

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
June 20, 2007**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, June 20, 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 (cont.) 6/20/07

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.

Present:	Richard McLeod, Chairman Kemal Denizkurt Donald Holzworth Charles Golden Francis Kenneally
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 reopen the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

Mr. Murrin stated that he has made some revisions which include taking a foot off the width of the house to move it back to its original spot on the northerly side (the house will be 30 feet in the rear instead of 31 feet), elimination of all windows in the attic space, elimination of the walk up stairs to the attic and replaced with pull down stairs, elimination of third floor deck (there will be two decks instead of three), the foundation has been dropped, and the roof will be gambrel style.

Mr. Golden asked for clarification of the reduction of the home by five feet.

Mr. Murrin noted that the height is now based on the mean rather than street level (61 feet is the average height of the lot so everything has been reduced to the mean). He noted that the house will be 1,956 square feet based on the foot print of house.

Mr. Kenneally asked if a meeting with neighbors took place. Mr. Murrin stated that they met on June 11, 2007. Mr. Murrin stated that the meeting seemed to go well. He noted that he has relatives who need wheelchair accessibility and that he was able to shorten the width and maintain an accessible doorway. He also noted that he met the request of a neighbor to remove the third deck.

Mr. Fuqua stated that after discussions with the Building Inspector, the basement is considered a half story. Attic is not living space and not considered a story but part of the roofline. Plans have been redrawn to show these changes.

BZA MINUTES – JUNE 20, 2007

The request under 120-41 to rebuild after fire has expired. This is an application to build on a non-conforming lot. The following variances are requested:

- Front yard setback is not 18 feet, but the plans show 13.2 feet which is the original setback.
- Side yard setback for Massasoit (paper) Street is 10 feet, but the plan show 1.4 to 1.5 feet.

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

Mr. Jim Cantwell stated that he represents Rick Morgan, 22 Squanto Road. He noted that the fire took place on February 20, 2002. Mr. Cantwell submitted police and fire reports. Mr. Michael Riley, the current property owner did not rebuild under Chapter 120-41 within the required time frame and has thus lost the grandfathered protection.

Mr. Cantwell stated that Mr. Morgan had previously submitted pictures of the property in question and his home.

Mr. Cantwell stated that the height of homes in area is smaller than the proposed dwelling to be built. The previous home was 26 feet high. He noted that the driveway would need to be twelve feet wide.

Mr. Kenneally asked if Mr. Cantwell had taken the step to determine the size of the house that could be built and conform to all of the zoning regulations. Mr. Cantwell stated that he had not done that. Mr. Murrin stated that he looked at this possibility and determined that the house would be ten feet wide.

Mr. McLeod asked what the height of the proposed dwelling is. Mr. Murrin stated that it is under 35 feet from the mean. He stated that he believes that the height was previously measured from the street. Mr. McLeod noted that the applicant is not looking for a height variance.

Mr. McLeod asked if it is possible to build a house on the lot without violating any of the setbacks. Mr. Murrin stated the lot is too narrow.

Mr. McLeod stated that Mr. Cantwell had made a reference to a driveway variance. Mr. Fuqua stated that 120-71 Section B does not apply in R-1 district.

Mr. Cantwell noted that the prior use did not include a two car garage, or a height more than 26 feet.

Mr. Cantwell stated that the goal of Mr. Morgan is to have the house moved further away from his home.

Mr. McLeod noted that the home could not be moved closer to Massasoit Street because the gutters would overhang that property. Irrespective of the fact that the street is town owned, you cannot overhang another's property.

BZA MINUTES – JUNE 20, 2007

Mr. McLeod stated that as far as standing of the applicant, the Board does not demand that the applicant provide proof of their interest in a property.

Mr. Denizkurt asked about the garage usage. Mr. Murrin stated that the height of the foundation has been reduced by six inches. The area beneath the house is for a boat, a plow, snowblower, riding lawn motor, and a street legal motorcycle. He noted that the parking is on the street and there will not be a paved driveway.

