

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
AUGUST 24, 2005**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, August 24, 2005, at 7pm 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 Kemal Denizkurt
Staff:	James Clarke, Director of Planning & Community Development
Recording Secretary:	Janet Murray

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

**BZA CASE # 2858 30 Unicorn Avenue**

Application of Brenda H. Kowalski for property at 30 Unicorn Street, also shown on the Weymouth Town Atlas Sheet 14, Block 189, Lot 22, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40, 120-51 & Table 1 and to reaffirm to allow subdivision of one lot into two lots, the lots were previously separated by Board of Appeals Case 1575 of 1977.

David Lane spoke on behalf of Mrs. Kowalski. He stated that his client realized in 2002 that the variance from 1977 had lapsed. The applicant had filed a subdivision plan in 1977 but a new home was not built. The lot has been assessed as two separate buildable pieces of property. The applicant has assumed, for these past 30 years that the second lot, which is vacant, was in fact buildable. They have counted on this as a means of financial support for their retirement.

Mr. Lane noted that the request is to reinstate the variance that was approved in 1977 and a special permit. He also noted that the dwelling would be built to the rear of the property where the 120 foot frontage would exist at the building line.

It was noted that a previous application for a variance was withdrawn without prejudice in 2002. There have been no changes in ownership since that time. Mr. Lane had a copy of a 2002 tax bill which showed the properties taxed separately.

Mr. Lane also asked that the Board take into consideration, for the special permit request, the fact that the lot is larger and it conforms to the typical lot size in the neighborhood.

James Clarke stated the application was routed to various Town Departments and received the following comments:

- Conservation Commission noted that there is a stream at the rear of the property. Work within 100 feet of the stream and/or any adjacent wetlands must be approved by the Conservation Commission. A notice of intent will need to be filed.
- Health Department had no objections
- Police and/or Fire had no issues or concerns
- DPW (Water, Sewer, and Engineering) Engineering noted that the building address will be assigned when the building permit plan is submitted.
- School Department had no special concerns.
- Tax Department noted that the taxes are current.

Mr. Clarke stated that there was concern, in 1977, about ledge on the property to the southwest corner, and this is why the subdivision line was drawn close to the existing house and the layout for the driveway was next to the house. The existing house and the new house lot appear to have 120' at the building line. The issue may have been the distance from the lot to the side of the house. The lot line has not change. What has changed is that the lots were recombined because of common ownership.

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

Michael Clark of 34 Unicorn Avenue stated that he is an abutter and is concerned about additional water run off, water and sewer capacity, and the already existing low water pressure in the neighborhood. He submitted photographs for the Board's inspections. Mr. Clark noted that parcel A has had land taken from it, by eminent domain by the MBTA, thus making the lot smaller. Ledge is also a concern as this property's foundation is pinned to the existing ledge. Exactly what type of development will be built on this property is a concern. He stated that he would like to see any submitted plans before a decision is made. Mr. Clark submitted a letter relating to his concerns to the Board.

Rosella Cicchese of 958 Commercial Street stated that she agrees with Mr. Clark. She noted that there are presently six (6) driveways in the immediate area of this property.

Donald Holzworth stated that he would like to see provisions of common ownership as well as the history of the property. He noted that if the property is taxable, then it is buildable. If it is not taxable, then it is not buildable.

Edward Foley stated that he would like to see the placement of the foundation and the location of the driveway on the plans.

Kemal Denizkurt recommended that a new plot plan be submitted before a decision is made.

A MOTION was made by Edward Foley to CONTINUE the public hearing until September 21, 2005 and was seconded by Mary McElroy, and was UNANIMOUSLY VOTED.

**HEARING CONTINUED UNTIL SEPTEMBER 21, 2005**

**BZA CASE # 2859 8 Mayflower Avenue**

Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Mary McElroy, Clerk  
Donald Holzworth  
Chuck Golden

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.

Application of Charles Belliveau for property at 8 Mayflower Avenue, also shown on the Weymouth Town Atlas Sheet 2, Block 5, Lot 8, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 to enclose a deck part of which lies within the setback area.

The applicant stated that he would like to enclose an existing deck and create a three-season porch. He noted that the one side of the deck is already within the 10 foot setback requirement. He informed the Board that he would not further encroach upon the setback as he intends to build on the existing footprint of the deck. The nonconforming use of this property will not be increased.

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

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

Mr. Slattery, a neighbor with abutting property to the applicant, submitted a letter which stated that he did not object to the project.

