BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
November 14, 2012

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, November 14, 2012 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.

RECEIVED
2012 DEC -6 A 10:53
OFFICE OF THE TOWN CLERK
WEYMOUTH, MASS

Present:	Richard McLeod, Chairman Edward Foley, Vice Chairman Kemal Denizkurt, Clerk Chuck Golden Jonathan Moriarty
Not Present:	Rob Stevens, Alternate Member
Staff:	Bob Luongo, Principal Planner
Recording Secretary:	Mary Barker

The Vice 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 #3167–316 Washington Street, Public Hearing (cont.)

Application of Jens Lisinski for property located at 316 Washington St., also shown on the Weymouth Town Atlas as Sheet 24, Block 324, Lot 1, located in B-1 zoning district, seeking to construct a drive-thru specialty coffee kiosk in the parking lot of Fox Shopping Plaza. Relief also requested from the parking restrictions, signage restrictions, and a modification to the special permit granted for the construction of the plaza on January 23, 1989, Case #88-11-9/9, regarding allowed hours of operation

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

Mr. Lisinski appeared before the board. He provided several additional items requested by the board, including a letter of intent, survey showing kiosk placement, map of plaza showing location and number of parking spaces.

Kemal Denizkurt reviewed the signage request. The applicant is seeking 46.5 sq. ft of signage where 32 would be allowed if assuming frontage on all four sides of the kiosk. Bob Luongo responded that it would be a judgment call. The applicant also asked if the space he is renting in the plaza for office/storage could be considered in the total square footage for signage and noted

he would not be using any sign space on the main plaza sign. He noted the kiosk signage is standard for other drive throughs in town. Kemal Denizkurt responded that he was not aware that it was standard or that it would conform to the zoning. He also responded that every building has four sides; not all are considered frontage. Chairman McLeod noted that allowing the increased signage would be setting a high bar. The applicant has not demonstrated a hardship. The frontage of the kiosk faces Washington Street and that is the frontage. Mr. Lisinski responded that the nature of a kiosk is that it is the whole business. He noted he is not using the 19' he would be allowed for the rental space in the main plaza building, and that the signage he is proposing would not be overly obtrusive to the neighborhood. Kemal Denizkurt responded that the drive through coffee shop in South Weymouth has the same visibility and one sign. Mr. Lisinski responded that that shop is bigger and set back from the street. There was a brief discussion of the other drive throughs in town and their signage. Bob Luongo reviewed the style and material of the signage the applicant is proposing and asked if he would be opposed to eliminating the signage on the side of the kiosk facing the plaza's building. Signage is printed on a rubberized framing projection with interior lighting. If he needed to adjust the signage he would go back to the franchise, but it would not create a financial hardship.

Mr. Lisinski also reviewed the letter of intent to lease. It contains a clause to restore the parking lot to original specs and removal of the kiosk if the business should fail, and a non-compete clause by the owner. He reviewed the placement detail which allows good ingress and egress from the plaza. The map of the plaza was reviewed; there are 131 usable parking spaces – 132 spaces overall, with a dumpster on one space. Previous traffic concerns were addressed in the traffic report which the Traffic Engineer has approved. He is also seeking a variance to the hours of operation. He would need to open early enough to capture the morning commute traffic. There will not be any speakers on the kiosk, so noise will not be an issue. He also noted that no neighbors have been present at any of the scheduled hearings, leading him to believe there is no opposition. He reviewed the positive aspects of the proposed application: It will bring jobs in a tough economy; it helps out the plaza, which is a significant taxpayer; it will provide a service to the tenants already in the plaza, and another coffee option is needed in town. Kemal Denizkurt asked if there is a sublet provision in the lease. There was a brief discussion of the non-compete clause. Vice Chairman Foley noted he was not comfortable with the sublet provision. The representative from Century 21 responded that the language can be taken out. Mr. Foley also noted there is a convenience store 400-500 yards away that will also be serving coffee. Mr. Lisinski noted there are many along this heavily traveled road but that his will serve a different niche market and he is not worried about how well he will do. The plaza's owner's son spoke in support of the application and the request for signage variance, since the franchise is not well known yet in the area and will need the visibility.

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

<u>To vote on the of BZA Case No. 3167 to approve a Special Permit to construct a drive-thru specialty coffee kiosk in the parking lot of Fox Shopping Plaza. Relief also requested from the parking requirements, signage requirements, and a modification to the special permit granted for the construction of the plaza on January 23, 1989, Case #88-11-9/9, regarding allowed hours of operation:</u>

A motion was made by Vice Chairman Foley to approve the application for a Special Permit to construct a drive-thru specialty coffee kiosk in the parking lot of Fox Shopping Plaza.

