrop, Massachusetts. The proposed development area is 350 feet from Belle Isle Marsh consisting of vacant densely forested growth completely landlocked in the center of a block of houses bounded by Banks Street, Main Street, Douglas Street, and Morton Street. The thicket of trees provides a natural habitat for wildlife and the protection of privacy for the neighboring houses. The proposed access road area floods regularly and abutters are concerned of increased flooding caused by the development. The access on Banks Street is insufficient as it is a 22' wide one way street. The abutters have opposed the development of this land several times over the last 35+ years and now this generation needs help to finally put an end to this development. Please help by signing the petition if you are a resident of Winthrop and it will be provided to public officials with the intent of stopping the development of 40R Banks Street, Winthrop, Massachusetts.

The Winthrop Zoning Board of Appeals denied proposed residential projects on this property in 1988, 1990, 2006, and again in 2017. The former owner appealed the Winthrop Zoning Board of Appeals decision in 2006 and a Suffolk County Superior Court Judge denied the appeal on the grounds that the Zoning Board of Appeals was correct in denying the project because the property had inadequate frontage, the proposed construction is in contravention of local zoning bylaws, derogates from the character of the neighborhood, causes risk to public safety and safety hazards, and would nullify or substantially derogate from the intent or purpose of the Zoning by-laws. Nonetheless, a new developer is now trying to develop the property.

Despite the Zoning Board of Appeals (ZBA) denying the project 4 times and a Judge supporting the denial, a new developer purchased the lot for \$30,000.00 in 2019 and is now trying to develop the same lot again. The developers, Glen and Jason Calla, are politically connected as their Mother, Linda Calla, is a former member of the town council and their brother Steven is the director of the DPW. At the recent Planning Board meeting of June 21, 2021, the developers' Mother advocated for the project and previously the brother Steven allowed a curb-cut for the property without approval of the project from the ZBA or Planning Board. It appears that the Calla family has a complete disregard for the previous decisions made by the Zoning Board of Appeals, the Judge, and the pleas from abutters over the past 35 years that this property should not be developed. The only conclusion is personal financial gain is more important than the longstanding abutters, the greater Winthrop community, and the Town's sensitive environment. Several abutters appeared at the recent Planning Board meeting and voiced their opposition adamantly that this project is a bad idea for Winthrop and the direct abutters just as they did in 1988, 1990, 2006, and 2017. The residents must once again stand up to protect Winthrop from undesirable development for the sake of money.

Winthrop should support the PEOPLE in the community not the PROFITS of the politically connected. All residents signing this petition seek to protect this property from development and respectfully request all Winthrop Public Officials to support this petition and deny all development projects at 40R Banks Street because:

1. The project does not comply with Winthrop's zoning by-laws and any waivers and/or variances requested are inappropriate given the totality of the circumstances.
2. In balancing the economic interests of the Developer against the interests of Winthrop in general and the neighborhood abutters in particular, the interest of Winthrop and the neighborhood abutters prevails because the development will have a detrimental effect upon the neighborhood and community at large.
3. The project does not comply with Winthrop's 2014 Five-Year Strategic Plan for Economic Development that seeks to "capitalize on several of Winthrop's key strengths including- its natural environment... and the town's great neighborhoods." The economic development strategies include: promoting environmental resources to encourage visitors, improve accessibility to/from and within town, create a strong town center, and promote Winthrop as a great place to raise a family. The proposed project threatens these strategies chosen by the people of Winthrop.
4. The project does not comply with Winthrop's 2016 Master Plan that focuses on development of the Winthrop Centre, Center Business District and the Middle School. The development of housing in an outlier densely populated block neighborhood is unnecessary and is not contemplated in the master plan.
5. Under the Planning Board's identified regulatory objectives, the proposed development is not designed in a safe, efficient and aesthetically pleasing manner.
6. Under the Planning Board's identified regulatory objectives, the proposed development does not reflect the natural capabilities and limitations of the site as well as the characteristics and limitations of adjacent property.
7. Under the Planning Board's identified regulatory objectives, the proposed development is not visually harmonious as viewed from both within and from outside the site.
8. Under the Planning Board's identified regulatory evaluation criteria, the proposed development will detract from the livability, scale, character or economic value of existing residential neighborhoods.
9. Under the Planning Board's identified regulatory evaluation criteria, the proposed development does not encourage sensitively planned development because it does not preserve open space for conservation or encourage the preservation, and minimum disruption, of the existing natural features of land and minimizing impacts on environmentally sensitive areas.
10. Under the Planning Board's identified regulatory evaluation criteria, the proposed development will have a negative impact on public facilities and services and on adjoining land.
11. Under the Planning Board's identified regulatory evaluation criteria, the proposed development does not promote the efficient and economical provision of public facilities such as utilities and streets.

12. Under the Planning Board's identified regulatory evaluation criteria, the proposed development is not compatible with surrounding land uses, and that traffic and public services will be adversely impacted if approved.

13. Under the Zoning Board of Appeals' regulatory decisionmaking criteria, the proposed development requiring relief from the zoning bylaws can't be granted without substantial detriment to the public good and without nullifying nor substantially derogating from the intent or purpose of the zoning bylaws. The Developer has not shown a good-faith hardship nor an entitlement to permitting.

14. The abutting neighborhood is densely populated and the addition of this development will contribute to an irresponsible over-population in the neighborhood and community.

15. The development will cause increased traffic and parking issues on Banks Street which is already a narrow one-way road with existing parking problems.

16. The development will cause flooding problems for the neighbors as the property already has flooding problems and is in an area with a high-water table.

17. The increased water and sewage demands of the development may cause problems to the utility systems. Residents have water pressure issues already and are concerned with potential sewage back-up.

18. The development will decrease property values in the neighborhood and cause a loss of use and enjoyment of their now private backyards.

19. The development will be in the middle of 20 houses on the block causing undue construction nuisance of dirt, noise, and inconvenience.

20. The development threatens fire safety even with a sprinkler system because the property is in the middle of a neighborhood block and not readily accessible. A snowstorm or parked vehicles could obstruct access for emergency services resulting in disaster for the new home as well as the abutters. Previous Winthrop Fire Department officials opined that access was an issue. The Superior Court Judge specifically credited the previous Winthrop Fire Department official's opinion in denying the appeal in 2006-2009. The ZBA board members of 1988, 1990, 2006, and 2017 all had concerns for access and safety with the proposed development.

21. The development is not in accordance with Winthrop's unique allure as a quaint environmentally focused ocean town offering a great place to live and raise a family.

22. The detrimental effect of this projects is substantial and threatens the abutters, the environment, and the community-at-large.

23. An approval of this project in light of the historical precedent where a Judge and generations of the ZBA board members have denied this project would be a gross and reckless disregard of your duty as members of the municipal board.

EXHIBIT 6

Diane Spicer started this petition to Residents of Winthrop and 2 others

Petition in Opposition to Development of 40R Banks Street, Winthrop, MA

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Despite the Zoning Board of Appeals (ZBA) denying the project 4 times and a Judge supporting the denial, a new developer purchased the lot for \$30,000.00 in 2019 and is now trying to develop the same lot again. The developers, Glen and Jason Calla, are politically connected as their Mother, Linda Calla, is a former member of the town council and their brother Steven is the director of the DPW. At the recent Planning Board meeting of June 21, 2021, the developers' Mother advocated for the project and previously their brother Steven allowed a curb-cut for the property without approval of the project from the ZBA or Planning board. It appears that the Calla family has a complete disregard for the previous decisions made by the Zoning Board of Appeals, the Judge, and the pleas from abutters over the past 35 years that this property should not be developed. The only conclusion is personal financial gain is more important than the longstanding abutters and the greater Winthrop community. Several abutters appeared at the recent Planning Board meeting and voiced their opposition adamantly that this project is a bad idea for Winthrop and the direct abutters just as they did in 1988, 1990, 2006, and 2017.

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- 2) In balancing the economic interests of the Developer against the interests of Winthrop in general and the neighborhood abutters in particular, the interest of Winthrop and the neighborhood abutters prevails because the development will have a detrimental effect upon the neighborhood and community at large.
- 3) The project does not comply with Winthrop's 2014 Five-Year Strategic Plan for Economic Development that seeks to "capitalize on several of Winthrop's key strengths including- its natural environment... and the town's great neighborhoods." The economic development strategies include: promoting environmental resources to encourage visitors, improve accessibility to/from and within town, create a strong town center, and promote Winthrop as a great place to raise a family. The proposed project threatens these strategies chosen by the people of Winthrop.
- 4) The project does not comply with Winthrop's 2016 Master Plan that focuses on development of the Winthrop Centre, Center Business District and the Middle School. The development of housing in an outlier densely populated block neighborhood is unnecessary and is not contemplated in the master plan.
- 5) Under the Planning Board's identified regulatory objectives, the proposed development is not designed in a safe, efficient and aesthetically pleasing manner.
- 6) Under the Planning Board's identified regulatory objectives, the proposed development does not reflect the natural capabilities and limitations of the site as well as the characteristics and limitations of adjacent property.
- 7) Under the Planning Board's identified regulatory objectives, the proposed development is not visually harmonious as viewed from both within and from outside the site.
- 8) Under the Planning Board's identified regulatory evaluation criteria, the proposed development will detract from the livability, scale, character or economic value of existing residential neighborhoods.
- 9) Under the Planning Board's identified regulatory evaluation criteria, the proposed development does not encourage sensitively planned development because it does not preserve open space for conservation or encourage the preservation, and

minimum disruption, of the existing natural features of land and minimizing impacts on environmentally sensitive areas.

10. Under the Planning Board's identified regulatory evaluation criteria, the proposed development will have a negative impact on public facilities and services and on adjoining land.

11. Under the Planning Board's identified regulatory evaluation criteria, the proposed development does not promote the efficient and economical provision of public facilities such as utilities and streets.

12. Under the Planning Board's identified regulatory evaluation criteria, the proposed development is not compatible with surrounding land uses, and that traffic and public services will be adversely impacted if approved.

13. Under the Zoning Board of Appeals' regulatory decisionmaking criteria, the proposed development requiring relief from the zoning bylaws can't be granted without substantial detriment to the public good and without nullifying nor substantially derogating from the intent or purpose of the zoning bylaws. The Developer has not shown a good-faith hardship nor an entitlement to permitting.

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19. The development will be in the middle of 20 houses on the block causing undue construction nuisance of dirt, noise, and inconvenience.

20. The development threatens fire safety even with a sprinkler system because the property is in the middle of a neighborhood block and not readily accessible. A

snowstorm or parked vehicles could obstruct access for emergency services resulting in disaster for the new home as well as the abutters. Previous Winthrop Fire Department officials opined that access was an issue. The Superior Court Judge specifically credited the previous Winthrop Fire Department official's opinion in denying the appeal in 2006-2009. The ZBA board members of 1988, 1990, 2006, and 2017 all had concerns for access and safety with the proposed development.

21. The development is not in accordance with Winthrop's unique allure as a quaint environmentally focused ocean town offering a great place to live and raise a family.

22. The detrimental effect of this projects is substantial and threatens the abutters, the environment, and the community-at-large.

Therefore, we, the undersigned residents of Winthrop, Massachusetts, respectfully request all Winthrop public officials accept this petition and deny all proposals for residential development of the property at 40R Banks Street, Winthrop, Massachusetts.

Updates

Keep your supporters engaged with a news update. Every update you post will be sent as a separate email to signers of your petition.

[Post an update](#)



January 24 Meeting will be held Via Zoom

After being rescheduled 3 times the Planning Board Meeting regarding this case is scheduled for tomorrow January 24 . At the last minute we found out that it will be held via Zoom only



Diane Spicer

19 hours ago

Winthrop Residents who signed the electronic petition SAY NO TO 40R Bank Street

Name	City	State	Postal Code	Country	Signed On
Diane Spicer	Winthrop	MA	2152	US	6/22/2021
Lauren Amaru	Winthrop	MA	2152	US	6/22/2021
nicholas agri	winthrop	MA	2152	US	6/22/2021
Christopher Evans	Winthrop	MA	2153	US	6/22/2021
Rosemary Hyde	Winthrop	MA	2152	US	6/22/2021
Christine Kinsey	Winthrop	MA	2152	US	6/22/2021
Tom Carideo	Winthrop	MA	2152	US	6/22/2021
Jane Carideo	Winthrop	MA	2152	US	6/22/2021
Mara Obrien	Winthrop	MA	11216	US	6/22/2021
Veronica Conforme	Winthrop	MA	2152	US	6/22/2021
Erin Walsh	Winthrop	MA	2152	US	6/22/2021
Margaret Carr	Winthrop	MA	2152	US	6/22/2021
Nancy Feeley	Winthrop	MA	2152	US	6/22/2021
Julia Howington	winthrop	MA	2152	US	6/22/2021
Alyson Dewar	Winthrop	MA	2152	US	6/22/2021
Theresa Cimmino	Winthrop	MA	2152	US	6/22/2021
Colleen Costa	Winthrop	MA	2152	US	6/22/2021
Samantha Bullerwell	winthrop	MA	2152	US	6/22/2021
Megan Petrola	Winthrop	MA	2152	US	6/22/2021
Melissa Bonnice	Winthrop	MA	2150	US	6/22/2021
Catherine Riley	Winthrop	MA	2152	US	6/22/2021
Joseph Cimmino	Winthrop	MA	2152	US	6/22/2021
Katie Costa	Winthrop	MA	2152	US	6/22/2021
Haley King	Winthrop	MA	2150	US	6/22/2021
DONALD GRIFONI	Winthrop	MA	2152	US	6/22/2021
bob eshback	Winthrop	MA	2152	US	6/22/2021
Nichole Vatcher	Winthrop	MA	2152	US	6/22/2021
Sean Hoey	Winthrop	MA	2152	US	6/22/2021
Alicia Sanford	Winthrop	MA	2152	US	6/22/2021
Robert DiMento	Winthrop	MA	2152	US	6/22/2021
daniel gerow	Winthrop	MA	2152	US	6/22/2021
Mark Peltier	Winthrop	MA	2152	US	6/22/2021
Jennifer Elliot	Winthrop	MA	2152	US	6/22/2021
Dawna Laidley	Winthrop	MA	2152	US	6/22/2021
Nicole Emanuele	WINTHROP	MA	2152	US	6/22/2021
SHERYL RIMER	Winthrop	MA	2152	US	6/22/2021
Shannon Viera	Winthrop	MA	2152	US	6/22/2021
Mariann Nicoletti	Winthrop	MA	2152	US	6/22/2021
Judy Hanlon	Winthrop	MA	2152	US	6/22/2021
Cathy Sena	Winthrop	MA	2152	US	6/22/2021
Joanne Hillman	Winthrop	MA	2152	US	6/22/2021
Tammy Perry	Winthrop	MA	2152	US	6/22/2021
Brad Armstrong	Winthrop	MA	2152	US	6/22/2021
Nicole Powers	Winthrop	MA	2152	US	6/22/2021
Amie Desmond	Winthrop	MA	2152	US	6/22/2021

Josephine Fatta	Winthrop	MA	2152	US	6/22/2021
Kimberly Hirsh	Winthrop	MA	2152	US	6/22/2021
Jessica Keller	Winthrop	MA	2152	US	6/22/2021
Elsie Capone	Winthrop	MA	2152	US	6/22/2021
George Spagnoli	Winthrop	MA	2152	US	6/22/2021
Mary Mahoney	Winthrop	MA	2152	US	6/22/2021
Elaine Abrams	Winthrop	MA	2152	US	6/22/2021
Zachary Margardo	Winthrop	MA	2150	US	6/22/2021
Jeanette Amaru	Winthrop	MA	2152	US	6/22/2021
Charlotte Nocton	Winthrop	MA	2150	US	6/23/2021
Kim Lundee	Winthrop	MA	2152	US	6/23/2021
Jason Shramko	Winthrop	MA	2152	US	6/23/2021
Pasquale Costello	Winthrop	MA	2152	US	6/23/2021
Irene Keogh Nargi	Winthrop	MA	2152	US	6/23/2021
Carol Rapoza	Winthrop	MA	2152	US	6/23/2021
Erica Mietzsch	Winthrop	MA	2152	US	6/23/2021
Erica Foley	Winthrop	MA	2152	US	6/23/2021
Daniela Foley	Winthrop	MA	2152	US	6/23/2021
Josh Corkhum	Winthrop	MA	2152	US	6/23/2021
Candis Gillette	Winthrop	MA	2152	US	6/23/2021
John Merlino	Winthrop	MA	2152	US	6/23/2021
Stephanie Costello	Winthrop	MA	2152	US	6/23/2021
Christopher Kezik	Winthrop	MA	2152	US	6/23/2021
Michelle Scorzella	Winthrop	MA	2152	US	6/23/2021
Carla Derrico	Winthrop	MA	2152	US	6/23/2021
Cynthia Benker	Winthrop	MA	2152	US	6/23/2021
samir goncalves	Winthrop	MA	2152	US	6/23/2021
Mary Kate Galusha	Winthrop	MA	2152	US	6/23/2021
Tracy Machcinski	Winthrop	MA	2152	US	6/23/2021
Kim Costigan	Winthrop	MA	2152	US	6/23/2021
Allison Derrico	Winthrop	MA	2152	US	6/23/2021
Brenda Bee	Winthrop	MA	2152	US	6/23/2021
Denny Mahoney	Winthrop	MA	2152	US	6/23/2021
Sondra Aresty	Winthrop	MA	2152	US	6/23/2021
David Berndt	Winthrop	MA	2152	US	6/23/2021
Federico Creatini	Winthrop	MA	2152	US	6/23/2021
Melanie Kerr	Winthrop	MA	2152	US	6/23/2021
Karla Murphy	Winthrop	MA	2152	US	6/23/2021
Jessica Rudolph	Winthrop	MA	2152	US	6/23/2021
Cory Kirk	Winthrop	MA	2152	US	6/23/2021
Kathleen Pellecchia	Winthrop	MA	2152	US	6/23/2021
Eileen Wickham	Winthrop	MA	2152	US	6/23/2021
Amy Vendetti	Winthrop	MA	10022	US	6/23/2021
Julia Agri	Winthrop	MA	2152	US	6/23/2021
Michael Yandle	winthrop	MA	2152	US	6/23/2021
Maria Baldrich	Winthrop	MA	2852	US	6/23/2021
Jen Taube	Winthrop	MA	2152	US	6/23/2021

