

**BOARD OF ZONING APPEALS**  
**RECORD OF MINUTES AND PROCEEDINGS**  
**October 2, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, October 2, 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  
                                     Rob Stevens, 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 7:20 PM and explained the procedures that would be followed to the people present.

**BZA CASE #3183-0 Greenvale Avenue, Public Hearing (cont.)**

Application of Norman Hassan for property located at 0 Greenvale Ave., also shown on the Weymouth Town Atlas as Sheet 25, Block 335, Lots 28 & 29, located in R-1 zoning district, seeking to combine lots 28 & 29 to provide adequate land and frontage for the construction of a single family residence. Lots 28 & 29 will have a combined total of approximately 8,096 sq. ft.

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

Atty. Jim Stathopoulos appeared with the applicant, Mr. and Mrs. Hassan. Atty. Stathopoulos provided the following documents that were entered into the record:

1. Elevations map of the proposed construction
2. Plan of Land Lots 28 & 29
3. GIS Map-DPW Engineering plan
4. Property record cards – 26 properties
5. Assessors Atlas 1935
6. Assessors Atlas 2013
7. Photographs vacant lot #29

8. Municipal Lien Certificate #30202 dtd 5/7/09 – at purchase

Atty. Stathopoulos noted that the proposed 8658 sq.ft. lot is in keeping with the neighborhood. Item 4 entered into the record contains photographs of 17 lots that average 5391 sq.ft. and includes 10 that are less than 5000 and 7 greater than 5000. When the original subdivision was created in the 1940's, lots were combined to create the existing larger lots. Exhibit 3 shows several homes along the water that are smaller, and those along the street side are larger. When the applicant purchased the land, he cleaned out the debris that had been dumped.

Chairman McLeod asked if the land had ever merged under the same ownership. Jonathan Moriarty noted the land was two lots originally, two lots in 1938, when the construction on the lot occurred, and asked if the land was registered. He asked to see the original deed and the chain of title. Atty. Stathopoulos responded that he has the chain of title. There was an Order of Taking in 1966. There was a brief discussion of when the dwelling was constructed and when it was torn down, when and why part of the land was registered and the common ownership of the properties. The discussion included ownership of 28 and 26 and the adjacent property. Vice Chairman Foley noted that in reviewing the houses, all except #106 were built in the 30's and 40's, and combined in 2004 to create a 12,000 sq. ft. lot. He asked if the applicant was creating a hardship to #106 by combining the lots. Kemal Denizkurt noted that this question came up on the first night of the hearing and that the approval would create a hardship to lot A. The seller did not come before the Board and the lot is more non-conforming with the requirements of the Zoning Ordinance. Atty. Stathopoulos responded that the former owner and the applicant were not required to have Board approval to sell or purchase the land. If the owner of #106 were to try to expand or alter his property he would have to come before the Board. Taxes were paid separately on each parcel. They cannot merge registered and unregistered land. Atty. Stathopoulos summarized the lot's history stating that since the 1930's the lot grew in size and is now 5,620 sq. ft. which may have been a result of a decline in the pond's water level. There was also a foreclosure proceeding for a tax title in 1995 on Lot 28. Atty. Stathopoulos also noted that when the original dwelling was built, zoning wasn't adopted by the town yet so it wouldn't have been a consideration. Jonathan Moriarty asked if the application has to go before Conservation Commission. Jim Clarke, Planning Director, responded that an Order of Conditions is required since the property is within the 100-ft buffer zone. Atty. Stathopoulos responded that the seller's nonconformity should not be held against the applicant and it is not a reason to deny this application to create a buildable lot. Jonathan Moriarty asked if the seller is aware that he now has a nonconforming lot and will have an issue when he sells. Kemal Denizkurt asked why the proposed plan includes laundry facilities on both first and second levels and the applicant responded it was for convenience.

The Vice Chairman asked if the Town Solicitor could provide an opinion on whether the Board can grant relief that will make a non-conforming lot more non-conforming. Chairman McLeod noted the Board has not approved an application on a lot size this small. Jim Clarke responded that he will have the Town Solicitor review the case and provide an opinion to the Board.

Martin Lynch, 105 Greenvale, spoke in favor of the application. He noted the former condition of the vacant lot.

A motion was made by Vice Chairman Foley to continue the public hearing to the Board's November 13, 2013 meeting and was seconded by Jonathan Moriarty. Unanimously voted.

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

Application of Cumberland Farms, Inc. for property located at 767 Main St., also shown on the Weymouth Town Atlas as Sheet 45, Block 514, Lot 6, located in B-1 zoning district, seeking to raze existing building 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

Jim Clarke reported that Atty. Troyer sent a written request for a continuance to the Board's October 16, 2013 meeting. A motion was made by Vice Chairman Foley to continue the public hearing to October 16, 2013 and was seconded by Jonathan Moriarty. Unanimously voted.

**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 120-74.M for day care center parking.

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

A motion was made, seconded and unanimously voted to reopen the public hearing and waive the reading of the published notice.

