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

**November 17, 2021 7:00 p.m.
McCulloch Building - Mary McElroy Room
182 Green Street, Weymouth, MA 02191**

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 **Case #3445 - WITHDRAWN BY APPLICANT-** The petitioner, Weathervane Massapoag LLC, for property located at Massapoag Street also shown on Weymouth Town Atlas sheet 44, block 504, lots 8, 9 & 40 and sheet 44, block 505, lots 1 & 2, located in the R-1 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit	120-63	Planned Unit Development
Variance		Planned Unit Development

The subject property is 6.9 acres of land mostly vacant with two single family dwellings located on the property. Per section 120-119(3), petitioner is seeking a variance from the 25 acre minimum required for a planned unit development. Petitioner seeks to construct 8 single family homes under the PUD provision.

2. **Case #3457 -** The petitioner, Charles Parnell/ Calpine Fore River Energy Center, LLC, for property located at 9 Bridge Street also shown on Weymouth Town Atlas sheet 6, block 64, lot 1, located in the I-2 District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit	120-37A	special permitted uses
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The subject properties consist of a 57 acre parcel with a combined cycle electric power plant. Petitioner seeks to install a Lithium Ion Battery Storage System to store electric energy being charged during non-peak demand periods and provide clean electric energy during seasonal peak demand periods.

Mr. McLeod informed those present that this case was advertised to re-open the public hearing in order to accept additional information.

Mr. Denizkurt made a motion to re-open the public hearing on Case #3457 and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Richard Novak, Charlie Parnell, and John Sutter appeared before the Board. Mr. Novak reported that Mr. Sutter, from Lummis, is the author of the risk assessment commissioned by the Weymouth Fire Department (WFD).

Mr. Novak gave an overview of the request for a special permit. He pointed out that Calpine has agreed to additional screening in the form of arborvitae trees and has agreed that the final permits will require WFD approval of all design and suppression systems.

Mr. Parnell, general manager of the Fore River Energy Center, reviewed the safety of the community, the protection of the environment, and the reduction of carbon emissions.

Mr. Sutter reviewed the document titled "Fire Risk Assessment for BESS at FREC".

Deputy Chief Justin Myers stated that the fire department is neither for nor against this project. Their concern is the department's ability to provide for the safety of the site. He reported that WFD has reviewed the risk assessment and feels that they understand that there is a risk, but that risk isn't greater than the risks in the area that are there today and that WFD is capable of working within and taking care of those risks.

Mr. McLeod asked if there was anyone present who would like to speak and received the following responses.

District 1 Councilor Burga spoke before the Board. Councilor Burga reported that residents of Montaquoit and Bluff Roads have been reaching out to her for past few years. They have expressed to her their concern that their neighborhood is already over-burdened with a lot of environmental and noise impacts.

Councilor Burga requested additional information as follows:

- Risk to pipeline
Mr. Sutter stated that the pipeline is buried three feet underground and the project will not be placed on top of it. He reported that if there is a fire in the battery storage system, the pipeline would not be affected as it is buried under the ground. An explosion will take the path of least resistance and there would be no crater. He clarified that in the accident in Arizona, the firefighters were injured when doors of the facility were blown out.

Mr. Novak reported that the pipeline belongs to Algonquin who has an easement through the property. If there was a need, Calpine would contact Algonquin to have the pipeline shut down.

Mr. Sutter stated that the request for this special permit is the first step in a multi-step process. If this project were approved, it would still need to go before Weymouth's Licensing Board for further review of risk to the pipeline.

Mr. Sutter reported that the containers with the batteries will be on concrete pads.

- Sound impact from the air conditioning units

Mr. Novak stated that the noise report speaks for itself and indicates that the ambient noise level will not be increased at all.

Councilor Burga stated that the noise report was done prior to project installation.

Mr. Novak reported that the noise report anticipates this level of noise.

Mr. Parnell reported that their noise levels are limited by Massachusetts Department of Environmental Protection (DEP).

Mr. Parnell stated that there is an air-monitoring station and he does not know if it has a noise-monitoring component to it. He reported that if there is a noise complaint, then that is investigated. He pointed out that they do have a noise-monitoring device to investigate complaints in order to mitigate the problem.

