

The April 30, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room at the Town Hall.

Chairman James M. Stanton called the meeting to order at 7:00 p.m. with the following members present:

James M. Stanton, Chairman  
Matthew Zuker, Vice Chairman  
Craig W. Hiltz, Clerk  
James DeCelle, Member  
Susanne Murphy, Member

Mary Jane Coffey, Associate Member  
Timothy Foley, Associate Member

Also present:  
Stephanie Mercandetti, Community & Economic Development Director

**7:00 p.m. – John Nassar-Case #06-14 (Stanton, Zuker, Hiltz, DeCelle, Murphy, Coffey, Foley)**

Mr. Stanton read the public hearing notice for **JOHN NASSAR, Case #06-14**, with respect to property located at 1449 Main Street, Walpole and shown on the Assessors Map as Lot No. 40-147, Business Zone.

The application is for:

A Special Permit under Section 5-B.1.4.e of the Zoning Bylaws to allow a salesroom storage area for used car sales, as specifies in Section 4.e.

The applicant, John Nassar, was present for the hearing and discussed with the board his request for a Special Permit. He owns and operates the gas station next door to the property. He has been there for the last two years. He would like to use the property to sell used cars.

Ms. Murphy noted her concerns about the number of cars on the current gas station lot.

Mr. Nassar explained that he has 10 cars on the lot; five of which are used cars to sell and works on the other cars that you see there. He has a license from the Board of Selectmen to sell used cars on his property.

Ms. Murphy wanted to know if the application had anything from Mr. Heavey, the owner of the property, in the packet.

Mr. Nassar mentioned that Mr. Heavey signed the application and then asked Mr. Heavey to come up and address the board.

Mr. Michael Heavey of 7 Williams Street, Medway, MA informed the board that the upper floor is an apartment. Downstairs is also a one bedroom apartment. The front area is an office space for Mr. Nassar's use. The lot is available for Mr. Nassar to sell used cars. The side lot would be used for tenants.

Mr. Homolko of 23 Marion Street said that he is an abutter of the proposed site and since it will be a public place and a sales lot that he would like to have a proper division of property. He does not want

trash or debris to get pushed onto his property. There is a fence dividing the property currently but it is falling apart. He would like a newer fence.

Mr. Nassar explained that the fence in question is on the gas station side and not on Mr. Heavey's side. He felt that Mr. Homolko was just trying to get a new fence out of this. He argued that Mr. Homolko told him that he needed to pay him \$1,000.00 for a fence or he was going to come to the meeting and make noise.

Mr. Homolko denied that he ever said that. He reiterated that he does not want people kicking trash onto his yard.

Mr. Stanton reminded the applicant and the public that any comments or questions should be directed through the Chairman.

Mr. Hiltz asked Mr. Nassar if he had any plans to change the lighting on the lot and asked about the security measures.

Mr. Nassar explained that he would have security cameras but he did not feel like he needed any additional measures.

Ms. Murphy commented that Mr. Nassar was already using this lot.

Mr. Nassar replied that he does park cars there but does not sell them.

Mr. Stanton asked Mr. Nassar how many cars he was looking to store at 1449 Main Street.

Mr. Nassar responded that he needs a permit for 25 cars. He noted that some of the spots would be used for the residents.

Mr. Zuker brought up that he also needs spots for the customers as well.

Ms. Murphy wanted to know how many cars he has parked at the 1449 Main Street lot currently.

Mr. Nassar explained that he has 20 cars already parked there and mentioned that his shop next door at 1439 Main Street is very busy.

Mr. DeCelle mentioned that all vehicle storage areas needs to include gas traps and it must be shown on the plan. He also pointed out that Mr. Nassar is asking for 25 spaces but there are not 25 spaces shown on the plan that Mr. Nassar supplied.

Mr. Zuker explained to Mr. Nassar that his engineer should draw up a new plan showing the parking for the used cars, tenants and customers. He mentioned that since Mr. Nassar is here for a Special Permit, he needs to show that what he is proposing is not detrimental to the neighbors. Therefore, Mr. Nassar should work with the neighbors and try to find some solution that works for everyone. He told Mr. Nassar that he already has a good business in town and that he really needs to take the neighbors' concerns into consideration and have a good fruitful discussion with all that are involved.

Mr. Hiltz had reiterated his concerns about the lighting and cameras. He also mentioned that if Mr. Nassar could supply pictures of the fence as of right now and the lighting at dusk. That having these things on file could help.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to continue the hearing to May 28, 2014 at 7:00 p.m. in the Main Meeting Room of the Town Hall.

