

## WALPOLE PLANNING BOARD MINUTES OF APRIL 2, 2015

A regular meeting of the Walpole Planning Board was held on Thursday, April 2, 2015 at 7:00 p.m. in the Main Meeting Room at Town Hall. The following members were present: John Conroy, Chairman; Richard Mazzocca, Vice Chairman (7:08 p.m.); John Murtagh, Clerk; Edward Forsberg, Richard Nottebart, Margaret Walker, Town Engineer; Elizabeth Dennehy, Economic Development Director.

Mr. Conroy opened the meeting at 7:04 p.m.

**Minutes:** Mr. Conroy moved to accept the minutes of March 19, 2015. Motion seconded by Mr. Nottebart and voted 4-0-0.

**ANR – Spring Street:** Rob Truax, GLM Engineering, Holliston, MA informed the board that they had signed a similar ANR in back in September of 2014 which he did not record. He is resubmitting because one of the lines moved back about 5' to enlarge the setback. Mr. Nottebart moved to endorse an ANR plan entitled "Plan of Land, Walpole, Massachusetts" dated September 3, 201, revised March 17, 2015 and prepared for Michael Roof by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, MA finding Form A in order and subdivision control not required. Motion seconded by Mr. Muragh and voted 4-0-0. Said property is shown as Assessors' Map 33, Parcel 396-1, Zoning District General Residence. The owners' title to the land is derived under deed from Joshua Allen, dated 9/30/97 and recorded In Norfolk Registry of Deeds, Book 12021, Page 529. The applicant is Michael Roof, 23 Concord Drive, Walpole, MA. Endorsement by the Planning Board does not constitute a determination of compliance with the Zoning Bylaw or that any lot is buildable.

Mr. Mazzocca arrived at 7:08 p.m.

**ANR – McCallum, Vintage Farm Lane:** Ms. Dennehy stated that John Glossa, Glossa Engineering made the changes she requested, so she is all set. Ms. Walker stated she is all set also. Mr. Nottebart moved to endorse an ANR plan entitled "Plan of Land in Walpole, MA" dated March 25, 2015 by Glossa Engineering finding Form A in order and subdivision control not required. Motion seconded by Mr. Mazzocca and voted 5-0-0. Said property is shown as Assessors' Map 44, Parcel 6-4, Zoning District Rural. The applicant is Frank and Rebecca Mahoney, 695 Winter Street, Walpole, MA; the owner is David and Tanya McCallum, 15 Vintage Farm Lane, Walpole, MA. It was noted that Parcel 4C is not a buildable lot as currently configured and is to be conveyed to abutters Frank and Rebecca Mahoney.

**Al Marhama Islamic Cemetery Continued Hearing, Case No. 14-11:** Mr. Conroy moved to accept an extension of time up to and including May 30, 2015 as requested by the applicant's attorney, Jay Peabody. Motion seconded by Mr. Nottebart and voted 5-0-0. The public hearing was continued without testimony to May 7, 2015 at 7:35 p.m.

**Wayne Feiden Invoice:** Mr. Nottebart moved to approve Mr. Feiden's March invoice in the amount of \$1130.00 as submitted. Motion seconded by Mr. Forsberg and voted 5-0-0.

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**7:16 p.m. D'Attilio, 54 High Street, Preliminary Plan:** The applicant, Walsh Brothers Building Company, Inc., 11 Saddle Way, Walpole was represented by Atty. James Brady, Main Street, Walpole and Rob Truax, GLM Engineering, Holliston, MA. The plan submitted was entitled "Preliminary Subdivision Plan "High Meadows" Walpole, MA". The owners of the property are Ronald and Elizabeth D'Attilio, 54 High Street, Walpole. Said property is shown as Assessors' Map 17, Parcel 30, Zoning District RB. Mr. Brady presented some background information dating back to 1953. He stated that Mr. Kivi who owned the property back then sold his land off along with a 40' right of way to access the back lots. At that time, they could have built a 6-lot subdivision. On June 22, 1983, Mr. D'Attilio received a variance from the Zoning Board, Case No. 36/83, authorizing the division of 196,016 s.f. with two existing dwellings into two lots, each to be the site of one dwelling and subject to the two following conditions: 1) that Lot 2 will be granted a right to use easement over the 40' driveway as shown on the plan; and, 2) the existing swimming pool will be removed.

