

**BOARD OF ZONING APPEALS**  
**RECORD OF MINUTES AND PROCEEDINGS**  
**June 19, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, June 19, 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 & Community 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**

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

At the applicant's request, a motion was made to continue the Public Hearing to the July 10, 2013 meeting and was seconded by Jonathan Moriarty. Unanimously voted.

A motion was made by Vice Chairman Foley to take Case #3198 out of order and was seconded by Jonathan Moriarty. Unanimously voted.

**BZA CASE #3198–58 Mt. Vernon Road East, Public Hearing**

Application of William M. Johns for property located at 58 Mt. Vernon Road East, also shown on the Weymouth Town Atlas as Sheet 14, Block 186, Lot 23, located in R-1 zoning district, seeking to construct an addition within the setback area

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

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

Mr. Johns presented the petition to construct a kitchen on the rear of the dwelling. He will work with the existing plumbing and install an open concept style, moving closer to the side yard setback. The property narrows to a cone shape. Vice Chairman Foley asked if locating it elsewhere on the property would be a hardship. The applicant responded the proposed design is minimally intrusive and still allows use of the yard. He could move it so it wouldn't increase the side yard setback, but this is the best plan.

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 3198– to approve a Variance to construct an addition:**

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 applicant has demonstrated that locating it elsewhere on the property would impose a financial and topographical hardship.
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 to construct an addition within the setback area.

**BZA CASE #3195–114 Forest Street, Public Hearing**

Application of Michelle 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 120-22 – Special permit Criteria, Article IIIA Watershed Protection and 120-22 Special Permit Criteria to subdivide one lot into two.

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

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

Attorney David Kelly, with offices at 45 Braintree Hill Office Park presented the petition on behalf of the applicant to subdivide the property to an undersized lot and relief from the minimum lot width requirement. The subdivision plan was presented, with Lot 1 with an existing home on a lot of 20,800 sq. ft. and a second lot of 20,000 sq. ft. with frontage on Wampum less than 100 ft. wide. The application was before the board several years ago when Wampum was largely undeveloped. Sewer and water will come in from Wampum Street. Atty. Kelly noted substantially all lots in the neighborhood are nonconforming. He presented a copy of the plan by Scott Arnold with the undersized lots noted. He also reviewed the topography of the neighborhood.

Chairman McLeod noted the lots highlighted may have existed and not the result of recent subdivision. He requested individual exhibits that the board can review to protect the record.

Jim Clarke reported that the plan was routed and reviewed the various comments, and included a copy of the prior decision, DPW's comments regarding curb cuts and mitigation required before connecting to water/sewer service.

Stephen Ford, 50 Samoset St. noted that he attended the prior public hearing on this case. He noted that the neighborhood has continued to be improved and this lot is the only unimproved area. If this is denied, this lot could become a dumping ground.

District Councilor Ed Harrington noted he lives in the neighborhood, and has not been contacted by any constituents regarding this application, nor does he have any personal objection.

Jonathan Moriarty discussed another application with similar dumping issues, and a brief discussion ensued regarding its resolution via conditions placed on approval.

Brad Vinton reported he has walked the site and the dumping consists of grass clippings and the like.

Councilor Harrington also noted that when the application was first before the board in 2005, the street was unpaved.

A motion was made by to continue Case #3195 to the July 10, 2013 meeting; seconded by Jonathan Moriarty and unanimously voted.

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

Application of Fox Rock Properties for property located at 97 Libbey Industrial Pky. And 7 Performance Dr., also shown on the Weymouth Town Atlas as Sheet 33 & 34, Block 432 & 433, Lots 33 & 34; Block 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  
                                 Kemal Denizkurt  
                                 Chuck Golden  
                                 Jonathan Moriarty  
                                 Brad Vinton, Alternate

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

Attorney David Kelly, with offices at 45 Braintree Hill Office Park presented the petition on behalf of the applicant with Jason Ward, a partner for Fox Rock Properties. The application is for a variance for change of use; the required number of parking spaces that are required under the medical office use, so that the entire building can be used to serve medical tenants. There are no other changes proposed to the site. The current zoning requires 1 space per every 100” gross floor area; an onerous requirement. He noted that other towns, including Braintree, Quincy and Milton have less restrictive parking space requirements. He reviewed the definition of gross floor space. The application requires a variance; the property is located within the wetlands area and abuts the Old Swamp River. Mr. Ward reviewed the 90 Industrial Pky. location; a variance had been granted there, and the intent is the same at 97. 97 Libbey Pky. was constructed in 2001-2002 and was fully occupied for ten years. A vacancy occurred last year and Fox Rock acquired it in this past April.

