

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

June 14, 2023, 7:00 p.m.

Weymouth High School - Humanities Center
1 Wildcat Way, Weymouth, MA 02190

RECEIVED
TOWN OF WEYMOUTH
TOWN CLERK'S OFFICE
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Members Present: Kemal Denizkurt, Chairperson
Jonathan Moriarty, Vice-Chairperson
Brandon Diem, Clerk
Nicole Chin
Jon Lynch, Alternate

Not Present: Carsten Snow-Eikelberg

Also Present: Robert Luongo, Director of Planning
Eric Schneider, Principal Planner
Monica Kennedy, Assistant Planner
Richard McLeod, Town Solicitor

Recording Secretary: Janet P. Murray

Chairperson, Kemal Denizkurt, called the Board of Zoning Appeals meeting to order at 7:00 p.m. in the Humanities Center at Weymouth High School, 1 Wildcat Way, Weymouth, MA 02190, and explained the procedures that would be followed to the people present.

Old Business:

Members Present: Kemal Denizkurt, Chairperson
Jonathan Moriarty, Vice-Chairperson
Brandon Diem, Clerk
Nicole Chin

Not Present: Carsten Snow-Eikelberg

1. **Case #3503-** The petitioner, James Cugini, for property located at **1675 Commercial Street** also shown on Weymouth Town Atlas sheet 19, block 260, lot 6, located in the R-1 District. The petitioner is seeking to:

Variance table 1 height

The subject property is a 12,730 sf parcel of land with a two-family dwelling. The applicant seeks to construct a shed dormer turning the attic into a third story.

Mr. Moriarty made a motion to **REOPEN** the public hearing on **Case #3503** which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Cugini appeared before the Board.

Mr. Denizkurt stated that one of the board members who sat on Mr. Cugini's application is ill this evening and unable to attend. Although there are five people at the table, Jon Lynch is not on Mr. Cugini's board as he was not here for that meeting.

There will only be four members. Mr. Denizkurt noted that Mr. Cugini has the option to proceed this evening with a four member board, which would require a unanimous decision, or he can postpone it to the next meeting when there will be a five-member board. Mr. Cugini chose to go forward with four members.

Mr. Denizkurt clarified that the applicant is seeking a variance.

Mr. Cugini stated that he is just trying to get the work done.

Mr. Denizkurt asked if Mr. Cugini is proposing to add on to the attic.

Mr. Cugini stated that he wanted to build a wall to make his living conditions in his bedroom better as he has an injury. He stated that it is difficult to get out of bed with the rafters the way they are. He added that he is also trying to install solar panels which would take this two-family house off the grid. He continued that by pitching the roof he will get more panels.

Mr. Denizkurt stated that the criterion for a variance has to do with hardship and it has to do with the lot itself: the soil conditions, shape, and topography of the lot. He asked Mr. Cugini if he had any submission on this aspect, as far as the hardship that the lot presents.

Mr. Cugini stated that his hardship is that he injured his neck three years ago and had nerve damage. He stated that topographically his land is flat.

Mr. Denizkurt stated that there are specific criteria that must be used for hardship, which is in the Zoning Bylaw. He added that it is a much higher threshold than a special permit.

Mr. Denizkurt questioned if Mr. Cugini could use a bedroom on the other floors. Mr. Cugini stated that the house is a legal two-family and has three bedrooms. He continued that the attic is his bedroom, and the other ones are taken up by his granddaughter and his son.

Mr. Denizkurt stated that he does not believe that he has heard enough for a variance. He added that his other concern would be what is requested would actually add a third floor to the property and this would be precedent setting with others in town looking to extend off their roof and get a whole third floor where one's not supposed to be.

Mr. Moriarty asked how long the property had Tyvek.

Mr. Cugini stated that it has been this way for 15 years. He stated that he has been working on the house for more than 36 years. He pointed out that he has spent time customizing the interior.

The next step would be building the dormer and installing the solar panels. He noted that his contractor is Jim Roach. He stated that the house is tight and that he stripped off all the vinyl, clapboard, and the boards. He stated that he must button up the Tyvek all the time but it's tight. The proposed dormer has an eight foot ceiling height and will be a full level.

Mr. Diem stated that he agrees with the chairman about the additional story being taken over by the attic as living space. He does not believe a variance is necessary here to achieve the proper space; this seems more of an interior fit out problem than a zoning issue.

Mr. Diem added that if we were to approve this, a condition would need to be that the Tyvek be sided prior to any further permit being pulled for the dormer.

Mr. Cugini stated that it needs to be open because they are going to have to bring post all the way down from the ends.

Mr. Diem agreed that the area can be open for the work, but he noted that Tyvek is only allowed to be exposed for four months. It has been exposed for 15 years. The house will need to be re-skinned and vapor barrier added. He continued that it has been detrimental to the neighborhood for the past 15 years seeing that un-sided as it is.

Mr. Schneider stated that the town did not have any comments. He added the Board has given an accurate assessment of the request and the conditions at the property.

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

Mr. Denizkurt stated that the Board has reservations about this application and has not heard enough facts to support a variance. He informed the applicant of his options given that there are members with concerns about the application.

