

**.BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
Wednesday May 15, 2013**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 15, 2013 at 7:05 p.m. 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 parties in interest of the subject locus and by publication in the Weymouth News.

Present: Richard McLeod, Chairman (arrived for Case # 3190)
 Edward Foley, Vice Chairman
 Kemal Denizkurt, Clerk
 Chuck Golden
 Jonathan Moriarty
 Rob Stevens

Staff: James Clarke, Planning Director
 Bob Luongo, Principal Planner

Recording Secretary: Ann Flynn Dickinson

The Vice Chairman called the meeting to order at 7:05 PM and explained the procedures that would be followed to the people present. A motion was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and unanimously voted.

BZA CASE #3183, 0 Greenvale Ave, Public Hearing (cont'd)

Applications 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 resident. Lots 28 & 29 will have a combined total of approximately 8,096 sq. ft.

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

A motion was made by Vice Chairman Foley to open the public hearing; seconded by Chuck Golden and voted unanimously.

Staff noted that the applicant requested a continuance until June 19, 2013.

A motion was made by Vice President Foley to continue the public hearing to the June 19, 2013 meeting; seconded by Kemal Denizkurt and unanimously voted.

Clapp Memorial Building – minor modification

John Deady owner of the Davis Clapp Memorial Building was invited to the table.

Mr. Deady explained that each unit in the three unit townhouses were 4' wider than shown on the approved plan. He can move the units closest to Broad Street closer to the street and still meet all setback requirements. The extra four foot width allows for a better interior layout. He could remove one unit but would rather reposition the townhouses.

Vice Chairman Ed Foley asked if this was a minor modification?

John Deady responded with yes they will all essentially stay the same style and the same number of units.

Jim Clarke stated the northerly townhouses will move 6 feet closer to Broad Street and center units will be moved a total of 12 feet. There is a 14 foot and an 18 foot open area between the buildings. This will still look good and not affect any of the change that was presented earlier.

Vice Chairman Ed Foley asked for a motion to this modification as a minor change to the original plan. Jonathan Moriarty approved and seconded by Kemal Denizkurt and voted unanimously.

BZA CASE #3188 35 Pleasant Street Public Hearing, (cont.)

Application of Metro Sign & Awning located at 35 Pleasant Street also shown on the Weymouth Town Atlas as Sheet 49, Block 558, Lot 1, located in B-1 & R-2 zoning district seeking variance for wall sign size.

Members sitting: Kemal Denizkurt, Clerk
 Chuck Golden
 Jonathan Moriarty
 Rob Stevens

Vice Chairman Ed Foley stated we need Rick McLeod for the Metro Sign and Awning without Rick they are shy one member of the Board and Ed Foley stated he could not vote and made them aware that they needed 4 positive votes for the motion to carry.

Jim Clarke requested a 2 minute recess.

Motion was made by Jonathan Moriarty and seconded by Kemal Denizkurt and voted unanimously.

Jim Clarke called Chairman Richard McLeod and he will be here shortly.

Recess back in session motion made and seconded Rob Stevens and Kemal Denizkurt.

A Motion was made by Kemal Denizkurt to open the Public Hearing, seconded by Jonathan Moriarty and voted unanimously.

David Esajian introduced himself and Jim Strain with Whole Foods Market in front of the board. David thanked the Board for the communication and help throughout this process.

The first portion of the handout shows the signs. The first four sheets shows what Whole Foods is proposing. The building sign and the lighting affect requested are face and halo to get glow from the back and illumination from the roadway. The Hingham application vs. Weymouth is a bit different. The next four pages are a combination of the former FoodMaster site and the balance of the signs. They were all individual letters and the big hardship is that the free standing signs shown on page 3 and 4 of the packet, there are a lot of tenants. When you pull in from Main or Pleasant Streets the signs are not very visible.