Rick Alphonso of Tetrattech provided a site plan review. The property has three separate parking areas, including one on the opposite side of the parkway. Two driveways service the building and there are sidewalks and a footbridge in the back. There is one crosswalk; a second is proposed.

Chairman McLeod asked about the number of parking spaces. There are 504; for the use, 960 are required.

Fayssal Hussein of Nitch Engineering reviewed the traffic plan. He reviewed the plan from 97 Libbey’s application. He reviewed his credentials and his experience with researching traffic data and provided the information on anticipated counts in peak and nonpeak periods, as well as comparative data from 3 nearby towns. He also reviewed the other types of porous pavement that can be utilized, such as gravel pavers in use in Boston’s Peabody Square.

Chuck Golden asked if Quincy, Braintree or Quincy have different zoning requirements specific to medical office use. Mr. Hussein responded no.

Brad Vinton asked if the applicant has considered shuttle or valet service from the parking lot across the way, or if they have considered using it exclusively for employees. Mr. Ward responded that without making a commitment now, they will judiciously look at all alternatives so that no one is placed in harm's way to access.

Vice Chairman Foley asked if the space is earmarked for any particular medical tenant at this time. Mr. Ward responded that they need to address the parking lot issue before they can offer to prospective tenants. The building is currently 50% occupied and the intent is for exclusive use by medical tenants at 100% occupancy.

Jonathan Moriarty asked if the owner plans to commit dedicated parking with each lease.

Chairman McLeod asked about the snow management plan. Mr. Ward responded that significant snow will be removed to a snow farm, as necessary. The snow from the other property (97 Libbey) was removed to a vacant lot this past year.

Vice Chairman Foley noted the letter from Conservation Administrator Mary Ellen Schloss and reviewed the points that were addressed; maintenance on the water quality recharge areas and a grass cutting plan. He noted the staff worked diligently with the Conservation Commission with substantive Orders of Condition when the application for 97 Libbey Parkway was approved. He also asked if the applicant would consider a pedestrian walkway over the parkway for access from the remote parking lot. Mr. Ward responded that it wasn't the intent to have patients parking across the road, but he will review all options.

Jim Clarke reported that the application was routed to the various departments and reviewed the comments. He noted the memo from the Conservation Commission. There is no room for additional parking. He also noted the memo from the Traffic Engineer. George Bezkorovainy reviewed the Nitsch report and noted the findings in the analysis are reasonable based on a 1 day survey and would like to see if it is confirmed over several days.

There was a brief discussion of lighting in the upper lot.

A motion was made by to continue the hearing to the July 10, 2013 meeting to allow the traffic engineer more time to review the report, complete additional studies and for the applicant to meet with the Conservation Administrator and was seconded by Jonathan Moriarty. Vice Chairman Foley noted that if the board plans to act favorably on the application, it should keep in mind that conditions will need to be crafted that includes: no snow storage on landscaped areas, no medical personnel parking in reserved spaces near the building. Unanimously voted.

### **BZA CASE #3197–25 Rockway Avenue, Public Hearing**

Application of Rockway Associates, LLC, for property located at 25 Rockway Ave., also shown on the Weymouth Town Atlas as Sheet 37, Block 465, Lots 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  
                             Chuck Golden  
                             Jonathan Moriarty  
                             Brad Vinton, Alternate Member

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

Attorney David Kelly, with offices at 45 Braintree Hill Office Park presented the petition on behalf of the applicant. The owner purchased it at auction after it was decommissioned as a National Guard Armory. After the zoning was changed, in November 2007 he requested and was granted a special permit for medical use. The property is still vacant. The location is in the R-4 zone which allows for multifamily and he is proposing the use similar to nearby Weymouth Woods, Tara Garden and Mediterranean Woods. The proposed plan fits with the intent of the ordinance. The lot exceeds 40,000 sq. ft. He proposes to construct 43 units in a luxury high-end style; 9 studios, 20 1-bedroom, 14 2-bedroom units. There will be decks in the rear of the building for the 1 and 2-bedroom units. He proposes hardwood flooring and washer/dryer and dishwasher in all units.

