

The June 8, 2011 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 (not present)  
James S. DeCelle, Member

Matthew Zuker, Associate member

**7:00 p.m. – Peter Alberini – Case #11-11**

Ms. Murphy read the public hearing notice for **PETER ALBERINI, Case #11-11**, with respect to property located at 576 Common St., Walpole and shown on the Assessors Map as Lot No. 42-149, 150, Residence B Zone.

The application is for:

A Variance from Section 6-B.1 of the Zoning Bylaws requiring frontage of 125 feet with 62.78 feet being provided;

A Variance from Section 6-B.1 of the Zoning Bylaws requiring an area which a circle, the diameter of which is not less than 80% (100 feet) of the minimum required lot frontage, tangent to the exterior street line from which the required frontage and minimum setback are derived; and

A Variance from Section 6-C.3 of the Zoning Bylaws requiring a lot width of not less than 80% (100 feet) at the required building setback with 50.2% (62.78 feet) being provided together with such other Variances as the Zoning Board may determine applicable.

Attorney Philip Macchi, II, represented the applicant and introduced Matt Smith, Norwood Engineering. He explained that the property is taxed as two separate lots. One lot has been built and the other is buildable. The applicant is asking to reconfigure the lots to remain as two lots in order to build on the second lot. The applicant can build a three lot subdivision with a full 46 foot roadway without any waivers. The existing house would be taken down. It is currently rental property. Rather than go before the Planning Board they have started with the Zoning Board. A portion of the property is in the Water Resource Protection Overlay District, and a roadway and at least one house would have to be built in the WRPOD zone. If the Variances are granted the only thing that would have to go into that area is a driveway. Mr. Macchi submitted a letter from abutters, Margarette Mikkola and John McCullough, 582 Common St., not opposing the construction if a single family residence at 580 Common St. Neither lot conforms to the requirements on Section 6. The front portions of both lots are in Area 1 of the WRPOD; the rear portions are not. The plan reconfigures the two lots into a fully conforming lot with the present residence located thereon and a second lot which would be buildable with the requested

Variances. It is not their intention, but they would tear the existing house down if it is necessary. The front for two lots would be approximately 100 feet each where 1.25 is required.

Matt Smith, Engineer and Land Surveyor, Norwood Engineering, looked at the existing house and designed a conforming lot around the existing house; designed one lot that conforms to the Zoning Bylaws and a second lot that requires Variances. In case the Variances were not approved, he was asked to make up a plan for a three lot subdivision with a cul de sac. He submitted a copy of that plan to the Board. The subdivision would have to tie into the existing water and sewer in the street and they would have to build detention basins.

Jack Mee, Building Commissioner, said he agrees that it is a unique situation. They have two lots that are smaller than the neighboring single lots, and they would have the ability to put in a subdivision without waivers. The applicant would still need to go before the Planning Board if they are allowed the Variances, and he believes they would need a frontage waiver from the Planning Board. Two homes would have less impact on the Town.

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, DeCelle, Zuker voting)

**7:30 p.m. – Lois and Philip Czachorowski – Case #12-11**

Ms. Murphy read the public hearing notice for **LOIS AND PHILIP CZACHOROWSKI, Case #12-11**, with respect to property located at 90 Pemberton St., Walpole and shown on the Assessors Map as Lot No. 25-105, Residence B Zone.

The application is for:

A Special Permit under Section 9.5.B of the Zoning Bylaws to allow reconstruction and extension of an existing one-family dwelling.

Meg Kundert represented the applicant and explained that the applicant has an existing house that is not insulated. They want to use the same foundation, keep the addition on the back and reconstruct the house adding 6 feet, a greenhouse and a porch in the rear. Ms. Kundert asked to make an amendment to the plan from 4 feet to 6 feet in the sideyard.

Ms. Murphy asked if there were any comments from the public.

Steve Pellowe, 83 Pemberton St., spoke in favor of the requested plans, which are in keeping of the character of the existing house and would add to the neighborhood.

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, DeCelle, Zuker voting)

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 reconstruction and extension of an existing one-family dwelling.

