

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
May 16, 2007**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 16, 2007, at 7:00pm at McCullough 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 #2954 28 Squanto Road

Present:	Richard McLeod, Chairman Kemal Denizkurt Donald Holzworth Francis Kenneally Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of John A Murrin, Jr. for property at 28 Squanto Road, also shown on the Weymouth Town Atlas Sheet 4, Block 30, Lot 14, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 to replace original dwelling destroyed by fire.

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. Murrin and his wife, Cindy, appeared before the Board. He noted that they purchased the property and would like to build a home on the original footprint.

Mr. McLeod asked about the condition of the structure. Mr. Murrin stated that the building burned down and the cinderblock foundation is basically all that exists.

Mr. Denizkurt questioned if the existing foundation will be used. Mr. Murrin noted that a new foundation will be installed.

Mr. McLeod noted that the plans lack the following detail; placement of driveway, entrance doorway, and back and side doorways. Mr. Murrin stated that he has spoken to the Building Inspector in order to put together a more coherent plan.

Mr. Murrin stated that the garage would be of minimal use. He would access it from the ocean (north) side of the property. He stated that he would use the 8.6 feet on the side of his property to access the garage for storage of his plow and boat.

Rod Fuqua stated the application was routed to various Town Departments and received favorable and/or no adverse comments. However, the Tax Department noted that the taxes are not up-to-date and if this request is approved, a municipal lien certificate would be required.

BZA MINUTES – MAY 16, 2007

Mr. Fuqua stated that before this application was filed, the applicant spoke to the Building Inspector. The Building Department is now looking at this application under 120-41, which allows rebuilding of the same use. The original structure was only 2 stories. If the area, height, and elevation are the same, a special permit can be issued under 120-40. But if there is a significant difference between the original structure and the proposed structure, a variance would be required. It was noted that this new plan shows 2 ½ stories. Mr. Fuqua stated that the suggestion is to continue the hearing so that the applicant can submit the proposed area, height, and elevation.

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

Richard Morgan, 22 Squanto Road, distributed a packet of information regarding the plan as presented this evening. He stated that he is in support of having a structure rebuilt on this lot; he is concerned about what is actually proposed to be built.

A MOTION was made by Mr. Denizkurt to CONTINUE the public hearing until June 6, 2007 and was seconded by Mr. Holzworth and UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL JUNE 6, 2007

BZA CASE #2955 373 Washington Street

Present:	Richard McLeod, Chairman
	Francis Kenneally
	Kemal Denizkurt
	Donald Holzworth
	Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

Application of Bernard S. and Phyllis Rubin for property at 373 Washington Street, also shown on the Weymouth Town Atlas Sheet 24, Block 325, Lot 8, located in a B-1 zoning district seeking a special permit and/or variance under Chapter 120-23, 120-39, 120-40, Articles VII and XIII to raze existing Bernie & Phyl's building and construct smaller retail building with off-street parking.

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. Frank Marinelli, attorney, represented the applicant. He noted the following proposed changes:

- The footprint is 7600 square feet; however the gross floor area of the building is 14,000 square feet due to the many different levels of the multi-floor building. The new building would have 5200 square feet on a single floor. The building size will be reduced significantly.
- A new parking area for eight (8) parking spaces.
- The current setback to the abutting residential property is 0' and will be increased to 65'.

BZA MINUTES – MAY 16, 2007

- Basement will be removed.
- Elevation of slab will be brought up by five feet.
- Facility will be completely handicap accessible.
- Single story rather than multi-story.
- Loading dock on the Congress Street side will be removed and replaced with shrubbery.
- Curbing and sidewalk will be installed along Congress Street.
- Drainage improvements.

Mr. Marinelli noted that even with these changes, the building will still not meet all of the zoning requirements. The front yard setback will increase from 1' to 2'. The requirement for five (5) parking spaces per 1000 for retail will not be met, however he gave an example from their Braintree store; that furniture store has 40,000 square feet which would have required 220 spaces but a variance was allowed for only 143 spaces. He stated that the site works well.

Mr. Marinelli stated that the proposed building will be much smaller and will only be a bedding showroom. It is not a high intensity store. He stated that the eight spots should be sufficient.

Mr. Marinelli stated that the area to the rear of the property will not be built on.

The topography is such that it slopes from west to east and the inverted, backward L-shape of lot creates a hardship. Also, the structure itself and the shape of the structure create hardships. The building mass is dense and the interior is a maze. He also noted that the water table on the property is high and causes flooding in the basement. This plan raises the elevation.