Mr. Truax, GLM Engineering, stated they will be getting the subdivision water and sewer off High Street. They are proposing a cul-de-sac road through an existing 40' right of way. There would be no roundings at the street line and they would like to reduce the pavement width down to 24'.

Mr. Conroy read comments from the Conservation Commission, Board of Health, Engineering and also an opinion dated March 18, 2015 as submitted by Atty. Richard J. Gallogly, from Rackmann, Sawyer & Brewster, Counselors at Law, 160 Federal Street, Boston, MA. In his letter, Atty. Gallogly stated ...."The Planning Board has previously granted similar waivers to other landowners in Walpole, allowing larger projects with greater impacts to proceed.....". Mr. Conroy questioned what subdivisions and Mr. Truax stated Olmsted Estates for one. Mr. Conroy stated that Olmsted Estates did have the 46' by removing a house, but asked for a waiver.

Ms. Walker questioned the house at 58 High Street and stated if the waivers are granted, they will need to show all the cross sections and also a street name. Ms. Dennehy stated she reviewed the plan, but had no written comments or questions.

Mr. Mazzocca questioned the frontage for the existing dwelling and Atty. Brady stated they only have access by the right of way. He also agrees that the house in the back will have to change its address. Mr. Forsberg stated both Jim and Ron D'Attilio live back there and the frontage will remain as it currently is. He stated that Jim D'Attilio's frontage is only 10' on the right of way. Mr. Truax doesn't see the need for a 26' roadway and feels 24' will be sufficient. Mr. Forsberg suggested they do what was done up on Saboites Way off Old Post Road to get the roundings in. He also stated that if we approve waivers, something should be offered back to the town in lieu of waivers. Mr. Murtagh asked if they will be seeking a waiver on the roundings and Mr. Truax stated yes. Mr. Conroy stated he saw the conveyance deed from Eino Kivi, but doesn't see the ANR dividing the property. Mr. Brady stated there was a variance granted back in 1983, which he gave the board a copy and Mr. Truax submitted a copy of the ANR. Mr. Conroy asked who owns the right of way and Atty. Brady stated it is part of the larger lot and is owned by Ron D'Attilio. Mr. Conroy asked if there is an existing utility easement on this and Mr.

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Truax stated not that he has seen. Mr. Conroy stated the back property wasn't part of this because it didn't have to be and Mr. Truax stated that is correct. Mr. Conroy asked Atty. Brady to get a determination ahead of time with regard to the variance as this is similar to Kingswood Estates. Also, he asked what does this do to the two existing houses once it becomes a road. Would you be creating a nonconformity on the setbacks. Mr. Forsberg stated we can't overrule a Zoning Board decision or condition of approval. Atty. Brady stated he will give the board opinions well in advance of filing the definitive plan. He also feels the Planning Board can clearly give a waiver on the 40' as we have the legal authority to do that. He asked if there are any other major concerns other than the ones raised as he would like some direction in coming back with the definitive. Mr. Mazzocca feels this would be a standard subdivision except for the issues raised and also the two front houses. Mr. Forsberg stated they should be all right as long as you don't make Lot 2 more nonconforming. Mr. Nottebart stated he is not sure how this will affect the current neighbors and wished there wasn't a waiver required. Mr. Murtagh feels this is a nice little subdivision off High Street. The front lots have to be sorted out. He is keeping an open mind on this. Atty. Brady stated the waivers they are requesting are not outrageous. Mr. Conroy stated the roundings will require a technical review, but this preliminary looks good, although we don't know what the neighbors will say. If they are looking for a vote tonight, he will abstain as he doesn't want to vote on something we don't know the answers to. Atty. Brady stated the board doesn't need to vote tonight. Mr. Conroy stated 1) the board can vote tonight; 2) the applicant can withdraw without prejudice and come back with a full definitive plan; or, 3) wait 45 days and submit all the legal stuff. Atty. Brady stated they will withdraw without prejudice. Mr. Conroy moved to allow the applicant's attorney to withdraw their application without prejudice. Motion seconded by Mr. Nottebart and voted 5-0-0.

