

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
September 8, 2010**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, September 8, 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.

Present: Richard McLeod, Chairman
 Edward Foley, Vice-Chair
 Chuck Golden
 Francis Kenneally
 Robert Galewski

Staff: Jim Clarke, Director of Planning and Development

Recording Secretary Mary Briggs

The Vice-chairman called the hearing to order and explained the procedures that would be followed to the people present. He also noted that in the absence of certain members, until the chairman has arrived a unanimous vote of the board will be required to pass any decisions and gave the applicants the option to delay their hearing until the chairman is present.

BZA CASE #3096 – Public Hearing, (cont.), Norma Road

Application of Kenneth Ryder for property located at Norma Road, also shown on the Weymouth Town Atlas as Sheet 24, Block 318, Lot 104, located in R-1 zoning district, seeking a variance from the minimum upland lot area due to the Planning Board rules and regulations of a minimum radius turn-around on the street and the locus of the wetlands substantially limits the applicant's buildable area.

Members sitting: Edward Foley, Vice-chairman
 Chuck Golden
 Francis Kenneally
 Robert Galewski

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

Attorney Gregory Galvin, with offices at 775 Pleasant Street appeared before the board on behalf of the applicant. The applicant has decided after reviewing the materials and discussion at the last Board meeting to go back to the Planning Board to rescind the previous subdivision project, and come back with new drawings showing a new road layout and with a substantial increase in the upland area for the Board to review. Attorney Galvin requested a continuance. He will notify the abutters in writing.

A motion was made by Chuck Golden, seconded by Francis Kenneally to continue the hearing to the October 6, 2010 meeting and was unanimously voted.

BZA CASE #3016 – Public Hearing, 1221 Pleasant Street

Application of Kenneth and Pamela Cahoon for property located at 1221 Pleasant Street, also shown on the Weymouth Town Atlas as Sheet 27, Block 356, Lot 2, located in R-1 zoning district, seeking to convert a two family with in-law to three family.

Members sitting: Edward Foley, Vice-chairman
 Chuck Golden
 Francis Kenneally
 Robert Galewski

Jim Clarke noted that the application has been withdrawn in writing. A motion was made by Chuck Golden, seconded by Francis Kenneally to accept the letter withdrawing the application and was unanimously voted.

Submission: Exhibit 1- letter from Kenneth and Pamela Cahoon

BZA CASE #3102 – Public Hearing, 127 Birchbrow Avenue

Application of Mary Christofi for property located at 127 Birchbrow Street, also shown on the Weymouth Town Atlas as Sheet 4, Block 54, Lot 27, located in R-1 zoning district, seeking a special permit and/or variance under Chapter 120-40, to add a second story addition, part of which lies within the setback area.

Members sitting: Richard McLeod, Chairman
 Edward Foley, Vice-chairman
 Chuck Golden
 Francis Kenneally
 Robert Galewski

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

Ms. Christofi and her husband appeared before the board. Chairman McLeod arrived during this hearing (7:15pm). Work was begun to redo a back room and expanded to include an upstairs room. The work was started before the building permit was issued and is currently under stop order. The work intensifies the existing nonconformity.

Jim Clarke noted that a copy of the plan was forwarded to other town agencies for review and comment and the following issues or concerns were noted:

Building:	After a review of the application, the Department of Municipal Licenses and Inspections finds the following: The structure is located in such a way as to not allow any other location for this proposed addition; 120-40 is zoning section which would apply to this case. The addition is partially
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	constructed and is under a stop work order at this time. The structure (addition) location would not inhibit traffic flow from the driveway.
Conservation:	No Conservation filing required.
Fire:	
Health :	Based on Health Dept. files, the land is suitable for the proposed addition.
Police:	No police issues.
DPW:	
Water comments:	No comments.
Sewer comments:	Water and sewer mitigation fees.
Highway/C&M/DPW Director:	No comments.
Engineering:	No comments.
Schools:	Presents no special concerns to the School Department.
Tax:	

Abutter Michael Mazrimas, 131 Birchbrow Avenue spoke in opposition of the application. He noted the work was begun with a building permit displayed from a prior project. He noted the expansion is too close to the side lot and his home and is concerned with a sliding glass door that may lead to further expansion. The structure is imposing on his privacy and light, and will cause runoff water issues. He provided photographs of the site.

