

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
FEBRUARY 15, 2006**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 15, 2006, 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
 Mary McElroy, Clerk
 Sandra Carle
 Robert Galewski
 Kemal Denizkurt
Absent: Edward Foley, Vice-Chair
Staff: Roderick M. Fuqua, Principal Planner
 James Clarke, Director of Planning and Community Development
Recording Secretary Mary Briggs

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 #2883 245 Oak Street

Application of George Salimbis for property at 245 Oak Street, also shown on the Weymouth Town Atlas Sheet 43, Block 503, Lot 110 located in an R-1 zoning district, seeking a special permit and/or variance under Chapter 120-51 and Table 1 to add a garage with a second floor bath attached to the bedroom.

Attorney Gregory Galvin represented the applicant before the Board. Mr. Galvin stated that this property is the last one before the industrial park, abutting Hingham, and across from the office park condos. Notice was given to Hingham. This is a recently purchased property on the old 128 (current 228) state highway layout; however the pavement is not extended to the full layout. The proposed addition is within the front yard setback and is the best fit with regard to shielding for privacy, and hardship due to the existence of ledge on the site. Mr. Galvin noted there is 120' for road layout and 40' of the layout is unpaved on Mr. Salimbis' side. Situating the addition any other way on the location would require the driveway be redone. He also noted that the property is uninhabited while undergoing renovations. Mr. Galewski stated that he had a chance to look at the plot plan and asked when the last plot plan had been done, since it appeared from the atlas that measurements may be a bit short. James Clarke responded that the last certified land survey was done in 2003, by Peter Hoyt Engineering, and that no work has been done since the purchase. Rod Fuqua stated that the addition will be as built on the foundation, and the owner will then have to reapply if it is short. Mr. Clarke noted that the Board should get a copy of the Certified Plot Plan for its files.

Rod Fuqua stated that the application was routed to various Town Departments and there were no issues or concerns.

A MOTION to close the public hearing was made and seconded, and was UNANIMOUSLY VOTED.

A MOTION was made by Kemal Denizkurt to APPROVE the request for a SPECIAL PERMIT to put a garage with a second floor bath attached to the bedroom. The Board finds that, in its judgment, all of the following conditions are met:

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 and welfare will be substantially served.

The MOTION was seconded by Sandra Carle and UNANIMOUSLY VOTED.

FINDINGS

The Board found that the SPECIAL PERMIT/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

The Board was familiar with the site and had the benefit of a plan. Some of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE/SPECIAL PERMIT.

BZA CASE #2884 616 Main Street

A MOTION to open the hearing was made; however since the applicant was not present, it was tabled until later in the meeting.

BZA CASE # 2886 39 Regatta Road

Application of Jack Knight for property located at 39 Regatta Road, also shown on the Weymouth Town Atlas as Sheet 2, Block 12, Lot 20, located in an R-1 zoning district, seeking a special permit and/or variance under Chapter 120-51 and Table 1 for relief from the front yard setback for the purpose of constructing a farmers porch across the front of the property.

Mary McElroy stated that Mr. Knight had done some work on trucks for her family, and she would step aside if the Board wished, but that she could remain impartial to the proceedings. It was consensus of the Board and applicant that she remain in the hearing.

A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

Attorney Gregory F. Galvin represented Mr. Knight in the proceedings. He noted that the application was for a farmers porch which has already been constructed by the applicant, and which violates the front yard setback. He provided a photograph to the Board. He noted that the property sits higher than the adjacent properties and the farmers porch affords a break between the property and street. The porch sits on land, and the owner has no intent to enclose it. Although he acknowledged the owner has already constructed it, he asked the Board to approve it on its own merit, since it does meet requirements. He provided the Board with a petition signed by Mr. Knight's neighbors in favor of the porch. The Board noted that a petition was previously presented and denied by the Board. Mr. Galvin stated that at that time, Mr. Knight was aware that there was opposition by a neighbor to the construction, and when he subsequently failed to show at the hearing, the petition was denied. Mr. Galvin asked that the Board not deny because it was built before approval.

