

The December 8, 2010 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 6:45 P.M. with the following members present:

Susanne Murphy, Chairman  
James M. Stanton, Vice Chairman  
Daniel J. Cunningham, Jr., Clerk (not present)  
Ted C. Case, Member  
James S. DeCelle, Member

Meg Kundert, Associate Member  
Matthew Zuker, Associate member

**6:45 p.m. – Carole Norrell – Case #19-10 (cont'd from 11/17) (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker)**

Ms. Murphy read the public hearing notice for the continued hearing.

Bob Purpura submitted an amended plan showing the driveway, topography and grading of the lot, as requested by the Board at the original public hearing. He explained there is a 70 feet of Town owned property that the property owners maintain.

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

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to close the public hearing.

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

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to grant a Variance from 6-B of the Zoning Bylaws to allow construction of a shed with a front yard setback of 10.32 feet, where 50 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, Case, DeCelle, Zuker 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 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 shape and topography of the lot.

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

The Board finds that the construction of a shed as conditioned 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 a shed as conditioned will not nullify or derogate from the intent or purpose of the Zoning Bylaws.

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

### **DISCUSSIONS:**

#### **Minutes – November 22, 2010 and October 27, 2010**

A motion was made by Mr. Stanton, seconded by Mr. Case, to approve the minutes of October 27, 2010 and November 22, 2010 as written.

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

#### **7:00 p.m. – Desiree Simmons – Case #21-10**

Ms. Murphy read the public hearing notice for **DESIREE SIMMONS, Case #21-10**, with respect to property located at 4 Renmar Ave., Walpole and shown on the Assessors Map as Lot No. 32-83, Limited Manufacturing – Water Resource Protection Overlay District.

The application is for:

A Special Permit under Section 5-B.4.e of the Zoning Bylaws to allow a salesroom for eight (8) automobiles.

Ms. Simmons submitted an As Built Plan for the property at 4 Renmar Ave and explained her desire to open a used car dealership at discount prices in Massachusetts using this location. They will advertise the vehicles for sale on line. The business will be part-time for now. They intend

to offer Walpole residents a discount. They are hoping to sell one car a week. All of the vehicles will be parked inside and only employees will be parked outside. Customers will come when they are testing driving a vehicle. The hours of operation will depend on when a customer is available to see the vehicle. They also have the option of bringing the vehicle to the customer if that is what they would prefer.

Mr. Gold, owner of the property, explained that his original plan was to use the entire building for his business, but due to the economic climate has broken the building into 4 bays, with the approval of the Building Inspector, using one bay for himself. The other business have occupancy permits; each having 1,000 square feet and a private bathroom. No fuel considered hazardous storage per the Town is stored on the premises except that which is in the vehicles and equipment.

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

Cameron Daley, Forest Rd., asked if the dealership was going to include an illuminated sign and said that the security lighting could light up the dark side of the moon.

Mr. Gold explained there is no signage on the building at all, and that there is no security lighting on the building. The other bays may eventually get signage if approved by the Town.

Ms. Murphy read comments from: Planning Board, Jack Conroy, dated November 4, 2010 and receipt of the Planning Board Site Plan Approval their case No. 08-1. Ms. Murphy asked if there were any further comments from the public; there being none:

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant, to close the public hearing.

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

A motion was made by Ms. Murphy and seconded by Mr. Zuker on behalf of the applicant to grant a Special Permit under Section 5-B.4.e of the Zoning Bylaws to allow a salesroom for eight (8) automobiles.

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

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, the structure shall be used as a salesroom for eight (8) automobiles to be stored inside the building.
2. As stipulated by the applicant no additional illuminated signs or exterior lighting will be installed.
3. This Special Permit shall lapse within two, 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 or, in the case of permit for construction, if construction has not begun by such date 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.**

Ms. Murphy read the public hearing notice from **ERNEST LABARGE, Case #22-10**, with respect to property located at 410-414 High Plain St., Walpole and shown on the Assessors Map as Lot No. 35-87-20, Highway Business District.

The application is for:

A Special Permit under Section 5.B.5.c of the Zoning Bylaws to allow a dwelling provided that such dwelling is accessory to a permitted main use such as the dwelling of a caretaker, watchman, or operator of a business or manufacturing establishment on the same premises, and subject to the condition that such dwelling conforms to the regulations of the Bylaw.

Mr. LaBarge referred to a letter from Fletcher Longley, Trustee of the 412 High Plain Street Condominium Trust, dated October 2010, stating that the condominium trust has agreed to extend its approval to Mr. LaBarge to take up residence in his office condominium, but not to any successor for a period of thirty (30) years. The Board has a copy of the letter in the applicant's file. Mr. LaBarge is seeking permission to dwell in this address as a caretaker of the property. He does not have the keys to each of the other units in the building, but would contact those owners if there was a problem. He does have the keys to the utility room.

