

The June 26, 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 6:30 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

6:30 p.m. – Michael P. and Bridget Servatius – Case #10-13 (cont'd from 6/12/13)

Ms. Murphy read the public hearing notice for **MICHAEL P. AND BRIDGET SERVATIUS, Case #10-13**, 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 the Building Inspector, Jack Mee, with respect to Building Permit issued on 4/16/2013 to permit a multi-family dwelling in a Residence B District. Use not allowed. The property does not meet the requirements of c40A, Section 3; site plan review required.

Mr. Cunningham, recused himself from this hearing.

Attorney Gerald Blair represented the applicant and explained the Appeal of the Building Permit, dated April 16, 2-13 for 2 Mikayla's Way. The Appeal was filed on May 14, 2013. The property is within the Residence B Zone that does not permit anything but single family homes. Section 3, Chapter 40A, Dover Amendment, permits various activities that do not have to comply with Zoning, one of which is for purposes of education. It requires that the land is owned or leased by the Commonwealth or any of its subdivisions. The Title is now handled by 2 Mikayla's Way LLC. On June 14, 2013 the Title passed to the LLC. It is not owned by the Commonwealth. The Dover Amendment also states that the land must be owned or leased by a non-profit organization. No such lease has been recorded with the Registry of Deeds, or the Building Department. No such document showing these reasons for exemption has been shown. Mr. Blair referred to the Regis College Decision and explained that the next requirement is that the primary, dominant purpose is educational. Mr. Blair then explained the history of the original house which was approved as a two lot subdivision, and submitted additional information. Further, Mr. Blair referred to "the Yellow House", a similar use in Norwood, which has a 30-day month to month lease agreement. There is nothing discerning to be an educational purpose. He pointed out the concern that the driveway is 16 feet wide and there is very little room for fire trucks and emergency equipment to turn around, there is no paved area for parking. it is the applicant's position that landowner has the burden of proof that the property is 1) owned or leased by the Commonwealth, or non-profit, educational; 2) that the educational purpose is primary and a dominant purpose; 3) if it is vague, then the landowner has failed to reach its

burden; 4) reasonable regulations can be posed if this is proved, i.e., lighting, parking, dumpster; 5) the Planning Board waived the need for sidewalks, curbing, and no paved turn around in order to protect its using the private driveway; 6) Site Plan Approval should be sought if it is found they have proven the criteria for the Dover Amendment; 7) submitted plans showing the Board a sense of the property; and 8) submitted plans of the three-story structure.

Attorney Ilana Quirk, Town Counsel, explained that procedurally the issue is that the Building Permit is for a residential house and does not reflect a group home use; this Building Permit only allows a single family residential use. Attorney Quirk referred to the Regis College case which does provide protection of educational uses. Whenever that home is used other than a single family use, the owner or operator must provide the details. Attorney Quirk said that procedurally it does not appear that the project has been properly presented to the Board and asked how the appellant would want the Board to proceed.

Attorney Blair answered: 1) to not issue an Occupancy Permit unless the owner presents information that the property will not be other than a single family use, 2) per the photos, the property has been expanded to show it is more than a single family dwelling; 3) or prove the Dover Amendment has been satisfied.

Attorney Quirk replied that the Occupancy Permit that could be used would be for a single family dwelling use unless an application is made with information that would satisfy another use. Regarding the two kitchens, a home can have as many kitchens, bedrooms, and bathrooms as they as a single family dwelling. Regarding Special Permit review, there is limited case law that says no Special Permit can be allowed provide it is an as of right situation, i.e., lighting, dumpster, etc. It would be administrative in nature and as of right, per: Federal Fair Housing Act, and there would be no advance notice.

Mr. Zuker reiterated that if the owner gets the Occupancy Permit for a single family house and use it as such, they would be in violation if they used the house for a use other than single family.

Attorney Quirk agreed.

Mr. Servatius asked if the owner change from a single family home to a group home?

Attorney Quirk said it could be changed either through an amendment to the Building Permit, or the owner must show that the Dover Amendment is applicable. There is no notice provided to abutters of a change in Building Permit or Occupancy Permit. However, there is a 30 day appeal period; after that it is permanent. Attorney Quirk asked if there was anyone in the audience representing the property owner.

John Roche, the property owner, explained that he has met with the Building committee, Housing Authority and Town Administrator regarding his proposal for a nine unit building. It has been the understanding that the Jewish Family Services is the primary purpose. There will be no dumpster, just regular trash pick, typically 2-3 cars – possibly 5; has spoken to the Building Inspector regarding a cul de sac for vehicles to come and go; has been working on this project for a year and a half. He can prove the educational aspects and resolve the other problems.

Attorney Quirk asked Mr. Roche if the Building Permit currently only indicates a single family dwelling, and asked him if he intends to amend the Building Permit to request the exemption for educational use and reliable proof to show that evidence to the Zoning Board. Attorney Quirk informed Mr. Roche that the Board is not requiring him to issue an amendment of the Building Permit to reflect the use proposed. It is up to him to decide.

