

**TOWN OF WEYMOUTH
BOARD OF ZONING APPEALS APPLICATION**

2022 JUL 14 PM 4:15

TO BE COMPLETED BY STAFF

Case Number: # 3484

Submittal Accepted: _____

Signature of Planning Dept. Staff for minimal requirements

Date

7/14/22

Town Clerk Stamp

Determined to be complete and may now be filed with Town Clerk: _____

Signature of Principal Planner or Director

PROPERTY INFORMATION - TO BE COMPLETED BY APPLICANT

PROJECT / PROPERTY STREET ADDRESS: 90 Tower Ave

Assessor's Map Sheet, Block, & Lot: Weymouth Town Atlas Sheet 45, Block 523, Lot 14

Zoning District: R-1

Overlay District: _____

OWNER OF RECORD (S) (print & sign): John Christopher
Jennie Mackenzie Jennie Mackenzie

(The owner of record is the person or entity who owns title to the property as of today's date)

Address of owner of record: 90 Tower Ave

Norfolk County Registry of Deeds Book and Page No. _____

Or registered in Land Registration Office under Certificate No. _____

NAME OF APPLICANT (S) (print & sign): John Christopher
Jennie Mackenzie Jennie Mackenzie

Applicant's Address: 90 Tower Ave

Contact Information: Email migration500@gmail.com Phone 310-429-7464

Check if you are an: owner(s) ☒ lessee(s) ☐ optionee (s) ☐

NAME & AFFILIATION OF REPRESENTATIVE: n/a

Address: _____

Contact Information: Email _____

Phone _____

NAME OF ENGINEER AND / OR ARCHITECT: n/a

Prior to submitting your application you must review this entire package and the Board Rules and Regulations outlining the Board's policies and procedures. Your signature signifies that you have read the required material and you will be expected to adhere to them.

I (we) hereby certify that I (we) have read the Board of Zoning Appeals Rules and Regulations and that the statements within my (our) application are true and accurate to the best of my (our) knowledge.

Applicant / Petitioner - Date (sign & print)

see attached land survey and BZA meeting minutes

NATURE OF REQUEST

Application is for: _____ Special Permit X Variance Other: _____

Applicable Section of Zoning Ordinance (specify Section (s) of the Zoning Ordinance from which relief is sought):

120-54

The above relief and Ordinance sections will be further reviewed after a complete package is submitted. This may be amended by the Planning or Building staff during the application review process after having the benefit of plan to accurately advertise the application before the Board.

PETITIONER'S DESCRIPTION AND NARRATIVE:

To be completed by all Board of Appeals Applicants. Attach additional sheets as necessary.

1. Describe what is presently located on the property (use as much detail as possible including all uses and square footage of each use):

Two Family Home
Small shed

2. The applicant seeks to (describe what you want to do on the property in as much detail as possible):

Assemble and install a 12' x 16' Gazebo Kit purchased at Costco. (A roof and four posts.)

3. Such a use is permitted by the Town of Weymouth Zoning Ordinance under Article (insert Article, Section of the Zoning Ordinance which permits the proposed use of the property).

120-54

4. Are you aware if this property has been previously granted approvals from any Town Board or Commission? If so, please list (provide dates of previous approvals, book and page numbers or any recorded decisions and copies of past decisions).

Case #3239 August 20th 2014 Allows use of property as a legal 2 family home.

5. Any other additional information as relevant to the Variance or Special Permit:

no

ZONING COMPUTATION WORKSHEET

(To be attached with all Board of Zoning Appeals Applications)

The Zoning Computation Worksheet must be completed by the Applicant / Petitioner. All information should be measured and calculated in accordance with the Weymouth Zoning Ordinance (Section 120-51 Table 1 "Schedule District Regulations" and other applicable sections of the Zoning Ordinance). The information should be based on engineer/surveyor/architectural prepared plans and or calculations. Further guidance can also be provided by the Board's step-by-step application instructions and by contacting the Planning or Building Department while completing this section.

Data	Required	Existing	Proposed
Use			
Lot Area / Size (Sq. Ft.)			
Dwelling Units			
Frontage (ft.)			
Lot Width (ft.)			
Front Yard Setback (ft.)			
Front Yard Setback (ft.) – corner lots			
Side Yard Setback (ft.)			
Side Yard Setback (ft.)			
Rear Yard Setback (ft.)			
Height (ft.) & # of Stories			
Lot Coverage			
Off-Street Parking Spaces			
Off-Street Loading Spaces			
Parking Setback			
Accessory Structure Setback			
Landscaping			
Floor Area Ratio			
Signage			
Other:			

SPECIAL PERMIT APPLICATION

To be completed for Special Permit Applications only.

