

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
February 3, 2010**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 3, 2010, at 7:00pm at McCullough 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 #3055 188 Idlewell Blvd. adjacent to 192 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 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 Francis Kenneally Mary McElroy, Clerk Charles Golden Kemal Denizkurt, Alternate
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 the applicant has requested that the hearing be continued to February 24, 2010. No testimony was taken.

HEARING CONTINUED UNTIL FEBRUARY 24, 2010.

BZA CASE #3075 1190 Commercial Street

Application of Peter Norton for property at 1190 Commercial Street, also shown on the Weymouth Town Atlas Sheet 19, Block 252, Lot 3, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 for an addition to the rear, part of which lies in the side setback area.

Present:	Mary McElroy, Acting Chairperson Francis Kenneally George Berg Kemal Denizkurt Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

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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. Norton appeared before the Board. He stated that he is the contractor for Anne Fulton. He stated that they are putting a small addition on the back of the house. The plan is to have it as far over as possible so that it does not encroach on the front of the existing garage. He pointed out that the plan stays within the existing lines of the property and does not further encroach.

Mr. Denizkurt questioned if the applicant would be going closer to the property line.

Mr. Norton stated that the structure is 3'7" from the property line and he is going no closer.

Mr. Berg stated that the site plan shows that the existing corner of the house is 3'7" from the property line. On the site plan the northeast corner of the addition is 3'6" from the property line. He questioned if the encroachment is from the bay window. He asked if the foundation extends to this window.

Mr. Norton stated that the foundation extends to this window and that this is where the small encroachment occurs.

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

Mr. Fuqua asked if the lines of the house are being extended out straight.

Mr. Norton stated that this is correct.

Mr. Fuqua noted that the difference of a tenth of a foot is in terms of the way the house is laid out versus the way the property line sits. The applicant is not changing much of the existing lines.

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.

A MOTION was made by Mr. Kenneally to APPROVE the request for a SPECIAL PERMIT for an addition to the rear, part of which lies in the side setback area. 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.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will be substantially served.

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The MOTION was seconded by Mr. Berg 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.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will 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 APPROVE the request for a SPECIAL PERMIT for an addition to the rear, part of which lies in the side setback area. 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.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will be substantially served.

BZA CASE #3076 Jacobs Lane

Application of James E. Bristol, Jr. & James E. Bristol, III, Pleasant Street Nominee Trust for property at Jacobs Lane, also shown on the Weymouth Town Atlas Sheet 27, Block 352, Lot 33, and 51-56, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-119.A(3), Table 1, and 120-53.1 for a variance from Table 1 District Regulations minimum lot area of 25,000 square feet per dwelling unit; and minimum Upland Area with respect to lots 55 and 56.

Present:	Mary McElroy, Acting Chairperson
	Francis Kenneally
	George Berg
	Kemal Denizkurt
	Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

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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 David Kelly appeared before the Board on behalf of the applicants. He stated that the applicant is requesting two variances. He noted that the specific variances are minimum lot area which requires 25,000 square feet and minimum upland which requires 75% coverage. He indicated that two of the seven lots are before the board. These lots are noted as 52 and 53 on the town atlas and shown on the applicant's plans as lots 22 and 23.

Mr. Kelly stated that the Planning Board, in the mid 1990s, approved a subdivision plan that was recorded and created seven lots. It complied with the zoning requirements of the time which were 15,000 square feet minimum lot size and 50% upland coverage. In 1997 the minimum lot size and upland coverage change. He pointed out that the lots are assessed and taxed as seven single lots, although they are no longer buildable because of the zoning change. He acknowledged that the eight year freeze on zoning changes has long past

Mr. Kelly stated that the merger of title rule under MGL 40a Section 6 is why the applicant is before the Board this evening. This rule states that anytime there are adjoining lots in common ownership and there is a zoning change, those lots are merged for zoning purposes. Even though the applicant has a subdivision plan showing seven lots, they are all under 25,000 square feet.

Mr. Kelly stated for the variance he must show something relating specifically to the site. He suggested that since the roadway is in and laid out for the seven lots which was done pursuant to the subdivision of the plan, this is something that affects this land uniquely as opposed to the zoning district generally. He stated that to reconfigure the layout of the utilities and the roadwork would involve a hardship both financial and otherwise.