Because a sliding glass door was installed, the applicant was asked if there were plans to build a deck on the second floor and she responded no.

Maureen Mazrimas, parent of the abutter and a former member of the Zoning Board for City of Quincy, also spoke in opposition of the plan. She read a prepared statement to the Board.

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

A motion was made by Francis Kenneally, seconded by Chuck Golden to take the application under advisement and was unanimously voted.

Submission: Exhibit 1 photographs presented by Michael Mazrimas
Exhibit 2 written comments presented by Maureen Mazrimas

BZA CASE #3087 –Public Hearing, cont., 115 Pilgrim Road

Application of Barry Drew for property located at 115 Pilgrim Road, also shown on the Weymouth Town Atlas as Sheet 4, Block 26, Lot 10, located in R-1 zoning district, seeking a special permit and/or variance under Chapter 120-51 & Table 1 to construct and expand a deck to a single family house within the side yard setback.

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

Chuck Golden
Francis Kenneally
Robert Galewski

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

Barry Drew appeared before the board. Jim Clarke reviewed the status. The board requested at its last meeting that the applicant remove the portion of the deck encroaching on the abutting property before returning to the board. Mr. Drew provided pictures that this has been done. A new plot plan showing the change has not been received. The deck originally was .4' over the property line; the applicant has cut 8" and is now 10" off the property line. There was a brief discussion regarding whether there still existed the need for the variance. Jim Clarke explained that the existing dwelling is within the 10' setback and the dwelling is non-conforming. Any construction would require review by the Board. Mr. Barry has been before the Board several times over the cleanup of the debris from the site and the encroachment issue. None of the abutters were present at this meeting.

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

A motion was made by Edward Foley, seconded by Robert Galewski to approve the application for a variance, citing the following:

1. Due to the shape of the lot and location of the structure, literal enforcement would prove a financial hardship.
2. The applicant has demonstrated a willingness to work with the neighbors.
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.
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.

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.

DECISION OF THE BOARD

Due to the above findings, it was unanimously to approve the request for a variance citing the following conditions:

1. Due to the shape of the land and placement of structure, literal enforcement would prove a financial hardship.
2. There is no other area to locate the deck.

3. The applicant has shown willingness to work with his neighbors and address the board's issues.

Submission: 6 photographs- deck dated prior to and after the encroachment correction

BZA CASE #3103 -Public Hearing, 141 Broad Street

Application of RCL Realty Trust, LLC for property located at 141 Broad Street, also shown on the Weymouth Town Atlas as Sheet 20, Block 274, Lot 17, located in R-4 zoning district, seeking a special permit or variance under Chapter 120-53 to subdivide property so that the commercial business is on a separate lot from the multi-family dwelling.

Members sitting: Richard McLeod, Chairman
Edward Foley, Vice-chairman
Chuck Golden
Francis Kenneally
Robert Galewski

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

Attorney Gregory Galvin, with offices at 775 Pleasant Street, appeared before the board with the property owner Ratan Lillaney. He noted there are two buildings on the property, one of which is commercial and the other is a 4-unit dwelling. The intent is to separate the lot along the lines suggested, similar to the original line before the property was merged. Surrounding property is all owned by the Welch family. Atty. Galvin cited the applicant noted his insurance rates will decrease by approximately \$2000 if he subdivides the property. He also noted that the business parcel would need to be separate from the residential use in order to consider a possible condo use. The property is assessed for tax purposes as one lot; by subdividing the town would gain by the ability to tax two separate properties. There was some discussion with the board regarding the history of the parcel, the tax rates, the density, floor area ratio (FAR) and the memo from Jeff Richards which indicates the separation would result in a non-conformity that doesn't currently exist. It was originally two separate parcels which were merged in order to meet the zoning requirement to construct the multiple-unit dwelling.

Attorney Galvin noted he did not have a copy of that correspondence and requested a continuance to October 6, 2010 to review and will further address including the frontage requirements.

