

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
July 23, 2008**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, July 23, 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 #3010 110 Main Street & 559 Washington Street (cont.)**

Application of RK Weymouth LLC for property at 110 Main Street & 559 Washington Street, also shown on the Weymouth Town Atlas Sheet 29, Block 329, Lots 10, 12, 15, & 21, located in a B-1 zoning district seeking a special permit and/or variance under Chapter 120-25(A), 120-25(B) and 120-25(C) for an addition to a Shopping Center - a 10,000 +/- sq. ft. retail building on Block 329, Lot 21 and a restaurant with a drive-through on Lots 12 & 15. The applicant will be adding 100 parking spaces to the shopping center thereby making the parking less nonconforming.

Present:	Edward Foley, Vice-Chair 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.

Attorney Gregory Galvin appeared before the Board along with David Baker, RK Associates, Bruce Babcock, civil engineer, and Mike Meglio, engineer.

Mr. Galvin stated that there have been several significant changes to the traffic flow and the buildings. He stated that the 10,000 square foot building was increased to 11,510 square feet. He stated that all required parking is provided.

Mr. Galvin stated that the other parcel has a building with 1900 square feet with a request for a drive through for coffee shop type tenant. After review, it has been determined that the queuing for a drive through will not work in this location. The applicant has abandoned the idea of having a drive through and is instead looking at a commercial type building on that lot. The size of the building matches the parking requirement for the town. There is no request for relief of parking for either building as there is adequate parking for both buildings.

Mr. Galvin stated that the traffic engineer will address concerns raised by one of the town's councilors.

Mr. Galvin stated that the applicant has been working to upgrade the plaza to make it more aesthetically pleasing.

Mr. Baker pointed out that landscaping and islands were installed within the last year. He noted that additional work was done on the covered walkway, the building was painted, and the pylon signs at each entrance have been redone.

Mr. Babcock stated that the smaller building's location will be moved closer to Washington Street.

Mr. Babcock stated that with the changes, a small pump station will be required. The proposed building is larger by 1500 square feet. The underground drainage will be slightly larger. It still meets storm water management requirements. He noted that the sewer has a direct gravity connection. There are two water services; one for domestic service and one for fire protection service. The large building requires sprinklers.

Mr. Meglio discussed the traffic concerns. He stated that he has submitted a supplemental traffic analysis. He noted that six intersections were reviewed:

- Two on Main Street
- One on Washington Street
- BJ's site driveway at Washington Street
- West Lake Drive and Cynthia Circle along Washington Street
- Washington and Middle Street (TIP – 2010)

Mr. Meglio noted that the plan calls for changes to internal circulation. He stated that the plan calls for a left turn lane to exit the driveway to Washington Street. He also stated that the plan would provide for a two way left turn lane on the exiting driveway at Main Street and Washington Street. Mr. Meglio stated that he has spoken with Massachusetts Highway Department (MHD) as curb cut permits are required. MHD noted that they look at left turn lanes on a case by case basis. It was noted that a meeting with MHD will be scheduled.

Mr. Meglio spoke regarding the peak periods: am peak, pm peak, and Saturday mid day peak. He stated that the level of service (LOS) at Cynthia Circle/West Lake Drive does not change in the am and pm peaks. The Saturday mid day peak at Cynthia Circle will increase to a D. He pointed out that this intersection was at the threshold and the additional 3 seconds pushed it over to the next level.

The intersection at BJ's will see no change in LOS in the am and pm peaks. He pointed out that the left turn out of BJ's driveway is an F.

The Main Street intersections remain at a LOS C in the A.M. and P.M. He pointed out that the pm peak improves from an LOS of D to an LOS of C. During the Saturday mid day peak the LOS remains at an F but significant improvement occurs with the change in the internal circulation of the site: two way traffic will be allowed onto Washington Street.

The Middle Street and Washington Street intersection is being pursued by another developer and is on the MHD Transportation Improvement Plan (TIP) for 2010.

Mr. Foley asked about the response from the town's traffic engineer.

Mr. Fuqua stated traffic data has been submitted by applicant. Further information has been requested by the town's engineer and also a meeting with MHD has also been requested of the applicant. Mr. Fuqua stated that the applicant's traffic engineer has been in contact with Planning staff on a regular basis.

