

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
FEBRUARY 22, 2006**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 22, 2006, at 7:00 p.m. at McCulloch Building, Whipple Center Conference Room, Weymouth, MA for the purpose of passing on the applications of certain persons whose petitions were properly before the Board. Notice of the public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

**BZA CASE #2887 – 200 Westminster Road**

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.

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| Present:             | Richard McLeod, Chair<br>Edward Foley, Vice-Chair<br>Mary McElroy, Clerk<br>Kemal Denizkurt<br>Martin Joyce |
| Staff:               | James Clarke, Director of Planning & Community Development  |
| Recording Secretary: | Rita Lounge   |

Application of Frank R. Jermyn for property at 200 Westminster Road, also shown on the Weymouth Town Atlas Sheet 30, Block 348, Lots 6 & 7, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-54, & 120-40 to add onto a nonconforming garage.

Frank Jermyn appeared before the Board. He stated that he would like to increase the size of his garage and existing roof. The roof needs work and this would increase the value of his property.

Mrs. McElroy requested that Mr. Jermyn put a number on his house so that people can see it.

Mr. Foley asked what the current size of the garage was. Mr. Jermyn replied that the garage is 22' x 20'. Mr. Foley asked what is proposed. Mr. Jermyn replied that he is looking to go out 8' towards the street.

Mr. Foley stated that because of the size of the lot Mr. Jermyn really couldn't go back with the addition.

Mr. Foley asked if the proposal is to make the garage 30' x 20'. Mr. Jermyn replied in the affirmative. He is proposing to keep the width and increase the length 8' out towards the street.

Mr. Foley asked if it was correct that Mr. Jermyn was not proposing any plumbing facilities, just storage. Mr. Jermyn replied in the affirmative. Mr. Foley noted that the garage really does need work.

Mr. Denizkurt asked if the current garage has any services. Mr. Jermyn replied that the garage has its own electric meter. There is no gas or water service to the garage.

Mr. Clarke stated that the application was sent to town departments and received the following comments.

- Conservation – Outside of Conservation Commission's jurisdictional area.
- Fire Department – No fire alarm issues. Street name and hydrants okay.
- Health Department – No objections.
- Police Department – No police issues.
- Public Works – No comments.
- School Department – No comments.

Mr. Clarke stated that if the Board is going to look favorably on this application, it is the staff recommendation that there be a condition that there is no water service to the garage.

Mrs. McElroy stated that she feels that no water service to the garage would be an appropriate condition.

Mr. McLeod opened the meeting for questions/comments from the public. There was no one present who wished to speak.

A MOTION was made by Mary McElroy to close the public hearing.

Mr. Foley asked if it was correct that the nonconformity of the lot would be the side setback. Mr. Clarke replied that was correct.

Mr. Foley asked if it was correct that the applicant won't be increasing the nonconformity. Mr. Clarke replied that it is an existing nonconformity and it is being extended by 8' in the front and extending it by building up for the second floor.

Mr. Foley seconded the motion and it was UNANIMOUSLY VOTED to close the public hearing.

Mr. Foley made a MOTION to APPROVE the SPECIAL PERMIT to add onto a nonconforming garage with the following condition:

- (1) There shall be no utilities to the garage with the exception of electricity which presently exists.

The Board finds that, in its judgment, the applicant has met the criteria of Section 120-122.D.:

- (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 Mrs. McElroy.

Mr. Denizkurt stated that the survey plan does not identify the 8' addition. He asked that the motion be amended to include a second condition that the applicant submit a survey plan showing the proposed 8' addition.

The Board agreed to amend the MOTION to include the following condition:

- (2) The applicant shall submit a survey plan showing the proposed 8' addition to the garage.

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 of substantially derogating from the intent and purpose of the Ordinance based on the criteria for approval of Section 120-122.D. and 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.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a SPECIAL PERMIT to allow the 8' addition onto a nonconforming garage with the following conditions:

- (1) There shall be no utilities to the garage with the exception of electricity which presently exists.
- (2) The applicant shall submit a survey plan showing the proposed 8' addition to the garage.

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.

### **BZA CASE #2888 – 54-64 BROAD REACH**

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.

