

The July 15, 2015 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 6:30 p.m. with the following members present:

Matthew Zuker, Chairman  
Jim DeCelle, Vice Chairman  
Craig W. Hiltz, Clerk  
Mary Jane Coffey, Member  
Susanne Murphy, Member  
Timothy Foley, Associate Member (not present)

ALSO Present:

Ilana Quirk, Town Counsel

**6:30 pm – Executive Session under G.L. c.30A, §21 (b)(3) and (4) to discuss litigation strategy regarding litigation known as 5<sup>th</sup> Fairway Development, LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2009-09, involving a proposed 40B Comprehensive Permit for land on Baker Street**

Mr. Zuker declared that under G.L. c.30A, §21 (b) (3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation known as 5<sup>th</sup> Fairway Development, LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2009-09, involving a proposed 40B Comprehensive Permit for land on Baker Street. A discussion of the foregoing in open session could compromise the purpose for the executive session. He further stated the board will return to open session at the conclusion of the executive session.

A motion was made by Mr. DeCelle, seconded by Mr. Hiltz, to go into executive session, under G.L. c.30A, §21 (a)(3), for the purposes and reasons declared by the Chairman and with the Zoning Board of Appeals to return to open session thereafter.

A Roll Call vote was taken and the vote was **5-0-0 in favor. (Mr. Zuker –Yes; Mr. DeCelle – Yes; Mr. Hiltz – Yes; Ms. Coffey – Yes; Ms. Murphy - Yes)**

The Board went into Executive Session at 6:34p.m.

A motion was made by Mr. Zuker, seconded by Ms. Murphy to come out of Executive Session and return to open session

A Roll Call vote was taken and the vote was **5-0-0 in favor. (Mr. Zuker –Yes; Mr. DeCelle – Yes; Mr. Hiltz – Yes; Ms. Coffey – Yes; Ms. Murphy - Yes)**

The Board returned to open session at 7:21 p.m.

Mr. Zuker welcomed everyone to the meeting.

**7:00 pm – KAM Construction Management – Case #6-15 (cont'd from 6/3/15)(Zuker, DeCelle, Hiltz, Coffey, Murphy)**

Mr. Zuker stated notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** in the **MAIN MEETING ROOM** of **TOWN HALL** on **WEDNESDAY, JUNE 3, 2015 at 7:00 P.M.** on an application from **KAM CONSTRUCTION MANAGEMENT, CORP., Case #6-15**, with respect to property located at Eastover Road, Walpole, MA and shown on the Assessors Map 26 and Lot Nos. 174 & 174-1 and Map 34 and Lot No. 288, General Residence Zoning District.

The application is for:

A **SPECIAL PERMIT** from Section 5B (3d) of the Zoning By-Laws to allow twelve (12) multi-family units to be constructed in a General Residence district

A **VARIANCE** from Section 5B (3diii) of the Zoning By-Laws to allow a decrease in the fifty foot (50') buffer requirement

Mr. Zuker read an email from Mr. Paul Schneiders that states:

Dear Mr. Zuker,

Due to a scheduling conflicts that the engineer and I have, would you please continue the Zoning Board hearing for the above stated matter from July 15, 2015 to August 12, 2015. Thank you. Paul Schneiders.

A motion was made by Mr. Zuker, seconded by Mr. Hiltz to grant the continuation to August 12, 2015

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

Mr. Zuker read the Time Extension form into record: I Paul A. Schneiders, Esq under POA for Applicant hereby agree to an extension of the deadline for the Zoning Board of Appeals to make its decision in this matter to (date:) September 30, 2015 and an additional 14 days beyond that date to file the decision with the Town Clerk's Office.

A motion was made by Mr. Zuker, seconded by Mr. Hiltz to accept the time extension

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

**Thomas C. Taylor, et als – Case #8-15**

Mr. Zuker stated notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** in the **MAIN MEETING ROOM** of **TOWN HALL** on **WEDNESDAY, July 15, 2015 at 7:00 P.M.** on an application from **THOMAS C. TAYLOR, ET ALS, Case #8-15**, with respect to property located at 44 Bubbling Brook Road, Walpole, MA and shown on the Assessors Map 6 and Lot No. 13, Rural Resident Zoning District.

