



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

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

**MINUTES
WALPOLE ZONING BOARD OF APPEALS
April 20, 2022**

Present: John Lee (Chair), Drew Delaney (Vice Chair), Robert Fitzgerald (Clerk), Judith Conroy (Associate Member), Timothy Hoegler (Associate Member)

Absent: Mary Jane Coffey, David Anderson

Also in attendance were Patrick Deschenes (Community & Economic Development), Stephen Natola (Community & Economic Development)

Mr. Lee called the meeting to order at 7:01 P.M. and read the public hearing notice.

Case No. 22-1, 173 High Plain Holding, LLC, 173 High Plain Street, Special Permit under Section 5-B.1.3.G of the Zoning Bylaws to allow for a three-story, ten-unit, mixed-use residential development within the Business (B) Zoning District. (Continued from April 6, 2022)

Public Hearing started at 7:02 pm

Mr. Lee stated that the applicant has requested a continuance until May 4 and an extension until June 1

Motion by Mr. Delaney and seconded by Mr. Fitzgerald to allow the applicant to continue their public hearing and extend their application.

The Motion carried 3-0-0 (Lee-aye; Delaney-aye; Fitzgerald- aye).

Case No. 22-4, Thomas J. Powers, 132, 136, 140, Washington Street, Special Permit under Section 5-B.1.3.G of the Walpole Zoning Bylaws to allow for a three-story, six-unit, mixed-use residential development within the Business (B) Zoning District at Washington Street and Chestnut Street, Assessors Map Lot 20-32.

Public Hearing started at 7:03 pm

Mr. Lee stated that the applicant has requested a continuance until May 18 and an extension until June 1

Motion by Mr. Delaney and seconded by Mr. Fitzgerald to allow the applicant to continue their public hearing and extend their application.

The Motion carried 3-0-0 (Lee-aye; Delaney-aye; Fitzgerald- aye).

Board Business: Cedar Edge Cedar Crossing - ANR Plan endorsement as a result of approved Comprehensive Permit Waiver

Discussion started at 7:04 pm

Mr. Lee stated that the applicant has asked the ZBA to endorse an ANR Plan for the Summer Street 40B project. This action was approved within the waivers for the Comprehensive Permit process and was necessary to separate the lot into two lots. One lot for the ownership units and the other lot for the rental units. Mr. Lee stated that Attorney Amy Kwesell, Town Counsel, has stated in a letter to the Board that as a result of the Comprehensive Permit, endorsement of the ANR Plan fall to the ZBA.

Mr. Fitzgerald raised the question about the ZBA sitting for the Planning Board. Noted the difference between State and Municipal jurisdiction regarding wetland bylaw administration. Noted that state statute allows the ZBA to stand in for the Planning Board in this instance. Town Counsel's opinion addressed Mr. Fitzgerald's concerns regarding board jurisdiction.

Mr. Lee noted this is his first instance where the ZBA has to create an ANR due to a 40B. Referenced Falmouth Hospitality v. Falmouth ZBA, a case referenced to the board by Town Counsel.

Mr. Fitzgerald wondered if the Registry of Deeds would accept an ANR signed by the ZBA.

Ms. Conroy stated she wasn't part of the Cedar Edge Cedar Crossing 40B application. Questioned why the applicant is asking the Board for an ANR.

Mr. Deschenes stated that the applicant received waivers to construct the two lots before the Board as part of the Comprehensive Permit. The Comprehensive Permit superseded the regular process in this situation.

Ms. Conroy questioned why the ANR needs to be approved now and why the typical ANR procedures - timestamps, submission to town clerk, application - weren't being followed. Ms. Conroy questioned why there are no requirements with this application similar to a typical ANR application.

Mr. Deschenes explained this isn't a typical ANR and that through the Comprehensive Permit process, the Board had already approved the creation of the two lots and that at this stage the applicant was looking for endorsement in order to record the approved action. Mr. Deschenes addressed Town Counsel's letter which stated that the Comprehensive Permit is controlling in

this situation and supersedes the local process. Mr. Deschenes stated that this is not a new application, it is going forward with the prior Board approval and waivers.

Mr. Lee mentioned that there is no fee for this ANR because the Comprehensive Permit fee covers any fee.

Ms. Conroy explained that the applicant would have plans showing their property lines and questioned if deeds and plans have already been filed.

Mr. Deschenes stated that the plan has already been approved by the board. The applicant is responsible for proper filling with the registry of deeds. Mr. Deschenes read the signature box and the accompanying text for this unique ANR process.

Ms. Conroy hoped the board would get their questions answered and desired to see the board not take any harmful actions to themselves or the public.

Mr. Lee summarized that the Board is tasked with taking what has already been approved by the board and putting an ANR stamp on it.

Mr. Fitzgerald confirmed that the applicant's intentions were always to create two lots, one for homeownership and the other for rental units.

Ms. Conroy questioned the application and the applicant's needs for the ANR.

Mr. Deschenes explained that the applicant needs the ANR in order to record the creation of the two lots pursuant to the Comprehensive Permit's decision, and in order to move their project forward.

Ms. Conroy asked if the signature block on the plan is the same language as that found on a typical ANR through the Planning Board. Mr. Deschenes explained that the language in the signature box is specific to this situation and is controlled by the Comprehensive Permit.

Ms. Conroy suggested the board put all the necessary language to comply with the ANR process on the plan.

Mr. Lee noted the five regular members should sign the plan.

Mr. Delaney questioned if Safe Harbor is affected by this ANR plan. Wondered the motives behind having the ANR plan endorsed now, wished the applicant could be here to explain their motives. Mr. Deschenes stated that the ANR Plan has no connection with the Town's Safe Harbor standing.

Ms. Conroy stated that she felt as though the ZBA shouldn't have to endorse the plan and the responsibility is on the applicant. Doesn't feel comfortable with signing the plan.

Mr. Fitzgerald read from Falmouth Hospitality, LLC, Housing Appeals Committee Case No. 201711 and concluded from the case example that the ZBA couldn't force the applicant to go to another Board, since the ZBA was supposed to handle it through the Comprehensive Permit.

Mr. Lee asked to send the plan back to the applicant and remove the words "ANR" and replace with "Plan of Land" and including the verbiage from the Planning Board's ANR stamp.

Ms. Conroy asked if the decision references an ANR. Mr. Lee said the decision specifically doesn't reference an ANR. Ms. Conroy wished the applicant could have sent a representative considering the size of the project.

The Board chose not to endorse the plan at this meeting.

Minutes Review: 3/16/2022

Agenda item began at 7:44 pm

Motion by Mr. Delaney to approve minutes for the March 16, 2022 Meeting, seconded by Mr. Fitzgerald.

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

Minutes Review: 4/6/2022

The Board took no action on the April 6, 2022 minutes.

Adjournment:

Motion by Mr. Delaney to adjourn, seconded by Mr. Fitzgerald.

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

Meeting adjourned at 7:47