

The May 28, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman James Stanton called the meeting to order at 7:10 p.m. with the following members present:

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

Mary Jane Coffey, Associate Member
 Timothy Foley, Associate Member

Also present:
 Stephanie Mercandetti, Economic Development Director

7:00 p.m. – Andrea G. Cisternelli – Case #08-14 (Variance 6C.8G.)

Mr. Stanton read the public hearing notice for **ANDREA G. CISTERNELLI, Case #08-14**, with respect to property located at 8 Emily Lane, Walpole and shown on the Assessors Map as Lot No. 36-73-1, Residence A Zone.

The application is for:

A Variance under Section 6C.8G. of the Zoning Bylaws to allow an in-ground pool to be located 3.7 feet from sideyard lot line.

Gerald Blair, 2 Commercial Street, Sharon, the applicant's attorney, was present to discuss the request. He mentioned that in 2012 Ms. Cisternelli hired a pool contractor to install an in-ground pool. A portion of the pool was 3.7 feet from the lot line. Mr. Blair mentioned that his client was unaware that she needed to have 6 feet from the lot line. The contractor was the one who decided to put the pool in where they did. Mr. Blair submitted some photos for the record of the pool and the sloped yard. Mr. Blair explained that the next door neighbor's property is landlocked. It is heavily treed and also has wetlands. This is a matter of a very small piece of the pool. The cost and expense of moving the pool would be \$150,000-\$200,000. This pool is not encroaching on the adjoining lot (Mr. Blair also submitted an aerial photograph). The fact that the pool was accidentally placed where it should not have been is not my client's fault. I would ask the Board to make a finding for a hardship. This is a big cost for such a small section of area. Mr. Blair explained that he has read various past decisions the Zoning Board has made over the years, to which he also submitted examples to the Board for the record. He mentioned that he could not find one with such a small variance. The placement of that pool was done by the pool contractor.

Mr. Stanton read comments from the various board and departments into the record. He specifically then read the letter submitted by Building Inspector Jack Mee:

“Dear Mr. Stanton,

I write to you today to give you a little background on this case. On June 2, 2011 we issued a permit for the installation of a 20’X40’ in-ground pool at 8 Emily Lane. There are a few areas within these documents that I would like to call your attention to:

- The proposed placement of the pool was to be 20 feet from the side lot line per their application.
- Our application clearly states “No side of any pool shall be closer than the zoning setback requirements...”
- The applicant signed that they understand that a certified “As Built” plot plan must be submitted before the final inspection is made.
- The approved plan from our office bears out standard stamp which states: “Any deviation from these APPROVED plans shall require written approval from the Building Official” This language comes directly from section 107.4 of the State Building code. This section states; “Amended Construction Documents. Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.”
- We discovered this pool was complete and in use when we were dealing with the owner’s violation on his barn which he had completely remodeled into a business office without any permits from the town.

It is hard to understand that with all the precautions that we have in place that this pool could be completed and in use without ever being in compliance. I hate to bring hardships on anyone, however as you can see this property owner does not believe in complying with our Codes and Bylaws.

Very truly yours, Jack Mee”

Mr. Blair stated that his client had hired the original contractor who would not do the pool. It was the second contractor that changed the precise placement of the pool.

Mr. Walter Olsen III, owner at 8 Emily Lane, mentioned that he and his wife originally hired one pool contractor and paid him a deposit. That pool contractor disappeared so we had to find another contractor. Mr. Olsen stated that he did not go and measure off when they started working. We are not trying to get away with anything. There is plenty of property. We could have moved the pool had we known. Mr. Olsen mentioned that he is very busy and he runs his own business. He does not have the time to oversee the contractor.

Mr. Zuker said let’s pretend that the pool was not put in. The argument for a variance is to show a hardship, you can see the challenge. He asked the applicant to think of the next person who comes in and does the same thing. Let’s pretend the pool is not in and you are arguing that it needs to go in where it did, what are your reasons?