Ms. Rosemary Coyle appeared before the board. She provided a packet of information to the members. Vice Chairman Foley asked about the fence. Ms. Coyle responded that the present fence is chain link and runs partially along the barn. In prior conversation with her neighbor, she proposed a natural barrier fence. Kemal asked about the parking plan and whether cars can be stacked in front for drop off because there is a steep drop off to one side of the driveway. Ms. Coyle provided a photograph in her packet to demonstrate how drop off can safely take place. She had the wood chips removed from the drive so cars can safely back out. Kemal also asked what the status was of her license from the state. She responded that she provided a checklist and everything she can complete except the time sensitive items and those that can't be done until after the application is approved. Chuck Golden noted she stated that there are to be six children

with her application; 7 if she counts her own child and asked if there is any contingency on the number of students. Ms. Coyle responded that she couldn't exceed ten but that she potentially could have eight with state approval.

Jim Clarke noted there were no additional staff comments at this time.

Ken Kraus, 170 Cornish, expressed his concerns with parking and traffic along the one lane road particularly because the corner at the end is challenging. He is also concerned that this will negatively impact property values in the neighborhood, and that when zoning changes occur, they tend to spread and change the character of the neighborhood. He asked why the applicant isn't looking to open a business in an area zoned for it and not in a residential neighborhood. He is also concerned with a liability issue regarding the steep area in the back and the children's safety.

Vice Chairman Foley responded that 120-12E allows certain types of businesses by special permit if the applicant meets certain criteria, and that there are other similar home-based businesses in town.

Joe Sullivan, 825 Commercial Street, noted he is against the application. The building is within 6-ft of his property line, and a business is not appropriate in a residential area. He noted that he and the applicant have discussed fencing, but that the livestock fence proposed by the applicant and he would prefer a 6-ft stockade fence. Ms. Coyle responded that it would be cost prohibitive with the number of existing boulders and trees and that it was partially fenced with chain link when the barn was constructed in 2006.

Eileen Sullivan, 825 Commercial, also stated that she did not prefer the livestock fence as it is not sufficient.

Chairman McLeod suggested that the applicant and abutters come to agreement on a type of fence that would provide privacy and security at a reasonable cost.

Chuck Golden noted that the length of the property line is 224-ft. There was a brief discussion of the construction of the barn and whether proper notice was given at the time of construction. Jim Clarke responded that the barn was legally built as an accessory structure and did not require action by the Board because accessory structures have different setback requirements and the use did not require a special permit.

A motion was made by Vice Chairman Foley to continue the public hearing to the Board's October 16, 2013 meeting to allow the parties to compromise on a fence type, seconded by Jonathan Moriarty and unanimously voted.

Ms. Coyle requested that the matter be first on the agenda at that time and the board agreed.

## **Other Business**

### **Discussion of Zoning Amendment to Section 120-53**

Abby McCabe, Principal Planner, provided the Board with a staff memo dated October 1, 2013, in which she provided the background material, taken from the discussion at the last meeting, for the Board to consider requesting a change in the Zoning Ordinance, Section 120-53, "Exceptions by Board of Zoning Appeals" relative to undersized lots. The information included applications taken from the last five years with an analysis from the Town's GIS on existing lot sizes in residential districts. Jim Clarke suggested that instead of specifying an amount or percentage, the Board could leave to its discretion on a case-by-case basis and the onus would be on the applicant. There was a brief discussion on the watershed area and PUD standards already in the language. Jim Clarke explained that the request will be drafted and submitted from the staff on behalf of the Board to the Mayor. The Zoning Amendment will then go to Town Council in the form of a measure. Council can refer to a standing committee which will hold a joint public hearing with the Planning Board. Once the hearing is closed, the Planning Board has 21 days in which to present its recommendation to the Town Council for a vote. For zoning amendments, a two-thirds majority of the Town Council is needed to pass. Rob Stevens asked if it might be prudent to wait to present until after the new town council is formed after the upcoming elections. Chairman McLeod noted the change might be helpful in those cases where applicants do not have legal representation at public hearing and the Board is in position to coach the parties.

A motion was made by Vice Chairman Foley to strike the last sentence in E and the word "two" in D and was seconded by Jonathan Moriarty. Unanimously voted.

A motion was made by Vice Chairman Foley, seconded by Jonathan Moriarty, to draft an amendment as approved with the changes noted and submit to the Mayor. Unanimously voted.

### **Minutes**

A motion was made by Vice Chairman Foley to accept the minutes from the September 4, 2013 meeting for Case #3209-68 Pond Street and was seconded by Chuck Golden. Unanimously voted.

### **Adjournment**

The next meeting of the Board of Zoning Appeals will be on Wednesday, October 16, 2013. Rob Stevens noted he will not be available for the November 13, 2013 meeting.

At 9:10 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.

Respectfully submitted:

  
Kemal Denizkurt, Clerk