

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
May 7, 2008**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 7, 2008, at 7 p.m. 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 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-Chair
	Mary McElroy, Clerk
	Chuck Golden
	Martin Joyce
	Kemal Denizkurt
Not Present	Richard McLeod
	Donald Holzworth
Staff:	Roderick M. Fuqua, Principal Planner
Recording Secretary	Mary Briggs

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.)

A MOTION was made by Mrs. McElroy to CONTINUE the hearing until May 28, 2008 and was seconded by Mr. Denizkurt and UNANIMOUSLY VOTED.

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

A MOTION was made by Mrs. McElroy to CONTINUE the hearing until May 28, 2008 and was seconded by Mr. Denizkurt and UNANIMOUSLY VOTED.

BZA CASE #3000 – 1502 Main Street, (cont.)

A MOTION was made BY Mrs. McElroy to CONTINUE the hearing until May 28, 2008 and was seconded by Mr. Denizkurt and UNANIMOUSLY VOTED.

BZA CASE #3007 – 35 Poinsettia Avenue

Application of Gerard and Mary Faunce for property at 35 Poinsettia Avenue, also shown on the Weymouth Town Atlas Sheet 12, Block 138, Lots 5 & 27 located in a R-1 zoning district seeking a special permit and/or variance under Chapter 120-53 for a subdivision of 1 lot into 2 lots.

A MOTION was made by Mary McElroy to open the public hearing, and was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

Present were Gerald and Mary Faunce of 46 Clematis Avenue and Attorney Rocco DiFazio of 119 Broad Street. The petitioner's name is incorrectly listed as Gerard, but it was noted for the record that the correct spelling is Gerald Faunce. Mr. DiFazio requested a special permit to subdivide the lot at 35 Poinsettia and provided a copy of the deed to the property. It was purchased by the Faunces, as tenants in entirety in 1979, as two separate, contiguous lots. The Faunces' son is returning to Weymouth following a military career and wishes to develop the property and will bring in water, sewer, gas and drainage as necessary. Lot A- Clematis Avenue is 15,000' ft. and Lot B- Poinsettia Avenue is 18,000' ft; and are larger than most of the lots in the neighborhood. He has spoken with representatives from the Conservation Commission; it is not believed to be wetlands. Request is to separate the lots.

Mr. Foley asked if the lots were subdivided; would the size of each be compatible with the rest of the neighborhood.

Mr. Denizkurt asked if the full length of Poinsettia Avenue is considered an "unimproved private way", and whether the new house will front Poinsettia. Planning Board will need to approve; however the intent is to front Poinsettia Avenue. This is not the only lot on Poinsettia that is unimproved.

Mr. Fuqua reported on the status of the street; Poinsettia is not a through street. The Planning Board will establish the road conditions, revise or modify request Mr. Fuqua noted on the map where improvements are on the lots.

Mr. Fuqua reviewed staff comments. Health Department, Police and Fire, Schools have no issues and the taxes are up to date. DPW noted there is a surface drain that drains out the back of the property towards Clematis. The Planning Board would note any impact from that. DPW will assign the address when it comes time to file for building permit. He also noted Poinsettia is spelled incorrectly in the application and he recommended that if the Board is favorable to the request, the correction be included.

Mr. Denizkurt asked if approval could be given conditional to not allow access to the Poinsettia lot through the other lot. Mr. Fuqua noted as per the plan submitted, it does not allow access through Clematis from lot A to lot B. there is also a provision in the zoning that will not allow access from one lot to another. It is not an option to allow access either from lot A or any of the abutting properties.

A MOTION was made by Mary McElroy to close the public hearing, and was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

A MOTION was made by Mary McElroy to approve the special permit, on the condition that the spelling of Poinsettia be corrected. The site is an appropriate location for such use, will not be detrimental to the established character of the neighborhood and town, and there will be no nuisance or serious hazard to vehicles or pedestrians. Adequate and appropriate facilities will be provided for the proposed use, and the public convenience and welfare will be substantially served. The motion was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

BZA CASE #3005 – 34 Epping Street/Candia Street

Application of Liberty Realty Trust for property at 34 Epping with rear lot fronting Candia Street, also shown on the Weymouth Town Atlas Sheet 17, Block 228, Lots 11 & 16 located in a R-1 zoning district seeking a special permit and/or variance under Chapter 120-53 for a subdivision of 1 lot into 2 lots for the purpose of constructing a single family home.

Mr. Golden disclosed that his wife has listed property purchased by Mr. Gabriel but did not expect it to affect his impartiality. The board members agreed.

