

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
August 24, 2011

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, August 24, 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: Edward Foley, Vice-Chairman
Kemal Denizkurt, Clerk
Chuck Golden
Martin Joyce
Jonathan Moriarty
Robin Moroz

Not present: Richard McLeod, Chairman

Staff: James Clarke, Director, Planning & Development
Robert Luongo, Economic Development 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 #3141 - Public Hearing (cont.), 167 Rinaldo Road

Application of Thomas G. McCue for property located at 167 Rinaldo Rd., also shown on the Weymouth Town Atlas as Sheet 11, Block 122, Lot 207, located in R-1 zoning district, seeking an appeal from the decision of the Inspector of Buildings.

Members sitting: Edward Foley, Vice-chairman
Kemal Denizkurt
Chuck Golden
Francis Kenneally
Martin Joyce

A motion was made by Kemal Denizkurt to open the public hearing and waive the reading of the legal advertisement, was seconded by Martin Joyce and unanimously voted.

Thomas McCue appeared before the Board. His neighbor runs an at home business for music instruction and small instrument repair. The business brings about ten cars average per day to the neighborhood. He submitted photograph dated 8/17/11, the Town of Weymouth Atlas sheet for

the properties, a letter from the neighbors at 149 Rinaldo Road, and the Zoning Ordinance, all of which were entered into the record as Exhibits 1-4.

Mr. McCue contends that under the R-1 zoning, the type of business being run at 168 Rinaldo Rd. is in violation of Ordinance 120-6, as a home office use. The amount of traffic generated by the business jeopardizes the children in the neighborhood. It's a narrow street and there are many children and is not a suitable location for a business. He does not want to force his neighbor out of business, but wants some restrictions.

Vice Chairman Foley asked what kind of restrictions. Mr. McCue responded traffic restrictions. When school is back in session, the business generates more traffic. Vice Chairman Foley noted that the Building Inspector has responded to correspondence from Mr. McCue and from Councilor Victor Pap that the business is in compliance with town ordinance.

Kemal Denizkurt noted there appears to be some confusion as to the definition of a home business, and professional home office and read the definition from 120-6. He noted that a professional home office does not preclude the use as a school or repair place, so long as it is not "a detriment to the neighborhood." Mr. McCue responded that it is a detriment to the kids riding bikes on the street. He reported that for every student who takes lessons, there is a drop off and pick up trip, and there are times the street is congested, particularly for the neighbors who rely on the T's The Ride. He contends the street has been documented with the DPW as a speedway and cut-through.

Jonathan Moriarty asked about the advertising for the business that Mr. McCue reported. Mr. McCue provided a print of an online ad, which was voted into the record as Exhibit 5. Jonathan Moriarty reviewed the photographs and noted that it appears to be resident vehicles and that the information being provided is not enough to substantiate a case to shut down the music business. He asked if plows or emergency vehicles have any difficulty getting through the street; there hasn't been.

Jeff Richards, Building Inspector addressed the Board and reviewed the complaints his office has received from Mr. McCue. He reported that the initial complaint his office received was headlights shining into Mr. McCue's windows after 6PM. An investigator was sent out who spoke with the instructor. The instructor parked his car on the street after that and allowed vehicles to use his driveway to drop off and pick up students. The music instruction occurs only during the day. He again reviewed the by-law and definition of professional Home Office. Traffic is not an issue and is regulated by WPD. The street is 18' wide, with a 4' apron on either side. Mr. McCue placed stones in front of his property, on the town-owned land.

Donald Altobello, owner of 167 Rinaldo Rd. and owner of the music instruction business addressed the Board. He brought another neighbor, Maureen Prasinos of 172 Rinaldo Rd. as a witness. He noted that many of the things Mr. McCue has said are gross exaggerations. He teaches classes from 3-6 PM three days per week; none scheduled after 6:30PM. He averages 4 students per day. Most parents do not drop off but will stay to observe lessons. They park in Mr. Altobello's driveway, so lighting into Mr. McCue's windows is not an issue. He has spoken with all of the abutters to his property and none has a problem with his music lessons outside of Mr.

