

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
August 23, 2006

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, August 23, 2006, at 7:00pm at McCulloch Building, Whipple Center Conference Room, 182 Green Street, Weymouth, MA for the purpose of passing on the applications of certain persons whose petitions were properly before the Board. Notice of the public hearing had been given by mail to the parties in interest of the subject locus and by publication in the Weymouth News.

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Mary McElroy, Clerk
	Donald Holzworth
	Charles Golden
Staff:	Rod Fuqua, Principal Planner
Recording Secretary:	Janet Murray

BZA CASE #2911 242 Bridge Street

Application of Robert Tivnan for property at 242 Bridge Street, also shown on the Weymouth Town Atlas Sheet 6, Block 60, Lot 11, located in a B-2 zoning district seeking a special permit and/or variance under Chapter 120-119 to appeal decision of Inspector of Buildings.

The Chairman called the hearing to order and explained the procedures that would be followed to the people present. A MOTION was made to open the public hearing and waive the reading of the legal advertisement, and was seconded and UNANIMOUSLY VOTED.

The applicant, Robert Tivnan, appeared before the Board with his attorney, Austin O'Toole. Mr. O'Toole stated, on behalf of his client, he is appealing the decision of the town of Weymouth's Inspector of Buildings.

Mr. O'Toole stated that he and his client are here in appeal of a determination that was unilaterally made by the Building Inspector for the town of Weymouth. In this determination, for failure of use for a billboard at the subject premise, for more than two years time, it was required under the law and the ordinances of the town of Weymouth that the billboard be removed. The Building Inspector cited an ordinance that states that a non-conforming use, out of use, for more than two years, without any application for use for more than two years, requires that it no longer be used in the non-conforming status.

Mr. O'Toole pointed out that the ordinance cited is in regards to use; it does not make mention of removal only use. He noted that this is the grounds for the appeal; that the Inspector of Buildings does not have the authority to require the removal of the billboard for non-use.

Mr. O'Toole pointed out that when Mr. Tivnan purchased the property, he was told that the billboard had not been in use for at least than one year. As a "quid pro quo" for allowing betterments at the property, the Building Inspected required Mr. Tivnan to accede to not using the billboard.

Mr. O'Toole handed out a copy of a building permit issued in 1994. He also handed out a memorandum of case law.

Mr. McLeod stated that Chapter 40A section 6 prohibits the grandfathering of billboards. Mr. O'Toole stated that this is only one leg of the argument. He stated that another issue is that the town can not require a particular property owner not to make use of their property and then say for failing to make use of the property, you are now required to remove the billboard. He also noted that another question is whether the ordinance allows the Building Inspector to require the removal of the billboard.

Mr. Tivnan has considered public service type usage of the billboard. Over the weekend, Mr. Tivnan has attempted to spruce up the billboard by painting it.

Mr. O'Toole stated that the cost of removing the billboard would be prohibitive. He noted that the billboard is anchored as part of the building.

Mr. McLeod asked Mr. Clarke if the Inspector of Buildings had ordered the removal of the billboard. Mr. Clarke stated that the Assistant Building Inspector is present. Mr. Clarke also stated that the letter sent to Mr. Tivnan orders him to remove the billboard within 30 days of receipt of the letter, dated 6/20/06.

Mr. Holzworth asked if the 24 months of abandonment had taken place prior to the application for the building permit. Mr. O'Toole stated that when Mr. Tivnan took possession of the property, the Building Inspector at the time stated that the billboard had not been in use for a year. Mr. Tivnan had noted that there had in fact been a "for sale" sign on the billboard. However, the Building Inspector did not agree and distinguished between a sign and a billboard.

Mr. O'Toole noted that the prior owners had used the billboard in the previous two years.

Mr. O'Toole stated that his client is here to attest to the town being integrally involved in the non-use of the sign and then being the party that comes forward to say that the sign must be removed.

Mr. Foley stated that cutting the billboard just above the footings would not be cost prohibitive. By leaving the footings and removing the billboard would not cause problems with the structural integrity of the building.

Mr. Clarke asked if the applicant had a cost estimate for removing the sign. Mr. O'Toole stated that he could obtain one if necessary.

Mr. Clarke asked about the history of the usage of the sign; does the applicant have evidence of when the sign was last used as a billboard and is there a permit from the Outdoor Advertising Board prior to 1994.

Mr. Clarke stated, for the record, that prior to and at the time of the sale, the billboard was only being used for a "for sale" sign. Mr. Clarke stated that the "for sale" sign is allowed as an on-premise sign, this is not a billboard by definition. The "for sale" sign does not qualify as a billboard.

