

**TOWN OF WEYMOUTH
BOARD OF ZONING APPEALS (BZA)
RECORDS OF MINUTES AND PROCEEDINGS
Wednesday, January 29, 2014**

Present: Richard McLeod, Chairman
Edward Foley, Vice Chairman
Kemal Denizkurt, Clerk
Chuck Golden
Jonathan Moriarty
Brandon Diem, Alternate Member
Brad Vinton, Alternate Member

Also Present: Abby McCabe, Principal Planner
Lee Hultin, Recording Secretary

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:20 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

BZA Case #3214 – 211 Main Street – Public Hearing (Continued from 11/13/13 & 12/18/13).

Members sitting: Richard McLeod, Chairman
Kemal Denizkurt
Chuck Golden
Jonathan Moriarty
Brad Vinton, Alternate Member

This is a request for a variance under Article XVI “Signs”, chapter 120-64.3 “Signs in Business District” to remove the existing building, wall and free-standing signs and replace with new signage that exceeds the maximum allowable sign area.

Chairman McLeod stated that the Board received a written request from the applicant to withdraw the application without prejudice.

A motion was made by Edward Foley to accept the applicant’s request for a withdrawal without prejudice on case #3214 at 211 Main Street and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY.

BZA Case #3216 – 666 Bridge Street – Public Hearing (Continued from 11/13/13, 12/18/13 & 1/15/14)

Members sitting: Richard McLeod, Chairman
Kemal Denizkurt
Chuck Golden
Jonathan Moriarty
Brad Vinton, Alternate Member

The applicant is seeking a special permit under Article VII, Section 120-25 (b) "Special Permit Uses" for the construction of a 2450 SF building for a UBOX service building on the easterly portion of the site with a lot area of 40,000 SF or more.

Peter Olio from U-Haul appeared before the Board. The applicant is proposing to construct a new building to be used as a U-Box storage area and construct a 20' x 40' canopy on the existing site in the B-1 zoning district. The new canopy is 26 feet tall and shields the customers from the weather.

According to the comments received by the Board, the Building Department has issues with the open lot storage area specifically the boats and trailers. Ms. McCabe, Principal Planner, pointed out that in the B-1 zone it permits a special permit as long as there is a 7 foot wall, fence, or landscape screen for open lot storage. The applicant also needs a special permit for the more than one building on a lot (Section 120-25A(1) and to change or alter a non-conforming use/structure (Section 120-40). Ms. McCabe explained that upon further review of the building file, it was discovered that a plan showing a total of 86 parking spaces (10 customer, 10 trailer storage, and 36 truck rental storage) was approved by the BZA in 1979. A recent site inspection found the rear of the site was being used for boat and camper storage which is not allowed in the B-1 zone.

Kemal Denizkurt asked if he was granted permission in 1979 to store boats. Typically B-1 zones are not allowed to store boats, only commercial lots. How many boats do you store? It was stated they don't distinguish from boats or campers. There are 33 outside vehicle storage parking spots and the spaces are 20 feet long.

Brad Vinton asked if there are any fire prevention systems installed in the building and it was stated emergency lights but no sprinkler system. It is a cold storage area, it will be wood pods that people fill up. The applicant stated that there will be no propane, gas or vehicles stored inside. It was stated the only access is dock height. Vehicles will not be able to gain access into the building.

John Moriarty requested plans showing the 86 spaces are 36 for truck rentals and 40 for trailer display and the 10 customer spaces.

Edward Foley asked about the vehicles being stored on the green space as noted in the Building Department's comments. Mr. Olio stated that the store manager has allowed them to accommodate their needs and they were not aware that they were not supposed to park on green areas. The vehicles on the green space area will be removed.

John Moriarty would like to make a condition that the vehicles need to be removed from the green space within 30 days. The applicant agreed with this request.

Chuck Golden asked if the manager lives in the facility and the applicant responded that they have a corporate apartment that was built 30 years ago. It was stated that the Town is aware of the apartment as they perform fire inspections annually.

The Chair opened up the hearing to public comment. There were no comments from the public.

