

The April 13, 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
James S. DeCelle, Member

Matthew Zuker, Associate member

7:00 p.m. – Kenneth Fleming – Case #06-11

Ms. Murphy read the public hearing notice for Kenneth Fleming, Case #06-11, with respect to property located at 14 Calvert Road, Walpole and shown on the Assessors Map as Lot No. 20-78, General Residence Zone.

The application is for: A Variance from Section 6.B.1 of the Zoning Bylaws to allow construction of a farmer's porch with a 19.1 foot setback when a 30 foot setback is required.

Mr. Fleming submitted a letter from Louis Jennings, Ed Keefe and Peter Fager speaking in favor of the proposed porch. He explained the construction would not go out any further than the existing shrubs. Most of the surrounding homes do not meet required minimum front yard setback of 30 feet. Would not be a detriment to the neighborhood; the porch would be part of the family friendly neighborhood.

Mr. Zuker pointed out that he believes the request should be for a Special Permit 9.4.A as an existing non-conforming.

Mr. DeCelle requested a Land Surveyor stamped plan showing the abutting houses and houses across the street, as well as his own house and requested construction.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to continue the public hearing for Case #06-11 to May 11, 2011 at 7:35 p.m.

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

7:30 p.m. – Wayne Paul – Case #05-11 (cont'd from 3/9/11)

The applicant was not present for the public hearing.

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 expansion of a dwelling with an eleven (11) foot set back where 15 feet is required.

The vote was **0-4-0**; therefore the application for a **Variance** is hereby **denied**. (Murphy, Stanton, Cunningham, Zuker voting) (Mr. DeCelle not present for March 9 hearing)

REASONS FOR DECISION:

It is the finding of the Board that the applicant was unable to meet the criteria for a Variance.

DISCUSSION

Stevan Gold, 277 South St. – Case #29-06 – Request for Determination

Mr. Gold referred to 277 South St., which he is considering purchasing, and requested a determination that the landscaping use is a similar use and his materials can be stored on the property. He explained that previously Case #29-06, Bostonian, pertained to this property and the applicant was allowed to store masonry equipment outside. Mr. Gold asked the Board if his landscaping equipment would be covered under that approval. He referred to the memo from Building Commissioner, Jack Mee, dated April 12, 2011, listing the organic materials that Mr. Gold would be storing. He would have no hazardous materials. He would store the materials in block bins. He would not use the area in the front of the building, which is landscaped. He has another facility in West Roxbury where most of his trucks would be stored.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to make the determination that the items listed in the letter from John Glossa, dated March 26, 2011, Glossa Engineering, as listed below, are consistent with the Zoning Board's intention when writing the Decision for Case #29-06, and that Mr. Gold would be allowed to store the listed materials at the site.

Materials such as:

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|----------------------|------------------------------|
| • Landscape supplies | Sand |
| • Gravel | Stone |
| • Stone dust | Road pack |
| • Loam | Mulch |
| • Wood Chips | Compost |
| • Brick | Bluestone |
| • Cobblestone | Pavers |
| • Granite | Landscaper Trucks |
| • Landscaper Loaders | Misc. landscaper's equipment |

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing, there shall be no hazardous materials stored on site.
2. The owner of the property is required to provide yearly documentation from a certified engineer stating "any and all recharge systems have been inspected and are in proper working condition" and such certification shall be supplied to the Building Department as part of their permanent file.

8:00 p.m. – Raffael’s Banquet and Conference Center – Case #17-08

Attorney Philip Macchi, II, informed the Board that Raffael’s has received its Occupancy Permit and is ready to go forward with the use of the new space.

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to find that the applicant has received and presented to the Board a Certificate of Occupancy for the back room expansion (formerly the deck area). Therefore, the Board finds that Condition 3.A of Case #17-08 has been fulfilled and as such Conditions 1, 2, 3 and 9 are deleted from the Decision of Case #29-02 and Conditions 1 and 2 are deleted from the Decision for Case #17-08.

The vote was **5-0-0 in favor**, therefore the request that Condition 3.A of Case #17-08 has been fulfilled and as such Conditions 1, 2, 3 and 9 are deleted from the Decision of Case #29-02 and Conditions 1 and 2 are deleted from the Decision for Case #17-08.

