

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
March 19, 2008**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, March 19, 2008, at 7pm 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 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 #2997 16 Princeton Avenue

Present: Richard McLeod, Chairman
Edward Foley, Vice-Chairman
Mary McElroy, Clerk
Charles Golden
Don Holzworth
Staff: Rod Fuqua, Principal Planner
Recording Secretary: Doreen Teodorson

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A MOTION was made by Mary McElroy to open the public hearing and waive the reading of the legal advertisement, and was seconded by Edward Foley and UNANIMOUSLY VOTED.

Application of Tsuyoshi & Yukiko Oba, TBE represented by Richard Avery of 116 Antlers Shore Drive, E. Falmouth, MA 02536 for property at 16 Princeton Avenue, also shown on the Weymouth Town Atlas Sheet 7, Block 89, Lot 9, located in a R-1 (Single-Family) Residential Zoning District seeking a special permit and/or variance under Chapter 120-40, 120-51, and Table 1 for a second story addition over a nonconforming first floor.

Richard McLeod asked the applicant if the second story was to stay within the existing footprint. Mr. Avery stated it would contain a five foot bump out in the back where the staircase will go from the first floor to the second floor. Mr. McLeod asked if there was no other place for this addition, to which Mr. Avery stated there was no other location available.

Rod Fuqua stated the application was routed for comments to the following departments:

Conservation: Outside Conservation Commission jurisdiction; no conservation impacts.

Health: No Objections.

Fire: Submit plans if approved. Six inch hydrant okay at 11 Princeton. Street name okay.

Police: No issues.

DPW: Water & Sewer Division/Water 1. Water service is 3/4"; advise upgrade during construction. Sewer comments: 1. Water and sewer mitigation fees. 2. Replace existing 5" AC sewer lateral with 6" PVC sewer lateral. Highway/C&M Division DPW Director: 1. No comments. Engineering Division: No comments.

Schools: Presents no special concerns.

Tax: Taxes are up to date.

Mr. Fuqua stated this was built some time ago and it was in conformance at the time of being built. This house predates zoning and does not conform to the current setbacks in the front or on

the North side. It is within 3.4 or 3.5 feet from the property on the closest side. It still allows a contractor to do work and stay on their property. The bump out in the back appears that it would conform to the zoning. They are looking for a special permit for an extension or change to the nonconformity as they are going up to a second floor.

There was no public comment.

A MOTION to close the public hearing was made by Mary McElroy and seconded by Don Holzworth and was UNANIMOUSLY VOTED.

A MOTION was made by Mary McElroy to APPROVE the request for a SPECIAL PERMIT to add a second story addition over a nonconforming first floor. 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 Edward Foley and 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 to add a second story addition, part of which lies within the setback area. 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 #2999 658 Main Street

Present: Richard McLeod, Chairman
Edward Foley, Vice-Chairman
Mary McElroy, Clerk
Charles Golden
Don Holzworth
Staff: Rod Fuqua, Principal Planner
Recording Secretary: Doreen Teodorson

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A MOTION was made by Mary McElroy to open the public hearing and waive the reading of the legal advertisement, and was seconded by Don Holzworth and UNANIMOUSLY VOTED.

Application of Charles and Linda Clifford of 658 Main Street for property at 658 Main Street, also shown on the Weymouth Town Atlas Sheet 41, Block 490, Lot 7, located in a R-2 Zoning District seeking a special permit and/or variance under Chapter 120-40, 120-51, and Table 1 for a rear addition onto a single family dwelling, part of which lies within the setback area.

Linda Clifford stated they wanted to build an addition onto the back of their house for the purpose of a family room to get away from the noise of Route 18. Mr. McLeod asked if they were further encroaching along the side yard setback. Ms. Clifford stated they have a driveway along the side of the home and the only usable space is the back. Edward Foley stated at this time it appears the existing house is 5.1 feet from the side lot line and they are going 2' closer. Ms. Clifford stated they were, but only on the far end as the addition is not straight off the back. The driveway is on the kitchen side of the home. Don Holzworth stated on the plot plan the addition is cockeyed instead of perpendicular off the back of the home. Linda Clifford stated it was straight off originally and that brought it too close to the lot line and they have two Anderson doors off the back which would remove their view of their back yard, which they do not want to do. Charles Clifford stated they have neighbors with them this evening that are in agreement with the plan. Ed Foley asked for any additional plan or pictures. Ms. Clifford brought a plan to Mr. Foley and after discussion, Mr. Foley stated it would be a financial hardship to move the doors.

Rod Fuqua stated the application was routed for comments to the following departments:

Conservation: Outside Conservation Commission jurisdiction; no conservation impacts.

Health: No Objections.

Fire: Street name and number okay. Hydrant @ 658 okay. Submit plans if approved.

