

The September 22, 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 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

Meg Kundert, Associate Member
Matthew Zuker, Associate member

6:45 p.m. – Francis Harvey & Sons, Inc. – Case #09-10 (cont'd from 8/18) (Murphy, Stanton, Cunningham, Kundert, Zuker)

Mr. Cunningham recused himself from this hearing.

Ms. Murphy read the public hearing notice for the continued hearing Francis Harvey & Sons, Inc., Case 20-10, with respect to property located at 36 Cobble Knoll Dr., Walpole and shown on the Assessors Map as Lot No. 58-10, Rural Zone.

The application is for:

A Variance from Section 6-B of the Zoning Bylaws to allow relief from the setback requirement to allow construction of a 3-season room within the side setback. The required setback is 25 feet; the request is for approval of 17.1 feet at one corner of the structure.

Ms. Murphy informed the applicant that we only have a four-member Board for this case because Mr. Cunningham has recused himself. The petitioner is entitled to a five-member Board and this hearing can be postponed until a five-member Board is present. 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 Gerald Blair said that his applicant does not want to go forward with the four-member Board and requested to start anew, i.e., continue the hearing in order to begin anew at the next hearing date. No evidence would be presented during this meeting.

A motion was made by Ms. Murphy, seconded by Mr. Zuker, on behalf of the applicant to begin the hearing anew on October 27, 2010 at 7:00 p.m.

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

7:00 p.m. – Hollingsworth & Vose – Case #13-10

Ms. Murphy read the public hearing notice for HOLLINGSWORTH & VOSE COMPANY, Case #13-10, with respect to property located at 112 Washington St., E. Walpole and shown on the Assessors Map as Lot No. 20-28, Limited Manufacturing Zone.

The application is for:

Special Permit under Section 9.3A of the Zoning Bylaws to allow the expansion and alteration of an existing non-conforming parking area, and/or

A Special Permit under Section 9.6 of the Zoning Bylaws to allow the expansion and alteration of existing non-conforming parking spaces and to grant such other further relief as the Zoning Board of Appeals may deem appropriate.

Attorney Philip Macchi, II, represented the applicant, and explained the request for the parking spaces. The old gray building will be raised; the Historical Commission has informed the applicant that they are not interested in the building (letter attached to Memorandum submitted at the hearing). The curb cut would be removed with the entrance on the north side and out by the main office. They will be adding nine (9) parking spaces on Washington St. The parking lot will be widened which will conform with Section of the Bylaw. They are also including a green area. The architect is before the Conservation Commission this evening in that regard. The whole site has 139 parking spaces. Attorney Macchi explained the pertinence of the two Section 9.3A and/or 9.6; either or both of which the Board may find applicable.

The Board found that Section 9.3A is the applicable section of the Zoning Bylaw.

Ms. Murphy read Board comments from the Planning Board, dated 9/9/10; the Conservation Commission, dated 9/22/10; Town Engineer – dated 9/9/2010; Traffic Safety Officer – dated 8/24/10; and Deputy Fire Chief – dated 8/23/10.

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

The resident of 88 Union St. said he had no objection to the project.

A motion was made by Ms. Murphy and seconded by Mr. Cunningham, that the Board grant to Hollingsworth & Vose Company a Special Permit under Section 9:3.A to allow the expansion and alteration of an existing non-conforming parking area as shown on a plan entitled: “LIMITED SITE PLAN for (Parking Lot Expansion) at HOLLINGSWORTH & VOSE CO. (Assessors Lot 20-28), 112 WASHINGTON STREET, E. WALPOLE, MASS.” Scale 1" = 20', dated August 16, 2010, drawn by John R. Anderson & Associates, 281 Mylod Street, Norwood, Mass 02062.

The vote was **5-0-0 in favor**; therefore the SPECIAL PERMIT is hereby granted.

