

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
NOVEMBER 17, 2010**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, November 17, 2010, at 7 pm at McCulloch Building, Whipple Center Conference 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
 Chuck Golden
 Kemal Denizkurt
 Martin Joyce

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. 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 #3114 - Public Hearing, 1465 Main Street

Application of Michael Yazbeck for property located at 1465 Main Street, also shown on the Weymouth Town Atlas as Sheet 57, Block 624, Lot 10, located in HT zoning district, seeking a special permit or variance under Chapter 120-27, 120-40 to construct 75' x 50' and 20' x 45' extension of existing building to be used for vehicle inspection and repair in accordance with 120-27.

Members sitting: Richard McLeod, Chairman
 Francis Kenneally, Clerk
 Kemal Denizkurt
 Chuck Golden
 Martin Joyce

Not present: Edward Foley, Vice-chairman

A motion was made by Martin Joyce to open the public hearing and waive the reading of the legal advertisement, was seconded by Chuck Golden and unanimously voted. Chairman McLeod reported that his wife's car has been in the applicant's shop for repairs but that it would not impair his impartiality in this matter. There were no objections.

Michael and Joseph Yazbeck appeared before the Board. The purpose of the construction is to have a bay strictly for inspections, and a bay large enough to fit the busses and ambulances from

South Shore Hospital that are repaired at the station. They have an application in to the Registry of Motor Vehicles to conduct inspections. There is no intent to pave land to the rear of the building; it will remain natural growth. Any parking of vehicles will be in the front of the property and entry will be the same. Rod Fuqua noted there is ample room in front of the building for queuing cars awaiting inspection.

Rod Fuqua read a letter in support of the application into the record, from abutters William and Cheryl Taylor. He reported the application was circulated to the various town departments and noted particular comments. The Conservation Commission noted the property should be connected to sewer; Health Department noted that the proposed addition may require the existing building and new addition be connected to the municipal sewer system; DPW Water & Sewer noted water and sewer mitigation fees apply. Rod Fuqua also noted that Jeff Richards, Building Inspector reviewed the plans, accompanied Mr. Yazbeck to the Planning Board to begin the process and has spoken highly of him.

Abutter Tracy McCarthy asked if she could review a copy of the plans. Kemal Denizkurt asked if there were any plans to store vehicles on the property and Mr. Yazbeck responded only while awaiting pickup. Kemal Denizkurt also asked what materials will be used in the construction. Mr. Yazbeck responded it will be concrete foundation and metal building. There is an existing 8' fence along the rear of the property. Glenn McCarthy, abutter to the rear of the property asked about the noise factor. Mr. Yazbeck has an agreement with Mr. McCarthy to put up trees on the McCarthy property as a sound barrier. The building operation hours are 8 AM -6PM Monday through Friday and 8 AM -3/4 PM on Saturdays. There will be no repairs on Sundays. Francis Kenneally asked the age and condition of the fence. Mr. Yazbeck responded that it is vinyl construction, and two years old.

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

To vote on the of BZA Case No. 3114 to allow construction of a 75 x 50 and a 20 x 45 extension of existing building to be used for vehicles inspection and repair:

A motion was made by Francis Kenneally, seconded by Martin Joyce to approve the application for as per plans and application submitted.

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 120-27.
2. The specific site is an appropriate location for such a use, as it exists currently and conforms with zoning.
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 as adequate storage of vehicles is provided.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

6. The public convenience will be substantially served and supported by the accompanied letter from the Taylors.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a special permit, with the following conditions:

1. The applicant will connect to town sewer.
2. Grass/natural growth will be maintained behind the property.
3. The existing 8' fence will be properly maintained.
4. There will be no vehicle access or parking to the rear of the building.

Submission:

Exhibit #1 - Letter dated 11/16/10 from William and Cheryl Taylor, 472 Pond St.

BZA CASE #3115 - Public Hearing, 670-678 Main Street

Application of The Maggiore Companies for property located at 670-678 Main Street, also shown on the Weymouth Town Atlas as Sheet 41, Block 490, Lots 8 (portion), 9 & 13, located in R-2 zoning district, seeking a special permit or variance under Chapter 120-51 & Table 1 to construct a building approximately 40' high and 3 stories so as to have the appropriate height on each floor and to limit the outside dimensions of the building.

