

**BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
MAY 20, 2009**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, May 20, 2009, 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.

Present:	Richard McLeod, Chairman Mary McElroy, Clerk Chuck Golden Francis Kenneally 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.

BZA CASE #3037 82 Broad Street (cont.)

Application of Vladimir & Melsi Xhengo for property at 82 Broad Street, also shown on the Weymouth Town Atlas Sheet 20, Block 269, Lot 19, located in a B-1 zoning district seeking a special permit and/or variance under Chapter Article XVII, 120-70.A., 120-72, 120-74.D to convert an existing building which is currently occupied as business offices to a 100 seat restaurant, allowable in a B-1 zone which is requesting parking variances of Sections 120-70.A. - Off Street Parking Location, 120-72 - Access to Street Requirements and 120-74.E - Minimum Required Spaces.j

Mr. Fuqua summarized for those present. He stated that this is a continuation of a public hearing. He noted that additional information previously requested has been submitted by the applicant.

John Murphy from Trapani & Associates, Vladimir Xhengo, the applicant, and Mark Temple from Prime Parking Solutions appeared before the Board.

Mr. Murphy stated that revised drawings were submitted showing parking access and egress and how the valet parking would work. He pointed out that deliveries would be scheduled in the morning so as not to interfere with the business operations.

Mr. McLeod asked about handicap parking. Mr. Murphy stated that the applicant is required to provide one spot per 25 spaces based on the number of spaces in the lot.

Mark Temple of Parking Solutions gave an overview of the parking plan. He stated that there would be one valet per parking lot.

Mr. McLeod asked if the parking on the site will be reserved for valet parking. Mr. Temple stated that several spots will be available for patrons who do not want valet parking. He stated that there is sufficient room to circle through the parking lot.

Mr. Temple stated that the handicap spot will be spot number 9; parking spots 7 & 8 are waiting spots for valet. The number of spots required by code is 60.

Mr. Temple stated that his company does extensive work in Boston. He stated that it is his experience that one space is needed for every three patrons. He also stated that the restaurant would attract families.

Mrs. McElroy asked about employee parking. Mr. Murphy stated that there are three spots identified on site for employees as well as twelve additional spots at Brother's Roast Beef.

Mr. Denizkurt asked how much time it would take to move a car from the lot across the street to the off-site parking. Mr. Temple stated that he estimated it at approximately three minutes. The number of attendants will be dictated by how busy the restaurant is.

Mr. Denizkurt expressed concern that this estimate does not account for the light cycle.

Mr. Temple stated that as a general rule, his company will overstaff and then let valets go as the night progresses.

Mr. Denizkurt expressed concern about the winter and snow plowing. Mr. Xhengo stated that he would be responsible for plowing any lot to be used.

Mr. Temple stated that spots 1-8 would most likely be used for staging for the valet but patrons who do not want to valet would be allowed to park there. Spots 10-13 would also be available.

Mr. Xhengo stated that the valet staff could direct people to the satellite lots.

Mr. McLeod expressed concern that the turning radius is too small for a large SUV size vehicle to turn around if needed.

Mr. Temple stated that when there are open spaces there is room for a three point turn. He noted that valet service does not maximize the onsite lot but instead will leave this lot for self-parking and staging for valet parking to the off-site lots.

Mr. McLeod expressed concern that as cars are pulling into the lot there would be confusion that could cause a back up onto Washington Street. He also stated that this would cause problems for cars making the left hand turn to get into the lot for cars heading south on Washington Street

Mr. Temple stated that the busy time is between 6pm and 8pm.

Mr. Denizkurt stated that traffic does not flow according to averages.

Mr. Temple stated that the valet would hold two spots for staging; spots 7 and 8. The drive coming into the lot is wide enough for two vehicles to pass. He noted that there is enough room near the dumpster to stage another car without interrupting the drive.

