

The May 25, 2011 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

Matthew Zuker, Associate member

**7:00 p.m. – Xtreme Action Sports, LLC – Case #09-11**

Ms. Murphy read the public hearing notice for **XTREME ACTION SPORTS, LLC, Case #09-11**, with respect to property located at 153 Washington St., E. Walpole and shown on the Assessors Map as Lot No. 20-7, Limited Manufacturing Zone.

The application is for:

A Special Permit under Section 5.B.4.r of the Zoning Bylaws to allow expansion of the existing Special Permit to include outdoor use and or any other relief required by the Board.

Jeff Sudman, owner of Xtreme Action Sports, explained he has been in business for a year and is currently operating indoors. To better diversity the business he would like to go out doors for seasonal use. He would create 6-10 jobs with the expansion. He is very strict with safety. The enclosure would be nylon netted so no players or paintballs can go outside the area. There would be inflatable bunkers. They clean up the area at the end of the day. Players have to be 10 years or older. The area is a parking lot that is not lined or used.

Mr. DeCelle was concerned that those parking spaces being part of any previous decisions. The Board needs to know how many parking spaces were originally required for that property.

Ms. Murphy read a letter received by the Board from Mr. and Mr. Langlois, 32 Rose Court Way, dated May 20, 2011, complaining of the noise they are hearing now from Xtreme Action Sports because their windows are open.

Mr. Sudman explained the sound is louder inside than it would be outside because the inflatable bunkers do not make as much noise when hit by the paintballs.

Mr. Cunningham questioned in the 60 feet by 100 feet shown on the plan submitted by Mr. Sudman. The dimensions are not drawn with the correct scale. The scale they used shows 35 feet by 85 feet.

Paul Sudman explained they got the plan from the landlord and then contacted the engineer for permission to use the plan. They then added the playing field area themselves.

Richard Dunn, 4 Riverwalk Lane, said although he is a proponent of entrepreneurship, he is concerned about the wild life in the area being affected by the outdoor use. Also, there are picnic tables and a walkway and a river. They have built a mini-golf course for their visiting children and grandchildren that abuts this property.

Ethan Pollack, 11 Rose Court Way, asked if the applicant has given consideration to the wild life in the area, and asked if they have gone to the Conservation Commission for consultation of the impact on the wild life. He is also concerned about property values being negatively impacted. Rose Court Way overlooks the area being proposed for outdoor use. He would not be opposed to this indoor use, but the out door use would be intrusive.

Ed Avery, 12 Rose Court Way, pointed out that there are two swans and a couple of herons in the area. Following questions and comments: 1) how big is the space? 2) trailer trucks come and go through the property and between the turn around – they had to repair the retention basin costing them \$100,000; 3) concerned about the kids going beyond the assigned area; 4) asked if it is customary to add a special permit onto a special permit? 4) can they come back and open up more business uses, i.e., food? 5) asked the operating hours.

Mr. Sudman explained 90% of the business is on Saturday and Sunday and school brake hours. The paint balls are non-toxic and biodegradable. He does not allow customers to take food outside.

Mr. Zuker explained that in an Limited Manufacturing Zone amusement is one of the uses that can be considered for this area.

Mr. Avery explained the homes in the area are high end and they pay significant condo fees. The noise level for this outdoor use would be coming at the best time of year for residents outside uses, and therefore, this requested outside use is a concern.

Mr. Sudman said he met with someone on the Trustees who said he would go back and inform their Board of the project, however, he is willing to put it in another position on the property.

Brenda Pollack, 11 Rose Court Way, asked the Board to send a letter request comments from the Conservation Commission.

Ms. Murphy suggested he meet with the condo owners, have the area engineered, so the plan accurately reflects the proposal.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to continue the hearing to June 8, 2011 at 8:35 p.m.

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

#### **7:30 p.m. – Robert Brown – Case #10-11**

Ms. Murphy read the public hearing notice for **ROBERT BROWN, Case #10-11**, with respect to property located at 599 Common St., Walpole and shown on the Assessors Map as Lot No. 42-184, Residence B Zone.

The application is for:

A Special Permit under Sections 9.3.A and 9.4.D.2 of the Zoning Bylaws to allow a nonconforming use may be continued to the same degree and for the same purpose, but may be altered, expanded or extended only with a Special Permit from the Board of Appeals in accordance with the provisions of 2.2. The Board of Appeals may grant a Special Permit for this continued use of the building under the provisions of 2.2 provided it determines the building is compatible with its neighborhood and complies with criteria set forth in 2.B.

Ms. Murphy read a letter from Mr. Brown, dated May 25, 2011, request to withdraw his application for a Special Permit.

On an application from Robert Brown **ROBERT BROWN, Case #10-11**, with respect to property located at 599 Common St., Walpole and shown on the Assessors Map as Lot No. 42-184, Residence B Zone.