The application is for:

A **MODIFICATION** of Variance Condition #1 in Board of Appeals Case No. 37/86 of the Zoning By-Laws to remove Variance Condition #1 and replace it with a new Condition #1 which states: "The parcel consisting of 13.75 acres shall have no more than three (3) separate buildable lots, each lot having no more than one single family residence that conforms to all applicable zoning requirements". Remand Application to Board of Appeals pursuant to Norfolk Superior Court CA NOCV 2015-00023D Order of Remand dated May 18, 2015.

Gerry Blair the attorney for the applicant stated, that he would like to thank the Board for allowing them to come back before the Board. In June of 1986 the Taylor's purchased a parcel of property. The property is zoned Rural Residence. In 1986 there was no access for public sewer to this property. Furthermore the soil conditions were such that the land would not pass percolation test requirement to allow for the installation of more than one septic system. There was no likelihood of sewer. At the Zoning Board hearing on June 18, 1986, Mr. Taylor explained that these conditions made it economically unfeasible to build a subdivision on this parcel. There would have been substantial cost to construct a cul-de-sac, sidewalks, drainage and other subdivision requirements. Accordingly, they did not subdivide the property. Instead, in 1986 the Applicant requested a variance from the Zoning Board to grant a frontage variance which the Board granted. That frontage variance had 2 conditions. Condition 1: only allow 1 home on this lot. The lot was considered to be the entire 13 acres. During the course of the hearing the applicant asked for a frontage variance rather than a subdivision because it would be a hardship for him to build a cul-de-sac, sewer and subdivision. He built the house the following year in 1987. He complied with the bylaw all of these years. The law permits an applicant to request modification of a variance condition when circumstances have changed since the variance was granted. In the case of Wendy's vs Zoning Board of Billerica, Wendy's was granted a variance with conditions that restricted access to only one entrance into their property. Road improvements were made to the road Wendy's was located on. The road went from a 2 lane road to 4 lane road. Wendy's filed a request to modify the variance condition to allow another entrance to their property. The Zoning Board of Billerica refused. It was taken up to the Supreme Judicial Court. The SJC stated that these changed circumstances were enough to permit the Board to modify the variance conditions that restricted access to the site. In this case the change is that my clients are now in position to obtain sewer from the Town of Westwood. Westwood Sewer voted to allow the Applicant to have access to sewer. This is certainly a circumstance or a change that shows why Mr. Taylor didn't do this in the first place. Once Westwood gave my client access to sewer, it made sense to go forward and file for this. We are here asking the Board to allow a change in the amendment. Town Counsel and I worked on the wording. I submitted an affidavit from the Applicant who couldn't be here because his daughter is getting married in Virginia. With this access to sewer the property can be legally subdivided. We ask the Board to find that. Besides the applicants, other Walpole residents may also benefit from this to be able to tie into Westwood's sewer system. When the Applicant filed he had no intentions of giving up his rights. If the Zoning Board approves this modification, all of the lots will be compliant. There would be no need for the variance once the subdivision is built. I am asking the Board to respectfully grant this modification. If this is approved the condition would read: The parcel consisting of 13.75 acres shall have no more than three (3) separate buildable lots, each lot having no more than one single family residence that conforms to all applicable zoning requirements. I would like to submit some things to the record. (Mr. Blair submitted the minutes from the Westwood meeting where they granted them the rights to tap into sewer.)

Mr. DeCelle said back in 1987 the Applicant didn't want to spend the money and decided to build 1 house on the 13.75 acres.

Mr. Zuker said it is expensive to put a road in for a subdivision.

Mr. Blair stated that building one house was all the Applicant could do back then.

Mr. Zuker said now that there is sewer available it is a different situation.

(John Glossa added to the record the soil conditions from John Anderson.)

Mr. DeCelle stated the lot is on 13.75 acres. Trying to equate the Wendy's decision to this is very different.

Mr. Blair said the Applicant had no control over the sewer back then. He had no crystal ball as to when that would happen. If the option of connecting to sewer didn't happen then I wouldn't be here tonight. The Town would get the benefit of the property revenue's that come from those lots. There are no losers here if the Board grants this.

Mr. Hiltz asked in terms of the proceedings with Westwood. How did that come about?

John Glossa of Glossa Engineering stated back in 2004 a woman who lives at 32 Trailside Drive came to him to design a replacement septic. She did not have a place on her lot that was suitable for septic. Westwood for the most part (80%) is sewer. There was sewer on the Westwood side of her property. I went to Westwood to ask if I could add a sewer line to her house and they were happy to do that. We went to the Board here and got an Inter-Municipal Agreement so Westwood Sewer could connect into Walpole. When the Applicant came to me and said he wanted to explore the possibility to subdivide the lots. We went to the Westwood Sewer Commission because we felt we should see them first. They hired CDM Smith to look at the flows. There were 8 potential houses that could connect. CDM Smith said yes the pipes and pumps are big enough to handle this. The Westwood Sewer Commission voted to allow this. That was the change in the circumstances.

