

The March 21, 2012 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. – Charles Pizzano – Case #05-12

Ms. Murphy read the public hearing notice for **CHARLES PIZZANO, Case #05-12**, with respect to property located at 37 Summit Ave., Walpole and shown on the Assessors Map as Lot No. 35-324 & 35-320, Residence B Zone.

The application is for:

A Special Permit under Section 9.4.A of the Zoning Bylaws to allow the proposed reconstruction and expansion of an existing non-conforming single-family residence as described in the enclosed documents, and

Request a Variance from Section 6.B of the Zoning Bylaws to allow the construction of a new single-family dwelling to replace the existing non-conforming single-family residence on a pre-existing non-conforming lot, along with a Variance from Section 6.C.2 to allow additional structure height.

Attorney James Brady represented the applicant, Charles and Christine Pizzano and explained they bought the property in November and want to tear down the existing house and construct a new house. The existing house is 15 feet from the rear lot line and cannot be expanded. Attorney Brady submitted a petition signed by 20 of the neighbors approving the construction of the new house. They are proposing to build slightly higher than the existing structure.

Dan Merrikin, Merrikin Engineering, explained they want to build a colonial style house in the front of the lot. The house would comply with the frontage requirements but not with the height restriction. Mr. Merrikin requested a determination from the Board under section 9.2.G.4 that the home is not being abandoned, per an opinion of Town Counsel included in the memo from Jack Mee, Building Commissioner dated February 9, 2012. Mr. Merrikin submitted an aerial plan of the area.

Ms. Murphy asked for 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 **Special Permit** under Section 9:4.A of the Zoning By-Laws to allow the proposed reconstruction and expansion of an existing non-conforming single-family residence at 37 Summit Avenue.

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing the addition will be constructed consistent with the plan entitled “Proposed House Location at Hse. No. 37 Summit Avenue in Walpole, MA” with a scale of 1”=30’ and a date of January 24, 2012, said plan being prepared by RIM Engineering Co., Inc., 150 North Main Street, Mansfield, MA 02048, which was submitted with the application.
2. As stipulated by the applicant at the public hearing, there shall be no cones of light shining on adjacent 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 FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 9:4.A of the Zoning By-law in that:

- i. An existing nonconforming one-family or two-family dwelling which is nonconforming with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw by the issuance of a building permit as provided in section 3.1. Any other change, extension, or alteration of an existing nonconforming one-family or two-family dwelling may be permitted provided the Board of Appeals grants a special permit including a determination that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

In hearing the application, the Board finds that the proposed reconstruction and enlargement of the existing single-family dwelling at the front of the lot is a reasonable and appropriate proposal given the neighborhood and surrounding conditions. As part of this finding, the Board hereby makes specific findings and **Determinations** pursuant to Section 9:4.A of the Zoning Bylaw and M.G.L. Chapter 40A, Section 6, Paragraph 1 that:

- ii. The proposed single-family dwelling reconstruction will not result in a more intensive nonconformity than the existing single-family structure. The existing single-family structure

is nonconforming relative to rear yard setback (15.3' existing where 30' minimum is required). The existing single-family dwelling is also located at the rear of the property and effectively sits adjacent to the back yards of the adjoining homes. The proposed single-family dwelling will meet all front yard, side yard, and rearward setback requirements but due to the 15.5' side yard setback (permitted), cannot meet the additional height restrictions of section 6-C.2 for those portions of the house lying within 25 feet of the side lot lines, although the proposed house will meet the underlying height restriction of 35'. In making this Determination, the Board notes that:

- a. Like many of the lots in this neighborhood, the lot is an undersized existing non-conforming property and only has a total width of ~75 feet.
 - b. The existing single-family dwelling is quite small (~880 s.f.). The owner could not add a second story to the home to make it of a reasonable size without violating the same height restriction of section 6-C.2 relative to those portions of the structuring that lie within 25 feet of the side lot lines. Thus, to add a second floor to the existing structure in its current location would create a second nonconformity.
 - c. The proposed location of the new house will meet the various yard requirements and will only have one nonconformity, that being the height of the structure within 25 feet of the left property line.
- iii. Given these facts, the Board finds and Determines that the proposed height nonconformity is not more intensive than the existing rear yard nonconformity.

