

BOARD OF ZONING APPEALS (BZA)  
RECORD OF MINUTES AND PROCEEDINGS  
September 6, 2023, 7:00 p.m.  
Weymouth High School - Humanities Center  
1 Wildcat Way, Weymouth, MA 02190

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2023 NOV 15 AM 9:55

**Members Present:** Kemal Denizkurt, Chairperson  
Jonathan Moriarty, Vice-Chairperson  
Brandon Diem, Clerk  
Carsten Snow-Eikelberg  
Nicole Chin  
Jon Lynch, Alternate

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

**Recording Secretary:** Janet P. Murray

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

**Old Business:**

**Members Present:** Jonathan Moriarty, Vice-Chairperson  
Brandon Diem, Clerk  
Carsten Snow-Eikelberg  
Nicole Chin  
Jon Lynch, Alternate

**Case #3473 - Remand in accordance with Land Court Docket Number 23MISC000052.** The petitioners, McDonald Keohane Funeral Home, Inc, for properties located at 809 Main Street also shown on Weymouth Town Atlas sheet 45, block 515, lots 4, 5 & 14 located in the Medical Services (MSD), R-1 & Watershed Protection Districts, seeking relief from the Board of Zoning Appeals to grant a special permit for the expansion/alteration of its funeral home.

Mr. Denizkurt stated that he had recused himself previously and would do so again. He turned the meeting over to Jonathan Moriarty as chair. He continued that Jon Lynch, an alternate that heard the case, will sit on this case.

Ms. Snow Eikelberg made a motion to open the public meeting for the purpose of rendering a decision on case #3473 which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

Mr. Moriarty stated that the purpose today is to discuss, deliberate, and entertain any motion either in favor or against the petitioner's petition before us today. He stated that the Board is here because this issue was remanded back from the Superior Court, but it does not mean the Superior Court matter is closed, it still remains open. It just means that there was mediation, there was a certain discussion regarding a certain proposal that both parties thought would be productive to bring back to this board to contemplate a new decision on that proposal. He indicated that since the public hearing has been closed, there will be no other comment that can be solicited from the public, nor any closing statement given by the petitioner.

Mr. Moriarty stated that the Board of Zoning Appeals (BZA) is a quasi-judicial board and is comprised of three lawyers and two architects, all of whom have experience in these matters. He stated that the Board hears the facts, and applies the bylaw, as they see it, to arrive at a decision. The facts include testimony, pictures, everything the town had to say, by and through its citizens, and everything that petitioner has to say. The board has the right to give certain weight to facts, and to weigh some testimony more heavily than others.

Mr. Moriarty stated that he is in favor of this petition as he was in favor of the first one. He believes that the current proposal is better in the fact that it's conditioned on a lot more controlling factors and those conditions are actually more favorable to the abutters and to the town than they are to the petitioner.

Mr. Moriarty stated that the project currently sits as follows: the south side entrance and the handicap ramp was the best repropose location for an entrance as opposed to the north side, or the east side. This plan maximizes parking and reduces the spaces along the south side abutters. The parking is focused on the front. No portion of the proposed improved structure, which would be the main building itself, lies in the R-1 zone.

Mr. Moriarty stated that this petition comes before the Board, as a matter of right. This funeral home can exist in an R-1 zone because it has existed in that zone prior to the town's zoning change.

Mr. Moriarty stated that he did not find the proposed location of the garage to be a substantial issue as a barrier. He noted that he actually finds that the garage where it sits is a better place than where it would have been, if it had been located on the northern side.

Mr. Moriarty stated as to the addition itself, which was originally approximately 6154 square feet, and a patio of more than 1400 square feet, is now at less than 5571 square feet, net. He noted that approximately 671 square feet of the building is being demolished.

Mr. Moriarty stated that other improvements are planned for the facilities in the family areas and things like that consisting of approximately 2400 square feet.

Mr. Moriarty stated that the handicap ramp is now ADA compliant and is located in an area which facilitates and maximizes parking as it is proposed. He continued that the only thing in R-1 is the rear parking. He stated that there are proposed conditions on the rear parking in that people will be encouraged not to park in that portion of the lot. He added there is eight-foot fencing, and landscaping, which as illustrated, and he understands it is a plan, but it looks pretty good and provides a substantial buffer to the neighbors.

Mr. Moriarty stated that he looked at the circular flow of traffic and at the safety issues and stated that there were not any. He noted that traffic was not a concern to the town. He stated that the Board cannot hypothecate about how traffic will be increased or decreased. He added that the petitioner is limiting how many number of funerals will be on site. If more people die, it still doesn't change the fact that they are still going to have the same amount of funerals on site at that time.

Mr. Moriarty stated that he looked at the exterior construction material of a funeral home as compared to a three to five level medical facility. He stated that he thinks that this proposal provides a more beneficial buffer between a medical zone and an R-1.

