

**TOWN OF WEYMOUTH  
BOARD OF ZONING APPEALS (BZA)  
RECORD OF MINUTES AND PROCEEDINGS  
Wednesday, March 5, 2014**

**Members Present:** Richard McLeod Chairman  
Edward Foley, Vice Chairman  
Kemal Denizkurt, Clerk  
Chuck Golden  
Jonathan Moriarty  
Robert Stevens, Alternate Member

**Also Present:** Abby McCabe, Principal Planner  
Jeffrey Richards, Inspector of Buildings

Chairman McLeod called the Board of Zoning Appeals meeting to order at 7:35 p.m. at the McCulloch Building and explained the procedures that would be followed to the people present.

**Case #3218 –269 Park Ave. & 168 Ralph Talbot - Public Hearing (Continued from 12/4/13, 1/15/14, & 1/29/14)**

		<u>Members Siting</u>
Petitioner:	Joseph Brewster	Richard McLeod
Locus:	269 Park Avenue & 168 Ralph Talbot Sheet 46, Block 532, Lots 27, 28 & 29	Ed Foley Kemal Denizkurt
Zoning:	R-1 (Residence, Single-Family/Low Density)	Chuck Golden John Moriarty

Seeking a Special Permit under Zoning Ordinance Article XIII, Section 120-40 “Extension or Change by Special Permit of a Nonconforming Use or Structure”. The petitioner 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).

The Chairman called the applicant for case 3218 to the podium.

Attorney Jim Baldassini introduced the applicant and property owner, Joseph Brewster. Attorney Baldassini summarized the application before the Board continued from the hearing opened in December. The application was filed under Section 120-40 of the Zoning Ordinance which allows for an alteration or change of pre-existing nonconforming uses and structures. The three parcels are currently owned by Mr. Brewster and have been considered one parcels for zoning purposes. They are nonconforming because of the commercial uses in the residential zoning district. Mr. Brewster wishes to sell one of the parcels to new owner which would no longer be merged with the other two parcels. Since the Board’s last hearing in December revised plans were submitted that were certified by a professional surveyor that listed the zoning and parking requirements and proposes changing the lot lines to allow for the minimum required parking spaces to be provided on each lot for each of the two businesses. The lot at 168 Talbot Street will

be combined with the lot in the rear on Ralph Talbot and would continue as a parking area serving the business.

The Chairman asked if there would be any permanent barriers between the lots and if not, why not. The applicant responded that they are not proposing any as the buyer and seller have agreed to share parking. The Chairman stated that he would like to see a barrier to prevent vehicles from cutting through particularly with the proposed ice cream shop use and outdoor seating area popular with children.

Mr. Foley reviewed the information provided by the applicant on the lot sizes for lots in the neighborhood and found that many of them are over 20,000 square feet.

Mr. Denizkurt stated that he was concerned about creating another non-conformity with this proposal which would result in two non-conforming lots with respect to size and use versus the one non-conforming use today.

Mr. Golden also questioned the proposed new owner's intentions as the Board has only seen the current owner's application.

Mr. Moriarty stated he was not convinced that the proposal to sell one of the lots would not be more detrimental to the neighborhood which is the finding the Board has to make.

Mr. Foley noted that the Board was recently a petitioner on a zoning amendment that was just adopted by Council to prevent undersized lots from being further subdivided to create lots less than the minimum requirements.

Ms. McCabe, Principal Planner, noted that this application is different than other special permits that the Board has seen because although the lots have been merged under the common ownership principle, the three underlying parcels physically exists today and are not newly being created.

The Chairman opened the hearing up to public comment.

Bob, Al and Jenna Perete, family of the proposed new owner for the lot with the ice cream business stated that the intent was to keep the ice cream business seasonal as it has been and that no other changes were being proposed.

Tom Tanner, Park Avenue West resident, spoke in support of the proposal and also agreed that traffic signage or barriers may be needed.

John Burke, Park Avenue resident, expressed his concern and thought the proposal would more detrimental to the neighborhood and did not meet the required criteria for special permit findings.

John and Lisa, abutters at 255 Park Avenue, were supportive and did not have any concerns with the proposal.

Mr. Foley asked where the dumpster would be and asked that it be shown on the plan. The applicant stated that the dumpster would be at the rear of the building. Mr. Foley also questioned whether additional relief was needed such as a variance and stated that he would feel more comfortable with more information from the new property owner and the plans for the businesses and lot. Mr. Moriarty also expressed concern.

The Chairman explained to the applicant that they could proceed with the vote, withdraw without prejudice or continue the hearing. The applicant asked to continue the hearing to the April 2, 2014 meeting and will provide the Board with further information on traffic circulation, parking and a statement in writing from the new property owner.

