

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
APRIL 1, 2009**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 1, 2009, at 7:00pm at McCulloch Building 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 Francis Kenneally Martin Joyce
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

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

**BZA CASE #3036 144 Middle Street**

Application of Scott Thomsen for property at 144 Middle Street, also shown on the Weymouth Town Atlas Sheet 18, Block 241, Lot 28, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 to extend an existing uncovered porch, part of which lies within the setback area.

Mr. Thomsen appeared before the Board. Mr. Thomsen stated that the request is to add a deck. He noted that the owners of the property have a handicapped child who needs room to maneuver onto the deck.

Mr. Fuqua asked if there is a door at the back that leads onto the proposed deck. Mr. Thomsen stated that the access is from the side door onto the existing deck. There is no other place to put the deck.

Mr. Fuqua asked what is the width of the existing deck. Mr. Thomsen stated that the width is six feet. He also stated that there would be a six foot opening for access to the new part of deck.

Mr. Foley asked if there would be further encroachment on the setback. Mr. Thomsen stated that the deck will actually be moved further away.

Rod 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.

A MOTION was made by Mrs. McElroy to APPROVE the request for a SPECIAL PERMIT to extend an existing uncovered porch, 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. Foley 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 to extend an existing uncovered porch, 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 #3035 110 King Avenue

Application of William Herlihy for property at 110 King Avenue, also shown on the Weymouth Town Atlas Sheet 20, Block 282, Lot 37, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 to demolish existing 2 car garage and build a new 2 car garage connecting it to the main building.

Present:                      Richard McLeod, Chairman  
                                    Edward Foley, Vice-Chair  
                                    Mary McElroy, Clerk

Francis Kenneally  
Martin Joyce  
Staff: Rod Fuqua, Principal Planner  
Recording Secretary: Janet Murray

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. Herlihy stated that he would like to replace the existing detached garage on his property and move it off the property line toward the existing structure. This will increase the side yard setback from six feet to eight feet; the front setback will be about 12 feet.

Mr. Foley asked what the size of the new garage will be. Mr. Herlihy stated that the garage will be about 100 square feet larger than the existing one and will be attached to the main building. By attaching the garage to the main building this will fill in an alley way that currently exists between the garage and the structure. The existing parking will be used.

Mr. Foley asked if another business will be opened. Mr. Herlihy stated that no other business is being established. He noted that he would like to run a heat duct to the garage. He also noted that the sill of the garage is rotted.

Mr. Foley asked if this is a request for a special permit. Mr. Fuqua stated that it is a change of an existing non-conformity. He noted that the zoning on this property was changed in 2007 from I-1 (industrial) to R-1 (residential). At the time of the change of zoning the property conformed to the then existing zoning.

Mr. McLeod asked about the placement of the dumpster. Mr. Herlihy stated that the dumpster would be moved to the left of the property. He agreed that there has been some illegal use of the dumpster and that it has become unsightly with a lot of trash on site. He pointed out that he is on a pick up request rather than a regular pick up with the dumpster removal company. He stated that fencing could be installed around dumpster. This could be a condition.

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

- Conservation Commission has no jurisdiction.
- Health Department had no objections.
- Police Department had no issues.
- Fire Department had no issues.
- DPW (Water, Sewer, Engineering, Highway) standard comments regarding water and sewer mitigation to be dealt during building permit process.
- School Department has no special concerns.
- Tax Department noted that there is a balance still remaining on '08 real estate. No taxes have been paid for 2009. Current bill due on water.

Mr. Fuqua stated that there is a town ordinance regarding dumpsters. However, the Board may make a condition that the fence be installed to screen the dumpster.

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

Kathy Maher, 86 Kensington Road, made note of many parked cars on the property. Ms. Maher submitted 15 pictures of the property.

Mr. Foley asked if Ms. Maher believed that the proposed changes would improve the sight. She agreed that tight screen fencing around the dumpster would be an improvement.

Mr. Herlihy stated that he is evicting the current tenant.