Mr. Cugini asked about a special permit. Mr. Denizkurt explained that based on the nature of what is proposed, a variance is what is needed for this application, not a special permit.

Mr. Denizkurt suggested that Mr. Cugini look for assistance from the town about his options.

Mr. Cugini requested to withdraw his application without prejudice.

Mr. Moriarty made a motion to withdraw the application for Case #3503 without prejudice which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

2. **Case #3497-** The petitioner, Raymond D. Jennings, III, for property located at **550-560 Washington Street** also shown on Weymouth Town Atlas sheet 29, block 330, lot 3, located in the B-1, Commercial Corridor Overlay Districts. The petitioner is seeking to:

Special Permit 120-25.15B Commercial Corridor Overlay
District special permit

The subject property is a 74,100 sf parcel of land with a single-family home and a 1,500 sf restaurant. The petitioner seeks to demolish existing structures and build a new structure containing 36 residential units with a 3,000 sf restaurant on the ground level.

Members Present: Kemal Denizkurt, Chairperson
Jonathan Moriarty, Vice-Chairperson
Brandon Diem, Clerk
Nicole Chin
Jon Lynch
Not Present: Carsten Snow-Eikelberg

Mr. Moriarty made a motion to **REOPEN** the public hearing on **Case #3497** which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Denizkurt stated that one member of the Board was not available this evening. He stated that Mr. Lynch was present at the previous meeting, and using the Mullin Rule, he is able to sit on this case.

Mr. Jennings agreed to have Mr. Lynch sit on the Board.

Mr. Moriarty made a motion to open the public hearing on **Case #3497** which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Jennings stated that he is the petitioner and an attorney with offices at 775 Washington Street in Weymouth. He gave a recap of the project thus far.

Eric Schoumaker, McKenzie Engineering Group discussed the site augmentations that occurred and how they improve the site by going to a single building instead of two. The latest plan set has a revision date of May 24, 2023. The site plans were revised since the meeting on April 5, 2023.

He noted the following revisions:

- Architectural changes to the building footprint which eliminates Building B
- Building B is replaced with a bituminous concrete parking area with 17 parking spaces, including one van accessible space and one handicap accessible space
- Addition of an ADA compliant walkway to the rear entrance of the building

- A series of stairs and cement concrete pads has been added along the northern face of the building from the lower parking area to allow pedestrian access to that second floor entrance
- At the northern corner of the building has a corner cut out of the structure that allows for them to pull the roadway up to the upper parking area inwards in the site
- Easternmost curb cut width on Washington Street has been increased to 24 feet that will allow for two-way traffic as well as fix the concern about the dead end turning area and trouble with traffic flow
- Dumpster pad has been moved to the north on the other side of the entrance to the first level parking garage
- Grading and drainage design was revised to account for this new upper level parking area which is roughly elevation 117 to 118 while the existing grade in that area is about 118 to 119
- A series of catch basins and drainage manholes will convey the stormwater from the upper level parking area down to the subsurface infiltration system.
- Revisions have been made to the location of the utility connections in the building

Mr. Schoumaker stated that they received an interpretation of section 210-25.17 B about the Commercial Corridor Overlay District (CCOD) dimensional requirements and setbacks which allows for an additional row of parking along the frontage of the site. An additional 10 parking spaces at the front of the site have been added while still maintaining the five foot landscape buffer from the property line. The rest of the front parking area simply shifted towards the building and into that landscaped area had been reserved on the previous plans.

A turning analysis for the Weymouth fire truck was completed and it confirmed that this layout with the extra parking spaces will not influence their turning movement in any way. By providing this extra 10 parking spaces at the front of the site, the parking count has been increased to 65 spaces.

Michael Schilling, McKinnon Associate, stated that there will be 28 units with 3000 square feet of restaurant space on the first floor along with some structured parking in the rear. The units will consist of 22 one bedroom and six studio apartments. The building is four stories and is above the 45 foot height limit but only on the street facing side because of our topography. There is a 14 foot grade difference from the street side of the brewhouse to the rear. The height on one half of the building is below the 45 foot height requirement based on the CCOD while the front section is above that at 47 feet which will require a height variance

Mr. Schilling stated that the biggest change to the floor plan is the roof plan. There will be two roof deck areas for tenants. He then reviewed the plans for the front and side of the building.

He stated that what they have shown is the current intent of what the landscape plan will be, but they do not have an updated plan with them because of the last minute change about the parking that only occurred on Monday. The landscape designers are working on the plan now and it will be prepared and ready before this application goes in front of the Conservation Commission.

Mr. Schilling stated that the four units on the top floor are two story penthouse style apartments and the access to these four units on the roof will be through the floor below.

Ms. Chin asked if there was a study to look at a mix of units in the current configuration.

Mr. Schilling stated that they are okay with going with the six studio apartments. He noted that with 10% of the units being affordable and some of the studios are more than 500 square feet, those could be deemed as affordable as well. This gives a different price point for what they can provide with regards to units and affordability.