Mr. Roche said he would do that and go to the Building Office the next day, then later said it would be a couple of days before he could get there. He believes this is the best action to take; he did not realize that the original filing would not suffice.

Attorney Quirk informed the Board that it may want to continue the hearing to a date certain in order to allow Mr. Blair to review the additional information, and allow the abutters and public to make their comments.

Attorney Blair asked that no Occupancy Permit be issued prior to the continued hearing.

Attorney Quirk informed him that single family is the only Occupancy Permit that can be issued.

Warren Baker, 599 Washington St., commented that he visited the Yellow House in Norwood, run by the Jewish Family Services.

Doreen Cummings, 12 Baley St., referred to a foster care program.

Patty Starr, 22 Sycamore St., Norwood, commented that they live and reside as a family in the home in Norwood.

Mr. Roche requested to continue the hearing.

Ms. Murphy suggested continuing the hearing to August 14, 2013 at 7:00 p.m., with the hope there will be a timely amendment to the Building Permit application.

Attorney Blair agreed to extend the application period for 44 days, to October 7, 2013.

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant, to accept the extension of the appeal for 44 days, to October 7, 2013.

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

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to continue the public hearing to August 14, 2013 at 7:00 p.m.

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

7:30 p.m. – Hill Family Realty Trust – Case #04-13 (cont'd from 6/12/13) (Murphy, Stanton, Cunningham, DeCelle, Zuker)

Ms. Murphy read the public hearing notice for **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, represented the applicant, and explained that they had had a number of meetings with the neighbors and have addressed every issue they raised. He referred to the draft decision which shows that the applicant easily meets the four criteria for a Variance.

Dan Merrikin, Merrikin Engineering, reiterated from the prior meeting that the property is developable with a four lot subdivision. The parcel is about five times larger than required. The applicant is proposing to subdivide the lot into two halves with a common driveway and showed the preliminary ANR plan which depicts conditions, per information gathered at the meetings with the neighbors, and itemizes nine different conditions they have agreed to: 1) 15 foot no disturb zone, 2) new trees planted for buffer and preserve the existing hill, 3) drainage patterns not be significantly altered, 4) stipulate the rear line would be considered so to insure nothing be developed along the property line on Polly Lane.

Mr. Stanton asked about the 7 foot access from Polly Lane.

Attorney Brady said that the Variances runs with the land, is covered under Conditions #7 and the non use of that strip of land is enforceable.

Mr. Merrikin informed the Board that the Planning Board has signed the ANR Plan.

Ms. Murphy asked if there were any comments from the public.

Damon Rainie, 61 Polley Lane, spoke in favor of the proposal; the water issue has been addressed.

Brian Cotter, 8 Eastland Circle, said it would be devastating if four houses were built on the property which would mean trees would be removed. He and his children enjoy the woods.

Bob Durant, 25 Pilgrim Way, his frontage is across from the property and would prefer one new home to a subdivision.

Mr. Merrikin added that the applicant would not be opposed to removing the white pines that are dropping large branches, if the neighbors would like, and would not be opposed to landscaping.

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)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, that the Board grant to the Hill Family Realty Trust: 1) A **VARIANCE** from Section 6-B of the Zoning By-Laws to allow the Applicant to create a new buildable Lot 2 with 40.00 feet of frontage on Pilgrim Way, with 23.00 feet at the minimum front yard setback at Pilgrim Way, and with a secondary front lot line (not “frontage”) location of 20.01 feet, where 125 feet is required, and 2) A **VARIANCE** from Section 6-B of the Zoning By-Laws to allow the Applicant to create said new buildable Lot 2 with a “circle” with a diameter of 29.4 feet where 100-feet is required.

The vote was **5-0-0 in favor;** therefore the application for **Variances** is hereby **granted, subject to the following conditions:** (Murphy, Stanton, Cunningham, DeCelle, Zuker voting)

CONDITIONS

1. The new Lot 2 is the same as Parcel 2 shown on a plan submitted by the Applicant entitled “24 Pilgrim Way, A.N.R. Plan of Land in Walpole, MA” prepared by Paul J. Desimone PLS, dated May 13, 2013 and endorsed as not requiring subdivision approval by the Walpole Planning Board on May 16, 2013 (hereafter the “Final ANR Plan”).
2. The new Lot 2 is also depicted along with many of the various conditions listed below, on a plan submitted by the Applicant entitled “24 Pilgrim Way, Preliminary A.N.R. Plan of Land in Walpole, MA” prepared by Merrikin Engineering, LLP, dated February 14, 2013 with a final revision date of May 15, 2013 (hereafter the “Preliminary ANR Plan”). It is noted and recognized that the structure and driveway size, location, and configuration depicted on the Preliminary ANR Plan are provided for illustration only and are non-binding. This Decision provides for frontage and circle variances for the dimensions of Lot 2 and should not be construed as limiting the future configuration of any new house and driveway, except with respect to the other conditions of this Decision.
3. As stipulated by the Applicant, the northerly property lines along the Cisternelli, Rainie, and Carlson abutters, shall be considered the rear lot lines of the new lot as depicted on the April 23, 2013 preliminary ANR plan.
4. As stipulated by the Applicant, the new driveway shall contain a turnout (of traditional size for a residential driveway, at least 10’ wide and 12’ deep) in proximity to the new house for facilitating emergency response vehicular traffic.
5. A roof runoff infiltration system shall be constructed with the new house. Such system shall be sized in accordance with the requirements of Section 12.3.A(3)(d) of the Zoning Bylaw (raw volume of at least 1-inch of runoff from the entire roof area of the new dwelling). All roof runoff from the new house shall discharge into such system with larger storms overflowing to the surface of the ground.
6. The proposed house construction shall result in substantially the same watershed areas, i.e. existing surface runoff watershed areas shall not be substantially altered by the new house construction and associated re-grading.
7. No vehicular access is permitting along the 20’+/- wide strip of land from Polley Lane.

