

The November 12, 2014 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 6:35 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman (arrived at 7:08 p.m.)
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member (not present)
Susanne Murphy, Member (arrived at 7:05 p.m.)
Timothy Foley, Associate Member

Also present:
James Johnson, Interim Town Administrator
Ilana Quirk, Town Counsel

Matthew Zuker declared the board will be going into Executive Session to discuss litigation strategy known as 5th 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 and to discuss litigation strategy regarding litigation known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2014-01; and Town of Walpole, et al. v Barberry Homes, LLC, Land Court 2014 MISC 481399-AHS and Robertson v. Barberry Homes, LLC, Norfolk Superior Court NOCV2014-000129 involving a proposed 40B Comprehensive Permit for land on Moose Hill Road. 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. Hiltz, seconded by Mr. Foley, to go into executive session, under G.L. c.30A, §21 (a)(3), for the purposes and reasons declared by Chairman and with the Zoning Board of Appeals to return to open session thereafter.

The vote was **3-0-0 in favor. (Mr. Zuker –Yes; Mr. Hiltz – Yes; Mr. Foley – Yes)**

The Board returned to open session.

7:00 p.m. – Thomas C. Taylor – Case #16-14

Mr. Zuker read the Public Hearing notice for **THOMAS C. TAYLOR, Case #16-14**, 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:

An amendment to a VARIANCE previously granted from Section 4-B (now Section 6-B) as written at the time when the original variance was applied for (granted on 06/19/86) of the Zoning Bylaws to allow the subdivision of the subject lot if said subdivision is in compliance

with the subdivision control law, the Walpole Zoning Bylaw and is approved by the Walpole Planning Board.

Tom Brady, the Applicant's attorney was present for the hearing. Attorney Brady stated that back in 1986 the Applicant was granted a variance for 40 feet of frontage. Fast-forward to 2014, the Applicant submitted information to the Planning Board to subdivide the land into 3 conforming lots. The lots meet the square footage requirements and frontage requirements. We completely comply with the Walpole Zoning Board.

John Glossa of Glossa Engineering was also present and stated that he took the plans to the Planning Board. The Planning Board was about ready to vote approval when Town Counsel noticed that there was a variance from 1986. Town Counsel said that the conditions state that only one house can be built on that lot. As someone who does a lot of work in this town, those are three lots that conform to all aspects of zoning. We are asking the Board to add in the suggested language. We would like the Board to amend the decision that was granted in 1986.

Mr. Zuker said that this is a unique situation. His concern is why the Board only wanted one lot back in 1986.

Mr. DeCelle stated that his biggest issue is why the Applicant agreed to it.

Mr. Hiltz wanted to know why the Applicant just doesn't abandon the variance.

Mr. DeCelle stated that when the applicant got the variance, the lot had no frontage. In 1986 the applicant agreed to build only one house.

Mr. Zuker asked if any members of the public wished to comment on the proposal. No members of the public wished to speak.

Mr. Zuker read comment letters into the record from the Board of Sewer and Water Commissioners, Police Department, Town Engineer, Fire Department, Conservation Commission, Planning Board and Board of Health. Mr. Zuker noted that Planning Board stated that: they had no comments at this time for the above referenced application. Please note that presently Mr. Taylor has an application for subdivision approval (Kingswood Estates) pending before the Planning Board. He also noted that the Board of Health stated: The Walpole Board of Health at its October 28, 2014 meeting voted that they were 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 buffer zone.

Mr. Zuker asked the applicant if there was a sewer connection near the property currently.

Mr. Glossa stated yes, it will connect from a Westwood line into Walpole. If constructed it would provide public sewer to 6 houses. The road currently just ends. It was clearly contemplated that this property would extend into a cul-de-sac. We have not asked for any waivers from the Planning Board. The Planning Board was just about to approve.

Mr. Zuker asked the Applicant if he could remember back to 1986, the meeting minutes from 1986 state that you are only going to build one house and that you agreed with that.

The Applicant, Mr. Thomas C. Taylor said that back in 1986 he was just going to build one house. He didn't think he had the frontage to build more.

Mr. Zuker said that the variance does not carry with the land forever, if that house did not meet the frontage then that would be a problem. If the Board agrees then this would take the existing house from a non-conforming house to a conforming lot.

Mr. DeCelle wanted to know why the applicant didn't subdivide it from the beginning, what was the reason. Mr. DeCelle also stated that he felt that the applicant gains all of the benefits of the variance and not he is saying I don't want it anymore.