Gerry Wardwell	Winthrop	MA	2152	US	6/23/2021
William Rice	Winthrop	MA	2152	US	6/23/2021
Sandra Grover	Winthrop	MA	2152	US	6/23/2021
Frederick Wright	Winthrop	MA	2152	US	6/23/2021
Francesca Quinion	Winthrop	MA	2152	US	6/23/2021
Eric Derrico	Winthrop	MA	2152	US	6/23/2021
Charlotte Streeter	Winthrop	MA	2152	US	6/23/2021
Christopher Zike	Winthrop	MA	2152	US	6/23/2021
Nathan Bucholtz	Winthrop	MA	2152	US	6/23/2021
Virginia Perham	Winthrop	NY	2152	US	6/23/2021
CURT DEBARTOLO	Winthrop	MA	2152	US	6/23/2021
Gail Klimas	Winthrop	MA	2152	US	6/23/2021
Toni Gaglione	Winthrop	MA	2152	US	6/23/2021
Heather Graziani	winthrop	MA	2152	US	6/23/2021
edward cabral	Winthrop	MA	2152	US	6/23/2021
Sophie Paulson	Winthrop	MA	2152	US	6/23/2021
Carole Brown	Winthrop	MA	2152	US	6/23/2021
Kevin Vargus	Winthrop	MA	2152	US	6/23/2021
Maureen Alikonis	Winthrop	MA	2152	US	6/23/2021
Bob Spicer	Winthrop	MA	2152	US	6/23/2021
Dorothy Donofrio	Winthrop	MA	2152	US	6/23/2021
Nancy Claflin	Winthrop	MA	2152	US	6/23/2021
Beth Osborne	Winthrop	MA	2152	US	6/23/2021
Nathan Osborne	winthrop	MA	2152	US	6/23/2021
patricia bliton	Winthrop	MA	2152	US	6/24/2021
Patricia Bosco	Winthrop	MA	2152	US	6/24/2021
Jennifer Jones	Winthrop	MA	2152	US	6/24/2021
Carol Costello	Winthrop	MA	2152	US	6/24/2021
LAWRENCE SEGEL	Winthrop	MA	2152	US	6/24/2021
Colleen Murphy	Winthrop	MA	2152	US	6/24/2021
Cindy Jimenez	Winthrop	MA	2152	US	6/24/2021
Julie Honan	Winthrop	MA	2152	US	6/24/2021
Vicki Martelli	Winthrop	MA	2152	US	6/24/2021
Cara Portnoy	Winthrop	MA	2152	US	6/25/2021
Denise Kress	Winthrop	MA	2152	US	6/25/2021
Harrison Floyd	Winthrop	MA	2152	US	6/25/2021
Brianna Bocchio	Winthrop	MA	2152	US	6/25/2021
Noah Hodgkins	Winthrop	MA	2152	US	6/25/2021
Jake Osborne	Winthrop	MA	2152	US	6/25/2021
Kim Filocamo	Winthrop	MA	2152	US	6/25/2021
Terese Nowicki	Winthrop	MA	2152	US	6/25/2021
Mary Jane Abbott	Winthrop	MA	2152	US	6/25/2021
sharon cohen	Winthrop	MA	2152	US	6/25/2021
Marguerite Cambria	Winthrop	MA	2152	US	6/26/2021
Kristen Reynolds	Winthrop	MA	2152	US	6/26/2021
Jennifer Casey	Winthrop	MA	2152	US	6/26/2021
Lee Pellecchia	Winthrop	MA	2152	US	6/26/2021

Chris Ferrer	Winthrop	MA	2152	US	6/26/2021
Elaine Nazzaro	Winthrop	MA	2152	US	6/26/2021
Valerie Passick	Winthrop	MA	2152	US	6/26/2021
Keith Costello	Winthrop	MA	2152	US	6/26/2021
Benjamin Schad	Winthrop	MA	2152	US	6/27/2021
MONICA BURKE	Winthrop	MA	13209-1508	US	6/27/2021
Nicholas Ivancic	winthrop	MA	2152	US	6/27/2021
deborah wilcox	Winthrop	MA	2152	US	6/27/2021
George Chinaglia	Winthrop	MA	2152	US	6/27/2021
Michael Di Mento	Winthrop	MA	2152	US	6/27/2021
irene doucette	Winthrop	MA	2152	US	6/27/2021
Linda Rich	Winthrop	MA	2152	US	6/27/2021
Lee Fich	Winthrop	MA	2148	US	6/28/2021
Ruth Davies	Winthrop	MA	2152	US	6/29/2021
Yole Morocco-foley	Winthrop	MA	2152	US	6/29/2021
Kevin Foley	Winthrop	MA	2152	US	6/29/2021
Joseph Cimmino	Winthrop	MA	2152	US	7/1/2021
Sandra JoneckSchiff	Winthrop	MA	2152	US	7/1/2021
Granville Harris	winthrop	MA	2152	US	7/7/2021
donna buonomo	Winthrop	MA	2152	US	7/7/2021
Kelly Boudrow	Winthrop	MA	2152	US	7/8/2021
Marilyn Regan	Winthrop	MA	2152	US	7/9/2021
Stephanie Haroules	Winthrop	MA	2152	US	7/9/2021
Lois Baxter	Winthrop	MA	2152	US	7/9/2021
Andrea Loud	Winthrop	MA	2152	US	7/9/2021
Diane Rosenberg	Winthrop	MA	2151	US	7/9/2021
Jeffrey Mead	Winthrop	MA	2152	US	7/10/2021
Leonard Clifford	Winthrop	MA	2152	US	7/10/2021
nancy o'malley	Winthrop	MA	2152	US	7/10/2021
Tom Flaherty	Winthrop	MA	2152	US	7/10/2021
Sage Cunningham	Winthrop	MA	2152	US	7/10/2021
Fabiola Oliveira	Winthrop	MA	11212	US	7/10/2021
Cheryl Cross	Winthrop	MA	2152	US	7/10/2021
Ana Arevalo	Winthrop	MA	2152	US	7/10/2021
Rosalind Mott	Winthrop	MA	2152	US	7/11/2021
Debra Stella	Winthrop	MA	2152	US	7/11/2021
Donna Ciccarelli	Winthrop	MA	2152	US	7/11/2021
Karen Menjivar	Winthrop	MA	2152	US	7/11/2021
Holly Bartlett	Winthrop	MA	2152	US	7/11/2021
Kim Nichols	Winthrop	MA	2152	US	7/11/2021
Denise Bass	Winthrop	MA	2152	US	7/12/2021
Rosemary Mahoney	WINTHROP	MA	2152	US	7/13/2021
Jonathan Copp	Winthrop	MA	2152	US	7/14/2021
Janice Cappello	Winthrop	MA	2152	US	7/16/2021
Alana L.	Winthrop	MA	2152	US	7/16/2021
Mary Teixeira	Winthrop	MA	2152	US	7/16/2021
Skye T.	Winthrop	MA	2152	US	7/19/2021

Paul Shifflett	Winthrop	MA	2152	US	7/19/2021
Betsy Moynahan	Winthrop	MA	2152	US	7/19/2021
Ruthie Fisher	Winthrop	MA	2152	US	8/18/2021
Kevin Kelley	Winthrop	MA	2152	US	8/21/2021
Skye Thomson	Winthrop	MA	2152	US	12/9/2021
Michele D'Amelio	Winthrop	MA	2152	US	6/23/2021

EXHIBIT 7

TOWN OF WINTHROP

Salvatore R. Massa, *Chairman*
Roger A. Emanuelson
Richard J. Lawton



TOWN HALL
WINTHROP, MASS. 02158
846-1077

Lois Cutillo *Secretary*

OFFICE OF THE BOARD OF APPEALS

LEGAL NOTICE

A Hearing will be held by the Board of Appeals at the Town Hall Hearing Room, on Monday October 17, 1988 at 7:30 p.m. on the following appeals:

Joan M. Shea, 108 Taft Ave., convert one family dwelling to two family require area, side yard & rear yard variance.

James Murphy, 107 Summit Ave., parking variance for two vehicles.

Chris Biasizzo, 140 Shore Drive, require 6' side yard variance.

Thomas Pellegriti, 40 Banks St., build two family dwelling on each of two lots both require a variance of 100' frontage and one has less than the required 10,000 sq. ft. Neither lot has any street frontage.

TOWN OF WINTHROP
BOARD OF APPEALS

IN RE: PETITION OF THOMAS PELIGRITTI
Premises: 40 Bank Street, Winthrop, MA
Date of Hearing: October 17, 1988
Date of Decision: October 22, 1988
Case Number: 52-88

ISSUE

This is a petition to construct two two-family dwellings on adjoining lots which have no frontage and one of which lacks sufficient area.

PRESENTATION OF FACTS

A hearing was held on October 17, 1988, the Board consisting of Salvatore R. Massa, Richard J. Lawton and Roger A. Emanuelson. At that time the Board heard from all those present in favor of or in opposition of the petition.

The Petitioner was represented by Attorney Alan Bernstein who represented to the Board that the subject lots (designated as C1 and C2) were located behind the lot at 40 Banks Street and were land-locked but for a twenty-nine foot right-of-way or easement which the Petitioner held on the property at 40 Banks Street. It was conceded that neither parcel had street frontage; and that lot C2 lacked the required area of 10,000.00 square feet by about 178 square feet.

The chronology of the Petitioner's ownership of various affected parcels was presented as follows: the Petitioner purchased his home at 51 Douglas Street which also abuts the subject lots in 1953. He then purchased lots C1 and C2 in 1957; at that time the lots were land-locked. At the time of purchase the lots had no buildings on them and the Petitioner contemplated no particular use for them. To date, the lots have remained empty. In 1963, the Petitioner purchased the property at 40 Banks Street which he owned until August of 1985. At the time he conveyed that property, he retained a twenty-nine foot easement and right-of-way. A copy of said deed was submitted to the Board. Prior to selling the property at 40 Banks Street, the Petitioner had sought a zoning change which would have permitted the building of garden apartments on lots C1 and C2 which request was defeated by vote of the Town meeting members.

The Petitioner claims to be able to provide sufficient off-street parking for each lot. He further claims that, due to the unique location of the lots, they cannot be used for any other purpose; and, therefore he suffers a hardship.

No other persons appeared in favor of the petition.

A large delegation of abutters and neighbors appeared in opposition. Their names and addresses are contained in the minutes of the Board meeting. The basis for opposition centers upon the already dense population of the area and the unique design of the streets of which Banks Street is the only one-way street leading to the main artery. The neighbors contend that the proposed use would create a negative impact upon existing on-street parking, as well as creating excessive traffic use. A number of instances of traffic accidents at the area of the subject easement were related to the Board. In addition, concerns were raised with respect to the ability of fire fighting apparatus to get to the lots in case of an emergency; and the resulting danger to surrounding properties.

Concern was also raised with respect to the possible adverse effects construction would have upon water drainage in the area, as well as demands upon water pressure and other utilities. Those appearing in opposition also cited concerns for adverse impact upon the values of the neighborhood properties if construction were allowed; and the adverse impact upon the environment of the area.

Both the Winthrop Planning Board and the Building Inspector were recorded as being opposed to the petition.

FINDINGS AND RULINGS

Upon a review of the relevant zoning by-laws and regulations, the Board finds as follows:

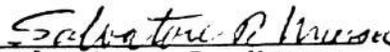
1. At the time the Petitioner purchased lots C1 and C2, they were land-locked and had no greater use than they currently have.

2. The Petitioner has failed to demonstrate that he would suffer any hardship by the denial of the requested variance.

3. In balancing the economic interests of the Petitioner against the interests of the Town in general and the neighborhood in particular, the Board finds that to grant the requested variances would have a detrimental effect upon the neighborhood and derogate from the intent of the zoning by-laws.

4. The Petitioner has failed to demonstrate that the Board has the authority to otherwise grant the relief requested.

WHEREFORE, the requested variances are hereby denied.


Salvatore R. Massa


Richard J. Lawton


Roger A. Emanuelson

EXHIBIT 8

Two Family
1988

TO: The Honorable Board of Appeals
Town of Winthrop

P E T I T I O N

We, the undersigned citizens of Winthrop, MA are strongly opposed to the granting of a variance which would allow the construction of a two family dwelling on each of two non-conforming lots as requested by Thomas Pellegriti. Said lots located between Banks and Douglas streets do not possess the required 100' frontage and one has less than the required 10,000 square feet. Neither has any street frontage which means that any construction activity will necessarily involve an unwelcomed intrusion on the quiet enjoyment of all neighboring properties. Our prime areas of concern are as follows:

- over-population in the community; as Winthrop is one of the most densely populated towns in Massachusetts
- traffic problems; the increase in traffic would certainly create added congestion causing more of a safety hazard to our children
- parking; with the development of two two-family dwellings (minimum 4 cars) the issue of parking faces all of us
- public utility issues; water, gas, electricity and telephone
- sewage / water pressure; potential back-up sewage into our basements and sinks - how will the development effect the existing low water pressure?
- water table issues; Banks and Douglas streets are in a high water table location, surely construction would displace water into our yards and homes
- property enjoyment; any development would actually take place in our back yards reducing the quiet enjoyment and privacy which each of us preserve
- construction nuisance; obviously dirt, noise and overall inconveniences are concerns to all of us
- boundary limitations; if a variance is approved, dwellings would be constructed closer to our properties, thus causing potential fire safety concerns

For the above mentioned reasons, we respectfully request the above described variance be denied.

<u>NAME</u>	<u>ADDRESS</u>	<u>TELEPHONE</u>
Robert Spicer	40 Banks St	846-1070
Diane M. Spicer	40 BANKS ST	846-1070
George C. Swanson	38 BANKS ST.	846-2244
Margaret Swanson	38 Banks St	846-2244
Paul A. Swanson	38 BANKS ST.	846-2244
Joseph M. Nutter	58 BANK ST	846-9322

NAMEADDRESSTELEPHONE

Donna Caravaggio	29 Wilshire Dr	846-8087
Arthur J Imperosi	20 Wilshire St	846-9548
Maureen Shea	25 Wilshire St	
Kathleen McCarthy	9 Wilshire	846-0202
Mark Bamson	254 Main St.	
Elizabeth Pastor	248 MAIN ST	846-9155
Phyllis Stewart	217 Main St.	846-7309
P. Allen	235 Main St	- - - -
Jack E. Michaud	232 MAIN ST.	846-6694
John DePiso	209 Main St	846-1661
Ann Dello Russo	229 Main St	846-1661
Arthur Dello Russo	229 Main St	846-1661
Walter Welch	228 main st.	846-6251
Joe Brown	226 MAIN ST	846-4098
Meg Moore	14 Banks St	846-7644
Josephine MacCormack	16 Banks St	846-5037
Mildred C. Hoppe	70 Banks St.	846-5830
Mrs Lynn Hoppe	70 Banks St	846-5830
Joseph W Vaccaro	41 Banks St	846-2712
Kathleen Vaccaro	41 Banks St	846-5247
Cindy Vaccaro	41 BANKS ST	846-1015

NAMEADDRESSTELEPHONE

Karen E. Chaschka	40 Banks	846-2468
Maria Cadigan	39 Banks	846-0039
Hilda M. Cadigan	39 Banks	846-0039
Joe Bartol	39 BANKS	846-9576
Elizabeth Bartolo	39 Banks	846-9576
Jane C. Schneider	34 Banks	846-9451
J.P.A. Robinson	36 Banks ST	846-7160
John Kaminowicz	33 BANKS ST	539-8236
FRANK McLAUGHLIN	33 BANKS ST	846-8236
GLORIA LEE	33 BANKS ST	846-539-0289
John V. ...	31 BANKS ST	
Mary Cadigan	30 Banks St	846-1766
Anthony R. Puzio	20 Banks Street	846 0427
John P. ...	14 Banks ST.	846-9644
Jessie J. ...	15 Banks St	846-5040
Thomas A. ...	10 Banks St.	746-2968
James ...	58 Banks St	846-9322
Clara ...	154 Morton St	846-6431
...	154 Morton St	846-6-...
Mr. William J. ...	95 Bank ST.	846-8853
Mr. ...	31 Banks	846-2645
...	31 Wilshire St	846-6770
Mary Koritsas	61 Wilshire St.	846-6770
James Santellano	50 Wilshire St	846 6043
Susan ...	46 Wilshire St	846-7742
...	36 WILSHIRE ST.	
Patricia ...	36 Wilshire St. (Wentley)	
Rita M. ...	37 Wilshire St Wentley Mass	

EXHIBIT 9

ONE FAMILY
1990?

