

TOWN OF WEYMOUTH

PLANNING BOARD/BOARD OF ZONING APPEALS

MINUTES

There was a joint meeting of the Planning Board and Board of Zoning Appeals held on Wednesday, October 28, 1998 at 7:00 P.M. at the Tufts Library.

Planning Board Members present: Paul Hurley, Chairman
Susan Abbott, Vice-Chairman
Paul F. Lynch, Sr.
Mary Sue Ryan

Board of Zoning Appeals members present: William F. Kilroy, Chairman
John F. Fehan
Edward J. Jordan
Robert E. Haley
Paul W. McHugh
Robert L. Quindley

Robert Gross, Chairman of the Zoning Bylaw Review Committee was also present.

Staff present: James Clarke, Director of Planning & Community Development
Jeffrey Coates, Inspector of Buildings

The meeting was called to order at 7:35 P.M. by Vice-Chairman Abbott.

Mrs. Abbott opened the meeting and explained why the Planning Board requested a meeting with the Board of Zoning Appeals. The purpose is to better understand how each Board works under the rules/regulations they must follow, and to try to work together better. She asked Mrs. Ryan for her comments.

Mrs. Ryan stated that one of the things we review is Board of Appeals cases and we made recommendations. From her experience, the Planning Board's recommendations are made in consideration of the bylaw, lot sizes and frontage. What the Board would like to know is what the philosophy is of the Board of Appeals when they make their decisions. The Planning Board is also concerned with non-conforming uses and the extension of those uses. She asked what, in particular, the BZA looks for when making a decision. Mr. Kilroy replied that the BZA when making a decision looks at Chapter 40A, the bylaw and common sense.

Mrs. Ryan asked if the BZA takes into consideration safety issues. Mr. Kilroy replied that recently a case came before them, and they received a letter concerning speeding on the road. The BZA has nothing to do with speeding which is an enforcement issue, nor do they have anything to do with road design.

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Mrs. Ryan asked if a road was poorly designed, would an additional curb cut make a bad situation worse. Mr. Kilroy replied that it might.

Mr. Coates stated that the special permit criteria of the bylaw talks about the extension or change of a non-conformity as substantially more detrimental, judgement situation. The BZA looks at it and evaluates it to see if, in their opinion, it is substantially more detrimental. In the effort to make that judgement they consider information submitted by the public, information submitted from the Planning Board and evaluate it along with everything else. They have to make a decision as to whether it is substantially more detrimental. With regards to undersized lots, Section 120-53 is very specific. If a neighborhood is substantially developed to a point where a subdivision of lots of the size of the bylaw is not necessary, then it can be waived. There is language in that section regarding judgement, and that is what the BZA is all about. The BZA is about enforcing the bylaw, making the judgements that are put on them by the bylaw, and enforcing stature under Chapter 40A. Mr. Coates read Section 120-53 – Exceptions by Board of Zoning Appeals. He stated that it is a judgemental situation, and the BZA must weigh all of the issues. He stated that some of the larger subdivisions that have come before the BZA have been turned down for undersized lots because it was felt that they were substantially their own neighborhoods.

Mrs. Ryan asked if the BZA, when considering undersized lots, takes into consideration that allowing more undersized lots will adversely affect an area with existing, undersized lots, and will have an adverse impact on that area. Mr. Fehan replied that they do consider the area and whether more undersized lots will impact an area. He cited a case near Whitman's Pond as an example.

Mr. Haley asked what precipitated this meeting – if there was one item that resulted in the need for both boards to get together, or are there a multitude of items that have built up over the years.

Mr. Kilroy stated that it might be a result of his remarks at meetings concerning the lack of information the Planning Board is sending to them. He stated that if someone is going to send them a letter for their consideration, they should include more information.

Mr. Coates stated that the Planning Board met with the Board of Selectmen and through that meeting there was the suggestion that a joint meeting with the Planning Board and Board of Zoning Appeals might be beneficial. This is a joint meeting with open discussion in order to try to get some understanding of what the priorities are. From what he sees at the BZA hearings is that there is sometime some concern when letters are sent from the Planning Board simply stating that the Planning Board objects and recommends denial. A list of the Planning Board's concerns would be appreciated, and considered by the Board, but it is not the place of the Planning Board to make a determination as to a case that is before the BZA.

Mr. Kilroy asked if the Planning Board schedules review of BZA cases on their agenda. Mrs. Ryan replied in the affirmative.

Mr. Hurley stated that this meeting with the BZA is a result of the meeting the Planning Board had with the Board of Selectmen. The Planning Board would like to get a feel for the way the BZA acts on their cases. He explained how the Planning Board looks at cases, and what the Board hoped to get from this meeting. He stated that the Planning Board is trying to get our rules/regulations to relate to what the BZA looks at. This is not something that has come about at a one or two night meeting. This is something that has come about probably over the last several years. If the BZA wants more information when we send them letters, the Planning Board will do that.

