

**BOARD OF ZONING APPEALS**  
**RECORD OF MINUTES AND PROCEEDINGS**  
**April 20, 2011**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 20, 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  
                                 Francis Kenneally, Clerk  
                                 Kemal Denizkurt  
                                 Chuck Golden  
                                 Robert Galewski  
                                 Jonathan Moriarty  
                                 Robin Moroz, Alt.

Not Present:                      Edward Foley, Vice-Chairman

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. In the absence of certain members, any decision on Case #3122 and Case #3126 will require unanimous vote to carry. 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 #3129 - Public Hearing, 18 Carroll Street**

Application of John McCafferty for property located at 18 Carroll Street, also shown on the Weymouth Town Atlas as Sheet 22, Block 294, Lots 4&23, located in R-1 zoning district, seeking a special permit and /or variance under Chapter 120-40 & 120-53 to subdivide one lot into two.

Members sitting:              Richard McLeod, Chairman  
                                 Kemal Denizkurt  
                                 Chuck Golden  
                                 Robert Galewski  
                                 Jonathan Moriarty

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

Attorney Gregory Galvin, with offices at 775 Pleasant Street appeared before the board with the applicant. He seeks to subdivide the lot; to re-establish the rear lot line. Lot 23 is the only one that abuts Walton, with no access to Carroll Street. This lot is only buildable if Walton Street is developed. There is a significant wetlands area off Charles Street.

Kemal Denizkurt asked if an affirmative vote will create a land-locked lot. Attorney Galvin responded that the lot is presently unbuildable, but if at some time Planning Board gives subdivision approval and Walton is developed it will then be accessible from Walton. There are presently no plans. With approval and no plan filed and no development, then in two years the lots will become contiguous again.

There was a brief discussion as to whether the Board has voted approval in the last several years that resulted in the creation of a land-locked lot. The result is that this is something that has come before the Board although infrequently.

Rod reported that the application was routed to the various departments. Conservation Commission noted the vernal pool of Walton Street behind lot 21 covers part of the right of way and will be a severe constraint to development. He also noted there are taxes due on the property. The applicant noted his recent purchase of the property would have been conditional to taxes and municipal fees due being paid.

### 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.

A motion was made by Jonathan Moriarty, seconded by Kemal Denizkurt to approve the application for a special permit as per plans and application submitted:

1. The applicant has met all criteria under Chapter 120-40, 120-53 & 120-122.
2. The specific site is an appropriate location for such a use based on zoning.
3. There will be no detriment to the established or future character of the neighborhood or town as the lot with the house is similar to the neighborhood.
4. There will be no nuisance or serious hazard to vehicles or pedestrians. The unbuildable lot on the unimproved portion of Walton Street will be subject to Planning approval before it may be built on.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
6. The public welfare and convenience will be substantially served

### DECISION OF THE BOARD

Due to the above findings, it was voted on a motion by Jonathan Moriarty, seconded by Kemal Denizkurt, 4/1(B. Galewski- no) to approve the request for a variance and for a special permit with the following condition.

1. The rear parcel, marked with a dotted line on the plan is considered one lot.

### **BZA CASE #3130 - Public Hearing, 66 Regatta Road**

Application of James and Leanne Galvin for property located at 66 Regatta Road, also shown on the Weymouth Town Atlas as Sheet 5, Block 12, Lot 44, located in R-1 zoning district, seeking a special permit and /or variance under Chapter 120-54 & 120-55 for a pool within the setback area.

Members sitting:     Richard McLeod, Chairman  
                              Kemal Denizkurt  
                              Chuck Golden  
                              Robert Galewski  
                              Jonathan Moriarty

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

Shane Brenner, Surveyor, appeared before the board, representing the applicants. They are requesting approval to install an above-ground swimming pool within the setback area. He reviewed the lot; due to steep topography, there is no place to play or entertain on the property with any other pool positioning. There was a nonconforming shed that has been moved and will not be put back in the same spot. Baylee Road is not primary access for the neighborhood but a cut through. The property fronts onto Regatta and the pool will adhere to the 18' setback on the Baylee Road side. Chairman McLeod asked if there is a plan to surround the pool with fencing. Mr. Brenner responded that there will be some type of fence/railing along the retaining wall on the Baylee Road side. Bob Galewski noted that Baylee Road does provide access to other homes in the neighborhood. Mr. Brenner responded that it is not heavily travelled.