SPECIAL PERMIT FINDINGS OF FACT

In the spaces below explain how the adverse effects of the proposal will not outweigh its beneficial impacts to the Town with respect to each of the following considerations per Article XXV, Section 120-122 of the Zoning Ordinance. The Special Permit Granting Authority may approve any such application for a special permit **only** if it finds that, in its judgment, all of the following conditions are met. (Attach additional supporting documentation as necessary).

1. Is the specific site an appropriate location for such a use? Please explain.

2. Will the proposed use / structure be detrimental or adversely affect the character of the neighborhood or town? Please explain.

3. Is there potential for nuisance or serious hazard to vehicles or pedestrians? Please explain.

4. Will adequate and appropriate facilities, utilities and other public services be provided for the proper operation of the proposed use? Please explain.

5. Will the public convenience and welfare be substantially serviced with this proposal? Please explain.

SUPPLEMENTARY QUESTIONS - SECTION 120-40 SPECIAL PERMITS

Extension, Alteration or Change of a Privileged Pre-existing, Nonconforming Structure or Use

(Article XIII "Nonconforming Uses" Section 120-40 "Extension or Change")

To be completed by Applicants applying for a Special Permit under Section 120-40 Only.

EXTENSION OR CHANGE FINDINGS OF FACT:

Any lawful structure or use in existences at the time the Zoning Ordinance was adopted or amended may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Board of Zoning Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood.

1. Describe what is currently nonconforming about this structure (list specific dimensional nonconformities):

2. Indicate how long the nonconforming aspects of the structure have been in existence:

3. At the time the nonconformity was created (the structure or use initiated) was it compliant with the current zoning requirements? Past zoning ordinances are available for research at the Town Clerk's office and Planning Department. Past zoning maps are available at the Planning Department.

4. Explain how the extension, alteration, or change itself complies with the current Zoning Ordinance requirements:

5. Indicate the number of off-street parking spaces currently provided and to be provided for the proposed structure as extended, altered or changed:

6. Explain how the use or structure as extended, altered or changed will not be substantially more detrimental to the neighborhood than the existing structure:

VARIANCE APPLICATION

To be completed for Variance applications only.

VARIANCE FINDINGS OF FACT:

Criteria for approval. The Board may approve any such application for a Variance **only** if it finds that, in its judgment, all of the following conditions are met.

Complete the following questions. Your responses should provide justifications as to why the requested Variance(s) should be granted. Attach additional documentation as necessary.

1. Describe how a literal enforcement of the provision of the Town of Weymouth Zoning Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner.

No shade in area does not allow for enjoyable use in summer sun.

2. Describe how the hardship is owing to circumstances relating to the soil conditions, shape, and/or topography of the land or structures and how the hardship especially affects said land or structures, but does not affect generally the zoning district in which it is located.

Placement of home on lot leaves most space for play + enjoyment on side of house, not the backyard.

3. Describe how desirable relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Town of Weymouth Zoning Ordinance.

We only want to use the land in a benign way, with some needed shade. A tree was damaged + had to be removed last year. Shaded spot would be away from street, adjacent to driveway + house.

4. Describe how the dimensional variance as it relates to floor space, bulk, number of occupants or other relevant measures, if granted, shall be no greater than the minimum necessary to provide relief from the statutory hardship.

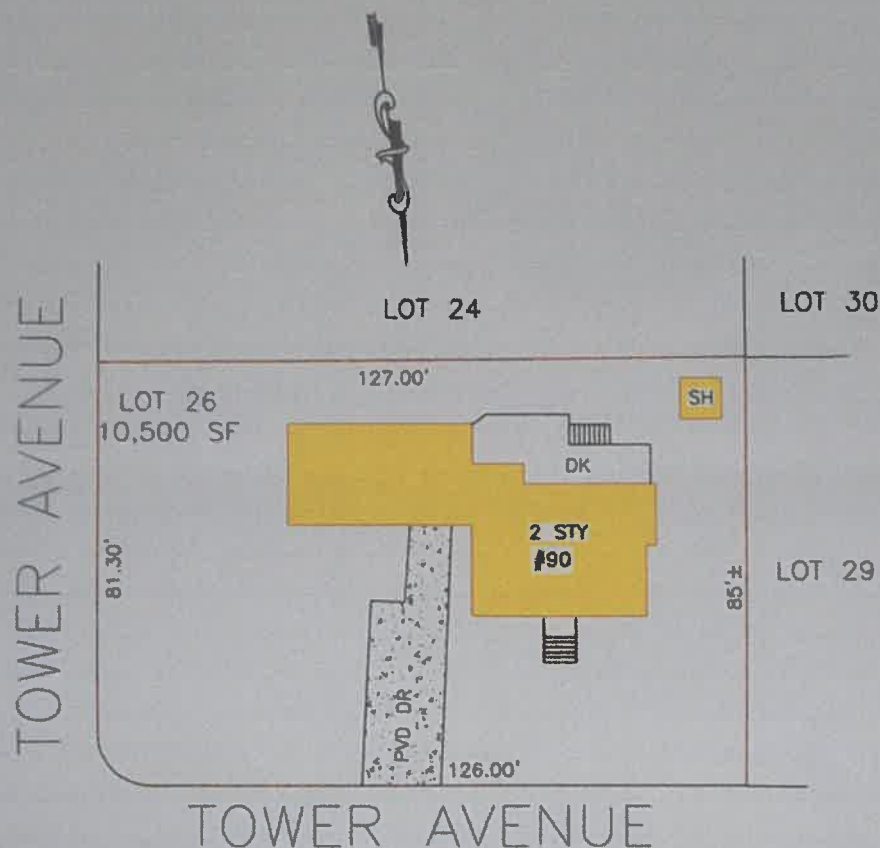
Roof for shade + 4 support posts would be placed away from street, adjacent to driveway, where we used to have a picnic table.

NOTE THAT THE LAW DOES NOT PERMIT THE BOARD TO GRANT A VARIANCE UNLESS ALL OF THE REQUIREMENTS SET FORTH IN CHAPTER 40A SECTION 10 OF THE GENERAL LAWS AND IN ARTICLE XXIV SECTION 120-119 OF THE WEYMOUTH ZONING ORDINANCE ARE SATISFIED. EACH OF THE ABOVE FINDINGS MUST BE ANSWERED IN DETAIL. ATTACH ADDITIONAL SHEETS IF NECESSARY.

File number:	140429-8	UNREGISTERED LAND		
Attorney:	JOSEPH M. FIDLER ESQ.	Deed Book	12002	Page 307
Lender:	BRIDGEWATER SAVINGS BANK	Plan Book	702	Page 64 Lot(s) 26
Owner:	DANIEL & CAROLINE FAHEY	REGISTERED LAND		
Date:	5/1/2014	Reg. Book	Sheet	Lot(s):
Assessor's Map	45 Blk: 523 Lot 14*	Certificate of Title		
		Census Tract		

MORTGAGE INSPECTION PLAN
90 TOWER AVENUE, Weymouth, MA

Scale: 1"=30'



CERTIFICATION

I CERTIFY TO THE ABOVE ATTORNEY, BANK, AND THEIR TITLE INSURANCE COMPANY THAT THE MAIN BUILDING, FOUNDATION OR DWELLING WAS IN COMPLIANCE WITH THE LOCAL ZONING BYLAWS IN EFFECT WHEN CONSTRUCTED (WITH RESPECT TO STRUCTURAL SETBACK REQUIREMENTS ONLY) OR IS EXEMPT FROM VIOLATION ENFORCEMENT ACTION UNDER MASS. GENERAL LAW TITLE VII, CHAPTER 40A, SECTION 7.

* SEE ALSO MAP 45-494-001

NOTE: TRIANGULAR PARCEL LOCATED ON OPPOSITE SIDE OF ROAD NOT SHOWN

FLOOD DETERMINATION

BY SCALE, THE DWELLING SHOWN HERE DOES NOT FALL WITHIN A SPECIAL FLOOD HAZARD ZONE AS DELINEATED ON A MAP OF COMMUNITY # 25021C0237E AS ZONE X DATED 7-17-2012 BY THE NATIONAL FLOOD INSURANCE PROGRAM.



Olde Stone Plot Plan Service, LLC
P.O. Box 1166
Lakeville, MA 02347
Tel: (800) 993-3302
Fax: (800) 993-3304



PLEASE NOTE: This inspection is not the result of an instrument survey. The structures as shown are approximate only. An instrument survey would be required for an accurate determination of building locations, encroachments, property line dimensions, fences and lot configuration and may reflect different information than shown here. The land as shown is based on client furnished information only or assessor's map & occupation and may be subject to further out-sales, takings, easements and rights of way. No responsibility is extended to the landowner or surveyor, or occupant. This is merely a mortgage inspection and is not to be recorded.

Ed Foley made a motion to approve the application for a Special Permit on Case # 3238 for 11 Wildwood Road:

The applicant has met the following Special Permit findings under Section 120-40:

1. That 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. The existing dwelling is currently within the side yard setback and there will be no further encroachment with the proposal for the second floor.
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 Department of Public Works and Town Engineer will verify that the sewer is appropriate for the addition.
5. The public convenience and welfare will be substantially served.

The motion was seconded by Jonathan Moriarty and was unanimously approved.

Case # 3239 – 90 Tower Avenue - Public Hearing

The petitioner, John Christopher, for property located at **90 Tower Avenue**, also shown on the Weymouth Town Atlas Sheet 45, Block 523, Lot 14, located in a R-1 (Residence Single Family / Low Density) zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit: Conversion of a single-family to a two-family dwelling (Section 120-13A).

Presently located on the premises is a single-family residence with an in-law apartment. The petitioner is seeking to convert the existing in-law into a legal two-family residence.

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

Ed Foley made a motion to open the public hearing on Case #3239 for 90 Tower Avenue and was seconded by Jonathan Moriarty. Voted Unanimously.

Ed Foley made a motion to waive the reading of the published legal notice on Case #3239 for 90 Tower Avenue and was seconded by Jonathan Moriarty. Voted unanimously.

Appearing before the Board was John Christopher and Jane McKenzie, the property owners and petitioner. Mr. Christopher explained that they recently purchased the property believing it was a two-family house as the house was marketed by the realtor as a two-family and received a certificate of occupancy from the Fire Department. The town's Assessors Office has also considered it a two-family for 15-20 years (since the 1990s). It was later discovered that the

property was not a legal two family and the building department had allowed the former owner to construct an in-law apartment in 1994. The applicant provided information that there are other two-families in the neighborhood and the applicants are looking for approval for this Special Permit to convert the single-family to a two family.

Kemal Denizkurt asked how many parking spaces are there and the applicant responded that there were five in the driveway, one car space in the garage and a paved area parallel to the street. They are looking to rent the one bedroom apartment and share the utilities with the owner. It was appraised by the bank as a two-family and therefore their mortgage is higher.

Jonathan Moriarty stated that there could be a law suit against the sellers and that he was sympathetic to their situation.

Jim Clarke stated it was originally built as an in-law by a former owner. The applicant stated that it has been rented as a two-family for 15 years. Several Town Departments recognize it as a two family although it did not come to the Board for the proper zoning approval.

Jonathan Moriarty states he has a problem with making it a two family just because several town departments mistakenly considered it a two family.

Jim Clarke stated that the applicant provided testimony that there are other two-families in the area and he has ample parking to meet off street parking requirements (2 per unit required).

Abby McCabe stated that the Building Department commented that in 1994 they approved an in-law with the intent that it would not be a two family apartment.

Chairman McLeod stated this is a home that has been recognized and lived in as a two family and the applicant is just trying to make it legal and there are several other two-families in the area.

Chairman McLeod opened the hearing up to public comment.

Public Comment:

Pat McNeil, 70 Tower Avenue, abutter to the property stated that the addition was built in the late 1980's and it was rented almost immediately as a two family and she was supportive of this application.

Jim Clarke stated that the staff believes this has been a two family rental for many years and there is testimony to that. He believes this is a unique situation.

It meets all the criteria of a two-family by the town's departments. There are several two-family homes in the area already.

Chuck Golden believes the owners bought it thinking it was a two-family and only found out now that it's an in-law and wants to fix it. He has no problem approving this.

Ed Foley made a motion to close the public hearing on Case # 3239 for 90 Tower Avenue and was seconded by Jonathan Moriarty. Voted Unanimously.

Ed Foley made a motion to approve the Special Permit for a two family conversion, recognizing the history and seeing the town did not due its due diligence ensuring that this didn't happen, due to the fact it has been rented as a rental property for 20 years and due to the uniqueness of this situation the applicant is suffering a financial hardhsip. This is very unique and has met the criteria in Section 120-22D.

The applicant has met the following special permit criteria under Section 120-22D:

1. That 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.

The Board also found that the lot has sufficient parking. The motion was seconded by Chuck Golden and voted 4-1 (Jonathan Moriarty voted No).

Case # 3240 – 1235 Main Street – Public Hearing

The petitioner, Hoa T. & Quy Vu, for property located at **1235 Main Street**, also shown on the Weymouth Town Atlas Sheet 53, Block 593, Lot 5, located in a HT (Highway Transition) and partially within the Watershed Protection Overlay zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit:	To construct a new building for retail sales and services (Section 120-22.8A(1)).
Variance:	Relief of 4,600 GFA from the maximum size requirements for the new building (maximum of 5,000 SF of gross floor area (GFA) required, 9,600 GFA proposed) (Section 120-22.8A(1)).
Variance:	Relief of three (3) parking spaces from the minimum required off-street parking spaces (22 required, 19 proposed) (Section 120-74L & O).

Presently located on the premises are two buildings previously used for warehouse and office uses totalling ~7,000 GFA. The petitioner is seeking to redevelop the site to construct a new one story ~9,600 GFA building, 19 off-street parking spaces, install landscaping and other associated site improvements.



90 Tower Ave



Category / Gazebo