Mr. Hiltz said so the change wasn't the Taylor's application from a year ago but was from the Town of Westwood allowing sewer to come into Walpole 10 years ago.

Mr. Zuker said being able to hook up to sewer made it beneficial for the Applicant.

Mr. Hiltz said the sewer coming into Walpole from Westwood under the inter-municipal agreement was the change. If the sewer lines or the option from Westwood existed back in 1986 then that agreement might have been established in 1986. In the Wendy's case it was the Town who changed the road from 2 to 4 lanes. If you are saying that some other external change has come forward such as the Westwood coming in with sewer then that is different.

Mr. Zuker said in general the ability to be able to hook up to Westwood Sewer was not an option in 1986.

Mr. Hiltz said are you saying that the Applicant will pay for the sewer connections of the 5 houses?

Mr. Glossa stated here is the existing sewer manhole. We are going to bring this sewer into Mr. Taylor's property. There are 5 houses that have the ability to connect to sewer. These residents on Bubbling Brook will be able to get rid of their septic systems which in turn will protect the wetlands, ground and surface water. It is quite a benefit.

Ms. Murphy said in the decision from 1986 it states that the Town of Walpole did not want this area to be too dense. How much will connecting to Westwood Sewer cost the Applicant?

Mr. Glossa stated approximately \$30,000.

Mr. DeCelle stated in this decision from 1986 it says the lot shall be used for 1 single family house.

Mr. Zuker said obtaining sewer from Westwood changes things. We as a Town have changed our Zoning in that time.

Mr. DeCelle stated this decision clearly says 1 single family house.

Mr. Zuker asked if there were any members from the audience who would like to add anything to the record.

Mr. Zuker read the Board comments into the record. Conservation Commission stated: they have approved and issued an Order of Conditions for 44 Bubbling Brook Rd. They have no other comments at this time. The Town Engineer stated: They have no comments at this time. Planning Board stated: Please be advised the Planning Board has no comments on the above referenced application. Mr. Taylor presently has a subdivision filing pending with the Planning Board. Board of Sewer & Water Commissioners stated: They will not be meeting until July 27<sup>th</sup> and as a result cannot meet the time frame of providing comments for the above subject's public hearing on July 15, 2015. Therefore, this Commission would like to reserve the right to comment until after their scheduled meeting to be held on July 27, 2015. Board of Health stated: The Walpole Board of Health at its July 14, 2015 meeting voted to reiterate comments previously made that they are opposed to dividing the current lot into 3 buildable lots because of the impact it would have on the wetlands, as it would be hard to conduct construction outside of the wetlands and/or the 100 buffer zone.

Mr. Zuker read an email into the record from Henry and Jenny Wyner of 43 Bubbling Brook Road an abutter to the applicant. It stated: Mr. Zuker- As a means of introduction we reside at 43 Bubbling Brook Road and are abutters to the above referenced sub division the Board will be discussing this evening. Unfortunately because of funeral services we are attending today we cannot appear at tonight's meeting however we ask that the minutes of the meeting note that we are in support of the sub division application. The applicants have been very responsive to concerns as abutters that we have and have agreed to conditions that have satisfied those concerns. Respectfully, Henry and Jenny Wyner 43 Bubbling Brook Road.

Mr. Blair stated that the abutter had concerns with construction. We have worked out everything. He had legitimate concerns and we responded.

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to close the public hearing

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

A motion was made by Ms. Coffey, seconded by Mr. Zuker, on behalf of the applicant, to approve a modification of Variance Condition #1 in Board of Appeals Case No. 37/86 of the Zoning By-Laws to remove Variance Condition #1 and replace it with a new Condition #1 which states: "The parcel consisting of 13.75 acres shall have no more than three (3) separate buildable lots, each lot having no more than one single family residence that conforms to all applicable zoning requirements". Remand Application to Board of Appeals pursuant to Norfolk Superior Court CA NOCV 2015-00023D Order of Remand dated May 18, 2015.