Mr. Brady mentioned that they are here tonight because Town Counsel pointed this condition out. Now the Planning Board is stuck with it. We have to get this fixed before the Planning Board can act.

Mr. DeCelle said that the Applicant requested a variance for a single family house. The applicant agreed to a single family house on 13 acres. He got a variance for a house that should have never been built. Don't they give up some of their rights because of that?

Attorney Brady stated no because of the subdivision control law.

Mr. DeCelle mentioned that if this came before the Board today, to build one house on 13 acres, should the Board ask in the future to subdivide the lot? The variance should have never been granted in the 1st place. Was this done erroneously?

Mr. Zuker stated that if the applicant knocks down the house then the variance goes away.

Mr. DeCelle stated that he got the benefit from the variance.

Mr. Zuker said that they have the case before us and that they are looking for an amendment to that variance.

Mr. Foley felt that the Board could just waive the variance. The applicant does not need it anymore, they have the frontage.

Mr. Zuker stated that they are doing something to gain the frontage, they are building a road.

Mr. Foley mentioned that he thinks the hardship was found for different reasons in 1986.

Mr. DeCelle said when you agree to something in a variance that is not legally binding?

Mr. Zuker stated that he agrees but the applicant does not need the variance anymore. There are no forever restrictions on this.

Mr. DeCelle said that back in 1986 he met all the criteria, he could have extended and made a cul-de-sac but he said he only wanted to build one house.

Mr. Hiltz wanted to know if the applicant had any other questions.

Attorney Brady stated that they had no questions at this time.

Mr. Hiltz mentioned the only problem he has is the wording of the amendment that the applicant provided. He stated that he is just a little concerned with the part that states, “without an application or decision on the Zoning Board of Appeals” he mentioned that he would rather see it say “the lot shall be used for one single family residence only except as follows, unless frontage requirement is met.”

Attorney Brady said he was fine with that change.

Philip Hooper of 39 Bubbling Brook Road said that he is just an interested resident. He believes that adding these homes would be a good benefit to the Town.

A motion was made by Mr. DeCelle, seconded by Mr. Hiltz to close the hearing with deliberation to take place on December 10, 2014.

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

7:00 p.m. – Talha S. Algur – Case #17-14

Mr. Zuker read the public hearing notice for **TALHA S. ALGUR, Case #17-14**, with respect to property located at 305 Elm Street, Walpole, MA and shown on the Assessors Map 24 and Lot No. 17, Residence A Zoning District.

The application is for:

A VARIANCE from 6-B of the Zoning Bylaws to allow an addition at 22.4 feet proximity to the lot border.

The Applicant Talha Algur stated that he resides at 305 Elm Street, he has 3 children and he needs to enlarge his house. The only possible way for him to enlarge is to go towards the street. He is asking for a 7.4 foot variance to enable him to build an addition so his wife will not kill him. When looking at the neighboring houses some of them are 12.4 feet to the street. The closest one is 12.4 feet which is the chiropractor at 231 Elm Street.

Mr. Hiltz wanted to know how far that house was from the Applicant’s house.

Mr. Algur stated 5 or 6 houses down. He mentioned that he has almost an acre of land but his lot is set up uniquely.

Mr. DeCelle asked if the Applicant was planning on adding a second floor.

Mr. Algur stated yes because he did not want to hit the Conservation Land.

Mr. Hiltz wanted to know what the hardship would be if be extended out back.

Mr. DeCelle followed up on Mr. Hiltz's statement, why can't you just extend out the back and go through the Conservation Commission.

Mr. Algur stated that the Conservation Commission signed off on the application but told him not to go towards the pond. He also does not want to take down the trees.

Mr. Hiltz mentioned if the back area was prone to flooding then he could see a hardship.

Mr. DeCelle was wondering if it was better to go towards the street.

Mr. Hiltz mentioned that it is a question of the bylaw. It complies with the bylaw to extend back.

Mr. Algur noted that if he extends out the front then he has the foundation, as long as he extends towards the street.

Mr. Hiltz said to go out back it slopes down to the pond.

Mr. Algur said he would have to pour a lot of foundation and then go up. Plus he would have to get rid of the beautiful trees and he does not want to do that.

Mr. Zuker read the Board comments into the record. He noted that Board of Health stated: The Walpole Board of health at its October 28, 2014 meeting determined that proposed plan results in a net increase in number of bedrooms under Title 5; therefore perc tests and a new system would need to be constructed before project can go forward.