Mr. Golden asked if there have been any “test” runs from the site to the off-site lots. He stated that the valet would have to cross four lanes of traffic in order to get to the off-site lot next to Western Performance.

Mr. Xhengo stated that when he passed through the area this evening at 6:30pm there was no traffic. Mrs. McElroy pointed out that it is a Wednesday night and traffic is busier on the weekends.

Mr. Kenneally asked if leasing lots is a common practice in the valet business. Mr. Temple stated that it is very common especially in downtown Boston. However, he did not know of an example in a suburban setting. He noted that there would be traffic enforcement and a learning curve. He pointed out that the valet service would also direct traffic even if patrons do not want to valet park.

Mr. McLeod asked about the other two restaurants in the area, the Blue Pointe & Jimmy’s as to the number of seats versus parking spots on site. Mr. Murphy did not have this information.

Mr. Golden questioned the number of handicap spaces; one spot versus four. Mr. Fuqua stated that the minimum requirement is one handicap space per 25 parking spots on site. He pointed out that if all of the required parking were on site three spots would be required.

Mr. Denizkurt asked about take out. Mr. Xhengo stated that there will be no take out or delivery service.

Mr. Fuqua noted the following comments from the traffic engineer

- Two attendants should be onsite
- No valet parking in the no parking zones on Washington Street
- 8 foot wide parking spots out that restaurant spaces should be 9 foot in size.
- Ten spaces are noted on the street. What is the availability on these spaces?
- Concern regarding circulation on site
- Overlap spaces

The building inspector expressed concern regarding the heavy reliance on agreements with other private owners; he questioned what would happen if agreement ends.

Mr. Fuqua noted that Sgt. Concannon of the Police Department is concerned about management of the valet parking. He also questioned the liability on the part of the valet service parking vehicles offsite.

Mr. Fuqua questioned the ability of a car to park in spot number 1.

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

Paul Madden, owner of the Grill & Eye, pointed out that the parking spaces on the street are shared. He stated that his restaurant has 20 seats and he employs four people as opposed to the applicants proposed three employees at the proposed 90 seat restaurant. He stated that he believes that the valet service will not work.

Tom Joyce, Homestead Avenue, expressed concerns regarding egress out of site heading south on Washington Street, the number of employees, and the size of the parking spaces. He stated that if the application were to be approved he would ask that there be conditions that there is no take out service and no entertainment.

Mr. Xhengo stated that he had previously indicated that he would have six to eight employees.

Marion Barrett stated that she and her daughter, Suzanne Barrett, live at 8 Fields Avenue and are located in close proximity to this property. Mrs. Barrett pointed out that her driveway is across from the parking spots designated for employee parking. She also pointed out that Fields Avenue is a narrow, dead end street. She stated that what works on paper does not necessarily work in reality. She is concerned about snow piles onto the adjacent properties and removal of snow from site.

Mrs. Barrett stated that with the restaurant's hours the returning cars and departing customers would be disruptive. She also expressed concerns regarding outside lighting, noise levels, increase in traffic. She stated that she believes that this restaurant will result in drastic change to immediate area and overall neighborhood.

Suzanne Barrett, 8 Fields Ave, stated that there was an article in the Weymouth News on April 17, 2009. She questioned the number of parking spaces on the site. Mr. McLeod noted that the plans show 13 on the site and three above. She asked what would happen if the satellite parking agreements end; is there a back-up plan? She expressed concern regarding traffic congestion.

Ms. Barrett asked if lunch will be served on weekends. Mr. Xhengo stated they would serve lunch on the weekend. Ms. Barrett noted that Western Auto is open on Saturday.

Ms. Barrett noted that when the dumpster is emptied Washington Street is blocked. She pointed out that trash builds up on the site.

Jim Parker, current owner of 82 Broad Street, stated that he has spent most of his life in Weymouth Landing. He stated that he parks his Jeep Cherokee in parking space number 1. He stated that he spent a considerable amount of money rehabilitating this building. He stated that he believes the neighbors have become accustomed to using his property to park their cars.

