

BOARD OF ZONING APPEALS (BZA)  
RECORD OF MINUTES AND PROCEEDINGS  
Wednesday, October 6, 2021 - 7:00 p.m.  
McCulloch Building - Mary McElroy Room  
182 Green Street, Weymouth, MA 02191

RECEIVED  
TOWN OF WEYMOUTH  
CLERK'S OFFICE  
2021 NOV 18 PM 3:53

**Members Present:** Richard McLeod, Chairman  
Kemal Denizkurt, Vice-Chairman  
Jonathan Moriarty, Clerk  
Brandon Diem  
Carsten Snow-Eikelberg

**Also Present:** Robert Luongo, Planning Director  
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. 182 Green Street, Weymouth, MA 02191 and explained the procedures that would be followed to the people present.

**Old Business:**

1. **Case #3449 WITHDRAWN BY APPLICANT-** The petitioner, Justin Ryder, for property located at **734 Pleasant Street** also shown on Weymouth Town Atlas sheet 35, block 444, lot 36,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 three-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.

**New Business:**

1. **Case #3461-** The petitioner, Gerald O'Brien, of 15 Thompson Road, has filed an application to Appeal a decision by the Inspector of Buildings for property located at **450 Green Street** also shown on Weymouth Town Atlas sheet 13, block 121, lot 16, located in the R-1 District. The petitioner is seeking to:

Appeal:	Appeal of a decision of the Inspector of Buildings (Article XXIV, Section 120.119A(1))
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The petitioner seeks to have the Board of Zoning Appeals annul the decision of the zoning enforcement officer, make a determination that the premises may only be

used for those uses permitted as of right in the R-1 district because any prior non-conforming status has been lost by abandonment and direct the Building Inspector to enforce the provisions of the R1 district through injunction and the levying of daily penalties.

Mr. Moriarty made a motion to open the public hearing on **Case #3461** and was seconded by Mr. Denizkurt. **UNANIMOUSLY VOTED.**

Mr. McLeod informed those present that this is not a request for a special permit or variance. He stated that this is an appeal of a decision made by the Town's Inspector of Buildings.

Mr. McLeod disclosed that he was familiar with Attorney Mackin's parents. He reported that he did not believe that this would influence his ability to make an objective ruling. There was no objection from the applicant or any one present.

Mr. Diem recused himself as he is familiar with the case.

Mr. McLeod informed the petitioners of their right to ask for a continuance as there will only be four members present this evening. If they go forward, they will need to get all four votes whereas if they have a full board, they will need a 4/5 vote. Mr. Mackin stated that his clients will go forward with four members.

Attorney Kevin Mackin appeared before the Board on behalf of the petitioner, Gerald and Kimberly O'Brien. Mr. Mackin reviewed the facts of law for this request.

Mr. Mackin reported that the previous Building inspector, Jeff Coates, had reviewed the property use in 2002 when the property was sold to Mr. Mannix. The use was to be for funeral-related storage of limosines in the garage and outdoor storage was to be discontinued. Mr. Mackin stated that this was the use from 2002-2009.

Mr. Mackin stated that in 2009 the property was purchased by Mr. Zona. In 2010 his request for a special permit to build second floor office space for his business was approved. The minutes reflect a comment made by Mr. Zona that the business would not change, and there would be no more tenants. Mr. Mackin stated that Mr. Zona has lived at 450 Greene street in contradiction to the special permit granted in 2010. The Town's Assessor does not list a bathroom, bedroom, heating, or a kitchen nor is there a building permit to add these.

Mr. Mackin stated that they asked the Town's Building Inspector, Mr. Richards, to determine if Mr. Zona is living there legally. Mr. Richards reported that Mr. Zona is living there legally. Mr. Mackin stated that they disagree with this decision.

Mr. Mackin stated that he questions former Building Inspector, Mr. Coates', right to determine property use, and that regardless of this, Mr. Mannix abandoned the building contractor's operation in 2002.

