

The September 26, 2012 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. – Lubold - Case #18-12 – Decision**

Ms. Murphy commented that initially the lot was pre-existing, non-conforming, but that changed when a portion of the property was sold.

Mr. DeCelle commented that the setbacks dimensions do not include the existing porch, so he is assuming the porch is coming down.

Mr. Case commented that they need a permit for a three-family residence in a residential zone, because the grandfathering is no long in affect. The applicant would have to request a Special Permit in order to continue that use.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant to allow the petitioner, Attorney Paul A. Schneiders on behalf of John Lubold, to withdraw without prejudice the application for a Variance from Section 6-B.1 of the Zoning Bylaws to allow a non-conforming setback of 22.33 feet where 30 feet is required to remain on a newly created lot.

The vote was **(5-0-0) in favor**; therefore the request to withdraw without prejudice the request for a **Variance** is hereby **granted**: (Stanton, Cunningham, Case, DeCelle, Zuker)

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 9.5.B to be changed to a Special Permit under Section 9.4.D.2 of the Zoning Bylaws.

The vote was **(5-0-0) in favor**; therefore the request for a Special Permit under Section 9.5.B to be changed to a Special Permit under Section 9.4.D.2 of the Zoning Bylaws is hereby **granted**: (Stanton, Cunningham, Case, DeCelle, Zuker)

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant to grant a Special Permit under Section 9.4.D.2 of the Zoning Bylaws to allow a non-conforming setback of 22.33 feet where 30 feet is required to remain on a newly created lot.

The vote was **(5-0-0) in favor**; therefore the application for a Special Permit under Section 9.4.D.2 is hereby granted, subject to the following conditions: (Stanton, Cunningham, Case, DeCelle, Zuker)

### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the lot shall be configured in accordance with the plan submitted at the public hearing dated “Jam” 13, 2012.
2. As stipulated at the public hearing the owner of the property can no longer keep the property as a three-family dwelling with out a Special Permit.
3. 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.***  
Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.
- ii. ***Shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.***  
Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.
- 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).***  
Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.
- iv. ***Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes.***  
Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.
- 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.***  
Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.
- vi. ***Shall not adversely effect the character of the immediate neighborhood.***

Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.

**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.***

Nothing will change in regard to the existing lot or house except that the 66,689 s.f. lot will be reduced in size to 30,699 s.f. which will be 15,699 s.f. larger than required.

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

**7:00 p.m. – Evelina Gourdoukis – Case 21-12**

Ms. Murphy read the public hearing notice for **EVELINA GOURDOUKIS, Case #21-12**, with respect to property located at 263 High Plain St., Walpole and shown on the Assessors Map as Lot Nos. 35-374 and 35-375, Residence B Zone.

The application is for:

A Variance from Section 6.B of the Zoning Bylaws to allow the reconfiguration of two existing lots held in common ownership, so as to create a revised lot for the existing single-family house, which is non-conforming due to front yard setback, and so as to create one lot for a new single-family house.

Attorney James Brady represented the applicant and explained the applicants moved to the USA from Albania 15 years ago and have become US citizens. Mrs. Gourdoukis works as a bank teller and her husband was working, but no longer has a job. They started reconstruction on the house and reroofing, but ran out of money, which is why the house is in its present condition. They are paying taxes on two lots, and are assess as two lots. They are non-conforming existing lots. Attorney Brady went on to explained the deeding that took place over the years. The two lots were merged into one lot when they purchased the house. The applicants are asking the Board to reconfigure the lot back to two lots. The applicant visited all the people on the abutters list; six of them were not available. The abutter to the right is in favor of the application. Over 90% are in favor of the application. Attorney Brady explained the applicants are having a difficult time paying the mortgage and have been paying it with a credit card. They are hoping to sell the second lot, and are not interested in building their own building. They would finish the house and garage and remove the asbestos shingles. There is a significant hardship.

Dan Merrikin, Merrikin Engineering, explained the configuration of the lots, one of which is long and skinny at 9,775 s.f.; the second is over 20,000 s.f. Mr. Merrikin informed the Board that the applicant would submit an ANR plan to the Planning Board, if this Variance is approved. Each would be 15,000 s.f. if the reconfiguration is approved. Each of the two lots would have the necessary amount of frontage. He did not think a Variance was necessary because the non-conformity is not affected.

Attorney Brady said there are a number of lots in the area that are smaller lots than the two lots in this application. Also, if the applicants are allowed to reconfigure these lots and sell one of them and finish the work on the house, it would be a relief to the neighborhood.

Mr. Case commented that the Assessor's office plan does not match up with the plan based on the applicant's deed. Also, if two 15,000 s.f. lots were created, that would not create buildable lots.