REASONS FOR DECISION

The existing non-conforming parking lot is part of a situation that is grandfathered under the Walpole Zoning Bylaws. The Board discussed the applicability of Section 9:3.A versus 9:6. Based on that discussion the Board decided that Section 9:6 did not apply to the applicant's proposal and did not take any further action relative to that request. By its present application, the applicant proposes to improve the area and reduce the non-conformity of the existing condition which the Board found to be a primary objective of Section 9. As such, in reviewing

the Walpole Zoning Bylaw the board finds that relief under Section 9:3 is the most appropriate for this situation and that the further findings set forth below warrant the granting of this Special Permit.

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 the use table does not set forth any specific criteria or standards for the granting of a Special Permit. However, the second clause of the first sentence of Section 9:3.A. sets forth additional requirements which are addressed separately 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 proposed additional 9 parking spaces are to accommodate existing demands for parking. It is not anticipated that there will be any additional vehicular and/or pedestrian traffic generated rather an enhancement benefitting vehicular and pedestrian traffic on and off the site. The proposal is not expected to negatively impact residential abutters across Washington Street. The Board notes that the area is commercial in nature otherwise. Therefore, the Board finds that there is no adverse affect to 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 the proposed additional 9 parking spaces will not in and of themselves increase the number of residents, employees or visitors so as to adversely affect the immediate neighborhood as said spaces will be accommodating existing employees and, in fact, will lessen the impact on Washington Street. As set forth above, other than some residences across Washington Street the immediate neighborhood is commercial. The Board finds that the additional parking spaces will provide a positive impact to the area and that 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 as the parking lot is non-conforming and that the non-conformity is

decreased by the addition of the 9 parking spaces. As the parking lot is grandfathered with respect to this condition and the additional spaces are within the grandfathered area this condition 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 utilization and re-alignment of the parking spaces coupled with the demolition of a building will not create a danger of fire, explosion, emission of wastes or other hazards as it is a benign use. Further, all work will be conducted in accordance with all applicable fire, health, and other public safety requirements. 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 addition of 9 parking spaces and their use will not create any noise, vibration, heat, smoke, fumes, odor, glare, or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Furthermore, the parking of vehicles is a benign use. Therefore, this condition is satisfied.

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

The Board finds that other than some residences across Washington Street the neighborhood is commercial in nature. On the south side of the parking lot are the H&V offices, then the Neponset River and then vacant land including the Clock Tower lot. On the north side of the lot is the H&V manufacturing building and then a lot that is utilized to store heavy equipment. On the opposite side of Washington Street to the south are entrances for the Hogie Bear Building and an office building. To the south is the entrance to the Estates at Walpole and some residences. Therefore, the proposed use of these parking spaces will in no way have an adverse affect on the character of the neighborhood and 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 one of the stated purposes of the By-Law is to: “lessen congestion in the streets”. As the additional 9 parking spaces will allow vehicles parking on Washington Street to park on site and therefore lessen congestion on the street this condition is satisfied.

Section 9: Non-Conforming Situations, 3. Nonconforming Uses A . requires that:

A nonconforming use may be continued to the same degree and for the same purpose but may be altered, expanded, or extended only with a Special Permit from the Board of Appeals in accordance with the provisions of § 2.2, provided further that the Board finds such alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

The Board restates and incorporates all of its findings with regard to the requirements of Section 2.2 set forth above. Taking the aforesaid information into account, the proposed expansion of the grandfathered parking lot will not be at all detrimental to the neighborhood and in fact will be an improvement to the area and not more detrimental to the neighborhood than the existing use. Accordingly, the specific requirements of Section 9:3.A are satisfied.

CONSISTENCY

This decision is consistent with the purpose and intent 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.

7:20 p.m. – Walpole park South VIII – Case #12-10 (cont'd from 9/8) (Stanton, Cunningham, Case, Kundert, Zuker)

Ms. Murphy recused herself from this hearing.

