

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDING
FEBRUARY 24, 2010**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 24, 2010, at 7 PM 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 public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. He noted that the hearing on Zero Pond Street is not a public hearing.

BZA CASE #3078, 164 UNION STREET AND 14 ERIN WAY

Application of Chris Hardie of 164 Union Street, also shown on the Weymouth Town Atlas Sheet 50, Block 535, Lot 48 and Juan Ferry of 14 Erin Way, also shown on the Weymouth Town Atlas Sheet 46, Block 535, Lot 14, located in R-1 zoning district, seeking a Special Permit and/or variance under chapter 120-40 and 120-53 to straighten out a lot line between two neighbors.

Members sitting: Richard McLeod, Chairman
 Mary McElroy, Clerk
 Chuck Golden
 Francis Kenneally
 Robert Galewski
Staff: James Clarke, Planning Director
Recording Secretary: Mary Briggs

A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

Mr. Ferry was not in attendance, but provided written testimony. Mr. Hardie stated that the adjustment in lot lines will allow him to move his driveway off Union Street and onto Erin Way. Mr. Clarke noted the DPW requested the removal of the easement right-of-way. His comments included the first quarter taxes on the Erin Way property are delinquent.

A MOTION was made and seconded to close the public hearing and was voted unanimously. A motion was made by Ms. McElroy to APPROVE the petition to straighten out a lot line between two neighbors and remove the easement right-of-way, and was seconded by Mr. Galewski and VOTED UNANIMOUSLY.

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 to straighten out a lot line between two neighbors with the condition that the easement right-of-way be removed.

BZA CASE #3052, 84 LIBERTY STREET (cont.)

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

Members sitting: Richard McLeod
 Chuck Golden
 Francis Kenneally
 Kemal Denizkurt
 Robert Galewski
Staff: James Clarke, Planning Director
Recording Secretary: Mary Briggs

A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

Francis D. Parisi, Esq. of Parisi Law Associates reviewed the items requested by the board at the last meeting. A balloon test was conducted in January. A balloon was raised at the approximate height of the proposed structure to show visibility. He noted that the effect of trees in leaf would further minimize visibility. He submitted photographs to the board and submitted an affidavit provided by a real estate expert on the affect to property values. He noted that zoning boards do not have the authority to prohibit when the use has been shown to be appropriate. The location is appropriate and the height of the structure is the minimum required. A consultant was also hired to review and provide a report. There were questions from the board on the balloon test. The consultant, Kyle McAllister of Turning Mill was hired to review the application and provide an assessment, an independent peer review. He noted the dropped call rate in the area is .5%; industry average is 1.5-2.5%. He noted there is a distinct coverage gap in the proposed area.

Mr. Parisi reviewed the legal standard for the board. He noted that compromising the height of the cell tower from the proposed height of 120 to 100 feet would still meet the objective. He also reported there are no other viable locations in the area, and that from a legal perspective, they have met the burden. He reminded the board that there is nothing to substantiate erecting the tower will negatively affect area property values. The recommendation is for a 100' monopole design, with a stealth shroud, which will allow for limited expansion and use by municipal entities. He noted that all alternative sites have been looked at; negotiating leased space from Tri-Corp was not deemed technically feasible nor economically viable.

Robert Devin, an attorney for the Weathervane trustees, noted that the Tri-Corp site in Hingham could provide coverage. He asked if 80' height would satisfy the coverage. He stated that the company that did the review for the town had worked for T Mobile. Mr. McAlister stated that he had never worked for T Mobile while at Turning Mill. He submitted a memo in support of his position.

There was also a brief discussion by the board of the independent peer review process. Mr. McAllister confirmed he did not do his own study, but relied on the information provided to him by T Mobile. Mr. Clarke noted this is a small industry and he was provided his name by another municipality.

Several residents commented, including Rick Pessin, Sandtrap Circle, and Town Councilor Michael Smart.

A MOTION was made and seconded to close the public hearing and was unanimously voted. A motion was made and seconded to take the matter UNDER ADVISEMENT and was UNANIMOUSLY VOTED.

APPLICATION TAKEN UNDER ADVISEMENT

BZA CASE # 3055, 188 IDLEWELL BLVD. (cont.)

Application of Cannon Construction Corp for 188 Idlewell Blvd., adjacent to 192 Idlewell Blvd., also shown on the Weymouth Town Atlas Sheet 9, block 136, Lot 18, in an R-1 zoning district, seeking to continue the public hearing to March 17, 2010 at the request of the applicant's attorney.

Members sitting: Richard McLeod
 Edward Foley
 Mary McElroy
 Chuck Golden
 Francis Kenneally
Staff: James Clarke, Planning Director
Recording Secretary: Mary Briggs

A MOTION was made and seconded to continue the Public Hearing to March 17, 2010 and UNANIMOUSLY VOTED.