Mr. Kelly pointed out that most lots in the area are not 25,000 square feet although there are newer lots that do meet the 25,000 square foot requirement. He stated that he has submitted a breakdown of the lots. He supplemented this with a letter to the Board in connection with the conservation delineation last July, the upland calculated was updated and it improved over what was submitted on the application.

Mr. Kelly noted that there are two different references to the parcels; lot 56 and lot 55 (assessors' map 21 and 22 on plan). These lots are 23,689 square feet, with 15,231 square feet of upland (64%) and 22,453 square feet with 14,307 square feet of upland (63.7%).

Mr. Golden asked about how the variance changed on lot 22; 28% variance reduced to 15% variance.

Mr. Kelly stated that this resulted from a wetland delineation that was updated. He noted that the subdivision was approved with 50% upland coverage requirement which has since increased to 75%.

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Mr. Bristol reviewed the utilities that are currently in place. He stated that the base coat is installed from the intersection at Westminster. All of the utilities, sewer, water, electric, telephone, TV are installed underground.

Mr. Bristol pointed out several town of Weymouth owned parcels and noted delays due to trying to resolve issues of land usage. He stated that there were initial objections from the Park Department but the lots were ultimately released to auction.

Mr. Bristol stated that after installing the road, a request for a bond was submitted to the Planning Board. He noted that the lots were under agreement with a builder. He stated that there was not enough time for the Planning Board and DPW to establish the bond amount and put everything in place prior to the expiration of the subdivision itself. The time frame was missed by several months. He noted that he would like to finish up what they started.

Mr. Bristol stated that there is ledge and the lots are configured to take this into account. He pointed out that to reconfigure would result in hardships due the need for significant blasting.

Mr. Kelly stated that the hardship is caused by existing site conditions, the cost associated with blasting, reconfiguring the lots and associated engineering costs, the utilities, and roads. Mr. Bristol stated that roadwork currently in place cost approximately \$250,000 to \$300,000. He noted that this was done in the early 2000s.

Mr. Bristol stated that they could have gone ahead with the project but they preferred to know what the ultimate disposition of the town owned lots were prior to beginning work.

Mr. Golden asked about the utilities.

Mr. Bristol stated that the sewer, water, and drainage are installed and the road is paved and electric crossings are in, a trench will need to be dug for the individual lots. He indicated that if the lots were required to be reconfigured the utilities would not work as currently installed and would need to be dug up and moved.

Rod Fuqua stated the application was routed to various Town Departments and received the following comments.

- Conservation Commission submitted a letter to Rod Fuqua, Principal Planner, from Mary Ellen Schloss, Conservation Administrator, dated January 29, 2010.
- Health Department had no objections.
- Police Department had no issues.
- Fire Department had no issues.
- DPW (Water, Sewer, Engineering, Highway) had no comment.
- School Department noted no special concerns.
- Tax Department had no comment.

Mr. Bristol noted that a new line was delineated that is valid until 2012.

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Mr. Berg asked if the current wetland line on the plan is the current plan dated July 2009.

Mr. Kelly stated that he has submitted an updated letter with the new wetland delineation.

Mr. Berg questioned if the applicant will go back before the Conservation Commission.

Mr. Golden pointed out that the conservation administration is indicating that the wetland line is expanding which contradicts the applicant's notation that the wetland line has decreased.

Mr. Fuqua pointed out that on lot 22, the wetland line from 1995 seems to come up further. The engineer's numbers show that the upland has increased and the wetland has receded which differs from Ms. Schloss' opinion.

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

Stephen Cassidy, 283 Westminster Road, stated that there is no stop sign and this proposal will increase volume. He asked why his builder had to abide by the current minimum lot requirement but this applicant is requesting smaller lot areas.

Liu Bo, 264 Westminster Road, asked why if the applicant builds more houses how is there less blasting.

Mr. Bristol stated that several of the houses are planned between the ledge outcroppings. He stated that the reconfiguration of the lots even to build fewer house would result in more blasting to work around the ledge. He noted that the plan is laid out according to the existing topography.

Mr. Bo asked if these houses would have basements.

Mr. Bristol stated that the houses would have full walk out cellars to the back of the lots.

Mr. Bristol stated that if the lots are bigger, the homes would need to be bigger to make the economics work. There would also need to be more blasting for the bigger foundations.

