

The March 9, 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 (not present)

Meg Kundert, Associate Member
Matthew Zuker, Associate member

7:00 p.m. – Ayoub Engineering, Inc. – Case #04-11

Ms. Murphy read the public hearing notice for AYOUB ENGINEERING, INC. - MCDONALDS, Case #04-11, with respect to property located at 595 Main St., Walpole and shown on the Assessors Map as Lot No. 26-12 and 26-13, Business Zone and Industrial Zone.

The application is for:

Special Permits under Section 2.2.A, 9.3.A. to alter, expand or extend a non-conforming use; and 5.B.4.q.ii for a drive through use in the Business Zone; and

A Variance from Sections 7.3.G, number of proposed signs greater than two (2); 7.8.A.1.a and b for proposed wall signs greater than 30 s.f.; and 7.8.A.3 proposed free standing sign within 100 feet of an existing Residential District Zoning boundary line, and within 50 feet of a commercial property boundary line.

Alan Micale, Ayoub Engineering, represented the applicant, McDonald's, and introduced Rhona McFarlane, McDonald's Area Construction Manager, and the owners of the property. Mr. Micale explained the history of the land and the proposal to demolish the existing building and construct a new McDonald's on the property. They have had a technical review meeting with Town of Walpole staff whose comments have been incorporated into the plans. They are proposing a side-by-side drive thru which would handle drive-thru traffic more safely and efficiently. Mr. Micale informed the Board and the public of the details of the project, and submitted a Memo dated March 9, 2011, speaking to the Special Permit Criteria. Underground stormwater management improvements are within the proposal. The Sewer and Water Commission has agreed to a new sewer connection, which will alleviate the problems now being experienced on the site. Mass. Highway has proposed some stormwater improvements and sidewalks in front of the new building. He is coordinating with them and their future plans for the area. They are proposal the removal of the fence on the right of the building and leaving the arborvitae that is there currently. They propose a fence on the left of the property.

Mr. Cunningham was concerned that the fence on the right was proposed to be removed and said there should be a fence to protect the abutting residence from debris.

Mr. Micale said if the Town wanted them to install a fence on that side they would install one.

Mr. Case was concerned about the entrance being in front of Gill Street.

Mr. Micale said they do not have the land to move the entrance over any further.

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

Mark Benson, 583 Main St., voiced the problems he has had with trash going onto his abutting property and sewer overflow on the site. He was opposed to the McDonald's sign being located closer to his property line.

Mr. Micale explained the plan is to install a six foot white vinyl fence and a four foot black chain link fence further in the back. The sewer system is proposed to connect in Main St. which would solve the sewer overflow issue. He said he would coordinate a meeting with Mr. Benson and the owners of the restaurant. Regarding the sign, Mr. Micale said the location is between the utility pole and the property line approximately 80-90 feet from Mr. Benson's property line. The sign is internally illuminated and would stand 15 feet high. The parking lot lights will be forward shining lights with rear shields, and would not shine into Mr. Benson's property.

There being not further comments from the public:

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, Kundert voting)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to approve the Variance from Section 7.3.G, number of proposed signs greater than two (2).

The vote was **(5-0-0) in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions**:

CONDITIONS:

1. As stipulated by the applicant at the public hearing the signs shall be installed as shown on the plans submitted at the public hearing.
2. As stipulated by the applicant at the public hearing there shall be no flood lighting into neighboring residential property.

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 in that the back of the lot slopes and therefore the building and signage must be located as shown on the plans submitted at the public hearing.

2. *Desirable relief may be granted without substantial detriment to the public good.*

Desirable relief may be granted without substantial detriment to the public good in that the property is business and industrial zoned.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the granting of this Variance with the above-imposed conditions does not substantially derogate from the purpose and intent of the By-law.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to approve the Variance from Section 7.8.A.1.a and b for proposed wall signs greater than 30 s.f.

