

Zoning Board of Appeals
135 School Street
Walpole MA, 02081

February 20, 2023

RE: Wall Street Development (WSD) - 40B Subdivision Division Modification

1. Proposed water connection to Burns Ave.; See MGL Chapter 187 Section 5, installation of public utility services for abutting owners on private ways authorized.
2. Requested modification to single family use requires minimum area and frontage be met, and *consequently Subdivision Control Law is in play*; See MGL Chapter 40A Section 6 paragraph 4, existing structures, uses, or permits; certain subdivision plans; application of chapter.

First, there is no limiting language referenced within MGL C187 s5 that would apply or not apply to one who abuts only the end of a way and can show no fee interest in the way. WSD has shown no restricting language within deeds whether regarding those on or by a way or in reference to those on or by a sideline. That said WSD does not abut Burns Ave. as shown by latest survey (10-5-2018). Had they, there would be competing fee interests in the way. C187 s5 assumes one seeking its use has fee interest in a private way; a way that has been shown does not exist and is actually two private properties.

For C187 s5 to apply, WSD must show rights of ingress and egress must be created by deed, way must be a private way, and property must be abutting the private way. WSD fails all three.

What may have been an access easement (implied easement by prescription) to one house does not just become a utility easement to 20 single family homes. Wouldn't this be a change in use? Resulting in overburdening an easement that was never spelled out in a deed. Regardless, that home has been abandoned.

Second, the Town of Walpole may grant a waiver to ZBL 6-C-5 (T.O.W. equivalent to the separate lot exemption (i.e. MGL C 40A s 6 para 4). However, can 40B trump 40A? The section allows single and two family uses to be constructed on what have become non-conforming lots assuming they meet the minimum area and frontage requirements (of at least five thousand square feet of area and fifty feet of frontage) set forth in the Statute. The majority of the lots shown on WSD modification do not meet this minimum standard set forth; could set precedent for under-sized lots. I do not see how the ZBA could bypass this Statute, nor how Mass Housing could use C40B to override C40A.

Note: New plan still shows 115.11' instead of 95.38', this changes one 20' boundary line.

Sincerely,

Robert D. O'Leary
776 Washington Street



Enc: MGL C187 s5 (2) + MGL C40A s6 (3)