Mr. Schilling stated in the back of the building by the elevator tower there is some extra space on every floor. He stated that this could be a public area; Mr. Jennings and his partners will consult with an interior designer about creating a hangout area.

Ms. Chin asked about where the restaurant's back of house area would be located.

Mr. Schilling stated that they expect that it would be adjacent to the front stairwell tower. He noted that there is also discussion about using the area in the structured parking section which is kind of a dead zone because of the parking configuration. They may put bike storage in there but then also utilize some of that space for walk in coolers for the restaurant.

Ms. Chin pointed out that there does not seem to be any space for louvers.

Mr. Schilling stated that Mr. Schoumaker has brought back the retaining wall so that it is back beyond the stairwell entrance. He noted that during the process of figuring out mechanicals, they may be able to adjust where that retaining wall is and bring it back a little bit farther so that they could get that ventilation out through that location.

Mr. Moriarty asked for the exact height measurement being sought on the southerly side of the building.

Mr. Schilling stated that the zoning usually speaks to the roof structure itself and the height to the top of the roof structure is 47 feet from average grade.

Mr. Diem asked about how they calculate the building height across the entire building.

Mr. Schilling stated that they have done it on all four sides; the front side and the left side are 47 feet. The south side and the right side are at 43-44 feet or below. This is due to the grade differential. The street side is at 47 feet. The south side which would be shown on the right hand side of the proposed front elevation from the high grade which is on the right side and the rear to the top of the actual stair tower is 46 feet. The roof structure is three feet below that. The back right hand corner is at 40 to 43 feet and the front stair tower is rising to the roof for secondary means of egress for the deck area.

Ms. Chin asked that the civil plans show that the canopy that goes around the front and north side of the building with the sloping columns have enough accessible space to egress into the main entrance.

Mr. Schilling stated that they can coordinate that.

Mr. Luongo asked if the proposed four penthouse units are on the part of the building that has three stories. Mr. Schilling confirmed that this is correct.

Mr. Luongo asked about the changes to the landscape plan with the additional parking spaces.

Mr. Schilling said that the only change is that the large green space that is in front of the building is getting smaller, but since it will not just be a grass area, they will make the landscape in that area more robust.

Mr. Luongo asked about the distance between the back of the parking lot and the sidewalk and how much planting in the area will you have.

Mr. Schilling stated that on the right side of the building there will be about 15 feet which will taper off to the intersection between the two sidewalks; the one that serves the parking area and the one that serves the front of the building.

Mr. Jennings stated that the rear of the lot is the one that is closest to the riverfront and is under Conservation Commission jurisdiction.

There was discussion about the exterior materials and design.

The Board asked for pictures of the proposed design.

Ms. Chin pointed out that the main entrance is shared by both the restaurant and the units at the front, which does not provide any indication that this is also an apartment building. She questioned if this design could be broken up to better delineate the two aspects of the property.

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

Mr. Jennings asked if he could get a sense of approval for the stories, height, and the overall project. He stated that he is amenable to coming back to discuss the materials and the overall look of the building.

Mr. Denizkurt stated that what is proposed is generally acceptable. He added that he does not have any issues with the variances, the number of units, or the parking.

Mr. Moriarty agreed and stated that he does not have any large objections and that the applicant has articulated the need for the variance with the change to one building. He stated that he would prefer to vote on it all at once instead of part and parcel. This would give the Board an opportunity to see the landscaping plan, materials, and the lighting plan as well.

Mr. Diem stated that he thinks that the design has progressed in a positive way. He likes the combination of the two buildings into one and how it is situated on the site compared to the previous design. The massing is much more thought through and he believes it benefits the overall look and feel of the building. He echoed the comment about reservations with the giant Hardy panels. He continued that he would like to see some examples.

Mr. Denizkurt pointed out that there is a memo from DPW Water and Sewer division as well as the Engineering division. He questioned if the applicant had received it. He stated that he did not think there was anything there that would be an issue.

Mr. Diem asked for a plan for the rooftop and the placement of the mechanicals.

Ms. Chin stated that the plans could show terminations of materials and trim pieces.

Mr. Moriarty made a motion to CONTINUE the public hearing on **Case #3497** to July 12, 2023, which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

3. **Case #3496- continued by the applicant to 7/12/23** The petitioner, NLTT, LLC, for property located at **217- 219 Washington Street** also shown on Weymouth Town Atlas sheet 20, block 275, lot 19, located in the B-1, R-1 Village Center Overlay Districts. The petitioner is seeking to:

Special Permit	120-25.3	Village Center Overlay District special permit use
Special Permit	120-25.9	Village Center Overlay District shared parking

The subject property is a 28,750 sf parcel of land with a vacant building that was the former site of a bicycle shop and car parts store. The petitioner seeks to remove the existing structure and construct a 3-story multi-use building with parking under and

on the first level, commercial retail space, and two additional stories of residential space totaling 27 units.