TO: The Honorable Board of Appeals
Town of Winthrop

PETITION

We, the undersigned citizens of Winthrop, MA are strongly opposed to Mr. Thomas Pellegriti's request to build a single family home, in the rear portion of 40 Banks St., Section 5.03 requires 75' minimum frontage. There is no street frontage. There are several issues of concern we would like to address; they are as follows:

- Fire Safety - a 29" easement is the only means of entry or egress to the rear portion of land, therefore fire safety is a major concern. Moreover should any obstruction occur on said easement, there would be no accessibility to the rear land.
- over population in the community as well as an already densely populated neighborhood
- Traffic/ Parking problems - Banks Street traffic would escalate due to a unique design of the streets. Banks St. is the only one-way street leading to the main artery and has been an area of traffic accidents and parking problems over the years.
- Construction - several issues of concern involving construction are adverse effects on water drainage, sewage, demands on water pressure and other utilities, noise, dirt and air pollution and the environment in general.
- Property enjoyment - any development would literally take place in our back yards, reducing the quiet enjoyment and privacy which each of us preserve.

Also, attached please find a copy of a petition submitted to the Board of Appeals on October 17, 1988 and the results of that hearing.

Based on the information submitted this 10th day of December 1990 and previous determinations, the citizens of Winthrop respectfully request Mr. Pellegriti's attempt to build a single family home to be denied.

<u>NAME</u>	<u>ADDRESS</u>	<u>TELEPHONE</u>
<i>Robert [unclear]</i>	<i>40 Banks St</i>	<i>846-1070</i>
<i>Diane M. Spicer</i>	<i>40 BANKS ST</i>	<i>846-1070</i>
<i>Margaret M. Swanson</i>	<i>38 Banks St</i>	<i>846-2244</i>
<i>George C. Swanson</i>	<i>38 Banks St.</i>	<i>846-2244</i>
<i>Richard D. [unclear]</i>	<i>38 BANKS ST</i>	<i>846--8569</i>
<i>John A. Roberson</i>	<i>36 Banks ST</i>	<i>846-7160</i>
<i>James [unclear]</i>	<i>36 Banks St</i>	<i>846-5472</i>
<i>Blaine [unclear]</i>	<i>154 Morton St</i>	<i>846-6431</i>
<i>Michael [unclear]</i>	<i>154 Morton St</i>	<i>846-6431</i>

NAME	ADDRESS	TEL #
Ed [unclear]	236 [unclear] St	846-4436
William [unclear]	235 Main St	846-0694
Michael [unclear]	" " "	" "
Walter R Welch		846-6251
Clare Burns		846-2434
James G. [unclear]		846-211
[unclear]		846-847
Barbara [unclear]		
Joseph E. [unclear]		
John K Sullivan	51 Douglas St.	539 0196
John [unclear]	" "	" "
John [unclear]	143 Morton St.	846-2796
Mary Ricciardi	143 Morton St.	846-2796
Mary Baiagalupi	142 Morton St.	539-0475
Joseph M. [unclear]	149 Morton St.	846-4119
George [unclear]	149 Morton St.	846-4117
John B. [unclear]	160 Morton St.	539-0867
Janette [unclear]	160 Morton St.	846-7244
Joseph M. [unclear]	58 Bank St	846 9322
Ken M. [unclear]	58 Bank St	" "
Janece [unclear]	58 Bank St	" "
Michael [unclear]	57 [unclear] St	
Cheryl Dalton	3 [unclear] St	846-4002

NAME	ADDRESS	TEL #
Laura Carano	45 Banks St.	846-2515
Patrick J. Feily	37 Banks St	846-8073
Nancy J. Feily	37 Banks St	846-8073
Marilyn J. Padigan	33 Banks St	846-1766
Thomas J. Curly	33 Banks St	846-1766
Rebecca R. Piffen	40 Banks St	539-1754
Stacy S. Piffen	40 Banks St	539-1754

EXHIBIT 10



THOMAS PELLEGRITI v. DARREN BAIRD, BRIAN BEATTIE, and ROMEO MOREIRA as members of the WINTHROP BOARD OF APPEALS

MISC 323305

March 20, 2009

SUFFOLK, ss.

Long, J.

DECISION

Introduction

This case is plaintiff Thomas Pellegriti's G.L. c. 40A, § 17 appeal from a decision of the Winthrop Board of Appeals (the "zoning board") which (1) denied his appeal from the building inspector's refusal to issue building permits for the construction of two, two-family homes on his property at 40R Banks Street, and (2) denied his application for a variance from the frontage requirement (upon which the building inspector's refusal was based) and the lot area requirement.

40R Banks Street consists of two lots (C-1 and C-2) as shown on a plan endorsed Approval Not Required by the Winthrop Planning Board (the "planning board") on September 12, 1988. A copy of that plan is attached as Exhibit A. The lots are both vacant land. Lot C-1 meets the minimum square footage requirement for two-family homes. [\[Note 1\]](#) Lot C-2 falls approximately 179 square feet short. [\[Note 2\]](#) Both are interior lots, surrounded on all sides by residential properties. Neither has frontage on a public or town-approved private way as required by the zoning bylaw. [\[Note 3\]](#) The only access to Lot C-2 is through use of a 29-foot wide, 85-foot long

easement from Banks Street. See Exhibit A. Access to Lot C-1 is available only through use of a 24-foot wide, 134-foot long easement over Lot C-2. Id. Mr. Pellegriti contends that the planning board's ANR endorsement is binding on the building inspector and zoning board with respect to access and frontage issues or, at the least (and coupled with the fact that Lot C-2 is nearly large enough to fulfill the lot size requirement) shows that the denial of his variance application was arbitrary and capricious. The zoning board disagrees.

The case was tried before me, jury-waived. I also took a view. Based upon the parties' stipulation of facts, my observations at the view, the agreed exhibits, the testimony and additional exhibits admitted into evidence at trial, and my assessment of the credibility, weight and inferences to be drawn from that evidence, I find and rule that the ANR plan is not binding on the ZBA with respect to access and frontage, and that the ZBA's actions in denying the appeal from the building inspector's decision and denying the variance were within its allowable discretion.

Facts

The plaintiff, Thomas Pellegriti, is the owner of the property at 40R Banks Street in Winthrop, the characteristics of which are set forth above. It is an entirely interior property, approximately in the center of the block bounded by Banks Street, Main Street, Douglas Street and Morton Street. It has no frontage of its own on any of those streets, and is completely surrounded by fully developed residential lots that do have such frontage.

40R Banks Street was formerly owned by Mr. Pellegriti's parents, A. Thomas and Nora Pellegriti, who also owned the abutting properties at 40 Banks Street and 51 Douglas Street. 40R, as previously noted, was completely landlocked at that time. 40 Banks Street fronts directly on Banks Street, and 51 Douglas Street fronts directly on Douglas Street. All three lots were subsequently conveyed to the Pellegritis' nominee trust and remained there, in common ownership, until 1985 when the trust began to sell them off. 40 Banks Street was sold in 1985, with the trust reserving a perpetual affirmative easement and right of way over and across the above described parcel for access to the 40R Banks Street property. [\[Note 4\]](#) The easement is twenty-nine feet wide and 84.75 feet long, and is located on the

eastern part of the 40 Banks Street lot. See Exhibit A. In 1989, the trust conveyed the 51 Douglas Street property to Brian K. Sullivan and Debra Norton, [\[Note 5\]](#) and on October 14, 2005, conveyed 40R Banks Street to Thomas A. Pellegriti, [\[Note 6\]](#) the plaintiff in this action.

In 1988, some years after 40 Banks Street had been sold, the trust sought an ANR endorsement for a plan showing the division of 40R Banks Street into two lots, with access by easements as shown on Exhibit A. The planning board granted endorsement on September 12, 1988, and the ANR plan thereafter was recorded at the registry of deeds. [\[Note 7\]](#) Exhibit A. Almost immediately thereafter, the trust sought a variance from the zoning board to construct two-family dwellings on the two lots, one on each (the same relief Mr. Pellegriti seeks in this case). The variance was denied for lack of the required lot area (lot C-2) and frontage (both lots) [\[Note 8\]](#) □ precisely the same grounds on which relief was denied in this case.

In 1990, undaunted by this earlier failure, the trust again sought a variance from the zoning board, this time to construct a single family home on lot C-2. That application was denied, again for lack of frontage, by decision dated December 17, 1990. [\[Note 9\]](#)

On September 15, 2005, while the property was still owned by his parents □ trust, Mr. Pellegriti applied for building permits to construct a two-unit dwelling on Lot C-1 and a two-unit dwelling on Lot C-2, in essence a revisiting of the trust □s 1988 variance application. [\[Note 10\]](#) The building inspector denied the application that same day, stating that □neither lot has frontage on a town street or way. □ [\[Note 11\]](#) On October 5, 2005, Mr. Pellegriti timely appealed the decision of building inspector to the zoning board. [\[Note 12\]](#) In that same appeal, in the alternative, he also sought a variance from the lot size and frontage regulations of the zoning bylaw. [\[Note 13\]](#)

On October 14, 2005, approximately a month after the building permits had been refused and nine days after the appeal and variance application were filed, the trust formally transferred ownership of the 40R Banks Street property to Mr. Pellegriti. [\[Note 14\]](#) The zoning board held public hearings on the appeal and application on November 17, 2005, January 26, 2006, and March 30, 2006. [\[Note 15\]](#) At the

hearings, Captain William Hazlett of the Winthrop Fire department testified that there was concern for the fire department's ability to gain entrance to the back lot (C-2) through the easement and even if they could gain entrance, the ladder trucks would be unable to make the turning radius onto Lot C-1, and there was a concern for life safety. [\[Note 16\]](#) He gave the same testimony at trial, expanding on those concerns and, with reference to the size of the trucks and their turning radiuses, demonstrated exactly how difficult the turns would be and why they would be even more difficult with parked cars on the lots and in winter snow conditions.

By decision dated April 25, 2006, the zoning board denied the requested variance and upheld the decision of the building inspector because the lots have inadequate frontage, and the proposed construction is in contravention of local zoning bylaws, derogates from the character of the neighborhood, causes risk to public safety and safety hazards, and would nullify or substantially derogate from the intent or purpose of the Zoning by-laws. [\[Note 17\]](#) The board also found that owing to conditions relating to soil conditions, shape or topography of the lots and especially the lots of the appellant, but not affecting generally the Zoning District in which the lots are located, a literal enforcement of the provisions of the by-laws would not involve a substantial hardship, financial or otherwise, to the appellant and, therefore, appellant is not entitled to variances requested in the application as appellant has failed to satisfy the requirements of G.L. c. 40A, § 10. [\[Note 18\]](#)

Mr. Pellegriti appealed to this court under G.L. c. 40A, §17, contending that the ANR endorsement of the Planning Board and its subsequent recording is conclusive that 40R Banks Street has the requisite frontage and access, and thus the ZBA should not have denied his appeal from the decision of the building inspector. He further contends that he fully satisfied the requirements for a variance, and that the ZBA's denial of that variance was arbitrary and capricious. Accordingly, he seeks to have the ZBA's decision annulled and an order entered directing the issuance of the building permits. [\[Note 19\]](#)

Other pertinent facts are included in the sections below.

The Standard for a G.L. c. 40A, § 17 Appeal

In a G.L. c. 40A, § 17 appeal, the court is required to hear the case de novo, make factual findings, and determine the legal validity of the board's decision upon those facts. *Roberts v. Southwestern Bell Mobile Sys., Inc.*, [429 Mass. 478](#) , 486 (1999) (citing *Bicknell Realty Co. v. Bd. of Appeal of Boston*, [330 Mass. 676](#) , 679 (1953)); *Josephs v. Bd. of Appeals of Brookline*, [362 Mass. 290](#) , 295 (1972)). In making those findings, "the judge is not allowed to give the board's findings or decision evidentiary weight." *Josephs*, 362 Mass. at 295 (citing *Devine v. Zoning Bd. of Appeals of Lynn*, [332 Mass. 319](#) , 321-322 (1955)). Facts may only be based on the evidence heard by the court. *Devine*, 332 Mass. at 322.

"Even when a zoning board cites no particularized reasons or any specific evidence for its denial decision, its action will be upheld, as will that of a judge affirming that action under G.L. c. 40A, § 17, if a rational basis for the denial exists which is supported by the record. So long as any reason on which the board can fairly be said to have relied has a basis in the trial judge's findings and is within the standards of the zoning by-law and The Zoning Enabling Act, the board's action must be sustained regardless of other reasons which the board may have advanced." *Davis v. Zoning Bd. of Canton*, [52 Mass. App. Ct. 349](#) , 356 (2001) (internal quotations and citations omitted). "The decision of the board cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary." *Roberts*, 429 Mass. at 486 (citations omitted).

In determining whether the decision was "based on a legally untenable ground," the court must determine whether it was decided

on a standard, criterion, or consideration not permitted by the applicable statutes or by-laws. Here, the approach is deferential only to the extent that the court gives "some measure of deference" to the local board's interpretation of its own zoning by-law. In the main, though, the court determines the content and meaning of statutes and by-laws and then decides whether the board has chosen from those sources the proper criteria and standards to use in deciding to grant or to deny the variance or special permit application.

Britton v. Zoning Bd. of Appeals of Gloucester, [59 Mass. App. Ct. 68](#) , 73 (2003) (internal citations omitted).

In determining whether the decision was □unreasonable, whimsical, capricious, or arbitrary,□ □the question for the court is whether, on the facts the judge has found, any rational board could□ come to the same conclusion. Id. at 74. While □it is the board□s evaluation of the seriousness of the problem, not the judge□s, which is controlling,□ *Barlow v. Planning Bd. of Wayland*, [64 Mass. App. Ct. 314](#) , 321 (2005) (internal quotations and citations omitted), and □a highly deferential bow [is given] to local control over community planning,□ *Britton*, 59 Mass. App. Ct. at 73, deference is not abdication; the board□s judgment must have a sound factual basis. See *Britton*, 59 Mass. App. Ct. at 74-75 (board□s decision must be supported by a □rational view of the facts□); *Mahoney v. Bd. of Appeals of Winchester*, [344 Mass. 598](#) , 600-602 (1962) (board□s determination that proposed use would adversely affect the health and safety of persons living in the neighborhood or be detrimental to the public welfare was not supported by □substantial evidence□, □could not reasonably be found□, and was thus reversed). If the board□s decision fails that test, the court should annul it, see, e.g., *Colangelo v. Bd. of Appeals of Lexington*, [407 Mass. 242](#) , 246 (1990); *Mahoney*, 344 Mass. at 600-602, and may also □make such other decree as justice and equity may require□ which, in appropriate circumstances, can include an order for permits to issue. G.L. c. 40A, § 17; see e.g., *Petrucci v. Bd. of Appeals of Westwood*, [45 Mass. App. Ct. 818](#) , 827-828 (1998).

Analysis

The ANR Endorsement

Mr. Pellegriti contends that the ANR endorsement granted by the planning board conclusively determined that his planned development of C-1 and C-2 has adequate access and frontage, and thus should be binding on the building inspector and on the ZBA. That contention is wrong.

In granting an ANR endorsement, the planning board makes a determination that the proposed plan does not constitute a subdivision. See G.L. c. 41, § 81L [[Note 20](#)] (defining a subdivision); G.L. c. 41, § 81P [[Note 21](#)] (providing for ANR endorsement when the planning board determines the submitted plan does not constitute a subdivision, and thus does not require approval). A □subdivision□ is a division of land into lots, each of which does not have access via a street or way.

See G.L. c. 41, § 81L. To determine that a plan is not a subdivision, and thus eligible for ANR approval, the planning board should consider whether there is adequate access and frontage □of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet.□ See G.L. c. 41, § 81L.

However, the frontage and access determination by the planning board is only a preliminary step. □The cases are legion which recognize that a Section 81P endorsement of a plan (□approval not required□) gives a lot shown on that plan *no standing under the zoning bylaw*.□ Arrigo v. Planning Board of Franklin, [12 Mass. App. Ct. 802](#) , 807 (1981) (emphasis added) citing Smalley v. Planning Board of Harwich, 10 Mass. at 599, 603 (1980). Moreover, □[t]here is no sound reason why the approval of a plan . . . which may be based on nothing more substantial than neglect by a planning board to attend to its duties on time, should preclude a building inspector or board of appeals from performing their statutory duties of requiring adherence to the town□s zoning bylaw, including any provision specifying minimum frontage. . .□ Arrigo, 12 Mass. App. Ct. at 807-808 (internal case citations omitted).