Mr. McLeod stated that possible conditions could be that no cars will be repaired in the driveway, no cars will be parked behind the garage, a municipal lien certificate will be submitted as proof of payment of owed taxes and utilities, tight screen fencing will enclose the dumpster.

Mr. Herlihy stated that the architecture will be similar to the existing structure which is wood frame.

Maria Vassiliadis, 18 DF Haviland, asked what kind of business operates at the site and what will be there once the tenants are evicted. Mr. Herlihy stated that the nature of the business will not change; it involves machine rebuilding of clutches and brake jobs.

Ms. Vassiliadis stated that up until about 2005 the location kept a low profile. She noted that there have been too many cars of late as well as outside oil changes being done.

Mr. Herlihy acknowledged that this has happened. He noted that he was sick and had rented the site. He stated that all work will be done inside the building.

Ms. Maher asked what happens if the property is sold. Mr. McLeod stated that the conditions would transfer to the new owner unless there is a change of use.

Mark Kelley, 40 DF Haviland, asked who monitors the site capacity. Mr. Fuqua stated that what is going on at the site is grandfathered in.

Mr. Herlihy invited the residents to stop by his shop and he would be willing to show them the plans.

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 to demolish existing 2 car garage and build a new 2 car garage connecting it to the main building with the following conditions:

- (1) A six foot tight screen fence shall be installed to enclose the dumpster and placed so that vehicles are not allowed to be parked in the rear of the property.
- (2) All taxes and utilities shall be paid, at the time the decision is recorded.
- (3) All cars shall be parked in the front of the garage within the property lines.

- (4) No repair work shall be done outside.

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 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 demolish existing 2 car garage and build a new 2 car garage connecting it to the main building with the following conditions:

- (1) A six foot tight screen fence shall be installed to enclose the dumpster and placed so that vehicles are not allowed to be parked in the rear of the property.
- (2) All taxes and utilities shall be paid, at the time the decision is recorded.
- (3) All cars shall be parked in the front of the garage within the property lines.
- (4) No repair work shall be done outside.

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 #3033 116 Green Street**

Application of Robert Melone for property at 116 Green Street, also shown on the Weymouth Town Atlas Sheet 8, Block 116, Lot 25, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-13.A to convert a single family dwelling with an in-law to a two family dwelling.

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

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. Melone stated that he is before the Board to request a legal change of their single family home with an in-law apartment, to a two-family home.

Mr. Melone stated that he and his wife purchased the home in 2005. He pointed out that the house is structured like a two-family home. There is a common egress. There are three bedrooms upstairs and one bedroom downstairs. There are two kitchens.

Mr. Melone noted that there is a limited market for the home. He pointed out that as a two-family there would be sufficient off street parking as there is a two car garage and two additional spots. He stated that the previous owner had two families living there.

Mr. Melone stated that the property currently has an in-law covenant which states that there can be two separate residences but the families must be related. He also stated the he had submitted and addendum to his application; a map showing where there are other multi-family homes in the immediate neighborhood.

Mr. Melone stated that he has already received estimates regarding separating the utilities. It would cost \$10,000. He noted that the 1<sup>st</sup> floor has one bedroom with a small sunroom off of it. Both units are the same square footage but the upstairs is configured with smaller rooms.

Mr. Joyce asked how do you access the 2<sup>nd</sup> floor. Mr. Melone stated that there is a common entry hallway.

Mr. Foley noted that there are 2 multi-families on Green Street.

Mr. Melone stated that the garage is used for storage. There is enough room on the property for four cars.

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

- Building Department noted that there is an in-law covenant for the property.
- Conservation Commission has no jurisdiction.
- Health Department had no objections.
- Police Department has concerns regarding parking. If the required number of parking spaces cannot be off street, he is opposed. The applicant has shown that there is room for four cars.
- Fire Department noted required compliance with Chapter 148, section 26 MGL and 527 CMR 31.
- DPW (Water, Sewer, Engineering, Highway) noted that there would be water/sewer mitigation due at the time of the building permit.
- School Department had no special concerns.
- Tax Department noted that taxes and utilities are current.

