

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
July 29, 2009**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, July 29, 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.

**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 under Section 120-106.1 for Wind Energy Conversion Systems with 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 Edward Foley, Vice-Chair Francis Kenneally Charles Golden
Not Present:	Mary McElroy, Clerk
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 asked if Mrs. McElroy was on this case. Mr. Fuqua stated that she is on this case but is unable to attend this evening's hearing. She is allowed to miss one meeting under the Mullin Rule.

Mr. McLeod announced that he signed the affidavit stating that he has listened to the recording of the hearing that he had missed.

Mr. Fantasia appeared before the Board. He introduced Mr. Frank Duggan.

Mr. Duggan stated that turbine failure has mostly been attributed to the structure being struck by another object. He pointed out that there are wind turbines in Kansas where there are tornados. He noted that the turbines have been tested with winds up to 130 miles per hour (mph).

Mr. McLeod asked about the one acre minimum lot size mentioned in the wind turbine literature.

Mr. Duggan stated that the one acre property size mentioned in the literature is for wind turbines that are much taller than what is being requested. The reasoning for this minimum lot size is so that the fall radius would be within the boundaries of the property. He noted that the fall radius depicts the boundaries of impact should the turbine fail.

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Mr. Kenneally asked about the safety of pedestrians and others in the area of the wind turbine should the turbine fail.

Mr. Duggan stated that there are a number of locations in Maine that are off the grid in rural areas that use wind turbines. He pointed out that there is an East Bridgewater location. He noted that the turbines are usually within 30 feet of the home.

Mr. Duggan stated that the fall ratio is 1.2 times the height of the turbine so that the turbine stays within the property.

Mr. Golden pointed out that the recommended fall radius is 50 feet but the fall radius of the proposed turbine is 13 feet. Mr. Golden asked Mr. Duggan if this was an accurate assessment. Mr. Duggan stated that the numbers were accurate.

Dorothy Ivil, abutter, expressed concern about the length of the blades.

Mr. Duggan stated that the blades are 11 feet long. He showed a cross section of the blade. He reiterated that the turbines have been tested in winds up to 130 mph winds. Examples of items that might strike the turbine during a tornado scenario are patio furniture and limbs of trees.

Mr. Duggan stated that the tower is similar to a cell phone tower. The tower falling is unheard of; the turbine blade is what would fail. He pointed out that the blade was placed across two blocks and four men (600 pounds) jumped on the blade sitting; the blade flexed but did not break. He stated that the blades are similar to blades on an airplane.

Mrs. Ivil asked about the surrounding trees

Mr. Fantasia stated that there is one tree on the school property that is partially dead and would need to be taken down.

Mr. Galewski asked if a car were to hit the tower what would happen. Mr. Duggan stated that there would be 1 ½ lag bolts; the car could do damage but he doubted that it would take down the tower. There are four anchors and 47 yards of concrete footing.

Robert Petri, 1294 Commercial Street, expressed concern about the tree. He asked if estimated wind speed figures were available.

Mr. Fantasia stated that the wind charts show the turbine at a level 2 which is well within the limits and does not reach the tested limits of 130 mph.

Mr. Petri stated that he was asking about the wind speed per second. Mr. Fantasia stated that the wind speed estimate is five (5) meters per second which is approximately 12 mph.

Mr. Petri stated that there is a study that was done off of Logan Airport that showed the wind speeds there over 10 years which were recorded at four (4) meters per second.

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Mr. Petri stated that the energy cost savings of 20,000 kilowatts at 14 cents per kilowatt hour would result in approximately \$2400 per year savings and based on the cost of the turbine would result in a 30 year payback. He stated that he finds it difficult to justify the cost to the neighbors for such a long payback period.

He stated that the cost would be decreased value, noise, safety, and other intangible costs being borne by neighbors.

A resident stated that her children attend the Pingree School and she is a member of the Pingree School Parent Council. She expressed health concerns of the turbine blowing tree particles around which could potentially exacerbate allergies.