Mr. Stanton was Acting Chairman and read the public hearing notice for WALPOLE PARK SOUTH VIII REALTY TRUST, Case #12-10, with respect to property located at 3 Walpole Park South Road, Walpole and shown on the Assessors Map as Lot No. 54-13 and portions of 47-16 and 54-5, Highway Business, Water Recharge Protection Overlay District Zone.

The application is for:

Special Permit under Section 5-B.1.4.c of the Zoning Bylaws to allow retail sales and services greater than or equal to 20,000 square feet in a building and its appurtenant parking and landscaping as shown on a plan entitled: “Walpole Park South VIII Site Plan”, dated July 1, 2010, prepared by Merrikin Engineering, LLP, 730 Main St., Suite 2C, Millis, MA 02054, as may be amended.

Mr. Stanton explained that this is a continued hearing.

Attorney Philip Macchi, II, and explained that the plans have been changed and Dan Merrikin will explain them to the Board.

Mr. Merrikin explained the changes: the main door is located on the left side, a set of stairs would be on the right side, a manhole was added to lessen the discharge velocity, a “no left hand turn” sign will be installed at the exit, erosion controls were added, the drainage O&M plan has been updated, a snow storage plan prepared, and other substantive changes. The entrance on Rt. 1, according to the State Highway Dept. cannot be more than 24 feet wide and there are other stipulations that have to be complied with.

Mr. Case was concerned about it being a short turn going 60 miles per hour off Rt. 1.

Mr. Merrikin pointed out that it is similar to the Kentucky Fried Chicken restaurant on Rt., but this facility will not be a large retail business.

Mr. Stanton asked if there could be some kind of signage showing that the entrance is so many feet ahead.

Mr. Merrikin said that could be made a condition, i.e., install a sign stating the entrance is 500 feet ahead, subject to DOT approval. There would be a 4 feet by 4 feet ground monument sign giving the address and business.

Attorney Macchi stated that the condition would also have to be subject to the Planning Board approval.

Mr. Stanton asked for 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.** (Stanton, Cunningham, Case, Kundert, Zuker voting)

A motion was made by Mr. Stanton and seconded by Mr. Cunningham, on behalf of the applicant, that the Board grant to Walpole Park South VIII Realty Trust 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 in a building and its appurtenant parking and landscaping as shown on a plan entitled: “Walpole Park South VIII Site Plan” dated July 1, 2010, revised 9/17/10, prepared by Merrikin Engineering, LLP 730 Main Street, Suite 2C, Millis, MA 02054.

The vote was **5-0-0 in favor;** therefore the SPECIAL PERMIT is hereby granted. (Stanton, Cunningham, Case, DeCelle, Kundert)

REASONS FOR DECISION

The building can be constructed and various commercial uses (e.g. warehousing, different types of manufacturing, offices, as well as retail under 20,000 s.f) can be conducted within the same by right. The purpose of the Highway Business district specifically states that retail is one of the uses desired. As such, allowing retail over 20,000 s.f is consistent with the intent of the district and allows the applicant as well as the Town flexibility as to the type of tenants to be located within this building once it is constructed. The Board also notes that this use was allowed by right prior to the comprehensive re-write of Zoning Bylaw and the granted Special Permit is compatible with the existing development along Route 1.