The vote was **4-1-0** in favor (Zuker, DeCelle, Hiltz and Coffey voting in favor; Murphy voting in opposition); therefore the application for a **Modification** of Variance Condition #1 in Board of Appeals Case No. 37/86 and replace it with a new Condition #1 is hereby **granted**, subject to the following conditions:

#### **CONDITIONS:**

1. This Variance shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L.c.40A, Section 17, if substantial use has not sooner commenced except for good cause.
2. All other conditions of the decision for Case No. 37/86 not expressly modified by this decision must be adhered to.
3. As stipulated by the applicant at the public hearing, the applicant will connect the single family homes built on each of the lots, including the existing single family home, to the Westwood public sewer system.

#### **REASONS FOR DECISION:**

It is the finding of the Board that the applicant was able to meet the requirements for a Variance under Section 2.3 of the Zoning Bylaw in that:

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located.*

The Board finds that the applicant has demonstrated a need relating to soil conditions, shape or topography of such parcel or to such structure. On January 23, 2013, the Westwood Board of Sewer Commissioners voted to allow sewer access to service three single family house lots comprising the applicants' existing property. This significant change in circumstances permits the Board to modify Condition #1. Also, by modifying Condition #1 and building an approved subdivision, each lot will comply with all applicable zoning requirements. The frontage non-conformity will be eliminated.

2. *A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner.*

The Board finds that the applicant's circumstances have changed since the June 19, 1986 when the Board issued the decision to grant a variance in Board of Appeals case No. 37/86. In 1986 there was no access to sewer. Furthermore the soil testing showed poor soil conditions with perc testing on the remaining areas of the applicants property failing Title V standards, thus it was determined to be a financial hardship to construct a subdivision road to service one lot. At some point after this date and prior to January 2013, the Westwood sewer system was extended into the town of Walpole. As stated above on January 23, 2013, the Westwood Board of Sewer Commissioners voted to allow sewer access to service three lots comprising the applicants' existing property.

3. *Desirable relief may be granted without substantial detriment to the public good*

In addition to the Applicant, several other Walpole homeowners in the Bubbling Brook subdivision may be eligible to connect to Westwood public sewer. Sewer access would not only benefit the eligible homeowners, but also to the Town of Walpole because the removal of septic systems will help protect the wetlands, ground and surface water. Creating two new buildable lots will also increase the property tax revenue to the Town.

**4. *Desirable relief may be granted without nullifying or substantially derogating from the intent and purpose of this Bylaw.***

The Board finds that allowing the requested modification of Condition #1 will not nullify or derogate from the Walpole Zoning By-Laws because the proposed subdivision will create three (3) fully conforming lots.

\* \* \* \* \*

**7:00 pm – Mary Piccirilli – Case #9-15**

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** in the **MAIN MEETING ROOM** of **TOWN HALL** on **WEDNESDAY, July 15, 2015 at 7:00 P.M.** on an application from **MARY PICCIRILLI, Case #9-15**, with respect to property located at 11 Trafalgar Lane, Walpole, MA and shown on the Assessors Map 24 and Lot No. 76, Residence A and WRPOD Area 3 Zoning District.

The application is for:

A **SPECIAL PERMIT** from Section 12.3.C (5) of the Zoning By-Laws to allow an increase in impervious coverage associated with the expansion of an existing single family residence.

Dan Merrikin from Merrikin Engineering, LLP the Applicant's Engineer submitted new plans to the record. Mr. Merrikin stated the new plans just submitted are in regards to the comments made by the Town Engineer. We would like to widen the driveway to accommodate the new garage. The site currently contains two roof runoff infiltration fields capturing roof runoff from the existing structure. The Applicant proposed to add two new oversized roof runoff infiltration fields to capture an additional 1-inch of runoff over the excess impervious surfaces on the lot. We have already gone before the Conservation Commission. The Zoning Board approval is all that is left.

Mr. Zuker read the Board comments into the record: The Walpole Fire Department, Walpole Police Department & Planning Board all had no comments at this time. Board of Health stated: At its July 14, 2015 meeting voted to reiterate comment previously made that the existing septic system is located and flagged for safety purposed during construction. The Board of Sewer & Water Commissioners stated: They will not be meeting until July 27<sup>th</sup> and as a result cannot meet the time frame of providing comments for the above subject's public hearing on July 15, 2015. Therefore, this Commission would like to reserve the right to comment until after their scheduled meeting to be held on July 27, 2015. Conservation Commission stated: They have reviewed the above filing at their meeting held on July 8, 2015. An Order of Conditions was approved and voted on June 24, 2015 for the construction of a garage addition to an existing single family house. See attached Order of Conditions with special conditions for your review. Mr. Zuker then stated he would read the Town Engineer's comments into the record and let Mr. Merrikin address each comment.

