



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

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

**DECISION- WALPOLE BOARD OF APPEALS CASE NO. 23-15**

**APPLICANT**

Kathleen Watson and Kevin Plunkett

**LOCATION OF PROPERTY INVOLVED:**

11 Pilot's Way  
Walpole Assessors Map 26, Parcel 239

**APPLICATION:**

An ADMINISTRATIVE APPEAL of the Zoning Enforcement Officer's decision that the citing of propane tanks at 11 Pilot's Way did not fall under Section 6: Dimensional Regulations: Table 6-B.1/Residence B/Minimum Side Yard setback/15 ft. Complaint #23-16.

**NOTICE OF HEARING:**

Pursuant to Massachusetts General Laws, Chapter 40A, Sections 8 and 11, notification of a public hearing for Case 23-15 was advertised on April 27, 2023 and May 4, 2023 in a newspaper of local circulation (*Hometown Weekly*). The language of this public hearing notice was as follows:

**Town of Walpole**  
**Zoning Board of Appeals**

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** in the **MAIN MEETING ROOM** of Walpole **TOWN HALL** on **MONDAY, MAY 15, 2023 at 7:00 P.M.** on an Application from **Kathleen Watson and Kevin Plunkett (of 7 Pilots Way)**, **Case #23-15** with respect to the property located at **11 Pilots Way, Walpole, MA**, within the Residence B (RB) Zoning District.

The Appellants have requested an Administrative Appeal from action taken by Building Commissioner, Jim Crowley, with respect to his decision that the citing of the propane tanks at 11 Pilot's Way did not fall under Section 6: Dimensional Regulations: Table 6-B.1/Residence B/Minimum Side Yard setback/15 feet. Complaint #23-16.

All are invited and encouraged to review the plans prior to the public hearing. This can be done by accessing the ZBA – Current Applications page on the Town Website ([www.walpole-ma.gov](http://www.walpole-ma.gov)) or by emailing Lauren Michalski, Plan Reviewer, at [lmichalski@walpole-ma.gov](mailto:lmichalski@walpole-ma.gov).

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**BACKGROUND AND DELIBERATION:**

On March 4, 2023, the appellants filed complaint #23-16 with the Building Commissioner stating that two 420 pound propane tanks located at 11 Pilot's Way were within five (5) feet of the property line at 7 Pilot's Way. They argued that although the Commonwealth of Massachusetts regulates propane tanks, the Walpole Zoning Bylaws also regulates the placement of tanks. Under section 6-B.1: Table of Dimensional Regulations, there were setback guidelines for structures and tanks. They felt as the Walpole Zoning Bylaws were more stringent, they would supersede the regulations per the Commonwealth of Massachusetts.

Building Commissioner, Jim Crowley, conducted an inspection at 11 Pilot's Way on March 6, 2023 and noted the tanks were regulated under NFPA 58.

On March 14, 2023, Mr. Crowley communicated to the applicant that after the Fire Department conducted their own inspection, the tanks were only 125lbs which meant that under Fire Code and NFPA 58 they did not have to comply with any setback requirement and they could stay where they were.

The Building Commissioner responded further to this Complaint on March 26, 2023, in which he stated the tanks fall under NFPA 58 and not the Walpole Zoning Bylaws. He advised the applicants to appeal to the State Fire Marshal. The applicants appealed this decision formally to the Zoning Board of Appeals. The application was accepted by the Town Clerk on April 12, 2023. Additionally, the applicant submitted a letter to grant the Town an extension of time to open the public hearing more than 30 days after the appeal was submitted.

A hearing before the Board was scheduled and opened on May 15, 2023. Testimony was heard from applicants, Kathleen Watson and Kevin Plunkett of 7 Pilots Way; Deputy Building Commissioner Bob Dougan; Daniel Shea, 11 Pilots Way homeowner.

