

The May 23, 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 (not present)

Matthew Zuker, Associate member

7:00 p.m. – Medical Management Int. – Case #13-12 (SP 5B14)

Ms. Murphy read the public hearing notice for **MEDICAL MANAGEMENT INT., Case #13-12**, with respect to property located at 50-100 Providence Highway, Walpole and shown on the Assessors Map as Lot No. 29-15, 21-10, 29-14, Highway Business Zone.

The application is for:

A Special Permit under, but not limited to Section 5.B.1 (Use Table) 4. (Business):s (5.B.1.4.s) of the Zoning Bylaw to allow an animal or veterinary hospital within PETSMART at 90 Providence Highway, Walpole, MA. As shown on a plan entitled “PRE-DESIGN APPROVED PLAN”, PETSMART, STORE #2299, Walpole, MA” as may be amended.

Attorney Philip Macchi, II, represented the applicant and submitted a Memorandum of Support explaining the request. The retail store is allowed and the animal hospital is either an accessory use allowed by right or a special use that requires a Special Permit. The Building Inspector and the Health Agent recommended they come before the Zoning Board for a Special Permit. Banfield operates as an adjunct to PetSmart and cannot stand alone. They expect a maximum of 25 customers a day and would have approximately 8 employees. The parking analysis showed there is an excess of parking spaces. Attorney Macchi went over the plans showing the location within the mall and architectural drawings of the store.

Lou Wihrauch, Field Manager, explained there will be two doctors and 6 paraprofessionals. There are a number of other facilities in the area. All the necessary medical waste will be stored properly and taken away by a licensed firm. Pet waste goes into the trash. There will not be a separate entrance; customers will come in through the store. They do not keep pets overnight, but if necessary a cat could stay overnight. When pets are walked outdoors, they clean up after the pets so there is no waste left outside.

Ms. Murphy read comments from the following: Conservation Agent, dated May 3, concerning the prevention of pet waste outside the building getting into the stormwater management system; Town Engineer, dated May 4, no issues; Board of Health, dated May 9, any hazardous materials need to be registered with the Health Dept. All medical operations will comply with all applicable regulations per state agency governing veterinary clinics in MA.

Mr. Wihrauch informed the Board that all OSHA Regulations would be followed. A request for a sign Variance will be filed in the future.

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

Barbara Beech, 54 Rustic Rd., asked what the emergency hours would be and where would the clients park, i.e., out front?

Attorney Macchi explained that all clients would be going through the store entrance. Mr. Langless, Architect, explained there would be no boarding at all.

There being no further comments,

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.** (Murphy, Stanton, Cunningham, Case, Zuker voting)

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant Special Permit under but not limited to Section 5.B.1 (Use Table) 4. (Business):s (5.B.1.4.s) of the Zoning Bylaw to allow an animal or veterinary hospital within PETSMART at 90 Providence Highway, Walpole, MA. As shown on a plan entitled “PRE-DESIGN APPROVED PLAN”, PETSMART, STORE #2299, Walpole, MA” as may be amended.

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, Zuker voting)

- 1) As stipulated by the applicant, all pet waste outside of the building shall be handled appropriately in order to prevent it from getting into the stormwater management system.
- 2) As stipulated by the applicant, if there are any hazardous materials used and stored at the facilities, the same need to be registered with the Board of Health as applicable.
- 3) As stipulated by the applicant, the animal/veterinary hospital shall be run as presented by the Applicant during the public hearing.
- 4) As stipulated by the applicant, there shall be no boarding of animals on site.
- 5) As stipulated by the applicant, the maximum hours of operation shall be as stipulated at the public hearing, 7 a.m. – 7 p.m. Monday-Friday, 7 a.m. – 6 p.m. Saturday and 7 a.m. – 5 p.m. Sunday.