Mr. Merrikin submitted responses to the Town Engineers comments to the record

Mr. Zuker read the Town Engineers first comment: 1) Calculations should be provided which document that the new/relocated recharge system recharges enough to cover the increase in impervious cover.

Mr. Merrikin said the calculation were provided with the application demonstrating that the various infiltration systems are designed to accommodate the entire roof area of the house that portion of impervious coverage in excess of 15%.

Mr. Zuker read the Town Engineers second comment: The plan should show existing vs. proposed driveway curb cuts. It appears that a new curb cut will be required, and the new driveway must meet town standards, which may not allow for the proposed driveway width as scaled from the plan.

Mr. Merrikin stated the maximum entrance is 20 feet so we put in an island but it will address the comment. One part of the entrance is 20 feet and the other is 12 feet. He also stated that the attached plan modifies the curb entrance per the Engineering Department's regulations. We will review this with the Town Engineer at the time the curb cut permit is requested.

Mr. Zuker read the Town Engineers third comment: The applicant will be responsible for obtaining A Curb Cut permit which will regulate proper reinstallation of granite corner rounding's and/or transition stones. All this work should be shown on the plan prior to filing for Engineering department sign-off on the Building Permit application.

Mr. Merrikin stated: As noted on the attached revised plan, the existing roadway berm is bituminous, be we will confirm the Engineering Department's requirement at the time the curb cut permit is requested. Mr. Merrikin said he would also confirm with the Water Department and discuss with the Town Engineer.

Mr. Zuker read the Town Engineers fourth comment: The existing water service for this lot should be shown on the plan so that it can be confirmed that the relocated recharge system will not damage it.

Mr. Merrikin stated that based on record information we do not believe there is any conflict but we will confirm this prior to seeking a curb cut permit.

Mr. Zuker read the Town Engineers fifth comment: Soil testing to determine seasonal high groundwater must be observed by the engineering department. It is better that this work be done during design phase, but if the ZBA allows it to be done at time of construction, the applicant runs that risk of having to modify calculations required in #1 above.

Mr. Merrikin stated the cost to obtain an excavator just for testing at this time is a burden on the applicant. It is more efficient to dig the test when the site contractor mobilizes to build the addition. The areas where the systems are to be installed are at least 10 feet high than the nearby wetlands. Based on this and other site features, we do not expect any issue with placement of the systems as specified. Minor adjustments can be made in the field if necessary as the time of construction.

Mr. Zuker wanted to know what the Applicant is proposing to do.

Mr. Merrikin stated that they are adding a 2 car garage.

Mr. Zuker wanted to know if there would be anything above the garage.

Mr. Merrikin said, he didn't believe so but he has not seen the architectural yet.

Mr. DeCelle wanted to know what zone the property is in.

Mr. Merrikin said Residence A Zone. We are bound by the height restrictions.

Mr. DeCelle wanted to know how the condition of the soil was.

Mr. Merrikin stated the soil is sandy.

Mr. Zuker said the existing garage is staying and the Applicant is proposing to add 2 more stalls.

Mr. Hiltz stated in regards to the conditions can we add that there is no increase in impervious coverage beyond what is proposed on said plan or substantial change to the volume of the recharge system mentioned at the Public Hearing and approved by the Applicant's Engineer.

Mr. Zuker said if they have to move it and the Town Engineer is fine then I'm fine.

Ms. Murphy stated she is nervous that there might be an apartment above the garage.

Mr. Merrikin stated it is a garage.

Mr. Zuker asked if there was any public here who wanted to speak regarding this case.

Ms. Coffey stated she was wondering the need for a 3 car garage. She is concerned that the applicant would put on a second floor and add an apartment.

Mr. Merrikin stated that they could not do that because it's illegal.

Mr. DeCelle stated that the Board can't give out a use variance.

Mr. Merrikin stated that the Applicant has older children who have cars. That is why she wants to add these garages.

A motion was made by Mr. DeCelle, seconded by Ms. Coffey to close the Public Hearing.

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

A motion was made by Mr. Hiltz, seconded by Ms. Coffey, on behalf of the Applicant to grant a **Special Permit** under Section 12.3.C (5) of the Zoning Bylaw to allow an increase in impervious coverage associated with the expansion of the existing single-family dwelling at 11 Trafalgar Lane.

