

BOARD OF ZONING APPEALS (BZA)
RECORD OF MINUTES AND PROCEEDINGS
Wednesday, March 22, 2017

Members Present: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Ed Foley
Chuck Golden-absent
Brandon Diem

Also Present: Eric Schneider, Principal Planner
Bob Luongo, Planning Director
Joseph Callanan, Town Solicitor
Janet Murray, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:15 p.m. at the McCulloch Building, 182 Green Street and explained the procedures that would be followed to the people present.

Old Business:

1) **Case #3316** - Continued from 1/4/17, Hearing not opened, Public Hearing opened 2/15/17, continued to 3/1/17, 3/22/17 - The petitioner, Patrick Flaherty, for property located at 4 Mutton Lane, also shown on the Weymouth Town Atlas sheet 35, block 444, lot 12, located in an R-1 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Lot A

Variance:	Table 1	Lot Size (9,686 sq ft)
Variance:	Table 1	120' at the front and rear building line
Variance:	120-48	120-48 Subdivision creating a new nonconforming lot
Variance:	120-59.1	Measurement across lots

Lot B

Variance:	Table 1	Lot Size (17,026 sq ft)
Variance:	120-56(c)	Frontage less than 40'
Variance:	Table 1	120' at the front and rear building line
Variance:	120-59.1	Measurement across lots

Lot C

Variance:	120-56(c)	Frontage less than 40'
Variance:	120-53.1	Percent Upland (50%)
Variance:	120-59.1	Measurement across lots

Presently located at 4 Mutton Lane is ~101,389 SF lot with an existing single family dwelling built in 1768. The petitioner seeks to preserve the historic home by subdividing the property creating two (2) additional buildable lots. With the

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requested relief, the applicant intends to demolish the existing house and subdivide the property to create one (1) additional buildable lot.

Sitting Members: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Ed Foley

Not Present: Chuck Golden

Mr. Denizkurt made a motion to open the public hearing on Case #3316 and was seconded by Mr. Foley. UNANIMOUSLY VOTED.

Mr. Flaherty appeared before the board along with Paul Gratta.

Mr. McLeod informed the applicant that only four (4) members were present this evening. He reviewed the various options.

Mr. McLeod noted that the applicant had submitted a packet of materials with pictures to the board. These documents are labeled Exhibit #1.

Mr. Flaherty gave a presentation of the variances requested. He noted that he purchased the property with the intent to raze the building. When filing the ANR, he was asked to consider the option of not razing the building if he were allowed to subdivide into three (3) lots rather than two (2).

Mr. Flaherty gave a detailed list of the number of homes sold in 2016 that do not meet the lot size requirements of the town's zoning regulations.

Mr. Flaherty showed the board members eight (8) additional pictures of the historic home. These were marked exhibit number #2.

Mr. Moriarty stated that he had asked for budget and plans for the proposal to be submitted.

Mr. Flaherty noted that he is currently living in the home. He reviewed the extent of the work to be completed.

Mr. Gratta stated that he had discussed with Mr. Luongo that they would not receive a certificate of occupancy until after the house restoration was completed.

Mr. Luongo stated that the town is in support of this proposal. He stated that if the board grants the relief, no building permits would be issued until the house restoration is completed. Utility and roadwork would need to be put in before the other houses are built. Also, a preservation easement/restriction would be granted to the town. The Weymouth Historical Commission would have total control of the

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exterior of the house. The exterior would need to meet the Secretary of Interior standards for historic houses. He noted that this is a high standard. The home is a period house that is a cultural resource for the town. This is not a typical relief and it warrants special attention.

Mr. Flaherty has stated that he is willing to grant a preservation easement/restriction. He is required to receive approval from the Conservation Commission.

Mr. Luongo stated that Mr. Moriarty's questions would be answered through the preservation easement/restriction.

Mr. McLeod asked about the square footage of the ANR lots. Mr. Flaherty stated that they are 37,610 sf and 63,700 sf.

Mr. McLeod asked the applicant why he needed to have three lots, with one of them less than 10,000 sf.

Mr. Flaherty stated that it was at the town's request that he came up with this plan. His original business plan was to demolish the house and develop two lots on the property. He stated that to save the house, he needs to have the third lot to make it financially feasible.

