

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
September 5, 2012

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, September 5, 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: Edward Foley, Vice-Chairman
Kemal Denizkurt, Clerk
Chuck Golden
Jonathan Moriarty
Robert Stevens, Alternate Member

Not present: Richard McLeod, Chairman

Staff: Robert Luongo, Economic Development Planner

Recording Secretary: Mary Barker

The Vice Chairman called the hearing to order at 7:00 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 #3166–1072 Washington Street, Public Hearing (cont.)

Application of Ed Kelcourse for property located at 1072 Washington St., also shown on the Weymouth Town Atlas as Sheet 30, Block 399, Lot 3, located in HT zoning district, seeking to construct a 2-story building with 2 residential units and 3 commercial units

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

A motion was made by Jonathan Moriarty to reopen the public hearing, seconded by Kemal Denizkurt and unanimously voted. Ed Kelcourse reviewed the revised design that was submitted, along with a satellite view of the property and surrounding area. He noted the house that was on the property has been razed and the property now stands between two businesses. He has met with the neighbors and noted the opposition to the project has been reconciled with the exception of three items requested by the petitioners:

1. No restaurant, coffee shop or convenience store style although all are allowed under HT zoning.
2. Restriction from drive-through covered under 120-22.

3. No permanent parking of vehicles in front of the establishment as advertising; although this has already been addressed, tenants can't be restricted from parking in designated areas.

Vice Chairman Foley asked if the applicant would be amenable to conditions placed on approval if granted that could address some of these issues. Mr. Kelcourse responded no. The plan calls for two 900 square foot business/retail spaces and a third space in the rear for Mr. Kelcourse's plumbing business.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments. There were a number of meetings with planning, the applicant, the District Councilor and one neighbor and all agree the current design is an improvement.

District Councilor Arthur Mathews addressed the Board and he expressed his gratitude for the cooperation of all parties. He noted the traffic concerns and the report from Traffic Engineer Georg Bezkorovainy. He also noted for clarification that a drive through is allowed for retail via special permit, but not for a restaurant. Given the site plan, it would be impossible to situate a drive through. Kemal Denizkurt discussed the plans; the number of parking spaces and HP accessible spaces. The current plan has more parking than required. There was no sign calculations provided; signage will conform to code. He commended the applicant on the revisions to the original plan.

Donna Dearth, 1065 Washington St., reported that she met with Mr. Kelcourse, Councilor Mathews and Planning staff and on behalf of the neighbors thanked them for the enhanced design and change in materials. She is still concerned that the types of businesses that could occupy the site can negatively impact the traffic flow to the area.

Donald Dearth, 1065 Washington St., also thanked the applicant for the design changes but expressed his concern that the applicant could sell the property in the future and the two retail spaces could be combined to create a higher volume business. Vice Chairman Foley noted the Board may vote only on the application submitted and not speculate future plans. Bob Luongo noted that the special permit would follow the property and if sold, any new owner would have to abide by it. He also reviewed the traffic study dated 7/30/12, which indicates the types of uses and how they would impact traffic. He also noted the parking would not support certain types of uses. Jonathan Moriarty noted that if the two spaces were combined they still would not support a fast food style operation. Vice Chairman Foley noted the Papa John's in the area which is 1200 square feet but has minimal impact to traffic. There was a brief discussion of entrance/exit- there will be one drive into and out of the property. The residential parking and entrance will be in the rear of the property. There was also a brief discussion of the permitted uses under the zoning, and the allowed/emergency hours of operation by the businesses and in terms of no disruption to the residential tenants.

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

To vote on the of BZA Case No. 3166 to approve a Special Permit to construct a 2-story building with 2 residential units and 3 commercial units:

A motion was made by Kemal Denizkurt to take the matter under advisement in order to give the Board the opportunity to discuss and craft conditions, and to recommend its decision at the September 19, 2012 hearing and was seconded by Jonathan Moriarty; unanimously voted.

Submittal: written response from Applicant addressing issues by petitioners

BZA CASE #3167–316 Washington Street, Public Hearing (cont.)

Application of Jens Lisinski for property located at 316 Washington St., also shown on the Weymouth Town Atlas as Sheet 24, Block 324, Lot 1, located in B-1 zoning district, seeking to construct a drive-thru specialty coffee kiosk in the parking lot of Fox Shopping Plaza. Relief also requested from the parking restrictions, signage restrictions, and a modification to the special permit granted for the construction of the plaza on 1/23/89, Case #88-11-9/9, regarding allowed hours of operation

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

Bob Luongo reported that the applicant is not present but has requested the matter be continued to the October 3, 2012 meeting. A motion was made by Jonathan Moriarty to continue the public hearing to October 3, 2012 and was seconded by Kemal Denizkurt and unanimously voted.

BZA CASE #3168–120 Mt. Vernon Road East, Public Hearing

Application of Deborah Cummings for property located at 120 Mt. Vernon Rd. East, also shown on the Weymouth Town Atlas as Sheet 14, Block 184, Lot 33, located in R-1 zoning district, seeking to raze an existing garage and construct a new garage and breezeway within setback area.

