

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
January 6, 2010**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, January 6, 2010, at 7:00pm at McCulloch Building, Whipple Center Conference Room, 182 Green Street, Weymouth, MA for the purpose of passing on the applications of certain persons whose petitions were properly before the Board. Notice of the public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

BZA CASE #3052 84 Liberty Street (cont.)

Application of T-Mobile Northeast LLC for property at 84 Liberty Street, also shown on the Weymouth Town Atlas Sheet 55, Block 607, Lot 10, located in a PIP zoning district for a special permit for wireless communication, freestanding structure in PIP zoning district and variance from height limitations of Table 1, Schedule of District Regulations.

Present:	Richard McLeod, Chairman Francis Kenneally Kemal Denizkurt Charles Golden Robert Galewski
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

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.

Mr. Parisi appeared before the Board on behalf of T-Mobile. He noted that since the prior hearing a lot has transpired and there is much information to hand out this evening.

Mr. Parisi stated that they reviewed the possibility of locating the tower at Southfield, the former naval air station. He submitted documents from Tri-Town Development Corporation and the Coast Guard both noted that the area in question has restrictions on locating the tower.

Mr. Parisi submitted documentation regarding the affect that locating a cell tower near a residential neighborhood would have on property values. A consulting report was prepared for T-Mobile by George F. Valentine of Valentine Appraisal Associates. Mr. Parisi commented that the report indicates that cell towers have no impact on real estate values in the vicinity of wireless facilities.

Mr. Parisi noted that the Board had indicated that the applicant needs to substantiate the need for the site. He stated the he can analyze dropped call data from adjacent sites of which there are several which was submitted at the last hearing. He stated that T-Mobile's threshold is .5%; he noted that 1.5 to 2.5% of calls in this area are being dropped.

Mr. Parisi stated that the applicant has looked at relocating the tower on the same lot to move it further away from the residential lot line. He stated that there is a scenario that would locate the tower more than 200 feet from the residential line and therefore won't need a variance. This

BZA MINUTES

January 6, 2010

avoids the need for a dimensional variance. He stated that this relocation does not affect technical characteristics of the request

Mr. Parisi stated that other potential alternatives have been considered such as to analyze the height to determine the minimum height required and to consider moving the site further east, down Sharpe Street into Hingham. He pointed out that moving the site that far away does not avoid the need for the tower at the Hanabury site

Mr. Parisi stated that the tower height initially requested is 120 feet as this was the optimal height recommended by the engineers. He noted that at the first hearing there were discussions regarding a reduction to 100 feet. Every time you lower the tower, holes are created somewhere else. He stated that he believes that 100 feet is the best compromise. He submitted maps to show the coverage at the different heights of the proposed tower.

Mr. McLeod asked what the darker green means on the map. Mr. Parisi stated that as wireless technology has progressed, cell phones are being used not only in cars but also in buildings. He stated that T-Mobile is looking to provide a better quality signal for phone calls in buildings.

Mr. MacLeod asked if there is an industry average for a threshold. Mr. Parisi stated that he can only speak for T-Mobile whose goal was initially to provide neg 91; in the past 7 years this goal has changed to neg 84; and recently the goal is neg 76. The maturity of the network determines the threshold that a company strives for.

Mr. Parisi stated that 19% of MA residents only have wireless phones and 50% of 911 calls last year were from wireless phones.

Mr. Denizkurt asked what is the industry average of dropped calls. Mr. Parisi stated that there is no average. He stated that he can give this information for a specific location.

Mr. Denizkurt stated that he did not know if the threshold that Mr. Parisi is realistic.

Mr. Denizkurt stated that part of the application is based on the coverage gap in this particular area. He asked if this coverage gap is a T-Mobile gap and what other providers who provide services in this area.

Mr. Parisi stated that he can only speak to T-Mobile and he stated that if he were able to show a coverage map for ATT, it would look completely different. He noted that gaps are carrier specific and different carriers use different technology.

Mr. Denizkurt stated that it is possible that the coverage gap that T-Mobile is trying to fill in is already filled in by other carriers.

