

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
April 2, 2008

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 2, 2008, at 7:00pm 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 #2998 117 Bridge Street (cont.)

Application of Bridge Street Pizzeria 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 & Article XVII for outside seating to a restaurant and modifications to the parking.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Donald Holzworth
Not Present:	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.

The applicant was informed that there were only 4 members present. The applicant was given the choice to proceed with only 4 members or to continue until the next meeting with the understanding that they would need a unanimous vote to be approved. The applicants chose to proceed with only four (4) members.

Mr. McLeod stated that this meeting is continued from March 19, 2008.

The applicant submitted a parking plan showing 32 spaces. He stated that he had met with neighbors on 3/30/08 regarding hours and other issues concerning the outside patio.

The applicant is requesting a seating variance as the addition of 20 seats requires additional parking. He stated that he currently holds a 60 seat license that requires 40 spaces. He pointed out that although his license is for 60 seats he actually has about 40-45 seats along with 32 parking spaces.

Mr. Fuqua stated that the seating for this restaurant is non-conforming. It was grandfathered in when changes were made. Under the former requirements only 20-30 parking spaces were required. He added that 20 more seats requires 13 more spaces.

Mr. Fuqua asked if the applicant had spoken with the building inspector since the last meeting in terms of the number of spaces. The applicant stated that he has not. When asked if the parking

spaces are lined out on the sites, the applicant stated that they are and he provided a hand drawn parking plan.

Mr. Foley requested that the applicant provide a formal parking plan if the application is approved.

Mr. Foley asked where smoking currently takes place. The applicant stated that the smoking is in the rear. It will be moved to the front of the building if the patio is built. There will be no smoking on the patio.

The applicant stated that the current fencing will be modified. The 3-4 foot chain link fence will be changed to a 6' wooden architectural-styled fence. There will be no lighting or music on the patio, and it will be closed at 10pm. The patio will not be a hang out for drinking and smoking.

Mr. Fuqua stated that District Councilor Pap has submitted a memo as he was unable to attend this evening. In the memo he noted three points:

- There shall be no free standing drinking on the patio; only dining with the same restrictions on indoor dining, i.e., no smoking or loud or disruptive behavior.
- Posted smoking out in front of building only.
- This patio with outdoor seating shall not be grandfathered in upon transfer of establishment.

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

Paula Pineo, an abutter stated that she met with the applicant. She asked that there be a probationary period of four months to see if this is going to work.

Mr. McLeod stated that he was not aware of a probationary period being allowed. He pointed out that the application can be conditioned; if the conditions are not met then the Building Department should be notified.

Mr. Fuqua stated that the Board of Appeals has abilities to control how the site is developed. The concerns being addressed by the neighbors are Licensing Board issues. Enforcement is up to the Police Department.

Sandra Gildea asked for clarification on the parking spaces. She asked if the plan includes the employees. Mr. Fuqua stated that the plan is for total parking including employees.

Deborah Evans asked if the patrons will be allowed outside once the dining has ceased. The applicant stated that the patio will be completely closed and patrons will not be allowed in the patio area.

Ms. Gildea asked about signage. The applicant stated that signage on the site will be reduced.

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

This is a request for a special permit and variance for 13 spaces. The hardship for the variance is due to the property being an existing non-conforming lot configuration which presents extenuating circumstance.

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT and VARIANCE with the following conditions:

- No free standing drinking on patio.
- Posted smoking out front and no smoking on the patio.
- Patio will close at 10pm.
- No speakers, piped in or live music.
- No lighting on the patio.
- Parking plan certified by an engineer and/or surveyor.
- Submit a plan for wooden stockade fence and shrubs.
- Access to patio is only allowed from inside the establishment.
- Present evidence that outstanding bills are paid.

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 above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a SPECIAL PERMIT and VARIANCE with the following conditions:

- No free standing drinking on patio.
- Posted smoking out front and no smoking on the patio.
- Patio will close at 10pm.
- No speakers, piped in or live music.
- No lighting on the patio.
- Parking plan certified by an engineer and/or surveyor.
- Submit a plan for wooden stockade fence and shrubs.
- Access to patio is only allowed from inside the establishment.
- Present evidence that outstanding bills are paid.

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 # 3001 204 Bridge Street

Application of Thomas W. Fleming for property at 204 Bridge Street, also shown on the Weymouth Town Atlas Sheet 6, Block 61, Lots 25 & 28, located in an R-1 zoning district seeking a special permit and/or variance under 120-64.3 to install a free standing sign where the principal building is within 10 feet of the front property line.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Donald Holzworth Kemal Denizkurt
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. Fleming stated that the signage on the site is old and needs to be updated. Also it is located on the side of the building. The sign needs to be more visible from route 3A.