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

Mr. and Mrs. Cummings presented the petition to remove an existing garage and replace it with a new garage and breezeway. The 2-car garage will be situated 7 feet from the abutter. Current structure is 10 feet away. They provided a letter in support from the abutter. Vice Chairman Foley confirmed with Bob Luongo that the application is for a variance and that the topography and shape of the lot would provide sufficient financial hardship. There is no other way to site the garage/breezeway that would still allow the applicants use of the bulkhead. There was a brief discussion with Jonathan Moriarty as to the use of the breezeway; it will be closed in and provide shelter in the winter. There will be a second level framed out and plumbed for future use as

family room or master bedroom, but not for use as rental. The breezeway will be the main entrance to property and closed in on all sides with staircase up to second level. Plans will be drawn by an architect. Jonathan Moriarty asked why it is being called a breezeway. Bob Luongo reported that when finished, it will be a heated extension of the house. Vice Chairman Foley asked if it was an addition. He would like to see more detailed drawings. The east facing wall opens up the to staircase. Chuck Golden noted it appears to be a hallway and not a breezeway. The Board asked for more detailed drawings, architectural renderings and Jim, the carpenter, noted it would take about 3-4 weeks to provide a floor plan.

To vote on the of BZA Case No. 3168 to approve a Variance to raze existing garage and construct a new garage and breezeway within setback area:

A motion was made by Kemal Denizkurt to continue the application to the September 19, 2012 meeting to allow the applicants to obtain architectural renderings and was seconded by Jonathan Moriarty and unanimously voted.

Submittal: Exhibit #1 letter from abutter (J. McGillicuddy, 122 Mt. Vernon East) supporting application

BZA CASE #3169–144 Forest Street, Public Hearing

Application of Patricia Conway for property located at 44 Forest St., also shown on the Weymouth Town Atlas as Sheet 44, Block 505, Lot 22, located in R-1 zoning district, seeking to construct a deck within setback area.

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

Patricia Conway presented the petition for a variance to replace an existing porch with a 20 x 13 foot deck that will be 6 feet from the corner. The property has two front set backs and driveways on Samoset and Forest Streets and the deck cannot be situated elsewhere on the property. The back of the house has 3 bedrooms and a bulkhead. Jonathan Moriarty asked if the applicant plans to tear up the drive on Samoset. The applicant responded no.

Bob Luongo reported that the application was routed to the various departments and there were no specific comments.

District 5 Councilor Ed Harrington addressed the Board. He noted he also lives on Samoset and there were no objections to the plans from any neighbors. This is a small project that will not impact the line of sight or on-street parking.

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

To vote on the of BZA Case No. 3169 to approve a Variance to construct a deck within setback area:

A motion was made by Kemal Denizkurt 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.
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 application for a variance to construct a deck within the setback area.

BZA CASE #3170–83 Woodrock Road, Public Hearing

Application of Expressions Dance for property located at 83 Woodrock Rd., also shown on the Weymouth Town Atlas as Sheet 35, Block 446, Lot 6, located in I-1 zoning district, seeking a special permit for recreation or assembly

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

Jen Skotniczny, the owner and Cara Cullen of Expressions Dance presented the petition for a special permit. The applicant who teaches dance to youth and adults is planning to move her studio to the 83 Woodrock site to expand her business. The owner of the property will erect a dividing wall to divide the studio spaces. Currently there is a welding business in the front of the building and an ambulance service adjacent that is vacating but still holds a lease for the next year.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments. The Health department notes the incompatible use- the impact of the welding business to the dance studio and that the building is used for chemical storage and metal fabrication and noted the potential nuisance of migrating residue.

Jonathan Moriarty noted that he is concerned and surprised that the applicant would want to use this space. The applicant responded that other retail space is either not suitable in size or financially prohibitive. Jonathan Moriarty also asked about creating a partition in a space that is already closed off.

Vice Chairman Foley noted that having worked in the welding business, he is familiar with the fumes that are created and that this is not what children should be breathing in or exposed to and that parents might not be inclined to enroll their children. He asked how much time the applicant plans to spend in the building. The applicant responded that her studio would be open 5-9 PM, with a short overlap with the welding shop. Jonathan Moriarty noted his primary concern is whether the space has a separate air filtration system that will not allow migration from the welding shop or from idling vehicles in the ambulance service. Kemal Denizkurt noted his concerns with the ventilation system as well as with the storage of flammable gasses and explosives in the building. He understands the applicant's attraction to the space due to the size and affordability, but the other uses allowed in the building are not conducive to a dance studio. Rob Stevens asked the applicant to provide some proof to the Board that the studio would not be going into a site that will negatively impact the studio; do swipe tests of the surfaces. He also noted the HVAC mounted with huge screws on a pad outside as a hazard, the lack of outside lighting and his concerns with the studio going into an industrial zoned site. District Councilor Mathews asked the applicant to consider that the Board is trying to protect the applicant and her business in addressing their concerns. Her lease of the property is contingent on the Board's approval of the application. He suggested they meet with or invite the building owner to address the concerns and the potential liabilities.

