

WALPOLE ZONING BOARD OF APPEALS  
MINUTES OF SEPTEMBER 2, 2015

A regular meeting of the Walpole Zoning Board of Appeals was held on Wednesday, September 2, 2015 at 6:30 p.m. in the Main Meeting Room, Town Hall. The following members were present: Matthew Zuker, Chairman; Jim DeCelle, Vice Chairman; Craig W. Hiltz, Clerk; Mary Jane Coffey, Susanne Murphy (arrived at 7:04 p.m.;(left at 7:18 p.m.); Tim Foley, Associate Member and Ilana Quirk, Town Counsel.

**6:30 p.m: 5<sup>th</sup> Fairway Development Executive Session:** 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 as well as 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.**

Mr. DeCelle moved to go into executive session to discuss litigation strategy with regard to 5<sup>th</sup> Fairway Development, LLC. Motion seconded by Mr. Hiltz and voted 5-0-0. Mr. Zuker requested a roll call vote to enter into executive session: (Mr. Zuker, yes; Mr. DeCelle, yes; Mr. Hiltz, yes; Ms. Coffey, yes; Mr. Foley, yes. The board entered into executive session at 6:40 p.m. and they will return to regular session.

Mr. Zuker moved to come out of executive session and return to regular session. Motion seconded by Mr. Hiltz and voted 5-0-0. Mr. Zuker requested a roll call vote to come out of executive session: Mr. Zuker, yes; Mr. DeCelle, yes; Mr. Hiltz, yes; Ms. Coffey, yes; Mr. Foley, yes. The Board returned to open session at 7:03 p.m.

Susanne Murphy arrived at 7:04 p.m.

Mr. Zuker opened the meeting at 7:04 p.m.

**7:05 pm: KAM Construction Management Continued Hearing from 6/3/15, Case #6-15 (Zuker, DeCelle, Hiltz, Coffey, Murphy):** Mr. Zuker opened the continued hearing at 7:05 p.m. Mr. Zuker read an email from the applicant's attorney, Paul Schneiders, Canton, MA requesting the Zoning Board of Appeals vote to withdraw Case No. 6-15 without prejudice. He stated that the Building Inspector wrote him an email stating that he felt the Applicant should file under Section 6-C. 4.A. of the Bylaw and based on that advice and direction of the Building Inspector that we would like to withdraw.

Mr. Zuker asked if there were any board comments. Mr. Hiltz wanted to know if they were requesting to withdraw both the Special Permit and Variance and Atty. Schneiders stated yes. Mr. Zuker stated that he does not have a problem with the request to withdraw; however, he noted that a lot of the Special Permit

criteria would hold true on the refiled Application. He further suggested that the Board could vote to waive the refile fee, if requested by the applicant Mr. Schneiders said that he would appreciate that.

Mr. Zuker asked for comments from the public. He explained that the Applicant has requested to withdraw the current application before the board and will be refiling a new one under a different section of the Zoning Bylaw as directed by the Building Commissioner. He further stated that the abutters will be renoticed of the new public hearing.

There were no comments from the public.

A motion was made by Mr. Zuker, seconded by Mr. DeCelle to accept the Applicant's request to withdraw Case #6-15 without prejudice.

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

**7:15 pm: Donna M. Belmore, Continued Hearing from 7/15/15, Case #10-15 (Zuker, DeCelle, Hiltz, Coffey, Murphy)**

Mr. Zuker opened the hearing at 7:15 p.m. and stated that this case was a continuation from July 15<sup>th</sup>; however, the Applicant, Donna Belmore, has requested that this application be withdrawn without prejudice. A motion was made by Mr. Zuker, seconded by Mr. DeCelle to accept the Applicant's request to withdraw without prejudice. The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey, Murphy.)

**7:18 pm: Daniel Cummings, 11 Old Farm Road, Case #11-15 :**

Susanne Murphy left the meeting at 7:18 p.m.

Mr. Zuker read the public hearing notice.

The Applicant, Daniel Cummings stated they are trying to re-grade the back of our yard as there is a hill they want to remove to make the yard more functional. Mr. Zuker asked the Applicant how much earth they are planning to disturb and Mr. Cummings stated he did not have an exact amount; however, the building inspector said it is more than 100 yards. Mr. DeCelle wanted to know if the applicant is bringing in or removing fill. Mr. Cummings stated that he is removing fill. Mr. Zuker stated that basically they are grading the yard to the back of your house.

The Applicant agreed and stated that presently there is a hump in the middle of the yard that they want to take out so it will match the rest of the backyard. Mr. DeCelle asked who put the red contours on the plan and Mr. Cummings stated he did.

Mr. Zuker said that he does not have any issue with this request. He then asked for public comments.

Linda Coletti, 7 Old Farm Road stated that she is an abutter and has no issue with this proposal.

Mr. Zuker read the Board comments from the Fire Department, Town Engineer, Board of Health, Police Department and Conservation Commission. Mr. Zuker stated that some of the Town Engineer's comments are similar to those concerns raised by the Board. He feels that during the excavation process, the Applicant's Engineer should be able to calculate the volume to be removed. Further, in the Town's

Zoning Bylaw (5.D.5) there is a list of requirements that should be shown on the plan. He asked Mr. Cummings to request his Engineer to add that information to the plans. Mr. Zuker also stated that he would like to see a planting plan with regard to loam and seed and recommends Mr. Cummings get copies of the comment letters received by the Board. In order for the the Board to vote, we need this information. Mr. Cummings asked if the Board needed a certain amount of time to review the new information and Mr. Zuker stated that the Board would need the new information a few days before the meeting. Our next two meetings are scheduled for September 16<sup>th</sup> and October 14<sup>th</sup>. Mr. Cummings asked if he could call the Board later and inform them which date would work better for him. Mr. Hiltz said the Board needs to continue this hearing to a date certain. If we continue it to September 16<sup>th</sup> and you feel you need more time as that meeting date gets closer, you can ask for a continuation to the next meeting.

Mr. Zuker recommended we continue this hearing to September 16, 2015 and hopefully Mr. Cummings will be able to get the information we asked for.

A motion was made by Mr. DeCelle, seconded by Mr. Foley to continue the hearing to September 16, 2015 at 7:00 p.m. at the Town Hall in the Main Meeting Room.

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

#### **OTHER BUSINESS:**

**Barberry Homes, LLC:** Adam Costa, Attorney for the Applicant stated when they were last before the Zoning Board on August 12, 2015, there was some discussion about changes to their previously approved plan. At that August 12, 2015 meeting, a few questions came up regarding the spot grade within the isolated wetlands which would require an expanded waiver. He stated they also talked about adding a retaining wall to protect the wetlands. New plans were sent to Mr. John Chessia. Mr. Costa went on to say that he has spoken with Town Counsel Attorney Quirk. She said she would speak to the Board with regard to the insubstantial changes. The decision is more or less a reiteration of those changes. He stated they are replacing the previous plan set with a new plan set and have decided to add a retaining wall to the plans so as to not affect the wetlands. There was one concern that Town Counsel Quirk raised in terms of the revision date on the plan. He further stated they have spoken to their engineer to change the plans to have the correct date on them.

Mr. Zuker said the plans the Board looked at were dated August 11, 2015 and asked what the new revision date would be. Attorney Costa stated August 17, 2015.

Mr. Zuker thanked Mr. John Chessia for coming to the meeting tonight. At the Zoning Board's last meeting there were four (4) changes that the Applicant was asked to make by the town's Conservation Commission.

John Chessia, Chessia Consulting Services, LLC said what he did was check the drainage to make sure it wouldn't be impacted from the change. There were some elevations that should have been listed on the plans. Everything has been changed and everything works and the wall is on the plan. Ultimately, there should be a final date on the plan. Mr. Zuker stated that the Board needs to assured that the plans reviewed by the applicant are the same plans reviewed and referenced by the Board. Mr. Chessia stated there is a retaining wall on the plan and the catch basins have been adjusted. There were just a few little

details that needed to be adjusted. Mr. Zuker asked Mr. Chessia if all of his comments had been addressed and Mr. Chessia said yes.

Mr. Zuker asked if there were any members from the public here tonight who would like to speak regarding Barberry Homes, LLC.

Pam Verrochi of 266 Moose Hill Road asked when the Zoning Board approves these revised plans does the Applicant have to go before the Conservation Commission again?

Mr. Costa stated yes they will have a meeting with the Conservation Commission to show them these changes that the ZBA has approved. They are hopeful this will address the big ticket items.

Mr. Zuker stated that he believes all of the concerns were addressed which was good. The decision is now are they substantial or insubstantial. He didn't personally believe the four (4) concerns were substantial, but they did need to be appropriately addressed appropriately. He also believes that the changes the Conservation Commission suggested are beneficial to the project. Town Counsel wanted to look over and finalize everything before she wrote the official decision. Mr. Zuker asked what date will be referenced on those plans. Mr. Costa said he can confer with Town Counsel to see what date she would like them to use or we could use today's date if the Board would rather. Mr. Zuker stated if we used today's date we would want Mr. Chessia to take one last look at the plans to make sure they are OK.

Rob Truax of GLM Engineering stated that they are not going to submit any architectural.

A motion was made by Mr. Zuker, seconded by Mr. DeCelle to determine the plans sheets 1-17 entitled Site Development Plan for the "Residents of Moosehill" dated 9-2-15 are insubstantial changes and authorize the Chairman of the Zoning Board of Appeals to execute the draft insubstantial change decision once the dates of the plan sheets are revised and once the decision has been reviewed by the Chairman with Town Counsel and further to accept an extension of time to finalize and give notice of the decision from the applicant through and including the end of the month.

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

Mr. Costa added that he does grant that extension to the end of the month and that they appreciate the Board working with us.

## **MINUTES:**

### **Executive Session: August 12, 2015**

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to accept the August 12, 2015 Executive Session meeting minutes as written. The vote was **4-0-0 in favor** (Zuker, DeCelle, Hiltz, Foley).

### **AUGUST 12, 2015**

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to accept the meeting minutes dated August 12, 2015. The vote was **4-0-0 in favor** (Zuker, DeCelle, Hiltz, Foley).

**Adjournment:** A motion was made by Mr. Zuker, seconded by Mr. DeCelle to adjourn the Zoning Board of Appeals meeting at 7:48 pm. The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Foley, Coffey). The meeting adjourned at 7:48 p.m.

Respectfully submitted,

Craig Hiltz, Clerk

Minutes approved: 10/28/15