

**TOWN OF WEYMOUTH, MASSACHUSETTS
BOARD OF ZONING APPEALS
NOTICE OF DECISION – APPEAL of the INSPECTOR OF BUILDINGS
BURKHALL STREET**

(To be mailed forthwith to the owner and applicant, if not the owner.)

Owner: James E. Bristol III & Arthur
Sharp, Trustee
S&B Nominee Trust

Date: 10/15/2015

Address: 221 Ralph Talbot Street
Weymouth, MA 02190

Applicant: Joanne Marques
Address: 60 Circuit Road
Weymouth, MA 02190

Case #: 3258

Representative: N/A

Site Address: Burkhall Street
Weymouth, 02190

Sheet: 38
Block: 467
Lot: 2

Sheet: 42
Block: 469
Lot: 2

Sheet: 42
Block: 467
Lot: 3

Sheet: 42
Block: 469
Lot: 21,22,23

RECEIVED
TOWN OF WEYMOUTH
TOWN CLERK'S OFFICE
2015 OCT 15 PM 4:05

Zoning District(s): R-4 & R-2 (Multi-Family)

An Appeal application filed on July 23, 2015 appealed the issuance of Building Permits by the Inspector of Buildings. The Appeal was specific to eleven (11) separate permits issued on June 23, 2015 and alleged a range of procedural infractions. The Board of Zoning Appeals heard testimony from the applicant as well as the Inspector of Buildings and, with advice from Counsel, ultimately found that only two (2) of the complaints fell under their purview:

- That the approved development plan did not conform to FAR requirements.
- That the buildings on Lot 467-3 about the Weymouth High School and therefore exceed the maximum height allowed Weymouth Zoning 120-57.

After a public hearings on September 2, 2015, and September 23, 2015 and as advertised in the Weymouth News on August 19, 2015 and August 26, 2015, the Board of Zoning Appeals at its meeting of September 23, 2015:

VOTED TO DENY THE APPEAL under Weymouth Zoning Ordinance Article XXIV Section 120-119A (1). The Board found that:

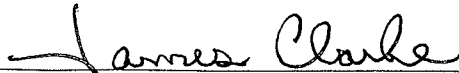
- A letter from Gale Engineering, the developer's engineering firm, from 5/27/2004 adequately explained and justified the FAR ratios used.

- The previous court decisions including 74 Massachusetts Appellate Court 1119, sufficiently and conclusively addressed the question of the building height adjacent to Weymouth High School.

In denying the Appeal, the Board of Zoning Appeals upheld the issuance of all permits issued by the Inspector of Buildings on June 23, 2015.

Decision filed with the Town Clerk on **October 15, 2015.**

IMPORTANT: Notice is further given that any person aggrieved by this decision may appeal, according to MGL Chapter 40A, Section 17, and said appeal, if any, must be filed with the Town Clerk within twenty (20) days after the filing of the decision with the Town Clerk.



James Clarke, Director of Planning and Community Development

BOARD OF ZONING APPEALS (BZA)
RECORD OF MINUTES AND PROCEEDINGS
Wednesday, September 2, 2015

Members Present: Richard McLeod, Chairman
Chuck Golden
Jonathan Moriarty
Ed Foley
Brad Vinton
Kemal Denizkurt

Also Present: Jim Clarke, Director of Planning
Eric Schneider, Principal Planner
Jeffrey Richards, Building Inspector
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:06 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

New Business:

Case # 3258 – The petitioner, Joanne Marques, of 60 Circuit Road, has filed an application to Appeal a decision by the Inspector of Buildings to issue building permits for property on Burkhall Street, shown on the Weymouth Town Atlas Sheet 38 & 42, Block 467, Lots 2 & 3, Block 469, Lots 2, 21, 22, 23, located in an R-4 & R-2 zoning district. The petitioner seeks to:

Appeal: Appeal of a decision of the Inspector of Buildings (Article XXIV, Section 120.119A(1))

The petitioner seeks to have the Board of Zoning Appeals rescind building permits issued.

Sitting Members: Richard McLeod
Chuck Golden
Jonathan Moriarty
Ed Foley
Brad Vinton

Chairman McLeod said they don't usually deal with these types of appeals and has asked Attorney Jim Lampke to attend. Mr. Lampke stated that what is before the board is an appeal on building permits in accordance with the zoning ordinance. Mr. Richards is in attendance to address this and answer any questions the board may have. This is not a

hearing on the merits of the project or on any other permits previously issued by the town and have been litigated in the courts over the course of many years.