Mr. DeCelle explained to the applicant to be careful before he starts construction because based on that comment, they are saying you would need an upgrade in your septic.

Mr. Zuker noted that there seems to be some questions if you could build back.

Mr. Algur mentioned it would cost \$45,000 just to pour the foundation. What he is proposing is at street level.

Mr. DeCelle wanted to know if the house was on a slab currently.

Mr. Algur stated that he has a basement. He would need to pour a complete height foundation 7 ½ fet- 8 feet. If I go with what I'm proposing then it will be a good looking house that will be faster to build and cost me much less than \$45,000.

A motion was made by Mr. DeCelle, seconded by Mr. Hiltz to close the hearing with deliberation to take place on December 10, 2014.

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

7:00 p.m. – Paul Alexander – Case #15-14 (cont'd from 10/29/14) (Zuker, DeCelle, Hiltz, Coffey, Murphy)

Mr. Zuker read the public hearing notice for **PAUL ALEXANDER, Case #15-14**, with respect to property located at 9 Fairmont Avenue, Walpole, MA and shown on the Assessors Map 18 and Lot No. 143, General Residence District.

The application is for:

A SPECIAL PERMIT under Section 9.4.A. of the Zoning Bylaws to allow construction of a deck on a house located on an existing non-conforming lot.

The Applicant, Paul Alexander submitted a new plan to the Board and noted that his neighbor came last meeting and did not have a problem with the proposed deck.

Ms. Murphy said she believes they can grant it under 9.4.A of the Zoning Bylaw. The last sentence states: Any other change, extension, or alteration of an existing nonconforming one-family or two-family dwelling may be permitted provided the Board of Appeals grants a special permit including a determination that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Hiltz stated that the Town Bylaws permit it and that he agrees with Ms. Murphy.

Mr. DeCelle said you cannot create a new violation.

Mr. Hiltz stated that the non-conforming lot refers to 9.4.A. it even states that if you have a non-conforming lot you can extend it. In 9.5.B. it states: A one-family or two-family dwelling shall not be deemed a nonconforming building or use solely due to the lot's deficiency in area or frontage, and the dwelling may be changed, extended, or altered by right (but a single-family dwelling use may not be changed as of right to a two-family use) if otherwise in conformity with the dimensional requirements in Section 6-B. In all other cases, the change, extension, or alteration of a building on a nonconforming lot shall require a special permit under Section 9.4.A. You can approve it if it is not detrimental to the neighborhood.

Mr. Zuker stated that the Town Bylaws allow it.

Mr. Foley said that the Board follows the Bylaw.

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

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

A motion was made by Ms. Murphy, seconded by Mr. Hiltz, on behalf of the Applicant, to grant a **Special Permit** under Section 9.4.A of the Zoning Bylaws to allow construction of a deck on a house located on an existing non-conforming lot.

The vote was **(4-0-1) in favor** (Zuker, Hiltz, Murphy and Foley voting in favor DeCelle abstained); therefore the application for a **Special Permit** is hereby **GRANTED, subject to the following conditions:**

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the structure shall be used as a deck, as shown on the plan submitted at the public hearing.
2. This Special Permit 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 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 Construction shall 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 construction shall 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 construction complies with all of the dimensional requirements of Section 5-G. Pursuant to Section 9.5 and 9.4.A the Board found the construction not to be more detrimental to the neighborhood because there are other similar decks in the neighborhood.

- 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. The neighbor who would be most impacted by the construction on the deck was in favor of the project.

- 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 not be detrimental to the neighborhood as shown on the plan. The deck on the back was consistent with the neighborhood as contested by the neighbors.

- 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.

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7:00 p.m. – James L. Diamond Jr. – Case #12-14 (cont'd from 9/10/14) (Zuker, DeCelle, Hiltz, Coffey, Murphy)

Mr. Zuker explained to the applicant that he would only have a four member board, since Ms. Coffey was not here tonight. Therefore the Applicant would need all 4 members who are here tonight to vote in favor for it to pass. He asked the applicant if he would like to move forward.

The Applicant, James L. Diamond Jr. stated that he understood and would like to move forward.

Mr. Zuker read the Public Hearing notice for **JAMES L. DIAMOND JR., Case #12-14**, with respect to property located at 759 Cedar Street, Walpole, MA and shown on the Assessors Map as Lot No. 39-19, Residence A Zoning District.