Attorney Blair stated that it was not deliberately done. He is asking the Board to consider what happened here. If there was another house next to the pool he would understand the Board's argument. That is not the case. There is no overcrowding, no encroachment. Mr. Blair said to make my client take on that expense is unwarranted.

Mr. Hiltz mentioned that the applicant took out the permit and not the contractor. If a contractor was hired, wouldn't that contractor look at the building permit? Mr. Hiltz wanted to know if there is any testimony from the contractor.

Mr. Olsen stated that he has never put a pool in before. He put his trust in professional hands. He would anticipate the contractor to do what they were supposed to do.

Mr. Hiltz mentioned that if he had hired a contractor and told the contractor to build him this and the contractor built it where it was not supposed to be, well then the contractor should be liable. He put it in the wrong place.

Mr. Olsen mentioned that the first contractor told them to hurry up and pull a permit. They quickly did. Then the first contractor bailed on them. They hired the second contractor and he just went with the original permit.

Mr. Olsen asked Attorney Blair if they brought that contract. Attorney Blair stated that it was attached with the aerial photographs that they had previously submitted.

Mr. DeCelle asked the applicant if there was a fence that surrounds the pool.

Mr. Olsen stated that they had a fence.

Mr. DeCelle asked if the applicant if he is encroaching on the neighbor.

Mr. Olson said no, I don't think so.

Mr. DeCelle asked if the applicant had a patio.

Mr. Olson stated, yes they had a patio.

Mr. DeCelle stated then you are encroaching on the neighbor.

Mr. Stanton asked if any members of the public would like to speak on this application.

There were no comments from the public.

Mr. DeCelle asked the applicant if he had tried to buy the property next door.

Mr. Olson stated that he believes the neighbor, Mr. Verone had passed away.

Ms. Murphy asked the applicant if he was in compliance with the past zoning violation.

Mr. Olson stated that yes he is. He gutted the whole building and has been working diligently trying to get that done.

Mr. Stanton asked if that applicant wanted to submit anything else or if anyone else had any further questions.

Ms. Coffey asked the applicant why he didn't go back to the contractor. If the contractor was the one who messed up then the applicant should have gone to see him. She stated that if someone put something in the wrong place, it would seem that they should have some liability. She stated that it is a horrible predicament to be in and asked if the man was still in business.

Mr. Olson stated that the contractor is still in business.

Mr. Zuker said if the applicant could buy some of that land on the property behind him, that it would save him some money. He mentioned that he was having a hard time seeing the hardship. He didn't feel that the applicant did anything deliberately wrong, however, circumstances as they are, the simplest and probably cheapest way to fix this problem would be to talk with that neighbor and see if they can figure something out.

Mr. Olson mentioned that he does not know where to find the owner for that property. He tried last year and was unsuccessful.

Mr. Zuker felt that the Town could help him with that.

Attorney Blair stated that his client did write and received no response back from the neighbors. He noted that his client is here tonight before the Board because they were not able to accomplish that.

Mr. Stanton stated that he would like to move to close the public hearing.

Attorney Blair asked to have 30 seconds with his client.

After they returned, Mr. Stanton asked if they had anything else they would like to add to the record.

Attorney Blair stated that they had nothing else to add.

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

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, on behalf of the applicant, to approve a Variance from Section 6C.8G of the Zoning Bylaw to allow an in-ground pool to be located 3.7 feet from sideyard lot line.

The vote was **0-5-0** in opposition (Stanton, Zuker, Hiltz, DeCelle, Murphy voting); therefore the application for a **Variance** under Section 6C.8G is hereby **denied**.

REASONS FOR DECISION:

It is the finding of the Board that the applicant has not met 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.***

In the Public Hearing, the Applicant admitted that the in-ground pool could have been placed in another location on the property as there was in fact adequate space. The Board finds that the property was not irregular nor are there any topographical obstructions. As the in-ground pool could have been relocated to another spot, the Board finds that the applicant has not demonstrated a need 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 the property is located.

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 has not shown substantial hardship, financial or otherwise. If there was hardship, it was self-imposed. The Applicant sought a building permit for a pool, in which no variance was required, and contracted a firm who installed the pool in its current location.