4. **Case #3502- continued by the applicant to 7/12/23** The petitioner, Pond Street Acquisitions, LLC, for property located at **505 Pond Street & 1537 Main Street** also shown on Weymouth Town Atlas sheet 61, block 639, lots 4 & 7, located in the B-1 District. The petitioner is seeking to:

Special Permit	120-25	(A), (B), and (C)
Special Permit	120-40	extension or change by special permit

The subject property is a 71,581 sf parcel of land with a 40,950 sf warehouse building that was previously Factory Paint & Decorating store and a 19,178 sf parcel with an unoccupied single-family dwelling. The petitioner proposes two buildings, 9,710 sf, and 7,916 sf, totaling 17,626 sf. The uses will include restaurant and retail operations, a drive-through lane, a mobile-order pick-up window, and a modest outdoor seating area. The remainder would be parking, vehicle aisles, & landscaping.

New Business:

1. **Case #3507-** The petitioner, Clear Lake LLC, Darragh Kealey, 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:

Special Permit	120-39	Continuation of a non-conforming use
AND/OR		
Special Permit	120-40	Extension or change of a non-conforming use by special permit

The subject property is a 26,020 sf parcel of land with an office and garage building. The applicant seeks to park construction trucks and dispatch them to job sites during the day, and store landscape and construction supplies to be used on the applicant's construction company jobs

Mr. Moriarty made a motion to open the public hearing on **Case #3507** which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Moriarty made a motion to waive the reading of the public notice which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Attorney Larry Mayo appeared before the Board on behalf of the applicant Clear Lake LLC, which is owned by his client, Darragh Kealey.

Mr. Mayo stated that the applicant owns an excavation business known as Kealey excavation. The business services the greater Boston area. It primarily performs site utility work. The company owns 11 trucks and other construction equipment some of which will leave the property in the morning and return in the evening for instance,

trailers, backhoe, skid steers, compressors, things of that nature. He would also operate his business office on the property and store limited quantities of work material. The materials to be stored at the property would be stone, pipe, gravel, tools, steel, steel rope, steel road plates, and miscellaneous granite curbs and concrete blocks. There would not be any hazardous material stored there on or above the property.

Mr. Mayo stated the applicant would use the first of the three bays for his own excavation business. He also intends to rent out the other two bays and some yard space to local contractors for similar use to his which would allow him to meet his monthly mortgage payments.

Mr. Mayo stated that there are currently several tenants on the property. All the existing tenants, both residential and commercial, will be required to vacate the property prior to Mr. Kealey taking ownership. The front portion of the building on Green Street will be used strictly as his business office.

Mr. Mayo stated that Mr. Kealey's proposal would provide a less intense and lawful use of the property which is beneficial to both the neighborhood and the town considering pending dismissal of litigation with the current property owner.

Mr. Denizkurt asked if there was an outreach meeting.

Mr. Mayo stated that there have been two outreach meetings with one about a week ago. He noted that there were about 20 neighbors present along with one city council woman. There were lots of questions asked and answered. He stated that the general tenor of the meeting was that this proposal appeared to be a good fit for the community from a commercial standpoint.

Mr. Mayo stated that the entrance from Green Street into the yard is a big wide open area. Mr. Kealey intends to install electronic rolling gates that would run side to side as opposed to swinging out into the street or back into the yard for convenient and safe access into and out of the property.

Mr. Kealey also agreed not to load his trucks early in the morning except in cases of emergency such as snowplowing as he does some municipal and state government plowing. He added that most of the yard will be used to keep his equipment safe on a nightly basis.

Mr. Mayo stated that his client has 12 or so registered vehicles, trucks, and trailers. He noted that not all of them move in and out of the property daily. He has three full time employees.

Mr. Kealey has agreed to back up his trucks into the parking spots in the evening, so in the morning, he does not create the beeping sound from commercial vehicles backing up.

Mr. Kealey has agreed that he will not store mulch, fertilizer, flammable or hazardous materials or other aggregates that might go airborne. Everything is going to be voluminous, something that cannot be moved easily by wind or other sorts of weather events.

Mr. Mayo stated that his client would like to start his vehicles at 5:45 a.m. to warm them up so that they can leave the site by 6:00 a.m. This would help with avoiding early morning traffic into Boston.

Mr. Mayo stated that they discussed lighting and that their plan would be to direct any lighting onto their property not towards neighboring properties.

Mr. Mayo stated that the Green Street building will only be used for an office; there will be no residential dwelling or retail business. Also there will be no signage on the lawn.

Mr. Denizkurt asked if the town had any comment.

Mr. McLeod, Town Solicitor, stated that as to the litigation relative to the town, the court granted summary judgment in favor of the town supporting the Zoning Board's decision that the site was not abandoned. He added that was the only issue on appeal. He stated that he believes that the other part of this litigation pertained to the private parties, and he believes they reached a settlement

Mr. Denizkurt asked if it was the town's position that the use was not abandoned and that this was upheld by the Land Court.

Mr. McLeod stated that this is correct. It is still considered a legal non-conforming use in an R-1 zone.

Mr. Moriarty asked the applicant to go over the kinds of equipment that is going to be stored primarily on the site by his business.

Mr. Kealey stated that he has two tri axial dump trucks, three six wheelers, excavators, compressors, one backhoe, and snowplow trucks. The trucks are approximately 12 feet high.

