



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

Zoning Board of Appeals
John Lee, Chair
Drew Delaney, Vice Chair
Robert Fitzgerald, Clerk
David Anderson, Member
Judith Conroy, Member
Timothy Hoegler, Assoc. Member
Mark Major, Assoc. Member

MINUTES
WALPOLE ZONING BOARD OF APPEALS
MARCH 6, 2024

Present: John Lee (Chair), Drew Delaney (Vice Chair), Judith Conroy, David Anderson, Tim Hoegler and Mark Major

Absent: David Anderson and Robert Fitzgerald

Also Present: Patrick Deschenes, Community and Economic Development

Mr. Lee called the meeting to order at 7:03 P.M.

Case No. 24-2, Scott Henderson, 8 Pilot's Way, Special permit under Section 12.3.C. of the Walpole Zoning Bylaws for the modification to a preexisting nonconforming one-family dwelling that exceeds the impervious surface requirement for a residential use within the Water Resource Protection Overlay District.

Case No. 24-2 opened at 7:03 P.M.

Scott Henderson, project engineer, appeared before the Board. He proposed two additions to the existing home which would increase the impervious surface area beyond 15% of the property's area. Anything beyond the 15% impervious would require a Special Permit as the property was located within the Water Resource Protection Overlay District. Based on the existing conditions, approximately 3,000 sqft of impervious surface area could be added by right, however the proposed plan exceeded the limit by roughly 950 sqft. The proposed mitigation of two roof drywell systems could handle over 1800 sqft of stormwater runoff which, was nearly double what was required. Mr. Henderson noted an Operation & Maintenance plan had also been submitted. Mr. Lee confirmed mitigation totals with Mr. Henderson.

Ms. Conroy commented that the rear of the property had a steep grade with a retaining wall. She asked if that was taken into consideration on the plans regarding potential runoff. Mr. Henderson said that was not considered as he focuses on roof runoff, all of which would be clean and mitigated to handle more runoff than required. The grades of surrounding properties flowed onto the lot, and the added mitigation would result in a net improvement to the front of the lot and the street.

Mr. Lee asked if the concrete paver patio was impervious. Mr. Henderson said the patio was calculated as impervious in the existing and proposed plans. Mr. Lee asked if water could somehow pass through the pavers. Mr. Henderson said it was possible, but to be safe he considered them to be impervious.

Keith Zive, 4 Pilot's Way, had no opposition to the proposed plans, however asked what would happen if a deviation from the plans was needed. Mr. Lee explained that the approved plans would be cited in the decision. Mr. Lee followed up with a brief overview of the modification process.

Mr. Lee read department comment letters into record and noted that the Town Engineer's comments should be conditioned within the decision.

No additional concerns were raised.

Motion: by Ms. Conroy seconded by Mr. Delaney to close the public hearing.

Motion: carried 5-0-0 (Lee – aye; Delaney -aye; Conroy -aye; Hoegler – aye; Major - aye)

Motion: by Ms. Conroy seconded by Mr. Delaney to grant the Special Permit with standard conditions as well as two additional conditions from the Town Engineer’s letter.

Motion: carried 5-0-0 (Lee – aye; Delaney -aye; Conroy -aye; Hoegler – aye; Major - aye)

Case No. 22-11, Wall Street Development Corp., 9 & 15 Pinnacle Drive (Map 19, Parcels 182 & 183), Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B, Sections 20 through 23, as amended, to allow for the construction of twenty-eight (28) homeownership, non-age restricted, condominium townhouses. (Continued from January 3, 2024)

Case No. 22-11 opened at 7:19 P.M.

Ms. Conroy recused herself.

Mr. Petrozzi appeared before the Board. He explained that over the past few months he had been discussing the option of a less dense 40A project however an agreement had not been reached with the neighbors. He asked that the Board allow another continuance so he could finalize an agreement with the neighbors and potentially present a less dense project under 40A.

The Board worked with the applicant and staff to establish future meeting dates. The applicant agreed to an extension of time.

Motion: by Mr. Delaney seconded by Mr. Hoegler to continue the public hearing to May 1, 2024 and an extension of time until June 30, 2024.

Motion: carried 4-0-0 (Lee – aye; Delaney -aye; Hoegler – aye; Major - aye)

Case No. 22-10, Wall Street Development LLC, with respect to the property located at Darwin Lane (Map 42, Parcels 240 & 227-13) for a Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B, Section 20 through 23 as amended, to allow the construction of twenty-eight (28) homeownership, non-age restricted, condominium townhouses in six (6) buildings on approximately 3.44 acres. (Continued from January 3, 2024)

Case 22-10 opened at 7:29 P.M.

Ms. Conroy recused herself.

Mr. Petrozzi appeared before the Board. He said that since the last meeting he submitted a lot of new materials and wanted a full review conducted by Peer Review. The email that Mr. Reardon provided as a review was not sufficient in Mr. Petrozzi’s opinion.

Mr. Lee asked how the issue of impervious coverage be resolved. This concern was repeatedly expressed by the Board and Peer Review. He said that unless a plan was submitted with lower impervious coverage, the Board had limited options. Mr. Petrozzi felt the project was in compliance with State and Local regulations and did not believe the plans needed to be revised.

