

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

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, July 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
 Chuck Golden
 Jonathan Moriarty
 Robin Moroz, Alternate Member

Staff: Bob Luongo, Economic Development Planner

Recording Secretary: Mary Barker

The Vice Chairman called the hearing to order at 7:05 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. Case #3165 was taken out of order.

BZA CASE #3165–1338 Pleasant Street, Public Hearing, Cont.

Application of National Auto Repair, Inc. for property located at 1338 Pleasant St., also shown on the Weymouth Town Atlas as Sheet 23, Block 307, Lot 11, located in a B-2 zoning district, seeking to convert the use from the storage of vehicles to the sale of vehicles.

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

A motion was made by Chuck Golden to reopen the public hearing and was seconded by Jonathan Moriarty and unanimously voted. Glenn Gillis appeared before the Board. Bob Luongo reported that Mr. Gillis has presented the administration with a new site plan and a letter dated July 16, 2012. Mr. Luongo also reported that he walked the site with the Conservation Administrator; no further pavement is planned, but the planting strip along the front may require review by the Conservation Commission. Mr. Gillis reviewed the planting plans; the asphalt will be removed, the spot dug up to a depth of 3' and drainage installed and shrubs planted. The site is illuminated by two National Grid poles; one across Pleasant Street and the other in the rear of the property and he will add two wall lights on the building. He will have the front and west side of the building painted. The east side abuts the herring run and Conservation asked that it not be painted. He will straighten out the fencing along the property, repair it as needed and will add a picket fencing to the chain link fence facing Pleasant Street. He will remove the storage container from the property and relocate it to the NAR business property on Winter/Main Streets.

There will be storage for 12 vehicles in back of the front fencing and room to maneuver for stock rotation, 10 customer parking spots including 2 HP accessible, and 6 spots for employees. Total parking spaces will be 38 (less than the 42 on the original plan to allow for dumpster placement and snow removal). He reviewed the dumpster placement. He has discussed with neighbors at 25 and 31 Riley Avenue. Bob Luongo reported that the impervious surfaces are not being altered, and the drainage appears to be working. Kemal Denizkurt asked about the washing of vehicles. Mr. Gillis responded that it will be done inside the site and drains to an existing gas trap. Kemal also asked about proposed signage. Bob Luongo responded that the application does not include a variance for signage. Kemal noted that the site is at an intersection of three roads and that a little money spent cleaning it up could do wonders. Kemal also asked about the drop off of vehicles. Mr. Gillis responded that vehicles delivered will be backed in and offload on the site. Vice Chairman Foley asked the status of property taxes and hours of operation. The taxes are now current and the business will be open 7AM to 8PM Monday through Saturday. It will be closed on Sundays.

During this discussion, the chairman arrived. Bob Luongo reported that the application was routed to staff and reviewed their comments. In addition all junk will be removed from the site. Kemal asked if the graffiti on the north side can be removed. Bob Luongo will check with the Conservation Commissioner to see if it can be cleaned up without detriment to the herring run. Kemal also noted that the snow storage area is small and asked if the applicant has the ability to truck it out if necessary. Mr. Gillis responded yes. Chuck Golden noted the initial plan as presented called for too many vehicles on the site. He asked for assurance that there will be no deliveries after 8PM. Vice Chairman Foley noted that at the last meeting it was agreed that deliveries would not be made after 6PM.

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

To vote on the of BZA Case No. 3165 to approve a Special Permit to

A motion was made by Edward Foley to approve the application for a special permit and was seconded by Jonathan Moriarty.

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. The applicant has addressed the concerns of staff and the neighbors.
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.

Board members added the following conditions:

1. Snow will be removed from the site if in excess of the area allotted.
2. Storage container will be removed from the property.
3. The dumpster area will be screened and located as per plan.