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 locus is situated at the corner of Walpole Park South Road and Route 1. As shown on the site plan, the lot can be accessed from either Route 1 South or via Walpole Park South Road. Southbound traffic can enter the property either directly from Route 1 or by turning into the industrial Park on Walpole Park South Road. Similarly, exiting south bound traffic can access Route 1 directly or by turning left on Walpole Park South Road. Traffic coming into the premises from Route 1 north would use the existing jug handle at Pine Street and then turn right into the park. Traffic wishing to exit onto Route 1 North would exit via Walpole Park South Road take a left on Pine Street and turn at the traffic light. Only a de minimus amount of traffic is expected to exit the site and take a right at Pine Street via Walpole Park South Road. Similarly, only a small amount of traffic is expected to access the site from that direction. Given its location, most of the traffic generated by a retail use on the premises is likely to come from Route 1. The immediate neighborhood consists of the Walpole Park South Industrial Park which is characterized by commercial uses and other commercial uses along Route 1, therefore this traffic will not have any adverse effect on the neighborhood. It should be noted that this property is the only lot within Walpole Park South that is at grade with Route 1 and will have actual access and egress onto that roadway. Further, the traffic from this proposed use is not expected to impact the residential neighborhoods behind the industrial park at all. Therefore, 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 building is expected to house a mix of office, retail, and other commercial uses. Retail uses that are less than 20,000 square feet are allowed by right in the HB district. However, based on this size of the proposed building, it is possible that this location could attract a tenant desiring an area larger than 20,000 square feet. This possibility is the basis for the request acted on by the Board. Regardless of the size of the tenant, most employees or visitors to this location are going to use Route 1 for access and egress. As was noted in subsection (c) above, the immediate neighborhood is made up of a mix of commercial uses that will be positively impacted by the employees and visitors to this site, if there is any impact at all. 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 proposed development as shown on the site plan complies with all

applicable dimensional requirements to include lot coverage and buffer zone requirements. The Board further submits that the impervious coverage is allowed by Special Permit, which has been applied for in conjunction with the Site Plan filed with the Planning Board. The development can not be built without the both the Special Permit and Site Plan Approval from the Planning Board. Therefore, the Board is satisfied that this condition is met.

- (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 as all Tenants will have to conform to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government, the immediate neighborhood will not be 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 a retail use on the premises will 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 uses of the proposed building will 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 site is the last undeveloped lot within Walpole Park South Industrial Park and was identified for development over twenty (20) years ago. As such, its development will complete the build out of the park. Within the park there are multiple manufacturing operations, office uses, and other commercial enterprises. Along Route 1 South there are two industrial buildings and high tension lines immediately to the North of the industrial park and Minuteman Trucking immediately 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. Further 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 further South the character of Route 1 is defined by Patriot Place and other big box retail stores. Therefore, a retail use regardless of size, within the proposed building will tie in with the existing character of the highway and will in no way have an adverse effect on the character of Route 1. Thus, 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.” The Board also notes that the entire building can be used as a

warehouse and various types of manufacturing plants and for retail under 20,000 s.f. by right. However, given that the building will be approximately 117,000 s.f., at grade with, and accessible from, Route 1 the Applicant wishes to have the option of leasing space greater than 20,000 s.f. to retailers. This ability will benefit both the Applicant and the Town of Walpole as it may attract businesses to Route 1 in Walpole that would have otherwise located in Norwood, Sharon, or Foxborough. As this site lies within an HB Zone 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.

The Board finds that no other Special Permit(s)/Variance(s) are required from this Board as the Applicant's remaining required permits are not within the jurisdiction of the Zoning Board. This decision is conditioned upon the granting of all required approvals from the Conservation Commission and the Planning Board.

CONSISTENCY

This decision is consistent with the purpose and intent 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.

7:30 p.m. – Wal-Mart Stores East LP – Case #14-10

Ms. Murphy recused herself from this hearing.

Mr. Stanton was Acting Chairman, and read the public hearing notice for WAL-MART Stores East LP, Case #14-10, with respect to property located at 550 Boston Providence Highway, Walpole and shown on the Assessors Map as Lot No. 36-39 (123-4 Sharon), Highway Business District.

The application is for:

Special Permit under Section 5-B.1, Use Table 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 its attendant parking and landscaping as shown on a plan entitled "PROPOSED SITE PLANS for WALMART STORES, INC. (#2103-12) PROPOSED BUILDING EXPANSION" drawn by Bohler Engineering dated 05/04/2010, last revised 07/16/2010, as may be amended, and/or

A Special Permit under Section 9:3.A to allow an expansion and alteration of existing building, retail sales and services greater than or equal to 20,000 square feet within an existing building and proposed expansion with its attendant parking and landscaping as shown on a plan entitled "PROPOSED SITE PLANS for WALMART STORES, INC. (#2103-12) PROPOSED BUILDING EXPANSION" drawn by Bohler Engineering dated 05/04/2010, last revised 07/16/2010, as may be amended.