FINDINGS

Further, the board finds that:

1. The specific site is an appropriate location for such a use. The plan will not increase the existing footprint.
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. Hours of operation will be 5:30 AM to 10 PM.
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.

A motion was made by Vice Chairman Foley to approve the Variance for relief from the parking requirements, signage requirements, and a modification to the special permit granted for the construction of the plaza on January 23, 1989, Case #88-11-9/9, regarding allowed hours of operation.

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. Signage of 8 square feet per side (4 sides of kiosk) and no other signage shall be allowed. If signage was not granted it would put business at a hardship relative to other kiosks in town with signage on all 4 sides.
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. The Traffic Engineer concurs that 117 usable parking spaces will be sufficient in the plaza.

DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the application for a special permit and variance with the following conditions:

1. Hours of operation will be 5:30 AM to 10 PM.
2. No deliveries will take place between 11 PM and 7AM.
3. The right to sublet clause will be stricken from the lease and the lease will be retyped with no handwritten notes.
4. No outside speakers will be allowed. No ordering or listening on speaker box shall be allowed.
5. Thirty-two feet of signage shall be allowed (8 sq. ft. per side). No other signage shall be allowed.
6. Letter of Intent dated November 18, 2012 between AHA Enterprises, Inc. and Fourzol Realty Trust shall be made part of this decision.

BZA CASE #3171–24 Woodbine Road, Public Hearing, (cont.)

Application of Zdzislaw Marecki for property located at 24 Woodbine Rd., also shown on the Weymouth Town Atlas as Sheet 30, Block 391, Lot 12, located in an R-1 zoning district, seeking relief from the minimum side yard depth for construction of a new house.

Members sitting: Edward Foley, Vice Chairman
Kemal Denizkurt
Chuck Golden
Jonathan Moriarty
Rob Stevens, Alternate (absent)

Mr. Marecki again appeared before the board. The Vice Chairman advised the applicant that due to the absence of one member, the application would require a unanimous vote to carry and asked if he chose to proceed. The applicant wished to proceed at this time. Bob Luongo was also absent at the last hearing and reviewed testimony. Mr. Marecki provided photographs to the board and reviewed several concerns brought up in earlier testimony including the stairs attached to the house, the concrete wall proposed to prevent dirt from settling on the driveway, the line between his and neighbor's property and the fence and shed erected on his property by the neighbor. Vice Chairman Foley noted that at the last meeting a certified plot plan was requested. Mr. Marecki responded that it is the neighbor whose property is encroaching. He is proposing to replace a one bedroom house with a three bedroom house. He is willing to work with the neighbor and provided his business card. The neighbor has not contacted him. Kemal Denizkurt asked if Ms. Helmar, the abutter had enough time to obtain a plot plan? George Collins, a Civil Engineer from Collins Civil Engineering in Bridgewater noted he was contacted by Ms. Helmar, and he reviewed and does not dispute the existing survey by Hoyt Engineering. The fence is on the abutting property that Mr. Marecki is purchasing and the shed encroaches on the property Mr. Marecki is purchasing. He is also representing the neighbor at 25 Woodbine, M. A. Lindsey, whose concerns are that the vehicles parked at the property include a commercial vehicle and the parking of the vehicles at 24 Woodbine make it difficult for her to get around with her health conditions. He noted that although the board had suggested the neighbors get together and work out a compromise. He also reviewed the plans, but was informed that he did not have the most recent plans. Ms. Lindsay noted that the proposed house with three bedrooms could further exacerbate the parking on the street. Mr. Collins also asked about sewer hookup and whether the spacing between the homes is adequate in terms of fire protection and how the additional number of bedrooms will affect the school system. Vice Chairman Foley noted the Fire Department did not raise concern in its review of the application, and the board is not permitted to look at future possibilities in its deliberation. Mr. Collins suggested the board take a look at the parking conditions, stake out the lot line and consider requiring installation of the fence at least 6" over the lot line. Chairman Foley responded that Ms. Helmar is not the applicant, and the board would not be inclined to consider this; it's outside the purview of the board.

Ms. Ella Jeske, former owner of 24 Woodbine noted that the number of cars and how they are parked do not impede Ms. Lindsey's access to and from her property or the road. Her son's commercial truck is legally parked on the property driveway.

Trisha Pries, 15 Woodbine Road noted the neighborhood is a former summer cottage community. She asked why the new house couldn't be built on the existing footprint and in a style more in keeping with the neighborhood, and sited further back onto the property where there is room. She does not see that the applicant has proven a hardship exists. She showed a photograph on her cell phone of the commercial vehicle parked on town property in violation of the bylaws. There was a brief discussion of the bylaw, including the size and number of vehicles allowed on the property. Jonathan Moriarty responded that the grade of the land in the back of the property is not conducive and the neighborhood is no longer considered a summer cottage community.