4. Hours of operation will be 7AM-8PM; no deliveries will be made before 7AM nor after 6PM.
5. Any washing of vehicles is to take place inside the building.
6. Applicant shall comply with plan submitted dated July 18, 2012 by Walter McKinnon Associates.
7. Lighting will consist of existing National Grid pole lights and two wall lights on the building as per plan.
8. Signage to be erected according to code.
9. The chain link fencing on the east side of the property (facing Pleasant Street) shall be repaired and straightened and a solid wood picket fence shall be attached to the existing chain link fence. The chain link fence on the southern side of the property shall be straightened and repaired. The existing wood fencing on the western property line shall be repaired. The site shall be cleaned up – removal of all outside “junk”, storage trailers/containers, metal, etc.
10. No vehicles shall be dropped off or loaded on Pleasant Street. Area of loading and unloading of vehicles shall be as shown on plan.
11. Plan will allow the sale of ten vehicles and storage of twelve vehicles. A total of eight customer parking spaces shall be provided. In addition, two handicapped parking spaces shall be provided. A total of six employee parking spaces shall be provided. All spaces shall be provided as per plan dated July 18, 2012 by Walter McKinnon Associates. Locations and square footages of sales office, repair facility, and Ted’s Transmission shall be as per plan submitted dated July 18, 2012.
12. Existing paved areas of the lot shall remain unchanged. Addition of crushed stone to unpaved areas.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the application for a special permit to convert the use from the storage of vehicles to the sale of vehicles with the following conditions:

1. Snow will be removed from the site if in excess of the area allotted.
2. Storage container will be removed from the property.
3. The dumpster area will be screened and located as per plan.
4. Hours of operation will be 7AM-8PM; no deliveries will be made before 7AM nor after 6PM.
5. Any washing of vehicles is to take place inside the building.
6. Applicant shall comply with plan submitted dated July 18, 2012 by Walter McKinnon Associates.
7. Lighting will consist of existing National Grid pole lights and two wall lights on the building as per plan.
8. Signage to be erected according to code.
9. The chain link fencing on the east side of the property (facing Pleasant Street) shall be repaired and straightened and a solid wood picket fence shall be attached to the existing chain link fence. The chain link fence on the southern side of the property shall be straightened and repaired. The existing wood fencing on the western property line shall

be repaired. The site shall be cleaned up – removal of all outside “junk”, storage trailers/containers, metal, etc.

10. No vehicles shall be dropped off or loaded on Pleasant Street. Area of loading and unloading of vehicles shall be as shown on plan.
11. Plan will allow the sale of ten vehicles and storage of twelve vehicles. A total of eight customer parking spaces shall be provided. In addition, two handicapped parking spaces shall be provided. A total of six employee parking spaces shall be provided. All spaces shall be provided as per plan dated July 18, 2012 by Walter McKinnon Associates. Locations and square footages of sales office, repair facility, and Ted’s Transmission shall be as per plan submitted dated July 18, 2012.
12. Existing paved areas of the lot shall remain unchanged. Addition of crushed stone to unpaved areas.

BZA CASE #3163–825 Middle Street, Public Hearing (cont.)

Application of Navid K. Patel for property located at 825 Middle St., also shown on the Weymouth Town Atlas as Sheet 33, Block 378, Lot 16, located in R-1 zoning district, seeking a second floor residential unit.

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

Bob Luongo reported that Mr. Patel has submitted a certified plot plan. He has visited the site. Per zoning, the retail establishment requires 8 parking spaces and the residence 2 for a total of 10 spaces; there is now 12. The issue is that 2 of the parking spaces protrudes onto Orleans Road although it does not appear to be in the roadway. The road isn’t paved to the full extent. He has discussed with the town’s engineers and DPW Director. They do not have an issue with the layout. Jonathan Moriarty reported that he went by at 6 PM and noted that patrons do not observe the marked parking spaces. Mr. Patel responded that it is difficult to monitor. It isn’t as busy during the day but from 4-6 PM it is. Chuck Golden also expressed his concern with parking and asked if eliminating one of the extra spaces might take away from the overhang. Kemal Denizkurt asked if the applicant has spoken with the neighbor who testified at the last meeting about the damage to his property by trucks delivering to the business. The applicant responded that the damage occurred under the prior owner’s tenure, but if there is future damage and it is reported to him, he will address it with the delivery company and his insurance company. Vice Chairman Foley asked if the police had noted any problems with traffic or parking at the establishment. Bob Luongo responded that none were noted when the application was routed to departments.

Dave Salvaggio, 12 Orleans Road submitted photos to the Board of damage to his property from three occasions when the fence on his property was hit. Two of these were hit and run damage. He brought these to the owner’s attention twice. Mr. Salvaggio also addressed snow removal plans and noted that in the past the snow has been piled up along the fence and onto the street, at times impeding vision to drivers coming out to Circuit Avenue. Kemal Denizkurt responded that plowing and snow storage will be addressed as a condition when the application is voted.

Mr. Salvaggio submitted eleven photos (Exhibit #1).