The vote was **(5-0-0) in favor** (Zuker, DeCelle, Hiltz, Coffey and Murphy voting); therefore the application for a **Special Permit** is hereby **granted, subject to the following conditions:**

#### **CONDITIONS:**

4. The work shall be generally as shown on the plan submitted by the Applicant entitled "11 Trafalgar Lane Site Plan of Land in Walpole, MA" with a scale of 1"=20', a date of May 26, 2015 and a final revision date of July 15, 2015, said plan being prepared by Merrikin Engineering, LLP.

5. The Applicant shall obtain a Curb Cut permit from the Engineering Department in compliance with their regulations. Revisions to the aforementioned plan are permissible without further approval from this Board as long as there is no increase in impervious coverage beyond what is proposed on said plan or substantial change to the volume of the recharge system mentioned at the Public Hearing and approved by the Applicant's Engineer.
6. The Applicant's engineer shall conduct a soil test pit, observed by the Engineering Department, in order to determine the elevation of seasonal high groundwater at the location of each of the proposed underground infiltration systems prior to installation of said systems.

### **REASONS FOR DECISION**

Section 12.4.C of the Zoning Bylaw provides:

*The SPGA may grant a Special Permit if it finds that the proposed use:*

- (1) Complies with applicable performance and/or design criteria listed in Section 12.3.C of the Zoning Bylaw;*

The Board finds that the Applicant has proposed work which will result in an impervious coverage of 23.6% of the lot, in excess of the 15% threshold for this special permit. To mitigate this increase, the applicant proposes to install two new stormwater infiltration trenches which, in combination with the two existing infiltration trenches, will capture and recharge runoff equal to one-inch of rainfall from the house roof (as is required under the bylaw) plus the amount of impervious coverage in excess of 15%. As such, the Board finds that the various performance standards of Section 12.3C are met.

- (2) Will not, during construction or thereafter, have an adverse impact on any water body or course in the district; and*

The Applicant has obtained an Order of Conditions from the Conservation Commission for work in the wetland buffer zone. Furthermore, the proposed infiltration will support groundwater levels in the general area. The Board therefore find that this requirement is met.

- (3) Will not adversely affect an existing or potential water supply.*

The Board finds that state regulation considers roof runoff to be clean and that the proposed infiltration of roof runoff will therefore not adversely affect an existing or potential water supply.

### **FURTHER FINDINGS**

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaw, which requires that:

- (1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:*

- (a) ***Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;***

As discussed above, the proposed work complies with the special permit provisions of Section 12.C.3 of the Zoning Bylaw.

- (b) ***Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed addition to a single-family dwelling will not significantly increase vehicular or pedestrian traffic and this requirement is therefore met.

- (c) ***Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;***

The Board finds that an addition to a single-family dwelling will not result in a significant increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and this requirement is therefore met.

- (d) ***Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

The Board finds that the proposed addition meets the various dimensional requirements of the Zoning Bylaw including lot coverage (as permitted by this decision) and that this criterion is therefore met. There are no buffer zone requirements associated with this use.

- (e) ***Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that single-family residential uses are not typically known to be dangerous due to fire, explosion, emission of wastes, or other causes. As such, the Board finds that this criterion is met.

- (f) ***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 finds that single-family residential uses are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

- (g) ***Shall not adversely effect the character of the immediate neighborhood; and***

The Board finds that the property in question lies within an existing single-family residential neighborhood and that the proposed addition and associated improvements are reasonable for the neighborhood. The Board therefore finds that this criterion is met.

- (h) ***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 finds that the proposed addition to the single-family residential structure and appurtenant work is appropriate for the Residence A zone, where single-family residential uses are allowed by right. As such, the Board finds that this criterion is met.

\*\*\*\*\*

7:00 pm – Donna M. Belmore – Case #10-15

Mr. Zuker read the public hearing notice:

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** in the **MAIN MEETING ROOM** of **TOWN HALL** on **WEDNESDAY, July 15, 2015 at 7:00 P.M.** on an application from **DONNA M. BELMORE, Case #10-15**, with respect to property located at 25 Oak Street, Walpole, MA and shown on the Assessors Map 33 and Lot No. 322, General Residence Zoning District.

The application is for:

A SPECIAL PERMIT from Section 2(B) (1) and 5(B) (3) (e) of the Zoning By-Laws to allow a two-story addition at rear of house with the first floor rear addition not accessible to existing structure.

A VARIANCE from Section 2.3 and 5 (B) (3) (e) of the Zoning By-Laws to allow a first floor rear addition not accessible to the existing structure.

