

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
August 21, 2013

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, August 21, 2013 at 7:00 pm at McCulloch Building, Mary McElroy Meeting Room, 182 Green Street, Weymouth, MA for the purpose of passing on the applications 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: Jim Clarke, Director of Planning & Comm. Development

Recording Secretary: Mary Barker

The Chairman called the hearing to order at 7:00 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

Jim Clarke reported that the applicant has asked for another continuation. A motion was made to continue the hearing to September 4, 2013 and was seconded by Chuck Golden. Unanimously voted.

BZA CASE #3202–3 Campbell Street, Public Hearing

Application of Donald Rafferty for property located at 3 Campbell Street also shown on the Weymouth Town Atlas as Sheet 55, Block 611, Lot 10, located in R-1 zoning district, seeking to subdivide the property into two lots about 10,500 square feet each.

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

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

Atty. Gregory Galvin, with offices at 775 Pleasant Street, Weymouth, appeared with the applicant before the board to present the plan. The property fronts Campbell and Graham. The front footage is 64' the curve, then another 7' and then less than 90' on Campbell, and 230' on Graham. He proposes 2 lots: lot A 10,659 sq. ft. and lot B 10,510 sq. ft. With the application and schematics from the Assessors Map. Atty. Galvin reviewed the lot sizes on Campbell and Graham. He combined the ones that are multiple lots with common ownership. He highlighted the parcels that are same or similar size to the proposed lots on Prescott, Dalton, Graham, Campbell and Barnes. Ten are approximately the same size; and 24 out of 30 are less than the proscribed 25,000 sq. ft. Many in the neighborhood are substantially less than what is called for in the bylaw. The 120' frontage on proposed lot A is more than most lots in the neighborhood. Attorney Galvin also reported the applicant canvassed the neighborhood and 14 property owners signed a petition in favor of the proposed subdivision; some were multiple signatures from same households. It was entered as Exhibit #1. Atty. Galvin pointed out those lots in the neighborhood that are similar sized; the applicant highlighted them on the town atlas sheet for comparison and it was entered as Exhibit #2. Atty. Galvin noted that the size of the proposed lots conforms to the surrounding neighborhood, and that the development of two single family homes will enhance the neighborhood along a mostly wooded area.

Vice Chairman Foley asked if the direct abutters on Prescott or Campbell were asked to sign the petition; 21 and 23 Prescott and 23 Dalton. The applicant responded that they did not sign and were not asked. Other than 6 and 32 Barnes, the owners of all other properties who were asked to sign the petition did. Atty. Galvin responded that the board looks at the size of the lots in the neighborhood; if the request passes and the applicant develops these lots, they will be more in keeping with what is already there. The bylaw doesn't indicate what size is considered. A number of lots in the neighborhood have frontages that aren't as wide what as what is proposed. Chuck Golden noted that the building department performed a similar exercise with different properties. There are five signatures from two properties that are not within the designated thirty. He had an issue that property owners within the grid of thirty were not asked to sign the petition. Atty. Galvin responded that the area he chose to focus as a reference was the three entrances leading in the property. He recommended his client go through the neighborhood based on that and many people who might have been asked so sign were not home. He did not identify specific houses to canvass to generate the petition. All direct abutters were notified by the town by mail. Chuck Golden responded that proximity was not in play; some properties that are much closer but larger were not included. He noted the

