

The September 5, 2007 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 7:35 P.M. with the following members present:

Susanne Murphy, Chairman  
Ted C. Case, Vice Chairman  
Daniel J. Cunningham, Jr., Clerk  
Craig Hiltz, Member  
James M. Stanton, Member

James S. Decelle, Associate Member  
Joseph F. Doyle, Jr., Associate Member

**7:30 p.m. – Daniel Flaherty, Jr. – Case #15-07**

Ms. Murphy read the public hearing notice for Daniel Flaherty, Case #15-07, with respect to property located at 7 Thomas St., Walpole and shown on the Assessors Map as Lot No. 35/283, RB Zone.

The application is for:

A Special Permit under Section 3-G(2) Non-Conforming Uses to allow the structure to be extended. Any such extension shall not be more detrimental than the existing non-conforming use to the neighborhood;

A Special Permit under Section 3-G(5) Fifty Percent Rule to allow the non-conforming structure to be increased by more than 50% over the total so devoted at the time the uses first became non-conforming; and

A Special Permit under Section 4-B Schedule of Dimensional Regulations to exceed the maximum lot coverage by structure to be 26% where 25% is allowed, and any other relief required for the proposed addition.

Mr. Flaherty explained his request to build an addition to his home and move an existing shed at the left rear of his property. The carport would become a bedroom.

Mr. Cunningham pointed out that the shed needs to be 10 feet from the sideline.

Mr. Doyle pointed out that the request should be for a Variance because the non-conformity would be increased.

Ms. Murphy pointed out the fact that the proposed structure is over the Zoning Bylaw 50% rule. Mr. Case pointed out that even if the carport were included as an existing structure, the addition would be more than 50% of the existing structure.

Mr. Flaherty asked to withdraw the application without prejudice.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to withdraw Case #15-07 without prejudice and to waive the Zoning Board fees when Mr. Flaherty files another application.

The vote was **5-0-0 in favor**, therefore, Case #15-07 is withdrawn without prejudice.

**DISCUSSION:**

**Oak Street Condominiums – Case #10-06 – Homebuyers Affirmative for signature**

Mr. Viano explained his letter dated August 27, 2007 requesting the Board's signature on a Homebuyers Affirmative Marketing and Buyers Selection Plan, i.e., the lottery plan and the buyer selection process. This letter will serve as the Town of Walpole's approval of the Homebuyer's Affirmative Marketing and Buyer's Selection Plan.

Ms. Murphy asked if the affordable homes will have the same appliances, etc. as the full priced homes.

Mr. Viano said that he is not required to do that, but that the units will be identical, however, he is offering an upgrade package of tile floors, central air, etc. As soon as he receives the signed letter, he will begin advertising.

Ms. Murphy said that she would talk to Mr. Boynton on Thursday so that Town Counsel can advise the Board regarding the signing of the Homebuyers Affirmative Marketing.....Plan.

**DECISIONS:**

**REI Properties LLC – Case #09-07 (Murphy, Case, Hiltz, Stanton)**

**LOCATION OF PROPERTY INVOLVED:**

240-242 Plimpton Street, Walpole, MA The lot is show on Assessor's Map as Lot No. 18-193.  
This parcel is not within a Water Protection Overlay District.

The proposed use includes approval for a ten (10) unit condominium development to be located on Plimpton Street, Walpole, MA, as outlined on the Site Plan entitled PLIMPTONVILLE CROSSING, 240-242 PLIMPTON STREET, dated February 7, 2007 and last revised on June 28, 2007, and any subsequent revisions thereto, and submitted to the Board on or about July 1, 2007.

**APPLICATION:**

**A.** To request a **SPECIAL PERMIT** under Walpole Zoning By-law Section 3-B 3.d. to allow Applicant to construct a ten (10) unit condominium as set forth on a site plan entitled PLIMPTONVILLE CROSSING, 240-242 PLIMPTON STREET, Merrikin Engineering, 2 Milliston Road, Suite C, Millis, MA 02054, dated February 7, 2007, revised on June 28, 2007, and any subsequent revisions thereto, and submitted to the Board on or about July 1, 2007.

**B.** To request a **SPECIAL PERMIT** under Walpole Zoning By-law Section 4-D(9) for a determination that a *de minimus* (and temporary) modification to a buffer is sufficient.