Attorney Philip Macchi represented the applicant and explained that the building exists and is technically non-conforming, but could be brought into conformance by granting a retail use. When the site was first developed, 150,000 square feet was provided for a grocery story. They

are not proposing to do anything that will significantly alter the area, but want to reconfigure the loading dock and add 2 pieces to the building and clean up the parking lot. The buffering neighbors would not be affected at all. The site was developed to have far more than there is now.

Matt Smith, Sr. Manager with Bohler Engineering, has worked on over 20 similar sites for Wal-Mart. The driveway is to High Plain St. and Rt. 1 and are not proposing any modifications to the driveways. The plan is to expand the building approximately 40 feet toward the west and a 70 foot bump out at the rear of the building. This would bring the 120,000 existing square feet to approximately 150,000 square feet. A new garden center would be located on the side of the building. The parking spaces would go from 615 to 625. The detention basin will not be impacted. They have met with the Conservation Commission and got their approval on land disturbance. They still have to meet with the Planning Board. They have met with the Town Engineer and are addressing those issues.

Bill Boyden, BRR Architecture, explained the changes Wal-Mart is making in rebranding their corporation that includes: a new recycling center, expanded cart storage area, using earth tone colors, new signage, adding screened garden center on the site, the loading docks in the back, the building will be energy efficient. Refrigeration, dehumidifiers and compressor units, etc. will be on the roof. The height of the building does not change a lot: 26 feet, 23 feet and 33 feet at the peak. The sides and rear stay the same.

Mr. Smith explained that some of the bigger units are still on the ground, but there is a berm between them and the residences.

Mr. Stanton asked for comments from the public.

Tony Marchetti, 175 Common St., asked if the retail space will be 100% food; felt that there would be a lot more traffic. It is a bottle neck area now; there would be a lot of delivery trucks; more noise; asked what the Town gains from it; and asked the Board to consider these issues.

Mr. Boyden said the food space is about 27,000 square feet.

Michael Moore, 237 Moosehill Rd., asked if they intend to increase the lighting.

Mr. Smith explained that there would be no loud speakers proposed; there will be some side lighting and pointed out some new lights to the side and to the rear. The lights are fully enclosed fixtures, shoe box style. The light cannot be seen from the sides, it projects downward. The store is a 24 hour store so the lights will be on at night.

Mr. Stanton asked if any traffic studies based on what is existing and what is expected.

Mr. Smith said there are offsite improvements through Mass. Highway and a traffic study was done and there is no substantial degradation in levels of services. One of the driveways will hit a signal warrant. They are committing to pursue it, but it is not a requirement of the development.

Carol Norrell, 585 High Plain St., voiced her concern regarding the traffic on Rt. 27. She directly abuts the property and is concerned about the beeping of the fork lifts running all night,

and the trailer trucks that keep their engines running all night. She believed adding a food store is going to increase those problems. Holiday traffic is bad now. Ms. Norrell asked how high the new lights are going to be, and asked what the applicant is going to do about these issues.

Mr. Smith explained that the lights are 42 feet high at an elevation of 235 feet and that High Plain St. is at 270 feet.

Mr. Boyden explained that typically 4-5 semi trucks per week with 6-7 during the Christmas season. Groceries will add about 2 trucks a week, so, it is less than one a day.

Attorney Macchi said the Board could add a condition that trucks cannot idle all night, but that deliveries will happen in the evenings. He also explained the results of the traffic study that was brought before the Planning Board for Site Plan Approval.

Mr. Stanton asked what the deliveries would be between 12 a.m. and 6 a.m.

Attorney Macchi said he could not answer that question, but asked that it not be made a condition.

Mr. Moore asked if there would be a security policy established as a 24 hour store.