Mr. Kealey stated that two of the garage bays will be rented out to businesses like his company.

Mr. Schneider stated that Mr. Kealey would not be required to come before the Board for his tenants unless their proposed use were to deviate and become a different use on the property which would require a special permit.

Mr. Kealey stated that he does utility work like water and sewer excavation. Approximately 60 to 70% of the yard storage will be for his business. There will be no storage of boats or RVs. Also, he will not be storing any soft materials. He noted that he would not store rock/road salt as the towns he works for supply this. He continued that he does not do landscaping so there will be no loam, mulch, or fertilizer. He added that there could be gravel, crushed stone, and possibly concrete blocks stored in an orderly fashion in piles about 2-3 feet high. He stated that he will not be storing vast amounts of materials on the site.

Mr. Diem asked for more information on the vehicles coming and going from the site.

Mr. Kealey stated that there is enough space on the property for his equipment to pull on the site and then reverse back inside the parameters of the property.

Mr. Diem asked if there will be any sort of maintenance or vehicle washdown proposed for the for the site.

Mr. Kealey stated that by the time the trucks get back to Green Street, there won't be any debris left on the tires.

Mr. Diem suggested that this could be a possible condition that the applicant does have a wash out and that the tires are cleaned if they are dirty.

Mr. Moriarty asked about the dumpster and if it will be shared with the tenants.

Mr. Kealey stated that he would just have one. He stated that he does not generate much trash. He stated that most of the sites have the 40 yard dumpsters.

Mr. Lynch asked about the lighting plan.

Mr. Kealey stated that he intends to install softer, downward lighting.

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

Laurie Hanson, 20 Thompson Road, thanked the Board for the opportunity to address the case tonight. She stated that Mr. Kealey attended a neighborhood meeting with them. Ms. Hanson read a statement which was submitted as Exhibit #1.

Mr. Kealey stated that the six additional parking spots will be for the renters of the two bays.

John Moore, 429 Green Street, stated that Mr. Kealey presented everything that the neighbors wanted to hear and is grateful for this proposal. He asked about the size of the bays to be rented.

Mr. Mayo stated that they are approximately 5320 square feet.

Mr. Kealey estimated that the bays are 50 feet long by 30 feet wide and could fit something a little bigger than a dump truck.

Mr. Moore submitted a document which was marked Exhibit #2.

Mr. Schneider stated that this is coming up because of the way a question on the original application submitted was worded. This caused some alarm both with staff and the neighbors. Subsequent conversations with Attorney Mayo assured the town that that wasn't his intent with the application. He provided a document that was just provided as a clarification that was supplied to the neighborhood. That was the basis of the meeting last week.

Mr. Mayo stated that what is represented in the memo referenced by Mr. Schneider would supersede that particular provision that the community is concerned about. He reiterated that there are no renters. There's no retail business. It's essentially falling back if you will to its traditional commercial contractor use.

Mr. Moriarty asked about the exhibit submitted today and an email mentioned earlier.

Mr. Schneider stated that the Board received Exhibit #2 from the applicant's attorney, Mr. Mayo. The email referenced as Exhibit #1 was received earlier from the previous citizen.

Mr. Moriarty stated that he would like to be certain that the Board has a list of proposed conditions to review.

Mr. Mayo stated that he submitted this memo in advance of the meeting to detail who the applicant is and his intended use of the property. He added that Miss Hanson then summarized the meeting as a whole.

Mr. McLeod suggested that if public comment is exhausted this evening, that the Board consider closing the public hearing and taking this matter under advisement until the next meeting.

Councilor Burga, District One, thanked the residents that came out tonight and Mrs. Hanson who presented a very good summary of the presentation the other day. She stated that the neighbors are all very receptive to the applicant's use of the property. She stated that Mr. Kealy has agreed to professional courtesies such as not starting trucks at 5:00 a.m. She cautioned the Board to be very careful about other uses, specifically about the uses of the rental bays. She recommended that the language be very restrictive, specific, and well-designed about usage. She pointed out that this would help to prevent changes in future usage should the current applicant choose to sell.

Mr. Luongo stated that the board cannot be more restrictive in its decision based on the land court decision upholding the use as a construction yard.

Mr. McLeod stated that the land court decision was specifically related to the issue of abandonment. He reported that the residents made a claim that the commercial use was abandoned because the original use was a construction yard and since it changed into multiple uses, that use was technically abandoned. The court did not agree with that and granted summary judgment in favor of the town upholding the decision of the Board that said that commercial use was never abandoned; it continued. He stated that if the board decides to take this under advisement, he will send that part of the decision over to the board for review.

Mr. Luongo stated that he can also draft conditions for the Board to review.

Mr. McLeod pointed out that the documents to be reviewed do not restrict the Board's ability to add any additional conditions that are deemed fair and reasonable.

Mr. Moriarty made a motion to CLOSE the public hearing on **Case #3507** which was seconded by Mr. Lynch. UNANIMOUSLY VOTED.

Mr. Moriarty made a motion to take the request for a special permit for **Case #3507** UNDER ADVISEMENT until July 12, 2023, and was seconded by Mr. Lynch. UNANIMOUSLY VOTED.