8. Property corners along adjoining residences to the west and north shall be permanently monumented with an iron pipe or concrete/stone bound. During construction, such corners shall be flagged and highlighted. Furthermore during house construction and prior to lot clearing, the westerly lot lines shall be staked at 75' intervals between the corners.
9. All as shown on the Preliminary ANR Plan; a 15' undisturbed buffer shall be maintained along the Damaso property, Tondreau property, Cisternelli property, Rainie property, and Carlson property. No buffer is required to the east along the new Lot 1. Along the Cotter property, a 15' undisturbed buffer shall be provided, except that along the 8.18 foot, 82.31 foot, 21.35 foot and 31.10 foot property line segments shown on the preliminary ANR plan, large white pine trees (>18" d.b.h.) may be removed and sloping is permitted (inside the subject lot), provided, however, that such grading be 3:1 or shallower and that new evergreen trees be planted at 10' intervals along the newly sloped area 5' off the property line. In order to prevent excessive tree height along the top of this sloped ridge, evergreen species shall be dwarf varieties (such as dwarf blue spruce) with a mature height of 12'-15'. Undisturbed buffers shall be maintained in a natural condition and no live trees or undergrowth shall be removed except where such trees are in danger of falling. The Applicant has the right to modify and maintain existing utility poles and lines within said undisturbed buffers.

REASONS FOR DECISION

It is the finding of the Board that the applicant was able to meet the requirements of Section 2: Administration, 3. Variances, of the Zoning Bylaws as follows:

- i. ***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...***
The Board finds that the applicant was able to meet the requirements of the Variance due to the amount of frontage compared to overall size of the lot, based on the unique shape of the lot.
- ii. ***... a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner...***
The Board finds that going through a Subdivision Approval process would be a hardship in this particular instance since 1) the Applicant is trying to dispose of estate property, 2) the Applicant is not a developer, and 3) the Applicant is satisfied with only one new lot (whereas three could reasonably be expected to be obtained through Subdivision Approval) and the expense of Subdivision Approval for one new lot would be cost-prohibitive. The Subdivision Approval process involves a lengthy permitting process which requires significant up-front expenses to cover the cost of permitting and a new roadway. The Board further finds that the expense associated with having to relocate the existing house and barn constitutes an additional financial hardship.
- iii. ***... and that desirable relief may be granted without substantial detriment to the public good...***
The Board finds that this particular Application is unusual because the Applicant has demonstrated the potential to develop up to four lots (including a lot for the existing home)

via the Subdivision Approval process. In contrast, however, the Applicant seeks variances to allow only one new lot to be created (plus one fully-conforming lot for the existing home), which would therefore be a 50% reduction in the otherwise potential development density for the land. The Board therefore finds that there is no detriment to the public good, but rather a significant benefit to the public good by developing the land in question as proposed. The proposal will result in one new house lot with one new driveway whereas a subdivision approval would result in over 300 feet of paved roadway and three new houses. The public benefits to the reduced density proposed by the Applicant are amply evident and include lesser impact to the neighborhood, lesser impacts to the environment and greater conservation of natural resources.

iv. ***... and (desireable relief may be granted) without nullifying or derogating from the intent or purpose of this bylaw.***

Among the stated purposes of the Zoning Bylaw in Section 1.2 are: *to lessen congestion in the streets; to secure safety from fire, flood, panic, congestion, confusion and other dangers; to prevent overcrowding of land; to avoid undue concentration of population; the conservation of natural resources.* Furthermore, Section 4.2.A(3) recites that the purpose for the RB district is to “*provide an area for medium density and single-family residential land use.*”

The Board finds that the granting of these Variances with the above-imposed conditions does not nullify or substantially derogate from the purpose and intent of the By-law in that the proposed creation of one new lot will result in significantly lesser density and impacts than the alternative subdivision construction and will further the many stated purposes of the Zoning Bylaw by precluding maximum development potential and thereby protecting adjoin properties and preserving natural resources.

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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.

There being no further business, the meeting adjourned at 9:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on September 4, 2013.