

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
June 5, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, June 5, 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
 Brandon Diem, Alternate Member

Staff: Jim Clarke, Director of Planning & Community Development

Recording Secretary: Mary Barker

The 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 by Vice Chairman Foley to move Case #3190 to the end of the agenda and take the remaining items out of order; seconded by Jonathan Moriarty and unanimously voted.

BZA CASE #3191–767 Main Street, Public Hearing

Application of Cumberland Farms for property located at 767 Main St., 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 to open the public hearing and waive the reading of the published notice.

Attorney Douglas Troyer, with offices at 45 Braintree Hill Office Park, Suite 107, presented the petition for a special permit for extension or change of an existing nonconformity. He noted some minor adjustments were made to the proposal that include bike racks, per ordinance and a reduction in the signage requested (25 to 20 ft.). He reviewed the history of the project. Last year a P&S was signed for the abutting property with the intent to build a larger convenience store on

the property and continue gasoline service. A request to the Town Council to rezone the area last year was rejected and the feedback from the neighbors, the Town Council and Planning Board was that the applicant should improve the existing facility and property. He reviewed the property history. Cumberland Farms has owned the property since 1986. A gas station has operated on the site continuously for many years; the records for the underground storage of gas go back to the 1930's. The Gulf station is full-service with 6 points of service from 3 dispensers. No repair service or sales is conducted. The preexisting nonconformity is for the gas service, lot width, landscaping and watershed protection area.

Manny Paiva, Project Manager reviewed the plans and renderings. He noted Cumberland Farms has owned the property since 1986 and the use has been essentially the same other than a land taking in 2006 for the state project to widen Route 18. The underground tanks were there when the property was purchased; three 3,000-gallon single-walled fiberglass tanks and one underground tank for heating oil. The Fire Department approved a permit for storage of 40,000 gallons and the plan includes two double walled fiberglass 20,000 gallon compartmented tanks to replace the existing three. There are three service bays and a small sales area and bathrooms that are not ADA accessible. Gas will be offered in three grades and diesel will be dispensed at a single bay. The proposed plan will increase the green space on the site, and two curb cuts are proposed on Park Avenue and Route 18 sides, and one on Adams Place. He reviewed the elevations of the proposed plan. Proposal is a prefabricated steel building, 2,900 sq. ft. that features a pitched roof with false dormers, and eliminates the existing service bays. The proposed bathrooms will be multiuse and HP accessible. An alcove was created in the rear attic space to house mechanical systems to screen sound, and bollards to protect it. He reviewed the color palette. Pole signs will illuminate the site and he reviewed the lighting plan for locations and size. He reviewed the canopy style and signage. There will be a fire suppression system.

Jack O'Leary, Project Manager at Merrill Associates, Inc. reviewed the paving plans, storm water management system and landscaping plans. The existing paving and utilities will be removed to make improvements. There are few current storm water controls; there is one catch basin on Park Avenue. The proposed plan will recharge clean runoff below ground and surface pollutants from paved surfaces will be treated in a series of inlets to separate, collect and sediment removed by a hauler. An underground pipe will run to the runoff system. In the driveway, a subsurface infiltration system will detain runoff and will improve the current runoff by 70-80%. The paved surface will not increase from the present. All utilities and connection will be located underground and meet current code.

The landscaping plan was reviewed. Landscaping will offer a buffer to abutters by use of arbor vitae and juniper evergreens for screening, and shrubbery to the intersection. In the islands, box woods and lily grass will be planted. Trees and woods abut the back and grass will be planted by the bike rack area. The current green space will double.

Gary McNaughton, of McMahon Transportation Engineers provided the traffic study and reviewed it. He reviewed the curb cuts, and access and egress to the site. The access was modified to allow better access and improved the aisles around the gas service. The tanks are located to allow for remote fills. He reviewed traffic volumes from the study and the projected volume during peak periods. He reviewed the methodology for the study and the counts. He

addressed the comments from the town traffic engineer. He noted the delay time is less than the analysis projected. The study shows baseline conditions and the project impacts. They propose to offer \$5,000 for an access management study to determine mitigation solutions to the traffic challenges at the nearby Dunkin Donuts facility.

Atty. Troyer summarized that under the proposed plan, they seek a special permit for an extension of an existing non-conforming use that will not be more detrimental to the area.

Chairman McLeod asked what is the current and projected levels of service. AM levels will go from E to F and PM levels from D to E by 2018 taking into consideration full build out of the Southfield development. Vice Chairman Foley asked if the study recommends mitigation who will bear the cost. Jim Clarke responded that the traffic engineer would need to address this. He also asked current and proposed hours of operation. The store is presently open 6AM to 10 PM and will be open under the new plan from 5AM to 12PM.

Jonathan Moriarty asked why Cumberland Farms needs to build a new larger store when there already is one four blocks up the street. The new one will not offer any more service or goods than is already available at the other store. Atty. Troyer responded that the proposed plan greatly improves the existing conditions. The size of the proposed store is reduced in size from the newer colonial style Cumberland Farms prototype that has been built in other locations in MA, ME, FL and CT. The typical size is 2,500 – 3,800 sq. ft.