The vote was **5-0-0 in favor**. (Stanton, Zuker, Hiltz, DeCelle, Murphy voting)

**7:15 p.m. – James L. Diamond Jr. – Case #05-14 (cont'd from 04/16/14) (Stanton, Zuker, DeCelle, Murphy)**

Mr. Stanton read the public hearing notice for **JAMES L. DIAMOND Jr., Case #05-14**, with respect to property located at 759 Cedar Street, Walpole and shown on the Assessors Map as Lot No. 39-19, Residence A Zone.

The application is for:

A Special Permit under Section 9.4.A of the Zoning Bylaws to allow an addition onto an existing non-conforming structure and A Variance under Section 6-B.1 of the Zoning Bylaws to allow for a 10ft sideyard setback where a 20ft minimum sideyard setback is required, as specified in Section 6-B.1.

The applicant, Mr. Diamond, was present for the hearing. Mr. Diamond told the board that he submitted the elevations of what he is proposing and has a letter from the neighbor stating that the neighbor supported the addition.

Mr. Stanton asked Mr. Diamond if the board had that letter and if they did not would he like to submit it to the file.

Mr. Diamond explained that he had not submitted the letter yet and that he would like to have it added to the record.

Mr. Stanton read the letter from Mr. Ralph Royle into the record.

Mr. DeCelle mentioned that the mass concerns him and that the other houses around this area are ranch style houses. He felt that there are no other houses like the one Mr. Diamond was proposing in the neighborhood.

Mr. Diamond explained that this was incorrect. The neighbor across the street is two stories. Other houses on the street are also two stories.

Ms. Coffey stated that she felt it wasn't up to the Zoning Board to decide if a house fits into a neighborhood. If the abutters have no concerns then why should the Board.

Mr. DeCelle felt that the problem we would run into is if the Board will be setting a precedent.

Ms. Coffey explained that the hearing is advertised in the paper and if the neighbors do not object to this project then why should the board.

Ms. Murphy mentioned that Mr. Diamond could have done something different. He could have moved it so that he would not need to be before the Board looking for a special permit.

Mr. Stanton asked if the public had any comments.

No one from the public expressed any concerns or questions.

Ms. Coffey asked Mr. Diamond if he could shift over the addition. She explained that if he could then he would not have to be before the Board looking for a Special Permit.

Mr. Diamond explained that he could but there is not much space for them to go back. He stated that they have a septic system and they are limited on where they can go. The Board of Health has already given their approval. He also said that eventually down the road they would like to build a garage.

Mr. Stanton asked for any other questions from Board members. Hearing none, he then asked if Mr. Diamond had anything else he would be submitting on this.

Mr. Diamond said that he had nothing else to provide, unless the Board had something else that they needed.

Mr. Stanton then explained that he would like to close the hearing. He mentioned that the board could deliberate later that evening or at their next meeting to decide on the application.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to close the public hearing.

The vote was **4-0-0 in favor**. (Stanton, Zuker, DeCelle, Murphy voting)

**7:30 p.m. – Dwight and Lisa Duncan – Case #07-14 (Stanton, Zuker, Hiltz, DeCelle, Murphy, Coffey, Foley)**

Mr. Stanton read the public hearing notice for **DWIGHT and LISA DUNCAN, Case #07-14**, with respect to property located at 3 Lorusso Road, Walpole and shown on the Assessors Map as Lot No. 27-389, Residence B Zone.

The application is for:

A Variance under Section 6-B.1 of the Zoning Bylaws to allow for a 19ft frontyard setback where a 30ft minimum frontyard setback is required, as specified in Section 6-B.1.

The applicant, Mr. Duncan was present, and explained that he is before the board to request a variance. He informed the board that he lives on a cul-de-sac and that his property is all frontage. He explained that he has more than enough property and that he is far away from his neighbor's property. He is building a nice garage. It will be aesthetically pleasing and will increase the property value.

Mr. DeCelle mentioned that the requirement is 30 feet. He wanted to know if Mr. Duncan tried to fit it in elsewhere on the property. He noted that if Mr. and Mrs. Duncan pushed the garage a little closer to the house then they would be OK and would not need a variance.

Ms. Murphy wanted to know why they just did not attach the garage to the house.

Mr. Duncan explained that he did not want to do that. He mentioned that he had access to a pool that he would like to keep there.

Mr. Stanton explained that for a variance you must show hardship. He told Mr. Duncan that he needed to make a case to the board that there is no other place to put this garage.

Mr. Duncan mentioned that he would lose the lighting to his house and that the second floor to his house would be lost.

Board members asked again that he needed to state his reasons and show hardship as to why the garage could not be placed elsewhere on the property.