REASONS FOR DECISION:

The animal or veterinary hospital as a principle use within the Walpole Mall is allowed by way of a Special Permit. If the veterinary use is considered as being accessory to the PETSMART retail use it should be allowed by right. However, within the Zoning By-Law there is no clear guidance

guidance to determine at what point an accessory use which is allowed by right does or does not require a Special Permit. As such, at the suggestion of the Zoning Enforcement Officer and the Health Director, the Applicant applied for this Special Permit in order to comply with the most stringent requirements and eliminate any further questions regarding the interpretation of the provisions of the Walpole Zoning By-Law. As set forth below, the Applicant meets all of the criteria for a Special Permit. In granting this Special Permit the Board intends to allow the Applicant to operate an animal or veterinary hospital as a principle use in the Walpole Mall without any of the limitations associated with accessory uses under the Zoning By-Law.

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 for this Special Permit is situated in the proposed PETSMART store within the Walpole Mall. Over the years the interior of the Mall has been modified, currently the newest modification includes the PETSMART store. The Applicant during the public hearing submitted multiple plans depicting the overall Mall and the relation of the animal or veterinary hospital area to the entire mall. In reviewing the current re-development of the Mall and the Site Plan Review process, it was found that the owner of the Mall was required to engage the services of a traffic consultant, McMahon Associates, to provide an analysis of traffic and parking to the Planning Board. As a prerequisite to the Site Plan Approval the Planning Board required assurance that there would be adequate parking for ALL TENANTS, existing and subsequent. It has been determined that the parking requirement for the entire Mall with the Pad Sites was not only in compliance but in excess of the parking required by the Walpole Zoning By-Law. Additionally, at that time, the Planning Board required a traffic light and the widening of Coney Street as a condition of approval, the same also having been approved by Town Meeting.

Most recently, a parking analysis report update was required to address the removal of an interior corridor and reconfiguring some of the interior space to create two 20,000 square foot retail stores. As such, McMahon provided an additional report which in substance indicated that based on the ITE figures there were still additional spaces available at the

Mall in accordance with Section 8 of the Zoning By-Laws. The PETSMART facility within which Banfield is located is within one of the 20,000 square foot box stores used in the McMahon calculations.

The PETSMART store encompasses the 20,000 square feet as set forth above, of which approximately 1,600 square feet is to be occupied by Banfield. As such, Banfield occupies approximately 7% of the gross floor area of the PETSMART store. In this situation, the Zoning By-Law clearly sets forth the procedure for computing parking in a structure containing a mix of uses in Section 8 Parking Regulations 4. Baseline Parking Calculations B. Said Section 8:4.B states:

For a mix of uses, the Baseline Parking Calculation shall be determined by adding together the individual parking requirements from the Table in Section 8.3. In an individual structure, where a subordinate use occupies less than 25% of the gross floor area of the premises when compared to the predominant use, the calculation for the predominant use shall apply to the entire premises.

As the Banfield operation is significantly less than 25% of the gross floor area as set forth in this section, the predominant use for the entire 20,000 s.f. occupied by PETSMART is “retail”. As such, the parking required by the 1,600 ± s.f space used by Banfield is contained within the calculation of required parking for retail space calculated on the entire 20,000 s.f. occupied by PETSMART.

Furthermore, it is not anticipated that the animal or veterinary hospital will generate any significant increase in traffic. A review of the submitted plans shows that the animal or veterinary hospital is to the rear of the PETSMART store in an area of approximately 1,600 square feet. The animal or veterinary hospital is for the added convenience of the PETSMART customers and is not expected to function independently of the retail operation. The PETSMART store including Banfield actually reduces the retail component of the Mall as stores to the rear of the building have been removed to provide storage and loading dock areas thereby reducing the square footage of the retail area in this part of the Mall from 30,000 to 20,000 square feet. The overall Mall plans also provide for pedestrian traffic allowing patrons safe walking throughout the Mall complex. Therefore, it is respectfully submitted that the vehicular and pedestrian traffic is not of a type to impact the residential neighbors. Again noting that the animal or veterinary hospital is within PETSMART retail store and that the anticipated traffic after the development of the entire Mall was and has been accounted for during the Site Plan Review process. As such 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 an animal/veterinary use at this location. The facility is to be located to the rear and within the PETSMART retail store. The animal or veterinary hospital is anticipated to employ approximately 8 people consisting of 2 Veterinarians, 4 Para Professionals (nurses/vet tech), 1 Office Manager and 1 Customer Service Coordinator. The estimated numbers of customers each

