

**BOARD OF ZONING APPEALS  
RECORD OF MINUTES AND PROCEEDINGS  
SEPTEMBER 21, 2005**

The Board of Zoning Appeals of the Town of Weymouth held a public hearing on Wednesday, September 21, 2005, at 7:00pm at McCulloch Building, Whipple Center Conference Room, 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  
                                 Chuck Golden  
                                 Kemal Denizkurt

Not Present:                Donald Holzworth

Staff:                        James Clarke, Director of Planning & Community Development  
                                 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 CASE #2858 30 Unicorn Avenue (cont.)**

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

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.

This is a continuation of a Public Hearing held on August 24, 2005.

Mr. Clarke informed the Board that the Building Inspector has determined that the vacant lot is buildable. He noted that the MBTA land taking does not affect setbacks and/or dimensional requirements as a Town by-law exempts land taken for public purposes from these requirements. Therefore there is no need to go forward with this request for a special permit and or variance. The applicant is asking to withdraw this application without prejudice.

An abutter who spoke at the previous meeting was informed of the reasoning behind this decision.

## BZA Meeting - September 21, 2005

Mr. Foley questioned if the owner was paying taxes on two separate lots. Mr. Clarke stated that the lots were billed separately.

A MOTION was made by Edward Foley to APPROVE the request for to WITHDRAW WITHOUT PREJUDICE the request to reaffirm to allow subdivision of one lot into two lots, the lots were previously separated by Board of Appeals Case 1575 of 1977 and was seconded by Mary McElroy and was UNANIMOUSLY VOTED.

### **PETITION WITHDRAWN WITHOUT PREJUDICE**

#### **BZA CASE #2866 170 Southern Avenue**

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

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 John and Tiara Tracy for property at 170 Southern Avenue, also shown on the Weymouth Town Atlas Sheet 40, Block 486, Lot 7, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40, 120-51 & Table 1 to construct 18' x 22' family room with 16' x 20' deck within side yard setback area.

This is a request for a special permit and a variance. The applicant would like to build an addition with a deck. The only possible location is off the kitchen as there is a significant amount of ledge and a boulder on the site going from the left side of the property around to the back.

The existing structure is approximately 8.41 feet from the property line. Mr. Fuqua noted that anything built up to 8.41 feet would require a special permit, but the proposed addition will further encroach on this setback, therefore a variance is also required. The new addition will come within 6.8 feet of the property line.

The building maintains parallel side lines. The building is stepped back from the side as the applicant has taken the opportunity where possible to keep stepping back further from the lot line.

It was noted that there is a town owned sewer easement and Paper Street abutting the property to the south.

## BZA Meeting - September 21, 2005

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

- Conservation Commission noted that this project may be outside of the Conservation jurisdiction. A closer inspection will be made when the Building Permit is applied for.
- Fire Department noted that 110V smoke detection is recommended throughout if not currently equipped. This will be reviewed when the Building Permit is applied for.
- DPW
  - Water, Highway, Engineering Departments had no comment.
  - Sewer Department recommended replacing the existing 5" AC sewer connection with 6" PVC. It was also noted that mitigation fees may be required.
- School Department had no special concerns.
- Tax Department noted that there are no outstanding taxes.

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.

### Special Permit

A MOTION was made by Edward Foley to APPROVE the request for a SPECIAL PERMIT to construct 18' x 22' family room with 16' x 20' deck within side yard setback area as 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.

### Variance

Due to the hardship created by the topography of the lot and the presence of ledge and boulder on the northerly side of the property, a MOTION was made by Edward Foley to APPROVE the request for a VARIANCE to construct 18' x 22' family room with 16' x 20' deck within side yard 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.

## BZA Meeting - September 21, 2005

- (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 18' x 22' family room with 16' x 20' deck within side yard setback area.

### BZA CASE # 2867 24 Mutton Lane

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

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 Joseph Ciarlone, Trustee, RAJO Trust for property at 24 Mutton Lane, also shown on the Weymouth Town Atlas Sheet 35, Block 444, Lot 19, located in an R-1 zoning district seeking a special permit and/or variance under Chapter 120-40 for extension or change of nonconforming use.

Attorney David Kelley represented the applicant before the Board. He noted that this is a request for a special permit. Mr. Kelley noted that there will be no change in the footprint or height of the existing building. However, two garage door openings will be created in the rear of the building. Past usage of this site was discussed. This is a non-conforming use in an R-1 zone.

The existing tenant's lease expires on 12/31/05. Two letters were entered into the record. The first is from the current tenant, Hydro Services, a receiving and warehouse company, indicating that they will vacate the premises. The second letter is from the owner stating that the property is for sale and is under agreement with Mr. Ciarlone subject to tonight's decision.

