

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
May 28, 2008**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 28, 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 #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 (PUD) for 21 new single family housing units in a clustered layout.

Present:	Richard McLeod, Chairman
	Mary McElroy, Clerk
	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.

Jim Bristol, Jr. appeared before the Board. He noted that Jim Bristol, Sr. and Carl Ericson were also present. He stated that he was before the Board previously on 2/27/08. He had presented layout revisions which was a conceptual layout agreement. He noted that he had been working with Conservation Commission. He pointed out that the hearing was closed on 4/9/08 and an order or conditions has been issued.

Revised plans with layout changes were submitted to the Planning Department as well as a conceptual plan for the entrance to Meredith Way. A 2 foot high stone wall with planting behind it, pavers and possibly some ornamental lighting is being proposed. He stated that he is working with Nstar to replace existing lanterns on Meredith Way with ornamental lighting.

The access to Essex Heights will be left as a grassed easement for emergency use only. He stated that he has been working with Councilor DiFazio in regards to overlaying Meredith Way with a top coat of asphalt as well as improving the sidewalk to Essex Street. He stated that he will not be able to suppress the utilities as this is cost prohibitive; it would cost \$230,000.

Several drainage run off improvements were made after review of the plans.

Proposed construction work hours are 7am-7pm, Monday through Friday, 7am – 3pm Saturday, and no work on Sunday.

Mr. McLeod asked how you distinguish the grass easement to Essex Heights Drive from the property owner's. Mr. Bristol stated that you will not be able to. The property owner will have a deed restriction from planting on the easement but will be responsible for maintenance of the easement.

Mr. Joyce asked about granite curbing. Mr. Bristol stated that there will be an asphalt berm on the Meredith Way side.

Mr. Golden asked about curbing on the Essex Heights side. Mr. Bristol stated that there will be curbing on the Essex Heights side.

Mr. Fuqua noted that the following comments were received from the Fire Chief and from Sergeant Concannon, from the Police Department.

The Fire Chief has stated that he has no objection to only one ingress and egress. He did note that a second means of access from Essex Heights Drive would be beneficial during an extreme emergency; however, since he did not see it used frequently, a paved road was not necessary. An easement constructed of base material that has adequate density to support the weight of a fire truck is suggested. He also noted that connecting the water main between Essex Heights Drive and Meredith Way would be beneficial for fire protection.

Sgt. Concannon, Police Department, stated that he was not aware of any problems that one ingress/egress point has had on a development in terms of public safety. He pointed out that although he believes that dual access is beneficial, he did not think that it should be a condition placed on this project.

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

Russ Turner, Meredith Way, stated that he thinks that there should be a connection between Meredith Way and Essex Heights. He stated that he believes that just because other developments do not have it does not mean that this one doesn't need it. In his opinion it makes sense to have this access since it is available. Mr. Turner pointed out that during the winter, an easement is not plowed. It would provide a measure of safety to the neighborhood.

A MOTION to close the public hearing was made by Mrs. McElroy and seconded by Mr. Holzworth, and was UNANIMOUSLY VOTED.

Mr. McLeod stated that the public hearing is now closed and no more testimony will be taken. The Board will review all testimony previously given and render a decision. The next meeting is scheduled for June 4, 2008.

A MOTION was made by Mrs. McElroy to TAKE UNDER ADVISEMENT the request for a Special Permit for a Planned Unit Development for 21 new single family housing units in a clustered layout.

**BZA CASE #2991 39 & 45 Winter Street (cont.) 5/28/08**

Application of KFC U.S. Properties, Inc. for property at 39 & 45 Winter Street, also shown on the Weymouth Town Atlas Sheet 33, Block 376, Lot19 & 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. Taco Bell/KFC restaurant in B-1 is allowed by right. The application seeks a special permit for the drive through window service and a variance for signage.

Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Mary McElroy, Clerk  
Kemal Denizkurt  
Chuck 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.

Attorney David Kelly appeared before the Board. He noted that Huseyin Sevincgil, MHF Design Consultants, Bharat Parikh, Yum! Brands, Inc, and James Winn from GPI were also present.

Mr. Kelly stated that the applicant was previously before the Board on 3/5/08. He pointed out that the signage plan was a point of contention. He noted the following changes to the signage plan:

- Wall signage  
50.5 square feet is requested. A variance for 9.5 feet is requested as 41 feet is allowed. He pointed out that the basis for the variance is that the formula in the Code is based on building frontage. The lot has a short front and a long lot. The frontage is necessarily short which translates into an allowed sign of 41 feet.
- Free standing sign  
31 square feet is requested. This is now conforming. Previously 86.9 square feet was requested and was reduced to 57 square feet. A brick planter base will be at the base of the sign. These changes will tie into design of building.

Further analysis on traffic counts of Dairy Queen were requested and have been completed.

Mr. Hazarvartian stated that he went out to view Dairy Queen operations in April. He noted that this was a second visit to observe traffic conditions. He stated that he went out on a Saturday during the mid-day period. He stated that the volume was not large enough to effect KFC/Taco Bell operations. He stated that there is traffic out there already processing through the intersection.

