

**BOARD OF ZONING APPEALS (BZA)
RECORD OF MINUTES AND PROCEEDINGS
Wednesday, September 2, 2015**

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

Also Present: Jim Clarke, Director of Planning
Eric Schneider, Principal Planner
Jeffrey Richards, Building Inspector
Lee Hultin, Recording Secretary

RECEIVED
TOWN OF WEYMOUTH
TOWN CLERK'S OFFICE
2015 SEP 24 AM 11:42

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:06 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

Case # 3259– The petitioner, Nancy Banatt, for property located at 17 Clematis Avenue, also shown on the Weymouth Town Atlas Sheet 9, Block 139, Lot 17, located in the R-1 zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit: Relief of Article XV, Section 120.54 (Confinement of accessory uses to rear yard.)

Presently located on the premises is a single family home. The petitioner is proposing to install a 17'x 34' inground swimming pool, surrounded by a concrete patio within the side yard setbacks.

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

Ed Foley made a motion to open the public hearing on Case # 3259 and was seconded by Jonathan Moriarty. Voted unanimously

Ed Foley made a motion to waive the reading of the publication and was seconded by Jonathan Moriarty. Voted unanimously

Appearing before the board was Nancy Bannat, 17 Clematis Avenue stated they are trying to put a pool in the side yard instead of the back yard. The back yard has two large maple trees and landscaping and a deck. It would cost about \$10-15,000 to remove and that would cause a hardship on her.

Eric Schneider stated that an abutter Paul and James Doherty has a concern about the location and noise of the pump and water draining onto his lot which is a lower lot.

It was determined that the pool equipment will be moved next to her house instead. A new plan will be submitted to the Planning Department.

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

Ed Foley made a motion to close the public hearing on Case # 3259 and was seconded by Jonathan Moriarty. Voted unanimously

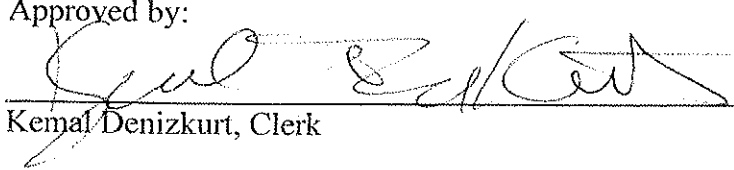
Ed Foley made a motion to approve the Special Permit under Section 120-122D

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.
2. The proposed use or 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 applicant stated she would move the pool equipment next to her house.
4. There are adequate and appropriate facilities, utilities and other public services provided for the proper operation of the proposed use.
5. That the public convenience and welfare will be substantially served with the proposal.

This motion was seconded by Jonathan Moriarty and voted unanimously.

Approved by:


Kemal Denizkurt, Clerk


Date

9/23/15

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Jeffrey Richards, Building Inspector
Lee Hultin, Recording Secretary

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Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:06 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

Case # 3260– The petitioner, Stephan Roberts for property located at 65 Summer Street, also shown on the Weymouth Town Atlas Sheet 24, Block 317, Lot 21, located in the R-1 Zoning District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance: Relief of Section 120 Table (1) (Requiring a front setback of 18 FT)

Presently located on the premises is a single family home with a shared entrance to an in-law apartment. The petitioner is proposing to construct a covered farmer's porch to the left and front of the structure within the front yard setbacks.

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

Ed Foley made a motion to open the public hearing on Case # 3260 and was seconded by Jonathan Moriarty. Voted unanimously

Ed Foley made a motion to waive the reading of the publication and was seconded by Jonathan Moriarty. Voted unanimously

Appearing before the board was Steve Roberts, homeowner. He need to replace his porch and since he is going to replace it he would like to make it level with the first floor and would like to make it a farmer's porch. Because it is so close to the street it requires a permit.

The existing porch is 4 feet and he is installing a 8 foot porch on the side and 9 foot on the front. This was to keep it symmetrical all around.

Chuck Golden said his house is set back further from the street than his neighbors.

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

Ed Foley made a motion to close the public hearing on Case # 3260 and was seconded by Jonathan Moriarty. Voted unanimously

Ed Foley made a motion to approve the variance.