The set back of the Whole Foods building is set very far back with no view from Pleasant Street. From Main Street you do get a view of over 500 ft from the street to the building and that is a significant distance. The letter visibility chart on the next page shows for a 540 ft setback you letter height should be 54 inches, we are proposing far less our lettering is 3ft which is less than what Foodmaster had on their sites. Lastly the former Foodmaster permit does not appear as it does on the permit drawings.

Kemal Denizkurt thanked David Esajian for the packet and would like it marked as Exhibit A, the hand out from Whole Foods.

Kemal Denizkurt asked if the board had any questions.

Jonathan Moriarty asked if they had reached out to Michael Smart Town Councilor.

Jim Clarke spoke to Councilor Michael Smart and said that he did speak to Whole Foods and is sticking by his initial position from the last meeting.

Jonathan Moriarty thanked them for researching the signs.

Chuck Golden asked for clarification on the 540 ft from the street. Our staff measured it and it is actually 477 ft from the street.

David Esajian researched it from google map and scaled it from that range and knew that it would be plus or minus a small amount.

Bob Luongo reminded the applicants that the Foodmaster's name was Johnny Foodmaster and it was changed to Foodmaster to stay within compliance.

David Esajian said he did a survey recently with some attached signs. A memo was distributed tonight showing Foodmaster was a little bit shorter in 2 feet 10 inches but the Marshall's is 4 foot. CVS has 3 foot high letter. Lowe's has 7 foot letters. Hilltop is 5 feet in height. These letters are clearly within range.

Kernal Denizkurt brought up the fact that the store has brought up two hardships:

1. The distance and obstruction along the street way impeding the store front.
2. The small letter and the abundance of store names on the sign. Do freestanding signs by the road constitute the need for a variance? Does this create a hardship under our zoning law? At the first hardship site it does.

Jim Clarke reported they picked the four plazas in the town and picked the setups that are all 300 to 500 ft from street right of way and we tried to be consistence using the comparisons

This is a public hearing and would like to make a motion to entertain comments from citizens. Motion was made and seconded and voted unanimously.

Ed Foley 54 Harding Ave Weymouth

Mr. Chairman I am here to oppose this variance. This applicant has created their own hardship. I also heard from Councilor Smart that he had oppositions and had called and emailed Whole Foods and had not heard from them. These people created their own hardship where Johnny Foodmaster existed for years without a variance. I oppose this application.

With no additional comments, Chuck Golden made a MOTION to close public hearing was made and seconded Jonathan Moriarty and voted unanimously.

Motion to take action on application or any further discussion.

Chuck Golden stated that Johnny dropped Johnny to comply with the code. The other thought is looking at Marshall's at the other end of the plaza and this sign is less than that sign to me this is a very difficult decision. Taking the comments from Mr. Foley and Councilor Smart, he has an issue of allowing a variance for one and not the other in the same plaza.

Jonathan Moriarty stated he did make exception to this location. I don't believe this is a self created hardship and it is very unique location and nestled in. It is not an L shape, it is awkward shape plaza. You have to know where you are going to go to Whole Foods. The Whole Foods letters are large letters. Jonathan commented that he is not in the business to handing out 3 foot letters, but we do have to take and exception to this.

To vote on the of BZA Case No. 3188 to approve a Special Permit under Section 120-40, and variance under Section 120-64.3 for a variance for a wall sign size.

Kemal Denizkurt made a Motion to approve the application for variance. Applicant has proved that the site is unique and is very set back with no street frontage. The applicant did demonstrate the hardship of the setback of the building and obstruction for any motorists trying to find the mall entrance. We could grant the relief without any substantial detriment to the public the motion was seconded by Jonathan Moriarty and unanimously voted.

DECISION OF THE BOARD - It was unanimously voted to approve a Special Permit.

