

WALPOLE ZONING BOARD OF APPEALS MINUTES OF DECEMBER 9, 2015

A regular meeting of the Walpole Zoning Board of Appeals was held on Wednesday, December 9, 2015 at 6:30 p.m. in the Main Meeting Room, Town Hall. The following members were present: Matthew Zuker, Chairman; James DeCelle, Vice Chairman; Craig Hiltz, Clerk; Mary Jane Coffey, Atty. Ilana Quirk, Town Counsel.

Mr. Zuker opened the meeting at 6:30 p.m. Mr. Zuker moved to go into executive session to discuss litigation strategy regarding litigation 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. The board will return to open session. Motion seconded by Mr. Hiltz and voted 4-0-0. Mr. Zuker asked for a roll call vote: Mr. DeCelle - yes; Mr. Hiltz - yes; Ms. Coffey - yes; Mr. Zuker - yes. The board entered into executive session at 6:32 p.m. and will return to regular session.

Mr. Zuker moved to come out of executive session and back into regular session. Motion seconded by Mr. DeCelle and voted 4-0-0. Mr. Zuker asked for a roll call vote: Mr. DeCelle - yes; Mr. Hiltz - yes; Ms. Coffey - yes; Mr. Zuker - yes. The board returned to regular open session at 6:55 p.m.

7:00 p.m. Barberry Homes, LLC, Case No. 21-13 Request for “insubstantial changes” to the previously granted Comprehensive Permit: Adam Costa, Barberry Homes was present to speak to the insubstantial changes request. He stated they were last before the board a few months ago for changes as requested by the Conservation Commission. This request is also per changes requested by the Conservation Commission. He stated they also are meeting with them tonight. The changes were listed in an attachment submitted on November 5, 2015. Mr. Costa stated that Ian Cooke, NRWA had requested these changes to protect the quality of the groundwater leaving the site. The changes were sent to the board’s review person, John Chessia, who reviewed them with Rob Truax, GLM Engineering. John Chessia was satisfied and recommended to the board that these changes were in fact insubstantial. They are less substantial than the previous changes that were determined to be insubstantial. Mr. Zuker stated that the Conservation Agent, Landis Hershey and town counsel, Ilana Quirk, were both present tonight. Atty. Quirk asked if the recommended condition was added to page 6 of the plan and Adam Costa stated yes.

David Carter, Barberry Homes, stated that the revised plan is dated yesterday, not today and the changes are all drafting additions, except for the changes shown on Page C-4 and C-10, which he submitted to the board.

Mr. Zuker asked for input from Landis Hershey. She stated they are coming before the Conservation Commission later tonight and that all the revisions requested have been met.

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Mr. Zuker stated we have a letter dated October 26, 2015 from the NRWA stating they are okay with this and recommend approval. Mr. Zuker questioned the sequence of events and Ms. Hershey explained and confirmed that sequence. Mr. Hiltz feels the applicant is being very cooperative, but feels the list is coming late in the application process. Mr. Zuker feels we are getting the best plan for the town. The contractor will be building from these plans.

Ms. Hershey left at 7:24 p.m.

There were no public comments.

Mr. Zuker moved that we determine that the requested changes be considered insubstantial changes to the previously granted Comprehensive Permit based on plans revised on December 8, 2015. Motion seconded by Mr. DeCelle and voted 4-0-0 (Zuker, DeCelle, Hiltz, Coffey).

Atty. Quirk stated there needs to be a written determination that goes out. Also, the twenty day deadline has been extended per Mr. Costa. Mr. Costa stated there was no specific dated and they will extend as necessary. Atty. Quirk will draft a decision.