Mr. Fuqua stated that the Health Department did comment on the application but did not express concern regarding this issue.

Kathleen Walsh asked about a sound study. Mr. Fantasia stated that the wind turbine is comparable to a residential air conditioner; this information is per the dealer/manufacturer.

Mr. Galewski asked if the tower will be the same as the one proposed in 2003. Mr. Fantasia stated that it is the same tower as 2003.

Ms. Walsh asked if the blades will spin within property boundaries. Mr. Fantasia stated that blades will remain within the boundaries of his property.

Mrs. Ivil asked if there will be wind coming off the turbine. The wind passes through the blades; it will not change the direction of the wind; it is not a fan. The wind is moving the turbine. The residents would still feel the wind as the currents flow naturally.

Pat Petrie 1288 Commercial Street, asked if the plans were submitted to the Historical Commission. Mr. Fantasia stated that he is not altering the original structure so there are not historical plans. Mr. Fuqua stated that a copy of the plan was forwarded to Historical Commission on April 26, 2009; no response was received.

Kathleen Walsh asked about the dumpster being enclosed and its location. Mr. Fantasia stated that it will be in the same place as noted previously and it will be enclosed.

Mr. Galewski asked where the dumpster is located now. Mr. Fantasia noted that it is to the left of the building.

A resident noted that Mr. Fantasia has not had a truck to empty the dumpster in the past four years. She also noted that there have been 50 calls to the address by the Police Department since 2005.

A resident noted that with the turbine, a truck will not be able to pass through the property to get to the dumpster.

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Mr. Golden asked if a truck has backed into the site to empty the dumpster. Mr. Fantasia noted that a front loader is used. He pointed out that if a resident parks in the driveway when the truck comes for the pickup, the driver will leave.

Mr. McLeod asked if the fall radius/fall ratio refers to the same thing. Mr. Fantasia stated that they are the same.

A resident noted that the lowering of the turbine will make the impacts worse, the turbine will attract vandalism such as objects thrown at, and the turbine is too close to school property.

A MOTION was made by Mr. Galewski to CLOSE the public hearing and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

A MOTION was made by Mr. Galewski to take this matter UNDER ADVISEMENT and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

### **BZA CASE #3046 54 Whitman Street 7/29/09**

Application of Spring Spectrum LP and its affiliate Clear Wireless, LLC for property at 54 Whitman Street, also shown on the Weymouth Town Atlas Sheet 22, Block 300, Lot 12, located in an R-1 zoning district seeking a special permit and/or variance Chapter 120-40, 120-51, Table 1, & 120-119.3 for an extension/change by spec. permit of a non-conforming use, dimensional variance and/or amendment to a Special Permit (Decision # 2435) permitting construction of the existing telecommunications tower. The applicant seeks to remove 3 of its existing antennas and replace them with 3 WiMax antennas mounted on the existing antenna mounts on the Tower. Additionally to add 3 wireless backhaul dish antennas to be mounted on the existing antenna mounts on the Tower, directly above the proposed replacement WiMax antennas. Also proposed is to add 1 GPS antenna, to be mounted on the existing ice bridge at the property, with 1 supporting equipment cabinet to be located within the existing lease area at the base of the Tower.

Present:	Richard McLeod, Chairman Edward Foley, Vice-Chair Francis Kenneally Charles Golden 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.

This hearing was postponed from July 8, 2009. No testimony was previously taken.

Mr. Ricardo Sousa appeared on behalf of the applicant.

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Mr. Galewski disclosed that he has worked with the applicants on issues in his work for the town of Braintree. Mr. McLeod asked if Mr. Galewski believed that he could impartially vote on this matter. Mr. Galewski stated that he believed that he could vote impartially. There was no objection presented by anyone present.

Sprint would like to add three (3) Wimax antennae and three (3) dishes to the existing tower. This will not extend the height or width of the current tower. The addition will be within a fenced compound which is not to be increased. An additional cabinet next to existing one will be added.

