

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
December 4, 2013**

**Present:** Richard McLeod, Chairman  
Edward Foley, Vice Chairman  
Kemal Denizkurt, Clerk  
Chuck Golden  
Jonathan Moriarty  
Brandon Diem, Alternate Member

**Also Present:** Jim Clarke, Planning Director  
Abby McCabe, Principal Planner  
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:15 pm. at the McCulloch Building in the Mary McElroy Meeting Room at 182 Green Street, Weymouth, MA and explained the procedures that would be followed to the people present.

**BZA Case #3183 – 0 Greenvale Avenue, Public Hearing (Continued from 11/13/13)**

Combining 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. lot area.

Appearing before the Board was the applicant Norman Hassan. Mr. Hassan requested a Leave to Withdraw Without Prejudice.

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

A motion was made by Edward Foley to accept the applicant's request for a Leave to Withdraw Without Prejudice on Case #3183 for property located at 0 Greenvale Avenue and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY.

**BZA Case #3205 – 90 Church Street**

Discussion and decision on the public hearing closed on November 13, 2013 on the request to subdivide two lots (owned for more than 5 years and considered 1 lot for zoning purposes) into two lots – one with a single-family dwelling and one buildable lot.

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

Jim Clarke, the Planning Director, stated that this application is a two-step process. The first step is to evaluate the information presented by the applicant to satisfy Zoning Ordinance Section 120-53 "Exceptions by Board of Zoning Appeals" that allows the Board to grant relief from the minimum lot size upon a finding that the proposed lot size is of a similar size to the lots in the adjoining neighborhood. The second step is to determine if the application meets the requirements of Section 120-122 "Special Permits" that sets five criteria that must be met for the approval of a Special Permit.

Kemal Denizkurt stated that the applicant submitted good information breaking down the lots. It always comes down to what constitutes the neighborhood. He is wondering why the applicant cut off the elbow on Church Street that took out five properties.

Jonathan Moriarty stated that there are 5 lots relatively the same size or smaller than the applicant's on Commercial Street. He feels the proposed residential use would be the least impact to the neighborhood in terms of traffic impacts.

Edward Foley said they are looking at lot sizes in the neighborhood and they need to define the neighborhood.

Edward Foley made a motion that the applicant has met the criteria in Section 120-53 "Exceptions by the Board of Appeals" and the Board finds that the size of the proposed lot at 90 Church Street is in keeping with the lot sizes in the rest of the neighborhood. The motion was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY.

#### Special Permit Findings:

Edward Foley stated that the specific site is not an appropriate location for the proposed use. Based on information presented during the public hearing, an additional driveway would create a hazard and no traffic study was presented that proved that it would not have a negative impact. He referred to the testimony during the public hearing which included a petition protesting the application signed by neighbors and submitted as part of the record. Therefore, the proposed use was found to be detrimental to the neighborhood and would create a nuisance and hazard to pedestrians by the angle and location of the driveway so close to the intersection.

Chairman McLeod agreed. The slope of the property is clearly a blind spot for the proposed driveway.

Kemal Denizkurt added that the news article submitted during the hearing that the Town was working with the Massachusetts Department of Transportation (Mass DOT) on the intersection of Church and Commercial Streets as it has been identified as an area with a high accident rate was a concern.

Jonathan Moriarty pointed out that the applicant made a proposal to grade and clear the lot to improve the line of site. He has not heard evidence that a house with a few residential vehicles would have a significant impact on traffic. If a traffic study was done, maybe it would have revealed something.

Chuck Golden agreed that this is a high accident area. The news article on the intersection, including comments from the Town's traffic engineer, the Mayor, and the Director of Planning are enough evidence of a high accident area without a formal traffic study.

Edward Foley made a motion to deny the Special Permit application under Zoning Ordinance Section 120-122D based on the application not meeting the five criteria for approval. The motion was seconded by Kemal Denizkurt. VOTE 4-1 (Jonathan Moriarty – No).

**BZA Case #3191- 767 Main Street, Cumberland Farms**

Discussion and deliberation as relevant to a public hearing closed on October 6, 2013.

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

Chairman McLeod stated that there have been five meetings since June 5, 2013 through October 16, 2013. This is a request under Zoning Ordinance Section 120-40 for an Extension or Change by Special Permit for a nonconforming use or structure.