7:30 p.m. William Cuqua Continued Hearing, 150 Common Street, Case No. 15-15: Mr. Zuker stated this hearing was continued from November 18, 2015. The applicant is represented by Atty. Jim Brady, Main Street, Walpole and Dan Merrikin, Merrikin Engineering, Millis, MA. Mr. Zuker stated there is only a four person board present tonight and asked if the applicant wants to go forward. Atty. Brady asked if we have the Mullen Rule and Mr. Zuker said yes, but we haven't used it yet. Atty. Quirk stated a member can only miss one meeting and can listen to the audio tape of it to catch up. Atty. Brady stated they will go forward tonight. He stated the board has been waiting to hear from town counsel and he has no new information at this time. Mr. Merrikin stated they downsized this project based on discussion at the last meeting. Atty. Quirk stated she wasn't aware the board was waiting to hear from her. Mr. Zuker stated he knew she was going to be at tonight's meeting. Atty. Quirk stated she gave an opinion on November 18, 2015. Mr. Zuker had asked that the applicant and abutters have some dialog. Atty. Brady stated that has happened. Atty. Cannon, the abutters' attorney, stated that has happened but no agreement was reached. His client asked for the following conditions: 1) remove the deck entirely from the rear of the property; 2) the side deck on the southerly side could remain as shown on the plan at 4'; 3) no future building to be allowed; 4) no motor vehicle access past the front of the barn and no parking in the rear of the property. Mr. Zuker asked if he is saying the 4' deck along the side is okay and Atty. Cannon stated yes, but no deck in the back as it is eye level with the DeRosa's. Mr. Zuker commends the parties for having discussion. Atty. Cannon stated his client didn't mind the patio in the back, but doesn't want a deck in the back. Mr. Hiltz asked what is meant by "no future building". Atty. Cannon stated to allow this project to come to fruition they can't come back and change anything. Mr. Hiltz asked if he means interior remodeling or footprint not changing and Atty. Cannon stated he is okay with that condition.

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Mr. Hiltz asked if we had pictures of the vegetation between this property and the DeRosa property and Mr. Zuker stated yes. Atty. Cannon stated they would like the applicant to provide some buffering. Mr. Hiltz asked Mr. Merrikin to send in the pictures and he agreed. Mr. Hiltz asked if the DeRosa property is on grade with the barn and Mr. Merrikin stated it is on grade with the front of the barn. Mr. Zuker stated you are seeking a Special Permit under Section 6-C, a Special Permit for use and a side yard setback Special Permit and also the height close to the side lot line. Atty. Quirk thinks the setback is an issue. Also, there could be lattice or screen on the back deck to give both parties privacy. Mr. Zuker stated the application was for a Special Permit. Atty. Quirk stated if they want to add a Variance, that could be included if they asked.

The Building Inspector would determine if that is required or not. It is not requested, so it is not before us. If they ask now and the board feels the ad was sufficient, you could move forward and entertain it at their own risk, then it would be up to the Building Inspector to determine if variance relief is required or not. Atty. Brady asked if he is saying the variance is necessary. Atty. Quirk stated if you don't apply for it, the Building Commissioner will make that determination. If you apply for it, the board will decide if it is okay. Atty. Brady stated they didn't apply because they didn't think it was necessary. Atty. Quirk stated then it is not before the board. It will be up to the Building Inspector to determine. Atty. Brady stated they don't want to do this again. They would like the board to make that determination so they don't have to come back. Atty. Quirk stated it is up to the applicant to ask or not. This board cannot make a zoning determination. That happens when an occupancy permit or building permit is sought. Mr. Zuker stated he understands what Atty. Brady is saying. Atty. Quirk stated in her opinion it is up to the applicant to ask for variance relief or not and it sounds like they don't want to. Mr. Zuker stated it could be allowed in this zone.

Mr. Hiltz asked if Atty. Brady would like to speak to the no further building condition proposed by Atty. Cannon. Atty. Brady stated he didn't agree to these personally. He asked if that means no shed on the property or an addition to the house. He doesn't think that is a reasonable requirement and he has informed Atty. Cannon they couldn't agree to that. There is no intention of parking a lot of cars there. The deck issue is being proposed because of the applicant's parents. His client could get a permit to put a deck on tomorrow without a hearing. They would be willing to do plantings if that will help. The adjacent property is owned by the abutters, but they don't live in it. They live across the street. Mr. Zuker asked if they would be amenable to a privacy screen on the deck and Atty. Brady stated yes. Mr. Hiltz stated they liked the charm of the barn and wanted to maintain it. Mr. Hiltz didn't get the impression that there was any change to the barn. Atty. Brady stated there won't be. Mr. Hiltz stated there is a big difference between no never and no now. If there is a substantial change wanted down the road, there should be a place to review this. Atty. Brady stated he will discuss this with Atty. Cannon and his client. Mr. Hiltz stated you are going from a density issue. You have a single family on this property with an accessory building. This family is all one extended family, but that could change.

