

WALPOLE ZONING BOARD OF APPEALS MINUTES OF JANUARY 20, 2021

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom on WEDNESDAY, JANUARY 20, 2021 AT 7PM. The following members were present on the Zoom Webinar:

John Lee (Chair), Susanne Murphy (Vice-chair), Bob Fitzgerald (Clerk), Jane Coffey, Drew Delaney, Dave Anderson Ashley Clark (Community Development Director); George Pucci (KP Law)

Case No. 20-38, John Schoenthaler, 91 Walnut Street, Special Permit Request:

Lee opened the hearing, present was the applicant and his contractor: Dan McQuillan. Schoenthaler stated that he is proposing to construct an Accessory In-Law Suite for the purposes of having his wife's mother reside at the residence. Lee asked the applicant if there will be a common access to both the main house and the in-law suite; the applicant stated that there will be a hallway/ corridor approx. 4 ft. in width that will be a common entrance into the single-family dwelling. McQuillan stated that the in-law suite will be 17.5 ft. from the property line, and therefore is in compliance with the required setbacks within the Zoning District RB. Lee opened the hearing up to the public for comment, which there wasn't any. Lee read comments from The town Engineer, Board of Health and Fire Dept. Murphy motioned to close the hearing at the applicants request, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0. Murphy motioned to grant the special permit with the blanket conditions of Section 5.B.2. and the condition referenced in the letter submitted from the Town Engineer re: surface water recharge for roof runoff, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Case No. 30-37, Paul Burke, 1 Winthrop Street, Variance Request:

Lee opened the hearing, present was the applicant, along with the Building Commissioner: Mike Yanovitch and Deputy Building Commissioner: James Crowley. Crowley updated the board that since the last hearing, the applicant has altered the garage and brought it into conformance by moving the garage back, which now brings the side-yard setback to the required fifteen ft. Applicant Paul Burke expressed to the board that he would like to withdraw his application without prejudice due to no longer needing a variance since he is now in compliance. Lee stated that he has since seen the property with the reconfigured garage, and Crowley expressed that the Building Dept. is content with the reconfiguration. Murphy motioned to accept the withdrawal of the application on behalf of the applicant without prejudice, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye, Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Case No. 30-36, Nancy Webster, 52 School Street, Administrative Appeal: *Susanne Murphy is recused*

Lee opened the hearing, Susanne Murphy is recused of this hearing, and Board Member Anderson is participating as a full voting member. Present were George Pucci of KP Law (Town Counsel); Jim Johnson (Town Administrator); Mike Yanovitch (Bldg. Comm.); John Carmichael (Police Chief), Rich Kelleher (Police); Nancy & Harry Webster (appellants); Mark Corner (appellants Counsel). Lee called upon the Building Commissioner to provide the board with an update of what has transpired from the last hearing on 12/21/20, to the present. Mr. Yanovitch stated to the board that on 1/4/21 an accident had taken place that was not directly related to KW Steel, however it involved a subcontractor of KW Steel, which warranted Mr. Yanovitch to issue KW Steel an amended cease & desist order, which demanded KW Steel to cease receiving all large and oversized deliveries. Mr. Yanovitch explained that even though he has issued the cease & desist order, the courts look for the town to exhaust all of its administrative remedies, with the administrative remedy in place at this time being the Board of Appeals needing to render a decision on the cease & desist regarding whether or not the current use is allowed and safe. Mr. Yanovitch expressed that he and the Building Dept. have been dealing with the abutters of KW Steel on a daily basis from the time of the original complaint to present. Mr. Yanovitch stated that KW Steel has agreed upon having a police