Mr. Petrozzi added that the State parameters for 400ft from the wellhead and this project is beyond that rule. He said that Mr. Reardon's comments were only opinion based and he did not feel that he was qualified to make those interpretations.

George Pucci, Town Counsel, said it was the applicant's right to disagree, however if there is no new information that will be provided, the Board needed to close the public hearing and vote.

Mr. Petrozzi requested a complete review of the plans from Mr. Reardon, including an updated list of items that were not addressed. Mr. Deschenes understood, but noted that Mr. Reardon's email included many of the concerns that had been expressed repeatedly.

Mr. Petrozzi said that other Towns have fully developed areas surrounding wellheads.

Attorney Pucci reminded the Board that all testimony could be referenced in the decision.

Dennis Murphy, attorney for Darwin Lane abutters, explained to the Board that there was no legal letter that said the project was in compliance. He argued that the land was currently vacant and to allow for a 300% increase in impervious surface area would be detrimental. If the project could not comply with local regulations, then it would not comply with State regulations. He referenced a Town Aquifer Protection Study from 1983 which noted that priority #1 was to purchase the parcel north of well #5 and south of Common Street. As recently as 2019, the Sewer and Water Commission tried to purchase the property.

Scott Horsley, Water Resources Consultant hired by Darwin Lane abutters, reviewed the applicant's letter from NGI and revised plans. The project, by comparison, was almost as dense as what would be allowed in the City of Boston. He believed that comments made by Mr. Petrozzi were misleading. In review of the plans, there was some compliance with the State regulations, however the focus was on the local regulations. Mr. Horsley noted the applicant had not addressed the last local provision which was to demonstrate and certify there will be no degradation to the water supply. There was reference to this provision in the NGI letter, however there was no modeling, calculations or evidence to support that the project met the provision.

Mr. Horsley said the two main items that were missing from the NGI letter were a lack of meaningful analysis of impervious impact and no enhanced treatment to support the impervious area. He added that the test pits were done in November which was a dry time of year. He noted that the Walpole Board of Health expressed concerns and Mr. Reardon's email was sufficient. MA DEP also supported the Town's opinion.

Judy Conroy, 455 Elm Street, (recused from the hearing, but spoke as a citizen and not as a Board member) read comments from the Water and Sewer Commission which expressed concerns over the development of land so close to the wellhead. In 2021, at a joint meeting with the Water and Sewer Commission, Middle School Committee and Select Board, eliminated an area of Robbins Road from the construction of a middle school 1,200 feet from a wellhead. She explained that the proposed middle school was three times as far away as the Darwin development and there was still a large local concern. Under 40B, the Zoning Board was to act as all Board and Committees, with the exception of Board of Health. Ms. Conroy asked that the Board act as Water and Sewer Commissioners and oppose the project.

Joe Parlon, 1165 Main Street, was very concerned over the possibility of dirt being trucked into the site via the woods. Mr. Lee asked Mr. Petrozzi to explain potential trucking plans. Mr. Petrozzi said that idea came from Mr. Reardon and was not his intention.

Mr. Parlon said the Zoning Board represented the residents and needed to uphold the greater good. The project threatened the water supply and was against the project as he felt the applicant's financial gains were at the expense of the residents.

Brian Canavan, 1288 Washington Street, urged the Board to close the public hearing and deny the project. He feared the more time past, the more the applicant would try to justify the project.

Mr. Petrozzi asked for a complete review by Mr. Reardon in advance of the next hearing.

Motion: by Mr. Delaney seconded by Mr. Fitzgerald to continue the public hearing to April 3, 2024 as well as grant an extension of time to May 30, 2024.

Motion: carried 4-0-0 (Lee – aye; Delaney -aye; Hoegler -aye; Major - aye)

Minutes

Motion: by Ms. Conroy seconded by Mr. Hoegler to approve the minutes from February 26, 2024.

Motion: carried 5-0-0 (Lee -aye; Delaney-aye; Conroy -aye; Hoegler- aye; Major -aye)

Board Business: 55 Summer Street

Mr. Major recused himself.

Mr. Deschenes explained that the Board previously signed the acknowledgement of the regulatory agreement for the single family homes. As the project had been modified, the Board needed to acknowledge the regulatory agreement for the rental units.

The Board expressed concern over language found in the Term section. They thought the language was not clear and worried the affordable units would not remain affordable after 30 years which was referenced in the section. Mr. Deschenes explained that the monitoring agreement with the State is a 30 year period, after which point the Town would be responsible for monitoring units. He explained there were regional groups that could monitor the units on behalf of the Town.

Mr. Pucci said he was not familiar with the agreement, however trusted that his colleague's review of the document and was comfortable with the Board signing the document.

The Board was uncomfortable with the language and wanted Attorney Kwesell to give an opinion on the language.

Enter of Executive Session

Motion: by Mr. Hoegler seconded by Mr. Delaney to enter into Executive Session for the purpose of discussing strategy with respect to the Housing Appeals Committee decision in the Matter of Wall Street

Development Corp., v. Town of Walpole Zoning Board of Appeals, No, 2021-04, for a Comprehensive Permit application located on Dupee Street, known as Diamond Hill Estates, votes may be taken.

Motion: carried 4-0-0 (Lee -aye; Delaney-aye; Hoegler -aye; Major – aye)

The Board entered into Executive Session and adjourned the meeting in Executive Session.