He pointed out that the day of his visit was a cloudy day. Dairy Queen was not likely generating as much but even if larger volume the impact is not significant.

Mr. McLeod asked about the exit and entrance to the Dunkin Donuts across the street. Mr. Hazarvartian stated that there are times when a driver will “barge and block”; a driver will attempt to come into the line of traffic, other traffic does not allow the vehicle to enter, therefore the driver is blocking traffic while waiting for an opening. Mr. Hazarvartian stated that this is not mentioned in the traffic engineering textbooks. He also stated that this is not a recommended method of entering the traffic flow.

Mr. McLeod asked about sight view coming off Route 18 taking the right hand turn. Mr. Hazarvartian stated that there is enough sight line. Mr. McLeod also questioned the red light cycle. Mr. Hazarvartian stated that cars exiting left from KFC/Taco Bell will need to wait until the light turns green in order to make the turn.

Mr. Denizkurt pointed out that the traffic report shows that 60% of traffic will dispense west towards route 18. Mr. Hazarvartian stated that this is an existing decision. He stated that it is not unusual in suburban areas like Weymouth. Mr. Denizkurt expressed concern regarding the traffic exiting the KFC/Taco Bell and the merging traffic coming from Route 18.

Mr. Hazarvartian stated that the turning roadway from Route 18 has a yield sign when entering Winter Street.

Mr. McLeod stated that the Mayor has submitted a letter stating her concerns regarding safety at this intersection. She stated that she could not support further congestion at this site. She noted seven (7) accidents in the past year.

Mr. Hazarvartian stated that the applicant looked at records to see if accidents had an effect on the intersection.

Mr. McLeod pointed out that four of the accidents were vehicles making left hand turns into Dunkin Donuts, two were vehicles making right hand turns into Dunkin Donuts, and one was an accident inside the Dunkin Donuts site. Mr. McLeod stated that the Dunkin Donuts driveway is right across the street from the proposed KFC/Taco Bell site.

Mr. Hazarvartian stated that the applicant could do a collision diagram to see if these accidents somehow relate to the proposed site. He pointed out that he performed a peer study review of the applicant’s traffic report.

Mr. Foley asked why an accident review was not done. Mr. Hazarvartian stated that this type of review is more than what is typically done in a traffic study. He stated that the applicant looked at accidents as he would normally expect a traffic study to do.

Mr. Foley asked Mr. Hazarvartian if he thinks a more in-depth study should be completed.

Mr. Kelly stated that he does not have a copy of this letter. He stated that the application has been before the Board since November. He questioned the timeliness of the letter.

Mrs. McElroy asked what would happen if the Donut Shop hours changed. Mr. Hazarvartian stated that the study assumes that KFC will open later and cater to lunchtime business. If the hours were to change, further traffic study would be needed.

Mr. Winn stated that the Dunkin Donuts left turn is across three (3) lanes of traffic. He also stated that AM and PM peak hours have different characteristics of traffic flow.

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

Tom Joyce, Homestead Ave, expressed concern regarding turning traffic. He does not believe that there is enough room to stop. He also expressed concern about other development in the area which will add to the congestion. He also stated that there should be limits on the hours of operations. He also asked about the existing KFC. Mr. McLeod stated that it was the Board's understanding that the existing KFC will be closed. As to what happens to that site is not part of the Board's jurisdiction.

Shawn Gaul, 5 Ruggiano Circle, stated that this is a horrible location for a KFC. He stated that at rush hour Winter Street is always backed up.

Greg Reardon, 45 Southern Ave, expressed concern about the location for this proposal. He stated that the Dairy Queen can get very busy.

Andy McDonagh, 20 Valley Road, also expressed concern about the congestion in this area.

John Burke, 95 Lambert Ave, stated that he is opposed to this project. He stated that there are community standards that are not being met and it will not have a positive impact on the town.

Mr. Kelly gave an overview of the previous application which was denied on a 3-2 vote in 2001 and the modifications made since then. He reviewed the following:

- Change of restaurant type from KFC/Pizza Hut to KFC/Taco Bell
- Lane from main street at the rear of the property has been removed
- Increased seating to encourage dining-in, no parking variance required
- Dumpster has been placed at the rear of the project – no spots in front of dumpster
- Relocated free standing sign
- Angled parking to improve traffic flow
- Signage reduction
- Separate exit and entrance
- Drive-way Farther from Main Street
- New sidewalk to be constructed

Mr. Kelly stated that he believes that this site is appropriate for the proposed use. He stated that although there are traffic concerns, both traffic engineers agree that the area can handle the traffic.

Mr. McLeod asked if the applicant would like time to review the traffic accident situations. Mr. Winn stated that he thinks that this application is different when compared to the other sites in regards to turning movements and sight distances. He stated that he did not see any significant safety concerns.