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

A MOTION was made by Edward Foley to APPROVE the request for a SPECIAL PERMIT to enclose a deck part of which lies within the setback area and was seconded by Mary McElroy 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.

**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 enclose a deck part of which lies within the setback area.

**BZA CASE # 2862 28 Cranch Street**

Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Mary McElroy, Clerk  
Donald Holzworth  
Chuck Golden

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.

Application of David & Deborah Deveau for property at 28 Cranch Street, also shown on the Weymouth Town Atlas Sheet 29, Block 337, Lot 23, located in an R-1 zoning district seeking a variance under Chapter 120-51 and Table 1 to put an addition, part of which extends into the front setback.

The applicants would like to add an addition and porch to their existing home. There is nowhere else on the property to place the addition. Last year, the property was tied into town sewer to the rear, westerly portion of the lot. Also, ledge is present on the property.

The porch would be 16 feet off the front setback instead of the 18 feet required.

The shape and topography of the lot create a hardship in placing the addition and porch anywhere else. The property is located at a curve in the road and the property is steep.

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

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

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

Due to the hardship created by the shape of the lot and the curve in the road, a MOTION was made by Edward Foley to APPROVE the request for a VARIANCE to put an addition, part of which extends into the front setback and was seconded by Mary McElroy and was UNANIMOUSLY VOTED.

**FINDINGS:**

Due to the hardship created by the shape of the lot and the curve in the road, 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.

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE to put an addition, part of which extends into the front setback.

BZA CASE # 2861 20 Pond Street

Present: Richard McLeod, Chairman  
Edward Foley, Vice-Chair  
Mary McElroy, Clerk  
Donald Holzworth  
Chuck Golden

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.

Application of Good Earth LLC for property at 20 Pond Street, also shown on the Weymouth Town Atlas Sheet 49, Block 555, Lot 11, located in an R-2 zoning district seeking a special permit and/or variance under Chapter 120-40 and 120-51 to raze an 8 unit building and construct a 6 unit building.

James Clarke stated the application was routed to various Town Departments and received the following comments:

- Conservation Commission noted that the proposed work is outside of its jurisdictional area.
- Health Department had no comment.
- Police noted that the sidewalk on Pond Street should be repaired as necessary.
- DPW (Water, Sewer, Engineering) had the following comments. Water services are to be 1" "k" copper services. Water mains are to be D.I cement lined AWWA class 52. All valves and hydrants open "RIGHT". Sewer Department noted that the plans show sewer lateral to property line as existing 8" PVC, when the town's notes show that it is 6" PVC. The sewer lateral should be 6" PVC. Highway/C&M Division/DPW Director and Engineering Division noted that no work is allowed in Pond Street layout (street or sidewalk) after new pavement is installed by Mass Highway. SMH must be DPW standard. It was noted that work on Pond Street to the property line for service connections has already been completed.
- School Department had no special concerns.
- Tax Department had no comment.

Donald Holzworth questioned the Floor/Area ratio. He noted that the plan only shows the FAR for the first floor. Mr. Clarke stated that the FAR is calculated on the entire square footage.

Rob Thompson stated that the FAR was calculated on the footprint of the building.

Mr. Holzworth noted that the plans, as shown exceed the FAR by as much as 60%. He also questioned lot coverage and he stated a variance is needed. Mr. Clarke stated that the lot coverage is covered under non-conforming use of an existing dwelling, as opposed to a vacant lot.

Mr. Holzworth stated that the plan shows that the lot has been an eight unit building. The property is assessed as an eight unit dwelling, however the building records show it as having five units.

Edward Foley questioned the parking in the front of the lot. Mr. DiFazio stated that there is a development at 21 Pond Street.

Andrew Kravitz stated that the parking at his property at 21 Pond Street starts at the street. He stated that his lot is 67,000 square feet. The lot at 20 Pond Street is 14,000 square feet.

Mr. DiFazio stated that in the 1950's there were five units when it was sold. The Assessor's Office noted that there were 4-8 units.

The existing building is 45 x 60. The building physically measures 8100 square feet.

The proposed building would have 720 square feet per floor. The third floor is for storage and is not included. The basement is only 5'6" high and used for mechanicals.

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

Gwen Carbone stated that she is the daughter of the former occupant/owner. She stated that there were six units, and one studio, but the property was taxed on eight units.