Mr. Fuqua noted that the applicant submitted an addendum showing the two other two families on Green Street.

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

Mr. Melone stated that if the existing in-law were changed to a two-family the only change would be that the tenants are not related.

Mrs. Melone noted that there has been no parking on Green Street. The parking behind the building is limited tenant to two cars.

Mr. Foley noted that a precedence would be set where there are only two other multi-families in the immediate neighborhood.

Mrs. McElroy expressed concern regarding traffic on Green Street.

Mr. McLeod stated that each situation is decided on a case by case basis.

A MOTION was made by Mr. Foley to CLOSE the public hearing and was seconded by Mr. Joyce and UNANIMOUSLY VOTED.

Mr. Melone stated that although he understands the concern regarding setting a precedence, the house is not a typical single family building that would need additional work to add a second kitchen.

Mrs. Melone noted that if the application were approved the only changes would be to change some locks and possibly a door.

Mrs. McElroy stated that just because two (related) families have lived on the property does not make it right and proper to change it to a two-family.

Mr. Melone noted that a letter was sent out to the neighbors. He pointed out that there are no abutters present to contest the application.

Mr. Foley suggested that the applicants talk to their neighbors.

Mr. McLeod asked Mr. Fuqua to research to see if an owner occupied or two-family allowed only with current owners as a condition could be imposed on the application.

The applicant asked to be allowed to continue the meeting in order to approach their neighbors.

A MOTION was made by Mr. Foley to CONTINUE the hearing until May 6<sup>th</sup>, 2009 and was seconded by Mr. Joyce and PASSED on a 4-1 voted with Mrs. McElroy opposed.

### **BZA CASE #3034 40 Hobamack Road**

Application of Piotr Szczepanik for property at 40 Hobamack Road, also shown on the Weymouth Town Atlas Sheet 4, Block 38, Lot 10, located in an R-1 zoning district seeking a special permit and/or variance under 120-53, Article XXV – 120-122 to subdivide one 10,000 ± square foot lot into two lots, one having 4,993 ± square feet and the other 5,000 ± square feet.

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

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 William Rounds, 115 Broadway, Taunton, MA represented Mr. Szczepanik before the Board. Mr. Rounds stated that the applicant would like to subdivide his lot with one lot at 4,993 square feet and the other at 5,000 square feet. His intent is to build a second house on the new lot.

Mr. Rounds stated that the total square footage on the lot is just under 10,000 square feet. It is approximately 2 square feet under 10,000. The second lot has an existing garage on it.

Mr. Rounds stated that the proposed building would be able to be situated on the lot within the current setbacks. The lot would be 30 feet wide by 54 feet deep. The existing garage would be demolished. The house would be pushed further back on the lot. There is also enough room for each lot to have a two car driveway.

Mr. McLeod stated that he did not believe that the Board has the power to grant this request under chapter 40(A) section 6.

Mr. Rounds stated that he believed that if both lots were at least 5,000 square feet, this application would be approved on an Approval Not Required (ANR). This is why the applicant



is before the Board. He pointed out that the vast majority of the lots in the neighborhood are on lots of 3,000 square feet.

Mr. Fuqua stated that Chapter 41 of the Subdivision Control Law does allow you to subdivide a property if it has existing structures on it. However Chapter 41 does not give any standing under the Zoning Acts section 40(A). In neither Chapter 41 of the subdivision control law nor in the Zoning Acts section 40(A) is there anything that links the two. If you come in under the zoning regardless of how many structures you have, you still have to come back if you less than 25,000 square feet. The zoning act itself does set a low threshold of 5,000 square feet.

Mr. Rounds referenced 5LCR30 1997 case in Land Court (Malcolm vs. Community Planning & Development Committee of North Reading). This ruling stated that if that exception to the subdivision control law applies then no zoning applies to the structures on the property.

