

The February 24, 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  
Ted C. Case, Vice Chairman  
Daniel J. Cunningham, Jr., Clerk  
James M. Stanton, Member  
James S. Decelle, Member

Meg Kundert, Associate Member  
Matthew Zuker, Associate member

**7:00 p.m. – Mary Pat Uzoma – (Case #01-10) (Murphy, Cunningham, Stanton, DeCelle, Kundert, Zuker)**

Ms. Murphy read the public hearing notice for **Mary Pat Uzoma, Case #01-10**, with respect to property located at 4 Old Diamond Street., Walpole and shown on the Assessors Map as Lot No. 34-7, General Residence Zone.

The application is for:

A Variance from Section 6.B.1 of the Zoning Bylaws to allow a one car garage 21.9 from the setback.

Ms. Uzoma explained that she does not have a garage and would like to build one. Her lot is triangular. The west side of the property is very close to a neighbor and the gas pipe line. The proposed garage will not interfere with abutting properties or affect the flow of traffic. It is currently a 2-family home. There is no surface water on the property; she has been told there is mostly rock underground, so, the garage would be built on a slab. The height of the garage is approximately 16 feet and she is not proposing any purpose for over the garage at this time.

Discussion ensued regarding which side should be considered the front yard, rear yard, and side yard. The property is slightly less than a 45 degree angle and two angles may be considered intersecting lines. The Board decided to have Jack Mee, Building Commissioner, to the continued hearing on this case to discussion on these issues and to clarify the intent of the bylaw.

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

A resident of 3 Old Diamond St. said he is in support of Ms. Uzoma's proposal because it would be an improvement of the neighborhood, but wanted to be sure the roof and siding of the garage match the existing structure.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to continue the hearing to March 24 at 7:30 p.m. and to invite Mr. Mee.

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

**7:30 p.m. – Lucas Auto. Holdings LLC – Case #01-10**

Ms. Murphy recused herself from this hearing.

Mr. Stanton read the public hearing notice for **Lucas Auto. Holdings LLC, Case #02-10**, with respect to property located at 1171 Main St., Walpole and shown on the Assessors Map as Lot No. 33-338, Limited Manufacturing Zone.

The application is for:

A Special Permit under Section 5.B.4.e of the Zoning Bylaws to allow a salesroom for automobiles, boats, trailers, trucks, farm implements or machinery with repair services.

Brad Lucas, 325 Washington St., E. Walpole, explained his proposal to sell second hand cars at this location. There are a number of automotive establishments in the area. He checked the environmental guidelines and the traps in bay #7 have been filled and plugged and do not leach into the septic system. Any other type of contaminant would be safely disposed of. His business would meet all the requirements of the Registry of Motor Vehicles. The parking spaces he would be using are shown on the plan at #60, which holds two rows of three cars and is approximately 20 feet in size. Any repairs on the vehicles he would sell would be done by the mechanic who occupies a bay in the same building. He was informed that other dealerships have operated out of this same area. There would be no other employees beside him.

Dan Bailey, 1185 and 1191 Main St., asked what the hours of operation would be, if there would be repairs on site, and how many vehicles would be involved. He also asked how many restroom facilities are available. Mr. Bailey commented on a number of problems he has had over the years at this location, which include contamination, loud noise at night and on weekends, cars being chopped up, fill being brought in – resulting in his basement being flooded.

Mr. Lucas said he would operate at regular business hours and that there would be no repairs. He may do some detailing. Initially, he will have 3 cars stored inside the bay. Eventually, as he increases his stock, there would be six vehicles locked up and parked outside. There is one bathroom on site.

Patricia Porreca, 1178 Main St., has abutted this property for 32 years and has a lot of problems with noise, traffic in and out and large trucks parking overnight at the Sturgis Aluminum Co.

Donnell Murphy, owner of the property, referred to the improvements made to the property over the years. The property was built prior to the Zoning Bylaws. Used car dealerships have been approved for this property in the past. However, there has been no display of goods or signage allowed directly on Rt. 1A.

