

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
MAY 6, 2009**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 6, 2009 at 7:00PM at McCulloch Building, Whipple Center Conference Room, 182 Green Street, Weymouth, MA for the purpose of passing on the application of certain person 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:** Edward Foley, Vice-Chairman  
Mary McElroy, Clerk  
Francis Kenneally  
Kemal Denizkurt  
Martin Joyce

**Staff:** Rod Fuqua, Principal Planner

**Recording Secretary:** Christine Callbeck

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. Mr. Foley made a MOTION to OPEN THE PUBLIC HEARING and the MOTION was SECONDED by Ms. McElroy. UNANIMOUSLY VOTED. Mr. Foley made a MOTION to WAIVE THE READING OF THE LEGAL ADVERTISEMENT and the MOTION was SECONDED by Mr. Kenneally. UNANIMOUSLY VOTED.

Mr. Foley made a MOTION to CONTINUE BZA Case #3033 until June 3, 2009. The MOTION was SECONDED by Ms. McElroy. UNANIMOUSLY VOTED.

Mr. Foley made a MOTION to CONTINUE BZA Case #3037 until May 20, 2009. The MOTION was SECONDED by Mr. Martin. UNANIMOUSLY VOTED.

**BZA CASE #3038 1502 MAIN STREET**

Case # 3038 - High Rock 1502 Main Street 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 Chapter 120 Sections 25.A., 25.B., 25.C. 70.C, 64.3.A. & 64.3.B, all sections addressed in Case # 3000. The application is for modification to Special Permit # 3000 to increase the second structure from 5,500 square feet to 10,000 square feet, to relocate the dumpster pad at the rear of the second structure with increased landscape plan, and to modify the prior plan by providing concrete cement island flush with parking lot pavement. The applicant requests variance that additional signage be allowed with new signage for the second structure tenants.

Attorney David A. Kelly stated that he is present this evening on behalf of his client. Attorney Kelly further stated that his client, Mr. Louis Karger is also present.

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Attorney Kelly stated that he is seeking a modification to the special permit that was granted by this committee less than one year ago. Attorney Kelly considered it a continuance of the former special permit. Also variance required in the special permit aforementioned. The proposed gross area of the building is what has required the special permit. Basically it is an increase in the area of a building that is yet to be built. Proposed building will now be 10,000 square feet, opposed to the already approved 5,500 square feet. The proposed new building will not affect the parking area in a negative way. The owner has made some changes to the property, including:

1. Relocate the dumpster
2. Change plan, eliminated curb at Trotter Road to allow truck egress
3. Propose to increase square footage

The board required that the site plan review is necessary.

A variance for the sign is requested. The town ordinance allows one sign per lot. This parcel is 3 lots. The owner proposed to build one sign for all three lots. New sign location will be at Trotter Road. Plan is to remove the existing signage, only the CVS sign will stay. The variance is for more than one sign on the lot. Attorney Kelly stated a hardship for the owner; if he is not allowed to provide signage for the tenants, they will not come. Attorney Kelly stated that he considered this variance a continuation of the prior public hearing.

Mr. Fuqua gave a review of the project:

Conservation	No objections
Health	No objections
Police	Traffic patterns at Trotter Road looked at by Traffic Engineer. The curb cut and cobblestone were all Okayed by Traffic Engineer
DPW	No objections
Schools	No objections
Taxes	All taxes are current

Mr. Fuqua stated that when the applicant noted they wanted to increase the size of the building and the signage, staff advised them to remove one of the signs (Gallagher's) and to discuss with the owner of the Charlie's Restaurant about removal of their sign and a new sign with all names on one.

Mr. Denizkurt asked what the square footage of the existing signs that are being taken down and the new proposed signage are. Attorney Kelly stated the variance states 128 foot more or less within 25 feet of the road, less than 8 feet above grade. Proposed new signage square footage is 59.5 feet.

Mr. Fuqua stated that there are three proposed tenants:

- Uncle Charlie's
- Gallagher's
- New building with proposed additional square footage

Mr. Denizkurt asks what the proposed lighting plan for the new sign is. Mr. Karger stated that the lighting is internal. Mr. Denizkurt asked if a restaurant will be taking the third site. Mr. Karger stated no, the space is not attractive to a restaurant, he is hoping for retail.

Mr. Denizkurt asked if the dumpster is for CVS and the 2<sup>nd</sup> building. Mr. Karger stated yes. Mr. Denizkurt stated that if the new tenant is a restaurant he will have additional questions regarding what is put into the dumpster. Mr. Denizkurt has concerns with residents adjacent to back of property. Concern with how dumpster would be managed.

Mr. Foley asked who the prospective tenants are. Mr. Karger stated that he is talking with a day care center, card shop and vitamin shop. Ms. McElroy asked if the day care wouldn't increase the traffic in the area. Mr. Karger answered it would be more of a 9:00am and 5:00pm traffic. Mr. Foley asked where the children would play. Mr. Karger stated that if it is a day care center, he would reduce the size of the building and allow for outside play area.