Application of East Bay Condominium Trust for property at 54-64 Broad Reach, also shown on the Weymouth Town Atlas Sheet 3, Block 1, Lots 1 & 26, located in an R-4 zoning district seeking a special permit and/or variance under Chapter 120-19, 120-6, 120-119, 120-51 & Table 1 for a variance for the Floor Area Ratio.

Attorneys Roy Giarrusso and Joseph Harrington from Giarrusso Norton Cooley & McGlone, PC appeared before the Board on behalf of the applicant. Mr. Giarrusso stated that they are seeking a variance of the Floor Area Ratio and they are here to describe what they call a comprehensive resolution or settlement that they have been working on for over a year and a half since the last time they appeared before this Board. It is a comprehensive settlement between his client, 300 River Street Condominium (another client of the firms), and East Bay at Weymouthport Corp., an entity controlled by Mr. Joe Iantosca. This is a settlement that they believe comprehensively addresses the myriad of zoning issues and land use issues and other issues on the Weymouth Neck parcel.

Mr. Giarrusso stated that they came before this Board about a year and a half ago seeking relief from the Floor Area Ratio ordinance. At that time the condominium had a Floor Area Ratio of .985. The Board denied the variance finding that, in part, they did have rights against Mr. Iantosca in litigation that they should seek to pursue. They did file litigation in the Land Court against Mr. Iantosca and his company seeking to have certain contractual rights under a Master Deed completed. This past year and a half they have been seeking through litigation to reach a resolution. They now come before the Board seeking a variance which is part of an overall settlement that has been reached that came out of the litigation. Relatedly this settlement will also address claims that his other client, 300 River Street Condominium, has against Mr. Iantosca with regard to land that it believes it is entitled to clear through adverse possession. This settlement will resolve both claims against Mr. Iantosca.

Mr. Giarrusso stated that the variance that they seek today is very much different for that which they sought a year and a half ago. In 1985 Mr. Iantosca purchased property outlined in blue on the plan and purchased it in the name of East Bay Condominium Corp. He pointed out Weymouthport Condominiums, River Street entering Webb State Park and 300 River Street Condominiums, and East Bay Condominiums. The other complex that Mr. Iantosca built is identified as Essex. In 1987 Mr. Iantosca pursuant to the Condominium Act, set aside a parcel of land for the purpose of building East Bay Condominium. In 1998 East Bay at Weymouthport, Mr. Iantosca's company, created Essex Leasehold Company pursuant to the Condominium Act, but importantly Essex, at that time, was not added to East Bay Condominiums. Both are stand

alone entities. This is currently the way the Iantosca land sits today. There is East Bay Condominium (his client's property), Essex Condominium, the property outlined in blue is the undeveloped property. He will refer to these properties, north of River Street as Lots 24 and 25. Lot 1 is known as the undeveloped piece. His client is not totally in compliance with the Floor Area Ratio of .3 under the Zoning Ordinance. With the floor area that they currently have of 97,800 square feet and a lot area 99,316 square feet, they have a floor area ratio of .985. The amount of lot area they will need in order to meet the letter of law of the Ordinance is 326,000 square feet.

Mr. Giarrusso stated that the reason why when they appeared before the Board a year and a half ago and were sent for litigation and they identified at that time that they potentially had litigation rights against Mr. Iantosca is that when East Bay Condominium was formed as part of that Master Deed there was a provision in the Master Deed that where Mr. Iantosca guaranteed East Bay Condominium that if it was not folded into the remaining part of the land, because originally the plan was to have a number of separate condominium buildings on one major parcel. When Mr. Iantosca developed East Bay Condominium as a stand alone single entity, not having sufficient floor area ratio and recognizing that by the Master Deed, he was agreeing and guaranteeing that May, 2001 if he didn't pull East Bay Condominium into the main parcel, he would grant and convey to East Bay additional land from the underdeveloped piece necessary to meet zoning code requirements. Mr. Giarrusso went on to say that when he came on the scene in post May, 2001 he said that had not been met, that date has come and gone, and East Bay is still noncompliant. At that time they filed suit in Land Court seeking to enforce the provisions of the Master Deed. The land that they are referring to and is identified in the Master Deed as annexable land is the undeveloped land that is identified in the blue on the plan which includes Lots 24 and 25 which includes the access and the undeveloped piece in blue.