Bill O'Connell the Applicant's attorney introduced the Applicant, Ms. Belmore a lifelong Walpole resident. He also introduced the builder who was at the meeting as well. The Applicant's husband unfortunately is sick. The plan is for a 2 story addition to be built off the rear of the house. The Building Inspector felt we should request a Special Permit as well as a Variance. The Applicant's property is in a General Residence Zone. Mr. O'Connell would like to ask the Board if they deem it necessary for a 2 family to be granted by a Special Permit. The Board should have a plot plan and an additional plan which they are in the process of getting stamped by a certified land surveyor. The Applicant is proposing a 2 floor addition. On the second floor there would be 2 bedrooms and a bathroom and on the first floor a bedroom, bath and kitchen. The current house has an entrance at the rear which would act as an entrance to the Applicant's "unit". There will be no stairs to the second floor outside. The existing pool and the garage will be removed. With respect to the height, the height of the addition would be 10 feet less than the existing home now. The Applicant's daughter and son-in-law would move in to the other part of the house. They were both born and raised in Walpole and would love to live in Walpole with their 4 children. Given the fact that the property is in a general residence zone and the intent of the project, Mr. O'Connell believes they meet the criteria of every component. With respect to the variance, it would be a dimensional variance. Removing the pool and garage will stabilize the lot. The Applicant would like some help with home care if that is required and financial help. It would assist her and her husband financially. Mr. O'Connell felt the addition would increase the value of their home and the neighboring homes. After speaking with the neighbors their only concern was the height. The height of the addition is less than what the home is now. This area is very close to Main Street. It has other duplexes. The Board granted 2 conversions from a 1 family home to a 2 family home last year. The Applicant would like to thank the Board for their time.

Mr. DeCelle wanted to know how big the house was currently.

The Applicant's builder stated that it is currently 1408 square feet

Mr. DeCelle said you are more than doubling the footprint of the house.

Mr. Zuker read the Board comments and then asked if there was anyone from the audience who would like to add anything to the record.

Cheryl Stelmash of 39 Oak Street stated that she was concerned about this proposed addition. Our backyard is facing this addition. What will this do to our property value?

Paul Stelmash of 39 Oak Street said they are doubling the size of the whole house. The lot is small as it is. That will be 6 more people moving in. Traffic could become an issue as well. It is coming off of Main Street and people fly down our street.

Cliff Snuffer of 23 Oak Street said that he is directly to the left of the Applicant's property. If you look at the 2 lots they are very small. The way the houses are currently positioned, even though they are side by side there is privacy. My backyard would be directly where the addition would be built. My concern is the size of the addition and the privacy. It takes up the whole footprint of the property. I am sympathetic to the Applicant's situation but I'm concerned at the way this will look.

The Applicant explained that the addition will be more to the side, not where the pool currently is.

Ms. Murphy said it doesn't take up the whole backyard.

Mr. Snuffer said the Applicant is looking for a Special Permit and a Variance. You have to get a variance to do something to the parcel that you otherwise are not permitted to do. He is not in favor of the variance. He believes this is going to be a privacy issue from his parcel. He could be sitting in the yard looking into a window. He wants to reiterate that he is sympathetic to the situation.

Mr. Zuker stated that he understood. Variances are hard to come by. There are different thresholds for a Variance and Special Permit.

Ms. Coffey asked Mr. Snuffer how much of the area from your property line to where the addition is going to be.

Mr. Snuffer stated pretty close

Ms. Murphy asked Mr. Snuffer if he is close to the pool

Mr. Snuffer stated that his whole backyard is conservatively 35-40 feet.

Mr. Stelmash said he doesn't think the plot plan is accurate. He believes the garage is right on the line. He feels a surveyor should be notified.

Mr. O'Connell stated we did submit a plot plan.

Mr. Zuker said to Mr. O'Connell that you believe you could do an in-law apartment by right.

Mr. O'Connell said yes. The Bylaw references in-law apartments, that they have to be accessible and there is also a deed restriction.

Mr. Hiltz asked Mr. O'Connell to take him through the preexisting non-conformity he talked about previously.

Mr. O'Connell said if the Board made a determination that the lot is preexisting non-conforming. Doesn't it become non-conforming for the 50%? He went on to say at some time the lot became preexisting non-conforming.

Mr. Hiltz wanted to know what the non-conformity of the lot was right now.

Mr. O'Connell stated that it's not.

