

The November 17, 2010 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

Meg Kundert, Associate Member (not present)
Matthew Zuker, Associate member

7:00 p.m. – Panda Express – Case #18-10

Ms. Murphy read the public hearing notice for Panda Express, Case #18-10, with respect to property located at 106 Providence Highway, Walpole and shown on the Assessors Map as Lot No. 29-15, Highway Business Zone.

The application is for:
Special Permit under Section 5-B.1(4)(p)(i) of the Zoning Bylaws to allow an outdoor dining patio, with railing and umbrella.

Bob Brownstein represented the applicant described Panda Express as a privately owned and charitable business and introduced Elana Amoroso, Chipman Adams Architects, who presented the application.

Ms. Amoroso presented information on the plans submitted; there would be 4 tables with 4 seats each, 16 seats in all on the patio. There would be one large umbrella that covers all 4 tables. The wind forces have been taken into account. Ms. Amoroso submitted supplemental information, a picture of an existing Panda Express at another location and an example of the railing configuration. They would remove two existing parking areas. The patio is not attached to the building. People would take out food and go onto the patio. A bioswale is behind the building so they can not put anything at that location.

Ms. Murphy read the comments from the following: Michael Laracy, Deputy Fire Chief, dated October 27, 2010; Margaret Walker, Town Engineer, dated November 1, 2010, November 2, 2010; Board of Health, dated November 10, 2010; Warren Goodwin, Traffic Safety Officer, dated November 9, 2010; and Jack Conroy, Planning Board, dated November 4, 2010.

Mr. Case was concerned about safety and requested that lights around the side, safety pole, and bollards be installed to protect the patio area and those within it.

Mr. DeCelle asked that the fencing be extended so people that are exiting the building would be protected within the fenced area.

Mr. Brownstein explained that the patio area would be open from April to mid October.

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

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

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

CORRESPONDENCE

Michael Viano re: Sterling Lane Condominium Extension Request, Case #10-06

Mr. Viano requested an extension on his Comprehensive Permit of 6 months in order to finish the pavement coating. Fifteen of the 16 buildings are occupied. He will be back with an As Built Plan and Cost Certification upon completion.

Mr. Case suggested the Board check with Jack Mee, Building Commissioner, for his comments.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to approve the request for a six month extension to QR Development, LLC, contingent upon approval of the Building Commissioner.

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

7:30 p.m. – Carole Norrell – Case #19-10

Ms. Murphy read the public hearing notice for **CAROLE NORRELL, Case #19-10**, with respect to property located at 558 High Plain St., Walpole and shown on the Assessors Map as Lot No. 36-42, Highway Business District.

The application is for:

A Variance from Section 6-B of the Zoning Bylaws to allow construction of a shed with a front yard setback of 10.32 feet, where 50 feet is required.

Ms. Norrell explained that there is seven (7) feet of Town property in front of her property. Because she is in the HBD zone, a 50 foot front setback is required in order to construct a shed.

Mr. DeCelle informed the applicant that the Board needs a plan that shows where the driveway is and the topography and grading of the lot in order to understand the location being chosen for the shed.

The hearing was continued to December 8, 2010 at 6:45 p.m.

CORRESPONDENCE

Philip Macchi, Esq. re: Raffael's Banquet and Conference Center

Attorney Macchi has requested the Board confirm that conditions no. 1, 2, 3 and 9 of the original 2002 decision, Case No. 17-08, will be vacated upon the issuance of a Certificate of Occupancy, as well as the vote vacating the Certificate of Occupancy and Special Permit for the 16 tallboy tables.

The Board had the secretary write the following letter: the Zoning Board of Appeals is in receipt of your letter dated November 9, 2010 requesting a confirmation on the above referenced case that Conditions No. 1, 2, 3 and 9 of the original 2002 Decision will be vacated upon the issuance of a Certificate of Occupancy, as well as the vote vacating the Certificate of Occupancy and Special Permit for the 16 tallboy table.

The Zoning Board decided to take no action until a Certificate of Occupancy is issued to the applicant.