Mr. Parisi stated that about 20 years ago the federal government broke up ATT into multiple land line companies. When wireless technology first came out few licenses were issued. Initially the government only issued two to each area. It was determined that this was not enough and the number of licenses was increased to 7-8 service providers in order to facilitate competition.

BZA MINUTES

January 6, 2010

Mr. Parisi stated that federal laws have been passed that stated that there cannot be discrimination among carriers. Just because there is one carrier in an area does not mean another carrier can be denied access to the area.

Mr. Denizkurt stated that it is not discrimination. He sees T-Mobile's request as a want as opposed to a need. He noted that there is existing coverage in the town. He noted that Mr. Parisi has mentioned public safety and the need to cover T-Mobile's gap. He stated that if there are other networks available, is there actually a gap.

Mr. Parisi stated that the federal government has explicitly stated that simply because one company may have coverage in a town does not mean that Boards can discriminate between carriers. The goal of this is to provide multiple choices to stimulate competition, improve service, and bring down the cost.

Mr. Denizkurt asked about the 200 foot radius in which there are buildings that are within this radius. He asked what are these buildings.

Mr. Parisi stated that these buildings are a barn, a residence, a commercial warehouse, and a residence. He pointed them out on the map for Mr. Denizkurt.

Mr. Parisi stated that there is a lot of perceived concern regarding the visibility of this tower. He stated that he does not think that the tower will be as visible as people think it will be. He stated that it will definitely be visible from Liberty Street. He stated that he can hoist a 3 foot diameter balloon up to 120 feet to see the height.

Mr. Kenneally asked if there is an industry standard for dropped calls. Mr. Parisi stated that it depends on the maturity of a carriers' network.

Mr. Golden asked what is the current level of service in Weymouth, Hingham, Rockland, other areas. Have you reach the threshold.

Mr. Parisi stated that different companies have different technologies. He stated that newer companies are at a higher frequency and need more sites. Older companies are on lower frequencies which has a better signal. He stated that you cannot "turn up" the signal on a site. The Hanabury site would broadcast at about 100 watts. This reaches about a couple of square miles. Wireless communication is two way communication from tower to receiver and back. He pointed out that a cell phone broadcasts at about.3 watts.

Mr. Parisi stated that the WBZ towers in Newton broadcast at 50,000 watts but this is for one way communication from tower to receiver.

The Chairman asked if the public had any comments, to which there was the following comments.

Councilor Smart asked if the applicant would clarify exactly what is being proposed at this time as to the actual height and location.

BZA MINUTES

January 6, 2010

Mr. Parisi stated that the applicant is applying for a special permit to build a tower in an industrial zone. He noted that initially the applicant had applied for a setback variance, but the application has been amended to lower the tower from 120 feet to 100 feet.

Councilor Smart stated that he is still opposed and that this is more of a want than a need; no hardship has been shown. He commented on the property study and noted that the comparison of a 50 foot pole to 100 foot tower is not comparable. He also pointed out that the other locations shown in the property study have larger lot sizes than Weymouth has.

Robert Deven stated that he is the attorney for the Weathervane Homeowners Association as well as resident of Weathervane. He pointed out that the Board has received a tremendous amount of technical data. He suggested that the Board require that the applicant provide for a peer review on technical data.

Mr. Deven stated that relocated tower complies with dimensional requirements except for height as the allowable height is 35 feet. He noted that the town can not unreasonably use local regulations to frustrate the development of telecommunications facilities; however the town can use reasonable local regulations to ensure statutory compliance. He also noted that a hardship relating to the shape, topography, and/or soil conditions is required for a variance

Mr. Deven pointed out that this parcel has been put to an economic use by Hanabury. He noted that he has never seen a court decision in Massachusetts upholding a hardship for a variance when the site already has an economically feasible use.

Mr. Parisi stated that the hardship is to the telecommunications company as a significant gap in coverage area constitutes a unique circumstance when a zoning variance is required. The issue is a dimensional variance.

Rick Pessin, Sandtrap Circle, stated that the property study is not adequate as the locations are not compatible, nor is the comparison to a 50 foot pole in Weymouth. He stated that the study should examine everything in the area and see how it affects the local area.