The application is for:

A Special Permit under Section 9 of the Zoning Bylaws to allow for new construction onto an existing non-conforming structure that is within setback and elevation guidelines set forth by town bylaws regarding non-conforming structures in Residence A Zoning District. As specified in Section 9.

Mr. Hiltz explained that in the event the meeting is continued, we are taping the meeting under the Mullin Rule. Which states: Per Massachusetts General Laws, Chapter 39 Section 23D, is a local option statute which gives local boards, committees and commissions that conduct

adjudicatory or quasi-judicial hearings flexibility if a member misses no more than one session of a public hearing. Before taking a vote the member must certify in writing that they have examined all evidence misses, including audio and or video recordings. This law was passed by the Legislature in 2006. This law is otherwise known as the Mullin Rule.

Mr. Diamond stated that he spoke with the Town Engineer. The plan with the red house is the new one. The average height is 19.4. We would move it into 20. The rest of the house is just going up. Everything is within zoning.

Ms. Murphy said that the new plan looks great.

Mr. Diamond stated that the house is going from non-conforming to conforming.

Mr. DeCelle wanted to know if the Applicant was conforming to the height requirement within Section 6. He noted that the Applicant did not put what the Board asked him to put on the plan.

Mr. Diamond stated that he was told he would need spot grades. He was told that it stated the proposed finished grade is 6 inches. He was told that he did not need topography.

Mr. DeCelle wanted to know who told him he did not need those things.

Mr. Diamond stated the Board did.

Mr. DeCelle stated that there are benchmarks that need to be on the plan.

Mr. Zuker noted that the average base grade is 6 inches.

Mr. DeCelle wanted to know to what? There are certain things the Board asked for. He explained that he could not go out in the field and reproduce to say if this is right or wrong. The second floor addition is not shown on the plan. He has a height here from the top of foundation. It is calculated from average grade. If this is 21 then this height could be 21 feet.

Mr. Zuker noted that the 25 foot line is right here, when you run that straight down, so it is 5 feet from that.

Mr. Diamond mentioned that he has it on the plan; you just cannot see it from here. He showed the Board the plan that was on his phone.

Mr. DeCelle said that he does this for a living. The surveyor did not show the right things. There is just a line that says this is 25 feet. If you want to assume then go ahead. I'm just saying it is not correct.

Mr. Hiltz said what if we condition any points of uncertainty.

Ms. Murphy mentioned that she would rather see it in writing rather than condition it.

Mr. Zuker said that the Board would want to know what the distance is from these two points on the plan.

Mr. DeCelle stated that the only one who can put those on the plan is a certified land surveyor.

Mr. Diamond said he thought the question was what the proposed finished grade would be. My question was how anyone can guess what that would be.

Mr. DeCelle said that you cannot have a plan without the height requirements. You need the distance from the 2nd floor as well.

Mr. Diamond said that he had the average grade for the footprint of the addition.

Mr. DeCelle said that it was supposed to be the house. You should have numbers on the foundations. I don't have a problem with what you are doing. The Board just does not have the information.

Mr. Zuker stated that you do not need the average grade according to our bylaws. You need the top height.

Mr. DeCelle said we ask for certain things. We are not getting them, we haven't been getting them. If we let it go then who do you require it from? We are not getting the information that is required. Do I think it needs a variance, no. However we do not have that information. We need that information. I do not have a problem with the addition. I just do not want to have someone come in later saying "you did not have this person do that".

Ms. Murphy wanted to know what the Applicant would have to do to move forward.

Mr. Zuker stated that the Applicant is not here for a variance.

Mr. Hiltz said that even if they had a plan that showed a need for a variance the Board would not be able to do that tonight. We could make sure we stated that the plan must comply with this certification.

Mr. Zuker stated that we cannot guess and scale out old plans. He asked the Board if they would be comfortable granting the Special Permit.

Mr. DeCelle stated that he would still like to see the couple of things that he mentioned.

Mr. Zuker said that if the Applicant was here for a variance then we would need those things. He stated that the Board can inform the Building Inspector what we said in terms of conditions. We would state that the Applicant would need to have a stamped plan that has a new and existing height that meets the requirements of Section 6.C.

Mr. Hiltz asked the Applicant if he was comfortable with that approach.

Mr. Diamond said that he is comfortable with that. He thought it just needed to be stated. It is on the stamped plan.