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Mr. Zuker stated because there is not sufficient sideyard on the carriage house, any change to that would require a determination or a special permit. Atty. Quirk stated a new barn would not be a pre-existing non-conformity. It would require a special permit. Mr. Merrikin stated the existing single family is allowed and it is conforming. The only non-conformity is the carriage house. Mr. Hiltz stated no future expansion of the footprint or height, privacy screening on the deck toward the south, no alteration from the driveway as shown on the plan without requesting a modification from this board – if they want to change any of those things, they would need to come back to this board. Atty. Brady agrees with the first one and also the changing of the driveway. He has a problem with the second one – any modification to the carriage house would be fine, so why would he have to come back here for an addition to the main house. Only one abutter is objecting and the others are okay. Mr. Hiltz stated you are increasing the density on the property. Atty. Brady doesn't think it is reasonable to tie this into the existing house. Mr. Zuker stated we don't know what the plan is in the future. Atty. Cannon stated the applicant is putting the entire property into play. There are two primary structures on this property now.

Atty. Brady asked to continue this hearing to January 13. He will also talk to town counsel as he hears the board's concerns. Mr. DeCelle stated he would like something in the decision that someone can't come in and make the barn look completely different from the house. He doesn't want it to change visually. Mr. Zuker stated we are trying to do our job using the town's bylaws. He is glad there has been discussion. Atty. Cannon would like the board to do a site visit.

Atty. Quirk stated no extension is necessary as it is 65 days to open the hearing and 90 days to render a decision after it is closed. Atty. Brady asked that this be continued. Mr. Hiltz moved to continue this to January 13, 2016 at 7:00 p.m. Motion seconded by Mr. DeCelle and voted 4-0-0 (Zuker, DeCelle, Hiltz, Coffey).

8:10 p.m. Stephen Townsend Continued Hearing, 321 East Street, Case No. 12-15: Mr. Zuker read correspondence dated December 8, 2015 from the applicant's attorney, Robert Nislick, P. O. Box 5207, Framingham, MA requesting tonight's hearing be continued without testimony and also granted the board an extension of time to take action up to and including February 28, 2016. Mr. Zuker moved to accept an extension of time up to and including February 28, 2016 as requested. Motion seconded by Mr. Hiltz and voted 4-0-0. Mr. Zuker moved to continue this hearing to January 13, 2016 at 7:00 p.m. Motion seconded by Mr. Hiltz and voted 4-0-0.

8:15 p.m. KAM Construction, Eastover Road, Case No. 16-15: Mr. Zuker read the public hearing notice. The applicant was represented by Atty. Paul Schneiders, Canton, MA. He stated this application is a refile under a different section of the Zoning Bylaw per Michael Yanovitch, Building Inspector, who no longer works in Walpole. The key to the bylaw is the

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word “harmony”. This proposed multi-family is in the GR district, but they need a special permit to put more than one building on this lot. They are not asking for a variance because according to the Zoning Bylaw they meet all the requirements they need to meet. Atty. Schneider stated they have almost double the square footage required; they meet the frontage and setback requirements; each unit has parking spaces; there will be no customers or employees; this project has the lowest density of other projects in the area; they meet all the dimensional requirements and setbacks; this poses no danger to the neighborhood and there will be no nuisance created and it will not affect the character of the immediate neighborhood; and, it is not incompatible with the intent of the zoning bylaw. There will be four buildings each with three units for a total of twelve units.