Police: No issues.

DPW: Water & Sewer Division/Water - No comments. Sewer comments: 1. Water and sewer mitigation. Highway/C&M Division DPW Director: 1. No comments. Engineering Division: No comments.

Schools: Presents no special concerns.

Tax: Taxes are current.

Mr. Fuqua stated the Cliffords came to him with a plan that showed the addition coming straight off the back of the home. This brought the corner just off the lot line. He stated he explained to them in the past the Board has requested some clearance room along the lot line for construction and maintenance of the property without encroaching on the abutting property. Therefore, they

have modified their plan which now shows the 3' setback. If the Board would like to consider their original plan if they are able to acquire additional piece of property from their neighbor, so they could come straight back. If the Board would like to consider their first layout with that option in their decision if they did purchase additional property, if they did this with this spirit and intent, they could come back to be reviewed to ensure they did follow what the Board would want. Ms. McElroy questioned the hardship issue. Mr. Fuqua stated there was a hardship with the driveway location and the elevation plan and the double set of windows in the rear of the home. This would be a variance because currently they are encroaching closer than what the house is now. They need the determination for hardship with the variance.

There was no public comment.

A MOTION to close the public hearing was made by Mary McElroy and seconded by Don Holzworth and was UNANIMOUSLY VOTED.

A MOTION was made by Edward Foley to APPROVE the request for a VARIANCE for a rear addition onto a single family dwelling part of which lies within the setback area as the applicant has shown sufficient financial and topographical and geological hardship through the relocation of the double doors in the back of the home and the driveway location. Mr. Holzworth noted the angle restriction of the addition is further hardship for the lot. Mr. Foley put an additional consideration on the approval that the Board would allow the consideration of their first layout option in their decision if the applicant was to purchase additional property, and they did this with this spirit and intent, they could come back to the Board to be reviewed to ensure they did follow what the Board would want. Therefore, if they were to acquire a small piece of land from the neighboring property, it would still be a variance approval. The MOTION was seconded by Mary McElroy and was UNANIMOUSLY VOTED FOR APPROVAL.

FINDINGS:

The Board found that based on the fact that the side of the house is not parallel to the side lot line and the shape of the lot 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.

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.

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 for a rear addition onto a single family dwelling part of which lies within the setback area as the applicant has shown sufficient financial and topographical and geological hardship through the relocation of the double doors in the back of

the home and the driveway location. The angle restriction of the addition was further noted as a hardship for the lot. An additional consideration was put on the approval that the Board would allow the consideration of their first layout option in their decision if the applicant was to purchase additional property, and is done within the spirit and intent of this decision; they could come back to the Board to be reviewed to ensure they did follow what the Board would want.

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 #2998 117 Bridge Street

Present: Richard McLeod, Chairman
Edward Foley, Vice-Chairman
Mary McElroy, Clerk
Charles Golden
Don Holzworth

Staff: Rod Fuqua, Principal Planner

Recording Secretary: Doreen Teodorson

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A MOTION was made by Mary McElroy to open the public hearing and waive the reading of the legal advertisement, and was seconded by Edward Foley and UNANIMOUSLY VOTED.

Application of Bridge Street Pizzeria, Inc. represented by Charles Saghbini for property at 117 Bridge Street, also shown on the Weymouth Town Atlas Sheet 6, Block 65, Lot 2, located in a B-2 Zoning District seeking a special permit and/or variance under Chapter 120-27 and Article XVII for outside seating to a restaurant and modifications to the parking.

Richard McLeod asked the applicant to explain his application. Mr. Charles Saghbini stated he recently purchased the restaurant and there was an existing patio on the back that has outside seating. He stated he was trying to establish an upscale bistro style environment with bench seating and pendant lighting and has brought in great chefs and is trying to create a family restaurant. He is opposed to the biker bar atmosphere that existed there in the past. He stated he never has encountered any issue with the parking.

Richard McLeod asked Mr. Fuqua for clarification on what was being asked of the Board. Mr. Fuqua stated the case refers to Article 17 for outside seating and modifications to the parking. Mr. McLeod stated without knowing what the parking requirement is for the seating that exists and what they are modifying, the Board cannot make an intelligent recommendation. He is not sure how much parking may have been lost with the addition of the patio and what hardship may exist to restore the lost parking. Mr. Fuqua stated the work for seating area is already completed. There is no data on the parking spaces provided nor parking spaces required and agreed a parking plan and seating to parking ratio should be presented to the Board.

Rod Fuqua stated the application was routed for comments to the following departments:

Conservation: Outside Conservation Commission jurisdiction; no increase in impervious area - will not affect Conservation interests.

Health: No Objections.

Fire: Street name and number okay. Hydrant (12") @ 117 Bridge Street. Height of fence?