Mr. Parisi stated that the balloon would be hoisted this Saturday January 9th with an alternate date of January 16th. The weather will be the determining factor – wind is the biggest factor. The balloon will be up between 10am to 1pm.

Mr. Parisi stated that he provided data to show that towers do not affect property value. He pointed out that there are no other towers in Weymouth in residential zones. He noted that there is no evidence that towers affect property value.

Councilor Smart stated that there are case findings in New York that show a perception by people of health concerns and the lowering of property values and that it takes longer and is more difficult for residents to sell their homes.

Mr. Parisi stated that he is not opposed to a peer review.

BZA MINUTES

January 6, 2010

Mr. Denizkurt stated that he would like to see a peer review. He noted that he questions the industry average for dropped calls and whether the goal they want to reach is realistic.

Mr. Parisi stated that he can provide information for T-Mobile. He stated that dropped call data is considered proprietary and confidential.

Mr. Fuqua stated that he believes that the Board is qualified to make the judgment as to a hardship. He stated that the peer review would be limited to technical data. The Board would need to spell out what it wants reviewed.

Mr. Denizkurt stated that the peer review to focus on dropped calls and coverage in the area that is trying to be filled. Is the applicant trying to achieve calls that are just "typical" for the state.

Mr. Parisi stated that the focus should be on the fact that there is a significant gap on coverage maps. "Neg" 76 in one location and "neg" 76 in another location – the area in between is not at "neg" 76; this is the significant gap.

Mr. Deven stated that he believes that a peer review will help to point out if dropped calls are abnormal and can also give advice as to minimum tower height.

Mr. Parisi stated that in analysis done for the town of Hingham consideration was given to the alternatives and can the tower height be lower.

Mr. Parisi changed the date for the balloon to January 16th with an alternate date of January 23rd from 10am to 1pm.

It was agreed that a peer review would be completed and that the information will be provided to the Board prior to the February 17, 2010 meeting.

A MOTION was made by Mr. Galewski to CONTINUE the public hearing until February 17, 2010 and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

HEARING CONTINUED TO FEBRUARY 17, 2010

BZA CASE #3067 82 Broad Street (cont.)

Application of Vladimir & Melsi Xhengo for property at 82 Broad Street, also shown on the Weymouth Town Atlas Sheet 20, Block 269, Lot 19, located in a B-1 zoning district seeking a special permit and/or variance under Article XVII, Chapter 120-70, 120-71, 120-72, and 120-74.D to convert an existing office building to a restaurant with some off-street and off-site parking together with some on street parking more than 150 feet of the locus. Further due to the use of valet parking some spaces may be less than 9 feet by 18 feet.

Present:	Richard McLeod, Chairman Mary McElroy, Clerk Francis Kenneally Charles Golden
Not Present:	Edward Foley
Staff:	Rod Fuqua, Principal Planner

BZA MINUTES

January 6, 2010

Recording Secretary: Janet Murray

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.

Mr. McLeod noted that the Mullin Rule will apply for Mr. Foley who left ill this evening. He stated that Mr. Foley will read the minutes and listen to the proceedings.

Attorney Gregory Galvin appeared before the Board on behalf of the applicants. He stated that at the last hearing the applicant was asked to produce certain information for the Board.

Mr. Galvin noted that he had submitted a petition to the Board in support of the application. He stated that upon further review of the petition, it was noted that there were names of people who were not from Weymouth and also some names were not readable. Mr. Galvin submitted a more accurate photocopy.

Mr. Galvin stated that Mr. Foley had asked for information regarding the number of accidents at the intersection of Broad Street and Washington Street. Reports received from the Police Department for the two year period of 1/1/08 through 1/5/10 showed that there were eleven (11) accidents reported. He also noted that at the intersection of Washington Street and Pleasant Street, nine (9) accidents were reported during the same time frame. At the intersection of Main Street and Columbian Street ten (10) accidents were reported.

Mr. Galvin stated that the applicants had done an informal parking survey of the number of vehicles parked along Washington Street between Richmond Street and Broad Street on the same side as the proposed restaurant. On the survey SS denotes same side and DS denotes different side. No note is the same side. He indicated that the survey was done over a six day time frame at various days and times; at any one time the maximum number of parked cars was four (4).