Mary McElroy noted that by disregarding the Board's prior vote, and now by approving, the Board would be setting a precedent. The Chairman also noted that inspection and construction approvals in the permitting process were also circumvented, and that this is a flagrant disregard of town by-laws. Mr. Galewski noted that where he works, a Cease and Desist order would be issued, and the structure ordered taken down. It was also noted that the Building Inspector was by the site, and construction stopped; however, there is only a small area of the porch that has not been completed.

Rod Fuqua stated the application was routed to various Town Departments and received the following comments:

- Building Department had no permit filed and no inspection of footings, foundation or framing. If granted, it will be subject to engineering controls per 780 CMR. If denied, subject to enforcement per Zoning Ordinance.
- Conservation noted the project is close to the edge of its jurisdiction (100' from the coastal bank). Not likely to have impacts on wetland resources. Applicant should be aware that all work in rear yard needs approval of the Conservation Commission.
- Fire Department noted porch in place, no fire alarm required and that the hydrant at #15 Regatta is ok.
- There were no objections by the Health Department.
- There were no police issues.
- Public Works, Water and Sewer Division:
 - There were no water comments
 - Sewer Department noted that the 5" ACP sewer connection should be replaced to the property line with a 6" PVC sewer connection. The porch will be installed over the existing sewer line, which should be replaced prior to installing the porch. The original sewer lateral was installed in 1963 and may be deteriorating. Replacing the line before the porch is installed would mean not having to take down a portion of the porch if there is a problem in the line in the future.

Highway D & M Division and DPW Director:

- There were no comments from the Highway D&M Division or the DPW Director.
- There were no comments from the Engineering Division.
- There were no special concerns from the School Department.
- Taxes are up to date.

Mr. Clarke asked what other property in the area violated the front setbacks. Mr. Galvin thought 67 Regatta Road might be closer than 18'.

A MOTION was made to close the public hearing and was seconded and VOTED UNANIMOUSLY.

A MOTION was made by Richard Galewski to DENY the request to grant a VARIANCE based on not meeting the criteria for hardship and was seconded by Sandra Carle. Mr. Denizkurt noted that by building without approval, Mr. Knight created his own hardship and therefore the criteria of hardship for a VARIANCE was not met under the circumstances. VOTED UNANIMOUSLY.

FINDINGS

The Board found that the VARIANCE 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 nullifying or substantially derogating from the intent and purpose of the Ordinance.

DECISION OF THE BOARD

The Board was familiar with the site and had the benefit of a plan. Due to the above findings, it was UNANIMOUSLY VOTED to DENY the request for a VARIANCE.

BZA CASE #2883 616 Main Street was once again tabled. Mr. Fuqua asked that if the parties were not present by the end of the meeting, it be recommended as a courtesy to the agenda on March 8, 2006.

BZA CASE #2885 705-709 Bridge Street

Application of Bohler Engineering, P.C., 352 Turnpike Road, Southboro, MA 01772 for McDonald's Corp., 690 Canton Street, Westwood, MA 02090 for property at 705-709 Bridge Street, also shown on the Weymouth Town Atlas Sheet 8, Block 15, Lots 1 and 9, located in a B-1 zoning district, seeking a special permit and/or variance under Chapter 120-125.A.1, 120.25.C & 120-64.3.A. for a special permit for more than one building per lot, drive through use, and variance for relief from wall sign requirements.

A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

Robert Cohen, of Cohen & Feirman represented the McDonald's Corp., and John Kucich of Bohler Engineering prepared the plan. Mr. Cohen reviewed a brief history of the current building which was not originally designed or built as a McDonald's restaurant. It was first a Pewter Pot, and then Taco Bell, and now the firm proposes to raze the building and build the McDonald's

restaurant. Mr. Kucich showed the plans for the new building and reviewed the site, landscaping and drive through queuing. The proposed building will be 3858 sq.ft., with the new prototype khaki coloring scheme (no longer red, yellow and white) and will have 90 parking stalls, with no direct access on Bridge Street. There is an existing grease trap that will be used, but will be increased in size if it needs to be by ordinance, and conformity with Title V. He believes it is a 1500 gallon trap, but will recheck. He noted that existing utility lines would be tapped into, and that any disruption to the area would be minimal and addressed with landscaping. The front of the building will have the traditional McDonald's lettering, and a 5.5sq.ft. arch, and two roof beams totaling 35.5 sq.ft. (28 + 7.5), thus the request for variance on signage.

