

WALPOLE ZONING BOARD OF APPEALS MINUTES OF OCTOBER 4, 2017

A regular meeting of the Walpole Zoning Board of Appeals was held on Wednesday, October 4, 2017 at 6:30 p.m. in the Main Meeting Room at Town Hall. The following members were present: Matthew Zuker, Chairman; Craig Hiltz, James DeCelle, Vice Chairman; Clerk; Susanne Murphy, Mary Jane Coffey and Robert Fitzgerald, Associate Member

Zuker opened the meeting at 6:30 PM

Zuker motioned to enter Executive Session at 6:31 PM

Zuker opened the meeting back to Open Session at 7:15 PM

Open session:

Case No. 03-16, McSharry Brothers Inc., Land off Pleasant Street:

Mr. Zuker stated that at this time there is no need for an open session since the case is undergoing continued litigation.

15 Marguerite Rd, Joseph Rodrigues, Closed Case w. Variance Issued:

Quirk stated that she had heard from counsel from one of the abutters with respect to the decision made in the matter on 9/13/17 – no appeal had been filed, however, there was a possible issue with Condition #2 in the Variance decision regarding the fence about the Board possibly having a more strict condition than what was written in the decision. Mr. Macchi was present on behalf of the abutter, and explained that the issue his client has with the decision is that condition #2 states that the fence shall be a minimum of 60'ft. however, doesn't state what purpose the fence is for. The Board and Quirk stated that it was clear that the purpose of the fence was for privacy and screening. Mr. Macchi read proposed language to take the place of the existing language in condition #2.. Zuker stated the Decision was clearly written and nothing in the decision would preclude anything from the desired abutters' wishes, and therefore nothing further is needed or requires action by any kind of the Board.

Case No. 06-17, William Germaine, 86 Oak St., Variance & Special Permit Request:

Applicant William Germaine was present, as well as Attorney Michael Murphy and Ardi Rrapi of Cheney Engineering. Mr. Rrapi submitted an updated plan to the Board, a letter of support from an abutter, and a revised drainage plan. Attny. Murphy stated that Maggie was on site for the recent soil testing, and was unsure if there's a need to bring in fill, as it appears as though there's already enough on the property to complete the proposed project. Zuker read board comments that consisted of comments from the Town Engineer. Atty. Murphy stated that he spoke with the tree warden (in response to Maggie's comments). In the previous hearing the Board expressed they wanted a plan for the fill, Mr. Rrapi stated all of the information for the fill is on the newest revised plan, including the hours of operation from 9am-1pm for any operation of the removal or bringing of fill. Coffey expressed concern over what the fill actually contains (cement etc). Zuker stated they can have the applicant dispose of fill if it's improper and have them use new clean fill if needed. Murphy & Coffey stated that they'd prefer clean fill. Fitzgerald asked if the Applicant was going to withdraw variance request. Mr. Norton was

present and stated that the Applicant would not need a variance based on the most recent plans shown and submitted. Zuker opened the meeting up for public comment in which there were none. The Board did not have any more questions at this time, Hiltz made a motion to close the public hearing on an application for a Special Permit under Section 5-D of the Zoning Bylaw to allow filling of the backyard up to 725 +/- cubic yards, seconded by Fitzgerald, the motion carried 5-0-0 (Zuker, Hiltz, Murphy, Coffey, Fitzgerald). Zuker stated that the Applicant has repeatedly presented the Board with any information that the Board has previously requested, such as abutter letters that were asked and received from applicant, revised plans, updated drainage etc. The Board decided to put the following conditions in place; 1. Materials will be tested by a qualified professional and any hazardous materials will be managed under MA DEP Guidelines; 2. A landscape/screening plan shall be submitted to the Town Engineer based upon consultation with the Tree Warden; 3. Downspouts shall be installed in accordance with the plan presented at the public hearing; 4. Trucking on and off site shall be conducted in accordance with the plan presented at the public hearing; 5. All activities shall be completed within one (1) year. The findings by the Board were as follows: 1. The Board found that the activity is not injurious or dangerous due to the Condition imposed that will require all materials be tested by a qualified professional and managed under MA DEP Guidelines; 2. The Board found that no undue hazards will be created, as the Board imposed a Condition pertaining to trucking on and off site; 3. The Board found that the activity shall not result in negative impacts to the environment, as all materials will be tested and managed accordingly; 4. The Board found that the activity will not result in a change of topography that is disadvantageous because of the staggered wall design and the adherence to MA DEP Stormwater Management Regulations; 5. The Board imposed a condition requiring that all activities shall be completed within one (1) year. Hiltz Motion to grant SP, seconded by Fitzgerald, vote carried 5-0-0. Variance: Applicant made a request to withdraw their variance application, Zuker made a motion to accept withdrawal of variance on behalf of the Applicant, seconded by Hiltz, the motion carried 5-0-0 (Zuker, Hiltz, Murphy, Coffey, Fitzgerald). Zuker made a motion to close the variance request under case # 6-17, seconded by Murphy, the motion carried 5-0-0 (Zuker, Hiltz, Murphy, Coffey, Fitzgerald).