proximity to the property would have been fairly important. Kemal Denizkurt noted that with ten properties about the same size out of thirty properties, then the standard of the neighborhood is a much larger size. Atty. Galvin responded that many are less than 25,000. Kemal continued that if the “standard of the neighborhood, so established” is the board’s basis, 60% of the lots are larger than the proposed. He agreed with Chuck Golden; what matters is what is considered the standard of the neighborhood. Chuck Golden also asked how the applicant chose the properties he did as opposed to the area the town did; why choose lots of greater size that are much closer, and smaller lots further away? Atty. Galvin responded he chose the route in from various points to the lot. Vice Chairman Foley noted that the numbers show it’s actually higher than 60%- there are 22 lots greater than 10,000 and 9 lots between 6100 and 10,000. He would argue that the standard of the neighborhood is considerably over 10,000. The applicant noted that the feel of the neighborhood is determined by how close the houses are to each other. The amount of frontage on each proposed lot is considerably higher and houses built on each will blend well with the neighborhood. He noted the town has not passed on any application for subdivision since 2000 with frontages on both lots as high as his proposal. Jonathan Moriarty noted that no one on Campbell, Prescott or Dalton signed, but 5 signatures on the petition were all from the same address. He asked if all signers from 25 Barnes are owners of record. He stated the submission should be a credible, reliable end result; the applicant can’t cherry pick lots to canvass. Atty. Galvin responded that he can’t make that allegation; the applicant believed he was being reasonable by staying relatively close but including property that is seen on the drive in to the property. He does not personally go out to the neighborhood and knock on doors; nor can he guess what the Building Inspector would do. They tried to present a snapshot of the neighborhood. Mr. Rafferty also noted that he spoke with the neighbors and those he spoke to closest to the property were in favor of the application. Vice Chairman Foley also noted that the property is within and subject to the watershed protection and referenced correspondence from the Conservation Commission. Atty. Galvin responded that is the typical form letter that is sent on all property within watershed protection. The application does not need to seek relief from it when the property has sufficient frontage.

Jim Clarke reported that the application was routed to the various departments and reviewed the comments. The letter from the Conservation Administrator noted the application does not appear to meet the watershed protection standard. The building department indicated the 120-51 and Table 1 be referenced in a decision.

Lawrence Turner, Graham Street noted that five homes on Graham and eight in the direct area are over 20,000 sq. ft. He also noted that his daughter who lives at the end of the cul de sac was not notified. He lives across from the proposal and it is long and narrow. Two homes would not leave yard space. He opposes the application.

Pamela Turner, Graham Street noted the proposed lot abuts her side yard. She noted that as the neighborhood has been improved, it has been chopped up and houses are getting larger. The street is a dead end and the additional traffic two houses would bring is a safety concern.

Jean Spillane, owner of 3 Campbell Street reported that when she moved in there were no houses.

Ms. Reilly, the realtor, responded that she believed she did her due diligence in researching the neighborhood. There are several others in close proximity that are similar and she provided a copy of her information taken from the town's property viewer website. It was entered as Exhibit #3.

A motion was made by Kemal Denizkurt to continue the public hearing to September 4, 2013 to give the applicant additional time to provide supporting evidence; seconded by Jonathan Moriarty and unanimously voted.

Submitted:

Exhibit #1- signed petition routed by applicant

Exhibit #2-Town Atlas sheet of the neighborhood with highlighting as noted

Exhibit #3-Town property viewer snapshot provided by the realtor

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

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

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

Rosemary Coyle presented her petition for a day care center. She is a gardener, potter and art teacher with 20 years experience in the Boston Public Schools. She plans a day care center more like an early childhood education program for 3-4 year olds and noted that her property lends itself to it. The children would be outside a lot in the gardens. The property is on a dead end and is safe. The barn on the property has a large 90x90 ft. open space. She provided photographs. It will have a small kitchen and bathroom and no other interior walls. She plans to keep it open by using movable dividers to segregate spaces. It has a studio and kiln. She can bring in other instructors.

Chairman McLeod noted that the ordinance cited in the application and publication is incorrect- there is not 120-24(M). It is 120.74(M) but the notice did reference day care parking.

Ms. Coyle noted that she understands the town language for what she is proposing is an at home family day care. She is in the process of obtaining her license. Chairman McLeod asked if obtaining her license before requesting relief was more prudent. Ms. Coyle responded that she believed getting the building approved for the use is her first step. She will begin the application after September to begin offering class the following September. She plans to work it around the typical school year.