Mr. Foley motioned to continue the public hearing to the April 2, 2014 meeting to allow the applicant time to provide further information on traffic flow, parking layout, and a statement from the new owner. The motion was seconded by Mr. Denizkurt and unanimously voted.

Mr. Denizkurt left the meeting.

**Case # 3225 - 186 Main Street – Discussion and deliberation on a public hearing closed on 2/19/14 (Continued from 2/19/14)**

		<u>Members Siting</u>
Petitioner:	186 Main Street, LLC	Richard McLeod
Locus:	186 Main Street (Route 18)	Edward Foley
	Town Atlas Sheet 29, Block 375, Lot 2	Chuck Golden
Zoning:	B-1 (Business Limited) &	Jonathan Moriarty
	Groundwater Protection Overlay	Robert Stevens, Alternate

The petitioner is seeking the following relief from the requirements of the Weymouth Zoning Ordinance: Special Permit: Storage in a roofed structure (Article VII, Section 120-24D).

Presently located on the premises is a vacant ~35,500 SF office building. The petitioner is proposing to redevelop the site for a self storage facility in two phases. The first phase proposes to demolish the existing building to construct a ~21,950 SF building for 502 units of self storage, fourteen (14) off-street parking spaces, drainage improvements and other associated site work. Phase two will consist of the construction of ~2,400 building to the south of the main storage building.

The Chairman reminded the Board that the hearing was closed at the last meeting on February 19 and they were now deliberating on the case. Mr. Stevens was concerned about the possibility of storage on other portions of the site since this was a large lot and only a small area is currently before them with this application. It was suggested to add a condition to clarify where there would be no storage. The applicant responded that the property also contains other uses and the vehicles that Honda keeps on site will be moved to the rear. It was the consensus of the Board that no exterior storage of vehicles or other items such as boats and trailers in front of the new building or along Main Street. At least a 50-ft perimeter around the new building was recommended to have vehicle or storage of any items only the parking spaces for the customer

and employee vehicles. Mr. Golden asked what was planned for phase II and the applicant said there were no plans at this time. Ms. McCabe noted that any new changes would require a special permit from the Board.

Ms. McCabe noted that she provided the Board members with a memo in their supplemental packets dated March 5, 2014 with suggested conditions of approval for review and distributed to the applicant. She also noted that the request from one of the members of the public to plant arborvitae along the north and south sides of the building was not incorporated into the revised landscape plan most likely because that is how the storage units enter the building. The revised landscape plan did however include more plantings than on the original landscape plan submitted with application.

The applicant's attorney, Frank Marinelli, stated that they received the memo and were amendable to the conditions with a few changes. They would like to specify the landscaped area be 25-ft in front of the storage facility and add except employee and customer parking in the seventh condition about no storage of vehicles. The Board also wanted to tweak the language on the storage and asked that the no storage areas be shown on a plan. A year for the length of reasonable amount of time in the third condition was also suggested. Mr. Marinelli requested that the Board continue the vote until the next meeting so the revised conditions could be reviewed by the owner who was not present this evening.

Mr. Foley motioned to continue the deliberation to the next meeting on March 19, 2014 for staff to revise the conditions and the applicant provide a plan showing where there will be no storage. The motion was seconded by Mr. Golden and unanimously voted.

**Case # 3226 - 856 Washington Street (aka 850 Washington Street), Public Hearing**

		<u>Members Siting</u>
Petitioner:	Bob Montgomery Thomas 848 Washington Street	Richard McLeod, Chairman Edward Foley, Vice Chair
Locus:	856 Washington St. (850 Washington St.) Town Atlas Sheet 30, Block, 387, Lot 3	Chuck Golden Jonathan Moriarty
Zoning:	HT (Highway Transition)	Robert Stevens, Alternate

The petitioner seeks to: Appeal of a decision of the Inspector of Buildings (Article XXIV, Section 120-119A (1)).

The petitioner has filed with the Board of Zoning Appeals an Appeal under the above section of the Weymouth Zoning Ordinance relative to a letter dated December 5, 2013 and electronic mail from January 10, 2014 from the Inspector of Buildings regarding property at 856 Washington Street (aka 850 Washington Street). Presently located on the premises at 856 Washington Street is a retail and storage building and off-street parking spaces granted a Special Permit by the Board for an expansion of a nonconforming structure in 2003 (Case # 2734). The petitioner is appealing the Inspector of Buildings's interpretation of the 2003 Special Permit.

Mr. Foley made a motion to open the public hearing on case #3226 and was seconded by Mr. Moriarty and voted unanimously.

Mr. Foley made a motion to waive the reading of the published legal notice and was seconded by John Moriarty and voted unanimously.

