

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
April 16, 2008**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, April 16, 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.

Present:	Mary McElroy, Clerk/Acting Chair Donald Holzworth Charles Golden Martin Joyce
Not present:	Richard McLeod
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 #2990 Meredith Way (cont.)**

Application of Bristol Brothers Development for property at Meredith Way, also shown on the Weymouth Town Atlas Sheet 21, Block 285, Lots 3, 122, 123, 124, 127, 128, 129, Sheet 25, Block 285, Lots 126, 127 and Sheet 25, Block 284, Lot 4, located in an R-1 zoning district seeking a special permit and/or variance under 120-63 Planned Unit Development for 21 new single family housing units in a clustered layout.

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 continue the hearing. No testimony was given.

A MOTION was made by Mrs. McElroy to CONTINUE the hearing until May 7, 2008 and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

HEARING CONTINUED TO MAY 7, 2008.

**BZA CASE #2991 39& 45 Winter Street (cont.)**

Application of KFC US Properties, Inc. for property at 39 & 45 Winter Street, also shown on the Weymouth Town Atlas Sheet 33, Block 376, Lots 19 & 20 located in a B-1 zoning district seeking a special permit and/or variance under Chapter 120-25.C, 120-119.A(2), 120-64.3, 120-119A(3), 120-10.1, 120-10.5 and 120-122.D for Taco Bell/KFC restaurant in B-1 is allowed by right. The application seeks a special permit for the drive thru window service and a variance for signage.

Present: Mary McElroy, Clerk  
Kemal Denizkurt  
Charles Golden  
Not present: Edward Foley  
Richard McLeod  
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.

As there were only three (3) members available this evening, the hearing will be continued to May 7, 2008. No testimony was taken.

A MOTION was made by Mrs. McElroy to CONTINUE the hearing until May 7, 2008 and was seconded by Mr. Golden and UNANIMOUSLY VOTED.  
HEARING CONTINUED UNTIL MAY 7, 2008.

### **BZA CASE #3003 32 Pine Ridge Road**

Application of Michael Huard and Aimee Davignon for property at 32 Pine Ridge Road, also shown on the Weymouth Town Atlas Sheet 30, Block 384, Lot 18, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40, 120-51 & Table 1 for a 2<sup>nd</sup> story on a single family dwelling, part of which lies within the setback area.

Present: Mary McElroy, Clerk/Acting Chairman  
Kemal Denizkurt  
Donald Holzworth  
Charles Golden  
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. Golden asked if the applicant's intent was to add a 2<sup>nd</sup> floor above the existing building. The addition will stay within footprint of the house and will not extend any further. Mr. Huard stated that the addition will only be above the main portion of the building. A prior addition converting a porch to a kitchen will not be built over.

Mr. Fuqua stated that this is a request for a special permit as the property is non-conforming.

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 Mr. Denizkurt to APPROVE the request for a SPECIAL PERMIT for a 2<sup>nd</sup> story on a 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.

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 for a 2<sup>nd</sup> story on a 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 #3004 220 Lake Shore Drive**

Application of Edward Jordan for property at 220 Lake Shore Drive, also shown on the Weymouth Town Atlas Sheet 30, Block 385, Lots 3 & 4, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-53, 120-51 & Table 1 to subdivide one lot into two lots for the purpose of constructing a single family home.

Present:	Mary McElroy, Clerk/Acting Chairman
	Kemal Denizkurt
	Donald Holzworth
	Charles Golden
	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. Fuqua stated that further information has been received. DPW did a review of this particular parcel. They looked at the deeds and discovered that this is in fact two lots separated by a passageway that is deeded. They went back to the subdivision plan of 1916 when the area was developed. This deeded passageway gives people rights to use it. The lots were never two lots in common ownership. Although the lots were owned by the same individual, the lots never shared a common lot line. The lot has been in existence prior to the Zoning laws taking effect. Although the lot is undersized, it is grandfathered.

The Assessors records were reviewed. The town assesses the lot as a buildable lot. The Town's atlas also shows this property as two separate lots.

Deed 6/1954 refers to grantor.

Attorney Raymond Jennings stated that the applicant is requesting to withdraw the application because of the above mentioned issue.

Darin Zemp, 215 Lake Shore Drive noted that there are two plot plans. Mr. Jennings stated that the plot plan was done by Neil J. Murphy Associates. He stated that he believes the plot plan dated 3/17/08 is an accurate representation. Mr. Zemp stated that there is a five foot discrepancy. Mr. Jennings stated that he would have to address this issue with the engineers.

A resident asked to whom the issue of this being a buildable lot be addressed.

Mr. Jennings gave an overview of the situation.

Dan Buchanan, 206 Lake Shore Drive, asked if the passageway ends at the waterfront. He noted that the lots are joined at the waterfront and into the water.

Mr. Jennings stated that the technical language is "and in and to the lands beneath Mill River." He stated that the lots are not joined.

Laura Buchanan, 206 Lake Shore Drive, stated that she believed that taxes were paid for one lot.

Leanne Zemp, 215 Lake Shore Drive, stated that the lot is clearly wetlands in a floodplain. She stated that she did her homework before purchasing her property. She stated that she bought property with a pond view.

Councilor Mathews stated that the residents here believed that tonight would be a public hearing. He pointed out that there will be a public hearing at the Conservation Commission. The Engineering Department at DPW has ruled that the lot is grandfathered as two lots because there is a ten foot right of way that separates the two lots.

