

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
March 21, 2007**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, February 20, 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.

**BZA CASE #2941 407 Union Street (cont.)**

Present:	Richard McLeod, Chairman Robert Galewski Mary McElroy, Clerk Donald Holzworth Kemal Denizkurt
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Adroaldo Vieira for property at 407 Union Street, also shown on the Weymouth Town Atlas Sheet 55, Block 601, Lot 7, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51 and Table 1 for a house located within the rear setback.

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. Vieira stated that this is his first project and he did not realize that he needed a plot plan after the foundation was poured as well as when the house was completed. It wasn't until the house was completed that he realized that the house had been pushed back several inches.

Mr. McLeod asked if the foundation had been done correctly would there have been sufficient room on the lot. Mr. Vieira stated that the house would be able to fit on the site.

Mr. Holzworth asked what the required rear setback is. Mr. Fuqua stated that the rear setback is 24 feet. The garage is over by ½ foot and the rear deck is 3.4 feet over in the back. The deck is over 30" above grade so it must meet the setback requirements. The side and front setbacks meet the requirements.

In regard to the flooding issue, Mr. Vieira stated that he has spoken with Mr. Barry. When it rains over an extended period of time the water has no place to go.

Mr. Galewski asked if drains or drywells were considered.

The Chairman asked if the public had any comments, to which there was the following comment.

Chris Buckley, 423 Union Street, noted that the size of the house is too big for the lot. The massive expanse of the roof is what is creating the problem with the drainage. He noted that the water mitigation discussed was for the applicant's property not the neighbors.

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Vincent Russo, 399 Union Street, stated that he had previously had a garden on the abutting side of the property where the flooding is worst.

Mr. Denizkurt asked if the neighbors had done anything on their own properties to mitigate the problems on their lots. He noted that although the new building may be contributing to the flooding it is not the sole cause of the problem.

Mr. Buckley noted that this area of South Weymouth has a notoriously high water table.

Mr. McLeod noted that the house, had the foundation been properly laid, would have been built as of right. The 6” discrepancy would not change the flooding problems.

Mr. Holzworth commented that the drainage issues are not within the jurisdiction of this Board. He did note that the property was built up.

Mr. McLeod noted that the Building Department approved the size and placement of the building on the property.

Mr. Galewski noted that the landscaping layout could have been done better. He also noted that a drywell system would have helped.

Mr. Vieira noted that the previous house did not have a foundation.

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

Due to the financial hardship of relocating the foundation and the fact that this was an innocent contractor error, Mr. McLeod made a MOTION to APPROVE the request for a VARIANCE under Chapter 120-51 and Table 1 and was seconded by Mrs. McElroy and UNANIMOUSLY VOTED.

### BZA CASE #2942 129 Fort Point Road

Present:	Richard McLeod, Chairman Mary McElroy, Clerk Donald Holzworth Charles Golden Kemal Denizkurt
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Dr. and Mrs. Natesa G. Pandian for property at 129 Fort Point Road, also shown on the Weymouth Town Atlas Sheet 2, Block 6, Lot 13, located in an R-1 zoning district seeking a special permit and/or variance under 120-38.3 (D)(4), 120-51 and Table 1 to establish a new front deck into the front yard setback, bring the first floor flush with the second floor into the

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side yard setback and to cover the walkway from the house to the garage in the front yard setback.

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 appeared before the Board with the applicants. He stated that the applicants are looking to remodel the building. He noted that the property is elevated somewhat compared to the abutting parcels. He also noted that the property abuts the seawall. The existing property has a crawlspace with utilities. It is the applicant's intention to bring the utilities up to the first floor. Also, the applicant would like to build a deck; there would only be a crawlspace beneath it.

There is a sunroom with a slanted roof. They would make the roof flat and use it as an entryway.

There is a portion of the first floor of the house that does not have a second floor above it. The applicant would like to go up and have a second floor above it. In addition, there is another part of the house that does not have a second floor above it.

The applicant would be extending upper floor living space, going straight up without extending the footprint of the house.

There is a garage to the rear of the property fronting on Parnell Street. The applicant would like to put a covering, with no sides, from the house to the garage.

The property is in the floodplain. The applicant must show that the subject land is not subject to flooding, or if it is, that the land is not unsuitable for building. The property is higher. There will be a grassed area in the front of the house. There will be no changes that would create any additional water runoff.

Mr. William Huber, the architect, was available to answer any questions.

Mr. Galvin handed out a petition signed by the neighbors showing their support for the project.

This is a request for a special permit.

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

- Conservation Commission noted that it is within 100 feet of a coastal bank and is subject to flooding. A filing is required.
- Health Department had no objections.
- Police Department questioned the deck from Fort Point Road. The deck is set back 19'
- Fire Department had no concerns.
- DPW (Water, Sewer, Engineering, Highway) had no objections.
- School Department had no special concerns.