Chuck Golden wanted to disclose that he lives in Weathervane and has been there over one year and has no business or social dealing with the Bristol Brothers and feels he can be fair and impartial when hearing this appeal. Mr. Lampke said under the law his disclosure covers any conflicts going forward.

Appearing before the Board was Joanne Marques, 60 Circuit Road, S. Weymouth who was recording the meeting for her personal use. Ms. Marques submitted four additional documents marked Exhibits 1,2,3,4 and were distributed to the board.

Exhibit #1 – Plan/Map

Exhibit #2 - Applications for building permits

Exhibit #3 - Floor area calculations

Exhibit #4 - An email from Andrew Fontaine to James McGrath

Ms. Marques updated the committee about what has happened over the last 15 years. The special permits was denied 3 times before final approval in 2004. In 2008 Trammel Crow filed for a NOI. The Conservation Commission hired a peer reviewer (Tetra Tech).

On June 23rd of 2015 there were 13 building permit applications submitted on the last day to apply and on June 24th Mr. Richards supplied copies to Joanne Marques. She asked how they could be approved when they didn't comply with floor area ratios and it was stated that Mr. Clarke makes the decision regarding zoning compliance and if Mr. Clarke says its ok then he has no choice but to issue the permits. She found this very surprising as she couldn't find anything to support that.

If any application is in violation of a zoning ordinance the building inspector should have withheld the permit as the applications were incomplete. Basic information such as names and address, size of lots were all missing. All the required information was not there.

In addition to the applications were 3 plot plans that were submitted to the building department that are described as block 469, Lot 2 on the east side of Burkhall as townhouses (27) units consisting of 9 buildings with 3 units in each one. On the same lot are garden units submitted by Upton & Partners has 56 units, 2 buildings with 28 units in each one. For some reason, the building permits were not issued on this one.

Block 467, lot 3 on the west side of Burkhall Street are the podium units submitted by Upton & Partners and the permits were issued on 6/23/15 but the plot plans are still being reviewed by DPW as of yesterday. These plans are substantially different from what the BZA approved in 2004.

1. On 6/24/15 Mr. Richards gave her a copy of the Plot plan regulations
2. Plot plans must be submitted to DPW for approval and that did not happen.

3. All water and sewer mitigation fees must be paid and as of yesterday they have not been paid.
4. Both plot plans exceed the maximum FAR of .30 and it appears the east side is .47 and the west side 1.3.

Ms. Marques believes block 467, Lot 3 abuts Weymouth High School and exceeds the maximum height allowed in the Zoning Ordinance Section 120-57.

The original 1972 Tall Oaks plan did not include block 467 Lot 2 or show Burkhall Street as an emergency access road.

Since the building permits have been issued on the 23rd the work flow has been going fast and furious and a few issues have come to light; the existence of vernal pools which conservation commission is reviewing; the engineering division has documented several trees that have been cleared and were supposed to have been left in their natural state.

Ms. Marques believes there are two issues before the board:

1. Incomplete application
2. Floor area ratio

Attorney Lampke said the height issue which relates to the school has been resolved in the courts.

Mr. Jeff Richards appeared before the board and had the following comments. There were multiple agencies involved with meetings prior to this permit issuance. This was a 10 year project and the plans have been reviewed over those years. More recently in the past few months the town has been speaking with Bristol Brothers to see what the minimum requirements would be to issue the permits by the date certain. In that time frame DPW and Conservation were reviewing plans. Two days prior to the applications being submitted, there were meetings with division heads to ensure there would be minimum required information to issue the permits to let the project proceed.

The day they applied the town received the final recording from the Registry of Deeds on the Board of Appeals Case dated June 19, 2015, required Orders of Conditions from Conservation Commission, controlled construction requirements and the sill slips. Mr. Richards said that he did not need the sill slips to issue the building permit for the podiums. He had a discussion with DPW who said he could issue the foundation permits (which is common) until they got the addresses correct and they had to make sure they matched the 911 system. You do not need the actual address to issue a permit it can be done on sheet, block and lot.

The building permit application is a blanket application for multiple uses and does not need to be complete. There were minor changes he did not know about at the time of the issuance such as the emergency road as this was not in the plan the Mr. Richards had from the BZA. After permits are issued it becomes the baseline to start a project it is

then adjusted when the town departments review them. There was no reason to hold up the permit knowing that it needed to be issued that day.