Mr. Moriarty stated that the funeral home is properly permitted and has been at this location for more than 50 years, and parking has not necessarily been an issue. He added that he did take into consideration the one or two instances which the abutters have complained about it and has seen the pictures of people on the garage. However, he stated that he did not hear repeating different complaints; he heard repeating one complaint or two complaints.

Mr. Moriarty stated that he sees a criterion that says it must be substantially more detrimental. He pointed out that the dictionary definition of "substantially" is a great deal or to a large degree. He continued that he does not believe that this proposed project is substantially more detrimental to the existing structure.

Mr. Diem stated that he was concerned about the south access. He also stated that he was a little disappointed that it was not taken into consideration by the applicant in terms of demonstrating that it could not be relocated. He continued that he looked very closely into what it would take to relocate that entrance. He stated that he understood that it opens up a whole litany of other issues, mostly negative, on that side: relocating parking and most likely relocating the garage. He continued that he did not see the benefit after going through that exercise; the change was negative to

the proposed design rather than an improvement. He added that he is comfortable with the way the proposed layout for access into the funeral home is being presented.

Mr. Lynch stated that the addition of that chapel is more beneficial because he keeps hearing a big complaint being people in the parking lot. He continued that when you have a space that large, people are not going to hang out in the parking lot. He stated that on hot days, no one is going to sit outside in the parking lot and talk to one another, they are going to stay inside the air conditioned area, and on cold days, no one is going to sit outside in the cold and talk about something; they are going to stay inside. He stated that he sees this as a big benefit because people will go through the funeral home and be encouraged to stay inside instead of outside; this results in less noise.

Ms. Snow-Eikelberg commended the applicant for going through the mediation process and coming back to the Board with a plan that is significantly less than the original plan and taking the time to hear the neighbors' concerns. She stated that she certainly defers to Mr. Diem's expertise on the architecture side and in terms of what it would take to change the location of the site entrance. However, she does think that moving the side entrance to the Columbian Street side when it has always been in the front is more substantially detrimental to the surrounding neighborhood because it does significantly change the focus of traffic flow. She noted that working in development she understands and respects what architectural changes look like, and the restrictions based on the current building, but she does still have concerns about the entrance on the neighborhood side.

Ms. Chin stated that she still thinks that the addition creates an increase in use across the entire design, whether that be parking, or the four-bay commercial garage; everything is starting to push, encroach, and occupy the R-1 district. She continued that having the entrance on the South will funnel and create a choke point where people will start to queue and create disruption for the residents that abut or will be abutting that newly created south side entrance.

Ms. Chin stated that having the facility entrance as proposed will create noise issues and create other unforeseen issues. Moreover, she stated that the previous traffic report included a 40% increase and considered the weekday peak hour traffic that stemmed from the existing use. She stated that those numbers were taken, understanding how the funeral home operates in its existing capacity; it does not consider this new future use on the site. She added that with the addition of the chapel there is seating for an additional one hundred people. This is ultimately creating a service that will be like a church or a place of worship, larger gatherings of people. She questioned the impact of these additional people on parking, noise and all the concerns that she has with the prior and the current plan.

Ms. Chin pointed out that, depending on the time of day and when people attend, this full capacity could have major impacts on route 18, since not all of the services would be in the morning from 9:00 a.m. to 11:00 a.m., when traffic is the lightest.

Mr. Lynch made a motion to approve the request for a special permit. And based upon the five criteria: the site is appropriate for the proposed use as it has been a site of a licensed funeral homes since 1961. The proposed upgrades are in keeping with trends in the funeral home industry and will provide a more comfortable setting for the guests. The use will not be detrimental to the established or future character of the neighborhood as there is no fundamental change to the daily operation of the facility. Ingress and egress to the site will continue to be from route 18 only. The expansion of the building will be limited to the MSD zoning district which does permit building heights of up to six stories by special permit. Although additional parking is being created in the residential portion of the site, it has been kept as far away as possible from the abutting residences and will be heavily screened with additional landscaping. There will be no nuisance or serious hazards to vehicles or pedestrians, as testimony from the applicant has indicated that an increase in the number of services or number of guests is not expected to increase substantially. Per the traffic analysis, even assuming a 40% increase in vehicle trips, the impact on overall traffic would be negligible. The upgrades to the building include improved stormwater infrastructure, fire suppression, and better ADA accessibility. And the public welfare will be served as the funeral home has been in operation since 1961 and proposed improvements will permit the business to maintain service per national trends.

Mr. Lynch stated that the proposed list of special conditions that were submitted to the Board an exhibit would apply. He added that two additional conditions were proposed: no work will be conducted outside the hours of 8am and 5pm, and a police detail will be required for larger wakes and funerals.

Mr. Diem pointed out that the work hours could be added to condition 18 which states all work related to this project shall be conducted in accordance with the town's construction protocol and restrictions as to different hours. Also, the police detail requirement could be added to condition number 10.