Mr. Fuqua stated that this was before the Board because there was a presumption that this was a single lot. He pointed out that the passageway is not an easement on either property. DPW reviewed the project and determined that since the lots were separated by the passageway both lots are grandfathered in as undersized lots. In order to build, the applicant still must go before the Conservation Commission.

Patricia Pries asked what zoning regulations were referred to. Mr. Fuqua stated that zoning regulations were not sited. Mr. Fuqua noted that under State law Chapter 40A Zoning Act protects lots, called grandfathering, if a lot is legal when it was created.

Ms. Pries asked if there were two tax bills. Mr. Fuqua stated that information given shows two separate parcel assessments, one for land and building, and another for just land. He also pointed out that this plan does not address the placement of the building or the location of the flood plain.

Mr. Fuqua stated that if any development takes place in the flood plain a new notice and advertisement will need to be published.

A MOTION was made by Mr. Golden to allow the applicant to WITHDRAW WITHOUT PREJUDICE and was seconded by Mr. Holzworth and UNANIMOUSLY VOTED.

APPLICATION WITHDRAWN WITHOUT PREJUDICE

**BZA CASE #3002 18 King's Cove Way**

Application of Brian Tartaglione for property at 18 King's Cove Way, also shown on the Weymouth Town Atlas Sheet 6, Block 62, Lot 35, located in an R-1 zoning district seeking an appeal under Chapter 120-111 and 120-6 from a decision of the Inspector of Buildings.

Present:	Mary McElroy, Clerk/Acting Chair
	Kemal Denizkurt
	Donald Holzworth
	Charles Golden
	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. Fuqua stated that this property was before the Board previously (Case # 2996) for a second story on a garage that had plumbing fixtures. The Building Inspector had noted that this was not allowed as it would effectively make the garage a second dwelling. The applicant withdrew the previous application and has appealed the Building Inspector's decision.

Mr. Fuqua stated that the Building Inspector noted that it was not customary for him to be present at an appeal. It is up to the applicant to present his case to the Board.

Mr. Tartaglione stated that he had spoken with the Building Inspector after he had filed the appeal. In that conversation, the Building Inspector told the applicant that records indicate that it stated that he testified that someone would be living in the garage. He stated that this is not the case. He stated that the original plan was a proposed in-law over the garage. Many different plans were proposed. He stated it was determined that placing a foundation and addition to the existing house will drive the cost up. Also the site is on the ocean and although the sewer pipes could be installed before the trench filled with water, this would not be the case with the foundation.

Mr. Tartaglione stated that the plans are for the garage to act as a secondary use as a place to be away from each other or to entertain guests and as well as use as an exercise room. He stated that no-one would be sleeping in this area.

Mrs. McElroy stated that this may be true now but could change. Mr. Tartaglione agreed and expressed concern about those cases that slip through the cracks.

Mr. Tartaglione pointed out that he was aware of a situation at 280 Pond Street where there were permits issued for plumbing permits for an accessory use.

Mr. Tartaglione also stated that there is property at 406 Broad Street that has a bathroom in a detached garage.

Mr. Holzworth stated that the applicant must make his case on the merits of his case alone.

Mr. Golden pointed asked if 280 Pond Street had come before the Zoning Board. Mr. Tartaglione stated that he did not think it had.

Mrs. McElroy stated that each case stands on its own merit.

Mr. Fuqua stated that the reason that the original application was before the Zoning Board was because the property is within the floodplain, which requires a special permit.

Mr. Golden asked why the plumbing is needed. Mr. Tartaglione stated that the owners would not want to have to walk across their property to use the facilities. The accessory use would not have kitchen facilities.

Mr. Fuqua stated that the project would conform to town's intent if there is no plumbing in the accessory use.

Mr. Tartaglioni stated that he was told that a guest house was allowed but when he went for the building permit, he was told that they were not allowed.

Mr. Fuqua stated that he does not recall any cases involving guest houses on single family lots. He stated that it does matter what you call it, by definition it is for habitation. There is no allowance in the R-1 zone for guests or transient use in a second building. There are allowances for in-law apartments internal within the house.

Mr. Golden stated that his interpretation is that plumbing falls outside of accessory use.

Mr. Tartaglioni stated that he is concerned that this building inspector allowed two projects for the same person; he questioned that if he knew the inspector would he have to come before the Zoning Board.

Mr. Fuqua stated that the Board has to make a determination whether to approve or deny the appeal. To deny the appeal would uphold building inspector's ruling.

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

Mr. Golden noted that this board has never approved sanitation or cooking in a detached dwelling. It would not be in keeping with this precedence to approve this request.

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

Mr. Denizkurt stated that as there is no known knowledge of the board approving essentially 2<sup>nd</sup> dwellings in an R-1 zone, and based on written testimony submitted by Building Inspector, plumbing is not allowed in an accessory use. Although the Building Inspector did not dispute that there may be properties in Weymouth which do not abide by the regulations, the Board did not have make any decision on those instances.

A MOTION was made by Mr. Denizkurt to DENY the request for an APPEAL from a decision of the Inspector of Buildings and was seconded by Mr. Golden and was UNANIMOUSLY VOTED.

**APPLICATION DENIED**

MINUTES – 4/2/8, Case # 2998 and 3001

A MOTION was made and seconded to APPROVE the Minutes of April 2, 2008, Case # 2998 and 3001 and was UNANIMOUSLY VOTED.

ADJOURNMENT

A MOTION was made and seconded to adjourn the meeting at 9:00 p.m. and was UNANIMOUSLY VOTED.

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Mary McElroy, Clerk

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Date