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

The Board finds that due to the location of the house on the lot and the location of the abutting properties, the location of the addition will be detrimental to the public good.

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

The Board finds that the residence is located in a Residence A, and therefore, the Variance may not be granted without nullifying or derogating from the intent or purpose of this bylaw.

7:30 p.m. – John Nassar – Case #06-14 (cont'd from April 30th)

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 specified in Section 4.e.

John Nassar mentioned that he had revised plans that he would like to submit into the record.

Mr. Stanton asked the applicant what has changed on the plans.

Mr. Nassar stated that he had met with Stephanie Mercandetti and tried to make sure he accommodated all of the Zoning Boards concerns. Mr. Nassar made sure tenant parking, employee parking and customer parking were all shown on the updated plans. To address the Boards concerns about lights and security, Mr. Nassar had his new plan show more lights and security cameras on all four corners of the building.

Mr. DeCelle asked if Mr. Nassar had any discussions with the neighbors.

Mr. Nassar stated that he had spoken with Mr. Homolko, the neighbor who had issues with the fence from the prior meeting. Mr. Nassar stated that he would help with the fence.

Mr. Homolko of 23 Marion Street stated that Mr. Nassar agreed to help with the fence. He noted that it will be a six feet high, L shaped, stockade fence. Construction of the fence will start in 10 days.

Mr. DeCelle mentioned that at the last meeting he wanted to know about gas traps.

Mr. Nassar stated that he is not required to have gas traps. In fact it is illegal and the plumbing inspector said that he did not need them.

Mr. DeCelle wanted to know where the water will go.

The owner of the property, Mr .Michael Heavey of 7 Williams Street, Medway, MA, mentioned that there is a grass strip that the water will go into. Also, it will go into the Williams Street drainage. The areas are currently paved. Previously the location was a hair salon.

Mr. Stanton read the comments from other departments into the record.

Mr. Hiltz wanted to know if the lights are the typical shielded lights.

Mr. Nassar stated that yes they are. That way the lights should not disturb the neighbors.

Mr. DeCelle asked where the handicap parking spaces were going to go.

Mr. Nassar mentioned that he could move some spaces around to accommodate the handicap spots.

Mr. DeCelle stated that a handicap space needs to be van accessible. Due to that, Mr. Nassar will lose a space. Mr. DeCelle also wanted to know if Mr. Nassar had a plan for the Planning Board showing handicap parking.

Mr. Nassar said that his plans do not show handicap parking yet.

Ms. Murphy noted that Mr. Nassar will need to show on the new plans that he moved the dumpster as well.

Mr. Zuker said that the Board is voting on the use and that we can grant just that use.

Ms. Murphy mentioned that as of right now Mr. Nassar is in violation. He has 20 cars currently sitting on that lot today.

Mr. DeCelle mentioned that Town Engineer Margaret Walker has a concern that it is not safe.

Mr. Zuker stated that from a use standpoint, Mr. Nassar meets the criteria. There are other issues but the Board can put a condition on the amount of spaces allowed.

Mr. Stanton said that the Zoning Board of Appeals has to approve the use.

Mr. Zuker wanted to know if this would increase the traffic on Williams Street.

Mr. DeCelle noted that on the plan a guard rail is shown.

Mr. Zuker stated that the guardrail becomes an issue for the Planning Board. The Zoning Board should inform the Planning Board of the concerns they have.

Mr. Hiltz wanted to know if tenant parking falls under the site plan.

Mr. Zuker mentioned that Mr. Nassar only cited the property to be a used car lot.

Mr. Heavey stated that in regards to the parking that would be near Williams Street, there has never been a problem. This used car lot will not cause any more traffic then when there was a beauty parlor in that same space.

Ms. Murphy reiterated that she did not like where the dumpster was situated and that it will impede the people being able to see as they back out of the space closest to it.

Mr. Nassar stated that a Planning Board member suggested he put it there. The dumpster can be moved without any issue. It is going to be a small dumpster and he does not get much trash.

