

## WALPOLE ZONING BOARD OF APPEALS MINUTES OF OCTOBER 26, 2016

A regular meeting of the Walpole Zoning Board of Appeals was held on Wednesday, October 26, 2016 in the Main Meeting Room at Town Hall. The following members were present: Matthew Zuker, Chairman; James DeCelle, Vice Chairman; Craig Hiltz, Clerk; Mary Jane Coffey, Susanne Murphy, and Timothy Foley, Associate Member.

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

**7:00 p.m. Eamonn Lynch, 1641 Washington Street, Case No. 18-16:** Mr. Zuker read the public hearing notice. The applicant was represented by Atty. James Brady, Main Street, Walpole and Dan Merrikin, Merrikin Engineering, Millis, MA. Atty. Brady stated this project, which is the Residential A district, is allowed as a matter of right as it was originally built in the latter part of the 19<sup>th</sup> century. It is located across the street from St. Francis Cemetery and the house needs repair. It presently doesn't comply with setback requirements, but it is a pre-existing nonconforming situation right now. They want to tear it down and file with the Historical Commission as it is over 100 years old although there is no historical significance. When they rebuild, they will relocate it and then it will comply with all setback requirements. It will also be a vast improvement to the neighborhood and help the property values in the neighborhood.

Mr. Merrikin stated the existing house is 12.8' off the street and 30' is required. They want to remove the existing structure and rebuild it where the existing garage is presently, which will be coming down also. All the setbacks for the RA district will be met and there will be municipal water and sewer.

Atty. Brady stated they are on the Historical Commission agenda for tomorrow evening and they will deal with what they have to. He doesn't anticipate any problems. He would accept as a condition of approval that they will comply with the bylaw as it pertains to the Historical Commission process. Mr. Zuker stated you have to comply but it is out of our jurisdiction. Mr. DeCelle asked if there is a reason they are putting the new house back 65' instead of 30' or 35'. Mr. Merrikin stated they are just trying to situate it on the lot so it will look good. The old house will be coming down first. Mr. Hiltz asked if it is presently a single or a double curb cut and Mr. Merrikin stated a single. Mr. Hiltz asked if there is a standard to provide a double and Mr. Merrikin stated no, but they can elect to do that. They will do whatever Ms. Walker wants them to do. Mr. Hiltz stated subject to her approval and Mr. Merrikin stated absolutely. Atty. Brady stated they don't want to run into an abandonment issue.

Mr. Zuker read letters from the town boards and commissions. Ms. Walker mentioned a moratorium on street openings. Mr. Merrikin stated they don't need to excavate into the street if they are using the existing lines. Mr. Hiltz stated that since the current use is pre-existing non-conforming, is the current service adequate for a two family use. Mr. Merrikin stated they can bring in two separate services or branch off from one to two. They can get a waiver from the Board of Selectmen for the moratorium if necessary. Atty. Brady stated he doesn't envision they will have to go into the roadway.

Mr. Zuker asked for comments from the public.

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Robert O'Leary, Washington Street asked because this is a non-conforming use, why isn't a special permit as per Section 9-3-A required. Mr. Merrikin responded the Building Inspector stated Section 9-4-A. Mr. DeCelle stated because the applicant is not abandoning his rights. Mr. Zuker stated it is not allowed in this zone, but it is already there. If we determine they can rebuild it, they can do this and it is not considered abandoned.

Robert O'Leary, Washington Street stated a two family is not allowed in an RA district; therefore, a special permit would be needed under Section 9-3-A. Atty. Brady stated it was there before the Zoning Bylaw in 1956. Mr. Zuker stated they still need a special permit. The determination was made under Section 9-4-A by the Building Inspector. Robert O'Leary stated he objects to that as it doesn't make sense to him.

Mr. DiBari, 3 Georgia Drive stated the house isn't centered. Mr. Zuker stated it is a two-story structure with a garage on each side. Mr. DiBari stated it is the closest to his house than anyone else's. Mr. Zuker stated 20' sideyard is required and now it is 50'.

Chris Haratoonian, 7 Barbara Road stated this house was originally the farmhouse for all the other houses in the area. If it meets all the requirements no one can really object. It was never a duplex, it was only one family and asked if it was set up as a two family. He wants to make sure there is enough water available for this project. He asked if any of the trees will be cleared in the back. Mr. Merrikin stated that there is no plan to remove any in the back but maybe a small amount on the sides. Mr. Zuker stated the Assessor's card says it is a multi-family. Further, the board takes comments from other town boards into consideration when we make our decision. Mr. Hiltz asked if there is testimony that the use has been a two family and it has continued as such. Mr. Merrikin stated they searched the records back into the 1930's and the Cruckshanks stated it has been a two family. They provided all that documentation to the Building Inspector and he made the determination that this is a valid two family.