Planning staff recommends approval of this application with the following recommended conditions of approval as agreed upon and amended by the applicant. Jim Clarke reviewed the conditions outlined in the memo dated December 3 and amended on December 4, 2013:

1. That the applicant fund a study of the intersection of site driveways adjacent to the Main, Park Avenue and Park Avenue West intersection. The funding will be \$6,000 to be paid to the town within thirty (30 days) of the expiration of the appeal period. The study will be conducted by the town by a traffic consultant hired by the town.
2. The applicant, as part of the driveway permit application, proposes signal timing modifications to Mass DOT as noted in the October 10, 2013 memo from McMahon Associates to Georgy Bezkorovainy, Weymouth Traffic Engineer, and Georgy Bezkorovainy's memo of October 15, 2013. The outcome should be actual signal timing changes approved by Mass DOT or agreement from Mass DOT that the delay in increased background growth, i.e. Southfield, does not warrant signal turning changes.
3. That the applicant work with the town and Mass DOT to address the ponding of stormwater on Adams Place near the intersection of Main Street. It shall be the responsibility of Cumberland Farms, Inc. to suggest and engineer options to address the ponding. Prior to the recording of the decision, Cumberland Farms, Inc. will submit a memorandum agreeing to participate in funding the option approved by the Town Planning Department and Department of Public Works, and Mass DOT, as required.

Jim Clarke stated that there appears to be several different options to condition #3. The first would be to see if a catch basin could be installed at the corner and tied into the state system which requires approval of Mass DOT and two other options are to raise the elevation of the last portion of

Adams Place so the water flows out onto Main Street into the existing catch basin or look at the inlet on the grassy area on their site, there is a pipe going into their stormwater system and maybe they can re-grade it. The ponding was a concern from residents for safety during the winter months.

4. The hours of operation shall be from 5:00 AM until 12:00 midnight. Deliveries shall be prohibited from 7:00 AM until 9:00 AM, 4:00 PM until 6:00 PM and after 9:00 PM.
5. That a no left turn sign be placed at the Main Street side driveway.
6. That a written snow removal plan be submitted to the Planning Department prior to the recording of the decision.
7. That the Site Plan dated March 27, 2013 and last revised on October 2, 2013 be revised and four (4) copies be submitted to the Planning Department showing the following:
  - The elimination of the sidewalk connection from the building to Adams Place;
  - That the date of the Board of Zoning Appeals approval for the Special Permit Case #3191 be noted on the plan; and
  - Show the no left turn sign to be installed at the Main Street driveway.

Chairman McLeod stated that a sidewalk to Adams Place would be the safest route for the people living at Adams Place. Jonathan Moriarty agreed.

Kemal Denizkurt said there was opposition to it during the public hearing so he is more inclined to remove it from the final plan.

The Chairman stated that it does not make sense not to have a sidewalk. Does the Board believe the request to remove the sidewalk connection to Adams Place came from the entire neighborhood or just 1-2 individuals? Jonathan Moriarty said he believes the comments may have been towards the project and not necessarily the sidewalk connection.

Chuck Golden said there is a sidewalk on Main Street. More than one person said they did not want people who didn't live in their neighborhood walk out the pathway into their neighborhood. He believes there will be pedestrians, high school kids and people from the hospital and a bus stop in the area. There will be people without vehicles in the area.

Edward Foley asked about the hours of operation at the Cumberland Farms on Front Street and Route 18. Jim Clarke responded that it was a 24 hour operation.

Kemal Denizkurt asked if they are looking for any additional signage outside of what they are allowed. Jim Clarke responded that the applicant submitted revised plans that complied with Zoning. Kemal asked that all the signage conform to the Zoning Ordinance. Jim Clarke stated they did testify that they are in compliance on during the hearing.

#### Special Permit Findings:

Based on the material submitted and analysis of the criteria for approval, the Board found that the application as revised meets the following criteria:

1. The specific site is an appropriate location for such a use.

- The property is zoned B-1 (Limited Business) where retail is allowed and service stations are allowed by special permit.
  - The property has been used as a gas station since 1930 and has been in its current configuration since 1967.
  - Commercial uses are on all four corners of the signalized intersection at Main Street and Park Avenue.
  - The site is at the corner of two state highways and has adequate utilities to the site.
2. The use involved will not be detrimental to the established or future character of the neighborhood.
- The proposed use of the gas dispensing and convenience store will be an upgrade over the existing gas dispensing auto repair station.
  - The new colonial style convenience store and enhanced landscaping will complement the other commercial uses at the intersection.
  - The elimination of site access to Adams Place, increased setback from residences to the west of the site, fencing and landscaping along the south and west lot lines will buffer the use from the residential uses to the south and west.