Mr. Boyden explained that Wal-Mart has high vision digital recorded cameras 24-7 of all parking lots, entrances and loading areas, plus full-time plain clothes and non-plain clothes security personnel on site and a security room that people can be placed in, if necessary.

Mr. Stanton read comments from the following: Traffic Safety Officer, dated 8/26/10; Deputy Fire Chief, dated 9/9/10; Planning Board, dated 9/9/10; Board of Health, dated 9/15/10; Sewer and Water Commissioners, dated 9/7/10 and 9/15/10; and Town Engineer, dated 9/8/10.

Mr. Boyden explained, they met with the Police Chief and are installing a special repeater system in the store to boost the 2-way radio systems. Mr. Boyden also informed the Board that Wal-Mart does not have trash containers in the store. They have compactors that are picked up by truck and removed.

Ms. Norrell and Mr. Marchetti voiced concern over the noise factor of the compactor.

Mr. Stanton asked if there were any further comments from the public; there being none:

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

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

A motion was made by Mr. Stanton and seconded by Mr. Cunningham, that the Board grant to Wal-Mart Stores East LP a Special Permit under Section 5-B.1. Use Table 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 its attendant parking and landscaping as shown on a plan entitled

“PROPOSED SITE PLANS for WAL-MART STORES, INC. (#2103-12) PROPOSED BUILDING EXPANSION” drawn by Bohler Engineering dated 05/04/2010, last revised 9/23/10.

The vote was **5-0-0 in favor**; therefore the SPECIAL PERMIT is hereby granted. (Stanton, Cunningham, Case, DeCelle, Kundert voting)

CONDITIONS

1. Under no conditions are the engines of delivery vehicles allowed to idle more than five (5) minutes.
2. The applicant will continue to use diligent efforts to pursue the installation of a traffic signal at the Rt. 27 entrance of the Wal-Mart store. The installation of this signal or any other traffic improvements determined necessary as a result of these efforts to be paid by Wal-Mart. However, the Board recognizes that any improvements require action by other Town Boards and the Commonwealth of Massachusetts and any such action is ultimately under their jurisdiction and at their discretion.

REASONS FOR DECISION

The Board finds that granting a Special Permit under Section 5 is appropriate 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 largest 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 of the use.

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 locus is situated at the corner of Routes 1 & 27. As shown on the site plan, the lot can be accessed from either Route 1 North or via Route 27. Based on the traffic study done by McMahon Associates, it is expected that the expansion will result in 67 additional trips to the site during the weekday evening peak hour and 83 additional trips to the site during the Saturday peak hour. These increases will not impact the level of service on the surrounding road network because the same was upgraded during the initial Wal-Mart construction to handle the volume of traffic generated by a 150,000 s.f. retail store and a full size grocery store. As such, no additional infrastructure work is required in order to accommodate the current expansion as the current conditions were designed to carry a heavier traffic flow than is proposed. However, the applicant submitted at the public hearing that it will explore the possibility of placing a traffic light at the Route 27 site driveway to improve the vehicular flow in and out of the site as well as on Route 27 itself. This potential improvement, however, is subject to the jurisdiction of the Planning Board, Board of Selectmen, and requires cooperation from Mass DOT and is beyond the scope of this Special Permit. Given all of the aforesaid, the expansion of the store to include a grocery component will not add a significant amount of traffic to the existing conditions. Therefore, the Board finds that the vehicular or pedestrian traffic generated by the site and its expansion 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 the retail use at this location as the store will continue to accommodate the existing and expanded Wal-Mart operations and services. The expansion as shown on the site plan is being undertaken to add a grocery component to the existing retail use. Additionally, the project will increase the internal storage of the building. The store currently employs a total of approximately two hundred forty-five (245) people working different shifts throughout the week. This number is expected to increase by approximately eighty-five (85) as a result of the expansion resulting in approximately three hundred thirty (330) jobs located in Walpole. Based on the applicant's testimony it is expected that the number of customers will increase by about eighty (80) during the weekday evening peak hour and roughly one hundred (100) during the Saturday midday peak hour. It must be noted that the base figure already exists and those numbers of employees and visitors have been utilizing this site for over fifteen (15) years. Based on the information presented at the public hearing, the Board finds that the increase in employees and visitors is de minimus when evaluated with the existing conditions in the immediate neighborhood. As such, there will not be an adverse affect on the immediate neighborhood. In fact, with respect to the other retail and service uses immediately adjacent to the store they may be positively impacted by the employees and visitors to this site, if there is any impact at all. 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 proposed development as shown on the site plan complies with all