BZA Case #3190-1294 Washington Street, Public Hearing

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 set-back; 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, Clerk
Chuck Golden
Jonathan Moriarty

Gregory Galvin, Attorney with offices at 775 Pleasant Street stated the applicant is Stephen Zeboski. The Applicant is seeking a number of different reliefs from the zoning bylaw seeking both a special permit and variances. The site at 1294 Washington Street it contains in excess of 100,000 square feet and has on one parcel a stone building (residential) that is close to Washington Street.

1. Applicant wants to subdivide into three lots. The existing bldg would be maintained with the wooden additions removed.
2. Applicant is also seeking the two new lots on this property to construct two town house style duplexes. With regards to the existing stone building he would like to convert to 4 micro studios for rent.
3. The units would be studios and one of the reliefs would be for 6 parking spaces opposed to 8. The units being studios, in our experience are usually occupied by one individual and frequently they do not have a car. They would not require two spaces per dwelling and we are seeking to reduce the amount of asphalt in there. We reduce the clearing and paving of the area and there is enough to put all 8 parking spaces in, but we do not feel it is necessary since it is right on a bus route which is right in front of the property.
4. Next relief is the lot that shows the two family in behind this stone building. We could put adequate frontage in and asking for an easement to come down one driveway.
5. Relief under the ordinance to be one driveway for both the stone building and the 2 unit townhouse in the back. The lot that has the stone unit is proposed 12,000 square feet; the ordinance requires 15,000 square feet. The brook is behind there together with wetlands. There is already one driveway there, we would be adding one more. There is another parcel for a 2 unit townhouse dwelling. This matter is currently before the Conservation Commission. If we move any of the proposed buildings we would be getting into issues with the buffer zones and the detention areas for runoff for this parcel. It does have a considerable slope to it. The back two family would have garages.

Kemal Denizkurt asked Attorney Galvin if they are all studios. Only the existing stone building would be studios.

Kemal asked if this is already one lot and we are looking to subdivide into three?

Attorney Galvin responded that it is two lots currently.

Kemal Denizkurt asked what is the advantage of creating three instead of two?

Bob Luongo asked if the two lots are owned by the same owner?

Attorney Galvin stated these lots meet zoning but are not merge by one owner. As long as each lot is greater than 15,000 they do not merge.

Chuck Golden asked Attorney Galvin you are already asking for a lot of relief so asking for three lots vs. two lots. Will he keep all units as rental units or will they be sold off separately eventually. The intent is not to sell but use as rental units.

Ed Foley asked Attorney Galvin if he had talked to the Water and Sewer Division yet.

Attorney Galvin responded Mr Luongo provided us with comments and the applicant and his engineer did not see anything within this that would not allow them to comply with all the water and sewer issues. The highway only has one to pay the usual fee for the connection. We will be dealing and complying with them.

Bob Luongo asked if they communicated to DPW yet.

Attorney Galvin replied Shawn Hardy the engineer had every intentions of working with the DPW.

Vice Chairman Ed Foley asked if it is right on Rte. 53 and you are looking for 6 spaces right on Washington Street.

Attorney Galvin responded saying that 6 spaces will be more than adequate for studios which are 365 ft each unit.

Vice Chairman Ed Foley after much discussion about placement of buildings, garages, parking spaces, etc. requests a copy of the atlas in order to figure out between diagrams which lot numbers go with lot letters on the other drawings.

Jonathan Moriarty states he is digesting it. He is not opposed to it, but he does not know if it is clever to get the two family units on these lots.

Attorney Galvin responded this is within the ordinance.

Jonathan Moriarty asked if that site will have a dumpster?

Attorney Galvin states none of the lots require a dumpster. Mr. Zeboski intends to put a dumpster for the four unit and the two family unit. The dumpster is being proposed if required to service two buildings so those buildings would not need barrels.

Jonathan Moriarty stated that would take up some parking.

Attorney Galvin stated there will still be plenty of room and we can add two parking spaces and add the dumpster with no problem.

Ed Foley asked Attorney Galvin that he mentioned one common driveway for the townhouse and the studios. Do you have to go to Mass Highway?

