

The August 14, 2013, 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 – not present
James S. DeCelle, Member – not present

Matthew Zuker, Associate Member

7:00 p.m. – Michael P. and Bridget Servatius – Case #10-13 (cont'd from 6/26/13) (Murphy, Stanton, Case, DeCelle, Zuker)

Ms. Murphy explained that Mr. Case and Mr. DeCelle are not present for this meeting, and Mr. Cunningham has recused himself, therefore, the Board has only three members available to vote.

A motion was made by Ms. Murphy, seconded by Mr. Stanton, to continue the hearing to September 4, 2013 at 7 p.m.

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

DISCUSSION

Executive Session – Case #18-08 – 5th Fairway Development, Baker St.

Ms. Murphy, the Chairman, declared that , under G.L. c30A, Sec 21(b)(3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation know as 5th Fairway Development, LLC v. Walpole Board of Appeals, Housing Appeals Committee Number 2009-09 regarding a proposed comprehensive permit for land located on Baker Street; and that a discussion of the foregoing in open session could compromise the purpose for the executive session; and that the Board shall return to open session at the conclusion of the executive session.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to go into Executive Session for the purpose of discussing pending litigation.

The vote was **5-0-0 in favor to go into Executive Session.** Ms. Murphy – aye; Mr. Stanton – aye; Mr. Cunningham; Zuker – aye

7:30 p.m. – John Santos – Case #12-13 (cont'd from 8/14/13) (Murphy, Stanton, Cunningham, Zuker)

Mr. Stanton informed the applicant that there are only four members present and the petitioner is entitled to a five-member Board and that this hearing can be postponed until a five-member Board is present. Further, with a four-member Board, there can be no negative votes in order for a motion to carry; however, a five-member Board can have one negative vote and four positive votes.

Mr. Santos chose to go forward with the 4 member Board.

Ms. Murphy read the public hearing notice for **JOHN SANTOS, Case #12-13**, with respect to property located at 1900 Main St., Walpole and shown on the Assessors Map as Lot No. 46-67, Industrial Zone.

The application is for:

A Special permit under Section 5.B.4.e of the Zoning Bylaws to allow the sale and repair of used cars and trucks.

Mr. Santos explained that he is self employed and has a business in Medfield. He purchased the property from Kenneth Zion, but Mr. Zion is technically the owner according to the Registry of Deeds, but he has given Mr. Zion money and done repairs to the property. He is requesting to sell 15 second hand cars. He has legal parking for 18 cars, some of which will be for employees. There is a two bay garage on the property. He would do repairs of the cars.

Ms. Murphy said she wanted the plan to show the two-bay garage. Ms. Murphy read comments from: Deputy Chief Laracy, Fire Dept., dated August 6, 2013; Sewer & Water Chairman John Spillane, dated July 16, 2013; Jack Mee, dated July 30, 2013; Lt. Zanghetti, Police Dept., dated July 03, 2013; Margaret Walker, Town Engineer, dated July 30, 2013; Landis Hershey, Conservation Agent, dated August 12, 2013; and Board of Health, dated August 14, 2013.

Mr. Santos said he has met with Ms. Landis, Conservation Agent, who said the flooding is a State problem because Rt. 1A is a State road. The water from the street goes into his property. He contacted the State and was told they could not correct the problem because the State did not have the money to do the project. He has also met with the Board of Health; they suggested he set up a meeting with all the Boards, Police and Fire Depts. So he could explain what he is proposing. Mr. Santos submitted a letter to the Board and the Site Plan referred to in the letter.

Ms. Murphy read the letter from Mr. Santos.

Mr. Zuker asked for the history on the property.

Mr. Santos explained that in 2003 Mr. Zion rented the property out and that tenant had a stolen car on the property. When Mr. Zion realized this, he called the Police and lost his license. The building was built 40 years ago. He is willing to do whatever is necessary to clean up the property and run a clean business. He has spent \$100,000 on this project so far.

Mr. Zuker explained that in order for the Board to allow a Special Permit the applicant needs to show the use is not detrimental to the neighborhood or have a negative impact. Regarding the water concerns and hazardous materials on the site, Mr. Zuker requested a plan showing more detail, including the aforementioned, and the gas traps, as stipulated in Bylaw Section 5.B.4.e.

Mr. Santos said he would not have hazardous waste except for one barrel and waste oil from the cars. He has an appointment with the Conservation Commission that evening before he can do the paving.

In order for Mr. Santos to have a Plan drawn up showing the additional information requested by the Board:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to continue the public hearing to September 18, 2013 at 7:00 p.m.

The vote was **4-0-0 in favor.**

8:00 p.m. – Washington Green Condominium Trust – Case #13-13

Ms. Murphy read the public hearing notice for **WASHINGTON GREEN CONDOMINIUM TRUST, Case #13-13**, with respect to property located at Washington Green Condominiums, Walpole and shown on the Assessors Map as Lot No. 19-189, General Residence Zone.

The application is for:

A Special Permit under Section 2 of the Zoning Bylaws to allow an amendment to the existing Special Permit to remove approximately 1200 square feet of land from the Site Plan Norfolk Registry of Deeds date April 18, 1986.