The proposed enlarged and relocated single-family dwelling with a height exceeding the requirements of section 6-C.2 within 25 feet of the left property line, but meeting all other setback requirements, is NOT substantially more detrimental to the neighborhood than the existing nonconforming single-family dwelling with a rear yard setback deficiency. The Board reaffirms the discussion above for this finding and Determination and finds that the proposed house location is much more appropriate for the neighbors and will contribute to improved privacy and enjoyment of the adjoining properties.

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It is also the finding of the Board that the applicant was able to meet the requirements of Section 2B of the Zoning By-law in that:

- i. ***Does and shall comply with such criteria or standard as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit.***
As discussed above, the proposed work complies with the special permit provisions of Section 9:4.A of the Zoning By-law.
- ii. ***Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.***
The Board finds that the proposed reconstruction of a single-family dwelling will not significantly increase vehicular or pedestrian traffic and this requirement is therefore met.

- iii. *Shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.*

The Board finds that the proposed reconstruction of a single-family dwelling will not result in a significant increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and this requirement is therefore met.

- iv. *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 Board finds that the lot lies in the Residence B zoning district, which limits coverage by structures to 25% of the lot area and that the proposed plans call for a building coverage of 15.5%, which is less than the permitted amount. In addition, the applicant represents that impervious coverage will not exceed the 40% limit specified in the Zoning-By-law. The Board therefore finds that this requirement is met.

- v. *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.

- vi. *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 Board finds that the applicant proposes to reconstruct a single-family dwelling which is consistent with the uses normally allowed in this district and which will not generate the adverse effects described in this requirement.

- vii. *Shall not adversely effect the character of the immediate neighborhood.*

The Board finds that the proposed single-family dwelling is an appropriate construction for the immediate neighborhood and will not adversely affect the area.

- viii. *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 proposed construction is a single-family dwelling, which is an appropriate use for the site and which is not incompatible with the purpose of the Zoning By-Law or zoning district in which the premises is located.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, 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 37 Summit Avenue to be demolished and reconstructed so that the use will not be considered “abandoned.”

The vote was **5-0-0 in favor**, therefore the **Determination** application is hereby **GRANTED** **subject to the following conditions:** (Murphy, Stanton, Cunningham, Case, DeCelle voting)

REASONS FOR DECISION:

Pursuant to Section 9:2.G(4) of the Zoning By-Law (and relevant case law), the applicant seeks an explicit recognition and **Determination** from the Board of their intention to demolish the existing residential structure for the purposes of preparing the site for an enlarged and reconstructed residential structure. The applicant intends to proceed with this demolition as a continuance of the existing non-conforming residential use of the site. The Board therefore determined that the proposed demolition is NOT evidence of abandonment of the existing site or use and may proceed in anticipation of the proposed residential structure reconstruction.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to allow the withdrawal without prejudice of the application for a **Variance** from Section 6-B of the Zoning By-Laws to allow the construction of a new single-family residence on a pre-existing non-conforming lot, along with a variance from Section 6-C.2 to allow additional structure height.

The vote was **5-0-0 in favor**, therefore the **Variance** application is hereby **withdrawn without prejudice**. (Murphy, Stanton, Cunningham, Case, DeCelle voting)

REASONS FOR DECISION:

After consideration of the issues involved in the application the Board has determined that the proposal falls within the parameters available for the issuance of a **Special Permit** as described herein and that the requested **Variance** is therefore not needed. The applicant therefore verbally requested that the application for **Variance** be withdrawn without prejudice.

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. – Ben D’Agostino & Theresa Venuto – Case #06-12

Ms. Murphy read the public hearing notice for **BEN D’AGOSTINO & THERESA VENUTO, Case #06-12**, with respect to property located at 7 Meadow Lane, Walpole and shown on the Assessors Map as Lot No. 26/114, Residence B Zone.

The application is for:

A Variance from Section 6.B.1 of the Zoning Bylaws to allow construction of a 24 foot x 24 foot addition with a 23.68 foot rear yard setback where a 30 foot rear yard setback is required.