2. **Case #3506**- The petitioner, FoxRock Libbey Realty, for property located at **90 Libbey Parkway** also shown on Weymouth Town Atlas sheet 33, block 433, lot 4, located in the POP District. The petitioner is seeking to:

Special Permit	120-76	Off-Street Loading Spaces Required for non-residential uses
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The subject property is a 369,129 sf parcel of land with a medical office building. The applicant seeks to amend special permits #3008 and #3069 to construct a loading dock on the southeast side of the building that fronts on Performance Drive.

Mr. Moriarty made a motion to open the public hearing on **Case #3506** which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Mr. Moriarty made a motion to waive the reading of the public notice which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Glen Doherty, civil engineer with Tetra Tech, appeared before the Board with Matt Goss, the applicant from Fox rock properties.

Mr. Doherty stated that they are seeking an amendment to the special permits for the medical office building located at 90 Libby Industrial Parkway at its corner with

Performance Drive. This amendment to the special permit would be to construct a loading dock on the southeast side of the building. He stated that the existing condition is a grass area. The building was constructed in the 1980s and has never had a formal loading dock facility. He stated that this would fulfill the requirement under the zoning ordinance section 120-76 for loading spaces required for nonresidential uses.

Mr. Doherty stated that the loading dock has been designed with two axis driveways, with one way circulation. The loading dock is a standard full four foot height dock adjacent to the building. He noted that it would also be a service area with a trash compactor and a recycling dumpster bin which would be enclosed, gated, and locked. He continued that on the Performance Drive side and the Libby side there would be solid six foot high screen cypress stockade fence. He noted that they do have landscape planting design planned to add to the buffer.

Mr. Doherty added that they have had a few meetings with Jim McGrath and the engineering department to talk about grading and drainage as well as with Owen MacDonald about the circulation with the one way driveways' ingress and egress.

Mr. Denizkurt asked about the timing of the current deliveries.

Mr. Doherty stated that it is predominantly early in the morning. He stated that currently they are taking deliveries to the main entrances. This will just make it more efficient.

Ms. Chin asked about changes to elevation.

Mr. Doherty stated that the loading dock itself is at the same height as the finished floor elevation of the building and there are a couple of retaining walls dropping down to get down to the street grade at Performance Drive.

Mr. Diem asked if there will be storage of vehicles in the loading bay.

Mr. Doherty stated that there will be no storage of vehicles; it is strictly for deliveries.

Mr. Denizkurt 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 on **Case #3506** which was seconded by Mr. Diem. **UNANIMOUSLY VOTED.**

Mr. Moriarty made a motion to APPROVE the request for a SPECIAL PERMIT for **Case #3506.**

SPECIAL PERMIT

1. The specific site is an appropriate location for such 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 no potential for nuisance or serious hazards 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 by the proposal.

The following condition will apply:

- Landscaping plan as submitted to Planning Department will be adhered to.

The motion was seconded by Mr. Diem. UNANIMOUSLY VOTED.

3. **Case #3500**-The petitioner, Ryder Development, for property located at 0 **Green Street** also shown on Weymouth Town Atlas sheet 11, block 119, lot 9, located in the R-1 District. The petitioner is seeking to:

Variance minimum lot size

The subject property is a vacant 70,500 sf parcel of land. Petitioner seeks to subdivide the parcel into three buildable lots each in excess of 23,000 sf.

Mr. Moriarty made a motion to open the public hearing on **Case #3500** which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Mr. Moriarty made a motion to waive the reading of the public notice which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Gregory Galvin, attorney with offices at 775 Pleasant Street in Weymouth, appeared before the Board on behalf of the applicant. Mr. Galvin noted that Mr. Ryder is present this evening along with the site engineer Alexandra Trakimas of SITEC development.

Mr. Galvin stated that this parcel is approximately 73,000 square feet and located in an R-1 Zone which could be subdivided to build single family homes on two lots. Each lot would have approximately 360 linear feet of frontage with roughly 100 feet depth.

Mr. Galvin stated that the applicant is seeking a variance in accordance with the statute based on the shape of the parcel and the topography. He pointed out that the applicant would like to subdivide the property into three lots; each lot would be more than 23,000 square feet. The variance from the bylaw would involve less than 2000 square feet per lot. He continued that the shape of the lot is extremely long with an overall linear frontage of approximately 735 linear feet. The depth is approximately 100 feet plus the topography from Green Street.

Mr. Galvin noted that there is an elevation in the topography as you go back along Merryknoll Road and then there is a substantial change in elevation in the middle of the parcel running from the rear of the lot to the front of the lot; it drops proximately 20 feet and then at the very end of the lot there is a substantial difference in the elevation.

The hardship would be if there were only two lots, then there would be a significant amount of area that would be very, very difficult for an owner to maintain. The topography drops off away from the middle. If three lots were allowed, there would be a substantially greater ability of the homeowners to maintain the parcel.

Mr. Galvin stated that the applicant has met with the abutters and the applicant has agreed to some conditions if he is able to obtain this board's approval under the variance provision. The neighbors on Sunrise Drive to the rear of this parcel are seeking fencing and a 15 to 20 foot no disturb area at the rear of the property.