Mr. Parker stated he believes that the neighbors have legitimate concerns regarding traffic and parking.

Mr. Parker stated that some of their concerns stem from their reliance on the use of his lot. Mr. Parker stated that patrons of the Egg & Eye Restaurant use his parking lot even though he has repeatedly asked him to inform his customers not to park in his lot.

Mr. Joyce stated that he does not live in Weymouth Landing, his main concern is about traffic congestion and the effect on the town as a whole. He stated that the Board needs to take the emotion out of the debate and make the decision based on facts presented.

Carolyn Parker stated that she and her husband believe that people want a family restaurant in the neighborhood.

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

Mr. McLeod informed the applicant that there is an option to withdraw without prejudice. If the application is not approved on at least a 4-1 vote, the applicant will be precluded from coming back before the Board for two years.

Mr. Xhengo elected to go ahead with the vote.

Mr. Denizkurt expressed concerns about the comments of the traffic engineer, parking spacing issues, and control of satellite lots.

Mr. Denizkurt pointed out that in order to approve a variance there is a need to show a hardship. He stated that no hardship has been demonstrated; the proposed use is a self imposed hardship.

Mr. Golden noted the traffic concerns at the intersection, the congestion of the area specifically the left hand turn.

Mr. McLeod noted that the decision of the Board must be based on the facts of the case, the best interest of the town, current zoning by laws and state laws, not on personalities.

Mr. McLeod stated that he is concerned about the safety and well-being of residents of the town. He referenced the recent Kentucky Fried Chicken (KFC) and noted that similar concerns were expressed regarding access to a site that required crossing multiple lanes of traffic.

FINDINGS:

The Board found that the SPECIAL PERMIT and VARIANCE WOULD derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could NOT 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 NOT an appropriate location for such a use.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town.
- (3) There WILL be nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities CANNOT be provided for the proper operation of the proposed use.

- (5) The public convenience and welfare will NOT be substantially served.

A MOTION was made by Mr. Denizkurt to DENY the request for a SPECIAL PERMIT to convert an existing building which is currently occupied as business offices to a 100 seat restaurant, allowable in a B-1 zone which is requesting parking variances of Sections 120-70.A. - Off Street Parking Location, 120-72 - Access to Street Requirements and 120-74.E - Minimum Required Spaces. The Board finds that, in its judgment:

- (1) The specific site is NOT an appropriate location for such a use.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town.
- (3) There WILL be nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities CANNOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

The MOTION was seconded by Mr. Golden and was UNANIMOUSLY VOTED.

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 DENY the request for a SPECIAL PERMIT and VARIANCE to convert an existing building which is currently occupied as business offices to a 100 seat restaurant, allowable in a B-1 zone which is requesting parking variances of Sections 120-70.A. - Off Street Parking Location, 120-72 - Access to Street Requirements and 120-74.E - Minimum Required Spaces.. The Board finds that, in its judgment:

- (1) The specific site is NOT an appropriate location for such a use.
- (2) The use involved WILL be detrimental to the established or future character of the neighborhood or town.
- (3) There WILL be nuisance or serious hazard to vehicles or pedestrians.
- (4) Adequate and appropriate facilities CANNOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT be substantially served.

BZA CASE #3039 1282 Commercial Street

Application of J.M. Fantasia LLC for property at 1282 Commercial Street, also shown on the Weymouth Town Atlas Sheet 23, Block 253, Lot 7, located in a B-2 zoning district seeking a special permit and/or variance proposal under Section 120-106.1 for Wind Energy Conversion Systems with a variance under Section 120-59 for placement of a retaining wall and garage within the setback area with application for associated earth filling.

Present:	Richard McLeod, Chairman
	Mary McElroy, Clerk
	Chuck Golden
	Francis Kenneally
	Robert Galewski
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.

Joseph Fantasia appeared before the Board. He stated that he has three requests this evening.