Mr. Sousa stated that Sprint/Nextel currently provides wireless telephone service. He noted that they would now be able to provide ubiquitous high speed internet access.

Mr. Sousa stated that there is no tree interference nor is there any sight distance line issues.

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

Mr. Fuqua noted that the existing tower was permitted in March 1999. It consists of the pole (61 feet with antenna on top). At the time of the application, co-location and expansion is allowed. This change will not increase height and co-location is in conformance with the 1999 case.

Mr. Foley asked if this would be under 120-40 extension or change of non-conforming. Mr. Fuqua stated that it is.

The Chairman asked if the public had any comments, to which there was no reply.

A MOTION was made by Mr. Foley to CLOSE the public hearing and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT ext./change by spec. permit of a non-conforming use, dimensional variance and/or amendment to a Special Permit (Decision # 2435) permitting construction of the existing telecommunications tower. The applicant seeks to remove 3 of its existing antennas and replace them with 3 WiMax antennas mounted on the existing antenna mounts on the Tower. Additionally to add 3 wireless backhaul dish antennas to be mounted on the existing antenna mounts on the Tower, directly above the proposed replacement WiMax antennas. Also proposed is to add 1 GPS antenna, to be mounted on the existing ice bridge at the property, with 1 supporting equipment cabinet to be located within the existing lease area at the base of the 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.

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(5) The public convenience and welfare will be substantially served.  
The MOTION was seconded by Mr. Golden 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 an ext./change by spec. permit of a non-conforming use, dimensional variance and/or amendment to a Special Permit (Decision # 2435) permitting construction of the existing telecommunications tower. The applicant seeks to remove 3 of its existing antennas and replace them with 3 WiMax antennas mounted on the existing antenna mounts on the Tower. Additionally to add 3 wireless backhaul dish antennas to be mounted on the existing antenna mounts on the Tower, directly above the proposed replacement WiMax antennas. Also proposed is to add 1 GPS antenna, to be mounted on the existing ice bridge at the property, with 1 supporting equipment cabinet to be located within the existing lease area at the base of the 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 #3047 12 Myrtle Street

Application of Carolyn S. O'Reilly for property at 12 Myrtle Street, also shown on the Weymouth Town Atlas Sheet 23, Block 311, Lot 10, located in an R-1 and B-2 zoning district seeking a special permit and/or variance under Chapter 120-40 for an addition of a 2<sup>nd</sup> floor over an existing portion of a single family dwelling and addition of an attached garage in a similar location where there is an existing detached garage.

Present:                      Richard McLeod, Chairman  
                                    Edward Foley, Vice-Chair

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	Francis Kenneally
	Robert Galewski
	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.

Maureen Riley appeared on behalf of Carolyn O'Reilly. Ms. Riley stated that Ms. O'Reilly is currently working in Michigan and is unable to be present this evening. Ms. Riley submitted a power of attorney authorizing her to act on Ms. O'Reilly's behalf.

Ms. Riley stated that the applicant would like to extend the 2<sup>nd</sup> floor of the dwelling over the portion of the home that is only one story. She noted that the applicant would also like to knock down the existing detached garage and build an attached garage. She noted that there is no encroachment on the existing property lines.

Mr. McLeod noted that the side yard setback is 9.2 feet. Ms. Riley noted that she was not certain but she pointed out that this side abuts her property and she is not opposed to proposed changes.

Mr. Foley asked why the applicant wanted to attach the garage. Ms. Riley noted that it was for convenience. It would provide a direct entrance from the garage to the dwelling as well as act as a mudroom.

Mr. Foley noted that this will also be a variance as the encroachment will be increased. The hardship is that there is no other location to place the garage due to the size, shape, and topography of the lot.

Mr. Fuqua noted that the garage needs a variance because of the setbacks of the house. By attaching the garage to the house, the 10 foot setback would be needed as opposed to the 5 foot setback for a detached garage.

Mr. Fuqua noted that the request for the addition to the 2<sup>nd</sup> floor is for a special permit.