Ms. Lindsey also noted her lack of notice of the application. Jonathan Moriarty responded that the notice was legally advertised, and she could have contacted the applicant or the Planning Department for more information. There have also been prior public hearings on the application that she could have attended.

District 4 Councilor Arthur Mathews addressed the board. He noted that in his personal opinion the applicant has not shown the existence of hardship required to approve the application. He is concerned that Ms. Helmar was required to pay consultants for a project on which she isn't an applicant. She is retired, on a fixed income and potentially expending money she didn't plan to remove a shed that has been in place over 35 years, and move a fence. It has been an uncomfortable situation.

Bob Luongo read the staff comments and noted the sewer issue would be addressed when permits are applied for.

A motion was made by Kemal Denizkurt to close the public hearing and was seconded by Jonathan Moriarty. Chuck Golden suggested the parties might take the opportunity to address outstanding issues and come to some compromise before the board considers closing the hearing and rendering its decision. Bob Luongo asked if Ms. Helmar would be willing to move the fence onto her property at her expense. Vice Chairman Foley noted that the board could make approval conditional to the fence being moved at the applicant's expense. Vote 1/3; motion did not carry.

A motion was made by Vice Chairman Foley to continue the public hearing and reconvene after testimony for the remaining public hearings have concluded. This was seconded by Jonathan Moriarty and voted 3/1.

BZA CASE #3174–577 Broad Street, Public Hearing

Application of 577 Broad Street LLC for property located at 577 Broad St., also shown on the Weymouth Town Atlas as Sheet 22, Block 292, Lot 23, located in an R-3 zoning district, seeking a Special Permit for an addition to existing building.

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

Martin Barnes, the owner of the property appeared before the board. He bought the property in 2007 with the intent to have an office there. There was a prior Special Permit in effect in the R-3 zone that expired. His application seeks to regain the special permit and to add on a small addition for office space. It will be a 30x30 one story addition. Bob Luongo reported that in an R-3 zoning district a professional office business is allowed by Special Permit. He is also seeking a variance for the minimum side yard setback. The applicant would have had two years to exercise under the special permit but because it lapsed, he is required to apply to reestablish the use. He noted there is no other site on the property to place the addition.

The board reviewed the plans and Mr. Barnes reviewed the materials. Kemal Denizkurt asked if he planned any changes to the existing 6x4 sign. He is not seeking any change to the signage and it will conform to the zoning.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments. He noted the memo from the Health Department concerning gas releases from the abutting gasoline service station, which does not appear to have an environmental impact on the property. The building at 557 Broad Street was a dental office and was vacant for a time before Mr. Barnes purchased and it was deteriorating. There is sufficient parking on the site; the 15 spots exceed the requirement. Approval of this application will contribute to the revitalization of the historic Central Square area.

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

<u>To vote on the of BZA Case No. 3174 to approve a Special Permit and/or Variance to construct an addition to the existing building:</u>

A motion was made by Vice Chairman Foley to approve the application for a Variance for the side yard setback.

<u>FINDINGS</u>
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.
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.

<u>DECISION OF THE BOARD</u>
Due to the above findings, it was unanimously voted to approve the application for a variance to construct an addition to the existing building within the side yard setback.

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

FINDINGS

1. The specific site is an appropriate location for such a use. There was a pre-existing permitted use that expired.
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; it will improve the character of the historic Central Square district.

DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the application for a special permit for office/professional use and to construct an addition to the existing building within the side yard setback.

BZA CASE #3175–242 Libbey Parkway, Public Hearing

Application of Workout of the Day for property located at 242 Libbey Pky., also shown on the Weymouth Town Atlas as Sheet 34, Block 435, Lot 3-II-1, located in POP zoning district, seeking a Special Permit to operate a workout and exercise facility.

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

Attorney Frank Baldassini appeared with applicants Jason Brown and Danielle Bjorkman before the board seeking a Special Permit. The applicants have signed a lease for 6,000 sq.ft. subject to approval of this application. The space will house locker rooms and exercise facility. This is a growing business with 4,000 studios in the country. Atty. Baldassini noted recreation is an allowed use in the POP district. The site is in the rear and segregated by concrete walls from the other tenants. The owner and broker of the property were both present. Hours of operation will be 5:30 AM to 9:30 PM with the majority of the traffic to the site in the early morning and late day and not when the other businesses on the property are operating. The studio will run one hour classes of 20. Membership will be by enrollment; there will not be walk-ins. Two showers will be provided. There is no equipment; it's cross fit training. There is more than sufficient parking on the site to accommodate the clientele (70-80 spaces) and the lot has been sealed and relined. There is no plan for competitions in the space; these will be held at the corporate sponsor site. Memberships will cost about $145-185 per month. There are loading bay doors but they will not be used by the business. There is sufficient outdoor lighting for the protection of staff and patrons. The building is lit on all four sides from dusk. There will not be any noise generated by the business, and it has been extensively addressed in the lease. Vice Chairman Foley asked for a copy of the lease.