1. Continue retaining wall around property and place crushed stone on the driveway. He noted that the school fence on abutters' property will not be disturbed.
2. Approval for a garage – incorporate retaining wall but is within 20 foot buffer.
3. Install a 60 foot wind turbine adjacent to the garage.

Mr. Fantasia stated that the wind turbine would have a reversible meter. The energy would be used to power the property. There will be a reversible meter which allows for selling the power to National Grid.

Mr. Fantasia stated that he believes that the wind turbine would be a positive influence on the children. He pointed out that the schools are encouraging students to consider using natural energy.

Mr. Fantasia stated that the turbine could also provide data for town as to the potential for wind energy.

Mr. Fantasia stated that the noise level is less than an office use at 46 decibels at 100 feet. He noted that the model he intends to purchase has vibration dampers.

Mr. McLeod asked if the turbine would run constantly. Mr. Fantasia stated that it would run steadily but more during storms. The sound would be similar to whistling in the trees.

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

- Building Department submitted a memo date 5/19/09 and noted that B-2 zoning that abuts residential district or school no building or structure shall be erected to a height in excess of 2 ½ stories, not to exceed 35 feet.
- Conservation Commission noted that this project was outside of their jurisdiction.
- Health Department noted that there is a history of non-compliance and history of non-communication. However, the land is suitable for wind harvesting.
- Police Department had no issues.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway) Engineering noted that it appears that an older plan from 2003 has possibly been edited by hand by someone unknown to them and they are not sure what exists versus what is truly proposed. A retaining wall appears to be part of what is now being proposed but no revisions to contour lines, other than those from 2003, can be found. This, combined with bits and pieces of information about windmills, but no real specific plans or description of what windmill structure is being proposed, leaves them unable to understand exactly what they are being asked to review. Proper plan need to be prepared and submitted before they can perform a review.

- School Department noted that this request presents one potential concern, the wind turbine as proposed is in close proximity to the Pingree School playground, and the child and play area would be in the zone if it would fall over.
- Tax Department noted that for 2008 the 4th quarter Real Estate bill is due and is in warrant. The 2009 3rd and 4th quarter Real Estate bill is due. Water lien on Real Estate bill for 2009. Water bill is due 2009.

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

Rob Petrie, 1288 Commercial Street, Jackson Place Condominiums submitted a petition signed by abutters to the right and left of the proposed property. He pointed out that the proposed turbine is located within 35 feet of where at least 40 people live.

Mr. Petrie noted that the packet that Mr. Fantasia submitted to the Board was put together by the manufacturer of the turbine. He stated that he had a packet of information from the World Health Organization (WHO), Centers for Disease Control (CDC), and Dr. Pierpont, PhD which present concerns regarding the safety and health of those living near wind turbines. He stated the suggestion has been to avoid putting up turbines near residents, schools, and nursing homes.

Mr. Petrie stated that he is concerned regarding the potential for structural failure as there is a playground adjacent to the property. He noted that he owns the abutting property with six units.

Mr. Petrie pointed out that Hanover, Milton and Quincy have restrictions on the placement of wind turbines. Turbines are required to be 1 ½ times the size away from residential areas and roads because of ice shed.

Mr. Petrie noted that there are two types of sound that would be produced: an audible sound that is heard and a low frequency sound/vibration that is felt.

Mr. Petrie expressed concern regarding the potential loss of home value if this project were approved.

Mr. Petrie noted that there are higher spots in the neighboring area. The property is so low that that the town required Mr. Fantasia to install a retaining wall

Mr. Petrie stated that there is a problem with the garage. He noted that there are six units and the parking required is 12 spaces. He pointed out that the garage would be located in the 70 foot by 70 foot back yard. Mr. Petrie noted that the garage, as proposed, would be used for storage for the applicant's business not for parking of the residents' cars.

Mr. Fantasia stated that the base is 6 ½ feet and does not require guide wires. There would be a 49 foot concrete base and the retaining wall. He noted that if the turbine were to fail and fall over it would fall into the trees.