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

- Conservation Commission noted that this may be within 200 feet of riverfront area; the applicant needs to check with Conservation Commission.
- Health Department had no concerns.
- Police Department had no comment.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway) had no comment.
- School Department noted no special concern.

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- Tax Department noted that there are utilities due. Present evidence that all municipal liens and taxes are paid.

Mr. Fuqua noted that the garage is very narrow as was common in older neighborhoods.

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

Karen Dean, Ms. O'Reilly's sister, stated that the garage is very small and needs to be enlarged.

Mr. Fuqua stated that if the Board votes favorably a condition should be imposed that the applicant present evidence that all municipal liens and taxes are paid

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

### SPECIAL PERMIT

A MOTION was made by Mr. Foley to APPROVE the request for a SPECIAL PERMIT for an addition of a 2<sup>nd</sup> floor over an existing portion of a single family dwelling and addition of an attached garage in a similar location where there is an existing detached garage with the following condition:

- (1) The applicant shall present evidence that all municipal liens and taxes are paid.

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. Golden and was UNANIMOUSLY VOTED.

### VARIANCE

Due to the size, shape, and topography of the lot and that there is no other location to place the garage, a MOTION was made by Mr. Foley to APPROVE the request for a VARIANCE for an addition of a 2<sup>nd</sup> floor over an existing portion of a single family dwelling and addition of an attached garage in a similar location where there is an existing detached garage with the CONDITION that the applicant present evidence that all municipal liens and taxes are paid. 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.

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(5) The public convenience and welfare will be substantially served.  
The MOTION was seconded by Mr. Golden and was UNANIMOUSLY VOTED.

### FINDINGS:

The Board found that the SPECIAL PERMIT and due to the size, shape, and topography of the lot and that there is no other location to place the garage, a 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 a VARIANCE for an addition of a 2<sup>nd</sup> floor over an existing portion of a single family dwelling and addition of an attached garage in a similar location where there is an existing detached garage with the following condition.

- (1) The applicant shall present evidence that all municipal liens and taxes are paid.

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 #3048 17 & 19 Worster Terrace

Application of John McCafferty for property at 17 and 19 Worster Terrance, also shown on the Weymouth Town Atlas Sheet 20, Block 265, Lots 3 & 13, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40, 120-41, 120-52, 120-53, 120-51 & Table 1 to construct two single family dwellings on existing lots and to modify existing lot configuration so that the lot line dividing the two lots will now be parallel to the street line.

Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Francis Kenneally  
Charles Golden

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Staff: Robert Galewski  
Recording Secretary: Rod Fuqua, Principal Planner  
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 the applicant Mr. McCafferty as well as Mr. McAuliffe.

Mr. Galvin stated that the duplex on the site burned down over one year ago. The duplex style dwelling was situated on two lots which were in separate ownership although the building spanned the two lot lines. The property has two separate mortgages.

Mr. Galvin noted that the buildings could be constructed side by side facing on Keith Street by right. However, the applicant would like to change the property so that one lot fronts on Keith Street and the other lot fronts on Worster Terrace. This change would not increase the density.

Mr. Galvin noted that the current plan does not show off street parking. He acknowledged that this would need to be included and expected that this would be a condition.

Mr. Galvin noted that there would need to be an easement from Keith Street to the Worcester Terrace property to allow for utilities to be brought in.

Mr. Galvin stated that Worster Terrace in front of the home is not paved and the applicant will need to go before the Planning Board for road conditions.

Mr. Galvin noted that the applicants have rehabbed other buildings in Weymouth.

Mr. Galewski asked if the homes would be modular. The applicant stated that the homes would be modular.

Mr. Foley asked about getting a trailer down Prospect Street and down Worster Terrace. Mr. McCafferty stated that the manufacturer has been on site and has not expressed any concerns.

Mr. Foley noted that the manufacturer is a company located in New Hampshire. He asked if there was a Massachusetts company available. Mr. McCafferty stated that he was not aware of one.