Atty. Baldassini reviewed the criteria under special permit and noted that this use meets each.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments. The Health Department issued a cautionary memo regarding the mixed use of recreational facilities in an industrial area. An order of conditions issued by the Conservation Commission in the original development addressed the clean up and continued maintenance of the drainage culvert and it has not been kept up. Atty. Baldassini responded that the issue of the trash and overgrowth in the drainage culvert is a matter to be addressed by the condo association, and they have been made aware and have provided a letter to the effect that conditions will be rectified. (Exhibit 1 - Condo Association letter and Exhibit 2 - Conservation Administrator's letter).

District 4 Councilor Mathews addressed the board. He noted that he has not heard any opposition from the neighborhood or public but advised the board be cognizant of the need for proper ventilation for recreational facilities in mixed use zoning. Atty. Baldassini responded that the site has separate hvac service and is separated totally from the other tenants by concrete. The property manager (Mr. Cooney) noted that the abutting tenants are suppliers and there are no shared utilities.

A motion was made by Vice Chairman Foley to close the public hearing and was seconded by Kemal Denizkurt and unanimously voted.

To vote on the of BZA Case No. 3175 to approve a Special Permit to operate a workout and exercise facility:

A motion was made by Vice Chairman Foley to approve the application for a Special Permit to operate a workout and exercise facility and was seconded by Kemal Denizkurt.

FINDINGS

Further, the board finds that:

1. The specific site is an appropriate location for such a use. There is adequate parking and ventilation.
2. The use involved will not be detrimental to the established or future character of the neighborhood or town. Access to the parking is one-way and lighting is sufficient. There are adequate separate dressing and bath facilities.
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 Order of Conditions previously issued by the Conservation Commission and cautionary memo from the Board of Health were both addressed. Condo association will have the drainage culvert cleaned up to address the nuisance condition and continue to maintain it.

DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the application for a special permit to operate a workout and exercise facility with the following conditions:

1. Hours of operation 5:30 a.m. to 9:30 p.m. Sunday through Saturday.
2. Stormwater and Catch basin issues noted by Conservation Agent shall be addressed.

BZA CASE #3176–110 Main Street and 559 Washington Street, Public Hearing

Application of RK Weymouth, LLC for property located at 110 Main St. and 559 Washington St., also shown on the Weymouth Town Atlas as Sheet 29, Block 329, Lots 10,12,15 & 21, located in a B-1 zoning district, seeking a variance to remove the existing nonconforming free standing signs and replace them with modern and more aesthetically pleasing signs. The sign at Washington St. will remain the same non-conforming size, but the sign on Main St. will be slightly larger. The applicant needs the larger sign to meet the current marketplace needs and due to the expansion of the plaza.

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

A motion was made by Vice Chairman Foley to continue Case #3176 to the December 5, 2012 public hearing and was seconded by Kemal Denizkurt and unanimously voted.

BZA CASE #3177– 854 Pleasant Street, Public Hearing

Application of Jonathan Dickerman for property located at 854 Pleasant St., also shown on the Weymouth Town Atlas as Sheet 35, Block 292, Lot 407, located in a B-1 zoning district, seeking a Special Permit and or Variance for the construction of a single family dwelling in a B-1 Zoning District.

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

Atty. Henry S. Levin of Quincy appeared before the board with applicant John Dickerman. The property is at the corner of Pleasant and Washington Streets and abuts the MaryLou's coffee shop. The applicant seeks to develop property owned by his parents. Under the zoning, a single family house is allowed by special permit. Atty. Levin noted the application meets criteria of the B-1 zoning district. The house will fit in the neighborhood. The rear of the property abuts a 3-unit condo development, and the lot is larger than other lots in the area. The proposed house will be a 3-bedroom building of 2 stories with an unfinished basement.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments.

Joanne Harper, 1198 Washington Street objected to the application. She believes the applicant's fence encroaches by 5' onto her property. Chairman McLeod asked if the property has been surveyed. Atty. Levin responded that a survey was done when the condo units were built. He also noted the land is registered, with bounds set by land court; however, if the fence is found to

encroach, the applicant will have it moved. There was a brief discussion. The minutes from the hearing prior to the building of the condo units ten years ago were reviewed prior to this hearing and the reference points, not boundaries were staked out. Bob Luongo noted that the Engineering Department may have the plans on record with a copy of the survey. The burden of proof is on the abutter; she would need to provide documentation proving that the fence is on her land. Ms. Harper also asked if blasting would be necessary to build since there is ledge. Mr. Levin responded that no blasting is needed.

