

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
October 16, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, October 16, 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: Richard McLeod, Chairman  
Edward Foley, Vice Chairman  
Kemal Denizkurt, Clerk  
Chuck Golden  
Jonathan Moriarty  
Brandon Diem, Alternate Member

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

Recording Secretary: Mary Barker

The Vice Chairman called the hearing to order at 7:25 PM and explained the procedures that would be followed to the people present.

A motion was made to continue the public hearing on Case #3205 - 90 Church Street to the November 13, 2013 meeting by Jonathan Moriarty; seconded by Chuck Golden and voted unanimously.

A motion was made to take Case #3210 (8 & 14 Pine Cliff Road) out of order by Jonathan Moriarty; seconded by Chuck Golden and voted unanimously.

**BZA CASE #3210 – 8 & 14 Pine Cliff Road, Public Hearing**

Application of Donald Rafferty of 32 Sea Street for property located at 8 & 14 Pine Street, also shown on the Weymouth Town Atlas as Sheet 30, Block 398, Lots 10 & 11 , located in R-1 zoning district, seeking to demolish an existing house, change lot lines, make one lot more non-conforming, and make one lot more conforming

Members sitting: Edward Foley, Vice Chairman  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Brandon Diem, Alternate Member was selected to sit on this case.

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

Donald Rafferty presented his application. He is the owner of 21 Westminster Road, now known as 8 Pine Cliff Road and is under agreement to purchase 14 Pine Cliff Road. He is proposing to change the lot lines leaving 10,780 sq. ft. on lot D and combining lot A and C as shown on the submitted plan. The site contains a significant amount of ledge that he has to work around and without a variance, he will have to demolish from the street. The proposed lot lines provide a more natural shape. He proposes 28 x 28 ft. houses.

Chuck Golden asked if the houses could be located further back on the property. Mr. Rafferty responded that due to the ledge at the rear of the lot and the slope of the back section prevent relocating the dwelling. Jim Clarke, Planning Director, noted the proposed house at #14 will comply with zoning, and that #8 will have 120-ft at the building line. Vice Chairman Foley asked to see the locations of the mature trees on the plan and asked if any are slated for removal. Mr. Rafferty responded that he will only take out trees necessary to get the equipment in. He noted that #8 Pine Cliff Road has already been cleared.

Abby McCabe, Principal Planner reported the application was routed to the various departments and reviewed the comments. There are two unpaid water bills. She also asked the Board to consider two conditions of approval if the application is passed; that revised plans be submitted and that an ANR (Approval Not Required plan) be submitted to the Planning Board and proof of recording at the Registry of Deeds be submitted to the Planning Department.

The Vice Chairmen asked for public comment. There were no comments from the public.

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

**To vote on Case 3210 – 8 & 14 Pine Street, to approve a Variance for relief of the minimum lot size requirements, the minimum front yard setback, and the minimum distance between buildings, to demolish the existing house, change the lot lines, to make one lot conforming and one lot more non-conforming:**

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

#### **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. Ledge on the property and the slope of the land supports that a hardship exists.
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 a Variance, with the following conditions:

1. The applicant submit proof of payment of the unpaid water bills to the Planning Department.
2. The applicant submit an updated plan showing the setbacks, zoning summary table with the dimensional regulations and annotating the mature trees slated for removal.
3. The applicant submit two (2) copies of the final approved plans to the Planning Department.
4. The Approval Not Required (ANR) Plan be submitted to the Planning Board and proof of recording at the Registry of Deeds be submitted to the Planning Department prior to the issuance of a final occupancy permit.

At 7:40 PM, Chairman Richard McLeod arrived.

**BZA CASE #3203–24 King Oak Terrace, Public Hearing, cont.**

Application of Rosemary Coyle for property located at 24 King Oak Terrace also shown on the Weymouth Town Atlas as Sheet 17, Block 182, Lot 7, located in R-1 zoning district, seeking an extension or change by special permit under Section 120-40 for a day care center, variance under Section 120-12.E for accessory uses and variance under Section 120-24.M for day care center parking

Members sitting:      Richard McLeod, Chairman  
                                 Edward Foley, Vice Chairman  
                                 Kemal Denizkurt  
                                 Chuck Golden  
                                 Jonathan Moriarty

A motion was made to reopen the public hearing and waive the reading of the legal notice.

The applicant, Rosemary Coyle, noted that she has come to an agreement with the abutters and will install a 6' stockade cedar fence along the property and continuing behind the barn, from the end of the existing chain link fence.

Abby McCabe reviewed the staff memo to the Board with the suggested conditions if the application is voted favorably. The suggested conditions of approval include:

- That a fence be installed and specify the location;
- If the childcare use is abandoned at some future time, the barn shall return to its original use;

- The number of children should be limited to 8 and any request to increase the number of children be required to come back before the Board for an amendment to review parking, traffic and safety concerns;
- That the drop-off and pick-up times be staggered and included in the parent handbook.

The Chairman opened the meeting to public comments. Mr. Sullivan, 825 Commercial Street, asked who will oversee compliance on the conditions.

