

The July 17, 2013 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
James M. Stanton, Vice Chairman
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member
James S. DeCelle, Member

Matthew Zuker, Associate Member

7:00 p.m. – Edward McElaney – Case #11-13

Ms. Murphy read the public hearing notice for **EDWARD J. MCELANEY, Case #11-13**, with respect to property located at 8 Lake Ave., Walpole and shown on the Assessors Map as Lot No. 34-188, General Residence Zone.

The application is for:

A Variance from Section 6.B.1.C of the Zoning Bylaws to allow construction with a 20.7 foot setback where 30 feet is required.

Mr. McElaney explained that the existing house is 20.7 feet to the rear property line. It is over 100 years old. This is the only location a family room could be built on the property; it would follow the same footprint as the existing living room. He talked to the neighbors abutting to the rear and they approve of the structure.

Mr. Zuker asked why the request is for a Variance and not a Special Permit for a pre-existing non-conforming structure. It will not increase the non-conformity of the existing structure.

Mr. DeCelle commented that the plan does not show the property lines off the existing house.

Attorney Quirk, Town Counsel, referred to a new case law in Gloucester, 40A Sec. 6, Ph. 1, the Board can grant Special Permit relief under that section and give Variance relief as requested as long as the Board finds it is not substantially more detrimental, as shown on the plan.

Ms. Murphy asked if there were any comments from the public; there being none:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to close the public hearing.

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

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6.B.1.C of the Zoning Bylaws to allow construction with a 20.7

foot setback where 30 feet is required because all of the requirements for a Variance were satisfied.

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plan dated May 30, 2013, Sharon Survey Service, submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, there shall be no cone of light from the newly constructed premises shining into neighboring property.
3. This Variance shall lapse within one year, 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.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Special Permit relief under 40A, Section 6, paragraph 1, to extend the existing nonconforming side setback so as to go from 30 feet to 20.7 feet, as shown on the plan dated May 30, 2013. It is the Board's finding that this relief can be granted because it is not substantially more detrimental to the public good

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plan dated May 30, 2013, Sharon Survey Service, submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, there shall be no cone of light from the newly constructed premises shining into neighboring property.
3. 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.

REASONS:

It is the finding of the Board that the applicant has met the requirements under Section 2B of the Zoning Bylaws in that:

- 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.

REASONS FOR DECISION:

The Board finds that this decision is consistent with the purpose and intent of the Zoning By-Laws, i.e., the residence is located in a Limited Manufacturing Zone.

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

7:30 p.m. – Town Counsel – Executive Session – Case #18-08 – 5th Fairway Development

Ms. Murphy, the Chairman, declared that due to pending litigation it would be detrimental to the Town's litigation position to stay in open session and declared the necessity for Executive Session. The Board will not return to open session

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to go into Executive Session for the purpose of discussing pending litigation.

The vote was **5-0-0 in favor to go into Executive Session.** Ms. Murphy – aye; Mr. Stanton – aye; Mr. Cunningham – aye; Mr. Case – aye; Mr. DeCelle – aye

There being no further business, the meeting adjourned in Executive Session at 8:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on September 4, 2013.