

WALPOLE ZONING BOARD OF APPEALS MINUTES OF FEBRUARY 11, 2021

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom on THURSDAY, FEBRUARY 11, 2021 AT 7PM. The following members were present on the Zoom Webinar:

Present: John Lee, Susanne Murphy, Bob Fitzgerald, Jane Coffey, Drew Delaney, Dave Anderson, Ashley Clark, Sean Reardon, Cliff Boehmer, George Pucci, Michael Yanovitch, Judi Barrett

Case No. 20-40, Wall Street Development Corp., Administrative Appeal of the Zoning Enforcement Officer's Violation Notice & Cease & Desist regarding the property at 48 Burns Avenue:

Lee opened the hearing, and stated that we received a multipage document from the appellant, and more time is warranted for town counsel to review. Lee suggested that continuing this hearing to 3/24/21 at 7PM via zoom would allow the board and town counsel to review the recently submitted documents, Murphy motioned to continue the hearing to 3/24/21 at 7pm via zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Case No. 05-20, Wall Street Development Corp., Dupee Street (Map 35; Parcel 380-1), Comprehensive Permit:

Lee opened the hearing, and explained that the projects peer reviewers Sean Reardon of Tetra Tech and Cliff Boehmer of Davis Sq. Architects were present. Reardon- largest change is cul de sac of 80 ft. (where 88 ft. is required). Reardon stated there was a lot of work done on the pond re: overflows and instability. The applicant gave us more detail on the walls, spillway and pond that addressed most of the previously stated issues. Reardon stated that all major issues have been addressed, and minor issues that remain can be addressed without changing the plan. Coffey expressed that she's primarily concerned about the latest submission by the Fire Dept. dated 2/22/21 that depict outstanding issues. Reardon stated that from his review standpoint, there is not much more than he can do, due to the lack of changes made by the applicant, and little, if anything can be done for some of the issues mentioned due to the constraints of the site. Fitzgerald stated that one of the comments related to the drainage basin overflowing to other properties that are at a lower elevation. Reardon stated that originally there was very little detail of how the proposed berm was constructed, and in response to peer reviews earlier comments, they enhanced the designed and had it reviewed by a geotechnical engineer in order to give more definition to the spillway, and in total depicts a much more comfortable design at this time. Murphy asked about the size of the increased storage relating to the size of the basin, in which Reardon stated that the size hasn't increased significantly, however, the outlet control center has been carefully redesigned. Murphy expressed her concern of the area relating to drainage. Rob Truax of GLM Engineering explained that the revised plans reflect a lengthened the spillway approx. 60 ft. and made the basin approx. 6-8 inches deeper. Reardon added that an operation and maintenance plan will be required to be submitted. Reardon suggested placing another basin, Truax stated it may not be possible, however, proposed an inlet instead to keep the water from going down to High Plain St. and place the water in the catch basin. Fitzgerald asked what the elevation of the proposed outlet structure relative to the bottom of the basin and voiced his concern about standing water, in which Reardon stated that there is a requirement that the basin has to be drained within 72 hrs. Clark stated that the board can consult with the Conservation Agent if necessary, however this project did not require a filing with the Conservation Commission. Delaney asked who would monitor the erosion control maintenance on this project, in which the Building Inspector, Mr. Yanovitch stated the Building Dept. would inspect the erosion controls to make sure it is in compliance.

Lee opened the hearing up to the public for comment, which included the following;

Janis Selett: too many units with inadequate parking; traffic; child safety; drainage; overworked utilities; location of manhole

Julie Sullivan: screening for light pollution

Tyler Houle: concern over the number of windows in development relating to privacy; question relating to outstanding comments made by the Fire Dept.

Pucci stated that is has to do with state vs local requirements, and if the Fire Dept. is referring to state requirements, it would trump the local requirements/ standards. Reardon explained that under the state regs. that Pucci referenced, and stated that the Fire Chief. can grant relief.