Mr. Giarrusso stated that he is a trial lawyer specializing in land use and environmental litigation and in any litigation there are no guarantees. There are risks and costs associated with litigation. They, as part of working this matter out with the judge and parties, reached a resolution after many discussions with the parties in court and with Mr. Clarke as to a comprehensive avenues for a potential solution. They reached a resolution whereby Mr. Iantosca's company will convey land to East Bay Condominium satisfying the contractual obligation of the Master Deed. There will be binding stipulations on Mr. Iantosca running with the land to be filed in the Registry of Deeds on his remaining parcel of his undeveloped land. His client, East Bay Condominium, will grant an easement for a small sliver of land that 300 River Street Condominium has been using for in excess of 20 years and has the right to clear title through adverse possession on the north side of River Street. The reason why they are here tonight is that in order to complete this comprehensive settlement they need to appear before the Board to ask for a variance because they have gone very far but have not completed the entirety of what they need to order to meet the FAR. He believes that if you add all these benefits together, you will find that the intent and purpose of the FAR is met by this comprehensive settlement.

Mr. Giarrusso stated that the conveyance that he referred to that they have in the form of a settlement agreement would have Mr. Iantosca's company deeding over to East Bay Condominium the entirety of Lot 24 and Lot 25 on the water side of River Street. The last undeveloped parcels before Webb State Park are Lots 24 and 25. Incidentally those are lots that

are some of the most contaminated lots and he is also representing these parties in connection with the environmental cleanup on Weymouth Neck. These happen to be some of the most contaminated lots in Weymouth Neck and are subject to the agreement with Connoco. The land area to be conveyed, pursuant to this settlement, to be part of East Bay Condominium will be an additional 116,264 square feet. With their existing floor area and lot area with the new conveyance they will bring their floor area ratio down to .45, more than doubling the improvement of where they stand today. The shortfall in area in order to meet .3 floor area ratio is 110,420 square feet. The way they propose to address this shortfall is through a binding stipulation that Mr. Iantosca has agreed would run with the land on his property on the undeveloped piece that would establish an area roughly equivalent to what's been described in the yellow attached area which would be in total 110,420 square feet. That entire property will be subject to the stipulation that would provide that it not be developed for any use at any time and cannot be used in calculating floor area ratio by Mr. Iantosca or any successor to Mr. Iantosca should they ever come before this Board or any other Board seeking to develop on this undeveloped piece. The reason they think what the purpose of a floor area ratio is that they will be sufficient land because it will be set aside never to be developed by Mr. Iantosca and never to be used by Mr. Iantosca or any of his successors in any future development. The exact location of the set aside land has not been determined. They think that the area they have described may be the best area in which to set aside that amount of land because based on the Rivers Act, the Wetlands Act, this is the only potential area where there could be future development by Mr. Iantosca. When you add the square footage, 110,420 square feet of the set aside land with the amount they are picking up with Lot 24 and Lot 25, their floor area ratio is .30, exactly what the ordinance requires.

Mr. Giarrusso reiterated that the stipulation will require that there will be no developable right on that 110,420 square foot piece and that it will not be used as a precedent in any future attempts to get a variance.

Mr. Giarrusso stated that the conveyance itself will give his client a .45 floor area ratio. The ordinance requires a floor area ratio of .30. As he stated they believe that the binding stipulation by providing the additional set aside area gives the Board what it needs in terms of knowledge that there is going to be the intent to meet the letter of the law in terms of floor area ratio. The other thing they wanted to suggest is that had they not been able to arrive at this settlement, it is unclear whether they would ever be able to take Lots 24 and 25 out of the development area. He can tell the Board that it has been represented to them that this property is under agreement, that there is an option, that there is the intent to build by Mr. Iantosca or someone he's involved with. If they pushed litigation all the way to the end and weren't able to construct a settlement whereby they are getting the chunks that they think mean something, potentially they could have ended up with the entire amount of land that they would need pursuant to the Master Deed, it could have been a sliver of land all around the exterior. Here they have taken out of play completely Lots 24 and 25. They have also taken 110,420 square feet away.