**7:56 p.m. Kingswood Estates Continued Hearing:** The applicant was represented by Atty. Gerald Blair, Sharon, MA. He feels all the requirements have been submitted; however, he just received town counsel's opinion. Mr. Forsberg stated so did the board as it came in late this afternoon. Atty. Blair stated that Ilana Quirk and Wayne Feiden's opinions are similar. He stated that this subdivision meets all the Planning Board requirements and the State Subdivision Control Act and therefore this should be approved. A variance is a device to be used or not allowed in order to meet a deficiency. In this case, less that the required frontage to construct a home is sought. Once the subdivision is allowed, there is no nonconformity. All three of the lots will be conforming. There is no relevancy to the variance at this time. They are not asking for a zoning deficiency to be adopted. All the lots have the proper dimensional requirements and Mr. Feiden agrees with that position. Like any other piece of property, as long as the requirements of the board are fulfilled and satisfied that is what should happen. He is asking the board to vote and approve this subdivision plan. He is saying this complies with all the board's rules. They will deal with any disputes or issues that arise from this. He would ask that the board vote as soon as possible. Ms. Walker stated she still has outstanding issues dating back to July of 2014 that were never resolved. Mr. Conroy stated the latest plan we have is dated August 21, 2014. He asked Ms. Walker if she looked at this plan and Ms. Walker stated obviously not. Mr. Conroy asked the applicant what gave him cause to revised plan on August 21<sup>st</sup> and Mr. Glossa stated Ms. Walker's comments. Ms.

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Walker stated she has five pages of things to be done. Mr. Glossa stated they are seeking two waivers and explained them.

Mr. Conroy moved to grant a waiver from the required horizontal scale so the plan can be done on one page. Motion seconded by Mr. Forsberg and voted 5-0-0. Mr. Conroy moved to grant a waiver from the required municipal analysis as per section 3-1-8 which should not be a problem as this is a small subdivision. Motion seconded by Mr. Murtagh and voted 5-0-0.

Mr. Nottebart read the letter from Atty. Blair and Atty. Quirk. He stated he hasn't had a chance to look at this as far as voting to approve it. However, Mr. Feiden seems to be okay with the board moving forward. Mr. Forsberg questioned the maintenance of the sewer and asked if they have gone to Westwood yet. Mr. Glossa stated Walpole will collect the money and once a year Westwood will send Walpole a bill and Walpole will pay it.

Mr. Conroy stated we are down to two issues: town counsel's letter and Ms. Walker's comments. Ms. Quirk had stated we could condition this or deny this. Atty. Blair stated they went to the Zoning Board and it is now before the courts under an appeal. Mr. Glossa stated that is how this all started. He asked if the board would consider a covenant with an amendment to it. Mr. Conroy stated that is what opened up the variance. They allowed Tom Taylor to sell his house. You could sign a covenant which excludes that lot from it. The covenant was issued so Tom Taylor could get out of town. Mr. Glossa stated it is right on the application. No one has tried to hide that fact. Mr. Conroy stated no one has an issue with the subdivision. We could give you the approval now except there are issues as per Ms. Walker's comments, which could create a problem for the applicant if we move forward without addressing those. We could ask the Zoning Board if they will release their issues if we approve this. Atty. Blair disagreed and stated it would be cleaner if each board acted on their own because each board has its own autonomy. This board should follow its own procedures and approve it leaving the fight between his client and the ZBA. Mr. Conroy stated we are obligated to move forward as per town counsel's opinion. Mr. Feiden's opinion was based on a planner's outlook and Ms. Quirk's was based on an attorney's outlook. Mr. Nottebart stated on the last page of Mr. Feiden's comments he said we should defer to our town counsel. Atty. Blair stated if the Planning Board allows this subdivision, the ZBA problem goes away. Mr. Mazzocca disagreed and stated we can't override another board's decision. Mr. Forsberg asked if we turn you down, would we be subject to an appeal. Mr. Mazzocca stated it is just this issue we need to work out and asked if Atty. Blair could talk to town counsel directly. Mr. Conroy asked Atty. Blair if he would be amenable to working this out with Atty. Quirk and he stated he will try and speak with her tomorrow. They have both cited their cases. Mr. Forsberg stated he doesn't want to close or take a vote tonight as he feels that both Ms. Walker and Town Counsel need to be satisfied. Also, he thinks we need approval from the town administrator for Atty. Blair to contact town counsel as it shouldn't be on our dime. Mr. Mazzocca asked if town counsel has this case in superior court and Atty. Blair stated yes. Mr. Glossa feels this board should either approve this or disapprove it. Mr. Conroy stated if he votes to approve this right now, he will add the three conditions mentioned by Atty. Quirk in the decision and you will be saddled with that. We can vote this tonight