Mr. Foley expressed concern regarding the manufacturer of the modular homes and its past business practices. He acknowledged that this has no bearing on the approval of the application.

Mr. Foley noted that Lot 3 has been in existence since 1947 and Lot 13 since 1946.

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Mr. McCafferty noted that the two dwellings together are a little less than the original two family that previously existed.

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

- Building Department noted that their information supports the applicants claims as to the dual ownership of the property. Two separate building permits were issued.
- Conservation Commission had no jurisdiction.
- Health Department had no concerns.
- Police Department has noted that parking needs to be shown on both of the lots as the streets are narrow.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway) had no comment.
- School Department noted no special concerns.
- Tax Department noted taxes are up to date.

Mr. Fuqua stated that the Planning Board will need to issue road conditions for Worster Terrace.

Mr. Fuqua pointed out that both lots are greater than 5000 square feet. A condition of the approval would be that the parking areas be shown on the plot plan when going for building permit.

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

Ms. Cassidy, 61 Keith Street, stated that she prefers the layout of the current plan with a lot on Keith Street and Worster Terrace.

Antoinette Hynes, 9-11 Worster Terrace, expressed concern regarding the poor condition of Worster Terrace which is a private way. She also noted that Worster Terrace is a narrow street and she stated that when the fire happened the fire trucks had trouble getting to the house.

Mr. Galewski suggested that the applicant consider sprinkling the homes.

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 to construct two single family dwellings on existing lots and to modify existing lot configuration so that the lot line dividing the two lots will now be parallel to the street line with the following condition.

- (1) The parking shall be shown on the plot plan.

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.

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- (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 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 two single family dwellings on existing lots and to modify existing lot configuration so that the lot line dividing the two lots will now be parallel to the street line with the following condition.

- (1) The parking shall be shown on the plot plan.

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 #3049 391 North Street

Application of John Deady for property at 391 North Street, also shown on the Weymouth Town Atlas Sheet 10, Block 124, Lot 8, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51, Table 1, & 120-61 to divide one lot into two, Lot B contains an existing dwelling. Lot A contains an existing garage to be converted to a one bedroom dwelling.

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Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Francis Kenneally  
Charles Golden  
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. Deady stated that he has 20 signatures on a petition from neighbors in support of his plan.

Mr. Deady stated that he is not building anything new, converting existing garage into single family dwelling. Most of the homes in the neighborhood were built on lots under 25,000 square feet with approximately 75% of them on lots of under 10,000 square feet.

Mr. Fuqua stated that this is a request for a variance under 120-51 due to dimensional criteria. Mr. Fuqua noted that 120-61 does not apply in an R-1 zone. The garage is conforming but if converted to a dwelling it is within the side yard setback.

Mr. Fuqua noted that a variance requires a hardship.

Mr. Deady stated that he believes that the shape of the lot creates the hardship. He noted that the neighborhood has been substantially developed to similar sized lot.

Mr. Fuqua stated that this request would create a pork chop lot as the first part functions as access to lot; 60% of the lot area can be used for normal lot purposes. He stated that the lot may have 11,000 square foot lot but functions as a 7,000 square foot lot.

Mr. Foley noted the improvements that have been made to the property. He noted that the topography and shape of lot create the hardship.

Mr. Deady stated that there are 167 lots in the neighborhood and 111 of the lots are under 10,000 square feet.

Mr. Fuqua noted that the lots in the neighborhoods with less than 10,000 square feet are uniformly shaped and the houses have a standard layout; very few of the lots are carved out with a similar geometric shape.

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

- Building Department
- Conservation Commission had no comment.

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- Health Department had no concerns.
- Police Department expressed concern regarding off street parking.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway) had no comment.
- School Department noted not special concerns.
- Tax Department noted utility payments due; Mr. Deady stated that the water main has been broken and he has been in contact with the DPW.

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

Lisa Jennings, 385 North Street, noted that she sees this as an improvement to the property.

John Henshall, 400 North Street, stated that he supports the plan as he believes it provides more open space which is in keeping with the neighborhood.

