

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
November 6, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, November 6, 2013 at 7:15 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: Edward Foley, Vice Chairman
Kemal Denizkurt, Clerk
Chuck Golden
Jonathan Moriarty
Robert Stevens, Alternate Member

Not Present: Richard McLeod, Chairman

Staff: Jim Clarke, Director of Planning & Comm. Development
Abby McCabe, Principal Planner

Recording Secretary: Mary Barker

The Vice 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 by Chuck Golden to postpone Case #3213-73 King's Cove Beach Road to the November 13, 2013 meeting; seconded by Jonathan Moriarty and voted unanimously.

BZA CASE #3211–135 Randolph Street, Public Hearing

Application of Robert C. Maynard for property located at 135 Randolph Street, also shown on the Weymouth Town Atlas as Sheet 48, Block 547, Lot 14, located in R-1 zoning district, seeking Special Permit and/or Variance under Chapter 120-53 "Exception by Board of Zoning Appeals" and Chapter 120-53.1 "Minimum Upland Area" to remove the existing two-family dwelling and subdivide the existing lot into two lots.

Members sitting: Edward Foley, Vice Chairman
Kemal Denizkurt
Chuck Golden
Jonathan Moriarty
Rob Stevens

A motion was made by Kemal Denizkurt to open the public hearing and waive the reading of the published notice; seconded by Jonathan Moriarty and voted unanimously.

Attorney Gregory Galvin, with offices at 775 Pleasant Street, Weymouth appeared before the Board with the applicant, Mr. Robert Maynard, to subdivide the property, which is located in an R-1, single family zone. The existing two-family (side to side and centralized on the property) will be demolished and two single-family homes constructed on each lot. The submitted plan shows the topography of the land, which slopes down from the street to the middle and then rises and slopes down again to the Mill River in the rear. The property is within the Town's Watershed Protection District and has been flagged since the application was filed, and the upland area is greater than originally noted, based on the survey. A study of the area property was attached to the application and a sampling of thirty properties along Randolph Street towards Holbrook shows seventeen properties are smaller; two smaller than the 25,000 required minimum. Mr. Galvin noted that the application is subject to Conservation Commission review, and if approved, the applicant will then apply for a demolition permit with the Building Department and Historic Commission because it is listed as a structure protected under the Town's Demolition Delay Ordinance. Any tree removal will be in compliance with an Order of Conditions from Conservation Commission. He noted that because the property is lower than the surrounding area, any runoff would remain on the property; he will take whatever steps necessary to keep runoff on the property confined to the yard area. Part of the rear property line follows the contour of the Mill River, and an instrument survey showed the lot size differs from the Town's Street Atlas and what is on the deed. A copy of the deed was entered as Exhibit H.

Chuck Golden asked if the application will be heard before the Historic Commission and Attorney Galvin responded that it would as part of the demo delay process. Jim Clarke, the Planning Director, noted the timing for the demolition delay begins once the application is filed with the Building Department and it is then forwarded to the Historic Commission for a public hearing. Vice Chairman Foley noted the original house was built in 1790. Kemal Denizkurt asked the style of the proposed homes. Attorney Galvin responded they are colonial style with 2-car garages. Rob Stevens asked the status of the well and cesspool shown on the site plan. Attorney Galvin responded that both have been filled; the property is tied to the town for water and sewer and appropriate mitigation will be met if construction is approved. Jonathan Moriarty asked if the 5000 sq. ft. gain was a result of the river subsiding. Attorney Galvin responded that it could have changed course or shape; it was plotted when the atlas was drafted and was based on property lines, not the Mill River. The prior deed was entered as Exhibit I land formerly owned by John and Julia Rexford, now owned by Delahunt. There was a brief discussion of the boundary discrepancy.

Abby McCabe, the Principal Planner, reported the application was distributed to the various Town Departments and she reviewed the comments. The application requires filing with Conservation Commission and Historical Commission. The Building Department noted the existing use as a 2-family house is not permitted with the R-1 zoning and the proposed use for single-family residences is allowed in the R-1 zone. Vice

Chairman Foley asked if the 75% minimum lot size of 18,750 upland area will be met with a subdivision of the property. Lot 1 will be 18,800 and lot 2 17,200. Chuck Golden asked if the applicant will be allowed to tear down the property if it was built in 1790. Attorney Galvin responded that the applicant may be required to salvage certain parts; determination will be made after it has been inspected.

A motion was made by Jonathan Moriarty to close the public hearing; seconded by Kemal Denizkurt and unanimously voted.

To vote on Case 3211 - 135 Randolph Street – to approve a Special Permit under Chapter 120-53 “Exception by Board of Zoning Appeals” to remove the existing two-family dwelling and subdivide the existing lot into two buildable lots:

A motion was made by Vice Chairman Foley to approve the application for a special permit; seconded by Chuck Golden.