Mr. Zuker said that he thinks the Applicant might have misunderstood what the Board was saying.

Mr. DeCelle said it was not the Applicant's fault, the Engineer/Land Surveyor should have known. The Board is looking for a spot grade and an average grade which is a specific number.

Mr. Hiltz explained to the Applicant that it should show the topography of the whole lot. It has to be based on an original number. The Board understands your intent. We are just lacking the information that confirms that. There is no question regarding the intent.

Mr. DeCelle mentioned that the Applicant would need dimensions from the property line even to the second floor and a grade to the house.

Mr. Hiltz said that the Applicant should show the Surveyor the Bylaw and have it comply with 6.C.2. I want to put in the conditions that we are not issuing a Variance. We do not have an application before us for a Variance. The Applicant stated that he does not plan to violate Section 6.C.2 of the Zoning Bylaws.

Mr. Zuker said if he does then the Applicant would need a Variance.

Mr. DeCelle said that we are just granting a Special Permit. That is it.

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

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

A motion was made by Mr. Hiltz, seconded by Ms. Murphy, on behalf of the Applicant, to grant a **Special Permit** under Section 9 of the Zoning Bylaws to allow for new construction onto an existing non-conforming structure that is within setback and elevation guidelines set forth by town bylaws regarding non-conforming structures in Residence A Zoning District, as specified in Section 9.

The vote was **(4-0-0) in favor** (Zuker, Decelle, Hiltz and Murphy voting); therefore the application for a **Special Permit** is hereby **GRANTED, subject to the following conditions:**

CONDITIONS:

1. The construction shall meet all the Town of Walpole building requirements and conform to the plans presented at the public hearing, which the Application stipulated mets Section 6.C.2 of the Walpole Zoning Bylaw. If an alteration to the plan that was presented at the public hearing is required for any reason, related to the conditions subject to this Special Permit or any other Special Permits issued by this Board or require a separate Special Permit, the applicant will seek a change of conditions to the Special Permit.

2. The Applicant must comply with Section 6.C.2 of the Bylaw because this application did not include and the Board is not granting a Variance from this section of the bylaw.
3. The Applicant is going to provide a stamped plan certifying compliance of Section 6.C.2 of the Zoning Bylaws by a surveyor to the Building Inspector, prior to the issuance of a building permit.

REASONS FOR DECISION

Section 9.5.B of the Zoning Bylaw provides:

A one-family or two-family dwelling shall not be deemed a nonconforming building or use solely due to the lot's deficiency in area or frontage, and the dwelling may be changed, extended, or altered by right (but a single-family dwelling use may not be changed as of right to a two-family use) if otherwise in conformity with the dimensional requirements in Section 6-B. In all other cases, the change, extension or alteration of a building on a nonconforming lot shall require a special permit under Section 9.4.A.

The Board finds that the proposed construction onto an existing non-conforming structure requires a **Special Permit** under Section 9.4.A. It is the further finding of the Board that the applicant was able to meet the requirements of Section 9.4.A of the Zoning Bylaw in that:

- i. *An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw by the issuance of a building permit as provided in § 3.1. Any other change, extension, or alteration of an existing nonconforming one-family or two-family dwelling may be permitted provided the Board of Appeals grants a special permit including a determination that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.*

In hearing the application, the Board finds that the proposed reconstruction and enlargement of the existing single-family dwelling is a reasonable and appropriate proposal.

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 by the Board the plan must conform with Section 6.C.2 of the Zoning Bylaw and that a Variance nor Special Permit from Section 6.C.2 was granted.

- (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 construction onto an existing non-conforming 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 the proposed construction onto an existing non-conforming 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 structure meets the various dimensional requirements of the Zoning Bylaw including lot coverage pursuant to Section 9.4.A 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 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 new construction onto an existing

non-conforming residential single-family structure is 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 new construction onto an existing non-conforming residential structure is appropriate for the Residence A zone. As such, the Board finds that this criterion is met.

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Discussion regarding ZBA Application, Fee Schedule, and Rules and Regulations:

The Board reviewed the Zoning Board Application & Fee Schedule with the changes that the Board requested implemented.

A motion was made by Ms. Murphy, Seconded by Mr. DeCelle to approve the application with the changes implemented.

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

There being no further business, a motion was made by Ms. Murphy, seconded by Mr. Hiltz, to adjourn the meeting at 9:46 p.m.

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

Craig Hiltz
Clerk

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Minutes were approved on December 10, 2014.