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- Tax Department noted that there are taxes due as of 2/8/07.

Mr. Fuqua noted that the existing garage is currently non-conforming. It is a free standing accessory building and would need to a five foot setback. He noted that the connection of the roof to the garage would require a variance.

Mr. Fuqua asked if the foundation is being replaced. Mr. Huber noted that there is a pier system, but the crawl space is limited and they have yet to determine the extent of the foundation. If need be, the

The exterior and the floor area will not be increased and is a preexisting condition. The deck, as a new part of the house, would need to meet flood plain requirements.

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 financial hardship that would be created by re-locating or demolishing the garage, Mr. Holzworth made a MOTION to APPROVE the request for a VARIANCE under Chapter 120-51 and Table 1 to establish a new front deck into the front yard setback, bring the first floor flush with the second floor into the side yard setback and to cover the walkway from the house to the garage in the front yard setback and was seconded by Mrs. McElroy and was UNANIMOUSLY VOTED.

A MOTION was made by Mr. Holzworth to APPROVE the request for a SPECIAL PERMIT under Chapter 120-38.8(D)(4) to establish a new front deck into the front yard setback, bring the first floor flush with the second floor into the side yard setback and to cover the walkway from the house to the garage in the front yard setback with the following condition:

- (1) A municipal lien certificate shall be submitted.

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:

The Board found that the SPECIAL PERMIT and VARIANCE would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without

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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 financial hardship that would be created by re-locating or demolishing the garage and due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE and a SPECIAL PERMIT under Chapter 120-38.3(D)(4), 120-51 and Table 1 to establish a new front deck into the front yard setback, bring the first floor flush with the second floor into the side yard setback and to cover the walkway from the house to the garage in the front yard setback with the following condition:

- (1) A municipal lien certificate shall be submitted.

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 #2945 63 Lakewood Road

Present:	Richard McLeod, Chairman
	Kemal Denizkurt
	Mary McElroy, Clerk
	Donald Holzworth
	Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Peter Letendre and Linda Howell for property at 63 Lakewood Road, also shown on the Weymouth Town Atlas Sheet 53, Block 551, Lot 23, located in an R-1 zoning district seeking a special permit and/or variance under 120-40 for a second story addition to single family dwelling, part of which lies within the setback area.

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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. Letendre and Ms. Linda Howell appeared before the Board. Mr. Letendre noted that they would like to put a second floor on the dwelling. He noted that the footprint of the house would not be increased.

Mr. Fuqua noted that there are both one and two story homes on Lakewood Road, thus the request is in keeping with the rest of the neighborhood. This is a request for a special permit.

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

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 Mrs. McElroy to APPROVE the request for a SPECIAL PERMIT under Chapter 120-40 for a second story addition to single family dwelling, 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.

The MOTION was seconded by Mr. Holzworth 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.

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### 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 under Chapter 120-40 for a second story addition to single family dwelling, 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 #2943 825 Middle Street

Present:	Richard McLeod, Chairman Mary McElroy, Clerk Donald Holzworth Charles Golden Kemal Denizkurt
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of John W. Murray for property at 825 Middle Street, also shown on the Weymouth Town Atlas Sheet 33, Block 378, Lot 16, located in an R-1 zoning district seeking a special permit and/or variance under 120-40, 120-51, and Table 1 for extension or change of a nonconforming use for a commercial use in a residential district.

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 Rocco DiFazio appeared before the Board with the applicant. He stated that the applicant is seeking to put a second story on the building, which houses Tower Liquors. The upstairs room would house his office, bathroom, and allow for more space for the bottle returns. There is currently an 8'x 22' container on the far end of the site. The roof will have asphalt shingles. Entrance and egress to the property will remain the same.

Mr. McLeod asked if the addition will exceed the current footprint of the building. Mr. DiFazio stated that it would not, in that it will extend over the existing container that is on the site.

Mr. Denizkurt asked if the container currently on the site would be removed. The applicant stated that it would be removed.

Mr. Golden asked if the retail space will be increased. Mr. DiFazio stated that it will not be increased.

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Mr. Golden asked if there was currently a bathroom facility at the location. Mr. DiFazio stated that the existing bathroom is located in the basement.

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

- Conservation Commission noted that the property is located across the street from a wetland area that borders Whortleberry Pond. The wetland area is slightly more than one hundred feet from the corner of the existing building. The applicant will not be required to file with the Conservation Commission, but should ensure good housekeeping practices. If excavation is required for the addition, care should be taken to ensure no sediments enter the catch basin on Middle Street as it discharges directly to the wetland.
- Health Department had no objections.
- Police Department had no concerns.
- Fire Department had no issues.
- DPW (Water, Sewer, Engineering, Highway) suggests upgrading the water service. Also they noted that both the existing structure and the proposed addition are shown to be within a town of Weymouth water easement. Permanent structures are not allowed in this easement. The owner has a letter from DPW stating that the additional location is ok.
- School Department had no special concerns.
- Tax Department noted that taxes are up to date.