Mr. Galvin submitted pictures depicting the area after a significant snow storm showing snow conditions. He indicated that the pictures were taken on 12/22/09 and also pictures were taken on 12/26/09 and 12/27/09 between 12pm and 3pm.

Mr. Galvin noted that it is not financially feasible to have less than 75 seats. He pointed out that there are two other hearings required because he needs a common victuals license and an alcohol license. He indicated that the restaurant could operate on Sunday through Wednesday, closing no later than 12 midnight and on Thursday through Saturday, closing no later 1am.

Mr. Galvin noted that the town's traffic engineer had submitted a traffic report. He stated that this report showed difficulties for deliveries and trucks maneuvering through the lot because of parked cars. He stated that the deliveries would be accepted only during non-business times so there would be no customer vehicles on site during delivery times.

Mr. Galvin noted that there are several other restaurants in town that do not have their own parking lot.

BZA MINUTES

January 6, 2010

Mr. McLeod stated that the Blue Pointe Bistro needed 40 spaces and only had 17 on site, and Jimmies Diner needed 40 spaces but only had 15 on site. This application needs 50 spaces and only has 16 on site.

Mr. McLeod pointed out that the Blue Pointe Bistro has access to a municipal parking lot.

Mr. Galvin noted that Blue Pointe Bistro does not offer valet service.

Mr. McLeod stated that upon reading the details of the application that this is a family style restaurant. He noted that kids are not out this late; a 1:00 am closing is not family oriented.

Mr. Galvin stated that he had indicated that if the customer base was not there the applicant would not open. He pointed out that the closing hours of other restaurant are similar.

Mr. Galvin stated that the 99 Restaurant is open until 1am as is the Venetian Restaurant yet both are considered family restaurants.

Mr. Golden stated that when customers comes into the restaurant's parking lot to park, there are two (2) left turns on Washington Street if the patron self parks and three (3) left turns if the patron uses valet parking (in to be valet parked, out to be valet parked, back in to return to customer, customer leaves).

Mrs. McElroy stated her concerns regarding traffic and parking and noted that this location is very busy and a restaurant on this site would be dangerous.

Mr. Galvin stated that even if this location has an office building there would still be traffic.

Mr. McLeod stated that an office building would not generate as much traffic as a restaurant.

The Chairman asked if the public had any comments, to which there was the following comment.

Marion Barrett, 8 Fields Avenue, requested that if this application is approved that the following restrictions be imposed; that there will be neither live music or DJ activity nor will there be any take-out.

Amy Gwen noted that nine (9) of the seats are dedicated to a bar area for standing/grouping. She pointed out that on the first floor this represents 20% of the restaurant.

Ms. Gwen noted that although truck movements would occur on off business hours, they will occur during the am peak hours of traffic on Washington Street. Also larger trucks will utilize Washington Street to back up and into the site.

Ms. Gwen stated that it is not clear from site plan as to the stacking in the parking field. She noted that staging for valet should not be counted as spots as they are dedicated for a specific use. She also noted that the ingress and egress for valets are not detailed to show where the cars will go when cars are arriving to the restaurant and others are leaving.

BZA MINUTES

January 6, 2010

She suggested that the applicant supply a list of local family restaurants and bars in the area to compare hours but also to note whether the establishment is a bar, restaurant, or pub.

Ms. Gwen stated that the applicant will need to provide coordination to ensure there is no back up into intersection. She noted that from Field Avenue to Broad Street an MBTA bus stop.

Mr. Galvin stated that the applicant is prepared to make adjustments to the plan as follows: Sunday to Wednesday to have the closing be at 10:30pm instead of midnight, and Thursday to Saturday to have the closing at midnight instead of 1am. He is concerned about reducing the number of seats lower than 75 because of financial constraints but would be willing to reduce seating to 70.

Mr. McLeod asked for clarification on why fewer seats creates such a financial constraint.

Mr. Galvin noted that there is the cost of purchasing the property, renovations, lease for parking lots, and valet parking.

