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

June 16, 2021, 7:00 p.m.
McCulloch Building - Mary McElroy Room
182 Green Street, Weymouth, MA 02191

2021 AUG 16 PM 2:05

Members Present: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Brandon Diem
Not Present: Robert Christian
Also Present: Joseph Calanan, Town Solicitor
Eric Schneider, Principal Planner
Monica Kennedy, Assistant Planner
Janet P. Murray, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:00 p.m. at the McCulloch Building - Mary McElroy Room, 182 Green Street, Weymouth, MA 02191 and explained the procedures that would be followed to the people present.

Mr. McLeod informed the applicants this evening that there are only four members present and will need all four votes to and they will have the opportunity to ask for a continuance.

Old Business:

1. **Case #3448** - The petitioner, Cove Outdoor, LLC, for property located at 611 Pleasant Street also shown on Weymouth Town Atlas sheet 39, block 476, lot 8, located in the I-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 the site of an existing non-conforming billboard. Petitioner seeks to lower the metal pole 20 feet and replace the current sign faces with light blocking technology.

The public hearing was closed on May 26, 2021. Tonight, the Board will render its decision.

Mr. McLeod stated that there was testimony asking the Board to remove the billboard. He noted that this action is not within this Board's authority.

Mr. Denizkurt stated that the town and the abutting neighborhoods have expressed that favorable action be taken on this application.

Mr. Moriarty stated that this application moves this situation in the right direction but acknowledged that there were opposing views.

Mr. Moriarty made a motion to APPROVE the request for a SPECIAL PERMIT for Case #3348.

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 motion was seconded by Mr. Denizkurt. Motion PASSED 4-0.

2. Case #3443 - The petitioner, Hanover RS, for property located at 1325 Washington Street also shown on Weymouth Town Atlas sheet 35, block 448, lots 7, 8, 9 & 25, located in the HT, R-2, I-1 & CCOD Districts. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit	120-25.14-23	Commercial Corridor Overlay District by special permit
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The subject property is a 9.78 acre parcel of land with single family residential houses, private road, former quarries and quarry roads, exposed ledge and woods. Petitioner seeks to construct two 4-story mixed-use buildings with 270 residential apartments, first-floor commercial space, site amenities, associated parking access, and utility infrastructure.

This is a continuation of a public hearing from May 5, 2021.

Attorney Frank Marinelli appeared before the Board on behalf of the applicant and recapped the proposal.

Mr. McLeod noted the following documents for the record:

- Exhibit #1 - Letter dated 6/10/2021 from Stephen Zeboski in support of the project
- Exhibit #2 - Letter dated 6/15/2021 from South Shore Chamber of Commerce in support of the project
- Exhibit #3 - Comments from Weymouths traffic engineer, Owen MacDonald

Mr. Denizkurt asked about the abutting property that buffers the residential area on Argyle Court. Mr. Marinelli stated that this is owned by National Grid.

Mr. Bazo reported that the bump out to the rear of the property is for potential future use as a part of good planning. The intent is for the utilities to be stubbed. It will be a gated emergency egress/access point which currently dead ends in the woods. He stated that Hanover properties is not presently a part of any proposed use for the abutting property.

Mr. Schneider reported that the developer has been cooperative with the town and abutters. They agreed to an Independent Peer Review for stormwater management and environmental issues.

Mr. Schneider reported that suggested conditions are:

- 20 affordable units
- Installation of sidewalks along their property (c-1.1)
 - Argyle Court to the Calicaco property
 - Zeboski property to the Elks building

Mr. Schneider noted that if the application is approved it is still contingent upon further Massachusetts Department of Transportation (MassDOT) review. He also pointed out that the applicant currently has an open case with the Conservation Commission.

Mr. McLeod asked about the Mass DOT review. Mr. Marinelli stated that the project will require an access permit from Mass DOT.

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

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

Mr. Moriarty made a motion to APPROVE the request for a SPECIAL PERMIT for Case #3443.

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:

- 20 affordable units will be provided
- Installation of sidewalks along their property as shown c-1.1 of the plans.

- Argyle Court to the Calicaco property
- Zeboski property to the Elks building
- Contingent upon favorable action by the Conservation Commission
- Contingent upon favorable action by Mass DOT.

The motion was seconded by Mr. Denizkurt. Motion PASSED 4-0.

3. Case #3447- The petitioner, Frank & Peggy Mullaney, for property located at 38 Driftway Road also shown on Weymouth Town Atlas sheet 3, block 2, lot 10, 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 a 5,062 SF parcel of land with a single family home. Petitioner seeks to remove the home and foundation and rebuild a slightly larger house providing off street parking for 4 vehicles and slightly extending into the side yard setback.

This is a continuation of the hearing held on May 26, 2021.