FINDINGS

Further, the board finds that:

1. The applicant has submitted sufficient evidence that shows the specific site is an appropriate location for such a use.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. The proposed lots are greater in size than 2/3 of the lots in the neighborhood and two single-family homes will be less nonconforming than the existing two-family dwelling.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve a Special Permit, with the following conditions:

- Tree removal will be only those permitted by Conservation Commission and will be marked on the plan.
- Driveways will be constructed in such a way to keep water runoff on the property.
- Approval not required site plan will be submitted for deeding purposes.

To vote on Case – to approve a Variance under 120-53.1 “Minimum Upland Area” to remove the existing two-family dwelling and subdivide the existing lot into two lots with less than the required minimum upland area:

A motion was made by Vice Chairman Foley to approve the application for a variance and was seconded by Jonathan Moriarty.

FINDINGS

Further, the board finds that:

1. Owing to circumstances relating to the soil conditions, shape or topography of the land, a literal enforcement of the provisions would involve substantial hardship, financial or otherwise. The size and shape of the wetlands in the rear of the property creates a hardship.
2. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the Variance.

BZA CASE # Case 3212 – 5 Harlem Road, Public Hearing

Application of Ryan Bruce for property located at 5 Harlem Road, also shown on the Weymouth Town Atlas as Sheet 2, Block 11, Lot 6, located in R-1 zoning district, seeking Special Permit under Chapter 120-40 “Extension or Change for Non-Conforming Uses or Structures: to remove the roof of the existing non-conforming one-car garage and expand the garage to create a two-car garage within the required minimum side and rear yard setbacks.

Members sitting: Edward Foley, Vice Chairman
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty
 Robert Stevens

A motion was made to open the public hearing and waive the reading of the published notice.

Applicant Ryan Bruce appeared before the Board. His application is to widen the existing 9' x 18' garage to 19' x 19' to provide additional storage space. There is nowhere else on the lot to locate it without requiring excavation. Vice Chairman Foley asked if this will increase the nonconformity. Abby McCabe reviewed the Building Inspector's comments that an accessory building must be set back 2 feet from the property line per state law, but the existing walls are allowed to remain in their current location along the property line if they are only repaired and any new walls will need to be setback 2 feet from the property line. The applicant agreed to jog the new wall in the back of the garage 2 feet from the rear property line. Chuck Golden asked if demolition has already started. The applicant responded that the roof had caved in and he removed it after he purchased the property in January, but he has not made any changes to the existing footprint.

Abby McCabe reported that the application was distributed to the various Town Departments and she reviewed the comments. The application requires filing with the Conservation Commission since the land is subject to flooding and there are outstanding taxes on the property.

A motion was made by Kemal Denizkurt to close the public hearing; seconded by Jonathan Moriarty and unanimously voted.

To vote on Case #3212 – to approve a Special Permit under Chapter 120-40 “Extension or Change for Non-Conforming Uses or Structures: to remove the roof of the existing non-conforming one-car garage and expand the garage to create a two-car garage within the required minimum side and rear yard setbacks.

A motion was made by Vice Chairman Foley to approve the application for a special permit and was seconded by Chuck Golden.

FINDINGS

Further, the board finds that:

1. The specific site is an appropriate location for such a use. The applicant intends to keep the use as a garage.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. Nothing in opposition was received from the neighbors.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The public convenience and welfare will be substantially served.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve a Special Permit, with the following conditions:

- Applicant will submit a revised plan that shows the two-foot setback from the rear property line for the new wall.
- Proof that all taxes are paid to date is required before a building permit can be issued.
- The Applicant shall file with the Conservation Commission.

Approval of Minutes

A motion was made by Chuck Golden to approve the minutes of the October 2, 2013 meeting as written; seconded by Jonathan Moriarty and unanimously voted.

A motion was made by Chuck Golden to amend the minutes from the September 4, 2013 meeting to correct a scrivener’s error and was seconded by Jonathan Moriarty and unanimously voted.

Discussion as relevant to a public hearing closed on October 16, 2013 (Case #3191-767 Main Street)

Jim Clarke reviewed the matter. Many issues that were brought up through the hearing process by the Town and the neighbors were resolved in the site plan changes that

Cumberland Farms proposed and they have been asked to address the issue of water ponding at the end of Adams Place. He will compile everything for discussion. The information should all be available in order to render a decision at the first meeting in December.

Other Business-Certificate of Occupancy for 1072 Washington Street (Landscaping)

Jim Clarke reported that he and Abby McCabe conducted a site visit before a Certificate of Occupancy issued and noted that although the landscaping was not installed along the east side per the Board's condition of approval, the applicant has improved the look by installing vinyl siding instead of the corrugated metal building as initially proposed. Everything else has been done as requested. He noted that side of the building faces other business and not residences. If the Board wants, staff can ask the applicant to install landscaping around the utility meters. Abby McCabe noted that the meters are not visible from the photographs taken from the front sidewalk. The consensus was that the Board would like to see landscaping along the meters, and staff will ask the applicant to install.

Adjournment

The next meeting of the Board of Zoning Appeals will be on Wednesday, November 13, 2013. At 8:30 PM, a motion to adjourn the meeting was made by Kemal Denizkurt, seconded by Jonathan Moriarty and unanimously voted.

Respectfully submitted:

Kemal Denizkurt, Clerk