

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
April 6, 2011**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 6, 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
Kemal Denizkurt
Jonathan Moriarty
Robin Moroz, Alt.

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 #3124 - Public Hearing, 185 Washington Street

Application of W.M. Realty, Inc. for property located at 185 Washington Street, also shown on the Weymouth Town Atlas as Sheet 20, Block 276, Lot 32, located in B-2, VCOD zoning districts

Members sitting: Richard McLeod, Chairman
Edward Foley, Vice-Chairman
Kemal Denizkurt
Jonathan Moriarty
Robin Moroz

A motion was made by Vice-Chairman Foley to accept the applicant's request to withdraw the petition without prejudice, seconded by Kemal Denizkurt and unanimously voted.

BZA CASE #3125 - Public Hearing, 875 Washington Street

Application of Hayle Corp. for property located 875 Washington Street, also shown on the Weymouth Town Atlas as Sheet 30, Block 380, Lot 11, located in an HT zoning district, seeking a special permit and/or variance under Chapter 120-39 and 120-40 to continue the nonconforming use and to allow for sales and outside storage of motor vehicles (new cars).

Members sitting: Richard McLeod, Chairman
Edward Foley, Vice-Chairman

Kemal Denizkurt
Jonathan Moriarty
Robin Moroz

Attorney Gregory Galvin, with offices at 775 Pleasant Street and Andrew Gordon appeared before the board. The purpose of the application is to extend the nonconforming use. The property at 875 Washington Street was acquired with the intent to move the motorcycle sales division from the main Weymouth Honda Motor Sales Main Street store to that location; however sales of motorcycles have not kept up with motor vehicles which are doing well. There was a tractor trailer hauling tenant in the Washington Street location. It is the intent now to use the property on Washington Street to store vehicles.

Cars will be parked on pavement. They intend to observe the no test drives on residential Lane Avenue per the prior order of conditions. The area is a mix of businesses and some residential. The applicant is unsure who owns the fence along the property by Mercury Mechanical and which is in need of repair. There is debris along the rear and side of the property, and brush which the applicant will clear.

Vice-Chairman Foley asked if the applicant's plans show the 100' wetlands buffer. Mr. Galvin responded that they intend to work within the confines of the buffer. Vice-Chairman Foley noted that he viewed the property; there is still a large area of snow and asked is it being removed. Mr. Galvin responded that it is in a shady spot and hasn't melted yet. Vice-Chairman Foley also noted that there is a lot of debris on the property near the pond and that it should be cleaned up.

Kemal Denizkurt asked how far back on the property is owned by the applicant. Mr. Galvin responded that the property line is about 10' back from the cars, before the embankment. Land further back is owned by Sawyer Ave. and Lane Ave. abutters. Kemal also noted the horrendous condition of the wetlands, and asked about snow removal, lighting and stormwater management plans; how the building will factor into the operation; whether automobile sales will be conducted on this site; how cars will be cleaned off in snow, and whether power washing will be used. He also asked whether it is feasible to park 113 vehicles on the property. Mr. Galvin responded that there is a drain on the property that directs surface water out to Washington Street. Vice-Chairman Foley asked if there is a petroleum trap in the drain; Mr. Galvin responded that there is inside, but is not sure if there is one outside. Mr. Foley reminded the applicant that the existing order of conditions specifies there is to be no washing of vehicles. Mr. Galvin noted that the applicant understands a lighting plan would have to be approved by the building department, but that it will be security lighting and will not affect the neighborhood. Vice-Chairman Foley noted that the last paragraph of Ms. Schloss' memo indicated stormwater conditions were to be documented and improved, if possible. Mr. Galvin will have the plan updated and submit to the board.

Vice-Chairman Foley asked if any change from current work hours is planned. Mr. Galvin responded that the addition of 4 hours on Sunday, from noon - 4PM is planned. Vice-Chairman Foley noted the current order allows noon-6PM on Sundays, holidays.

Rod Fuqua reported that the application has been routed through the various town departments and noted that it may need to go before the Conservation Commission if the paved area is extended further. He noted Ms. Schloss' two concerns- whether the parking plan can be implemented without alterations to the existing conditions and recommendations to improvements to the site for water quality/stormwater runoff. There were no concerns from Health Dept., WPD, and taxes and utilities are paid to date. She also noted concern with the plan that shows cars parked partially off paved area, and the instability of the slope to the wetlands. Mr. Fuqua then reviewed the parking plan as presented. There is a need to see a definitive plan showing the pavement and how all 5 rows of cars will fit. The retaining wall in the rear needs to be shown to judge its impact. There has been no sign plan submitted. The applicant reserves the right to come back with one; the intent is to park cars on the lot. He asked if the applicant plans to have sales people on site; Mr. Galvin responded that customers will be managed at the Main Street site, but there may be occasion to bring customers to the lot to view a particular vehicle. There was a brief discussion of the condition of the current fence, and whether there exists residential quarters on the property. Mr. Galvin responded that no one is living on the site; Mr. Harvey will check to see what the living quarters consists of and report back to the board.

