



**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*

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**DECISION - ZONING BOARD OF APPEALS CASE NO. 23-22**

**APPLICANT:**

Anthony Civitarese, Jr.

**OWNER OF RECORD:**

Anthony Civitarese, Jr.

**LOCATION OF PROPERTY INVOLVED:**

0 Sunset Drive  
Walpole Assessors Map: 54-41  
Zoning District: Highway Business (HB)

**APPLICATION:**

A **Special Permit** under 5.D-4 of the Zoning Bylaws for earth removal of 2,280 cubic yards from lots 7, 8 and 9 Sunset Drive.

**DESCRIPTION OF PROJECT:**

The applicant is requesting a Special Permit to allow for earth removal of 2,280 cubic yards from lots 7, 8 and 9 Sunset Drive. The purpose being open storage of materials, supplies, and equipment in a storage yard screened from view as permissible under Table of Use, Section 5-B.1.5(d). In particular, the applicant is proposing to store dumpsters onsite as part of their business.

**PUBLIC HEARING:**

On July 17, 2023 a public hearing was opened and held in the Select Board 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 the requested Special Permit. The public hearing was closed that same evening.

On July 17, 2023 the following members were present and voting:

Robert Fitzgerald, Clerk  
Judith Conroy, Member  
David Anderson, Member  
Timothy Hoegler, Associate Member  
Mark Major, Associate Member

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A motion was made by Ms. Conroy, and seconded by Mr. Major to approve the **Special Permit** under **Zoning Bylaws Section 5-D.4**, with conditions, for 0 Sunset Drive to allow for earth removal of 2,280 cubic yards from lots 7, 8 and 9 based on a plan titled "Proposed Site Plan "Lots 7, 8 and 9 Sunset Drive Plan of Land in Walpole, MA" dated May 30, 2023, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, Ma 02032.



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The vote was (5-0-0) in favor: Fitzgerald-Aye, Anderson-Aye, Conroy-Aye, Major-Aye, Hoegler-Aye; therefore, the application for a **Special Permit** is hereby granted, subject to the following conditions:

**CONDITIONS:**

1. The applicant shall apply to the Conservation Agent for additional permitting, if and as required by law.
2. All work shall be completed no later than December 31, 2023.
3. The applicant, or their engineer, will work with the Town's Engineering Department for design and review of a stormwater infiltration system at the site.
4. 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.
5. The project shall be constructed according to the Proposed Site Plan "Lots 7, 8 and 9 Sunset Drive Plan of Land in Walpole, MA" dated January 30, 2023, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, Ma 02032.

**SPECIAL PERMIT USE REQUIREMENTS PER SECTION 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.**

Not applicable with this application.

**B. Area and limits of work.**

The area and limits of work are identified within the plans submitted titled "Lots 7, 8 and 9 Sunset Drive Plan of Land in Walpole, MA" dated January 30, 2023, prepared by Glossa Engineering, Inc., 46 East Street, East Walpole, Ma 02032

**C. Proposed date of termination.**

All work will be completed no later than December 31, 2023

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



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Excavators and dump trucks will be used to removal material. All excavated materials will go to local processors.

**E. Hours of operation.**

The hours of operation would take place from 7:30 AM – 3:30 PM.

**F. Routes of transporting excavated material through the Town.**

Trucks will remain on numbered roads including routes 27, 1 and 1A to avoid thickly settled neighborhoods.

**G. Type and location of accessory structure.**

The intent of the site is to store construction dumpsters when they are not in use. They will be secured within a fenced in area in the middle of the site.

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

Once the site has been leveled, the area of the lot outside of the fence will be loamed.

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

The site is currently wooded. Aside from the leveling of the lot along Sunset Drive, the existing landscape will remain. No new plantings were proposed as part of the project.

**DECISION RATIONALE**

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-D.6 to allow earth removal at the proposed property. Accordingly, the Board has determined that the Special Permit requested is warranted. Specifically, the Board made 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;**

The Board finds that the proposed earth removal of 2,280 cubic yards complies with all of the criteria of Section 5-D as set forth within this decision. 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 use will increase traffic during the earth removal process in order to process and remove the excess soil, however this increased traffic is only temporary during the



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allotted time needed to grade the site according to the submitted plans. With the applicant utilizing main roads, such as Routes 27, 1, and 1A, this will help to mitigate impacts to general traffic. Therefore, the Board finds this criterion 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 for site work needed towards a commercial purpose allowed by-right within the Highway Business District. Site work will increase workers presence temporarily, while the proposed business itself is specifically for storage only and will not generate a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood. Therefore, the Board finds this criterion is satisfied.

- (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 proposed use is for site work only and will not involve the creation of any new structures. Therefore, the Board finds that this criterion is not applicable.

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

The Board finds that the proposed earth removal will not cause any danger to the immediate neighborhood or the premises through fire, explosion, emission or wastes, or other causes. As a result, 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 commercial in nature. 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. 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 zoning for Highways Business and is commercial in nature. The proposed use does not adversely affect the character of the immediate neighborhood. Therefore, the Board is satisfied that this condition is met.

- (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;**



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The proposed earth removal meets the standards needed for relief through a Special Permit as defined within the Section 5-D 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 Special Permit criteria required for the specific relief sought, which is outlined within Section 5-D.6 of the Zoning Bylaws.

**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.**

The Board finds that after the earth removal process, the site will be used to store construction dumpsters when they are not in use. The proposed use would not pose activity that is injurious or dangerous to the public health or safety or hard to the amenities of the vicinity of the Town.

**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 there will be a significant transportation of materials from the site. However, the applicant has confirmed that dump trucks used to remove materials will travel on numbered routes including routes 27, 1 and 1A to local processing sites, which can withstand large trucking to ensure no undue injury to the roadway surface will occur.

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

The Board finds that proposed activity will not negatively impact the natural environment as the removal will not be lower enough to impact the area's groundwater, and proper stormwater mitigation will be required, as conditioned herein.

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

The Board finds the proposed activity will result in a change to the topography for a portion of the proposed property. Given the purpose of the earth removal is to establish a commercial use on the property, it ultimately is found permissible given the zoning district for which the property is located.

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

The applicant has confirmed the activity of earth removal will be completed no later than December 31, 2023.



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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 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

*Robert Fitzgerald*

Robert Fitzgerald, Clerk

This decision was made on July 17, 2023 and filed with the Town Clerk on July 31, 2023