Attorney Galvin states there is no curbing here. The applicant gets up to point out area used as driveway that is just gravel with no asphalt on it. To add a third driveway we have to ask the engineer if that would trigger a Mass Highway filing?

Ed Foley requests copies of these drawings that we can see these in detail. I would like the conservation drawings also to be more legible. The full size plans are great.

Ed Foley again asked if they plan to be sold later.

Attorney Galvin responds that the applicant states they will all be rentals. One of the issues is with the DPW on the water lines for the two townhouses. It would be next to impossible to sell them they would have to remain rentals.

Bob Luongo asked if the façade of the other two buildings will be similar is it stone or concrete.

Steve Zeboski, applicant, stated it is stone.

Bob Luongo stated there were a couple of comments from the DPW that Shawn Hardy the engineer needs to get a letter back stating that they are satisfied with their response.

Chairman McLeod asked if there were any questions.

Dee Kelley of 1276 D Washington St. states it is too crowded around there. This is so vague and this is the first time I have heard of garage. Everyone has a car in Weymouth. I think it is too big of a project for what is there. I am concerned about the dumpster and lighting, I am concerned about flooding. When you put black top in and remove all the trees who knows what is going to happen.

Attorney Galvin responded that her building is a good distance from our project.

Dee Kelly asked for more information on the detention basin.

Attorney Galvin responded that it is a depression that water runs into and seeps down. It is required because of the surrounding wetlands

Claudio Murphy 1276 F Washington Street voice concerns about the water.

Paul Rotondo of Argyle Court states there has been two fatalities there. The project needs to be scaled down a bit. This is too big of a project.

Jim Franklin of Argyle Court commented that is state property down there, my mother in law got rear ended in this area. This is an issue, always has been and always will be. Snow removal is another big issue. Jim also stated that Attorney Galvin was in an accident at that site.

Kemal Denizkurt requested the Attorney please obtain accident information for that area.

Attorney Galvin denies having an accident there.

Tom Coughlin of Argyle Court asks how much ledge will be taken out and how is it going to be excavated?

Attorney Galvin responded they are not sure yet if we have to bring a third opening coming out means excavating

Stephen Zeboski states the material will need to be excavated and what isn't good will be taken off site.

Tom Coughlin of Argyle Court asked if there would be blasting?

Attorney Galvin responds not at this time and that would be a Fire Dept. issue. We would try to hammer it first.

Tom Coughlin replies that is still vibrations.

Stephen Zeboski responds he will have to chip it if that is the easiest and cheapest way to do it.

Attorney Galvin also states it would be the least amount of excavating.

Clair Coughlin of Argyle Court comments she is very concerned about traffic. It takes us about 3 minutes to get out of our street. The condos across, the office bldg and now there will be two to three more driveways to worry about.

Chairman Richard McLeod asks if there are any other questions

Bob Luongo asks if they have any type of landscape plan to provide this board and a lighting plan for the parking lot yet.

Attorney Galvin responds no not at this time.

Kemal Denizkurt asks if he owns both properties right now.

Robert Vincent of 1 Argyle Court just bought property and traffic is an issue that needs to be addressed. I plan to have a family on Argyle Court and cars are flying by there every night. Secondly snow removal is a huge problem.

Chairman Richard McLeod said this meeting will be continued to another date. If you have any further questions or comments, I don't want to stop you from voicing concerns tonight, but there will be another opportunity

Paul Gervasi of Argyle Court stated that on our street, past one and two they are not considered abutters and traffic is a huge concern.

Chairman Richard McLeod replied it certainly is a concern for us.

Next hearing date on the 19th of June and there is one for the 5th.

Chairman Richard McLeod asked if that is enough time to get the information.

Attorney Galvin requests that he have enough time to get information on the lighting and the conservation.

Kemal Denizkurt asked if they need conservations approval.