Mr. McLeod stated that with the reduction of the number of seats, there could be less parking required. He also stated that the size of the requested variance is a concern. The applicant is causing hardship with the request.

Mr. Galvin stated that the hardship is that the parking lot is too small for the size of the existing building. The parking area is existing and not expandable and it is too small for a building in a B-1 zone. The building was originally designed for municipal use.

Mr. McLeod stated that the location is at a busy intersection and public safety is a concern as is the size of the parking area.

Mr. Golden asked what the plan for Brother's Roast Beef is as these two restaurants are close together.

Mr. Xhengo pointed out that Brother's is a fast food restaurant and the new restaurant would be sit down and not provide take out.

Carol Foley owner of Looking Good Hair Salon pointed out that patrons going for a drink would not valet park. She is concerned with parking in front of her shop. She pointed out that the applicant's pictures were taken over a long weekend when shops were closed.

A MOTION to close the public hearing was made and seconded, and was UNANIMOUSLY VOTED.

A MOTION was made by Mrs. McElroy to take this matter UNDER ADVISEMENT and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

BZA CASE #3071 141 Broad Street

Application of RCL Realty LLC for property at 141 Broad Street, also shown on the Weymouth Town Atlas Sheet 20, Block 274, Lot 17, located in an R-4 zoning district seeking a special

BZA MINUTES

January 6, 2010

permit and/or variance under Chapter 120-40 to modify an existing non-conforming building by adding an exterior wall mounted ATM and to add a sign on the liquor store side.

Present: Richard McLeod, Chairman
Mary McElroy, Clerk
Francis Kenneally
Charles Golden
Kemal Denizkurt
Staff: Rod Fuqua, Principal Planner
Recording Secretary: Janet Murray

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.

Attorney Gregory Galvin appeared before the Board on behalf of the applicant, Mr. Lalani. He stated that the applicant has been at this location for 12 years, first as a franchisee and then as the owner. He noted that Mr. Lalani is also the owner of the abutting liquor store. Mr. Lalani is looking to put in a 24 hour ATM machine on the outside of the building in accordance with the plans submitted to the Board. The machine would be in an area under a canopy in order to provide an additional service to customers who would not need to go into the store to access the machine.

Mr. Galvin stated that the building is an existing non-conforming. The machine will extend out from the building similar to the air machine that is currently located at the front of building.

Mr. McLeod asked if this would be a drive-up machine.

Mr. Galvin stated that it would not be a drive-up machine. He also noted that the machine inside the store inside will be eliminated. Currently the store is open from 6am to 10pm.

Councilor Molisse submitted a letter expressing opposition to this request as the location is surrounded by residents and would cause disturbance, increase traffic, and litter in the area.

Mr. Galvin pointed out that Mr. Lalani operates a family run business and tries to maintain good neighborly relations.

Mr. Denizkurt asked about the lighting.

Mr. Lalani stated that there would be lighting in the canopy which would shine down onto the machine and the area immediately around it.

Mr. Galvin stated that the second part of the application is for a sign for the liquor store. The existing sign is between 12 and 13 feet across. He would like to increase it to 19 feet by 3 feet which is less than the maximum allowed by the town bylaws. The maximum allowed in the bylaws is 60 square feet; this request would be for 57 square feet. He also noted that the frontage between the two streets is 197 feet (60x137).

BZA MINUTES

January 6, 2010

Mr. Fuqua stated that the ATM request is a special permit for a change to an existing non-conforming and the sign request is for a variance.

Rod Fuqua stated the application was routed to various Town Departments and received favorable or no adverse comments:

Mr. Galvin stated that this would be a walk up ATM. Cars do not park in front of the store and that there is a six (6) foot sidewalk across the front of the building.

The Chairman asked if the public had any comments, to which there was the following comment.

Maureen Kiley, 10 Vining Street, stated that she lives directly across the street from the store. She stated that she is constantly picking up trash such as coffee cups, newspaper wrappings and lottery tickets. She also stated that patrons for the store park their cars in front of the house. She informed the Board that the applicant had been requested that a trash receptacle be placed outside of the store, but this was not done.