McCue. He provided letters in support and a petition signed by his neighbors and all abutters with two exceptions: Mr. McCue and a property in foreclosure and these were entered into the record as Exhibit 6,7 and 8. He has nothing to do with the internet ad; he does not own a pc, nor does he sell music equipment. He repairs woodwinds and brass instruments only. His business is strictly by appointment and has been in business since 1986. He has taught music from his home since the 1970's and never had any complaints or problems until Mr. McCue moved in. The cars that Mr. McCue refers to are three friends with whom he socializes on Wednesday evenings. They have not met since last September. He also noted that Mr. McCue runs an embroidery business from his home.

He read a prepared statement to the Board. He has been a resident since 1958 and he, his family and friends have been the victims of harassment for the last six years by Mr. McCue. He is licensed by the town and it is his livelihood and hobby. In July he moved his elderly father in with him. He provided many letters from his neighbors and friends. They were submitted as Exhibits 10,11,12, and 13. He submitted an aerial view of the property which was entered into the record as Exhibit 14.

Neighbors and friends of Mr. Altobello also testified in support of him and his business, including Maria Zaccardi, 182 Rinaldo Rd., Jim Campbell, who has played guitar with Mr. Altobello for 40 years, Ron Zaccardi of 182 Rinaldo Rd., Robert Gallegos of 60 Phillips St., Maureen Prasinos, 172 Rinaldo Rd., Diane Dumont who is a family member and noted some of the cars in the photos provided by Mr. McCue are hers and other family members.

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

To vote on the of BZA Case No. 3141 to Appeal the decision of the Building Inspector

A motion was made by Jonathan Moriarty to deny the application for appeal; there is insufficient evidence to support that the business is a problem; nothing from WPD to support a traffic issue; the license issued by the town conforms with town ordinance and no reason to challenge.

FINDINGS

Further, the Board finds that:

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 will be substantially served.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to deny the appeal of the Building Inspector's decision.

Submission:

Exhibit #1-photo dated 8/17/11, Rinaldo Rd.

Exhibit #2-Town of Weymouth Atlas Sheet for the property

Exhibit #3-Letter from E. and M. McDonough, 149 Rinaldo Rd.

Exhibit #4-Zoning Ordinance Chapter 120

Exhibit #5-Internet Advertisement

Exhibit #6,7,8-signed letters, petitions

Exhibit #9-Roundstone Embroidery ad

Exhibit #10,11,12,13- letters in support

Exhibit #14-Aerial view

BZA CASE # 3144- Public Hearing (cont.), 102 Weyham Road

Application of Claire & Neal Drew for property located at 102 Weyham Rd., owned by Joseph and Kathleen Geary; also shown on the Weymouth Town Atlas as Sheet 8, Block 111, Lot 29, located in R-1 zoning district, seeking an appeal of the decision of the Inspector of Buildings to issue permit (handicap ramp is exempt from Zoning Ordinance).

Members sitting: Edward Foley, Vice-chairman
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty
 Martin Joyce

A motion was made by Jonathan Moriarty to open the public hearing and waive the reading of the legal advertisement, was seconded by Chuck Golden and unanimously voted.

Claire and Neal Drew appeared before the Board. A year ago the Gearys had a deck built without a permit and then applied for a permit for a handicapped access ramp. There is no one in residence currently who is in a wheelchair. Jeff Richards noted on 8/5 he was inclined to let them keep it with a 9' block from floor to gutter privacy barrier. Jeff noted that in 2009 they applied for an addition with double slider and stairs on the back, per plan submitted. The deck was built without the required landing and there were no subsequent drawings or permits. A registered letter was sent on 4/13/11 but not picked up by the owners. The builder then came in with an application for a wheelchair ramp. The permit was issued on 6/14/11. Under MGL the ramp does not require a setback. He then spoke with the applicant about abatement and the construction of a wall to eliminate the line of sight to the neighbors. The wall was built, but Mr. Richards hasn't seen it yet.

Vice Chairman Foley noted that these owners have been before the Board twice for work without a permit. The testimony from the neighbors about the health risk of drifting smoke is credible and it's not too much to ask for a 9' barrier. There was some discussion of the amount of time to complete after permit issuance, the ramp not under ADA requirements for residential use- the ramp is not for public use and can be built to the resident's need, and where the ramp is located on the plan. Exhibits 1 and 2 were entered into the record; photographs and letter from neighbor's physician.