Attorney Galvin replied that the conservation ordinance requires they file with Zoning Board and then the conservation process will go forward.

Bob Luongo states in an extreme condition, Conservation says they can't do something it would have to come back to be appealed.

Chuck Golden asked Attorney Galvin if he was meeting with Conservation on the 29th.

Attorney Galvin responds yes.

Vice Chairman Ed Foley asked if we can get the minutes from that meeting.

Bob Luongo said he would ask Conservation.

Vice Chairman Ed Foley asked Attorney Galvin what the plan was for snow removal.

Chairman Richard McLeod made a motion to continue the hearing to the 5th.
The motion was seconded by Ed Foley and voted.

Other Business

Motion was made by Chairman Richard McLeod and seconded to accept the minutes of the last meeting on April 24, 2013 and seconded by Ed Foley.

Chairman Richard McLeod mentioned the need to review the provision for allowing smaller lot sizes. We would like to draft a new bylaw to tighten this up. I would like to leave this open for discussion.

The second issue is procedures for alternate members. The alternate does not seem to understand the procedure. I do not want the applicant to believe the alternate is now sitting up here acting as one of the board members. We should ask the alternates to sit in the audience and we can explain it to them. This prevents confusion to the applicant that they are addressing Board Members when they are alternates.

The third issue is for newer people making motions that we have to support with facts each of the criteria. If we have a working session with the alternates then they will get comfortable making those motions as well.

Jonathan Moriarty responds this is very important especially on issues with appeal. We need to be clear, with reasons, why we are making the decision.

Chairman Richard McLeod with our new year coming July 1 it is time to flush out some of these issues.

Vice Chairman Ed Foley asked why not stick with the 25,000 sq ft and if the Town Council chooses to say that's it no variances.

Bob Luongo asked if we can allow smaller lots on a courtesy.

Vice Chairman Ed Foley said plain and simple it is revenue for the town plain and simple.

Bob Luongo responded this is not a statutory requirement.

Chairman Richard McLeod said when you look at surrounding neighborhoods, that wording would need to be eliminated.

Bob Luongo said that you could look at the surrounding but you are willing to go down to 20,000 but no relief under 20,000.

Chairman Richard McLeod said we can recommend the zoning change at any time.

Chairman Richard McLeod said the way to get around this is coming up with this saying this applies to lots with this square footage.

Bob Luongo states 20,000 and prove it will be smaller than that.

Chairman Richard McLeod said under state law you can not have a lot under 5,000 sq. ft.

Chairman Richard McLeod said when taking land from a non-conforming lot, we all get in trouble by this. There was a common lot just over 5,000 in North Weymouth it was 7,500 in each lot and it did not look like it split the lot and we were all troubled by this and we needed to come up with ideas to address this.

Bob Luongo noted Ralph Talbot Street one of the big houses wanted to knock down the original house and make three lots out of it. He has the 25,000 for each of those two lots. The owner did not want to pursue it as a developer would. He only created one lot with proper lot area.

Chairman Richard McLeod said we just need to get protocol on all this.

Vice Chairman Ed Foley said the town feels it is getting more tax revenue.

Vice Chairman Ed Foley said it is now a way for people to make money.

Bob Luongo states it is a capitalist society.

Chairman Richard McLeod said we can try to look back at prior rulings to help us with decisions but I see that we are all troubled with it.

Kemal Denizkurt asked does the sign section need to change.

Bob Luongo asked if we allow signs to stay up when the business is gone. We are outdated compared to other towns. We need comprehensive review with representatives from community and this council and look at it and make rhyme or reason of some of this stuff. We don't want to be left with a judgment call on these, there needs to be a chart that we can use to determine and use as standards and guidelines.

Adjournment

Chairman Richard McLeod made the motion to adjourn and seconded by Vice Chairman Ed Foley unanimously voted at 8:55 p.m.

Approved:

Richard McLeod, Chairman

Date