Ms. Venuto requested to build a 24 foot by 24 foot addition. The deck will be removed. The existing house was a bungalow and they need more space for their children. The addition would be one story with no bathroom. The home on the abutting property in the rear is not near their rear yard.

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, 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 of the Zoning Bylaws to allow construction of a 24 foot x 24 foot addition with a 23.68 foot rear yard setback where a 30 foot rear yard setback is required.

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, Case, DeCelle voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans 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.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.3 of the Zoning Bylaws.

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship due to the shape of the lot which is substantially wider than it is deep.

2. *Desirable relief may be granted without substantial detriment to the public good.*
The Board finds that the shape of the lot is substantially wider than it is deep and there was no neighborhood opposition.
3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*
The Board finds that relief may be granted because the shape of the lot is substantially wider than it is deep and there was no neighborhood opposition.

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

8:00 p.m. – Southridge Farm LLC – Case #07-12 (request to withdraw)

Ms. Murphy read the letter from GLM Engineering requesting to withdraw the application because there were some incorrect lot numbers.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant, **JOHN MARINI, PLIMPTONVILLE CROSSING**, to grant a request to withdraw without prejudice Case #27-11.

The vote was **5-0-0 in favor**; therefore the application for Case #27-11 is hereby **withdrawn without prejudice**. (Stanton, Cunningham, Case, DeCelle, Zuker voting)

REASONS FOR DECISION:

It is the finding of the Board that the applicant requested withdrawal without prejudice, because there was an error on the application, at the hearing on January 11, 2011 and the Board had no reason to deny the request.

This decision is consistent with the purpose and intent of the Zoning By-Laws.

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

8:15 p.m. – Timothy and Theresa Duffy – Case #03-12 (Stanton, Cunningham, Case, Zuker) (request to continue to 4/11/12)

Mr. Stanton read the request from the applicant to continue their hearing to April 11, 2012.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to continue the hearing for Case #03-12 to April 11, 2012 at 7:00 p.m.

The vote was **4-0-0 in favor**. (Stanton, Cunningham, Case, Zuker voting)

8:30 p.m. – Joseph Proia – Case #04-12 (Murphy, Stanton, Cunningham, Case, Zuker)

Ms. Murphy read the public hearing notice for **JOSEPH PROIA, Case #04-12**, with respect to property located at 7 Kevin's Way, Walpole and shown on the Assessors Map as Lot No. 55-77-2, Rural Zone.

The application is for:

A Variance from Section 6.B of the Zoning Bylaws to allow a 5 foot front yard setback, where 30 feet is required.

Mr. Proia submitted a detailed plan as requested by the Board at the March 7, 2012 hearing.

Mr. Commerford explained that more of the house is moved out of the buffer and they have minimized the amount of trees that need to be taken down. He also explained that Parcel A at the end of the cul de sac is owned by three property owners in the Association; they would have to convey that parcel to this lot. There is a water retention basin in the back. The Town does not plow or maintain the roadway and it will never be extended. The hammerhead roadway was approved by the Planning Board.

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, Zuker 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 of the Zoning Bylaws to allow a 5 foot front yard setback, where 30 feet is required.

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, Case, Zuker)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans submitted at the public hearing dated January 27, 2012, revised on March 12, 2012.
2. As stipulated by the applicant at the public hearing, the turn around must remain as presented in the plan submitted for the public hearing and recorded at the Norfolk County Registry of Deeds.
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.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.3 of the Zoning Bylaws.

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship due to the shape of the lot, soil condition, and slope of the lot.

2. *Desirable relief may be granted without substantial detriment to the public good.*
The Board finds that the newly created hammer head cul de sac is over 60 feet from the original turn around creating a 65 foot setback rather than a 5 foot setback, as requested.
3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the newly created hammer head cul de sac is over 60 feet from the original turn around creating a 65 foot setback rather than a 5 foot setback, as requested; also taken into consideration is the decision of the Planning Board regarding this property.

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

There being no further business, the meeting was closed at 9:30 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on June 31, 2012.