Kathy Marsh stated that she has three children and is concerned about the noise level, the flicker created by the spinning of the blades. She stated that the turbine activity level is high and is too close to people to have in this area. She pointed out that Mr. Fantasia is not living up to

expectations previously agreed upon when he received previous approval. She expressed concerns regarding the parking lot and the fences.

Allison Zogheib, 1224 Commercial Street, stated that she would ask for more time to look into this application more deeply. She noted that she has not had the opportunity to review any of the information.

Graham Barkson, 1224 Commercial Street, expressed concern regarding construction and drainage.

Pat Petri, 1288 Commercial Street, expressed concern about the noise level that would be generated by the wind turbine.

Yvonne Rossi, 1296 Commercial Street, stated that she believes that Mr. Fantasia does not have the right to infringe upon the neighbors quiet, sunlight, and airspace.

Mr. Petri pointed out that there is a child daycare center with 85 children in the immediate vicinity.

A resident asked if the garage to be built is for the purpose of tenants or for the applicant's personal use. She noted that he does not live on the site.

David Yen, 1286 Commercial Street, expressed concern regarding the affect of trees on the velocity of the wind needed to turn the turbine.

Mr. Fantasia stated that there are nine parking spots currently on the site. He noted that the land is zoned B-2.

Mr. Fuqua stated that with the garage relocated there would 12 spots on the lot and two in the garage.

Mr. Galewski asked if the garage would be tied into the retaining wall. Mr. Fantasia stated that it would be interconnected with the following dimensions of 13.5' x 18.5' x 5'.

Mr. Fantasia stated that he has lived in Weymouth for approximately 12 years and he is a journeyman ironworker. He stated that he knows what to do and what not to do and the proper people to do the work.

Mr. Fuqua commented on what would be stored in the garage as the special permit allowed residential use; the garage should be an accessory usage of residential property. If the intent is to have business storage an amendment to the special permit should be sought as this would change the original special permit.

Mr. Golden asked if the work approved on the special permit in 2003 has been completed. Mr. Fantasia stated that the apartments were built but the garage was not built. Mr. Fantasia noted that the financial state of the economy has hurt his business.

Mr. MacLeod asked if there was any other location in the area with this type of wind turbine. Mr. Fantasia stated that he visited a location on Front Street in Whitman.

The applicant needs to provide the following information to the Board:

- Certified plot plan showing the proposed parking spaces, the size of the garage, and setback area
- Copy of special permit approved in 2003
- Copy of structural design of retaining wall

Mr. Fuqua stated that the business use of the garage cannot be a part of this decision because this use has not been advertised.

A MOTION to CONTINUE the public hearing until June 17, 2009 was made by Mrs. McElroy and seconded by Mr. Galewski, and was UNANIMOUSLY VOTED.

BZA CASE #3040 379 Middle Street

Application of Joseph Melchione for property at 379 Middle Street, also shown on the Weymouth Town Atlas Sheet 26, Block 289, Lot 16, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-56 to acquire permit to build a single family home as lot has access by a right of way, but does not have any frontage, as defined by the ordinance.

Present:	Richard McLeod, Chairman
	Mary McElroy, Clerk
	Charles Golden
	Francis Kenneally
	Robert Galewski
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. Joseph Melchione and his wife Loretta Melchione appeared before the Board. Mrs. Melchione stated that they are before the Board seeking a variance as they do not have the required 40 feet of frontage. This property is accessed through a right of way.

Mr. Fuqua stated that this request was reviewed on site. This lot has been in existence prior to the implementation of zoning by-laws. It is a non-conforming lot as it does not have street frontage the access is via a right of way. The property had been used as a salvage yard for many years. The property is zoned R-1. This would change the property to residential usage.

The variance is based on existing conditions based on the fact that there is no frontage. Chapter 120-56 requires 40 feet of frontage. There is no other way to access property; the right of way has historically provided this access.