REASONS:

It is the finding of the Board that the applicant has received and presented to the Board a Certificate of Occupancy for the back room expansion (formerly the deck area). Therefore, Condition 3.A of Case #17-08 has been fulfilled and as such Conditions 1, 2, 3 and 9 are deleted from the Decision of Case #29-02 and Conditions 1 and 2 are deleted from the Decision for Case #17-08.

DISCUSSION**Hale Trailer Brake & Wheel, Inc. – Case #18-05 – Request for Extension**

Attorney Philip Macchi, II, referred to the recent Bill signed by the Governor extending most permits for two years and asked for an extension to January 20, 2014 for Case #18-05, Hale Trailer Brake & Wheel, Inc. per the new law.

A motion was made by Ms. Murphy, and seconded by Mr. Cunningham, that the Board determine that the Special Permits granted in Case No. 18-05 are subject to the provisions of Section 173 of Chapter 240 of the Acts of 2010 (“Section 173”). Pursuant to said Section 173, an Approval issued by the Board, not to include an Approval under M.G.L. c. 40B, that was in effect at any time between August 15, 2008 and August 15, 2010 has been automatically extended for two years beyond the “lawful term” of the Approval, i.e. the date on which the Approval (including any extension previously granted by the Board) would otherwise have expired. The permit extension granted by Section 173 operates automatically, as a matter of law, without requiring any action to be taken by the Applicant of the Board. Therefore the expiration date of the Approval for Case No. 18-05 is now January 20, 2014.

The vote was **5-0-0 in favor**, therefore the determination is hereby made and no further action is necessary. (Murphy, Stanton, Cunningham, DeCelle, Zuker voting) (Mr. Case not present)

REASON FOR DECISION:

It is the finding of the Board that the granting of said extension is consistent with the purpose and intent of the Zoning Bylaws.

Wal-Mart Stores – Case #14-10 – Request for Acceptance of Minor Modifications

Ms. Murphy recused herself from the discussion.

Mr. Stanton informed Attorney Macchi that there are only four members present and the petitioner is entitled to a five-member Board and that this discussion can be postponed until a five-member Board is present. Further, with a four-member Board, there can be no negative votes in order for a motion to carry; however, a five-member Board can have one negative vote and four positive votes.

Attorney Macchi informed the Board of a number of minor modifications to the previously accepted plan, and asked the Board to vote to substitute the previous site plan with the amended site plan.

A motion was made by Mr. Stanton, and seconded by Mr. Cunningham, that the Board determine the changes to the plans made as a result of the Site Plan approval process and endorsed by the Planning Board as presented by the applicant constitute a minor modification to the Special Permits granted in Case #14-10 and that the Board accept the same and modify the decision for Case #14-10 accordingly. Therefore, the Board modifies the decision in Case #14-10 by striking all references to the plan entitled: “PROPOSED SITE PLANS for WALMART STORES, INC. (#2103-12) PROPOSED BUILDING EXPANSION” drawn by Bohler Engineering dated 05/04/2010, last revised 9/23/2010” and substituting the “Site Plan endorsed by the Planning Board on January 6, 2011 as modified by the plans endorsed on April 7, 2011” in place thereof. The Applicant shall provide the Board a copy of the final endorsed Site Plan for its files.

The vote was **4-0-0 in favor**, therefore the modification is hereby made and no further action is necessary. (Stanton, Cunningham, DeCelle, Zuker voting)

VFW – Withdrawal of Case #08-11

On an application from **WALPOLE VFW POST 5188, Case #08-11**, with respect to property located at 33 Robbins Rd., Walpole and shown on the Assessors Map as Lot No. 25-12, Residence B Zone.

The application is for:

A Variance from Section 7.C of the Zoning Bylaws to allow construction of a new sign with 18.75 square feet, 9 feet total height, where 10 square feet is allowed.

VOTE OF THE BOARD:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, **WALPOLE VFW POST 5188**, to grant a request to withdraw without prejudice Case #08-11.

The vote was **5-0-0 in favor**; therefore the application for Case #08-11 is hereby **withdrawn without prejudice**. (Murphy, Stanton, Cunningham, DeCelle, Zuker voting)

REASONS FOR DECISION:

It is the finding of the Board that the applicant requested withdrawal without prejudice in a letter dated April 7, 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.

Zoning Bulletin

The Secretary informed the Board that the annual fee for the Zoning Bulletin has gone from \$88 in 2000, to \$222.96 this year and was told it will increase every year. The Board agreed to cancel that subscription.

MINUTES

Save for next meeting.

There being no further business, the meeting was closed at 10:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on May 11, 2011.