Paul Brodmerkle, Site Design Professionals, site engineer for the project, stated he is responsible for the design of the access and the infrastructure of this facility. Presently, sewer is not available on Eastover, but they will install one that begins on East Street and then ties into these unit and they will provide each home on Eastover with a sewer connection. They will also install a new 8” water main and the homes on Eastover will get service connections to their property line for that as well. They can choose to hook up to sewer or not. The water main will go from 6” to 8”. Each unit has a garage and a parking space and a third space for visitors in front of the garage. There will be 36 spaces. There will be significant benefits to the people on Eastover Road. Mr. Zuker stated a previous discussion was the width of Eastover Road. He asked what is existing now. Mr. Brodmerkle stated Eastover is 21’ wide and then it narrows down to 16’ at one point and then goes back to 21’ wide. They are proposing to widen the road on the easterly side by 5’.

John Marini, applicant, stated each unit will have a full basement and will be of wood construction. Mr. DeCelle asked why they went from five units to three and Atty. Schneider submitted correspondence from the Building Inspector. He stated they are also putting in a substantial buffer. Atty. Quirk stated under Section 14 in the bylaw, they need a special permit for the four three family dwellings. Atty. Schneider stated they meet all the requirements of Section 5-B-3 and then the Building Inspector thought they were doing this the wrong way. Atty. Quirk asked if the intention is to connect each of the twelve dwellings to sewer and Atty. Schneider stated yes. Mr. Zuker stated the bigger issue is the neighbors that are here. Mr. Marini stated that according to the Fire Department, they would require a fire wall if this is a three-family unit. Mr. Zuker believes a special permit would trigger a site plan review. Mr. Hiltz stated the new Building Inspector may make a different determination when they go for a building permit. Atty. Schneider asked if the board could ask town counsel for her opinion. Atty. Quirk stated that whenever you have a new building inspector they have the discretion to ask town counsel and can choose to follow or not follow the previous opinion. Atty. Schneider asked what if the new building inspector agrees with the old one that they are doing this the right way, then what. Mr. Zuker stated then would have it and wouldn’t need a site plan approval. Mr. Hiltz stated if you don’t include the additional special permit, you would need to come back

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to us for an additional special permit and also to apply for site plan approval. Atty. Schneider stated you would have to agree with the prior building inspector as he doesn't think the building inspector can just waive that requirement. Mr. Zuker stated if that is the determination, then that is what it will be. Atty. Schneider stated it appears they need to sort this out with the new building inspector. Mr. Zuker stated the public hearing could be closed tonight if the applicant wants. Atty. Quirk stated they could put in a request tonight before the public hearing closes to amend their application.

Mr. Zuker read comments from the Board of Health, Town Engineer, Sewer and Water Commission, Fire Chief and Conservation Commission.

Ann Bielenin, 15 Eastover Road asked what is the advantage of not doing a site plan and is it to their advantage. Mr. Zuker stated without the Planning Board process it would be done by the town departments, not at a public hearing. Ms. Bielenin asked how heat is being provided – will it be gas, oil or electric and she questioned screening. Mr. Brodmerkle stated they prepared a landscaping plan showing the trees that will grow to provide a buffer. Also, when they filed with the Planning Board, they responded to Ms. Walker's comments and also to her follow up comments.

Phil Sullivan, 1 Eastover Road stated that he couldn't hear the Planning Board people at their meeting. Instead of people having a private conversation, this board talks. He has been here for fifty years. He questioned the turning radius as there is a lack of visibility now.

Jack Gillon, Registered Professional Engineer discussed the traffic report. Mr. Zuker asked if the radius is changing and Mr. Brodmerkle explained the radius change and stated he will run this by Ms. Walker. Mr. Hiltz asked if we can condition this to be reviewed by Ms. Walker. Mr. Zuker stated yes. The board will request that this be reviewed with the town engineer. Ms. Bielenin stated the road is very narrow. Mr. Zuker stated they will convey that to whoever conducts the site plan review.