Jonathan Moriarty asked if the signage is comparable to the height of signs at the other area businesses- MaryLou's, Dunkin Donuts and TDBank North on the other three corners. Manny Paiva responded that he was not sure of their sign heights, but that 20' is the industry standard. Jonathan Moriarty also asked if there was a snow removal plan. Jack O'Leary responded that smaller storms will allow for snow to be plowed within 18' of the curb; anything over that will be removed from the site. The trash will be fenced in and a recycle bin provided and will have a ten foot buffer from abutters. The fencing will be 6' vinyl along side and back and 6' coated chain link with privacy slats along the abutter side. Jonathan also noted that if the plan is approved, vehicles must be parked on site during construction. He also asked if any additional painting/stripping is planned, and that deliveries of goods and supplies, and trash pickup be done in off peak times.

Kemal Denizkurt asked if the message board sign conforms to zoning. He asked for the calculations of what is allowed and proposed on the pylon sign be provided. He also asked how many employees will be used for both the store and the gas pumps. Weymouth does not allow self service gas dispensaries.

Chuck Golden noted the existing Cumberland Farms store within one traffic light. He also addressed the number of employees. He also asked for a review of the proposed use of the interior square footage. He noted the proposal increased the size of the gas storage allowed by 10,000 gallons and he addressed the traffic study in particular the counts.

Jim Clarke reported that the application was routed to the various departments and reviewed their comments, particularly those of the fire department and DPW, Water, Sewer and Engineering.

He also noted George Bezkorovainy's memo and exceptions to the traffic study that was submitted.

Dorothy Lang, 38 Adams Pl. noted the intersection is #8 on a DOT statewide crash location report that was featured in a WBZ news I-Team report. The road is a commuter cut through and the mayor agrees that conditions have not improved with the Route 18 widening project. She noted that there are already two gas stations and an existing Cumberland Farms nearby and that there are other safer locations that could meet the needs.

John MacDonald, 11 Adams Pl. asked that no entry or exit onto Adams Place be allowed. He also noted that he has received no compensation from Cumberland Farms.

Tom Daru, 333 Columbian Street noted that Dunkin Donuts' traffic issues should not be Cumberland Farms' problem.

Ann Cawley, 46 Adams Pl. noted that traffic and safety are issues. She has concerns with adding and entrance and exit onto Adams Place.

Eleanor Edwards, 779 Main St. noted the plan is a marked improvement to the current site. She asked that the proponents consider moving the dumpster to the other side of the building, and that snow is not allowed to be plowed blocking on her side of the property. She also was concerned with water runoff from the property.

Tara Curtain, 15 Adams Pl. noted she is against the plan and has issues with the curb cut locations, snow plowing and trash dumpster location.

District Councilor Ed Harrington noted the issues he addressed in opposition of the rezoning plan last year; the criteria to base a decision for or against the plan still apply. He does not support it.

A motion was made by Vice Chairman Foley to continue the hearing to the July 10, 2013 meeting to allow the applicant to provide/address the following:

- Sign calculations
- Copies of all memos
- Detail on delivery schedule information
- Queuing and stacking information
- Need for curb cut on Adams Place
- Dumpster location

The motion was seconded by Jonathan Moriarty and unanimously voted.

Submitted:

Exhibit #1-revised plan

Exhibit #2-bike rack specifications

Exhibit #3-trash maintenance plan dated 5/31/13

Exhibit #4-traffic/road safety report

BZA CASE #3192–79 Lake Street, Public Hearing

Application of Colm & Caroline Kearns for property located at 79 Lake St., also shown on the Weymouth Town Atlas as Sheet 22, Block 301, Lot 17, located in R-1 zoning district, seeking an extension or change by special permit for a second floor addition within the setback area.

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

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

Colm Kearns presented the petition. He proposed taking the roof off the house and adding a second floor with 2 bedrooms and a bathroom, within the setbacks. There will be no increase to the nonconformity. The lot drops at the side and the plan will extend the walk out basement. The plan will not obstruct view.

Jim Clarke reported that the plan was routed to the various departments and reviewed the comments. He noted that the decision should refer to 120-51, Table I.

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

To vote on Case 3192–79 Lake Street to approve a Special Permit for a second floor addition within the setback area:

A motion was made by Vice Chairman Foley to approve the application for an extension or change by special permit for a second floor addition within the setback area, under Chapter 120-40, and 120-51 Table 1 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.
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 for a second floor addition within the setback area.

BZA CASE #3193–670 Main Street, Public Hearing

Application of Monarch Weymouth for property located at 670 Main St., also shown on the Weymouth Town Atlas as Sheet 41, Block 490, Lots 8,9,13 located in R-2 zoning district, seeking a variance for sign height of 3'; proposed is 4'.

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

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

David Auricho presented the petition for a 4' high sign, double sided. The sign has a decorative bump out in the center and end caps. A 3' high sign will not offer enough visibility. Moving the sign to another area is problematic from a maintenance standpoint.