Robert Montgomery Thomas, of 848 Washington Street, addressed the board. He read a prepared text against the approval of this application and provided photographic evidence as well.

He noted that the original application for use as auto-related by Hayle Corp. was based on a grandfathered use because the original business, Larry's Glass, occasionally replaced auto glass. The previous tenant had also been grandfathered, although the business was in operation prior to approval by the Board. He noted that the restrictions issued in the order of conditions had not been adhered to by Mark Trucking. He reviewed his reasons for not granting the application, including the number of cars that will be parked on the property, possibly on unpaved land, the need for a buffer to the wetlands, and snow removal. He reviewed his arguments with the application procedure, the conditions by which a special permit can be issued, and the criteria for approval. He also reviewed his opinion why none of the HT setback requirements has been met. He provided the board with photographs as well. Attorney Galvin noted that Mr. Montgomery Thomas trespassed to obtain some of his photographs; Mr. Montgomery Thomas noted the photographs were obtained with a zoom lens, but that he could issue a "no trespass order." Mr. Montgomery Thomas also noted that he was not given notice; while not a direct abutter, he considers himself to be a party of interest, and stated he was being kept out of the process.

Chairman McLeod asked Mr. Montgomery Thomas to present only his argument in support that the proposed use will not be more detrimental to the neighborhood and stick to the facts of his opposition.

Vice-Chairman Foley responded that the town properly posted notice of the meeting.

Arthur Mathews, President of the Town Council addressed the board. He was copied in an email in November 2010 and sent a letter to the Planning Department. He has received complaints from area residents. The corner of Lane and Washington is an elementary school bus stop. He stressed loading and unloading of vehicles should only be occurring on the property, and not on Lane Avenue or Washington Street. His other concerns include the number of vehicles proposed

Chairman McLeod asked why cars have been parked on non paved land. Mr. Gordon responded that the lines were unclear during the snowy weather, and that all cars are now moved to paved spots. Chairman McLeod noted the plan does not clearly delineate the paved areas. He also suggested the use of bumper guards to curb parking to the paved areas. The applicant will consider it.

Jon Moriarty asked if there is sufficient room on the site to load/unload, and whether sales will be conducted at the site. Mr. Harvey responded that he does not plan to use the site for sales, but does not want to be prohibited from bringing customers to the site to view vehicles. Mr. Moriarty suggested that for purposes of adhering to the by-laws and interpretation, the sales component be removed from the application.

Mr. Montgomery Thomas asked if there is any intent to move the parked vehicles until such time as action has been taken on the application. Chairman McLeod responded that the board is not the enforcement authority.

BZA CASE #3126 - Public Hearing, 1106 Main Street

Members sitting: Richard McLeod, Chairman
Edward Foley, Vice-Chairman

Kemal Denizkurt
Jonathan Moriarty
Robin Moroz

A motion was made by Vice-Chairman Foley to open the public hearing and to waive the reading of the public notice, seconded by Kemal Denizkurt and unanimously voted.

Nancy Wallace of Wallace Coffee, Inc. appeared before the board with Gabe Crocker from Coler & Colantonio, Inc. An overview of the proposal and the construction plans were reviewed. The applicant has another location in business in Marshfield, First Stop Coffee. This proposed site is 13,000 square feet in the highway transitional zoning district with a planned 8,000 square foot building, dual drive through with 2 windows on each side, a right turn only exiting from the property, a 6' stockade fence in the rear and screening to the side and illuminated down-lighting from the building overhang. Deliveries and trash pickup will not be made during peak morning hours. There will be an on-site drainage system with an underground trench that will meet or reduce peak rate runoff. The unique passenger side drive through was reviewed. Queuing was reviewed based on conservative estimates using the set up from the Marshfield location. Sixteen vehicles can be queued at any one time. Betsy Johnson reviewed the architectural plans for the building, and John Morgan of Coler & Colantonio reviewed the traffic analysis that takes into consideration the Route 18 widening through 2017 and focus on peak morning hours. There will be a full service entrance, one-way traffic flow through and no customer parking. There is no indoor service; strictly a drive through operation. Based on other location they expect the location will generate traffic for about 500 customers per day; 140 during the morning peak hours (70 in and 70 out). Hours of operation will be 4AM to 6PM (8PM in summer) 7 days per week and employing about 10 full time employees. There is sufficient room that snow can be pushed to the large middle space and emergency vehicles can access the site. Any signage will conform to the ordinance.

Rod Fuqua reported that the plan was routed to the various departments and noted any comments; the entryway will be addressed by MADOT. There are eight coffee shops between the Abington line and Park Avenue along Route 18. There is no grease trap concern as cooking will not be done at this location. He then reviewed the comments from the traffic engineer who surveyed the site. He recommends Route 18 have no left turn exiting and recommends police detail to enforce this for the first week of operation; reviewed quarterly thereafter and then monitored yearly as needed. He also surveyed 11 communities which have locations that service with right side service windows and followed up with responses that do not indicate any problems.

