

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
February 6, 2013

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 6, 2013 at 7:15 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, Alternate Member

Staff: James Clarke, Director of Planning and Community Development
 Bob Luongo, Principal Planner

Recording Secretary: Mary Barker

The Chairman called the hearing to order at 7:15 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 #3180–174 Central Street, Public Hearing, (cont.)

Application of Paul Mackintire for property located at 174 Central St. also shown on the Weymouth Town Atlas as Sheet 50, Block 565, Lot 13, located in R-1 zoning district, seeking to divide property into two lots about 10,000+ sq. ft. each.

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

A motion was made by Vice Chairman Foley to reopen the public hearing, seconded by Jonathan Moriarty and voted unanimously. Attorney Gregory Galvin, with offices at 775 Pleasant Street, again appeared before the board. At the last meeting, a decision was made to go back to the DPW Water Dept. to ascertain water pressure information. He reported the applicant also held a meeting with the neighbors to review the issues that were brought forward in the public hearing. As a result, he submitted a new plan to the town with some changes. Both proposed houses are raised ranches, with 2-car garage on lower level. The new plan entitled “Proposed Subdivision Plan Huntington Avenue and Central Street, Weymouth, MA” revised February 1, 2013 includes a water easement through lot 2 to bring water to lot 1. Water for both lots shall come off the 12” main from Central Street. The house on the corner lot (lot 2) will face Central Street with the driveway off of Central Street. Lot 1 will have its driveway off of Huntington Avenue. The

neighbors also asked for screening from the end of the stockade fence by the abutting property to the street and save as many trees as possible, including the large tree in the back corner of the property. The plan for lot 1 includes roof drains that feed into dry wells. Atty. Galvin also noted that the town does not have it within the budget, nor does it have any plans to either increase the water line coming into Huntington Avenue, looping lines or cleaning lines. Looping costs would run about \$60-70,000 without consideration for costs of the easement rights over the property. They do not recommend relining according to Bob Loungo as this can further narrow pipes.

District 6 Town Councilor Michael Smart reported he was present at the neighborhood meeting and thanked the applicant for addressing the priorities of the neighbors: the driveway location on Central, the water connections and the downspouts to alleviate runoff. He also noted that the neighbors also brought up screening, selective pruning and catch basin clearing. Jim Clarke will contact the DPW to follow up on the catch basin cleaning. Council Vice President Patrick O'Connor also noted he was present at the meeting and thought it was productive and that the applicant and neighbors made the effort to positively resolve the issues around this application.

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

To vote on the of BZA Case No. 3180 to approve a Special Permit to subdivide property into two lots about 10,000+ sq. ft. each

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

FINDINGS

Further, the board finds that:

1. The specific site is an appropriate location for such a use. The board has approved similar projects.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. The applicant met with the neighbors to address their concerns.
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. The applicant has changed the location of the driveway from Huntington Avenue to Central Street and the plans include three drywells on lot 1, and water supply off the 12" main from Central Street.
5. The public convenience and welfare will be substantially served. The applicant proposes to keep trees and add screening.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the application for a special permit to subdivide property into two lots – lot 1 containing 10,000+ sq. ft. and lot 2 containing 11,100 sq. ft. +/- with the following conditions:

1. Applicant shall comply with all conditions, notations and markings as detailed on the plan entitled "Proposed Subdivision Plan Huntington Avenue and Central Street, fWeymouth, MA" revised February 1, 2013.

2. The applicant will make every effort to save trees, and put in screening such as arbor vitae but not too close to the street to impede vision. The large tree on the northeast corner of the lot will be saved.
3. Both houses will be raised ranch style.
4. Driveway on lot 2 will be on Central Street; lot 1 will be as per plan.

BZA CASE #3183, 0 Greenvale Ave., 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 & 20 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, 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. Norman and Jackie Hassan, owners, addressed the board. The applicant proposes combining lots 28 and 29 for a total of 8,096 in order to build a home on the lot. There is no structure on the lot now. The proposed construction is a house built on pillars. The applicant noted that many of the surrounding lots are less than 5,000 sq. ft. The Chairman requested the Assessor's Map so the board could review the area. Jonathan Moriarty noted from the online property viewer that most lot sizes look consistent. He asked who owns lot 30. The applicant responded that the owner has been deceased for some time and is in tax title. He has tried to buy the land but it has not come up for auction. Kemal Denizkurt asked for the Assessor's Map and for the applicant to show a buildout box on the plan so that the board can see the footprint of the proposed structure with setbacks, and elevations in relation to the water. Chuck Golden also requested an Assessor's Map and would like to see the topography of the plan. Vice Chairman Foley asked who had cleared the lot. Mr. Hassan responded that he had permission to remove the knotweed.

