

BOARD OF ZONING APPEALS
RECORD OF MINUTES AND PROCEEDINGS
August 27, 2008

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, August 27, 2008, at 7:00pm at Town Hall Council Chambers, 75 Middle 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 and 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.

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| Present: | Edward Foley, Vice-Chair Mary McElroy, Clerk Donald Holzworth 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.

Attorney Gregory Galvin appeared before the Board on behalf of the applicant. David Baker, Bruce Babcock and Michael Meglio were also present.

Mr. Galvin stated that this hearing is a continuation of this matter as the Board was waiting for information from the Town's traffic consultant. The applicant was asked to meet with the state's highway engineer. This meeting has occurred and the applicant has further proposals to add to the request.

Mr. Meglio spoke regarding changes to the traffic. He stated that turning counts were taken at the two intersections on Main Street, the Washington Street, BJ's, and West Lake Drive/Cynthia Circle intersections. The projected additional traffic as a result of the construction of this project was studied.

Mr. Meglio stated that the plan still calls for the site to revert to a two way traffic flow at both the Main and Washington Street intersections.

Mr. Meglio reviewed the various intersections. He state that there is no significant intersection degradation, however, some intersections actually see improvement.

Mr. Meglio noted that the Level of Service (LOS) is based on the number of seconds a vehicle waits to make a turn. He pointed out that the Main Street intersection improved from a 7-10

minute to a 1 ½ minute wait. He did note that the Washington Street intersection will drop from an LOS C to an LOS D as will the Cynthia Circle/West Lake Drive intersection. He stated that the change in the waiting time is actually only 3 additional seconds. The BJ's intersection will remain an LOS F.

Mr. Meglio stated that with the build scenario the overall traffic flow in the area will be improved.

Mr. Galvin stated that the applicant is no longer seeking a drive through on the smaller building. The buildings will be commercial in nature.

Mr. Foley asked about the cost of improvements to Route 18 to add the turning lanes. Mr. Baker stated that the cost would be born by the applicant as a private request. He stated that based on MassHighway Department (MHD) requirements he estimated that it would cost between \$50,000 and \$80,000 dollars for both streets

Mr. Baker stated that there had initially been concern that there was a moratorium on this type of work; however MHD has since determined that no such moratorium exists at this time.

Mr. Fuqua stated that the applicant has kept in contact with the town's traffic engineer. MHD has noted that there is no moratorium on this type of work

Mrs. McElroy asked about the distance that the smaller building will be from Washington Street. Mr. Baker stated that the set is 60 feet from the street and conforms to the town's zoning by-laws.

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

Councilor Arthur Mathews stated that he was invited to the MHD meeting. Although he was unable to attend, he expressed appreciation for the invitation. Councilor Mathews asked about the estimated amount of space for the turning lanes and if this amount included land takings. Mr. Baker stated that there are no land takings planned.

Mr. Fuqua stated that the town's engineer had looked at the information and confirmed that all work would be done within the right of way.

Councilor Mathews expressed concern regarding traffic after that traffic leaves the applicant's site. He asked that the Board consider mitigation off site; specifically along Washington Street.

Councilor Mathews pointed out that the residents of West Lake Drive and Cynthia Circle were not notified because they are not direct abutters to the plaza.

Mr. Foley stated that he would like to see the estimated amount for the MHD work be placed in escrow.

Mr. Baker stated that there has not been a public meeting with the neighborhoods surrounding the plaza. He pointed out that the applicant had followed the town's requirements for

notification. He also stated that there was a three second increase in the timing which is what pushed the Cynthia Circle/West Lake Drive grade from a C to a D.

Councilor Mathews suggested that after the project is completed that another traffic study be completed.

Mrs. McElroy asked the applicant to meet with the neighbors of the surrounding area, suggesting that Councilor Mathews help to arrange the meeting.

Mr. Galvin stated that a letter was sent out on May 19, 2008 in regards to this matter.

Bill Parr, 21 Henderson Street, stated that his street is directly across from the Main Street exit closest to McDonalds. He stated that taking a left from Main Street to Henderson Street. Mr. Parr stated that he is thrilled with the work that has been

Mr. Meglio stated that there will be a middle/ third turning lane.

Mr. Foley pointed out that MHD engineers have looked at this situation and it would appear that this scenario is the best possible one. He stated that the applicant has looked at what the town has asked them to look at; Washington Street and Main Street. He pointed out that supplemental traffic studies were done on 8/18/08 and 8/26/08. The town's engineer agreed with MHD and the applicant that this mitigation is appropriate.