Mr. Diem seconded the motion. The motion failed on a 3-2 roll call vote as follows:

Jonathan Moriarty - YES

Brandon Diem - YES

Nicole Chin - NO

Carsten Snow-Eikelberg - NO

Jon Lynch - YES

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

**Case #3496**-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. Petitioner seeks to remove the existing structure and construct a 3 story multi-use building with parking under and on first level, commercial retail space and two additional stories of residential space totaling 27 units.

Ms. Snow-Eikelberg made a motion to re-open the public hearing on case #3496 which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Galvin appeared before the Board with Mr. William Christopher, architect, Mr. Paul Tyrell, the engineer, and Ms. Restrepo, traffic engineer.

Mr. Galvin stated that the proposed plan has been updated. He noted that they have again stayed away from the easements that are on this site. The easements for the entrance will continue in the same place that the easement currently is. The entrance off of Broad Street onto the site has not changed and will not change.

Mr. Christopher reviewed the changes that were made as a result of the comments and concerns from the last meeting. He referenced the slides to provide the answers.

Mr. Christopher reviewed the slide of the landscaping plan. There was a conflict between two of the renderings. One showed shrubs and the other showed a tree; it is a tree, and its average height is around 15 feet high. It grows up narrow and is a moderately growing tree.

Mr. Christopher continued that they have added the “do not block” box sign as you enter in from Broad Street onto Washington Street. He noted that they have illustrated the parking indicator monitor that will be mounted on this wall. When entering the site, it will show whether any commercial spaces are available in the lower area.

Mr. Christopher reviewed the walkways on the property from the sidewalk as there were differences in the plans. He pointed out the section it and noted that it worked out fine. The ramp that is shown is appropriate and works. He pointed out on where they did have to go to a longer ramp.

Mr. Christopher stated that they have gone into great detail about parking on the ramp; it is fully detailed and illustrated and submitted to Weymouth's Town Engineer.

Mr. Christopher pointed out static points of grade elevations that illustrated the three points of entrance into the building.

Mr. Christopher pointed out sections both laterally and longitudinally through the ramp that show how the slope works. He also pointed out where elevation sections tie into the pedestrian walkway in order to see the grade differentials because the walkway is flat, but the sidewalk slopes up away from Broad Street. All of these elevations have been taken into consideration.

Mr. Christopher pointed out where the outside decks are illustrated and where there are no decks as requested. He noted where a 10-foot high screen wall has been added. He explained that they will be pouring it as a retaining wall and matching the grade as it abuts the neighbor evenly around. He showed where they will be in-filling.

Mr. Christopher provided information about the turning radiuses for the vehicles in the Garage. He stated that they have illustrated that and are confident that that works. And then these are the illustrations. Each of these has been updated to reflect the changes.

Mr. Tyrell stated that he spoke with staff at the Department of Public Works (DPW) as there were questions related to access driveways and the handicap parking spaces located on the left regarding the appropriate elevations. He stated that he also presented them with the preliminary utility design and the drainage design. He stated that an email was sent to somebody within the town stating that all Engineering Department questions had been answered.

Mr. Moriarty asked if the underground parking is proposed to serve the residents, as well as the commercial uses.

Mr. Galvin stated that this was correct.

Ms. Chin questioned the fence at the penthouse roof deck.

Mr. Christopher stated that the sightlines for neighbors' privacy dictated the length. He pointed out where it runs, showing the abutters property.

Mr. Galvin stated that that the fence sits back from the edge of the building significantly.

Ms. Chin stated she wants to make sure that there is enough fencing, so there is no visibility up and over to the neighboring property.

Mr. Christopher stated that the way it is designed will successfully block the views.

Mr. Moriarty asked if the commercial use on the first floor has been identified.

Mr. Christopher stated that this has not been identified.

Mr. Moriarty stated that depending on the commercial use, it may have more demand on trips to and from for the parking area.

Mr. Galvin stated that they did it by square foot.

Mr. Schneider read, for the record, the email received from Jim McGrath which Mr. Tyrell referenced.

It is dated September 6, 2023. It reads "I had a conversation with the project engineer Paul Tyrell regarding the spot grade and proposed contour issue that I had identified on the architectural presentation sheet 15. He explained to me that the 91.75 foot spot grade was being changed to 90.5 which will align with the proposed contouring at the rear of the site. All of our questions have been addressed to this point. If approved, please make a condition that a final set of site plans need to be submitted to DPW for final approval for a sill slip."

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

Mark Bourbeau stated that he is representing the owner of the adjoining property with the stores. He stated that he had not heard anything related to questions he raised about the fire access to the back of the building and where fire engines would be on the site.

Mr. Bourbeau noted that it appears that the ramp from the garage has been extended further forward with a wall in between the two ramps; he questioned if this wall will create additional conflict points for driving in and if a fire engine could pull into the area at the at the top of the ramp. He pointed out that he presented the plan at the last meeting with the templates for the Weymouth fire engines showing that without this extended ramp, you could only get two next to each other and they would then



have to back out onto the abutting property. He added that the applicant cannot depend, for this project, on using an abutting property in an emergency. The fire department could go anywhere they want in an emergency, but approval of a project cannot depend on the ability to use other private property.