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

To vote on the of BZA Case No. 3177 to approve a Special Permit for the construction of a single family dwelling in a B-1 Zoning District:

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

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 the application for a special permit for the construction of a single family dwelling in a B-1 Zoning District with the following conditions:

1. If the applicant's fence is shown to be on Mrs. Harper's property, he will have it moved.
2. Outdated flood maps will be updated.
3. Building department to address inconsistency in stamp/signature dates.

BZA CASE #3178–47 Rosalind Road, Public Hearing

Application of Gary Pickering for property located at 47 Rosalind Rd., also shown on the Weymouth Town Atlas as Sheet 6, Block 73, Lot 73, located in an R-1 zoning district, seeking the addition of a dormer.

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

Applicant Gary Pickering addressed the board with builder Jim Curtain. He proposes to extend the existing dormer back to increase living space but he will not go above the existing ridge line or increase the existing footprint. It is an extension of a non-conforming use.

Bob Luongo reported that the application was routed to the various departments and reviewed the comments. Plans and elevations were reviewed with the applicant.

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

To vote on the of BZA Case No. 3178 to approve a Special Permit for the addition of a dormer

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

FINDINGS
Further, the board finds that:

1. The specific site is an appropriate location for such a use. The applicant will not exceed the existing footprint.
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. The applicant is not adding bedrooms or bathrooms.
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 the addition of a dormer.

BZA CASE #3171–24 Woodbine Road, Public Hearing, (cont.)-reconvened

Application of Zdzislaw Marecki for property located at 24 Woodbine Rd., also shown on the Weymouth Town Atlas as Sheet 30, Block 391, Lot 12, located in an R-1 zoning district, seeking relief from the minimum side yard depth for construction of a new house

A motion was made by Jonathan Moriarty to re-open the public hearing and was seconded by Chuck Golden and unanimously voted.

A motion to close the public hearing was made by Jonathan Moriarty and seconded by Kemal Denizkurt and unanimously voted.

To vote on the of BZA Case No. 3171 to approve a variance seeking relief from the minimum side yard depth for construction of a new house:

A motion was made by Vice Chairman Foley to approve the request for a variance and was seconded by Kemal Denizkurt.

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.
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 relief from the minimum side yard depth for construction of a new house, with the following conditions:

1. The applicant will put up an 8' stockade fence along the east side of the property line and run the length of the property line, from the street line to the timber wall. The first section of stockade fence closest to the street line will be 3' in height. The second section of stockade fence shall be 6' in height and the remaining sections of the stockade fence shall be 8' in height.
2. Any commercial vehicles must be parked in the driveway.
3. The shed shall be addressed by the abutter and applicant.

Submitted: Exhibit #1- photographs

Adjournment

The next meeting of the Board of Zoning Appeals will be on Wednesday, December 5, 2012. At 10:48 PM, there being no further business, a motion to adjourn the meeting was made by Kemal Denizkurt, seconded by Chuck Golden and unanimously voted.

Approved:

Kemal Denizkurt, Clerk

12/5/12
Date

#1

LIBBEY BUSINESS PARK
CONDOMINIUM ASSOCIATION
210-250 Libbey Parkway, Weymouth, MA 02189

November 14, 2012

Attn: Town of Weymouth Planning Board Committee

It has come to the attention of this Condo. Association that the storm water management system on the property at 210-250 Libbey Industrial Parkway is in need of maintenance. This is an adjacent area that has been used as a border between properties, and was merely an oversight of any existing statutes. Further, there are no hazards, trash, or chemicals of any kind collecting in this area, and is just the overgrowth of vegetation.

The Condo. Association is expediting the clean up and is already seeking estimates and bids. It is estimated that a landscaping crew could have the area cleared in two or three days.

We thank the Conservation Commission for calling this situation to our attention and welcome their suggestions and expertise on future maintenance of the area.

Scott Willy

Scott Willy
Assistant to the President
Libbey Business Park
Condominium Association

Exhibit 2

DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

JAMES F. CLARKE, JR.
Director of Planning and
Community Development
781-340-5015

Mary Ellen Schloss
Conservation Administrator
781-340-5007

781-335-3283 (FAX)

Town of Weymouth
Massachusetts

Susan M. Kay
Mayor

75 Middle Street
Weymouth, MA 02189

www.weymouth.ma.us

November 9, 2012

TO: Robert Luongo, Principal Planner
FR: Mary Ellen Schloss, Conservation Administrator
RE: Special Permit/Variance Application
242 Libbey Parkway, Sheet 34, Bl 435, Lot 3-II-1

The change in the proposed use does not require Conservation Commission approval, however I would like to bring to your attention the fact that the stormwater management system at this development has not been maintained as required by the Order of Conditions issued to the original developer (DEP File #81-344).