Jim Clarke reported that there were three violations issued by the Conservation Commission. In 2010 a violation was issued for additional vegetation removal, in 2013 the same for adding turf, and the fence on the property was moved 30 ft. Mr. Hassan noted that the plan will obstruct no one's view but his own. He owns and lives in the house across the street.

Jim Clarke reported that the application was routed to the various departments and reviewed their comments, which includes a memo from Conservation Administrator Mary Ellen Schloss and her concerns with clearing. He also noted that the Building Inspector noted the purchase of land from the abutter, and acquiring by deed lot B to create the new lot B + C created a zoning violation to lot A. The lot size for the new lot A is more nonconforming in size. Jonathan Moriarty noted that the owner of lot 26 which is now lot A on the plan, will not be able to sell his property with the violation. There was a brief discussion of combining registered and unregistered land lots. The applicant reported that he had the property surveyed and there is actually 5,569 sq. f. (lot A). There was a discussion regarding what approach the board might

take. Jim Clarke recommended that if the board is inclined to go forward with the application, it should be reviewed with the Building Inspector, the Town Solicitor, and the owner of Lot 26. Kemal asked if this could set a precedent. Jim responded that the issue will be the setbacks and sidelines and that the violation is self-created. Vice Chairman Foley agreed that this requires guidance or input from the Town Solicitor. Jim Clarke will have a discussion with the Building Inspector and Solicitor. Chuck Golden also asked for clarification from the Conservation Commissioner regarding the violations, and of the footprint of the proposed structure with height restrictions.

A motion was made by Vice President Foley to continue the public hearing to the March 6, 2013 meeting; seconded by Jonathan Moriarty and unanimously voted.

BZA CASE #3184–50 Ocean Ave., Public Hearing

Application of Douglas Smock for property located at 50 Ocean Ave., also shown on the Weymouth Town Atlas as Sheet 4, Block 49, Lot 6, located in R-1 zoning district, seeking to raze an existing dwelling. New proposed dwelling will be in greater compliance than existing.

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

Applicant Douglas Smock appeared with Greg Morse of Morse Engineering. He reported that the original structure, built in 1903 will be razed and a new house built. The existing house is noncompliant; the proposed will be in greater compliance. He has discussed with both abutters who are in support. Kemal Denizkurt asked how many cars can be parked in the front. The applicant responded two. There are 3-4 cars parked there currently and all are off the street. The proposed house is 32x37 with a deck measuring 32x10. The existing house is 32x40 and includes a wrap around porch. Jonathan Moriarty notes the fence is falling onto the property. He asked whose it is. The applicant responded that he will leave it in place during construction and will speak to the abutter regarding repair.

Bob Luongo reported that the application was routed to the various departments and discussed their comments. Conservation Administrator Mary Ellen Schloss has noted in her comments that all work is to be outside of the conservation area. The plan has been submitted to the Conservation Commission for review and they have draft approval.

Alan McDonald, 59 Ocean Ave. noted the current building is an eyesore and he is in support of the application.

James Briggs, abutter on the right side, also supported the application.

Chuck Golden asked for clarification of the proposed building size. The existing is 32x40; the proposed size is 32x37 without the deck- the deck size is 32x10. There was a brief discussion of the side yard setbacks. Vice Chairman Foley asked if the Building Department had determined a value to repair or replace the structure. It had not.

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

To vote on the of BZA Case No. 3184; to approve a Special Permit to raze an existing dwelling and construct a proposed dwelling in greater compliance than the existing.

A motion was made by Vice Chairman Foley to approve the application for a Special Permit and was seconded by Jonathan Moriarty.

FINDINGS

Further, the board finds that:

1. The specific site is an appropriate location for such a use. The proposed building will not increase the nonconformity.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. The testimony from the neighbors indicates the proposal will be an improvement to the neighborhood and the applicant has received a draft approval from the Conservation Commission.
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. The applicant will tap onto the town's erosion control measures.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the application for a special permit to raze an existing dwelling and construct a new dwelling in greater compliance than the existing. Application to approve plan entitled "Proposed Site Plan 50 Ocean Avenue, Weymouth, MA", dated December 13, 2012.

BZA CASE #3185–26 Massasoit Rd., Public Hearing

Application of Derek Petrus for property located at 26 Massasoit Rd., also shown on the Weymouth Town Atlas as Sheet 4, Block 28, Lot 16, located in R-1 zoning district, seeking to remove the existing house and build a 24' x 40' new house & deck.