James Deady, 403 North Street, stated that the improvement on the property has been tremendous and he is in favor of the plan.

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

Mr. Foley noted that the plan does not move the building closer to lot lines, the current dimensions will stay, the Board has subdivided lots of this size before, and improvements to property have been made.

Due to the hardship created by the topographical and soil conditions on the lot a MOTION was made by Mr. Foley to APPROVE the request for a VARIANCE to divide one lot into two, Lot B contains an existing dwelling. Lot A contains an existing garage to be converted to a one bedroom dwelling with the following conditions.

- (1) Proof of payment of utilities shall be provided
- (2) Off street parking shall be shown on the plot plan.

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 PASSED ON A 4-1 vote with Mr. McLeod opposed.

## BZA MINUTES

July 29, 2009

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### 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 VOTED on a 4-1 vote with Mr. McLeod opposed to APPROVE the request for a VARIANCE due to the hardship created by the topographical and soil conditions on the lot a to divide one lot into two, Lot B contains an existing dwelling. Lot A contains an existing garage to be converted to a one bedroom dwelling with the following conditions.

- (1) Proof of payment of utilities shall be provided
- (2) Off street parking shall be shown on the plot plan.

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 #3050 525 Bridge Street

Application of Paul Clancy for property at 525 Bridge Street, also shown on the Weymouth Town Atlas Sheet 7, Block 97, Lot 7, located in an NCD zoning district seeking a special permit and/or variance under Chapter 120-40 for an extension or change of non-conforming use for an addition to provide a waiting area for customers. The addition will not take away any parking spaces.

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Francis Kenneally
	Charles Golden
	Robert Galewski
Staff:	Rod Fuqua, Principal Planner

## BZA MINUTES

July 29, 2009

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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. Mike Monahan appeared before the Board on behalf of Mr. Clancy. Mr. Monahan noted that Mr. Clancy must vacate his current property in Quincy by August 31, 2009.

Mr. Monahan noted that the addition does not front on Route 3A; it is in the rear of the property. He stated that the changes would not affect the parking. A bathroom would be added as well as a waiting area for patrons. The changes do not impact dimensional requirements. Mr. Monahan noted that the plan shows the dimensions as 14'x10' but would be changed to 14'x12'.

Rod Fuqua stated the application was routed to various Town Departments and received favorable or no adverse comments except for the Tax Department. The Tax Department noted that taxes, fees, and utilities are due on the property.

Mr. Monahan noted that his property is at 525 Rear Bridge Street and the Enterprise Rental was in 525 front Bridge Street. He noted that Enterprise Rental is no longer at this location.

Mr. Fuqua stated that the Deputy Tax Collector will look for payment of the personal property taxes from Enterprise as the company is no longer at the location; however other property taxes and utility fees are still owed and will need to be paid.

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. Foley to APPROVE the request for a SPECIAL PERMIT for an extension or change of non-conforming use for an addition to provide a waiting area for customers. The addition will not take away any parking spaces. The application is approved with the following conditions:

- (1) Dimensions on the plan (14' x 10') are amended to 14' x 12'.
- (2) Property taxes and utility fees shall be paid.

The Board finds that, in its judgment; all of the following conditions are met:

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

## BZA MINUTES

July 29, 2009

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The MOTION was seconded by Mr. Galewski 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 an extension or change of non-conforming use for an addition to provide a waiting area for customers. The addition will not take away any parking spaces. The application is approved with the following conditions:

- (1) Dimensions on the plan (14' x 10') are amended to 14' x 12'.
- (2) Property taxes and utility fees shall be paid.

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 #3051 328 North Street

Application of Colin A. Morneau for property at 328 North Street, also shown on the Weymouth Town Atlas Sheet 10, Block 103, Lot 1, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 to enclose the existing porch, extend living space into attic and add 2 story addition 13'x20' on north side with 10'x 12' rear deck.