Mr. Bristol indicated that he has paid over \$100,000 in taxes for these seven individual lots.

Mr. Kenneally pointed out that the lots are consistent with Granite Post Lane.

Mr. Fuqua stated that there is concern from the Conservation Commission regarding a variance from wetland requirements. He asked the applicant to consider combining lots 55 and 56 (22 and 21 on the plan) into 1 buildable lot. This would remove the need for a wetland variance.

Mr. Bristol stated that he would be willing reduce the number of lots from seven lots to six lots. He pointed out that if he were to reconfigure the lots to 25,000 square feet, he would be able to build five lots. He asked to be allowed to tweak lot lines, while keeping the total number of lots at six.

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Mr. Kenneally asked if this tweaking would result in any lot being smaller than what it is now.

Mr. Bristol stated that all of the lots would either be the same as it is currently or larger.

Mr. Kelly stated that a variance would still be needed from the minimum 25,000 square foot lot requirement. With the combining of the two lots, the upland variance will not be needed.

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

Mr. Golden asked if the Board should wait until the lot sizes are tweaked to vote on this application.

Mr. Fuqua stated that all of the lots will have at least what is currently shown.

Due to the hardship created by the presence of ledge and the current roadway and utilities being in place per approved plans dated 1995, a MOTION was made by Mr. Berg to APPROVE the request for a VARIANCE for a variance from the minimum 25,000 square foot lot size with the condition that the town lot numbers (plan number) 33 (16) 51, (17), 52 (18), 53 (19) and 54 (20) do not decrease in size, 55 (21) and 56 (22) are combined to one lot.

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 of residential zoning and approved subdivision plan.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town as the lots in the adjacent neighborhoods are similarly sized as the applicant showed a similar lot size in the neighborhood.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians. There will be reduced blasting.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use as utilities are already in place.
- (5) The public convenience and welfare will be substantially served based on all of the above comments.

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

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 because of residential zoning and approved subdivision plan.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town as the lots in the adjacent neighborhoods are similarly sized as the applicant showed a similar lot size in the neighborhood.

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- (3) There will be no nuisance or serious hazard to vehicles or pedestrians. There will be reduced blasting.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use as utilities are already in place.
- (5) The public convenience and welfare will be substantially served based on all of the above comments.

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 VARIANCE. Due to the hardship created by the presence of ledge and the current roadway and utilities being in place per approved plans dated 1995, a MOTION was made by Mr. Berg to APPROVE the request for a VARIANCE for a variance from the minimum 25,000 square foot lot size with the condition that the town lot numbers (plan number) 33 (16) 51, (17), 52 (18), 53 (19) and 54 (20) do not decrease in size, 55 (21) and 56 (22) are combined to one lot; all of the following conditions are met:

- (1) The specific site is an appropriate location for such a use because of residential zoning and approved subdivision plan.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town as the lots in the adjacent neighborhoods are similarly sized as the applicant showed a similar lot size in the neighborhood.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians. There will be reduced blasting.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use as utilities are already in place.
- (5) The public convenience and welfare will be substantially served based on all of the above comments.

BZA CASE #3077 474 Washington Street

Application of Back Bay Sign for CVS, also shown on the Weymouth Town Atlas Sheet 25, Block 330, Lot 13, located in a B-1 zoning district seeking a special permit and/or variance under Chapter 120.64.4.A for an increase in the size and quantity of wall signs. The existing wall signs have the maximum 75 square feet allowed by the Zoning Ordinance.

Present:	Mary McElroy, Acting Chairperson
	Francis Kenneally
	Charles Golden
	George Berg
	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.

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Mr. Parrillo, Back Bay Sign Company, represented the applicant before the Board. He stated that the purpose of this sign improvement is to enhance the visibility and recognition of this CVS location especially relating to the hours of operation, and the products and services that CVS provides to the community. The signs are designed to be in keeping with the character of the building. He noted that this is a high profile location. He noted that the 75 square foot maximum only allows two small signs on the sides of the building. He pointed out that he has noticed signs in Weymouth that seem much larger.

Mr. Berg noted that the original design of the sign was to meet the scale and character of the building. He stated that he believes that the existing signs meet this. He asked why CVS believes that 36" signs are necessary.

