

**BOARD OF ZONING APPEALS (BZA)  
RECORD OF MINUTES AND PROCEEDINGS  
Wednesday, April 20, 2016**

**Members Present:** Richard McLeod, Chairman  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

**Also Present:** Bob Luongo, Planning Director  
Eric Schneider, Principal Planner  
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:00 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 #3270** – Continued Public Hearing from 1/6/2016, 3/30/16 - sitting members: McLeod, Foley, Denizkurt, Golden, Moriarty - The petitioner, **Foxrock Properties LLC, for property located at 97 Libbey Industrial Parkway and 7 Performance Drive**, shown on the Weymouth Town Atlas Sheet 33, Block 432, Lot 2, and Sheet 34, Block 433, Lot 17, located in the Planned Office Park zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Amend BZA Case #3196

Variance;	120-74 I	Minimum Required Spaces
Special Permit;	Table 1	Maximum Height

Presently located at 97 Libbey Parkway is an existing ~ 101,200 SF building with 321 parking spaces, 7 Performance Drive has 183 parking spaces for use at 97 Libbey Parkway per Variance granted in BZA case #3196, for a total of 504 parking spaces. The petitioner is proposing to separate the 7 Performance Drive parking lot from BZA Case #3196, and construct a 4-story parking garage with 248 parking spaces for a total of 569 spaces on site.

**Sitting Members:** Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

2. **Case #3271** – Continued Public Hearing from 1/6/2016, 3/30/16 - sitting members: McLeod, Foley, Denizkurt, Golden, Moriarty –The petitioner, **Foxrock Properties LLC, for property located at 7 Performance Drive**, also shown on the Weymouth Town Atlas sheet 34, Block 433, Lot 17, located in the Planned Office Park zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance; 120-74 I Minimum Required Spaces  
Variance; 120-51, Table 1 Front Yard Setback  
Special Permit; 120-51, Table 1 Maximum Height

Presently located on the property is a 183-space open parking lot for use at 97 Libbey Parkway. The petitioner is proposing to construct a ~80,000 SF, 5-story office building, and a 6-story, 403 space parking garage.

Sitting Members: Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

3. **Case #3272** – Continued Public Hearing from 1/6/2016, 3/30/16 - sitting members: McLeod, Foley, Denizkurt, Golden, Moriarty –The petitioner, **Foxrock Properties LLC, for property located at 0 Performance Drive and 90 Libbey Parkway**, shown on the Weymouth Town Atlas Sheet 34, Block 433, Lot 16, and Sheet 33, Block 433, Lot 4, located in the Planned Office Park zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Amend BZA Case #3196  
Variance; 120-74 I Minimum Required Spaces  
Variance; 120-62 Location on Lot of Structure

Presently 0 Performance Drive is a vacant lot; a ~81,000 SF 2-story building, with 372 parking spaces presently exists at 90 Libbey Parkway. The petitioner seeks to construct a 2-story, 26,000 SF building with 183 new parking spaces at 0 Performance Drive, and retain 349 existing parking spaces at 90 Libbey Parkway, for a total of 532 parking spaces.

Sitting Members: Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

4. **Case #3273** – Continued Public Hearing from 1/6/2016, 3/30/16 - sitting members: McLeod, Foley, Denizkurt, Golden, Moriarty –The petitioner, **Foxrock Properties LLC, for property located at 200 Libbey Parkway**, shown on the Weymouth Town Atlas sheet 34, Block 435, Lot 14, located in the Planned Office Park zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance;	120-74 I	Minimum Required Spaces
Variance;	120-62	Front Yard Landscaping
Special Permit;	120-51, Table 1	Maximum Height

Presently located on the lot is a 2-story building. The petitioner seeks to demolish the existing building and construct a new 120,000 SF 4-story building, a new 6-story, 558 space parking garage, with an additional 60 parking spaces at grade.

Sitting Members: Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

Eric Schneider stated that he received a letter from the applicant Foxrock Properties requesting to withdraw all four cases without prejudice.

Ed Foley made a motion to accept the applicants request to withdraw without prejudice and was seconded by Jonathan Moriarty.

VOTED UNANIMOUSLY

**Case #3276** – Continued Public Hearing from 3/9/16 - The petitioner, Charles Cocce, for property located at **28 Pond Street**, shown on the Weymouth Town Atlas sheet 49, block 555, lot 10, located in the R-2 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit;	120-13.3 A	Alteration or Expansion Exceeding 10% of Existing Gross Floor Area
Variance;	Table 1	Lot Area Required for 5 Units @ 5,000 SF per Unit

Presently located on the ~ 8800 SF lot, is a ~2250 SF dwelling with 2-1 bedroom apartments and 2 studio apartments. The petitioner seeks an additional apartment by constructing a third floor shed dormer, increasing the third floor living space by ~723 SF.

Sitting Members: Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

Eric Schneider stated that the applicant Charles Cocce has requested a continuance on Case #3276.

Ed Foley made a motion to continue Case #3276 28 Pond Street to May 11, 2016 and was seconded by Jonathan Moriarty.  
VOTED UNANIMOUSLY

Chuck Golden stated that he will not be here on May 11, 2016. Eric will let the applicant know in advance that 1 member will not be here.

### New Business

**Case #3280** – The petitioner, William Weigele, for property located at 126 Prosepect Hill Drive, shown on the Weymouth Town Atlas sheet 3, block 4, lot 78, located in the R-1 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit: 120-40 Extension or change of non-conformity

The petitioner seeks to demolish an existing – 10'x13' enclosed cinderblock structure attached to the rear of a single family dwelling and construct a new – 16'x16', two-story structure; first story constructed of cinderblocks, with a 3-season porch proposed for the second story.

Sitting Members: Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

Chuck Golden made a motion to open the public hearing on Case #3280, 126 Prospect Hill Drive and was seconded by Jonathan Moriarty.  
VOTED UNANIMOUSLY

Chuck Golden made a motion to waive the reading of the publication on Case #3280 and was seconded by Jonathan Moriarty.  
VOTED UNANIMOUSLY

Appearing before the board was William Weigele. Mr. Weigele stated he is seeking relief from Zoning Ordinance 120-40. Currently attached to the house is a cinderblock shed that they store their outdoor furniture in. There are cracks in it and water gets in there from it as well as from the windows and doors. They are looking to raise the structure and rebuild it.

Chairman McLeod asked if he is looking to exceed the existing footprint and he stated yes, but he will not be encroaching anymore into the side yard setback.

Ed Foley stated there is a letter from the abutter, Mr. Robert Linden and he is not opposed to this application. Mr. Linden supports this application.

Eric Schneider stated that there weren't any comments from the department heads on this application.

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

Ed Foley made a motion to close the public hearing on Case #3280 and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY

Ed Foley made a motion to approve Case #3280 request for a Special Permit 120-40.

**Special Permit Criteria for Approval.** The Board of Zoning Appeals may approve any Special Permit applications only if it finds that, in its judgment, all of the following conditions are met in accordance with Zoning Ordinance Section 120-122D.

1. The specific site is an appropriate location for such a use. **The concrete support is cracked and best to be replaced.**
2. The proposed use or structure will not be detrimental or adversely affect the character or future character of the neighborhood or town. **The abutter has stated no opposition to the project.**
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians. **It's a deck on the back, not living quarters.**
4. There are adequate and appropriate facilities, utilities and other public services provided for the proper operation of the proposed use. **Suggested putting a skim coat over the new structure.**
5. That the public convenience and welfare will be substantially served with the proposal. **The applicant is staying within the current footprint and is not extending into the nonconforming use.**

This motion was seconded by Jonathan Moriarty.  
VOTED UNANIMOUSLY

**Case # 3281** – The Petitioner, George E. George, for property located at 81 Washington Street, shown on the Weymouth Town Atlas sheet 20, block 277, lot 7, located in the VC, zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinances:

Special Permit:           120-40           Continuation or change of non-conforming use

The petitioner seeks to install a prefabricated 8'x 20' Cooler/Freezer unit over a 6" concrete slab on the north side of an existing retail building, with access from the interior only; and to construct a concrete retaining wall to protect the unit against erosion from an adjacent hillside.

Sitting Members: Richard McLeod  
Kemal Denizkurt  
Chuck Golden  
Jonathan Moriarty  
Ed Foley

Ed Foley made a motion to open the public hearing on Case # 3281, 81 Washington Street and was seconded by Jonathan Moriarty.  
VOTED UNANIMOUSLY

Ed Foley made a motion to waive the reading of the publication on Case # 3281, 81 Washington Street and was seconded by Jonathan Moriarty.  
VOTED UNANIMOUSLY

Appearing before the board was George E. George, owner of Napoli's Pizza. He is looking to construct a 20'x8' walk in refrigerator and freezer attached to the rear of the existing building. The new walk in will be accessed from the interior of the restaurant only. The existing cooler within the building will be removed to create additional food preparation area.

Ed Foley said he visited the site and the walk in freezer will be entered from the building. He will be putting in a retaining wall along the cliff.

The health department comments are as follows: Napoli pizza is in need of a new water heater. We made an agreement with the owner that we would allow him to replace the unit in connection with the walk-in freezer project. We approve the freezer project with the stipulation that a new water heater is also installed.

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

Ed Foley made a motion to close the public hearing on Case # 3281 and was seconded by Chuck Golden.  
VOTED UNANIMOUSLY

**Special Permit Criteria for Approval.** The Board of Zoning Appeals may approve any Special Permit applications only if it finds that, in its judgment, all of the following conditions are met in accordance with Zoning Ordinance Section 120-122D.

1. The specific site is an appropriate location for such a use. **The site is a restaurant and there is a need for it and it will be attached to the restaurant and accessed through it.**
2. The proposed use or structure will not be detrimental or adversely affect the character or future character of the neighborhood or town. **He will be constructing a retaining wall in the back to deal with the cliff issue.**
3. There is not a potential for nuisance or serious hazard to vehicles or pedestrians. **It is fenced in.**

4. There are adequate and appropriate facilities, utilities and other public services provided for the proper operation of the proposed use. **Health department requested a new water heater.**

5. That the public convenience and welfare will be substantially served with the proposal. **Freezer and cooler will allow applicant to better serve the public and more space to store his food.**

Condition:

1. A new water heater will be installed.

This motion was seconded by Jonathan Moriarty.

VOTED UNANIMOUSLY

**Case # 3283** – The petitioner, Jennifer Porter, for property located at 73 Cain Avenue, also shown on the Weymouth Town Atlas Sheet 18, Block 246, Lot 1, located in an R-1 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit:        120-13A        Single-Family to a Two-Family

Ed Foley made a motion to open the public hearing on Case # 3283, 73 Cain Avenue and was seconded by Jonathan Moriarty.

VOTED UNANIMOUSLY

Ed Foley made a motion to waive the reading of the publication on Case # 3283, 73 Cain Avenue and was seconded by Jonathan Moriarty.

VOTED UNANIMOUSLY

Appearing before the board was Jennifer Porter, owner of 73 Cain Avenue. She stated she is looking to demolish the existing garage and add an addition for her parents. There will be two entrances so it will be established as a two family but will only have one address as opposed to an inlaw.

There was a plan established by the staff labeled Exhibit #1 of other legal two family plots in the area.

Jonathan asked why the addition on the right side and not the left or the back? The applicant replied that originally it was to utilize the existing garage and build a breezeway to connect them. When they realized the garage could not be used it was decided to demolish it. There will be a crawl space underneath the entire addition. The land is a corner lot and she felt this was the best set up.

Jonathan is concerned about the 13.7' distance between the proposed additional and the neighbor. He asked what is the second bump out on the back was on the plans and it was stated it's a bulkhead but she is not going to be doing that as it would be a second one and cost is a factor. There will be

a full basement connected to the main basement and the only access will be through her existing house.

Chuck said if it is converted to a two-family home the second family will not be able to use the cellar is that correct and she stated yes it is too costly.

Ed Foley stated that on the artist rendering there is a deck on the back of the house and it is not showing on the plot plans and he would like to know the dimensions of it. The applicant stated that she is not sure about doing the deck on the back and if she decides to do it, she will need to go to the building department for a permit for it.

Jonathan said he has two reservations with this, one is the creation of the nonconformity by building within 13.7' of the rear lot line especially since the garage is coming down and secondly is creating a two family in a predominately single family neighborhood. He understands the intent.

Eric said if you use the 1/5<sup>th</sup> depth of lot rule as opposed to the 24 then you come out with 11.8 feet.

Applicant said it is not practical to put the addition on the left side as she has a driveway there and that is her main entrance into her house and by building off the back she would lose all the windows in the three bedrooms along the back.

Jonathan said he would prefer the in-law instead of the two-family as approving this would allow other neighbors to come before the board and ask for the same two-family status.

Her neighbors are all in favor of this and she has a letter from her mother's doctor stating she needs to live in a two bedroom unit with a ramp or at least one floor living.

Jonathan asked if she could put a ramp without a two family status and it was stated yes.

The applicant stated she needs privacy in the inside of the home and that is why she is requesting the two family permit and not an in-law.

Eric updated the committee on a discussion he had today with Jeff Richards and Bob Luongo. They were discussing this clause in the zoning ordinance 120-13A. It is Jeff's opinion that he and Jim Clarke, over the course of time, (due to Jim's guidance) interpreted this that if your house was in existence prior to the zoning ordinance that via special permit under that clause you could go from a 1 family to a 2 family. However, Bob Luongo the new Planning Director, disagrees with this. He and Jeff both agree that at the time of this application this was the interpretation that this special permit was available under this ordinance. Going forward Bob Luongo will clarify the language to not allow a two family in an R1 district.

Jonathan said there is nothing he can use to carve out an exception based on the information he is hearing from the petitioner. There are no overwhelming facts in her favor that makes this different and unique.

At the time you applied we had a different planning director and the new one has a different opinion.



Jonathan questions why a two family is needed. The intent is to have her parents live with her and she could create an in-law. That would be a proper relief to the rear or northeasterly corner. This plan does not work for him.

The applicant stated that if there was an objection before why was it not raised to her prior.

Kemal Denizkurt said the board did not get that far as the prior plans were not complete. This board approves or disapproves, the planning department only accepts your application. We are the deciding board.

Ed Foley asked if the board granted the other two families in the area and they were not sure if they were existing or converted. Ed would like to see the by law changed.

Filing an application is not a promise that you are going to get a relief. Being sued can happen on a solid or weak decision.

Ed Foley wants to know if this board granted a special permit for the blue highlighted lots or if they were in existence before the bylaws. Eric will look into this and get back to the board.

Jonathan said there aren't any circumstances that allow her to do this. She would build on the other side.

Jennifer said when she began talking with Jeff Richards he said because you don't know what is under the garage why don't you just knock it down and rebuild. There will be some shared living space with laundry and living room with a common laundry room as a buffer between the two areas to allow for privacy.

It could probably be done in the existing plans for the two family. The hold-up is not really the construction plan its the classified two family status as opposed to an in-law.

If she could show the board the interior design so they can distinguish the difference between the in-law and the 2 family. This plans almost seems to be an in-law plan. The applicant stated that she didn't care about getting the 2 family permit, it doesn't matter to her. Chairman McLeod stated she should show some plans with the interior so they can approve it for an in-law instead as it does not seem the members are going to approve a 2 family permit. This will help her accomplish what she really needs is to help her parents with living.

Chuck would like to know what Jeff Richards and Bob Luongo are thinking to make a change to the code of ordinances.

Chuck said you might be able to accomplish what you need with the in-law.

Roberta – Her money is doing this. Is the 13.7 feet going to be an issue going forward. The depth of the lot will be clarified by Eric for the next meeting.

Ed Foley said his only concern is the two family status. He likes the idea of helping out parents.

It is important to raise all issues as they are unique to this situation.

Jonathan is concerned.

Ed Foley made a motion to continue to May 11 and Chuck Foley seconded. Chuck said he will not be here on the 11th. VOTED UNANIMOUSLY

**Other Business:**

**Minutes** – March 30, 2016

Ed Foley made a motion to approve the minutes of March 30, 2016 and was seconded by Chuck Golden. VOTED UNANIMOUSLY

**Upcoming Meetings** – May 11, 2016, June 1, 2016 and July 27, 2016

**ADJOURNMENT**

Ed Foley made a motion to adjourn at 8:20 pm and was seconded by Chuck Golden. VOTED UNANIMOUSLY

Respectfully submitted by,

Lee Hultin  
Recording Secretary

Approved by:

  
Kemal Denizkurt, Clerk

5-11-2016  
Date