Police: No issues.

DPW: Water & Sewer Division/Water 1. No comments. Sewer comments: 1. Water and sewer mitigation. Highway/C&M Division DPW Director: 1. No comments. Engineering Division: No comments.

Schools: Presents no special concerns.

Tax: Taxes are up to date. W/S has outstanding bills - total due \$537.20

Mr. Fuqua suggested the Board consider the following two conditions which are standard to prior applications such as this: 1. Access to the patio area will only be allowed from inside the building. 2. No live music, speakers, or piped in music will be allowed in the patio area.

Richard McLeod asked what the Special Permit was for. Mr. Fuqua stated it would be for additional seating and a parking variance. The additional seating is the outdoor seating area. Richard McLeod asked if they would handle the variance for the parking and would the Licensing Commission decide on the seating. Edward Foley stated they need a plan for the required number of seats and the ratio to the parking before making any decisions. Don Holzworth stated before they look and grant additional seats they must have further data on the square footage and what is required. Charles Golden agreed and asked what the required parking would be with the increased seating. Mr. Saghbini stated he has sixty seats with a capacity of 90 people but does not know the exact number of required parking spaces. A discussion was held on where the parking was located and a recommendation of the applicant providing a plan was requested. The applicant stated they had a grand opening and they were able to maintain plenty of parking. The Police checked the facility several times and had no complaints or issues. Rod Fuqua stated the parking has long standing been a pre-existing condition.

Richard McLeod asked the public for comment.

Richard Penio, an abutter to 117 Bridge Street, stated the hours of operation and the use of music are vague answers from the applicant. He stated the illegal patio has been used as a smoking and drinking area previously. There have been fights and loud noise until late hours. The applicant answered he would only request the patio be open until the kitchen closes at 10:00 or 11:00 p.m. He would push the smokers to the front of the building. There would be no music and it would be just a couple of tables for dining only. Richard McLeod stated it would need to be enclosed with entrance and exit only through the building. The applicant stated he would add additional wooden fencing with plantings for atmosphere. Mr. McLeod stated the applicant needs to meet with the abutters to discuss the plans for the patio, landscape, parking and fencing.

Mr. Foley stated they must ensure the entrance to the patio is only from the inside and ensure there is no music.

Paula Pineo stated she is an abutter and has small children. Their back yard abuts this area and the patio magically appeared. It has been loud and uncomfortable.

Russ Evans stated he lives directly behind the patio, which was illegally built. He said the more they drink, the louder they get. It sounds like a bunch of drunks in his back yard. It has already been tried out, and he does not appreciate the loud swearing. He stated the previous owner took down all but a few of the trees that were a buffer. The applicant stated he was adding landscaping this weekend. Mr. McLeod stated he would like to see a landscape plan. The applicant stated he is a business owner and a family man and would like to run a respectful family type operation. He has added a martini bar, will stucco the building and add landscaping. He wants to create a neighborhood bistro and use the patio until 9:00 p.m. or 10:00 p.m.

Brian White stated he has lived behind the lot for 16 years and is concerned with the noise. He has watched five owners come and go from a sub shop to a sports bar with keno. He stated they smoke pot in the back, fight, and are very noisy. Mr. White stated the previous owner cut many trees, which eliminated the buffer zone.

Victor Pap, District 1 Councilor stated he has never seen a parking issue at the restaurant. He asked if the Licensing Board would be the forum for many of the questions. Sandra Gildea stated she was there and looked at the patio fencing, which is chain link. The applicant stated it was going to be changed to wood with landscaping. Ms. Gildea asked for a buffer of trees. She also was concerned with the addition of lighting and wanted to ensure the lighting was angled downward to not intrude on abutting property. Mary McElroy stated they can place conditions on such items that will stay with the building.

Richard McLeod stated he would like to see a plan for the fencing, the landscaping, the parking and the seating for the Board to review, to which the applicant agreed. A meeting date was set for April 2, 2008. Richard McLeod explained that one Board member would not be present at that meeting, and the applicant would need a unanimous vote for approval on the matter, to which the applicant agreed to proceed with that date.

The Board suggested the abutters meet with Victor Pap to voice their concerns and meet with the applicant, Charles Saghbini, prior to the next meeting.

A MOTION was made by Edward Foley and was seconded by Don Holzworth to continue the hearing to April 2, 2008 and was UNANIMOUSLY VOTED.

Minutes – 02/27/08 - Case # 2987

A motion was made by Edward Foley and seconded by Mary McElroy to approve the minutes of 02/27/08 - Case # 2987 and was UNANIMOUSLY VOTED.

A MOTION was made by Mary McElroy and was seconded by Edward Foley to adjourn at 8:10 p.m. and was UNANIMOUSLY VOTED.

Mary McElroy, Clerk

Date