Tim Cimeno: process of the remainder of the hearing process and final decision moving forward

Jim Doyle: 19 ft. frontage on one of the proposed homes

Jonathan Falls: concern relating to Summit Ave. being used for visitor parking; elevations of homes relating to privacy; recommends mature plants be used for screening

Mark Rice: general safety comments relating to lack of parking and narrow street for Fire Dept. apparatus access

Murphy asked what the breakdown of the bedrooms in the units, in which Mr. Petrozzi stated that he would have to refer back to the application, however believes that it consists of 6 two-bedrooms and 2 three-bedrooms. Bill Scully of Green International Consultants stated that him and the applicant met with the Fire Chief and went over plans, and modified the site design to the Fire Depts. preference of the cul de sac. Scully stated it's an 80 ft. cul de sac in diameter and the plans how that it is sufficient to accommodate a fire apparatus. Scully stated that in terms of comment #2, he is not anticipating the fire apparatus driving down opposing traffic on any of the streets. Lee stated that there are still some issues relating to fire safety that need to be resolved, and recommends continuing the hearing to 3/24/21 at 7 PM via Zoom, and getting a written letter of extension from the applicant through 3/25/21. Lee asked Mr. Boehmer if he had any comments relating to the civil and architectural drawings, in which he stated that the building plans are lacking critical information such as building heights, materials, photometric plans, lack of adequate buffering of the landscape plans, site plan deficiencies. Mr. Yanovitch stated that he reviews many types of plans on a daily basis, and would not be able to accurately make decisions on a 40A or a 40B application based on the plans that Mr. Petrozzi has provided. Mr. Fitzgerald stated that at the next hearing, he would like a member of the Fire Dept. present in order to comment on the project. Murphy motioned to continue the hearing at the request of the applicant to 3/24/21 at 7PM via Zoom, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye. The motion carried 5-0-0.

Case No. 30-36, Nancy Webster, 52 School Street, Administrative Appeal of the Zoning Enforcement Officers Violation Notice & Cease & Desist:

**Susanne Murphy recused herself from this hearing*

Lee opened the hearing, Mr. Yanovitch provided an update from the last hearing on 1/20/21, and reiterated what the key issues were that the board needs to address and make a determination on and stated that the appellant is still in the process of exhausting their administrative remedies. Mr. Pucci brought the board up to date and stated that the board is at the point where they have heard and received extensive information from the appellant and the public, and could potentially close the hearing and make a determination either tonight, or within the near future.

Lee stated that he would like to hear from both counsels relating to a brief summary of what has been happening and submissions provided.

Mr. Corner was present and representing the appellants of KW Steel. Mr. Corner stated that he'd like to address what is currently before the board, and referenced the Cease & Desist Order, noise violation and whether or not the activity by KW Steel is allowed in the LM District. Mr. Corner reiterated Section 5 of the Use Table of the ZBL, specifically P and Q, and reiterated where there were "allowed uses" for the LM District. Mr. Corner also referenced the letter dated 2/17/21, that was sent to the ZBA Office and Town Counsel relating to what the appellant is willing to include as additional precautions of their daily operations.

Mr. O'Connell (abutters Counsel) was present and reiterated that the Board should uphold the Zoning Enforcement Officers Cease & Desist Order to protect the neighbors and abutters. Mr. O'Connell expressed that a Certificate of Occupancy was also not applied for, and stated that they should be required to acquire one.

Lee asked the Board what their thoughts were relating to the question as to whether the appellants activity at KW Steel is an allowed use for the Zoning District, which included the following:

Bob Fitzgerald: reiterated the ZBL's definition of Light Manufacturing and expressed that his interpretation of "light manufacturing" is small projects that include metal and plastic, and reiterated that the activity at KW Steel includes the welding and fabrication of large steel beams, which in his opinion does not fall within the category of "light manufacturing".