Councilor Mathews stated that it was good news to hear that there will be no drive through, but he is concerned about site views with the building's placement closer to the street. He stated that he is also concerned about two way traffic as the site is currently one way. Councilor Mathews cautioned the Board regarding the assumption that the intersection at Middle Street will be completed through the TIP. This intersection has been on the TIP in the past but the work was not done due to budget constraints.

Mr. Galvin stated that all traffic is considered when an analysis is done. This report is done with build and no build scenarios. The proposed building along Washington Street meets the town's bylaws in that it is in excess of 40 feet from the property line (actual: 50-55 feet from Washington Street)

Councilor Molisse expressed concern about two way traffic at the Washington Street intersection and cut through traffic

Councilor Harrington expressed concern about the two way traffic and cut through traffic from Route 18 to Route 53.

There was no other public comment.

Mr. Fuqua asked for the applicant to submit the request to withdraw the drive through window in writing so that the Board could vote on it as a withdrawal.

Mr. Holzworth asked about how keeping the rear driveway a one way would affect the traffic on Main Street.

Mr. Foley noted that applicant will be meeting with MHD and the town engineer regarding further traffic details.

A MOTION was made by Mrs. McElroy to CONTINUE the public hearing until 8/27/08 and was seconded by Mr. Joyce and UNANIMOUSLY VOTED.

### **BZA CASE #3016 151 Wessagussett Road**

Application of Elizabeth Skafidas for property at 151 Wessagussett Road, also shown on the Weymouth Town Atlas Sheet 4, Block 36, Lot 7, located in a R-1 zoning district seeking a special permit and/or variance under Chapter 150-51, Table 1, 150-54 & 150-38.3 for a variance

to construct a three season room around the rear and side of the dwelling enclosing the stairs and chairlift at ground level within the side yard setback and to construct a two level garage within the rear yard setback for storage. All work is within the Floodplain District Zoning A4.

Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Mary McElroy, Clerk  
Francis Kenneally  
Charles 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.

Mr. Galvin appeared before the Board with the applicant Mrs. Skafidas and Shawn Barry, civil engineer.

The applicant has already presented this request to the Conservation Commission which approved it with an order of conditions.

The applicant is seeking a two step process:

1. Put on a three season porch on the lower level of her dwelling across the back of the house. This would enclose the existing stairway that is covered (chair lift). The residents of the home have mobility concerns and need to use covered stairs.
2. Build a free standing two car garage with second story with no plumbing, this is for storage space. The existing garage can accommodate the van.

A condition of the Conservation Commission is to abandon a town drainage easement that is 15 feet wide and would pass under where the garage is, pending abandonment of easement on Paomet Road, which is a dead end road

Mr. Glavin stated that the storm water/new construction will meet current building standards. He pointed out that on the southwestern side, the dwelling is 7.3 feet from the lot line.

Mr. Barry stated that the proposed construction is appropriately sized for flood plain storage.

Mr. Golden noted that the current garage is open, more like a carport. Mr. Barry stated they would build out around the perimeter.

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

- Conservation Commission has received a notice of intent and has issued an order of conditions.
- Health Department had no objections.
- Police Department had no comment.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway)
  - Noted that catch basin elevation is from 2004, catch basin has been replaced, plan needs to be updated to show elevation change
  - DPW in the process of abandoning the easement, any drain line within the easement are to be capped with concrete as per DPW specifications.
  - Noted that there is no sewer or water to the garage, this should be a condition
- School Department had no special concerns.
- Tax Department noted that taxes are up to date.

The flood level is at 17.83 feet and the floor is at 13.9 feet. The new construction is four feet below the flood level which matches the existing house. The hardship is created by the topography of the lot because if you build the porch per flood plain requirements, two ramps would be needed or the elevation of the entire house would need to be raised.

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

Mr. Amuzzini, 143 Wessagussett Road, stated that he did not want to see the easement abandoned. He stated that the drain easement in the back fills with water and floods his back yard.

Mr. Fuqua stated that DPW will make the final decision whether to abandon the easement.

Mr. Amuzzini stated that the water has no place to go because the easement is blocked.

