

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
April 18, 2012

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 18, 2012 at 7:00 pm at McCulloch Building, Mary McElroy Meeting Room, 182 Green Street, Weymouth, MA for the purpose of passing on the application of certain persons whose petitions were properly before the Board. Notice of public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

Present: Richard McLeod, Chairman
 Edward Foley, Vice-Chairman
 Kemal Denizkurt, Clerk
 Jonathan Moriarty
 Robin Moroz (arrived 7:15 P.M.)

Staff: Robert Luongo, Economic Development Planner

Recording Secretary: Mary Barker

The Chairman called the hearing to order at 7:15 PM and explained the procedures that would be followed to the people present. A motion was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and unanimously voted.

BZA CASE #3158–24 Beals Street, Public Hearing, Continued

Application of Donald J. Rafferty, Jr. for property located at 24 Beals St., also shown on the Weymouth Town Atlas as Sheet 10, Block 125, Lot 4 & 5, located in R-1 zoning district, seeking a special permit and variance for the minimum width at the building line and minimum lot size to subdivide one lot into two lots (17,130 sq. ft. and 13,278 sq. ft.)

Members sitting: Richard McLeod, Chairman
 Edward Foley, Vice Chairman
 Kemal Denizkurt
 Jonathan Moriarty
 Robin Moroz

Attorney Gregory Galvin, with offices at 775 Pleasant Street and the applicant again addressed the Board. Several exhibits were presented to and accepted by the Board including:

- Exhibit #5- Summary of decisions by the BZA on similar applications for lot division
- Exhibit #6- Email correspondence from Michael Molisse, Town Councilor at-large, in opposition
- Exhibit #7-email correspondence from Victor Pap, III, Town Councilor, District 1, in opposition
- Exhibit #8 - letter from Beals St. abutter Thomas Clark, in opposition
- Exhibit #9 –new subdivision plan for consideration by BZA
- Exhibit #10 – letter from Beals Street abutter William and Madeline Keyes in opposition

Attorney Galvin submitted exhibit #8 to show that there are cases where the Board has approved the subdivision of lots with resulting lots of less than 120' width frontage and a number of lots within 70-75'. He also provided the Town Atlas to the Board. He pulled each deed and provided the building plan for each property fronting Beals Street. Block 125, Lot 3 did not have a plan available; three others are in excess of 120'; five properties are greater than 70' but less than 120'; ten are 70' or less.

Based on the testimony and comments at the last public hearing, the applicant went back to the owner and requested a land division of different dimensions. The lot with the existing house will be reduced from 99 to 89' wide, and result in each parcel just over 15,000 sq. ft., Exhibit #9. The owner and applicant would seek to amend the plan presented with the application. The owner of the property intended to subdivide as evidenced by the application presented in 2000. The current mortgage and property value are both jeopardized if the application is denied. Two separate lots will generate more income. The mortgage company will ultimately have to approve the plan. As it stands, a single lot with one house won't generate income and could go into foreclosure. Attorney Galvin presented the amended plan to the Board. This was accepted as Exhibit #9. Attorney Galvin then reviewed the drainage plan. The topography of the lot directs water naturally in a northeasterly direction downhill to a catch basin on Pearl Street.

Vice Chairman Foley asked if the new plan will still allow the proposed dwelling that is not within 20' of any abutting dwelling, with a 10' setback on either side, and not requiring any further variance. Attorney Galvin responded that it is within the buildable setback line.

Vice Chairman Foley asked for more information on storm water management- how the applicant proposes to direct water. Atty. Galvin responded that the applicant intends to handle as much onsite as possible through the use of a drywell system and pitching the drive to direct water to the lawn area to minimize runoff. Chairman McLeod noted that the Board can make this a condition and the applicant would be required to demonstrate compliance to the Building Department before building permits are granted.

Jonathan Moriarty asked the status of the current mortgage on the property and whether it encumbers both lots. Will the lender allow a partial release? Atty. Galvin responded that the mortgage does cover the two lots; if and when it is divided, the owner of the property would require lender approval. Without approval on this application the owner will not be able to get a partial release or be in position to pay down the mortgage.

Kemal Denizkurt asked what size and style of house the applicant proposes. The applicant does not have a plan yet, but is considering a colonial style 3-bedroom home. It will be about 38-40' wide.