Mr. Pellegriti points to the language in G.L. c. 41, § 81P which provides that an ANR endorsement is □conclusive on all persons,□ and argues that it reflects the Legislature□s intent to make that endorsement, and all its necessary subsidiary findings, binding on the building inspector and the zoning board. But, despite that language, an ANR plan is not impervious to review. See Lee v. Board of Appeals of Harwich, [11 Mass. App. Ct. 148](#) , 151-152 (1981)(□We will not lightly assume that the Legislature intended to insulate administrative action, often taken by a single individual, from correction, no matter wrong or arbitrary the action may have been.□). Indeed, when planning boards have wrongly granted ANR endorsements, those endorsements have been subsequently reversed when challenged. See Gifford v. Planning Board of Nantucket, [376 Mass. 801](#) (1978) (holding that an ANR plan was endorsed when not appropriate, and reversing that approval because a narrow winding road leading to the planned units did not provide adequate access); see also Lee v. Board of Appeals of Harwich, 11 Mass. App. Ct. at 152 (observing

that a lot lacking requisite frontage appeared on the same ANR endorsement as the lot at issue).

The building inspector denied Mr. Pellegriti's application for a building permit, specifically stating that "neither lot has frontage on a town street or way." Denial of Building Inspector, Sept. 15, 2005. [\[Note 22\]](#) He was not precluded from doing so by the planning board's prior endorsement of the ANR plan, nor was the zoning board precluded from affirming his denial. Notably, "[a]n endorsement under Section 81P [ANR] does not mean that the lots within the endorsed plan are buildable." See *Stefanick v. Planning Board of Uxbridge*, [39 Mass. App. Ct. 418](#), 425 (1995) (emphasis added and internal citations omitted); *Lee*, 11 Mass. App. Ct. at 152. Indeed, even aside from the frontage issue, at least one of the lots, C-2, cannot be used for construction of the sought-after two-family dwelling because it lacks sufficient area. It has only 9,821.5 square feet of land, [\[Note 23\]](#) and the zoning bylaw requires a minimum lot area of 10,000 square feet for a two-family dwelling. [\[Note 24\]](#) Moreover, under the rationale in the *Arrigo* and *Lee* cases the building inspector could enforce the bylaw, even with respect to frontage and access, notwithstanding the ANR approval. See *Arrigo*, 12 Mass. App. Ct. at 807-808; *Lee*, 11 Mass. App. Ct. at 151-152. [\[Note 25\]](#)

The Zoning Board Acted Within Its Allowable Discretion When It Denied the Appeal from the Building Inspector's Decision and the Plaintiff's Variance Application

The zoning board's decision may be reversed only if "it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary." *Roberts*, 429 Mass. at 486 (citations omitted). As noted above, the board was not bound by the ANR plan on frontage and access issues and was free to examine those questions anew, so long as it acted in accordance with the law in a rational, non-arbitrary manner. Clearly Mr. Pellegriti's development plans were in violation of the zoning bylaw's requirements on minimum square footage (Lot C-2) and frontage (both lots). The board correctly refused to overturn the building inspector's decision on those grounds. The only avenue by which Mr. Pellegriti could obtain the permits he sought was through a variance and, as discussed below, the zoning board acted within its allowable discretion in denying that application. Its judgment that access would be inadequate and, therefore, that the development would be in

derogation of the purposes of the zoning bylaw, was rationally based and neither arbitrary nor capricious.

Variances are governed by G.L. c. 40A, § 10, which provides:

The permit granting authority shall have the power to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The Supreme Judicial Court has repeatedly held that no variance can be granted unless all of the requirements of this statute are met. Warren v. Zoning Bd. of Appeals of Amherst, [383 Mass. 1](#), 9-10 (1981). [A] failure to establish any one of them is fatal. Guiragossian v. Bd. of Appeals of Watertown, [21 Mass. App. Ct. 111](#), 115 (1985) (citing Blackman v. Bd. of Appeals of Barnstable, [334 Mass. 446](#), 450 (1956)). On appeal to the [Land Court], the judge is required to hear the matter de novo and to determine the legal validity of the board's decision concerning the variance upon the facts found by the judge. Guiragossian, 21 Mass. App. Ct. at 114 (citing G.L. c. 40A, § 17; Josephs v. Bd. of Appeals of Brookline, [362 Mass. 290](#), 295 (1972); Garvey v. Bd. of Appeals of Amherst, [9 Mass. App. Ct. 856](#) (1980)). [T]he burden rests upon the person seeking a variance and the board ordering a variance to produce evidence at the hearing in the [Land Court] that the statutory prerequisites have been met and that the variance is justified. Dion, 344 Mass. at 555-556 (1962). Although the judge hears the matter de novo, a zoning board decision cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary. Roberts v. Southwestern Bell Mobile Sys., Inc., [429 Mass. 478](#), 486 (1999) (quoting MacGibbon v. Board of Appeals of Duxbury, [356 Mass. 635](#), 639 (1970)).

The zoning board denied the variance chiefly on the ground that to grant it would cause substantial detriment to the public good and either nullify or substantially derogate from the intent or purpose of the zoning by-law. Specifically, they denied it because of safety concerns. The key testimony at trial came from Captain Hazlett of the Winthrop Fire Department, whom I find to be expert in matters of fire and emergency-apparatus access and whose testimony on those issues I credit in full. As previously noted, Lots C-1 and C-2 are interior lots, with no frontage on any public or approved private way. They are separated from the nearest way by fully built-upon residential properties, and they are accessible only by easement. That easement is long, narrow and has a sharp 90° turn. See Exhibit A. The planned two-family dwellings would occupy much of the space on the lots, effectively eliminating any room to maneuver outside the easement. See Exhibit B (development plan).

Banks Street itself is narrow (22 feet wide) and one-way. [\[Note 26\]](#) Cars park along the side closest to 40R, reducing the usable width of the road to 16 feet and even less in winter when cars have difficulty getting close to the curb. [\[Note 27\]](#) There are utility poles and a fire hydrant near the easement entrance. [\[Note 28\]](#) Winthrop's fire trucks are approximately 42 feet long, with 100 foot ladders. Their □curb to curb□ turning area (the space required for the fire truck to make an unobstructed turn) is approximately 37 feet. [\[Note 29\]](#) Their □wall to wall□ turning area (the necessary space, in total, from front to back, required for the truck to turn if there are obstructions) is 41 feet and 4 inches. [\[Note 30\]](#) Both are critical. These turning ratios, coupled with the narrowness of the street, the obstructions created by parked cars, the utility pole and the hydrant, and the sharp turn necessary to get onto the easement from Banks Street, would make it extremely difficult for the fire department □to get their apparatus up Banks Street and then to make a right-hand turn onto the easement.□ [\[Note 31\]](#) Once on the easement, there are further problems. The individual owner of a private way is responsible for his own snow removal and parking restrictions on the way, not the town. Thus, emergency responders would be at the mercy of the owner of the way, and whether that owner is diligent in plowing snow and enforcing parking restrictions. There is also the turning-area problem of the 90° left turn and the obstructions created by the proposed two-family dwellings and the cars parked alongside them. See Exhibit B. For all of those reasons, Mr. Hazlett testified that

gaining access to C-1 and C-2 with emergency fire vehicles would be □extremely difficult. □ [\[Note 32\]](#)

Mr. Pellegriti argued that other streets in Winthrop are worse than this, and if the town can deal with them, why not him? But even if access to other properties is compromised, the town is under no obligation to increase the number of its narrow streets and ways and make a bad situation worse. Mr. Pellegriti□s counsel also questioned Chief Hazlett about the possibility of mounting a smaller ladder on the ground if necessary to access the second floor or roof of the proposed two-family units on C-1 and C-2. But it is clear from Mr. Hazlett□s explanation of the limited number of firefighters that there would be insufficient responders to take the ladder off the truck, and mount it on the ground while fighting a fire. [\[Note 33\]](#) Mr. Pellegriti also questioned whether a fence owned by the property behind his could be taken down if the fire department had to access his property. There are two problems with this. First, there was no evidence that the owner of that property, who owns the fence, would consent. Second, the fire department and the zoning board are under no obligation to provide for such an exception to the ordinary access requirement.

In light of the testimony of Mr. Hazlett, which I find both credible and well-founded, I find and rule that the zoning board did not act arbitrarily and capriciously in denying Mr. Pellegriti□s appeal of the decision of the building inspector and did not act arbitrarily and capriciously in denying Mr. Pellegriti□s application for a variance. A rational board could come to the conclusion that the access to Mr. Pellegriti□s proposed residences on C-1 and C-2 was inadequate and unsafe. [\[Note 34\]](#) It is also consistent with the zoning board□s previous decisions about this property. [\[Note 35\]](#)

Conclusion

For the foregoing reasons, the plaintiff□s appeal from the zoning board□s decision is DISMISSED, WITH PREJUDICE. Judgment shall enter accordingly.

SO ORDERED.

Keith C. Long, Justice

Dated: 20 March 2009

FOOTNOTES

[[Note 1](#)] Town of Winthrop Code, Article V, Section 145 (□zoning bylaw□) Attachment 1 (dimensional requirements for two-family uses for lots subdivided after July 1, 1982); Substitute Joint Pre-Trial Memorandum, Statement of Agreed Facts (Jul. 11, 2007), (hereinafter □Agreed Facts□), ¶ 17.

[[Note 2](#)] Agreed Facts, ¶¶ 6 & 17.

[[Note 3](#)] The zoning bylaw requires a minimum frontage of 100 feet. Zoning Bylaw, Article V, Section 145 Attachment 1. □Frontage□ is defined in Section 145-5 as □[t]he front property line of a building or lot abutting on a public or private way approved by the Town.□ Agreed Facts, ¶ 17.

[[Note 4](#)] The conveyance occurred on August 6, 1985, and the deed was recorded at the Suffolk County Registry of Deeds in Book 11799, Page 10. Agreed Facts, ¶ 7; see also Trial Exhibit 8.

[[Note 5](#)] The conveyance occurred on August 21, 1989, and the deed is recorded at the Suffolk County Registry of Deeds in Book 15768, Page 266. Agreed Facts, ¶ 7; Trial Exhibit 6.

[[Note 6](#)] Deed recorded at the Suffolk County Registry of Deeds in Book 38670, Page 183. See Agreed Facts, ¶ 7; Trial Exhibit 7.

[[Note 7](#)] Suffolk County Registry of Deeds, Book 16469, Page End; Agreed Facts, ¶ 4.

[[Note 8](#)] The decision denying the variance was dated October 22, 1988. Agreed Facts, ¶ 19.

[[Note 9](#)] Agreed Facts, ¶ 18.

[[Note 10](#)] The plan of the two-unit residences is shown on a Plan of Land dated May 5, 2005 by Albert A. Romano. See Agreed Facts, ¶ 5.

[[Note 11](#)] Agreed Facts, ¶ 10; Trial Exhibit 10.

[[Note 12](#)] Agreed Facts, ¶ 11; Trial Exhibit 11.

[[Note 13](#)] Id.

[[Note 14](#)] Agreed Facts, ¶ 7. However, the deed was not recorded at the registry until December 14, 2005. Trial Exhibit No. 7.

[[Note 15](#)] Agreed Facts, ¶ 12.

[[Note 16](#)] Agreed Facts, ¶ 13.

[[Note 17](#)] Zoning Board Notice of Decision (Apr. 25, 2006); see Agreed Facts, ¶ 15.

[\[Note 18\]](#) Id.; Trial Exhibit 12.

[\[Note 19\]](#) See Plaintiff's Complaint (May 15, 2006); see also Substitute Joint Pre-Trial Memorandum, Statement of Legal Issues (Jul. 11, 2007).

[\[Note 20\]](#) G.L. c. 41, § 81L provides, in relevant part, that a "subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law

[\[Note 21\]](#) G.L. c. 41, § 81P provides, in relevant part: "Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision."

[\[Note 22\]](#) Agreed Facts, ¶ 10; Trial Exhibit 10.

[\[Note 23\]](#) Agreed Facts, ¶ 6.

[\[Note 24\]](#) See n. 1, supra.

[\[Note 25\]](#) Mr. Pellegriti contests this, arguing that if there is insufficient frontage or access under the zoning bylaw, the planning board must tacitly have waived those requirements pursuant to G.L. c. 41, § 81R, which it can do if such a waiver is in the public interest. See G.L. c. 41, § 81R. However, there is no evidence the planning board intended to waive any requirements and, in any event, a waiver under Section 81R cannot amount to a variance, as would be required here. See Arrigo, 11 Mass. App. Ct. at 807.

[\[Note 26\]](#) See Trial Exhibit 17E.

[\[Note 27\]](#) Trial Transcript at 68-69; see Trial Exhibit 17F. There is an error on Exhibit 17F where it refers to the width of Banks Street with parked cars, it is intended to refer to feet instead of inches. Trial Transcript at 68.

[\[Note 28\]](#) See Trial Exhibits 17D and 17F; Trial Transcript at 73.

[\[Note 29\]](#) Trial Transcript at 60.

[\[Note 30\]](#) Trial Transcript at 59.

[\[Note 31\]](#) Trial Transcript at 55.

[\[Note 32\]](#) Trial Transcript at 72.

[\[Note 33\]](#) Trial Transcript, pp. 113, 130-132.

[\[Note 34\]](#) I note an additional reason for upholding the denial of the variance □ Mr. Pellegriti□s failure to prove a □substantial hardship, financial or otherwise,□ if the variance were not granted. G.L. c. 40A, § 10. Any hardship here was essentially self-imposed since Mr. Pellegriti□s family previously owned the surrounding properties at 40 Banks Street and 51 Douglas Street but chose to sell them separately, thus landlocking 40R and creating its access problems. Indeed, locating an easement on a different part of 40 Banks Street, or making it wider, might have lead to an approval of the sought-after variance. I need not and do not reach the other reasons given by the zoning board in support of its denial of the variance since the plaintiff□s failure to prove that he satisfied even one requirement is sufficient to uphold the denial. See Warren v. Zoning Bd. of Appeals of Amherst, 383 Mass. at 9-10; Guiragossian, 21 Mass. App. Ct. at 115 (citing Blackman v. Bd. of Appeals of Barnstable, 334 Mass. at 450).

[\[Note 35\]](#) See discussion, supra at 3-4 (zoning board variance denials in 1988 and 1990 for lack of frontage).

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EXHIBIT 11



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TOWN OF WINTHROP
MINUTES OF MEETING
Held on Thursday, April 27, 2017
Town Hall – Joseph Harvey Hearing Room
WINTHROP, MA 02152

Acting Chairman Michael Power called the public meeting of the Board of Appeals to order at approximately 7:07 p.m. In attendance at the hearing were the following Board Members: Darren Baird, Fred Gutierrez, Irene Dwyer, Thomas Chiudina and Joanne M. DeMato, BOA Secretary/Clerk, Chief Paul Flanagan.

Absent: Brian Beattie.

The following matter was heard:

AGENDA: Hearing of the following application(s) for variance and/or special permit and deliberation of pending matters and discussion of new and old business.

***Continued from January 26, 2017**

Item No.	Appl. #	Applicant	Address	Type of Appeal	Voting Members
1.	*#022-2016 Cont. to April 27, 2017	Verizon Wireless	7 Waiden St.	Variance Chapter 17.12.130 Table Use of Regulations & Chapter 17.12.120 C 8 Antennas & Satellite dish antennas	BB/DB/TC GRANTED
2.	*#001-2017 #002-2017	Thomas A. Pellegriti	40 Banks St. C-2	Variance Chapter 17.16. Dimensional Regulations, & 17.04 Provisions and Definitions	MP/ID/TC DENIED
3.	*#003-2017 Continued to April 27, 2017	Michael Dello Russo	410-412 Shirley St.	Special Permit & Variance Chapters 17.16.030 Min lot requirement, density, frontage, width, front	MP/ID/FG GRANTED

1 | Page MINUTES, APRIL 27, 2017

Minutes From 2017
Denial from previous owner
application

Applicant is told they must wait the 21 day appeal period.

#001-2017, 40 Banks St. C-2 & #002-2017, 40 Banks St. C-1, Thomas A. Pellegriti

Sitting: MP/ID/TC

In Attendance: George Piperidis, Contractor

MP: We have some property abutters that were not properly notified so we'd like to give them a moment to comment so I'm going to re-open the public comment that we not notified to state their piece.

Peter Gill: I'm on the Housing Authority Board and the address was incorrect on the town's records so we did not receive notifications.