DPW to be asked to take another look at easement abandonment.

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

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT and VARIANCE to construct a three season room around the rear and side of the dwelling enclosing the stairs and chairlift at ground level within the side yard setback and to construct a two level garage within the rear yard setback for storage with the following conditions.

- (1) Seal and cap drain pipes per DPW specifications.
- (2) There shall be no plumbing fixtures or water service to the garage and no living space there.
- (3) The three season porch will have no heat.
- (4) Plans updated to show correct elevation of catch basin.

All work is within the Floodplain District Zoning A4 with the following conditions:

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 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 construct a three season room around the rear and side of the dwelling enclosing the stairs and chairlift at ground level within the side yard setback and to construct a two level garage within the rear yard setback for storage with the following conditions:

- (1) The seal and cap drain pipes per DPW specifications.
- (2) There shall be no plumbing fixtures or water service to the garage and no living space there.
- (3) The three season porch will have no heat.
- (4) Plans updated to show correct elevation of catch basin.

All work is within the Floodplain District Zoning A4.

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 #3018 54 Whitman Street**

Application of Sons of Italy Building Corp. and Metro PCS Massachusetts, LLC for property at 54 Whitman Street, also shown on the Weymouth Town Atlas Sheet 22, Block 300, Lot 12, located in a R-1 zoning district seeking a special permit and/or variance under 120-106.2, 120-40, 150-51 for a co-location of wireless equipment facility on existing monopole tower.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Francis Kenneally Charles 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 Brian Grossman stated that he represents Metro PCS Massachusetts, LLC through the Sons of Italy Building Corp. He introduced Mr. Mark Cook, site development specialist working with Metro PCS and Mr. Ben Orichi, radio frequency engineer with Metro PCS.

Mr. Cook stated that Metro PCS through the Sons of Italy is the beneficial applicant of this request. Metro PCS is a wireless carrier looking to establish service in this area and is licensed by the Federal Communication Commission (FCC).

He stated that Metro is looking to utilize an existing structure by installing an eight foot tall canister and would sit right on top of the existing pole. The total height of the existing pole and canister would be 68' above ground level. The antennas would be contained in the canister, with the cables running down the wooden pole from the canister to a concrete pad and equipment cabinet, in the existing compound which would be expanded.

Mr. Cook stated that the maintenance person would be out once per month to maintain the equipment. This would be the only traffic generated by the installation of the canister and would not hinder any parking on the property. Photo simulations were submitted.

Mr. Orichi displayed a map showing the proposed coverage area for Metro PCS. He stated that prior permitting has been allowed to locate this type of equipment on existing poles. He noted that this request is minimally intrusive and the canister is located on an existing structure. Mr. Cook stated that the canister does not emit heat, light, glare, or smoke. Also, it does not increase traffic; the vehicle for maintenance is an SUV sized vehicle rather than a large

equipment truck. There is no burden on the town's services or utilities. There will be no removal of vegetation at the site.

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

- Conservation Commission had no comment.
- Health Department had no comment.
- Police Department had no objections, but did say they would like the owner of the pole to contact them to consider co-locating a repeater for the police and/or fire department. The police is not asking for a repeater.
- Fire Department had no objections.
- DPW (Water, Sewer, Engineering, Highway) had no objections
- School Department had no special concern.
- Tax Department had no comment.

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

Joe Deluca, representing Sons of Italy, stated that if the police need something, they can ask and the Sons of Italy are willing do it. He stated that they are asking for an eight foot extension on the pole.

This is an application for a variance in height of eight feet. The hardship would be financial in that a new pole would need to be erected to house this equipment. Also this is a unique situation and it will not disturb the surrounding area. There is also an extension or change of an existing non-conforming.

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 APPROVE the request for a SPECIAL PERMIT and due to the financial hardship of installing another pole and the unique situation at this site, a VARIANCE for co-location of wireless equipment facility on existing monopole tower. 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 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 due to the financial hardship of installing another pole and the unique situation at this site, VARIANCE for co-location of wireless equipment facility on existing monopole tower. 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 #3017 1529 Commercial Street**

Application of Ryder Development Corp. for property at 1529 Commercial Street, also shown on the Weymouth Town Atlas Sheet 23, Block 254, Lot 3, located in a B-2 zoning district seeking a special permit and/or variance under Chapter 120-27C to construct multi-family dwellings on a lot in a B-2 zone and to modify BZA case #2973 for access and layout purposes including utilities.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Francis Kenneally Charles 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.