Mr. Mackin stated that the property's current uses include storage for rent, an auto detailing shop, Zona motor sports, and an embroidery shop. He continued that these are additional uses (not accessory uses in an R-1 zone) that should have come before the Zoning Board for special permits.

Jeff Richards, Weymouth's Building Inspector, reported that he did receive the request from Attorney Mackin to review the zoning on the site of 450 Greene Street for its applicability to the pre-existing non-conforming condition on the site. In his review he looked at the 1940 by-laws as this property, since 1947, has been approved for service use and this has not changed.

He reviewed what the site is allowed to be used for and stated that it is the same as a strip mall with tenants moving in and out over the years. He stated that in 2008, there was open lot storage of limosines, external to building. He pointed out that Mr. Coats' letter was a recommendation to the then-existing tenant saying that this is what we want on the site but this does not carry with the property.

Mr. Richards stated that he reviewed a 2013 picture of the site which showed similar activities as previous owner. Thus there was never a loss of service enterprise and nothing on site is illegal. He added that he inspected the site and the 24 hour use is in keeping with previous limosine service, storage yard, and other service use. He determined that the current use is consistent with prior uses and are allowed service enterprise. He stated that there have been no changes requested after 2013 but that the use has been living/working for 24 hours per day.

Mr. Mackin reported that there is a three-pronged test to determine use prior to existence of zoning. He questioned how the current use is in keeping with a residential (R-1) district.

Mr. Mackin pointed out that Mr. Richards did not address the question of residences on the site. He added that the property is intensely used.

Mr. Gregory Galvin stated that he represents Mr. Paul Zona, current owner of 450 Greene Street. He reported that Mr. Zona purchased the property in November of 2009. At that time there was a significant commercial aspect to the site which included "beds" for employees to use if needed to stay over night. He added that Mr. Zona has a hobby of race cars for personal use which are stored inside one of the garages. Mr. Zona also has a hobby of reclaiming old vehicles.

Mr. Galvin stated that he did not believe that the non-conformity of the property stopped existing. He added that it was reduced.

Mr. Denizkurt asked Mr. Richards if he accessed the second floor. Mr. Richards stated that he did not access the 2<sup>nd</sup> floor as this was a certificate of occupancy. He noted the 1<sup>st</sup> floor service use. He further asked if the town has records indicating of this

being used as a residence. Mr. Richards stated that there is no record of it being used as a residence. He added that 24 hour operation is allowed on the site; he noted that at the time of the inspection, he was not there to determine whether there was a residence.

Mr. McLeod informed those present that this is a legal issue as to whether the Building Inspector's decision should be upheld by this Board or overruled by this Board.

Mr. McLeod stated that although he understands that people may have comments and questions, this is not the forum for that. He pointed out that each attorney has given a detailed presentation. He added that this is not a vote of popularity. The issue is whether the decision made by the Building Inspector is correct based on the Town's regulations.

- If the Board rules that the building inspector did not make the correct decision, the applicant must apply for a special permit.
- If Board rules that building inspector did make the correct decision, the petitioner has the right to appeal the decision in Land Court.

John Moore, 429 Greene Street, stated that there have been no beds in that building since he has lived there (since 1967). He added that the non-conforming use has been broken; the main gate is shut and locked at night, all night. This is not 24 hour use. Mr. Moore continued that he is a retired firefighter in North Weymouth and is concerned about safety; the way the property is being used is not safe for the neighborhood.

Mr. Luongo stated that this is not about legality, it is about interpretation of the Zoning. The question is did the Building Inspector interpret the zoning ordinance correctly.

Mr. Luongo further stated that if there is residential use on second floor and this was not originally residential part of the property, this would now be considered mixed-use.

Jerry Mackin, 44 altura Road, stated that he believes that this property has been turned from an idyllic place to a junk yard. He added that the Building Inspector cannot change zoning, or issue a special permit

Kathy Kelly, 445 Green Street, expressed concern about this site and that no one has ever lived there. She added that the site has car engines revving. She continued that there is a dog groomer business, fire trucks stored, a car washing business, and other car storage.