Edward Foley asked if the review takes into consideration base development.

Colleen Meany, 15 Webster Street noted she has two small children and asked what kind of fencing will be planned to the abutting property. Ms. Wallace will work with the neighbors to provide a fence for privacy as well as safety.

Ann Ford, 15 Webster Street asked if the construction will affect the water table to the adjacent property. Mr. Crocker responded that the system, with an underground leaching facility, two

overflow pipes, and water holding system sufficiently large enough to leach slowly will not affect the water table of the surrounding properties. It's spread over a large area to allow for more infiltration.

Michael Smart, Town Councilor, District 6 also questioned the leaching system, queuing of traffic and the right turn only exiting the premises. He also asked if the operation will have lottery (no) and dress code of employees.

Town Council President Mathews encouraged giving the neighbors participation in the choice of fencing erected on the property and questioned snow removal and whether the dumpster will be enclosed. He also asked if the plan has taken into consideration any future planned land taking by MA DOT.

A motion was made by Jonathan Moriarty to close the public hearing, seconded by Vice-Chairman Foley and unanimously voted.

A motion was made by Vice-Chairman Foley to take the matter under advisement, seconded by Kemal Denizkurt and unanimously voted.

BZA CASE #3128 - Public Hearing, 360 Libbey Parkway

Application of Kelly Fichtner for property located at 360 Libbey Parkway, also shown on the Weymouth Town Atlas as Sheet 38, Block 445, Lot 29 & 31, located in POP zoning district, seeking a special permit and /or variance under Chapter 120-35.2.2 for an All Star Cheerleading Training facility.

Members sitting: Richard McLeod, Chairman
 Edward Foley, Vice-Chairman
 Kemal Denizkurt
 Jonathan Moriarty
 Robin Moroz

A motion was made by Edward Foley to open the public hearing and waive the reading of the public notice, seconded by Kemal Denizkurt and unanimously voted.

Kelly Fichtner appeared before the board. She is the owner of All Star Cheerleading which has been using space in Ellis Gym in Braintree and the Weymouth Tennis Club. She has found a location at 360 Libbey Pky., which will allow her a facility with sufficient room to run a full program. She offers an affordable program (\$85/month); 50% of her students are Weymouth residents, 25% from Braintree and the remaining from the Abington and Rockland area. Her program requires a 56 x 42 ft. space with 20 ft. ceiling height. The program will run part-time; the majority will be evenings and some Sundays and she will have 2 instructors. Parking is not an issue as most students are dropped off and picked up. Her students range from 3-18 years old. The flooring will be spring carpet bond foam that is installed in sections.

Rod Fuqua reported that the application was routed to the various departments with no special concerns. Parking will be off peak from the traditional businesses in the park.

Town Council President Mathews asked if the space will be used by anyone else during hours the program is not in operation. Ms. Fichtner responded that she has no plans to allow the space to be used for any other purpose at this time.

Denise McCauley, an abutter to the property approved of the plan and noted it will be a great opportunity.

A motion was made by Edward Foley to close the public hearing, seconded by Kemal Denizkurt and 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. The Board made the following findings.

1. The applicant has met all criteria under Chapter 120-35.2.2
2. The specific site is an appropriate location for such a use with appropriate ceiling height.
3. There will be no detriment to the established or future character of the neighborhood or town as it is zoned properly as it is zoned properly.
4. There will be no nuisance or serious hazard to vehicles or pedestrians with adequate access.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use with no change in utilities.
6. The public welfare and convenience will be substantially served and will provide a service for the youth of the town.

DECISION OF THE BOARD

Due to the above findings, a motion was made by Edward Foley, seconded by Kemal Denizkurt and was unanimously voted to approve the request for a special permit.

Minutes

Meeting, March 16, 2011 Case #3127 and 3116;- A motion was made by Edward Foley, seconded by Kemal Denizkurt to approve the minutes of the March 16, 2011 meeting and was unanimously voted.

Other Business

Zero Pond Street- modification

Rod reported that the request for modification to the 40B application is because the gas company will not bring in a gas line for service to and the modification allows for propane to be brought in to service the emergency heater.

A motion was made by Edward Foley to approve a minor field change modification that is in keeping with the spirit and intent of the original approval of a 40B approved application based on a request dated March 24, 2011 and plans dated March 11, 2011 and March 22, 2011.

Rules and Regulations Review

Rod Fuqua has received comments back from Kemal Denizkurt, Jonathan Moriarty and Francis Kenneally and will have a draft set to review. Robin Moroz asked if there is a set of the current rules that she can review; Rod responded that it will not really help with the review of the new draft.

Adjournment

At 10:50 PM, there being no further business, a motion was made by to adjourn the meeting, seconded by and unanimously voted.

Kemal Denizkurt

Date