The vote was **(5-0-0) in favor**; therefore the application for a **Variance** is hereby **granted**, **subject to the following conditions**:

CONDITIONS:

1. The height and width of the signs will be consistent with the plans submitted at the public hearing.
2. As stipulated by the applicant at the public hearing there shall be no flood lighting into neighboring residential property.

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 in that the back of the lot slopes and therefore the building and signage must be located as shown on the plans submitted at the public hearing.

2. *Desirable relief may be granted without substantial detriment to the public good.*

Desirable relief may be granted without substantial detriment to the public good in that the property is business and industrial zoned.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the granting of this Variance with the above-imposed conditions does not substantially derogate from the purpose and intent of the By-law.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to approve the Variance from Section 7.8.A.3 proposed free standing sign within 100 feet of an existing Residential District Zoning boundary line.

The vote was **5-0-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions**:

CONDITIONS:

1. The proposed sign shall be the erected at within 100 feet of an existing Residential District Zoning boundary line.
2. As stipulated by the applicant at the public hearing there shall be no flood lighting into neighboring residential property.

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 in that the back of the lot slopes and therefore the building and signage must be located as shown on the plans submitted at the public hearing.

2. ***Desirable relief may be granted without substantial detriment to the public good.***
Desirable relief may be granted without substantial detriment to the public good in that the property is business and industrial zoned.
3. ***Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.***

The Board finds that the granting of this Variance with the above-imposed conditions does not substantially derogate from the purpose and intent of the By-law.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to approve the Variance from Section 7.8.A.3 proposed free standing sign within 50 feet of a commercial property boundary line.

The vote was **0-5-0**; therefore the application for a **Variance** is hereby **denied**.

REASONS FOR DECISION:

It is the finding of the Board that the proposed sign cannot be erected within 50 feet from the commercial boundary line.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Special Permit under Section 9.3.A. to alter, expand or extend a non-conforming use.

The vote was **5-0-0 in favor**; therefore the application for a **Special Permit** is hereby **granted**, **subject to the following conditions**:

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the construction shall be per the plans submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, the exit driveway shall be relocated further from the Gill Street intersection.
3. As stipulated by the applicant at the public hearing, parking spaces outside the front setback line will be relocated further from the residential zone across Main Street.
4. As stipulated by the applicant at the public hearing, the stormwater management system and water quality on-site will be upgraded, including a new stormceptor and water quality basin.
5. As stipulated by the applicant at the public hearing, a new sewer connection onto Main Street will be installed, eliminating the existing sewer connection toward the Neponset River.
6. As stipulated by the applicant at the public hearing, a new on-site lighting plan with forward throw fixtures and glare shields will be installed.
7. As stipulated by the applicant at the public hearing, there shall be construction of a site with a net increase in green space (pervious area) of approximately 4,900 square feet.

REASONS FOR DECISION:

It is the finding of the Board that the applicant has met the requirements under Section 2B 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, as the application is to continue the existing use.

- 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 5.G).*

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 proposed building is replacing the raised building with the same use.

- 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.

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A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Special Permit under Section 5.B.4.q.ii for a drive thru use in the Business Zone.

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

CONDITIONS:

1. As stipulated by the applicant, the construction of a new drive thru restaurant will comply with ADA and MASS AAB interior and exterior per the plans submitted at the public

hearing.

REASONS FOR DECISION:

It is the finding of the Board that the applicant has met the requirements under Section 2B 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 in that there is currently a restaurant with drive thru operating on-site and with the proposed rebuild and associated improvements the construction will be a positive improvement to the site, and the proposed rebuild facility be designed to function in a more efficient fashion with efficient fashion with safer circulation

- 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 5.G).*

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 proposed building is replacing the raised building with the same use.

- 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.

Ms. Murphy read the public hearing notice for WAYNE PAUL, Case #05-11, with respect to property located at 539 Washington St., E. Walpole and shown on the Assessors Map as Lot No. 27-276-0, Residence B Zone.

The application is for:

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.