Michael Smart, District 6 Councilor, stated that this project is too much and is not a good fit for the neighborhood. He also noted that the parking is right up in the front. He questioned if there is space for visitor parking. The attic being used as a bedroom is another concern. The town records show six bedrooms and five baths. He noted that the appearance of the large building would be detrimental to the character of the neighborhood. He expressed concern about the use of the attic area as living space.

Mr. Smart questioned why this application is for a special permit. Mr. DiFazio stated that this is a request for a change of a non-conforming use.

Mr. Thompson stated that two more parking spaces could be created but this would result in less landscaping.

Cheryl Taylor stated that the number of units is too much and this will contribute to already existing traffic congestion. She noted that she is a member of the Pond Plain Civic Association but is not speaking for the Board of that association.

Richard McLeod questioned that since the building is being demolished, not being extended or changed, is the dwelling now required to conform to current zoning standards. Mr. Clarke stated that the regulations do not talk about the building, but about use. The use is for that piece of

land, which is a nonconforming use by virtue of the fact that there are multiple units there. The site is a nonconforming site.

Mr. Foley stated that he is concerned that the use of the attic space as living area could impact the parking situation. He also stated that the project is too dense. He would like to see the number of units reduced.

Mr. Thompson stated that the 3<sup>rd</sup> floor could be constructed so that the ceiling height is less than seven feet to make it for storage only.

In response to Mr. Foley's question regarding parking on the side of the property, Mr. Clarke stated that this would create a problem for access. With the parking in the front, there could be 3-4 foot ornamental fencing along the front as well as having the units staggered.

Councilor Smart asked if the property will be classified as a condominium complex. The units will be sold as individual units for sale. He questioned the number of curb cuts. There are two.

Mr. DiFazio stated that the applicant is willing to continue the hearing and return with a revised plan with five units.

Mr. Clarke stated that the revised site plans showing a reduction in units, as well as fencing detail and the lowered loft height, would need to be in the Planning Office by September 1, 2005 in order for the continued hearing to be held on September 7, 2005.

A MOTION was made by Edward Foley to CONTINUE the Public Hearing until September 7, 2005 and was seconded by Mary McElroy and UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL SEPTEMBER 7, 2005.

**BZA CASE # 2860 46 Park Avenue**

Present:	Richard McLeod, Chairman
	Edward Foley, Vice-Chair
	Mary McElroy, Clerk
	Donald Holzworth
	Chuck Golden

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.

Application of Theodore R. Hawkes for property at 46 Park Avenue, also shown on the Weymouth Town Atlas Sheets 41 & 45, Block 491, Lots 24 & 21, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 and 120-51 to expand an existing nonconforming business.

Attorney Gregory Galvin represented the applicant before the Board. Mr. Galvin noted that the Park Avenue Market has been in existence since 1928. It is an existing nonconforming use.

Mr. Galvin stated that the applicant would like to expand onto the rear parcel which is held in common ownership. The parking requirements have been met.

It was noted that hoe ramming and/or blasting will be required as there is a rock out cropping. A blast survey has already been completed. Stone removal will be done by Graziano in Braintree.

Mr. Galvin noted that Mr. Hawkes had contacted all of the abutters and that there were no concerns. The lack of residents present in the audience tonight would indicate that there are no major concerns with this project.

The roof will be sloped to prevent individuals from jumping to the roof from the rock outcropping. The distance from the roof to the rocks is about 5 feet.

Donald Holzworth pointed out that there is a grade discrepancy on the plans. The new loading dock is noted at 155' yet the existing building is at 151' and only one level is planned.

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

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

Mary McElroy stated that she had spoken with David Chandler who expressed his appreciation for all that Mr. Hawkes has done for the community.

Mr. Clarke questioned if there were to be any changes to the drainage. It was noted that the existing drainage system will be used. The plans show the drainage flowing to the west and the elevation at 151', 154, and 155'. Obviously water does not flow up hill.

In order to clarify the grade discrepancy, it was suggested that the public hearing be continued. Mr. Galvin agreed to have new plans into the Planning Office by September 1, 2005.

A MOTION was made by Edward Foley to CONTINUE the Public Hearing until September 7, 2005 and was seconded by Mary McElroy and UNANIMOUSLY VOTED.

HEARING CONTINUED UNTIL SEPTEMBER 7, 2005

**Minutes - 7/26/05**

A motion was made and seconded to approve the minutes of July 26, 2005.

**Approved:**

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Mary McElroy, Clerk

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Date