Kemal Denizkurt noted that she is not licensed yet and asked what happens to the barn if the property is sold. With a kitchen and bathroom and sleeping space, it is a half-step away from being a 2-family in an R-1 zone. He asked if she has to bring in the plumbing and utilities. He is concerned with abandonment issue and the lack of a license. The day care cannot open if she is not licensed.

Ms. Coyle responded that she plans to use mats for sleeping, a mini dishwasher and a small bathroom. The utility stubs are in place from the original construction.

Jonathan Moriarty asked about the licensure process. Ms. Coyle responded that it must be completed within a year of the application. She also said that it is an enormous investment for her and she needs to know it's a go before she changes her life.

Vice Chairman Foley asked how many employees she will have. Ms. Coyle responded that it will be just her. Chairman McLeod noted that there is adequate parking. Ms. Coyle noted that the drive will be used as parents drop off children.

Jim Clarke reported the application was routed to the various departments and reviewed the comments. He reviewed the memos from Building Inspector Jeffrey Richards, and Health Director Daniel McCormack. Mr. Richards noted the use of the barn as a day care would be allowed by right if it was attached to the primary dwelling. They also recommended that the board condition that if the use is abandoned, the barn be returned to its original use. Mr. McCormack contacted Debbie Hayes of the Department of Early Education and Care in Quincy, who inspects day care centers in Weymouth, who indicated the barn can be used as a day care facility as long as the director lives in the single family home on the property. She also provided the requirements for permanent provisions that would be required for living, sleeping, eating, cooking and sanitation. She recommended the applicant consult with the Building Department.

Jim Clarke also noted that he would like to see a more detailed parking plan that shows parking, off street loading and unloading, traffic flow and stacking. Chairman McLeod agreed. Chuck Golden also agreed; he noted that although it might meet the parking requirements, it will be difficult driving in and out and he would like to see a plan that shows how it will work in the small area. Ms. Coyle noted she could have a more formal plan drawn. Vice Chairman Foley suggested a certified plot plan be provided. Jonathan Moriarty noted one would have been done when the barn was constructed. Chairman McLeod asked to see a plan that shows the layout of the barn. Ms. Coyle showed the plans from when the barn was constructed. Vice Chairman Foley agreed; he would also like to see a more detailed plan and how the day care will be laid out. Jonathan Moriarty

also noted that the description provided in Mr. McCormack's memo indicated "permanent" sleeping ...what is considered permanent? Vice Chairman Foley noted that Debbie Hayes could better clarify some of the information that has been asked.

Joe Sullivan, 825 Commercial Street- his property abuts the back and the barn is already close to the property line. He has endured the structure as storage but opposes its use as a business. He is concerned with liability if children come onto his property. He asked if the board would consider requiring a fence along the property line.

Ken Krauss, 170 Cornish Street- his property is behind Mr. Sullivan's. He is concerned with the noise that will come from the center and is concerned the applicant would not be able to handle too many children by herself. He asked what the ratio of children per adult is in the requirements. He is also concerned that this is a business and it will be conducted in a residential neighborhood.

Joan Krauss, 170 Cornish Street asked if the town approves the application and the center opens, can the applicant sell it at some point and the new owner be allowed to increase the program? Ms. Krauss also reported that King Oak Terrace was an old country lane and traffic is a safety issue. Chairman McLeod responded that if the purpose use is abandoned, the barn has to be returned to original state. Any future owner would be required to come before the board for any use not allowed by right.