Alan Medeiros, represented the applicant, and explained the request to add to the existing one door garage so he can park his pick up truck in it. Per the plan submitted for the public hearing the applicant's property line is a minimum of 20.40 feet from the existing structure. There is an old land court plan that includes 25.12 feet from the applicant's property line to the edge of the pavement. When the house was built approximately 50 years ago, the driveway was built through that 25.12 feet, which is the hardship because if the driveway were to be moved it would mean a curb cut on Washington St.

Mr. Paul explained that he wants to tear down the existing garage, build a garage with a family room and bedroom above it.

The Board requested architectural plans showing the dimensions of the proposed structure, a plan showing land elevations, the existing driveway, the elevations of the garage and the house.

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 April 13, 2011 at 7:30 p.m.

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

8:00 p.m. – Herbert Jacobs – Case #01-11 (cont'd from 2/9 and 2/23) (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker)

Ms Murphy read the public hearing notice for HERBERT JACOBS, Case #01-11, with respect to property located at 1600 Main St., Walpole and shown on the Assessors Map as Lot No. 40-317-0, Residence B Zone.

The application is for:

A Variance from Section 6.C.8.D of the Zoning Bylaws to allow a six (6) foot solid fence along the front of the property line.

Mr. Jacobs submitted a revised field survey. Mr. Jacobs pointed out that the lot is unusual in shape and topography in that it has frontage on three streets, which is a hardship. A further hardship is the cost of moving the fence. He did not knowingly install the fence in opposition to the Town's bylaws. He submitted signatures from 13 abutters in favor of allowing the fence. Mr. Jacobs referred to Case #12-07, 4 Hummingbird Lane, where the Board allowed a 6 foot fence.

Ms. Murphy pointed out that that fence did not include a driveway and the Board made that applicant dwindle the fence.

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, Kundert voting)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6.C.8.D of the Zoning Bylaws to allow a six (6) foot solid fence along the front of the property line.

The vote was **0-5-0**; therefore the application for a **Variance** is hereby **denied**: (Murphy, Stanton, Cunningham, Case, Kundert)

REASONS FOR DECISION:

1. It is the finding of the Board that there exist safety concerns on exiting and entering onto the State main roadway of Main Street due to high traffic.
2. It is the finding of the Board that there has not been a State survey done for that address on Main Street.
3. It is the finding of the Board that the Building Commissioner, in a letter to the Board dated February 11, 2011, confirmed that the 6 foot fence was installed in violation of the Zoning Bylaws.

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

8:15 p.m. – William McLaughlin – Case #03-11 (cont'd from 2/23)

Ms. Murphy read the public hearing notice for WILLIAM MCLAUGHLIN, Case #03-11, with respect to property located at 16 Haynes St., Walpole and shown on the Assessors Map as Lot No. 25-88, Residence B Zone.

The application is for:

A Variance from Section 6.B of the Zoning Bylaws to allow an addition of 536 square feet with a setback of 11.37 feet where 15 feet is required.

Mr. McLaughlin explained his request to construct a garage that will allow his pickup truck to be parked in it. Also, they are planning to build a bedroom above the garage and in then make the existing bedroom into a bathroom. They now have two teenage children and need the space. Mr. McLaughlin submitted letters from two abutters in favor of the project.

Ms. Murphy asked if there were any comment 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, Kundert 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 an additional of 536 square feet with a setback of 11.37 feet where 15 feet is required.

The vote was **4-1-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions**: (Murphy, Stanton, Case, Kundert in favor. Cunningham opposed)

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 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 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 location of the existing driveway and that the property is a corner lot and the placement of the house on the lot.

2. *Desirable relief may be granted without substantial detriment to the public good.*

The Board finds that the construction of an addition to the single-family home on a lot in the Residence B Zone will not be a detriment to the public good.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the construction of an addition to the single-family home on a lot in the Residence B Zone will not nullify or derogate from the intent or purpose of the Zoning Bylaw.

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 9:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on May 11, 2011.