

The March 7, 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 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 (not present)

Matthew Zuker, Associate member

**7:00 p.m. – Timothy and Theresa Duffy – Case #03-12**

Ms. Murphy recused herself from the hearing.

Mr. Stanton, Acting Chairman, 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.

Mrs. Duffy chose to continue the hearing to the Board's next meeting.

Mr. Case asked the applicant to show the dimensions of how far the pool is from the abutting houses; a hand drawing would suffice.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to continue the hearing for Case #03-12 to March 21, 2012 at 8:15 p.m.

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

**DISCUSSION**

**Panda Express Railing – Case #18-10**

The Board discussed the letter dated March 5, 2012 from Jason Archbold, Chipman Design Architecture, requesting the Zoning Board reconsider condition number 4 from its decision dated November 23, 2010, Case #18-10. After discussion the Board requested the secretary send the applicant a letter substantiating the original decision.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, that the past decision stands as written.

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

The following letter was sent:

At the Zoning Board meeting of March 7, 2012 the Board discussed your letter of March 5, 2012 and upheld its decision of November 23, 2010 and the conditions therein. At the time of the hearing those conditions were stated and the applicant was informed of the concerns of the Board, and the applicant agreed to those conditions. The vote of the Board was unanimous.

However, you may apply for an amendment to that decision, which would require another hearing before the Board.

**7:30 p.m. – Joseph Proia – Case #04-12**

Mr. Murphy read the public hearing notice for **JOSEPH PROIA, Case #04-12**, with respect to property located at 7 Kevin's Way, Walpole and shown on the Assessors Map as Lot No. 55-77-2, Rural Zone.

The application is for:

A Variance from Section 6.B of the Zoning Bylaws to allow a 5 foot front yard setback, where 30 feet is required.

Mr. Proia is presenting the application for Mrs. Cummerford, the owner of the property. He is proposing to move the house to 5 feet from the property line. The topography is a major issue because of a 12 foot drop off from the road, which is a private roadway. A 5 foot setback would still be 70-72 feet from the existing roadway. He is trying to avoid the wetlands. He has spoken to the Conservation Agent who mentioned the possibility of moving the driveway.

Peter Cummerford, son of the owner, explained that in order to make it a public road they would have to comply with the slope rating from the Town. Coming from the cul de sac the level of the road they would have been 13 feet. The hammer head cul de sac has been approved and it is now being landscaped. The top coat is left to be done. The property will never be extended any further.

Ms. Murphy read the comments from the Town Engineer dated February 21, 2012: 1) engineering had received an incomplete copy of the plan and has since seen the whole plan, 2) sewer manhole label not found – the field markers have since been found, 3) maintain site plan so that drainage patterns for roadway are not altered – Mr. Cummerford spoke to the Engineering about that, 4) the applicant is aware of the of any deed restrictions planned within the site of the home, 5) regarding the driveway and potential runoff into the garage – the applicant is aware, 6) re: impervious cover of house on the lot and noted to be included in all impervious surfaces and possible need for additional Special Permit under Section 12 of the Zoning Bylaws.

Members of the Board requested additional information to be included on the plan because there is a need for more clarity to include requested engineering information, dimensions and exact location of the proposed dwelling on the plan, the dimensions and location of the driveway on the plan, and topography of the lot.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to continue the hearing to March 21, 2012 at 8:30 p.m.

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

**8:00 p.m. – Jeffrey Melzack – Nancy Sheehan-Melzack – Case #01-12 (cont'd from 2/8/12)**  
**(Stanton, Case, DeCelle, Zuker)**

Ms. Murphy read the public hearing notice for **Jeffrey Melzack & Nancy Sheehan-Melzack, Case #01-12**, with respect to property located at 10 Chicatabut Dr., Walpole and shown on the Assessors Map as Lot No. 36-24, Residence B Zone.

The application is for:

A Special Permit under Section 6.B.1 of the Zoning Bylaws to allow two (2) six foot (6') extension of existing deck with a 6.71foot setback where 15 feet is required.

Mrs. Melzack explained the vertical measurements on the newly submitted plan as requested by the Board at the previous meeting.

Mr. Case and Mr. Zuker agreed that a Special Permit under Section 9.4.a was also needed for the height.

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to amend the application for Case #01-12 to include another Special Permit under Section 9.4.a which is a pre-existing nonconforming structure already in the setback.

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

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

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant a Special Permit under Section 6.B.1 of the Zoning Bylaws to allow a six foot (6') extension of existing deck with a 6.71foot setback where 15 feet is required.

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

**CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the structure shall be used as a deck, as shown on the plan submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, there shall be no cones of light shining on adjacent property.
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:**

It is the finding of the Board that the applicant has met the requirements under Section 2B 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 construction 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 construction 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 construction 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 construction 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 construction 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 construction 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 construction shall not be incompatible with the purpose of the zoning bylaw or the purpose of the zoning district in which the premises is located.

\* \* \* \* \*

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to allow a Special Permit under Section 9.4.a of the Zoning Bylaws extending a previously existing nonconforming height on a pre-existing nonconforming structure already in the setback.

The vote was **5-0-0 in favor**. Murphy, Stanton, DeCelle, Zuker voting.

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the structure shall be used as a deck, as shown on the plan submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, there shall be no cones of light shining on adjacent property.
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:**

It is the finding of the Board that the applicant has met the requirements under Section 2B of the Zoning Bylaws in that that such extension will not increase the nonconforming nature of the structure and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure:

***i.Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.***

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

**8:15 p.m. – John Marini/Plimptonville Crossing – Case #02-12 (cont'd from 2/8/12)**  
**(Stanton, Case, DeCelle, Zuker)**

Ms. Murphy recused herself from this hearing.

Mr. Stanton, Acting Chairman, read the letter from Mr. Merrikin dated March 6, 2012 requesting to continue the hearing to March 21, 2012. They have made some changes to the plan at the request of the Planning Board. The agenda for March 21 is full.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to continue the hearing for Case #02-12 to April 11, 2012 at 7:30 to 8:30 p.m.

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

**DISCUSSION**

**ZBA Applicant Check List**

John Naff, Deputy Building Inspector, asked the Board if the “location of abutting property buildings” is required on applicant’s registered land surveyor stamped certified plans?

The Board discussed the request and decided that requirement must continue to be included on the plans.

There being no further business, the meeting was closed at 9:30 p.m.

Daniel J. Cunningham, Jr.  
Clerk

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Minutes were approved on April 11, 2012.