Mr. Denizkurt asked if the fire department had been informed about these plans. Mr. Schneider stated that, as of today, he has confirmed with them that they have the plans and asked them for concerns; no feedback was received. He added that there will be a separate approval by the Weymouth Fire Department for their access. The applicant will not get approval if the fire department is unable to access the building.

Mr. Bourbeau stated that if this proposal were approved and appealed to Land Court, he is concerned that without the fire department's input, the matter could be remanded back due to lack of public safety information. He also questioned whether there is adequate water in that area for fighting a fire that could potentially move to abutting properties.

Mr. Bourbeau questioned the traffic report. He stated that this report is unsatisfactory to rely on. He stated that they looked at the entrance to this parking lot, that is going to be supposedly shared by all the people who will live here, as well as the existing customers and laundromat, for one hour on a Tuesday morning in July. He does not believe that this is an adequate traffic study. He pointed out that they observed only one vehicle entering, in the morning, during the whole hour. He stated that this is not realistic traffic time for a convenience store and a laundromat that over the course of the day, there would only be one vehicle per hour. It was also stated that cars move back and let that car come in which is to rely on the kindness of strangers in cars to let the customers cut through because there is going to be a queue that's going to interfere with traffic; both ways are going to backup traffic on the street.

Mr. Bourbeau continued that in order to see the sign regarding parking under the proposed building, the car would have to come into the lot to be able to read it, creating further conflicts. He added that there has been no study of the internal flow based on how this is going to be used, or at an adequate time of day and over a repeated series of days, to understand how the entrance off Broad Street is going to work safely and efficiently and without seriously interfering with his client's business and operations.

Mr. Bourbeau questioned the efficiency of the parking sign as there would only be 10 retail spaces; it is possible that there are two open spaces, and three cars will see it and head down. This could create a problem with cars jockeying for spaces while a fourth person enters. He stated that there are too many conflicts that have not been addressed.

Mr. Denizkurt stated that the town's traffic engineer has reviewed this plan. The Board relies on their opinion to help analyze these documents. He added he is not aware of any concerns over the items discussed and that the fire department has had opportunities to voice their concern.

Mr. Tyrell stated that the wall is no further onto the abutter's property. He stated that the town engineers reviewed site plans and know the area where there is adequate water as there is 10 inch and 12 inch water lines abutting both sides of this property. He added that during the design process, fire flow tests will be completed, and fire suppression design will be done based on the actual pressure and flow within the street.

Mr. Moriarty asked if anyone has discussed a dry system for the sprinkler,

Mr. Tyrell stated that is part of the final design.

Mr. Tyrell stated that the town's engineer reviewed the traffic report. He added that the sign conversation is true whether it is a large or small garage. He stated that the sign is an improvement.

Mr. Galvin stated that Mr. Bourbeau has had many opportunities to get his own traffic study done and stated that his comments is speculation. A trained, experienced traffic engineer did our traffic study; they follow the rules and regulations as to how to assess a property. As far as the entrance into the property is concerned, Mr. Galvin stated that they are being careful to stay off of the easement area with any building and that the easement also goes to the back of both properties. He noted that it is an easement that benefits both properties.

Mr. Bourbeau stated that it appears that the proposed wall will cut off the ability to use the easement.

Mr. Tyrell stated that the client can acquiesce to the easement when they do not need to use it anymore.

Mr. Galvin stated that from the corner of the driveway entrance to the parking garage will be 26 and a half feet. He added that it is wide enough to get out.

Mr. Bourbeau pointed out the conflict points where there are cars trying to back up and others are coming in. He continued that at the same time there is traffic trying to gain access to the retail in his client's building and the people who live there are all competing for the same entrance. He stated that the decision points happen as soon as a car enters the site.

Mr. Bourbeau stated that he does not believe that it is on the abutter to get a traffic engineer and spend a lot of money, when the applicant is trying to develop this site as intensely as presented.

Mr. Bourbeau stated that he does not believe the Board has adequate facts before it based on the submissions to date, to be able to make a reasoned informed judgment on the safety issues.

Mr. Denizkurt stated that the Board does not expect abutters to provide their own traffic studies. It is the applicant's responsibility to submit this information and the Board's responsibility to consider all the facts as presented.

Mr. Luongo explained to the board and to the public the process of this application relative to the Board of Zoning Appeals. When the developer came in:

1. The District Counselor was contacted and there were two community meetings.
2. The applicant prepared plans for an internal department head meeting that involved all departments, including police, fire, health department, DPW, engineering, water and sewer, and planning department and maybe a couple of others that he may have missed. The plans were reviewed so that any questions or concerns were addressed before the applicant comes before the Board of Zoning Appeals with their presentation.
3. The parking concerns were discussed with the applicant and the engineering department. Mr. Schneider read the DPW's letter saying that all their concerns are met.
4. The building was looked at by the fire department and there were no questions. They were part of the department head meeting.