The floor area ratio was discussed with Mr. Clarke based on the 2004 BZA decision. Mr. Jeff Richards passed out a letter from Gale Associates to the board which was labeled Exhibit 5.

Ms. Marques stated that the floor area ratio was based on per lot. Mr. Richards clarified that under the BZA case the entire site was determined as the lot, that is why this was already discussed and resolved in 2004 by the BZA board during the application process.

Mr. Jeff Richards stated that they always use "see plans" because there is too much detail to put on the application.

It was asked if Mr. Richards can issue a permit without the DPW approval and it was stated yes.

Chairman McLeod stated that after hearing this information the board believes there is only one issue remaining before them and that is number 1.

The public was given the opportunity to speak.

Attorney Adam Brodsky representing Bristol Brothers distributed a memo labeled Exhibit #6.

As part of the FAR conditions it needed to be filed with the clerk and the trial court upheld the decision. He believes it is just a mistake or miscalculation on Ms. Marques part. We should have been using the word "parcel" to avoid this confusion.

Arthur Mathews, District 4 Town Councilor – Given that this is just a controversial subject, he wished the applicant was more thorough. Since the building permits were issued he will now be going to his third Conservation Commission board for violations on that aspect of the project, since the permits were issued. There is a new water and sewer agreement and he hopes Mr. Richards will follow up on this to make sure it was paid and get it resolved. It seems like this is being piecemealed. The building permits that were issued were not for the entire project, and the departments are told to adjust on the fly. He feels this has been backwards. He hopes the applicant is more thorough going forward.

Andrea Barnes, Burkhall Street – she is a little offended by the applicants approach to this. Suddenly at the last minute permits were issued and machines started showing up and the residents and neighbors were not aware of it. Last minute permits only help the businessman and not the residents. There is a reason why the room is filled this evening and she hopes the board sees the big picture.

Christine Morrissey, 160 Burkhall Street – asked what was the rush in approving this permit? Chairman McLeod stated that this wasn't rushed it took place over a large period of time. She then asked when did they walk into the office? Mr. Richards stated the Board of Appeals case expired on that date and the special permit would not be valid if we did not issue it then. That is why the town division heads met prior to the expiration date.

Marty Lebran, Burkhall Street – He is a new resident and asked if they missed the filing date what would be the new standards. Chairman McLeod stated that is an advisory question the board cannot answer.

Comeau, Burkhall Street – permits were issued last minute based on 2004 plans but weren't the 2004 plans before the court? Yes, It was the same plans and they did not change.

Linda Nevill, 120 Burkhall Street– stated she doesn't understand what the rush was. It seems the town gave special treatment to the builders by meeting prior and she doesn't feel if it was a resident that they would get the same treatment. She believes the 2004 plans would not stand up to 2015 standards.

Jordan Dexter, 58 Circuit Road – moved here 4 years ago. This has been going on a long time and he has been in construction for over 20 years and the permit process typically takes time. There was a drawing submitted to the registry of deeds and it is not the plan that is being built. He is not feeling confident in the town's decisions. He put an addition on his house and has to pay \$2800 before he could start and this large project didn't pay their mitigation.

Barbara Popkin, 118 Tall Oaks Drive – she feels the ball has been dropped as nobody has consulted the residents that are directly affected by this. The people are against this project since 2004 and this board has to listen to the people and we are being ignored. There was no notification about this new project to any abutters.

Chairman Macleod stated that the building department is the enforcing authority. If you see something going on bring it to the building department and the town will take care of it.

Mr. Foley will look into Condition #8 as Ms. Marques feels this is being violated. Mr. Richards said there was a grade change on the original plan. Once it was graded it can't be touched after it was graded to the proper level.

Attorney Adam Brodsky regarding emergency access road, the applicant will meet with the neighbors to look for an alternative.

Lauren Hirshberg, 118 Burkhall Street – It sounds like the application was accepted because it was good enough and the deadline was coming. This development is too big for this.

Mr. Richards said the project was 10 years long and the decision was complete, all the information was predetermined by the BZA case and it just needed to match.

Mr. Lampke said the litigation was concluded on 6/23/2009.

After that the applicant can work with the town to obtain building permits and that is what had happened. These decisions did not take place overnight it was over a period of time.