Mr. Duncan mentioned that it is a two story garage. He thought that he had submitted a plan that showed it was two stories.

Mr. DeCelle also stated that if you looked at the plot plan, it does not state on the bottom that it is a certified plot plan.

Mr. Duncan stated that they had submitted a certified plot plan and that there had been another plan submitted.

Mr. Stanton asked Mr. Duncan if he was sure about that.

Mr. Duncan mentioned that they have the plan at home and that they had something from the building inspector stating that it was OK.

Mr. Stanton explained that it is a variance being sought because what Mr. and Mrs. Duncan are asking for is not allowed. He stated that in order for the Board to grant the variance, the Duncan's need to prove hardship. Based on what has been submitted and stated, it is not enough.

Mr. DeCelle reiterated that the Duncans need to submit a certified plot plan. He mentioned that the Board needs to see pictures of why the Duncans cannot attach the garage to the house.

Mr. Duncan stated that the two story garage would block out his bedroom and living room.

Ms. Murphy wanted to know what was proposed for the second floor of the garage.

Mr. Duncan explained that his home office would be built there.

Mr. Stanton read comment letters from the various Boards and Departments into the record. He particularly referenced the comment from the Town Engineer stating that a proper Curb Cut permit would be required if there is to be a new driveway installed for the new garage. He then stated that the Board would need to continue this hearing to another date. The Board would need to see elevations of the garage, the side of the house that the Duncans are claiming will be blocked, photos and other information detailing why they are unable to attach the garage to the house, a plan for the driveway, exact distance from the house, full instrument survey as only a plot plan was provided from when they bought the house.

Mr. Duncan said he could provide these.

Mr. Zuker stated that his personal opinion is to move the garage to a place where it will not need a variance.

Mr. Stanton noted that maybe the Duncans should consult with a professional engineer or lawyer, someone who does these things on a regular basis.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to continue the hearing to May 28, 2014 at 8:00 p.m. in the Main Meeting Room of the Town Hall.

The vote was **5-0-0 in favor** (Stanton, Zuker, Hiltz, DeCelle, Murphy voting)

**8:00 p.m. – C & J Realty Trust – Case #03-14 (cont'd from 3/26/14) (Stanton, Zuker, DeCelle, Murphy)**

Mr. Stanton read the public hearing notice for **C&J REALTY TRUST, Case #03-14**, with respect to property located at 119 Pleasant Street, East Walpole and shown on the Assessors Map 20 and Lot No. 194, General Residence Zone.

The application is for:

A Special Permit under section 5-B.1.3.c. of the Zoning Bylaws to allow for the conversion of a single family house into a three-family residence, as specified in Section 3.c., within the building's existing footprint.

Attorney Philip H. Macchi was present on behalf of the applicant for the hearing. He stated that he is counsel for C & J Realty Trust. On behalf of his client, he respectfully requests to withdraw the application without prejudice. He also noted that his applicant is not looking for a reimbursement of the fees. That his client made the mistake and he apologized for taking up the time of the board. He submitted a request in writing to the Board.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to accept the request to withdraw the application without prejudice.

**The vote was 4-0-0 in favor** (Stanton, Zuker, DeCelle, Murphy voting)

**8:30 p.m. – Michael P. and Bridget Servatius – Case #02-14 (cont'd without testimony from 03/26/14) (Stanton, Zuker, DeCelle, Hiltz, Murphy, Coffey, Foley)**

Mr. Stanton read the public hearing notice for **MICHAEL P. and BRIDGET SERVATIUS, Case #02-14**, with respect to property located at 2 Mikayla's Way, Walpole and shown on the Assessors Map as Lot No. 27-252-1 Lot 2, Residence B Zone.

The application is for:

An Appeal from action taken by Building Inspector, Jack Mee, with respect to Building Permit issued on 4/16/2013 and amended on 12/16/13, Building Permit #BP-2013-0102, to permit multi-family dwelling in Residence B Zone. Use not allowed. Property does not meet requirements of c.40A, Section 3; Site Plan Review required.