Mr. Trakimas stated that in the rear to the south of the property there are eight abutters whereas if this is approved, there will only be three lots bordering those eight abutters. He stated that lot one is 252 feet wide, lot two is 231 feet wide and lot three is 227 feet wide. He added that the lot shape factors, which cannot exceed 30, are 20.75 for lot one, and just under 19 for lots two and three.

Mr. Trakimas pointed out a 20 foot no build zone/buffer area to be left in its natural state to provide additional screening to the abutters.

Mr. Galvin noted that the rear abutting lots are smaller, and the owners use all of their land so they would like to have a buffer in the back.

Mr. Ryder reviewed the history of the lot. He noted that he has met with the residents on Sunrise Drive. He noted the changes made regarding lot shape factor to avoid porkchop lots. He pointed out that the proposed lots are rectangular and fit in with the neighborhood.

Mr. Denizkurt stated that he is not convinced of a hardship on this case.

Mr. Schneider asked how the applicant would be able to ensure the preservation of that 20 foot no build.

Mr. Ryder stated that they could put a deed restriction or fencing.

Mr. Schneider pointed out that this is like the case with Ralph Talbot where a buffer that was supposed to be kept was cut down within a week.

Mr. Ryder pointed out that there was not a variance in that case.

Mr. Schneider stated that the point still remains that the buffer zone was clear cut within days of the property changing hands.

Mr. Luongo reviewed changes made in 2016 to the R-1 zoning district. He stated that sometimes the town must be aware of not just what the residents want in their neighborhood but what best protects the entire town. He continued that if this board grants a variance for this, it sets a precedent for other developers. He added that there is no case for hardship since length of the frontage is not a hardship.

Mr. Ryder stated that there are not many buildable lots left in this town. He noted that these are 23,500 square foot lots that are double the width. The zoning tells us to build a house you need 120 feet of frontage. These have 240 feet which is double. He stated that it fits in with the character of the neighborhood. He added that he is not trying to squeeze anything in; these are very large lots. The zoning was always 25,000 square feet. In 2016 the lot size was not increased, the changes made it harder to get a buildable lot. The large shape factor was what changed and now there is a lot shape factor formula.

Mr. Ryder referenced an application he submitted a few years ago for two houses at the end of Union Street which required several variances. There was one lot of about 19,000 square feet and the other 17,000 square feet. They only had 75 feet of frontage. But the benefit was the neighbors got open spaces from an acre that he donated and some fencing.

Mr. Ryder stated that before coming to the Board, he had met with the residents about a year ago. He noted that there are some drainage issues, and the neighbors would like some fencing and lighting. He added that this could benefit the neighborhood.

Mr. Ryder stated that he did not see this as setting precedent. He noted that he was at a Zoning Board of Appeals hearing in a different city recently and the board said each case is unique. He continued that this is unique because it's long and thin.

Mr. Denizkurt stated that if there are some issues that some of the residents are having with the property that Mr. Ryder would still address those whether he gets the relief from the board or not as far as drainage. This shouldn't be conditioned upon getting a third lot. He noted that this was just his opinion.

Mr. Moriarty stated that he cannot support the project primarily because he does not see a hardship. He stated that he sees it as a not so bad bending of the rules.

Mr. Galvin stated that the hardship is having an owner maintain the type of frontage that only having two lots would create. It is a hardship for the neighborhood because there will be areas of the lot that front on Merryknoll that are not going to be maintained because it's just too big.

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

Steven Greer, 67 Merryknoll Road, stated that he has lived there for 45 years and when he first moved in the entire stretch of land was overgrown. He stated that he did his best to clean it up and ultimately asked National Grid, the property owner at the time, to mow it, which they did and have continued to do. He added that he trims the bushes back.

Mr. Greer continued that he is concerned that a lot with 360 feet of frontage leaves a lot of land that an average homeowner is not going to feel responsible for mowing and trimming the shrubbery to keep it from growing out into the streets.

Mr. Denizkurt explained that in the past this type of thing was abused by people buying property which upset residents in the town. This is why the zoning law was changed and made more restrictive. He agreed that 1500 square feet does not seem like a lot of space, but it is precedent setting. He noted that the town just spent the last 10 years trying to get away from what was going on where people were jamming houses onto smaller lots.

Mr. Denizkurt further explained that the aesthetics of the neighborhood don't come into play as much as for a hardship of the property itself and it is what is unique about the property that creates the hardship.

Marge West, 84 Sunrise Drive, stated that she is not an abutter but has lived there all her life. She stated that having a smaller lot is not a hardship.

Ms. West asked how much of that hill on the property is going to be excavated and will be done as a retaining wall.

Mr. Ryder stated that there is a significant topography change in the middle lot. He stated that they have discussed building a "Versa lock wall" outside of that 20 foot buffer zone. It would be up to four or five feet tall with a fence along that a lot that would prevent anyone from cutting it, that would prevent erosion and still provide a backyard for the proposed house.