Johnathan Moriarty made a motion to close the public hearing on Case #3216 for the application for property located at 666 Bridge Street at 7:45 p.m. and was seconded by Kemal Denizkurt. VOTED UNANIMOUSLY.

Kemal Denizkurt made a motion to approve the application for:

- More than one building on a lot (Section 120-25A (1))
- Extension or change by Special Permit (non-conforming use/structure) Section 120-40.
- To construct a 2,450 SF building on property with a lot area of 40,000 SF or more (Section 120-25B)
- Open Lot storage for material in unenclosed premises (Section 120-24E)

With the following Conditions:

- That a 7-ft fence be installed along the rear paved area to screen the storage areas;
- That the parking areas for customers, trailers, and trucks be clearly identified on site;
- That landscaping be installed in front of the new building along the street and shown on a plan submitted to the Planning Department;
- That there be no vehicle storage or parking on the required green space; and
- The maximum number of parking spaces for storage is 76 spaces.

The motion was seconded by Chuck Golden. VOTED UNANIMOUSLY.

BZA Case #3218 - 269 Park Avenue and 168 Ralph Talbot Street, Public Hearing (Continued from 12/4/13 and 1/15/14)

Application of Joseph Brewster for property located at 269 Park Avenue and 168 Ralph Talbot Street, also shown on the Weymouth Town Atlas as Sheet 46, Block 532, Lots 27, 28 & 29, located in R-1 (Residential, single-family, low density) for a special permit under Zoning Ordinance Article XIII, Section 120-40 "Extension or Change by Special Permit of a Nonconforming Use or Structure". The applicant owns lots 27, 28 & 29 and is proposing to sell lot 27 which is non-conforming with respect the use (retail) in a R-1 zoning district and lot size under table 1 - Schedule of District of Regulations (25,000 SF minimum required and 15,003 SF provided).

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

The Chair stated that the Board received a written request from the applicant requesting that the public hearing be continued to allow time to submit revised plans. The applicant was present and agreed to a March 5, 2014 date to allow the full Board to be present. Edward Foley made a motion to continue this public hearing to the Board's March 5, 2014 meeting and was seconded by Jonathan Moriarty. VOTED UNANIMOUSLY. Edward Foley reminded the public that there

would be no additional abutter notification and that the March 5, 2014 meeting will be in the same room at 7:15 p.m.

BZA Case #3221 – 85 Park Avenue – Public Hearing

Application of Anthony Merlino for property at 85 Park Avenue, also shown on the Weymouth Town Atlas Sheet 45, Block 494, Lot 9, located in a R-1 (Residential, Low Density/Single Family) zoning district. The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance:

Variance: Relief of 13,874 SF from the 25,000 SF minimum lot area requirements for the 1 (11,124 provided) (Table 1 – schedule of District Regulations).

Variance: Relief of 12, 874 SF from the 25,000 SF minimum lot area requirements for lot 2 (11,124 SF provided) (Table 1 – Schedule of District Regulations).

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

The petitioner is proposing to subdivide the existing lot into two (each 11,124 SF) to create a buildable lot to construct a ~1,850 SF single-family dwelling in the rear that will front on the unnamed private way as shown on the submitted plan.

Edward Foley made a motion to open the public hearing on case #3221 and was seconded by Kemal Denizkurt. VOTED UNANIMOUSLY.

Edward Foley made a motion to waive the reading of the published legal notice and was seconded by Kemal Denizkurt. VOTED UNANIMOUSLY.

Appearing before the Board was Anthony Merlino, the applicant, and his Attorney, Greg Galvin.

Attorney Galvin stated that the applicant does not yet own the property but has a Purchase and Sales Agreement. The Merlino's currently live in Weymouth and are seeking a variance for this lot. They would like to divide the lot in half and there is currently a town drainage easement which has made the back portion of the property unusable. The back area is wooded and has a lot of debris because it is hard to maintain the rear of the property in its current configuration. The applicant wants to subdivide the land and sell it to Mr. Merlino. Mr. Merlino would like to build a 2 bedroom ranch style home with a garage. It is at the end of a dead end private way. Mary Ellen Schloss, Conservation Administrator, in a memorandum to the Board, explains that the existing lot is divided by an intermittent stream which receives run off from the area and originates in the wetland area on the South Shore Hospital property. Attorney Galvin said that the Conservation Administrator's memorandum states that the proposed subdivision requires a filing of a Notice of Intent with the Conservation Commission but the applicant is questioning whether or not that is in fact an intermittent stream. Attorney Galvin noted that they have a

petition from residents in support of the project and submitted the petition to the Chairman as part of the official record.

