

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
APRIL 7, 2010**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 7, 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 #3055 approx. 188 Idlewell Blvd., adjacent to 192 Idlewell Blvd.

Application of Cannon Construction Corp. for property at adjacent to 192 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, Chair Edward Foley, Vice-Chair Francis Kenneally Mary McElroy, Clerk Charles Golden
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.

Attorney Galvin appeared before the Board with the applicant, Mr. Agnitti. Mr. Galvin stated that this matter was continued for several months while the applicant went through the conservation process. The applicant last met with the Conservation Commission a couple of weeks ago; the indication was that they would be issuing the Order of Conditions at their meeting on 3/21/2010.

Mr. Galvin stated that he believed that the applicant had satisfied most of the concerns of the Conservation Commission; however in doing this the plan was slightly modified from the plan initially presented to Board. He stated that the initial plan called for the house to sit approximately 21 feet off the rear corner of the abutting property at 192 Idlewell Blvd. The house at the front would have an expanse 24 feet and would run towards the back of the property for 24 feet with a jog and would then extend further back another 14 feet.

Mr. Galvin stated this was done because the Conservation Commission did not want the house back in towards the 100 foot buffer zone of the river. The plan has been flipped so that the jog is in the front of the house and the expanse across the front would be 18 feet. The house was kept 20 feet from the abutting resident. The house now is situated that they are now seeking same relief on opposite side which abuts the playground.

Mr. Galvin stated that the driveway will be gravel and a swale will be constructed to catch water runoff between the new proposed house and the neighbor at 192 Idlewell. He noted that a detailed foundation plan with breakaway panels has been submitted. He also noted that the plans meet the flood plain requirements of keeping the first living level at least one foot above the flood plain.

Mr. Galvin stated that the hardship is created by the existing house location on its lot, the narrowness of the existing lot, the slope of land, together with the fact that this plan keeps the house out of the 100 foot buffer zone as required by the Conservation Commission.

Mr. Agnitti stated that the break-away panels will be friction fit. They are cut to the correct side and wedged into holes to allow the water to push through and flow through. Mr. Galvin pointed out that this is a requirement.

Mr. Foley asked where the mechanicals would be located.

Mr. Agnitti stated that the mechanicals would be located in the attic. The heating would be forced hot air and there would be a tank-less hot water.

Mr. Foley noted that this is a buildable lot.

Mr. Galvin stated that it is a non-conforming buildable lot.

Mr. Foley stated that it is buildable lot only with a variance.

Mr. Galvin stated that because of the location on Mill Cove, in order to have a functional house, and since you cannot use the basement for mechanicals, the house needs to be 20 foot wide. This pushes the house into the side yard setback by four feet on the playground side which does not have any houses.

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

- Conservation Commission has met on this application. See memo to Rod Fuqua from Mary Ellen Schloss.
- Building Department found (James Clarke from Jeffrey E. Richards dated April 7, 2010) that the foundation plan and details provided show that the foundation and break-away panels will allow for compliance with 780-CMR (Building Code); The six foot side lot line is considered adequate area for construction on the side line area. (please note protection of side line property if approved); A review of ownership on September 4, 2002 confirms separate ownership and under MGL Ch. 40A, Section 6 and the Town's Zoning Ordinances, Subsection 120-52 is a buildable single family house lot.
- Health Department had no objections.
- Police Department had no issues.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway)
- School Department noted no special concerns.
- Tax Department noted Tax Title FY 2005. FY 10 Real Estate Taxes are delinquent for Quarter 1.

Mr. Fuqua stated that this was a BZA case in 2003 for work within flood plain but it was never acted upon. This is a new application.

The chairman asked if there was anyone present who would like to comment and received the following responses.

Debra Tier, 196 Idlewell Blvd, stated that she had been given an elevation for the house in September. She noted that it looks like the basement is 7 ½ feet above the grade to the rear and 5 ½ feet to the front. She questioned what this would look like.

Ms. Tier noted that the previous owners of this lot and the abutting lot wanted to add an addition to the house at 192 Idlewell Blvd.

Ms. Tier asked if anyone will be living in the basement area.

Ms. Tier noted that the house is bigger on this smaller lot (5000 square feet) than other houses in the neighborhood which are on larger lots.

Driveway will be filled to 7 feet and the drainage will run the side of the property to the rear yard.

Mr. Galvin stated that Mr. and Mrs. Egerton had owned the property; the lot with the house was in one name and the lot was in another name. They divorced and the lot was sold to their son; the property is not held in common ownership.