Ms. Kiley stated that the light on the existing sign is bright. She noted that in addition to trash and parking there has also been issues with snow plows.

Ms. Kiley stated that the store currently has two ATMs, one inside the package store and one inside the convenience store. She stated that she believes that the owner is looking to enhance his revenues at the expense of the neighbors. She stated that the ATM will require additional lighting for security.

Jack Kiley, 10 Vining Street, repeated concerns about rubbish and the need for a barrel outside. He noted that he has contacted the Board of Health. He stated that the store does not need a 19 foot sign. He noted that snow has been pushed into his chain link fence. He does not believe that this establishment has been a good neighbor.

Katherine Howes, 144-146 Broad Street, stated that she has lived at this location for 60 years. She stated that there was formerly a telephone booth that had to be removed because of vandalism. She pointed out that there is an ATM at the corner of Washington and Broad Street. She also pointed out that patrons can use the ATM inside.

James Deneill, 142 Broad Street, stated that the lighting is bright and there is trash such as nips and scratch tickets that comes from the site.

Mr. Denizkurt asked about the machines inside the building.

Mr. Galvin stated that the machine inside of the convenience store will be removed; the one on the liquor store side will remain.

Mr. Denizkurt asked if there is a trash barrel on the site. Mr. Lalani stated that there is a barrel located inside the door but there is not one outside the door.

Mr. Fuqua asked if the light on the sign goes off when the store closes at 10pm.

BZA MINUTES

January 6, 2010

Mr. Lalani stated that the lights are turned off. He stated that the ATM sign will be on.

A resident noted there have been several accidents at Broad, Vining and Webb.

Richard Welch, owner of the nursing home that abuts this property, as well as 9 Vine Street. He stated that he has been in this neighborhood for 45 years. He stated that an outside ATM will attract vandalism. He noted that he has had his own painters cover tagging that has been done on the applicants rear wall.

A MOTION to close the public hearing was made and seconded, and was UNANIMOUSLY VOTED.

A MOTION was made by Mrs. McElroy to DENY the request for a SPECIAL PERMIT to modify an existing non-conforming building by adding an exterior wall mounted ATM. The Board finds that, in its judgment:

- (1) The specific site is NOT an appropriate location for such a use as there is are two existing ATMs inside the building as well as an ATM just down the street.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town by taking some business to the exterior.
- (3) There WILL be a nuisance or serious hazard to vehicles or pedestrians by adding exterior activities.
- (4) Adequate and appropriate facilities will NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

The MOTION was seconded by Mr. Kenneally and was UNANIMOUSLY VOTED.

Due to the fact that no hardship was shown, a MOTION was made by Mrs. McElroy to DENY the request for a sign variance and was seconded by Mr. Golden and UNANIMOUSLY VOTED. The Board finds that, in its judgment:

- (1) The specific site is NOT an appropriate location for such a use as the existing sign provides enough lighting.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town as the additional lighting would disturb the neighborhood.
- (3) There WILL be nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

The MOTION was seconded by Mr. Kenneally and was UNANIMOUSLY VOTED.

FINDINGS:

The Board found that the SPECIAL PERMIT and VARIANCE WOULD derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could NOT be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance.

BZA MINUTES

January 6, 2010

Special Permit

- (1) The specific site is NOT an appropriate location for such a use as there is are two existing ATMs inside the building as well as an ATM just down the street.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town by taking some business to the exterior.
- (3) There WILL be a nuisance or serious hazard to vehicles or pedestrians by adding exterior activities.
- (4) Adequate and appropriate facilities will NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

Variance

- (1) The specific site is NOT an appropriate location for such a use as the existing sign provides enough lighting.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town as the additional lighting would disturb the neighborhood.
- (3) There WILL be nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to DENY the request for a SPECIAL PERMIT and VARIANCE to modify an existing non-conforming building by adding an exterior wall mounted ATM and to add a sign on the liquor store side. The Board finds that, in its judgment:

For the Special Permit:

- (1) The specific site is NOT an appropriate location for such a use as there is are two existing ATMs inside the building as well as an ATM just down the street.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town by taking some business to the exterior.
- (3) There WILL be a nuisance or serious hazard to vehicles or pedestrians by adding exterior activities.
- (4) Adequate and appropriate facilities will NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

and

For the Variance:

- (1) The specific site is NOT an appropriate location for such a use as the existing sign provides enough lighting.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town as the additional lighting would disturb the neighborhood.
- (3) There WILL be nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will NOT be provided for the proper operation of the proposed use.