Bob Luongo noted that there have been no further department comments on the application other than what was reported at the first public hearing.

Robert Conlon, Town Councilor at-large addressed the audience and asked for a show of hands in opposition to the application. The Chairman reminded him to address his comments to the

Board. Mr. Conlon reported that he received a call from Mrs. Burns and went to look at the property. He spoke in opposition to the application; zoning requirements are designed to prevent this, and it will not enhance the quality of the neighborhood. He urged the Board to support what the neighborhood wants. Chairman McLeod responded that the Board intends to base its decision on the facts presented and the law, and not on popularity.

Joe Spallino, 76 Saning Rd. spoke in opposition, and noted homes in the area have problems with shifting and cracked foundations due to blasting with prior development. Further disturbing the ledge will increase these issues.

Patrick Martinec, 54 Beals St. spoke to neighborhood opposition to this in general, as evidenced by the number of residents who have showed up for the hearings and voiced their opinions.

Maggie Brown, 54 Beals St. spoke in opposition; she grew up there and feels the area doesn't need more development or traffic.

Michael Burns, 32 Beals St. presented a letter dated 4/13/12, from William and Madeline Keyes, 42 Beals St. who were unable to be present but are in opposition to the application. The Chairman accepted it as Exhibit #10.

Mr. Burns also stated that he was told when he purchased his property that the empty lot was considered unbuildable and he invested in the property and later the wall based on that. Chairman McLeod asked who advised him. Mr. Burns responded that he was told it by Mr. Fuqua.

Donald Stewart, 549 Essex Street, former owner of 32 Beals St. spoke in opposition. He urged the Board to deny the petition; that its only purpose is for financial gain.

Keith Delvecchio, no address given, spoke in support of the application. The property has been taxed as a buildable lot since the 1980's- that conflicts what the owner of 32 Beals St. has said. The builder has a right to make money and it's unfair of the neighbors to oppose it simply to keep the appearance of open space in the area.

There was a brief discussion of the lot. Atty. Galvin confirmed that the lot has been taxed as fully buildable. Each lot generates its own bill and the owner pays a significant tax on both lots. The lots were merged for zoning purposes. The owner had not applied for abatement.

Kemal Denizkurt made the observation that denial won't stop the possibility of the owner from putting up a monster sized home on the lot with a similar impact on the neighborhood.

Pascal Berger of the North Weymouth Civic Association asked if there are plans available for the public to view. Chairman McLeod responded that it isn't required for the Board's consideration. The property has to be divided first before it is at the stage that plans would be presented. The Board has approved similar requests based on the evidence presented, zoning and the law before making a decision and the applicant is entitled to the appeal process.

Jack Kiley, whose mother's property abuts the property addressed the Board. He is a builder and was told by the Town Building Department that the lot was not buildable. He asked who determined it. Chairman McLeod responded that the determination would have been made based on the zoning at the time.

There was a discussion of the deeds to the property. Jonathan Moriarty asked if Atty. Galvin pulled the deeds for the property. He did not. Jonathan Moriarty asked when the second lot was conveyed in trust. Atty. Galvin responded that it was some time after the mortgage was placed on the property and before the application went in. It was put on in 2005. Atty. David Cunningham, representing one of the audience members noted that the most recent deed separates transferred the smaller lot into the trust back in April 2006. Jonathan Moriarty noted that it is interesting that this was done after the last application was denied. Per Atty. Cunningham, the owner took title via two deeds in 1961; one deed from his father and one from a conservator to an uncle. From 1961 – 1970 it was in his name; it was deeded back to Patrick McCue in 1974.

Atty. Cunningham urged the Board to take into consideration that the Board denied an application 12 years ago. There is no evidence that the public welfare will be served. The only circumstance that differs was investment in the wall. Chairman McLeod responded that the neighbor put up a wall on property he did not own. The decision made 12 years ago was not unanimous. Jonathan Moriarty is concerned with the deed and the merger issue. Don Stewart asked if the subdivision would enable the owner to pay off the mortgage; he asked the amount of the current mortgage. Chairman McLeod responded that this would go to financial hardship for a variance, and asked Atty. Galvin if he would care to divulge this information. Atty. Galvin responded that he would not. Jonathan Moriarty asked the assessed values of the lots. The vacant lot is assessed at \$135,000 and the lot with house is assessed \$232,900.