detail, and to notify the town regarding any oversize deliveries, and when they will take place. Mr. Yanovitch stated that the contentions remain the same, and it still remains unclear on exactly what use is allowed at the property (light manufacturing/ heavy manufacturing), due to the lack of precise language defining the two from each other, and he is looking to the board to render a decision as to what KW Steel is subject to. Lee stated for the record that there was a site visit at KW Steel at 3PM earlier in the day for the sole purpose of observing the daily operations taking place, with no deliberations, in which the following members were in attendance: Lee, Fitzgerald and Anderson. Lee reiterated that the real issue the board needs to render a determination on is whether the operations of KW Steel qualifies under an "allowed use" within the limited manufacturing zone. Pucci confirmed to Lee and the board that Lee and Yanovitch are correct regarding the issue currently before the board. To follow up on Mr. Yanovitch's previous comment relating to the serious accident that occurred, Pucci noted that there was a timely appeal of the original cease & desist order, and the operator of the business of KW Steel has a right to pursue an admin. Appeal of the cease & desist order, typically before anyone seeks any injunctive relief. Pucci also stated that the accident on 1/4/21 occurred while the appeal was pending, so the Building Commissioner was unprepared with a compelling public safety issue at that time, which led Mr. Yanovitch to issue an amended cease & desist order. Pucci stated that in order to maintain the status quo while this admin. appeal was pending, the appellant and Mr. Yanovitch reached an agreement to use police details in the event of any large loads to or from that property. Pucci stated that regardless of the impact of the business on the residences, that hopefully the public safety issue has been resolved so that the board can proceed with the admin. appeal. Pucci emphasized that the agreement reached between the appellant and Mr. Yanovitch is by no means meant to minimize the residents complaints and adverse effects, however, it is meant to allow this admin. appeal to proceed and stop any public safety issue in the meantime. Lee stated that regardless of the accident taking place, that is not the issue before the board. Lee turned the hearing over to the appellant.

Mark Corner (appellants counsel) stated to the board that today at 5:44 P.M. he had submitted supplemental information to the board which contains photographs of equipment that's used in operations, and noise meter readings that the appellant took yesterday at various locations on the property. Mr. Corner stated that there isn't a distinction made in the bylaw between uses that are allowed in the Limited Manufacturing District and the Industrial Manufacturing District, which is the problem the board is faced with. Mr. Corner stated that if the board were to uphold the cease & desist order that it will be challenged and result in litigation. Secondly, Mr. Corner stated that if the board were to overturn the cease & desist order, KW Steel would continue to operate and may also lead to litigation due to the complaints and concerns of the abutters who have already voiced their stances. Mr. Corner stated that KW Steel has already changed some operations, such as; their hours of operation to starting an hour later in the day, keeping the large bay door closed at all times to reduce the emission of noise, and also agreed to notify the town and obtain a police detail whenever they are dealing with an oversized load on top of already having an escort. Regarding the accident in 1/4/21, Mr. Corner stated that its important to note that the trailer that was involved in the operation was not KW Steels trailer, and that it was being operated by a private contractor, and that loads of that size are a relatively rare occurrence. Mr. Corner stated that as a condition to continue to operate, the appellant is willing to maintain having the police detail/escorts, and also willing to entertain any other reasonable requests the town might have to address the concerns of the board and Building Commissioner. Mr. Corner read the ZBL which stated that the purpose of the LM District is to provide an area for a low-density wholesale and unobtrusive manufacturing uses. Mr. Corner noted that his clients business primarily involves the cutting and joining of pieces of steel; welding, bolting, and the use of tools and machinery such as forklifts, cutting torches, drills, high-powered wrenches- which are assembly and fabrication materials, rather than the actual manufacturing of steel. Mr. Corner stated that the noise generation complaint/dispute was a single isolated incident in which a wrench was used outside for a short period of time, which Mr. Corner noted has only happened once, and every other time it has been used within the building with the doors closed. Mr. Corner stated that one of the assertions is that his client did not obtain a certificate of occupancy, and reiterated to the board that he has made a public records request to the Building Department for any Certificates of Occupancy, in which Mr. Corner

was provided a number of documents dating back to the 1970's, and noted that he saw a single certificate of occupancy included among the documentation, which was for a devising wall that was issued in 2002, and noted that within the past 18 yrs. he did not see a single previously issued certificate of occupancy for this property. Mr. Corner stated that his client would be happy to apply for one, however suggests that there has been no substantial change in use of his clients operations compared to the operations of the previous business, Denmar Pumps. Lee stated that the submissions from Mr. Corner on behalf of the appellant that were received at 5:44 PM this afternoon will not be addressed tonight, and that the board will review the materials in the near future due to additional time needed.