applicable dimensional requirements including lot coverage and buffer zone requirements. Additionally, all buffers have been maintained in the proposed site plan. Therefore, the Board is satisfied that this condition is met.

- (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 as all Tenants will have to conform to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government, the immediate neighborhood will not be 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 retail use of the premises will 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 expanded building will 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 site is already developed in accordance with site plans approved by the Town of Walpole. The proposed expansion and upgrading of the site will include a remodel of the exterior of the building that will enhance the visual appeal of the site. The property is surrounded by a car wash, Dunkin Donuts & laundry, a gas station, a restaurant, a motel, a building supply retailer, and a self storage facility. Behind the property there are residential neighborhoods, however the same are buffered from view and higher than the Wal-Mart site. Additionally, the retail use over 20,000 s.f. already exists with the proposed redevelopment being an enhancement thereof. Therefore, a retail use regardless of size, within the expanded building ties in with the existing character of the highway and will in no way have an adverse effect on the character of Route 1. Thus, 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." As this site lies within an HB Zone 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. Additionally, the Board notes that this use has been ongoing for over fifteen years and is an integral part of the existing neighborhood. Therefore, this condition is satisfied.

CONSISTENCY

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

VOTE OF THE BOARD

A motion was made by Mr. Stanton and seconded by Mr. Cunningham, that the Board grant to Wal-Mart Stores East LP A Special Permit under Section 9:3.A. to allow an expansion and alteration of existing building, retail sales and services greater than or equal to 20,000 square feet within an existing building and proposed expansion with its attendant parking and landscaping as shown on a plan entitled “PROPOSED SITE PLANS for WAL-MART STORES, INC. (#2103-12) PROPOSED BUILDING EXPANSION” drawn by Bohler Engineering dated 05/04/2010, last revised 9/23/10.

The vote was **5-0-0 in favor**; therefore the SPECIAL PERMIT is hereby granted. (Stanton, Cunningham, Case, DeCelle, Kundert voting)

CONDITIONS

1. Under no conditions are the engines of delivery vehicles allowed to idle more than five (5) minutes.
2. The applicant will continue to use diligent efforts to pursue the installation of a traffic signal at the Rt. 27 entrance of the Wal-Mart store. The installation of this signal or any other traffic improvements determined necessary as a result of these efforts to be paid by Wal-Mart. However, the Board recognizes that any improvements require action by other Town Boards and the Commonwealth of Massachusetts and any such action is ultimately under their jurisdiction and at their discretion.

REASONS FOR DECISION

The retail use, without any size limitation, was allowed by right when the building was constructed in 1994. 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 and eligible for a Special Permit under Section 9 to expand or alter the use. Accordingly, the Board finds that granting a Special Permit under Section 9 is also an appropriate form of relief in this instance. As the Bylaw is silent as to the preferred method of dealing with the present situation, the Board has decided to grant this Special Permit in addition to the Permit Granted under Section 5-B.1.4.c above.