Mr. Burns asked how the property could be subdivided if the mortgage encumbers both lots. Atty. Galvin responded that if the application is approved, the owner will then go to the mortgage company to request a pay down to grant a partial release. Jonathan Moriarty explained the process. Mr. Burns notes the property is overpriced now and it hasn't generated any offers.

There was a brief discussion of the Board's vote on the prior application. Approval would have required 4 of the 5 members to approve. The vote was 3/2 and the application was denied.

Jody Purdy Quinlan spoke neither in favor nor in opposition, but as a resident of Weymouth. Her objection is not about the actual division of the property but as a town historian addressing the further destruction of the natural resource that the area is built on, purple slate. She asked if the Board would consider allowing her to bring in scientists from Harvard and MIT to study it before it is destroyed. Chairman McLeod asked why it wasn't a point brought out in the prior application. Ms. Purdy Quinlan responded that the resource was not on her radar at that time. She has been researching it recently. Chairman McLeod asked if she has approached the abutters for permission to go on their land to study; she hasn't yet.

At the request of Mr. Burns, Atty. Galvin provided information on how the drywell system will work. Atty. Galvin provided a brief explanation of the use of stone and sand mix drywells from which downspouts will be directed to leach water into the ground without causing further runoff.

This will not require blasting. Jonathan Moriarty noted that the lot with a house built on it will displace the same as it will in its current state with impervious purple slate.

There was a five minute recess.

Don Stewart again noted his strong opposition; as a life resident, he objects to homes being built on “postage stamp” lots, and bought an acre next to his current home specifically to avoid that.

Maggie Brown noted that if given a choice between two lots both with houses or a single lot with a much larger house, she would prefer the single lot.

Kemal Denizkurt responded that the public should understand that if the application is denied, the owner could merge the lots and build a much larger structure than what is there already, and the neighborhood could still lose the open space.

Mr. Kiley asked if the proposed plan would build the house on a basement or slab. Atty. Galvin responded that the plans won't be developed until after the application approval.

Jonathan Moriarty asked if the Board is to consider the amended application. Atty. Galvin responded that the applicant and owner both agree to the amended plan if the Board does not object. He believes it is legal because the application includes a request for a variance. Jonathan Moriarty asked if the change in frontage then changes the original plan submitted because it changes the number of lots meeting frontage ranges. Atty. Galvin responded that it would change the number of lots with greater than 70' but less than 120' to 5 from the original: 4 of 120' or greater, 10 at 70' or less, and 5 greater than 70' but less than 120'. There was a brief discussion and review of the atlas. Bob Luongo reviewed Chapters 120-40 and 120-53 to include in the discussion. Chairman McLeod noted it does not deviate from the original application published. He also noted that although there are lots with 70' frontage in the neighborhood, the facing lots on Beals St. are all over 100'.

A motion was made by Vice Chairman Foley to close the public hearing and was seconded by Jonathan Moriarty and unanimously voted.

To vote on the of BZA Case No. 3158 to approve a Special Permit and Variance to subdivide one lot into two lots:

A motion was made by Edward Foley to take Case # 3158 under advisement for the members to consider the additional exhibits presented; to render a decision at the next meeting on May 2, 2012. This was seconded by Jonathan Moriarty and unanimously voted.

Submittals:

Exhibit #5- summaries of decisions by the BZA on similar applications for lot division
Exhibit #6- email correspondence from Michael Molisse, Town Councilor at-large, in opposition
Exhibit #7- email correspondence from Victor Pap, III, Town Councilor, District 1, in opposition
Exhibit #8 letter from Beals St. abutter Thomas Clark, in opposition
Exhibit #9-amended plan for division of the two lots with revised frontage widths

Exhibit #10-letter dated 4/13/12 from William and Madeline Keyes, 42 Beals St., in opposition

Minutes-April 4, 2012, Case #3158

A motion was made by Vice Chairman Foley to approve the minutes of the April 4, 2012 meeting; Case #3158, seconded by Jonathan Moriarty and was unanimously voted.

Adjournment

At 8:50 PM, there being no further business, a motion to adjourn the meeting was made by Vice Chairman Foley, seconded by Jonathan Moriarty and unanimously voted.

Approved:

Kemal Denizkurt, Clerk

Date