Jim Clarke noted that a copy of the plan was forwarded to other town agencies for review and comment and the following issues or concerns were noted:

Building:	See memo to Board of Zoning Appeals from Jeffrey E. Richards, CBO, dated August 24, 2010
Conservation:	No comments. Properties are outside Conservation Commission's jurisdictional area
Fire:	
Health :	Based on Health Dept. files, there are no objections

	regarding the request to subdivide the property
Police:	No police issues
DPW:	
Water comments:	No comments
Sewer comments:	Utility easement shall be recorded on the deed for Lot 17B
Highway/C&M/DPW Director:	No comments
Engineering:	<ol style="list-style-type: none"> 1. This lot had a building permit plot plan approved for the structure on lot 17B in 2009. All utilities have been installed for the new building (135 Broad Street) and are within the access and utility easement. The plot plan (PP-4469) was approved and forwarded for permitting the structure has been built. 2. Topographic info on the plot plan shows all the elevations pitching towards Lot 17A and Broad Street. No drainage was shown on the plot plan and none appears to be required.
Schools:	Presents no special concerns to the School Department
Tax:	

Attorney John E. Twohig, of Goulston & Storrs, Counsellors at Law, and representing the Welch family and the Colonial Nursing Home spoke in opposition of the application. He noted that the application subverts the intent of the zoning ordinance by allowing a lot to be subdivided which was originally merged in order to meet zoning requirements to construct the multi-family dwelling. He also reviewed the history of the lot and cited the insufficiencies in lot and driveway sizes and rear yard setback, excess FAR, and concern with the encroachment and impact to abutting properties. He submitted supporting documentation to the Board.

A motion was made by Francis Kenneally, seconded by Robert Galewski to close the public hearing and was unanimously voted. A motion was made by Edward Foley, seconded by Francis Kenneally to continue the public hearing to October 6, 2010 and was unanimously voted. Chuck Golden asked that the parking spaces be shown in the plan when the applicant comes back.

Submission: Letter dated September 8, 2010 from John E. Twohig of Goulston & Storrs and attached supporting documentation

BZA CASE #3104 -13 Wood Avenue, Public Hearing

Application of David Godinho and M. Kenneth Heckman, III for property located at 13 Wood Avenue, also shown on the Weymouth Town Atlas as Sheet 31, Block 404, Lot 2, located in R-1 zoning district, seeking a special permit and/or variance under Chapter 120-40 for an addition to a single family, part of which lies within a setback area.

Members sitting: Richard McLeod, Chairman
Edward Foley, Vice-chairman
Chuck Golden
Francis Kenneally

Robert Galewski

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

David Godinho appeared before the board. He noted that the lot is unusual. The front of the property is on Wood Avenue, but the back yard fronts Sanderson Avenue. The intent is to remove the existing porch and deck, and building an enclosed porch which will not further encroach on the rear of the lot that actually fronts on Sanderson Avenue.

Jim Clarke noted that a copy of the plan was forwarded to other town agencies for review and comment and the following issues or concerns were noted:

Building:	No comments
Conservation:	No Conservation filing required
Fire:	okay
Health :	A review of Health Dept. files finds this land suitable for the proposed addition
Police:	No police issues
DPW:	
Water comments:	May want to upgrade water service to 1" Cu during renovation
Sewer comments:	No comments
Highway/C&M/DPW	
Director:	No comments
Engineering:	No comments
Schools:	
Tax:	Owner of record: David P. Godinho and Kenneth M. Heckman III; taxes current

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

A motion was made by Edward Foley, seconded by Robert Galewski to approve the application for a special permit 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.

DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the request for a special permit citing the following conditions:

1. The lot is unique in that it has frontage both front and back of the property and no rear yard.
2. The applicant should consider the recommendation by the Water Department of the DPW to upgrade water service.
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.
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.

BZA CASE #3105 - 28 Leonard Road, Public Hearing,

Application of Brian Peach for property located at 28 Leonard Road, also shown on the Weymouth Town Atlas as Sheet 7, Block 57, Lot 12, located in R-1 zoning district, seeking a special permit and/or variance under Chapter 120-40 to extend nonconformity for an addition within sideline setback.

Members sitting: Richard McLeod
Edward Foley, Vice-chairman
Chuck Golden
Francis Kenneally
Robert Galewski

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

Brian Peach, applicant and Avo Asdourian, project architect, appeared before the board. There is a current nonconformity. The addition will follow the existing lines, without further encroachment. There is no other way to locate the addition.