The application is for:

A Special Permit under Section 9.3.A and 9.4.D.2 of the Zoning Bylaws to allow a nonconforming use may be continued to the same degree and for the same purpose, but may be altered, expanded or extended only with a Special Permit from the Board of Appeals in accordance with the provisions of 2.2. The Board of Appeals may grant a Special Permit for this continued use of the building under the provisions of 2.2 provided it determines the building is compatible with its neighborhood and complies with criteria set forth in 2.B.

#### **VOTE OF THE BOARD:**

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant, Robert Brown, to grant a request to withdraw without prejudice Case #10-11.

The vote was **5-0-0 in favor**; therefore the application for Case #10-11 is hereby **withdrawn without prejudice**. (Murphy, Stanton, Case, DeCelle, Zuker voting)

#### **REASONS FOR DECISION:**

It is the finding of the Board that the applicant requested withdrawal without prejudice in a letter dated May 25, 2011, and the Board had no reason to deny the request.

This decision is consistent with the purpose and intent of the Zoning By-Laws.

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

#### **7:45 p.m. – JB Realty, LLC – Case #07-11 (cont'd from 5/11) (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker)**

Ms. Murphy read the public hearing notice for **JB REALTY, LLC, Case #07-11**, with respect to property located at 11 Barstow Road, Walpole and shown on the Assessors Map as Lot No. 35-344, Residence B Zone.

The application is for:

A Special Permit under Section 9.5.B of the Zoning Bylaws to allow demolition of pre-existing single family house and to construct a new single family house on a lot that has 100 feet of frontage where 125 feet is required, and 12,000 square foot area where 20,000 square feet is required. The proposed house meets all zoning setbacks.

Andrea Chamberlain submitted a topographical plan as requested by the Board. the driveway would be in the same spot as the existing. There will be less asphalt. The retaining walls are owned by the abutters. The property is on town sewer.

Mr. Cunningham was concerned about the frontage and the 20,000 square foot area.

Ms. Kruz, 17 Barstow Rd, informed the Board that she has a retaining wall which goes around her house. There are trees and shrubs that will need to be pulled up and she is afraid that may ruin her wall. She asked if she could be guaranteed that it will be repaired if it got damaged.

Mr. DeCelle explained that would be a civil issue.

Jeff Dodge, 317 High Plain St., explained that the property in question slopes down to his property and he was concerned that additional water would flow from that property to his property because of this new construction.

Joseph Derba, explained he has worked in the area and knows what the rules are.

Joanna Darsh, 317 High Plain St., was concerned because after the property is built and sold the water problem may come to light and then who is responsible for it?

Ms. Murphy asked if there were any further comments; there being none,

A motion was 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, DeCelle, 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 9.5.B of the Zoning Bylaws to allow demolition of pre-existing single family house and to construct a new single family house on a lot that has 100 feet of frontage where 125 feet is required, and 12,000 square foot area where 20,000 square feet is required. The proposed house meets all zoning setbacks.

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

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the structure shall be constructed per the plans submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, the roof leaders shall be discharged into a drywell suitably sized to accommodate runoff.
3. As stipulated by the applicant at the public hearing, the applicant shall follow all Board of Health regulations pertaining to demolition of the existing structure.
4. 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 3B 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 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.**

**8:00 p.m. – 5<sup>th</sup> Fairway Development Remand – Case #18-08 (cont'd from 4/27) (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker)**

Ms. Murphy summarized the request.

Attorney Ilana Quirk, Town Counsel, reviewed that there was a continuance to this hearing in order to allow the Board to have its Town Engineer and consulting engineer review the most recent plan. The Board now has comments from the Town Engineer, consulting engineer, and Attorney Haverty.

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

Bob Higgins, 2 Carriage Lane, referred to the most recent reports showing that the applicant's proposal cannot handle the additional water in the existing system owned by the Walpole Country Club.

Ms. Murphy asked for the record if there was anyone representing the applicant who wishes to speak.

Mrs. Thurston said there is nothing else.

Attorney Quirk informed the Board they have 40 days to make a decision and that she would prepare the draft.

Ms. Murphy suggested scheduling the decision discussion for June 22, 2011.

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, DeCelle, Zuker voting)

Attorney Quirk asked if the Board would like to schedule a workshop which would be free to the Town.

The Board would like to schedule a workshop sometime in the future.

**DISCUSSION**

**Michael Viano re: Minor Modification – Case #10-06 Oak St. Condominiums**

Mr. Viano explained that because of the slope of the driveway going into the condominiums, he and the Town Engineer decided it would be very difficult to make the rounded driveway work,

and so he is requesting to build an 8 foot by 8 foot waiting area for a bus stop. The Town Engineer agreed.

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to accept the request for the modification to remove the sidewalks and put in a bus stop area.

The vote was **5-0-0 in favor**, therefore the request for the minor modification is approved. (Murphy, Stanton, Cunningham, DeCelle, Zuker voting)

**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 was closed at 9:30 p.m.

Daniel J. Cunningham, Jr.  
Clerk

ev

Minutes were approved on August 10, 2011.