Mr. Fuqua stated that there is a section in the zoning ordinance that if your building is within 10 feet of the street line a free standing sign is not allowed. The sign that the applicant is looking for requires a variance. The property is actually two lots but functions as one lot. Mr. Fuqua stated that the applicant is not proposing a high sign, it is small. The base is 6 feet off the ground, but for property located within 20 feet of the road it would need to be 8 feet high.

The applicant stated that walls signs would be removed from the site.

Mr. Denizkurt asked which way the sign is facing. The sign is not facing the street. The sign is 4x6 and would be located on the second lot, directly in the middle, 11-12 feet back from the fence.

The total sign area permitted on the building is 30 square feet. The building is 30 feet long. The sign area is 1 square foot per 1 linear foot.

Mr. Fuqua stated that the free-standing sign permitted on this property is 30 square feet. The lot has 150 feet of frontage. The area for the free-standing sign is 1 square foot per 5 linear feet. This requirement will result in a reduction in size of the sign by 2 square feet.

Mr. Fuqua stated that he had spoken with the sign maker today. The sign would be set back 10-15 feet from the street.

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

Mr. Fuqua stated that if this application is approved the applicant will need to bring the building into conformance. He stated that there is an existing permit for two 30 foot signs. There are three signs on the sides of the building that should be removed if the freestanding sign is approved.

Mr. Fuqua stated that staff recommendation is for the sign to have the property number on the base of the sign. He pointed out that the number would not be counted in the sign area.

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

Mrs. Gildea asked to review the sign.

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

Due to the hardship created by the topography of the lot, and safety concerns regarding customers finding the building, a MOTION was made by Mr. Foley to APPROVE the request for a VARIANCE to install a free standing sign where the principal building is within 10 feet of the front property line with the following conditions:

- (1) The signs on the sides of the building shall be removed.
- (2) The street number of the building shall be placed on the base of the sign. This will not be counted in the sign area.
- (3) The sign shall be no larger than 30 square feet.
- (4) The front edge of the sign shall be set back at least 10 feet from the street.

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 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 and also due to the hardship created by the topography of the lot and safety concerns regarding customers finding the building, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE, to install a free standing sign where the principal building is within 10 feet of the front property line with the following conditions:

- (1) The signs on the sides of the building shall be removed.
- (2) The street number of the building shall be placed on the base of the sign. This will not be counted in the sign area.
- (3) The sign shall be no larger than 30 square feet.
- (4) The front edge of the sign shall be set back at least 10 feet from the street.

BZA CASE #3000 1502 Main Street

Application of MOS Realty LLC for property at 1502 Main Street, also shown on the Weymouth Town Atlas Sheet 61, Block 627, Lots 1, 24, & 25, located in a B-1 zoning district seeking a special permit and/or variance under 120-25A, 120-25C, 120-25B, 120-70C, 120-64.3A & B to construct two new buildings: 1) a retail pharmacy of 12,900+/- square feet floor area with drive thru pharmacy window service; 2) a proposed commercial building of 5,5000 +/- square feet with specific commercial use undetermined 3) A variance for a sign of 128+/- square feet, 75 square feet allowed 4) Variance and/or extension of a nonconformity for off street parking within 15 feet of Trotter Road 5) variance for a freestanding sign within 25 feet of a road with a lower edge less than 8' above grade.

Present: Richard McLeod, Chairman
 Edward Foley, Vice-Chair

Staff: Mary McElroy, Clerk
Donald Holzworth
Kemal Denizkurt
Recording Secretary: Rod Fuqua, Principal Planner
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. Kelly stated that this application is to re-develop the site to include a CVS pharmacy with a drive-through window.

Mr. Kelly noted that a neighborhood meeting has not happened due to scheduling conflicts and a miscommunication. He stated that he intends to have this meeting in the near future.

Donald Rose gave an overview of the proposed plan. He discussed grading and drainage.

The drainage will be connected to infiltration systems to improve drainage and alleviate existing problems of puddling.

He pointed out that the lighting plan is generic and the applicant is willing to allow for changes. The landscaping plan calls for mounding, trees and bushes, islands dressed up with shrubbery and trees. The building must be set back because of property line. Uncle Charlies Restaurant will remain at its existing location.