Mr. Luongo stated that Mr. Schneider has all this in the documentation as does the board. He continued that as to the technical aspects of the building, if it is coming before the board, and there were any concerns, this Board of Appeals knows what those concerns are as the project has been vetted. He stated that they have to provide water use because the town is getting near the limits on water. There is going to be water saving devices in the building and fire suppressant.

Ms. Snow-Eikelberg noted that this is a particularly odd-shaped parcel and questioned if there were any additional easements to the other portions of the lot.

Mr. Tyrell stated that these slivers of land that go up are not constructed, are not an easement nor a former paper street. They seem to be a residual piece of land from when the original property owner conveyed out the parcels for construction.

Mr. Galvin stated that the intention is to leave this portion of the lot natural. He stated that this is where the ledge starts.

Ms. Chin asked about the depth of the four parking spaces in the garage.

Mr. Christopher stated that the spots are all twenty feet deep, which is required. He added that this plan was illustrating the turning radiuses for vehicles getting in and out of the garage and. The spots are twenty feet deep by eight foot six inches and eight foot six inches.

Ms. Chin pointed out a discrepancy on sheet 25.

Mr. Christopher stated that should not be there and Mr. Galvin stated that they will have to correct that.

Ms. Chin asked what size car was used to determine the turning radius.

Mr. Christopher stated that it is a standard template that uses an average size American car and does not identify any particular car or type but it is not a pickup truck; it is a residential car.

Ms. Chin stated that she would like to see all of those spaces noted as nine by twenty.

Mr. Diem asked about the maintenance of the little sliver of property.

Mr. Christopher stated that the abutter has been using it and maintaining it

Mr. Christopher stated that they had originally talked to the commercial abutter about working with them to provide five or six more parking spaces along that side and that offer still stands. The offer was declined.

Mr. Christopher stated that they cannot do a curb cut onto Washington Street, because that is a state highway.

Mr. Diem stated that there needs to be work done for the two lots to work out a scheme to enable the existing building to have adequate access and parking.

Mr. Christopher stated that legally they do not have to satisfy the abutters' needs. He added that they did try to collaborate with them.

Mr. Tyrell pointed out that the front of the building is an area with options for additional parking. He noted that there are opportunities to work collaboratively to improve the conditions that exist if there is interest in doing so on Broad Street.

There is a large, landscaped area on the front of the property that could be paved, and there could be parking placed there, that would improve access to the facilities.

Mr. Tyrell stated that they are only building to the property line limits only as they do not have the right to do anything beyond that and there has been no negotiation to do so. Although the applicant is not averse to it.

Mr. Galvin stated that his client wants to be a good neighbor and is willing to work with them to try to make things better for them as well.

Colleen Donnellan, 27 Lindbergh Avenue, stated that she is the abutter on three sides of this property. She stated that the applicant is proposing to put three stories beside her property, looking down on her.

Mr. Christopher stated that there will be no decks on that side of the project.

Ms. Donnellan noted the following from the 120 zoning guide:

1. Chapter 120 25.1, section B: limit and discourage uses that create higher traffic volumes
2. Chapter 120 25.1. Section E: minimize the visual and function conflict between residential and abutting properties
3. Chapter 120 25.1 section I: encourage uses that maintain noise and congestion
4. Chapter 120 25.5 Section B: the relaxation of height limits will not interfere or negatively impact abutting properties, particularly property uses zoned for single family residential purposes.

She stated that this project will negatively impact her home and that these zoning guidelines are not being met.

Mr. Galvin stated that the zoning in this area would allow for up to four stories. So based upon comments from primarily Mr. Longo, the applicant reduced it to three stories. He noted that the applicant has offered to provide plantings although he acknowledged that it will not immediately block the third floor window.

Mr. Christopher stated that they offered to build screening along the property line.

Ms. Donnellan stated that she did not have a conversation with Mr. Galvin. She stated that she spoke with the architect.

Ms. Donnellan stated if something had to be put in, it would need to be something higher so they could not see into her home or yard; large enough to go all the way to the top of the building.

Mr. Christopher stated that there would be eight foot tall oak tree as it comes in.

Mr. Bourbeau stated that it was not his intention to impugn the integrity of any public employee of the town of Weymouth. He apologized for any inference that might be drawn by anybody from it.

Mr. Moriarty asked if there was any discussion about doing a land swap with the Lindbergh neighbor.

Mr. Christopher stated that she was offered this but declined.

Ms. Donnellan stated that they did offer this, but they proposed that they would give her that piece of land if they could take more of my land just behind the pool which would bring the building closer to me. She stated that this was not acceptable to her.