The parties have met with Rod Fuqua, Jeff Richards of the Building Department, and the North Weymouth Civic Association who gave a favorable recommendation.

Rod Fuqua stated the application was routed to various Town Departments and received the following comments:

- Building Department would recommend an exterior grease holding tank for use in compliance with 248CMR.
- Conservation Department had no comments; located outside of its jurisdiction.
- Fire Department would have fire alarm (type 1) plans, fire suppression equipment and sprinkler plans submitted if approved. They recommend replacing the bark mulch with non-combustible material (i.e. stone). The 8"hydrant at the entrance is ok.
- Health Department had not objections.
- Police Department had no police issues.
- School Department had no special concerns.
- Taxes are up to date.
- Town Traffic Engineer has reviewed the traffic report, which was found to be conservative, and not a concern.

Mr. Galewski requested the hours of operation, and was informed the hours would remain 5 am through 11 pm (through 12 midnight for the drive through), and that the North Weymouth Civic Association would not wish to consider 24-hour operation.

Mr. Kucich reported that the arches will not be internally illuminated, and the top banner of the structure has been eliminated from the rendering. Mr. Clarke asked if any changes were proposed to the exterior lighting, and Mr. Kucich responded no. The drive aisle would also remain the same, and the only change is to the trash area, which will add an additional 2 parking spaces. There will be no additional request beyond the 75' for signage in the plan, and there will be no additional directional signage added. Ed Beeler of the McDonald's Corp. advised that the "swish" logo in the plans is determined to be an architectural detail, and the Board noted that any lettering or advertising on it would require an additional variance.

Mr. Clarke noted that the biggest issue would be promotional, temporary signs, and he does not wish to have enforcement issues with bannerling.

The queuing pattern for the drive through was reviewed with Mr. Kucich, and the plan allowed for unimpeded passage; the average queue is expected to be 3-4 cars; 6-7 during peak times.

Mr. Galewski asked if there were any complaints about odors and Mr. Fuqua responded that none have been registered.

The Chairman asked if the public had any comments, and Michael Gardner Jr. from the SuperShine car wash next door to the proposed McDonald's spoke. He asked if the drive through was traditional or tandem, and was told it would be tandem, which will further diminish any queuing problems. He was in favor of the project.

A MOTION was made to close the public hearing and was seconded and VOTED UNANIMOUSLY.

Robert Galewski made a MOTION to approve both the SPECIAL PERMIT for the building and drive through, with the same hours of operation, and was seconded by Mary McElroy and UNANIMOUSLY VOTED. There was some discussion on whether the logo portion of the sign leaned to signage and whether a VARIANCE was required; it was decided to approve the signs as is, and Robert Galewski made a MOTION to APPROVE a VARIANCE for relief from wall sign requirements. The Board finds that, in its judgment, all of the following conditions are met:

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 and welfare will be substantially served.

The MOTION was seconded by Mary McElroy and UNANIMOUSLY VOTED.

FINDINGS

The Board found that the SPECIAL PERMIT/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

The Board was familiar with the site and had the benefit of a plan. Some of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE/SPECIAL PERMIT.

At the request of Roderick Fuqua, **BZA CASE #2884 616 Main Street** was tabled to the March 8, 2006 meeting.

OTHER BUSINESS

There was no other business.

MINUTES - 1/25/06

A MOTION was made by to Mary McElroy to accept the minutes from the January 25, 2006 meeting and was seconded by Kemal Denizkurt and VOTED UNANIMOUSLY.

A MOTION was made by Kemal Denizkurt to adjourn the meeting at 8:20 pm, and was seconded by Sandra Carle and VOTED UNANIMOUSLY.

Mary McElroy, Clerk

Date