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with conditions or we can go one more meeting and let Atty. Blair talk to Atty. Quirk He asked the applicant what do they want to do. Atty. Blair asked if they would be on the next agenda and Mr. Conroy stated yes if they are ready. Mr. Forsberg stated Mr. Glossa has to go over Ms. Walker's issues with her and they also need to have a resolution with town counsel. Mr. Murtagh questioned if there is a problem with this if Atty. Quirk is representing the ZBA in court and Atty. Blair stated no.

Mr. Conroy continued this hearing to April 16, 2015 at 7:10 p.m.

Mr. Conroy asked Atty. Blair if the board could take the Marini discussion out of order as it should be quick. Atty. Blair agreed.

**8:50 p.m. Marini, 1429 Main Street Discussion:** Paul Brodmerkle, Site Design Professionals, was present to update the board regarding tree cutting at 1429 Main Street. He is also waiting to hear from the abutters regarding fencing. He would like to add these changes to the site plan and then he will ask the board to endorse it. He needs to know where to go from here in order to get the plans endorsed. Mr. Conroy stated the plan as it is presently has a zoning violation and he would like the applicant's attorney, Paul Schneiders, to layout how he thinks this should go and then we will send his suggestions to town counsel as he is not sure if this is an amendment or a new hearing. We will also ask the building inspector for his opinion. Mr. Forsberg asked why can't they just plant the trees and Mr. Conroy stated because our building inspector stopped them. Mr. Murtagh feels the Zoning Enforcement Officer should take over from here. Mr. Brokmerkle stated the building inspector believes it is his responsibility. Mr. Conroy suggested the applicant withdraw and start the process over. Mr. Brodmerkle questioned if he means readvertise and re-do this hearing and Mr. Conroy feels that would be the easiest solution at this point. If they choose not to do that, he will be asking them to re-notice everyone by certified mail. Mr. Murtagh feels that is extreme. Mr. Conroy disagreed. Mr. Forsberg questioned that the plan in front of us is not approved yet? Mr. Conroy stated it is approved, but not endorsed. Mr. Forsberg stated that right now this is in front of the Zoning Enforcement Officer as a vacant lot. If they don't come in for endorsement, it goes back to the way it was. Mr. Conroy stated he is not being an obstructionist, but feels we need to protect the neighbors. Mr. Nottebart stated the applicant was going to talk to the neighbors and then the Building Inspector. He feels this has to go back to Michael Yanovitch. Mr. Conroy stated we can't endorse a plan that has changed from the public hearing. If the neighbors like it and it is done legally, we don't care.

Mr. Brokmerkle will get back to the board.

**9:10 p.m. Southridge Farm Site Plan Approval, Case No. 15-3:** Mr. Conroy moved to allow the applicant to withdraw this application without prejudice as requested by Rob Truax, GLM Engineering, Holliston, MA. Motion seconded by Mr. Nottebart and voted 5-0-0.