Charles Hardy, 96 Spring St., asked Mr. Murphy if he has any control of the search light that lights up the abutting properties all night over the past 4 years.

Mr. Murphy said he is not aware of this light and will check it out.

George Murphy, 135 Spring St., informed the Board that kids are using go karts every Sunday up and down the railroad tracks.

Mr. Stanton asked if there were any further comments from the public; there being none

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to close the hearing.

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

A motion was made by Mr. Stanton and seconded by Mr. Cunningham on behalf of the applicant to grant a Special Permit under Section 5.B.4.e of the Zoning Bylaws to allow a salesroom for automobiles, boats, trailers, trucks, farm implements or machinery with repair services.

The vote was **5-0-0 in favor**; therefore the application for **Special Permits is hereby granted**, subject to the following conditions:

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the structure shall be used as a salesroom for passenger motor vehicles only.
2. 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 or, in the case of permit for construction, if construction has not begun by such date except for good cause. In addition, however, if substantial construction is timely begun, construction shall thereafter take place in accordance with the deadlines set forth hereunder and shall be completed not later than March 2, 2012 or the rights under this Special Permit shall lapse as to any construction or use that has not been so completed.

#### **REASONS:**

It is the finding of the Board that the applicant has met the requirements under Section 3B 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.

**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. – T-Mobile Northeast, LLC – Case #22-09 (postponed from 2/10 due to storm)**

Ms. Murphy read the public hearing notice for **T-Mobile Northeast, LLC**, Case #22-09, 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 Variance from Section 6.B.1 of the Zoning Bylaws to allow the installation of antenna and equipment above the 40 foot height limit in the LM zone. Applicant requests the Zoning Board consider this proposal exempted under Section 6.C.1.

A Special permit under Section 10.F of the Zoning Bylaws to allow the installation of a wireless facility on the roof at 153 Washington Street. Antenna and equipment cabinets will be camouflaged by brick colored screen walls.

Terri Feuersanger, represented T-Mobile, and explained they would be installing an antenna and equipment that would be camouflaged by brick colored fiberglass on the top of the penthouse using the elevator shaft and creating a chimney. It would exceed the height requirement, as does the building. They would install an additional 10 feet on the top of the penthouse. Section 6.C.1 exempts chimneys, penthouses and a number of other things from height restriction.

Ms. Murphy asked for comments from the public.

Ed Forsberg, 460 High Plain St., requested that a condition be made that the fiberglass be maintained so that it does not fade or degrade over time.

Ms. Murphy asked if there any further 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, Cunningham, Stanton, DeCelle, Kundert voting)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant that the Variance under Section 6.B.1 of the Zoning Bylaws is not required because the proposal is exempt under Section 6.C.1 of the Zoning Bylaws.

The vote was **(5-0-0) in favor;** therefore the motion carries. (Stanton, Cunningham, DeCelle, Kundert, Zuker voting)

**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.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Special Permit under Section 10.F of the Zoning Bylaws to allow the installation of a wireless facility on the roof at 153 Washington Street. Antenna and equipment cabinets will be camouflaged by brick colored screen walls.

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

**CONDITIONS:**

1. The applicant shall post emergency contact information clearly visible at the site;
2. The radio frequency there shall be tested once a year; a copy of the test results to be sent to the Zoning Board of Appeals;
3. The Wireless Communication Facility, as represented by the applicant, a wireless communications antenna will be located on the existing roof and placement of related equipment shall be located as shown in the plans filed with the application;
4. As stipulated by the applicant, lighting or noise to be generated by the operation of the wireless communication facility will meet criteria as established by the Town;
5. There shall be no use or storage of toxic or hazardous materials on this site;
6. All equipment shall be properly maintained. The fiberglass enclosure shall be properly maintained for appearance and function.