Variance Criteria for Approval. Weymouth Zoning Ordinance Section 120-119A(3). The Three Required Findings For Granting A Variance:

Finding #1: Soil, Shape, Topography

Owing to circumstances relating to soil conditions, shape or topography of the land or structure and especially affecting such land or structure but not generally affecting the zoning district in which it is located.

- The board must also find that the peculiarity is unique to the zoning district where the parcel is located.
- The peculiarity must not be found in the district as a whole.

Finding # 2: Hardship

A literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise.

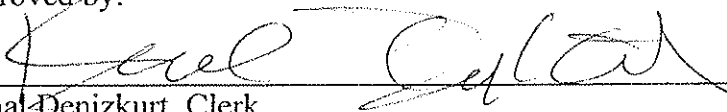
Finding # 3: Public Good

Desirable 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 or bylaw.

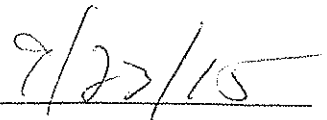
Mr. Foley stated that it would involve a substantial hardship to the applicant due to the typography of the lot and the shape of the building to stay within the four foot and would not be pretty architecturally.

The motion was seconded by Jonathan Moriarty and voted unanimously.

Approved by:


Kemal Denizkurt, Clerk

Date



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Members Present: Richard McLeod, Chairman
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Lee Hultin, Recording Secretary

RECEIVED
TOWN OF WEYMOUTH
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2015 OCT -8 AM 11:19

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:06 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

New Business:

Case # 3258 – The petitioner, Joanne Marques, of 60 Circuit Road, has filed an application to Appeal a decision by the Inspector of Buildings to issue building permits for property on Burkhall Street, shown on the Weymouth Town Atlas Sheet 38 & 42, Block 467, Lots 2 & 3, Block 469, Lots 2, 21, 22, 23, located in an R-4 & R-2 zoning district. The petitioner seeks to:

Appeal: Appeal of a decision of the Inspector of Buildings (Article XXIV, Section 120.119A(1))

The petitioner seeks to have the Board of Zoning Appeals rescind building permits issued.

Sitting Members: Richard McLeod
Chuck Golden
Jonathan Moriarty
Ed Foley
Brad Vinton

Chairman McLeod said they don't usually deal with these types of appeals and has asked Attorney Jim Lampke to attend. Mr. Lampke stated that what is before the board is an appeal on building permits in accordance with the zoning ordinance. Mr. Richards is in attendance to address this and answer any questions the board may have. This is not a hearing on the merits of the project or on any other permits previously issued by the town and have been litigated in the courts over the course of many years.

Chuck Golden wanted to disclose that he lives in Weathervane and has been there over one year and has no business or social dealing with the Bristol Brothers and feels he can be fair and

impartial when hearing this appeal. Mr. Lampke said under the law his disclosure covers any conflicts going forward.

Appearing before the Board was Joanne Marques, 60 Circuit Road, S. Weymouth who was recording the meeting for her personal use. Ms. Marques submitted four additional documents marked Exhibits 1,2,3,4 and were distributed to the board.

Exhibit #1 – Plan/Map

Exhibit #2 - Applications for building permits

Exhibit #3 - Floor area calculations

Exhibit #4 - An email from Andrew Fontaine to James McGrath

Ms. Marques updated the committee about what has happened over the last 15 years. The special permits was denied 3 times before final approval in 2004. In 2008 Trammel Crow filed for a NOI. The Conservation Commission hired a peer reviewer (Tetra Tech).

On June 23rd of 2015 there were 13 building permit applications submitted on the last day to apply and on June 24th Mr. Richards supplied copies to Joanne Marques. She asked how they could be approved when they didn't comply with floor area ratios and it was stated that Mr. Clarke makes the decision regarding zoning compliance and if Mr. Clarke says its ok then he has no choice but to issue the permits. She found this very surprising as she couldn't find anything to support that.

If any application is in violation of a zoning ordinance the building inspector should have withheld the permit as the applications were incomplete. Basic information such as names and address, size of lots were all missing. All the required information was not there.