There was a brief discussion of the site. The use of the property was established years ago, and any future industrial businesses cannot be restricted from use. The ambulance service is vacating and a similarly incompatibly business could sublet the space. The applicant requested a copy of the Health Department report.

To vote on the of BZA Case No. 3170 to approve a Special Permit for recreation or assembly:

A motion was made by Kemal Denizkurt to continue the public hearing to the September 19, 2012 meeting to allow time to meet with the property owner and was seconded by Jonathan Moriarty and unanimously voted.

Submittal: Health Department report

BZA CASE #3171–24 Woodbine Road, Public Hearing

Application of Zdzislaw Marecki for property located at 24 Woodbine Rd., also shown on the Weymouth Town Atlas as Sheet 30, Block 391, Lot 12, located in R-1 zoning district, seeking relief from the minimum side yard depth for construction of a new house

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

Mr. Marecki presented the petition with current owner Jeske Elzbieta. The property is scheduled to close escrow on 9/7/12. He is seeking relief from the side yard setback on both sides in order

to fit a 32 x 36 foot house on the property. Each side requires 2 feet of relief. There was a brief discussion of the size of the proposed house and whether the plan submitted is accurate. Jonathan Moriarty asked if the applicant has considered any other style home. The applicant responded that the house will have a garage underneath it. Due to the slope of the land, it is more costly to put any other style on it. The house will be one level and a 1-car garage below. Vice Chairman Foley noted that the window placement in the picture is deceptive. Jonathan Moriarty noted his concern with the impact to the neighbor's driveway.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments, particularly from Water & Sewer and the Engineering Department. The existing building is 844 square feet.

District Councilor Mathews noted the concern is not with the new house, but the close proximity to the abutter and asked if it could be shifted further or planned to accommodate both the applicant and the abutter that could work. Vice Chairman Foley noted that the Board recommends that the applicants address potential conflicts with abutters in order to come to a cooperative solution.

Susanne Helmar, 20 Woodbine Rd., addressed the Board. She noted there is more room on the other side of the property and is concerned with impact to her driveway, any blasting for ledge, and that the proposed plan will bring the new house within 27 feet to the corner of her home. Jonathan Moriarty asked if the house is prefabricated or custom built and if it's possible to scale it down to 32 feet wide. At 30 feet, the applicant could build without approval. He would support 32 feet wide and not encroaching any closer to the abutter at #20. The applicant responded that it's custom built. Rob Stevens noted the plan is inconsistent with the measurements provided. He asked to see renderings that also include side heights. Vice Chairman Foley asked if the applicant has spoken with the abutter at #26. The applicant responded no; abutters were notified of the public hearing. The house was built in 1923 and Ms. Helmar has been a neighbor for 37 years. Kemal Denizkurt noted that the stockade fencing that belongs to the abutter is on the applicant's property and that the shed straddles the property line. Jonathan Moriarty asked how old the shed is and if it's built on cement. The abutter responded that the shed is on a cement foundation.

Vice Chairman Foley called a 5-minute recess. The Board reconvened at 9:25PM.

There was a discussion of the property line, the fencing, and the plans that were provided. District Councilor Mathews suggested the applicant stake out the new footprint for the benefit of the abutter. Rob Stevens noted that his concerns that the plans were not drawn by a certified architect but by a land surveyor and he would like to see an accurately drawn depiction of the plans. He's also concerned with the abutter's encroachment concerns. He suggested the applicant bring his architect to the next meeting. Kemal Denizkurt noted that some of the confusion is due to the fence being situated closer than the property line.

A motion was made by Kemal Denizkurt to continue the public hearing to the October 3, 2012 meeting and was seconded by Jonathan Moriarty and unanimously voted.

Other Business

Brandon Diem, recently appointed as an alternate member, was introduced to the Board.

BZA CASE #3165–1338 Pleasant Street, Minor Modification

Bob Luongo reported that he met recently with Conservation Administrator Mary Ellen Schloss and she is concerned that the three-foot planting buffer proposed in front of the building will not be maintained and might be compromised by snow removal. She has requested that the Board consider eliminating it from conditions in its approval voted July 18, 2012.

A motion was made by Kemal Denizkurt that item #9 be eliminated from the conditions ordered in the approval voted on case #3165 July 18, 2012, seconded by Jonathan Moriarty and unanimously voted.

Minutes-July 18, 2012, Cases #3163 and #3165

A motion was made by Jonathan Moriarty to approve the minutes of the July 18, 2012 meeting; Case #3163, Case #3165, Case #3166 and Case #3167, seconded by Chuck Golden and was unanimously voted.

Adjournment

At 10:00 PM, there being no further business, a motion to adjourn the meeting was made by Jonathan Moriarty, seconded by Chuck Golden and unanimously voted.

Approved:

Kemal Denizkurt, Clerk