Ms. Murphy read comments from: Michael Laracy, Deputy Fire Chief, dated December 6, 2010 and an email to Jack Mee, dated November 18, 2010, voicing their concerns for fire safety; Jack Mee, Building Commissioner, dated December 3, 2010, voicing his concerns; Jack Conroy, Planning Board, dated November 18, 2010; Richard Stillman, Police Chief, dated November 11, 2010; and Fitzroy Design, dated October 16, 2010 regarding an address correction.

Mr. LaBarge explained he has owned the condominium since 1991. He has lived there for approximately three (3) years and has acted as a caretaker over that period of time, and has had circumstances where he called the police and the individuals were arrested.

Mr. Case reiterated the Deputy Fire Chief's concerns regarding a hardwired smoke/carbon monoxide detector system throughout the building to which Mr. LaBarge would have complete access. Also is the issue of the two bedroom apartment, which has not been approved in the past, i.e., single bedroom caretaker apartments on business premises, and the need for an apartment to have windows to the outside for safety purposes.

Mr. Stanton requested a letter from all of the owners of all of the units voicing their individual approval of the caretaker apartment and their willingness to install a hardwired alarm system.

Mr. LaBarge informed the Board that the entire building is sprinkled.

Ms. Murphy suggested Mr. LaBarge meet with Deputy Chief Laracy and the Building Commissioner to resolve the various issues and get statements from the other condominium owners, or have them present at the continued hearing.

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the owner, to continue the hearing to January 26, 2011 at 7:00 p.m.

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

**8:00 p.m. – Frederick J. Malfy – Case #23-10**

Ms. Murphy read the public hearing notice for **FREDERICK J. MALFY, Case #23-10**, with respect to property located at 24 Neal St., Walpole and shown on the Assessors Map as Lot No. 35-196, Residence B Zone.

The application is for:

A Special Permit under Section 5.B.3.I of the Zoning Bylaws to allow continued operation of landscaping business at residence.

Mr. Malfy explained he was informed by Mr. Mee that he needed a business certificate and that prompted the discover for the need for a Special Permit, which he thought he had gotten 16 years ago when Dave Conley was the Building Commissioner. Mr. Conley told him he could continue the business from his home because he did not have any hazardous products. He has two one ton trucks that he parks on the property that run on diesel fuel.

Ms. Murphy read comments from: Jack Conroy, Planning Board, dated December 2, 2010; Michael Laracy, Deputy Fire Chief, dated December 6, 2010; Richard Stillman, Police Chief, dated November 11, 2010.

Mr. Malfy said he has a five gallon container of diesel fuel, and regular fuel, no fertilizer. He owns a compact tractor for his personal use on the property. He does not sell any products from the property or have customers coming by to use or buy products. There is no signage and he does not intend to put up any signs.

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

Fred Cuqua, 24 Alton St., informed the Board that Mr. LaBarge has never had a permit for the business; has two dump trucks with landscape trailers behind them; bobcats, chippers, graders, loam and mulch piles; it looks like a commercial yard. The applicant used to rent property from Sansone and leave his equipment there, but Sansone sold the pit and the equipment moved to the house. There are a lot of children in the area and he is concerned about their safety.

Mr. Malfy said he does not own a chipper. He is spreading stone and has a pile of loam for his garden. He does have another location where he can store equipment if everyone is upset about it. He has two plows stored on his patio.

Pat Fasanello, 23 Neal St., informed the Board of previous businesses that have been in their neighborhood, which involved equipment and parked cars. The area is filled with small businesses. He was on the Zoning Bylaw rewrite committee and said they all agreed that the Town wants to be business friendly, and asked the Board to approve the application.

Joe McMannus, 16 Neal St., said he has lived there for 50 years and there have been landscaping businesses on the street over that time. He said Mr. Malfy's trucks are never on the street, except when his son is home for lunch. He sees no problem with the application.

Mary Anne Burn, 26 Alton St., was concerned because there are small children in the neighborhood and the reason she moved there was because there are a lot of growing families. She can hear the beeping of the trucks at night and there is a big spot light that shines into her

yard. The applicant has built a structure in their backyard and she believes it is an eye sore. The machines he uses smells of diesel fuel and pollutes the air. Ms. Burn is afraid the business is devaluing her property and asked the Board to deny the request.

Pat Murray, 20 Alton St., informed the Board that they just bought the house and were under the impression that all the area was residentially zoned. The beeping of the equipment is very noticeable and they asked the Board to deny the request.

James Taylor, Broad St., frequently drives by the applicant's home and it does not look unsightly.