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, DeCelle, Zuker voting)

**CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the structure shall be constructed per the plans submitted at the public hearing and amended at the June 8, 2011 hearing.
2. As stipulated by the applicant at the public hearing, the exterior of the proposed construction will be consistent with the siding on the existing residence.
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 3B of the Zoning Bylaws 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.

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.**

**8:00 p.m. – Daniel and Deborah Dalessio – Case #13-11**

Ms. Murphy read the public hearing notice for **DANIEL AND DEBORAH DALESSIO, Case #13-11**, with respect to property located at 18 Beth Rd., Walpole and shown on the Assessors Map as Lot No. 26-136, Residence B Zone.

The application is for:

A Variance from Section 6.B.1 of the Zoning Bylaws to allow a setback of 22.3 feet (the distance of the existing garage from the rear property line) where 30 feet is required.

Jim Campbell, Base and Crown Company, represented the applicant and explained there is a proposed breezeway addition between the existing dwelling and the detached garage. The lot is very narrow and slopes in. The breezeway will not extend beyond the garage.

Ms. Murphy asked if there were any comments from the public.

Mr. Hilbrener, 12 Holly Rd., informed the Board that their sideyard abuts this property and spoke in favor of the Variance.

Ms. Murphy asked if there were any further comments; 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, DeCelle, Zuker voting)

**8:30 p.m. – Robert Purpura – Case #14-11**

Ms. Murphy read a letter from Merrikin Engineering, on behalf of the applicant, requesting to withdraw the application.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, 551 East St., E. Walpole, to grant a request to withdraw without prejudice Case #14-11.

The vote was **4-0-0 in favor**; therefore the application for Case #14-11 is hereby **withdrawn without prejudice**. (Murphy, Cunningham, DeCelle, Zuker voting)

### **REASONS FOR DECISION:**

It is the finding of the Board that the applicant requested withdrawal without prejudice at the hearing on June 8, 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.**

#### **8:35 p.m. – Xtreme Action Sports, LLC – Case #09-11 (cont'd from 5/25) (Murphy, Cunningham, DeCelle, Zuker)**

Ms. Murphy read the public hearing notice for **XTREME ACTION SPORTS, LLC, Case #09-11**, with respect to property located at 153 Washington St., E. Walpole and shown on the Assessors Map as Lot No. 20-7, Limited Manufacturing Zone.

The application is for:

A Special Permit under Section 5.B.4.r of the Zoning Bylaws to allow expansion of the existing Special Permit to include outdoor use and or any other relief required by the Board.

Jeff Sudman submitted a revised plan showing the accurate dimensions of the proposed expansion.

Ms. Murphy read the letter from Conservation Agent, Landis Hershey, recommending the ZBA require the applicant to install a structure to collect and filter the residuals from the paint balls area so that it does not go directly into the storm drain or river, and that the area be secured.

Mr. Sudman explained that the enclosure captures the paint balls. The enclosure retracts up and down when not in use. The area is a tarred parking lot for approximately 20 cars.

Paul Sudman explained the landlord did not know the exact total amount of parking spaces.

Mr. DeCelle pointed out that the parking spaces are supposed to be shown on the plan.

Ms. Murphy asked if there were any comments from the public.

Elliott Grupp, 6 Rose Court Way, Chairman of the Board of Trustees, clarified the position of their board and explained that the individual the applicant spoke to was not speaking on behalf of the Board of Trustees. That Board has spoken unanimously in opposition of the application. Many of the residence of this neighborhood chose the location for its serenity and wild life. The current noise level of the sports business is affecting the neighborhood now and pointed out that the original special permit stipulated that this business would not create such noise, vibration, etc. as to negatively impact the surrounding area and would not negatively impact the character of the immediate neighborhood. He was concerned that this expansion would negatively impact

their property values. He asked if the indoor and outdoor functions would take place at the same time.

Mr. Sudman said he would operate them at the same time if he could.

Mr. Langlois, 32 Rose Court Way, asked that the extension of the Special Permit be denied, because it is obnoxious and offensive to the people observing the activity and the immediate neighborhood. Mr. Langlois referred to the letter he sent for the May 25 hearing. The proposed location is less than 336 feet from his property; and the neighborhood is for 55 years and older. He informed the Board that the business has been opening their windows and he could hear the pop of the paintball guns and voices of the people playing.