Mr. Heavey added that he is looking for a use for the building. Mr. Nassar is trying to work something out that will benefit him and the community. He stated that he hopes the Board will act favorably.

Mr. Stanton asked if any members of the public wished to comment. No member of the public wished to speak. He then stated that the Board is here tonight to deal with the use of the property and only the use.

Mr. Zuker stated that he did not have a problem with the use. Not knowing the everyday traffic on Williams Street is a concern. Both the Zoning Board and the Planning Board have to take that into account.

Mr. Hiltz asked if the Board could include that in a condition. He noted that the Board is talking about 16 spots. Perhaps the Board could mention something that says that the nine other parking spots may be required on the site due to the site plan.

Mr. Zuker mentioned that he felt that Mr. Nassar should come back with an amended site plan.

Mr. Heavey mentioned that the Zoning Board has to act on this and then the Planning Board. He felt that if the Zoning Board went forward with a condition that the Planning Board would review it.

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

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

A motion was made by Ms. Murphy, seconded by Mr. Stanton, on behalf of the applicant, to approve the request for a Special Permit under Section 5-B.1.4.e of the Zoning Bylaw to allow a salesroom storage area for used car sales, as specified in Section 4.e.

The vote was **5-0-0** in favor (Stanton, Zuker, Hiltz, DeCelle, Murphy voting); therefore the application for a **Special Permit** under Section 5-B.1.4.e is hereby **granted**, subject to the following conditions:

CONDITIONS

1. The granting of the Special Permit requires that the parking spaces will not exceed sixteen (16) spaces for automobile storage.
2. The granting of the Special Permit requires that the Applicant maintain a buffer between the business and the abutting residences respectively as required under the Zoning Bylaw.
3. As stated during the Public Hearing, the Applicant has agreed to construct, repair and maintain a 6-foot stockade fence to run along the length of the property and the adjoining business, which the Applicant also owns, as agreed to with the neighboring abutter located at 23 Marion Street.
4. The granting of the Special Permit requires that the Applicant is not allowed to use designated tenant or customer spaces for use of automobile storage or repairs. Should it

be determined that additional spaces are required for uses on site, then such spaces shall come from the granted sixteen (16) spaces for automobile storage.

REASONS FOR DECISION:

It is the findings of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws.

- i. Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.*

The Applicant operates a related business immediately abutting the property proposed for the use which is located in one of the Town's commercial areas, therefore the use will not cause vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.

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

The property is not extensively large for the proposed use therefore the use will not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.

- iii. 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 use does comply with the dimensional requirements applicable to the Business Zone.

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

The use will not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes.

- 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 use will 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.

- vi. Shall not adversely effect the character of the immediate neighborhood.*

The use will be in a commercial area along Route 1A/Main Street where other similar businesses are located therefore the use is consistent with the surrounding area and will not adversely effect the character of the immediate neighborhood.

- 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 use is compatible with the purpose of the zoning bylaw or the purpose of the zoning district in which the premises is located.

8:00 p.m. – Dwight and Lisa Duncan – Case #07-14 (Cont'd from April 30th)

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.

Mr. Stanton read a letter signed and submitted by Dwight and Lisa Duncan that read:

“I Dwight and Lisa Duncan withdraw our application before the ZBA without prejudice regarding 3 Lorusso Road Walpole, MA 02081.

Sincerely,
Dwight Duncan
Lisa Duncan”

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

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

8:30 p.m. – Michael P. and Bridget Servatius – Case #02-14 (Deliberation)

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.

Mr. Stanton asked what is on the table.

Ms. Murphy wanted to know if the parking situation and snow removal was addressed.

Mr. John Rockwood, attorney for the applicant, stated that they did not have that information yet.

Mr. Stanton said that the issue he sees is that the Board has talked a lot about the educational uses being interpreted broadly and to see if the the educational purpose of this proposed project is satisfied under the Dover Amendment.

Ms. Murphy stated that she was more concerned with the safety aspect of it.