Mr. Giarrusso stated how does what they sought in 2004 differ before this Board differ from what they are seeking today. In 2004 they didn't come before the Board with any proposed conveyance or stipulations. They were at .985 floor area ratio. Today they are talking about a conveyance of 116,264 square feet and stipulation of 110,420 square feet. The binding

stipulation will be part of the record in the Registry of Deeds. They will be at actual floor area ratio of .45, but an effective floor area ratio of .30 when you add the conveyance and stipulation together.

Mr. Giarrusso stated that it has taken a year and a half to do, but they believe what they have been able to put together promotes the public interest, is beneficial to all concerned, and is something that addresses an issue that is long overdue for fixing Weymouth Neck. They have addressed this issue with the Mayor, the Town Solicitor, Town Council, Jim Clarke, Friends of Webb State Park, Mary Toomey especially. He can report to the Board and he is authorized to report that Mary Toomey supports their proposed resolution and their seeking of a variance. Abby Childs supports this settlement and supports their seeking of a variance. He can tell the Board that anything they are proposing doing here will not in any way delay the environmental cleanup of Weymouth Neck. They have been working with the entity that's cleaning up Weymouth Neck. They know where we are in the status here and they know at some point they will have to deal with them in the clean up of Lots 24 and 25 and the rest of the area they are talking about in the settlement. With that they ask that this Board look on their comprehensive settlement favorably and they ask that this Board grant the relief they seek which when you add the conveyance of land combined with the stipulation that they have referred to meets the intent and purpose of the floor area ratio.

Mr. McLeod asked if Lots 24 and 25 are presently in Mr. Iantosca's name. Mr. Giarrusso replied that Lots 24 and 25 are presently in the name of a company controlled by Mr. Iantosca.

Mr. McLeod asked if Mr. Iantosca will convey Lot 24 and 25 to you. Mr. Giarrusso replied in the affirmative.

Mr. McLeod asked why won't the conveyance be done now. Mr. Giarrusso replied that they felt that the most advantageous way to resolve this would be a comprehensive way. Effectively it has been agreed to but they haven't done the conveyance.

Mr. McLeod asked why the 110, 420 square feet can't be done as a conveyance instead of a stipulation. Mr. Giarrusso replied that potentially it could be but the problem they have been having is it's the cart before the horse. They have been trying to grab as much as they possibly could. The answer they have been getting is that it may be that Mr. Iantosca never develops that land, but he owns it so he makes the decision on that land. Mr. Iantosca claims not to have a development plan yet and until he does have a plan, he doesn't know where on the property would be best suite for the swap. They wish they could find out where definitely where that would be, but until they do it's a floating zone. Mr. Giarrusso stated that he can assure this Board that there will be no building on 110,420 square feet, but he can't tell you where that will be. He does not think it's necessary for the purpose of this Board granting or not granting a variance where the issues is that they add it together with Lot 24 and Lot 25.

Mr. McLeod stated that Mr. Giarrusso used the phrase "cart before the horse". He asked aren't they before this Board before it's all done. Right now they have the exact land they had a year and a half ago. The only difference is they have a stipulation that we have not seen. Mr.

Giarrusso stated that he would suggest that any ruling by this Board would have to have as conditions everything he reported.

Mr. McLeod stated that the applicant may not need a decision by this Board because the only thing before this Board is the floor area ratio. Mr. Giarrusso replied that they are not getting a conveyance of that 110,420 square feet. That land only comes to them by Mr. Iantosca not being able to use that amount of land. They are really at a floor area ratio of .45.

Mr. McLeod stated that the only concern he has is that the applicant doesn't own that land.

Mr. Giarrusso stated that technically they are appearing before this Board with land area that only gets them to .45 and asking for relief. Mr. McLeod stated that's why he thinks that it's premature to be before this Board. Mr. Giarrusso stated that the reason they decided to come to this Board and seek the Board's assistance with a variance is that if he's forced to continue with litigation strategy, he may win but where will the land be. He will get something that will look as weird as possible so as to seek to preserve as much developable land as possible for Mr. Iantosca. He wins but it doesn't necessarily benefit Weymouth or Weymouth Neck and his neighbors at River Street, but he doesn't need a variance. He's willing to go through this process because he thinks that what he's setting forth is a lot better than what he would get in litigation.

