

Town of Walpole  
Walpole Ma 02081  
Attn: Zoning Board of Appeals  
*Sent via email to Amy Messier and Ashley Clark on November 15, 2020 9:46 pm*

TO: Mr. Chairman, Zoning Board of Appeals  
Zoning Board of Appeals Board Members  
Ashley Clark, Director of Community and Economic Development

November 15, 2020

Ref: *Wall Street Development, Burns Avenue Development LLC*  
*Plan: Amended Site Development Plan A Comprehensive Permit M.G.L. c 40B "The Residences at Burns Avenue"*  
*Walpole Massachusetts, dated April 21, 2020 revised May 21, 2020, revised October 22, 2020*

In reference to the application for Comprehensive Permit under M.G.L. c.40B, *Wall Street Development, Burns Avenue Development LLC; Plan: Amended Site Development Plan A Comprehensive Permit M.G.L. c 40B "The Residences at Burns Avenue" Walpole Massachusetts, dated April 21, 2020 revised May 21, 2020, revised October 22, 2020*, we are submitting information related to our private property being used described in the project above.

Our information has been previously provided to the Town of Walpole, Zoning Board of Appeals, Conservation Committee, the Applicant and those representing the Applicant throughout various projects submitted to the Town of Walpole beginning in 2016/2017 to date, and as described below:

- Applicant's project submitted in December 2016, "Union Square Village in Walpole MA off Burns Avenue"
- The application for Comprehensive Permit under M.G.L. c.40B, The Residences at Burns Avenue, A Residential Condominium Development in Walpole, MA, prepared by: Wall Street Development Corp on February 11, 2019.
- The application for Comprehensive Permit M.G.L. c.40B, Wall Street Development, Burns Avenue Development LLC; Plan: Amended Site Development Plan A Comprehensive Permit M.G.L. c 40B "The Residences at Burns Avenue" Walpole Massachusetts, dated April 21, 2020 revised May 21, 2020, revised October 22, 2020, currently submitted to the ZBA.

***The Applicant fails to meet the requirement, Massachusetts Department of Housing and Community Development, 40B, 760 CMR 56.03 (j) evidence of control of the site (usually a purchase and sale agreement or deed).***

*The ZBA shall consider that the Applicant has not shown ownership or evidence of site control of the project based on two (2) major issues; (a) Campbell private property, and (b) a gap of 20' X 15.11' as shown on the Applicant's plans.*

(a) On the Applicant's plans, *Amended Site Development Plan A Comprehensive Permit M.G.L. c 40B "The Residences at Burns Avenue" Walpole Massachusetts, dated April 21, 2020 revised May 21, 2020, October 22, 2020*, **there is a portion of land that belongs to the Campbell family (private property, 20' X 95.38')**, for which the Applicant does not have ownership, access, or a right of way (deeded or otherwise), over, or right to make improvements on. **It is profoundly flawed to assume that the Applicant has any rights to show Campbell private property as part of this project.**

*Proof of ownership of 31 Burns Avenue, East Walpole MA 02032 is proven by legal deed and survey attached:*

- Deed: # 26950; Book 3109, pages 109-112.
- Survey: Plan of Land 31 & 35 Burns Avenue" dated October 5, 2018 prepared by A.S. Elliott & Associates

Campbell Survey, "Plan of Land 31 & 35 Burns Avenue" dated October 5, 2018 prepared by A.S. Elliott & Associates clearly shows a parcel of land labeled "Remainder of Map 20, Block 139 after Taking for Burns Ave..... Area=1,908 S.F.); dimensions of 20' X 95.38' which is and has been privately owned and maintained for over 68 years by the Campbell Family; has never been used for pedestrian or vehicular traffic. Specifically, the area beyond the Limit of Public Way where the Applicant is proposing access and right of way into the project that is shown over a portion of the Campbell private property.

These facts are supported by a memo dated November 25, 2019 submitted to the ZBA from Ashley Clark, Community Development Director; a document from the office of Mr. George Pucci, representing the Town of Walpole in the prior Burns Avenue 40B project; a memo titled "*Burns Avenue access issues*". *The memo was summarized as follows and is also attached for a complete review:*

*"...In summary, the memo finds that the grant of a G.L. c. 40B comprehensive permit would not create access rights. The memo recommends the ZBA make the specific findings:*

*(1) that the rights of the Developers to use the disputed private way area in the manner proposed in the development plans have not been conclusively established;*

*(2) that, in granting the comprehensive permit, the Board recognizes that the Developers may be at risk of a potential court challenge by a person or persons with standing to contest the Developers' rights to use the disputed private way area; but*

*(3) that it is the Developers' responsibility to ensure that they hold the necessary rights to develop the project as approved prior to proceeding with construction.*

*The Memo recommends that the ZBA clearly state that approval of the comprehensive permit is not intended to either confirm existing private access rights over the disputed private way area or confer new private access rights to use the disputed area.*

*In addition, Staff recommends the ZBA include the following condition: Site control must be demonstrated to Mass Housing's satisfaction..."*

(b) As shown on the Applicant's plan there exists a 20' (wide) X 15.11' (length) "gap" between the Applicants property at 48 Burns Avenue and the end of the "Limit of Public Way". The prior owner of 48 Burns Avenue accessed their single-family home by traveling down Burns Avenue over the 20' (wide) X 15.11' (length) "gap" to enter their property, however, the Applicant's plan fails to identify ownership of this piece of property (the "gap").

We ask the ZBA to recall comments made by Town appointed legal counsel in the prior Burns Avenue 40B project who informed the public and the ZBA that *"...improvements to the land to create access (e.g. widening of the 'road') is a key component of the Comprehensive permit.....the Applicant must show a legal right to make improvements...."*

Without the ability to widen the road and proceed over the "gap", the Applicant cannot proceed with the plans submitted to the ZBA as currently designed without proof of ownership of said properties; described by the Massachusetts Department of Housing and Community Development 40B, 760 CMR 56.03 (j) evidence of control of the site (usually a purchase and sale agreement or deed).

**Access over private property without permission or legal evidenced rights (deed, easement, or, right of way) is a violation of our 14<sup>th</sup> Amendment Constitutional Right.**

Considering our Constitutional Rights are being violated based on the current plans dated October 22, 2020 submitted by the Applicant to the ZBA, we request the ZBA and Town of Walpole to perform due diligence on this matter ensuring the Applicant is not allowed any usage on or over our private property. The ZBA and the Town of Walpole have an obligation to ensure that the application in front of them for approval abides by M.G.L and all other laws. The information we are providing is supported by a legal deed and a stamped, signed, and dated survey performed by A. S. Elliott, Professional Land Surveyor, all of which reside in the Norfolk County Registry of Deeds and are attached for your review. Thank you.

Respectfully,

Christopher Campbell

Cathy Campbell

#### **Attachments**

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|---|---|
| A. Mark McDonnell to Clarence Campbell<br>Clarence Campbell | Book 3109 pages 109-112 dated 8/22/1952<br>Deed 26950 |
| B. Plan of Land 31 & 35 Burns Avenue 10/5/2018              | Plan book 680 page 98 dated 3 /29/2019                |
| C. Memo from Town of Walpole, MA A. Clark                   | November 25, 2019                                     |