Barbara Murphy, 28 Alton St., because it is a residential neighborhood she does not think it is fair to hear beeping and smell diesel fuel, and asked the Board to deny the request.

Marie Keyqua, 24 Alton St., said when they look outside their yard there is a business being run out of their backyard. They hear every truck going out and beeping. Day by day there are more and more trucks being brought in. Ms. Keyqua asked the Board to limit the property to two trucks. The applicant has set up 3 half domes for storage. It has gotten worse since Sansone closed down. They live in a wooded area, but can hear the noise of the trucks going in and out and see the lights in the back yard. She requested the Board deny the request.

Mr. Malfy explained that the light in the back yard was for their dog pen and listed his equipment: 1 covered trailer, a canvas shed coverall to replace a metal shed for lawn mower and yard equipment, a Bobcat for personal use, 2 trucks that have snow plows. He does not own a grader, does not store fertilizer or loam for the business, the trucks return empty – he does not come back with them loaded, he does do work on his own property, i.e., a garden every year and landscaping. There should be no diesel fuel fumes because his equipment meets the government standards and he does not keep them running.

Mrs. Malfy explained the spot light in the back was because they had a dog and needed the light in order to go out back to let the dog out. Usually around 11 p.m. in the evening, but the dog has since died.

Janet Fasanello informed the Board that applicant has been operating the same way over many years. She has grandchildren and feels very safe. Mr. Malfy is very careful and aware of the children.

Mr. Groshev, 25 Neal St., has lived at this location for seven years and spoke in favor of the application.

Ms. Murphy asked if there were any further comments; there being none,

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to close the public hearing.

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

A motion was made by Ms. Murphy and seconded by Mr. Zuker on behalf of the applicant to grant Special Permit under Section 5.B.3.I of the Zoning Bylaws to allow continued operation of landscaping business at residence.

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

#### **CONDITIONS:**

1. As stipulated by the applicant at the public hearing, there shall be no outside display of goods or products, storage of materials or equipment, or any other outward evidence that the premises is being utilized for any purpose other than residential
2. As stipulated by the applicant at the public hearing, the items stored on site are stored in a covered area that cannot be seen by abutters.
3. As stipulated by the applicant at the public hearing, the external appearance and general aspect of the building so used is in conformity with the residential character of the neighborhood.
4. As stipulated by the applicant at the public hearing, there shall be no cones of light shining on adjacent property.
5. As stipulated by the applicant at the public hearing, there shall be no storage of hazardous materials over house hold quantities.
6. 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.
7. All of the aforesaid conditions shall be enforced by the Town of Walpole Zoning Enforcement Officer.

#### **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.**

**8:30 p.m. – Bead Addiction/Lydia May – Case #24-10**

Ms. Murphy read the public hearing notice from **BEAD ADDICTION/LYDIA MAY, Case #24-10**, with respect to property located at 2000 Main St., Walpole and shown on the Assessors Map as Lot No. 45-63, Limited Manufacturing Zone.

The application is for:

A Variance from Section 7.8.B.3 of the Zoning Bylaws to allow installation of a second ground sign where one grounds sign is allowed.

Lydia May explained that she is requesting to install a sign; she had sent the Bylaws to the sign maker and thought they had been adhered to and then found out that only one sign is allowed. She has chosen this location for her business because of the square footage and the ambience of the building. It currently has a directory type sign at one end of the front of the property. The sign she could add to that would not be large enough for people driving by to see and is not located in front of the portion of the building she is occupying. She submitted pictures of the sign being held up at the proposed location. She is not requesting to light the sign. The beads are stained glass and faceted.

Ms. Murphy read comments from: Jack Conroy, Planning Board, dated December 2, 2010; Planning Board Site Plan Approval, Case No. 2001-13, dated May 13, 2002; Jack Mee, Building Commissioner, dated November 9, 2010.

Ms. May said she would park wherever it is allowed by the Town. The owner of the building told her he would go before the necessary Boards for necessary approvals.

Mr. Stanton asked Ms. May what would happen to the sign if the business did not succeed.

Ms. May said she owns the sign and would take it with her and suggested the Board could put that as a condition. The height of the sign would be according to the Town's standards.

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to close the public hearing.

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

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to grant a Variance from Section 7.8.B.3 of the Zoning Bylaws to allow installation of a second ground sign where one grounds sign is allowed.

The vote was **4-1-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions:** (Stanton, Case, DeCelle, Zuker in favor, Murphy - 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. 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 topography and shape of the lot and the shape of the building.

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

The Board finds that the sign will enhance traffic safety site distance.

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

The Board finds that with the above listed conditions, the Variance may be granted without nullifying or derogating from the intent or purpose of this 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 10:00 p.m.

Daniel J. Cunningham, Jr.  
Clerk

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Minutes were approved on February 9, 2011.