Mr. Giarrusso stated that Mr. Iantosca's lawyer has just walked into the room.

Mr. McLeod asked Mr. Giarrusso why they have come to this Board. Mr. Giarrusso replied that he thinks it's the best way.

Mr. Denizkurt stated that in the Board's packet on page 2 there were 4 bullet points listed and the last bullet states "the trustees agree and stipulate that they will not utilize any property conveyed to the Condominium under the agreement for new development independent of the Condominium and any improvements made to such property will be consistence with the ordinance". As he reads that you're talking about Lots 24 and 25 being conveyed to you and you will not build on those independent of the existing condominium. He reads that to mean that they could use that to add onto the existing condominium. Mr. Giarrusso replied that is not what they intended it to mean, nor the way they read the ordinance. They read the ordinance to allow for any ancillary use, not an expansion of the existing use; it may be a gazebo but not more condominiums.

Mr. Denizkurt asked what the current landscape was of the larger portion they are talking about getting a conveyance of. Mr. Giarrusso asked Mr. Denizkurt if he was asking what the 110,420 square foot parcel looked like now. Mr. Denizkurt asked what was there now and what would it possibly look like – would it just be an overgrown grass. Mr. Giarrusso replied that assuming that Mr. Iantosca maintains title he will own the 110,420 square feet as well. The way it looks like right now, the top soil is being removed by Connoco as part of the remediation. The intention is that the major portion is going to be capped pursuant to the remediation plan. The cap is going to be a natural cap and maintained as a grassy area. Part of the maintenance of the cap, there are requirements, and you can't have re-growth, you can't allow trees to grow because



the roots would penetrate the cap. There will ongoing yearly maintenance as part of the agreement with Connoco to ensure that it is a grassy area.

Mr. Denizkurt asked why Mr. Iantosca refuses to deed over the 110,420 square feet. Ms Marjorie Adams, Mr. Iantosca's attorney, replied that it's not that he's refuses to deed over the 110,420 square feet; he just hasn't decided what he's going to do with the property. They need to resolve the issue of giving East Bay Condominiums enough land right now. The idea of building something on that property is not something Mr. Iantosca intends presently. After Mr. Iantosca decides exactly what he wants to do with the land, then East Bay may get the land. Mr. Iantosca is in his seventies and the idea of building something is not something he's planning at this time. Mr. Iantosca wants to maintain the ability to do something with his land. The property preferred by East Bay is the closest to contiguous. If Mr. Iantosca were to deed over property at this time, it would probably be a sliver going around the perimeter of the property and not very useful to East Bay. It was discussed that after Mr. Iantosca determined what he wanted to do with his land, he would eventually convey the 110,420 square feet. What they are proposing now and to get to what the town wants which is to restrict building is some 110,420 square feet would be set aside. They don't know where that 110,420 square feet would be because they don't what can be built or if anything can be built, but that still preserves the land. There is nothing going on right now but until Mr. Iantosca applies for a building permit and determines what's actually buildable he wants to retain ownership.

Mr. Denizkurt asked assuming the conditions as presented by counsel for the applicant were made part of an approval for this application, how long is it going to take to decide. It sounds to be open ended. Ms. Adams replied that maybe Mr. Iantosca never decides. The whole point is the town got what the town needed. The town is saying that East Bay doesn't have the proper floor area ratio. Mr. Iantosca is giving East Bay 116,264 square feet and Mr. Iantosca can't use 110,420 square feet of his property. If Mr. Iantosca were to build, 110,420 square feet would be subtracted from his property and they would not count that for the floor area ratio. They are setting aside 110,420 square feet that can never be used for building. What they are saying that all of these lots put together will have the proper floor area ratio.

Mr. Giarrusso stated that he would like to respond to the question as to why East Bay doesn't get the land deeded to them. One of the problems they have had and they have sought the town's opinion on concerned the access road and can they use that access road in calculating floor area ratio and therefore once they get that, they would then be able to use some land adjacent to that because they would be contiguous. The contiguous requirement has been a major issue for them. They can't use the access road because the opinion from the town is that it provides access for his client's property, for Weymouthport, for Essex and for any future potential building so it can't be owned by his client and can't be used in the calculation for floor area ratio and therefore they can't use land abutting it. The only land that is contiguous is Lot 24 and Lot 25 plus the area which encompasses River Street which is just an easement of way at this point is all to be included and with that it gets them to the .45 floor area ratio. They think that they have gotten the most than can through conveyance. That plus the 110,420 square feet binding no development stipulation gets them to the floor area ratio of .30.

