



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

DECISION - ZONING BOARD OF APPEALS CASE NO. 23-16

APPLICANT:

Daniel Martinez

OWNER OF RECORD:

Daniel Martinez

LOCATION OF PROPERTY INVOLVED:

1245 Washington Street
Walpole Assessors Map: 42-252
Zoning District: Residence B (RB)

APPLICATION:

A **Special Permit** under 12.3.C and of the Walpole Zoning Bylaws to allow for the modification to a one-family dwelling that exceeds the impervious surface requirement for a residential use within the Water Resource Protection Overlay District. The applicant also seeks relief for a **Special Permit** under 5.D.4.A of the Walpole Zoning Bylaws for Earth Removal.

DESCRIPTION OF PROJECT:

The applicant is requesting a Special Permits to allow for the increase of impervious surface area in an Area 1 in WRPOD through alterations of their driveway. The project also involves earth removal as they intend to grade their backyard by leveling it out and reconfiguration of the driveway to allow for usable space.

PUBLIC HEARING:

On May 15, 2023 a public hearing was opened and held in the Main Meeting Room of Walpole Town Hall, 135 School Street, for the purpose of receiving information and voting upon a decision as to the granting of Special Permit. The public hearing was continued to July 17, 2023 and closed on August 21, 2023.

On August 21, 2023 the following members were present and voting:

John Lee, Chair
Drew Delaney, Vice Chair
David Anderson, Member
Judith Conroy, Member
Mark Major, Associate Member

A motion was made by Mr. Delaney, and seconded by Ms. Conroy to approve the **Special Permit** under **Zoning Bylaws Section 12.3.C**, with conditions, for 1245 Washington Street to allow for a modification to a



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

one-family dwelling that exceeds the impervious surface requirement for a residential use within the Water Resource Protection Overlay District based on a plan titled "Proposed Drive and Grading Plan of Land, in Walpole, Ma" dated December 2, 2022, revised July 31, 2023, prepared by Colonial Engineering Inc., 11 Awl Street, Medway, MA 02053.

The vote was (5-0-0) in favor: Lee-Aye, Delaney-Aye, Anderson -Aye, Conroy-Aye, Major-Aye; therefore, the application for a **Special Permit** is hereby granted,

A motion was made by Mr. Delaney, and seconded by Ms. Conroy to approve the **Special Permit** under **Zoning Bylaws Section 5-D.4**, with conditions, for 1245 Washington Street to allow for the excavation of earth exceeding 100 cubic yards for a residential use based on a plan titled "Proposed Drive and Grading Plan of Land, in Walpole, Ma" dated December 2, 2022, revised July 31, 2023, prepared by Colonial Engineering Inc., 11 Awl Street, Medway, MA 02053.

The vote was (5-0-0) in favor: Lee-Aye, Delaney-Aye, Anderson -Aye, Conroy-Aye, Major-Aye; therefore, the application for a **Special Permit** is hereby granted,

Both approvals are subject to the following conditions:

CONDITIONS:

1. The roadway shall be swept daily.
2. Dust mitigation shall be used daily.
3. Green giant arborvitaes along the eastern side of the lot line and shall be planted at 6-8ft in height.
4. The existing driveway along the rear of the dwelling shall be removed.
5. The Engineering Department shall be notified by the installer prior to installation of the infiltration systems for permitting/inspection
6. The as-built plan shall show the installed infiltration systems.
7. The Engineering Department shall be notified by the installer prior to the installation of loam.
8. The property owner shall obtain a permit to work within the public way from the Engineer Department before any work is done on the site.
9. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Zoning Board of Appeals, Walpole Town Clerk, and Walpole Building Department.



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

DECISION RATIONALE

It is the finding of the Board that the Applicant was able to meet the requirements of both Sections 12.3.C and 5-D.4, in order to allow the requested increase of impervious surface for a residential use within the Water Resource Protection Overlay District, and for the excavation of earth exceeding 100 cubic yard. The Board finds that the proposed project is in character with and follows the intent of the Zoning District in which it is located. Accordingly, the Board has determined that the Special Permits requested are properly applied. The Board make the following findings pursuant to Section 2.2.B.(1) of the Zoning Bylaw:

- (a) Does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested Special Permit;**

Through review, the Board finds that the proposed work at the site adequately addresses the defined use requirements and design standards as specified within each respective section of the zoning bylaws (Section 12.3.C and 5-D.4). Therefore, the Board finds this criterion is satisfied.

- (b) shall not have vehicular and pedestrian traffic of a type of quantity so as to adversely affect the immediate neighborhood;**

The Board finds that the proposed work of earth removal will not result in an adverse impact to the neighborhood relative to vehicular or pedestrian traffic. During exaction trucks moving off site may cause temporary disturbance, however, the property owner is required to seek appropriate permitting through the Town's Engineering Department in order to address any concerns within the public way. Therefore, the Board finds this criterion is satisfied.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

The Board finds that the proposed relief sought is residential in nature and will not result in any new residents, visitors, employees. This specific criterion is not applicable to the relief sought.

