

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
MARCH 7, 2007
AMENDED APRIL 4, 2007**

The Board of Zoning Appeals of the Town of Weymouth met on Wednesday, March 7, 2007 at 7:00pm at McCullough 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 the 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 Mary McElroy, Clerk Donald Holzworth Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Mr. Fuqua stated that this is a request from the Mayor for proposed zoning map changes. He noted that this is not a request to approve the change but a request to submit the proposed change to the Town Council. The article, by request of the Board of Zoning appeals to see if the Town will vote to amend the zoning map, as follows:

By changing from I-2, General Industrial to R-1, Residential Low Density (single family) the parcels identified on the Weymouth Town Atlas as follows: Sheet 20, Block 282, Lots 36, 31, and 37. Lots are generally bounded by King Avenue to the East, DF Haviland Lane to the North, and private property zoned R-1 on the West and South.

Or take any other action in relation thereto.

A MOTION was made by Mrs. McElroy to APPROVE the request to send the proposed zoning map changes to the Town Council and was seconded by Mr. Foley and UNANIMOUSLY VOTED.

BZA CASE #2939 115 Prospect Street

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Donald Holzworth Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Stephen J. Clements for property at 115 Prospect Street, also shown on the Weymouth Town Atlas Sheet 20, Block 268, Lot 17, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51 and Table 1 to allow a shed to be placed on the lot within the setback area.

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.

Mr. Clements stated that there is no other place to place the shed due to the shape of the lot. He noted that the shed has already been erected.

Mr. McLeod noted that this is a request for a variance due to the shape of the lot.

Mr. Fuqua noted that the lot is L-shaped. The unusual lot shape makes the placement of a shed difficult. This is a corner lot on Prospect Street and Prospect Court.

Mrs. McElroy asked about the DPW recommendation for a condition that any future sewer work for repair or maintenance is the owner's responsibility. Mr. Fuqua stated that this could be added as a condition.

Mr. Fuqua stated the application was routed to various Town Departments and received favorable or no adverse comments.

The Chairman asked if the public had any comments, to which there was no reply.

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

Due to the shape of the lot and topography of the land, a MOTION was made by Mr. Foley to APPROVE the request for a VARIANCE to allow a shed to be placed on the lot within the setback area with the following condition:

- (1) The shed not be placed on top of or too close to the existing sanitary sewer service. If the shed needs to be moved in the future to perform repair or maintenance to the service, it will be the owner's responsibility to move it.

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 Mrs. McElroy and was UNANIMOUSLY VOTED.

FINDINGS:

Due to the shape of the lot and topography of the land, 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 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 VARIANCE to allow a shed to be placed on the lot within the setback area with the following condition:

- (1) The shed not be placed on top of or too close to the existing sanitary sewer service. If the shed needs to be moved in the future to perform repair or maintenance to the service, it will be the owner's responsibility to move it.

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 Mrs. McElroy and was UNANIMOUSLY VOTED.

BZA CASE #2931 Off Tirrell Street and Aster Circle

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Mary McElroy, Clerk
	Martin Joyce
	Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Ryder Development Corporation for property at Off Tirrell Street and Aster Circle, also shown on the Weymouth Town Atlas Sheet 28, Block 361, Lots 1 and 2, Sheet 32, Blocks 410, 423, 424, Lots 9, 15, 40, 44, 47, 49, 50, 51, 53, and 54, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-12.1, 120-38.3(d)(3) & 120-63 for a Special Permit for Planned Unit Development for 48 condominium housing units and Special Permit for development within the floodplain zones A & C.

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.

Mr. McLeod stated that the Board is waiting for comments to be submitted by the Department of Public Works.

A MOTION was made by Mrs. McElroy to continue the hearing until April 18, 2007 and seconded by Mr. Foley and UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL APRIL 18, 2007

BZA CASE #2934 398 Broad Street (cont.)

