

The June 3, 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 7:05 p.m. with the following members present:

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

**7:00 pm – Twins Realty Trust – Case #3-15**

Mr. Zuker stated that the Applicant is looking for a modification request. He went on to say that when the Board made the decision for this case we did not add the correct language. He read Attorney Gerald Blair's letter into the record:

The Applicant is concerned about the breadth and scope of Conditions #1 and #2 in the Board's decision relating to the Application for a Special Permit to allow a drive-in or stand on the property (Lot 49-6) pursuant to Section 5B4qii in Board of Appeals Case No. 03-15.

Condition #1: The wording of Condition #1 could be interpreted to unduly limit the uses to which the building may be used only to a bank, pharmacy or dry cleaner. As worded, if a business such as a dentist, architect, engineer or book store wanted to conduct such business on the property (Lot No. 49-6) **without a drive-in**, the Applicant would have to go back to the Zoning Board to get permission to operate such a business that is already permitted in the Highway Business district. Based on the discussion at the public hearing, the restrictions imposed are meant to relate to the operation of a drive-in or stand.

Respectfully, the Applicant requests that the Board amend Condition #1 of the decision related to the property (Lot 49-6) to read as follows:

1. As stipulated by the applicant at the public hearing, the only types of business that may operate a drive-in or stand on the property (Lot No. 49-6) will be a bank, pharmacy or dry cleaner. The Applicant would be required to come back to the Zoning Board for permission to allow any other type of business to operate a drive-in or stand on the property (Lot No. 49-6).

The above requested amendment maintains the restriction of the type of business that may operate a drive-in or stand on Lot No. 49-6 without unduly restricting permitted uses that do not involve a drive-in or stand and are otherwise permitted in the HB district.

Condition #2: The wording of Condition #2 could be interpreted to unduly limit the hours of operation of any business on the property (Lot No. 49-6) without regard to the operation of a drive-in or stand. As discussed in the above request to amend Condition #1, the discussion at the public hearing related to restrictions imposed on the operation of a drive-in or stand.

Respectfully, the Applicant requests that the Board amend Condition #2 of the decision related to the property (Lot 49-6) to read as follows:

2. As stipulated by the applicant at the public hearing, the hours to operate a drive-in or stand on the property Lot No. 49-6 will be 7:00 a.m. – 9:00 p.m. The business may operate when the drive-in or stand is closed.

The above requested amended Condition maintains the restriction of hours of operation of a drive-in or stand without unduly restricting the hours of operation of any business that may **not** operate a drive-in or stand or when the drive-in or stand is closed.

Mr. Zuker said to be clear in terms of the 20 day appeals clock, it is a gray area.

Mr. Blair said that once the decision is refiled with the Clerk's office the clock starts there.

A motion was made by Mr. Zuker, seconded by Mr. DeCelle to replace Conditions #1 and #2 in the original decision with what the applicant stated in their letter.

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

### **7:00 pm – Thomas Taylor, et als – Case # 7-15**

Mr. Zuker read the public hearing notice for **THOMAS C. TAYLOR, ET ALS, Case #7-15**, 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".

Mr. Zuker stated the application and hearing was scheduled before the remand was voted, because that has not happened Town Counsel as asked for the applicant to withdraw without prejudice and refile. Mr. Zuker said that he has talked to Attorney Blair just before the meeting started. Attorney Blair agreed with Town Counsel and asked to withdraw the application without prejudice. The Board wants to apologize to anyone who came in tonight for this public hearing.

Attorney Blair wanted to know when the Board could schedule this case again.

Mr. Zuker stated the earliest he could fit the applicant on the agenda would be July 15, 2015.

Attorney Blair asked if the Board would waive the filing fees.

A motion was made by Mr. Zuker, seconded by Mr. DeCelle to allow the withdrawal of the application without prejudice and waive the fees for the new application.

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

#### **7: 00 pm – KAM Construction Management – Case #6-15**

Mr. Zuker read the public hearing notice for **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

Paul Schniders of KAM Construction the Attorney representing the applicant mentioned that Mr. Marini (the applicant) and Paul Brodmerkle (site design) are also here to answer questions on this case. We are asking for a Special Permit and a Variance. The Special Permit we are looking for is to allow twelve (12) multi-family units to be constructed in a General Residence district. The dwelling will be connected to public sewer. The parcel consists of 125,000 square feet. It will be necessary to disturb the buffer. It is not clear if this Board or Planning Board or both should address this issue. We are at a little bit of a loss of whether either or both of these Boards should address this issue. The Planning Board gives waivers and the Zoning Board of Appeals gives Variances. We would appreciate some direction from your Board. As far as the other Boards the Applicant has already gone to the Conservation Commission. We will also be filing an application with the Planning Board this week.