Mr. David Kelley noted that there is currently no drainage on the property. A closed drainage system is proposed in the rear to collect the water and direct it to a drainage system at the intersection of Congress Street and Washington Street. He commented that they are aware that Washington Street is a state road and will require additional permitting from Mass Highway Department (MHD). The elevation from Washington Street to the retail space is approximately 6 feet. There will be an entranceway where an elevator is proposed. He noted that the datum be consistent with the Town of Weymouth datum, ramps to be ADA compliant, and MHD requirements were listed as DPW concerns. Mr. Kelley stated that the applicant will comply with all of these comments.

The proposed use will be strictly for bedding and will be a showroom not a clearance center. The product is shipped from the company facilities in either Norton or Braintree

Mr. Holzworth asked about two drywells on the site. Mr. Kelley stated that a sub-surface leaching area will handle roof run off. There will be an overflow for small storms roof runoff and then recharged into the ground. The overflow from that will continue into the closed drainage system that ultimately ties into the state drainage system. This is a DEP requirement as well as MHD.

Mr. Holzworth asked if vertical granite curbing will be installed along Congress Street. Mr. Kelley stated that this will be done.

BZA MINUTES – MAY 16, 2007

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

Mr. Kenneally asked about the landscaping along the property line. Mr. Kelley stated that there will be a 6 foot stockade fence.

Mr. Kenneally noted that there was a truck at the site today. He asked if this truck would be stored there. Mr. Kelley stated that truck storage will not take place.

Mr. Denizkurt asked about lighting on the rear parking area. Mr. Kelley stated that there will be lighting along the building. A shoe box fixture will be installed above the entrance to the store. The store's hours of operations will be 10am -9pm Monday through Saturday and 12pm -6pm on Sunday.

Mr. Holzworth noted that the gates of the fence surrounding the dumpster will swing out and block parking spaces. He noted that coordination will need to take place to minimize this conflict.

Mr. Golden asked about landscaping abutting the residential property. Mr. Marinelli stated that plantings could be added on the applicant's side of the fence. He stated that he did not see any plantings along the side abutting Burger King.

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

Ben D' Amore, 24 Congress Street, stated that his concerns are the time frame of construction and the disruptions to Congress Street. The current building demolition would take about one month. Construction work for the job is not out to bid.

Mr. D' Amore noted that his driveway is used as a turnaround. He asked if cars could park in the Burger King parking lot. Mr. McLeod stated that the Board is not able to make such a condition.

Mr. Kelley stated that signage would help with this issue. He also noted that if the application is allowed, the site will no longer be a clearance center with customer pick up.

Mr. Tremblay, 16 Congress Street, stated that turnaround concerns are also an issue for them.

Mr. Wyatt noted that if the plan is approved there will no longer be any customer pick up. This change should help alleviate this problem.

Mr. Tremblay also expressed concerns about his driveway being blocked.

Mrs. Tremblay noted that the lot to the rear and left of the parking area has become a dumping ground. Mr. Kelley stated that the area will be cleaned up.

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

BZA MINUTES – MAY 16, 2007

Due to the shape of lot and size and shape of the building, a MOTION was made by Mr. McLeod to APPROVE the request for a VARIANCE for dimensions (article XV), parking (XVII), and off street loading (XVIII) to raze existing Bernie & Phyl's building and construct smaller retail building with off-street parking and a SPECIAL PERMIT with the following conditions:

- (1) On site sewer system filled in.
- (2) All building permit plans per Town of Weymouth datum.
- (3) Parking and directional signage per Building Department discretion.

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 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 to raze existing Bernie & Phyl's building and construct smaller retail building with off-street parking with the following conditions:

- (1) On site sewer system filled in.
- (2) All building permit plans per Town of Weymouth datum.
- (3) Parking and directional signage per Building Department discretion.

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.

BZA MINUTES – MAY 16, 2007

- (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.

MINUTES – 5/2/07 – Case # 2952 and 2953

A MOTION was made and seconded to APPROVE the Minutes of May 2, 2007, Case # 2952 and 2953 and was UNANIMOUSLY VOTED.

ADJOURNMENT

A MOTION was made and seconded to adjourn the meeting at 8:00 P.M. and was UNANIMOUSLY VOTED.

Richard McLeod, Chairman

Date