Mr. Gregory Galvin, attorney, appeared before the board along with Mr. Kenneth Ryder, the applicant, and Mr. Al Trakimas, design engineer.

Mr. Galvin stated that Mr. Ryder had been before the board within the past year regarding property at 1535 Commercial Street for 10 units of housing. Mr. Ryder has received the opportunity to acquire 1529 Commercial Street. He would like to join the two properties and build an additional 10 units on the new parcel. There would be one entrance and exit. The current location for the 1535 driveway would remain

The request is for a special permit under section 120.27C and to modify Board of Zoning Appeals case number 2972, for one access, the layout is encompassing the infrastructure that was being developed on the adjoining parcel. The applicant is looking for multi family dwelling in B-2 zone. The application does meet the set backs and will mirror what was previously approved on the 1529 Commercial Street parcel.

Mr. Galvin stated that floor area ratio (FAR) is .30 for by law. The prior development FAR was .26 and the new parcel's FAR is .28 for the entire development.

Mr. Trakimas stated that the percentage of green space is 50% for the entire project. He pointed out that the drainage system will be similar and a second recharge system will be installed. There will be no run off to street

Mr. Kenneally commented on the condition of the site. He noted that on the previous project the site was cleaned up. He stated that the site is currently in deplorable condition.

Mr. Galvin noted that the site is on the demolition delay list. Mr. Ryder stated that there was a hearing with the Historical Commission. He pointed out that the property has been released from the demolition delay order.

Mr. Kenneally stated that there is alcohol debris and pornography littering the site.

Mr. Ryder stated that he does not own the property but has a purchase and sale agreement in place. The property is a two-family rental. He pointed out that the owner is elderly and no longer lives in the area.

Mr. Golden stated that there is a dramatic view of the project from Grant Street and mitigation should be considered.

Mr. Galvin stated that other permitted uses in B-2 are commercial parking lot, rental agency for autos, by right, private club, lodge, place of amusement, clinic or professional type office, retail services, larger site could be a hotel/motel, a convenience store, by right

Mr. Ryder stated that there is an approximately 50 foot set back to the rear of the project.

Mr. Ryder stated that he would consider additional landscape and a buffer along the rear of the property along with fencing and trees/evergreens. He pointed out that the topography is that Grant Street is higher.

Mr. Ryder stated that he believes that residential use has the lowest traffic impact. The units will have two bedrooms.

Mr. Foley asked if the units will be rental units or condominiums. Mr. Ryder stated that they are for sale units.

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

- Conservation Commission reviewed with staff. Drainage is handled on site. One grant received for East Weymouth area. 6 catch basins on same side and tie into storm drain that drains into herring run. Applicant consider potential for future easement to put in a storm ceptor to treat water – applicant stated that he is agreeable to this easement.
- Health Department had no comment.
- Police Department had no comment.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway) looking at fine tuning utilities, storm drains, isolation valves, moving sewer laterals
- School Department would be concerned about increase in number of school children
- Tax Department noted that there are taxes due. Condition that all municipal taxes, water and sewer fees are paid at time of building permit

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

Will Baker, 23 School Street, director of East Weymouth Neighborhood Association and a member of the Greenbush mitigation committee expressed frustration as someone who lives in the Jackson Square neighborhood. He stated that as a member of the Greenbush mitigation committee, much time was spent to have Jackson Square neatly designed when the train station was built. He is disappointed with the situation in the square.

Mr. Baker pointed out that a restriction on food establishments in the CVS plaza was lifted, the Dunkin donuts was built and then a drive through was added. He asked when the overdevelopment will end. He also asked, is this project a benefit to the neighborhood: more apartments means more people, more traffic and more required services. He asked the board to deny this request for a special permit.

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

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT to construct multi-family dwellings on a lot in a B-2 zone and to modify BZA case #2973 for access and layout purposes including utilities with the following conditions.

