

The January 11, 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 – recused from hearing
James M. Stanton, Acting Chairman
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member
James S. DeCelle, Member

Matthew Zuker, Associate member

7:00 p.m. – Witcher & Witcher (Minuteman Truck Facility) – Case #25-11

Ms. Murphy recused herself from the hearing.

Mr. Stanton, Acting Chairman, read the public hearing notice for **WITCHER & WITCHER (MINUTEMAN TRUCK FACILITY), Case #25-11**, with respect to property located at 2195 Boston-Providence Highway, Walpole and shown on the Assessors Map as Lot No. 54-50, Highway Business, Water Resource Protection Overlay District Zone.

The application is for:

A Special Permit under Section 5-B.1.4.c to allow retail sales and services greater than or equal to 20,000 square feet within an existing building and proposed expansion with their appurtenant parking and landscaping as shown on a plan entitled “Board of Appeals Minuteman Truck Facility, 2195 Boston Providence Highway, Walpole, Mass.” drawn by Norwood Engineering, dated November 14, 2011, as may be amended. Together with such other relief as the Zoning Board determines applicable to allow the proposed undertaking as shown on the aforesaid Plan, as may be amended.

Attorney Philip Macchi represented the applicant and submitted a Memorandum of Support and explained the addition of the paint booth. The building was built in 1976 and there were no size limitations at that time. Now, with the new Bylaws rewrite, a Special Permit is required because of the over 20,000 square feet rule. The applicant will not be expanding the retail use at all. They are scheduled to meet with the Planning Board next.

Bill Witcher explained their business as not being retail, per se’. They do not have a showroom. They have sales representatives that go to their customers; they do have commercial vehicles that come in for repair; they sell and distribute fire trucks and ambulances; they have 80-83 employees; hours are between 7 a.m. and 6 p.m. Monday through Friday and 8 a.m. through 12 p.m. on Saturday. They want to upgrade their paint shop. They have moved the parking outside of the 50 foot setback.

Attorney Macchi commented that a Variance was allowed for the parking in the 1970’s.

Mr. Stanton read the memos from the Town Engineer, dated December 1, 2011 and December 12, 2011.

Attorney Macchi informed the Board that they have addressed all of the Town Engineer's comments.

Mr. Stanton read the memo from the Sewer and Water Commission, dated January 10, 2012.

Attorney Macchi informed the Board that the Sewer and Water Commission comments will be reviewed at the Planning Board hearing.

Mr. Stanton read the memos from the Planning Board, Deputy Fire Chief Laracy, and Board of Health. Mr. Stanton then asked if there were any comments from the public.

The resident of 4 Whiting Ave. said he was concerned about the wooded area being changed.

Attorney Macchi informed the resident that none of the woods would be touched.

Michele Bradford, 3 Whiting Ave., asked what building materials would be used.

Attorney Macchi explained that the new building would not be different from the existing building.

There being no further comments:

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, to close the public hearing.

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

A motion was made by Mr. Stanton and seconded by Mr. Cunningham, that the Board grant to Witcher & Witcher, LLC a Special Permit under Section 5-B.1. (Use Table) 4. (Business): c to allow retail sales and services greater than or equal to 20,000 square feet within an existing building and proposed expansion with their appurtenant parking and landscaping as shown on a plan entitled "Board of Appeals Minuteman Truck Facility 2195 Boston Providence Highway Walpole, Mass." drawn by Norwood Engineering dated November 14, 2011

The vote was **5-0-0 in favor;** therefore **the SPECIAL PERMIT** is hereby **granted, subject to the following condition:** (Stanton, Cunningham, Case, DeCelle, Zuker voting)

The Applicant shall address the comments of the Town Engineer relating to the Site Plan filed as Planning Board Case No. 11-10 to the satisfaction of the Planning Board.

REASONS FOR DECISION:

The retail use, without any size limitation, was allowed by right when the building was constructed in 1976. As a result of the comprehensive re-write of the Zoning By-Law in 2008, retail uses over 20,000 s.f. now require a Special Permit. Accordingly, the use is properly grandfathered. However, the Applicant has requested this Special Permit at the request of the Zoning Enforcement Officer as an administrative housekeeping matter. Thus, the Board finds that granting a Special Permit under Section 5 is the most appropriate form of relief in this instance as the intent of the HB district is to “provide for retail, office, research and development, assembly, and manufacturing uses and all accessory uses related to said uses consistent with uses along a major regional highway, and all related accessory uses”. In this case, the continued existence of one of the larger retailers and employers in town and the expansion thereof falls within the stated purpose of the HB District and is desirable for the Town of Walpole. Furthermore, granting of this Special Permit brings the use into conformity with the Zoning Bylaws and eliminates the need for any further Special Permits dealing with non-conformance.

FURTHER FINDINGS:

Section 2: Administration, 2. Special Permits B. Finding and Determination requires that:

Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

- (a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;*

The Board finds that use table does not set forth any specific criteria or standards for the granting of a Special Permit. As such, the only requirements for the granting of this Special Permit are contained within Section 2:2 and examined in subsections (b) - (h) below. Therefore this condition is satisfied.