Mr. Hiltz said prior to the zoning bylaw, he could potentially use the lot in many ways. But that does not create a current non-conformity.

Mr. O'Connell said there were a small percentage of preexisting non-conforming lots that were grandfathered. That is his logic. On the flip side because it is not in violation, then they would have the go ahead. For whatever reason the property did not have enough frontage.

Mr. Hiltz stated that Section 9 applies when you have a lot, use or building which does not conform with the bylaw. If you have a parcel that is less than 15,000 square feet and want to expand the house on a lot that is less, that is required. In your client's situation, they conform.

Mr. Zuker said the issue he is having is the Board has approved Special Permits applications previously on properties going from a one family to a two family but they gave conditions. Most of the time what we have is a lot of 20,000 square feet that was connected to sewer. Is it a use or dimensional variance?

Mr. O'Connell said he thought it was a dimensional variance. He then went on to say with respect to the abutter concerns. There will be another family there. I don't know how much extra traffic there will be. We understand their concerns and we want to work with the neighbors.

Mr. Zuker said we have to look ahead as well. Down the road this house could be sold as a 2 family. It is not just your situation which we understand and are sympathetic to but it is the future situation as well.

Mrs. Stelmash stated that both she and her husband also grew up in Walpole. We bought my uncles house, raised our children and we would like to keep it the way it is.

Mr. DeCelle said it is the Variance that concerns him more than the Special Permit.

Mr. Hiltz said your variance request is to allow a first floor rear addition to the existing structure. It doesn't specify. As the variance is written, he did not believe the Applicant requested relief from the specific requirements in the bylaw.

Mr. O'Connell asked how the Board would like him to address it with the 50%.

Mr. DeCelle said the Board needs more clarification.

Mr. Hiltz stated when you request a variance from the bylaw. What you requested in terms of relief is not in this item.

Mr. O'Connell said the variance is for a 1st floor unit that is not accessible. That is part of the criteria. He doesn't know what the Board is asking for.

Mr. Hiltz said he is looking at this specific language.

Mr. O'Connell said he is requesting a variance and he mentioned the specific bylaw. He went on to say that he will be more than happy to fix the description.

Mr. Hiltz stated that he is looking at Section I in the Bylaw. Your district GR requires 15,000 square feet. In order to convert a building on a lot, it needs to have 50 % more area.

Mr. Zuker said if you are asking for a frontage variance then you need to sight the code.

Mr. Hiltz said that it doesn't specify. The Applicant has to reference what relief he/she wants.

Mr. Zuker mentioned the better one is under F. You still need a waiver.

Mr. O'Connell felt he couldn't come in under F because it is under.

Mr. Zuker stated that he can't come under E either. We do need the right notice so everyone knows what they are applying for. He went on to say that the Board does not have a sight plan.

Mr. O'Connell asked if it was the Board's preference to continue the hearing.

Mr. Zuker stated he has an issue of the precedent this would be creating. He believes there is a way to deal with the current situation. It is a slippery slope. It makes sense to give a variance for lot size. How do you meet those criteria?

Mr. O'Connell said that there are two family homes all over Walpole.

Mr. Zuker said the Board did approve other one to two family conversions but they were different situations. They had a lot size of 20,000 square feet. If you look at the special permit criteria, it is tough when you don't comply with that.

Mr. O'Connell wanted to know if the Board wanted to keep the hearing open until they saw updated plans.

Mr. DeCelle stated that he does not have enough information right now to make a decision.

Mr. Zuker said his personal opinion is that there is a better way to do this without asking for a Variance. You try to step out of the personal situations. You could do the addition and it could meet all of the requirements, the addition is not the issue, it is the use inside the addition.

Mr. O'Connell asked if the Board could keep the hearing open.

Mr. Stelmash said we want the neighborhood to stay the same and we feel there is more footwork to be done. We would like to review plans to see how big this addition really is.

Mr. Zuker stated it is probably good to work together with your neighbors. We will keep the hearing open.

Mr. O'Connell said that he will look over the definitions in the Bylaw.

A motion was made by Ms. Murphy, seconded by Mr. DeCelle to continue the meeting until September 2, 2015 at 7:00 pm in the Main Meeting Room of the Town Hall.

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

A motion was made by Mr. Hiltz, seconded by Ms. Coffey to adjourn the meeting at **9:52** pm

The vote was **5-0-0 in favor**

(Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

Craig W. Hiltz  
Clerk

kb

Meeting minutes were approved on August 12, 2015.