Rod Fuqua reported that the application was routed to the various departments. He noted that the shed is 2' from the line, and closer than 3' requires one hour fire rating. Building Department recommends that the Baylee Road side of the property be screened with 6' stockade fencing to avoid it becoming an attraction nuisance. The board will consider a variance; the property does not have a rear yard and the shape and topography creates a hardship.

A motion was made by Robert Galewski to close the public hearing, seconded by Kemal Denizkurt and unanimously voted.

### FINDINGS

The Board found that owing to soil condition and topography, literal enforcement of the ordinance would create a substantial hardship. The Board made the following findings:

1.     The applicant has met all criteria under Chapter 120-122.
2.     The specific site is an appropriate location for such a use. Due to the shape and topography of the lot, there is no other layout that will work.
3.     There will be no detriment to the established or future character of the neighborhood or town as no change in the neighborhood is proposed.
4.     There will be no nuisance or serious hazard to vehicles or pedestrians. There is no change in access.
5.     Adequate and appropriate facilities will be provided for the proper operation of the proposed use with conditions for shed setback and fencing.
6.     The public welfare and convenience will be substantially served

### DECISION OF THE BOARD

Due to the above findings, a motion was made by Robert Galewski, seconded by Kemal Denizkurt and it was unanimously voted to approve the request for a variance, subject to the following conditions:

1. The shed will be located 3' off the lot line.
2. Six foot stockade fencing will be installed along Baylee Road as per Building Dept. request.

### **BZA CASE #3131 - Public Hearing, 114 High Street**

Application of Wayne Danubio for property located at 114 High Street, also shown on the Weymouth Town Atlas as Sheet 23, Block 263, Lot 36, located in R-1 zoning district, seeking to amend Case #3101 to eliminate Condition #3.

Members sitting:      Richard McLeod, Chairman  
                                Kemal Denizkurt  
                                Chuck Golden  
                                Robert Galewski  
                                Jonathan Moriarty

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

Wayne Danubio appeared before the board. He requested that the board remove condition #3 when it approved Case #3101, requiring the property be left its natural state. He provided photographs of the site. The previous owner has cleared the site because refuse was being dumped. He proposes to plant hemlocks as screening. Kemal Denizkurt asked if the mound of dirt is still there; Mr. Danubio responded that it is loam that will be screened. Bob Galewski asked if there is any plan for the rest of the site and if there is any asphalt planned. Mr. Danubio responded that he does not plan any asphalt. Jonathan Moriarty noted that during his visit he noted commercial vehicles parked on the lot and notes that the restriction applies to both lots.

Rod Fuqua reported that the application was routed to the various departments with no special concerns. He reviewed the history of the lots and Case #3101. The prior owner was within his rights to clear the property; however, once transferred it was required as a condition that the lot be left in its natural state. He noted that the applicant plans to use the lot as a side yard and plant vegetation. There can be no storing of commercial vehicles and the lot is not considered buildable.

Marsha Young, 12 Duck Lane, Hingham, addressed the board. She also provided photographs of the current conditions of the lot, and some information to support her objection to planting hemlocks along the property line as a buffer. She also requested how close to the property line the plantings will be and how far apart they will be planted. She requested alternative plantings, such as Leland cypress. Mr. Danubio is willing to consider her request. She also asked if any fencing is planned; Mr. Danubio responded that the only fencing he will erect will be to protect vegetation from animals. Rod noted the application is only to rescind condition #3; all other conditions will still apply. Mr. Danubio can still store vehicles on his property but not on this lot.

Eileen Maroney, 125 High Street and Sarah Green, 109 High Street both spoke to the improvements Mr. Danubio has made to his property.

A motion was made by Robert Galewski to close the public hearing, seconded by Kemal Denizkurt and unanimously voted.

### FINDINGS

The Board found that rescinding Condition #3 from the vote of the board on 9/9/10 on Case #3101 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 found that:

1. The applicant has met all criteria under the zoning ordinance 120-122.
2. The specific site is an appropriate location for such a use.
3. There will be no detriment to the established or future character of the neighborhood or town. The property will remain a side yard.
4. There will be no nuisance or serious hazard to vehicles or pedestrians, with no change in access.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, there are no utilities proposed.
6. The public welfare and convenience will be substantially served

### DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the request to rescind Condition #3 of Case #3101 approved 9/9/10, and subject to the following conditions:

1. The lot will remain vegetation; no asphalt will be allowed.
2. Trees will be a minimum of 6 ft. in height and not further than 15 ft. on center planted on the property line.