Mr. Merrikin explained that there are two plans, i.e., an existing plan and the Assessor's plan.

Attorney Brady said a Variance would be needed to allow the lot to be buildable.

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

Christine Pulick, 11 Sybil St., explained that she and her husband bought two 20,000 s.f. lots on which to build their home. She was concerned that the new home would be looking into their bedroom window. She was also concerned because Mrs. Gourdoukis told her that she would give first opportunity to purchase the property to her family and that they would build the same sort of house in a similar condition as the applicant's.

Mrs. Gourdoukis said she would be willing to put it in writing that she will sell the lot to an independent builder.

Attorney Brady said that the new home would be built by an independent building and sold to an outside party. He has told the applicant that they would have to put up some nice shrubs and make it look good and to fix the roofline; and suggested arborvitaes.

The resident at 265 High Plain St., asked if they are going to have an architect fix the front stairs because it does not look presentable.

Greg St. Cyr, 280 High Plain St., asked what would prevent the applicant from selling the new lot to a family member for \$1 and building another structure like the existing one. An agreement to make improvements is non-binding. He informed the Board that the garage has been left with no shingles on it. He had his property assessed and was told that this lot and the existing buildings are affecting the value of his property. He also commented that the applicant removed all the trees on their lot and is concerned that would be done again.

Justin Pulik, 11 Sybil St., asked if the applicant's current lender would allow them to release that lot from their mortgage.

Mrs. Gourdoukis said she would guarantee she wants to fix the house. She has been working here for 11 years and this is the last best option.

Attorney Brady said he would be willing to work with the neighbors on behalf of his applicant to assure them it will be a single family home that is built. The existing garage will be gone, it is half down now. Attorney Brady asked for a 10 minute break to talk with the neighbors, which was allowed, then returned and informed the Board that the neighbors were not interested in considering a two week continuance. After reviewing his position with the Board, Attorney Brady asked that the hearing be closed.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to close the public hearing for Case #21-12, Evelina Gourdoukis.

The vote was **5-0-0 in favor**, the hearing was closed. (Murphy, Cunningham, Case, DeCelle, Zuker voting)

**7:30 p.m. – Robert Stewart – Case #22-12**

Ms. Murphy recused herself from the public hearing.

Mr. Stanton read the public hearing notice for **ROBERT STEWART, Case #22-12**, with respect to property located at 7 Spring Valley Drive., Walpole and shown on the Assessors Map as Lot No. 33/268, General Residence Zone.

The application is for:

A Variance from Section 6.C.8.d of the Zoning Bylaws to allow a six-foot fence where only a three-foot fence is allowed.

Robert Stewart explained that he had installed a 6 foot fence not realizing it had to be 9 feet onto his property. Someone complained about being able to come out of the street safely. Mr. Mee did a site visit of the fence and informed him that the site of view was okay, but he would need to maintain the 3 foot area between the fence and the sidewalk. He is requesting a Variance in order to keep the fence up and not have to take it down. There are neighbors present that will speak on his behalf.

Jack Mee, Building Commissioner, explained the Bylaw is 15 feet on the side lot line.

Mr. DeCelle commented that there is a clearance of a 25 foot triangle from the corner.

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

Mr. Mee commented that he believes the definition regarding the tangent is regarding a structure, i.e., a building. He does not believe there is a site line issue.

Bill Ryan, 3 Spring Valley Drive, informed the Board that he has lived there for 49 years. He has cut back the vegetation in the 3 foot area between the sidewalk and the property at that intersection for years. The home owner is now doing that. He is in favor of the applicant's request.

Randolph Howard, 1 Autumn Lane, has lived here for 50 years and strongly urged the Board to consider this application. The applicant has cleaned up the lot.

Rich Colleran, 8 Spring Valley Drive, informed the Board that the applicant has done a lot of work cleaning up this site and now it looks great. Mr. Colleran used to cut back the vegetation himself at that corner to improve the site line.

Mr. Stanton asked if there were any further comments; 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**, the hearing was closed. (Murphy, Cunningham, Case, DeCelle, 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.8.d of the Zoning Bylaws to allow a six-foot fence where only a three-foot fence is allowed.

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

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, the area in front of the fence and sidewalk shall be maintained with no vertical height.
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 topography and lawn configuration.

2. *Desirable relief may be granted without substantial detriment to the public good.*

The Board finds that the site line has been improved due to the maintenance of that area by the home owner.

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

The Board finds that due to the site line improvement at that intersection by the maintenance of that area by the home owner the Variance 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.**

**8:00 p.m. – John Hasenjaeger – Case #23-12**

Ms. Murphy read the public hearing notice **JOHN HASENJAEGER, Case #23-12**, with respect to property located at **3 Pinnacle Drive**, Walpole and shown on the Assessors Map as Lot No. 19-183-3, General Residence Zone.