Mr. Geary addressed the Board. He and his wife took the Drews to court for harassment which was dismissed. Mrs. Drew was advised by the court to discontinue taking photographs of the property until the matter was heard by BZA.

Barbara Hamilton, 104 Weyham Road, testified that she has no problem with this deck.

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

A motion was made by Kemal Denizkurt to take the matter under advisement, seconded by Martin Joyce and unanimously voted.

Submission:

Exhibit #1-photographs

Exhibit #2-letter from physician

BZA CASE #3145 - Public Hearing, 25 Okala Road

Application of Stephen Gosselin, Inc. for property located at 25 Okala Rd., also shown on the Weymouth Town Atlas as Sheet 19, Block 257, Lot 24, located in R-1 zoning district, a special permit and/or variance to subdivide one lot into two lots (12,727 sq. ft. and 12,728 sq. ft.)

Members sitting: Edward Foley, Vice-chairman
 Kemal Denizkurt
 Chuck Golden
 Jonathan Moriarty
 Martin Joyce

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

Attorney Edward J. Richardson, with offices at 339 Washington St., Dedham, MA appeared before the board with applicant Stephen Gosselin. Exhibit #1 with Attachments A-D:

- A- old subdivision plan
- B- Weymouth Assessors Map
- C- Plot Plan at sale
- D- Plan with application

Attorney Richardson noted the deed for the property is recorded both in Weymouth and Hingham; a small corner of the property is situated in Hingham. Taxes are not assessed on the property by the Town of Hingham.

The intent is to subdivide a parcel that has one dwelling into two parcels. The dwelling was built in the 1930's and the title goes back to the 1940's. Special Permit required as both lots will be less than the minimum required under 120-53; however, it is a small established development of similar sized lots. The average lot size in the area is 8200 sq. ft. The application complies with

the intent of the by-law. There is some concern with hydrant location that will be resolved through WFD. Water department has already been consulted regarding the water line concern.

Bob Luongo reported that the application was routed to the various departments and noted the comments. There are outstanding tax and water bills. Attorney Richardson responded that the taxes were paid, and he obtained a municipal lien certificate that doesn't indicate water bills outstanding. Mr. Gosselin has met with the neighbors and there is no opposition to his application. One neighbor, Donna Malfer of Ocala Rd., and the owner of 52 Manatee Rd. were in attendance and supported the application.

A MOTION to close the public hearing was made by Kemal Denizkurt, was seconded by Martin Joyce and unanimously voted.

To vote on the of BZA Case No. 3145 to subdivide one lot into two lots:

A motion was made by Jonathan Moriarty seconded by Kemal Denizkurt to approve the application for as per plans and application submitted based on testimony that the lot will be greater than the average in the area, there are adequate utilities for the one lot addition, and there will be no nuisance by adding one new lot to the street.

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 application has met the criteria in zoning under Chapter 120-51 Table 1.
2. The specific site is an appropriate location for such a use as it is residential.
3. The use involved will not be detrimental to the established or future character of the neighborhood or town as the lot is of greater size than average in the area.
4. There will be no nuisance or serious hazard to vehicles or pedestrians by adding one house lot.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
6. The public convenience will be substantially served.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a special permit to subdivide one lot into two lots (12,727 sq. ft. and 12,728 sq. ft.).

Submission:

Exhibit #1 plan with Attachments A-D

BZA CASE #3146 - Public Hearing, 17 Bradford Road

Application of Kim Culhane for property located at 17 Bradford Rd., also shown on the Weymouth Town Atlas as Sheet 43, Block 499, Lot 17, located in zoning district, seeking a special permit or variance under Chapter 120-51 and Table 1 for front yard setback to construct a front porch.

Members sitting: Edward Foley, Vice-chairman
Kemal Denizkurt
Chuck Golden
Jonathan Moriarty
Martin Joyce

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

Kim Culhane appeared before the board. She is requesting relief from the 18' setback requirement to build a front porch. There is no other location on the lot suitable. The proposed porch addition is 7.5x20' and will require a variance. There is no opposition from the neighbors. She provided a survey of the property, letters from the neighbors and photographic testimony which were entered into the records as Exhibits 1,2,3.