Paul Brodmerkle of Site Design stated that they are extending Eastover Road. We are showing 12 townhouses. Each unit will have a garage. The entire facility will be provided with gravity sewer. We will run a sewer line, everyone on the street will be able to benefit from the sewer line if they would like. 50 % of the units will be 2 bedrooms and 50% will be 3 bedroom units. These will be upscale units and it will appreciate the neighboring properties. This project will be a benefit to the community. These units will be very expensive in the way of community development.

Mr. Zuker wanted to know about the drainage and what the Conservation Commission had to say.

Mr. Brodmerkle said that they have an order of conditions from the Conservation Commission.

Ms. Murphy wanted to know if the abutting homes will have the opportunity to hook up to the public sewer line.

Mr. Brodmerkle said that it is their choice.

Mr. Hiltz said the intersection of Eastover and 27 is a busy intersection. He wanted to know if any traffic studies have been done and does the applicant have any information regarding that.

Mr. Brodmerkle said that they have not done that yet. They are in the process of working with the Planning Board.

Mr. Zuker opened the meeting up to the public.

Judith Collins of 780 East Street said that her property abuts the construction area. Where the applicant is going to reduce the 50 foot buffer zone, whose property will that affect the most?

Mr. Brodmerkle said that it will affect your property the most.

Ms. Collins said that she opposes that. The buffer is supposed to be in a natural state.

Mr. Zuker wanted to know if the buffer zone was maintained would Ms. Collins be OK with the 12 units or does she oppose the 12 units.

Ms. Collins said that she opposes the whole project. The traffic will be horrendous.

Joyce Collins of 780 East Street said in regards to drainage, where will that go. She wanted to know if the drainage water will impact the Collin's property in flood like conditions.

Mr. Brodmerkle said that they have a 100 year system in place.

Mr. Zuker said that a lot of the technical issues would get reviewed with the Planning Board. They will be able to help with a lot of the technical details.

Joyce Collins said that she would not want it to have an impact on her property.

Krishnamurthy Deepashree of 5 Eastover Road stated that they bought the property 5 years back because they believed it was a quiet street. 12 units, 24 parking spaces and 24 cars on that little street will be a challenge. He said that he has a hard time passing a car on that street now. He believes the volume on that street is what is bothering him the most. The second thing he was concerned with was how long the construction will take to complete the whole project. We just spend close to \$25,000 to put in a brand new septic system. He can only speak for his family but he will not get the benefit of the public sewer line. He also is concerned with the construction as well.

Arthur Lopresty of 12 Tilton Court said he lives in a subdivision that John Marini built in September. He wanted to say that he is very happy living there. He and his wife came from the North Shore and could not find any new townhouses in the area. They were so happy to find this place. Working with KAM was wonderful; they were well maintained and are so happy they took advantage of that opportunity.

John Hayes of 3 Eastover Road said that there is a steep rise in the road, which makes for a dangerous proposition. Backing out of your driveway is very hard. We are dealing with traffic on East Street and from Walpole Woodworkers. I am very concerned with the traffic this will bring.

Mr. Zuker wanted to know if the applicant did test pits and where was the ground water.

Mr. Brodmerkle said it varies. The ground water goes down 5 feet.

Ms. Murphy wanted to know how many of the units will be 3 bedrooms.

Mr. Brodmerkle said 6.

Mr. Zuker read the Board comments Board of Health & Planning Board have no comments at this time. Conservation Commission stated that they voted to approve the Order of Conditions for the Eastover Road condominium development with special conditions and have enclosed the Order for the Board's review. The Walpole Fire Department said: The fire department has reviewed the submitted special permit application and supporting plans and offer the following comments:

- The 24' roadway appears to be adequate. We could not determine if the 24' roadway is designed from East Street to proposed project?
- It is vital that adequate turn around access is provided for fire and EMS vehicles. What is designed is adequate as long as parking is restricted to marked areas only.
- The fire hydrant is located in proximity of the area reserved for snow removal. We would like the opportunity to meet with the engineer and relocate this hydrant.
- A 6" water line is proposed for this project and we want to make sure that the size, pressure, and volume is adequate to supply the sprinkler system for all twelve units.
- The fire department will work with the building department to assure that all fire protection codes are met if this project is approved.