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

- Conservation Commission had no comment.
- Health Department submitted a memo to Roderick M. Fuqua from Daniel I. McCormack dated April 30, 2009. Mr. Fuqua stated that the applicants have filed for a financial inability to clean up the site. The recommendation from the Health Department is that the site is not suitable for a single family home until the site is cleaned up to the residential standards established under the Massachusetts Contingency Plan.
- Police Department had no issues.
- Fire Department had no issues but would like to ensure that proper permitting occurs throughout the process.
- DPW (Water, Sewer, Engineering, Highway) had no comments.
- School Department had no special concerns.
- Tax Department noted that this parcel is in tax title dating to FY 1992. The amount owed is in excess of \$75,000.

Mr. Fuqua stated that although the Health Department has valid concerns, the staff level suggestion is to allow the variance in order to get the site cleaned up to residential standards with two specific conditions:

1. A municipal lien certificate be required to be filed with the decision that notes that all municipal fees are paid. The variance is valid for one year. If the taxes are not paid within that period of time, then the decision cannot be recorded and the variance would lapse after the one year period.
2. No building permit issued until such time that health issues related to site cleanup are addressed.

Mr. Melchione stated that he has hired a Licensed Site Professional (LSP) to oversee the process and file the reports. He stated that there is cancer spot on the site. The site will be cleaned up. Mr. Melchione stated that he will bring in an excavator and have the fill removed by Northeast Tank under the LSP

Mr. Melchione stated that he has met with the Mayor regarding the payment of taxes and have the site cleaned up within a year. The site will be deed restricted.

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

Anne Kandalaft, 103 Fieldstone Lane, expressed concern regarding the removal of the contaminated soil. She asked that the project be monitored to ensure that the contaminated soil is treated appropriately, and that no dust flume is allowed to develop.

Mrs. Melchione stated that the LSP will supervise the work. This LSP works for town government although they pay the cost.

Mr. Galewski asked if the home will be a single family. Mr. Fuqua stated that a plot plan will be submitted during the building permit process.

The hardship is caused by the shape of the lot and the existing pre-zoning access.

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

Due to the hardship created by the shape of the lot and the fact that the lot has been in existence prior to zoning, a MOTION was made by Mrs. McElroy to APPROVE the request for a VARIANCE to build a single family home as lot has access by a right of way, but does not have any frontage, as defined by the ordinance with the following conditions:

- (1) A municipal lien certificate shall be filed.
- (2) No building permit shall be issued until such time that health issues related to site cleanup are addressed.

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. Galewski 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 build a single family home as lot has access by a right of way, but does not have any frontage, as defined by the ordinance with the following conditions:

- a. A municipal lien certificate shall be filed.
- b. No building permit shall be issued until such time that health issues related to site cleanup are addressed.

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 #3041 195 Washington Street

Application of The Sign Center for property at 195 Washington Street, also shown on the Weymouth Town Atlas Sheet 20, Block 276, Lot 30, located in a B-2 zoning district seeking a special permit and/or variance under Chapter 120-64.3C seeking relief for the proposed 46" high by 57" wide (18.2 sq. ft) electronic message center. The allowable square footage as per Sec. 120-64.3.C. is 3 sq. ft. plus 10% of the sign face area for a total of 5.5 sq. ft.

Present:	Richard McLeod, Chairman
	Mary McElroy, Clerk
	Charles Golden
	Francis Kenneally
	Robert Galewski
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.

The representative from The Sign Center as agent for S Bank formerly South Shore Cooperative Bank appeared before the Board along with Mr. Don Gill, president and CEO of S Bank.

The representative from The Sign Center stated that S Bank formerly South Shore Cooperative Bank underwent a branding reinvigoration to get a clean identity. This site is the main office; there are also two other bank locations. This request is a part of their re-branding project. The attempt is to maintain the bank's community identity of the bank with the clock but also allow for name recognition.