Peg Lyons, Exec. Dir of the Housing Authority: I received a stack of letters addresses to One Metcalf Sq and the Housing Authority has been at Golden Dr for 40 years. I called Mr. Lynds office but have not received a return phone call. I wanted to know about the strip of land that abuts 12 of housing Authority's parcels that house low income families with children. We have incurred a lot of expenses with trees falling onto our property through the years and have been trying to locate the owner of that property because of damages while we might not have an objection we wanted the opportunity to be heard. I had a meeting with Al Legee and was given misinformation that this matter was resolved at the Feb. meeting and that there was no further action. If there was going to be any action taken we would like for it to be continued to have an opportunity to talk to Mr. Lynds and take a look at the plan and for the state agency that overlooks the housing authority might have an interest. Previously there was a question as to where the property lines were and those questions might have been answered if we had been properly notified.

MP: Duly noted but Mr. Lynds has not made himself available tonight so we can't address your comments but if he come we'd be happy to talk to you about that. The Fire Chief has made himself available to discuss this. Have you looked at the plans?

PF: I've looked it over; the fire dept. has opposed this project over 32 years when it comes back. I've walked the property in the last few weeks. As it stands now, it's a disgrace the way it stands, in 2014, the Fire Code – some of the things we have that create a problem when you hit Banks St. there is approx. 300 ft. into a dead end way, fire suppression systems have come a long way from when this started but some of the problems that the Fire Dept. does face is the authority having jurisdiction in this case, I can control the inside steering radius from Banks St. to the newly constructed street on the right of way and they are showing 29 ft. so many of the things that Article 18 addresses on MA amendments they can meet but some of the problems that we had is multiple access roads, when more than one fire access road shall be provided determined by jurisdiction that access by a single road would be impaired by a vehicle or congestion of terrain driving conditions or others. This will become a private way and the fire Dept. Has no jurisdiction over this. Any time the town has a residential sticker program you'll see a disaster off Tafts Ave, everybody hides up in the private ways

because they are not subject to enforcement. In order to keep that clear it will be up to the resident of that street to call a private tow company to remove cars that are obstructing that road. We can have residential sprinklers, put a fire hydrant in, if you do put a hydrant in it cannot be a dead end st. It is not just for fire flow it's for the quality of drinking water. If they weren't successful in getting a right of way you would have to take the water main on Banks St and go in with it and hit the hydrant and come back out down Banks St. But our biggest problem is access to that road; we have no way of maintaining it. So that is the biggest concern. All these building would have to be sprinkled and monitored and have a new fire hydrant.

GP: That is what we proposed.

The Chief and Member Chiudina discuss snow removal or emergency and driving a truck into a dead end street. Chief states if a home is 50 ft. beyond a paved surface you have to by code put in residential sprinklers. If you put them in you can be within 150 ft. within a paved surface. We are going in around 300 ft. from the last house, any time our apparatus goes in they have to back out and there is a 90 degree turn in the road.

GP: If you look at the plans in the middle there is a 3 point turn so you do not have to back out.

PF: These homes are going to outgrow their driveways and now we'll have obstructed access.

GP: This could be increased here so this could also be lengthened and widen to accommodate a 3 point turn. We want to try and create the best possible means of leave so we will have 2 locations where we could do that.

DB: I know I've seen this case at least twice maybe 3 times and we keep giving the same answer which is that applicant back in time files an A & R plan and in that plan they decided to chop up their lots the way they exist now and cut themselves off from frontage. To me there is no way you can grant a variance from the town's bylaws when someone has created his own hardship. Especially in the face of real safety concerns that the Chief has just put out there just like Capt. Hazlett did in 2005. As a volunteer Board when a petitioner comes before the Board again a& again and we keep saying no and they keep asking you're wasting our time and then it gets appeals to the land court and your wasting community resources for an appeal, I'm sorry, I was on the Board in 2005 and I don't want to see this case again ever. I'm happy that I'm not sitting on this because I don't want to be on another case that we get sued on. So someone should pick up the case file and really read it that we mean no from my standpoint.

GP: I think previously if I'm not mistaken the main problems with those plans in the past was safety because that was the reason for denial. I don't think you can create a more safety fire apparatus safety equipment we could put into this plan. It supersede what is required for and I just explained the access for the fire & safety equipment to make that 3 point turn because they do have enough room and all this was never presented in all those previous cases. We've come to this specific meeting with a lot more information to try and make this an easier process and I'm not trying to make it harder for the Fire Dept. to do their job and we're trying to alleviate all that and we structured this

whole plan for that. They were asking for 4 units before and we reduced it to 3 to allow ourselves more room because the 4 would take up too much room in sake of the turning around of the fire apparatus.

DB: I understand the desire to do something with the property I get it its sitting fallow and there's some value to it not sure what. In order to be entitles to a variance in Massachusetts you have to have 3 things: 1 – you have to have a site that has an usually shaped but that you didn't create the unusual shape the way you find the lot is unusual, the soil, shape & topography. The only thing that is unique about this is the shape and if the petitioner didn't create the shape historically Id fell a little bit differently about it. 2 – You have to have a substantial hardship that is related to that shape, when you come to a property and its wedge shaped and you buy it, being able to receive value for the property is not a substantial hardship, to be able to construct things on a site that was subdivided this way is not a substantial hardship that Chapter 40A section 10 would ever recognize. 3. – It would not be more detrimental to the community. I think all this safety stuff is done and could work It also requires that perfect condition is there in a time of emergency that something is not obstructing the ability of a fire truck to get to those units to hose them and ladder them.. I'm not convinced – someone is parked in the wrong place and the truck can't make the turn, but on the night that there's a fire and you can't get to that house you've got a problem.

GP: You can say that about a lot of places.

DB: I agree but the petitioner created the condition and it's our job not to allow conditions like that to be created – that's all I'm saying.

ID: I don't agree that the changes remove all safety issues and if everything is perfect its ok but you can't count on it. My problem is the uniqueness of a condition of a lot and the hardship that is caused by that. What we're being asked to so here – a variance is literal enforcement of the zoning would create an undue hardship that would not apply to other properties in the neighbor etc. To me it's a matter of degree to some extent that in the prior application they asked for 5000 instead of 10000 sq ft. that is a variance. What's being asked for us here is being to waive entirely a statutory requirement that buildable lot have 100 ft. on a public way (2 lots). We're being asked to give relief that neither of these lots has access on a public way. The applicant doesn't even own the access and I think that building the roadway with utilities would be over burdening the easement. We don't have any authority to decide that. So what are we asked to do here? We're not being asked to give a little on a turning radius or a sq. footage or on a lot line setback. We're being asked to declare that a couple of non-buildable lots are now buildable and waiving a major requirement for a bulldable lot and that's not a variance to me, its re-zoning.

GP: Isn't that what an easement is for to create that?

ID: An easement is to use someone else's land to access your land. But how you can access that person's land is sometime limited to pedestrian. That is a legal question that might be found in favor of your clients but that's not something we can decide. That's my opinion and I wouldn't do that because it's beyond my authority. What we are being asked to do is to waive the requirements of 100

ft. on a public way and in essence to say that we had a decision that the mere fact that something is on a plan that approval not required does not make it a buildable lot because there no frontage on a public way. Getting there is one thing it's not enough to make it buildable lot and were be asked to waive that requirements completely and that to me is not a variance and its beyond what the BOA is allowed to do.

MP: The reason that we continued to this meeting was to confer with town counsel regarding issues around frontage and the legality of your request and they did come up with some guidance which is that your client made his own harm while the town shouldn't be in a position prevent people make good use of their property the town doesn't have an obligation to assist you in solving your own harm therefore it is my interest as the chair that we move forward on a denial and I will entertain either way but it is my wish to deny. I think that the safety concerns are a factor and if don't think the decision of the applicant to put in sprinklers fully mitigate the fire safety issue regardless the lack of frontage doesn't make it a buildable lot.

PF: Sprinklers are installed to get people out of the building they are not installed to extinguish a fire.

MOTION: (ID) - #001-2017 - C-2 - to the rear of 40 Banks St. - A building permit has been denied because this lot has no frontage on a town street or way and therefore the permit was denied in accordance to dimensional regulations and provisions and definition of 17.16.030 and 040 that the decision of the Building Inspector be upheld and the application for relief be denied.

SECOND: (TC)

VOTED: ALL IN FAVOR TO DENY

MP: Denial claims must be unanimous and since this was unanimous the motion before this Board to request a variance for parcel C-1 has been denied. A decision will be issued and will be given to the owner of the property or their counsel who can then proceed as they wish. As to case #002-2017 - C-1, 40 Banks St. may I hear a motion please?

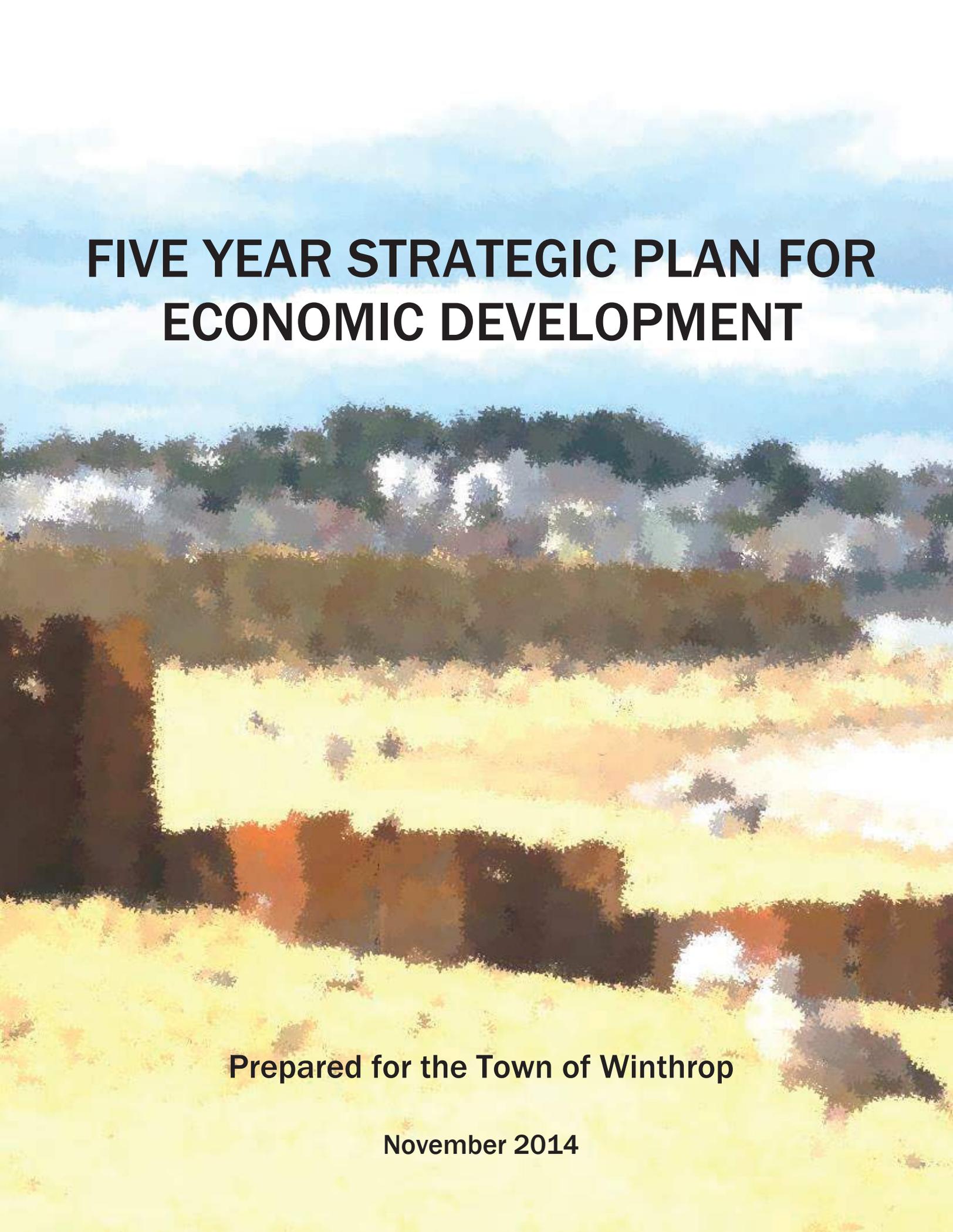
MOTION: (ID) - The applicant's request for a building permit was denied by the Building Inspector on Feb. 2, 2017 for the same reason given in the prior case which is that the lot is landlocked and that has no frontage on a town street or way and therefore is in violation of the Towns Dimensional regulations and definitions of Chapter 17.16.03 & 04 I move that we uphold the decision of the BI to deny the building permit for reasons stated.

SECOND: (TC)

VOTED: ALL IN FAVOR TO DENY

MP: This Board has voted to deny unanimously you will receive a written decision from the Board to the owner of the property or representative who may proceed with whatever recourse they have. We have minutes to approve?

EXHIBIT 12



FIVE YEAR STRATEGIC PLAN FOR ECONOMIC DEVELOPMENT

Prepared for the Town of Winthrop

November 2014

1. **Location** - Winthrop's location is both a strength and a weakness. The town's unique and beautiful environment on a peninsula in the Boston Harbor is a tremendous strength not matched by many other communities, and its close proximity to downtown Boston and the airport means that it is only minutes away from significant economic centers. However, being on a peninsula with only two ways in and out of town means it is unlikely that a shopper or visitor will accidentally happen upon Winthrop as they are traveling elsewhere. As a result, businesses will need to reach out to potential customers, and something distinctive will need to be offered to entice visitors and shoppers to come to Winthrop. Customers must know something is in Winthrop of interest to them, and they must be able to get there with relative ease.
2. **Regulatory Environment** - The Town's regulatory process was identified by several sources as being off-putting to potential businesses. Lack of clarity regarding the process was identified as a challenge, as well as the length of time needed to secure permits. This is not unique to Winthrop, as communities throughout the Boston metro region struggle with establishing a permitting process that is rigorous, but also ensures that businesses are treated fairly and can move through the process expeditiously. That said, even if a process is streamlined, additional hurdles will arise when a community has not established a common vision for its future. This can produce contentious debate about development projects during the permitting process, instead of discussions and dialog about what a community wants before a specific development project is proposed. At present, Winthrop's zoning bylaw does not provide a clear picture of the community's desire for the future, thereby making it more difficult for persons seeking to invest in businesses in town to have a sense of what might be approved.
3. **Sense of Community** - Winthrop residents' strong sense of community and support for local business was recognized by residents and business persons alike. This is a tremendous asset that will aid Town leaders as they rally the residential community to support growth in local businesses. However, when a strong sense of community becomes exclusionary, instead of inclusionary, and when it results in a fear of change, what was once a strength becomes a drawback. Some participants indicated they did not feel totally welcomed as newcomers and others mentioned concerns about generalized opposition to new ideas and change. This presents a challenge as for local businesses to succeed, it will be essential for outside dollars to be drawn into the community. Visitors will only likely return a second or third time if they feel welcomed into a community on their first visit. Although it may not often be considered a part of their role, Winthrop residents are actually ambassadors for their local businesses.
4. **Casino Development** - In September 2014, the Massachusetts Gaming Commission made a decision to issue the eastern Massachusetts gaming license to Wynn Casinos for a site in Everett. Now that this decision has been made, it is clear change will take place throughout the region. This is both an opportunity for and a threat to businesses in Winthrop. It is a potential opportunity if visitors to the casino can be encouraged to visit the town perhaps for golfing, boating, dining, or shopping, and a

STRATEGIES

The strategies below are designed to capitalize on several of Winthrop's key strengths - its natural environment, Town Center, and the Point Shirley waterfront commercial district, and the town's great neighborhoods - in order to improve the local business environment. At the same time, the strategies acknowledge several key challenges need to be addressed, including improving accessibility by multiple means of transportation and increasing the number of jobs in town. Regional marketing the final strategy, because while attracting new customers into town is vitally important to the health of the business community, marketing should be done when there is something of note to let the broader region know about.

Economic Development Strategies

1. Promote environmental resources to encourage visitors.
2. Improve accessibility to/from and within town.
3. Create strong town center and waterfront commercial districts.
4. Increase number of local jobs and improve alignment with skills of local residents.
5. Promote Winthrop as a great place to raise a family.
6. Increase targeted regional marketing.

UNIQUE ENVIRONMENT (STRATEGIES 1, 3, AND 6)

Winthrop: 1.6 square miles of land, 6.3 square miles of water, and 7 miles of shoreline



American Oyster Catcher

Point Shirley Beach



810,000 tons of sand are being added to Winthrop Beach to create approximately 46 acres of beach area.