Jim Clarke reported that the application was routed to the various departments and reviewed the comments. There was a brief discussion of the location; whether intersection or driveway is appropriate criteria. The building is under construction and will not be completed and open until the fall. On the northerly side, there is a retention pond so the sign can't be relocated there. It also can't be pushed further on the left side where there is a 2-family house because the hedges lean up and into the driveway. The applicant is concerned that appropriate visibility be available to emergency vehicles.

There was a brief discussion of the code and the bump out on the top of the sign. It requires 3-8' for clear visibility, and a ground sign makes the most sense. Kemal Denizkurt asked if the hedges obstruct the sidewalk.

Victor Bernan, 1109 Front Street noted the requirement is 3' and would prefer the applicant be restricted to it. He does not want to see a larger sign.

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

To vote on Case 3193–670 Main Street to approve a Variance for sign height:

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 comments from Building Department's Jeff Richards were taken into

consideration: the retention basin on the northerly side; the 2-family house on the north side.

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 sign height with the following conditions:

1. Applicant will submit a certified Plot Plan.

BZA CASE #3194–91 River Street, Public Hearing

Application of Thomas & Ann Corcoran for property located at 91 River St., also shown on the Weymouth Town Atlas as Sheet 2, Block 3, Lot 17, located in R-1 zoning district, seeking to add a single floor addition within the setback area.

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

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

Thomas and Ann Corcoran presented the petition to add on to the back of their house. There is not any other location on the property that would work without causing a financial hardship. One side of the house has an existing bedroom and no neighbors on the garage side .

Jim Clarke reported the application was routed to the various departments and reviewed the comments. The property is located within the riverfront area and an application to Conservation Commission was approved on May 20, 2013.

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

To vote on Case 3194–91 River Street to approve a Special Permit to add a single floor addition within the setback area:

A motion was made by Vice Chairman Foley to approve the application for a special permit to add a single floor addition within the setback area; seconded by Jonathan Moriarty.

FINDINGS

Further, the board finds that:

1. The specific site is an appropriate location for such a use, and cited the building department comments; the work will not further encroach on the existing 9' setback.
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.
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 to add a single floor addition within the setback area.

BZA CASE #3190, 1294 Washington Street, Public Hearing (cont.)

Application of Stephen Zeboski for property located at 1294 Washington Street shown on the Weymouth Town Atlas as Sheet 35, Blocks 407 & 408, Lota 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 §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
 Ed Foley, Vice Chairman
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty

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

Attorney Gregory Galvin, with offices at 775 Pleasant Street returned to the table. He noted that many of the neighbor's comments included their concern with regard to traffic. He spoke with the town traffic engineer and reviewed the crash history for the street; from January 2005 to January 2012, there was only one reported property damage accident which occurred on 8/19/06. The applicant also submitted landscape (with planting schedule) and lighting plans as requested. The applicant proposes minimal tree removal to only those impacted by the construction and paving. An additional parking space is added behind the 2-story block building. The applicant proposes a total of 7 spaces. 8 are required for the 4-unit building, but not needed because of the size of the units. The dumpster is located at the end of the parking area by the studio apartments. The lighting plan proposes light shining only on the parking area, with no spillage to the properties behind 1290.

Kemal Denizkurt asked if the calculations count the two garages in the rear of the property. He noted the property is 3 separate parcels under common ownership. Atty. Galvin noted parcel one is held in a different entity and does not meet the definition of common ownership.

Jim Clarke reviewed the Conservation Commission's memo and the special conditions for a certificate of compliance.

Atty. Galvin noted the above surface detention system has been changed to subsurface detention infiltration area. Vice Chairman Foley asked for a clearer plan. He noted the Conservation Commission's comment regarding improper maintenance of the skimmer box. Jim Clarke noted the Whitmans Pond concerns that it will get blocked up again. Atty. Galvin responded that the Conservation Commission requires a maintenance plan and periodic review.

Jonathan Moriarty asked about the curb cuts. Atty. Galvin responded that one will be required. There are 2 drives into the property and 2 current curb cuts. These will be maintained. Ledge is between the south side of the property and the 4-story building and would have to be excavated and more trees removed to accommodate another drive. Changing the lot A layout wouldn't be a hardship, but it doesn't make planning sense. There is an existing set back issue with the 2-story block building.

Claudia Murphy of 1274 Washington Street asked if the property will be restricted under a homeowner association. Jim Clarke responded that he will check; the Conservation Commission has more control on that aspect.

Claire Coughlin of Argyle Ct. noted the crash report data only goes back 8 years and includes only property damage data. She said it should go further. She also asked if the applicant would consider fewer units with more upgrades. Chairman McLeod responded that the board cannot control what the applicant wants to do with his own property.

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

A motion was made by to take the matter under advisement, to review the materials including any Orders of Condition imposed by Weymouth Conservation Commission; seconded by Jonathan Moriarty. Vice Chairman Foley noted that if the board looks favorably on this application, it should include a list of Conditions as recommended by the Conservation Commission. Unanimously voted.

Adjournment

The next meeting of the Board of Zoning Appeals will be on Wednesday, June 19, 2013. At 10:05 PM, a motion to adjourn the meeting was made by Chuck Golden, seconded by Jonathan Moriarty and unanimously voted.

Approved:

Kemal Denizkurt, Clerk

Date