Mr. Coates stated that Chapter 40A of MGL - the zoning enabling act talks about the rules/regulations in statute and the things to be considered, and sets our guidelines that all bylaws have to be written to. Whenever the bylaws get changed through the Planning Board and Town Meeting, they get done in compliance with the guidelines set out in Chapter 40A. Chapter 40A is very specific and we want to stick to it. The BZA tries to stick to issues that are germane to specific issues. If the BZA has something before them for lot size, they don't consider a lot of other things that are not germane to that. The use of the land is not germane if you are asking for a special permit for the lot size because the use of the lot is controlled by the zoning and they are not asking for any relief from that. The same applies when something comes before the Planning Board, he feels that under 40A, the Planning Board should look at what's germane to the issue before the Board. He thinks that sometimes the Planning Board looks at things in a much broader scope, that is probably good from a general point of view, but is very difficult from a zoning point of view. He feels that a knowledge of Chapter 40A is absolutely necessary for Board of Appeals members and Planning Board members. The BZA tries to stay within the guidelines, and feels that some of the things the Planning Board would like the BZA to do, the BZA feels are overstepping the bounds that are set by Chapter 40A.

Mr. Clarke stated that this meeting was generated somewhat from the meeting with the Board of Selectmen, but even in the past it has been mentioned that it might be useful for the two Boards to meet. He looks at this as educational from both ends. We are all involved in making land use decisions and as Jeff pointed out we use different bylaws and laws so we come at them differently. On some of our comments to the BZA cases, from a staff point of view, what he has tried to suggest to the Board is that we comment on BZA cases that appear to have more of a planning feel to them. The Planning Board does not comment on all BZA cases. The Planning Board has almost universally, for many years, sent letters on undersized lots. That has been the position of the Board. We don't go into a lot of detail, we just say our position is that we are opposed to granting any type of relief on undersized lots.

Mr. McHugh explained what the BZA looks at when reviewing cases. When letters are submitted by the Planning Board, the BZA considers all information. Some cases are turned down based on a letter from the Planning Board, and some are approved. They take each case on an individual basis.

Mr. Haley asked if the Planning Board reviews all sites. Mr. Clarke replied that they do not review all the sites. Mr. Haley stated that BZA members do review all of the sites. He stated that the applicant has certain rights and there is the human factor – pro and con.

Mrs. Ryan stated that she views the sites.

Mr. Clarke explained why both he and Jeff felt it was important for Bob Gross, Chairman of the Zoning Bylaw Review Committee to be here this evening. In discussions this evening, one result might be that there is some agreement from both Boards that there is a need for some adjustments to the bylaw.

Mr. Gross stated that he would comment as an overview from listening to both sides. It seems to him that the distinction is that one side – the Planning Board, has a recommending power and the Board of Appeals has the decision making power. Recommendations and decision don't always meet. He thinks it's understood that both Boards are doing their best to try make a decision based on how they see it. As Mr. Kilroy pointed out there are certain specifics that have to be addressed as far as the Zoning Bylaw is concerned. As Mr. Haley said citizens have rights and those rights are spelled out in the bylaw. He thinks the purpose is to allow citizens to do certain things on their property so long as it's fair and it's reasonable. Mr. Gross stated that probably it is more a misunderstanding of the different roles. Maybe the Planning Board is questioning why they should even address something, if when they make a recommendation the BZA does whatever they want. He thinks the Planning Board must look at it as the BZA takes the recommendation of the Planning Board and treats it as part of the evidence that they are considering in the case. He thinks what is necessary is just a better understanding of what each Board is doing.

Mr. Coates stated that from an administrative point of view, he wants to make one thing clear. Everything that the Planning Board writes gets read into the record and gets considered. The Planning Board is not being ignored; they are being considered, and it is one of the factors that is being considered along with a lot of other factors. The evidence is weighed and a judgement is made. Mr. Coates stated that zoning issues cannot be determined on the basis of a popularity contest. Over the thirteen or fourteen years he has been dealing with this in the Town of Weymouth, he sees the BZA making very sound judgements. Decisions by the BZA are based on laws, and sound judgement.

Mr. Haley stated that also important is that the BZA has the ability and does set certain conditions when making decisions.

Mr. Clarke explained what he would like to see come out of this meeting. He and Jeff and others have had some debate on the role of the Zoning Bylaw Review Committee. He would like to recommend that, if they can't agree on anything else, they have a meeting like this once a year in September or late August with the Zoning Bylaw Review Committee members and talk about specific bylaw changes that each one of the Boards has had a problem with over the past year. Then the Zoning Bylaw Review Committee, over the remaining months of the calendar year, can work on certain items for Town Meeting. He feels that would be a useful outcome of this meeting.

Mr. Coates stated that the Quality of Life Committee has been formed to look at all of the bylaws. Their first meeting is scheduled for November 5th. He explained the purpose of the committee and what it hopes to accomplish.