- (1) All taxes and fees are paid.
- (2) Applicant shall consider a future easement for storm ceptor.
- (3) All municipal utilities to be constructed as per DPW specifications.
- (4) Landscaping is subject to site plan review.
- (5) Approval of this does not affect the conditions of case #2972.
- (6) Sediment control shall be installed to prevent construction runoff from entering Commercial Street.

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. McElory 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.
- (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 to construct multi-family dwellings on a lot in a B-2 zone and to modify BZA case #2973 for access and layout purposes including utilities with the following conditions.

- (1) All taxes and fees are paid.
- (2) Applicant shall consider a future easement for storm ceptor.
- (3) All municipal utilities to be constructed as per DPW specifications.
- (4) Landscaping is subject to site plan review.
- (5) Approval of this does not affect the conditions of case #2972.

- (6) Sediment control shall be installed to prevent construction runoff from entering Commercial Street.

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 #3019 562 Main Street**

Application of The Mourad Company, LLC for property at 562 Main Street, also shown on the Weymouth Town Atlas Sheet 37, Block 463, Lot 3, located in a B-1 zoning district seeking a special permit and/or variance under Chapter 120-40, 120-122, 120-101 alteration of nonconforming car wash structure. The existing structure consists of three car wash bays - two enclosed and one open bay. The applicant requests special permit to enclose the existing outside car wash bay with a new 12 x 10 Mansard seem metal roof to match the existing structure. New wall to be added to existing foundation of the outside bay. No increase in footprint of structure as foundation exists for existing outside bay. No increase in number of bays.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Mary McElroy, Clerk Martin Joyce Charles 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.

Mr. Mourad appeared before the board. He stated that he is looking to enclose one bay so that it can be used year round. He noted that he will not increase the footprint of the building nor increase the elevation. The plan is for the bay to remain self serve.

Mr. Mourad stated that he met with his neighbors and the ones who responded did not have any negative comments. He stated that he also contacted the Town Councilors.

Mr. Mourad presented pictures to the board for their information.

He noted that the site is zoned for 6am to midnight. The outside bay actually closes at 9pm in the summer and 8pm in the winter.

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

Mr. Fuqua state that the applicant was before the board in 2005 for case number 2837. Mr. Mourad stated that case number 2837 was abandoned and he renovated the existing site.

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

Councilor Harrington, District 5 Councilor, stated that Mr. Mourad has maintained a nice facility. The prior owners had allowed the site to fall into disrepair. He also stated that he has received no negative feedback. Councilor Harrington noted that he has visited the site a number of times.

Councilor Molisse stated that Mr. Mourad has been a good neighbor as promised. He noted that the property is well-maintained.

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

A MOTION was made by Mrs. McElroy to APPROVE the request for a SPECIAL PERMIT for alteration of nonconforming car wash structure. The existing structure consists of three car wash bays - two enclosed and one open bay. The applicant requests special permit to enclose the existing outside car wash bay with a new 12 x 10 Mansard seem metal roof to match the existing structure. New wall to be added to existing foundation of the outside bay. No increase in footprint of structure as foundation exists for existing outside bay. No increase in number of bays. 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. Foley 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.
- (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 alteration of nonconforming car wash structure. The existing structure consists of three car wash bays - two enclosed and one open bay. The applicant requests special permit to enclose the existing outside car wash bay with a new 12 x 10 Mansard seem metal roof to match the existing structure. New wall to be added to existing foundation of the outside bay. No increase in footprint of structure as foundation exists for existing outside bay. No increase in number of bays. 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 #2990 Meredith Way Decision 7/23/08**

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 Chapter 120-63 for a Planned Unit Development 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

Mr. Fuqua stated that this is an application for a Planned Unit Development. This allows for the reduction of lot sizes for a cluster development.

He stated that there was lengthy discussion regarding treating existing portion of Meredith Way, construction protocol during construction, incorporate all Conservation issues into final plan, treatment of Meredith Way, overlay entire length of Meredith Way, sidewalks to Essex Street, and antique lighting. There was discussion on whether to connect to Essex Heights Drive, however the stub that connects the two neighborhoods is privately owned; permission has not

been granted by the owner. The board cannot condition this as the current owner does not control the lot.