Mr. McLeod stated that if the billboard has not been used in the past two years then it has been abandoned. Mr. O'Toole replied it has not been used but only because Mr. Tivnan was precluded from using it because of the building permit.

Mr. McLeod noted that since 1994 the applicant has not applied for permits to use the billboard.

Mr. O'Toole read a letter from that the applicant was instructed to write in September 22, 1994.

Thomas Barry, Assistant Building Inspector, stated that the billboard has no other use other than as a billboard and it needs to be removed. He noted that it is an eyesore.

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

District 1 Town Councilor Gregory Shanahan urged the Board to uphold the opinion of the Building Inspector.

Sandra Gildea spoke on behalf of the North Weymouth Civic Association. She submitted pictures of the property. She noted the unsightly nature of the property.

Mr. Clarke stated that the issue at hand is about the billboard. No other issue is being discussed.

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

Mr. McLeod stated that it is his recommendation to deny the appeal in part. He stated that he does not see any compelling reason to require the removal of the sign as there is no imminent safety hazard.

Mr. Foley agreed with Mr. McLeod except that he believes that since there is no longer a use for the sign, it should be removed.

Mr. McLeod stated that it is not up to the Building Inspector to decide that there is no longer a use for the billboard. Mr. Tivnan has the right to apply for a variance before the Board of Zoning Appeals.

Mr. Foley made a MOTION to UPHOLD the decision of the Inspector of Buildings to take down the billboard. The MOTION was not seconded.

A MOTION was made by Richard McLeod to DENY the application's appeal and UPHOLD the Building Inspector's decision in part with respect to his determination that the billboard usage has been discontinued for a period of two years. However, he does not believe the town has the authority to order the removal of the billboard. The MOTION was seconded by Mary McElroy and PASSED on a 4-1 vote with Edward Foley opposed.

BZA CASE #2909 3 Manomet Road

Application of David and Lisa Richards for property at 3 Manomet, also shown on the Weymouth Town Atlas Sheet 7, Block 42, Lot 7, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51 and Table 1 for a deck within side yard setback area.

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. Richards stated that he has recently purchased this property. He stated that he is applying for a variance for a deck on the northeast portion of the house. A title search and drawing by the surveyor noted that structure did not meet the side setbacks. The history of the deck is that it was previously used as a deck for an above-ground pool. The pool was removed but the deck was not. Then an addition was added onto the back of the house so that it matched up with the deck.

He noted that the deck has been in place for 20 years. He stated that to remove the deck, which is 10' off the ground, would result in very steep stairs from the rear exit.

Mrs. Richards stated that when the bank performed a title search, this issue came back as a violation. They are required by the money lender to remedy this situation by either obtaining a variance or removing the deck.

Mr. Fuqua noted that the Building Department is now requiring decks more than 30" in height to conform to setbacks.

Mr. Fuqua also stated that there is a building permit from 2003 for the rear addition that does not show the deck.

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

Mr. Fuqua stated that it is possible that the deck is a pre-existing non-conformity, although there is no additional information available. He noted that the deck has been in place for many years and is in keeping with the character of the neighborhood. Also there is no additional encroachment on the abutting property.

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.

Due to the hardship created by the shape and topography of the lot and financial hardship, a MOTION was made by Charles Golden to APPROVE the request for a VARIANCE for a deck within side yard setback area. 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 Mary McElroy and was UNANIMOUSLY VOTED.

FINDINGS:

The Board found that due to the hardship created by the shape and topography of the lot and the financial hardship the VARIANCE for a deck within side yard setback area would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance.

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

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE for a deck within side yard setback area. 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 #2913 75 Robinswood Road

Application of John Fargo for property at 75 Robinswood Road, also shown on the Weymouth Town Atlas Sheet 49, Block 551, Lot 29, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51 and Table 1 to convert a front deck into a covered porch within side yard setback area.

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.

John Fargo appeared before the Board. He stated that he would like to build a roof over his front set of stairs. The roofline will encroach on the front yard set back.

Mr. Fargo stated that he put a second floor on the home in 2003.

The lot is on a corner of Robinswood Road and is triangular in shape. There is no rear yard to speak of. The roofline will be 12'8" from street.

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

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

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

A MOTION was made by Mary McElroy to APPROVE the request for a SPECIAL PERMIT to convert a front deck into a covered porch within side yard setback area. 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 Charles 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 to convert a front deck into a covered porch within side yard setback area. 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 #2910 1546 Commercial Street

Application of Helder Garcia for property at 1546 Commercial Street, also shown on the Weymouth Town Atlas Sheet 19, Block 253, Lot 35, located in a B-1 zoning district seeking a special permit and/or variance under Chapter 120-25 (c) for a drive thru service window.