Lee asked Police Chief John Carmichael to add any comments or information he may have into the record. Chief Carmichael stated that some concerns going forward regarding the public safety aspect include; how many loads are expected coming out of that location, and how are "oversized" loads going to be defined. Mr. corner stated that the accident with the large beams hanging off of the trailer was a mistake by the contractor, and in the future, his client would agree to whatever conditions the town requires a way of notice and a police detail, and also be agreeable to any other conditions the town would impose and be amenable to providing whatever advance notice is required of the town. Mr. Carmichael stated that the crash reconstruction has been completed, and stated that one of the main issues with the operation of the truck was that when it pulled out onto Hanson Ave. and back into the appellants property, the truck was missing the safety requirements, such as; flags, warning lights and the rear of the load was unsecure. Carmichael stated that based on the search warrant of the event data recorded from the vehicle and the speed before impact, it is likely that due to the color of the beams, and grey background, and lack of warning devises on the truck, it's unlikely that the operator of the Lexus did not see the beams until approx. 3.5 seconds before impact. Carmichael stated that the future police details would satisfy public safety needs by making sure that the trucks are pulling out safely onto the street, and the officers would ensure that all of the appropriate safety mechanisms on the trucks are in place to prevent future accidents. Mr. Corner stated that police details and additional police supervision are absolutely acceptable to his client, and stated that the usual operations take place completely on the appellants property with no overhang into the street, and that this particular accident was unusual and incorrectly done, and unlikely to reoccur.

Lee asked if any board members want to comment on the case, which included the following:

Mr. Fitzgerald stated that on the site visit he mostly observed metal cutting with torches, grinding tools being used, explanation of the typical operations. They did not strike him as a heavy industry, the definition of manufacturing includes the assembly of materials, and observed that the basic business model at the property is to bring in raw materials, assemble them, and to then ship them out to their destination. Fitzgerald stated that he did not observe any drop hammers, or anything that concerns him in terms of internal operations. Fitzgerald stated that he is however trying to reconcile the use of the impact wrench outdoors that was responsible for the original noise complaint, and the submissions and testimony by neighbors that this activity was actually not a one-time occurrence. Fitzgerald stated that if a certificate of occupancy was issued, that conditions be included that address the substantial public safety concerns of the Police Dept., the noise levels, the hours of operation, etc.

Mrs. Coffey stated that she did not attend the site visit earlier in the day, however she has observed the property before. Coffey stated that the appellant has tried to address the issue of noise, and that her main concern is that the streets surrounding the property are too narrow for trucks of large size to be transporting large and heavy amounts of materials as they currently are.

Mr. Anderson agreed with Mr. Fitzgeralds assessment of the site visit, and stated that the heaviest machinery that was seen were the forklifts. Anderson stated he did not see any drop hammers on the property, but did see sledge hammers. Mr. Anderson also stated that he did not observe any equipment outside.

Mr. Delaney stated that he is sincerely in favor of businesses within the town of Walpole. Concerns Mr. Delaney has include the following; the decibel reading took place 126 days after the initial noise complaint, and was not conducted in a timely manner; the trucking situation is concerning on multiple levels due to observing two forklifts

that needed to lift large steel beams on a tractor-trailer, and classifies the steel being transported as heavy manufacturing. Mr. Delaney also voiced his concern that having the appellant notify the police whenever a heavy delivery/shipment is taking place now shifts the public safety responsibility solely on the appellant. Lastly, Delaney stated that based on his previous observations of the property, he has difficulty believing that all of the operations involved at this property are appropriate for the LM district.

Mr. Corner reiterated that the truck drivers are not the appellant subcontractors, they are the customers subcontractors, and the steel beams that were being transported off of the property belong to the customer, not the appellant. Mr. Corner stated that his client (the appellant) is agreeing to take responsibility for taking additional steps, however, he stated that the trucks are subject to jurisdiction of MassDOT. Lee asked Mr. Carmichael if there is a requirement that escort vehicles notify the local police when they arrive at a site? Mr. Carmichael stated that it is not required, and stated that MA requires any vehicle with an oversized load to have two pilot vehicles (one in the front, and one in the rear), and this requirement only applies to numbered state highways. Delaney asked Mr. Carmichael if there is special training involved for police regarding being involved in DOT inspections for vehicles traveling? Mr. Carmichael replied that in this particular case they did it collaboratively with the State Police, with the State Police performing the truck-team items, such as weighing the vehicle/ load, and issuing citations for the flags and warning lamps. Mr. Carmichael also stated that the crash reconstruction and investigation was done by the Walpole Police.