Mr. Kelley stated that the proposed use would involve the storage of contractor material, vehicle parking, and light carpentry. Deliveries would be by the company only. He noted that there are existing loading docks for tractor trailer, which would be removed. There will be no retail usage. No customers or clients will visit this site.

## BZA Meeting - September 21, 2005

The parking would be for employee vehicles during the day, and company truck parking overnight. An employee would arrive in the morning, leave his personal vehicle, and take a company vehicle out for the day.

There was an informational meeting held last night at which the neighbors requested that the stockade fence be repaired or replaced.

Scott Arnold spoke for the applicant. He stated that the site is located at the corner of Mutton Lane and Lakehurst Avenue, to the rear of Brad Hawes Park. He noted that there is currently a 4 foot chain link fence atop a 4 foot stone wall. Along the property line with the park, there is a dilapidated stockade fence.

Mr. Foley noted that more pavement would be added, thus increasing the impervious area. Mr. Arnold noted that a catch basin and dry well would be added for drainage. Currently there is no parking area.

It was noted that the parking easement for the abutter will be maintained.

Eight commercial vehicles would be parked on site, overnight. These would be light trucks/vans. These trucks would deliver items from the Washington Street site to the Mutton Lane site. The number of parking spots requested for approval is eight (8) for company vehicles and two (2) for the abutter's easement.

There will be no heavy equipment, planing, or spray booths. There will be a dumpster to be used for excess scrap. The work hours will be from 7am to 6pm.

Mrs. McElroy questioned if there had been any concerns with Mr. Ciarlone's operations in the past. Mr. Fuqua responded that there had not been any.

James Clarke stated that there should be a sump in the catch basin. This diagram should be noted on the plan. Grading also needs to be added to the plan. The plans should show that the runoff is directed towards the catch basin.

There will be no additional lighting. Any additional signage would be erected in accordance with the required permitting process. There will be no free standing sign. A wall sign would be added.

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

- Conservation Commission noted that this request does not affect resource areas.
- Health Department had no comment.
- Police Department had no issues.
- Fire Department recommended a fire detection system. This will be reviewed as part of the Building Permit process.

## BZA Meeting - September 21, 2005

- DPW
  - Water, Sewer, and Highway Departments had no comments.
  - Engineering Department noted that the proposed plan shows an increase in impervious area and a proposed catch basin and drywell. It was noted that the proposed pavement should be graded to ensure that all runoff from the proposed pavement is directed toward the proposed catch basin.
- School Department had no special concerns.
- Tax Department noted that there are no outstanding taxes.

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

Linda Donovan of 20 Mutton Lane stated that she is the abutter with the parking easement. Ms. Donovan was reassured that the easement for two parking spaces will remain intact.

It was noted that the applicant does not currently have a parking plan to submit.

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 for extension or change of nonconforming use as 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.

And the following conditions will be met:

- Parking easement will be maintained. Parking is allowed for these two (2) spots and eight (8) company vehicles for a total of ten (10) spaces.
- Catch basin – sump pump will be installed.
- The property is to be graded to direct the water runoff toward the catch basin.
- The hours of operation will be from 7am – 6pm. There will be no power equipment use prior to 8am.
- The stockade fence will be replaced.
- There will be no additional lighting.
- There will be no 18-wheel vehicles used for deliveries.
- There will be no free standing sign.

The MOTION 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.

- (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.

And the following conditions will be met:

- Parking easement will be maintained. Parking is allowed for these two (2) spots and eight (8) company vehicles for a total of ten (10) spaces.
- Catch basin – sump will be installed.
- The property is to be graded to direct the water runoff toward the catch basin.
- The hours of operation will be from 7am – 6pm. There will be no power equipment use prior to 8am.
- The stockade fence will be replaced.
- There will be no additional lighting.
- There will be no 18-wheel vehicles used for deliveries.
- There will be no free standing sign.

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 extension or change of nonconforming use with the following conditions:

- Parking easement will be maintained. Parking is allowed for these two (2) spots and eight (8) company vehicles for a total of ten (10) spaces.
- Catch basin – sump will be installed.
- The property is to be graded to direct the water runoff toward the catch basin.
- The hours of operation will be from 7am – 6pm. There will be no power equipment use prior to 8am.
- The stockade fence will be replaced.
- There will be no additional lighting.
- There will be no 18-wheel vehicles used for deliveries.
- There will be no free standing sign.