Present:

Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Francis Kenneally  
Charles Golden  
Robert Galewski

## BZA MINUTES

July 29, 2009

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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. Morneau appeared before the Board. He stated that he currently has two open building permits. The Building Department has recorded six dwellings on the property. The building in question is building D.

Mr. Morneau stated that the property is non-conforming with same ownership pre-dating zoning. He noted that attempts have been made over the years to bring the property into compliance; however they have not been successful.

Mr. Morneau stated that there are three (3) homes on the property that are occupied by blood relatives over four (4) generations. He noted that the current owners are listed as Debra Freeman and her sister Dawn Struzzieri. He noted that the 5<sup>th</sup> generation is currently living at the location with the most recent addition being born a month ago.

He noted that Ms. Freeman and her husband live in building D with their three children in 650 square feet of living space.

Mr. Morneau noted that no financial institution will make a loan on this property and no one will purchase this non conforming property. He noted that the dwellings are set back from the neighbors and the street with ample acreage.

Mr. Morneau noted that he currently has two building permits for work being done on the property. He stated that the first permit is for roof repairs and the addition of living space in the attic area. The second permit is for a 13'x20' two story addition and rear deck.

Mr. Morneau stated that work was begun to repair the roof system as well as to add the attic bedrooms; however the town's building inspector called and told him that the permit approval was a mistake. The applicant was informed that he needed to go before the Board of Zoning Appeals for approval as the request is an alteration or change of an existing non-conforming.

Mr. Morneau stated that he needs the Board's approval to continue the work. He noted that the house is ranch style but would like to use as a Cape Cod style. The house is currently a one and a half story house.

Mr. Morneau stated that the family is currently living in tents awaiting the completion of the project.

Mr. Morneau stated that he is also looking for approval for the second permit which was previously issued to add a 13'x20' 2 story addition and rear deck.

## BZA MINUTES

July 29, 2009

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

- Conservation Commission noted that there is an outstanding enforcement order going back to 2006 with a follow up letter in 2007.
  - The applicant stated that he is unaware of the violation.
  - Mr. Fuqua stated that a letter dated 7/17/09 was sent regarding restoration of 5000 square feet of wetland areas that was improperly filled in with landscaping contractor debris. The violation was discovered on 7/14/06.
  - The applicant needs to submit a restoration plan.
  - Compliance with enforcement order needs to occur prior to the issuance of any permits.
  - The letter was addressed to the listed owner, Charles and Dawn Struzzieri.
- Health Department asked if the home is connected to sewer; if not, Title V issues may need to be met.

Mr. Foley noted that documentation of connection to sewer and a restoration plan for the 5,000 square feet of property must be submitted at the next meeting.

The Chairman asked if the public had any comments, to which there was no reply.

A MOTION was made to CONTINUE the public hearing until August 26, 2009 and was seconded by Mr. Galewski and UNANIMOUSLY VOTED.

**Hearing continued until August 26, 2009.**

### **BZA CASE #3043 102 Weyham Road (Discussion and/or Decision)** **7/29/09**

Application of Joseph & Kathleen Geary for property at 102 Weyham Road, also shown on the Weymouth Town Atlas Sheet 8, Block 111, Lot 29, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 for an addition in the rear of a single family dwelling, part of which lies within the side yard setback. Under advisement.

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Francis Kenneally
	Charles Golden
Not Present:	Mary McElroy
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 MINUTES

July 29, 2009

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The applicant was informed that there were only 4 members present. The applicant was given the choice to proceed with only 4 members or to continue until the next meeting with the understanding that they would need a unanimous vote to be approved. The applicants chose to continue until August 26, 2009.

**Discussion and/or Decision Continued until August 26, 2009.**

### MINUTES – 7/8/09

A MOTION was made and seconded to APPROVE the Minutes of July 8, 2009 and was UNANIMOUSLY VOTED.

### ADJOURNMENT

A MOTION was made and seconded to ADJOURN the meeting at 9:30 P.M. and was UNANIMOUSLY VOTED.

Approved:

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Richard McLeod, Chairman

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Date