Lee opened the hearing up to the public for comment, which included the following:

Attny. Bill O'Connell (representing Dave & Steph Lynch of 12 Hartshorn Rd.) stated that he respectfully requests that the board uphold the Building Inspectors original cease & desist order dated 10/13/20, as well as the amended order dated 1/4/21. O'Connell stated that it seems that the only issue being addressed is the use issue of the site. O'Connell stated that the burden has been shifted to the residents, and has the concern that the residents aren't being put first. O'Connell asked the board to relook at Section 5.A.B. "basic requirements and specific use provisions".

Kevin Dieter of 35 Hanson Ave. stated that he was surprised to hear the characterization of the expectations going forward with the loading of the large trucks being rare, since his observation is that there are large trucks pulling in and out of the site at least 2-3 times per week. Dieter stated that the expectations stated by Mr. Corner do not resonate with what is currently going on at the site, and is in agreement with the observation that the trucks going in and out of the site are too large for the surrounding neighborhood and streets.

Jack Fisher, stated he was an abutter to the site of over 35 yrs., and stated the current use is a very large difference from the previous use of Denmar Pump. Mr. Fisher stated that the activities currently taking place at the site are categorized as heavy manufacturing. Mr. Fisher also stated that the statement made by the appellants counsel that the large deliveries are rare is untrue, and has observed multiple large deliveries even as recently as the week after the 1/4/21 accident. Mr. Fisher stated that the activities currently taking place on site are not low density and nonobtrusive. Mr. Fisher read from the ZBL what is permitted under limited manufacturing, and argued that a 100 ft. beam weighing over 1000 lbs. does not fall under limited manufacturing, and respectfully disagrees with the current use being allowed on the site. Mr. Fisher mentioned the original permits issued from 1969/1970 regarding parking and loading and use of the land regarding the right side on the property. Mr. Fisher requested that the board hold up the cease & desist order issued by the Building Inspector.

Gianfranco Comune (owner of property on corner of Hanson Ave. & School St.) stated that he is new to Walpole, and is directly impacted by KW Steel, and has observed many mid-size to large trucks entering and exiting the site, and stated that it is obtrusive. Mr. Comune stated that the trucks are large and noisy due to the pressurized brake. Mr. Comune stated that the noises of banging/ clicking/ truck idling and backing up produce loud noise for extended periods of time. Aside from the safety concerns, Mr. Comune stated he and his family are impacted by the noise, and at times being blocked into their driveway due to the nose of the truck blocking the entrance to their driveway when trying to maneuver.

Dave Lynch of 12 Hartshorn Rd. stated that there is constant back and forth by the trucks trying to maneuver onto the site. Mr. Lynch stated that the process of getting the beams out of the building entails a lot of maneuvering of the steel beams themselves and the machines/ trucks that are moving them. Mr. Lynch stated that an area of the abutters fence was been penetrated in the process of moving the beams, along with rubbing up against the sides of the overhead door and brick, that creates a sound similar to someone ripping open a tin can. Mr. Lynch stated he has reported the incidents to OSHA and has submitted video evidence. Mr. Lynch stated that the current activity taking place is dangerous, and a health and safety issue for the abutters and entire community. Lastly, Mr. Lynch stated that there have been two occasions that he has witnessed KW Steel receiving raw materials to the rear of the building after the amended cease & desist order was issued.

Kathy & Tom Kiewlicz: Kathy stated that there have been many occasions of disruptive noise that can be heard from their backyard. Kathy expressed her concern over the safety issues of their residential neighborhood and stated the neighborhood is not designed for the type of manufacturing and transportation of that take place at KW Steel. Kathy expressed that she and the surrounding neighborhood should be able to live in their homes peacefully without the constant continual disruptions that are obtrusive. Tom asked Mr. Corner when the noise measurements were taken and what instruments were used; Mr. Corner stated that they were taken on 1/19/21. Mr. Lee interjected and stated that the documents that were submitted by Mr. Corner in the late afternoon of 1/20/21 will not be reviewed by the board at this time as there was not an appropriate amount of time for review. Mr. Lee also stated that if noise measurements are to be taken, it will be done by a third party by a trained individual specializing in that field.