Mr. Fuqua stated that when you measure the height you measure the mean grade elevation. In this case it is at about 4' off street level as the property slopes down in the back.

Mr. Fuqua stated that the mean grade is shown as elevation 61'.

Mr. Golden asked who Mr. Cantwell represents. Mr. Cantwell replied that he represents Mr. Morgan but has also spoken to other neighbors.

Mr. Golden noted that the original house was 906 square feet; the proposed house is almost twice as large. Most homes in the neighborhood are somewhere between 906 and 1900.

Ann McKay, 176 Pilgrim Road, expressed concern regarding the safety of homes so close together and stated that she is concerned about putting the largest possible structure on a lot.

Mr. McLeod pointed out that the applicant will be required to have up-to-date fire safety equipment in his home.

Mrs. McKay stated that she is concerned that the applicant is attempting to put the largest possible building on this lot.

Mr. McLeod stated that the Board looks at the shape and soil conditions of the lot that prohibit the applicant from complying with the current bylaws to build a house of somewhat the same size. He acknowledged that the living space is larger but the applicant noted that he would need to accommodate handicapped relatives.

Mr. Holzworth stated that the lot is 3280 square feet and under the current by-laws the applicant can cover 30% of the property without requesting a variance. 984 is 30% of 3280. Mr. Murrin noted that the footprint is actually 936. Mr. Holzworth noted that the existing town requirement has been met. He also noted that the applicant has made sacrifices.

Mr. Holzworth stated a story is the area between a floor and a floor and/or a floor and a roof. He noted that in essence the third floor is a story; with a gambrel roof there is 10'6" height in the attic space. Mr. Holzworth noted that the applicant did make a sacrifice in lowering the height of garage (6' 9").

BZA MINUTES – JUNE 20, 2007

Mr. Fuqua stated that the attic space is not considered habitable floor area so that does not constitute a story. The plans show a pull down stairway so it is not set up to be used for living space. The building inspector's interpretation is that this is a 2 ½ story dwelling.

Mr. Fuqua stated that if an attempt were made to install a full stairway to the attic area, a building permit would be required; the request would then be sent to the BZA.

Mr. Holzworth asked what the applicant is asking for in the way of variances for actual setbacks requested. Mr. Murrin stated that he is requesting the variances based on the plans submitted this evening. Mr. Murrin stated that there will be a 6" overhang and there will not be any gutters.

Mr. Fuqua stated that there was an overhang onto the roadway which was not acceptable. The plan was redrawn, by the applicant, and the house was shifted over by one foot to remove the overhang. He noted that the Board does not have the jurisdiction to allow an overhang.

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

Request for two variances include:

- Front yard setback is not 18 feet, but the plans show 13.2 feet which is the original setback.
- Side yard setback for Massasoit (paper) Street is 10 feet, but the plan show 1.4 to 1.5 feet.

Suggested conditions include:

- (1) Decision is based on site plans revised to June 19, 2007 and floor plans and elevations drawn by Gerald J. Galiano.
- (2) Parking spaces in the front of the property need to be delineated on plans to be submitted.
- (3) No windows in attic space.
- (4) No third floor deck.

Due to the size, shape and topography of the property and that there is no other location to site the building without further encroaching upon other setbacks, a MOTION was made by Mr. Golden to APPROVE the request for a VARIANCE to replace original dwelling destroyed by fire with the following conditions:

- (1) Decision is based on site plans revised to June 19, 2007 and floor plans and elevations drawn by Gerald J. Galiano.
- (2) Parking spaces in the front of the property need to be delineated on plans to be submitted.
- (3) No windows in attic space.
- (4) No third floor deck.

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.

BZA MINUTES – JUNE 20, 2007

- (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. McLeod and was UNANIMOUSLY VOTED.

FINDINGS:

The Board 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, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE to replace original dwelling destroyed by fire with the following conditions:

- (1) Decision is based on site plans revised to June 19, 2007 and floor plans and elevations drawn by Gerald J. Galiano.
- (2) Parking spaces in the front of the property need to be delineated on plans to be submitted.
- (3) No windows in attic space.
- (4) No third floor deck.