Chuck Golden said he has not seen the petition until now and asked if the applicant met with the abutters. Attorney Galvin stated that there was no neighborhood meeting.

Edward Foley stated the applicant has not submitted any drainage plans to address any potential flooding. Attorney Galvin responded that drainage plans would be submitted when filed with the Conservation Commission filing. Mr. Foley stated that he would like to see a drainage plan as well the Watershed Protection District labelled on the revised plan, a landscape plan specifying which matures trees will be removed, also show the proposed new paving on the road and lot. Also, Mr. Foley requested proposed elevations, the proposed utilities on the plan, and proof that they have legal rights to the private way.

Kemal Denizkurt is concerned about the hardship argument regarding limited access to the rear of the lot from Park Avenue. He asked the applicant if he ever considered a footbridge to go over the drainage easement to allow for access to the back of the lot.

John Moriarty agreed with Mr. Denizkurt and finds it hard to believe there is a hardship related to the land. The applicant's argument regarding the difficulty in maintaining the back portion of a lot does not qualify as a hardship. Attorney Galvin responded that he believes it does, as maintaining it on a regular basis is difficult. When it is wet the land is too soft. Attorney Galvin stated that the hardship is that it is extremely difficult to maintain the lot as one lot.

Abby McCabe, Principal Planner, stated that the applicant has 75 feet of frontage on the private way. She stated that she researched old Sanborn Insurance maps and found that the private way and the subject property is shown to have frontage on the 1928 maps and also shown on a recorded plan from 1937 that was included as an exhibit in the Board's packet as well as old Street Atlas Maps. The 1937 plan shows a 30 foot wide private way that extends 211 east from Torrey Street. If approved, the applicant would need to go before the Planning Board to set the road conditions and work with the Department of Public Works to establish the improvements to the public way. She also stated that the Conservation Administrator submitted a letter to the Board that the proposed project requires a filing with the Conservation Commission because it is within the buffer zone to the intermittent stream and reminded the applicant that he would need to recuse himself from the application due to a conflict of interest as a Conservation Commission member. Ms. McCabe also noted that her memorandum to the Board received this evening and dated January 29, 2014 notes that drainage plans, landscaping plans, elevations, and the proposed utilities were not submitted or shown on the plan but these items are not specifically required for single-family residential projects although they may be helpful to the Board when making a decision.

The Attorney stated that the application was filed as a variance application because it was filed a few days after the public hearing was closed with Town Council for a Zoning Ordinance Amendment that would no longer qualify the proposal to file under a special permit with the proposed new criteria before the Council.

The Chairman opened the hearing for public comments.

James Carson, 99 Torrey Street, stated that he grew up at this address and is a direct abutter to the subject property. The brook had about 4 feet of water just yesterday. He can only remember 1-2 times when the stream was dry. The 30 foot Private Way was paved in 2012 and was previously a dirt road. He is also concerned about the removal of existing trees on the property as some are very large and about 50-60 feet high. If those trees are taken out, and the land is leveled off he believes his back yard will flood. The land elevation at 99 Torrey Street has a 10 foot drop from the front of the house to the back of the house. Mr. Carson submitted photographs that were entered as exhibits.

Ken Long, 103 Torrey Street, on the corner Torrey Street and the private way. He stated that he has 64 signatures against this proposal and submitted the petition to the Chairman for the official record. He said that his property has a drain around his house because it's a low lying water area and believes this proposal will have an impact on all the surrounding houses. The abutters paid to have the right-of-way paved and also pays for the snow plowing. Mr. Long also asserted that his neighbor when owned by someone else had looked into developing the property further in the past and did not pursue because of the wetlands. He also noted that the property owners bring their rubbish barrels out to Torrey Street because the Town does not go down the private drive.

