

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
May 2, 2012**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 2, 2012 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 Robin Moroz
Staff:	Robert Luongo, Principal Planner
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. 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 #3155– 200 Liberty Bell Circle, Public Hearing, (Cont.)

Application of Joanne McBride for property located at 200 Liberty Bell Cir., also shown on the Weymouth Town Atlas as Sheet 14, Block 121, Lot 153, located in R-1 zoning district, seeking to construct a 12 x 12 shed on the side of the house within 5 ft. of property lines from side, back and front.

Members sitting:	Richard McLeod, Chairman Edward Foley, Vice Chairman Kemal Denizkurt Chuck Golden Jonathan Moriarty
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Ms. McBride appeared before the Board. She provided additional photographs, as requested at the last public hearing and which were accepted as exhibits. First photograph is a view of the deck to the right taken on the right side of the house from the front. Second is a shot from the door to the right to the white fence. Third exhibit is a signed letter from the neighbors, Robert and Cynthia Stracco (190 Liberty Bell Circle).

There was a brief discussion and review of the photographs. The applicant reported that if the application is granted she will landscape to the street in front of the shed. The neighbor may be planning to do some grading on the other side of the shed and place rocks for drainage. Jonathan Moriarty asked where the boat is to be stored. Ms. McBride responded that she has not made plans yet. Vice Chairman Foley asked if she would match the fencing in front of the shed to the

fence on the other side, or with the white fencing. Ms. McBride responded that the white fencing belongs to the neighbor.

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

To vote on the of BZA Case No. 3155 to approve a Variance to construct a 12 x 12 shed on the side of the house within 5 ft. of property lines from side, back and front:

A motion was made by Vice Chairman Foley to approve a Variance and was seconded by Chuck Golden.

FINDINGS

Further, the Board finds that:

1. Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise. There is no other place to site the shed without having to level land resulting in financial and other 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 the application for a Variance to construct a 12' x 12' shed on the side of the house within 5 ft. of property lines from side, back and front with the following conditions:

1. The applicant will landscape around the shed with mulch and natural plantings consistent with the landscaping of the rest of the property.

Submitted: Exhibit #4 - Photograph
Exhibit #5 - Photograph
Exhibit #6 - Letter from Robert & Cynthia Stracco

BZA CASE #3158–24 Beals Street, Discussion and/or Decision

Application of Donald J. Rafferty, Jr. for property located at 24 Beals St., also shown on the Weymouth Town Atlas as Sheet 10, Block 125, Lot 4 & 5, located in R-1 zoning district, seeking a special permit and variance for the minimum width at the building line and minimum lot size to subdivide one lot into two lots (17,130 sq. ft. and 13,278 sq. ft.)

Members sitting: Richard McLeod, Chairman
Edward Foley, Vice Chairman
Kemal Denizkurt
Jonathan Moriarty
Robin Moroz

Chairman McLeod reviewed the ten exhibits that were submitted. He also reviewed the governing language in Ch. 120-53 and the sampling of similar decisions by the Board that was presented as testimony.

Jonathan Moriarty presented the following findings:

- Property was originally two lots
- There are two deeds and two tax bills
- Testimony to the effect that no blasting will be necessary
- Lot 5 taxes are past due
- Original application denied in 2000
- Neighborhood comprised of primarily single family homes
- Five of the properties fronting Beals St. have over 70' but less than 120' frontage
- Ten properties have frontage less than 50' wide
- Ruling to be based on amended plan dated April 11, 2012 (Exhibit 9)
- Majority of the topography on unimproved lot consisted of purple slate
- Drainage is to be addressed on the lot- any runoff is to be captured on site
- Properties facing on Beals St. on the Assessors Plan: lots 3,4, and 29 are over 100'
- The application meets with the spirit or intent of 120-53
- It is an appropriate location and use will not be detrimental
- Lot is appropriate for a single family home and with no blasting, there will be no nuisance
- No traffic will be generated by the construction of one single family home
- Public welfare will be substantially served; a newly constructed single family home will add to the neighborhood and increase values.
- There will be no negative impact

Chairman McLeod reviewed the testimony of the owner of DJ Equipment regarding blasting. He also noted that if the plan were approved the Historical Commission could consider study/sample of the purple slate prior to construction.

Vice Chairman Foley noted that he is not in favor of the application based on the following findings:

- Decisions in the past have been made on a case-by-case basis. He does not have issue with the frontage, but probably does with the topography.
- He noted the testimony and number of neighbors in opposition on Beals and Pearl Streets, and Saning Road.
- Testimony entered into exhibits on the geology and shape of the lot and he didn't hear Mr. Bean say he wouldn't blast.
- He noted that at 27 Beals Street, the utility pole work was delayed 4 years due to the inability to drill (in testimony from submission by Mr. Burns).
- Four councilors and the past Board support opposition to the application.
- It is not an appropriate site and the use could be detrimental to the neighborhood.
- It could reduce property values.

- There are several surrounding property owners testifying to flooding problems from runoff. Putting drywells on ledge will not alleviate.

Vice Chairman Foley noted he is not in favor of the special permit, but is not opposed to the variance.

Kemal Denizkurt clarified information in testimony on blasting. Mr. Bean has testified that no blasting will be required. He is in support of the application with the condition that there will be no blasting. With a proper drainage plan when seeking a building permit, flooding can be mitigated. The applicant has demonstrated that the size fits with the neighborhood, and there is sufficient size without set back issues.

Jonathan Moriarty responded that in testimony on 4/4/12, Mr. Bean offered his opinion that blasting will not be required, and wasn't necessary when he put the addition on the house across the street. Blasting is not within the purview of this Board. The purple slate is nonporous and impervious to water and reported to cover the entire lot; putting a house on the lot will not displace the water any differently.

Vice Chairman Foley responded that as an example, the ledge was found to be within 2' below the surface at 27 Beals Street and delayed utility pole work.

Chairman McLeod reported that blasting is not in the Board's jurisdiction. When the last application was denied, it was by members, including himself who were new to the Board. Blasting will be an issue for the Health and Fire Departments, subject to testing and the applicant would be required to secure adequate insurance protection. While he is not oblivious to the opposition, this application is not a popularity contest and the decision will be made based on the evidence presented and incorporating the local and state laws. The application is not unique and consistent with prior decisions and is not being made arbitrarily or capriciously. He supports the application; there is not sufficient evidence for him not to; based on the surrounding lots and the neighborhood, there are a number of lots of similar or smaller size. He is concerned that there be conditions to deal with water runoff.

Jonathan Moriarty asked if the pole on 27 Beals Street is an eyesore; he would like to see a condition that any utility poles set will require digging through slate. Kemal Denizkurt noted that the Board does not have the authority to direct how a pole is set, but the petitioner can be directed to notify utilities.

To vote on the of BZA Case No. 3158 to approve a Special Permit and Variance to subdivide one lot into two lots:

A motion was made by Chairman McLeod to approve a Special Permit as per the amended plan dated April 11, 2012 (Exhibit 9) and was seconded by Jonathan Moriarty.

FINDINGS

Further, the Board finds that:

1. The site is an appropriate location for such a use because the site is located in an R-1 District where the applicant proposes to create two lots of approximately 15,000 square

feet (See Exhibit 9) with the existing dwelling on one lot. These lots were always taxed as two lots. The neighborhood consists of single family homes; the size of the proposed lots are substantially consistent with the established lots in the neighborhood.

2. The use involved will not be detrimental to the established or future character of the neighborhood because the proposed use is for a single family dwelling which is a permitted use and once again, the proposed lots are substantially consistent with the established lots in the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians because no traffic concerns would be generated by adding one more single family home. Although not within our jurisdiction, blasting would not be necessary according to Mr. Bean at DJ Equipment (See exhibit #1). If so it would be regulated by the health and fire department in order to ensure the safety of pedestrians and vehicles.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Here the proposed single family dwelling would be constructed according to Building and Municipal Codes.
5. The public convenience and welfare will be substantially served. The proposed lots substantially serves the welfare of the public as created buildable lots creating a higher tax assesment basis providing additional residential real estate tax revenue to the Town. In addition a new single family home would probably increase values to the surrounding lots in the neighborhood.

CONDITIONS

1. All water run off will be collected in a drain system on site that runs to the end of the driveway.
2. The applicant will provide the Historical Commission the opportunity to inspect and sample the purple slate on the lot.
3. All taxes will be paid in full prior to the issuance of building permits.
4. Petitioner will provide notice to utilities to re-inspect and assess pole at 27 Beals Street.

DECISION OF THE BOARD - Due to the above findings articulated in the discussion, it was voted 4/1 (Vice Chairman Foley- nay) to approve the application for a Special Permit as per the amended plan dated April 11, 2012 (Exhibit 9) to subdivide one lot into two lots with the following conditions:

1. All water run off will be collected in a drain system on site that runs to the end of the driveway.
2. The applicant will provide the Historical Commission the opportunity to inspect and sample the purple slate on the lot.
3. All taxes will be paid in full prior to the issuance of building permits.
4. Petitioner will provide notice to utilities to re-inspect and assess pole at 27 Beals Street.

A motion was made by Chairman McLeod to approve a Variance for the minimum lot width at the building line as per the amended plan dated April 11, 2012 (Exhibit 9) 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 such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance 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 the application for a Variance for the minimum lot width at the building line as per the amended plan dated April 11, 2012 (Exhibit 9).

Other Business

Case #3150, 6 Perkins Road, Minor Modification

There was a brief discussion as to the modification requested; footprint and elevations are unchanged; applicant wants to add full dormers. This matter was continued to the next meeting.

Minutes-April 4, 2012, Case #3159, Case #3160

A motion was made by Vice Chairman Foley to approve the minutes of the April 4, 2012 meeting; Case #3159 and Case #3160, seconded by Jonathan Moriarty and was unanimously voted.

Bob Luongo introduced Brad Vinton to the Board. He was appointed as an alternate member and was present to observe.

Adjournment

At 7:50 PM, there being no further business, a motion to adjourn the meeting was made by Vice Chairman Foley, seconded by Jonathan Moriarty and unanimously voted.

Approved:

Kemal Denizkurt, Clerk

Date