

BOARD OF ZONING APPEALS (BZA)
RECORD OF MINUTES AND PROCEEDINGS

June 3, 2020, 7:00 p.m.

VIRTUAL
Cisco Webex Meetings

RECEIVED
TOWN OF WEYMOUTH
TOWN CLERK'S OFFICE
2020 JUL 14 AM 11:16

Members Present: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Ed Foley
Brandon Diem

Also Present: Robert Luongo, Planning Director
Eric Schneider, Principal Planner
Monica Kennedy, Assistant Planner
Janet Murray, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:00 p.m. and explained the procedures that would be followed to the people present.

New Business:

1. **Case #3413** - The petitioner, Diane Pompeo-Maltby, for property located at **126 Wessagusset Rd.** also shown on Weymouth Town Atlas sheet 4, block 49, lot 1, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit	120-40 Extension or change by special permit
Variance	Table 1 District Regulations (number of stories)

The subject property is 2,173 SF lot containing a condemned 718 SF single family dwelling with attached decks and porch. It is currently sited over the neighbor's property line and has nonconforming setbacks on two sides. Petitioner seeks to demolish existing structure and rebuild an elevated 2,023 SF home. Dwelling will be three (3) stories but under the 35 ft max height.

Mr. Foley made a motion to open the public hearing on **Case #3413** and was seconded by Mr. Denizkurt. **UNANIMOUSLY VOTED.**

Mr. Foley made a motion to waive the reading of the public notice and was seconded by Mr. Denizkurt. **UNANIMOUSLY VOTED.**

For the record, Mr. McLeod stated that he knows an Attorney Christine Malby who is Mr. Maltby's niece. He stated that he has no working relationship with Ms. Maltby and can vote impartially on this case. There was no objection to Mr. McLeod hearing this case.

Phil Baker, with Rockwood Design, Inc., with offices at 1020 Plain Street, Suite #320, Marshfield, MA, spoke before the Board on behalf of the applicant. Mr. Baker stated that there is a new design plan for this property; it will have three bedrooms and four bathrooms. The home will be elevated out of the flood zone with parking underneath and moved off of the property line of the abutting neighbor.

Mr. Baker reviewed the changes made from the previous plans that had been submitted.

Mr. Foley asked if Mr. Baker or the applicant had spoken to the town councilors or neighbors. Mr. Maltby stated that he has spoken with Mr. Hirtle his abutting neighbor and also to his neighbor across the street. Ms. Maltby stated that they have not spoken to the councilors.

Mr. Foley asked if the applicant had a chance to look at the property at 50 Ocean Avenue. Ms. Maltby stated that she has not had a chance yet.

Mr. Baker stated that although the proposed dwelling has 2000 SF, taking into account the third, half floor, the main body of the box it is actually only 1350 SF.

Mr. Schneider stated that this application has been sent out to town departments. He received a response from the Conservation Commission. He read into the record the memo from Mary Ellen Schloss. There will be an independent review by that Board. In the letter, she expressed concern about the size of the project. The memo was marked **Exhibit ___**.

Mr. Schneider stated that Rebecca Haugh, Councilor-at-Large, submitted a letter, marked **Exhibit ___**, concerning this property.

Mr. Baker noted that in a discussion over Zoom with Ms. Schloss, he had informed her that it will be a saltwater pool. It will pumped and drained off-site.

Ms. Maltby stated that they are looking at building it with its own substructure similar to a hot tub on a deck. He added that it is a lap pool and approximately 7 feet x 12 feet.

Mr. Foley asked if the building has been demolished yet. Ms. Maltby stated that it has not yet been demolished.

Mr. Baker reviewed the relief being sought for this project.

Mr. Diem asked about the number of bedrooms. Mr. Baker stated that the existing dwelling is a two-bedroom while the proposed is a three-bedroom.

Mr. Diem asked about screening underneath. Mr. Baker stated that it was not planned but would comply with town requirements.

Mr. Baker stated that the existing height is 20 feet and the proposed height is 34 feet 10 inches. The house is being lifted up 7 feet from the ground.

Mr. Diem stated that he is concerned about the overall scale of the project. He asked if there could be a comparison of the existing to proposed height.

Mr. Denizkurt stated that he has reservations about the size of the project on an undersized lot.