In addition to the applications were 3 plot plans that were submitted to the building department that are described as block 469, Lot 2 on the east side of Burkhall as townhouses (27) units consisting of 9 buildings with 3 units in each one. On the same lot are garden units submitted by Upton & Partners has 56 units, 2 buildings with 28 units in each one. For some reason, the building permits were not issued on this one.

Block 467, lot 3 on the west side of Burkhall Street are the podium units submitted by Upton & Partners and the permits were issued on 6/23/15 but the plot plans are still being reviewed by DPW as of yesterday. These plans are substantially different from what the BZA approved in 2004.

1. On 6/24/15 Mr. Richards gave her a copy of the Plot plan regulations
2. Plot plans must be submitted to DPW for approval and that did not happen.
3. All water and sewer mitigation fees must be paid and as of yesterday they have not been paid.
4. Both plot plans exceed the maximum FAR of .30 and it appears the east side is .47 and the west side 1.3.

Ms. Marques believes block 467, Lot 3 abuts Weymouth High School and exceeds the maximum height allowed in the Zoning Ordinance Section 120-57.

The original 1972 Tall Oaks plan did not include block 467 Lot 2 or show Burkhall Street as an emergency access road.

Since the building permits have been issued on the 23rd the work flow has been going fast and furious and a few issues have come to light; the existence of vernal pools which conservation commission is reviewing; the engineering division has documented several trees that have been cleared and were supposed to have been left in their natural state.

Ms. Marques believes there are two issues before the board:

1. Incomplete application
2. Floor area ratio

Attorney Lampke said the height issue which relates to the school has been resolved in the courts.

Mr. Jeff Richards appeared before the board and had the following comments. There were multiple agencies involved with meetings prior to this permit issuance. This was a 10 year project and the plans have been reviewed over those years. More recently in the past few months the town has been speaking with Bristol Brothers to see what the minimum requirements would be to issue the permits by the date certain. In that time frame DPW and Conservation were reviewing plans. Two days prior to the applications being submitted, there were meetings with division heads to ensure there would be minimum required information to issue the permits to let the project proceed.

The day they applied the town received the final recording from the Registry of Deeds on the Board of Appeals Case dated June 19, 2015, required Orders of Conditions from Conservation Commission, controlled construction requirements and the sill slips. Mr. Richards said that he did not need the sill slips to issue the building permit for the podiums. He had a discussion with DPW who said he could issue the foundation permits (which is common) until they got the addresses correct and they had to make sure they matched the 911 system. You do not need the actual address to issue a permit it can be done on sheet, block and lot.

The building permit application is a blanket application for multiple uses and does not need to be complete. There were minor changes he did not know about at the time of the issuance such as the emergency road as this was not in the plan the Mr. Richards had from the BZA. After permits are issued it becomes the baseline to start a project it is then adjusted when the town departments review them. There was no reason to hold up the permit knowing that it needed to be issued that day.

The floor area ratio was discussed with Mr. Clarke based on the 2004 BZA decision. Mr. Jeff Richards passed out a letter from Gale Associates to the board which was labeled Exhibit 5.

Ms. Marques stated that the floor area ratio was based on per lot. Mr. Richards clarified that under the BZA case the entire site was determined as the lot, that is why this was already discussed and resolved in 2004 by the BZA board during the application process.

Mr. Jeff Richards stated that they always use “see plans” because there is too much detail to put on the application.

It was asked if Mr. Richards can issue a permit without the DPW approval and it was stated yes.

Chairman McLeod stated that after hearing this information the board believes there is only one issue remaining before them and that is number 1.

The public was given the opportunity to speak.

Attorney Adam Brodsky representing Bristol Brothers distributed a memo labeled Exhibit #6.

As part of the FAR conditions it needed to be filed with the clerk and the trial court upheld the decision. He believes it is just a mistake or miscalculation on Ms. Marques part. We should have been using the word “parcel” to avoid this confusion.