The applicant has requested a continuance until September 20, 2006. The public hearing was continued without testimony or discussion.

A MOTION was made by Mary McElroy to APPROVE the request for a continuance until September 20, 2006 and was seconded by Charles Golden and UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL SEPTEMBER 20, 2006

BZA CASE #2912 Seabury Street

Application of Ryder Development Corporation for property at Seabury Street, also shown on the Weymouth Town Atlas Sheet 8, Block 115, Lots 6, 7, and 8, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51, Table 1, and 120-53 to allow an exception for lot size to subdivide three (3) lots into two (2) lots with approximately 13,000 square feet each.

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.

Gregory Galvin appeared before the Board with the applicant, Mr. Kenneth Ryder. Mr. Galvin stated that this is an application for a special permit as most of the lots in the neighborhood area are substantially smaller than that which is required by the current by-law. Most of the lots are under 10,000 square feet. Lots on Green Street are 10,000 to 16,000 square feet.

Each lot would have more than the required 120 feet of frontage, but the lots would be 13,000 square feet in area. Mr. Galvin noted that the lots are taxed as three (3) lots.

Mr. Galvin noted that Seabury Street is a paper street. Road conditions were issued by the Planning Board.

Mr. Galvin noted that there are a number of neighborhood residents present this evening. He also noted that the District 1 Councilor, Gregory Shanahan, is present. Councilor Shanahan has requested a neighborhood meeting. Mr. Galvin noted that his client was willing to do this and if the Board so desired, could take this matter under advisement this evening, after the residents have given their testimony.

Mr. Galvin stated that the application conforms to the special permit by-laws on Chapter 120-53 as an exception and the use is an appropriate use of the site. If the lots remain at three, one of the

lots would have over 200' of frontage. He noted that with two lots, each of them would have the necessary 120' of frontage. He noted that the use would not be detrimental to the present or future characteristic of the neighborhood as the surrounding lots are of similar size and shape.

Mr. Holzworth questioned who owns this property. Mr. Ryder noted that he owns it. Mr. Holzworth noted that the applicant could have subdivided the property further but has chosen not to do this.

The non-conforming status has been lost due to common ownership for over five (5) years.

Mr. Fuqua stated that the Planning Board issued roadway conditions in February of 2006. The Planning Board reviewed the plan that shows pavement, sewer, water, and storm drains. He also noted that Mr. Ryder has been asked to loop the water lines in the area.

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

- 1 Conservation Commission had no comment.
- 2 Health Department had no issues.
- 3 Police Department had no concerns.
- 4 Fire Department questioned the existence of a water main between Fairfax and Green.
- 5 DPW had no comments.
- 6 School Department had no special concerns.
- 7 Tax Department noted that there are several small outstanding tax payments due.

Mr. Fuqua stated that if the application is approved, proof of payment of taxes be required.

Mr. Foley noted that the one combined lot meets the minimum requirement of 25,000 square feet.

Mr. Ryder stated that he has tried to do the right thing to create a neighborhood that is in keeping with the surrounding area. He noted that he was looking to keep the lots in keeping with the existing character.

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

District 1 Councilor Gregory Shanahan spoke before the Board. He noted that he is present to help to advocate for his constituents. He noted that he would like to see a neighborhood meeting before a meeting is held.

Mike Vaughn, 8 Seabury Street, addressed the Board. He stated that he feels the lot sizes are too small. He noted that the current minimum lot requirement is 25,000 square feet. He suggested that many of the lots were built when the minimum lot size was 15,000 square feet.

Diane Mahoney, 84 Green Street, wanted to clarify that her driveway would be re-built as part of the project. She is concerned about water run off.

Jean Stevenson stated that she lives on Call Road. Mrs. Stevenson asked if Seabury will come out to Call Road.

Jeanine Pierce stated that she lives on the end of Call Road. She noted that there is a natural spring that exists in the area. She is concerned about the potential creation of flooding. Mr. Ryder noted that he would only be installing a hydrant and an 8" water main along Call Road.

Mr. Ryder stated that Seabury Street will end with a cul de sac and will not connect to Call Road.

A MOTION was made by Mary McElroy to CONTINUE the public hearing until September 20, 2006 and was seconded by Edward Foley and UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL SEPTEMBER 20, 2006

MINUTES – 7/19/06, Case # 2906, 2907, 2908

A MOTION was made and seconded to approve the Minutes of July 19, 2006, Case # 2906, 2907 and 2908 and was UNANIMOUSLY VOTED.

Mary McElroy, Clerk

Date