Vice Chairman Foley added that the proposal improves the area and Jonathan Moriarty said it will be more modern and have safer amenities with upgrades to the fire suppression systems. Edward Foley agreed.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.
- The increase in traffic generated by the site over the existing use is minor compared to traffic volumes on Main Street and Park Avenue.
  - The applicant's traffic reports, confirmed by the Town Traffic Engineer, show that minor signal modifications will offset the increased traffic generated by the site.
  - The applicant has improved safety by reducing curb cuts from five to two, including the elimination of any access from the site to Adams Place.
  - The site has been designed to facilitate safe access to the gas pumps, customer access to the convenience store, easy access for gasoline delivery trucks, and sufficient parking spaces as per zoning.
  - Handicap accessible sidewalks are provided along the Park Avenue West and Main Street frontage.

Jonathan Moriarty added that they reduced curb cuts and are prohibiting a left hand turn. Richard McLeod stated that this applicant will not generate more traffic. Chuck Golden said they are upgrading the fueling facility and storage tanks.

4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- The site is designed for efficient access to the gas pumps islands and the convenience store with minimum conflicts between both uses.
  - The site is serviced by all utilities.
  - Enclosed and gated trash receptacles are provided in the northeast corner of the lot.
  - Lighting is provided for the site driveway and parking, yet does not spill onto adjacent properties.

5. The public convenience and welfare will be substantially served.
  - The existing gas dispensing operation will be substantially improved by the new site configuration.
  - Customers are able to purchase convenience items and gasoline during one stop.
  - Reducing curb cuts and moving driveways away from the signalized intersection reduce potential conflict points.

Kemal there was a lot of discussion under #5 and we heard their comments but what is proposed is allowed so it is hard to control this.

Jonathan Moriarty noted the deletion of a service station and the addition of a convenient store is a benefit to the neighborhood.

Edward Foley motioned to approve this application for the Special Permit under Section 120-40 "Extension or Change by Special Permit" based on the findings the Board stated this evening with the conditions stated above. The motion was seconded by Jonathan Moriarty.

Board Discussion on the Motion:

Edward Foley suggested changes to condition #4 to read as follows:

The hours of operation shall be from 5:00 AM until 12:00 midnight. Deliveries shall be on site and prohibited from 7:00 AM until 9:00 AM, 4:00 PM until 6:00 PM and after 9:00 PM. No rubbish or service pick up or removal before 7:00 AM or after 9:00 PM on weekdays. No rubbish or service pick up or removal before 8:00 AM or after 9:00 PM on weekends.

Jonathan Moriarty suggested adding a condition that parking be on site only and that there be no parking of commercial or employee vehicles on Adams Place during construction.

Richard McLeod asked if the large existing tree or bush that is very high and blocks site lines will be removed and Jim Clarke said that the plan shows that it will be removed.

This motion was amended based on Mr. Foley's and Mr. Moriarty's comments and VOTED UNANIMOUSLY.

**BZA Case #3218 - 269 Park Avenue and 168 Ralph Talbot Street, Public Hearing**

Application of Joseph Brewster for property located at 269 Park Avenue and 168 Ralph Talbot Street, also shown on the Weymouth Town Atlas as Sheet 46, Block 532, Lots 27, 28 & 29, located in R-1 (Residential, single-family, low density) for a Special Permit under Zoning Ordinance Article XIII, Section 120-40 "Extension or Change by Special Permit of a Nonconforming Use or Structure". The applicant owns lots 27, 28 & 29 and is proposing to sell lot 27 which is non-conforming with respect the use (retail) in a R-1 zoning district and lot size under Table 1-Schedule of District of Regulations (25,000 SF minimum required and 15, 003 SF provided).

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

Chuck Golden made a motion to open the public hearing and waive the reading of the published notice at 8:15 pm. and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY.

Appearing before the Board was the applicant's attorney, Jim Baldasini, and the applicant, Joseph Brewster. Mr. Baldasini said this property consists of three separate lots. The use of the property will not change. Lot 27 is the ice cream stand and will be owned by someone else. Lot 29 (JP Greers) and the parking lot in the rear will remain owned by Joe Brewster. The property owners will share the parking lot. The lot is not striped but they believe there is sufficient parking. Each building has separate water, sewer and electrical. Both businesses are grandfathered under zoning and considered a pre-existing nonconforming use because the commercial use has existed in the residential zoning district. The ice cream is seasonal from April – October and this will remain the same.

Chairman McLeod requested to see a plan with striped parking.

Jonathan Moriarty asked if the proposed buyer was a chain and the applicant responded that it was not. The buyer for lot 27 is Mr. Perette and he is a local business owner.

Mr. Baldasini said his client wants to sell one of the three lots currently held under common ownership by Mr. Brewster to the new business owner. The Board asked if the buyer is aware that the conditions on this lot will remain the same. If there is any changes to the existing use (a seasonal ice cream business) or site layout for 269 Park Avenue (lot 27) the applicant will need to return to the Board of Appeals.