Discussion ensued regarding special permits, subdivisions, and by right uses with regards to what could be put on as conditions. For special permits and subdivision reasonable conditions may be required in addition to what's in the bylaw. For by right uses, there must be a bylaw if something is to be prohibited or conditioned.

Mrs. Ryan stated that getting back to the Planning Board and one of the reasons why we are here, on most of the occasions their concerns are with undersized lots, and the lack of frontage on the street. The bylaw is in place that says that all lots should be 25,000 square feet. There is a certain amount of frontage that is required. Mr. Haley mentioned the human factor, and she certainly sees it. The whole point of the bylaw is that so there would not be any more undersized lots because we did want them a certain size and we wanted enough frontage so that we didn't have long driveways. These lots all have an effect on the people who live in the area. She understands that people have the right to do certain things with their property, but the town also has the right to enact bylaws, and that is exactly what they have tried to do. What the BZA is saying is that common sense is a reason why the BZA will make an exception. The BZA's common sense doesn't necessarily agree with the Planning Board's common sense. It was mentioned tonight that the Planning Board does not give the BZA enough detail, and she believes we will all make an effort to see that there is more detail. One very good detail is that we want a 25,000 square foot minimum lot size. We don't want any more building on small lots. We don't want houses in back of houses.

Mr. Coates stated that under the State Zoning Enabling Act, Chapter 40A, grandfathered lots are permitted. Section 120-53 is just as much a part of that bylaw and was voted in by the same process at Town Meeting, and provides a method to judge those exceptions. Mr. Coates stated that if the Planning Board does not want an undersized lot to be granted under Section 120-53 then your recommendation to the BZA should speak specifically to what particular issue in this judgemental call does not meet the criteria.

Mr. Gross stated that the Zoning Bylaw is a bylaw that is intended to breath and to allow flexibility when flexibility is reasonably called for. There are specific sections of the bylaw that grant the BZA the authority to do certain things. They don't have it as a matter of simple common sense; it must fall within the parameters of the bylaw. If the BZA finds that something falls within the parameters, they should grant the relief. If the BZA finds that something is outside the parameters of the bylaw, then relief should not be granted. Mr. Gross stated that the Zoning Bylaws are not simply something that is written to grant exceptions to other parts of the bylaw. As Mr. Coates pointed out the 25,000 square foot area requirement is just one part of the Zoning Bylaw. There are other parts of the Zoning Bylaw that authorizes a board, made up of citizens, to act with certain rules and regulations clearly defined to make adjustment where needed. This meeting started out with the question being asked of the Board of Appeals what their philosophy was -- what kind of rationale they use when making decisions. The bottom line is, as Mr. Kilroy said, the BZA uses common sense after they see what the rules are. He thinks that it is a vehicle to keep things moving. One rule to cover all, doesn't apply. Zoning didn't come into effect until 1940. Before that you could do just about whatever you wanted, wherever you wanted. He thinks that it's great that the Planning Board sees these cases, and makes recommendations. It is another body, an assistance to the Board of Appeals when they are making decisions. They know another body has looked at the case and applied their common sense as to what they think. Mr. Gross stated that to follow up on what Jim had mentioned earlier as far as the Zoning Bylaw Committee is concerned. He would like to be able to re-write the whole code to make it a little more understandable and readable; and take out some of the ambiguities and conflicts. Mr. Gross went on to say that the Zoning Bylaw Review Committee tried to do this a few years ago, but they don't have any administrative assistance to do that. Maybe they should talk in the future about how they can use staff of various departments to work on these particular things. He does agree these meetings are useful; everyone's interested in the same subject matter. It is good to have joint meetings so that these things get aired out.

Mr. Clarke asked that everyone support the Planning Board's article on the STM for \$90,000 for a Master Plan update. He is hoping that out of that there will be a direction to update the bylaw, and that will be one area of focus. Through that process we can identify specific areas and then move into a re-write of the full bylaws. Mr. Clarke stated that he and Mr. Coates have looked at the zoning bylaw and it is a task beyond our time constraints.

Mr. Coates stated that over the years they have looked at updating the zoning bylaws only to find out that they didn't have the manpower, time or support to go ahead and do that. To get a private consultant to look at the zoning bylaw, he is all for. There should be a comprehensive look at the zoning bylaw.

Mr. Quindley discussed the problem that occurs when one owner has two adjacent lots with regards to the property being treated as one lot after five years.

Mr. Coates thanked everyone for coming and stated that he feels the meeting was beneficial for everyone.

Mr. Clarke stated that he hopes that both Boards feel this would be beneficial to have a joint meeting on a yearly basis.

The meeting was adjourned at 8:50 P.M.

This is to certify that the foregoing is a true and complete statement of all actions taken at this meeting on October 28, 1998.

Paul Hurley, Chairman