Deb McKinnon and Sandy Miller, both from Sunrise Drive, expressed concern about the proposal. Ms. McKinnon stated that they both enjoy the green space that is behind the house. She stated the hill behind her home is very, very steep. She added that they have spoken with Mr. Ryder about some of their needs.

Ms. McKinnon stated that Ms. Miller has a pool, and she has a well on her property. She continued that there are drainage issues and wetland at the end.

She stated that they would like to see a buffer zone of 15 to 20 feet and have it written into the deed. Also, she would want any trees that were taken down by accident to be replaced, a retaining wall because of topography, and fencing.

Alexandra Destasi, 48 Sunrise Drive, stated that she would like to keep her privacy. She noted that she does not have a fence in the rear of her property.

Ms. Miller asked if a geologist could assess the hill behind their properties to ensure that any vibration would not affect the integrity of their properties. She stated that the trees are not just an aesthetic choice, they are also for erosion purposes. She would like to keep as many trees as possible and to have it in writing that they would be replaced if taken down for whatever reason, whether they go bad or fall; they still need to be maintained by someone.

Mr. Ryder stated that regardless of the outcome of the hearing, which doesn't seem like it's going well, he would do that anyways as common practice in construction.

Mr. Ryder asked at what point would a variance ever be granted, for the size of a lot.

Mr. Denizkurt stated that it is application specific, and the zoning doesn't speak to the size of the lot, it speaks to the condition of the lot.

Mr. Diem stated that a lot of the presentation was about the topography but noted that there are no contours on the plans in front of him.

Mr. Moriarty made a motion to close the public hearing on **Case #3500** which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Ryder asked at what point does the variance have any teeth in this town. He stated that he did get a variance a few years ago up on Union Street.

There was discussion about variances.

VARIANCE

Mr. Moriarty made a motion to **DENY** this application for a variance on **Case #3500** specifically citing that he **CANNOT** make a finding that there is a substantial hardship. The town did in fact amend the bylaws creating 25,000 square feet as the minimum lot size and the applicant is seeking to make three lots out of one existing lot and can get two. Without hearing sufficient evidence of any soil shape and topography the Board is **NOT** able to grant the variance without substantial detriment to the public good and **NOT** without nullifying or substantially derogating from the intent or purpose of the ordinance. The motion was seconded by Mr. Lynch. **UNANIMOUSLY VOTED.**

4. **Case #3501**-The petitioner, Fiore & Francesca Tammaro, for property located at **41 Union Street** also shown on Weymouth Town Atlas sheet 45, block 527, lot 2, located in the R-1 District. The petitioner is seeking to:

Special Permit 120-40 extension or change by special permit

The subject property is a 16,300 sf parcel of land with a two-family dwelling along with a secondary building. The petitioner seeks to add 820 sf addition adding a bathroom to unit 1 and a second bedroom to unit 2.

Mr. Moriarty made a motion to open the public hearing on **Case #3501** which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Mr. Moriarty made a motion to waive the reading of the public notice which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Gregory Galvin, attorney with offices at 775 Pleasant Street, Weymouth, appeared before the Board representing the applicant. With him were Fiore Tammaro and Marco Tammaro.

Mr. Galvin stated that the property is a two-family residence in an R-1 zone. He stated that this is an application to put a small addition at the rear of the property and therefore it is an extension of a non-conforming use. The addition will not violate the setback requirements. By allowing the applicants to put this addition on, they would be able to add a bedroom and a bathroom.

Mr. Galvin pointed out that there is adequate parking for the required four vehicles.

Mr. Denizkurt asked if there was any height difference that currently exists or further encroachments.

Mr. Galvin stated that there are not.

Ms. Chin asked about the exterior material.

Mr. Tammaro stated that they will be using Hardy clapboard. He noted that they have a permit to demo the front half of the house, so they have already started cleaning up. The new addition being added will have a gable off the existing roof so it's going to look like it's always been that size.

One unit will have three bedrooms and one bathroom and the other will have three bedrooms and one and a half baths.

Mr. Denizkurt 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 on **Case #3501** which was seconded by Mr. Lynch. **UNANIMOUSLY VOTED.**

Mr. Moriarty made a motion to **APPROVE** the request for a **SPECIAL PERMIT** for **Case #3501.**

SPECIAL PERMIT

1. The specific site is an appropriate location for such 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 no potential for nuisance or serious hazards 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 by the proposal.

The following conditions will apply:

- An elevation, and dimensional drawings will be submitted for approval by the Planning Department.

The motion was seconded by Mr. Lynch. **UNANIMOUSLY VOTED.**

Other Business


1. 665 Washington Street

Mr. Schneider stated that this is a request for a six month extension on the special permit which is set to expire. He noted that there is progress being made and expects them to start very soon.

Mr. Moriarty made a motion to **APPROVE** the request for a six-month extension for 665 Washington Street and was seconded by Mr. Lynch. **UNANIMOUSLY VOTED.**

2. Minutes: NONE
3. Upcoming Meetings: July 12, 2023
4. ADJOURNMENT

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

Approved by: 
Mr. Diem, Clerk

10.11.23
Date