Mr. Moriarty stated that he is not convinced that this twenty-six foot access way so close to the intersections of Broad and Washington Streets is not going to create a problem with the thirteen foot parking easement. He added that he has to look at the nature and character of the abutting commercial property, which is part of the neighborhood, together with the Lindbergh house, the Washington Street house, and the other two Lindenberg houses to the rear.

Mr. Galvin questioned if as an abutting lot owner, does his client owe an obligation to give the neighbor more than the neighbor currently has.

Mr. Moriarty stated that he was not stating that, but Mr. Galvin's client cannot control what the previous owner did by having two lots and then creating this situation. He continued that he thinks that this proposal does not fit into the nature and the character of the neighborhood although the applicant is allowed to build as a matter of right. He added that the intensity of the height, layout, and footprint, is just too intense for what this neighborhood will support. Also, he is not convinced that this proposal will not create significant safety issues.

Mr. Diem agreed with Mr. Moriarty about the impact of the building as proposed on the neighbors. He stated that it is difficult to look at this plan holistically and the impact that it has on the abutters and feel favorable right now about it. He noted that he does not see that the parking on the abutting piece of property can actually work, and it will not interfere because he thinks that it is going to cause a situation that is more detrimental with the vehicular traffic coming in and out.

Mr. Diem questioned if it was possible to lower the scale of units 15 and 16, so that the abutter does not have two and a half to three stories looming over their property. Units 21 and 22 could go up the full three stories and have a step down in the back.

Ms. Chin stated that dimensionally, the proposal is ultimately constrained at every site boundary line, every easement, and there is not a lot of room for construction tolerances.

She noted that she has already questioned the ADA spaces and the access that they had at that corner of such a busy intersection.

Mr. Denizkurt stated that this proposal is an extremely high intensity of use on the site. He added that he believes that there can be steps made towards the rear to help alleviate the impact on the residential neighborhood. He stated that there is a need to figure out how the parking lot is really going to work best.

Mr. Galvin requested to withdraw the application without prejudice.

Mr. Moriarty made a motion to allow the applicant to withdraw without prejudice the application for case #3496 which was seconded by Ms. Chin. UNANIMOUSLY VOTE.

**Case #3502- continued to 10/4/23** The petitioner, **Pond Street Acquisitions, LLC**, for property located at **505 Pond St. & 1537 Main St.** 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. 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.

Ms. Snow-Eikelberg made a motion to continue the public hearing on case #3502 which was seconded by Ms. Chin. UNANIMOUSLY VOTED.

**New Business:**

**Case #3510-** The petitioner, **Prayag Patel**, for property located at **915 Washington Street**, also shown on Weymouth Town Atlas sheet 30, block 382, lot 18, located in the HT District. The petitioner is seeking to:

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

The subject property is a 10,518 sf parcel of land with a variety store and storage containers. The applicant seeks to remove and rebuild the building.

Ms. Snow-Eikelberg made a motion to open the public hearing on **Case #3510** which was seconded by Mr. Moriarty. **UNANIMOUSLY VOTED.**

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

Attorney Gregory Galvin appeared before the Board with the applicants Peter Patel and Manny Patel.

Mr. Galvin stated the applicants operated Lynn's Variety store which was substantially damaged when a vehicle drove into the building. The applicant is requesting to rebuild the store in the same area but pull it back from both Washington Street and Joan Terrace somewhat. He noted that there are some storage containers on the lot that are used for the business. The applicant is seeking to remove the storage containers and use that space with a new design of the building by coming up and around the corner of Joan Terrace and Paris Street. He is proposing to have the necessary parking spaces for the size of the store. They are requesting not to build the three parallel spaces to the left and instead plant shrubbery along that area.

Mr. Galvin stated that people do not linger in the store for long periods of time; the spots that are in the front of the store are more than adequate to facilitate the needs of the building.

Mr. Galvin stated that they have provided the Board with the elevation plans. He stated that they are decreasing the nonconformity of the setback. He noted that they are extending the building to have storage in the building and provide a new look along Washington Street.

Ms. Snow-Eikelberg commented about your site plan that it would be helpful to have the streets noted because it is difficult to confirm exactly where the ingress and egress is and where the building is.

Mr. Galvin stated that the ingress and egress is not changing.



Ms. Chin asked about the two sets of stairs in the building; is one going down to a basement and one going up to an upper floor.

Mr. Galvin stated that the one going up is where an office would be for the owners and manager.

Mr. Moriarty asked if there is any proposed plumbing on the second floor.

Mr. Galvin stated that there is a plan for a half-bath.

Mr. Moriarty noted that there is an office on the first floor and questioned if there is a layout for the second floor.

Mr. Galvin stated that he does not have a plan for the second floor.

Mr. Schneider questioned if the board is concerned that this could turn into something more than an office, there could be a condition.

Mr. Schneider stated that in regards to lighting and windows, it is not being constructed as usable living spaces. He added that the board could put a condition on it that upstairs space will be used only as part of Lynn's Variety store's operation and not rented it out to a second party either as an office or residential space.