Mr. Moriarty asked how much below grade the area beneath the structure will be. Mr. Baker stated that it will be approximately 6 inches below grade than it is now. He added that there is a catch basin. They would be willing to put down permeable pavers. The garage height is 7 feet, from the underside of the floor joist to the grade and where the car pulls under is 7 feet 6 inches.

Mr. McLeod asked if there was anyone present who would like to speak. There was the following response.

Pascale Burga, Councilor District 1, stated that no one has reached out to her about this project. She added that she has spoken to several neighbors. She stated that although she is pleased that there are plans to redevelop this property, she is concerned that this is a very ambitious project that covers much of the lot. The need for consideration on what type of car the owner of the house could have to use the parking is not thinking ahead to future owners. She also stated that she is concerned about the beach parking. A three-bedroom with only two small parking spaces could overflow onto that very small parking lot.

Carolyn Green, 127 Wessagusset Road, stated that she was not approached by the owner nor received any correspondence regarding this project. She pointed out that she looks forward to the redevelopment but has two concerns. The first is that this application could set a precedence for the neighborhood in regards to setbacks. She added that her second concern is the garage space. Two 7 foot 6 inch high and 18 feet wide spaces is not adequate for a three-bedroom home.

Victoria Gambino, 114 Wessagusset Road, stated that she agrees with Carolyn and Councilor Burga with their concerns. She added that she was not approached about this project either.

Mr. Baker stated that as far as he knew all those who were required to be notified of the hearing were notified.

Mr. McLeod stated that it was not the notification of the hearing, rather the applicant reaching out to their neighborhood about the scope of the project.

Ms. Maltby stated that this property came up at the meeting at the Whipple Center last May which is over a year ago. She added that she was not made aware of the need to reach out to councilors or neighbors other than the property abutters.

Mr. McLeod suggested that Ms. Maltby reach out to Councilor Burga and speak with neighbors.

Mr. Baker stated that in relation to other houses, the proposed dwelling will not tower over the other buildings in the neighborhood.

Mr. Schneider read a comment from “Mike” in the chat box that suggested that the town sell a piece of the town-owned parking lot so that the home could be wider and only two-stories. He added that he doesn’t like the idea of three-stories.

Mr. McLeod suggested that the public hearing be continued to the next meeting so that the applicant can meet with the councilors, the abutters, the architect and staff.

Mr. Foley suggested that the applicant have a community meeting, that a sketch of the proposed structure be overlaid onto the existing structure, and that any information from the Conservation Commission be submitted to the Board.

Mr. Baker asked when the massing study and any updated plans should be submitted to the Board. Mr. Schneider stated that the next meeting is in three weeks so as soon as possible.

Mr. Foley made a motion to CONTINUE the public hearing until June 24, 2020 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

2. **Case #3414** - The petitioner, JRM Realty Group LLC, for property located at **43 Mutton Lane**, also shown on Weymouth Town Atlas sheet 35, block 447, lot 12, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit 120-40 Extension or change by special permit

The subject property is 42,100 SF with an existing three family with an appurtenant commercial use in an R1 district. Petitioner seeks an extension of the non-conforming use to renovate or demolish and rebuild the structure to four residential units on the existing footprint and eliminate the nonconforming commercial use.

Mr. Foley made a motion to open the public hearing on **Case #3414** and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

Mr. Foley made a motion to waive the reading of the public notice and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

Attorney Ray Jennings, 775 Pleasant Street, Weymouth, spoke on behalf of the applicant JRM Realty Group, LLC. He stated that the proposal would replace asbestos siding with hardy board or clapboard siding. The dwelling will stay within the existing footprint. The commercial use will be removed.

Mr. Jennings stated that this is a request for an extension of pre-existing non-conforming. The dwelling will increase from a three-family to four-family.

Mr. Schneider stated that the Building Department confirms that this is an established three-family dwelling. He said that no comment was received from town departments. He noted that there were several phone calls from abutters who preferred renovation rather than demolition.

Mr. Denizkurt questioned the parking requirement. Two spaces per unit is required. There are eight spaces depicted on the plan, two for each of the four dwelling units proposed.

Mr. Foley asked if these would be rental units. Mr. Metri stated that they would be market-priced rental units. There will be three (3) two-bedroom and one (1) three-bedroom apartments.