Ms. Coyle responded that she has spoken to many of her neighbors who are in support. There is an area of the drive that is lined with wood chips that can be used to alleviate traffic to and from the site. She also noted that the students would not be arriving at the same time. Chuck Golden responded that he drove through it and it was not easy to maneuver. Jonathan Moriarty asked if the applicant would consider increasing the paved area to provide better passage. Kemal asked if there was any fencing on the site. Ms. Coyle responded that there is a fence along the hillside to the back of the barn. She also responded that she would not allow the children in the abutter's yard. She will look further into the licensing procedure- she isn't sure if she has to have the space designated in order to obtain her license. She will provide a parking plan, and photos that show the fencing.

A motion was made by Vice Chairman Foley to continue the public hearing to the October 2, 2013 meeting to allow the applicant to provide the additional information and plans; seconded by Jonathan Moriarty and unanimously voted.

BZA CASE #3204–4 James Road, Public Hearing

Application of Robert and Donna Morris for property located at 4 James Road also shown on the Weymouth Town Atlas as Sheet 14, Block 183, Lot 1, located in R-1 zoning district, requesting relief from the 18' front yard setback requirement in order to construct an addition on a 5,660 sq. ft. corner lot. The applicant is requesting relief of 8.8' for the front yard setback and 2' at the rear yard setback.

Members sitting: Richard McLeod, Chairman

Edward Foley, Vice Chairman
Kemal Denizkurt
Chuck Golden
Jonathan Moriarty

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

Architect Pat Fisher of Fisher Associates presented the application along with the applicants. The applicants have aging parents who will need full time care and they can provide it without relocating by adding an in-law apartment. The lot has a steeply sloped side and the only location that works is shown on the plan. The property also abuts the Emery Estate. The town has not formally announced a plan for its reuse, nor the parking or traffic and the applicant does not want to place the addition too close to it. Vice Chairman Foley noted there is a lot going on in a small area. Kemal Denizkurt asked if the utilities will be metered separately. The applicant will comply with the ordinance. There will not be a door between the apartment and the main house and a family entrance will be located at the end of the drive into a mudroom. Vice Chairman Foley reviewed the existing walkway. He asked if there is a 2-bay garage. The applicant responded that it is more like two separate garage spaces. It would be difficult to ever use as a 2-family. Vice Chairman Foley asked why the rear yard is not being considered. The applicant responded that they do not want to take the only play area away.

Jim Clarke reported the application was routed to the various departments and reviewed the comments. The Building Department indicated the setbacks aren't measured to the property line and that the proposed addition exceeds lot coverage by 6 sq. ft. They also noted the owner is required to sign an In-law covenant recorded with the Registry of Deeds that the area will only be for family use and never rented out. Engineering Division requires that if the stone bound in the driveway is moved during construction, it be reset by a MA licensed surveyor at owner's expense.

Jim Clarke also commented that the set backs are measured from an abandoned area by county layout when the roadway was constructed 30+ years ago. There was a wall that was abandoned by instrument, and the lot line goes to the stone wall.

Jim Clarke also suggested that 7' or so of building coverage as shown on the plan be reduced at the right side rear of the location to comply with the building coverage requirements. Pat Fisher agreed to adjust the plan to meet building coverage.

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

To vote on Case 3204– to approve a Variance; requesting 8.8' relief from the 18' front yard setback requirement along Commercial Street and 2' relief from the 14' rear yard setback requirement in order to construct an addition on a 5,660 sq. ft. corner lot:

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 property has two front yard setbacks. The applicant's parents have physical hardships that require direct supervision.
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 will comply with the In-law Covenant requirement.
2. The total square footage of the building coverage will be reduced by 6-8'.

Minutes

A motion was made by Vice Chairman Foley to approve the minutes from the July 10, 2013 meeting; case #3195, #3196, #3197, #3199, #3200 and #3201; seconded by Jonathan Moriarty and unanimously voted.

Adjournment

The next meeting of the Board of Zoning Appeals will be on Wednesday, September 4, 2013. At 9:30 PM, a motion to adjourn the meeting was made by Chuck Golden, seconded by Jonathan Moriarty and unanimously voted.

Approved:

Kemal Denizkurt, Clerk

Date