BZA CASE # 2868 992 Middle Street

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

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 Falconi Realty Co., Inc. for property at 992 Middle Street, also shown on the Weymouth Town Atlas Sheet 37, Block 431, Lots 6, 7 and 14, located in an R-4 zoning district seeking a special permit and/or variance under Chapter 120-21.1.B. for expansion of a commercial property on a lot with an area greater than 40,000.

Attorney Gregory Galvin represented the applicant before the Board. Mr. Galvin noted that Mr. Doug Fields the engineer from Merrill Associates and the architect, Scott Town from DRL Associates, were also present.

Mr. Galvin stated that this is an application to access a portion of the applicants recently acquired property from the Commonwealth of Massachusetts. This is a portion of lot 14, block 431 on the assessors map. Mr. Falcone would like to add this to the existing commercial property that fronts on Middle Street, which is block 431 and lot 7. This change would allow for a better traffic flow around the building as well an addition for more retail space. Mr. Galvin noted that this is a permitted use in the R-4 zone under section 120-20 (f). However, under 120-21.1 (b) because the land area is in excess of 40,000 square feet, a special permit is required.

Mr. Fields made a presentation to the Board of the existing conditions on the lot. He noted that the curb cuts will remain the same. There is currently a 15' right of way. The circulation will be changed for two way traffic around the rear of the building. The right of way will be increased to 20'. This is where the truck unloading bay is. This bay measures 15' x 55'. (14' x 45' is required.) Mr. Foley questioned if a copy of the template was provided. It was noted that the Town's engineer stated that there is enough room for the trucks to back into the loading bay, although it is a tight fit. The Town Engineer recommended a speed bump and/or signage indicating a 10 mph speed limit.

The setback is 33' (only 30' is required). Parcel A is 56,249 square feet. The F.A.R. allows for 16,874 square feet. The new building would be 11,298 square feet. 58 parking spaces are provided; only 57 are required.

The existing building has 8100 square feet and 3120 square feet for the proposed building. The storm water currently sheds off the site. Drainage from the roof will be collected and directed underground to a leeching pit to be recharged on site. This will reduce the off-site flow by 15%.



## BZA Meeting - September 21, 2005

The landscape will be enhanced. The lighting is provided from two (2) poles approximately 16' high with shields. The electrical wires will be put underground. The sewer system will be connected to the existing manhole. A new 6" water line will be installed. There will be a small architectural retaining wall.

It was noted that a Form A was approved to subdivide the lot. The Form A has not yet been recorded. Form A is a plan for subdividing property and changing the property line but the lots each have frontage on existing ways. The Form A certifies that the lots have adequate frontage. It does not give any standing as for zoning.

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

- Conservation Commission had no comment.
- Health Department had no comment.
- Police Department had no issues.
- Fire Department recommends a fire diction system review when applying for building permit.
- DPW - Water service needs to be upgraded. Sewer and water mitigation fees will be required. The subdivision of the lots needs to be recorded. Pipe encasement should follow DPW requirements. Drainage to be reviewed further. It was noted that these issues have been adequately addressed.
- School Department had no special concerns.
- Tax Department stated there were no delinquencies.

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

Marie Garrity of Middle Street asked for clarification on the number of parking spaces. It was noted that the number will be increased from 41 to 58. She also inquired about the hours of operation. It was noted that the hours of use will be consistent with what is currently in place. Jenny's Market is open from 6am to 11pm.

Mr. Foley asked if the new space will be for storage. It was noted that this space will be used for retail.

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 for expansion of a commercial property on a lot with an area greater than 40,000 as 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.

## BZA Meeting - September 21, 2005

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 following conditions will be met:

- The water line will be upgraded as per DPW specifications.
- The wall pack will be shielded.
- The hours of operation will be 6am – 11pm.
- The traffic control plan will be approved by the Town Traffic Engineer.
- The plan will be revised to include all DPW comments.

The MOTION 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.

- (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 following conditions will be met:

- The water line will be upgraded as per DPW specifications
- The wall pack will be shielded.
- The hours of operation will be 6am – 11pm.
- The traffic control plan will be approved by the Town Traffic Engineer.
- The plan will be revised to include all DPW comments.

### 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 expansion of a commercial property on a lot with an area greater than 40,000 with the following conditions:

- The water line will be upgraded as per DPW specifications
- The wall pack will be shielded.
- The hours of operation will be 6am – 11pm.
- The traffic control plan will be approved by the Town Traffic Engineer.

**BZA Meeting - September 21, 2005**

- The plan will be revised to include all DPW comments.

**MINUTES - 8/24/05 & 9/7/05**

A motion was made and seconded to approve the Minutes of August 24, 2005 and September 7, 2005.

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Mary McElroy, Clerk

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Date

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