Mr. Zuker felt that the shared driveway is a concern as well.

Ms. Murphy mentioned that the Board was never shown a plan with any parking.

Ms. Coffey added that if there are 10 bedrooms and eight out of those 10 people had a visitor then you would have eight or 10 cars there. She felt that the fire department would not be able to get a truck through that area if something went wrong.

Mr. Stanton stated that if the vote was to uphold the Building Inspector's permit then the Board could add conditions. One of them being that parking should be shown. What concerned the fire department was that there was never a reference to the house becoming a multi-family dwelling when they did a site visit in 2013. The Board reviewed the plans as proposed. The Board's concerns are the same that we have raised previously. What really jumps out though is the parking.

Mr. Zuker said that the Board could put conditions in place.

Both Mr. DeCelle and Mr. Stanton felt it was important for the Fire Department's concerns to be addressed.

Mr. Stanton stated that it is not a request for a variance or special permit. This situation is a little different. The Board needs to decide if they felt it should be thumbs up or thumbs down on the building permit.

Mr. Zuker stated that for better or worse the Dover Amendment is the law. It can be tough just like a 40B.

Ms. Murphy said that she could assume they would want safety to be addressed.

Mr. DeCelle asked if the building permit was issued wrong or right. The question the Board has before them, is this the Dover Amendment or not. This is the appeal of the Building Inspector's issue of the permit.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to uphold the issuance of the building permit granted by the Building Inspector.

The vote was **5-0-0**; (Stanton, Zuker, DeCelle, Murphy, Foley voting) (Hiltz not present for the May 14th hearing); therefore, the Building Inspector's action was upheld.

REASONS FOR DECISIONS:

During deliberation, the Board found that the term “educational use” is defined broadly and can include any form of social instruction such as personal hygiene/dental care, laundry, housekeeping, community safety and awareness skills, and food preparation and nutrition.

Based on facts and evidence received during the public hearings, it is the finding of the Board that the eligibility for the educational use exemption provided for under Massachusetts General Law Chapter 40A, §3, otherwise known as the Dover Amendment, has been satisfied. The Board further determined that Site Plan Review is not required.

In addition, the Board grants this motion on behalf of the Appellee with the following conditions:

- 1.) The Appellee must provide adequate parking as determined by the Building Inspector;
- 2.) The Appellee must provide appropriate trash and snow removal;
- 3.) The Appellee must address any concerns of the Fire Department; and
- 4.) The Appellee must develop an Operation & Maintenance Plan to be approved by the Building Inspector.

Furthermore, based on the above decision, the Board finds that the Building Inspector’s actions were substantiated and thus the Board upheld his action.

The Board finds that this decision is consistent with the purpose and intent of the Zoning By-Laws.

Mr. Stanton asked if members had any comments on the draft minutes for the meetings of January 22, 2014, February 12, 2014 and March 5, 2014, previously distributed to the Board. There were no comments or edits presented.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to approve the minutes for the January 22, 2014 meeting as written.

The vote was **3-0-1 in favor**. (Stanton, Zuker, DeCelle voting; Murphy abstained)

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to approve the minutes for the February 12, 2014 meeting as written.

The vote was **3-0-1 in favor**. (Stanton, Zuker, DeCelle voting; Murphy abstained)

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to approve the minutes for the March 5, 2014 meeting as written.

The vote was **3-0-1 in favor**. (Stanton, Zuker, DeCelle voting; Murphy abstained)

The board had a discussion regarding the summer schedule. They agreed to meet on June 11, 2014, July 16, 2014 and August 13, 2014. Craig Hiltz noted that he would not be able to attend

the June 11, 2014 meeting. Timothy Foley stated that he would have to miss the July 16, 2014 meeting.

A motion was made by Mr. Stanton, seconded by Mr. Zuker, to approve the summer schedule.

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

There being no further business, a motion was made by Mr. Stanton, seconded by Mr. Zuker, to adjourn the meeting at 9:34 p.m.

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

Craig Hiltz
Clerk

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Minutes were approved on September 24, 2014