

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
January 5, 2011**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, January 5, 2011 at 7 pm at McCulloch Building, Mary McElroy Meeting Room, 182 Green Street, Weymouth, MA for the purpose of passing on the application of certain persons whose petitions were properly before the Board. Notice of public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

Present: Richard McLeod, Chairman
 Edward Foley, Vice-Chairman
 Francis Kenneally, Clerk
 Chuck Golden
 Kemal Denizkurt
 Jonathan Moriarty

Not Present: Robert Galewski

Staff: Rod Fuqua, Principal Planner

Recording Secretary: Mary Barker

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A motion was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and unanimously voted.

BZA CASE #3117 - Public Hearing,(cont.), 729 Bridge Street

Application of PS Weymouth LLC for property located at 729 Bridge Street, also shown on the Weymouth Town Atlas as Sheet 8, Block 15, Lot 1, located in B-1 zoning district, seeking a variance for signs in business districts.

Members sitting: Richard McLeod, Chairman
 Francis Kenneally, Clerk
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty

A motion was made Kemal Denizkurt to approve a request by the applicant to withdraw the petition without prejudice. The motion was seconded by Francis Kenneally and unanimously voted.

BZA CASE #3119 - Public Hearing, (cont.), 21 Western Avenue

Application of Ernest Bettuchy for property located at 21 Western Ave., also shown on the Weymouth Town Atlas as Sheet 4, Block 456, Lots 46 & 13, located in R-1 zoning district, seeking a special permit or variance under Chapter 120-51, Table 1&120-53 to subdivide a lot

with two houses. Lots were separate but because of common ownership the lots are now considered one for zoning purposes.

Members sitting: Richard McLeod, Chairman
 Francis Kenneally, Clerk
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty

A motion was made by Kemal Denizkurt to approve a request by the applicant to withdraw the petition without prejudice. The motion was seconded by Francis Kenneally and unanimously voted.

BZA CASE #3096 - Public Hearing, (cont.), Norma Avenue

Application of Kenneth Ryder for property located at Norma Avenue, also shown on the Weymouth Town Atlas as Sheet 24, Block 318, Lot 104, located in R-1 zoning district, seeking a variance from the minimum upland lot area.

Members sitting: Richard McLeod, Chairman
 Edward Foley, Vice-chairman
 Francis Kenneally, Clerk
 Chuck Golden

Attorney Gregory Galvin, with offices at 775 Pleasant Street, and Ken Ryder appeared before the Board. There was a brief discussion due to the absence of Robert Galewski regarding the number of votes required to pass on the application for variance or for special permit. Variance will require a majority vote. Attorney Galvin reviewed the change in plans. It has gone back to the Planning Board with a request to rescind the subdivision plan that had been approved. The Planning Board is willing to approve the drafted plan with Engineering issues addressed, but does not want to take action until the BZA has rendered its decision. The initial plan was submitted to the Planning Board in 2006 and was approved for a 3-lot subdivision with sufficient upland area for two lots and a turnaround on Norma Ave. and one lot on Healy Road. The property is surrounded by wetlands and the Braintree/Weymouth recreation area. The plan has lost upland area because of the Conservation Commission wetland requirements and the 10' drainage easement was not counted in upland area. Due to the soil conditions and the configuration due to the Planning Board's desire to have a turnaround a hardship exists. With homes on two lots, there is not sufficient upland area for the third.

Rod Fuqua reviewed the history. The development has changed from the original concept, which had two lots accessed from Norma Avenue and one lot from Healy Road to the opposite with one lot from Norma Avenue and two lots on Healy Road. It's more advantageous to bring two in from Healy Road. There is still a lengthy permitting process ahead. The Planning Board has continued its hearing until the BZA has made a decision. He also noted the Planning Board prefers this layout instead of the cul-de-sac and larger paved area. He also reviewed the comments from the DPW. He reviewed correspondence from Mary Ellen Schloss, Conservation Commission.

A motion to close the public hearing was made by Edward Foley, seconded by Francis Kenneally and unanimously voted.

To vote on the of BZA Case No. 3096 to allow a variance from the upland minimum lot area

A motion was made by Edward Foley, seconded by Francis Kenneally to approve the application for a variance as per plans and application submitted.

FINDINGS

The Board found that the variance would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance.

1. The applicant has shown a hardship exists with the previous subdivision layout due to soil conditions and topography.
2. The revised plan will eliminate the cul-de-sac per the wishes of the DPW.
3. There will be a reduction in the amount of impervious area by eliminating the turnaround.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a variance.

BZA CASE #3116 - Public Hearing, (cont.), 141 Broad Street

Application of RCL Realty Trust for property located at 141 Broad Street, also shown on the Weymouth Town Atlas as Sheet 20, Block 274, Lot 17, located in R-4 zoning district, seeking to subdivide the property so that the commercial business is on a separate lot from the multi-family dwelling.