BZA MINUTES

January 6, 2010

- (5) The public convenience and welfare will NOT be substantially served.

BZA CASE #3072 32 Mamie Road

Application of Eric Coldwell for property at 32 Mamie Road, also shown on the Weymouth Town Atlas Sheet 41, Block 489, Lot 68, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 to add a single story addition behind main dwelling; the addition squares off with existing one story family room/garage.

Present:	Richard McLeod, Chairman
	Mary McElroy, Clerk
	Francis Kenneally
	Charles Golden
	Kemal Denizkurt
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

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.

Mr. Eric Coldwell appeared before the Board to request a single story addition behind their main dwelling. He stated that this addition will square off the existing one story family room/garage with the rest of the house and maintain integrity of the house.

Mr. Coldwell stated that he has been a resident of 32 Mamie Road since 2001. He noted that the structure, a garrison colonial, was built in 1955. The new addition will be 9 feet by 26 feet. The main structure was built less than 10 feet from the property line. The dwelling is 7 feet 6 inches from the property line. The new addition will not further encroach upon this setback.

Mr. Coldwell stated that he has spoken with the abutters, the Colletta's at 24 Mamie Road. He indicated that they did not have any concerns regarding the proposed addition.

Mrs. Coldwell stated that the new addition will be for a new kitchen. Mr. Coldwell stated that the garrison style home is box shaped. He stated that there is room to put the addition onto the right side of the garage but this would not be consistent with the existing layout nor be in keeping with the architectural style of the house.

Rod Fuqua stated the application was routed to various Town Departments and received favorable or no adverse comments.

The Chairman asked if the public had any comments, to which there was no reply.

A MOTION to close the public hearing was made and seconded, and was UNANIMOUSLY VOTED.

BZA MINUTES

January 6, 2010

A MOTION was made by Mrs. McElroy to APPROVE the request for a SPECIAL PERMIT to add a single story addition behind main dwelling. Addition squares off with existing one story family room/garage. The Board finds that, in its judgment; all of the following conditions are met:

- (1) The specific site is an appropriate location for such a use because it is zoned for single family use.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town because there is no closer encroachment to lot line.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians because there are no changes in access or in utilities.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use because there are no changes in access or in utilities.
- (5) The public convenience and welfare will be substantially served due to all of the above findings.

The MOTION was seconded by Mr. Golden and was UNANIMOUSLY VOTED.

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 specific site is an appropriate location for such a use because it is zoned for single family use.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town because there is no closer encroachment to lot line.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians because there are no changes in access or in utilities.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use because there are no changes in access or in utilities.
- (5) The public convenience and welfare will be substantially served due to all of the above findings.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a SPECIAL PERMIT. The Board finds that, in its judgment; all of the following conditions are met:

- (1) The specific site is an appropriate location for such a use because it is zoned for single family use.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town because there is no closer encroachment to lot line.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians because there are no changes in access or in utilities.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use because there are no changes in access or in utilities.
- (5) The public convenience and welfare will be substantially served due to all of the above findings.

BZA MINUTES

January 6, 2010

BZA CASE #3069 90 Libbey Parkway (Decision) – 1/6/10

Application of Fox Rock Properties for property at 90 Libbey Parkway, also shown on the Weymouth Town Atlas Sheet 33, Block 433, Lot 4, located in a POP zoning district seeking a special permit and/or variance under 120-119(3), 120-74.I, and 120-35.2.1 for a variance from medical office parking requirements.

Present:	Richard McLeod, Chairman Mary McElroy, Clerk Francis Kenneally Charles Golden
Not Present:	Edward Foley
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

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.

Mr. Fuqua stated that this application was taken under advisement to discuss a contribution to traffic mitigation in the area. Two previous projects were summarized.