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

Derek Petrus appeared before the board. His application is to tear down the old house and build a new one. Chairman McLeod asked if the proposed house will be bigger than the existing. The applicant responded yes. The Chairman noted the proposed garage could fit four cars. The applicant responded that it will be used for two with room for storage. Bob Luongo reported that the Building Department has reviewed the application. The property is within the flood zone. Kemal Denizkurt asked about the height. The applicant responded that the height must accommodate the requirements of the solar panels that will be installed on the roof; they must be

high enough for the sun's rays to hit in winter. Bob Luongo reported that the distance between the peak of the roof and the top of the 2x6 plate is 40'.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments. The application will go for a hearing before Conservation Commission and then the Building Department. There is the additional issue of the property being situated in the flood plain. The applicant responded that the plan includes the creation of natural swales designed with the new flood plain guidelines in effect, and it will not increase the water surface above the 100-year mark. Bob Luongo also noted the comments from Jeff Bina and noted they can be made part of the conditions if the board is inclined to approve. Kemal Denizkurt asked how the deck will be accessed; the applicant responded that it will be via an outside spiral staircase. There was a brief discussion regarding the solar design, tax credits, and what hardship is involved.

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

To vote on the of BZA Case No. 3185; to approve a Variance to extend the height limit of 35' to 42':

A motion was made by Chuck Golden 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 height of surrounding trees, buildings will interfere with the placement of solar panels, and the plan complies with the new floodplain requirements.
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 extend the height limit of 35' to 42'.

To vote on the of BZA Case No. 3185; to approve a Special Permit for relief for the minimum 25,000 sq. ft. lot size, minimum lot width of 120' and minimum side yard setback to construct a 24' x 40' house and deck:

A motion was made by Vice Chairman Foley to approve the application for a Special Permit and was seconded by Jonathan Moriarty, based on the following findings:

FINDINGS

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 the application for a special permit, for construction of a 24' x 40' house and deck. Relief is granted for the minimum 25,000 sq. ft. lot size, minimum lot width of 120' and minimum side yard setback.

To vote on the of BZA Case No. 3185; to approve a Special Permit for construction within the 100 year floodplain:

A motion was made by Vice Chairman Foley to approve the application for a Special Permit and was seconded by Jonathan Moriarty, based on the following findings:

FINDINGS

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 the application for a special permit, for construction within the 100 year floodplain with the following conditions:

1. Application approval subject to 138-38.5 A-E:
~ 120-38.5. Construction criteria for special permits.
2. The plan will incorporate the Engineering Department comments.
3. The proposed plan will not increase the water by a raised foundation.
4. Approval subject to meeting construction criteria in 138-38.5 A-E.
5. Garage will be a 3-car garage with space for storage/workshop.

Minutes

A motion was made by Vice Chairman Foley to approve the minutes from the January 9, 2012 meeting, Case #3176, 3180, 3182, and 3181; seconded by Chuck Golden and unanimously voted.

Other Business

Case # 3084, Oak Cliff Rd.

Bob Luongo reported on Case #3084, Oak Cliff Rd. that was approved on June 2, 2010. The application was a 2-lot subdivision created with a right of way for access. The application was approved with the condition that one house would be built on lot 35. Engineering has looked at the plan. The applicant now wants to adjust the lot lines as per plan dated January 22, 2013 entitled "Plan of Land 36 Oak Cliff Road, Weymouth, MA". The applicant is basically asking to move the lot line; the same conditions will apply as stated in BZA Case 3084.

A motion was made by Vice Chairman Foley to approve the minor modification with all other previous conditions to remain the same; seconded by Jonathan Moriarty and unanimously voted.

BZA CASE #3157– 1090 Washington Street

Bob Luongo reported that the board approved this case in a prior meeting and the building is under construction; however, the barn is not the same materials that were discussed at the public hearing. Per plans submitted to the BZA dated 4/14/11 - Elevation for the Barn, the barn is to have wood plank siding fastened to pre-engineered siding. This included the barn door, front door and gable door. The design that was discussed was a wood sided metal building. The plans that were submitted to the Building Department do not include wood siding. The builder indicates the design would have affected water integrity. Mr. Luongo urged the board members to go by and look at the property and the Board can discuss at the next meeting.

Adjournment

The next meeting of the Board of Zoning Appeals will be on Wednesday, February 20, 2013. At 9:15 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:

Edward Foley, Vice Chairman

Date