Members sitting: Richard McLeod, Chairman
 Francis Kenneally, Clerk
 Kemal Denizkurt
 Chuck Golden
 Martin Joyce

Not present: Edward Foley, Vice-chairman

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

Attorney Gregory Galvin, with offices at 775 Pleasant Street, P. Maggiore and David Aurico, Patient Care Business Manager both with Maggiore Companies of 13 Whaling Ave., Woburn appeared before the Board. The purpose of the application is to construct an assisted living facility to provide care for Alzheimer patients. The building will be three floors, 52 beds and adequate parking facilities for staff, visitors. The application is for a variance for the height requirement only. In R-2 zoning, the application is not allowed by right; however it is exempt under MGL Ch. 40A, Section 3 (care for disabled persons). Current zoning allows for a height of 35'; this will be 36.5'. Nine feet ceiling height, plus three feet to accommodate the HVAC ductwork per floor, is the industry standard in facilities providing patient care of this type. Due to the ledge on the property, construction is limited without blasting and the basement level, where kitchen and laundry facilities will be housed, is limited to 30% of the footprint. 52 letters were mailed inviting neighboring businesses and residents to a meeting that was held regarding the proposed construction. Councilor Harrington reviewed the concerns; the lack of privacy along the northern line of the property and the noise from a generator. The generator will be cycled once a week for approximately one half hour, and the applicant is willing to exercise it to a time determined by the neighbors. The noise factor at 90 feet is similar to a lawn mower. The entrance

to the property will be single lane and two lanes exiting onto Route 18, with standard curb cuts and sufficient room for emergency vehicles. The driveway design was reviewed; driveway access and parking will be for approximately 6 employees and any visitors. Visiting hours will be 12-8PM. The closest residence is 300' away from the parking area. There will not be speeding ambulances through the lot and patient receiving area will be in the front of the building.

Abutter Charles and Linda Clifford were present and noted they already have a basement flooding problem in heavy rains; the addition of the building foundation will increase the likelihood without additional drainage to the street. Mr. Galvin provided a plan of the existing conditions and noted that existing topography indicates the natural slope of the property is away from the Clifford's. The applicant, working with the DPW and SITEC Environmental has provided plans for direct runoff to a detention basin. Mrs. Clifford also noted that lighting from cars driving through the property will be disruptive. Kevin Rooney, abutter also noted his concerns with a 40' high building in a residential zone; the location of the proposed building on the lot; the need for fencing and/or privacy evergreens and a limit to any future expansion. There is an existing town easement between the property and Mr. Rooney's. Rod Fuqua noted the 10' right of way between the properties and noted that any access over the easement should be allowed only for utilities. Mr. and Mrs. Bernan, residing across the street from the proposed building noted their concern with the size and height of a building which is directly visible from the front of their property.

Chairman McLeod asked about the location of the building; it cannot be lowered and stretched out over the property because of the ledge; there is a hardship based on the shape of the lot. He also asked if the generator could be moved; it cannot because the basement does not follow through the building. Mr. Aurico noted the generator can be surrounded by shrubbery to mask the noise. Chairman McLeod asked if power lines will be run up the easement. Mr. Maggiore noted they will run underground via the shortest straightest point to the building.

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

To vote on the of BZA Case No. 3115 to allow a variance from the height requirement to construct a building approximately 40' high and 3 stories so as to have the appropriate height on each floor and to limit the outside dimensions of the Building for the purpose of constructing an Alzheimer Assisted Living Facility:

A motion was made by Kemal Denizkurt, seconded by Francis Kenneally to approve the application for 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. The proposed construction is 1'6" over the height variance for R-2 zoning.
2. The applicant has demonstrated the ledge prevents expansion of the property at a lower height and access to a full basement and for utilities and sprinklers. The proposed construction is a medical facility for onsite treatment and housing of patients.

3. Owing to the topography and soil conditions, literal enforcement of the zoning is a hardship to the applicant.

DECISION OF THE BOARD - Due to the above findings, it was unanimously voted to approve the request for a variance, with the following conditions:

1. The applicant will plant shrubbery/trees on the north portion of the property along the Clifford property, and on the southwest to the Rooney property.
2. Proof of payment of all taxes and fees to date will be required at time of Building Permit application.
3. The applicant will work with the Cliffords to determine a 2-hour weekly window in which the generator will run.
4. The easement will not be used for vehicle or pedestrian traffic.
5. The applicant will work with staff to provide shielded lighting for 150' of driveway, as approved.

Submission:

Exhibit #1 – picture plan of proposed construction

Exhibit #2 – generator sound specifications

Exhibit #3 – letter received 11/15/10 from Charles and Linda Clifford, 658 Main Street

Submissions are on file in the Department of Planning and Community Development, 75 Middle Street, Weymouth, MA 02189.

Other Business

Rod Fuqua noted that at the last meeting of the Town Council, Jonathan Moriarty was appointed to the Board of Zoning Appeals as an alternate member. Mr. Moriarty was in the audience to observe the proceedings and was introduced to the Board.

Minutes

A motion was made by Chuck Golden to approve the minutes of the October 20, 2010 meeting, seconded by Martin Joyce and voted unanimously.

A motion was made by Chuck Golden to approve the minutes of the November 3, 2010 meeting, seconded by Martin Joyce and voted unanimously.

Adjournment

At 8:20 PM, there being no further business, a motion was made and seconded to adjourn the meeting and was unanimously voted.

Approved:

Francis Kenneally, Clerk

Date