The representative from The Sign Center stated that the issues are about square footage on the changeable area as well as flashing, intermittent lights.

Mr. Gill noted that two members of the bank's Board of Directors were present with him this evening: Mr. Paul Haley and Mr. Nickerson. Mr. Gill stated that the bank is aware of the Board's concern regarding setting a precedence for a rolling sign. He noted that the bank is prepared to accept conditions in order to meet the requirements of the Board.

Mr. Gill noted that the time and temperature time sign has been in front of the bank for a long time and is a critical feature for the recognition of the bank. He also noted that although many people recognized the bank as the one with the clock but did not necessarily know the name of the bank.

Mr. Gill stated that the advertising aspect of the sign would be minimal possibly no more than 12 times per year. However, he noted that the bank would like to add a civic piece to the sign with holiday and town related messages.

The representative from The Sign Center stated that the current sign is within code except for the pre-existing non-conforming part of the time and temperature which pre-dates zoning. He noted that the sign is 6'x10' for a total of 60 square feet. The time and temperature takes up 15 square feet of the existing sign. The sign is 18 feet above grade.

The proposed sign would be 17 feet above grade and a little less wide. There will be 49 square feet total. The height, size, and placement will remain within code. He noted that zoning allows for manually changeable signs up to 6 square feet. The bank would like to have the sign change electronically. The sign would be contained to a static message rather than a dynamic message.

The message part of the sign would increase from 15 square feet to 18 square feet, which includes the time and temperature.

Mr. Galewski asked what the color will be. The representative from The Sign Center stated that the color will be black with amber colored letters only.

Mr. McLeod asked for clarification on the sign that it will be a static message not a rolling or flashing message. The message will stay up for a specific period of time and then be changed. The representative from The Sign Center stated that this will be the case.

Mr. Golden noted that the overall size of the sign will decrease from 60 square feet to 49 square feet and the size of the message part of the sign will increase from 15 square feet to 18 square feet. He asked about how the sign would be operated.

The representative from The Sign Center stated computer software would be used.

Mr. Galewski commented that there should be no other outside advertising. Mr. Gill noted that in the banking industry these types of signs are not used as they are in the retail industry.

Mr. Golden noted that the changes should not be made during rush hours. Mr. Gill agreed.

Mr. Fuqua asked where the time and temperature would be located on the sign. The representative from The Sign Center stated that it would likely be that the top 1/3 of the sign, approximately 6 square feet, would be for the message and the bottom 2/3, approximately 12 square feet, would be for time and temp. The representative from The Sign Center noted that technologically every pixel is changeable; it is this technology and the changes to the messages that would be controlled by conditions set by the Board.

There will be conditions for advertising and conditions for community service messages.

- (1) The time and temperature will be maintained on a frequently changing basis similar to what is presently there.
- (2) The advertising messages would be allowed to be changed on a weekly.
- (3) The color will remain the same.
- (4) The civic/holiday notices would be allowed to be changed in 48 hours.

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

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.

This is a request for a special permit for the flashing of the time and temperature and the variance is on signage square footage; the hardship is caused by pre-existing condition to maintain the community identity of the time and temperature.

Due to the hardship created by the pre-existing condition, a MOTION was made by Mr. Golden to APPROVE the request for a VARIANCE seeking relief for the proposed 46" high by 57" wide (18.2 sq. ft) electronic message center. The allowable square footage as per Sec. 120-64.3.C. is 3 sq. ft. plus 10% of the sign face area for a total of 5.5 sq. ft. 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 Mrs. McElroy 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 seeking relief for the proposed 46" high by 57" wide (18.2 sq. ft) electronic message center. The allowable square footage as per Sec. 120-64.3.C. is 3 sq. ft. plus 10% of the sign face area for a total of 5.5 sq. ft. 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 #3042 101 Columbian Street

Application of Robert Rodak, South Shore Hospital for property at 101 Columbian Street, also shown on the Weymouth Town Atlas Sheet 45, Block 515, Lot 2; Block 518, Lots 11, 14 and 37; Block 519, Lots 1 and 3; Block 520, Lots 1, 3, 4, 6, 8, 9, 10, 11, 12 and 14; and Block 521, Lots 1 and 5, located in an MSD zoning district seeking modification to Special Permit Case # 2925. The modification requests a change to the landscape plan in addition to the placement of a site sign identifying the use of the building.