- (d) shall comply with the dimensional requirements applicable to the zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The Board finds that the use sought and work to be performed on site will not impact dimensional requirements. Allowable impervious surface within a Water Resource Protection District will be impacted, however the applicant has sought relief under the applicable section of the bylaws, and has designed a system to meet any concerns due to that increased impervious surface. Therefore, the Board finds that this criterion has been met.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**



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

The Board finds that the proposed earth removal is residential in nature and designed correctly. There will not be any danger to the immediate neighborhood or the premises through fire, explosion, emission or wastes, or other causes. Therefore, this criterion has been met.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard as to adversely affect the immediate neighborhood;**

The Board finds that the proposed use is residential. Some noise and dust will be generated during the earth removal process. Nothing proposed by the Applicant will be used, generated, or would otherwise create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard as to adversely affect the immediate neighborhood. In addition, conditions have been placed to ensure the applicant addresses potential dust generated during proposed work. Therefore, this criterion is satisfied.

- (g) shall not adversely affect the character of the immediate neighborhood, and;**

The Board finds that the immediate neighborhood is residential and the proposed earth removal does not adversely affect the character of the immediate neighborhood, nor does the installation of the infiltration system. Therefore, the Board is satisfied that this condition is satisfied.

- (h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the Zoning District in which the premises is located;**

The proposed earth removal and site work on the existing lot, will exceed the impervious surface permitted by right within the WRPOD. However, the proposal meets the standards needed for relief through a Special Permits as defined within the applicable sections of the Zoning Bylaw. The use is also appropriate for the Zoning District in which the premises is located. Therefore, the Board finds that this criterion is satisfied.

In addition to the basic findings listed in Section 2, the Special Permit Granting Authority shall consider the following factors when developing a decision to deny, approve or approve with conditions.

SPECIAL PERMIT USE REQUIREMENTS PER SECTION 12.4.C

- (1) Complies with applicable performance and/or design criteria listed in Section 12.3.C of the Zoning Bylaw**

The proposed drainage system was reviewed by Town Engineering for compliance with State and Local standard. The drainage system was deemed appropriately designed for its purpose.

- (2) Will not, during construction or thereafter, have an adverse environmental impact on any water body or course in the district**

In both during and after construction, the proposed increase of impervious surface will not have an adverse environmental impact on any water body or course in the district.



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

(3) Will not adversely affect an existing or potential water supply.

The increase in impervious surface will not adversely affect any existing or potential water supply. Designs for stormwater mitigation will adequately handle rainfall.

SPECIAL PERMIT APPLICATION REQUIREMENTS PER SECTIONS 5-D.5

An applicant for a Special Permit for Excavation or Filling of Earth shall provide the following plans and information to the Special Permit Granting Authority (SPGA):

A. As determined by the SPGA, all applicable information required for Full Site Plan Review pursuant to Section 13.

This is not applicable to the application.

B. Area and limits of work.

The area and limits of work are identified within the plans submitted dated July 31, 2023.

C. Proposed date of termination.

The project will take approximately two months to complete.

D. Description of excavation method and fate of excavated material including boulders and stumps.

Gravel that is removed from the site will be transported to a facility in Foxboro. Stumps will be transported to a facility in Avon.

E. Hours of operation.

Hours of operation will be 7AM-5PM Monday-Friday and 7:30-3PM on Saturday.

F. Routes of transporting excavated material through the Town.

Trucks will utilize main routes and numbered roads. They will mainly use Washington Street, Common Street and Route 1.

G. Type and location of accessory structure.

This is not applicable for this application.

H. Placement and depth of loam over the area of work.

There will be six inches of loam then hydro seed.

I. Planting plan of the area showing suitable cover, including trees shrubs and grass using non-invasive plantings.

This is shown within the plans submitted dated July 31, 2023.

SPECIAL PERMIT DETERMINATION REQUIREMENTS UNDER SECTION 5-D.6

A. Whether the activity is injurious or dangerous to the public health or safety or harmful to the amenities of the vicinity of the Town.



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

The Board finds that the earth removal activity will not be injurious or dangerous to the public health or safety or the amenities of the vicinity of the Town. Daily mitigation practices will be utilized to ensure dust and debris will not intrude on the public way and proper permitting will be applied for, as conditioned, in order to ensure protection of public infrastructure.

B. Whether the activity requires the transportation of materials over particular public streets on which undue congestion or hazards will be created, or on which undue injury to the roadway surface will be sustained.

The Board finds that excavation at the site will require the transportation of material over the public right of way, however the removal of materials will be contained in trucks that will utilize main streets and numbered routes to avoid congestion. Proper permitting and standard safety practices will be maintained throughout all site work, as conditioned within.

C. Whether the activity shall result in significant negative impacts to the natural environment.

The activity on site should not have any negative impacts to the natural environment. All proposed grading was extensively reviewed to ensure it was properly designed to meet any concerns of the Town.

D. Whether the activity will result in a change of topography or cover disadvantageous to the most appropriate use of the land.

The activity will result in a change to the topography, however it will make the land more usable to the property owner, and limit any negative impact to abutters.

E. Whether the activity will be terminated within one (1) year

The activity will take approximately two months to complete.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant of thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good use".

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority of special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded with the Norfolk registry of



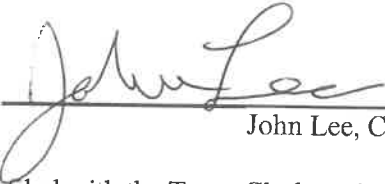
Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

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

deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner on record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.

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 TWENTY 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



John Lee, Chair

This decision was made on August 21, 2023 and filed with the Town Clerk on September 1, 2023