John Morgan gave an overview of the traffic study. He stated that additional trips generated will be 300-400 per day with 100 during the evening peak hour. He pointed out that potential traffic from Southfield has been factored into the study. Comments received today will be reviewed. There are no anticipated changes for access to the site although there may be some curb cut changes. Access to the site will be from route 58 and 18 as well as from Trotter Road. Future plans for Trotter Road once Southfield's East/West parkway is built will be addressed as those plans are further developed.

New trips/pass by trips would be 500 per day. A pass by is a trip that is already on the roadway. The peak hours are in the PM and on Saturday.

Mr. Morgan stated that three sites are being re-developed as one site. The second building proposed would be for general retail.

Mr. Morgan stated that the traffic study used Institute of Traffic Engineers (ITE) generic numbers for trip generations.

Mr. Denizkurt asked about the existing CVS at the Pleasant Shops. Mr. Kelly stated that it is the intention to keep this CVS open.

Kevin Paton stated that the building would be two – tiered with traditional brick. The compactor will be enclosed to look more like building structure. The roof is flat

Mr. Denizkurt asked about design for second building on site. Mr. Kelly stated that there is no design for this building. He stated that it could be a condition that the applicant return to modify the permit when the second building is proposed to be built. He suggested that the ruling on this application be on size with design to be subject to review.

Mr. Denizkurt asked if this will be a 24 hour location. Mr. Paton stated that the proposed hours of operation are 7am to 11pm with the drive-through open the same hours as store.

The dumpster is located to the side of the proposed CVS and behind second proposed building.

The sign vendor was not available this evening. The proposal for signage is as follows:

- Wall sign – 75 square feet
- Proposed – 128 square feet – variance of 53.18
- Free standing sign – location variance – 3 feet

Mrs. McElroy asked if a clinic is proposed for this site. Mr. Paton stated that a clinic is not planned for this site.

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

- Conservation Commission – not subject to review
- Health Department had no objections
- Police Department submitted a memo regarding concerns about traffic flow on site
- Fire Department recommend adding a hydrant to site at rear of CVS building
- DPW (Water, Sewer, Engineering, Highway) submitted a memo noting technical points
- Traffic engineer submitted a memo regarding concerns about potential traffic changes, review counts regarding increase in numbers
- School Department had no special concerns
- Tax Department noted taxes and water payments due
- Staff concerns
 - Landscaping plan
 - Trotter Road is currently considered a private way
 - Multiple easements on site

Mr. Fuqua asked Mr. Rose to point out the location of the easements on the site map.

Mr. Rose pointed out the easements. He noted that Gallaghers, Charlies, and Papa Ginos have parking easements on the site. The aggregate parking is greater than what is required by zoning regulations; 147 spaces are provided although only 126 spaces are required by regulation. The parking on site is currently unmarked.

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

Councilor Smart acknowledged the scheduling conflicts with Mr. Kelly. He stated that he has an issue with the drive-through location as it is close to a residential area. Noise is also a concern. He stated that he does not like all the brick and would like to see the building have a more colonial style in the design. Some brick, clapboard and overhangs.

Mr. McLeod commented that there are two other CVS locations in town, Jackson Square and Route 18 and 53. He noted that these buildings have a more colonial style and should be used as an example.

Councilor Smart asked for a clarification on the hours of operation.

Councilor Smart noted that the grading slopes towards Plain Terrace

Harvey Welch, Pond Street, asked who would maintain the storm drainage catch basins to make sure that they do what they are supposed to do. Mr. Kelly stated that it is the applicant's responsibility to maintain the catch basins for the entire site.

Mr. Welch asked about the positioning of the lighting. This will be addressed at the meeting with the abutters. This meeting to be arranged by Councilor Smart.

Mr. Welch asked about the dumpster and if it would be a compactor and would it be enclosed. Mr. McLeod noted that there are town regulations that dictate these requirements. Mr. Foley suggested that the dumpster issue be brought up at the neighborhood meeting.

Mr. Welch asked about plowing on the site.

Ken Hale, Plain Terrace, expressed concerns about the sign out front. He asked if it will it be a computerized message sign. Mr. Paton stated that it is a pylon sign. There is no plan for computerized signage.

A MOTION to CONTINUE the public hearing until 5/7/08 was made by Mr. Foley and seconded by Mrs. McElroy, and was UNANIMOUSLY VOTED.

MINUTES – 3/5/08 AND 3/19/08

A MOTION was made and seconded to approve the Minutes of March 5, 2008 and March 19, 2008 and was UNANIMOUSLY VOTED.

ADJOURNMENT

A MOTION was made and seconded to adjourn the meeting at 9:30 P.M. and was UNANIMOUSLY VOTED.

Mary McElroy, Clerk

Date