**9:15 p.m. Twins Realty Trust, 985-995 Old Post Road, Site Plan Approval Continued Hearing, Case No. 14-17 and Special Permit Continued Hearing, Case No. 14-18:** Mr. Conroy stated we have comments from Revision #1 and also Revision #2. The applicant was represented by Atty. Gerry Blair.

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He submitted a copy of a memorandum of support spelling out how they need relief under the Zoning Bylaw. They have filed with the Zoning Board of Appeals for drive-thrus for the two buildings, which will be a Dunkin Donuts and possibly a pharmacy which is scheduled for April 15. The location is located in the HB Zoning District and they meet the coverage requirements. He discussed stormwater management. There are two cesspools on site and the proposed project will extend a sewer line from Common Street to the applicant's property, which will enable them to meet the latest version of the Massachusetts stormwater policy. He stated this business doesn't intersect with Route 1 and it is not adjacent to it. There is no adverse impact on the immediate neighborhood. His client has four other Dunkin Donuts within a three mile radius. Atty. Blair feels this won't generate a whole lot of extra traffic. Mr. Mazzocca questioned if he was talking about Route 1 traffic, as the issue is Common Street traffic being increased. Atty. Blair stated he will let the traffic consultant talk to this. He stated there are no dangerous activities that will go on at this site. This area complies with the goals of HB districts. This property is adjacent to residential property and has a 40' buffer and there is also a 25' utility easement which they won't disturb. This project will bring positive thing to this area. They are prepared to have the water main increased from 6" to 8" as per the recommendation of Rick Mattson, Water Superintendent. Atty. Blair stated at this point there is no monitoring of the cesspools, but putting in sewer will be a tremendous improvement for the town and the neighborhood. The length of this drive thru can accommodate the number of visitors that will use it.

Atty. Blair stated his client has thirty plus years of experience with the drive-thru process. There will be free-standing signs. They have satisfied all the requirements for a special permit under the zoning bylaw and Massachusetts policy and also satisfied requirements for site plan approval. He asked the board to vote favorably and as soon as possible.

John Glossa, Glossa Engineering discussed the turning lane. Mr. Mazzocca asked if they have to widen the road in this area and Mr. Glossa stated yes by about 5' on their side. All work will take place within the existing right of way. He submitted documentation to the town engineer. He just responded today to Ms. Walker's comments. They revised the plan with Mr. Conroy's requests incorporated. He thinks that the Selectmen in both Sharon and Walpole need to look at this.

Mr. Conroy doesn't feel there should be a right hand turning lane and asked what would that take care of. He feels it will only create problems. Luke Parlon, Walpole Police Department, stated a right turn will cause problems, but this is Sharon, not Walpole. Mr. Glossa stated the person leaving can only see 175' but the car turning in has really good sight distance. Mr. Conroy asked the benefit of the right hand exit and Mr. Glossa stated we can make it an entrance only, but can't guarantee that someone won't drive out there.

Jack Gillon, Traffic Engineer stated the purpose of that driveway was an entrance. They have no problem eliminating that exit. They also know they have a sight distance problem. There will be traffic, but it still works. The board should be considering if it safe enough. Mr. Conroy asked if they will have one larger left hand turn in and one down further and Mr. Gillon stated yes.