- (b) 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 retail use has been on-going since the 1970s and is part of the overall operation of Minuteman Trucks. This Special Permit request does not change any of the access or egress to the site. Furthermore, as the business is fully established there is no expected change in the vehicular or pedestrian traffic in the area. As such, there is no impact on the immediate neighborhood. Therefore, the Board finds that the vehicular or pedestrian traffic generated by the site will not adversely affect the immediate neighborhood and this condition is satisfied.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;*

The Board finds that there will not be any residents associated with a retail use at this location. The buildings on-site house a mix of office, retail, maintenance, and other commercial uses. Additionally, most employees or visitors to this location use Route 1 for access and egress. As was previously noted, the immediate neighborhood is made up of a mix of commercial uses that have been established after the retail operation began in the 1970s. As such, the employees and visitors that have been working or visiting the site for the past thirty-five (35) years are all part of the existing traffic pattern of the immediate neighborhood. Thus, there is no impact to the immediate neighborhood in granting a Special Permit for a use that has been in existence for over three decades. Therefore, this condition is satisfied.

- (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements of Section 5-G;***

The Board finds that the buildings that exist as well as the addition to the plant both shown on the plan “Board of Appeals Minuteman Truck Facility 2195 Boston Providence Highway, Walpole, Mass.” drawn by Norwood Engineering dated November 14, 2011 comply with all applicable dimensional requirements to include lot coverage and buffer zone requirements. Therefore, this criteria is satisfied.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that the Applicant conforms to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government. Also, the retail use that is subject to the present Special Permit request does not generate waste or create a fire hazard. As such, the immediate neighborhood is not in danger of fire, explosion, emission of wastes or other hazards originating from the site. Further, these dangers are not customarily associated with a retail use regardless of size. Therefore this condition is satisfied

- (f) 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 on-going retail use does not create any noise, vibration, heat, smoke, fumes, odor, glare, or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. The use of the building will continue to conform with all pertinent laws and regulations to ensure that there is no adverse affect to the immediate neighborhood as a result of operations therein. Therefore, this condition is satisfied.

- (g) shall not adversely effect the character of the immediate neighborhood; and***

The Board finds that the locus was developed in 1976 over thirty five (35) years ago and, in fact, predates much of the development within the area. Along Route 1 South there is the Walpole Park South Industrial Park immediately to the North of the site and a vacant lot followed by the Red Wing Diner and other commercial uses to the South. On the other side of the divided

highway, there is an apartment complex, several small industrial parks, offices, an ice rink, and retail establishments. Furthermore, to the North of the site Route 1 is known as the “Automile” and accommodates numerous commercial operations such as the Walpole Mall, Home Depot, and Super Stop & Shop. While to the South the character of Route 1 is defined by Patriot Place and other big box retail stores. Therefore, the existing retail use, regardless of size, ties in with the existing character of the highway and, in fact, is one of the uses that gave the immediate neighborhood its existing character. Thus, the existing retail use in no way adversely effects the character of Route 1. As such this condition is satisfied.

(h) 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 Board finds that Section 4 Establishment of Districts: 2. Description, Purpose of Districts, B. Commercial Districts (3) HB - Highway Business District, states, “The purpose of this district is to provide for retail, office, research and development, assembly, and manufacturing uses and all accessory uses related to said uses consistent with uses along a major regional highway, and all related accessory uses.” It should be further noted, that the HB district was created specifically to maintain the commercial viability of Walpole along the Route 1 corridor. As this site lies within an HB District where retail use is specifically identified in the description and purpose of the district and commercial activity is the most effective use of the land this use is entirely compatible with the purpose of the zoning by-law. Therefore, this condition is satisfied.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

The Board intends for this decision to allow the applicant to conduct its retail operations in the building and proposed expansion coupled with their appurtenant parking and landscaping as shown on the plan and that no other Special Permit(s)/Variance(s) are required from this Board.

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. – David Sareault – Case #26-11

Ms. Murphy read the public hearing notice for **DAVID SAREAULT, Case #26-11**, with respect to property located at 125 Pemberton St., Walpole and shown on the Assessors Map as Lot No. 17-282, Residence B Zone.

The application is for:

A Special Permit under Section 9.5.B of the Zoning Bylaws to allow construction of a second floor to an existing residence. The second floor will have an 18 inch front overhang into front setback area.

David Sareault explained the Town took some footage from the frontage back in 1949. The overhang he is requesting is to make the existing cape style house to look like a garrison

colonial. This style is in keeping with other homes in the neighborhood. He showed the Board pictures of the house across the street and the existing home.

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

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant a Special Permit under Section 9.5.B of the Zoning Bylaws to allow construction of a second floor to an existing residence. The second floor will have an 18 inch front overhang into front setback area.

The vote was **5-0-0 in favor**; therefore the application for **Special Permits 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 structure shall be used as a single family dwelling.
2. As stipulated by the applicant at the public hearing, the structure will be built according to the plan submitted at the public hearing.
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 By Laws in that:

- i. ***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 in that the structure is in conformance with the surrounding 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.

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

MINUTES

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to approve the minutes of December 14, 2011 as written.

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

There being no further business, the meeting was closed at 9:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on April 11, 2012.