

**BOARD OF ZONING APPEALS**  
**RECORD OF MINUTES AND PROCEEDINGS**  
**July 10, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, July 10, 2013 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  
                                  Brad Vinton, 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 August 21, 2013 and was seconded by Kemal Denizkurt. The chairman noted that if the applicant is not ready to go forward then, the board may recommend the application be withdrawn. Unanimously voted.

**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, seconded and unanimously voted to reopen the public hearing and waive the reading of the published notice.

Atty. Douglas Troyer and Manny Paiva again appeared before the board to present a revised plan. Based on the comments at public hearing, the plans were amended to take into consideration input from the neighbors and the district councilor. Atty. Troyer also reported that the plans provided are a draft and he apologized for the short notice. The engineer who had been involved in the project unexpectedly left. The preliminary plan has been provided also to the town engineer. Manny Paiva reviewed the changes, which includes number and location of curb cuts, elimination of the drive onto Adams Place, a connection from the sidewalk to Main Street, relocating the delivery and dumpster, overall internal circulation change between the building and the islands, addition of outside seating, and heavy tree line along Adams Place and 6' high vinyl fencing and an offer to landscape the right of way to the intersection and along the fence around the property, including dumpster screening. The rooftop units will be soundproofed.

There was a discussion of the revised plans. Chairman McLeod asked if the building in the amended plan is smaller than in the original design. Atty. Troyer responded that it was narrower but deeper and the proposed building is 3,296 sq. ft.. He also asked if these plans have been provided to the district councilor. Atty. Troyer responded no; he will email a pdf version to Councilor Harrington. Chuck Golden noted the building size is increased by 10% and the parking decreased by 20%. Atty. Troyer responded that the count includes vehicles parked at the pumps.

Dorothy Lang, 38 Adams Pl. – recommended an additional traffic study and asked if it takes into consideration competing with other nearby gas stations – any price wars will increase traffic to the site.

Paul Milner, 37 Adams Pl. – asked if the traffic counts delineates between those using the gas service and those using the convenience store.

Lynn McLaughlin, owner of Dunkin Donuts franchise at 755 Main St. asked why the plans aren't ready, why the plans changed, and about the traffic study. She also asked how many deliveries of gas and food are expected per week. Jim Clarke responded that Cumberland Farms has offered to provide the town with the funding to conduct a traffic study. Atty. Troyer responded that the delivery information will be provided at the next meeting.

Tara Curtin, 15 Adams Place - asked if the plan takes into consideration the expected opening of the East/West Parkway to Southfield.

Rhonda Milner, 37 Adams Pl.- noted she is concerned for the safety of her 2 children who wait for a school bus at the corner on the main street at the property.

Denise Lenoue, 24 Adams Pl. – asked about number of employee parking spaces and location.

Eleanor Edwards, 779 Main St. – she issue with outdoor seating; she notes it's opposite a T bus stop in front of her house and she does not want to encourage kids to congregate and litter by providing a place for them to do so. She is also concerned with safety since her house was broken into in the past.

Councilor Ed Harrington, District Councilor – noted he has listened to the new plans and the comments from the constituents, and cannot support a proposal that adds traffic to an already congested intersection. He recommends they look at alternative uses that would reduce traffic.

There was a continued discussion. Atty. Troyer noted this is the fifth version of a site plan presented to the town and that this has been a long process; there were two meetings in an attempt to rezone. They have listened to the concerns of the neighbors and are trying to propose a plan that takes some of those suggestions into consideration; by limiting the plan to their own property, making changes to location of the building; location and number of cut cuts, and noise suppression measures. He noted he will field questions specific to the revised plan at the next meeting after the board has a chance to review them. He did not think another meeting with the district councilor is in order since the councilor has already stated he will continue to oppose any project they put forward.

A motion was made by Kemal Denizkurt to continue the public hearing to September 4, 2013; seconded by Jonathan Moriarty and unanimously voted.

A motion was made by Kemal Denizkurt to take Cases #3199, #3200 and #3201 out of order; seconded by Jonathan Moriarty and unanimously voted.

### **BZA CASE #3199–312 Central Street, Public Hearing**

Application of Julie Mitchell for property located at 312 Central Street, also shown on the Weymouth Town Atlas as Sheet 50, Block 567, Lot 35, located in R-1 zoning district, seeking relief under Section 120-51, specifically relief of minimum 18' front yard depth (Union Street) and under Section 120-54, specifically relief of confinement of accessory uses to rear yard (Union Street) to add an 8'x8' storage shed. The corner lot creates two front yards and limited back yard space.

