

The January 20, 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
Ted C. Case, Vice Chairman
Daniel J. Cunningham, Jr., Clerk
James M. Stanton, Member
James S. Decelle, Member

Meg Kundert, Associate Member

7:00 p.m. – Trio Auto Clinic – Case #19-09 (cont'd from 1/6/10) (Murphy, Case, Cunningham, Stanton, DeCelle)

Ms. Murphy read the public hearing notice for **TRIO AUTO CLINIC, Case #19-09**, with respect to property located at 1439 Main St., Walpole and shown on the Assessors Map as Lot No. 40-148, Business Zone.

The application is for:

A Special Permit under Section 5.B.4.e of the Zoning Bylaws to allow a salesroom storage area for used car sales. All vehicles to be parked on paved surfaces.

John Nassar, the applicant informed the Board that he could not get a hold of Mr. Heavey for the letter stating that he would allow Mr. Nassar to park cars on his property, but he did get a letter from Mr. Eldayha, the owner of the abutting property, stating that Mr. Nassar has permission to park cars on his property of 1429 Main St. The dumpster is also located on this abutting property.

Ms. Murphy was concerned about the potential of cars for sale being parked next door on the abutting property.

Mr. Nassar said the special permit could be just for his company and if he leaves, the special permit could cease.

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, Case, Cunningham, Stanton, DeCelle voting)

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.e of the Zoning Bylaws to allow a salesroom storage area for used car sales. All vehicles to be parked on paved surfaces.

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing, all vehicles shall be parked on paved surfaces.
2. As stipulated by the applicant at the public hearing, there shall be a maximum of five (5) cars for sales at any one time in designated parking spots as shown on the plan dated September 4, 2009, spaces 1 through 5.
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 3B of the Zoning By Laws in that:

- i. ***Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.***
The use 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 use 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 use 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 use 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 use 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 use 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 use 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.

DISCUSSION

Minutes:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to approve the minutes of January 6, 2010 and executive session minutes of January 6, 2010, as corrected.

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

7:30 p.m. – Cary Orlandi/Mill Brook Homes – Case #23-09

Ms. Murphy recused herself from this hearing.

Mr. Case read the public hearing notice for Cary Orlandi/Mill Brook Homes, Case #23-09, with respect to property located at 2255 Providence Highway, Walpole and shown on the Assessors Map as Lot No. 53-45, Highway Business Zone.

The application is for:

A Variance from Section 6.B of the Zoning Bylaws to allow a 25 foot side setback, where 40 feet is required to allow parking within the 50 foot setback for stadium events only.

Mr. Orlandi submitted an overview of the property and informed the Board that the site has been vacant for over 3 years. He is the owner of Mill Brook Homes which has 12 modular home styles that proposes to sell from this site. He is seeking approval for a 25 foot variance side set back instead of the 40 foot requirement, and approval to park 9 cars out front on the left side within the 50 foot requirement. The hardship is that the shape of the property does not allow use of property for the purpose. The current 40 foot setback on the left of the entrance prohibits a model modular home of 26 feet wide to be within other guidelines without causing a safety factor. And the best aesthetic view for the customers and my neighbor to the left. Regarding public good, the 25 foot setback offers a more pleasing view of the property. It allows an easier entrance for incoming and outgoing vehicles. It allows customers to enter and exit the front door parking area safely. If the 25 foot sideline is approved, the applicant would be willing to line the left sideline with 6 foot Hemlock evergreen trees that would grow 30 feet high and 8 feet wide. The applicant is also asking permission to use the front for parking during stadium events, 29.5 feet from the highway.

Mr. Cunningham pointed out a disparity between his request and the plan, which shows the model home at 28 feet not 26 feet wide.

Mr. Orlandi explained that there is an updated plan for the Planning Board. He had submitted them to the Planning Board, but not to the Zoning Board.

Mr. Case asked him to submit the updated plan to the Board.

Mr. Orlandi explained that he will be going before the Planning Board to request this home and a second home next to it. He will also be asking for additional stadium parking throughout the property. On the right side of the property is a nursery that will sell plants; in the rear is mulch bins,

grain house and tent to keep rain off the equipment. There would be a backhoe and dump truck. There will be no fertilizer on site.

Mr. Cunningham pointed there is only 10 feet on the sidelines where some parking spaces are located. The applicant needs to furnish the following information: the size of the proposed building, the parking schedule, land uses, site calculations and setbacks.

Mr. Orlandi said his engineer told him he can park right up to the lot line. Mr. Cunningham explained that is not allowed in Walpole per the bylaws.

Mr. Case asked if there were any comments from the public.