Attorney Mark Einhorn explained the history of Washington Green Condominiums; an abutter approached the condominium trust requesting to purchase 1200 s.f. of their property. The process requires 75% of the Condominium Board to approve the request and 77% approved the request. The abutter, Mr. Hennessey, has submitted an ANR request from the Planning Board to be heard the next evening. The original Special Permit was from the Zoning Board, which is why they had to come before the Board with this request. This purchase will not affect the existing 26 foot buffer around the property. Mr. Hennessey would convey this piece of property back to the condominium; nothing is going to change; nothing will be built there as a requirement of the easement; the fire lane will not change. Mr. Hennessey will then have the required amount of property for his project.

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

Christina Davis, 169 East St., asked if the land is the strip that is the fire road near the dumpsters?

Attorney Einhorn explained the fire road would not change, and now there is a fence and hedges which will not change.

Ms. Murphy read comments from Margaret Walker, Town Engineer, dated July 30, 2013.

Attorney Einhorn said, regarding the discrepancy in side yard setback, he could have the engineering go back out and measure it, but both numbers are more than the required 40 foot buffer.

Ms. Murphy continued reading the Town comments: Lt. Zanghetti, Police Dept., dated July 17, 2013; Deputy Fire Chief Laracy, dated July 19, 2013; and Conservation Agent Landis Hershey, dated July 22, 2013, and a letter from Mr. Michael Jauquet, an abutter, dated August 12, 2013 in opposition of the application.

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

The vote was **4-0-0 in favor.** (Murphy, Stanton, Cunningham, Zuker voting)

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant a Special Permit under Section 2 of the Zoning Bylaws to allow an amendment to the existing Special Permit to remove approximately 1200 square feet of land from the Site Plan Norfolk Registry of Deeds date April 18, 1986.

The vote was **4-0-0 in favor**; therefore the application for **Special Permit is hereby granted**, subject to the following conditions: (Murphy, Stanton, Cunningham, Zuker voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the amendment to the existing Special Permit to remove approximately 1200 square feet of land from the Site Plan Norfolk Registry of Deeds date April 18, 1986, shall be as shown on the Plan dated June 26, 2013, signed by Wayne S. Carlson, Carlson Survey Company.
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:

It is the finding of the Board that the applicant has met the requirements under Section 2B of the Zoning By Laws in that:

- i. ***Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.***
The amendment 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 amendment shall not have a number of residents, 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 amendment 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, emission of wastes, or other causes.***

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

- v. ***Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood.***

The amendment 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 amendment shall not adversely affect the character of the immediate neighborhood purpose of the zoning district in which the premises is located.

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. – Patrick and Mary McGrath - Case #14-13

Ms. Murphy read the public hearing notice for **PATRICK AND MARY MCGRATH, Case #14-13**, with respect to property located at 62 Riverside Place, Walpole and shown on the Assessors Map as Lot No. 33-206, General Residence Zone.

The application is for:

A Variance from Section 6.C – Special Conditions – of the Zoning Bylaws to allow a setback of 21.3 feet where 30 feet is required.

Mary McGrath explained that they assumed the construction of the porch was okay, but found out that it went beyond the grandfathered footprint. The old porch had rotted out and they could not get into the house through the front door. The house is 110 years old; the porch was approximately 80 years old. The new three season porch is about 3 feet beyond where the original porch was located. Ms. McGrath said her neighbors, the Kellehers and Silvis approve of the project.

Ms. Murphy read the letter from eight abutters writing in favor of the construction.

Mr. Stanton read comments from Town Engineer, Margaret Walker, dated July 29, 2013; Board of Health, dated August 14, 2013; Lt. Zanghetti, Police Dept., dated July 17, 2013; and Landis Hershey, Conservation Agent, dated July 22, 2013.

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

Dave Fontana, 38 Riverside Place, informed the Board that when he did work on his property he pulled all the necessary permits, and that he believes there is another structure in the back of the property that is not on the plan.

Ms. McGrath explained there is a shed in the back that her engineer did not include on the plan.

Mr. Foley, 50 Riverside Place, informed the Board that the property was dilapidated when the McGraths purchased the house. The porch fell off of the house. He was in favor of the construction.

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

The vote was **4-0-0 in favor.** (Murphy, Stanton, Cunningham, Zuker voting)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6.C – Special Conditions – of the Zoning Bylaws to allow a setback of 21.3 feet where 30 feet is required.

The vote was **4-0-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions:** (Murphy, Stanton, Cunningham, Zuker voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans submitted, Colonial Engineering Inc., dated July 8, 2013, at the public hearing.
2. There shall be no cone of light from the newly constructed premises shining into neighboring property.
3. This Variance shall lapse within one year, 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 was able to meet the requirements of Section 2.3 of the Zoning Bylaws.

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 this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship due to the shape of the lot.

2. *Desirable relief may be granted without substantial detriment to the public good.*
The Board finds that a newly constructed porch will not be a substantial detriment to the public good.

3. Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.

The Board finds that relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.

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 9:30 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on September 4, 2013.