A MOTION was made by Mary McElroy to open the public hearing and waive the reading and was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

Present were Robert Gabriel, President of Liberty Realty Development, Inc., and Carl Johnson IV, Esq. requesting a special permit to redivide existing lots.

Mr. Johnson noted that the lot is an unusual parcel. GIS map of Candia Street shows a wooded, unimproved lot originally subdivided in 1926, subdivided in 1937. 34 Epping St. has a single family home with garage. The second lot is the same size as the first; 9,952 square feet. Lot 16 on the assessor's map is the one on Candia Street. Lot 11 is a vacant lot. The Building Inspectors opinion is that when the lot came into common ownership in 1945 the lot lines for zoning purposes has disappeared; however the town has always treated is as two lots. Assessment for each was separate consistently since 1945. Assessor has classified it as developable land since 1945. He provided copies of the Weymouth property cards as proof. The lot is consistent in size with others in the neighborhood. The neighborhood is developed with colonial style homes. Two sets of plans were submitted, the first with the application. Both lots front Candia Street. Derry Street, which abuts is a paper way. Ownership is to the centerline of the paper street, with the right of passage under MGL. There is no intent to use Derry Street. It will remain a wooded area but will be cleaned up. Lot will be 1200 square feet with 100 feet depth. He discussed abandonment process, which is lengthy, but only for illustrative purposes. He provided aerial views of the neighborhood. Derry Street would not be used as either a cut through or access. Conditions can be placed on the granting of the special permit that would allow for Derry street to remain unimproved, which would be an assurance to the neighbors. Mr. Johnson provided pictures of homes with scale and size comparable to the neighborhood. Drainage characteristics on the site would not be changed. There is no intent to use Derry Street, other than as a buffer.

Mr. Johnson noted that the home will be an asset to the neighborhood, will add to the tax base. He noted Mr. Gabriel has built about sixty homes in town, usually on single lots. He is a responsible builder.

Mr. Fuqua reported that the Building Department noted it would require a variance for the front yard set-back for the portion on Derry Street. The board under 120-53 is allowed to make adjustments and the board should note that the 10 foot setback be maintained on Derry Street. Health Department and police had no issues. The DPW noted that water is 1" coming off 6" main and noted the location of the sewer. They will assign an address when the building plan is submitted. There were no concerns raised by school department. There is a small balance on the tax bill, and if the board is favorable to the petition, it should require taxes and municipal utilities

be brought up to date at the time of permit. Utility access is from Candia Street, and the board should note the driveway come off of Candia Street and a Candia Street address, so that no road improvements be needed or warranted on Derry Street.

There was a brief discussion as to frontage and soil testing for ledge, which has not been done. Resident and abutter Thomas Ridge of 70 Candia Street noted his concerns that there not be increased traffic to the neighborhood, nor drainage issues as a result of building. The lot is on a higher level than surrounding property.

Mr. Fuqua board noted that the board could impose conditional to approval that drainage post-development would not be substantially changed, via use of dry wells and directed downspouts. Detail will be presented to Building Department.

Construction will begin once approved; probably within a few months if approved.

Dominic Galluzzo of 86 Candia Street noted the first catch basin catching runoff from the property is in front of his house. Subsequent resurfacing of the street has directed that none of the runoff hits catch basins on the odd numbered side of the street.

Mr. Foley noted this is not within the purview of the board, but should the board act favorably, post development drainage will not be essentially different from current conditions.

Mr. Johnson noted that cleanup of the vacant lot will improve some of the drainage, but approval could be conditional to plans that include drainage.

Mr. David Llewellynn of 47 Candia Street noted he has the same concerns regarding drainage as his neighbors, and is opposed to any improvements to Derry Street.

Mr. Foley requested clarification from Mr. Fuqua; the board is acting of request for a special permit as well as variance for the setback allowance. Mr. Fuqua responded that the board should act on the special permit but note that the permit allows for the 10' setback on the Derry Street side.

A MOTION was made by Mary McElroy to close the public hearing, and was seconded by Kemal Denizkurt and 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:

A MOTION was made by Kemal Denizkurt and seconded by Mary McElroy to approve the SPECIAL PERMIT, with the following conditions:

- (1) The driveway of the property will front Candia Street.
- (2) The applicant will not attempt to develop Derry Street.
- (3) Taxes shall be brought current.
- (4) Documents filed will take steps to direct drainage with dry wells and downspouts.

Mr. Fuqua noted that as part of the conditions of the motion will require the following condition:

- (5) The applicant shall submit an engineering plan showing that post development impervious runoff will not be substantially changed and will be directed to dry wells and downspouts.

UNANIMOUSLY VOTED.