Case No. 23-16, Wall Street Development, 48 Burns Ave:

Applicant Lou Petrozzi was present, along with Rob Truax of GLM Engineering. Petrozzi stated to the Board that he had no additional information to submit to the Board at this time, however, additional traffic research was performed and will be submitted to the Board between now and the next meeting on 11/15/17. Zuker read updated comments from the Fire Dept. Petrozzi stated that he has reviewed all videos and minutes and will submit additional material to satisfy all information wanted by the Board. Fitzgerald raised concern over the contents of the environmental report done by CMG in regards to the soil/material being untested. Petrozzi stated there has been testing, and the results of that testing are included in the report, with the main materials found during the testing consisting of; coal ash, coal slag, asphalt, brick and concrete (all provided for in regulations as solid waste). Petrozzi stated that there will be no trucking of material offsite, as most of fill that is there will be processed to form a structural component to be used onsite, with the exception of the non-usable material (tires, metal debris, barrels) which will be placed in dumpsters and removed from the site. Zuker asked if there will be any fill coming

onto the site, in which Petrozzi stated that there will be some fill needed to be brought onsite to raise the level of the proposed driveway/ access roadway and around the proposed buildings. Fitzgerald requested that he would like the soil/ material to be looked at again due to some of the findings in the CMG environmental report (possible hazardous materials/ levels of concentration of materials). Petrozzi stated that when construction begins on the site, CMG will be present on a regular basis to monitor and test the soils/materials, and that this specific material is exempt from being considered “hazardous” material under the regulations. Murphy asked if there is any dialogue with the neighbors, in which Petrozzi stated that there is none at this time, and that the neighbors have not replied to his attempts to reach out. Zuker addressed the multiple recent submissions from the abutters and opened the meeting to the public for comment, which were as follows;

Mr. Martin of 7 Brook Ln.: submitted two letters addressing the existing characteristics of the neighborhood, specifically density and lot size; distance between houses (currently 64 ft. average distance/ proposed development would be 11-12 ft. distance); and livable square ft. of homes (current avg. of 1500 sqft./ proposed development would be 1900-2400 sqft.). Altogether, the letter summed up that the proposed development would create larger homes w. smaller lots that are significantly closer together and don’t fit in with the characteristics of the existing neighborhood. Hiltz asked if Martin also removed the wetlands areas on the properties surrounding the proposed development that was included in his comparison letter, in which Brian stated that he did not. A traffic and police report summarizing number of reported accidents in the area from 2013 to present; concerns regarding traffic, safety of children etc.; potential safety concerns about the soil, truck activity, dust mitigation plan, protection of site from children/ no access.

Mr. Conroy (abutter): submitted letter titled “Checklist”. Conroy expressed his concern regarding: street layout; proposal of a sewer line through the flood plain; special permitting for flood plain and excavation; absence of sidewalks; no proposed upgrades on Burns Ave.; mitigation plan regarding sewer; turning radius and access for Fire Dept.; test pit placement and results. Conroy also stated that he read the environmental report and expressed concerns over it. Lastly, he expressed his opinion that the number of truck trips would be excessive and disposal of materials is unclear.

Ms. Campbell of 35 Burns Ave.: submitted a letter and claims that during a conversation with Building Inspector Dave Norton in regards to frontage, he stated that if there are any other plans that would dispute the fact that there was in fact a road continuing beyond the accepted portion of Burns Ave, that she should submit information to the Board as it would be within the purview of the Board that there are plans showing a strip of land/ easement /paper street/ private way. Campbell stated that Wall Street Development is picking and choosing which plans to show on their submittals for an approved ANR and submit to the ZBA, specifically ones that are in their favor. Campbell requested that her full property “35 &31” based on the deed be added to the plans that have been submitted to the Board, and for her to be able to review that before anything else is done. Scott Robins of SAR Development was present on behalf of the Campbells’ and reiterated that there are inaccuracies in the plan regarding rights of way and ownership that was submitted by Wall Street Development.

Quirk stated that with respect to the frontage issue, the Zoning Board of Appeals cannot make a determination as to the parties legal rights, and the applicant needs to show colorable right that they own the property (ex. Stamped surveyed plans), and if there’s a dispute, the parties that dispute the ownership of the land bring a case in a court of competent jurisdiction. Zuker asked what the threshold

is on the frontage issue, in which Ilana stated that the ultimate status of the access in question is up to the Building Official in which permits are sought. Truax suggested that it would be best if the Campbells' hire an independent surveyor due to this dispute. Quirk recommended to the Board that they move on from the frontage subject, and continue the hearing to address other aspects of the case that are within the Boards' purview.