Mr. Foley stated that he knows how hard staff has worked on this along with East Bay to get something good for the residents and the town. Just the fact that Mary Toomey supports this resolution means a lot to him. He knows how hard she has worked on this along with Abby Child. Something that bothers him is that when East Bay Condominiums were constructed about twenty years ago. Mr. Giarrusso stated that East Bay was constructed in 1987. Mr. Foley stated that it has gone on and on and on. Now he hears that a piece of property won't be developed. What guarantee do we have that the 110,420 square feet of property won't be developed. As a member of this Board, he has seen cases that come before us where there have been stipulations/orders of conditions and yet they are superseded. What guarantee do we have that that piece of property will not be built on in the future. Ms. Adams replied that the Board received copies of the Declaration of Restricted Covenant. One talks about what East Bay can't do with the property they got and the other one talks about the set aside. This gets recorded at the Registry and goes with the land. Should Mr. Iantosca develop his land the first 110,420 square feet can't be included in the floor area ratio.

Mr. Joseph Harrington stated that the Declaration of Restricted Covenant is not only for the benefit of East Bay Condominiums, but town is also named as beneficiary. Mr. Giarrusso added that they are having the town sign off on this as well because they see this to be a benefit to the town so they have identified the town as an intended beneficiary of this agreement to ensure that if a future owner doesn't follow that stipulation and comes before this Board and seeks to develop the property including that 110,420 square feet, the town has the right to enforce this Covenant as an intended beneficiary.

Mr. Foley stated that would be his concern that even though it is being spelled out that the property would not be used in the future FAR calculations. Ms. Adams replied that they are giving the town the right to say no in a recorded document.

Mr. Giarrusso stated that the language has been reviewed by the Town Solicitor in draft form and will be reviewed by him before it's signed. They have worked very closely with town officials including the Town Solicitor, to make sure they were comfortable with the concept and with the specific language.

Mr. Clarke stated that he has some comments on this but first he will review comments received from town departments.

- Conservation noted that it is a land transfer only and there would be no disturbance or alteration of resource areas proposed so they had no comment.
- There were no comments from the Fire Department, Health Department, Police Department, Public Works Department or School Department.
- The Tax Department noted that Lot 1 has some outstanding taxes owed of \$31.88 and \$10.50.

Mr. Clarke stated that he has been working with these attorneys for over a year on this issue and have kept other administration people involved when need be. They have looked at a lot of different ways to resolve this. They could walk away from here and withdraw their application and resolve the FAR issue between the two of them and it would be to no benefit of the town

because Mr. Iantosca could deed just a sliver of land. There is nothing that says Mr. Iantosca must provide a developable piece. He just needs to make right the FAR and that doesn't really serve our purpose. Clearly in his position, it was important for the town to be a player in this. In reviewing the different options, they looked at many. Broad Reach is a laid out way so that it cannot be used as access to some of the other property that Mr. Iantosca owns. The access road out to Webb Park is just a right of way so it is owned by Mr. Iantosca and does provide a contiguous piece. From his position, any piece out there is an important piece but that area adjacent to Laundry Cove, adjacent to Webb State Park, on the entrance for people going to Webb State Park if there was any way we could keep it from being built and this is one way that can occur on is critical because it does provide the entranceway to Webb State Park. He thinks that's a tremendous plus and that will only occur if they came before the Board with a crafted proposal that the Board is going to be able to put stipulations on. At the end of the day the original slide that was put up of the land that was purchased by Mr. Iantosca that shows all the land that he acquired it is correct to say that the FAR for all of that land will never be above .3. He believes that is the intent of the law and we are going to get that through the acquisition of land by East Bay and by the stipulation that the 110,420 square feet cannot be used in the calculation of the FAR. We resolve this issue and we are able to have the clean up move forward. Mr. Giarrusso also mentioned the encroachment issue. The may not be an issue of the town but it will go away. The fact that East Bay will have control of that property adjacent to Laundry Cove on the access way so they will have a stake because they will be right there and it will have better maintenance than what it's had in the last twenty years. He thinks that's positive for the community. This is complicated. They have looked at a lot of different options. The naming of the town in this part of this agreement he feels is important. He feels that the Mayor is comfortable with this and the Town Solicitor is comfortable with this as well. The bottom line is that he believes that we have reached something that is reasonable. We are not letting someone off the hook. He feels we are actually getting more by having this agreement than we would if we let them go their own way.

