



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. 23-20**

**APPLICANT**

Lisa Bastianelli

**LOCATION OF PROPERTY INVOLVED:**

41 Forsythia Drive  
Walpole Assessors Map 26, Parcel 63  
Zoning District: Residence A (RA)

**APPLICATION:**

A VARIANCE under Section 6-B.1 of the Walpole Zoning Bylaws in order to reconfigure the previously approved In-Law Suite (ZBA Case No. 22-20) to be within the side yard setback.

**NOTICE OF HEARING:**

This Application is for a Variance under Section 6-B.1 of the Walpole Zoning Bylaws in order to reconfigure the previously approved In-Law Suite (ZBA Case No. 22-20) to be within the side yard setback was advertised on May 18, 2023 and May 25, 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**  
**Public Hearing Notice**

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 **WEDNESDAY, JUNE 7, 2023 at 7:00 P.M.** on an Application from **Lisa Marie Bastianelli, Case #23-20** with respect to the property located at **41 Forsythia Drive, Walpole, MA**, within the Residence A (RA) Zoning District.

This Application is for a Variance under Section 6-B.1 of the Walpole Zoning Bylaws in order to reconfigure the previously approved In-Law Suite (ZBA Case No. 22-20) to be within the side yard setback.

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 September 7, 2022 the Board granted a Special Permit for the construction of an In-Law Suite with conditions, based on a construction plan titled "Residential addition 41 Forsythia Drive, Walpole Ma 02132, dated July 2022", by Berdi Consulting and based on a plot plan titled, "plot plan at 41 Forysthia Drive", dated August 29, 2022 by Neponset Valley Survey Association.

Building Permit BR-22-369 was issued on September 20, 2022 and construction began. During construction, the proposed elevator was relocated within the structure and the proposed deck was shifted to the rear left side of the structure. A roof was placed above the deck.

These changes diverted from the approved Special Permit and from the submitted building permit. The applicant was instructed to either remove the non-compliant roof above the deck, or seek a Variance through the Zoning Board of Appeals. The applicant pursued the option of seeking relief through a Variance.

At the June 7, 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  
Mark Major, Associate Member

During the public hearing, Larry Bastianelli, applicant's father and future occupant of the previously approved in-lawn suite, explained to the Board that during construction the stairs and deck were moved due to safety reasons. However, in error the applicant's contractor constructed a roof over the deck, making it non-compliant with the side yard setback. It was during the inspection that it was brought to their attention that the roof over the deck created a structure which now resulted in a violation of the side yard setback.

Mr. Bastianelli and his family asserted that the roof over the deck should be allowed to stay in its current location. Their reasoning was that the deck served as the only means of egress from the second floor in-law suite and in the event of an emergency, having the deck covered would provide additional safety from the elements for him and his wife.

Mr. Bastianelli also further asserted that there were no abutters on that side of the property as it abuts the train tracks. He stated his reason for hardship was due to safety and the financial cost associated with removing the already installed roof.

The Board affirmed that the applicant had compliant plans to construct the project as it was previously approved. The Board determined that this new request for a Variance was the result of a self-imposed hardship by not following their approved plans, or by seeking a modification to the plans before construction. Mr. Lee stated that the applicant did not meet the traditional standards of a hardship which could be used for justification for zoning relief through a Variance, and encouraged the applicant to seek alternative options to their problem. He added that the applicant had an opportunity to come to the Board prior to making any changes to the plans and this need for a Variance could have been avoided. Mr. Bastianelli explained the only alternative was to remove the already installed roof which would cause him a financial hardship. The Board did not deem that as a viable hardship as it was self-imposed.

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**VOTE OF THE BOARD:**

**MOTION** made by Mr. Delaney and seconded by Mr. Fitzgerald to deny the application for a Variance.

The motion carried 5-0-0 (Lee-aye, Delany-aye, Fitzgerald-aye, Major-aye, Anderson-aye) thereby denying the request of a Variance for the relief sought.

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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 June 7, 2023 and filed with the Town Clerk on June 16, 2023.