The stormwater system discharges directly into the South Cove of Whitman's Pond. The detention basin, side slopes and berms are completely overgrown. The area is thick with fallen trees and heavy vines, and there has apparently been no maintenance access into the basin. The area is so overgrown that I could not locate the outlet structure that directs water from the basin into the outlet swale.

I have attached some photographs, taken today. The attached site plan shows the location of the photographs.

The Conservation Commission will need to follow up with regard to compliance with on-going conditions relative to maintenance of the stormwater management system.

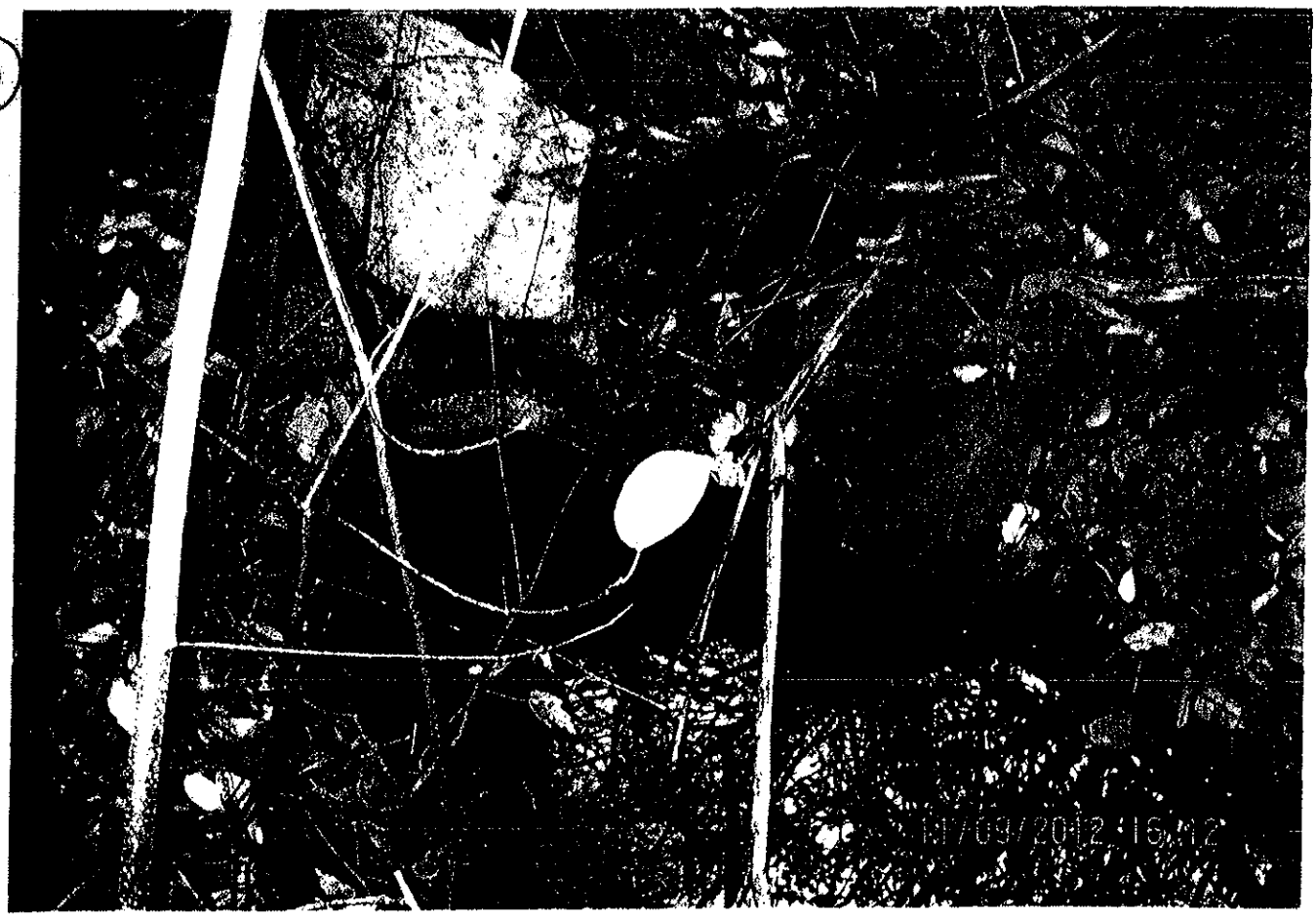
242 Abbey Parkway

(A)