Attorney Gregory Galvin appeared before the Board along with the applicants, Mr. and Mrs. Mullaney. Mr. Galvin reported that the applicants worked with their architect to incorporate changes as suggested by neighbors. He reviewed those changes which include moving the house back two feet, reducing the deck by two feet, and lessening the left side (facing the property) yard set back encroachment by not going past where the existing deck is located. Mr. Mullaney needs an elevator which is what is driving the need for a larger house.

Mr. McLeod stated that three emails were received as follows:

- Exhibit #1 - letter Francis Araujo 6/15 and email from Francis Araujo dated 6/16/2021
- Exhibit #2 - Willse email
- Exhibit #3 - Mary O'Donnell email

Mr. Moriarty stated that this is a good opportunity to make improvements to the neighborhood. However, he stated he is not willing to vary the westerly lot line as it is too close.

Mr. Denizkurt remarked that the emails and letters are not in favor of the application. He commented that he thinks the project is too big. He did note that the revised plan does not further encroach on the westerly side.

There was discussion about pushing the porch back without further encroachment.

Mr. Diem asked if the setbacks include the roof overhangs.

Mr. Galvin replied that the roof overhangs are not included as that is not required.

Mr. Diem suggested that the applicant look at building so that a special permit is not required.

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

Jimmy McGee, 37 Canacum Road, expressed concerns about losing his view of the ocean. He also expressed concerns about the effects of the project's construction on the neighborhood.

Olga O'Brien, 25 Cliff Street, asked that Mr. McGee's view not be impeded. She asked how high the deck will be? Mr. Mullaney stated that the current garage height is 7.4 feet to 8.4 feet, so the deck will be at 8.4 feet.

Linda Willse, 36 Driftway, stated that she thinks the 10 foot setback should be maintained for a new build. She stated that she is concerned about possible drilling and erosion.

Mr. Galvin stated that there will be no need for excavation.

Ambrosio Araujo, 42 Driftway, stated that the project should stay within the 10 feet setback.

Kevin O'Brien, 25 Cliff Street, stated that his concern is that although a neighbor can plant a tree that will block a view, in this case the Board would be granting a permit to take the view by building the new building.

Michael Skinner, 45 Canucum Road, asked how many people will live in the house. Mr. McLeod stated that this is not relevant. Mr. Skinner stated that he is asking the question because the applicant is saying that the house is too small for them. He stated that this project will effect his view and property value. He stated that this is a cottage community with smaller houses. He also stated that others have rehabbed homes in the neighborhood and stayed within the existing footprint

Mr. Galvin brought a picture to the chairman which was marked Exhibit #4.

Mr. Mullaney stated that they have hired someone to look at water runoff as they will need to go before the Conservation Commission.

Mr. McLeod reminded Mr. Galvin that there are only four members present this evening and he has the option to continue. Mr. McLeod also noted that the member not present will be able to watch the proceedings prior to the next meeting and be able to vote.

Mr. Galvin request that the hearing be continued.

Mr. Denizkurt made a motion to CONTINUE the request for a SPECIAL PERMIT to July 14, 2021, for Case #3447 and was seconded by Mr. Moriarty.

4. Case #3450- The petitioner, Nick Beaujean, for property located at 16 Paomet Road also shown on Weymouth Town Atlas sheet 4, block 34, lot 26, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit AND/OR Variance	120-40 Table 1	extension or change by special permit Dimensional requirements
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The subject property is 3200 SF parcel of land with two single-family dwellings located on the property. Petitioner seeks to convert the legal, single-family residences into one duplex.

Mr. Schneider reported that he has not heard from the applicant but noted that with the change back to in person there could have been confusion. He suggested continuing the hearing to the July meeting and he will contact the applicant.

Mr. Moriarty made a motion to CONTINUE the public hearing until 7/14/2021 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

New Business:

1. Case #3449- The petitioner, Justin Ryder, for property located at 734 Pleasant Street also shown on Weymouth Town Atlas sheet 35, block 444, lot 36, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance	Table 1	Dimensional requirements - minimum lot size; rear yard set back
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The subject property was part of a 3-lot subdivision with each lot having a minimum of 25,000 sf. Petitioner seeks to subdivide the land contested in land court leaving the lot with a partially constructed home with 21,942 SF and a contested lot of approximately 3,065 SF.

Mr. Moriarty made a motion to open the public hearing on Case #3449 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

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

Attorney Gregory Galvin appeared before the Board on behalf of the applicant along with the applicant, Justin Ryder, and also Ken Ryder. He stated that he believes that

a letter sent from the town's solicitor to the Board is out of line in that he is stating that the applicant has not proven the case for a special permit before there has been a presentation.