Mr. Galvin said the right-of-way is 30 feet wide but the pavement is only 12 feet wide and not the full width of the way. The applicant understands that they would need to provide additional paving to extend the road to the length of the proposed lot.

Carol Peach, 97 Torrey Street, stated that the area is zoned R-1 and which requires a minimum of a 25,000 square foot lot to build on it because Weymouth doesn't want the pork chops lots. She stated that she believed the land is wet with salamanders and frogs. Her concern is the size of the lot, the frontage and the drainage easement.

Amy Cristofery, 50 Burton Terrace, stated that she is concerned about flooding as she has lived at this address for 13 years and believes there is constantly water running through the area.

Walter and Kathleen Grant, 85 Tower Ave, are abutters to the property. They expressed their concern with the proposal and did not want to see the area developed as they have enjoyed the wooded area that is home to birds, turkeys, and deer.

Edward Grine, 97 Torrey Street, stated that he believed the proposal would be a burden to Mrs. Carson and Kenny Long with the trucks on their private way getting in and out of their driveways will be very difficult during construction.

Katie Mahoney, owner of the subject property at 85 Park Avenue, stated that she has lived at the property for 8 years and has not experienced much water there. The rear portion of the lot has also experienced illegal dumping and trespassing. She believes a new home would be an improvement to the neighborhood.

Dennis Carson, 99 Torrey Street, stated that the average lot size in that area is 16,000 square feet. The town told them it was a driveway and not a private way....until now.

Kathy Grant, 85 Tower Avenue, was concerned about the setbacks for the new dwelling and how close it would be to the surrounding houses. Mr. Galvin responded that the applicant will comply with the setback requirements.

William Stanley, 111 Park Avenue, has a grate that needs to be cleaned every time it rains.

Resident at 66 Burton Terrace, has not lived in the neighborhood long but suggested a drainage analysis or study would be helpful.

Dan Fahey, 90 Tower Avenue, was concerned with who would be responsible for maintaining the easement if the property is sold and a new dwelling constructed.

Councilor Harrington said he was not convinced with the applicant's hardship argument. He believes the intermittent stream and the preservation of the area for open space is important to the neighborhood and community.

Councilor Molisse said there is a concern with drainage and flooding in the area. He was also not convinced of the maintenance hardship argument.

The Chairman asked if the Board members had any further comments or questions on the application. Jonathan Moriarty commented that he is concerned about the 99 Torrey Street because the private way is currently being used as their driveway and if this is approved the new road improvements would need to allow room for access to 99 Torrey. He would also like to see utilities on the revised plans.

Ed Foley made a motion to continue this public hearing to the Board's March 19, 2014 meeting in the same room at 7:15 p.m. The motion was seconded by Kemal Denizkurt and voted unanimously. The Board requested revised plans showing drainage, utilities, paving, elevations, identifying mature trees to be removed and further proof of legal rights to the private way which may include the specific metes and bounds of the property.

APPROVAL OF PRIOR MINUTES

Ms. McCabe stated that the January 15, 2014 minutes have not yet been prepared and asked that they be continued to the February 5, 2014 meeting. The Board continued the review of the January 15, 2014 minutes to the next meeting on February 5, 2014.

SIGNING OF DECISIONS FROM PREVIOUS MEETING

Ms. McCabe noted that the decision for 466 Main Street Case #3217 approved on January 15, 2014 should also be continued to the next meeting on February 5, 2014 because the meeting minutes still need to be completed.

OTHER BUSINESS

Ms. McCabe informed the Board that all members must review and sign the state's conflict of interest laws and return as Board members are considered employees of the Town. The conflict of interest law and signature page were distributed to the Board members.

ADJOURNMENT

Ed Foley made a motion to adjourn the meeting at 9:30 pm and was seconded by Johnathan Moriarty. VOTED UNANIMOUSLY.

Respectfully submitted by,

Lee Hultin
Recording Secretary

Approved by:
