

The March 20, 2013 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 7:00 P.M. with the following members present:

Susanne Murphy, Chairman
James M. Stanton, Vice Chairman
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member
James S. DeCelle, Member

Matthew Zuker, Associate member

7:00 p.m. – Donnell Murphy – Case #02-13

Ms. Murphy recused herself from this hearing.

Mr. Stanton read the public hearing notice for **Donnell Murphy, Case #02-13**, with respect to property located at 555 Boston-Providence Highway, Walpole and shown on the Assessors Map as Lot No. 36-20-2 and 36-20-3, Highway Business Zone.

The application is for:

A Variance from Section 6.C.8.D of the Zoning Bylaws to allow an eight foot (8') stockade fence to be installed along the westerly and northerly boundaries of the site in lieu of the six foot (6') fence allowed by right as shown on a plan entitled, "Walpole Place Site Plan of Land in Walpole, MA" dated August 13, 2012 and last revised December 7, 2012 prepared by Merrikin Engineering, LLP, 730 Main Street, Suite 2C, Millis, MA 02054, as may be amended.

Attorney Phil Macchi represented the applicant and submitted a Memorandum in Support of Application. Attorney Macchi explained that at a December 6, 2012 Planning Board meeting it was agreed that the applicant would ask for approval of an 8 foot fence from the Zoning Board, as desired by the abutters. An 8 foot fence would supply more protection and screening for the abutting properties to the north and south. The applicant is considering installing the fence contiguously along the Kentucky Fried Chicken property as well, so that the fence evenly runs along the common lot line. The project complies with zoning and will run with the land.

Dan Merrikin, Merrikin Engineering, referred to the overview of Walpole Place, a small strip mall, which is in compliance with Walpole regulations. There would be up to ten tenants, but could be just one or two depending on who is interested in the space. The proposed building is 19,960 s.f. Mr. Merrikin submitted a landscaping plan. They have received a Conservation Commission permit for land disturbance and Site Plan Approval.

Lee Garrison, 11 Mohawk Circle, spoke in support of the 8 foot fence; Timothy Speer spoke in support of the 8 foot fence; Gerard Higgins, 80 Old Post Rd., spoke in support of the 8 foot fence; and Jennifer Gillis, 8 Squire Ct., spoke in support of the 8 foot fence.

Mr. Stanton read the comments from the Planning Board, dated March 15, 2013; Lt. Zanghetti, Walpole Police Dept., dated February 19, 2013; Margaret Walker, Town Engineer, dated February 20, 2013; and Michael Laracy, Fire Department, dated February 15, 2013.

Attorney Macchi requested the hearing be closed.

Mr. Stanton asked if there were any comments from the public, there being none:

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant, to close the public hearing.

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

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, that the Board grant to Donnell W. Murphy, Trustee of Lot 5A – Route 1 Realty Trust: a Variance from Section 6-C (Special Conditions) 8. (Setback and Sideyard for Other Uses) D. (Solid Fence Height) of the Zoning Bylaw to allow an eight foot (8') stockade fence to be installed along the westerly and northerly boundaries of the site in lieu of the six foot (6') fence allowed by right as shown on a plan entitled, "Walpole Place Site Plan of Land in Walpole, MA" dated August 13, 2012 and last revised December 7, 2012 prepared by Merrikin Engineering, LLP, 730 Main Street, Suite 2C, Millis, MA 02054.

The vote was **5-0-0 in favor**; therefore the **Variance** is hereby **granted, subject to the following condition:**

1. The fence shall be maintained in good condition at all times and shall be inspected annually. The fence shall be repaired and/or replaced as needed to ensure its structural and screening integrity.

REASONS FOR DECISION

The Board finds that there are circumstances relating to topography and shape of the Lot but not affecting generally the Zoning District where said Lot is located as a result of which a literal enforcement of the provisions of the Bylaw would create a substantial hardship, financial or otherwise, to the Applicant. This relief will actually be a benefit to the public good and is supported by the Planning Board, Town Engineer, and Conservation Commission as well as the direct abutters to the locus. Granting the Variance will not be detrimental to the public good nor will it nullify or derogate from the purpose of the Bylaw, rather by granting the requested relief there will be an overall benefit to the abutting neighbors and the Town.

FURTHER FINDINGS

Section 2: Administration, 3. Variances require that:

The Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a variance from the terms of this Bylaw where the Board of Appeals find 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, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.

The Board finds that the fence, which is the subject of this application, is proposed in conjunction with the development of the lot for the in accordance with the Site Plan Approval for the proposed building. The proposed multi-tenant development is shown on a plan entitled, “Walpole Place Site Plan of Land in Walpole, MA” dated August 13, 2012 and last revised December 7, 2012 prepared by Merrikin Engineering, LLP, 730 Main Street, Suite 2C, Millis, MA 02054.

The Board further finds that that the requested relief is due largely to the topography of the locus in that the commercial project lies several feet below the finished grade of the residential abutters’ property to the southeast, is at grade to the east, and is above grade to the northeast. As such, a typical six foot (6’) fence will not provide as effective a screen as would normally be the case as some of the abutters will be looking down at the commercial site while others will be looking up due to the unique topography of this site. Furthermore, it should be noted that this site is the logical extension of an existing eight foot (8’) fence on the adjacent lot to the south, that is allowed by a Variance granted by the Board in Case No. 05-06. While the two (2) properties are held under different ownership, the two Trusts have agreed, that if this Variance is granted the eight foot (8’) fence line will be contiguous to provide the maximum screening for the residential neighbors. It should also be noted that the grant of the Variance has been specifically requested by the nearby residential property owners and the Planning Board as they all desire to maximize the effectiveness of the screening between the residential homes and the commercial development due to the unique topography between the commercial and residential properties.

This request relates specifically to this parcel and its elevation in relation to nearby residential properties and does not generally affect the zoning district in which it is located rather is limited to two adjoining parcels of land. Furthermore, if the Board required a literal enforcement of the By-Law, there would be a hardship to the Applicant as it will not be able to accommodate what appears to be an issue of great concern to the abutters and a potential future point of contention between the residents and the commercial tenants due to the lack of satisfaction by the abutting residential property owners with the proposed development. Therefore, this condition is satisfied.

(2) That desirable relief may be granted without substantial detriment to the public good.

The Board finds that this Variance is being sought at the request of the direct abutters to the property as well as a condition imposed by the Planning Board in its Site Plan Approval request for the purpose of enhancing the screening between the direct abutters and the proposed retail building. Furthermore, allowing an eight foot (8’) fence in lieu of the six foot (6’) fence allowed by right will not have any impact on any members of the public other than those who have requested the fence. Additionally, the Conservation Commission has supported a higher fence as it will provide an improved means of stopping debris from the project from migrating into the residential neighborhood. Similarly, the Town Engineer has recommended the approval of this Variance as the same is in line with discussions held with the Planning Board during the Site Plan process. The Police Department also noted during the Planning Board public hearings that the higher fence would provide additional security for the nearby residential neighbors by further preventing pedestrians from cutting through the adjacent neighborhood. Accordingly, this relief does not have any detriment to the public good, rather it is an improvement thereto. This, this

condition is satisfied.

(3) without nullifying or derogating from the intent or purpose of this Bylaw.

The Board finds that the Zoning By-Law specifically provides a buffer zone between residential and commercial properties under Section 5-G. This section also indicates that greater screening of the residential neighbors is a benefit. As part of the design of the buffer, the direct abutters, the Planning Board, and the Applicant all felt that adding two feet (2') to the fence would improve the screening and follows the intent of the By-Law. As such, granting this Variance will not nullify or derogate from the intent and purpose of the Zoning By-Law. Therefore, in granting the Applicant's request, the Board will not nullify or derogate from the intent or purpose of the Walpole Zoning Bylaw and this criterion is satisfied.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

7:30 p.m. – Walter Olsen – Case #03-13

Ms. Murphy read the public hearing notice for **WALTER OLSEN, III, Case #03-13**, 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 Special permit under Section 5-B.1.3.i of the Zoning Bylaws to allow the use of the existing building accessory to the dwelling located at 8 Emily Lane, Walpole, MA 02081 as the place for incidental work and storage of an electrician provided that the use conforms with Sections 5-B.1.3.i.i., ii., iii., iv., and v. as shown on the plan entitled “#8 Emily Lane, Plan of Land in Walpole,” dated December 18, 2012 drawn by Glossa Engineering, Inc., 46 East Street, East Walpole, MA 02032, as may be amended; together with such other relief as the Zoning Board determines applicable to allow the proposed undertaking as shown on the aforesaid Plan, as may be amended.

Attorney Philip Macchi represented the applicant and corrected the applicant's name to **Wallace S. Olsen, III.**

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to amend the application to correct a scrivener error from Walter S. Olsen, III, to Wallace S. Olsen, III.

Attorney Macchi submitted a Memorandum in Support of Application for Special Permit. The application had the wrong name on it. Mr. Macchi explained that the applicant was not aware that using his barn for a business was an illegal use. The Building Commissioner, Jack Mee, became aware of the situation during an inspection of the a new pool cabana.. The applicant has been working on this since. If the Zoning Board grants the Special Permit, the applicant will bring everything up to code, if the application is not granted, the applicant will cease using the property as an office for his electrical business. The abutters are roughly 1,000 feet from the barn. The business is low voltage telecommunications and security systems and computer networking. There is currently one full-time employee at the site, other employees operate from their homes. Traffic generated by the business is approximately between 2 and 4 trips per day. No deliveries

are made to this office, there is no storage, and no truck traffic on a regular basis. On-site activities consist of maintaining the company computer server, answering phones, scheduling the remote electricians, bookkeeping, and other administrative tasks. The barn is also used to store minimal amounts of wire and small electrical equipment.

Mr. Olsen informed the Board he has six trucks used by his employees; none of which are parked at the barn. There are no animals in the barn. There is no signage out on the street. There is a small sign near the house.

Ms. Murphy asked if there were comments from the public, there being none:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to close the public hearing.

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

A motion was made by Ms. Murphy, and seconded by Mr. Cunningham, to approve with conditions a **SPECIAL PERMIT** under Section 5-B.1. (Use Table) 3. (Residential): i. to allow the use of the existing building accessory to the dwelling located at 8 Emily Lane, Walpole, MA 02081 as the place for incidental work and storage of an electrician or similar person as shown on a plan entitled, “#8 Emily Lane, Plan of Land in Walpole,” dated December 18, 2012 drawn by Glossa Engineering, Inc., 46 East Street, East Walpole, MA 02032.

The vote was **5-0-0 in favor**; therefore the **SPECIAL PERMIT is hereby granted** subject to the following conditions:

1. As stipulated by the Applicant, such use is and remains clearly secondary to the use of the premises for dwelling purposes.
2. As stipulated by the Applicant, no trading in merchandise shall be regularly conducted except for the sale of products made by the resident himself or of parts or other items customarily maintained in connection with and incidental to its performance.
3. As stipulated by the Applicant, such use shall not have a material adverse affect on the value of the land and buildings in the neighborhood.
4. As stipulated by the Applicant, the external appearance and general aspect of the building so used is and remains in conformity with the residential character of the neighborhood.
5. As stipulated by the Applicant, there shall be no outside display of goods or products, storage of materials of equipment, or any other outward evidence that the premises is being utilized for any purpose other than residential (except for an accessory sign as provided in the Zoning Bylaw and as presented by the applicant at the public hearing).
6. As stipulated by the Applicant, the use is conditioned upon making the building in compliance by obtaining all required approvals from the Board of Health and Building Department prior to receiving a final certificate of occupancy.
7. If the nature of the use changes, the Applicant, or his successor in interest, may apply to

the Zoning Enforcement Officer for a determination that (i) this Special Permit covers such changes, (ii) the Applicant needs to request a modification of this Special Permit, (iii) the Applicant needs to apply for new a Special Permit, or (iv) the change is not allowed under the Zoning By-Law.

8. The maximum number of employees allowed to work on site shall be limited to four (4) people in addition to the home owner.

REASONS FOR DECISION

It is the finding of the Board that with the above imposed conditions the Applicant was able to meet the requirements of Section 5-B.1. (Use Table) 3. (Residential): i sub-sections i. – v. of the Zoning By-Laws. In that with the above imposed conditions the Board finds that the use of the existing accessory barn as an office, place of work, and/or storage for the Applicant's off-site business there will not be a negative impact on the neighborhood, traffic, or the Town. The Board also notes that the grant of this Special Permit was supported by a letter from the direct abutter most affected by the use.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits B. Finding and Determination requires that:

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 the section of this Bylaw which refers to the granting of the requested special permit;*

The Board finds that use table sets forth specific criteria or standards for the granting of a Special Permit in Section 5-B.1. (Use Table) 3. (Residential): i sub-sections i. – v. The Board makes its findings with regard to those subsections as follows:

- i. Such use is clearly secondary to the use of the premises for dwelling purposes;*

The Board finds that the business use of the barn is clearly secondary to the use of the premises for dwelling purposes. Looking at the investment made by the Applicant and his wife, the home on the premises is a two story colonial style. Additionally, there is below ground pool and cabana installed by the family in 2012 for their recreational use. In this instance, the barn is of significantly less value than the house and an obvious accessory building thereto. On a purely familial grounds, using the barn as a home office benefits the family as at least one (1) of the Applicant's children comes to the barn after school and remains there until their mother comes home from work. Taken as a whole, it becomes readily apparent that the requested use is a secondary concern to the Applicant in relation to creating a comfortable and safe dwelling environment for his family. Accordingly the Board finds this condition satisfied.

- ii. *No trading in merchandise is regularly conducted except for the sale of products made by the resident himself or of parts or other items customarily maintained in connection with and incidental to its performance;***

Based on the evidence presented at the Public Hearing, the Board finds that there is no trading of merchandise conducted on the premises. As such, this criterion is satisfied.

- iii. *Such use will not have a material adverse affect on the value of the land and buildings in the neighborhood;***

Based on an aerial photograph presented at the public hearing, the two closest abutters are the Siemens Health Care factory and the Curley residence. It should be noted that the Curley's have written a letter to the board endorsing the approval of this Special Permit. As there is only minimal traffic generated by this business, the use is largely unnoticed. Accordingly, the Board finds that there will not be any adverse affect on the value of the land and building in the neighborhood and this condition is satisfied.

- iv. *The external appearance and general aspect of the building so used is in conformity with the residential character of the neighborhood;***

The Board finds that externally the barn looks largely as it did when it was initially constructed. The Applicant has installed conventional windows and doors instead of barn doors and windows. However, aesthetically the structure looks like an accessory building that belongs in a neighborhood similar to any other detached garage or barn. Furthermore, none of the neighbors in the area can see either the Applicant's house or barn. Other than the Curleys, the neighbors are, in general, over 1,000' away from the site of the barn and the topography of the land is such that there is no direct line of sight between their residence and the barn. Thus, this criterion is satisfied.

- v. *There is no outside display of goods or products, storage of materials of equipment, or any other outward evidence that the premises is being utilized for any purpose other than residential (except for and accessory sign as hereinafter provided).***

The Board finds that due to the nature of his business, there is no outward evidence that the premises are being utilized for any purpose other than residential and this subsection is satisfied.

- (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 business use does not generate customer or employee traffic, other than that of its full time employee. This traffic in relation to the normal household traffic generated by a husband, wife, and three children is minimal. As such, there is no impact on the immediate neighborhood. Therefore, this condition is satisfied.

- (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 business use is accessory to an allowed dwelling as such there are no residents attributed to the business. Based on the nature of the business, as presented by the Applicant, there are rarely any visitors attributed to the use and presently one (1) full time employee. Thus, there is no impact to the immediate neighborhood in granting a Special Permit for a use. Therefore this condition is satisfied.

- (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 of Section 5-G;**

The Board finds that the buildings as shown on the plan entitled, “#8 Emily Lane, Plan of Land in Walpole,” dated December 18, 2012 drawn by Glossa Engineering, Inc., comply with all applicable dimensional requirements to include lot coverage and buffer zone requirements. Therefore, this criterion is satisfied. Therefore, the Board is satisfied that this condition is met.

- (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 the Applicant’s business conforms to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government. Also, the use that is the subject of the present Special Permit request does not generate waste or create a fire hazard. The Applicant stipulated that all building and septic issues will be addressed to the satisfaction of the Board of Health and Building Department prior to receiving a permanent Certificate of Occupancy. As such, the immediate neighborhood is not in danger of fire, explosion, emission of wastes or other hazards originating from the site. Therefore this condition is satisfied.

- (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 the proposed use does not create any noise, vibration, heat, smoke, fumes, odor, glare, or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. The use of the building will conform with all pertinent laws and regulations to ensure that there is no adverse affect to the immediate neighborhood as a result of operations therein. Therefore, this condition is satisfied.

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

The Board finds that the barn was constructed in 1996/7 by way of a valid building permit. The requested Special Permit will not create any outward indication that a business is being operated on the premises. Furthermore, the closest road to the barn is Interstate 95, which will not be effected in any manner by this use. The actual residential neighborhood is approximately 1,000 feet away and other than the minimal traffic generated by the use, will not be effected either. Therefore, the requested use, will tie in with the existing character of the neighborhood and there will not be any adverse effects. Thus, this condition is satisfied.

(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 type use requested actually falls more in line with the professional offices allowed by right as accessory uses under Section 5-B.1.3.j which addresses office of professions to include engineer and architect. However, in conformance with the language of the By-Law the subject use requires a Special Permit from the Zoning Board of Appeals. The By-Law clearly allows accessory home offices, places of work, and storage provided that certain criteria are met to safeguard the residential character of the neighborhood. As stated above, the Applicant stipulates that these criteria be added as conditions of Approval, if the Board so desires. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the zoning by-law. Therefore, this condition is satisfied.

The Board finds that no other Special Permit(s)/Variance(s) are required from this Board for the use of the accessory barn as an office, place of work, and/or storage and that the Applicant's remaining required permits are not within the jurisdiction of the Zoning Board. This decision is conditioned upon the granting of all required approvals from the Board of Health and the Building Department.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

8:00 p.m. – John Lubold – Case #01-13

Ms. Murphy recused herself from this hearing.

Mr. Stanton read the public hearing notice for **JOHN M. LUBOLD, Case #01-13**, with respect to property located at 254 Plimpton Street, Walpole and shown on the Assessors Map as Lot No. 18-194, General Residence, Flood Plain Zone.

The application is for:

A Special permit under Section 5.B.3.c of the Zoning Bylaws to allow a non-conforming three-family use to remain on a newly created lot.

Attorney Paul Schneiders represented the applicant and submitted an explanation of the request. Mr. Schneiders further explained that the three-family house has existed for over 100 years and that there will be no changes to the lot other than the addition of four parking spaces. There will be no adverse affect on the neighborhood. The house is owner occupied.

Paul Brodmerkle, Site Design Professionals, referred to the plan showing the proposed parking spaces.

Mr. Case informed the engineer that the parking spaces are too close to the street.

Mr. Brodmerkle said they are pre-existing.

Mr. Case explained that the pre-existing status was lost once the lot was subdivided.

Mr. DeCelle commented that the rear of the cars would be on the sidewalk as shown in the proposed plan.

Mr. Schneiders suggested that the Board could approve the application and the Planning Board could approve the parking spaces under the Site Plan. The Zoning Board could condition its decision that the location of two of the parking spaces is not sufficient in size and the plan be amended.

Mr. Stanton read comments from Margaret Walker, Town Engineer, dated January 29, 2013; Sewer and Water Commissioner, dated February 26, 2013; Lt. Zanghetti, Police Dept., dated February 25, 2013; Conservation Commission, dated January 25, 2013, and Board of Health, dated February 13, 2013.

Mr. Case informed the applicant that the porch must be torn down because the previously approved 22 foot front setback measurement was to the house itself, not to the porch.

Mr. Stanton asked if there were any comments from the public.

Mr. Marini, 245 Neponset St., Canton, explained that the two parking spaces have been there for over 100 years and did not understand what the issue was.