Ms. Murphy said she had called the Police Department and they had not had any calls regarding this business.

George Urban, 28 Riverwalk Lane, informed the Board there is a putting green that is close to this property.

Frederick Waldman, 15 Riverwalk Lane, explained he has a sunroom and porch abutting the property and he can hear the noise there now. He is also concerned about the increase in traffic. He said they do not have peace and quiet now and they are playing inside.

Jim Marini, 17 Riverwalk Lane, informed the Board that the property is very close to the putting green. Also, he has grandchildren that visit him and does not want them exposed to people acting like they are in a war zone. Requested the Board deny the Special Permit.

Bob Hardcastle, 36 Rose Court Way, informed the Board that his unit abuts the corner of the applicant's parking lot. They can hear the activities now with the 321 and boat horn.

Jeff Harsfield, 14 Riverwalk Lane, spoke in opposition to the request because he heard the paintball in the past and would be very concerned if the activity was going on outside.

Leslie Marini, 17 Riverwalk Lane, said she would not feel comfortable walking there when paintballs were being shot around.

Mr. Averl, 12 Rose Court Way, said they would not be accessing the play area from indoors and would have to go through the parking lot to get to it. He also pointed out there were ten cars a panel truck and a pick up truck in the parking lot.

Mr. Sudman explained that the rear entrance would be within the netted area. He also explained that a paintball cannot go through the netting. There would also be a retractable netted roof. The walls and roof would be retracted at night. The foghorn would not be used outside.

Diane Walden, 15 Riverwalk Lane, was opposed to the permitting.

Lynn Kobey, 20 Rose Court Way, informed the Board that she goes to the yoga classes in the building, which had to move because of the noise of the paintballs. She asked if there would no

longer be two exits when the netting was in use, and was concerned about the possible fire hazard.

Mr. Sudman explained he has his own entrance.

Anne Sutton, 11 Riverwalk Lane, said that the proposed area would be 150 yards away and is very concerned about the noise, vibration, and general nuisance this activity would cause; and asked the Board not to approve the request for a Special Permit.

Jason Grossman, 6 Riverwalk Lane, said there is a riverwalk that would be on the other side of the net. The Town required them to create and maintain this walkway. He believes their liability would be increased by the proposed activity. He is also concerned about the peace and quiet of the neighborhood being interrupted.

Kevin Kouri, 22 Rose Court Way, said he is opposed to this request and does not feel the original Special Permit is being followed because of the noise emanating from the building. The footprint of the operation, the density, and capacity would further exacerbate the problem.

Amy Hardcastle, 36 Rose Court Way, strongly encouraged the Board to do a site visit before voting on the request. He was concerned that the atmosphere of the area would change.

Barry Waylor, resident, emphasized that East Walpole residents walk along the walkway and it would change considerably with this activity. He was also concerned that the area would become a curiosity factor.

Judy Donovan, 32 Rose Court Way, informed the Board that he can hear the paintball operation now that he is outside more.

Mr. Sudman explained that his clientele want to play outside during the good weather. He does not plan to run two types of matches at the same time. He is only planning to play outside during the summer months; 90% of which is from 10 a.m. to 5 p.m. Most of the business is on the weekends. He would take into consideration the noise level of the fog horn. He explained that most of the paintballs do not splat out, and if they did it would be a foot or two out. Artificial turf would be installed as the outside flooring.

Anne Sutton suggested they install air conditioning then the people using the facility would not want to stay outdoors.

Mr. Sudman explained he cannot afford to install air conditioning because of the size of the facility, and that he would try using airsoft inside, which is quieter.

Jim Marini, 17 Riverwalk Lane, explained that their homes being disrupted by this business is a very serious matter. They moved there for the peace and quiet.

Ms. Murphy asked Mr. Sudman if he would consider moving the location of the outside activity.

Mr. Sudman explained there are vans in another area which makes it unusable, and if they moved to the parking lot on the other side of the building, it would be closer to the residences.

The Board decided to individually make site visits.

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 continue the hearing to June 22, 2011 at 8:00 p.m.

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

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 August 10, 2011.