The application is for:

An Appeal from action taken by the Building Inspector, Jack Mee, with respect to the side yard set back on engineering plans has been questioned due to the odd shape of the lot.

A Variance from Section 6.A, B, C of the Zoning Bylaws to allow that the right side yard is confirmed or granted a Variance to status of a side yard (if determined side yard is a rear yard). Further to provide 20 foot frontage Variance where 30 feet is required, allowing aesthetic and conforming positioning of the home on the lot.

Mr. Hasenjaeger explained the history of the lot, i.e., it was owned by Bird & Son, then February Trust. A number of different proposals have been presented to the Town over the years. He purchased the property and turned it into a viable street. The neighbors did not want condominiums up the street, and for them to be single family homes. The Form A lots are provided to achieve that. The Town wanted a sewer easement to River Walk. Therefore the property lines got dictated into a weird way. A home cannot be built on top of a sewer line. This odd shaped lot went through the Planning Board and a number of engineering companies confirmed the zoning lines on the plan submitted. He had a couple who want to build a home on the lot, and have put money down. They are now going to build that same house on another lot. Mr. Naff decided the sideline was a backline which ruined that plan. Since then, he has had a few meetings with Mr. Mee. They have a difference of opinion. John Glossa proposed the furthest point from the street which is 30 feet off as the setback. Mr. Hasenjaeger said he has been taxed on the lot as a buildable lot. There is over 100 feet of buffer that is landscaped between this property and the properties behind it. He has designed a river walk at the rear of the property.

Board members discussed the various property lines in relation ship to the application.

Ms. Murphy read comments from the following Boards and Departments: Deputy Fire Chief Laracy, dated 9/19/12; Town Engineer Walker, dated 9/12/12; Board of Health, dated 9/26/12; Conservation Agent Hershey, dated 9/6/12, and Building Commissioner Mee, dated 9/13/12.

Mr. Mee explained that he and Mr. Naff went over the plan that was submitted to them. The applicant had been pressuring them to grant the plan. After thoroughly reviewing the submitted plan, Mr. Mee came to the conclusion that the back side line would be the rear lot line, and notified Mr. Hasenjaeger. Mr. Hasenjaeger continued to come into the Building Inspector's office and decided to have the plan reviewed by the Board of Selectmen, and the Town Administrator. Mr. Boynton allowed Mr. Mee to review it with Town Counsel who helped him to work on the letter submitted to the Board. Mr. Hasenjaeger's appeal period expired prior to the filing of his appeal of the Building Inspector's decision. Regarding the Variance, Town Counsel advised him "that the shape of the lot as subdivided is irrelevant to the statutory criteria regarding the shape of the land..... standing alone, the shape of the lot as subdivided cannot

support the grant of a Variance from zoning requirements..... “. It was never determined that this is a buildable lot.

Mr. DeCelle asked if John Glossa’s plan made more since.

Mr. Hasenjaeger said that once a line changes more than 45 degrees it becomes a side line. He is asking relief from the Zoning Bylaws. He explained that the unique shape of the lot was not created by this plan, but was created by the Town because of the sewer easement. Regarding the appeal, he did not receive anything in writing and thought everything was still negotiable.

Mr. DeCelle was concerned because the house on the plan did not show the dimension from the front. The Board cannot make a decision “as shown on the plan”, because it is not on the plan. Further, there is no topography shown on the plan, not where the back green space is located. The Board needs a plan that shows where everything is located.

Mr. Mee explained there was a verbal stop work on May 1, 2012. Mr. Hasenjaeger concurred that he was told to stop on May 1, 2012 by the Assistant Building Inspector.

Ms. Murphy asked if there were any comments from the public or further comments from the Building Inspector or applicant.

Mr. Hasenjaeger commented that Town Counsel, Ilana Quirk, had nothing to do with this case, and asked that Mr. Mee write an official letter to him to stop work so he can have the 30 day appeal period, and he would like to submit a plan for the Variance.

Ms. Murphy asked Mr. Mee to submit the correspondence he received from Town Counsel.

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

The vote was **4-1-0**, four in favor one opposed, Mr. Case opposed. (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker voting)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to uphold the decision of the Building Commissioner, Jack Mee and deny the Appeal.

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 reopen the public on the Variance only part of the application.

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 October 24, 2012 at 7:30 p.m.

The vote was **4-1-0, four in favor, Mr. Case opposed**. (Murphy, Stanton, Cunningham, Case, DeCelle voting)



There being no further business, the seminar was closed at 10:30 p.m.

Daniel J. Cunningham, Jr.  
Clerk

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Minutes were approved on November 28, 2012.