The Chairman stated that this was an application appealing the Inspector of Buildings decision stating that no loading space was required at 856 Washington Street in an old Board of Appeals case. The Chairman invited the Inspector of Buildings, Jeffrey Richards, to the table to summarize and explain his reasoning.

Mr. Richards stated that he received a written complaint from the petitioner, Mr. Montgomery Thomas, on December 2, 2013. On December 5, he provided a written response back to the petitioner addressing each of the 5 items in the December 2, 2013 letter. A short time later the petitioner submitted a response letter disagreeing with the Inspector of Buildings interpretation of the old case specifically the loading space. Mr. Richards stated that the plan submitted with the application and in the file for case 2734 for 856 Washington Street did not show a loading space and he interpreted that to mean that no loading space was required by the Board as there was none shown on the plan. In early January, Mr. Richards maintained his position that item # 4 regarding the requirement of the loading space was not required by the Board as it was not shown on the plan.

The Chairman asked the petitioner, Mr. Montgomery Thomas, to summarize his petition. The applicant stated that he has reviewed the 2003 case 2734 file and that the plan in the file was entitled a building location plan and was not updated as it was dated from 1994 and did not have a then current professional engineer or surveyed stamp which he believes may not have been the approved plan as the approved plan was not referenced in the Board's decision. He further noted that the Board's 2003 decision did not specifically waive the loading requirement or reference a plan. He distributed two exhibits to add to the file and were listed as exhibit A and exhibit B. The applicant explained that exhibit A was the death certificate for the land surveyor from the so called approved plan stating his death was prior to the 2003 case and exhibit B was a narrative to further accompany his petition.

Mr. Foley reviewed the conditions of the 2003 special permit decision granted by the Board and stated that it is his understanding that all of the other items have been addressed or are in the process of being completed such as the accessible parking and landscaping.

Mr. Moriarty stated that the plan that the Board approved did not have a loading space and felt that the appeal period for that application from 2003 has expired.

The Chairman also stated that he did not believe the Inspector of Buildings could enforce the loading space if it was not on the approved plan. He suggested the applicant work with the property owner or the district Councilor to see if an agreement can be reached to satisfy everyone and possibly provide a loading space. If the petition is denied tonight the only other option for the applicant is to appeal their decision.

The applicant again stated that he did not believe the old plan was correct and that the loading space requirement was never specifically waived by the Board.

Mr. Foley explained that the Board accepted the plan at the time the application was before them. He recalls the applicant's concerns when the case was before them and believed that they tried to address is concerns at that time and included extra conditions for the berm and fence.

Ms. McCabe stated that she received a letter today from Councilor Arthur Mathews as he was unable to attend the hearing asked that the letter be read into the record. Ms. McCabe read the complete letter for the Board. The letter stated that he believed there were loading and parking issues at the site and suggested deliveries use smaller vehicles.

The applicant asked that his application be withdrawn and the Chairman responded that appeals could not be withdrawn and the Board had to make a decision on the case.

Mr. Foley made a motion to deny the applicant's request to overturn the Inspector of Buildings decision because there was no loading space shown on the approved plan, the statute of limitations has expired for the 2003 special permit that did not require a loading space, and the applicant did not prove his case to overturn the Inspector of Buildings decision. The motion was seconded by Mr. Moriarty and unanimously voted.

**Approval of Minutes**

The minutes from the February 19, 2014 meeting were continued to the next meeting on March 19, 2014 because they still need to be prepared.

**Signing of Decisions from prior meetings** – 52 High Street (Case 3222) and 67 Wilson Avenue (Case 3224) were continued to the March 19, 2014 to be finalized with the minutes.

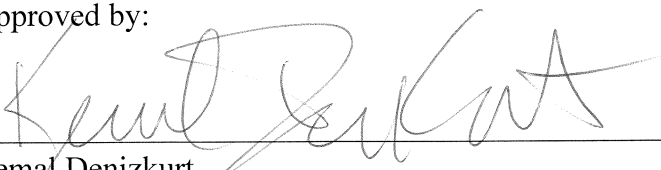
**Other Business** - Update on Zoning Ordinance Amendment to Section 120-53 "Exceptions by the Board of Appeals" subdivision of undersized lots. Ms. McCabe informed the Board that the Zoning Amendment that they submitted in the fall was adopted as written by the Council on March 3, 2014 and will be in effect from the time of the vote.

**Adjournment**

Ed Foley made a motion to adjourn the meeting at 9:50 p.m. and was seconded by Johnathan Moriarty and was unanimously voted.

Respectfully submitted,  
Abby McCabe

Approved by:

  
Kemal Denizkurt

3/19/2014  
Date