Arthur Mathews, District 4 Town Councilor – Given that this is just a controversial subject, he wished the applicant was more thorough. Since the building permits were issued he will now be going to his third Conservation Commission board for violations on that aspect of the project, since the permits were issued. There is a new water and sewer agreement and he hopes Mr. Richards will follow up on this to make sure it was paid and get it resolved. It seems like this is being piecemealed. The building permits that were issued were not for the entire project, and the departments are told to adjust on the fly. He feels this has been backwards. He hopes the applicant is more thorough going forward.

Andrea Barnes, Burkhall Street – she is a little offended by the applicants approach to this. Suddenly at the last minute permits were issued and machines started showing up and the residents and neighbors were not aware of it. Last minute permits only help the businessman and not the residents. There is a reason why the room is filled this evening and she hopes the board sees the big picture.

Christine Morrisey, 160 Burkhall Street – asked what was the rush in approving this permit? Chairman McLeod stated that this wasn't rushed it took place over a large period of time. She then asked when did they walk into the office? Mr. Richards stated the Board of Appeals case expired on that date and the special permit would not be valid if we did not issue it then. That is why the town division heads met prior to the expiration date.

Marty Lebran, Burkhall Street – He is a new resident and asked if they missed the filing date what would be the new standards. Chairman McLeod stated that is an advisory question the board cannot answer.

Comeau, Burkhall Street – permits were issued last minute based on 2004 plans but weren't the 2004 plans before the court? Yes, It was the same plans and they did not change.

Linda Nevill, 120 Burkhall Street– stated she doesn't understand what the rush was. It seems the town gave special treatment to the builders by meeting prior and she doesn't feel if it was a resident that they would get the same treatment. She believes the 2004 plans would not stand up to 2015 standards.

Jordan Dexter, 58 Circuit Road – moved here 4 years ago. This has been going on a long time and he has been in construction for over 20 years and the permit process typically takes time. There was a drawing submitted to the registry of deeds and it is not the plan that is being built. He is not feeling confident in the town's decisions. He put an addition on his house and has to pay \$2800 before he could start and this large project didn't pay their mitigation.

Barbara Popkin, 118 Tall Oaks Drive – she feels the ball has been dropped as nobody has consulted the residents that are directly affected by this. The people are against this project since 2004 and this board has to listen to the people and we are being ignored. There was no notification about this new project to any abutters.

Chairman Macleod stated that the building department is the enforcing authority. If you see something going on bring it to the building department and the town will take care of it.

Mr. Foley will look into Condition #8 as Ms. Marques feels this is being violated. Mr. Richards said there was a grade change on the original plan. Once it was graded it can't be touched after it was graded to the proper level.

Attorney Adam Brodsky regarding emergency access road, the applicant will meet with the neighbors to look for an alternative.

Lauren Hirshberg, 118 Burkhall Street – It sounds like the application was accepted because it was good enough and the deadline was coming. This development is too big for this.

Mr. Richards said the project was 10 years long and the decision was complete, all the information was predetermined by the BZA case and it just needed to match.

Mr. Lampke said the litigation was concluded on 6/23/2009.

After that the applicant can work with the town to obtain building permits and that is what had happened. These decisions did not take place overnight it was over a period of time.

Chairman McLeod asked what was the time frame Mr. Richards started working with the applicant for this permit? Mr. Richards said right after the BZA case was approved. Conservation already had a registered decision at that time.

Ed Foley asked if Mr. Richards would make sure the conditions area adhered to? Yes replied Mr. Richards.

Ed Foley made a motion to close the public hearing at 8:30 and was seconded by Jonathan Moriarty. Voted unanimously.

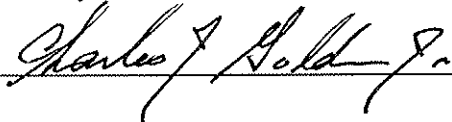
Ed Foley made a motion to take this case under advisement and was seconded by Brad Vinton. Voted unanimously.

This case will be discussed on 9/23/15 at 7:00 pm.

Jim Clarke left the meeting at 8:30 pm

Respectfully submitted by,
Lee Hultin
Recording Secretary

Approved by:



Date

10.7.15

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Members Present: Richard McLeod, Chairman
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Brad Vinton
Kemal Denizkurt

Also Present: Jim Clarke, Director of Planning
Eric Schneider, Principal Planner
Jeffrey Richards, Building Inspector
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:06 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

Case # 3261– The petitioner, Stephan Gosselin for property located at Wainwright Avenue/Victoria Avenue, also shown on the Weymouth Town Atlas Sheet 55, Block 611, Lots 58,59,61,62,63,47,76,39, located in the R-1 Zoning District. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Special Permit: Article XV, Section 120-59.1

The petitioner is seeking to combine several lots to create two new buildable lots with adequate square footage but less than the 72' of frontage required under 120-59.1, also to reconfigure two non-conforming lots with existing single family homes (14 Wainwright Av & 15 Victoria Av) to be less non-conforming.

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

Ed Foley made a motion to open the public hearing on Case # 3261 and was seconded by Jonathan Moriarty. Voted unanimously

Ed Foley made a motion to waive the reading of the publication and was seconded by Jonathan Moriarty. Voted unanimously

Appearing before the board was Attorney Gregory Galvin, 775 Pleasant Street, Weymouth, MA representing the applicant Stephen Gosselin.

There are two nonconforming lots with houses and 5 vacant lots. He is seeking to combine the lots so as to create 2 new buildable lots with adequate 40' of frontage. The 2 existing non conforming lots will be reconfigured to be less non-conforming.

Richard MacLeod disclosed that he knows the owner of the orange lot as they sit on another board together.

Mr. Dean's lot would then become 30,785 s.f. and Mr. Foley asked if Mr. Dean has any intention to come before the board to subdivide that lot in the future, and that it would need to be a condition that it cannot happen.

Kemal Denizkurt asked if the applicant has spoken to abutters and it was stated all but one on Victoria and Wainwright. Everyone else is in agreement.

Eric Schneider said Mr. MacNamara came into the office and has no problems with it and he has an auction bid to purchase the lot behind him (#51).

The board reviewed the lots and felt there are a lot of lots that are being auctioned or town owned and felt a condition that these would not be subdivided would be necessary.

All of the DPW, Engineering Division comments were discussed in detail with the board. Water and Sewer service lines will be provided through easements. There was a lot of discussion on this issue as the plan was not complete and would need approval from DPW. The Department of Public Works does not want to see any easements per their comments. The plan before the board is currently proposing easements.

The applicant stated he will put together a full water and sewer line plan for the DPW which will need their approval.

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

Ed Foley made a motion to close the public hearing on Case # 3261 and was seconded by Jonathan Moriarty and voted unanimously

Ed Foley made a motion to approve the special permit request for Case # 3261 14 Wainwright – 15 Victoria to create two new buildable lots in excess of 25,000 sq ft, 1 lot with an existing home will be substantially less non-conforming at 19,191 sq ft, 1 lot with an existing home will now be conforming at 30,785 sq ft. Lot #15 Victoria with 70' of frontage per section 120-59.1

Special Permit Criteria for Approval Section 120-122D:

1. The specific site is an appropriate location for such a use.
2. The proposed use or 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, utilities and other public services provided for the proper operation of the proposed use. **See Engineering Memo 1-5**
5. That the public convenience and welfare will be substantially served with the proposal.

The board had the following conditions:

- No easements, a new plan must be submitted
- All four lots cannot be subdivided in the future even if additional land is added to any of these lots they cannot be divided again.

This motion was seconded by Jonathan Moriarty. Voted unanimously

Other Business:

Review of Minutes –July 8, 2015

Ed Foley made a motion to approve the minutes of July 8, 2015 as written and was seconded by Jonathan Moriarty. Voted unanimously

Upcoming Meetings – September 2, 2015, September 23, 2015, October 7, 2015, October 21, 2015

ADJOURNMENT

Jonathan Moriarty made a motion to adjourn at 9:30 pm and was seconded by Chuck Golden. Voted unanimously

Respectfully submitted by,
Lee Hultin
Recording Secretary

Approved by:


Kemal Denizkurt, Clerk

10-7-15
Date