BZA CASE #3067, 82 BROAD STREET – DISCUSSION AND/OR DECISION

Application of Vladimir and Melsi Xhengo of 82 Broad St., also shown on the Weymouth Town Atlas Sheet 20, Block 269 Lot 19 in a B-1 zoning district, seeking to convert an existing office building to a restaurant with some off street 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.

Members sitting: Richard McLeod
 Edward Foley
 Mary McElroy

Chuck Golden
Francis Kenneally
Staff: James Clarke, Planning Director
Recording Secretary; Mary Briggs

Before beginning, Chairman McLeod reported that he had received a phone call from the building's owner, Jim Parker. He noted it would have been unethical to speak with him while the application was under review and did not return the call. He requested the board consider the application in two parts: whether the changes are substantially changed from the initial design, and then to consider the request for parking variance.

He also reported that the application now before the board has been revised from the original plan to the Planning Board. Seating has been reduced from 90 to 75 and now to 70 seats. A motion was made by Mr. Golden and seconded by Mr. Foley that the changes proposed constitute a substantial change from the initial proposal and was unanimously voted.

Discussion regarding the parking variance included information from the Traffic Engineer which shows less space on the street and lot, and difficulty moving cars within spaces (valet parking), and that the data provided did not concur with traffic engineer's finding. Also cited were traffic congestion in the area, accident data provided by the Weymouth Police Department. Chairman McLeod noted that neither the applicants, nor their attorney were present. While not adverse to a restaurant in the area, the concern is with the size of the proposed restaurant. He noted the applicants could withdraw the application without prejudice if they were present.

A motion was made by Mr. Foley to DENY the request for a variance; that the applicant has not proven sufficient hardship, citing the Traffic Engineer's concerns with valet parking, and general traffic, the WPD accident data, the proximity to the MBTA stop, the many (senior) pedestrians in the neighborhood and that the specific site is not in the public good, and was seconded by Ms. McElroy. Vote carried 4/1 (Chairman McLeod voted no)

Note: The Board voted on a special permit that was not required for this application.

A motion was made by Mr. Foley to DENY the request for a special permit and was seconded by Ms. McElroy. Mr. McLeod was of the opinion that the application could be approved with restrictions placed. Vote carried 4/1 (Chairman McLeod-no).

FINDINGS:

The Board found that the 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.

The Board found that:

- (1) The specific site is not an appropriate location for such a use.
- (2) The use involved will be detrimental to the established or future character of the neighborhood or town.
- (3) There will be a 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 VOTED (4-1) to DENY the request for a VARIANCE 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 and due to the use of valet parking some spaces may be less than 9 feet by 18 feet.

0 POND STREET – TIMELINE EXTENSION

Stephanie Kiefer of the Freeman Law Group requested an extension of the timeframe for the comprehensive permit beyond its scheduled expiration on March 7th for an additional period of three years and abiding by all current conditions. Delay is a direct result of legal action brought by an abutter. There are no substantial changes proposed. She reviewed the status of the appeal with DEP, and which should be completed shortly.

A motion was made by Mr. Foley to approve the request for an extension to March 14, 2013 and was seconded by Ms. McElroy.

Chairman McLeod noted that although this was not a public hearing; he would allow public comment as long as comments were limited specifically to the request for the extension. Jim Lombard (Galway Rd.), Councilor Michael Smart, Kevin Spellman (14 Pond St.) Fred Hallisey (17 Sea Captain's Way), Janice Gonzales (619 Pond St.) John Wayne Smith (595 Pond St.) and Harvey Welch all commented that a three year extension should not be given. Mr. Golden and other Board members discussed the tolling of the development timeframe and noted that the applicant was not in appeal during the full three year period.

The Board voted 4/1 to grant the extension (Mr. Golden-no).

Ms. Keifer explained that there are three orders of conditions for the project with three different expiration dates. The request is to have all three permits conterminous with the comprehensive period timeframe. The request is for the Board to vote to add a condition #14 that would have the expiration dates of all three Orders of Conditions be coterminous with the expiration of the Comprehensive Permit.

Mr. Foley made a motion to add Condition 14, as follows:

"Condition 14. The Board confirms the approvals previously granted by the Weymouth Conservation Commission, acting under its authority of the Town of Weymouth Ordinance, Chapter 7, Section 301, referenced as DEP File Nos. 81-937, 81-1057 and 81-1067 and hereby waives the expiration date of each of the Orders of Conditions. The Board expressly confirms that the expiration of each order of Conditions under the Local Ordinance shall be conterminous with the expiration of this comprehensive permit, as may be extended from time to time."

This was seconded by Mary McElroy and voted unanimously.

A motion was made by Mr. Foley to extend the period of the modifications to the same time as the comprehensive permit to March 14, 2013 and was seconded by Ms. McElroy and was voted unanimously.

MINUTES

A motion was made and seconded to approve the minutes of the meeting on January 20, 2010 and was unanimously voted.

ADJOURNMENT

A MOTION was made by Edward Foley to adjourn the meeting at 10:15PM, and was seconded by Mary McElroy and voted unanimously.

Mary McElroy, Clerk

Date