Mr. Hiltz questioned the square footage and asked what is the relationship in terms of total square footage with what is there now and what is proposed. Mr. Merrikin stated that there is 1780 s.f. existing now and 2,285 s.f. proposed. The bylaw allows increases up to 50%. Garages, etc. are not included.

Robert O'Leary, Precinct 3, Washington Street stated that since it was brought up, a special permit would be necessary for 50% under Section 9-3. It is 25% not including the existing garage. Mr. Zuker stated we are dealing with what is before us. Mr. O'Leary stated this is not allowed in RA and they are expanding what is not allowed. It is more detrimental because they are expanding this. Mr. Zuker stated it is a combo of many things. They are making a non-conforming factor more conforming.

Jim Hinds, 1652 Washington Street asked what is the ultimate use going to be, apartments or condos. Mr. Lynch stated that right now they will be rentals. Mr. Zuker stated we can't discriminate against rental or condos. Mr. Hinds stated that was a friendly question.

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John O'Leary, 776 Washington Street asked if what's before you tonight is just to allow them to tear down and rebuild? Mr. Zuker stated yes. Mr. O'Leary stated they have to build to the site plan issued to the board. If they are going to be allowed to expand, they need another special permit 1) to allow them to rebuild and 2) to expand. Mr. Zuker stated no, they just need one. The Building Inspector has stated it is under Section 9-4-A and this is what is before us.

Atty. Brady stated they are asking permission to tear down the existing structure and rebuild. It will be in conformity with the plans that were submitted to the board. You know what is going up there because they presented what is. This is a pre-existing non-conforming structure and is allowed because it was done before 1956. He feels Mr. O'Leary's argument is misplaced. Robert O'Leary asked why didn't they say this is more than one building on one lot. Mr. Hiltz stated we have a proposal in front of us with a specific size. He asked what detriment that poses to the neighborhood. Robert O'Leary stated it is a single family neighborhood. Mr. Hiltz stated there is a two family there now and they are proposing a two family. What is the detriment? The proposal is to replace the building that is there with a new building.

Mr. DiBari, 3 Georgia Drive stated for 26 years it has been a one family and now it is going to a multi family. Mr. Hiltz asked how they know it is a single family living there. Mr. DiBari stated the Cruckshank's son lived on one side with his kids and the mother and father lived on the other side. Ms. Murphy stated they are taxed on a two-family.

Charles Hartoonian, 7 Barbara Road asked what the water service is that goes there now and will it have to be increased. The house has six bedrooms and two baths and he is not sure what is going there. Ms. Murphy stated that Sewer and Water will decide.

There were no further comments. Mr. Zuker moved to close the hearing. Motion seconded by Mr. DeCelle and voted 5-0-0.

After deliberations, a motion was made by Craig W. Hiltz, seconded by James S. DeCelle, on behalf of the applicant, to make a Determination pursuant to Section 9:2.G(4) of the Zoning By-Laws to allow the existing dwelling at 1641 Washington Street to be demolished and reconstructed as proposed so the existing two family use will not be considered "abandoned".

The vote was 5-0-0 in favor (Zuker, DeCelle, Hiltz, Murphy and Coffey voting), therefore the Board determined the existing dwelling at 1641 Washington Street can be demolished and reconstructed as proposed so that the existing two-family use will not be considered "abandoned" subject to seven conditions.

A motion was made by Matthew Zuker, seconded by James Decelle, on behalf of the applicant to grant a Special Permit under Section 9:4.A of the Zoning By-Laws to allow the proposed reconstruction and expansion of an existing non-conforming two-family residence at 1641 Washington Street.

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The vote was 5-0-0 in favor (Zuker, DeCelle, Hiltz, Murphy and Coffey voting); therefore the application for a Special Permit was granted subject to seven conditions.

Ms. Murphy left the meeting at 8:00 p.m.