Architect Ken Hagan presented the plans for the building for the owner Edward Kubrick. The height will be 55.5ft above ground, contemporary with a large green space and adequate parking.

Fayssal Husseini reviewed the traffic report including peak morning and afternoon counts, analysis to warrant need for traffic signal and taking into consideration sight lines to the intersections, shoulders, crosswalks and bus stops nearby and pavement issues. He also reviewed historic crash data from the state. He noted the crash rate is comparatively lower than the state average. The study indicates the site will generate minimal impact on the intersection. There was a brief discussion of expected level of service. Jonathan Moriarty noted he runs in the area and it isn't safe. There are cars parked along both sides. Brad Vinton asked if consideration was given to visitor parking and noted it is a public safety issue with overflow parking. Vice Chairman Foley asked if the data takes into consideration a full build out of Southfield.

Jim Clarke reported that the application was routed to the various departments and reviewed the comments. He noted the school department comments need to be confirmed. The traffic engineer reviewed the traffic report, did his own speed test but the automated counts are similar to ones in 2005 and turning counts are much lower and suspect. Conservation noted an Order of Conditions in 2005 and extended twice will require an amendment filing.

Vice Chairman Foley asked if the owner has an equity partner and has financing in line. He has financing. He also asked if there is any intent to sell units as condos? There is no intent. He also asked what revenue benefit the project will provide to the town. The owner estimates \$80,000 in tax revenue per year. He will use local trades.

Kate Mulligan who resides in Ckway Woods noted the property is in disrepair, and a dumping ground. She spoke with the owner on Monday about cutting the grass, and is concerned that it be

properly maintained. Mr. Kubrick responded that he will do his best to address concerns and will keep the property maintained.

Audrey Sinclair, Rockway Condo owner noted that any commercial use of the property would be objectionable.

District Councilor Ed Harrington reported that he met with the owner on 6/14 to address the concerns raised by 3 abutters concerning lack of maintaining the property. He has no objection to the project if it is cleaned and secured to the satisfaction of the abutters.

A motion was made by Vice Chairman Foley to continue the public hearing to July 10, 2013 so the owner can provide a sign plan, a traffic recount can be done, and the school department comments clarified. It was seconded by Jonathan Moriarty and unanimously voted.

### **BZA CASE #3190–1294 Washington Street, Discussion and/or Decision**

Application of Stephen Zeboski for property located at 1294 Washington St., also shown on the Weymouth Town Atlas as Sheet 35, Blocks 407 & 408, Lots 36 & 12, located in HT zoning district, seeking a Special Permit and Variance under Article XV §120-51, Schedule of District Regulations, Table 1 Minimum Lot area and minimum width at the building line; Article II §120-6 Frontage; Article XIII §120-39 Continuation of nonconforming setback; Article XIV §120-48 Reduction of lot area; Article VIB §120-22.7(B) conversion of existing dwelling for up to four dwelling units; and Article XVII §120-74(C) minimum parking spaces. Proposed is for Lot A to have four (4) studio style units,, and Lots B and C will each have a duplex constructed on each lot.

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

Jim Clarke provided a memo to the board that outlined the criteria and conditions for Variance and Special Permit. Vice Chairman Foley thanked him for putting it together and notes it covers everything that was discussed and proposed including snow removal, dumpster location, fence height. He also recommended the applicant consider ornamental pole lighting when the lighting plan is submitted. Chuck Golden noted the concerns with the initial application. Jonathan Moriarty noted the lot size and that this had to be an absolute exception to the zoning. There was a brief discussion. Jim noted most of the comments will be addressed through the conservation application process.

### **To vote on Case 3190 – to approve a Special Permit to convert the existing residence into a four unit dwelling:**

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. The studio apartments will provide a variety of rental options for the community.
3. There will be no nuisance or serious hazard to vehicles or pedestrians. The traffic generated from studio apartments will be minimal.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Seven spaces will provide adequate parking for the dwelling.
5. The public convenience and welfare will be substantially served. Driveway access onto Washington Street has safe sight lines.