Mr. Foley stated that he is optimistic that these changes would help to ease the situation.

Mr. Parr stated that he does not believe that the turning lane will alleviate the turning problems that currently exist at Henderson Street. He stated that he will be unable to get into the turning lane as there will be cars turning left into the plaza.

Mr. Foley asked the applicant to agree to placing funds in an escrow account.

Mr. Baker stated that he would be willing to escrow an amount once a final cost is determined. He stated that he did not object to this being a condition of the approval of the applicant.

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

A MOTION was made by Mrs. McElroy to take this matter UNDER CONSIDERATION and was seconded by Mr. Golden and UNANIMOUSLY VOTED.

BZA CASE #3021 7 Caldwell Street

Application of John Desmond for property at 7 Caldwell Street, also shown on the Weymouth Town Atlas Sheet 2, Block 5, Lot 14, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-51, Table 1, and 120-40. The applicant is requesting relief from the zoning dimensional regulations for the proposed project. The lot is a pre-existing and non-conforming property of 2,800 square feet total area. The proposal is for the demolition of all structures on the lot and replacement with a single structure that attempts to improve the conformity of the lot to the zoning requirements of the R-1 district.

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

John Desmond appeared before the Board along with Mr. Hartel, the homeowner. The plan is to tear down and reconstruct the dwelling at 7 Caldwell Street. Photographs were submitted to show the property's current condition. Mr. Desmond noted that this is a pre existing, non-conforming.

The lot size is 70 foot by 40 foot (2800 square feet) and does not meet zoning requirements. The lot coverage is approximately 1400 square feet or 50% of the lot consisting of the house, decks, and a guest house. This proposal would reduce the coverage to 42% as all existing buildings would be removed from lot and one dwelling constructed.

Mr. Desmond stated that the right side dimension for the foundation listed as 30.7 feet should be 38 feet.

The front setback remains the same at 11.4 feet (currently extends into street layout). The side setback 1.9 feet would increase this setback to 3 feet. The reason for this is to be closer than 3 feet would require expensive fire proofing material. The right setback would remain unchanged. The rear setback would be reduced from 27.9 feet to 20 feet. The building footprint would be 27 feet wide by 38 feet deep.

The property is approximately 100 years old. The owner would like to construct a more energy efficient, economical dwelling.

The proposal calls for moving the foundation. Additional height to the property is due to past flooding issues.

All existing structures will be demolished and all building materials will be removed and disposed of off site.

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

- Conservation Commission noted that this property is not within its jurisdiction.
- Health Department had no comment.
- Police Department had no issues.
- Fire Department had no comments.
- DPW (Water, Sewer, Engineering, Highway) suggests that the utilities be reviewed during the building permit process.

- School Department has no special concerns.
- Tax Department noted that first quarter 2009 taxes have not been paid.

Mr. Fuqua stated that if this building were damaged, they would be coming in for a special permit to rebuild. In this case, the building is still standing, but evidence has been submitted showing that the building is in poor condition. Attempting to rehabilitate this building is not practical. The request is for a variance from 120-51 on the setback.

The new building will not have a deck that extends into the right of way. There is an existing dwelling with guest house in the rear. The guest house will be removed. He noted that a guest house could potentially be problematic in the future as it could become an illegal apartment.

Mr. Fuqua stated that the hardship is based on the size of lot and the existing development within the lot. If the setbacks on the side are reduced the lot would be narrow.

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.

Mr. McLeod stated that he is reluctant to approve this request for a variance although he intends to vote in favor of it. He stated that the lot is small but the special circumstance of this application is that the guest house is being removed and the house is being rebuilt in a way that will improve the property.

A MOTION was made by Mr. Foley to APPROVE the request for a VARIANCE for relief from the zoning dimensional regulations for the proposed project with the following conditions:

- (1) Proof of payment of all municipal fees have been paid in full.
- (2) The guest house is removed from the plan.
- (3) All utilities are to DPW specifications.
- (4) The plot plan to be revised to show proper dimensions of 38 feet on the northerly side setback.

The lot is a pre-existing and non-conforming property of 2,800 square feet total area. The proposal is for the demolition of all structures on the lot and replacement with a single structure that attempts to improve the conformity of the lot to the zoning requirements of the R-1 district.

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.

Mr. McLeod noted, for the record, that as the applicant will be removing the guest house, he will vote in favor of this application.

FINDINGS:

The Board found that the VARIANCE would not derogate from the intent and purpose of the Zoning Ordinance, and the requested relief could be granted without substantial detriment to the public good nullifying or substantially derogating from the intent and purpose of the Ordinance.