Ms. Paquette of 10 Burns Ave- submitted a letter, Hiltz asked why she included properties on Pleasant St. and Burns but not include Brook Lane? Paquette stated that she only included the properties of Pleasant and Burns because she and her husband wanted to compose the submittal specifically based on their view and perspective of the neighborhood and what they see every day, which does not include Brook Ln. Pictures in the submittal were taken by Mr. Coffski, and include images of a similar development already existing in a Medfield. Her main point was that the character of the neighborhood would change if the proposed development was to be built, based on the views she currently has now.

Ms. Hayes 8 Brook Ln: Stated that the current neighborhood is quiet, dark, and a dead end street. Claims the Development will remove the current character of the neighborhood and states she has seen an increase in traffic on Brook Lane due to people thinking that it's a "cut through" street, and thinks that people will think that Burns Ave. is a "cut through" street as well if there is a development built. Stated she is concerned about possible flooding, along with possible diminished wildlife, which alters the character of the neighborhood.

Mr. Webster- Trustee at the Redwood Condominiums and was present to represent the 24 owners that are concerned about the environmental impact of the proposed development on Traphole Brook.

Zuker asked the Applicant what he was planning on submitting in the near future, Petrozzi stated that traffic information will be submitted in the near future (before the next meeting on 11/15/17). Zuker stated that the current design of the development doesn't meet criteria of 6.C4.A., and Hiltz listed specific items of concern, including the following; total livable area, size of buildings relative to the neighborhood, amt. of square footage per unit (total density), elevations relative to the neighborhood, space between buildings. Petrozzi stated that at the next hearing (11/15/17), he will do his best efforts to address all concerns brought up by the Board and the abutters. DeCelle addressed the issue of the photo-shopped/ simulated images that were submitted by Paquette, and stated that they may not accurately depict all aspects of the development, and recommends that Petrozzi look over them etc. and also to provide the Board with a similar type of images that would show correct elevations, grades etc. Petrozzi asked the Board if they want to control the size of the livable area in square footage? In which the Board stated not necessarily, and that the design and layout just needs to blend with the neighborhood regarding spacing / general sizing etc.

Coffey stated the following multiple issues she has concern over; density cutting of the trees possibly raising the water table; and that the current design is not in keeping with that neighborhood. Coffey also stated that she will not personally entertain a plan that is going to modify the same density, and expressed that Lou clearly has a credibility problem with the neighbors.

Mr. Sheean of 28 Burns Ave: wants the board to vote tonight on the current plan, Zuker stated that the Applicant has the right to continue the hearing and submit additional information that was asked of him from the board.

Ms. Barrows of 189 Union St: Raised the question regarding the need for a Special Permit for work in flood plain and asked the Board when that would come into play since Building Inspector Dave Norton stated that looking at the plan in August that was the most current, if the sewer line does not change its place, the Applicant will send the applicant back before the board for Special Permit regarding that matter. Zuker and Norton stated that the special permit for the flood plain should be coming soon. Fitzgerald stated that agrees that density is a large issue that needs to be addressed still. Murphy made a motion to continue the hearing to 11/15 @ 7PM, seconded by MJ, the motion carried 5-0-0 (Zuker, DeCelle, Hiltz, Murphy, Coffey).

Policy/ Procedures:

Hiltz stated that there needs to be a specific procedure regarding the requests for Board comments, recommends to draft some procedure up, put them in front of the board and present as procedures and put it before the board.

Oversight: Hiltz stated that more specific procedures need to be in place in regards to the need for more support , guidance to the office and quality of decisions.

Authority: Hiltz stated that he is the one that signs all the decisions, and there should be a procedure in place for someone to sign in behalf of Hiltz if he is unavailable, along with the authority to add items on the Agenda if the chair isn't able to OK the item. Lastly, if there is a disagreement, where do people go to resolve the issue to resolve possible litigation of the Town.

Coverage: Hiltz raised questions regarding the protocol for office coverage in the event of illness, vacation and unexpected meetings that are not previously listed on the meeting schedule.

Fitzgerald expressed concern regarding the application process, specifically having the Applicant knowing exactly what relief they need off the bat instead of having to go back to the Building Commissioner to apply for another permit while they are still before the Zoning Board for their initial permit.

Murphy made a motion to adjourn the meeting, seconded DeCelle. The vote carried 5-0-0 (Zuker, Hiltz, DeCelle, Coffey, Murphy)

The meeting adjourned at 11:00 p.m.