Mr. Stanton explained that this application is strictly for the use of the property.

Mr. Schneiders said they will be going before the Planning Board the next day regarding the six parking spaces.

Mr. Stanton asked if there were any further comments from the audience, there being none:

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant to close the public hearing.

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

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant to allow the request for a Special Permit under Section 5.B.3.c to allow a non-conforming three-family use to remain at a 254 Plimpton Street in a General Residence district.

The vote was **(5-0-0) in favor;** therefore the application for a Special Permit under Section 5.B.3.c is hereby granted, subject to the following conditions: (Stanton, Cunningham, Case, DeCelle, Zuker voting)

CONDITIONS

1. As stipulated by the applicant at the public hearing, the existing structure shall be used as a three-family home on a newly created lot in a General Residence district.

2. The granting of the Special Permit requires that the six (6) legal parking spaces will not include use in front of the building.
3. The granting of the Special Permit requires the removal of the front porch.
4. All other items must meet Town of Walpole codes.
5. 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 finding of the Board that the applicant has met the requirements under Section 3G of the Zoning bylaws in that:

- i. ***Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.***
The non-conforming three-family use at 254 Plimpton Street shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.
- ii. ***Shall not have a number of residences, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.***
The non-conforming three-family use at 254 Plimpton Street shall not have a number of residences, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.
- iii. ***Shall not have a greater lot coverage than allowed in the zoning district in which the premises is located (refer to Section 4-B).***
The non-conforming three-family use at 254 Plimpton Street shall not have a greater lot coverage than allowed in the zoning district in which the premises is located.
- iv. ***Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emissions of wastes, or other causes.***
The non-conforming three-family use at 254 Plimpton Street shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emissions 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 non-conforming three-family use at 254 Plimpton Street 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.
- vi. ***Shall not adversely effect the character of the immediate neighborhood.***
The non-conforming three-family use at 254 Plimpton Street shall 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 non-conforming three-family use at 254 Plimpton Street shall not be incompatible with the purpose of the zoning bylaw or the purpose of the zoning district in which the premises is located.

Further it is the finding of the Board that in realizing the fact that the 22 foot setback as requested at the previous hearing, Case #18-12, goes to the house, not to the porch, and therefore, the porch is required to be removed.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

8:30 p.m. – Hill Family Trust – Case #04-13

Ms. Murphy read the public hearing notice for the **Hill Family Realty Trust, Case #04-13**, with respect to property located at 24 Pilgrim Way, Walpole and shown on the Assessors Map as Lot No. 27-59 & 27-86, Residence B Zone.

The application is for:

A Variance from Section 6-B of the Zoning Bylaws to allow the applicant to create a new buildable Lot 2 with a total of 60.01 feet of frontage (in two locations), where 125 feet is required; and

A Variance from Section 6-B of the Zoning Bylaws to allow the applicant to create a new buildable Lot 2 with a “circle” of less than the required 100 foot-diameter.

Attorney James Brady introduced and represented Jack and Steven Hill and informed the Board that he and the applicants contacted the people on the abutters list and held an informational session at the Walpole Library. They received feedback from some of the neighbors and will address those concerns. The plan is to divide the lot into two 1 ¼ acre lots. The alternative would be to go before the Planning Board looking for a four-lot subdivision. The applicant would prefer to do the one house which requires a Variance from the Zoning Board.

Dan Merrikin, Merrikin Engineering, explained the lot. The wetlands have been flagged in the rear of the lot; the rest of the lot is high. A subdivision would have the requisite frontage, circle and lot area, and would have to relocate the existing house onto one of the lots. However, what the applicant wants to do is divide the lot into two 1.46 acre lots and the house and barn would stay where they are. The Variance is being sought for lot 2 which has an approximate area of 54,000 s.f., but does not have the required frontage. There is an existing side yard area that would have a standard driveway.

Mr. Brady explained that the existing Special Permit for the stored cars would no longer be applicable.

Mr. Merrikin informed the Board that the neighbors mentioned there has been a problem with the abutter’s sewer systems. He talked to Rick Mattson, Sewer and Water Dept., who said it was a problem with tree roots, which was taken care of.