Councilor Burga asked if there is consideration to put in noise-mitigation.

Mr. Novak stated that they will plant arborvitae trees for both visual and noise but stated that they did not want to put in mitigation for speculative impacts.

- Risk to the Fore River from storm water run-off from fire suppression

Mr. Sutter reported that the site is graded towards a concrete tank that is below grade and there is ability to store a certain amount of water within that system before it reaches overflow and goes into the river. If the tank reaches overflow, Calpine would call in somebody who would have some sort of storage tank that could pump out that containment vessel and take it off site for treatment.

Mr. Parnell stated that when fighting this type of fire, the water is more of a mist in order to keep the heat and smoke down so it's not like a steady stream or a gush of water. The containment tank holds approximately 650,000 gallons of water with a surge capacity of 290,000 gallons.

- Benefits to people of Weymouth (when is enough, enough)

Mr. Parnell stated that the batteries would provide convenient clean energy to Weymouth residents. He also stated that there is a 25-year agreement that gradually increases the amount of tax paid over time and is currently at \$4 million. This agreement comes up for renewal in several years.

Mr. McLeod asked if this battery storage system is not installed that there is a huge risk that his plant will shut down?

Mr. Parnell noted that he is not saying that the plant will shut down without this project but that it is a vital asset to New England. He stated that his point is that this project would give the plant a more solid future.

At-Large-Councilor Haugh echoed Councilor Burga's question of when is enough, enough? She responded to some of the rhetoric about the benefits of the battery story, this has always been an industrial zone, and the tax benefit. Councilor Burga pointed out that when the former coal plant was built almost 100 years ago, it provided approximately 75% of Weymouth's tax base, which in today's numbers would equate to about \$80 million. She concluded by stating that the town is not getting the benefits from adding more and more to the Fore River.

Mike Lane spoke before the Board. He stated that he is the environmental coordinator for the East Braintree Civic Association. He expressed concern about approving a project that has neither been built or designed.

Ms. Snow-Eikelberg asked what role specific manufacturers play into the fire-safety process. Mr. Novak reported that this questions is one of the reasons why it's a multi-step process. They will need to come back because the exact design of the system and whose batteries they are and how they're packed and what fire suppression is appropriate depends on the exact system design. The batteries and suppression system will be purchased from one manufacturer.

Retired firefighter John Moore, 429 Green Street, asked who pays for WFD trainings. Mr. Novak reported that Calpine pays for it but that the firefighters would be paid their town salaries while taking the trainings. He asked that Calpine subsidize the training so it isn't hurting the town's budget.

Mr. Moore expressed concern that the fire will be put out by steam but that the humidity can carry potentially hazardous chemicals.

Mr. Novak reported that there have been discussions about trainings and there will be further discussions if they get to the point of permitting.

Mr. Moore asked if this Board can hold off approving the special permit until the project has gone through all the Boards. Mr. Novak stated that this is not the way the zoning statute works. The permit must be issued first, with potential conditions, so that Calpine can continue the process.

Jeremiah Treanor, 82 Bluff Road, expressed concern that gates have been left unlocked which is an imminent safety risk, potential breakage to the containers, and noise mitigation as there is noise that goes off in the middle of the night.

Frank Singletonw, 60 Bluff Road, expressed concern that the technology for batteries is constantly changing.

Alice Arena, 6 Blueberry Street, stated a better job needs to be done in locating this type of storage. She added that there is legislation being proposed to give the ESFB control over anything under 35 megawatts.

Frank Burke, 93 Bluff Road, expressed concern that this area is already congested. He noted that the proposed legislation referred to by the previous speaker takes into consideration environmental justice, climate, and public health.

A resident of 109 Broad Street expressed concern that there continues to be more noise pollution and lack of safety allowed to be built in environmental justice zones. She stated that there should be enforcement of these zones and that the human aspect be taken into consideration.

Mr. Diem asked the applicant to review the process that would happen if this Board approved the project. Mr. Novak stated that the process could take up to 2 to 2 ½ years and that each step must happen prior to any construction.

Mr. Novak stated that there would be opportunity for additional public comment when the application went before Weymouth's Licensing Board.