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The Board opened a duly-noticed public hearing on July 11, 2007 at 8:30 p.m. in the Main Meeting Room Walpole Town Hall, 135 School Street, Walpole, Massachusetts for the purpose of receiving information as to the application for a Special Permit from REI Properties I LLC. The hearing was continued to August 8, 2007 with the assent of the Applicant. The Board closed the public hearing on August 8, 2007.

On September 5, 2007 the Board met to vote on whether to grant the Special Permit. Members of the Zoning Board present at the public hearing to consider the Application for a Special Permit were:

Susanne Murphy, Chairman  
Ted C. Case, Vice Chairman  
Craig Hiltz, Member  
James M. Stanton, Associate Member

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#### **VOTE OF THE BOARD:**

A motion was made by Ms. Murphy, seconded by Mr. Case, that the Board grant to REI Properties I, LLC, a Special Permit under Section 3-B 3.d. to allow Applicant to construct a ten (10) unit condominium as set forth on a site plan entitled PLIMPTONVILLE CROSSING, 240-242 PLIMPTON STREET, Merrikin Engineering, 2 Milliston Road, Suite C, Millis, MA 02054, dated February 7, 2007, revised on June 28, 2007, and any subsequent revisions thereto, and submitted to the Board on or about July 1, 2007.

The vote was **4-0-0** in favor; therefore the **Special Permit** is hereby **granted, subject to the following conditions:**

#### **CONDITIONS:**

1. Subject to conditions of Site Plan Approval as issued by the Walpole Planning Board;
2. Subject to an Order of Conditions as issued by the Walpole Conservation Commission;
3. As stipulated by the Applicant at the Public Hearing on July 11, 2007 and August 8, 2007, the Applicant and subsequent Condominium Association and the successors in interest shall install certain vegetation, to wit, an assortment of trees planted between the development and abutters' properties (in coordination with abutters and the Walpole Tree Warden); and
4. Otherwise to be developed and built in conformance with plan entitle PLIMPTONVILLE CROSSING, 240-242 PLIMPTON STREET, Merrikin Engineering, 2 Milliston Road, Suite C, Millis, MA 02054, dated February 7, 2007, revised on June 28, 2007, and on August 7, 2007, and any subsequent revisions thereto, and submitted to the Board on or about August 7, 2007.

5. As stipulated by the applicant, the applicant shall install a six (6) foot chain link fence with privacy inserts to be maintained and installed by the applicant and the Condominium Association and the successors in interest.
6. As stipulated by the applicant, there shall be no exterior cones of light directed or encroaching on any parcel other than their own and will consist of coach-style fixtures.

### **REASONS FOR DECISION:**

It is the finding of the Board that with the above imposed conditions the applicant meets the requirements of Section 3-B 3.d. of the Zoning By-Laws, in that Board finds that Plimptonville Crossing is consistent with the development of the site for the use proposed. Accordingly, the Board hereby determines that the granting of a Special Permit under this By-Law is warranted.

Pursuant to Section 3-B(3)(d), in General Residence Zone (GR), a dwelling for occupancy for more than three families is allowed, provided that:

- i. such a dwelling is connected or to be connected with the public sewer system at the time of construction,
- ii. such dwelling is located on a lot having an area of at least 30,000 square feet with an additional 10,000 square feet for each dwelling unit in excess of three to be accommodated,
- iii. a fifty-foot buffer zone shall be required where the adjacent lot has a single-family dwelling or is a vacant lot,
- iv. wetland districts or flood plain districts will not be considered for the computation of the buildable area of a lot.

### **FINDINGS OF THE BOARD**

As to each element of Walpole Zoning By-law Section 3-B (Use Regulations - Residential), Subsection 3.d., the Board found as follows:

***i. such a dwelling is connected or to be connected with the public sewer system at the time of construction.***

The Board found that the development will be connected to public sewer system as shown on Page 3 of 8 of Plans.

***ii. such dwelling is located on a lot having an area of at least 30,000 square feet with an additional 10,000 square feet for each dwelling unit in excess of three to be accommodated.***

The Board found that the lot has an area of approximately 178,233 square feet. The area proposed for the development is approximately 66,500 square feet. The area required under the bylaw is 100,000 square feet. Therefore the Board found that the plan clearly meets the requirement of the by-law.