Yirrell Beach

Halford Beach

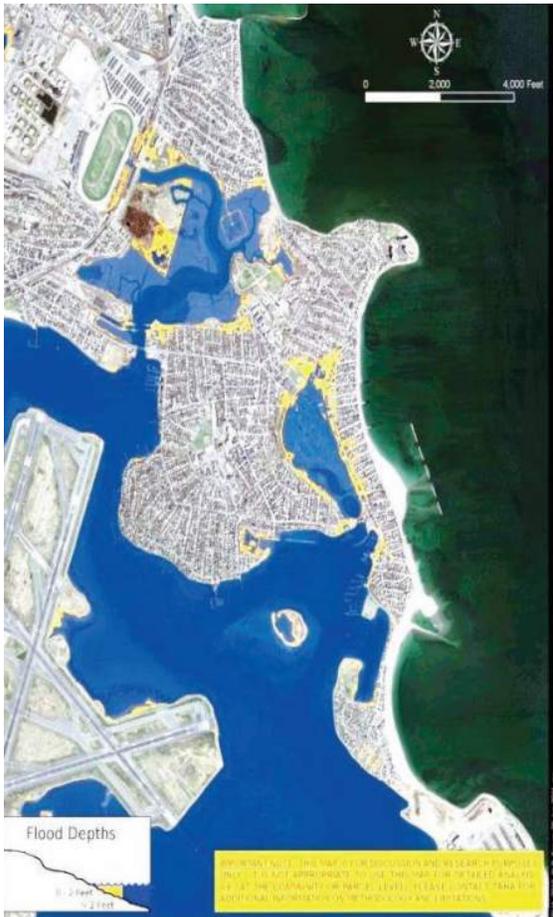


Least Tern

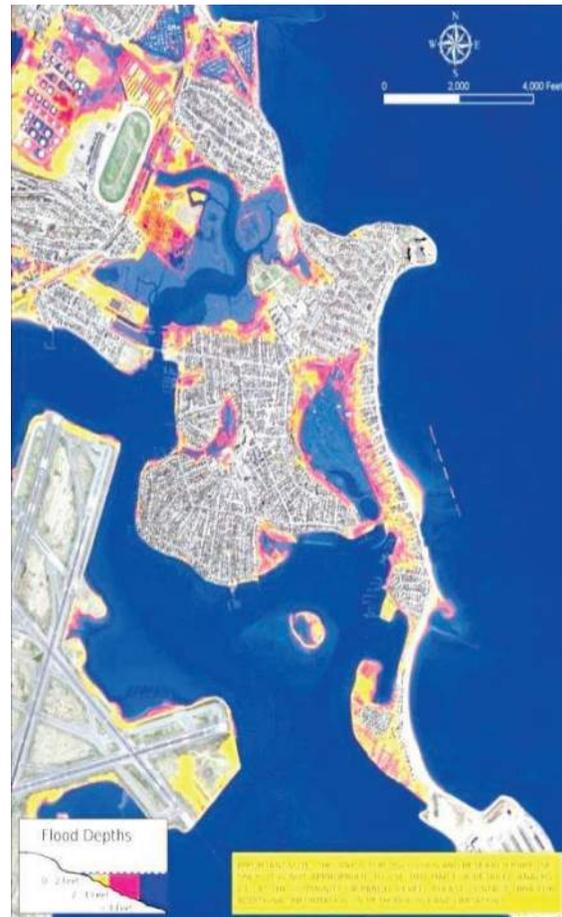
Belle Isle Marsh contains 241 acres of land (152 managed by DCR) with plants and wildlife rarely found in the Boston metro area.



Implications for Winthrop include: increased daily tide heights, possible bi-monthly flooding, and greater impact of storm surge.



2.5 feet of projected Sea Level Rise



5 feet of projected Sea Level Rise

EXHIBIT 12

Winthrop Centre Business District and Middle School

**Master Plan and Vision Study
Community Meeting May 26, 2016**



Imagery: Google, 2016



MASSDEVELOPMENT



Town of Winthrop | MassDevelopment | Metropolitan Area Planning Council | Form + Place

Winthrop Centre Land Use





THOMAS PELLEGRITI v. DARREN BAIRD, BRIAN BEATTIE, and ROMEO MOREIRA as members of the WINTHROP BOARD OF APPEALS

MISC 323305

March 20, 2009

SUFFOLK, ss.

Long, J.

DECISION

Introduction

This case is plaintiff Thomas Pellegriti’s G.L. c. 40A, § 17 appeal from a decision of the Winthrop Board of Appeals (the “zoning board”) which (1) denied his appeal from the building inspector’s refusal to issue building permits for the construction of two, two-family homes on his property at 40R Banks Street, and (2) denied his application for a variance from the frontage requirement (upon which the building inspector’s refusal was based) and the lot area requirement.

40R Banks Street consists of two lots (C-1 and C-2) as shown on a plan endorsed Approval Not Required by the Winthrop Planning Board (the “planning board”) on September 12, 1988. A copy of that plan is attached as Exhibit A. The lots are both vacant land. Lot C-1 meets the minimum square footage requirement for two-family homes. [\[Note 1\]](#) Lot C-2 falls approximately 179 square feet short. [\[Note 2\]](#) Both are interior lots, surrounded on all sides by residential properties. Neither has frontage on a public or town-approved private way as required by the zoning bylaw. [\[Note 3\]](#) The only access to Lot C-2 is through use of a 29-foot wide, 85-foot long easement from Banks Street. See Exhibit A. Access to Lot C-1 is available only through use of a 24-foot wide, 134-foot long easement over Lot C-2. Id. Mr. Pellegriti contends that the planning board’s ANR endorsement is binding on the building inspector and zoning

board with respect to access and frontage issues or, at the least (and coupled with the fact that Lot C-2 is nearly large enough to fulfill the lot size requirement) shows that the denial of his variance application was arbitrary and capricious. The zoning board disagrees.

The case was tried before me, jury-waived. I also took a view. Based upon the parties' stipulation of facts, my observations at the view, the agreed exhibits, the testimony and additional exhibits admitted into evidence at trial, and my assessment of the credibility, weight and inferences to be drawn from that evidence, I find and rule that the ANR plan is not binding on the ZBA with respect to access and frontage, and that the ZBA's actions in denying the appeal from the building inspector's decision and denying the variance were within its allowable discretion.

Facts

The plaintiff, Thomas Pellegriti, is the owner of the property at 40R Banks Street in Winthrop, the characteristics of which are set forth above. It is an entirely interior property, approximately in the center of the block bounded by Banks Street, Main Street, Douglas Street and Morton Street. It has no frontage of its own on any of those streets, and is completely surrounded by fully developed residential lots that do have such frontage.

40R Banks Street was formerly owned by Mr. Pellegriti's parents, A. Thomas and Nora Pellegriti, who also owned the abutting properties at 40 Banks Street and 51 Douglas Street. 40R, as previously noted, was completely landlocked at that time. 40 Banks Street fronts directly on Banks Street, and 51 Douglas Street fronts directly on Douglas Street. All three lots were subsequently conveyed to the Pellegritis' nominee trust and remained there, in common ownership, until 1985 when the trust began to sell them off. 40 Banks Street was sold in 1985, with the trust reserving a perpetual affirmative easement and right of way over and across the above described parcel for access to the 40R Banks Street property. [\[Note 4\]](#) The easement is twenty-nine feet wide and 84.75 feet long, and is located on the eastern part of the 40 Banks Street lot. See Exhibit A. In 1989, the trust conveyed the 51 Douglas Street property to Brian K. Sullivan and Debra Norton, [\[Note 5\]](#) and on October 14, 2005, conveyed 40R Banks Street to Thomas A. Pellegriti, [\[Note 6\]](#) the plaintiff in this action.

In 1988, some years after 40 Banks Street had been sold, the trust sought an ANR endorsement for a plan showing the division of 40R Banks Street into two lots, with access by easements as shown on Exhibit A. The planning board granted endorsement on September 12, 1988, and the ANR plan thereafter was recorded at the registry of deeds. [\[Note 7\]](#) Exhibit A. Almost immediately thereafter, the trust sought a variance from the zoning board to construct two-family dwellings on the two lots, one on each (the same relief Mr. Pellegriti seeks in this case). The variance was denied for lack of the required lot area (lot C-2) and frontage (both lots) [\[Note 8\]](#) precisely the same grounds on which relief was denied in this case.

In 1990, undaunted by this earlier failure, the trust again sought a variance from the zoning board, this time to construct a single family home on lot C-2. That application was denied, again for lack of frontage, by decision dated December 17, 1990. [\[Note 9\]](#)

On September 15, 2005, while the property was still owned by his parents' trust, Mr. Pellegriti applied for building permits to construct a two-unit dwelling on Lot C-1 and a two-unit dwelling on Lot C-2, in essence a revisiting of the trust's 1988 variance application. [\[Note 10\]](#) The building inspector denied the application that same day, stating that "neither lot has frontage on a town street or way." [\[Note 11\]](#) On October 5, 2005, Mr. Pellegriti timely appealed the decision of building inspector to the zoning board. [\[Note 12\]](#) In that same appeal, in the alternative, he also sought a variance from the lot size and frontage regulations of the zoning bylaw. [\[Note 13\]](#)

On October 14, 2005, approximately a month after the building permits had been refused and nine days after the appeal and variance application were filed, the trust formally transferred ownership of the 40R Banks Street property to Mr. Pellegriti. [\[Note 14\]](#) The zoning board held public hearings on the appeal and application on November 17, 2005, January 26, 2006, and March 30, 2006. [\[Note 15\]](#) At the hearings, Captain William Hazlett of the Winthrop Fire department testified that there was concern for the fire department's ability to gain entrance to the back lot (C-2) through the easement and even if they could gain entrance, the ladder trucks would be unable to make the turning radius onto Lot C-1, and there was a concern for life safety. [\[Note 16\]](#) He gave the same testimony at trial, expanding on those concerns and, with reference to the size of the trucks and their turning radiuses, demonstrated exactly how difficult the turns would be and why they would be even more difficult with parked cars on the lots and in winter snow conditions.

By decision dated April 25, 2006, the zoning board denied the requested variance and upheld the decision of the building inspector because the "lots have inadequate frontage," and the proposed construction "is in contravention of local zoning bylaws," "derogates from the character of the neighborhood," "causes risk to public safety and safety hazards," and "would nullify or substantially derogate from the intent or purpose of the Zoning by-laws." [\[Note 17\]](#) The board also found that "owing to conditions relating to soil conditions, shape or topography of the lots and especially the lots of the appellant, but not affecting generally the Zoning District in which the lots are located, a literal enforcement of the provisions of the by-laws would not involve a substantial hardship, financial or otherwise, to the appellant and, therefore, appellant is not entitled to variances requested in the application as appellant has failed to satisfy the requirements of G.L. c. 40A, § 10." [\[Note 18\]](#)

Mr. Pellegriti appealed to this court under G.L. c. 40A, §17, contending that the ANR endorsement of the Planning Board and its subsequent recording is conclusive that 40R Banks Street has the requisite frontage and access, and thus the ZBA should not have denied his appeal from the decision of the building inspector. He further contends that he fully satisfied the requirements for a variance, and that the ZBA's denial of that variance was arbitrary and capricious. Accordingly, he seeks to have the ZBA's decision annulled and an order entered directing the issuance of the building permits. [\[Note 19\]](#)

Other pertinent facts are included in the sections below.

The Standard for a G.L. c. 40A, § 17 Appeal

In a G.L. c. 40A, § 17 appeal, the court is required to hear the case de novo, make factual findings, and determine the legal validity of the board's decision upon those facts. *Roberts v. Southwestern Bell Mobile Sys., Inc.*, [429 Mass. 478](#), 486 (1999) (citing *Bicknell Realty Co. v. Bd. of Appeal of Boston*, [330 Mass. 676](#), 679 (1953)); *Josephs v. Bd. of Appeals of Brookline*, [362 Mass. 290](#), 295 (1972)). In making those findings, the judge is not allowed to give the board's findings or decision evidentiary weight. *Josephs*, 362 Mass. at 295 (citing *Devine v. Zoning Bd. of Appeals of Lynn*, [332 Mass. 319](#), 321-322 (1955)). Facts may only be based on the evidence heard by the court. *Devine*, 332 Mass. at 322.

Even when a zoning board cites no particularized reasons or any specific evidence for its denial decision, its action will be upheld, as will that of a judge affirming that action under G.L. c. 40A, § 17, if a rational basis for the denial exists which is supported by the record. So long as any reason on which the board can fairly be said to have relied has a basis in the trial judge's findings and is within the standards of the zoning by-law and The Zoning Enabling Act, the board's action must be sustained regardless of other reasons which the board may have advanced. *Davis v. Zoning Bd. of Canton*, [52 Mass. App. Ct. 349](#), 356 (2001) (internal quotations and citations omitted). The decision of the board cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary. *Roberts*, 429 Mass. at 486 (citations omitted).

In determining whether the decision was based on a legally untenable ground, the court must determine whether it was decided

on a standard, criterion, or consideration not permitted by the applicable statutes or by-laws. Here, the approach is deferential only to the extent that the court gives some measure of deference to the local board's interpretation of its own zoning by-law. In the main, though, the court determines the content and meaning of statutes and by-laws and then decides whether the board has chosen from those sources the proper criteria and standards to use in deciding to grant or to deny the variance or special permit application.

Britton v. Zoning Bd. of Appeals of Gloucester, [59 Mass. App. Ct. 68](#), 73 (2003) (internal citations omitted).

In determining whether the decision was unreasonable, whimsical, capricious, or arbitrary, the question for the court is whether, on the facts the judge has found, any rational board could come to the same conclusion. *Id.* at 74. While it is the board's evaluation of the seriousness of the problem, not the judge's, which is controlling, *Barlow v. Planning Bd. of Wayland*, [64 Mass. App. Ct. 314](#), 321 (2005) (internal quotations and citations omitted), and a highly deferential bow [is given] to local control over community planning, *Britton*, 59 Mass. App. Ct. at 73, deference is not abdication; the board's judgment must have a sound factual basis. See *Britton*, 59 Mass. App. Ct. at 74-75 (board's decision must be supported by a rational view of the facts); *Mahoney v. Bd. of Appeals of Winchester*, [344 Mass. 598](#), 600-602 (1962) (board's determination that proposed use would adversely affect the health and safety of persons living in the neighborhood or be detrimental to the public welfare was not supported by substantial evidence, could not reasonably be found, and was thus reversed). If the board's decision fails that test, the court should annul it, see, e.g., *Colangelo v.*

Bd. of Appeals of Lexington, [407 Mass. 242](#) , 246 (1990); Mahoney, 344 Mass. at 600-602, and may also "make such other decree as justice and equity may require" which, in appropriate circumstances, can include an order for permits to issue. G.L. c. 40A, § 17; see e.g., Petrucci v. Bd. of Appeals of Westwood, [45 Mass. App. Ct. 818](#) , 827-828 (1998).

Analysis

The ANR Endorsement

Mr. Pellegriti contends that the ANR endorsement granted by the planning board conclusively determined that his planned development of C-1 and C-2 has adequate access and frontage, and thus should be binding on the building inspector and on the ZBA. That contention is wrong.

In granting an ANR endorsement, the planning board makes a determination that the proposed plan does not constitute a subdivision. See G.L. c. 41, § 81L [\[Note 20\]](#) (defining a subdivision); G.L. c. 41, § 81P [\[Note 21\]](#) (providing for ANR endorsement when the planning board determines the submitted plan does not constitute a subdivision, and thus does not require approval). A "subdivision" is a division of land into lots, each of which does not have access via a street or way. See G.L. c. 41, § 81L. To determine that a plan is not a subdivision, and thus eligible for ANR approval, the planning board should consider whether there is adequate access and frontage "of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet." See G.L. c. 41, § 81L.

However, the frontage and access determination by the planning board is only a preliminary step. "The cases are legion which recognize that a Section 81P endorsement of a plan ("approval not required") gives a lot shown on that plan *no standing under the zoning bylaw*." *Arrigo v. Planning Board of Franklin*, [12 Mass. App. Ct. 802](#) , 807 (1981) (emphasis added) citing *Smalley v. Planning Board of Harwich*, 10 Mass. at 599, 603 (1980). Moreover, "[t]here is no sound reason why the approval of a plan . . . which may be based on nothing more substantial than neglect by a planning board to attend to its duties on time, should preclude a building inspector or board of appeals from performing their statutory duties of requiring adherence to the town's zoning bylaw, including any provision specifying minimum frontage. . ." *Arrigo*, 12 Mass. App. Ct. at 807-808 (internal case citations omitted).

Mr. Pellegriti points to the language in G.L. c. 41, § 81P which provides that an ANR endorsement is "conclusive on all persons," and argues that it reflects the Legislature's intent to make that endorsement, and all its necessary subsidiary findings, binding on the building inspector and the zoning board. But, despite that language, an ANR plan is not impervious to review. See *Lee v. Board of Appeals of Harwich*, [11 Mass. App. Ct. 148](#) , 151-152 (1981) ("We will not lightly assume that the Legislature intended to insulate administrative action, often taken by a single individual, from correction, no matter wrong or arbitrary the action may have been."). Indeed, when planning boards have wrongly granted ANR endorsements, those endorsements have been subsequently reversed when challenged. See *Gifford v. Planning Board of Nantucket*, [376 Mass. 801](#) (1978) (holding that an ANR plan was endorsed when not appropriate, and reversing that approval because a narrow winding road leading to the planned

units did not provide adequate access); see also *Lee v. Board of Appeals of Harwich*, 11 Mass. App. Ct. at 152 (observing that a lot lacking requisite frontage appeared on the same ANR endorsement as the lot at issue).