Mr. Moriarty asked if the applicant is currently storing energy on the site. Mr. Novak responded that they are not. Mr. Moriarty pointed out that this request is then an increase of the intensity of the use.

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

Mr. Luongo stated that with the hearing closed, no more testimony will be entered into the record.

Mr. Moriarty made a motion to **DENY** the request for a **SPECIAL PERMIT** for Case #3457.

SPECIAL PERMIT

1. The specific site is **NOT** an appropriate location for such a use. It is currently a facility that operates to generate electricity, although it's a permissible use in an industrial zone, the site is not permitted to be a storage facility.
2. The proposed use of structure **WILL** be detrimental or adversely affect the character or future character of the neighborhood or town. Testimony has been given over the past two hearings stating the adverse effect on the neighborhood. The site is already a detriment to the neighborhood.
3. There **IS** a potential for nuisance or serious hazard to vehicles or pedestrians.
4. There are **NOT** 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 **NOT** be substantially served with the proposal.

The motion was seconded by Ms. Snow-Eikelberg. Motion **PASSED** on a 4-1 vote with Mr. Denizkurt opposed.

3. **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 St. 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))

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. Diem recused himself from the hearing. Mr. McLeod reminded the applicant that there are only four Board members on this case and the applicant needs a unanimous vote for approval.

Attorney Mackey reviewed the case thus far. He stated that under Chapter 40a Section 6, the pre-existing non-conforming use of the site as a builder's yard was abandoned when in 2001 then-owner Paul Mannix requested permission to run or operate a limosine service.

Mr. McLeod asked if from the day of Weymouth Trucking, has the site always been operated as a commercial site. Mr. Mackin stated that this has not been a residence nor has an occupancy permit been issued. The site has operated as a legal, non-confirming use.

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

Councilor Burga stated that she has met with neighbors and she noted that they had a long list of concerns regarding the property such as the storing of race type fule, Fire truck storage, and flood lights in the parking lot to name a few. She also stated that she had researched the tax rate and noted that the tax rate is much different than other businesses in North Weymouth.

Lori Hanson, 20 Thompson Road, stated that she has lived in the neighborhood for 43 years and what happened tonight is what has been happening in the neighborhood. She stated that in 2009 it was asked how the property would be used. It was reported that it would be a limosine company. She stated that the non-conforming use far exceeds what was okayed in 2009.

John Moore, 429 Green Street, stated that they are looking for good government.

Kathy Kelly, 445 Green Street, stated that prior to Mr. Zona owning the property, boat storage was not allowed on that property nor was the storage of PVC piping. She questioned why Mr. Zona has been allowed to do what he is doing on the property.

Mr. Moriarty pointed out, from the December 2, 2009 minutes, that Mr. Zona had reported that there would be no other tenants on the site other than the limosine service. He questioned how there is more than the limosine service.

Mr. Galvin responded that at the time, Mr. Zona was asking to add the limosine use to the already existing uses in place.

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

Mr. McLeod stated that the Board has no authority to issue an injunction or levy fines. He continued that as he sees it, the protected use of the building contracting storage was a service enterprise to the closest definition that we have. The property has continued uninterrupted commercial service enterprise or a business use through today. The building inspector was correct in his determination that the current owner did not abandon that lawful, pre-existing non-conforming use. However, the facts presented to this Board indicate that there is more than one business being operated out of this property. He stated that he thinks there is a different character or degree of the service enterprise being operated on this property. The current owner needs, in his opinion, to apply for a special permit to continue those multiple uses.

Mr. Moriarty made a motion on Case #3461 that the Building Inspector was correct in the determination that the the current owner did not abandon the lawful, pre-existing non-conforming use but was incorrect that there was not an intensified use of the site. The motion **PASSED+** on a 4-0 vote.

4. Case #3462 - The petitioner, Edward Wolforth, 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.

This is a continuation of a public hearing from October 6, 2021.

Mr. McLeod invited the applicant to step forward to present their case.

Attorney John Burke appeared before the Board along with Mr. Wolforth, the applicant.

Mr. McLeod stated that the Board has received the additional submissions and renderings concerning the project under construction.