Mr. Denizkurt asked if the property owner is paying residential tax rate. Mr. Galvin indicated that he is not aware that it is taxed separately for residential use

Attorney Mackin pointed out that when Mr. Zona bought the property, the second floor did not exist. Byright use is non-conforming construction business which has not been in operation.

Mr. Richards reported that the non-conforming 24 hour use has never been prohibited and is still protected.

Mr. McLeod asked Mr. Richards if the resident is shown to be living on the property, would that change his decision. Mr. Richards stated that it would not change his decision.

Kevin Kelly, 445 Greene Street, state that he bought the house from his mother. He pointed out that the property in question did not have water; they had to use water from 445 Greene Street.

Mr. Mackin pointed out that in doing research, there is not a certificate of occupancy for residential use.

Mr. Luongo stated that the next Board of Zoning Appeals meeting is on October 27, 2021 in this room. At that point, the public hearing will be closed and a decision made by the Board. He added that the meeting will not be advertised again.

Ms. Snow-Eikelberg made a motion to CONTINUE Case #3461 until October 27, 2021 and was seconded by Mr. Moriarty. Motion passed on a 4-0 vote.

**2. Case #3462** - The petitioner, Edward Woforth, for property located at **125 Lake Shore Drive** also shown on Weymouth Town Atlas sheet 26, block 339, lot 15, located in the R-1 & Watershed Protection Districts. 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
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The subject property consists of a 4,300 SF parcel with a vacant blighted single family home. Petitioner seeks to expand existing structure to cover footprint and add second floor.

Mr. Moriarty made a motion to open the public hearing on **Case #3462** 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.**

Mr. Woforth appeared before the Board. He stated that he is looking to add a second floor to the property. He added that the property is not on Town land. He pointed out that he had an instrument survey done.

Mr. Wolfort stated that the proposed plan would increase the dwelling from 800 SF to approximately 2000 SF.

Mr. McLeod asked if the construction will further encroach on the setbacks or extend beyond the existing footprint.

Mr. Wolfort stated that the proposed plan would not exceed the existing footprint.

Ms. Snow Eikelberg asked what the proposed height will be. Mr. Wolfort stated that it will be about 25 feet from grade and will fall within town requirements.

Mr. Diem asked if there is an elevation plan. Mr. Wolfort reported that he did not have them with him.

Mr. McLeod asked the applicant if he is able to submit an elevation plan. Mr. Wolfort stated that he could submit them but is concerned about having to wait.

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

Mr. Wolfort requested a continuance.

Mr. Moriarty made a motion to CONTINUE the request for a SPECIAL PERMIT until October 27, 2021 for **Case #3462** and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

**3. Case #3463** - The petitioner, Richard Burns, for property located at **28 Reservoir Run** also shown on Weymouth Town Atlas sheet 48, block 508, lot 103, located in the R-1 & Watershed Protection Districts. 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 consists of a 15,001 SF parcel with a single family home. Petitioner seeks to exchange a portion of 28 Reservoir Run with 38 Reservoir Run. The proposed reconfiguration would reduce the lot width at the building line.

Attorney Kevin Mackin appeared before the Board on behalf of the applicant and requested a continuance until October 27, 2021.

Mr. Moriarty made a motion to CONTINUE the request for a SPECIAL PERMIT until October 27, 2021 for **Case #3463** and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

**Other Business:**

1. **Minutes: 8/11/2021, 8/25/2021, 9/8/2021**

Mr. Moriarty made a motion to ACCEPT the Minutes from 8/11/2021, 8/25/2021, and 9/8/2021 and was seconded by Ms. Snow-Eikelberg. UNANIMOUSLY VOTED.

2. **Next Meeting: October 27**

3. **ADJOURNMENT**

Mr. Moriarty made a motion to adjourn at 8:30 p.m. and was seconded by Mr. Denizkurt. VOTED UNANIMOUSLY.

Approved by:  
Mr. Moriarty, Clerk



11/17/2021  
Date