Mr. Callanan, Town Solicitor, stated that if the applicant were to subdivide the property for just two houses, he would still qualify for a variance for frontage, soil conditions because of wetland configuration and shape of the lot.

Mr. Callanan noted that it is not the practice of the board to require the applicant to seek the minimum number of variances on an application.

Mr. McLeod stated that the plan increases the non-conformity and the board looks to approve conditions that will get closer to what is allowed by statute. He asked why the need for the third lot.

Mr. McLeod stated that the board works diligently to be consistent in its decisions. He noted that the board has previously denied the creation of two lots that were each 20,000 sf.

Mr. Flaherty stated that he was willing to push back property line to make the smallest of the three lots larger.

Mr. Flaherty stated that it is more profitable to tear down the house and build two new homes.

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Mr. Callanan stated that the application meets the test for a variance. He stated that regarding the previous case, this case is substantially different. The prior applicant was not entitled to a variance at all. This applicant is entitled to at least one variance, and is the board is now looking at the degree of the relief. He further stated that this application has been vetted by town departments.

Mr. McLeod stated that he is concerned that this case will set a standard for other cases going forward.

Mr. Callanan stated that the hardship is the town losing a historical resource

Mr. Luongo stated that the town is causing the hardship on Mr. Flaherty by asking that the home be save. He pointed out that the is not an issue of land area as the entire property is 106,000 sf.

Mr. Luongo stated that a conservation easement/restriction is a means to preserve cultural resources. An example is when a town pays a developer money to preserve the façade of a resource and then the developer grants the conservation easement/restriction. This mechanism is used to give developers incentive to restore/preserve historical resources.

The town is giving Mr. Flaherty monetary value by allowing the development of the third lot, and to then use the profit from the sale of that lot to preserve the property

Mr. McLeod asked if the value of the cost to restore the house was estimated.

Mr. Callanan stated that to find the value, an appraisal would need to be completed. This was not done. He pointed out that a conservation easement/restriction is a transaction between the applicant and the town.

Mr. Callanan stated that the precedence set would be for other historic homes.

Mr. Foley stated that the by-laws do not show the protection of historic resources.

Mr. Callanan stated that he was referencing the state test for variances.

There was an attempt to create three (3) lots with 25,000 sf; however, wetlands traverse the lot and the location of the existing historic home affects the configuration. Many departments looked at the plans. Three conforming lots are not feasible.

Mr. Foley noted that the cost could go way over expected. He asked if the board should make a performance bond a condition.

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Mr. Luongo stated that the covenant - to restore the exterior of the building first - would act as the bond. The building department will not issue permits for the other lots until the historic home is restored. The applicant would have to show the building department that the work has been completed to the Secretary of the Interior's standards and that the utility work and driveway are completed.

Mr. Callanan stated that, in his opinion, performance bonds only make bond holders rich. He stated that the town can enforce the conditions with its own authority by withholding the permits.

Mr. Foley asked if the town would be on the hook for the restoration if the applicant did not complete the work.

Mr. Callanan stated that the town would not be responsible. He noted that if this were to happen, the applicant would not receive building permits for the other two lots. Also, the preservation restriction would still be on the house and any buyer would have to meet the obligations of the restriction.

Mr. Luongo stated that the town is adopting the Department of the Interior's standard. There is no federal review required.

Mr. Flaherty indicated that he is familiar with the historical standards as he has done his homework on the process.

Mr. Denizkurt asked under what criteria is this home designated historic.

Mr. Luongo stated that it is on the state inventory.

Jodi Purdy-Quinlan stated that there are approximately 300 homes in the town that are on the state inventory.

Mr. Callanan stated that the town is obligated to get an appraisal only when taxpayer money is being spent.

Jodi Purdy-Quinlan stated that this application should be granted. She noted that the town has not worked cohesively in the past to preserve historical properties. She believes that this type of historical precedence is worth setting.

Mr. Foley made a motion to accept the applicant's request to waive the 100-day requirement until April 19, 2017 with a written request to be submitted by the applicant, and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

Mr. Foley made a motion to close the public hearing and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

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Mr. Foley made a motion to take the matter of case #3316 under advisement until April 19, 2017 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

2) **Case #3322** - Continued from 2/15/17 The petitioner, DAI Property Management, Inc., for property located at **84-94 Broad Reach**, also shown on the Weymouth Town Atlas sheet 3, block 1, lot 1, located in a R-4 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

120-21.1 & 120-18 (c) Special Permit for building exceeding 19 units.