Mr. Diem asked if there is space for each unit to have general storage. Mr. Metri stated that there is a full basement for storage for each unit.

Mr. Diem asked if there would be secondary egress or balconies on the exterior of the building. Mr. Schilling stated that there would not. The building is fully sprinkled and does not require the secondary egress.

Mr. Luongo stated that a landscaping and lighting plan need to be submitted to the Planning department.

Mr. Luongo stated that he would like to see the front door remain at the front of the building. He added that it changes the character of the house. Mr. Schilling stated that this can be done as the first floor is dedicated to one unit.

Mr. McLeod asked if there was anyone present who would like to speak. There was no response.

Mr. Foley made a motion to close the public hearing and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Mr. Foley made a motion to APPROVE the request for a SPECIAL PERMIT for Case #3414.

SPECIAL PERMIT

1. The specific site is an appropriate location for such a use.

2. The proposed use of structure will not be detrimental or adversely affect the character or future character of the neighborhood or town.
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians.
4. There are adequate and appropriate facilities, utilities and other public services provided for the proper operation of the proposed use.
5. That the public convenience and welfare will be substantially served with the proposal.

The following conditions will apply:

- Commercial use will be removed.
- First-floor unit entrance will remain in the front of the building.
- Lighting and landscaping plans will be submitted to the Planning Department.
- Hardy plank or something similar will be used for siding.

The motion was seconded by Mr. Moriarty. UNANIMOUSLY VOTED as follows:

Mr. McLeod - Yes
Mr. Diem - Yes

Mr. Moriarty - Yes
Mr. Denizkurt - Yes

Mr. Foley - Yes

3. **Case #3415** - The petitioner, John Deady, for property located at **958 Commercial St.** also shown on Weymouth Town Atlas sheet 18, block 189, lot 8, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance 120-Schedule of District Regulations - Front Setback

The subject property is 13,930 sf with an existing single family dwelling. The addition of Cicchese Circle turned the previously conforming side yard into a second front yard now requiring an 18' setback. The petitioner is proposing 11'. The petitioner seeks to leave the existing structure in its present location rather than turning it sideways to meet the dimensional requirements as is currently planned. As part of the Cicchese Subdivision Plan, the subject property was increased in size from a nonconforming 13,930 sf to a now conforming 27,475 sf.

Mr. Foley made a motion to open the public hearing on **Case #3415** and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

Mr. Foley made a motion to waive the reading of the public notice and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

John Deady, 203 Middle Street, stated that he is looking for relief to decrease the frontage from 120 feet to 80 feet. This lot will become a two front-yard lot because of the subdivision. He is looking for relief from the 8 foot front yard setback.

Mr. Deady reviewed the site history. He reference that this property history dates back to 1918. He pointed out that zoning regulations did not begin until 1940.

He stated that the current zoning requirements create the hardship and need for a variance.

Mr. Foley asked how many new houses are in the subdivision. Mr. Deady stated that there will be three dwellings.

Mr. Deady stated that the hardships created by moving the house are the financial costs of relocating the family out of the home before it is moved, the cost of moving the structure, the structural damage that the dwelling could suffer, and an 11 foot back yard rather than 85 feet if the house stays where it is.

The size, shape, and narrowness of the lots at Commercial Street were adequate when the lots came into existence but do not meet current requirements.

Mr. Deady stated that he has attempted to have a neighborhood meeting but it was cancelled.

Mr. Schneider stated that the Planning Department has been working with Mr. Deady on this plan. He noted that they have worked with him to come up with a plan that did not involve the moving of the house so that it was side facing to Commercial Street.

Mr. Schneider stated that there was land in the back that could be provided for the town for a drainage easement. Mr. Deady stated that he was agreeable to this easement. This would benefit properties outside of Mr. Deady's ownership.

Mr. Schneider stated that there is concern about an access easement at 872 Commercial Street. He asked if Mr. Deady would be willing to abandon this easement once the project is complete. Mr. Deady agreed to abandon the easement.

Mr. McLeod stated that the precedence is set to NOT put houses sideways so that the side of the house is facing the street

Mr. Diem asked if the abutter to the right had adequate requirement clearance to the new roadway. Mr. Deady stated that it does.

Mr. McLeod asked if there was anyone present who would like to speak. There was the following response.