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 MINUTES – JUNE 20, 2007

BZA CASE #2961 184 Hibiscus Avenue

Application of John Spada for property at 184 Hibiscus Avenue, also shown on the Weymouth Town Atlas Sheet 12, Block 146, Lot 5 located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-38.3D(3), 120-38.4, 120-38.5 & 120-123 for an addition within the 100 year floodplain.

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Donald Holzworth
	Charles Golden
	Francis Kenneally
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. Scott Arnold, C. F. Arnold Associates, stated that he represents the applicant Mr. Spada. He noted that the applicant would like to construct an addition to his single family home. The property is located in a floodplain overlay district. This location is at the westernmost end of Hibiscus and is at the lowest elevation. To the west of the property is a salt marsh area that abuts the Fore River. He noted that Federal Emergency Management Agency (FEMA) has established the 100 year flood elevation at 17.8 feet in that area. The ground surface of the lot runs between 14 and 16 which is 3-4 feet below 100 year flood elevation.

Mr. Arnold noted that the applicant would like to construct a substantial addition on the southerly and westerly side of house. The addition would be built according to State and Local building codes. The lowest structural member of dwelling would be at least one foot above flood plain. The foundation would be built with flood vents

Mr. Arnold stated that there is no change of grade or ground elevation around the proposed addition. This area is currently a lawn. He noted that there are no flood impacts to abutters as the water runs off towards the water.

Mr. Arnold submitted letters from abutters in support of the project.

Mr. McLeod asked about the gravel road to the side of the property. Mr. Arnold noted that there is a sewer easement and this road is used for access.

Mr. Denizkurt asked what use the addition would be. Mr. Arnold stated that it would be a bedroom, family room, bathroom, sunroom, and deck that will be located on the westerly end.

Mr. Denizkurt asked if this was intended to be a separate unit to be rented out. Mr. Arnold stated that this is not the intent of this project.

BZA MINUTES – JUNE 20, 2007

Rod Fuqua stated the application was routed to various Town Departments and received the following comments:

- Conservation Commission has issued an order or conditions under DEP File # 81-998. Special conditions include removal of the above ground pool and compliance with all state and local requirements for construction in a flood zone. Mr. Fuqua noted that the pool has already been removed.
- Health Department had no objections.
- Police Department had no issues.
- Fire Department had no concerns.
- DPW (Water, Sewer, Engineering, Highway) noted that water and sewer mitigation fees will be due and suggest that 5" AC sewer lateral be replaced with 6" PVC
- School Department had no special concerns.
- Tax Department noted that taxes and utilities are current.

Mr. Fuqua stated that this is a project for building in a floodplain. The flood elevations are shown on the plans to conform to the 17.8 requirement. The plans also show that the foundation conforms to the requirements of building in a floodplain. He recommended that a certificate of elevation should be prepared.

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. Kenneally to APPROVE the request for a SPECIAL PERMIT for an addition within the 100 year floodplain with the following conditions:

- (1) A certificate of elevation shall be filed with the Building Inspector prior to issuance of an occupancy permit.

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. Denizkurt 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.

BZA MINUTES – JUNE 20, 2007

- (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 an addition within the 100 year floodplain with the following conditions:

- (1) A certificate of elevation shall be filed with the Building Inspector prior to issuance of an occupancy permit.

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.

MINUTES – JUNE 6, 2007, Case # 2956, 2957, 2958A & B, 2959, 2960

A MOTION was made and seconded to APPROVE the Minutes of June 6, 2007, Case # 2956, 2957, 2958A & B, 2959 and 2960 and was UNANIMOUSLY VOTED.

ADJOURNMENT

A MOTION was made and seconded to adjourn the meeting at 10:00 P.M. and was UNANIMOUSLY VOTED.

Richard McLeod, Chairperson

Date