each day of the week are anticipated as follows: 10-Monday, 15-Tuesday, 25-Wednesday, 15-Thursday, 25-Friday, 25-Saturday and 5-Sunday. As such, the number of employees or visitors will not have any adverse affect to the immediate neighborhood. 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 animal or veterinary hospital within the PETSMART retail store complies with all applicable dimensional requirements. The overall Mall was approved under Site Plan Approval as complying with all dimensional requirements applicable to HB district. Therefore, this criterion 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 Applicant will conform to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government. Further, there is nothing utilized by the animal or veterinary hospital to cause a danger by fire, explosion or emission of wastes. As such, the immediate neighborhood will not be in danger of fire, explosion, emission of wastes or other hazards originating from the site. 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 veterinary 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. The use by the animal or veterinary hospital within the proposed PETSMART 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 Walpole Mall was constructed in the 1970s and after a period of time became somewhat run down. The present owners have upgraded the Mall significantly with the pad sites, landscaping, access/egress points and building facades. The animal or veterinary hospital is within the PETSMART retail store which is located in a part of the original Mall that is currently being upgraded. The Mall itself is along Route 1 is in character with Route 1 businesses and positive to the Route 1 neighborhood. It is acknowledged that to the rear of the Mall is a residential neighborhood, however, during the Site Plan process additional buffering was provided. As such 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.” It should be noted that the proposed animal or veterinary hospital as an adjunct to the PETSMART retail use is compatible with the Zoning District. As this site lies within an HB Zone where retail uses are allowed as of right or by Special Permit, as in this case, there is effective use of the land entirely compatible with the purpose of the Zoning By-Law. Therefore, this condition is satisfied.

CONSISTENCY

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

The Board intends for this decision to allow the applicant to conduct its animal and veterinary hospital operations in the Walpole Mall and that no other Special Permit(s)/Variance(s) are required from this Board.

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

7:30 p.m. – Christopher Matos – Case #14-12 (Var 6C8D)

Ms. Murphy read the public hearing notice for **CHRISTOPHER MATOS, Case #14-12**, with respect to property located at 1 Chicatabut Dr., Walpole and shown on the Assessors Map as Lot No. 35-73, Residence B Zone.

The application is for:

A Variance from Section 6.C.8.D of the Zoning Bylaws to allow construction of a 6 foot privacy fence with a 3 foot setback where 15 feet is required.

Mr. Matos explained that the fence is approximately 5 feet from the property line, it is a 6 foot high fence, it is not on a corner so there is no site distance issue, and it has been up for two years.

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

Thomas Flanagan, 160 Old Post Rd., was concerned because he feels this fence and the adjoining fence destroys the look of the street, and further that the applicant did not apply for a permit. It does not look good from his house when he looks outside.

Mr. and Mrs. Matos explained because of the irregular grade of the property, water puddled in the yard during heavy rains. They removed some trees that were a hazard to the home and leveled the yard. Because it is a very busy street and people throw trash from the cars that end up in their yard, and for safety and privacy, they had a fence installed.

Ms. Murphy asked the applicant if he would be will to install some plantings along the fence to help with the appearance.

Mr. Matos said they would not be opposed to sprucing it up.

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

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

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6.C.8.D of the Zoning Bylaws to allow construction of a 6 foot privacy fence with a 3 foot setback where 15 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, Cunningham, Case, Zuker voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans, dated March 29, 2012, submitted at the public hearing.
2. As stipulated by the applicant at the public hearing, if possible, vegetation along the fence, along the roadway would be appreciated.
3. This Variance shall lapse within one year, 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 soil condition, and the property is a corner lot.

2. *Desirable relief may be granted without substantial detriment to the public good.*
The Board finds that the location of the fence does not cause a site line hazard for traffic or pedestrians and therefore relief may be granted without substantial 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 relief 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.