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. However, the second clause of the first sentence of Section 9: 3.A sets forth additional requirements which are addressed separately 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 locus is situated at the corner of Routes 1 & 27. As shown on the site plan, the lot can be accessed from either Route 1 North or via Route 27. Based on the traffic study done by McMahon Associates, it is expected that the expansion will result in 67 additional trips to the site during the weekday evening peak hour and 83 additional trips to the site during the Saturday peak hour. These increases will not impact the level of service on the surrounding road network because the same was upgraded during the initial Wal-Mart construction to handle the volume of traffic generated by a 150,000 s.f. retail store and a full size grocery store. As such, no additional infrastructure work is required in order to accommodate the current expansion as the current conditions were designed to carry a heavier traffic flow than is proposed. However, the applicant submitted at the public hearing that it will explore the possibility of placing a traffic light at the Route 27 site driveway to improve the vehicular flow in and out of the site as well as on Route 27 itself. This potential improvement, however, is subject to the jurisdiction of the Planning Board, Board of Selectmen, and requires cooperation from Mass DOT and is beyond the scope of this Special Permit. Given all of the aforesaid, the expansion of the store to include a grocery component will not add a significant amount of traffic to the existing conditions. Therefore, the Board finds that the vehicular or pedestrian traffic generated by the site and its expansion 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 the retail use at this location as the store will continue to accommodate the existing and expanded Wal-Mart operations and services. The expansion as shown on the site plan is being undertaken to add a grocery component to the existing retail use. Additionally, the project will increase the internal storage of the building. The store currently employs a total of approximately two hundred forty-five (245) people working different shifts throughout the week. This number is expected to increase by approximately eighty-five (85) as a result of the expansion resulting in approximately three hundred thirty (330) jobs located in Walpole. Based on the applicant's testimony it is expected that the number of customers will increase by about eighty (80) during the weekday evening peak hour and roughly one hundred (100) during the Saturday midday peak hour. It must be noted that the base figure already exists and those numbers of employees and visitors have been utilizing this site for over fifteen (15) years. Based on the information presented at the public hearing, the Board finds that the increase in employees and visitors is de minimus when evaluated with the existing conditions in the immediate neighborhood. As such, there will not be

an adverse affect on the immediate neighborhood. In fact, with respect to the other retail and service uses immediately adjacent to the store they may be positively impacted by the employees and visitors to this site, if there is any impact at all. 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 proposed development as shown on the site plan complies with all applicable dimensional requirements including lot coverage and buffer zone requirements. Additionally, all buffers have been maintained in the proposed site plan. Therefore, the Board is satisfied that this condition is met.

- (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 as all Tenants will have to conform to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government, the immediate neighborhood will not be 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 retail use of the premises will 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 expanded building will 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 site is already developed in accordance with site plans approved by the Town of Walpole. The proposed expansion and upgrading of the site will include a remodel of the exterior of the building that will enhance the visual appeal of the site. The property is surrounded by a car wash, Dunkin Donuts & laundry, a gas station, a restaurant, a motel, a building supply retailer, and a self storage facility. Behind the property there are residential neighborhoods, however the same are buffered from view and higher than the Wal-Mart site. Additionally, the retail use over 20,000 s.f. already exists with the proposed redevelopment being an enhancement thereof. Therefore, a retail use regardless of size, within the expanded building ties in with the existing character of the highway and will in no way have an adverse effect on the character of Route 1. Thus, 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.” As this site lies within an HB Zone 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. Additionally, the Board notes that this use has been ongoing for over fifteen years and is an integral part of the existing neighborhood. Therefore, this condition is satisfied.

Section 9: Non-Conforming Situations, 3. Nonconforming Uses A. requires that:

A nonconforming use may be continued to the same degree and for the same purpose but may be altered, expanded, or extended only with a Special Permit from the Board of Appeals in accordance with the provisions of § 2.2, provided further that the Board finds such alteration, expansion or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

The Board restates and incorporates all of its findings with regard to the requirements of Section 2.2 set forth above. Based on those findings the proposed expansion and upgrading of the existing Wal-Mart along with the attendant parking and landscaping will not be at all detrimental to the neighborhood and in fact will be an improvement to the area. Accordingly, the specific requirements of Section 9: 3.A are satisfied.

CONSISTENCY

This decision is consistent with the purpose and intent 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.

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 December 8, 2010.