DISCUSSIONS

2011 Meeting Schedule

January 12 and 26, 2011

February 9, and 23, 2011

March 9 and 23, 2011

April 13, 2011 and 27

May 11 and 25, 2011 (SPTM 5/2, 4, 9, 11)

June 8, 2011

July 13, 2011

August 10, 2011

September 14 and 28, 2011

October 12 and 26, 2011 (FTM 10/18, 20)

November 9 or 16, 2011

December 14, 2011

8:00 p.m. – Francis Harvey & Sons, Inc. – Case #20-10

Ms. Murphy read the public hearing notice for Francis Harvey & Sons, Inc., Case 20-10, with respect to property located at 36 Cobble Knoll Dr., Walpole and shown on the Assessors Map as Lot No. 58-10, Rural Zone.

The application is for:

A Variance from Section 6-B of the Zoning Bylaws to allow relief from the setback requirement to allow construction of a 3-season room within the side setback. The required setback is 25 feet; the request is for approval of 17.1 feet at one corner of the structure.

Attorney Gerald Blair represented the applicant and owners of the property, requesting a Variance. This is an unusually shaped lot; it has five sided polygon on a corner on a cul de sac, therefore, it is difficult to building anything on the lot. The lot faces both roads. The septic system is on the right rear of the house as sown on the plan including the leaching fields. Attorney Blair submitted a letter from Merrikin Engineering, dated November 15, 2010, assessing the proposed location of the proposed addition. Also included was a sketched plan depicting the existing condition of the property along with the various restrictions and limitations of the site. Further Attorney Blair read a statement made by Gail Nixon of the Health Department regarding the location of the septic system and leaching fields. The setback requirements also include the location of the existing pool. He submitted copies of previous decision by the Board for dimensional Variances. Regarding detriment to the public good – he submitted pictures showing the trees and bushes between the applicant and abutting neighbors. The construction will carry the same roof line as the existing home and will be aesthetically pleasing and will bring up the value of the area. There will be no over crowing or encroaching

on abutting properties. He submitted letters from some of the abutters – Michael McCarthy, 28 Concord Dr., Mary and John McCarthy, 37 Cobble Knoll Dr., and Joanne and Michael Roof.

Ms. Murphy asked for comments from the public.

Mary and John McCarthy, 37 Cobble Knoll Dr., explained they live behind Mr. and Mrs. Goral and is the closest to the addition. It does not affect his property in the least and is in favor of the project.

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

The vote was **5-0-0 in favor**.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6-B of the Zoning By-Laws to allow the addition of a 3 seas room to a single family dwelling to be setback a distance of $17.1 \pm$ feet from the side yard lot line requiring a variance of $8 \pm$ feet from the bylaw, 25 feet required.

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

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, there shall be no cone of light from the newly constructed premises shining into neighboring property.
3. This Variance 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 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 and soil conditions on the lot. The shape of the lot is an unusual 5 sided polygon on a cul-de-sac and corner lot. The existing house is angled facing Anson Drive and Cobble Knoll

Drive. There is an existing septic tank and leaching field, together with design plans that include provisions for future septic reserved trenches to be used in the event the system fails. There is also an existing in-ground pool with a concrete apron. The existing septic system prevents the proposed addition to be built on the right rear of the house. The pool and soil conditions restrict where, if any, the septic system could be relocated. It would be a substantial hardship and cost prohibitive to relocate the septic system.

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

The Board finds that the proposed addition will be built and sided to match the existing single family home in appearance, siding and height. There are trees which diminish the visibility of the proposed addition from the abutting property. The proposed addition, with the above conditions, will not encroach upon the abutting neighbors.

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

The Board finds that granting the above variance is consistent with the intent and purpose of the bylaw in that the proposed addition will be built and matched to the existing single family home in appearance, siding and height. The proposed addition, with the above conditions, will not overcrowd the applicant's lot and will not encroach on any abutting property.

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

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Minutes were approved on December 8, 2010,