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.

Julie Mitchell presented her petition for to put a shed in her yard. Her property is on the corner lot and has two front yards and limited back yard. She provided the board with photos of the area to accommodate the 8x8 shed. Jim Clarke reported that the applicant is not asking for relief from the setback as long as the shed is 5' from the lot line. He also noted the board does not need to require a survey for a typical shed placement; it would be onerous to require the applicant to provide one and the board can have some flexibility. Chuck Golden noted the yard is nicely landscaped.

Jim Clarke reported the application was routed to the various departments and reviewed the comments.

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

**To vote on Case 3199– to approve a Variance for relief from minimum front yard depth and relief of confinement of accessory uses to rear yard:**

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, due to the uniqueness of the shape of the lot its location on the corner, that it consists of (2) front yards.
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 and, as recommended by staff, without requiring a certified plot plan.

**DECISION OF THE BOARD** - Due to the above findings, it was unanimously voted to approve a Variance.

**BZA CASE #3200–16 Albert Road, Public Hearing**

Application of Keith Oliver for property located at 16 Albert Road also shown on the Weymouth Town Atlas as Sheet 14, Block 164, Lot 11, located in R-1 zoning district, seeking to construct a deck within a side yard setback area.

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. Chairman McLeod disclosed that the applicant is a personal

friend and that he can hear the petition without bias if the other members do not object. No one objected.

Keith Oliver presented his petition to construct a deck on the back of his house. He reported that he spoke with his neighbors and none were present or opposed; three letters from abutters in support were provided with the application. There was a brief discussion of the certified plot plan, which erroneously identified the property as located in Quincy. The address is listed on his deed and mortgage documents differ as to the property address: 16 or 24 Albert Road.

Jim Clarke reported the application was routed to the various departments and reviewed the comments.

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

**To vote on Case 3200 – to approve a Special Permit to construct a deck within side yard setback area:**

A motion was made by Vice Chairman Foley to approve the application for a special permit; 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. Three neighbors have submitted letters in support.
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.

**DECISION OF THE BOARD** - Due to the above findings, it was unanimously voted to approve a Special Permit, with the following conditions:

1. a corrected certified plot plan be submitted
2. the address be revised to “16, aka 24” Oliver Rd.

**To vote on Case – to approve a Variance for :**

A motion was made by to approve the application for a variance and was seconded by.

**FINDINGS**

Further, the board finds that:

3. 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.

4. 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. Submit a corrected certified plot plan.
2. Revise address to “16 Oliver Rd., AKA 24 Oliver Rd.”

**BZA CASE #3201–1366 Pleasant Street, Public Hearing**

Application of Jackson Village Realty Trust or property located at 1366 Pleasant Street also shown on the Weymouth Town Atlas as Sheet 23, Block 302, Lot 18, located in B-2 zoning district, seeking to construct a residential (2) unit townhouse condominium building.

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.

Christopher Bethany, Jr., trustee for Jackson Village Realty Trust, presented the petition for the construction of a 2-unit condominium style. Kemal Denizkurt asked the current condition of the lot. The applicant responded that it is a treed lot. The former building on the site burned many years ago; the foundation wall remains. The current owner received approval to construct a multiunit dwelling. Jim Clarke passed out a site plan from the 1990's. The adjacent property to the right is a multiunit dwelling.

Jim Clarke reported the application was routed to the various departments and reviewed the comments, particularly the memo from Conservation Administrator Mary Ellen Schloss. The property is located within the Herring Brook buffer zone and the application is subject to review by that board. He also noted the comments from DPW-Water & Sewer pertaining to separate services and mitigation requirements and Engineering regarding the 14% slope of the parking area.

Chairman McLeod asked if it is possible to reduce the slope of the parking area and a brief discussion ensued. The applicant would be amenable to redesign to reduce the slope to 12%.

Mr. Cicchese, 103 Shawmut Street- asked who owns the wall on the property. Jim Clarke responded that the existing stone wall is owned by the applicant. Mr. Bethany noted that the wall was included in the purchase of a portion of town property in 1994 or 1995.