The building inspector denied Mr. Pellegriti's application for a building permit, specifically stating that "neither lot has frontage on a town street or way." *Denial of Building Inspector*, Sept. 15, 2005. [Note 22] He was not precluded from doing so by the planning board's prior endorsement of the ANR plan, nor was the zoning board precluded from affirming his denial. Notably, "[a]n endorsement under Section 81P [ANR] does not mean that the lots within the endorsed plan are buildable." See *Stefanick v. Planning Board of Uxbridge*, 39 Mass. App. Ct. 418, 425 (1995) (emphasis added and internal citations omitted); *Lee*, 11 Mass. App. Ct. at 152. Indeed, even aside from the frontage issue, at least one of the lots, C-2, cannot be used for construction of the sought-after two-family dwelling because it lacks sufficient area. It has only 9,821.5 square feet of land, [Note 23] and the zoning bylaw requires a minimum lot area of 10,000 square feet for a two-family dwelling. [Note 24] Moreover, under the rationale in the *Arrigo* and *Lee* cases the building inspector could enforce the bylaw, even with respect to frontage and access, notwithstanding the ANR approval. See *Arrigo*, 12 Mass. App. Ct. at 807-808; *Lee*, 11 Mass. App. Ct. at 151-152. [Note 25]

The Zoning Board Acted Within Its Allowable Discretion When It Denied the Appeal from the Building Inspector's Decision and the Plaintiff's Variance Application

The zoning board's decision may be reversed only if "it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary." *Roberts*, 429 Mass. at 486 (citations omitted). As noted above, the board was not bound by the ANR plan on frontage and access issues and was free to examine those questions anew, so long as it acted in accordance with the law in a rational, non-arbitrary manner. Clearly Mr. Pellegriti's development plans were in violation of the zoning bylaw's requirements on minimum square footage (Lot C-2) and frontage (both lots). The board correctly refused to overturn the building inspector's decision on those grounds. The only avenue by which Mr. Pellegriti could obtain the permits he sought was through a variance and, as discussed below, the zoning board acted within its allowable discretion in denying that application. Its judgment that access would be inadequate and, therefore, that the development would be in derogation of the purposes of the zoning bylaw, was rationally based and neither arbitrary nor capricious.

Variances are governed by G.L. c. 40A, § 10, which provides:

The permit granting authority shall have the power "to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The Supreme Judicial Court has repeatedly held that no variance can be granted unless all of the requirements of this statute are met. □ Warren v. Zoning Bd. of Appeals of Amherst, [383 Mass. 1](#), 9-10 (1981). □ [A] failure to establish any one of them is fatal. □ Guiragossian v. Bd. of Appeals of Watertown, [21 Mass. App. Ct. 111](#), 115 (1985) (citing Blackman v. Bd. of Appeals of Barnstable, [334 Mass. 446](#), 450 (1956)). □ On appeal to the [Land Court], the judge is required to hear the matter de novo and to determine the legal validity of the board's decision concerning the variance upon the facts found by the judge. □ Guiragossian, 21 Mass. App. Ct. at 114 (citing G.L. c. 40A, § 17; Josephs v. Bd. of Appeals of Brookline, [362 Mass. 290](#), 295 (1972); Garvey v. Bd. of Appeals of Amherst, [9 Mass. App. Ct. 856](#) (1980)). □ [T]he burden rests upon the person seeking a variance and the board ordering a variance to produce evidence at the hearing in the [Land Court] that the statutory prerequisites have been met and that the variance is justified. □ Dion, 344 Mass. at 555-556 (1962). Although the judge hears the matter de novo, a zoning board decision □ cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary. □ □ Roberts v. Southwestern Bell Mobile Sys., Inc., [429 Mass. 478](#), 486 (1999) (quoting MacGibbon v. Board of Appeals of Duxbury, [356 Mass. 635](#), 639 (1970)).

The zoning board denied the variance chiefly on the ground that to grant it would cause substantial detriment to the public good and either nullify or substantially derogate from the intent or purpose of the zoning by-law. Specifically, they denied it because of safety concerns. The key testimony at trial came from Captain Hazlett of the Winthrop Fire Department, whom I find to be expert in matters of fire and emergency-apparatus access and whose testimony on those issues I credit in full. As previously noted, Lots C-1 and C-2 are interior lots, with no frontage on any public or approved private way. They are separated from the nearest way by fully built-upon residential properties, and they are accessible only by easement. That easement is long, narrow and has a sharp 90° turn. See Exhibit A. The planned two-family dwellings would occupy much of the space on the lots, effectively eliminating any room to maneuver outside the easement. See Exhibit B (development plan).

Banks Street itself is narrow (22 feet wide) and one-way. [\[Note 26\]](#) Cars park along the side closest to 40R, reducing the usable width of the road to 16 feet and even less in winter when cars have difficulty getting close to the curb. [\[Note 27\]](#) There are utility poles and a fire hydrant near the easement entrance. [\[Note 28\]](#) Winthrop's fire trucks are approximately 42 feet long, with 100 foot ladders. Their □ curb to curb □ turning area (the space required for the fire truck to make an unobstructed turn) is approximately 37 feet. [\[Note 29\]](#) Their □ wall to wall □ turning area (the necessary space, in total, from front to back, required for the truck to turn if there are obstructions) is 41 feet and 4 inches. [\[Note 30\]](#) Both are critical. These turning ratios, coupled with the narrowness of the street, the obstructions created by parked cars, the utility pole and the hydrant, and the sharp turn necessary to get onto the easement from Banks Street, would make it extremely difficult for the fire department □ to get their apparatus up Banks Street and then to make a right-hand turn onto the easement. □ [\[Note 31\]](#) Once on the easement, there are further problems. The individual owner of a private way is responsible for his own snow removal and parking restrictions on the way, not the town. Thus, emergency responders would be at the mercy of the owner of the way, and whether that owner is diligent in plowing snow and enforcing parking restrictions. There is also the turning-area problem of the 90° left turn and the obstructions created by the proposed two-family dwellings and the cars parked alongside them.

See Exhibit B. For all of those reasons, Mr. Hazlett testified that gaining access to C-1 and C-2 with emergency fire vehicles would be □extremely difficult.□ [\[Note 32\]](#)

Mr. Pellegriti argued that other streets in Winthrop are worse than this, and if the town can deal with them, why not him? But even if access to other properties is compromised, the town is under no obligation to increase the number of its narrow streets and ways and make a bad situation worse. Mr. Pellegriti□s counsel also questioned Chief Hazlett about the possibility of mounting a smaller ladder on the ground if necessary to access the second floor or roof of the proposed two-family units on C-1 and C-2. But it is clear from Mr. Hazlett□s explanation of the limited number of firefighters that there would be insufficient responders to take the ladder off the truck, and mount it on the ground while fighting a fire. [\[Note 33\]](#) Mr. Pellegriti also questioned whether a fence owned by the property behind his could be taken down if the fire department had to access his property. There are two problems with this. First, there was no evidence that the owner of that property, who owns the fence, would consent. Second, the fire department and the zoning board are under no obligation to provide for such an exception to the ordinary access requirement.

In light of the testimony of Mr. Hazlett, which I find both credible and well-founded, I find and rule that the zoning board did not act arbitrarily and capriciously in denying Mr. Pellegriti□s appeal of the decision of the building inspector and did not act arbitrarily and capriciously in denying Mr. Pellegriti□s application for a variance. A rational board could come to the conclusion that the access to Mr. Pellegriti□s proposed residences on C-1 and C-2 was inadequate and unsafe. [\[Note 34\]](#) It is also consistent with the zoning board□s previous decisions about this property. [\[Note 35\]](#)

Conclusion

For the foregoing reasons, the plaintiff□s appeal from the zoning board□s decision is DISMISSED, WITH PREJUDICE. Judgment shall enter accordingly.

SO ORDERED.

Keith C. Long, Justice

Dated: 20 March 2009

FOOTNOTES

[\[Note 1\]](#) Town of Winthrop Code, Article V, Section 145 (□zoning bylaw□) Attachment 1 (dimensional requirements for two-family uses for lots subdivided after July 1, 1982); Substitute Joint Pre-Trial Memorandum, Statement of Agreed Facts (Jul. 11, 2007), (hereinafter □Agreed Facts□), ¶ 17.

[\[Note 2\]](#) Agreed Facts, ¶¶ 6 & 17.

[\[Note 3\]](#) The zoning bylaw requires a minimum frontage of 100 feet. Zoning Bylaw, Article V, Section 145 Attachment 1. □Frontage□ is defined in Section 145-5 as □[t]he front property line of a building or lot abutting on a public or private way approved by the Town.□ Agreed Facts, ¶ 17.

[\[Note 4\]](#) The conveyance occurred on August 6, 1985, and the deed was recorded at the Suffolk County Registry of Deeds in Book 11799, Page 10. Agreed Facts, ¶ 7; see also Trial Exhibit 8.

[\[Note 5\]](#) The conveyance occurred on August 21, 1989, and the deed is recorded at the Suffolk County Registry of Deeds in Book 15768, Page 266. Agreed Facts, ¶ 7; Trial Exhibit 6.

[\[Note 6\]](#) Deed recorded at the Suffolk County Registry of Deeds in Book 38670, Page 183. See Agreed Facts, ¶ 7; Trial Exhibit 7.

[\[Note 7\]](#) Suffolk County Registry of Deeds, Book 16469, Page End; Agreed Facts, ¶ 4.

[\[Note 8\]](#) The decision denying the variance was dated October 22, 1988. Agreed Facts, ¶ 19.

[\[Note 9\]](#) Agreed Facts, ¶ 18.

[\[Note 10\]](#) The plan of the two-unit residences is shown on a Plan of Land dated May 5, 2005 by Albert A. Romano. See Agreed Facts, ¶ 5.

[\[Note 11\]](#) Agreed Facts, ¶ 10; Trial Exhibit 10.

[\[Note 12\]](#) Agreed Facts, ¶ 11; Trial Exhibit 11.

[\[Note 13\]](#) Id.

[\[Note 14\]](#) Agreed Facts, ¶ 7. However, the deed was not recorded at the registry until December 14, 2005. Trial Exhibit No. 7.

[\[Note 15\]](#) Agreed Facts, ¶ 12.

[\[Note 16\]](#) Agreed Facts, ¶ 13.

[\[Note 17\]](#) Zoning Board Notice of Decision (Apr. 25, 2006); see Agreed Facts, ¶ 15.

[\[Note 18\]](#) Id.; Trial Exhibit 12.

[\[Note 19\]](#) See Plaintiff's Complaint (May 15, 2006); see also Substitute Joint Pre-Trial Memorandum, Statement of Legal Issues (Jul. 11, 2007).

[\[Note 20\]](#) G.L. c. 41, § 81L provides, in relevant part, that a "subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law . . .

[\[Note 21\]](#) G.L. c. 41, § 81P provides, in relevant part: "Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision."

[\[Note 22\]](#) Agreed Facts, ¶ 10; Trial Exhibit 10.

[\[Note 23\]](#) Agreed Facts, ¶ 6.

[\[Note 24\]](#) See n. 1, supra.

[\[Note 25\]](#) Mr. Pellegriti contests this, arguing that if there is insufficient frontage or access under the zoning bylaw, the planning board must tacitly have waived those requirements pursuant to G.L. c. 41, § 81R, which it can do if such a waiver is in the public interest. See G.L. c. 41, § 81R. However, there is no evidence the planning board intended to waive any requirements and, in any event, a waiver under Section 81R cannot amount to a variance, as would be required here. See Arrigo, 11 Mass. App. Ct. at 807.

[\[Note 26\]](#) See Trial Exhibit 17E.

[\[Note 27\]](#) Trial Transcript at 68-69; see Trial Exhibit 17F. There is an error on Exhibit 17F where it refers to the width of Banks Street with parked cars, it is intended to refer to feet instead of inches. Trial Transcript at 68.

[\[Note 28\]](#) See Trial Exhibits 17D and 17F; Trial Transcript at 73.

[\[Note 29\]](#) Trial Transcript at 60.

[\[Note 30\]](#) Trial Transcript at 59.

[\[Note 31\]](#) Trial Transcript at 55.

[\[Note 32\]](#) Trial Transcript at 72.

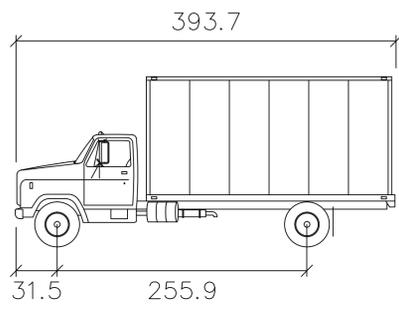
[\[Note 33\]](#) Trial Transcript, pp. 113, 130-132.

[\[Note 34\]](#) I note an additional reason for upholding the denial of the variance □ Mr. Pellegriti□s failure to prove a □substantial hardship, financial or otherwise,□ if the variance were not granted. G.L. c. 40A, § 10. Any hardship here was essentially self-imposed since Mr. Pellegriti□s family previously owned the surrounding properties at 40 Banks Street and 51 Douglas Street but chose to sell them separately, thus landlocking 40R and creating its access problems. Indeed, locating an easement on a different part of 40 Banks Street, or making it wider, might have lead to an approval of the sought-after variance. I need not and do not reach the other reasons given by the zoning board in support of its denial of the variance since the plaintiff□s failure to prove that he satisfied even one requirement is sufficient to uphold the denial. See *Warren v. Zoning Bd. of Appeals of Amherst*, 383 Mass. at 9-10; *Guiragossian*, 21 Mass. App. Ct. at 115 (citing *Blackman v. Bd. of Appeals of Barnstable*, 334 Mass. at 450).

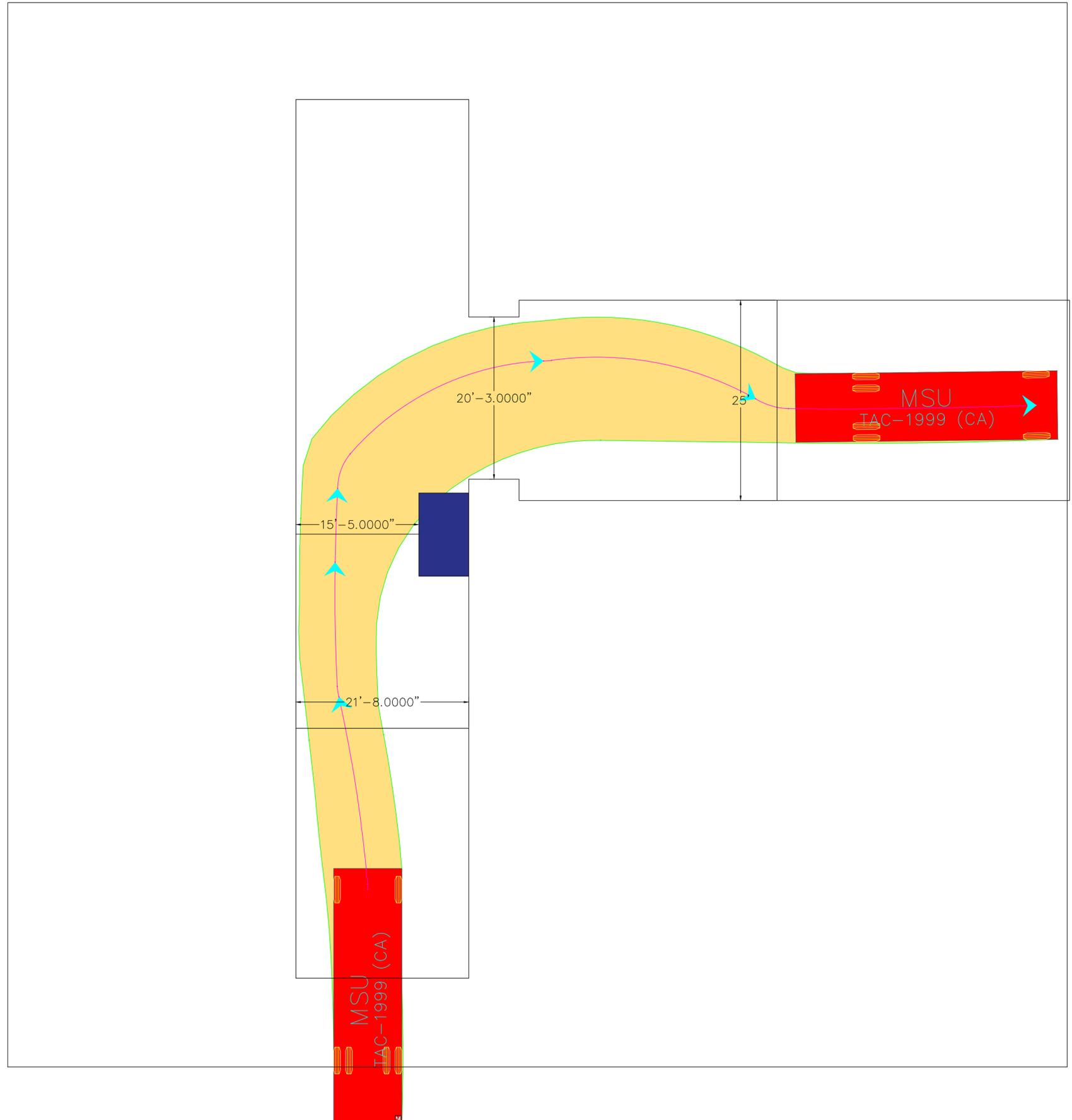
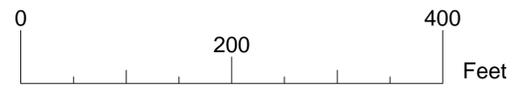
[\[Note 35\]](#) See discussion, *supra* at 3-4 (zoning board variance denials in 1988 and 1990 for lack of frontage).