Mr. Golden asked about adding a curb on the Essex Heights Drive property. Mr. Fuqua stated that this could be requested but not required as it would be subject to approval by the other property owner.

Mr. Fuqua stated that Planning staff had met with the easement owner, however there has been no additional contact regarding this issue.

Mr. Fuqua stated that blasting is regulated by the fire department which involves a permit process that covers review of qualifications, insurance, how far the pre-blast survey will be, notification, and supervision during blasting.

The working hours during the day are Monday through Friday 7am to 7pm. Saturday 7am to 3pm, with no work on Sundays. This is also addressed in construction protocol.

A construction protocol, which covers such things hours, dust control, noise, process for complaints and/or issues, and other matters, will be entered into.

Improvements at the retaining wall and any entryway treatment at the intersection of Meredith Way and Essex Street, shall be subject to site plan review by the Department of Planning and Community Development.

The roadway will be 24' wide.

An overlay course of pavement on the entire portion of Meredith Way will be done.

A restriction will be placed on lot 20 for emergency access.

Overhead ornamental lighting to be installed and existing lighting on Meredith Way will be changed to this style, pending availability through National Grid.

On the northerly side of the proposed Meredith Way extension, a swale is to be installed. This has been addressed by Conservation Commission.

Cape Cod curbing will be placed along the full length of Meredith Way.

All work is subject to all permits required.

There would be a deed restriction on lot 20 for emergency exit/access. The easement would be grassed to allow for this access.



A MOTION was made by Mrs. McElroy to APPROVE the request for a SPECIAL PERMIT for a Planned Unit Development for 21 new single family housing units in a clustered layout with the following conditions.

- (1) The working hours during the day are Monday through Friday 7am to 7pm. Saturday 7am to 3pm, with no work on Sundays. This is also addressed in construction protocol.
- (2) A construction protocol, which covers such things hours, dust control, noise, process for complaints and/or issues, and other matters, will be entered into.
- (3) Improvements at the retaining wall and any entryway treatment at the intersection of Meredith Way and Essex Street, shall be subject to site plan review by the Department of Planning and Community Development.
- (4) The roadway will be 24' wide.
- (5) An overlay course of pavement on the entire portion of Meredith Way will be done.
- (6) A restriction will be placed on lot 20 for emergency access.
- (7) Ornamental lighting to be installed within the new development; applicant is to work with utility company (National Grid) to evaluate changing lantern style on existing Meredith Way.
- (8) On the northerly side of the proposed Meredith Way extension, a swale is to be installed, as per Conservation Commission approval.
- (9) Cape Cod style berm and sidewalk will be extended from within the new development (Meredith Way extension) along the north side of Meredith Way to the intersection with Essex Street.
- (10) All construction is subject to all permits required.
- (11) There would be a deed restriction on lot 20 for emergency exit/access. The easement would be grassed to allow for this access.

The MOTION was seconded by Mr. Holzworth 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.
- (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 a Planned Unit Development for 21 new single family housing units in a clustered layout with the following conditions.

- (1) The working hours during the day are Monday through Friday 7am to 7pm. Saturday 7am to 3pm, with no work on Sundays. This is also addressed in construction protocol.
- (2) A construction protocol, which covers such things hours, dust control, noise, process for complaints and/or issues, and other matters, will be entered into.
- (3) Improvements at the retaining wall and any entryway treatment at the intersection of Meredith Way and Essex Street, shall be subject to site plan review by the Department of Planning and Community Development.
- (4) The roadway will be 24' wide.
- (5) An overlay course of pavement on the entire portion of Meredith Way will be done.
- (6) A restriction will be placed on lot 20 for emergency access.
- (7) Ornamental lighting to be installed within the new development; applicant is to work with utility company (National Grid) to evaluate changing lantern style on existing Meredith Way.
- (8) On the northerly side of the proposed Meredith Way extension, a swale is to be installed, as per Conservation Commission approval.
- (9) Cape Cod style berm and sidewalk will be extended from within the new development (Meredith Way extension) along the north side of Meredith Way to the intersection with Essex Street.
- (10) All construction is subject to all permits required.
- (11) There would be a deed restriction on lot 20 for emergency exit/access. The easement would be grassed to allow for this access.