Richard Stevens, 90 Iron Hill Rd. – noted he was not opposed to the size of the proposal- 2 units, but he is concerned that it will result in on street parking.

George Hodges, 107 Shawmut Street – noted he is concerned with privacy and requested the applicant put up a stockade or other adequate fencing. Mr. Bethany responded that he could from the rear corner along the property line, but that there are visibility issues along the other corner.

Mr. Cicchese also asked the location and aim of spot lights.

Mr. Hodges asked the board if he were to purchase the property could he combine it with his as one parcel. Chairman McLeod responded that if he is asking for a legal opinion, he should consult an attorney.

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

**To vote on Case 3201– to approve a Special Permit to construct a residential two unit townhouse condominium building:**

A motion was made by to approve the application for a special permit; seconded by.

**FINDINGS**

Further, the board finds that:

1. The specific site is an appropriate location for such a use. It was formerly the site of a residential dwelling.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. The applicant has spoken with neighbors about fencing and lighting.
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. Staff comments regarding slope of parking area to be taken into consideration.
5. The public convenience and welfare will be substantially served. There continues to be a need for additional housing in the town.

**DECISION OF THE BOARD** - Due to the above findings, it was unanimously voted to approve a Special Permit, with the following conditions:

1. Stockade type fencing to be erected along the rear and sides of the property for a distance to be determined without limiting line of sight.
2. Floodlights to be screened and trained only on the parking lot.
3. Applicant to heed DPW and Water and Sewer comments regarding separate sale of the units.
4. Parking area to be redesigned to reduce the slope from 14% to 12%.
5. Applicant to submit plan for removing the existing foundation.

**BZA CASE #3195–114 Forest Street, Public Hearing (cont.)**

Application of Michelle C. Dutton for property located at 114 Forest Street also shown on the Weymouth Town Atlas as Sheet 48, Block 542, Lot 7, located in R-1 zoning district, seeking

relief from 120-53- Exceptions by Zoning Board of Appeals, 120-6 – Lot Line, Front and Lot Width and 120-122 – Special permit Criteria, Article IIIA Watershed Protection and 120-122 Special permit Criteria to subdivide one lot into two.

Members sitting:      Richard McLeod, Chairman  
                                 Edward Foley, Vice Chairman  
                                 Chuck Golden  
                                 Jonathan Moriarty  
                                 Brad Vinton, Alt.

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

Atty. Daniel E. Kelly and applicant Michelle Dutton again appeared before the board. Atty. Kelly submitted a memo to the board citing the specific decisions by the board, including three Special Permits issued on Wampum and Forest Streets resulting in undersized lots, citing case #2746, 3154 and 2977. He then reviewed the criteria for special permit and how this application complies. There was a brief discussion with the board. Vice Chairman Foley noted that the request is not out of keeping with what is in the neighborhood. Jonathan Moriarty noted that if the board approves the application, the shed on lot A will need to be moved to avoid creating a nonconformity since it appears to be less than 5' from the lot line.

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

**To vote on Case 3195– to approve a Special Permit to subdivide one lot into two:**

A motion was made by Vice Chairman Foley to approve the application for a special permit; 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. Prior decisions by the board in cases 2746, 3154 and 2977 resulted in similar sized lots.
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. Improving the lot will eliminate the site as a dumping spot for yard waste.

**DECISION OF THE BOARD** - Due to the above findings, it was unanimously voted to approve a Special Permit, with the following conditions:

1. Shed on lot A will be moved if necessary to conform with rear yard setback.



2. Applicant will comply with mitigation before hooking up to town water/sewer.

**BZA CASE #3196–97 Libbey Industrial Parkway/7 Performance Drive,  
Public Hearing (cont.)**

Application of Fox Rock Properties for property located at 97 Libbey Industrial Parkway/7 Performance Drive also shown on the Weymouth Town Atlas as Sheets 33 & 41, Blocks 432 & 433, Lots 2 & 17, located in POP zoning district, seeking to change from office to medical use with relief sought for Dimensional Variance for medical office Parking – Ordinance 120-74 I-Off Street Parking and Ordinance 120-119a(3) – Variance.

Members sitting:      Richard McLeod, Chairman  
                                 Edward Foley, Vice Chairman  
                                 Chuck Golden  
                                 Jonathan Moriarty  
                                 Brad Vinton, Alt.