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Mary McElroy, Clerk
	Donald Holzworth
	Frances Kenneally
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Gerard Devine for property at 298 Broad Street, also shown on the Weymouth Town Atlas Sheet 21, Block 232, Lot 8, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-53 to subdivide one lot into two lots with Lot 8A having approx. 16,500 sq. ft. & Lot 8B having approx. 16,500 sq. ft.

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.

Attorney Gregory Galvin stated that at the previous meeting, one of the main issues involved the topography of the lot and possible drainage of surface water and/or subsurface water in this area. The applicant has had the engineer go out. Mr. Galvin stated that he has a plan to present to the Board. He noted that he understands that the hearing will need to be continued to allow the Board time to review the plans.

Ellen O'Sullivan stated that she owns the property behind Mr. Devine's property. She noted that Mr. Devine has placed boulders on her property.

Mr. MacLeod stated that this is an issue that should be taken up directly with the applicant.

Mr. Galvin stated that it is Mr. Devine's intention to remedy this issue. Mr. Galvin submitted copies of the plan.

Mr. Fuqua asked for calculations on the test pits for DPW to make a complete review. Mr. Galvin stated that this information will be submitted.

A MOTION was made by Mr. Foley to CONTINUE the public hearing until April 18, 2007 and was seconded by Mrs. McElroy and was UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL APRIL 18, 2007

BZA CASE #2936 527 Columbian Street (cont.)

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Donald Holzworth Francis Kenneally
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Frank Giglio/Weymouth Office Park, LLC for property at 527 Columbian Street, also shown on the Weymouth Town Atlas Sheet 40, Block 480, Lot 10, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-25A (3), 120-25B, 120-74L, 120-76/77/78 and 120-62 to demolish 1,285 square foot wood frame commercial building and portion of the existing main structure, and construct a 3,478 square foot addition to the main Barn Door Furniture building, expand the paved parking lot to the rear of the building where a gravel lot exists, provide new utility connections for the expanded building; and provide new signage for the site.

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.

Mr. Chui noted several revisions that have been to the plans:

- The island will be bigger to prevent backing out onto Columbian Street
- There will be one way in on south side driveway
- Two-way (in and out) on main parking side
- The drive aisle was widened from 20' to 24'
- Retail space is eliminated; therefore the parking variance is no longer needed.

Mr. Chui submitted pictures of the signs for the lot.

Mr. Fuqua noted that the owner of this piece also owns the abutting piece of property. He noted that they are adding a piece of the property. The parcel to be conveyed is 4' larger.

Mr. Fuqua asked if this change to the abutting property will change the parking layout of the abutting property. Mr. Chui stated that it does not change that layout.

Mr. McLeod clarified that the applicant will now have sufficient parking and will no longer need a parking variance.

Mrs. McElroy noted several issues that she had made note of at the previous hearing; dumpster, parking survey, storm drain system, transferring parkland, roof drain, and backing out onto Columbian Street.

Mr. Chiu noted that there will be an island to prevent backing out onto Columbian Street.

Mr. Fuqua noted that the applicant has been before the Conservation Commission. There was an issue regarding drainage.

The changes made by Conservation: drainage swale eliminated and drainage pipe to empty to a different location. The Order of Conditions is due to be issued on 3/14/07.

The Chairman asked if the public had any comments, to which there was no reply.

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

Mr. Foley made a MOTION to allow the applicant to WITHDRAW the application for a variance and was seconded by Mrs. McElroy and UNANIMOUSLY VOTED.

It was noted that the retail space down below has been removed, parking verified by Building Inspector, revised plans are submitted, comments, sign details, and staff recommended conditions. Mr. Fuqua stated that when he sends out the agenda for the April meeting, he will include a draft of the conditions. The Board will vote on this case on April 4, 2007.

A MOTION was made by Mr. Foley to take this matter UNDER ADVISEMENT and was seconded by Mrs. McElroy and UNANIMOUSLY VOTED.