**DECISION OF THE BOARD** - Due to the above findings, it was unanimously voted to approve a Special Permit to convert the existing building into a four unit dwelling, with the following conditions:

1. The dumpster be enclosed with a solid fence (6' height) and gated on the front.
2. Parking lot lights should be pole lanterns (ornamental style). Type and location to be submitted to the Planning Office for approval.
3. Applicant shall apply for an historic plaque for the 1805 tollhouse building or other appropriate signage to identify the site. Approval will be by the Weymouth Historical Commission.

And referencing the following plans:

1. Layout Plan 1294 Washington Street by Hardy Engineering (2 sheets), 3/13/13
2. Landscape Plan for 1294 Washington Street by CMG Design, May 2013
3. Site Lighting 1294 Washington Street (3 sheets) by W. Stuart Johnson, dated 6/1/13, showing seven parking spaces on Lot A, and dumpster location
4. Floor Plans and elevations, New Townhouse, by Walter A. McKinnon Associates, dated 5/7/13

**To vote on Case 3190– to approve a Variance for Parking:**

A motion was made by Vice Chairman Foley to approve the application for a parking variance for the 4-unit building 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 topography (steep grade at rear of property) and the four units being studio units, the reduction of parking to seven spaces is appropriate.
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 for parking for the four unit building.



**To vote on Case 3190– to approve a Variance for Lot Area for Lot A:**

A motion was made by Vice Chairman Foley to approve the application for a variance for the lot area for Lot A 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 original lot is approximately 130,000 square feet (=/- 3 acres) Lot A could be 15,000 sq. ft. based on the original lot size, but the added area to the lot would not be usable. Development locations are constructed due to the location of wetlands. Based on these issues, a lot waiver is appropriate. This is a unique situation in the H-T zoning district.
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 for the lot area for Lot A.

**To vote on Case 3190– to approve a Variance for Frontage Definition:**

A motion was made by Vice Chairman Foley to approve the application for a variance for the frontage definition 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. Frontage is defined as the area providing access to a lot. Due to ledge and the attempt to minimize curb cuts along Washington Street, a state highway, Lot B shares a common driveway with Lot A. The proposed development layout better conforms to the access concerns along Washington Street.
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 for the frontage definition.

**To vote on Case 3190– to approve a Variance for Building Line Width:**

A motion was made by Vice Chairman Foley to approve the application for a variance for the Building Line Width 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. 75' is required. Lot A, with the existing stone building has a building line width of approximately 72.09 ft. Due to the need to minimize wetlands impacts and the reuse of the existing building, the 75' minimum cannot be met. For these reasons, the waiver could be granted.
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 for building line width.

**To vote on Case 3190– to approve a Variance for Frontage Setback:**

A motion was made by Vice Chairman Foley to approve the application for a variance for the frontage setback 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. 20' is required. The existing stone dwelling is 5.5 feet off the front property line at the southwest corner of the building. The building is the former tollhouse for the Weymouth and Braintree Turnpike, built in 1805. It is in the town's interest to preserve this historical structure. Since this is an existing building, the requested waiver should be granted under 120-39.
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 for frontage setback.

A motion was made by Vice Chairman Foley to approve the application for a variance for the frontage setback 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 a Variance for the frontage setback.

### **Other Business**

Jim Clarke reported that the owner of One Stop Coffee has requested they be allowed to take down the “no left turn” sign. The business is not generating traffic, and the sign is due to come down with the state highway project. A motion was made by Vice Chairman Foley to approve a minor modification and was seconded by Jonathan Moriarty. Unanimously voted.

Jim Clarke reported that the Alzheimer facility under construction has asked for a minor modification to the height requirement for floor height in the courtyard area for an addition of a meeting room that needs to be enclosed to the interior. It will not go past the south building line. A motion was made by Vice Chairman Foley to approve the minor modification and was seconded by Jonathan Moriarty. Unanimously voted.

### **Minutes**

A motion was made by to approve the minutes from the May 15, 2013 meeting: Case #3188; seconded by and unanimously voted.

### **Adjournment**

The next meeting of the Board of Zoning Appeals will be on Wednesday, July 10, 2013. At 9:50 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