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 #2991 39 & 45 Winter Street (cont.) 7/23/08**

Application of KFC U.S. Properties for property at 39 & 45 Winter Street, also shown on the Weymouth Town Atlas Sheet 33, Block 376, Lots 19 & 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. The application for Taco Bell/KFC restaurant in B-1 is allowed by right. The application seeks a special permit for the drive thru window service and a variance for signage.

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

Mr. McLeod stated that this meeting is to discuss and make a decision on the above application. He stated that at the 6/25/08 meeting, the applicant's attorney was asked if the applicant wanted to withdraw the request without prejudice. Mr. Kelly contacted the Planning Office stating that the applicant did not want to withdraw.

Mr. McLeod indicated that Mr. Kelly had stated that the applicant is prepared to contribute \$30,000 for traffic mitigation and road improvements to the intersections at Winter Street and Middle Street and Winter and Route 18. Mr. McLeod noted that this would be consistent with mitigation received from Stop & Shop and Walgreens.

Mr. McLeod stated that one of the most significant concerns was traffic from the site attempting to take a left turn from the site onto Winter Street.

Mr. Golden stated that there have been many concerns referenced regarding traffic and safety.

Mr. Foley stated that the Board has looked at this request and the applicant was given the opportunity to withdraw the request for the drive through window. Mr. Foley stated that numerous opposition from neighbors and Town Councilors was received.

Mr. McLeod pointed out that the applicant is able to build the restaurant as a matter of right. The only issue being denied is the request for a drive through window. He also pointed out that a request for a sign variance has already been approved.

Mr. Foley noted that there was numerous opposition from neighbors and that Mayor Kay had submitted a letter with serious concerns regarding a large number of accidents at this specific site.

Mr. Fuqua asked for clarification that the Board is basing their decision to deny this request on all of the items identified at the 6/25/08 meeting as the identified findings.

Mr. Golden stated that specific findings are noted in the letter from the Mayor. This information was too dramatic to ignore.

Mr. Denizkurt stated that there were serious concerns regarding the studies done which noted problems entering and exiting the site, the proximity to the intersection at Winter Street and Route 18, and the significant queuing. He noted that the town's traffic engineer concern that queuing backed up past the site's driveway. The traffic exiting left from the site must cross three lanes of traffic.

Mr. Golden noted that the traffic studies did not include counts while the Dairy Queen, across the street, was in operation.

Mr. Denizkurt noted that Mass Highway and district averages for traffic rates are exceeded which indicates that there is already traffic problems at this intersection and surrounding area.

Mr. Foley pointed out that this request does not meet the standards required by 120-122.D.

Mrs. McElroy stated for the record that the Mayor had submitted a letter regarding this request.

A MOTION was made by Mr. Golden to DENY the request for a SPECIAL PERMIT Application for Taco Bell/KFC restaurant in B-1 is allowed by right. The application seeks a special permit for the drive thru window service. The Board finds that, in its judgment, the following criteria are NOT met:

- (6) The specific site is an appropriate location for such a use.
- (7) The use involved will not be detrimental to the established or future character of the neighborhood or town.
- (8) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (9) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- (10) The public convenience and welfare will be substantially served.

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

FINDINGS:

The Board found that the SPECIAL PERMIT 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 and further that:

- (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 will NOT be provided for the proper operation of the proposed use.
- (5) The public convenience and welfare will NOT 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 DENY the request for a SPECIAL PERMIT. The Board finds that, in its judgment; all of the following criteria are NOT 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.

### **OTHER BUSINESS**

- **South Shore Hospital – Cancer Center, BZA Case # 2925** – Proposed Modification  
The Board reviewed proposed modifications to enclose the garden terrace on the second floor of the Cancer Center and found that the modification was de minimus and in keeping with the spirit and intent of the special permit approval. The Board further noted that the modification would have no impact on traffic generation or alter the square footage devoted to treatment facilities.

Based on the above findings, a MOTION was made by Mrs. McElroy and seconded by Mr. Golden that the modification would require no further action by the Board and was UNANIMOUSLY VOTED.

### **ADJOURNMENT**

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

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Mary McElroy, Clerk

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Date