Jonathan Moriarty said a major issue is traffic in this area. Residents cut through the ice cream shop because it is seasonal and then back up through Ralph Talbot. The applicant said he uses cones and barriers at the curb cuts.

The applicant responded that they will stripe the parking for all three lots. Showing what they currently have and what they are proposing to have for parking.

Edward Foley said if the new applicants want to expand or do anything other than ice cream, sandwiches etc. they would need to come back before the Board.

The Board is concerned this will turn into the same issue they had with Greenvale Avenue and would like to refer to the opinion received from the Town Solicitor on Greenvale.

Abby McCabe, Principal Planner, said the difference between this and the Greenvale case is that the lot already exists and the lots are pre-existing nonconforming properties. The applicant owns three lots that have been considered one lot because of the common ownership but the parcels lines and

boundaries still exist and are pre-existing nonconforming parcels. Greenvale was not because it was a lot that was recently created and not allowed at the time that it was created. Any changes to lot 27/ 269 Park Avenue would need a Special Permit for an extension or change of nonconforming use. Abby recommended a revised and certified plan be submitted showing all the dimensions, a zoning and parking summary table, and the parking layout as outlined in the planning staff memo so the Board can review to confirm that the proposed changes will not result in a lot that becomes more nonconforming.

Kemal Denizkurt asked if this is one lot we are subdividing into two, or is it three individual parcels of land. The applicant and Abby stated that it is three separate parcels that have been considered one lot for zoning purposes because they have been held by the same owner. Once one of the lots is sold it will be two separate parcels since they are no longer held in common ownership.

Jonathan Moriarty is concerned if we break one of the lots out it could potentially be zoned R-1 and someone could build a house later so he would like to see what the lot sizes in the neighborhood are.

#### Public Comment:

John Burke, resident at 270 Park Avenue, spoke of his concern because the existing businesses are in an R-1 area. If this parcel is sold and separated from the two others then a house could be built on it. It would be detrimental to him by creating two separate lots. It looks like the ice cream shop is getting upgraded. Mr. Burke was concerned about the property later being turned into a residence and attracting more kids to the area. The entire area is residential and this proposal will be creating another non-conforming lot. Mr. Burke would like to be able to speak on this application at a later public hearing once the applicant submits the new plans.

Chairman MacLeod requested a dumpster plan, snow removal, and shared parking arrangement plan before the next public hearing.

The public was given the opportunity to speak and there were no further public comments.

Ed Foley motioned to continue this public hearing to the Board's January 15, 2014 meeting at which time the applicant was asked to submit a revised plan and information on the neighborhood's lot sizes. Kemal Denizkurt seconded. VOTED UNANIMOUSLY.

#### **BZA Case #3219- 37 Lakecrest Path – Public Hearing**

The applicant, Robert Lecomte, is seeking a Special Permit under Article XIII, Section 120-40 "Extension or Change by Special Permit of a Nonconforming Use or Structure" to enclose the existing 130 SF nonconforming deck within the same footprint. The deck is nonconforming with respect to the side yard setback (10 ft. minimum required, 2 ft. provided).

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



Edward Foley made a motion to open the public hearing on case #3219, 37 Lakecrest Path and waive the reading of the published notice and was seconded by Chuck Golden. VOTED UNANIMOUSLY.

Appearing before the Board was Larry Evans, a contractor hired by Robert Lecomte. He has an existing 13' x 10' platform on the side of the house that he is looking to enclose to create a mud room that will have a gabled roof to match the house. The applicant will be building up the current stairway and constructing a new one.

Edward Foley made a motion to close the public hearing on case #3219 and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY.

Edward Foley made a motion to approve the application on case #3219 with a condition that 4 copies of a revised plan certified by a professional land surveyor or engineer be submitted prior to applying for building permits. The motion was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY.

**Approval of Minutes:**

Edward Foley made a motion to approve the minutes from the Board's November 6, 2013 and November 13, 2013 meetings as written. The motion was seconded by Johnathan Moriarty. VOTED UNANIMOUSLY.

**Other Business:**

Review of the Board's 2014 meeting schedule was continued to the next meeting.

Abby McCabe reminded the Board that the public hearing for the Zoning Amendment that the Board submitted on Section 120-53 regarding the undersized lots will be on Monday, December 16, 2013 for a joint hearing with the Town Council and Planning Board.

**ADJOURNMENT**

Edward Foley made a motion to adjourn at 9:02 pm and was seconded by Johnathan Moriarty. VOTED UNANIMOUSLY.

Respectfully submitted by,

Lee Hultin  
Recording Secretary

Approved by:

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Kemal Denizkurt, Clerk

Date