Mr. Denizkurt asked what the proposed lighting plan for the side of the building is. Mr. Karger stated that he is not looking to add additional light to the building of the parking area. Mr. Denizkurt asked Mr. Fuqua to check into the Fire Departments thoughts on parking. Mr. Fuqua stated that the Fire Department saw the plans and had no questions.

### **Open Comment**

Councilor Michael Smart

Attorney Kelly did try to contact Councilor Smart but they were unsuccessful in connecting. Councilor Smart disagrees with Attorney Kelly that this should be a continuation of the prior public hearing on this property. Councilor Smart stated that he does not like when a proponent comes back before the committee asking to double the size of the square footage. Councilor Smart asked if the applicant received permission from the Health Department to move the dumpster.

Mr. Foley stated that he is upset that the dumpster was moved without asking permission. Mr. Foley further stated that he agrees with Councilor Smart that this is not a continuation of the prior public hearing. Councilor Smart stated that the Health Department located where the dumpster can be located on property. Mr. Fuqua stated that the dumpster was moved and will be moved back if this board does not allow the new proposed plans this evening. Attorney Kelly stated that he had spoken with the Planning Board and the applicant knew if not approved would need to move dumpster again.

Councilor Smart agrees with Mr. Denizkurt about the lighting, and does not want to see any additional lighting. The side of building with concerns on style and type of lighting anticipate.

Councilor Smart stated that there is 15 feet between the two buildings; fire engines are 9 feet wide. Access for emergency vehicles concerns him. Councilor Smart stated he has additional concerns about who the tenant might be.

Ken Hale  
36 Plain Terrace

Mr. Hale asked what recourse residents have if the requirements are not met by the applicant. A fence to block the lighting at CVS was promised and it was never met. Mr. Foley asked if this discussion took place with the applicant. Mr. Hale said yes. Mr. Karger said this is the first that he has heard of this discussion. Mr. Karger said that he will contact his partner and check on this promise. Attorney Kelly stated that this building does not directly abut Plain Terrace. Mr. Karger stated that he does not own the property where Mr. Hale would like this fence.

Mr. Foley stated that he has issues with proposed special variance. First he would like to see the dumpster put back, but should have asked to move it before. Second, Mr. Foley has problem with square footage request and no tenant, and third, Mr. Foley would like to see applicant come back with a tenant and dumpster moved back before he agrees to allow additional square footage.

Attorney Kelly stated he does not understand the issue tonight because it still complies with all the other elements. Attorney Kelly stated that he will require that his criteria are answered as to why this application fails in the board's judgment.

Mr. Karger asked the public what their trash issue is. Mr. Hale stated he has complaints with the lot and the trash blowing around. Mr. Karger stated that CVS has its own dumpster built in, it is a compactor. Mr. Karger apologized for moving the dumpster without the proper compliance. Mr. Karger further stated that relocating the dumpster will only affect him.

Mr. Denizkurt asked has there been a proposed style for the building. Mr. Karger answered an awning and a storefront window. Mr. Foley asked for an architect's rendering of the storefront.

Mr. Denizkurt stated that he feels that more information is needed before a decision can be made:

1. Square footage of existing two signs to be torn down.
2. Square footage of proposed new sign.
3. More specific with lighting. Questions why the two means of egress will not be lighted.

Mr. Foley included his ideas:

1. Architect's rendering of the storefront building.
2. Opportunity to revisit original plans of application.

Mr. Kenneally made a MOTION to CLOSE THE PUBLIC HEARING and was SECONDED by Mr. Martin. UNANIMOUSLY VOTED.

Mr. Foley made a MOTION to CONTINUE BZA Case #3038 to June 3, 2009. UNANIMOUSLY VOTED.

**MINUTES**

Ms. McElroy made a MOTION to APPROVE the minutes of BZA Case #3031, BZA Case #3032 and BZA Case #3030. Mr. Kenneally SECONDED the MOTION. UNANIMOUSLY VOTED.

**OTHER BUSINESS**

**O POND STREET**

Mr. Fuqua stated that he just received a letter from Councilor Smart which questions the conditions of O Pond Street. Mr. Fuqua suggested the board read the letter and have Councilor Smart in at a later date to discuss its contents. Councilor Smart stated that he would like to give a brief description of the issue.

Councilor Smart stated that at the most recent Conservation Commission meeting of April 29, 2009 sidewalk plans for the project located at O Pond Street we introduced by the project proponent. While reviewing the submitted plans to assess their accordance with the Order of Conditions approved by the Zoning Board of Appeals, Councilor Smart found some disparity. The sidewalk was supposed to meet with the other sidewalk, now it gives the appearance of where they want the crosswalk to go. Councilor Smart stated that Conservation Commission did not want to discuss sidewalk safety, whereas it is not their concern.

Mr. Fuqua stated that he will look into the issue with the building department and make sure that it is addressed. Mr. Fuqua further stated that if any change is made, it would be a change made in concert with the traffic engineer and the planning department.

**ADJOURNMENT**

There being no further business to come before the Board of Zoning Appeals, a MOTION to adjourn was made by Ms. McElroy and SECONDED by Mr. Denizkurt, UNANIMOUSLY VOTED to adjourn at 8:22PM.

Approved:

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Mary McElroy, Clerk

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Date