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a SPECIAL PERMIT with the following conditions:

- (1) The driveway of the property will front Candia Street.
- (2) The applicant will not attempt to develop Derry Street.
- (3) Taxes shall be brought current.
- (4) Documents filed will take steps to direct drainage with dry wells and downspouts.
- (5) The applicant shall submit an engineering plan showing that post development impervious runoff will not be substantially changed and will be directed to dry wells and downspouts.

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 #3006 – 541 Main Street

Application of Atlantic Management Co./Atlantic-Stetson Realty for property at 541 Main Street, also shown on the Weymouth Town Atlas Sheet 37, Block 460, Lot 1 located in a B-1 zoning district seeking a special permit and/or variance.

A MOTION was made by Mary McElroy to open the public hearing and waive the reading, and was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

Present was John Sullivan representing the ownership group of 541 Main Street. He gave a brief overview. The property was purchased in summer of 2007, and is lacking exterior signage. The building is 100,000 square foot, 300 feet frontage along Main Street that includes unused entrances. This is a multi-tenanted building. There have already been substantial aesthetic improvements to clapboards, landscaping, painting and window detailing but there is an immediate need for improvements to signage to coordinate entry and traffic pattern and parking situation.

He provided samples of signage to the board, which include silk-screened banners to be installed on the brick verticals along the Main Street side, awnings for the back side, and identity signage. He also included improvements to lighting and signage to the detached Advanced Dental building. Banner color defers to the current largest tenant, Harbor Medical, but can change as future needs do.

Request for the variance is due to the unconventional type of building/business and the overall size and type of signage. He reviewed the type and location of the proposed signs and banners. 6 - 3x15 banners; 2x6' sign for Advanced Dental, corner signs and smaller identity signage.

Mr. Fuqua noted that sign calculations for this include two types; on the building itself, 75 square feet of signage would be allowed for the first floor business along the Main Street. Although each of the banner signs are 75 square feet, the lettering is not fully boxed-the signed portion of each banner is only half or 37.5 square feet, and double sided. The other sign, on Advanced Dental is 40 square feet, but because it is a separate building, the board will not have to consider. Mr. Fuqua is looking at it as a package. He also noted the awning signs is identification and would not be considered part of the signage. For a freestanding sign, given the frontage of the building and lot, 120 feet of signage is allowed. He noted the board should consider the size of the building, the type of signage, and that it would be an exception to the rule.

The board had a brief discussion about the banners and awnings hanging over the sidewalk on Main Street, and the number of banners needed. Mr. Sullivan noted the number was determined based on balance from a design perspective.

Mr. Fuqua noted the concern of the board in reviewing the signs would be that they are sufficiently high enough off the sidewalk and whether they meet the minimum. A ten foot height, which is proposed is higher than the eight feet above grade required in the sign ordinance for a projecting sign. They may want to consider that because the signs will overhang a public way, a requirement of the approval will be that the signs be maintained to the standard and

discretion of the building inspector.

Mr. Golden asked if the six signs were reduced to four would the aesthetic impact be the same. Mr. Sullivan noted that the design team felt the number proposed would best serve the building.

Mr. Denizkurt noted that there were five banners shown in the presentation but that six were in the proposal. Mr. Sullivan responded that six were to be requested.

Mr. Fuqua noted the request for the variance and the hardship is due to the building's location; it is right on the street. Any signs placed flush on the building would be visible directly across the street.

A MOTION was made by Mary McElroy to close the public hearing, and was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

FINDINGS:

The Board found that noted the following conditions exist: that due to the shape of the structure there is no place to put signs which will be visible, that the banners will overhang the public way and will be subject to review by the building inspector to determine structural safety, and the application falls within the square footage allowed by law. The Board further 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:

A MOTION was made by Mary McElroy and seconded by Kemal Denizkurt to approve the SIGN VARIANCE, based on the hardship due to the unique shape of the structure and the public good will be substantially served, and noted the following conditions exist: that due to the shape of the structure there is no place to put signs which will be visible, that the banners will overhang the public way and will be subject to review by the building inspector to determine structural safety, and the application falls within the square footage allowed by law, and that the board consider the size of the banners and the respective borders. UNANIMOUSLY VOTED. Mr. Fuqua noted that the board reserves the right to review in the future for uniformity.

Minutes - April 16, 2008

A MOTION was made by Mary McElroy to accept the minutes, and was seconded by Chuck

Golden and UNANIMOUSLY VOTED.

Adjournment -

At 9:04 pm, there being no further business, a MOTION was made by Mary McElroy to adjourn. This was seconded by Kemal Denizkurt and UNANIMOUSLY VOTED.

Mary McElroy, Clerk

Date