(B)

C

D



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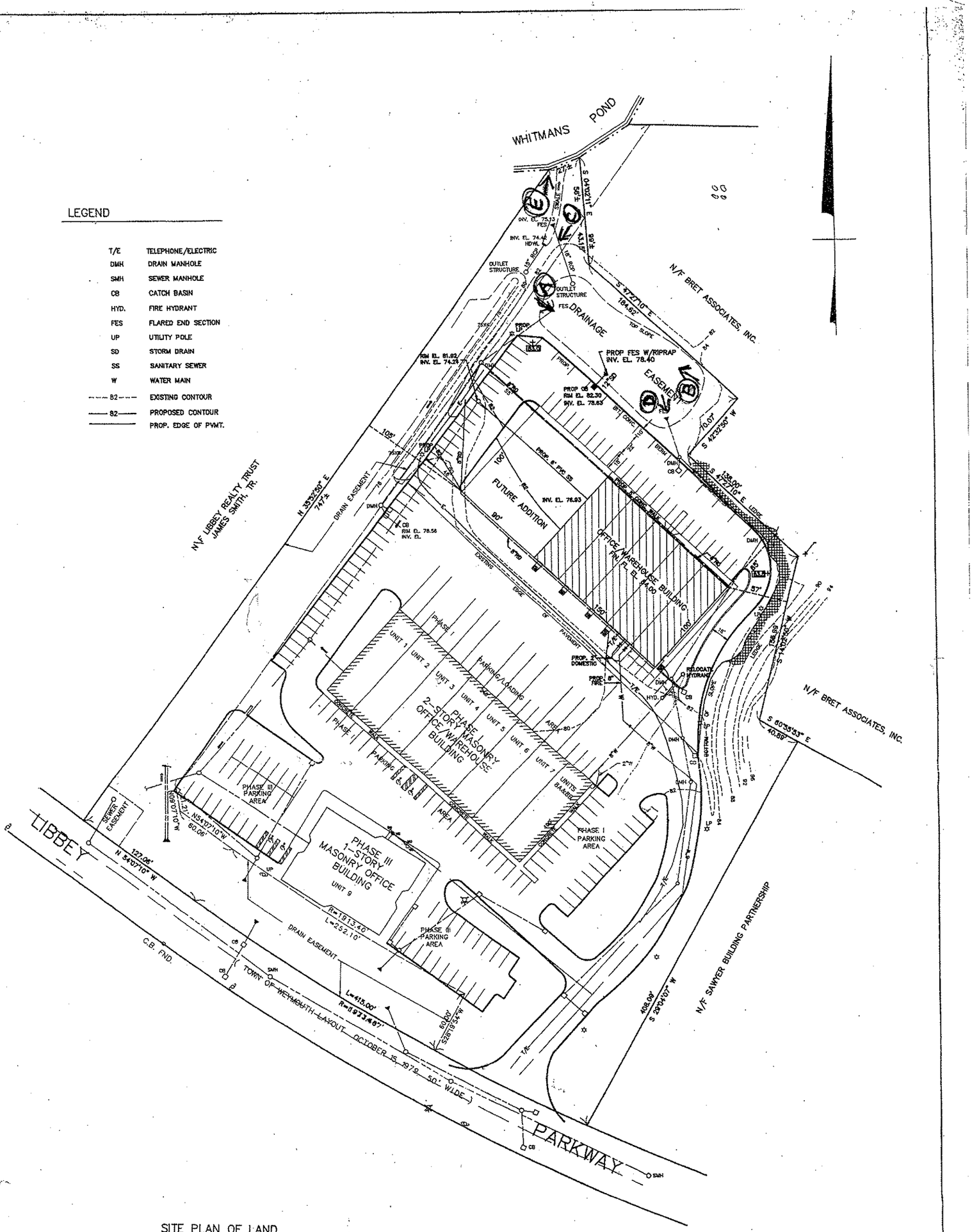

SITE PLAN OF LAND

210–250 REAR LIBBEY PARKWAY

WEYMOUTH, MASS.

SCALE: 1" = 40'

JUNE 1, 2001

40 0 20 40 80 160FEET

C.F. ARNOLD ASSOCIATES, INC.
REGISTERED LAND SURVEYORS & CIVIL ENGINEERS
404 LIBBEY PARKWAY
WEYMOUTH, MASS.

COMMONWEALTH
COMMERCIAL

Dear Mr. Luongo and members of the zoning board,

Thank you for spending so much time considering our various variances. I understand how much of a time commitment you are making to the town. I also serve on two boards in Watertown. In fact I have a planning board meeting tomorrow and another about 40B.