A MOTION to close the public hearing was made by Martin Joyce, was seconded by Kemal Denizkurt and unanimously voted.

To vote on the of BZA Case No. 3146 for a variance for front yard setback to construct a front porch

A motion was made by Jonathan Moriarty, seconded by Kemal Denizkurt to approve the application for a variance, under Chapter 120-51 Table 1, as amended, as per plans and application submitted.

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. Owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise. The front porch cannot be placed elsewhere on the lot. It will be covered and provide protection from the elements.
2. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a variance for front yard setback to construct a front porch.

Submission:
Exhibit #1-survey
Exhibit #2-photographs

Exhibit #3-signatures from neighbors in favor of the application

Minor Modification-Case #3126, 1106 Main Street

Mr. Clarke reported that the request for minor modification on this has been withdrawn.

Minor Modification-Case 2849, Weathervane Golf Club & Village at Weathervane

Mr. Clarke reported that the application for a minor modification on the clubhouse design is requested. The applicant met with him, the Building Inspector and Conservation Administrator. It's at the building permit stage, and Mr. Bristol is requesting the location of the clubhouse be moved 50 ft. to the north and adding 4 additional spaces.

The Board agreed that this is a minor modification. A motion was made by Kemal Denizkurt to approve the applicant's request to revise the clubhouse layout and add four additional parking spaces, and was seconded by Jonathan Moriarty and unanimously voted. The Board requested that the application show where the 4 additional spaces are located on the plan.

BZA CASE #3142 - Public Hearing (cont.), 412 Washington Street

Application of Michael Patenaude/Poyant Signs, for property located at 412 Washington St., also shown on the Weymouth Town Atlas as Sheet 24, Block 284, Lot 22, located in B-1 zoning district, seeking a variance for signs to allow new signage of similar dimensions totaling approximately 102 square feet.

Members sitting: Kemal Denizkurt
 Chuck Golden
 Martin Joyce
 Jonathan Moriarty
 Robin Moroz

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

Michael Patenaude appeared before the Board. The invoice to Barlo Signs/Screengraphics for the previous signage, showing permit fees was entered into the record as Exhibit #1. The applicant noted he could not guarantee that the other company went to the town to obtain the permits, but believed they were applied for. The permit can't be located and the current signage has been in place fourteen years. The request for new signage is not more than what is already in place. Kemal Denizkurt asked about the wraparound lighting on the fascia bands, which will shine downward.

Building Inspector Richards noted that the project is looked at like a strip mall; there are several tenants in the property and each tenant has his own sign area. The building department will see that the other tenant signage violations are corrected. The application is only for Enterprise.

A MOTION to close the public hearing was made by Chuck Golden, was seconded by Jonathan Moriarty and unanimously voted.

To vote on the of BZA Case No. 3142 to allow a variance for signs to allow new signage of similar dimensions and totaling approximately 102 square feet.

A motion was made by Chuck Golden, seconded by Jonathan Moriarty to approve the application for a variance as per plans and application submitted.

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. Owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise.
2. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance.
3. The specific site is an appropriate location for such a use.
4. The use involved will not be detrimental to the established or future character of the neighborhood or town. The outstanding water bill will be resolved.
5. There will be no nuisance or serious hazard to vehicles or pedestrians.
6. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
7. The public convenience will be substantially served.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a variance for signs to allow new signage of similar dimensions totaling approximately 102 square feet.

Submission:

Exhibit #1-Invoice of Barlo Signs/Screengraphics to Enterprise Rent a Car dated 5/8/97

Minutes-June 8, 2011 and July 20, 2011 Case #3140, 3143

A motion was made by Chuck Golden to approve the minutes of June 8, 2011 and July 20, 2011; Case #3140 and 3143; was seconded by Robin Moroz and was unanimously voted.

Adjournment

At 10:00 PM, there being no further business, a motion to adjourn the meeting was made by Chuck Golden, seconded by Jonathan Moriarty and was unanimously voted.

Respectfully submitted:

Kemal Denizkurt, Clerk