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

Attorney David E. Kelley with offices at 45 Braintree Hill Office Park and J. Ward of Fox Rock Properties again appeared before the board. The hearing had been continued to allow the Traffic Engineer to complete a field study and to review the Orders of Conditions imposed by the Conservation Commission. A proposed additional crosswalk has been withdrawn. Jim Clarke responded that the administration would prefer the existing markings be restriped. They do not want to encourage multiple crossing areas on the road. Jim Clarke also provided a memo from Traffic Engineer George Bezkorovainy dated June 26, 2013 and reviewed the results of the spot checks he did. He concluded that the proposed use will be similar to 90 Libbey Parkway, with similar expectations. The applicant is not proposing any increase in parking area; much of the area is in the wetland protection zone.

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

**To vote on Case 3196– to approve a Variance to change from office to medical use with relief sought for Dimensional Variance for medical office parking:**

A motion was made by to approve the application for a variance and was seconded by.

**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 applicant has provided evidence that the existing parking will be sufficient to serve the building and the Town Engineer concurs.
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 existing crosswalk will be restriped with high visibility epoxy approved by the administration and in a style similar to crosswalks in Weymouth Landing.
2. Parking will be reserved in the immediate vicinity of the building for patient use.
3. The applicant will submit plans conforming to the 2005 Order of Conditions imposed by the Conservation Commission.
4. Employees will be directed to parking lot across Performance Drive.

Submitted:

Exhibit A- formal request to remove the second crosswalk from the plan

### **Minutes**

A motion was made by Vice Chairman Foley to approve the minutes from the May 15, 2013 meeting, the June 5, 2013 meeting and the June 19, 2013 meeting and was seconded by Jonathan Moriarty. Unanimously voted.

### **BZA CASE #3197–25 Rockway Avenue, Public Hearing, (cont.)**

Application of Rockway Associates, LLC, for property located at 25 Rockway Ave., also shown on the Weymouth Town Atlas as Sheet 37, Block 465, Lot 24 & 37, located in R-4 zoning district, seeking relief for a dimensional variance for Floor Area Ratio requirements in the R-4 District to construct a multifamily apartment building of 43 dwelling units.

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

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

Attorney David Kelly, with offices at 45 Braintree Hill Office Park again appeared before the board. The board requested additional traffic analyses and the supplemental report dated July 2, 2013 was reviewed. The report suggests, and the Traffic Engineer concurs that a traffic light is not warranted at this time. The level of service for the roadway and intersection of Rockway was discussed. Jim Clarke also reviewed the Traffic Engineer's memo dated June 24, 2013. He recommended the board consider a condition if the application is passed to review signage at the intersection.

They also reviewed the FAR requirements. The board had approved a similar request for variance on FAR on the 21 Water Street property.

Councilor Ed Harrington reported that he met with the neighbors; the lot has been secured and

they have heard no further objection. He noted the project would not have a big impact on the neighborhood.

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

**To vote on Case #3197– to approve a Special Permit to construct a multi-family dwelling of 43 units:**

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

**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. It is a multi-family residential building going in an existing multi-family residential neighborhood.
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, as supported in the memo from Town Engineer Chip Fontaine to Jim Clarke dated 6/14/13. Applicant will be required to provide a sidewalk on the southerly side of Rockway from Middle Street to the location, and will enhance the stop line.
5. The public convenience and welfare will be substantially served. These are high-end style units that will enhance the neighborhood and make good use of the property.

**DECISION OF THE BOARD** - Due to the above findings, it was unanimously voted to approve a Special Permit, with the following conditions:

1. Applicant will enhance the stop line at Rockway Ave.
2. Applicant will install sidewalk along the southerly side of Rockway Ave. from Middle Street to the building.

**To vote on Case 3197– to approve a Variance for a dimensional variance for Floor Area Ratio requirements in the R-4 District :**

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 current zoning allows up to .30 and the applicant is requesting .37.
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. The

board approved a similar variance for a Water Street property on 10/18/90, as noted in the memo from Atty. Kelley dated 7/2/13.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve a Variance.

### **Adjournment**

The next meeting of the Board of Zoning Appeals will be on Wednesday, August 21, 2013. At 9:30 PM, a motion to adjourn the meeting was made by Chuck Golden, seconded by Jonathan Moriarty and unanimously voted.

Approved:

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Kemal Denizkurt, Clerk