Mr. Foley asked if accident information was asked for. Mr. Winn stated that he did ask for accident information from the Police department in November of 2007.

Mrs. McElroy asked about the zoning of the site.

Mr. Fuqua stated that this site could be used for retail sales and service or office space as a matter of right. This restaurant could be built as of right if there was no drive through.

Harvey Welch, 674 Pond Street, stated that it is tough driving through there. He pointed out that the intersection is rated "F". He questioned how adding more traffic is beneficial to the area. Any additional building will produce more traffic.

A MOTION to close the public hearing was made by Mrs. McElroy and seconded by Mr. Foley, and was UNANIMOUSLY VOTED.

A MOTION was made by Mrs. McElroy to take **UNDER ADVISEMENT** the request for a SPECIAL PERMIT and VARIANCE for restaurant in B-1 zone which is allowed by right. The application seeks a special permit for the drive through window service and a variance for signage. The MOTION was seconded by Mr. Foley and **UNANIMOUSLY VOTED**.

#### **BZA CASE # 3000 1502 Main Street (cont.) 5/28/08**

Application of MOS Realty LLC for property at 1502 Main Street, also shown on the Weymouth Town Atlas Sheet 61, Block 627, Lot 1, 24, 25, located in an 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 +/- sq. ft. floor area with drive thru pharmacy window service. (2) A proposed commercial building of 5,500 +/- sq. ft. with specific commercial use undetermined. (3) A variance for a sign of 128 +/- sq. ft., 75 sq. ft. allowed. (4) Variance and/or extension of a nonconformity for off street parking within 15 ft. of Trotter Road. (5) Variance for a freestanding sign within 25 ft. of a road with a lower edge less than 8' above grade.

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.

Attorney, David Kelly, appeared before the Board representing the applicant. He stated that a neighborhood meeting was held and was well attended. He believed that there was a good exchange of information. He pointed out that Councilor Smart had written a letter that outlines the issues addressed.

Additional traffic analysis has been completed. There are no design changes. There will be a signage change so that the sign reads CVS at Poole's Corner. There is a sign variance requested; allowed signage is 75 square feet, the applicant is asking for a wall sign that is 128.18 square feet (53.18 feet variance). The free standing complies with the by-laws.

Mr. Fuqua stated that the town's traffic engineer concurs with applicant's traffic engineer. The town's traffic engineer did suggest that if the plan is approved that mitigation include keeping the traffic consultant on board to review this site as Southfield develops through the 2014.

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

Councilor Smart reviewed a letter that he submitted to the Board based on the neighborhood meeting.

Mr. Foley asked about the future use for the second building. The applicant is willing to accept a condition if the permit is approved to require a review of this building before it is built. He stated that this can also be done during site plan review. The proposed building does not have a tenant.

Harvey Welch, 674 Pond Street, asked about snow removal. The applicant stated that there is additional space on the lot to accommodate snow; if there is a lot of snow, the snow will be trucked off site.

Mr. Welch also stated that the drainage should not be sent off site. The applicant noted that the site is sloped to catch run off and is sloped away from the Plain Terrace neighborhood.

Mr. Welch asked about the dumpster being enclosed. Mr. McLeod noted that the applicant must comply with the town's health codes.

Mr. Foley asked about intersection on the northerly side of the lot and that it will eventually be the access to the east/west connector.

John Morgan, traffic engineer, stated that the eastwest parkway will be further north on route 18. Trotter road will be used only until 2014.

Mr. Holzworth asked about current drainage. The applicant stated that on east side water does drain off site to abutting property. The proposed plan does not increase water run off. He stated

that the plan meets 100 year storm standards. He stated that more storm drains could be added but there are grading issues.

Mr. Welch asked what the level of service is for the intersection of Route 18 and Pond Street. Mr. Morgan stated that the current LOS is C. The proposed site does not change the LOS. He did point out that the development at Southfield will have an effect on the LOS and mitigation for that project is proposed; additional lanes will be added at the intersection.

Charlie Wilson asked if there was going to be a bigger MBTA parking lot. Mr. McLeod stated that he did not know.

Mr. Foley suggested that the applicant work with the South Shore Building Trades in order to coordinate the work done at Southfield and the proposed project.

A MOTION to close the public hearing was made by Mrs. McElroy and seconded by Mr. Foley, and was **UNANIMOUSLY VOTED**.

A MOTION was made by Mr. Foley to **TAKE UNDER ADVISEMENT** the request to construct two new buildings: (1) a retail pharmacy of 12,900 +/- sq. ft. floor area with drive thru pharmacy window service. (2) A proposed commercial building of 5,500 +/- sq. ft. with specific commercial use undetermined. (3) A variance for a sign of 128 +/- sq. ft., 75 sq. ft. allowed. (4) Variance and/or extension of a nonconformity for off street parking within 15 ft. of Trotter Road. (5) Variance for a freestanding sign within 25 ft. of a road with a lower edge less than 8' above grade and was seconded by Mrs. McElroy 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