Town Council President Arthur Mathews addressed the Board. He received one phone call regarding the application. It was his understanding that when the original application was approved several years ago, it was with the condition that the addition of the second floor was to be only for storage and/or office space. He also shares the neighbors concerns with deliveries to the establishment and should be addressed conditional to approval to alleviate the neighborhood concerns. He asked if the delivery times could be restricted.

Chairman McLeod responded that the original application was reviewed in 2007 and approved a second floor to be used for office or storage. The application to change the use now is a result in a change in ownership. The Board cannot prohibit the use in perpetuity if the zoning allows for such a use. R-1 zoning does allow this use. There is no restriction for the applicant to request the use as a residence. Kemal Denizkurt asked if the applicant would be willing to place boulders or a small fence to prevent damage to the neighbor property; however it was noted that because the area encroaches on a town way, it would be an issue. Bob Luongo noted he could speak to the engineering department to see if the town could put a barrier or devise another solution that the applicant could pay for that would be agreeable to the abutter. There was a brief discussion exploring alternative parking/delivery arrangements.

John Murray, Village Lane Property Trust, noted he owned the building for 31 years and the issue of parking/deliveries and damage has not been ongoing.

Ed Kelcourse, 811 Middle Street, noted he drives by the property daily and has noted trucks blocking the street, public urination behind the building and has complained to the owners past and present numerous times. He suggested the owner could mount cameras for surveillance.

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

To vote on the of BZA Case No. 3163 to approve a Special Permit adding a second floor residential unit:

A motion was made by Edward Foley to approve the application for a Special Permit and was seconded by Jonathan Moriarty.

FINDINGS

Further, the Board finds that:

1. The specific site is an appropriate location for such a use. The site is zoned R-1 residential.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. There is more than sufficient parking on the site.
3. There will be no nuisance or serious hazard to vehicles or pedestrians. Snow removal will be addressed.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Proper water and sewer hookup will be required for the residence upstairs.
5. The public convenience and welfare will be substantially served.

The Board discussed the following conditions:

1. Whether to have the engineering department determine a solution to prevent vehicles creating a hardship to address abutters' concerns. It was agreed that the Board would leave it to the staff to come to an understanding to address the issue.
2. Snow removal on and from the site. It was agreed that all snow will either be stored on site or trucked out.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the application for a special permit for a second floor residential unit with the following condition:

1. All snow removal on and from the site will either be stored on site or trucked out.

Submittals:

Exhibit #1- 11 pages of photographs

BZA CASE #3166 – 1072 Washington Street, Public Hearing

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 two story building with 2 residential units and 3 commercial units

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

Ed Kelcourse presented the petition seeking a special permit to construct a 5-unit building with 3 commercial spaces on first floor and 2 1-bedroom residential units on the second floor. He submitted 2 plans; the revised plan is dated 7/15/12. There was a brief discussion of the proposed materials; Vice Chairman Foley asked if the applicant could consider fabrication materials more appealing than steel. Mr. Kelcourse responded that he could but that it is a cost consideration. Bob Luongo noted that the administration had concerns with the initial plan and the revised is what Mr. Kelcourse has come back with; it is more a conceptual design. He is looking for direction from the Board at this point. Under the HT zoning for residential reuse he is trying to balance cost with design. There was a broad discussion of the design. Parking will be in the rear for the residents. If he moves the building closer to the street he will lose some space in the front.

Donald Dearth, 1065 Washington Street noted the scale of the design fits well with the area; however, there are 3 convenient stores, 2 liquor stores, and 4 vacant office units all within the area on Washington Street from Mutton to Lakehurst and questioned whether the area can support another commercial property. He asked if the owner could control who will rent the units. He noted there is a larger school bus stop there also. He presented a petition signed by 13 of the 28 residents of Mutton Lane and Lakehurst Avenue (Exhibit #1). Chairman McLeod asked if he had spoken with the applicant. Mr. Dearth responded that he hadn't yet. Vice Chairman Foley noted he is not a fan of steel construction and he recommended the applicant discuss with

staff to explore other options. Chairman McLeod noted that aesthetic landscaping might balance the equity between the commercial and residential property owners in the HT zone. The Board has considered similar applications and it's a matter of finding the best possible use for the reuse of the property. Jonathan Moriarty asked the breakdown of commercial space. The applicant responded that it will be either a single use of 1800 square feet or two of 900 each. He will use the commercial space in the rear for his plumbing business.

Town Council President Arthur Mathews addressed the application as the District 4 representative. He noted the residents would like to see the reuse fit a happy medium for the area. The residents do not want an apartment building. He also asked that any new plans be forwarded to him. He noted the recent projects that the Board has approved such as the barn nearby on Washington Street that was fine-tuned to address the concerns of the abutters. The HT zoning allows for up to 4-family residential use; more would require a variance increasing density.