Mr. Galvin stated that any living area must be 1 foot above flood plain elevation so there cannot be any living space or mechanical/electrical systems in the basement area.

Mr. Foley asked where is one foot above flood plain. The application replied the floodplain is at elevation 19.8 feet and the first floor elevation is 22 feet.

Mr. Foley asked why there were no Conservation Commission issues when the application was made in 2002.

Mr. Galvin stated that the laws have changed and four of the five members of the commission have changed.

There was discussion regarding whether the swale will work.

Mr. Fuqua suggested that the Board defer to the review by the Conservation Commission as to the location of the swale.

Saul Schrader of 192 Idlewell Blvd. stated that he bought his house from Bruce Edgerton as did the applicant. He questioned if this is common ownership.

Mr. Schrader stated that there is run-off from the street and the ground is saturated. He also pointed out that his property does not have a driveway. He expressed concern that the proposed plan shows the lot's driveway over town property.

Mr. Galvin noted that the town property will only be graded to allow for access to the lot's driveway.

Mr. Galvin stated that Mr. Schrader bought his home through the executor of the estate.

A MOTION was made by Mrs. McElroy to CLOSE the public hearing and was seconded by Mr. Foley and UNANIMOUSLY VOTED.

**FINDINGS:**

The Board found upon a MOTION by Mr. Foley, seconded by Mrs. McElroy that the SPECIAL PERMIT within the Floodplain District Zone A4, in the Board's judgment, met all of the following conditions:

- (1) The utilities and mechanicals are above the floodplain.
- (2) All construction conforms to floodplain regulations.
- (3) All construction is according to plans revised dated March 15, 2010.
- (4) There will be no living space in the basement.

UNANIMOUSLY VOTED.

The Board further found upon a MOTION by Mr. Foley, seconded by Mrs. McElroy, that the VARIANCE due to the hardship created by the shape with narrow width and topography by the slope and floodplain conditions of the lot, 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 and that, in its judgment, all of the following conditions are met:

- (1) The specific site is an appropriate location for such a use; the lot is a buildable lot.
- (2) The use involved will not be detrimental to the established or future character of the neighborhood or town; it is in a single family neighborhood.
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians; adequate parking is provided.
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use; utilities and access are adequate and the structure meets floodplain construction criteria.
- (5) The public convenience and welfare will be substantially served based on all of the above findings.

UNANIMOUSLY VOTED.

**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 the following VOTES were made:

A MOTION was made by Mr. Foley, seconded by Mrs. McElroy, to APPROVE the request for a SPECIAL PERMIT for construction within the Floodplain District Zone A4 and was UNANIMOUSLY VOTED.

A MOTION was made by Mr. Foley, seconded by Mrs. McElroy, to APPROVE the request for a VARIANCE to construct a single family home within the side yard setback.

BZA CASE #3085 132 Union Street

Application of Mike and Cherylanne Harkin for property at 132 Union Street, also shown on the Weymouth Town Atlas Sheet 46, Block 529, Lot 6, located in an R-1 zoning district seeking a special permit and/or variance under 120-40 to extend a nonconforming building by creating a mud room/laundry room from the existing porch and to extend the roof on the barn.

Present:	Richard McLeod, Chair Edward Foley, Vice-Chair Mary McElroy, Clerk Francis Kenneally Charles Golden
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

Mike and Cherylanne Harkin appeared before the Board.

Mr. Fuqua reviewed the case for Board members. He stated that the applicant had previously requested to add the mud room. At time of review, it was noted that the garage had some work done that should have come before the Board. The applicant withdrew that application and resubmitted to include the mud room/laundry room and the roof.

Mr. Foley noted that there will be nothing outside of the footprint of the existing structure.

The chairman asked if there was anyone who wanted to comment on this application to which there was no reply.

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

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT to extend a nonconforming building by creating a mud room/laundry room from the existing porch and to extend the roof on the barn. 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.

The MOTION was seconded by Mrs. McElroy 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 to extend a nonconforming building by creating a mud room/laundry room from the existing porch and to extend the roof on the barn. 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.

**MINUTES – 2/24/10**

A MOTION was made and seconded to APPROVE the MINUTES of February 24, 2010 and was UNANIMOUSLY VOTED.

**ADJOURNMENT**

The meeting was adjourned at 8:00 P.M.

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Richard McLeod, Chair

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Date