BZA CASE #2940 90-100 Main Street

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Donald Holzworth Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Robert M. Cohen, Esq. for McDonalds Corporation for property at 90-100 Main Street, also shown on the Weymouth Town Atlas Sheet 29, Block 329, Lot 22, located in a B-2 zoning district seeking a special permit and/or variance under Chapter 120-25B, 120-25C, and 120-64.3A for special permit for drive-through service or windows and variance for relief from wall sign requirements.

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.

Attorney Mr. Cohen, John Kusick of Boeler Engineering, and Ed Bealer were present this evening.

Mr. Cohen stated that there has been a MacDonald's on this site for 29 years. The renovations will be similar to renovations made to the Bridge Street restaurant. He stated that the plan is to raze the building and rebuild. He also noted that a request for a sign variance was also submitted due to an architectural feature on sign. The top of the roof is painted yellow. It was not clear if this would be considered a sign.

Mr. Kusick handed out a site plan. He noted that the plan presented is almost identical to present lot configuration. The building is a little narrower to allow for more room on the site. About 2000 square feet of pavement will be replaced with landscaping. The pavement on the entire lot will be removed and the lot will be entirely regarded. Drainage will be improved.

Mr. Foley asked about the placement of the dumpster. Mr. Kusick stated that the dumpster area has been enlarged to accommodate recyclables.

Mr. Golden noted that the building is approximately 11% larger than the original building. Mr. Kusick noted that the building is longer in the rear.

Mr. Golden asked if there have been any traffic issues with this location. Mr. Fuqua noted that the entryway and circulation have not changed. He also noted that there have not been any issues at this location.

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

- 1 Conservation Commission noted that this is outside the wetland resource area.
- 2 Health Department required outside grease recovery system. Mr. Kusick pointed out the location of the system.
- 3 Police Department noted that pavement markings show movement through the site.
- 4 Fire Department had no issues.
- 5 DPW (Water, Sewer, Engineering, Highway) noted technical points. Vertical elements should be noted according to Weymouth datum base on the as built plan.
- 6 School Department had no special concerns.
- 7 Tax Department noted that taxes are up to date.

Mr. Kusick submitted updated plans making changes as noted in the town's comments.

Mr. Foley asked what the roof is made of. Mr. Kusick noted that it is made of aluminum finish. It is a standing seam metal roof. It was noted that this part of the roof does not need a sign variance as it is not a sign element. There is no sub-roof below it.

The Chairman asked if the public had any comments, to which there was no reply.

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

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT according to plans dated 3/7/07 for special permit for a restaurant on a lot over 40,000 square feet with drive-through service or windows and variance for relief from wall sign requirements with the following condition:

- (1) Vertical elements should be noted according to Weymouth datum base on the as built plan.

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 Mr. Golden 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.

- (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 according to plans dated 3/7/07 for special permit for a restaurant on a lot over 40,000 square feet with drive-through service or windows and variance for relief from wall sign requirements with the following condition:

- (1) Vertical elements shall be noted according to Weymouth datum base on the as built plan.

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 Mr. Golden and was UNANIMOUSLY VOTED.

Mr. Foley made a MOTION that a VARIANCE for the sign is not necessary as this it is not a sign element but a part of the roof. The motion was seconded by Mrs. McElroy and UNANIMOUSLY VOTED.

The applicant requested to withdraw the request for a variance.

Mr. Foley made a MOTION to allow the applicant to WITHDRAW the request for a sign variance and was seconded by Mrs. McElroy and was UNANIMOUSLY VOTED.

MINUTES – 2/21/07

A MOTION was made and seconded to APPROVE the Minutes of February 21, 2007 and was UNANIMOUSLY VOTED.

ADJOURNMENT

A MOTION was made and seconded to ADJOURN the meeting at 8:00 P.M.

Mary McElroy, Clerk

Date