Mr. McLeod asked if the Town Solicitor has read the agreement. Mr. Clarke replied that the Town Solicitor has read the settlement terms.

Mr. McLeod opened the meeting for comments and questions from the public.

Mr. Paul Sheehan, 73 Broad Reach, Trustee at Weymouthport Condominium, stated that they are concerned that the 110,420 square feet has not been specifically identified. If it is that piece of property he doesn't have a problem going forward. Ms. Adams stated that they are not saying that the piece identified will be the exact location for the 110,420 square feet, but Mr. Iantosca does not want to commit to it at this time. Mr. Sheehan stated that if the piece identified is not going to be used for the FAR, it sounds like it could be any place.

Mr. Harrington stated that after you do the calculation and after you take out the 110,420 square feet and set aside the amount needed for Essex, it leaves about 230,000 square feet. Based on that you could have a building of about 70,000 square feet.

Mr. McLeod stated that the Board's decision has to be based on what's been submitted and is before the Board. If the applicant could have the 110,420 square feet conveyed to them, they

wouldn't need to be here. The Restrictive Covenant protects the residents and citizens of the town.

A resident of East Street spoke in favor of approving the application.

Mr. Giarrusso stated that they also see that Lots 24 and 25 important as the entrance to Webb Street Park. With Mr. Clarke's assistance they are going to determine if there is a way that when Connoco does their remediation here it also has to do remediation on the easement of way because there is contamination on the road. They are going to create a clean corridor and they are hopeful they can coordinate with the necessary entities to sink the power lines and get them underground including up to Webb State Park. If they can do that it will benefit everyone.

Mr. Dan Murray stated that he is a Trustee of East Bay Condominium and he wants to confirm a couple of points that were made that Lots 24 and 25 mean a lot to East Bay.

A MOTION was made by Mrs. McElroy and seconded by Mr. Foley and was UNANIMOUSLY VOTED to close the public hearing at 8:15 P.M.

Mr. Clarke stated that if the Board is going to be acting favorably he would suggest that the Board make the conditions those that were presented by the applicant – the stipulation of the land and the 110,420 square feet, that it all be part of the reasoning behind granting .45.

Mr. McLeod reviewed proposed conditions of approval:

1. Provided that Lots 24 and 25 and the easement of way be conveyed to the applicant
2. Provided that the Restrictive Covenant is filed with the Registry of Deeds.

Mr. Foley made a MOTION to grant the application for a variance based on the following findings:

The Board finds that, in its judgment, the applicant has met the criteria of Section 120-122.D.:

- (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.

and to include the following conditions:

- (1) Provided that Lots 24 and 25 and the easement of way be conveyed to the applicant.
- (2) Provided that the Restrictive Covenant is filed with the Registry of Deeds.

Mrs. McElroy seconded the MOTION and was UNANIMOUSLY VOTED.

FINDINGS:

The Board finds that, in its judgment, the applicant has met the criteria of Section 120-122.D.:

- (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.

DECISION

The Board was familiar with the site and had the benefit of a plan. The majority 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 for the Floor Area Ratio with the following conditions:

- (1) Provided that Lots 24 and 25 and the easement of way be conveyed to the applicant.
- (2) Provided that the Restrictive Covenant is filed with the Registry of Deeds.

MINUTES – 2/15/06

A MOTION was made by Mr. Foley, seconded by Mrs. McElroy and was UNANIMOUSLY VOTED to accept the Minutes of February 15, 2006 for Cases # 2883, 2884, 2885, and 2886.

ADJOURNMENT

A MOTION was made by Mrs. McElroy, seconded by Mr. Foley and was UNANIMOUSLY VOTED to adjourn the meeting.

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Mary McElroy, Clerk

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Date