**REASONS:**

It is the finding of the Board that the applicant has met the requirements under Section 2-B 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.***

It is the finding of the Board that the proposed facility will be unmanned and will not materially increase traffic on or near the property so as to adversely affect the immediate neighborhood. Once the facility is constructed, traffic to and from the site will be limited to **one to two trips per month** by maintenance personnel. As illustrated on the plans, the maintenance vehicle will access the property utilizing the existing driveway.

- ii. ***Shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.***

It is the finding of the Board that the proposed facility will be unmanned and will not materially increase traffic on or near the property so as to adversely affect the immediate neighborhood. Once the facility is constructed, traffic to and from the site will be limited to **one to two trips per month** by maintenance personnel. As illustrated on the plans, the maintenance vehicle will access the property utilizing the existing driveway.

- iii. ***Shall not have a greater lot coverage than allowed in the zoning district in which the premises is located.***

It is the finding of the Board that the applicant proposed facility complies with all applicable dimensional requirements.

- iv. ***Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes.***

It is the finding of the Board that the proposed facility is passive in nature and does not produce odor, smoke, glare, or waste. The installation will comply with all applicable local, state and federal codes and regulations.

- 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.***

It is the finding of the Board that the proposed installation will not produce vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or hazard. Further the only noise produced by the installation is from the electric fans in the ground equipment, which will not be detectable from the neighboring lots.

- vi. ***Shall not adversely affect the character of the immediate neighborhood.***

It is the finding of the Board that the proposed facility is permissible within this zoning district with the grant of a special permit. The proposed installation is entirely consistent with the existing uses on the property as well as those in the surrounding area. By installing its antenna on an existing roof, the applicant can close a gap in its wireless network coverage without constructing a new tower or other more intrusive installation. In fact, the applicant submits that the proposed facility is the least intrusive means of providing the necessary coverage to this area of Walpole.

***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.***

It is the finding of the Board that the proposed facility is consistent with the purposes of the bylaw. The proposed facility utilizes the highest available priority site under the bylaw, and will not create a hazard as it is passive in nature and will not produce any waste.

Furthermore, the installation will have a minimal visual impact on the surrounding area because the antenna and equipment will be camouflaged by brick colored screen walls. In addition, by installing its antenna on an existing roof, the applicant can close a gap in its wireless network coverage without constructing a new tower or other more intrusive installation.

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

**8:30 p.m. – Cary Orlandi/Mill Brook Homes – Case #23-09 (request to withdraw)**

Ms. Murphy recused herself from the hearing.

Mr. Stanton, acting Chairman, read the public hearing notice for Cary Orlandi/Mill Brook Homes, Case #23-09, with respect to property located at 2255 Providence Highway, Walpole and shown on the Assessors Map as Lot No. 53-45, Highway Business Zone.

The application is for:

A Variance from Section 6.B of the Zoning Bylaws to allow a 25 foot side setback, where 40 feet is required to allow parking within the 50 foot setback for stadium events only.

Mr. Stanton read a letter from Mr. Orlandi requesting to withdraw his application without prejudice.

Attorney Gerald Blair, representing Goddard School, requested that the withdrawal be with prejudice so that the applicant can not come before the Board again with the same application. Goddard School has spent a lot of time and money opposing this project and does not want to have to go through this process again on the same project. Furthermore, Attorney Blair said that the applicant did not come prepared.

Mr. Orlandi informed the Board that he was prepared; he sought advice from the Building Commissioner, the Planning Board and took their advice when filling out and preparing his application. He requested to withdraw his application without prejudice.

Mr. Stanton asked if there were any comments from the public; there being none:

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

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

**DISCUSSION**

**Executive Session re: Case #16-09**

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to go into executive session to discussion litigation.

The vote was **5-0-0 in favor, therefore, the motion carried.** Ms. Murphy - aye, Mr. Cunningham - aye, Mr. Stanton - aye, Mr. DeCelle - aye, Ms. Kundert - aye

The Board will return to open session to vote on decisions.

There being no further business, the meeting was closed at 10:00 p.m.

Daniel J. Cunningham, Jr.  
Clerk

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Minutes were approved on April 14, 2010.