At the May 15, 2023 public hearing, the hearing was opened, closed, and the matter at hand was deliberated and voted upon. The members who were present, deliberating, and voting:

John Lee, Chairman  
Drew Delaney, Vice Chair  
Robert Fitzgerald, Clerk  
David Anderson, Member  
Judith Conroy, Member

The Board's deliberation focused on the interpretation of the Zoning Bylaws definition of "structure" and the applicability of a propane tank as defined within this complaint fitting that definition of a "structure". If the Board found that the tank did fit the definition of a "structure" it would need to comply with Zoning Bylaws Section 6: Dimensional Regulations: Table 6-B.1/Residence B/Minimum Side yard setback/15 feet. According to Section 14 of the Zoning Bylaws, the definitions of "structure" is "[a] combination of materials for permanent or temporary occupancy of use, such as a building, bridge trestle, tower, framework, retaining wall, tank, tunnel, tent, stadium, reviewing stand, platform, swimming pool, shelters, piers, wharves, bin, fence, sign, gasoline, pumps, recreational courts, or the like."

Deputy Building Commissioner, Bob Dougan, explained that the definitions in this section of the Bylaw were intended to apply to "large scale" versions of the items listed in the definition, meaning tanks were interpreted as an industrial or commercial use. He further explained the appellant's claims that the propane tanks could be interpreted as a tank or structure within the bylaw derogated from the intent of the Bylaw.

Deputy Commissioner Dougan presented reasoning, on behalf of Commissioner Crowley, for not considering the propane tanks associated with the in-ground pool be considered a structure. He stated that many other common items found on properties (i.e. mail boxes, recycling bins, fences, etc.) are often located within property setbacks. Using the Appellant's argument these could be interpreted as structures. If that were the case, they would have to be subject to large setbacks which would be unrealistic to the use of said items. Deputy Commissioner Dougan explained that it was the role of Commissioner Crowley to act as the Zoning Enforcement Officer to interpret the meaning of said Bylaws. As Commissioner Crowley did not believe the propane tanks were structures within the scope of the term "tank" within the definitions section of the Bylaw, he deferred to the Fire Department and the regulations found within NFPA 58.

Mr. Fitzgerald asked Deputy Commissioner Dougan whether, even if the tanks complied with applicable NFPA requirements, the tanks would still need to comply with requirements of the Zoning Bylaw to the extent applicable. Deputy Commissioner Dougan agreed that NFPA requirements and the Zoning Bylaw requirements are independently enforceable requirements.

Kevin Plunkett, applicant of 7 Pilot's Way, said two large tanks were installed and were covered by a tarp. Once the tarp was removed, he believed the tanks were roughly 420lbs. He explained that Commissioner Crowley found them to be 125lbs which Mr. Plunkett believed was implausible and did not agree with the Commissioner's ruling. Mr. Plunkett discussed his disagreement with the Commissioner's ruling on the definitions of tanks and structures. He believed unless there was a specific exemption for the propane tanks used, the more stringent Bylaw supersedes. In this case, Mr. Plunkett felt the Walpole Zoning Bylaws were more stringent.

Daniel Shea, 11 Pilot's Way, spoke as the homeowner of the property in question. He explained that the tanks were placed at the recommendation by the pool company that has been in business for several decades. He added that the Building Department and Fire Department had signed off on the location of the tanks.

Mr. Delaney asked how the tanks were installed. Mr. Shea said they arrived on a two wheel dolly. Mr. Delaney believed that proved the tanks were not considered structures.

Mr. Fitzgerald referred the Board to the definition of "structure" in Section 14 of the Zoning Bylaws and noted there was no qualification to the term "tank" or any other item listed in the definition that implied that only "large scale" tanks fell within the definition.

Mr. Lee stated that he understood the appellant's concerns, but found the definition of tanks and structures within this section of the bylaw was intended for a larger scale such as industrial or commercial use. He agreed with the Building Commissioner that these tanks were not structures. He believed that the Building Commissioner correctly interpreted the bylaw.

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#### **VOTE OF THE BOARD:**

**MOTION** made by Ms. Conroy and seconded by Mr. Delaney to uphold the Building Commissioner's ruling and deny the administrative appeal.

The motion carried 4-1-0 (Lee-aye, Delany-aye, Fitzgerald-nay, Conroy-aye, Anderson-aye)

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APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

*Robert Fitzgerald*

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Robert Fitzgerald, Clerk

This decision was made on May 15, 2023 and filed with the Town Clerk on May 25, 2023.