Matthew Lynch asked if anyone from the board/ Chief Carmichael could give examples of other light manufacturing businesses within town, and asked if it was typical for a police detail to be present at any other light manufacturing businesses within town; Mr. Lee replied to Mr. Lynch and stated that an example of a light manufacturing facility within town is the Rolls Royce manufacturing facility on Norfolk St. Mr. Carmichael stated that no other light manufacturing businesses within the town have police details during their deliveries or oversized loads. Mr. Lynch expressed that the scheduled site visit may not have depicted an accurate account of what the operations, and questioned Mr. Websters accountability from listening to his comments regarding the accident on 1/4/21. Mr. Lynch asked Mr. Lee who is responsible for loading the beams onto the trucks, in which Mr. Lee stated that the purpose of this hearing is to determine whether the use is allowed. Mr. Lynch stated that the week after the 1/4/21 accident he was walking his dog and witnessed a down stop sign and street sign at the Corner of School St. and Norton St. expressed his concern for the safety of the neighborhood.

Ken Maffei of 10 Hartshorn Rd. stated that he also witnessed the down stop sign and street sign, and said that he was told by a neighbor that a trailer truck that was going to/from KW Steel had knocked them over due to the inability to properly make the turn. Mr. Maffei expressed his concern of the neighborhood due to a child care business being close by. Mr. Maffei stated that Mr. Corners statement that it is uncommon for large trailer trucks to be going to and from KW Steel is inaccurate, and stated that he sees a large trailer truck coming to/from the site at least once a week. Mr. Maffei stated that another cause of loud noise is due to the steel beams dragging along the concrete floor of the business in a hollow building with the doors open.

Attny. Bill O'Connell reiterated to the board that he requests that they uphold bldg. inspectors cease & desist order, and that the board to revisit the 5A use of the ZBL.

Chief Carmichael noted the following from the crash reconstruction report relating to the dynamics of loading the truck and chain of events leading up to the crash "Detective Foley spoke to the operator of the truck, and Mr. went on to relay the following: Mr. B (sp?) drives around the back of 50 School St. in order to load his trailer. He was scheduled to pick up 4 I-beams from KW Structures. The I-beams are 100 ft. in length, the beams are loaded on the trailer and secured at the front end of the trailer with chains, because of the gate, Mr. B (sp?) has to drive through to get to the street. He does not secure the beams on the rear end of the trailer, nor does he extend his trailer. Mr. B (sp?) said that when he approaches the gate, he has to swing wide to the left and drive through the grass (this was evident by photographs that were taken at the scene due to the tire tracks in the grassed area). Mr. B. (sp?) does this maneuver, Mr. B. (sp?) stated that he has to then drive up Hanson Ave. to straighten out the truck and then

back into the paved area of 50 School St. Once he's parked off the road, forklifts from the company will lift the steel beams while Mr. B (sp?) extends his trailer. At this point, the forklift will then put the beams back down on the trailer and then Mr. B will then secure the entire load."

Mr. Lee read a question from Mr. O'Leary regarding use the table in the ZBL, Mr. Lee explained that nowhere in the ZBL does it say that steel fabrication of 100 ft. steel beams and I-beams with grinding/ welding is allowed or not allowed. Mr. Lee stated that the few things that are not allowed in the limited manufacturing district include; petroleum storage, coal elevator, adult entertainment and a marijuana dispensary, and reiterated Section G of the ZBL.

Mr. Pucci stated that the board is limited to the cease & desist order and suggested that the board possibly talk to the appellants counsel, continue the public hearing and to confer with counsel and the bldg. commissioner to see if they would be amendable to revise the cease & desist order. Mr. Pucci stated that another option would be to possibly have conditions put on the certificate of occupancy to address the concerns and adverse effects reported by the neighbors. Mr. Lee asked Mr. Yanovitch what his thoughts were regarding an occupancy permit with conditions. Mr. Yanovitch stated that the occupancy permit with conditions would be fine, as long as the board can find an occupancy in which the appellant falls under, and the appellant chooses to file for one.