Jim Clarke noted that a copy of the plan was forwarded to other town agencies for review and comment and the following issues or concerns were noted:

Building:	
Conservation:	No Conservation filing required
Fire:	Okay. Alarm system must be compliant with 780 CMT 9.00
Health :	A review of Health Dept. files finds this land suitable for the proposed addition
Police:	No police issues
DPW:	
Water comments:	No comments
Sewer comments:	Water and sewer mitigation fees
Highway/C&M/DPW	
Director:	No comments
Engineering:	No comments

Schools:	Presents no special concerns to the School Department
Tax:	Owner of record: Brian J. Peach; taxes current

A motion was made by Edward Foley, seconded by Francis Kenneally to close the public hearing and was unanimously voted.

A motion was made by Edward Foley, seconded by Francis Kenneally to approve the application, citing:

1. The design and the layout of the addition fit the site.
2. The specific site is an appropriate location for such a use.
3. The use involved will not be detrimental to the established or future character of the neighborhood or town.
4. There will be no nuisance or serious hazard to vehicles or pedestrians
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
6. The public convenience will be substantially served.

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.

DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the request for a special permit.

BZA CASE #3107 – Lot 3A, Neck Street, Public Hearing

Application of Kenneth McAuliffe of 64 Gilmore Street, for property of John McCaffrey located at Lot 3A, also shown on the Weymouth Town Atlas as Sheet 5, Block 13, Lot 24, located in R-1 zoning district, seeking a special permit and/or variance under Chapter 120-38.3 for a single family dwelling within a 100 year floodplain.

Members sitting: Richard McLeod
 Edward Foley, Vice-chairman
 Chuck Golden
 Francis Kenneally
 Robert Galewski

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

Owner John McCaffrey and applicant Kenneth McAuliffe appeared before the board. The matter was heard before the Conservation Commission and an Order of Conditions issued.

Jim Clarke noted that a copy of the plan was forwarded to other town agencies for review and comment and the following issues or concerns were noted:

Building:	
Conservation:	See memo to Rod Fuqua from Mary Ellen Schloss, Conservation Administrator, dated September 2, 2010
Fire:	Okay; alarms to comply with 780 CMR 9.00
Health :	A review of Health Dept. files finds this land suitable for the proposed build of a single family home
Police:	No police issues
DPW:	
Water comments:	Water service shall be 1" K copper
Sewer comments:	Water and sewer mitigation
Highway/C&M/DPW Director:	Flowable fill (aka "CDF") required
Engineering:	<ol style="list-style-type: none"> 1. At least one test pit should be dug to at least the depth of lowest proposed leaching galley. The exposed soil should then be evaluated for permeability and suitability for infiltration. Also, the seasonal high groundwater table, if within the elevation of the proposed leaching pit, should be identified. 2. The concrete bound shown on the layout line of Neck Street must be protected during construction or, if disturbed, will require resetting by a PLS.
Schools:	Presents no special concerns to the School Department
Tax:	Owner of record: Campbell Family Inv. Trust; taxes current

Jim Clarke read the memo from Mary Ellen Schloss, Conservation Commission; the commission voted approval to the plan with conditions. Jim noted the site was proposed for a day care and in a coastal flood zone. It will be required to show the flood elevation to be in compliance.

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

A motion was made by Edward Foley, seconded by Francis Kenneally to approve the application, citing:

1. The approval will include the conditions issued in an Order of Conditions by the Conservation Administrator.
2. The approval will include the recommendations of the Engineering Department of the DPW.
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.
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.

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.

DECISION OF THE BOARD

Due to the above findings, it was unanimously voted to approve the request for a special permit.

MINUTES

A motion was made by Edward Foley, seconded by Francis Kenneally to accept the minutes of the July 21, 2010 and August 11, 2010 meetings and was unanimously voted.

OTHER BUSINESS

There was a brief review of the meeting, including the need to get sufficient information from applicants and abutters and the use of criteria in support of the board's decisions, particularly with regard to getting information on record for the appeal process.

ADJOURNMENT

At 8:30, there being no further business, a motion was made by Robert Galewski, seconded by Francis Kenneally to adjourn the meeting and was unanimously voted.

Richard McLeod, Chairman

Date