**8:03 p.m. Carroll Advertising Continued Hearing, Case No. 17-16:** The applicant, John Carroll, was represented by Atty. James Brady, Main Street, Walpole, MA and Dan Merrikin, Merrikin Engineering, Millis, MA. Mr. Merrikin stated the billboard is located at the corner of The Preserve driveway on Route 1. They want to dismantle the one that is presently there, move it and make it a digital one similar to the one located by the Big Y on Route 1. This is a pre-existing non-conforming use and has been at this site since 1951, even though they were not allowed at that time. There is also a billboard across the street. The size will be 14x48 and two faced. The Redwing billboard was allowed in 2004 and the one at Peking Garden in 2013. They went from static to digital. This will not be detrimental to the neighborhood or increase traffic. There are significant benefits allowing this to be done. A certain number of hours per month can be given to public announcements. The Economic Development Committee used these billboards to help fulfill the public service requirement along with the Walpole High School Alumni, Friends of St. Patricks, and Walpole Fire Department. They can be used for town meeting information and amber alerts. Mr. Merrikin stated he handled the other two locations in town. The one across the street is the same size. The board previously allowed it to be removed and rebuilt in a different location and also the Peking Garden billboard. The existing board is two sided and they would like to take it down and rebuild closer to Route 1 with the same faces and same size. The setback will comply with the Zoning Bylaw. The Building Inspector stated it would require a special permit under Section 9-3-A and 9-3-C. Mr. Hiltz stated he remembers the two other billboards and there was a safety issue with both of them. He asked what would be the motive for the board to reconsider this sign. Mr. Merrikin stated the other two as they were older and in disrepair. They were multi-legged signs and they replaced them with a monopole. It also abuts a wetland at the Redwing and the one at Peking Garden was on a residential property line. In this case, moving the sign away from the apartments is good. The applicant wants to move it closer to Route 1 as it is a piece of advertising and would be more effective closer to Route 1.

Atty. Brady stated the benefit is the public service component to the town and a new bulletin board would look better aesthetically. Mr. Hiltz stated the town doesn't have a bylaw to allow such signs. We are dealing with a nonconforming pre-existing. To permit a change or authorization, we have to ask if we are taking steps to benefit the town and/or bring it closer to conformity of the bylaw.

Mr. Foley asked if DOT is involved and Mr. Merrikin stated yes, but that is a separate permit. The conversion to digital is an improvement. There is no change in the size or the nature of the use. There is very little change except the location. Mr. Merrikin stated the other two in town are about the same and are located about 10' off the layout. This is a typical setback. Right now it is within a foot. Mr. Zuker wants to make sure there is no negative impact. Mr. Hiltz stated because we don't have a bylaw, are there other towns that do have such bylaws and what

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are their placement requirements. Atty. Brady stated the ones in Sharon are setback 10' as are the other communities. The investment to be made by Mr. Carroll in this board should allow good visibility. Right now it is obscured by trees and the bulletin board doesn't even look good now. Mr. Zuker stated maybe the town needs to draft some bylaws. Mr. Carroll stated he has to take the board's approval to the State. They will look at zoning and whether or not there are schools or churches nearby. They won't approve it if they don't think is in a good place.

Mr. DeCelle asked if the sign is weighted in the back, so if it falls it will fall backwards and Mr. Carroll stated yes. Mr. Zuker asked how many do you have and Mr. Carroll stated 24 faces and 14x48 is standard with the height being the sight lines.

John and Arthur Cook, 2220 Route 1 stated all their concerns as abutters have been addressed.

There were no further board comments. Atty. Brady submitted a letter from the EDC in support of this request.

Mr. Zuker moved to close the hearing. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Foley).

A motion was made by Mary Jane Coffey, seconded by Matthew Zuker, on behalf of the applicant to grant a Special Permit under Sections 9.3.A and 9.3C of the Zoning By-Laws to allow the existing non-conforming billboard to be relocated, reconstructed, and converted to digital. The vote was 5-0-0 in favor (Zuker, DeCelle, Hiltz, Coffey and Foley voting), therefore the application for a Special Permit is hereby granted, subject to three conditions.

**Minutes:** Ms. Coffey moved to accept the minutes of June 22, 2016. Motion seconded by Mr. Hiltz and voted 5-0-0. Ms. Coffey moved to accept the minutes of July 13, 2016. Motion seconded by Mr. DeCelle and voted 5-0-0. Mr. Hiltz moved to accept the minutes of August 17, 2016 as amended. Motion seconded by Mr. DeCelle and voted 5-0-0. Ms. Coffey moved to accept the minutes of October 12, 2016. Motion seconded by Mr. DeCelle and voted 5-0-0.

Mr. DeCelle stated he will be unable to attend the November 9, 2016 meeting.

Mr. Zuker moved to adjourn. Motion seconded by Mr. DeCelle and vote 5-0-0. Meeting adjourned at 8:50 p.m.

Respectfully submitted,

Craig Hiltz, Clerk