Mr. Parrillo noted that the increase would be one foot higher. He noted that the scale of the building is such that if you are 500 feet away, the signs appear small. He stated that most CVS stores of this size have 36" signs.

Mr. Berg pointed out that people sit at the lights, looking directly at the building and are clearly able to see the signs. The building is visible. He thinks that the existing scale and aesthetics of the building sign are in keeping with the character of the building.

Mr. Golden stated that this increase is significant.

Mr. Parrillo stated that three signs are requested on the side: drive thru pharmacy, beauty, and photo for a total of 42.64 square feet. Two signs are requested on the front facing Washington Street: drive thru pharmacy and photo for a total of 33.77 square feet.

Mr. Parrillo stated that he has submitted a sign dimension comparison table.

Mr. Parrillo noted that the drive thru pharmacy facing Washington Street is not illuminated and he is requesting to swap the signs.

Mr. Golden stated that he does not believe that the increase is insignificant. The increase in letter would result in a 50% increase.

Mr. Parrillo stated that the increase in the size of the letters would result in the sign being 170 square feet. The signs on the two sides would be 40 square feet in total, and 34 square feet in total. The combined total of all of the signs (the three letters for CVS and the five signs on the two sides) would be a total of 244 square feet.

Mr. Berg noted that this is over three times what is allowed

Mr. Parrillo asked if he could drop one of the requests if the Board was willing.

Mr. Berg stated that he believes that the 36" letters would be out of keeping with the character of the building. He thinks that the sign is thoughtful and meets zoning ordinance. He also stated that people know what services are provided by CVS and the additional product signage is not necessary.

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Mr. Parrillo stated that by adding the signs, it increases the overall visibility of this store. He pointed out that a large part of the building is blank.

Mr. Berg stated that this is a highly visible sight

Mr. Parrillo asked if Wal-Mart had to come before the Board for the 5' letters that are on its store.

Mr. Fuqua stated that comparing one building to another, there is not an apples to apples comparison as this is a variance so the variance is not what another building might have. He stated that the Wal-Mart building was constructed in the 1980s when sign requirements were different.

Mr. Fuqua stated that a variance is based on the shape, soil, and topography of the lot. He noted that the site has a large amount of frontage that does not impede upon view of property, nor is there ledge or any other natural feature that blocks the view.

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

The applicant requested to withdraw the application without prejudice.

A MOTION was made by Mr. Berg to allow the applicant to WITHDRAW without prejudice and was seconded by Mr. Kenneally and UNANIMOUSLY VOTED.

APPLICATION WITHDRAWN WITHOUT PREJUDICE.

OTHER BUSINESS

BZA CASE # 3027, 16 HILTON DRIVE – REQUEST FOR MODIFICATION

Present:	Mary McElroy, Acting-Chairman
	Francis Kenneally
	George Berg
	Kemal Denizkurt
	Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Mr. Fuqua stated that this is a request for modification of Case # 3027 at 16 Hilton Drive which is formerly the rear lot of 86 Park Avenue.

Mr. Fuqua stated that this had been previously before the Board with a condition that plantings be placed on the side of the slope coming into the property. He stated that the neighbors have approached the property owner about making some changes and the owner has come into the office with a request to change the plan.

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Mr. Fuqua stated that the neighbors are looking to have the plants maintained and protected. He noted that there is a large area of brush and a large wooded area.

Mr. Fuqua stated that the Board needs to decide if this is a material change.

Mr. Fuqua stated that if the request is viewed favorably the relocation of the plantings would be to the side and to the rear.

The Board found the owner and abutter are in agreement and the request is in keeping with the spirit and intent of the approved decision. Further the Board found that due to the distance of the house to the property line that there is ample space for natural vegetation to grow, so the plantings will not need to be maintained in perpetuity.

A MOTION was made by Mr. Berg to APPROVE the change to allow for relocation of the plantings. Once the plantings are in place, they will be naturally maintained and there will be nothing binding on the owner to physically maintain the planting. The motion was seconded by Mr. Golden and UNANIMOUSLY VOTED.

MINUTES – 12/16/09

A MOTION was made and seconded to APPROVE the Minutes of December 16, 2009 and was UNANIMOUSLY VOTED.

Mary McElroy, Clerk

Date