Mr. Zuker asked if there are any plans of widening Eastover Road.

Mr. Brodmerkle said that is a public way and they have no plans to widen it.

Steve Miller of 14 Eastover Road said that he has been in his house since 1999. Shortly after he moved in they extended the road, even though they were not supposed to. Ever since they have done that I have had a problem with flooding. I think it is too much for this area. It is a very narrow street. I oppose the fire hydrant being moved. I have concerns with all of the traffic being added to our street. I voice the same concerns as the other before me. The project is too big.

Pilar Keyes of 6 Eastover Road said one of her major concerns is the value of the property. She believes that adding condos could devalue her property. The narrow street will cause all kinds of snow issues. If I was an owner of a condo unit I don't think I would appreciate trucks turning around in that area. It is very scary to think of my children driving in this area. People who pull in my driveway already have a hard time pulling back out. She mentioned that she is concerned with the water behind her property. Mr. Hasenjaegar did all of this work that was not permitted. To even think that more creatures are going to have more destruction. It will have a negative impact on our way of life. None of this seems appropriate. It is going to impact our way of life and our safety.

Judith Heart a resident of Plimptonville Crossing said that she believes just the opposite will happen in regards to the valuation of Ms. Keyes property. People want nice condos and the condos that Mr. Marini has built are beautiful. She is very happy living in one of them.

Mr. Lopresty who spoke earlier regarding Tilton Court said that Plimptonville Crossing has more units than the amount of units being proposed on Eastover Road. The increase of traffic has not been bad.

Mr. Zuker said that one of the issues with the Special Permit is the traffic. He is hopeful that the applicant will have a traffic study done. Usually they are helpful and it is good to get a professional opinion on that. The Board hopes that the traffic study will be done before the next hearing. We have heard the traffic issues loud and clear. The traffic study looks at line of safety and the width of the lane.

Mr. Hiltz said that he heard residents had concerns regarding the bus area there. He would be interested in the cuing.

Mr. Zuker wanted to know if the condominium units will have an age restriction.

Mr. Brodmerkle stated that the units are very upscale and there are no age requirements.

Mr. Hiltz said that he would be interested in the market analysis.

Mr. Zuker said that he feels that would be more appropriate for the Planning Board.

Mr. DeCelle said that he would be interested in seeing that information as well.

Mr. Zuker said that the Board does not require that with Special Permits.

Mr. Hiltz said he is trying to figure out who will buy the 3 bedroom units. Will they be 20-30 years old with 3 children or a 55 year old couple with a spare bedroom?

Kathy Hasenjaegar who is representing Mr. Marini as a real estate broker said of all the people who are interested in these units, there is only 1 family with 2 little children. The rest are older people who are looking to sell their house and move to a condo. The three bedroom units have a 1<sup>st</sup> floor master bedroom which is appealing to retirees.

Mr. Hiltz said one of the conditions of a Special Permit is the volume of people and that nature of that in terms of the amount of people, are their school aged children.

Ms. Coffey said that she does know the quality of Mr. Marini's work. She stated that she is sure that he would build an absolutely beautiful and high end unit. The concern she has is that Eastover Road is a small street with a hill at the end of it. The neighbors are concerned with the traffic. It is a small street coming out onto a dangerous area.

Mr. Hiltz wanted to know if the construction would be done in a single phase or will it be developed in phases.

Mr. Marini said that they anticipate all of the 12 units to be done in 18 months – 2 years.

Mr. Hiltz wanted to know if the developer had any pictures to show what the units will look like.

Mr. Brodmerkle said the units will be colonial he showed the Board a picture of the proposed units.

Mr. Zuker said, clearly we will continue this. The Board needs more information on traffic, landscaping and the buffer zone. The buffer is there for a reason. How that buffer will look at the end of the day will be important.

Pilar Keyes of 6 Eastover Road said if the Board does a site visit to keep in mind that the Applicant is talking about 2 years of construction and how that will affect the neighbors. For 2 solid years of our life, trucks will be driving up this very narrow road. Our quality of life will be impacted. Regardless if the condo's being built are beautiful. It is the nature of the location. There is only one way in and one way out of the street. It is very different from Plimpton Street.

Mr. Miller said that even if the buffer was increased, it is not the same. Previously we were looking at the woods and now we will be looking at these complexes.