Mr. Moriarty suggested a condition that no more than a one-half bath be installed.

Mr. Denizkurt also suggested a condition that the applicant provide a floor plan for the second floor.

Mr. Schneider stated that he and Mr. Galvin talked about the optional parking spaces. He stated that the traffic engineer's recommendation is that unless needed, the absence of those parking spaces would benefit the site.

Mr. Denizkurt questioned the number of parking spaces.

Mr. Galvin stated that although the plans show twelve spaces there are thirteen.

Mr. Denizkurt noted that there would now be nine spaces.

Mr. Galvin stated that the spaces will be built to the zoning code.

Mr. Schneider asked for the lighting plan, or a cut sheet.

Mr. Galvin stated that McKinnon and Associates had indicated that they would send it to the town. He noted that he did not have it.

Mr. Schneider stated that another condition would be the submission of the lighting

plan for approval of the style and the placement of the lights as well as ensuring that lighting is maintained on the property.

Mr. Luongo asked about signage.

Mr. Galvin stated that the sign planned will conform with the town's bylaw and would be presented to the building inspector for approval.

Mr. Schneider stated that if the sign conforms, then that is the case.

Mr. Diem asked about screening around the dumpster.

Mr. Galvin stated that it is supposed to be screened and agreed to the condition that it be screened.

Mr. Denizkurt asked for clarification that the building is coming five feet off of Joan Terrace.

Mr. Galvin stated that it is moving back five feet in the front as shown on page two. He noted that the scale runs around Joan Terrace and Paris Street.

Mr. Galvin stated that stormwater management is in place which was done at the time of a prior zoning case in 2007.

Ms. Snow-Eikelberg asked about the square footage of the current building.

Mr. Galvin stated that the new building is 2600 square feet, and the existing building is approximately 1400 square feet.

Mr. Schneider asked for confirmation that all of the temporary storage containers that are on site will be removed.

Mr. Galvin stated that they will be removed because they are located where the building will be increased.

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

Jane Cheney, 20 Joan Terrace, stated that the plans available online did not show this. She asked for clarification so that the abutters can see the layout because it looks like they are planning to pull the store further back into the corner.

Ms. Cheney was shown the certified plot plan which shows in detail where the property is going. It was not able to be viewed on the screen due to internet difficulties.

Ms. Cheney noted that there is concern about rats and she would like to see this resolved before any building construction takes place. She stated that she had made calls to the town.

Mr. Galvin stated that the applicant has hired a pest control company to monitor the situation. He added that the Health Department requires a plan for abatement.

Mr. Schneider stated that it could be a condition but noted that this is required by the health department as a part of the demolition permit.

Ms. Cheney asked how high the building is going to be.

Mr. Denizkurt stated that the building as proposed is twenty feet nine inches.

Mr. Schneider stated as a reference that a single family home can be up to 35 feet, so it is about a one and a half story building.

Richard Tantillo, 17 Joan Terrace, questioned if the applicant could move all the way to the right on the land next door. He stated that he does not have a view of the pond.

Mr. Galvin stated that the store will stay in essentially the same place.

John Cheney, 20 Joan Terrace, commented that people do not necessarily go into the store, come out, and leave, especially if they have Keno. They park and stay, which limits the parking spaces.

Ms. Snow-Eikelberg made a motion to close the public hearing which was seconded by Ms. Chin. **UNANIMOUSLY VOTED.**

Mr. Moriarty made a motion to **APPROVE** the request for a **SPECIAL PERMIT** for **Case #3510**.

#### **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:

1. There will be Nine 10' by 20' parking spaces, and a proper plan will be submitted to the town identifying those locations and size
2. A plan for the second floor will be submitted to the town and the second floor

space will be used specifically and exclusively for office use and/or storage and that no more than one-half bath will be plumbed and installed inside.

3. A lighting plan will be submitted to the town for approval.
4. The screening for the dumpster will be shown and indicated on the plan
5. The mechanicals will be properly screened as indicated on the plan
6. Temporary storage units will be removed from the site
7. Proper pest and rodent control precautions will be taken pursuant to the town's requirements for demolition and by the Health Department
8. There will be no living space on the second floor

Ms. Snow-Eikelberg seconded the motion. UNANIMOUSLY VOTED.

**Case #3509-** The petitioner, **Best Heavy Hauling, LLC**, for property located at **40 Moore Rd.**, also shown on Weymouth Town Atlas sheet 35, block 446, lot 36, located in the I-1 District. The petitioner is seeking to:

**Special Permit - 120-29 (B) (C) Special Permit uses**

The subject property is a 43,124 sf parcel of land with Auto Service, Towing and Storage with a 3300 SF commercial structure. The applicant seeks to add motor freight and open lot storage of new building materials for motor freight purposes

Ms. Chin made a motion to open the public hearing which was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

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

Mr. Denizkurt noted that the applicant was not present this evening.