### **BZA CASE #3122 – Discussion and/or Decision, 754 Main Street**

Application of TD Bank, N.A., for property located at 754 Main Street, also shown on the Weymouth Town Atlas as Sheet 41, Block 491, Lot 30, located in B-1 zoning district, seeking a special permit and /or variance under Chapter 120-25.C, 120-51, Table 1, 120-40, 120-48, 120-74.L. The applicant is proposing a bank with provision to maintain some landscaping on lot frontage; provide one (1) less parking space than required; add three (3) drive through lanes; and move the entrances further from the intersection. Some setbacks and lot dimensions have been impacted by the widening of Main Street.

Mr. McLeod was not present at the March 16, 2011 public hearing session. He did submit an affidavit as required by the Mullen Rule and is therefore eligible to vote on the application.

Members sitting:     Richard McLeod, Chairman  
                             Francis Kenneally, Clerk  
                             Kemal Denizkurt  
                             Robin Moroz

All parties are willing to continue with four Board members in attendance; any action requires unanimous vote. Rod Fuqua reviewed the conditions that have been recommended if the Board finds favorable action: no left turn onto Main Street exiting the site; all vehicles during demolition and construction will be parked on site.

Kemal Denizkurt asked to review fencing; the plan calls for 6' cedar fence on both sides of the property.

Chairman McLeod reviewed the variance request; for parking spaces one less than required; setback requirements and drive-through.

### FINDINGS

The applicant has shown a hardship exists for the parking and landscape requirements. Literal enforcement with the unique shape and usage of the lot and by land taking not of its volition 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. The Board made the following findings:

1. The applicant has shown a hardship exists with the unique shape and usage of the lot and by land taking not of its volition.
2. The specific site is an appropriate location for such a use based on the zoning.
3. There will be no detriment to the established or future character of the neighborhood or town, the lot is presently developed.
4. There will be no nuisance or serious hazard to vehicles or pedestrians with a new left turn out on Main Street.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use based on the application and testimony..
6. The public welfare and convenience will be substantially served based on all the above findings.

### DECISION OF THE BOARD

Due to the above findings, a motion was made by Francis Kenneally, seconded by Robert Galewski and was unanimously voted to approve the request for a variance and for a special permit and subject to the following conditions:

1. There will be no left turn exiting the property onto Main Street.
2. No vehicles will be parked on Main Street or Park Avenue during demolition or construction.

### **BZA CASE #3126 – Discussion and/or Decision, 1106 Main Street**

Application of Wallace Coffee, Inc., for property located at 1106 Main Street, also shown on the Weymouth Town Atlas as Sheet 53, Block 560, Lot 5, located in HT zoning district, seeking a special permit and /or variance under Chapter 120- 22.8A(1) for a drive-through coffee shop in a new structure and contains up to a maximum of 5,000 sq. ft. gross floor area.

Members sitting:     Richard McLeod, Chairman  
                              Kemal Denizkurt  
                              Jonathan Moriarty

Robin Moroz, Alternate

Not present: Edward Foley, Vice-Chairman

Rod Fuqua reviewed the recommended conditions the board had considered. Exit from the property will be right turn only. Trash pickup and deliveries can only occur after peak morning hours. There will be a police detail to monitor and enforce traffic for the first week during peak operation hours; reviewed quarterly during the first year and thereafter as determined.

#### 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 120-122.
2. The specific site is an appropriate location for such a use based on zoning.
3. There will be no detriment to the established or future character of the neighborhood or town as this is a commercial developed street in this area.
4. There will be no nuisance or serious hazard to vehicles or pedestrians with a condition of no left turn out onto Main Street.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use with the addition of a fence on two sides.
6. The public welfare and convenience will be substantially served

#### DECISION OF THE BOARD

Due to the above findings, a motion was made by Kemal Denizkurt, seconded by Jonathan Moriarty and it was unanimously voted to approve the request for a variance and for a special permit subject to the following conditions:

1. Six foot solid fencing will be installed on the west and south sides of the lot.
2. Exit from the property will be right turn only.
3. Trash pickup and deliveries will be late morning or afternoon only.
4. A police detail to monitor and enforce traffic will be in place during the first week of operation.
5. The Traffic Engineer, as deemed appropriate, will monitor traffic thereafter.

#### Adjournment

At 8:30 PM, there being no further business, a motion was made by Jonathan Moriarty to adjourn the meeting, seconded by Kemal Denizkurt and unanimously voted.

Approved:

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Kemal Denizkurt

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Date