Mr. Brady said going through the subdivision process would be a hardship to the owners because of the cost and time it would take.

Ms. Murphy asked if there were any questions from the audience.

Bob Durrant, 25 Pilgrim Way, asked where the driveway would be.

Mr. Merrikin explained it is to the left as you face the house.

Richard Carlson, 69 Polley Lane, asked, if there is water and heavy rain, how would the sewer system take it out of the area? And asked about the location of the electrical wires.

Mr. Merrikin explained that the power lines are behind all of the homes and does not believe the poles would have to be moved.

Regarding the drainage, the driveway water would flow out onto Pilgrim Way and would shed about the same as it does now.

Mr. Carlson said he was concerned about the water that comes from the driveway into the woods. On Eastland Circle the water piles up and then drains into Polley lane.

Mr. Brady asked the Board to continue the hearing so the applicant can continue working with the abutters.

Ken Wheeler, 16 Pilgrim Way, asked why the attorney and engineer are talking more about the subdivision than the actual request on the application, which is for a single family home?

Mr. Brady explained that a Variance is not always given out because it is more difficult to meet that criteria.

Mr. Wheeler asked for an explanation regarding the required frontage requirement in their neighborhood. He also asked if there was any precedent for adding frontage on one side of a lot and frontage on the other side of the lot that will never be used?

Mr. Merrikin explained that it is 125 feet for the frontage requirement at either the frontage line or the side setback line.

Mr. Wheeler commented that it sounded like the applicant is asking for a Variance from 125 feet to 40 feet. He asked if anyone had done any research on how this would affect the property values.

Mr. Brady said he has not done any extensive research on that, but he would expect the house to be value in the \$600,000 area.

Mr. Wheeler said it would not be the same kind of house as the houses on the street, i.e., his is worth \$350,000.

Mr. Brady said the driveway would not change the value of the houses on Pilgrim Way.

John Adams, 77 Polley Lane, spoke in support of the Variance because it is the least invasive option.

Mr. Carlson submitted two letters from abutters.

Kevin Feeley, 5 Eastland Circle, informed the Board that the abutters are willing to sit down with the applicant to see what parameters can be put around a single family house because they have some ideas. He pointed out that there are children who live in the neighborhood who play in the woods and there is wild life living in the woods. He would like to see the least amount of impact on the woods, a tree buffer for the direct abutters and asked that the hearing be continued to a date certain.

Mr. Brady spoke on behalf of the applicant in agreement with the continued hearing and meeting with the abutters.

Damon Rainie, 61 Polley Lane, asked for an explanation of the 100 foot circles on the subdivision plan, and pointed out that some of the four circles do not fit in the lot.

Mr. Merrikin explained that in Walpole the circle has to have 80% of the required frontage.

Mr. Zuker pointed out that the frontage has to be contiguous.

Mr. Brady said they will have to amend the plan and will bring it back at the date of the continuation.

Brian Cotter, Eastland Circle, informed the Board the houses would be right behind his house and does not want four houses behind his.

Matt Towers, 7 Eastland Circle, asked what kind of prevention would be put into place to assure there would not be a drainage problem

Mr. Merrikin said that could be explored when they meet with the neighbors. There would have to be some grading of the hill, but they would try to work with the existing grade and do a walkout.

Ms. Murphy read comments from Town Engineer, Margaret Walker, dated February 22, 2013; Deputy Fire Chief, Michael Laracy, dated February 25, 2013; Patrick Fasanello, Board of Sewer and Water; Police Department, Lieutenant Joseph Zanghetti, dated February 25, 2013; and Conservation Commission, Albert Goetz, dated March 6, 2013.

Mr. Merrikin said he would meet with the Fire Department regarding their comments.

Ms. Murphy was handed letters from Sister Ellen Powers, Paul Walsh, and one unsigned said to be from Jean Barbarick and read them into the record.

Ms. Murphy asked if there were any further comments; there being none:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to close the public hearing.

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

There being no further business, the meeting adjourned at 10:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on April 24, 2013.