Present:	Richard McLeod, Chairman Mary McElroy, Clerk Charles Golden Francis Kenneally Robert Galewski
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. McLeod disclosed that he and Mr. Kelly, the applicant's attorney, rent office space in the same building but are not affiliated with one another.

Mr. Kelly appeared before the Board on behalf of the applicant along with Mr. Rodak, the facilities project manager and Jay Emperor, a landscape architect from Pressley, Inc. He stated that the application is for site plan changes; there are no significant changes, and the size of the building is not being changed. He stated that he does not believe that these modifications change the intent of the special permit.

Mr. Rodak noted that these plans reflect the final design of the building. He noted the following changes:

- Granite wall will be added on west and south sides. The granite will be the same as the granite on the opposite side of the street. Mr. Emperor did some research and found granite that matches.
- Sunken garden has been further developed. There will be more plantings and ground cover. There will be a winter garden where people will be able to sit inside and look out toward the sunken garden.
- Exit stairway will be in the southeast corner instead of a loading area. Small trees will be added.
- Concrete sidewalk modification on the south side is done in conjunction with the driveway modifications. The existing beech tree will be maintained.
- There has been no significant grading changes.
- The retaining walls on the west side is part of the opening for the MRI equipment to be installed into basement level; the walls and panels are removable.
- The walkway from the Cancer Center to Columbian will have 160 feet of overhead canopy servicing two purposes: screen the power plant and provide overhead protection for pedestrians to crosswalk.
- Plantings will be in groupings, flowering trees will be added as well as an Arborvitae hedge. The intention is for defining of species, location, and design. He also noted that there will be more trees behind the garage for shielding.
- Building identification sign at the corner will be 60 square feet and 25 feet back from the road. He noted that this sign was not in the original packet.

Mr. Fuqua stated that although these are relatively minor changes during the course of construction there were several modifications that were made such as the atrium being enclosed, the location of the compactor, and retaining wall change. These were all brought back to the Board and they were done as minor changes in keeping with the spirit and intent of the original decision. When these additional changes were brought to the office, the staff recommendation was to come back to the Board so that there is documentation for easy tracking.

Mr. Fuqua stated that the recommendation at the staff level is to recommend approval and accept as final plans on case number 2925. He also stated that revised plans dated 4/28/09 and 5/20/09 should be referenced.

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

Mr. McLeod asked if the hospital had heard any comments from the neighbors behind the garage. Mr. Rodak stated that there has been comments regarding the fencing.

Mrs. McElroy asked when the building would be opened. Mr. Rodak noted that the garage is partially open for second shift employees. He also noted that the Cancer Center is scheduled to be open in the fall.

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. Galewski to APPROVE the request for MODIFICATIONS to the landscape plan in addition to the placement of a site sign identifying the use of the building as noted on plans dated 4/28/09 and 5/20/09. 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 Mrs. McElroy and was UNANIMOUSLY VOTED.

FINDINGS:

The Board found that the MODIFICATIONS 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 MODIFICATIONS to the landscape plan in addition to the placement of a site sign identifying the use of the building as noted on plans dated 4/28/09 and 5/20/09.

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 - May 6, 2009

A MOTION was made and seconded to APPROVE the Minutes of May 6, 2009 and was UNANIMOUSLY VOTED.

ADJOURNMENT

A MOTION was made and seconded to ADJOURN the meeting at 10:30 P.M. and was UNANIMOUSLY VOTED.

Mary McElroy, Clerk

Date