Joanne Palermo of 32-B1 Rainbow Pond Drive said that she went and took a tour of the Plimpton condos. She loves the whole setup. They were really nice. However she feels that the proposed location of this condominium complex will be too much for the area. She also added

that she does not normally go down Eastover Road, when she was leaving at 6:00 pm she was shocked at how hard it was to pull out of that street. She said she could not imagine what it will be like with another 24 extra cars.

Ms. Murphy said that is what is different than the Plimpton complex. There is not the same amount of traffic on Plimpton Street.

Joyce Collins felt that the land does not support the amount of condo's being proposed.

Mr. Zuker wanted to know if the applicant would be ready with all of the information by July 15, 2015.

Mr. Brodmerkle said that they should have the traffic study done by then.

A motion was made by Ms. Murphy, seconded by Mr. DeCelle to continue the public hearing until July 15, 2015 at 7:00 pm at the Town Hall in the Main Meeting Room.

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

**7:00 pm – David Senatore – Case # 2-15 (cont'd from 5/13/15) (Zuker, DeCelle, Hiltz, Coffey, Murphy)**

Mr. Zuker read the public hearing notice for **DAVID SENATORE, Case # 2-15**, with respect to property located at 269 Pleasant Street, East Walpole, MA and shown on the Assessors Map 28 and Lot No. 23, General Residence Zoning District.

The application is for:

A VARIANCE under Section 6C of the Zoning Bylaws to allow proposed addition to exceed allowed height to setback parameter.

Mr. Zuker explained that this meeting is a continuation from the May 13, 2015 public hearing.

The Applicant said that he has all of the information that the Board asked for (submitted new plans to the record). He went on to say that the overall height did change.

Mr. Zuker said that he believes that changing the type of roof did bring it closer to compliance. We will ask Mr. DeCelle our engineer on the Board what he thinks. Do you think that designs change made a big difference?

Mr. DeCelle said that the applicant still does not have the average grade on the plans.

The Applicant said that the engineer called it the average foundation depth, which he believes is 97.95.

Mr. Zuker asked if any members from the audience would like to speak.

Dorothy Connolly of 265 Pleasant Street said that she just wants to know exactly what is going on.

Mr. Hiltz explained the Bylaw to Ms. Connolly. He explained that the applicant changed the roof and what it would look like. He told her that she would be the abutter most impacted by this addition.

The applicant stated that at if they raise the grade they would be able to bring the addition into compliance. He does not want to mess with the grade. He went on to say that Ms. Connolly is concerned about the drainage. If I raise the grade then the runoff will go into her yard.

Mr. Zuker said that it seems that if you filled in the grade then you would meet the bylaw. However the abutter does not want the retaining wall, I can tell you revised the drawing as much as possible.

Ms. Connolly stated that she is putting in a new lawn and doesn't want the drainage to ruin that. She asked the applicant why he could not put the addition out back.

The applicant stated because of the garage. He would have to remove a bathroom to just build a new bathroom. It would defeat the purpose of having a garage. He is trying to do this with as little impact as he possibly can.

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

The vote was **5-0-0 in favor** of closing the public hearing (Zuker, DeCelle, Hiltz, Coffey & Murphy voting)

A motion was made by Ms. Coffey, seconded by Mr. DeCelle, on behalf of the applicant to grant a Variance from Section 6C of the Zoning Bylaws to allow proposed addition to exceed allowed height to setback parameter.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey and Murphy voting); therefore the application for a **Variance** under Section 6C is hereby **granted**, subject to the following conditions:

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans submitted at the public hearing.
2. 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.

## REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.3 of the Zoning Bylaws.

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, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship due to topography and shape of the lot. Filling the land could both negatively affect the applicant's property but also his abutter's property.

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

The Board finds that the proposed addition will not cause a substantial detriment to the public good. It was the wishes of the abutter for the applicant to not alter the drainage pattern by putting in a retaining wall. What the applicant is proposing to do should not affect said drainage pattern.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that with the above listed conditions, the Variance may be granted without nullifying or derogating from the intent or purpose of this bylaw.

## MINUTES

A motion was made by Mr. Hiltz, seconded by Ms. Murphy to approve the May 13, 2015 meeting minutes as written.

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

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to adjourn the meeting at 8:49 pm.

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

Craig W. Hiltz  
Clerk

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Minutes were approved on August 12, 2015.