

The July 18, 2012 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 7:00 P.M. with the following members present:

Susanne Murphy, Chairman
James M. Stanton, Vice Chairman
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member
James S. DeCelle, Member

Matthew Zuker, Associate member

7:00 p.m. – John Lubold – Case #18-12

Ms. Murphy recused herself from this hearing.

Mr. Stanton read the public hearing notice for **JOHN LUBOLD, Case #18-12**, with respect to property located at 254 Plimpton St., Walpole and shown on the Assessors Map as Lot No., 18-194, General Residence and Flood Plain Zone.

The application is for:

A Variance from Section 6-B.1 of the Zoning Bylaws to allow a non-conforming setback of 22.33 feet where 30 feet is required to remain on a newly created lot.

A Special Permit under Section 9.5.B of the Zoning Bylaws to allow a non-conforming setback of 22.33 feet where 30 feet is required to remain on a newly created lot.

Attorney Paul Schneiders represented the applicant and explained the 66,699 s.f. of Mr. Lubold's property has been divided into two lots and received an ANR from the Planning Board. Parcel A consisting of 36,000 s.f., to be purchased by Mr. Marini, and the second half that includes a three-unit residence owned by Mr. Lubold. The home, constructed prior to March 31, 1925, is approximately 8 feet too close to Plimpton St., i.e., 22 feet where 30 feet is required and was built prior to the bylaws being created and therefore has been a grandfathered non-conformity. A member of the Planning Board informed the applicant that the property lost the grandfathering of the non-conforming setback when the lot was ANR'd, and that either a Variance or Special Permit from the Zoning Board of Appeals would be required. The house is 100 years old and could not withstand being moved back on the lot.

Mr. Case commented that the hardship was self inflicted when the applicant divided up the lot.

Attorney Schneiders said that the hardship is that Mr. Lubold has over 66,000 s.f. of property that he cannot do anything with because of the non-conforming setback. The hardship was created in 1925. A Variance would satisfy the Planning Board and the Building Department.

Mr. Stanton referred to comments from the Board of Health, Conservation Commission and the Police Department, all of which had no issues with the application.

Mr. Stanton asked if there were any 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, Zuker voting)

7:30 p.m. – Timothy and Theresa Duffy – Case #03-12 (Stanton, Cunningham, Case, DeCelle, Zuker) (cont'd from 6/13)

Mr. Stanton read the email from Mrs. Duffy requesting to postpone this evening's hearing to September.

The Board agreed to continue the hearing one more time to its next meeting in August, and that they expect the requested information at that time because there will be no further extensions granted.

A motion was made by Mr. Stanton, seconded by Mr. Cunningham, on behalf of the applicant to continue the hearing to August 15, 2012 at 7:30 p.m.

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

8:00 p.m. – Southridge Farm – Case #08-12 (Murphy, Cunningham, Case, DeCelle, Zuker) (cont'd from 4/11)

Mr. Truax, GLM Engineering, explained that an architectural plan has not yet been drawn for the building that will eventually be proposed for the site. He showed the Board the placement of the retaining wall and security fence on an updated plan. The only entrance will be off South St. The existing entrance will be eliminated and boulders placed at that entrance to prevent entrance.

Mr. Case was concerned about protecting customers and their families from truck traffic going into the work area in the rear portion of the property. The possibility of fencing or a berm was discussed. The applicant will look into a solution for the safety of the customers.

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

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to close the public hearing for case #08-12.

The vote was **5-0-0 in favor.**

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant a Special Permit under Section 5.B.4.A of the Zoning Bylaws to allow Business: Retail Sales and Services less than 10,000 square feet.

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the structure shall be used for the retail sales and services.
2. As stipulated by the applicant at the public hearing, the applicant will take safety precautions with respect to a retail type business.
3. This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L.c.40A, Section 17, if substantial use has not sooner commenced except for good cause.

REASONS:

It is the finding of the Board that the applicant has met the requirements under Section 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 retail sales and service business 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 retail sales and service business 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 retail sales and service business 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 retail sales and service business 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 retail sales and service business 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 retail sales and service business 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 retail sales and service business 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.

There being no further business, the meeting was closed at 9:00 p.m.

Daniel J. Cunningham, Jr.
Clerk

ev

Minutes were approved on September 12, 2012.