Jim Clarke responded that the fence must be installed before a certificate of occupancy can be issued. A copy of the decision will be submitted to the Building Department and when there is the request for the certificate of occupancy the Planning Department will review the conditions of the application prior to the issuance of the final certificate of occupancy.

A motion was made by Vice Chairman Foley to close the public hearing; seconded by Chuck Golden and unanimously voted.

**To vote on Case #3203 – 24 King Oak Terrace to approve a Special Permit and Variance for a home occupation in an accessory dwelling and relief of the required minimum parking spaces:**

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

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

**SPECIAL PERMIT FINDINGS**

Further, the board finds that:

1. 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.
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.

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

**VARIANCE 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.
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 requested Special Permit and Variance with the following conditions:

1. That a 6-ft cedar fence be installed along the rear property line;
2. That the structure return to its original use as an accessory building for storage (barn) if the daycare/childcare use of the barn is abandoned;
3. That the maximum number of children be limited to eight (8) due to traffic, parking and safety concerns;
4. If more than eight (8) children is proposed in the future, the applicant shall return to the Board for an amendment;
5. Staggered pick-up and drop-off times be included in the Parent Handbook.

**BZA CASE #3191-767 Main Street, Public Hearing, (cont.)**

Application of Cumberland Farms for property located at 767 Main Street also shown on the Weymouth Town Atlas as Sheet 45, Block 514, Lot 6, located in B-1 zoning district, seeking to raze the existing building (2,246 sq. ft.) and rebuild a new 2,971 sq. ft. colonial style convenience store, and reconfigure and continue to provide full service gasoline sales.

Members sitting:      Richard McLeod, Chairman  
                                 Edward Foley, Vice Chairman  
                                 Kemal Denizkurt  
                                 Chuck Golden  
                                 Jonathan Moriarty

A motion was made to reopen the public hearing and waive the reading of the legal notice.

The applicant's attorney, Douglas Troyer, appeared before the Board. Additional traffic studies were completed since the last meeting and Gary McNaughton, traffic engineer for Cumberland Farms summarized the findings for the board. As a result, they have modified the drive access on Route 18 to a single reconfigured driveway to improve on-site queuing. He further noted that the findings were shared with MassDOT, which agreed with the assessments and analysis. There may need to be some signal timing adjustments and they will begin the MassDOT permitting process, taking into consideration the change in standards over the last few years. Chairman McLeod asked if the utility pole on Rt. 18 will need to be moved to accommodate the changes and the applicant responded that it will not. Jim Clarke reported there are three main issues from the traffic engineer: the funds for Main Street traffic improvements; the recommendation for signal timing if MassDOT accepts signal changes and synch with the Columbian Street light as well and MassDOT will determine.

Attorney Troyer noted that Cumberland Farms has made several revisions to the plan to accommodate the concerns of the town and the neighbors, and has listened to the staff and abutters' concerns. They have moved the location of the building, adjusting the queuing, moved the gas and filling tanks, added green space and buffers along the residential neighbors with fencing in an effort to address the concerns. He noted this is a good plan for the town and the neighbors and provided a final handout for the application to demonstrate that the application meets each of the criteria for the special permit process.

Councilor Ed Harrington addressed the board and reiterated his opposition to the project. He demonstrated that the project does not meet any of the criteria for the special permit process and read a prepared statement to the board.

Dorothy Lang, 38 Adams Place addressed the Board and noted and she still has concerns that the project is a public safety concern, the location of the building and the overhang blocks the line of sight. She provided a letter to the Board which was entered into evidence.

Lynn McLaughlin, owner of Dunkin Donuts at 755 Main Street, noted she was not aware that a traffic study was being conducted as a part of the project and asked for details.

Eleanor Edwards, 779 Main Street noted she looks forward to the Cumberland Farms completed project, and a cleaner, better kept site. She noted that Councilor Harrington does not speak for all of the neighbors. A letter that she addressed to the Board was entered into evidence.

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

A motion was made by Vice Chairman Foley to take Case #3191 - 767 Main Street under advisement and was seconded by Jonathan Moriarty and voted unanimously.

## **Minutes**

A motion was made by Vice Chairman Foley to strike a sentence in the September 4, 2013 minutes from Case #3202-3 Campbell Street and was seconded by Jonathan Moriarty and voted unanimously.

A motion was made by Vice Chairman Foley to approve the minutes from the September 4, 2013 and September 18, 2013 meetings and was seconded by Jonathan Moriarty and unanimously voted.

The minutes from October 2, 2013 were not voted as they have not been completed.

## **Other Business**

Jim Clarke reported that the proposed zoning change to Section 120-53 pertaining to subdividing undersized lots by special permit has been submitted to the Town Council for an upcoming meeting.

## **Adjournment**

The next meeting of the Board of Zoning Appeals will be on Wednesday, November 6, 2013. At 9:05 PM, a motion to adjourn the meeting was made by Chuck Golden, seconded by Jonathan Moriarty and unanimously voted.

Respectfully submitted:

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Kemal Denizkurt, Clerk