7:45 p.m. – Andrew and Heather Nixon – Case #15-12

Ms. Murphy read the public hearing notice for **ANDREW AND HEATHER NIXON, Case #15-12**, with respect to property located at 2 Wompatuck Rd., Walpole and shown on the Assessors Map as Lot No. 35-74, Residence B Zone.

The application is for:

A Variance from Section 6.C.8.D of the Zoning Bylaws to allow construction of a 6 foot privacy fence 3.0 feet within the 15 foot side yard setback requirement.

Heather Nixon explained that the fence has been up since October. They had their property landscaped and when the fence was installed they ran into a lot of rock. They are on a corner lot, it is a very busy street and the fence was installed in order to allow their two children to have a safe area to play in. The fence is set back from the corner for sight distance safety.

Ms. Murphy asked if they would be willing to install some plantings, possibly hedges.

Mr. and Mrs. Nixon said they would.

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

Mr. Flanagan, 160 Old Post Rd., voiced the same issues as with the fence in the previous case.

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

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

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a Variance from Section 6.C.8.D of the Zoning Bylaws to allow construction of a 6 foot privacy fence with a 3 foot setback where 15 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, Cunningham, Case, Zuker voting)

CONDITIONS:

4. As stipulated by the applicant at the public hearing, construction shall be pursuant to the plans, dated March 29, 2012, submitted at the public hearing.

5. As stipulated by the applicant at the public hearing, if possible, vegetation along the fence, along the roadway would be appreciated.
6. This Variance shall lapse within one year, 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.

4. *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 soil condition, and the property is a corner lot.

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

The Board finds that the location of the fence does not cause a site line hazard for traffic or pedestrians and therefore relief may be granted without substantial detriment to the public good.

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

The Board finds that relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.

8:00 p.m. – Stavroula Bregianos – Case #16-12

Ms. Murphy read the public hearing notice for **STAVROULA BREGIANOS, Case #16-12**, with respect to property located at 754 Main St., Walpole and shown on the Assessors Map as Lot No. 26-260, Limited Manufacturing Zone.

The application is for:

A Special permit under Section 5.B.4.n of the Zoning Bylaws to allow a tailoring and dressmaking and a collection station for laundry and cleaning.

Ms. Bregianos explained that she has been a dress maker for over 20 years at a cleaners and is looking to open up her own shop. It would be convenient for those customers to have a pick up and drop off laundry service. There would be a couple of racks to hang clothes on, some sewing machines, and a dressing room. The hours would be 8 a.m. to 5 p.m., five days a week, unless it gets busy and then she would stay open until 6 p.m. She will apply for a sign permit.

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

Mr. Flanagan said he has known Ms. Bregianos and spoke on behalf of her work ethic and character.

Mike Flaherty, Chairman of the Chamber of Commerce and owner of a local cleaners, was concerned about there being another dry cleaners in Walpole. There are seven in town now and he felt it would take away from the existing businesses.

Ms. Bregianos said to just relay on the sewing would be risky, the two businesses go together, a one stop kind of thing.

Mr. Lee, Poly Cleaners, has been tailoring for 10 years and just bought his business in January and was concerned about another tailoring business coming into Town.

Ms. Murphy commented that the Board cannot refuse a permit based on other businesses in Town.

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

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

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant Special Permit under Section 5.B.4.n of the Zoning Bylaws to allow a tailoring and dressmaking and a collection station for laundry and cleaning.

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, Zuker voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the portion of the structure, as shown on the plan submitted at the public hearing, shall be used as a tailoring and dressmaking, and a collection station for laundry and cleaning.
2. 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 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 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.

DISCUSSION

Wal-Mart – Case #10-12 & 11-12

Ms. Murphy read an email from Kathy Kem, BRR Architecture, Inc., informing the Board that the application requested a total of 201.9 square feet, which is correct, however when she did the breakdown of the sign sizes she put the wrong square footage for the reduced sign of the Outdoor Living. She wanted to know if this will affect the decision. The sign company will be applying for sign permits in the near future.

After discussion:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to accept the changes as noted in the email dated May 23, 2012 because there is no material change.

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

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

Daniel J. Cunningham, Jr.
Clerk

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Minutes were approved on September 12, 2012.