Ken Ryder stated that the deed and the plan for the purchase say 81,000 SF. The Town of Weymouth atlas says 81,000 SF. The plan on record when he bought it is from 1956 says endorsed by Weymouth Planning Board and recorded at the Registry of Deeds which shows 81,000 SF. He added that he respects Attorney Callanan's opinion but would like to have the opportunity to explain and present evidence to the Board. He stated that the direct abutting parcel got nine variances for the same thing.

Mr. K. Ryder stated the land in question on this application was changed by a town employee in 2009, based on a note from the town's engineer dating back to 1925 that they walked the property and pointed to it. Mr. K. Ryder stated that there are no bounds on the property, so he hired an independent surveying company in 2018. He stated that there was a meeting at DPW to discuss the situation but the neighbor never showed. In December 2018, Mr. Hoyt, working for the neighbor, discussed potential solutions with the applicant. According to Mr. Galvin, after this meeting, he never heard from the neighbor or his representative again until an appeal in 2019 of a Conservation Commission ruling was filed.

Mr. K. Ryder stated that they rehabbed the historical house on the property. After the house on this property was completed, Justin Ryder, the property owner, received a letter from the above-mentioned neighbor seeking \$180,000.

The abutter filed a lawsuit in June of 2020 to challenge the abutting lot line based on the 2009 change that a town employee made using the note from 1925. Mr. Galvin referenced the Nichols plan recorded in 1956 and the deeds on record that were submitted to the town for approval by planning department.

Mr. Galvin gave further details about the land the filing for lis pendens. He pointed out that even before COVID-19, the courts were slow; now they are even slower. He stated that this lawsuit could take years. If Mr. J. Ryder were to lose, his lot would be approximately 3,605 SF smaller than the required 25,000 SF.

Mr. Galvin stated that there is an intermittent stream that is on the abutter's property. He reported that the applicant claims that the sloped land is owned by him. The hardship created by Mr. Flaherty is such that the Board has the proper criteria to grant the variance that Mr. J. Ryder is requesting to separate the triangular area and noted as unbuildable land. Mr. Flaherty's lot on that side is 70,000 SF so the 3000 SF has no effect on it.

Mr. McLeod identified the documents submitted by Mr. Galvin for the record as follows:

- JEM markup
- McGrath 2009 survey

- Nichols Plan
- Letter from DPW
- Picture of slope
- Final plan dated 2016

Mr. Moriarty made a motion to CONTINUE the public hearing until 7/14/2021 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

2. **Case #3452-** The petitioner, James Calabro, for property located at 234 River Street also shown on Weymouth Town Atlas sheet 3, block 2, lot 34, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance - Table 1 Dimensional requirements - maximum lot coverage

The subject property is a 5,485 SF parcel with a two family home. Petitioner seeks to construct a single story garage.

Mr. Moriarty made a motion to open the public hearing on **Case #3452** and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

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

Joseph Hannon, engineer, appeared before the board on behalf of the applicant who was also present. He stated that they would like to build a 26'x26' garage which will increase the lot coverage by 4%. The lot coverage allowed is 30%, the current is 26%, and the proposed is 34%.

Mr. Hannon stated that the applicant will be going before the Conservation Commission.

Mr. McLeod stated that it would appear that Mr. Calabro is creating the hardship, not the shape, topography, or soil conditions.

Mr. Diem stated that the applicant is entitle to build 456 SF by right.

Mr. Hannon stated that the applicant has measured their vehicles and determined the need to be 26 feet deep.

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

Ellenor Pompeo, 10 Cliff Street, stated that she doesn't want the structure there because of the view.

James Calabro, 234 River Street, stated that there is no storage on this two-family lot. He stated that he would park two vehicles and store other items.

Mr. Moriarty made a motion to CONTINUE the public hearing until 7/14/2021 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

3. Case #3453- The petitioner, Laura Bergemann, for property located at 58 Old Country Way also shown on Weymouth Town Atlas sheet 17, block 226, lot 31, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance	120-54	Confinement of accessory uses to rear yard
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The subject property is a 9,467 sf parcel with a single family home. Petitioner seeks to replace an existing non-permitted shed in side yard.

Mr. Moriarty made a motion to open the public hearing on Case #3453 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

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

Ms. Bergemann appeared before the Board with a request to replace a shed on her property. The shed was built without a permit by a previous property owner.

Mr. Schneider stated that this lot borders three streets and the lot is oddly shaped. The shed will be built on a level, stone pad.

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

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

VARIANCE

Mr. Moriarty made a motion to APPROVE this application for a variance on Case #3453 because the applicant has shown the hardship due to the odd shape of the lot and that it borders three streets. 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 motion passed 4-0.

Other Business

1. Minutes: 4/14/2021

Mr. Moriarty made a motion to approve the minutes from 4/14/2021 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

2. Upcoming Meetings: July 14, 2021

3. ADJOURNMENT

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

Approved by:

~~Mr. Denizkurt, Clerk~~


Jonathan Moriarty, Clerk

Date

8/11/21