***iii. a fifty-foot buffer zone shall be required where the adjacent lot has a single-family dwelling or is a vacant lot.***

The Board found that Page 1 (cover) and Page 3 of the Plan illustrate where the 50-foot buffers are located. The Board found that no buffer is required along the boundary of the adjacent lots at 254 Plimpton Street (Assessors Parcel 18-194), because the lot does not contain a single-family dwelling.

***iv. wetland districts or flood plain districts will not be considered for the computation of the buildable area of a lot.***

The Board was satisfied that the wetland districts or flood plain districts will not be considered for the computation of the buildable area of a lot, as per the Calculations of buildable lot contained with the Development Impact Statement. Said calculations specifically exclude wetland district or flood plain districts.

**The Special Permit sought by the Applicant is also subject to an SP4 special permit. As to each element thereunder, the Board found as follows:**

The Project:

***i. shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;*** the Board found that the type of vehicular traffic will be personal use vehicles almost exclusively, since this is a strictly residential development. The Board accepted the findings of the Applicant's Traffic Analysis study. Any increase in pedestrian traffic is anticipated to be minimal as there are ten (10) proposed residential units (a net increase of eight residential dwellings on Plimpton Street). Said foot traffic may be to and from the Plimptonville commuter rail stop.

***ii. shall not have a number of residents, employees, customers or visitors, so as to adversely affect the immediate neighborhood.***

The Board found that with only ten new homes (a net increase of eight residential dwellings on Plimpton Street), the increase in the number of residents on Plimpton Street will not adversely affect the immediate neighborhood. There is not expected to be many families residing at Plimptonville Crossing, more likely "empty-nesters." (The master bedroom of each unit will be located on the first floor.) As this is strictly a residential project, the Board found that there will be no employees or customers to speak of. Regarding visitors, the Board found there is adequate extra parking space for visitors.

***iii. shall not have a greater lot coverage that allowed in the zoning district in which the premises is located (Section 4-B: Chart For Schedule of Use Regulations).***

The Board found that the Plans comply with Section 4-B: Chart for use Regulations.

***iv. shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes.***

The Board found that there will be none of these potential dangers from this modest residential development.

**v. shall not create such noise, vibration dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood.**

The Board found that there will be none, except for perhaps during the construction phase. In any event, these factors would be controlled to the extent possible during construction.

**vi. shall not adversely effect the character of the immediate neighborhood.**

The Board found that although most of the properties on Plimpton Street are single-family homes, the structure currently on the site is a two-family dwelling. In addition, a two-family home was recently constructed at 265 Plimpton Street. (That parcel is zoned General Residence (GR), as is the parcel in this application.) However, other structures nearby do include apartment buildings. The Board further found that preliminary architectural renderings of the project show that Plimptonville Crossing will exhibit a colonial-style design. The Plimptonville Crossing Condominium Association will ensure the property is properly maintained, in compliance with any and all conditions imposed by the various Walpole permit granting authorities. Therefore, the Board found that the Plimptonville Crossing development shall not adversely effect the character of the neighborhood.

Second, the Applicant has made a conscious design-scope decision to keep within the character of this particular neighborhood. Building ten (10) *condominiums* implies ownership of the units at Plimptonville Crossing, rather than rentals. The Applicant is not developing a rental property, and the Applicant is not applying for a comprehensive permit pursuant to M.G.L. c. 40B §§ 21-23 (a “40B” project). Thus, the Board finds that the proposed development is within the character of the immediate neighborhood. In fact, given the design of the units, and the landscaping agreed to by the Applicant, the Board finds that the project will improve the look of the proposed location from its current status, especially in light of other alternative uses of the property, which would, the Board found, possibly negatively impact the character of the immediate neighborhood.

When completed, Plimptonville Crossing will be a modest, handsome, residential condominium. It will be comparable to many other small condominiums found throughout Walpole, also located within in GR-zoned areas.

**vii. shall not be incompatible with the purpose of the zoning bylaw or the purpose of the zoning district in which the premises is located.**

The Board found that the proposed use is not incompatible with the purpose of the Zoning by-law or the purpose of the zoning district in which Plimptonville Crossing is located. In fact, this project is entirely consistent with the stated uses of General Residence zoning.