A motion was made by Vice Chairman Foley to continue the public hearing to the September 5, 2012 meeting; seconded by Jonathan Moriarty and unanimously voted.

Submittal:

Exhibit #1- Petition presented by Donald Dearth, 1065 Washington Street

BZA CASE #3167 – 316 Washington Street, Public Hearing

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 a B1 zoning district, seeking to construct a specialty coffee kiosk in the parking lot of Fox Shopping Plaza. Applicant also seeks relief from the parking restrictions, signage restrictions, and a modification of the special permit granted for the construction of the plaza on January 23, 1989, Case #88-11-9/9, regarding allowed hours of operation.

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

Mr. Lisinski of 44 Welland Road presented his application seeking a special permit to construct a drive through coffee kiosk in Fox Plaza and relief for the number of parking spaces required, the signage, and the original special permit granted when the plaza was constructed in 1989. Bob Luongo provided a memo from the traffic engineer regarding McMahon Transportation's traffic study and a past case decision with restrictions due to concerns with traffic. At the time, a police officer was stationed at the entrance. Conditions have since improved along Washington Street and the traffic engineer is satisfied with the study. The application if approved will eliminate 18 parking spaces in the plaza to allow for the kiosk and queuing. Based on the square footage of the building, 129 spaces are required. Bob Luongo reported that there are 131. Kemal Denizkurt asked if the kiosk would be hooked up to water. Mr. Lisinski responded that it can either be self-

contained or hooked up to water and sewer. The northwest corner of the site has access, but he would prefer to have it self-contained and water brought in and out. There is no toilet, and this is something that would have to be addressed by the Health Department. Mr. Lisinski is working with the franchise - if it needs to have toilet facilities; it would be a special consideration. Vice Chairman responded that it will have to be according to code. Kemal Denizkurt noted that based on the model provided by the applicant and the business he is predicting, it doesn't look like it will be a viable business. Mr. Lisinski responded that it can if he keeps his operating costs and number of employees low. Chuck Golden noted that the traffic report doesn't jibe with the business plan. Kemal Denizkurt asked what will happen to the kiosk if the business fails. Mr. Lisinski responded that he would remove it. Chairman McLeod asked if the franchise is located anywhere else nearby. Mr. Lisinski responded that it is bigger on the west coast. The closest open one is in Ohio; there are two under construction in Connecticut and New Jersey. There was a brief discussion on the status of another drive-through coffee shop that was approved by the Board several months ago and the current occupancy rate of the plaza. It is 25% occupied. There was also discussion on dumpster and sewer hookup- the cost would have to be factored into the opening costs if the town requires it. The traffic along the road was discussed. It has improved with the construction by the state along Route 53 and the installation of a light at Rt. 18 and 53 by the CVS. The traffic is level F with full build out in 2012. There was also some discussion regarding the parking spaces if the application is granted, and another company moves into the spot vacated by Blockbuster. Losing 18 spaces will limit the use of the site.

The owner of the property addressed the Board. It is 35% occupied and he has other tenants who are in default on rent. His business is hurting and he needs assistance and will go along with any town requirements. Vice Chairman Foley noted that if it is approved he would have to live with the loss of 13 spaces. Jonathan Moriarty asked about the lease terms of the property. It is a 5-year renewable lease. Bob Luongo reports that if the town requires toilet facilities, the kiosk would need to be enlarged, further impacting the parking spaces. Chairman McLeod noted that the Board is required to act on the application currently before them, but he would like to know the Health Department's requirements and it is a small kiosk, but if there are changes required it will affect the viability of the business.

A motion was made by Vice Chairman Foley to continue the hearing to the September 5, 2012 meeting; seconded by Jonathan Moriarty and unanimously voted.

Minutes-June 20, 2012-Case #3163, Case #3164 and Case #3165

A motion was made by Vice Chairman Foley to approve the minutes of the June 20, 2012 meeting, as amended: Case #3165:- replace Rob Stevens with Robin Moroz; Case #3163, Case #3164 and Case #3165, seconded by Jonathan Moriarty and was unanimously voted.

Adjournment

At 9:30 PM, there being no further business, a motion to adjourn the meeting was made by Vice Chairman Foley, seconded by Kemal Denizkurt and unanimously voted.

Respectfully submitted:

Kemal Denizkurt, Clerk