Town solicitor Richard McLeod addressed the Board. He stated that this is a request for a special permit to operate a hauling business in a separate business already located an existing business site. The applicant filed the application for a special permit without an attorney. It was signed off by the landowner and the applicant for the business. However, he stated that today, the town received an email from attorney Kevin Mackin requesting the building inspector and the planning director to withdraw the application for a special permit. Mr. McLeod continued that pursuant to chapter 40 (a), section 16, because this application has already been published for a public hearing, they no longer have the authority to grant that relief and actually never had this authority. He continued that that prior to publication, the applicant can always withdraw the application for a hearing, but once there is a publication, that decision rests with this Board.

Mr. McLeod stated that he responded to Attorney Mackin late this evening, by informing him that the request to withdraw is not within his or his clients authority. It is within this Board's authority, and it is discretionary; the Board may grant this request to withdraw with or without prejudice.

Mr. McLeod stated that granting this request to withdraw without prejudice would be the applicant's request, but that is not articulated in the request. He pointed out that there are a number of people in attendance to contest this application. He stated that it is his understanding from the attorneys who represent the abutters that they were planning on presenting videos with detailed opposition to what is going on at this site.

Mr. McLeod stated that the Board could force a hearing, denying the application's right to withdraw and proceed with the hearing. He stated that in his experience an application has never been allowed to go forward without an applicant. He did not think that would be an option. He continued that the only option he sees is to grant the applicant's right to withdraw but with prejudice because of the time and expense that the abutters have put into this. He stated that this would be reasonable and justifiable.

Mr. McLeod stated that he had hoped that the applicant and the attorney could appear to answer questions concerning, if they want to withdraw this, how they intend to make this a business that is allowed to legally operate on this site. He added that the landowner received an enforcement letter from the town's Building Inspector, instructing them to cease and desist operating or simply just apply for a special permit. They did that without their attorney and now their attorney is back in the picture.

Mr. Moriarty asked Attorney McLeod to explain the type of communication that has been received.

Mr. McLeod stated that he received an email from Attorney Mackin this afternoon at 12:23 p.m. He noted that when he returned to the office, from another matter, he had sent him an email at 5:23 p.m. to let him know that it is this Board's authority to either grant or deny that request, not the building inspector or the planning director's discretion. He stated that he is not aware of a response to the email.

Mr. McLeod read the email as follows: "gentlemen, I've been authorized by the owner of the premises described above J M F Realty as well as the applicant for the BZA case 3509 to withdraw the application and to inform you these clients will not be in attendance at the hearing this evening, nor should they be contacted by any town employee since you are on notice that they have counsel."

Ms. Snow-Eikelberg made a motion that in the case of the special permit application for 40 Moore Road, the applicant be allowed to withdraw but with prejudice which was seconded by Ms. Chin. The motion passed on a 3-2 vote with Mr. Moriarty and Mr. Diem opposed.

Mr. McLeod pointed out that the request would be a withdrawal without prejudice that they may resubmit an application for a special permit and start the timeframe all

over again, that is not the request by Attorney Mackin. It appears it is his intent to challenge the decision of the building inspector on its enforcement letter, indicating that his client is required to file an application if they want to run a separate hauling business in this industrial zone area. It is the building inspector's opinion that they have to apply for a special permit.

Mr. McLeod stated that Attorney Mackin attempted to file an appeal to the Zoning Board of that decision. However, since the town's bylaw requires a special permit for this type of business to be located in this zone there is no right to appeal.

Mr. McLeod stated that although Attorney Mackin may articulate his reasons, in order to challenge that opinion, he had to do that within a certain period of time, which has expired.

Mr. Moriarty questioned if the enforcement letter is enforceable.

Mr. McLeod stated that after this evening, the town will issue daily fines to the landowner as the Building Department had already issued a letter which stated that if the procedure is not followed, daily penalties will be imposed. The applicant, without their attorney, had come forward and filed the application for a special permit. If the application is withdrawn with prejudice, the landowner will be precluded from operating a separate business there for two years and daily fines will be imposed. It was pointed out that the landowner is a family member of the operator of the hauling business.

Mr. Schneider asked whether this decision required a super majority vote.

Mr. McLeod stated that this vote does not require super majority vote, so the vote taken to allow the applicant to withdraw but with prejudice passed.

Mr. Moriarty made a motion to close the public hearing which was seconded by Ms. Snow-Eikelberg. UNANIMOUSLY VOTED.

### Other Business

1. Minutes: 6/14/2023, 7/12/2023

Mr. Diem made a motion to approve the minutes from 6/14/2023 and 7/12/2023 which was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

2. Upcoming Meetings: October 4, 2023

3. ADJOURNMENT

Mr. Diem made a motion to adjourn at 9:30 p.m. and was seconded by Mr. Moriarty. VOTED UNANIMOUSLY.

Approved by:  
Mr. Diem, Clerk



10.7.23  
Date