I have modified the letter of intent from Mountain Mudd, Jens Lisinski as requested and I am today delivering 15 copies for your perusal. Any mistakes or oversights please call me on my cell or email the info.

Thanks again,

Fred Reynolds
Century 21 Commercial Real Estate
Commonwealth Group
161 Mt. Auburn Street
Watertown, MA 02472-4005
Cell 617 417-6356
Fax 617 440-6760
Fred.Reynolds@commoncommercial.com

COMMONWEALTH
COMMERCIAL

FRED REYNOLDS
Advisor

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www.commoncommercial.com

COMMONWEALTH
COMMERCIAL

November 18, 2012

AHA Enterprises, Inc.
43 Welland Road
Weymouth, MA 02188

Re: AHA Enterprises, Fox Plaza Weymouth, MA

Dear Mr.Mouhanna,

We are pleased to submit to Fourzol Realty Trust the following Letter of Intent on behalf of AHA Enterprises, Inc. for the lease of certain premises located at Fox Plaza, Weymouth, MA...

Property:	Fox Plaza Weymouth, Massachusetts
Landlord:	Fourzol Realty Trust
Tenant:	AHA Enterprises, Inc.
Premises:	A portion of the parking lot for a coffee vending kiosk and an office and bathroom in the main building.
Commencement:	January 1, 2013, subject to full execution of a lease and completion of the Tenant Improvements. This date may change due to the fact that it is too late in the year to dig for plumbing and electrical connections.
Lease Term:	Five (5) years from Commencement with an option for an additional two, five year terms.
Base Rental Rate:	$1,200/month for an 8ft. by 8ft. Kiosk in parking lot with the ability to stack 4 cars and $900/month for an 535 s. f. office and bathroom in the building.Net of tenant gas and electric for heating and air conditioning.
Renewal Option:	Tenant shall have two (2) five (5) year renewal option. Tenant shall provide Landlord with written notice of its intention to not renew no less than three (3) months prior to the expiration of the initial Lease Term otherwise lease will automatically renew.
Operating Expense:	Tenant shall be responsible for their pro rata share of any Operating Expenses. Such charges to be based on the prior year expenses .Current monthly common area operating charges are $32 / month for the kiosk and $275.50/month for the office and and bath room. Should snow removal costs increase due to the kiosk tenant will be asked to cover the increase.
Real Estate Tax:	Tenant shall be responsible for their pro rata share of any Real Estate

	Taxes.
Tenant Improvements:	Landlord shall provide the space inside the building in as is turnkey condition. LESSEE shall be responsible for all costs to construct a coffee kiosk in the parking lot and renovate the office and bath room inside the mall.
Electricity gas:	Tenant shall be responsible for Electricity and gas consumption in the Premises for heat, cooling and lights & plugs. Premises will be separately metered.
Signage:	Tenant will have signage rights upon town approval.
Parking:	The Tenant will have access to the parking lot. .
Sublease & Assignment:	Tenant will *NOT* have the right to sublease.
Hours & Operations:	5:30 a. m. until 10:00 p. m.., but must comply with instruction from the town,
Competing Beverage Businesses:	NO other business exclusively offering coffee and other non-alcoholic beverages will be allowed in Fox Plaza. This restriction does not apply to establishments serving beverages before, during, or following food service,
Brokerage:	Century 21 Commonwealth will be paid a full market commission by the Landlord if a lease is fully executed.
Qualifying Conditions:	The preceding proposal is contingent upon Owner's and Tenant's mutual approval of the final Lease agreement and conceptual space plan.

For a period of 30 days from and after the execution of this letter by Owner and Tenant, the parties agree to negotiate in good faith with each other to reach agreement on the final language of the Lease to be prepared by Owner. During this period, Owner will not entertain or solicit any other offers or negotiations for the lease of the Premises. In the event that, for any reason, Owner and Tenant are unable to reach final agreement on the terms and conditions of the Lease within the 30 day period, then the parties shall have no further obligation to each other, and the Premises shall be free and clear of the effect of this proposal, unless the time period is extended by mutual execution of a written agreement pertaining to an extension thereof.

Except for the provisions of this paragraph relating to the exclusive 30 day negotiating period, this letter is intended as, and shall constitute, a non-binding letter of intent not enforceable by any party for any purpose.

Please sign and return a copy of this letter to us by November 20, 2012. If your acceptance of this letter is not received by such date, the letter shall terminate and be of no further force and effect.

COMMONWEALTH
COMMERCIAL

We appreciate the opportunity to present this Letter of Intent and look forward to our lease discussions.

Sincerely,

Fred Reynolds
Century 21 Commercial

Jens Lisinski

Letter of Intent accepted 11/17 2012.

By: _____

Its: Land Lord
Title (duly-authorized)