

The July 16, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:04 p.m. with the following members present:

Matthew Zuker, Chairman  
James S. DeCelle, Vice Chairman  
Craig W. Hiltz, Clerk  
Mary Jane Coffey, Member (not present)  
Susanne Murphy, Member  
Timothy C. Foley, Associate Member (not present)

**7:00 p.m. – Toll MA I LLC – Case #10-14**

Mr. Zuker read the public hearing notice for **Toll MA I LLC, Case #10-14**, with respect to property located at 5 Shady Lane, Walpole, MA and shown on the Assessors Map as Lot No. 11-110-1, Rural Resident Zoning District.

The application is for:

A Variance from Section 6C.8D of the Zoning Bylaws to allow for a 10 foot retaining wall where only 6 feet is allowed due to safety concerns.

Mr. Zuker informed the applicant that there is only a four-member board able to vote on the variance tonight. Further, with a four-member Board, there can be no negative votes in order for a motion to carry; however, a five-member Board can have one negative vote and four positive votes.

Austin McDaniel, Project Manager of High Oaks Estates, was present on behalf of the applicant and stated that he would like to proceed. He then informed the Board that the homebuyer has young children. The buyers would like the applicant to raise the retaining wall to 10 feet. The higher wall would make the yard more enjoyable for the homeowner. The buyers would like their children to be able to play outside safely.

Ms. Murphy asked who the owner of the property was.

Mr. McDaniel stated that he was confused.

Ms. Murphy noted that the application has Toll Brothers as the owners of the property.

Mr. McDaniel said that he works for Toll Brothers.

Mr. Hiltz mentioned that the Board would need something from the owner of the property stating that it was OK.

Mr. McDaniel stated that he could provide that eventually.

Ms. Murphy said she has a problem with that.

Mr. Hiltz mentioned that maybe a letter of authorization would be helpful.

Mr. McDaniel mentioned that they already went through the Planning Board.

Mr. DeCelle mentioned that the applicant does not have a hardship, it is already designed.

Ms. Murphy said that the applicant had accepted the approval of the site plan as shown.

Mr. DeCelle wanted to know what the hardship was.

Mr. Hiltz mentioned that if the Planning Board approved then doesn't that go against the fact that there is a substantial hardship?

Mr. Zuker stated he understands the buyers concerns especially with having young children. However, he does not see a hardship.

Mr. DeCelle stated that an example of a hardship would be that you could not build on it.

Mr. Zuker mentioned soil conditions as another example.

Mr. DeCelle stated that he does not see a hardship for the applicant.

Mr. Zuker mentioned that they could use a terrace wall. A ten foot retaining wall is a big wall. If it is that important to them then a terrace wall could be a possible solution.

Mr. McDaniel asked if they decide to do a terrace wall, would they have to come before the Board again.

Mr. Zuker stated that the applicant can go 6 feet but 6 feet one inch would require a variance. He stated that the applicant would have to show a hardship. As of right now, the applicant is stating having the bigger wall would make the yard more enjoyable as opposed to being able to enjoy anything.

Mr. Hiltz mentioned that on the drawing the applicant submitted it mentions an existing access with wall maintenance easement. Mr. Hiltz wanted to know what that was.

Mr. McDaniel said he is not sure but the wall has not been built yet.

Mr. Hiltz felt that maybe Toll Brothers had granted them an easement on this property. If this easement is related to that wall they intend to build, then Toll Brothers is anticipating that this wall is going to need maintenance. If the wall is not maintained then will the wall cause some type of problem? Are there children or people living on the other side of this wall?

Mr. Zuker thought drainage was on the other side.

Mr. DeCelle thought maybe the easement is something they designed before the house was ever built.

Mr. Hiltz mentioned that he had never seen wall maintenance before.

Mr. Zuker mentioned that he has seen them with drainage structures.

Mr. Hiltz wanted to know if a 10 foot wall would be dangerous for children.

Mr. McDaniel stated, from the buyer's standpoint, having a yard with that steep of a grade causes them concern for their children's safety.

Mr. Zuker explained that he understands what the applicant is saying however he believes that they can fix the yard without obtaining a variance. Maybe the applicant could do something different. The buyer essentially just wants to flatten their yard.

Mr. Hiltz stated that the standard for a variance is that there has to be a hardship. The other part is for the board to grant it.

Mr. McDaniel mentioned that the main concern was safety. They just want to make the yard safer.

Mr. Hiltz said that the town does not want walls higher than six feet. They are not as stable therefore it creates something that could potentially collapse. The town does not want to create something that will need to be maintained. Kids could jump off a ten foot wall and get hurt.

Mr. McDaniel asked if it would be helpful if he got more information from Toll Brothers.

Mr. Hiltz said that the hardship is the problem. The Planning Board did not see a problem with the original plans.

Mr. Zuker reiterated Mr. Hiltz's point and stated that there is not a substantial hardship here. It is safer to build two, five foot walls and terrace them.

Ms. Murphy mentioned that the applicant could shrub the heck out of a six foot wall.

Mr. Zuker stated once again that in his opinion doing a terrace would be safer. The applicant has not shown any substantial hardship. The original plan was approved that way, it was designed that way. There is no hardship here.

Mr. Hiltz wanted to know if maybe the applicant should take this design back to the Planning Board. Is there an underlying issue with this plan? Maybe the applicant is saying that the Planning Board missed something.

Mr. Zuker said that if the original plan did not meet the grade then the Planning Board would not have approved it.

Ms. Murphy noted that the other lots will have the same issue.

Mr. Hiltz said, to Ms. Murphy's point, the applicant does not have a problem. They have three problems.

Mr. Zuker said it is not a hardship, it is a preference. He stated to the applicant that he could probably see where this vote was going to go.

Ms. Murphy asked the applicant if he would like to withdraw without prejudice.

Mr. McDaniel stated yes that is what he would like to do.

A motion was made by Mr. DeCelle, seconded by Ms. Murphy, to accept the request to withdraw the application without prejudice.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy voting)

Mr. Zuker asked if members had any comments on the draft minutes for the meetings of April 17, 2014; April 29, 2014; and April 30, 2014 previously distributed to the Board. There were no comments or edits presented.

A motion was made by Mr. DeCelle, seconded by Mr. Zuker, to approve the minutes for the April 17, 2014 meeting as written.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy voting)

A motion was made by Mr. DeCelle, seconded by Mr. Zuker, to approve the minutes for the April 29, 2014 meeting as written.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy voting)

A motion was made by Ms. Murphy, seconded by Mr. DeCelle, to approve the minutes for the April 30, 2014 meeting as written.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy voting)

A motion was made by Mr. Zuker, seconded by Mr. DeCelle, to adjourn the meeting at 7:53 p.m.

The vote was **4-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy voting)

Craig W. Hiltz  
Clerk

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Minutes were approved on September 24, 2014.