Mr. Fuqua asked if the material on the exterior of the addition will be the same as the material on the exterior of the existing building. The applicant stated that the first floor will remain cinderblock. The second floor will be clapboard and conventional windows.

Mr. Fuqua noted that there is a dumpster on the site. He recommended that the Board make it a condition that the dumpster be enclosed. He noted that this is a standard requirement of the town on new development.

Mr. Fuqua questioned if the second floor would only be used as part of the existing business. The applicant stated that this is correct.

Mr. Holzworth asked if the sign would change. The applicant stated that it would not change.

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 hardship created by the size and shape of the lot, Mr. Golden made a MOTION to APPROVE the request for a VARIANCE under Chapter 120-51 and Table 1 and was seconded by Mrs. McElroy and was UNANIMOUSLY VOTED.



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A MOTION was made by Mr. Golden to APPROVE the request for a SPECIAL PERMIT under Chapter 120-40 for extension or change of a nonconforming use for a commercial use in a residential district with the following conditions:

- (1) The dumpster is to be enclosed.
- (2) The retail space will not be increased
- (3) There will only be one (1) business on the premises.

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:

The Board found that the SPECIAL PERMIT and 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 hardship created by the size and shape of the lot and due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE and a SPECIAL PERMIT under Chapter 120-40, 120-51 and Table 1 for extension or change of a nonconforming use for a commercial use in a residential district with the following conditions:

- (1) The dumpster is to be enclosed.
- (2) The retail space will not be increased.
- (3) There will only be one (1) business on the premises.

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.

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- (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 #2944 1284 Washington Street

Present: Richard McLeod, Chairman  
Mary McElroy, Clerk  
Donald Holzworth  
Charles Golden  
Kemal Denizkurt  
Staff: Rod Fuqua, Principal Planner  
Recording Secretary: Janet Murray

Application of Sophia Giannaros-Darras for property at 1284 Washington Street, also shown on the Weymouth Town Atlas Sheet 35, Block 407, Lot 60, located in an Highway Transition (HT) zoning district seeking a special permit and/or variance under 120-64.3B(3) for a freestanding sign within 25' of the road to have a lower edge of the sign less than 8' above grade.

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. Giordano appeared before the Board. He submitted pictures to the Board of the existing signs at the location. He noted that there are two signs but three tenants. He is proposing to take out the two signs but keep the existing poles. A new sign will be erected to advertise the three tenants.

He stated that he is requesting a variance because in speaking with the electrical company he was informed that the sign needed to have at least a two foot clearance between the top of the sign and the electrical wires. He noted that the pole closest to the street is set back at least 12 feet from the street. He also noted that the existing shrubs are set back enough so as not to obstruct traffic views. The poles are parallel and 57" apart. The sign will be placed between the poles, will be internally lit and will be on a timer. Also, it will be removable.

Mr. Holzworth noted that there is an electrical pole on the island. It is his belief that the sign post is not located on the applicant's property. Mr. Fuqua stated that this would need to be reviewed. The applicant would need to verify the actual location of the sign on the plans. If the sign is on the right of way, the Board does not have the authority to grant a variance or special permit.

Mr. Golden asked that the existing sign square footage be submitted.

The Chairman asked if the public had any comments, to which there was the following comment.

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Linda Broadforth, 1278c Washington Street, stated that she is concerned that the sign would block the view of the residents exiting the Plymouth River Condominiums. She asked about the height of the sign. The sign will be 6-7 feet high from the ground to the bottom of the sign.

Ms. Broadforth also expressed concerns about lighting and fencing. Mr. MacLeod stated that only the sign request is under the purview of this Board. Mr. Giordano stated that he would inform the owner of the abutters concerns.

Mr. Giordano stated that he did not believe that it would interfere with their view.

A MOTION to CONTINUE the public hearing until April 4, 2007 and was made and seconded, and was UNANIMOUSLY VOTED.

### **HEARING CONTINUED UNTIL APRIL 4, 2007.**

#### MINUTES – 3/7/07, Case # 2939 and 2940

A MOTION was made and seconded to APPROVE the Minutes of March 7, 2007, Case # 2939 and 2940 and was UNANIMOUSLY VOTED.

#### ADJOURNMENT

A MOTION was made and seconded to adjourn the meeting at 8:30 P.M. and was UNANIMOUSLY VOTED.

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Mary McElroy, Clerk

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Date