**SP4: In addition to the seven conditions above, the ZBA must also find:**

**ii. no buffer zone is required but the board of appeals may require one if in their opinion one is necessary to protect the abutting residences.**

The Board found that the Applicant has proposed a 50 buffer, to be surrounded in part by a fence to further protect abutting residences (six (6) foot chain link fence with privacy inserts as agreed to by the applicant and abutters).

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#### **VOTE OF THE BOARD:**

A motion was made by Ms. Murphy, seconded by Mr. Case, that the Board grant to REI Properties I, LLC, a Special Permit under Section 4-D(9) to allow Applicant to encroach temporarily into small portions of the buffer to be altered for the placement of grass around approximately six (6) patios, to allow installation of a retaining wall, and for temporary alteration for the construction of retaining walls and a sewer line, as set forth on a site plan entitled PLIMPTONVILLE CROSSING, 240-242 PLIMPTON STREET, Merrikin Engineering, 2 Milliston Road, Suite C, Millis, MA 02054, dated February 7, 2007, revised on June 28, 2007, and on August 7, 2007, any subsequent revisions thereto, and submitted to the Board on or about August 7, 2007.

The vote was **4-0-0** in favor; therefore the **Special Permit** is hereby **granted, subject to the following conditions:**

#### **CONDITIONS:**

1. Subject to conditions of Site Plan Approval as issued by the Walpole Planning Board;
2. That the *de minimis* and temporary intrusion into the buffer zone will be limited to that as shown on the plan entitled PLIMPTONVILLE CROSSING, 240-242 PLIMPTON STREET, Merrikin Engineering, 2 Milliston Road, Suite C, Millis, MA 02054, dated February 7, 2007, revised on June 28, 2007, and any subsequent revisions thereto, and submitted to the Board on or about July 1, 2007.
3. As stipulated by the Applicant at the Public Hearing on July 11, 2007 and August 8, 2007, the Applicant and subsequent Condominium Association and the successors in interest shall install certain vegetation, to wit, an assortment of trees planted between the development and abutters' properties (in coordination with abutters and the Walpole Tree Warden); and
4. That the Board shall retain jurisdiction so as to view the site after completion of construction to determine whether the modified buffer is in fact, adequate.
5. As stipulated by the applicant, the applicant shall install a six (6) foot chain link fence with privacy inserts to be maintained and installed by the applicant and the Condominium Association and the successors in interest.
6. As stipulated by the applicant, there shall be no exterior cones of light directed or encroaching on any parcel other than their own and will consist of coach-style fixtures.

**REASONS FOR DECISION:**

It is the finding of the Board that with the above imposed conditions the applicant was able to meet the requirements of Section 4-D(9) of the Zoning By-Laws, in that with the above imposed conditions the Board finds that Plimptonville Crossing is consistent with the development of the site for the use proposed. Accordingly, the Board determines that the granting of a Special Permit under this By-Law is warranted.

**FINDINGS OF THE BOARD:**

Section 4-D(9) of the By-law states as follows: “In approving a site plan, the Board of Appeals may modify, at the applicant’s request, the requirement of this section (4-D) with respect to buffer zones, provided that such modifications are in keeping with the intent of this section and provide adequate screening for residential uses involved, prevent the blowing of dust, dirt, refuse and prevent soil erosion. As a precondition to modifying the buffer zone requirements of this section, the Board of Appeals may retain jurisdiction so as to view the site after completion of construction to determine whether the modified buffer is in fact, adequate.

At the Public Hearing on July 11, 2007, the Applicant specifically requested that the Board retain jurisdiction for the stated purposes. Furthermore, the Board found that the Plans referred to above from Merrikin Engineering show that the Applicant is seeking permission under 4-D(9) to allow small portions of the buffer to be altered for the placement of grass around approximately six (6) patios, to allow installation of a retaining wall, and for temporary alteration for the construction of retaining walls and a sewer line. The Board found that the temporary areas of alteration will be restored after construction is completed.

In this regard, the Board finds that the Applicant’s request for modification of the buffer areas is in keeping with the intent of the Section 4-D.

There being no further business, the meeting was closed at 10:30 p.m.

Daniel J. Cunningham  
Clerk

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Minutes were approved on September 19, 2007.