Mr. Burke stated that although he was not at the previous hearing, he was aware that the Board had concerns about what the house would look like when completed. He noted that Mr. Wolforth had renderings prepared which have been submitted.

Mr. Burke stated that the previous structure on the property was a dilapidated home in need of substantial repair; the variance being requested is for an increase to the square footage of the living space. The second floor would have 900 additional square feet.

Attorney Burke submitted the following:

- Exhibit #1 pictures
- Exhibit #2 updated plans

Mr. Diem asked about the building height. Mr. Wolforth reported that the building height is 25 feet.

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 Ms. Snow-Eikelberg. UNANIMOUSLY VOTED.

Mr. Denizkurt made a motion to APPROVE the request for a SPECIAL PERMIT for Case #3462.

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. Moriarty. UNANIMOUSLY VOTED.

The following cases were not opened and no testimony was given. These cases will be heard on December 8, 2021.

5. **Case #3463** - The petitioners, Richard & Mary Burns and Ed & Jane Meehan, for properties located at 28 & 38 Reservoir Run also shown on Weymouth Town Atlas sheet 48, block 508, lots 103 & 105, located in the R-1 & Watershed Protection Districts. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance	120-48	change in shape
Variance	120-59.1	measurement across lots
Variance		minimum lot area
Variance		minimum lot width

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.

New Business:

1. **Case #3378 (MINOR MODIFICATION)** - The petitioner, Hoang Nguyen as Trustee, for property located at 1055 Main Street also shown on the Weymouth Town Atlas sheet 49, block 555, lots 27A and 27B, located in the B-1 and Commercial Corridor Overlay Zoning District. The petitioner is seeking to add balconies to the south and east facades.

2. **Case #3464** - The petitioner, New Ground Development, LLC, for property located at 59 Lake View Rd. also shown on Weymouth Town Atlas sheet 30, block 386, lot 1, located in the R-1 & Floodplain Districts. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit	120-38	Floodplain
Special Permit	120-40	extension or change by special permit
Special Permit	120-41	exception to limitation on restoration by special permit

The subject properties consist of a 7,379 SF parcel with an outdated single family home. Petitioner seeks to remove existing house and construct a new single family home in the same general area and rebuild the shed.

3. **Case #3465 - CONTINUED to 12/8** The petitioner, Kevin and Kathy Kelly, of 445 Green St., has filed an application to Appeal a decision by the Inspector of Buildings for property located at 450 Green St. 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.

4. **Case #3466** - The petitioner, **Jeff Reale**, for property located at **875 Washington Street** also shown on Weymouth Town Atlas sheet 30, block 380, lot 11, located in the Highway Transition District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit 120-22.8 A (2) service use in a pre-existing building

The subject properties consist of a 39,041 sf parcel. Petitioner seeks to reuse existing building to house a computer service business.

5. **Case #3467** - The petitioner, **Todd Stone**, for property located at **522 Bridge Street** also shown on Weymouth Town Atlas sheet 7, block 25, lot 10, located in the NCD District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance Height

Variance FAR

The subject properties consist of a 7,728 sf parcel with a abandoned service station. Petitioner seeks to demo existing building and erect a new 3 story multi use structure.

Other Business

1. Minutes: October 6, 2021

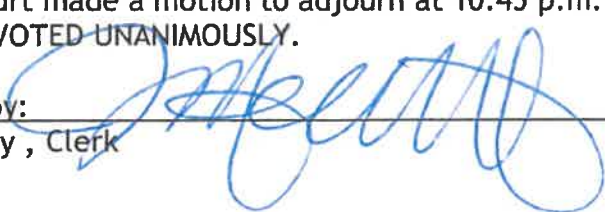
Mr. Denizkurt made a motion to approve the minutes from October 6, 2021 and was seconded by Mr. Moriarty. **UNANIMOUSLY VOTED.**

2. Upcoming Meetings: December 8, 2021

3. ADJOURNMENT

Mr. Denizkurt made a motion to adjourn at 10:45 p.m. and was seconded by Mr. Moriarty. **VOTED UNANIMOUSLY.**

Approved by:
Mr. Moriarty, Clerk



3/2/2022
Date