Mr. Pucci stated that if the board found that the use was as of right, that finding would take place through an affirmative vote upholding the appeal, or an affirmative vote overturning the cease & desist. Mr. Pucci stated that this would benefit from additional dialogue, Mr. Lee agreed with Mr. Pucci, and stated that additional dialogue could help reach a solution or determination that could possibly benefit the appellant and the neighbors. Mr. Pucci recommends getting a verbal agreement with the appellant, as well as a written one in the near future as an extension to continue the hearing. Mr. Corner stated that he and the appellant are agreeable to an extension and to continue the hearing to a later date. Mr. Webster stated that all of the work that is done within the facility is done with machinery that was existing from the previous business that resided there. Mr. Webster also stated that the 48 ft. trailer that is used going to and from his business are typical length, and is considered a legal load that does not require a police detail. Mr. Webster stated that his number one concern is the safety of the driver involved in the accident, and there was no reason for the accident to have taken place. Mr. Webster stated that he will do whatever he can do to minimize the noise coming from the back of the building where the trailers load and offload, along with the location of the storage area. Mr. Webster stated that when the large bay doors are closed, the decibel readings are far below what is acceptable. Mr. Fitzgerald stated that he would like to take a further look at the use table in the ZBL regarding the terms of light and heavy manufacturing in relation to the weight of the products the business produces or works on. Fitzgerald voiced that this may be a two-step process that include the following; do we think this is an allowed use according to the use table?, and if so, a certificate of occupancy with conditions could be an appropriate route to go. Mr. Yanovitch clarified that the appellant is still operating at this time because they are in the appeals process, and there has been no determination made yet by the ZBA.

Mr. O'Connell reiterated his previous comments throughout the hearing, and requests that the board close the hearing on behalf of his clients, Mr. & Mrs. Lynch. Mr. Pucci recommended that the board take a vote on the continuance of the hearing to a future date and time certain. Coffey motioned to continue the hearing to 2/24/21 at 7PM via zoom, seconded by Fitzgerald, roll call vote: Lee-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye; Anderson-aye. The motion carried 5-0-0.

Case No. 20-40, Wall Street Development Corp. 48 Burns Avenue, Administrative Appeal:

Lee opened the hearing, Town Counsel George Pucci of KP Law was present, along with Building Commissioner Mike Yanovitch, it was noted that the applicant was not present on Zoom for the hearing. Clark reiterated to the board the applicants email requesting a continuance that was sent to her at 9:11 PM. Pucci and Yanovitch stated to the board that there has been compliance of the cease & desist order by the appellant, who has ceased any further activity pending the appeal and outcome of the boards decision. Pucci recommended to the board that the hearing be opened and continued at the applicants request to a date and time certain. Messier stated that the admin. appeal

was submitted into viewpoint by the appellant on 12/14/20 and accepted and filed w. the Town Clerk on 12/16/20. Clark stated that a decision needs to be rendered within one-hundred days of the application being accepted by the Clerk, which brings a deadline to render a decision of 3/26/21. Pucci stated that the board has sixty-five days to open the hearing, and therefore the opening of this hearing has been done in a timely manner. Clark stated that Conservation Agent Landis Hershey was also present tonight at the request of several department heads and anticipating this hearing, Pucci noted that the admin. appeal is a very distinct issue regarding its relation to previous Conservation orders/permits that are currently in place, and the current cease and desist does not involve the jurisdiction of other boards, with the sole issue being a zoning violation. Murphy motioned to continue the hearing at the request of the applicant to 2/24/21 at 7PM via Zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Minutes: No minutes were accepted at this time.

Murphy motioned to adjourn, seconded by Coffey, roll call vote: Lee-aye; Fitzgerald-aye; Coffey-aye; Murphy-aye; Delaney-aye; Anderson-aye. The motion carried 6-0-0.

The meeting adjourned at 9:41 PM

Accepted 2/11/21