Marilee Hearon, 54 Unicorn Avenue, expressed concern about how close the foundation is to her fence.

Mr. Deady stated that the foundation is 46 feet from Ms. Hearon's fence and the easement is at other end of property.

Mr. McLeod stated that the plan being considered tonight is about the turning of the house.

Ross McGrath, 982 Commercial Street, asked about the 15 foot porch that has not been mentioned but has been removed. He asked about the easement that goes through his property. He stated that he would prefer that the house not be moved. He also asked about a landscape plan for the subdivision.

Mr. Deady stated that new trees and grass will be planted.

Mr. Deady stated that the porch had to come off in order to put in the road. He noted that it would not have been able to be moved as it was a concrete foundation built on stone.

Keith Delvecchio stated that Mr. Deady has stated that the hardship was financial. He stated the he created his own hardship; money is not an acceptable hardship. He would like to see the house turned.

Mr. McLeod reiterated that the issue before the Board is whether to maintain the house in its current location on the lot or to turn it. This Board is limited to ruling on just that matter.

Mr. Foley stated that there have been comments made by town residents that the placement of homes sideways look ridiculous, stupid, awful, and out-of-place.

Mr. Schneider stated that the Planning Department is looking at changing the zoning. He added that the comments made by town residents influenced the department to approach Mr. Deady with the request to keep the home facing Commercial Street.

Donald Rafferty stated that he built the house at 383 Pond Street which was referred to earlier. He stated that in turning the house, it will face the new roadway being built. He added that Mr. Deady created his own hardship by putting in the road, making a side setback into a rear setback.

Mike Bernazzani, 972 Commercial Street, stated that it is his property that has the easement on it. He noted that the Norfolk Superior Court opinion is that the Board exceeded its authority in not approving this plan. That plan is the one that has the house turned to face the new road.

Mr. Bernazzani stated that the hardship being requested is based on cost, removal of the family, and 1940s and 1950s zoning ordinances. He added that the applicant knew or should have known this prior to going forward with the plan. He questioned why this is coming up now.

Mr. Deady stated that you are entitled to use the land for what it is zoned.

Mr. McLeod stated that it is the Planning Department that had requested that Mr. Deady submit the application with the request to not have to turn the house. He noted that Mr. Deady is prepared to turn the house.

Mr. Schneider stated that the Planning Department is looking at this variance request from the perspective of the hardship as the law is written as it pertains to the shape, topography, and soil conditions of the lot. Prior zoning allowed for 20 feet of frontage which has since been increased to 40 feet; this is what has created the hardship. Mr. Deady has a right to access his property.

Mr. Bernazzani stated for the record that Mr. Deady has offered to sign over the easement to his property to the previous owner in 2016 which did not happen. Mr. Deady also offered this to him, but nothing has happened yet.

There was discussion regarding taking this case under advisement or continuing to seek an opinion from the Town's Counsel.

Mr. McLeod stated that the public hearing cannot be closed if more information is requested. He also stated that there needs to be a clear question to ask Town Counsel.

Mr. Foley made a motion to close the public hearing and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

VARIANCE

Mr. Foley made a motion to APPROVE this application for a variance because the applicant has shown hardship due to the shape and topography of the lot, the location, age, and condition of the house on the lot and the cost associated with moving it, and the cost of relocating the family currently living in the home. The Board is able to grant the variance without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance. The motion was seconded by Mr. Denizkurt.

The following conditions will apply:

- The easement at 872 Commercial Street will be abandoned.
- An easement will be granted to the town for sewer pipes.

The motion PASSED 4-0-1 with Mr. Moriarty abstaining.

Mr. McLeod - Yes
Mr. Diem - Yes

Mr. Moriarty - Abstain
Mr. Denizkurt - Yes

Mr. Foley - Yes

Other Business

1. **Minutes:** 5/13/2020, 12/12/18

Mr. Moriarty made a motion to approve the minutes from May 13, 2020 and December 12, 2018, and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

2. **Upcoming Meetings:** June 24, 2020

3. **ADJOURNMENT**

Mr. Foley made a motion to adjourn at 10:15 p.m. and was seconded by Mr. Denizkurt. VOTED UNANIMOUSLY.

Approved by: Kenneth Denizkurt 7/7/2020
Mr. Denizkurt, Clerk Date