John Hayes, 3 Eastover Road wants to know if there was a study on the topography of the road. It is hard for three of them to back out, which is a safety hazard for all of them. Mr. Brodmerkle stated Eastover is a public way. There is a hill in the middle of the street and the road is only 16' wide at the hill. They are proposing to increase that width. Mr. Hayes stated he would like a speed bump. There will be increased traffic with deliveries. Mr. Zuker stated there are methods they can use. Mr. Hayes stated the acting chairman of the Planning Board did do a site visit as it was different from what was shown on the plan. Mr. Zuker stated that is a good question as safety is important to the board. Site Plan review can address traffic and other safety measures.

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Prashanth Vijalapura, 5 Eastover Road stated speed is an issue and would also like speed bumps. Mr. Zuker stated that is a specific question for whoever will be doing the site plan review. Mr. DeCelle suggested they talk to the town engineer. Mr. Hiltz stated he lives on Kendall Street and that is a cut through street. People come from 1A to 27. They talked about speed bumps but snow removal was an issue. One solution may create a different problem, which is why we make the recommendation that it should be part of the site plan review.

There were no further public comments.

Mr. Zuker read a letter from Alan Virtue, Diamond Pond Housing that was received today. He was not in favor of this proposal. Mr. Hiltz mentioned some questions that were from the last hearing. He questioned the queueing from Eastover onto East Street. Mr. Gillon stated there is no queueing. There will be gaps in the traffic. He discussed the peak hours and the volumes that occurred. Mr. Hiltz asked if he is saying there is no queueing today of that this development will add no additional queueing. Mr. Gillon stated there was only one time there were cars waiting to get out, but that dissipated quickly. Mr. Brodmerkle asked if it is safe to say there is no queueing and Mr. Gillon stated yes. Mr. Zuker stated that one of his questions is the 21' of pavement. Is 24' more appropriate, which he feels that is a question for site plan review. Mr. Brodmerkle stated that can be done but it will come off the easterly side of the roadway as the other side has utility poles. He would want to work with Ms. Walker on this. Atty. Quirk stated they should consider whether or not the cul-de-sac will be eliminated. Mr. Brodmerkle stated it will never be built. Mr. DeCelle stated it will only be on paper. Mr. Zuker stated the fire department had said as long as people park where they are supposed to it will be okay. Mr. Hiltz asked that they remind him of the number of bedroom per unit. Mr. Marini stated six units will have three bedrooms with a master on the first floor and six will have two bedrooms with a master on the second floor.

Mr. Brodmerkle stated the applicant wants to add amend the application by adding Section 5-B-3-C in addition to Section 6-C-4-A. Mr. Hiltz moved to accept the amendment to the application so they won't have to come back. Motion seconded by Mr. DeCelle and voted 4-0-0. Mr. Hiltz moved to close the public hearing. Motion seconded by Ms. Coffey and voted 4-0-0.

Mr. Zuker stated he was pleased with the comments from the neighborhood that he heard tonight. Ms. Coffey feels they offered the abutters sewer and water which is a plus. Mr. Hiltz stated this allows the property to be built in a favorable way. Mr. Zuker stated there are still details to be worked out on the site plan. Ms. Coffey feels that Mr. Marini has a superb reputation and feels that is why the neighbors aren't objecting and they are fortunate in the integrity of the builder. Mr. Hiltz stated this is in character with other location nearby such as Hartshorn Village and Plimpton Street.

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Mr. Zuker stated this meets the criteria of a special permit. Ms. Quirk stated there will be one decision, but two special permits. Mr. Zuker stated the criteria will be different, but conditions and reasoning will be the same.

Ms. Coffey moved to allow twelve attached units in a general residence district subject to conditions. Motion seconded by Mr. Hiltz and voted 4-0-0. The board discussed the reasons, findings and conditions.

Mr. Zuker moved to grant two special permits, one under Section 5-B-3-C as stated in their motion to amend the application and also Section 5-B-3 of the zoning bylaw, subject to conditions as discussed. Motion seconded by Mr. Hiltz and voted 4-0-0.

Town counsel left at 9:55 p.m.

Mr. Zuker moved to adjourn. Motion seconded by Mr. DeCelle and voted 4-0-0. The meeting adjourned at 10:05 p.m.

Respectfully submitted,

Craig Hiltz, Clerk

Accepted 3/9/16