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

DECISION OF THE BOARD:

The Board was familiar with the site and had the benefit of a plan. The majority of the members had viewed the site in question. Due to the above findings, it was UNANIMOUSLY VOTED to APPROVE the request for a VARIANCE requesting relief from the zoning dimensional regulations for the proposed project with the following conditions:

- (1) Proof of payment of all municipal fees have been paid in full.
- (2) The guest house is removed from the plan.
- (3) All utilities are to DPW specifications.
- (4) The plot plan to be revised to show proper dimensions of 38 feet on the northerly side setback.

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 #3020 1215 Washington Street

Application of Stephen Gosselin, Inc. for property at 1215 Washington Street, also shown on the Weymouth Town Atlas Sheet 35, Block 447, Lot 1 located in an B-1 zoning district seeking a special permit and/or variance under Article VIII, Chapter 120-27C & Article XIII, Chapter 120-40 to extend the non-conforming use by converting the second floor of the 2 car garage into a residence. The main building is currently used as a residence with adequate parking and open space.

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 Galvin appeared before the Board along with the applicant Mr. Gosselin. He stated that the applicant is looking for a special permit to construct an apartment over an existing garage. There will be no outside changes to the structure. Mr. Galvin stated that the lot is 12,000 square feet and he believes that the plan shows adequate parking.

Mr. Galvin noted that staff had expressed concern regarding the 48 foot driveway opening. The applicant has reviewed this concern. Mr. Galvin presented a plan to the Board to decrease the width of the opening. The applicant is proposing to add 8 feet of curbing in the area closest to Washington Street and 12 feet of curbing on the other side. This will reduce the opening to 26 feet to provide a safer means of entering and exiting the driveway and parking area. There is a sidewalk that runs both on Pleasant Street and Washington Street.

Mr. Galvin stated that there are dwellings in the main building. The property alongside this building is the Elks Halls. The property across Washington Street is a small strip mall. The property across Pleasant Street is also a strip mall. He noted that when you travel up Pleasant Street there are residences. He pointed out that this area is a mixed use area.

Mr. Foley asked if anyone is living in this space now. Mr. Gosselin stated that there is not. He stated that there are two other units in the building.

Mr. Foley asked about a construction vehicle that is currently parked on the site. Mr. Gosselin stated that a tenant owns a tile company.

Mr. Kenneally asked why there are three mailboxes. Mr. Gosselin stated that there is an owner's mailbox.

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

- Conservation Commission noted that the lot is outside its jurisdiction.
- Health Department had no concerns.
- Police Department had no comment.
- Fire Department had no comment.
- DPW (Water, Sewer, Engineering, Highway) suggested that the copper service be upgraded.
- School Department had no special concerns.
- Tax Department noted that there are outstanding water and sewer fees due.

Mr. Galvin stated that there are three units with ten parking spaces provided. He pointed out that only six spaces are required. He did note that spaces number 7 and 8 are stacked. Mr. Galvin

stated that he had instructed the applicant to show what the maximum available parking was for the site.

Mr. Foley asked if any vehicles are currently parked in the garage. Mr. Gosselin stated that the space is not currently in use. It will be used for parking for the unit above and for storage.

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

Councilor Mathews stated that he did not receive any notice of opposition.

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 extend the non-conforming use by converting the second floor of the 2 car garage into a residence. The main building is currently used as a residence with adequate parking and open space with the following conditions:

- (1) All municipal fees are paid in full.
- (2) No commercial vehicles unless allowed by Section 120-12.B. are to be parked in the outside spots so that the property maintains a residential feel.
- (3) A one (1) ton limit on vehicles parked on the site as per town ordinance– the existing tenant will park his commercial vehicle in the garage or in space number 7 as shown on 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 Mrs. 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.

- (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 extend the non-conforming use by converting the second floor of the 2 car garage into a residence. The main building is currently used as a residence with adequate parking and open space with the following conditions:

- (1) All municipal fees are paid in full.
- (2) No commercial vehicles unless allowed by Section 120-12.B. are to be parked in the outside spots so that the property maintains a residential feel.
- (3) A one (1) ton limit on vehicles parked on the site as per town ordinance– the existing tenant will park his commercial vehicle in the garage or in space number 7 as shown on 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.

MINUTES – 7/23/08

A MOTION was made and seconded to APPROVE the Minutes of July 23, 2008 and was UNANIMOUSLY VOTED.

ADJOURNMENT

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

Mary McElroy, Clerk

Date