The applicant, Mr. Servatius, was present for the hearing. Mr. Servatius stated that he wanted to clear up some assumptions. He wanted it to be put on the record that he does not have an issue with the residence in the home. He is not prejudice. He and his wife Bridget are opposed to Mr. Rockwood being Mr. Roche's attorney. They do not want any personal allegiances. They are direct abutters to the project. They are the only home that shares a driveway. The initial permit issued last year states that only a single family home would be allowed. Then on December 16<sup>th</sup> it states that the house will be used as a group home. The property is a zoned Residence B which does not permit a multi-family home. The land owner failed to prove that this property met Dover Amendment. The land or property must be owned or leased by the Commonwealth or a nonprofit. This property is owned by Mr. John Roche and not by the Commonwealth or a nonprofit. Ten out of the twelve bedrooms will be for profit not nonprofit. The total rent due is \$1200/month. This property is not being rented to a nonprofit. This should not be OK with the Zoning Board of Appeals. The boilerplate lease states that the LLC has ultimate control over who will live here. There is a clause in the lease that states that the LLC can rent to who he chooses. This is a clear violation to the Dover Amendment. It must be educational and it is not. This is more or less a boarding house. They are using the Dover Amendment to bypass the local bylaws. A precedent will be set in Walpole with this case. My personal concern is that this is a private and narrow driveway off of

Washington Street, and there will be a lot more traffic. Two cars cannot pass each other. Where are they going to put the snow? Where will they put all of the trash? How will parking be accommodated for staff, guests, property maintenance, etc.? This is a shared driveway; there will not be just vehicle traffic but pedestrian traffic as well. Some of these vehicles will be backing out of the driveway onto Washington Street. Someone is going to get hurt. Privacy is another concern to us. We thought we would be sharing that driveway with a single family home. All of a sudden this private driveway no longer feels private. When this lot was first approved in March of 2000, there were special conditions that were approved. The driveway cannot be widened. This is not adequate or safe. We also have questions for the Building Inspector. Why would he grant this? Why did he approve this lease? Why are we doing the due diligence when it is his job? There seems to be special treatment in this case. Only a small portion is being leased to a nonprofit, this situation should be heavily scrutinized. It seems like someone is trying to bypass zoning. We would like the Building Inspector to take the permit away and the landowner to cease using this property as a multi-family unit. This should all be in the Walpole Bylaws.

Mr. Stanton asked if the board had any questions.

Mr. Hiltz stated that if the building permit applicant was able to show that the use of this property was educational then it does fall under Dover Amendment. Also, the Walpole Zoning Bylaw does allow for educational uses in a Residence B Zone.

Mr. Servatius stated that this is not a single family home. It will be a multi-family home. A multi-family home is not allowed.

Mr. Zuker stated that he would like to hear from Mr. Roche's attorney.

Mr. Rockwood, attorney for Mr. Roche, informed the board that he wanted to clear up a couple of things. He stated that a couple of accusations were made regarding his representation for Mr. Roche. He stated that yes, he is the Town Moderator, however he checked with Town Counsel and as the moderator he does not appoint anyone to the Zoning Board of Appeals. The Board of Selectman appoints the Zoning Board. He objected to the characterization that anyone who knows each other will give different treatment. The property, 2 Mikayla's Way, does meet the characteristics. The lease is between 2 Mikayla's Way and Jewish Family Services. On the lease itself it defines the premises. Jewish Family Services is a nonprofit. It also serves an educational purpose.

Ms. Murphy noted that the lease left off 10 bedrooms. She stated that according to the lease, Jewish Family Services is in charge of two suites, the common area and garage.

Mr. Servatius noted that there is no garage.

Mr. Rockwood hesitantly stated that the other area encompasses that.

Ms. Murphy explained to Mr. Rockwood that it is not that clear on the lease.

Mr. DeCelle noted that there are two separate leases.

The Board questioned why the rental payments are being made out to Mr. Roche. There are ten individual leases for those 10 bedrooms and all of those rental payments are being made out to the lessor. Mr. Roche is leasing ten additional rooms. What is the purpose of structuring it that way?

Ms. Doreen Cummings, representing Jewish Family Services, stated that they have been working with Mr. Roche for a while. They have similar homes in Norwood.

Ms. Murphy stated that they have concerns with the lease.

Mr. Stanton questioned if any of the Norwood homes are in a single family zone.

Ms. Cummings stated yes they are all in single family zones.

Mr. Stanton noted that the home they own on Washington Street is in a multi-family home zone.

Ms. Cummings responded yes, but the other four are in single family areas.

The Board had many concerns about the lease. They noted that it was poorly written and that the lease needed to be revised. They discussed continuing the meeting to a later date. They would like the lease to be fixed and more straightforward.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to continue the hearing to May 14, 2014 at 7:00 p.m.

The vote was **5-0-0 in favor**. (Stanton, Zuker, Hiltz, DeCelle, Murphy voting)

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to adjourn the meeting at 10:13 p.m.

The vote was **5-0-0 in favor**. (Stanton, Zuker, Hiltz, DeCelle, Murphy voting)

Craig W. Hiltz  
Clerk

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Minutes were approved on July 16, 2014.