Chairman McLeod asked what was the time frame Mr. Richards started working with the applicant for this permit? Mr. Richards said right after the BZA case was approved. Conservation already had a registered decision at that time.

Ed Foley asked if Mr. Richards would make sure the conditions area adhered to? Yes replied Mr. Richards.

Ed Foley made a motion to close the public hearing at 8:30 and was seconded by Jonathan Moriarty. Voted unanimously.

Ed Foley made a motion to take this case under advisement and was seconded by Brad Vinton. Voted unanimously.

This case will be discussed on 9/23/15 at 7:00 pm.

Jim Clarke left the meeting at 8:30 pm

**BOARD OF ZONING APPEALS (BZA)
RECORD OF MINUTES AND PROCEEDINGS
Wednesday, September 23, 2015**

Members Present: Richard McLeod, Chairman
Chuck Golden
Jonathan Moriarty
Ed Foley
Brad Vinton

Also Present: Jim Clarke, Director of Planning
Eric Schneider, Principal Planner
Jeffrey Richards, Building Inspector
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:06 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

Old Business:

Case # 3258 – For Deliberation, Public Hearing closed 9/2/2015

The petitioner, Joanne Marques, of 60 Circuit Road, has filed an application to Appeal a decision by the Inspector of Buildings to issue building permits for property on Burkhall Street, shown on the Weymouth Town Atlas Sheet 38 & 42, Block 467, Lots 2 & 3, Block 469, Lots 2, 21, 22, 23, located in an R-4 & R-2 zoning district. The petitioner seeks to:

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Sitting Members: Richard McLeod
 Chuck Golden
 Jonathan Moriarty
 Ed Foley
 Brad Vinton

Chairman McLeod stated there was an open public hearing at the last meeting and this meeting is to determine the following:

1. Approve the appeal and find that the permits were not issued properly under the Zoning By Laws by the Inspector of Buildings or
2. Find that the permits were issued properly under the Zoning By Laws and deny the appeal.

Mr. Foley said he sat on this case 11-12 years ago, he believes all of Ms. Marques concerns were addressed within the court systems. Floor area ratio, height, school situation and the courts have all affirmed the board's decisions in the past. He believes the reasons given to appeal this decision do not play out. He does have some concerns about the conditions that were placed on this project and heard them during the public hearing.

Mr. Foley's main concern is that there were 3 pieces of property that would never be developed (Condition #8). This has not been done and asked Jim Clarke for an update on the restrictions.

Mr. Clarke said the town's legal department is reviewing a draft of conservation restrictions on this and it should be ready shortly. This work would not have happened until the project came back before the town and that just recently happened. Regardless of the decision this evening those 3 lots (Lot 21, Lots 22 & 23 and Lot 2) will never be developed or built on.

Chairman McLeod said one of Ms. Marques concerns were the incomplete applications; how does the board feel about that. Mr. Foley said if they were filled out properly then they would have the conservations restrictions on that land. Mr. Clarke stated that the application was generic and the Building Inspector testified to that. There are other conditions that will need to be fulfilled but cannot be done before the building permit is issued. There are traffic improvements that will need to be done as well; therefore it does not tie into the issuance of the permits.

Mr. Moriarty said he felt the applications were sufficient but was offended as they were sloppy and the timing was not good. To have a citizen come in to look at the permit that was just filed and was handed a copy of this application was offensive.

Mr. Golden said he can't find enough facts to overturn what has already been decided either by the board or the courts. However, as a board we need to confirm that all the conditions will be met.

Jonathan Moriarty said in regards to the FAR issue, he would uphold the numbers that were submitted by Gale. The town approved them and they haven't been challenged sufficiently to date.

Ed Foley made a motion to conclude the discussions on Case # 3258 and was seconded by Brad Vinton. Voted Unanimously

Ed Foley made a motion to deny this appeal on Case # 3258 that the applicant has not met the burden of proof on the issues with the FAR and introduces the following evidence:

- 5/27/2004 Gale's letter regarding the FAR ratio
- 6/23/2009 Court's decision on the school and the height limitation
- A 2007 letter from Mr. Lampke referring to the Superior Court's decision granting the Special Permit to TCR Mid-atlantic that it has ruled in favor of the town's decision that the special permit was issued appropriately.
- All conditions that were issued for this project will be met and fulfilled.

This motion was seconded by Jonathan Moriarty.

Voted Unanimously