Attorney Gerald Blair, represented the Goddard School, 2265 Providence Highway, an abutter to this property. He made a number of points in opposition to the application: side yard variance – there is no hardship being shown. Front setback – approval of this would derogate from the intent of the bylaw. The two houses the applicant is proposing to build on the site are considered dwellings and no dwellings are allowed in a highway business zone. Attorney Blair submitted a copy of the DIS report and pointed out that the property is within the Water Resource Protection Overlay District, which has not been addressed. If cars were allowed to park on this property for extended periods of time, there would be leaching of oil and gasoline into the ground area, also there is a private well located on the property. The existing impervious cover is in violation on the site and has to be removed. There is no Grandfathering because it has not been used for more than 3 years. The proposed 200+ stadium parking spaces on the lot is an obnoxious use, especially considering it is directly abutting the play area in the rear of Goddard School. The proposed tree plantings near the Goddard School line would obscure the ability for the school to be seen from the highway for people intending to enter the property. He referred to Case #12-00 for this site that conditioned there would be no stadium parking on the site because of the abutting residential properties. He requested that the two variances be denied.

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

Elaine McKay, 44 Irving Drive, informed the Board that she is an abutter and can see this property from her back yard. She originally thought this was going to be a nursery, but did not realize there would be almost 200 parking spaces that close to her backyard. She was very concerned about cars parking there into the wee hours of the night.

Mr. Orlandi assured the Board that the model homes will not become dwellings. There will be full utilities and a septic tank for employee use. If the business did not work out, the homes would be removed and the foundations are removable as well. The models are considered retail. The style of home is ordered and then delivered to the customer's site. The model home will be used as his office and showroom. The reason for planting the hemlocks was so that the abutting neighbor would not have to look at the back of the model house. Regarding the stadium parking, there is no proposition they would allow any tailgating or drinking on the property. If there is any litter from the parking, it would behoove him to keep the property clean for the sake of his model home business. During stadium parking he and his sons plan to be on the site, and he was told that he may have to have a police detail.

Mr. Stanton asked how long before an event would he open the parking lot.

Mr. Orlandi said the rules are the parking lot can open not more than 3 hours before and 3 hours after an event. He intends to open the parking lot one hour before the game. The back of the existing building is being used by a parts equipment company, who is looking to rent the front of the building as an office space. Regarding the water resource protection overlay district, he met with Conservation Agent, Landis Hershey, and she did not think wetlands would be an issue.

The requested the following information for the next hearing date: list of uses with square feet, specific parking plans, a statement that he will hire a police officer, and that he and employees will be on site for security during stadium events, specifically how many hours the parking lot will be open before and after events, how do you propose addressing the issues brought before you this evening by the abutters and residence, file with the Conservation Commission regarding the aquifer protection, list the nursery requirements within this zoning district, address the setback for the parking issue, submit a copy of the letter he wrote to the Town Engineer in answer to the issues she has presented him, submit the updated plan to the office by January 25, 2010, and prove the hardship requirements for a variance.

There being no further comments;

A motion was made by Mr. Case, seconded by Mr. Cunningham, to continue the hearing to February 10 at 7:30 p.m.

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

8:00 p.m. – British Beer Company – Case #24-09

Ms. Murphy read the public hearing notice for **British Beer Company**, Case #24-09, with respect to property located at 85 Providence Highway, Walpole and shown on the Assessors Map as Lot No. 29-11, Highway Business District Zone.

The application is for:

A Variance from Section 6.B.1 of the Zoning Bylaws to allow relief of the 50 foot setback with 41 feet proposed.

A Special Permit under Section 5.B.4.q.i of the Zoning Bylaws to allow outdoor seating.

Mike Fallman, British Beer Company, referred to a number of restaurants in the area that have outdoor seating during the summer. Because it is difficult to compete with those places, he is requesting to construct a deck on the front of the building. The reason for building the deck on the front versus the rear of the building is because there are neighbors abutting the property and he wants to be sensitive to their privacy and any potential noise that may come from people seated on the deck. The entrance to the deck would be from inside the building. There will be wait service to the patrons on the deck. He is requested eight (8) tables of 4 seats each, equally 32 seats, plus a couple of Adirondack chairs. There would be no outside music. The hours of operation would be the same as the establishment. There would be no outside lighting, except for rope lighting. Last call is at 12:30.

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

A motion was made Ms. Murphy, seconded by Mr. Cunningham, to close the hearing.

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

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to approve the Variance from Section 6.B.1 of the Zoning Bylaws to allow relief of the 50 foot setback with 41 feet proposed.

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing the deck shall be no closer than 41 feet from the setback as proposed by the applicant.
2. As stipulated by the applicant at the public hearing the addition will be constructed consistent with the plans submitted at the public hearing.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 8C 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 location of the existing building and layout constraints of the interior, the proposed location is the only location where the deck can be constructed; and the location of the deck at the front of the premises is advantageous to the abutting properties in the rear.

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 location of the deck at the front of the building is the least detrimental to the residential area in the rear.

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.

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.i of the Zoning Bylaws to allow outdoor seating.

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

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the hours of operation shall remain the same as the existing permit.
2. As stipulated by the applicant at the public hearing, there shall be a maximum of 35 seats on the deck.
3. As stipulated by the applicant at the public hearing, there shall be no outside music.
4. As stipulated by the applicant at the public hearing, outdoor service shall be at the tables only.
5. 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 has met the requirements under Section 3G 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 in that houses in the immediate neighborhood have similar structures.

- 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.

There being no further business, the meeting was closed at 10:30 p.m.

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on April 14, 2010.