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Mr. Mazzocca asked how many cars can line up and Mr. Gillon stated probably three to four. Mr. Forsberg asked if the west curb cut was an entrance only. That way you would have one entrance and two exits. He thinks they should take the middle one and expand it to two lanes – left hand turn out and right hand turn in. Mr. Forsberg feels this is like Ashmont plaza. The main entrance doesn't work. You won't be able to take a left hand turn at 8:00 a.m. When you come out of the drive thru, you should only be able to go right toward Route 1. Mr. Nottebart asked the applicant if he could queue this in the reverse way from what was presented. Mr. Glaropoulos stated no as you would have to pass the coffee through the passenger side. Mr. Conroy stated that traffic-wise, no matter what happens on the street, we don't have a choice. Mr. Gillon stated this is in Sharon and we can let them know of our concerns. Mr. Conroy asked if they need to go to MA Dot and Mr. Gillon stated he doesn't think so. Mr. Murtagh stated the site in its present form is an eyesore. The fact that it is in an Area 1 with two cesspools would make this an improvement. He asked how they could improve the sight distance. Mr. Glossa stated they have to bring sewer in from Common Street and will be taking down the scruff. Mr. Gillon stated there will be a tree at the farthest entrance and Mr. Forsberg stated we don't want any trees. Mr. Murtagh questioned the fire lane. He asked what separates the parking spaces from the fire lane and Mr. Glossa stated just pavement markings. Mr. Murtagh suggested a barrier between the two. Mr. Glossa suggested a raised island and Mr. Murtagh stated that will work. Mr. Conroy asked Officer Parlon if he had anything to add and he stated no. He feels an island could edge a truck into another lane. Mr. Conroy asked if Sharon has the same traffic concerns and Officer Parlon stated he doesn't know.

Mr. Conroy read comments from various boards and committees. Mr. Glossa stated they will be putting in a new hydrant and hiring a fire protection engineer to design a system for them. Ms. Dennehy stated this use is consistent with the HB district and is a much better use of the property than what is there now. She also questioned the sidewalk and the third curb cut and feels this can be addressed by adding certain conditions of approval. Mr. Conroy questioned fencing between residential and Dunkin Donuts and asked what is there now. Mr. Glossa stated nothing is there now. Mr. Conroy stated we did it at Big Y to help the neighbors with trash issues. Mr. Glossa stated the other side of the fence would remain natural. Mr. Conroy stated stockade vinyl as a barrier for trash and also because kids will want to cut through to Jarvis Farm.

Ms. Walker stated she has not even looked at John Glossa's memo that was received today. From the beginning, she has been advocating for a peer review for traffic, but because the roadway is in Sharon, it makes no sense for us to do it. Mr. Murtagh questioned a dumpster and Mr. Glossa stated it is on site. Mr. Forsberg questioned if there is an easement there now and Mr. Glossa stated yes, but it is for future use. Mr. Forsberg asked that the signage be for Dunkin Donut sites only. He feels the signage on Main Street is very confusing. Mr. Mazzocca stated that Sharon doesn't really care. The traffic will be our problem. The Walpole Police take care of this stretch now. He feels it should go to peer review as he knows Sharon won't care. We need to do our due diligence and not rely on Sharon. Mr. Glossa stated they won't act on anything that is not real. Mr. Conroy stated we could make input from the Sharon and

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Walpole Selectmen a condition of approval. If anything changes, they will have to come back for a modification.

There were no public comments.

Mr. Conroy continued this hearing to May 7, 2015 at 7:45 p.m.

**ANR – Olmsted, 337 Fisher Street:** Mr. Nottebart moved to re-endorse a corrected ANR plan of land for Lisa and Dale Olmsted, 337 Fisher Street finding Form A in order and subdivision control not required. Motion seconded by Mr. Conroy and voted 5-0-0. Said property is shown as Assessors' Map 13, Lot 179, Zoning District Residential A. The owner's title to the land is derived under deed from the Estate of Helen Groote dated April 29, 2002 and recorded in Norfolk County Registry of Deeds, Book 16551, page 524. Said ANR plan was prepared by John Glossa, Glossa Engineering, 46 East Street, East Walpole, MA. The division of the tract of land shown on the plan is not a "subdivision" within the meaning of the subdivision control law because it shows a proposed conveyance, which adds to/takes away from/changes the size and shape of lots in such a manner so that no lot affected is left without frontage as required by the Town of Walpole Zoning By-Law under Section 4-B, which requires 125' in the RB district. No change is being made to the frontage on an existing street. The purpose of this plan is to divide the existing lot into Lot 1 and Parcel H.

It was moved, seconded and voted to adjourn. The meeting adjourned at 11:10 p.m.

Respectfully submitted,

John Murtagh, Clerk

Approved 4/16/15