Mr. Fuqua stated that when the 100,000 square foot Weymouth Woods office building was put in, ground water testing was completed and land was provided for the sewer pump station to protect the water quality of the town's well field and south cove.

Mr. Fuqua stated that the 67,000 square foot Campanelli project provided \$15,000 for traffic mitigation at Middle and Washington Streets as well as a 3M opticom.

The applicant was sent to the Conservation Commission to look at filling with replication. The applicant is doing extensive work to detention basin abutting the property which will take care of some of the run-off from Performance Drive. This basin has an outlet across Performance Drive near the well field. The applicant is spending a lot of money in terms of the water quality issue. The traffic projections show a marginal increase over what they currently have. From a staff level, the opinion is that the town is better served by improvements to the detention basin and the conditions through the Conservation Commission provide adequate mitigation.

The applicant was asked if they were willing to move forward with only four (4) votes as Mr. Foley was not present this evening. The applicants stated that they were willing to go forward this evening.

A MOTION was made by Mr. Golden to APPROVE the request for a VARIANCE from medical office parking requirements with the condition that "no parking" signs are placed on Performance Drive.

BZA MINUTES

January 6, 2010

Finding of Hardship:

Due to the amount of wetland on site there is a hardship to conform with the zoning requirements.

The Board finds that, in its judgment; all of the following conditions are met to show the variance will not be more detrimental by:

- (1) The specific site is an appropriate location for such a use due to proper zoning.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town due to medical use added recently as an allowed use.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians as per the findings of the traffic reports because it will be easier to navigate within the parking lot.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use as there will be improvements to the abutting detention basin.
- (5) The public convenience and welfare will be substantially served by better traffic flow and improved water quality and traffic studies indicate adequate space for the intended use.

The MOTION was seconded by Mrs. McElroy and was APPROVED on a 4-0 vote.

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 specific site is an appropriate location for such a use due to proper zoning.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town due to medical use added recently as an allowed use.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians as per the findings of the traffic reports because it will be easier to navigate within the parking lot.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use as there will be improvements to the abutting detention basin.
- (5) The public convenience and welfare will be substantially served by better traffic flow and improved water quality and traffic studies indicate adequate space for the intended use.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was VOTED 4-0 to APPROVE the request for a VARIANCE from medical office parking requirements with the following condition:

- (1) No parking signs shall be placed on Performance Drive.

The Board finds that, in its judgment; based on the Finding of Hardship that due to the amount of wetland on site there is a hardship to conform with the zoning requirements, all of the following conditions are met:

- (1) The specific site is an appropriate location for such a use due to proper zoning.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town due to medical use added recently as an allowed use.

BZA MINUTES

January 6, 2010

- (3) There will be no nuisance or serious hazard to vehicles or pedestrians as per the findings of the traffic reports because it will be easier to navigate within the parking lot.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use as there will be improvements to the abutting detention basin.
- (5) The public convenience and welfare will be substantially served by better traffic flow and improved water quality and traffic studies indicate adequate space for the intended use.

BZA CASE #3055 188 Idlewell Blvd. (cont.)

Application of Cannon Construction Corp. for property at 188 Idlewell Blvd., also shown on the Weymouth Town Atlas Sheet 9, Block 136, Lot 18, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-38(3)(D)(3), 120-38.4, 120-51 Table 1, & 120-52 to construct a single family home on a lot within the Floodplain District Zone A4 with a variance of the side yard setback.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Francis Kenneally Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Mr. Fuqua stated that the applicant has requested that the hearing be continued to February 3, 2010. No testimony was taken.

HEARING CONTINUED UNTIL FEBRUARY 3, 2010.

MINUTES – December 2, 2009, Case # 3060, 3062, 3063, 3064, 3065, and 3066

A MOTION was made and seconded to APPROVE the Minutes of December 2, 2009, Case # 3060, 3062, 3063, 3064, 3065 and 3066, and was UNANIMOUSLY VOTED.

ADJOURNMENT

The meeting was adjourned at 11:00 P.M.

Mary McElroy, Clerk

Date