Members sitting: Richard McLeod, Chairman
 Edward Foley, Vice-chairman
 Francis Kenneally, Clerk
 Kemal Denizkurt
 Chuck Golden

Gregory Galvin and the owner of 141 Vine Street appeared before the Board. The property was originally two parcels. The corner parcel is an 8,000 sq. ft. commercial property; convenience and liquor store. The other parcel has a 20 ft. opening to Broad Street and is 8,900 sq. ft.. when the property was acquired, the owner had an application approved under R-4 zoning to build a second building on the property. A four unit residential condo unit has been built with sufficient parking. The owner is seeking to subdivide the property because the entire property is considered commercial property for insurance purposes. He wishes to re-establish two separate lots, with the original lot lines and requires relief because of the setback requirements. There is adequate parking for 8 vehicles along the rear of the building with space to turnaround. He provided a plan of the parking. Parking for the commercial building exists in the front of that building. The delivery access was discussed. All deliveries to the commercial property with the exception of milk will be via the front door. Milk truck will park on Broad Street and hand-truck the twice

weekly deliveries in to the existing side door which is a direct access to the cooler, without interference to access to the residential building. Having separate properties will allow the owner to sell the residential units as condos while maintaining his commercial property.

Discussion followed. Edward Foley noted the new lot line is more nonconforming than the original nonconformity; from 2 ft. to 1 ft. and asked whether the applicant is thereby creating the hardship. He also noted the lot size is small but average for the area. Kemal Denizkurt asked if the back parking lot has been striped; it is paved, but not yet striped. Attorney Galvin noted the utility lines will need to be moved, but excavation cannot be done now until spring. Edward Foley asked if an occupancy permit has been granted. It has not been finalized. Kemal Denizkurt asked who will be responsible for the residential driveway maintenance; it will be the condo owners. Rod Fuqua noted the application has been routed to the town departments with no objections.

The property is surrounded by Welch Healthcare properties, and there are several concerns. Attorney Graham Catlin of Goulston & Storrs presented a letter by John E. Twohig on behalf of Colonial Nursing Home of Weymouth, Inc. and highlighted the concerns for the Board, which include density and use of the driveway, parking density, snow removal, trash receptacles, and landscaping to shield residential parking which faces a Welch building, including expanding the fencing to along the third side of the lot. He also noted that if the Board acts favorably, the letter also has potential conditions for consideration.

A motion to close the public hearing was made by Edward Foley, seconded by Francis Kenneally and unanimously voted.

To vote on the of BZA Case No. 3116

A motion was made by Edward Foley, seconded by Francis Kenneally to take the application under advisement so staff can come back with its recommendation, and the Board can go through the abutter's concerns and craft a set of conditions. Unanimously voted.

Submission:

Exhibit #1 – 6 photographs

Exhibit #2 – Building Permit

Exhibit #3 – Plan, Sheet 20

Exhibit #4 – Letter from John Twohig, of Goulston & Storrs dated January 5, 2010

Exhibit #5 – revised Plan submitted 10/6/09

Rod Fuqua will continue this to a February agenda as Edward Foley will not be available for the next scheduled meeting.

BZA CASE #3118- Public Hearing, (cont.) 180 Bridge Street

Application of William Gavigan for property located at 180 Bridge Street, also shown on the Weymouth Town Atlas as Sheet 6, Block 62, Lot 20, located in B-1 and R-1 zoning district, seeking to upgrade and modernize sign in keeping with new corporate designs.

Members sitting: Richard McLeod, Chairman
 Francis Kenneally, Clerk
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty

Bill Gavigan and franchisee Victor Cavahlo appeared before the Board, with new drawings showing signage on the front with no changes, taking the sign off over the awning, and proposed backlighting only on the “DD” logo (reducing the awning light). The new plans were on view at the store so the neighbors could review. Rod Fuqua noted the awning size was also reduced in the back and the canopy lighting addressed as the neighbors had requested.

A MOTION to close the public hearing was made by Francis Kenneally, seconded by John Moriarty and unanimously voted.

To vote on the of BZA Case No. 3118 to allow a special permit for upgrading the signage

A motion was made by Francis Kenneally, seconded by John Moriarty to approve the application for a special permit as per plans and application submitted.

FINDINGS

The Board found that the special permit would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance.

1. The application has met the criteria in zoning to upgrade the signs with no increase in total signage.
2. This is an extension or change of existing nonconformity.
3. The specific site is an appropriate location for such a use as the business operates currently as the business currently is located on site.
4. The use involved will not be detrimental to the established or future character of the neighborhood or town. The applicant has made concessions at the request of the neighbors to reduce the size and the colors of the rear awning.
5. There will be no nuisance or serious hazard to vehicles or pedestrians as no change was made to access.
6. Adequate and appropriate facilities will be provided for the proper operation of the proposed use as current operations are maintained.
7. The public convenience will be substantially served by reducing sign glare from the drive through in the rear.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a special permit, with the following conditions:

1. Incorporate by reference the Plan dated December 20, 2010.
2. All outstanding taxes are to be brought up to date.
3. A trash receptacle will be returned to the outside of the property.

Minutes

December 15, 2010 Meeting;- A motion was made by Chuck Golden, seconded by Francis Kenneally to approve the minutes of the December 15, 2010 meeting and was unanimously voted.

Other Business

Rod Fuqua noted that attorney Robin Moroz has been appointed and sworn in as an Alternate Member of the Board. She has a background in corporate zoning petitions and may be present at the next meeting to observe.

At 8:30 PM, there being no further business, a motion was made and seconded to adjourn the meeting and was unanimously voted

Respectfully submitted:

Francis Kenneally, Clerk

Date