Presently located on the ~15.07-acre lot is an existing 72-unit residential condominium building. The petitioner seeks to construct a 6-story, 50-unit residential condominium building with 22 covered parking spaces on the first floor and 50 residences located on the second through sixth floors; 7 single story four-unit garages, and fifty-nine exterior parking spaces.

Sitting Members: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Ed Foley

Not Present: Chuck Golden

Mr. Foley made a motion to re-open the public hearing on Case #3322 and was seconded by Mr. Denizkurt. UNANIMOUSLY VOTED.

Mr. McLeod reminded the applicants that there were only four (4) members present.

Attorney Frank Marinelli appeared before the board. He gave an overview of the project.

The list of conditions is Exhibit A and the Covenant is Exhibit B.

Mr. Callanan, Town Solicitor, stated that the covenant provides extra protection to prevent further development, residential or otherwise, in perpetuity. He further stated that the FAR for the property is consumed. He noted that accessory and/or ancillary uses on the site would be allowed.

Mr. Foley asked about snow removal.

Mr. Gabe Crocker stated that there is ample width especially along the driveway. He stated that they have made accommodations to store snow in the side parking lot. The water will go through the filtration system. He also stated that there will be a dedicated dumpster enclosure.

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Adam Brodski, representing Weymouth Port Condominium Trust, stated that there were meaningful edits to the covenant. He stated that with those edits, he would recommend favorably to the Trust.

Rebecca Haugh, District 1 Councilor asked if no future development meant no residential or industrial or commercial development.

Mr. Callanan stated that other than a private club for the condo owners and guests there would be no future development of any kind.

Councilor Haugh noted that River Street is in poor condition. The roadway and sidewalks need repaving. She suggested that River Street be moved to the top of the list for repair.

Mr. Brodsky gave the board an updated version of the covenant with the agreed upon edits with comments removed.

Mr. McLeod noted that the new exhibit is "exhibit 1A".

Mr. McLeod stated that the covenant is subject to approval by the Town Council

Linda Deangelo thank the town for all the work done. She pointed out the 1/30/17 recommendations from the town's conservation commissioner, Mary Ellen Schloss. She noted that although the Conservation Commission does not have jurisdiction, this memorandum offers additional safeguards.

Mr. Foley made a motion to close the public hearing and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Mr. Foley made a motion to approve the request for a special permit for case #3322 with the following conditions:

1. The specific site is an appropriate location for such a use. It is an R-4 district and consistent to what exists there at this time.
2. The proposed use of structure will not be detrimental or adversely affect the character or future character of the neighborhood or town.
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians. The traffic report shows that there is sufficient parking and not increase the amount of traffic on the road.
4. There are adequate and appropriate facilities, utilizes and other public services provided for the proper operation of the proposed use. Plans for snow removal and trash containment
5. That the public convenience and welfare will be substantially served with the proposal.

The following conditions will apply.

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1. That post-construction and occupancy of Seascape, there shall not be constructed additional residential density on the Site as set forth in the Condition;

East Bay at Weymouthport Corporation, its successors and assigns, hereby covenant that following construction and occupancy of the Seascape at Weymouth building, there shall not be constructed upon the property identified as Weymouth Assessors Map 3, Block 1, Lot 1 (the "site") additional dwelling unit building(s) that would increase the number of dwelling units located upon the site beyond the number of existing dwelling units attributable to the site (including Essex and Dover dwelling units) and the construction and occupancy of Seascape and its related improvements. Nothing contained herein shall preclude construction of any improvements related to the site and/or to be located at, under or upon the site. Nothing contained herein shall preclude the maintenance, repair, construction, reconstruction and/or replacement of site improvements including buildings containing dwelling units. Nothing contained herein shall preclude any future application for and/or construction of any amenities and any other structures and improvements.

2. That in the event of construction and occupancy of Seascape, the Town of Weymouth and the applicant will enter into a Covenant substantially similar in content to the draft attached as Exhibit A. The final Covenant shall be recorded and run with the land.
3. The community support budget will be paid to the Town in accordance with the timing set forth in paragraph 2 of the Special Permit Findings.
4. In the event of excavation below three (3) feet (which is required, by example, for utilities and/or foundations), occurring in limited areas of the Site during the initial stage of construction, there must be a health and safety plan and soil management plan, all of which have been provided by the petitioner. The petitioner is also providing air monitoring during construction excavation.
5. Seascape will extend a sidewalk on the northerly side of Broad Reach in the vicinity of the 220 bus stop to facilitate pedestrian travel. The Broad Reach boulevard, with median, will be continued into Seascape to maintain similar consistency of design as illustrated on the above referenced plans.

The motion was seconded by Mr. Moriarty and APPROVED on a 4-0 vote.

3) **Case #3324** - Continued from 3/1/17, Public Hearing not opened - The petitioner, Jessica Murray-Sisson for property located at **79 Granite Street**, also shown on the Weymouth Town Atlas sheet 16, block 205, lot 14, located in a R-1 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

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120-40 Special Permit for Extension or change to a nonconforming structure
120-52 Variance - Lot under 5000 square feet

Presently located on the approximately 4790 Square foot lot is an existing single-family dwelling with approximately 1176 square foot footprint. Setbacks of current structure are nonconforming. The proposed new house will lessen or eliminate these encroachments.

Sitting Members: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Ed Foley
Brad Diem

Mr. Foley made a motion to open the public hearing on Case #3324 and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Mr. Foley made a motion to waive the reading of the public notice and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

The applicants, Jessica Murray and Jeff Sisson, appeared before the board requesting two (2) variances and a special permit.

Ms. Murray stated that the side yard setback on the left side of the property is increasing from 2 feet 4 inches to 4 feet 5 inches and the right side is decreasing from 12 feet 6 inches to 10 feet. She noted that although there was an increase in setback, they still needed relief as the increase does not bring the setback into conformity with the zoning regulations.

The front yard setback will be increased to bring it into conformity

Mr. Denizkurt questioned the proposed in-law apartment.

Ms. Murray stated that there is a currently an apartment on the third floor of the dwelling but it will be moved to the first floor.

This is a variance as the applicant is not using the existing foundation.

Mr. McLeod asked if there was anyone present who would like to speak regarding this application. There was no response.

Mr. Foley made a motion to approve this application for a variance due to the topography and geography of the lot. The Board is able to grant the variance without substantial detriment to the public good and without nullifying or substantially

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derogating from the intent or purpose of the ordinance. The motion was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Mr. Foley made a motion to approve the request for a special permit

SPECIAL PERMIT

1. The specific site is an appropriate location for such a use. There is already a structure on the property.
2. The proposed use of structure will not be detrimental or adversely affect the character or future character of the neighborhood or town.
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians.
4. There are adequate and appropriate facilities, utilizes and other public services provided for the proper operation of the proposed use. The in-law
5. That the public convenience and welfare will be substantially served with the proposal.

The motion was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

New Business:

1) **Case #3326** - The petitioner, Petro Realty Corp, c/o Aaron Cutler, for property located **981 & 995 Main Street and 10 Pond Street** also shown on the Weymouth Town Atlas sheet 49, block 55, lots 12, 13, & 29, located in a B-1 Zoning District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

120-51	Table 1	Variance from minimum front yard depth
120-51	Table 1	Variance from maximum lot coverage
120-62.1		Variance from front yard landscaping
120-70.C		Variance from minimum parking setback
120-64.3.A		Variance from wall signs

The property presently consists of three (3) separate parcels containing three (3) structures with a variety of uses. The applicant seeks to consolidate the three existing parcels into one parcel, demolish the three (3) existing structures, and construct a new ~5,185 SF building for use as an urgent care medical facility (ConvenientMD) with associated ~30-space parking lot and utilities.

Sitting Members: Richard McLeod, Chairman
Kemal Denizkurt
Jonathan Moriarty
Ed Foley
Brad Diem

Mr. Foley made a motion to open the public hearing on Case #3326 and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

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Mr. Foley made a motion to waive the reading of the public notice and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Attorney Edward Fleming appeared before the board on behalf of the applicant. He introduced Aaron Cutler, Max Puyanik, David Anderson, and Mark Whitstead.

Mr. Fleming gave a summary of the proposed plan. He stated that Convenient MD has nine (9) locations in New Hampshire. He noted that there are several letters of recommendations as part of the application. Convenient MD provides quality, convenient and affordable health care.

Mr. Fleming stated that the current businesses at this location are Liberty Travel, Quick Wash Laundry and Dry Cleaners, a gas station, and a residential single-family home.

Mr. Fleming stated that there are three (3) parcels of land that the applicant is looking to consolidate into one (1) lot.

The proposed building will be one-story with 30 parking spaces provided. He noted that the building inspector has submitted a letter stating that 30 spaces are sufficient.

The triangular shape of the lot and the need for high visibility is the reason for seeking signage relief. The existing signage on site is not well-spaced.

Mr. Puyanik stated that Convenient MD is a full-service medical facility. He noted that a visit to an emergency department can cost \$1500 and a visit to a hospital-affiliate urgent care facility can cost \$600. Convenient MD will cost approximately \$200.

Mr. Puyanik stated that Convenient MD is an active member of the community. He pointed out that they work with school nurses and offer free flu shots, as well as support local sports teams.

He stated that signage is critical to ease of access. He noted that the clients coming to the facility are under some level of distress and visibility is important. He noted that parking in front of building is typical for their facilities.

Mark Whitstead, site manager, gave an overview of the site plan. He noted that the storm water plan includes two catch basins. He also noted that there will be two (2) driveways. He stated that they had met with Mass DOT as they control Main Street/Route 18.

Mr. McLeod noted that taking a left turn from the site onto Main Street would be difficult.

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Mr. Denizkurt asked how many signs are currently on the site.

Mr. Fleming noted that there are 15 to 19 signs on the site. He stated that the town's maximum allowed is 75 square feet. He stated that each side presents as a frontage so there is proposed a 150-square foot sign at the Pond street intersection, and two (2) 100-square foot signs, one each on the Pond Street side and the Main Street side with an entrance sign at the rear facing the parking lot.

The signage totals 400 square feet.

It was noted that Walgreens, across Pond Street, has two signs at 33 square feet each

Mr. Luongo stated that the Mayor has been encouraging applicants to contribute to the beautification of the town. Convenient MD has agreed to provide a sign that denotes the area as Independence Square.

Mr. McLeod noted that the board is very strict about signage. He noted that this location is highly visible. He stated that the shape and topography of the lot does not indicate a need for this amount of signage. The building is clearly visible on Main Street.

Mr. Luongo stated that he agrees with signs on all four sides, however, the size of the signs is a major concern.

Mr. McLeod noted that the applicant needs to work with staff to reduce the signage. The allowed signage is 75 square feet and the applicant is asking for 400 square feet.

Mr. Denizkurt noted that the parking lot egress needs to be worked out.

Mr. Luongo stated that the traffic engineer and MA DOT will come up with a solution.

Mr. Foley asked about the number of parking spaces.

Mr. Luongo stated that there is not a required number. This is not a retail location, which would have required 51 spaces. The building inspector reviewed the plans and determined that 30 spaces is adequate.

Mr. McLeod asked if there was anyone present who would like to speak. There was the following response.

Michael Smart, District 6 councilor, noted his agreement with reducing the signage. He pointed out that this is an adequate use for the site but access is key. He stated that there should be no left-hand turn onto Main Street. He suggested that the

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applicant should look at installing bollards to stop cars. Furthermore, there should be no overflow parking on Pond Street.

Mr. Puyanik stated that there will be 10 employees. In reviewing the number of patients, he noted that they see on average 20 patients in an hour who stay for approximately 40 minutes to one (1) hour.

Councilor Smart asked about the removal of contaminated soil from the gas station site.

Mr. Whitstead stated that the underground storage tanks will be removed.

There was discussion regarding design guidelines and materials to be used. The applicant was asked to add a more colonial look to the building.

Mr. Foley asked that the materials to be used be provided to the board.

Mr. Foley made a motion to continue the public hearing on case #3326 until April 26, 2017 and was seconded by Mr. Moriarty. UNANIMOUSLY VOTED.

Upcoming Meetings - April 19, 2017, May 10, 2017, June 7, 2017

ADJOURNMENT

Mr. Foley made a motion to adjourn at 11:30pm and was seconded by Mr. Moriarty. VOTED UNANIMOUSLY.

Approved by:

Mr. Denizkurt, Clerk

 4/19/17

Date