Jane Coffey: expressed that she is in agreement with Mr. Fitzgerald, and expressed that she is looking at the issue as what is going on inside the building and outside of the building, and thinks the heavy equipment and trucks that enter and exit the premises are too large to be operating in the residential area.

Drew Delaney: stated he has a difficult time regarding to what he has witnessed himself and what the abutters have witnessed in relation to categorizing the daily operations of KW Steel as light manufacturing. Mr. Delaney expressed he is not comfortable with the current level of safety in the area with relation to the traffic entering and exiting the property.

Dave Anderson: expressed that he cannot imagine that the fabrication of 80 ft. beams falls under the category of "light manufacturing".

John Lee: expressed that he feels that the current use of KW Steel is allowed within the Light Manufacturing District, and stated that the issue is dealing with residential areas being close by the "Light Manufacturing" District.

Mr. Yanovitch mentioned Section 5.C. of the ZBL relating to uses that have to be enclosed and within an entirely enclosed structure, and stated that the use in question is not included under that Section. Mr. Yanovitch further stated that if the Board were to find that the use in question is an allowed use, he will enforce the fact that the use in this District (non-residential) will be undertaken entirely within the building. Mr. Fitzgerald asked what the practice is within the Building Dept. relating to the occupancy permit, in which Mr. Yanovitch stated the Building Dept. looks at the ZBL, and assess whether the new business is a

change of use from the old business vs. the new business, specifically, whether there is an intensification of the use of KW Steel that raised it to a “new use” compared to Denmark Pump.

Mr. Pucci recommended taking a vote to close the public hearing and then vote on whether or not to uphold the Cease & Desist Order. Mr. Lee stated that he will take brief comments from the public, which included the following;

Jack Fisher: does not consider KW Steels activities “light manufacturing”, respectfully requests that the Board deny the Admin. appeal.

Mr. Corner stated that he has an email from Mr. Yanovitch dated 1/25/21 that Mr. Yanovitch made a suggestion that a potential location for KW Steel would be on Renmar Dr. which is also located in a Light Manufacturing District. Mr. Corner also stated that according to the Building Dept. documents, that there has not been a Certificate of Occupancy issued for the property for twenty years.

Mr. O’Connell submits that there has been a substantial change of use from Denmark Pump to KW Steel and that a Certificate of Occupancy should be needed.

Coffey motioned to close the hearing, seconded by Delaney, roll call vote: Coffey-aye; Fitzgerald-aye; Delaney-aye; Anderson-aye; Lee-aye. The vote was 5-0-0, the motion carried.

A motion was made by Ms. Coffey and seconded by Mr. Delaney to deny the appeal of the cease and desist order. Roll call vote: Fitzgerald-aye; Coffey-aye; Anderson-aye, Lee-no; Delaney-no. The vote was three (3) in favor and two (2) opposed resulting in a vote of 3-2 which failed to attain the necessary votes needed for approval of the motion and therefore did not carry. The result of this vote allowed the applicant’s appeal to move forward for a decision on whether to deny or uphold the Cease and Desist Order.

A motion was made by Mr. Fitzgerald and seconded by Ms. Coffey to affirm the appeal and overturn the Cease & Desist. Roll call vote: Fitzgerald-no; Delaney-no; Coffey-no; Anderson-no; Lee-aye. The vote was one (1) in favor and four (4) opposed resulting in a vote of 1-4 which failed to attain the necessary votes needed for approval of the motion and therefore did not carry. The result of the vote upheld the Cease & Desist Order.

Minutes: Fitzgerald motioned to accept the minutes of 2/10/21 with the edits as mentioned, seconded by Coffey, roll call vote: Lee-aye; Coffey-aye; Fitzgerald-aye; Delaney-aye; Anderson-aye. The motion carried 5-0-0.

Fitzgerald motioned to adjourn, seconded by Coffey, the vote was 5-0-0.

The meeting adjourned at 10:20 PM

Accepted 5/5/21