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

- Conservation Commission noted that this is outside their jurisdictional area.
- Health Department had no objections.
- Police Department had no issues.
- Fire Department had no concerns.
- DPW (Water, Sewer, Engineering, Highway) had no comments.
- School Department had no special concerns.
- Tax Department noted that the taxes and utilities are current.

Mr. Fuqua questioned when the most recent subdivision of a lot occurred in the area. He pointed out that this neighborhood is in a well-developed neighborhood.

Mr. McLeod stated that in the nine years that he has been on the Board he has only seen one application such as this and it was not approved.

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

Kathleen Minis, 42 Hobamack Road, asked where the parking would be located. Mr. Szczepanik stated that the parking could be located on the other side of the lot from Mrs. Minis' property. She asked how big the house would be. Mr. Szczepanik stated that it would be 1800 square feet. Mrs. Minis stated that her house is only 1042 square feet in size.

Mrs. Minis expressed concern about the steep hill in the back and that digging will cause damage to existing foundations in the adjoining areas. Mr. Szczepanik stated that he would construct a retaining wall.

Len Minis, 42, Hobamack Road echoes his wife's concerns regarding the foundations. He stated that his foundation is already showing cracks from normal wear and tear.

Jim Murphy, 32 Hobamack Road, stated that he is representing his mother who owns this abutting property. He stated that there is a retaining wall on his property and from experience he knows that once the trees go, the soil goes.

Mr. Murphy pointed out that if the square footage includes the hill, then there is even less space on the lot to be used for the house, and parking.

Kathy Mackey, 44 Hobamack Road, asked if Mr. Szczepanik would be living in this house, even though he has bought another house. He stated that he would live in the house. Mrs. Mackey expressed concern regarding the parking.

Don Hunt spoke on behalf of Frank Murphy. He asked if the 5000 square feet is level as he noted that there is a 15 – 20% on a 60-75 foot angle. He pointed out that tree cutting would cause sliding of soil. He also stated that Hobamack Street is narrow. He also asked if there are requirements on how close you can build to another lot.

Mr. Rounds stated that his client is aware of the topography of the surround area. He stated that the plan shows the details. He stated that there is enough flat area on the proposed lot for the house as the footprint needed would be 900 square feet. He also stated that if needed the house could be smaller.

Ed Snell, Witawaumet, questioned about this being strictly legal. He pointed out that when he subdivided a lot for his daughter there was an issue regarding their lots being in different names. He stated that if this is legal there will be a “run” on applications to subdivide other existing 10,000 square foot lots into two lots.

Mr. Hunt added that the pitch on the street drops and as you come to end of the street it narrows.

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

Mr. Foley state that he believes that Section 6 precludes subdividing below 5000 square feet and further noted the lot slope conditions as mentioned during the public hearing.

A MOTION was made by Mr. Foley to DENY the request for a SPECIAL PERMIT to subdivide one 10,000 ± square foot lot into two lots, one having 4,993 ± square feet and the other 5,000 ± square feet. The Board finds that, in its judgment:

- (1) The specific site is NOT an appropriate location for such a use, based on the slope of the property.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town.
- (3) There WILL BE nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities CANNOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

The MOTION was seconded by Mrs. McElroy and was UNANIMOUSLY VOTED.

FINDINGS:

The Board found that the SPECIAL PERMIT would derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could NOT be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance.

- (1) The specific site is NOT an appropriate location for such a use, based on the slope of the property.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town.
- (3) There WILL BE nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities CAN NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT 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 VOTED to DENY the request for a SPECIAL PERMIT to subdivide one 10,000 ± square foot lot into two lots, one having 4,993 ± square feet and the other 5,000 ± square feet. The Board finds that, in its judgment:

- (1) The specific site is NOT an appropriate location for such a use, based on the slope of the property.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town.
- (3) There WILL BE nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities CAN NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

MINUTES – 3/18/09, Case # 3031

A MOTION was made and seconded to APPROVE the Minutes of March 18, 2009, Case # 3031 and was UNANIMOUSLY VOTED.

ADJOURNMENT

The meeting was adjourned at 8:30 P.M.

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Mary McElroy, Clerk

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Date