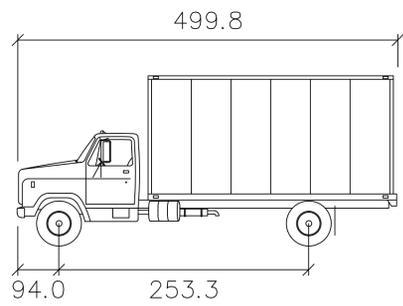
- [Home/Search](#)
- [Land Cases by Docket Number](#)

- [Land Cases by Date](#)
- [Land Cases by Name](#)



MSU inches
 Width : 102.4
 Track : 102.4
 Lock to Lock Time : 6.0
 Steering Angle : 40.1

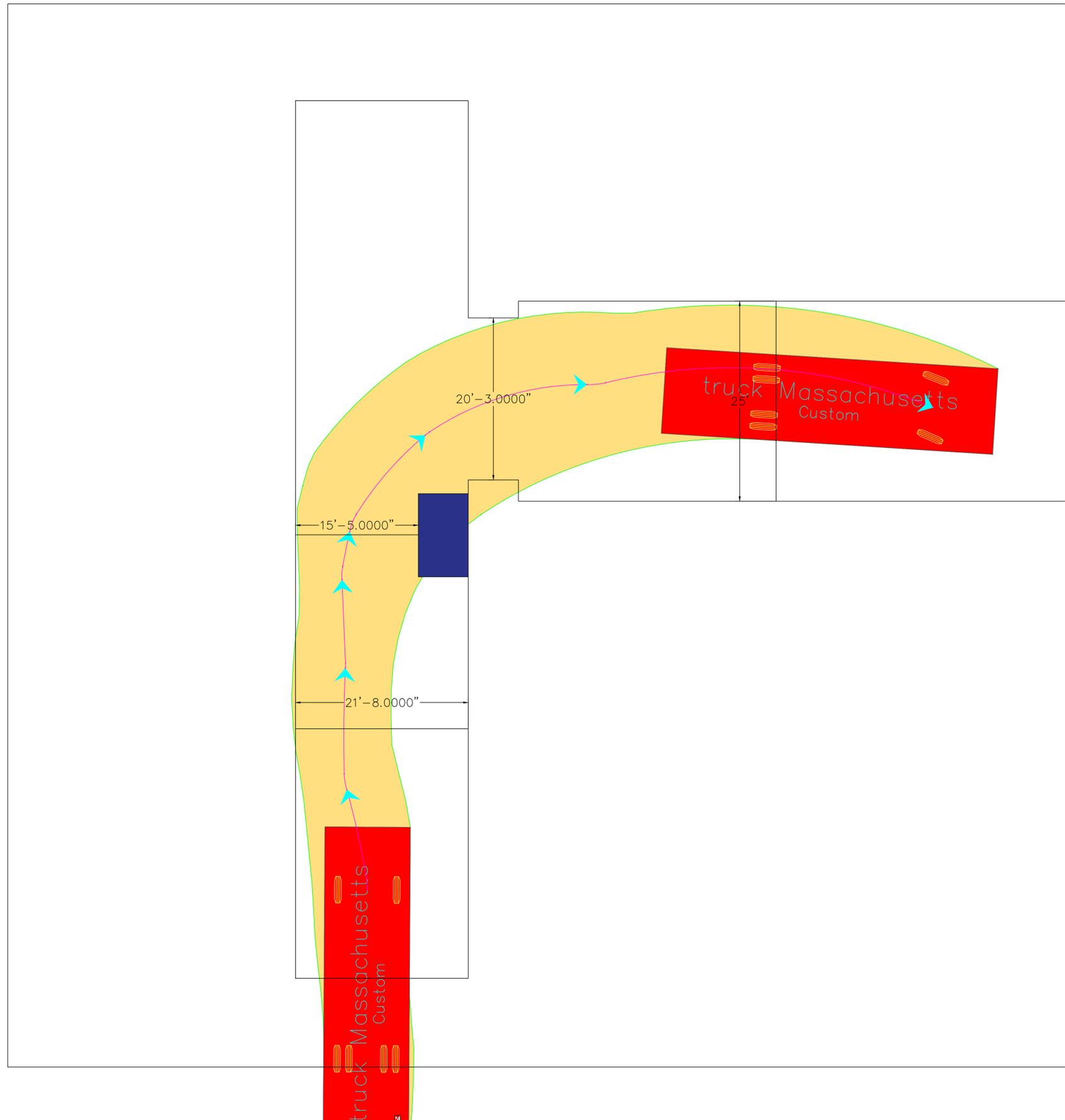
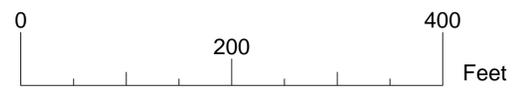




truck Massachusetts

- Width : 128.5
- Track : 98.4
- Lock to Lock Time : 6.0
- Steering Angle : 40.0

Measurements based on
2006 Pierce Dash 105' RMA



Winthrop Private Roads Construction Date			
Road Name	Description of Location	Construction Date*	Notes
Walden Place	off Walden Street	1957	
Sheryl Lane	off Bartlett Road	1957	
Mugford Street	Taft Avenue to The Strand	1950	predates 1950; source https://winthropmemorials.org/streets-corners/winthrop-mass-our-streets.html
Eleanor Court	off Bellevue Avenue	1948	
Somerset Terrace	off Somerset Avenue	1946	
Foam Street / Anderson Ave	Grand View Avenue to Triton Avenue, aka Anderson	1940	
Strand (The)	Brewster Avenue to Deer Island	1920	
Woodside Park	Dix Street to Woodside Avenue	1920	
North Avenue	off Winthrop Street	1920	
Willow Terrace	off Willow Avenue	1920	
Lorean Terrace	off Johnson Avenue	1920	
Sargent Terrace	off Johnson Avenue	1920	
Elmwood Court	off Washington Avenue	1913	
Elmer Avenue	off Court Road	1910	
Albert Avenue	off Court Road	1910	
Atkinson Circle	off Highland Avenue	1905	
Otis Street	from Tafts Avenue to Waterfront	1900	
Brewster Avenue	off The Strand	1900	
Vine Avenue	Winthrop Street to Pleasant Street	1900	
Egleton Park	off Bartlett Road	1900	
Lincoln Terrace	off Lincoln Street	1900	
Andrew Street	Taft Avenue to The Strand	1900	
Jerald Street	Read Street to Beal Street	1900	
Johnson Terrace	off Johnson Avenue	1900	
Williams Street	Pleasant Street to Adams Street	1900	
Edgar Terrace	off Winthrop Street	1900	
Bellevue Terrace	off Johnson Avenue	1898	
South Avenue	off Winthrop Street	1895	
Bayou Street	off Revere Street	1885	
Corinha Beach Road	off Sunnyside Avenue	1875	
Washington Terrace	off Washington Avenue	n/a	footway
Seal Harbor Road	off Pond Street	n/a	condos
Shirley Park	off Shirley Street near Neptune Avenue	n/a	commercial RE
Belle Isle Terrace	Willis Avenue to Pleasant Street	n/a	Boat Yard
Adams Street	off The Strand	n/a	no dwellings on road
Bay Street	off Locust Street	n/a	no dwellings on road
Circle Street	off River Road	n/a	no dwellings on road
Circuit Path	Footway - Circuit Road to Sargent Street	n/a	footway
Court Road Footway	Off Court Road to Boston Harbor	n/a	footway
Deepwater Street	Grand View Avenue to Triton Avenue	n/a	no dwellings on road
Green Hill Path	Stairway; Terrace Avenue to Cottage Avenue	n/a	footway
Holly Path	Hawthorne Avenue to Myrtle Avenue	n/a	footway
Laurel Path	off Locust Street	n/a	no dwellings on road
Loring Footway	Lowell Road Intersection to Boston Harbor	n/a	footway
Loring Terrace	Loring Road to Court Road	n/a	no dwellings on road
Nerious Street	Brewster venue to Boston Harbor	n/a	no dwellings on road
Petrel Street	Shirley Street to Boston Harbor	n/a	no dwellings on road
Pontos Street	Shirley Street to Boston Harbor	n/a	no dwellings on road
Pratt Street	Taft Avenue to The Strand	n/a	no dwellings on road
Shirley Street Extension	Triton Avenue to Boston Harbor	n/a	no dwellings on road
Somerset Avenue Footway	Somerset Avenue to Pauline Street	n/a	footway
Stowe Terrace	off Sargent Street	n/a	no dwellings on road
Summit Avenue Footway	Summit Avenue to Crest Avenue	n/a	footway
Surfside Avenue	Taft Avenue to Brewster Avenue	n/a	footway
Vine Street	off Myrtle Avenue	n/a	no dwellings on road

Winthrop Passage	Metcalf Square, Winthrop Street to Metcalf Square	n/a	footway
Wyman Street	Tafts Avenue to The Strand	n/a	no dwellings on road
*Construction Date = date of home construction on street unless otherwise noted			
** https://www.town.winthrop.ma.us/sites/g/files/vyhlf4061f/uploads/assessedvaluesbylocation-1.pdf			

228 MAIN ST

Location 228 MAIN ST

Mblu 54/ 70/ 11

Acct#

Owner AREVALO ANA C

PBN

Assessment \$526,000

Appraisal \$526,000

PID 5416

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2022	\$250,400	\$275,600	\$526,000

Assessment			
Valuation Year	Improvements	Land	Total
2022	\$250,400	\$275,600	\$526,000

Owner of Record

Owner AREVALO ANA C
Co-Owner
Address 228 MAIN ST
WINTHROP, MA 02152

Sale Price \$280,000
Certificate
Book & Page 48039/0244
Sale Date 06/17/2011
Instrument 1U

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
AREVALO ANA C	\$280,000		48039/0244	1U	06/17/2011
SETTIPANE WILLIAM	\$217,000		47995/0028	1R	06/07/2011
TENERIELLO PAUL	\$177,500		19718- 233/0	00	04/27/1995
WELCH, WALTER R	\$0		/0		01/01/1988

Building Information

Building 1 : Section 1

Year Built: 1875
Living Area: 1,735
Replacement Cost: \$368,703
Building Percent Good: 65
Replacement Cost Less Depreciation: \$239,700

Building Attributes

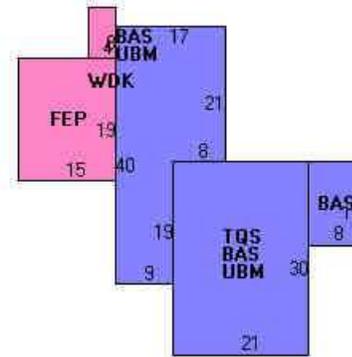
Field	Description
Style:	2 Unit
Model	Multi-Family
Grade:	Average
Stories:	1.75
Occupancy	2
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure:	Gable
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Carpet
Interior Flr 2	Hardwood
Heat Fuel	Gas
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	4 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	
Total Rooms:	
Bath Style:	
Kitchen Style:	
Num Kitchens	01
Cndtn	
Num Park	
Fireplaces	
Fndtn Cndtn	
Basement	

Building Photo



(<http://images.vgsi.com/photos/WinthropMAPPhotos/\00\00\71\31.jpg>)

Building Layout



(http://images.vgsi.com/photos/WinthropMAPPhotos//Sketches/5416_5416.j)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	1,262	1,262	
TQS	Three Quarter Story	630	473	
FEP	Porch, Enclosed	285	0	
UBM	Basement, Unfinished	1,158	0	
WDK	Deck	32	0	
		3,367	1,735	

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Use Code 1040
Description APT 2 UNIT
Zone
Neighborhood R4
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 0.22
Frontage 0
Depth 0
Assessed Value \$275,600
Appraised Value \$275,600

Outbuildings

Outbuildings						<u>Legend</u>
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
FGR1	GARAGE-AVE			128.00 S.F.	\$1,700	1
SPL1	POOL-INGR CONC			512.00 S.F.	\$8,700	1
SHD3	SHED METAL			48.00 S.F.	\$300	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2021	\$230,400	\$246,100	\$476,500
2020	\$222,800	\$246,100	\$468,900
2019	\$213,600	\$226,800	\$440,400

Assessment			
Valuation Year	Improvements	Land	Total
2021	\$230,400	\$246,100	\$476,500
2020	\$222,800	\$246,100	\$468,900
2019	\$213,600	\$226,800	\$440,400



Morton St

Morton St

Banks St

Douglas St

Banks St

Banks St

Banks St

Banks St

228 Main St

1935

1932

1875

1912

1930

1950

1910

1930

1875

Main St

Main St

Main St

Main St

Phillips Beth

Google





DOUGLAS





40R Banks St Planning Board Meeting Talking Points
January 24 2022

- 1) I would like to ensure all of the general provisions of the Subdivision are met. Chapter 16.12.010.A.1.h states "The minimum width of a street right-of-way shall be 40 feet". I ask that the planning board confirm that this is not ignored. The proposed driveway is 25 feet.
- 2) I request that the applicants accurately update the "Flood plain" answer to "yes". I would also like to bring attention to this property, specifically the half requesting development, which has had a history of flooding. The 100 year flood zone is not a theoretical line, but one which my neighbors experienced first hand. I have included 2 photos from Morton street which shows the extent of flooding that occurred in 2018. Some neighbors had to be evacuated via construction trucks that had the capacity to navigate the high waters engulfing the roadway. I have also included a photograph taken at the easement's entrance where the extent of the flooding only begins to subside. The current stormwater collection system failed in 2018 and adding a new building and pavement will only exacerbate the damage and dangers of the next flood.
- 3) The proposal only has one house. Why do they need a road when a driveway is sufficient. It's because they are trying to skirt the rules of the town's frontage requirements. Without calling their driveway a road, they will not have the required 100 foot frontage. I like to be clear that this is a driveway in which they are paying their lawyers to convince you to call it a road.
- 4) Let's discuss 228 Main St for a moment. This is a house that has a long driveway from Main street going behind houses on Main, Banks and Douglas Streets. By the looks of it, it is very similar to the Calla proposal. It appears to be stuck in the middle of a town block, surrounded by houses. What is different is 228 Main street was built in 1875 and the other surrounding houses were built decades later. The oldest house I could find on Banks St was constructed in 1910. I have emailed the planning board supplemental information supporting this.

Speaking of dates, this brings me to my final talking point, 1957.

- 5) If the planning board approves this road, the board will be creating a new precedent for the town. One which will open the doors for developers to cram a so-called road in every undeveloped nook and cranny that remains in Winthrop. The reason I call it a new precedent is because Title 16 - Subdivisions became effective on February 1st **1957**. Since this effective date in **1957**, there have been no new private roadways constructed. This is important so I will repeat it. **THERE HAVE BEEN NO NEW PRIVATE ROADS CONSTRUCTED IN WINTHROP SINCE THE SUBDIVISION BY-LAWS BECAME EFFECTIVE.** I have emailed the board supplemental information detailing all private roads which were collected from the town's website. Included is the construction date of homes built on each private road. All private roads listed contain a house built on or prior to 1957. This detail is important to note because it demonstrates **ALL PRIVATE ROADS IN WINTHROP** have been in place prior to the

Subdivision by-laws of **1957**. Creating this new so-called private road is creating a new precedent.

Fwd: 40 R Banks draft of letter to Planning bo

petergill2@verizon.net <petergill2@verizon.net>

Wed, Feb 2, 2022 at 11:51 AM

Reply-To: petergill2@verizon.net

To: "dquist@town.winthrop.ma.us" <dquist@town.winthrop.ma.us>, "rcarroll.arch@gmail.com" <rcarroll.arch@gmail.com>

-----Original Message-----

From: petergill2@verizon.netTo: petergill2@verizon.net

Sent: Wed, Feb 2, 2022 11:46 am

Subject: Fwd: 40 R Banks draft of letter to Planning bo

To: Winthrop Planning Board

From: Winthrop Housing Authority

Re: [40R Banks Street](#) Difinitive Sub Division

Date: January 24, 2022

At the December 20, 2021 Planning Board Public Hearing on this request which was postponed to tonight, the Housing Authority expressed our opposition to the proposed request by the applicant to change the zoning.

Being the largest abutter to the property located at [40R Banks Street](#), the Winthrop Housing Authority is opposed to any change in zoning as is being requested at the Planning Board Public hearing.this evening.

Given the history of many failed attempts in the past to change the zoning of this property and the current concerns and rationale presented by the abbutors and many other Winthrop residents, we strongly urge the Planning Board not to change the zoning of this parcel

Thank you

Peter Gill
Chairman