

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT
LAND COURT

LAND COURT DEPARTMENT
MISC. ACTION NO.

WALSH BROTHERS BUILDING COMPANY,
INC.,

Plaintiff,

v.

JOHN LEE, SUSANNE MURPHY, ROBERT
FITZGERALD, MARY JANE COFFEY, and
DREW DELANEY as they are the members of
the TOWN OF WALPOLE ZONING BOARD
OF APPEALS,

Defendants.

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) **COMPLAINT** – Ch. 40A, §17 Appeal
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Nature of Action

This is an appeal under Mass. Gen. L. ch. 40A, §17 from a decision (the “Decision”) of the Town of Walpole’s (the “Town”) Zoning Board of Appeals (the “ZBA”), which was filed with the Town Clerk on August 2, 2021. The Decision denied the Plaintiff/Applicant, Walsh Brother Building Company, Inc. (the “Plaintiff” or “Applicant”) a special permit that the Plaintiff sought to allow for the construction of a single-family dwelling (the “Project”) located at 300 Stone Street (Lot 2) Walpole, MA 02081 (the “Property”). In the instant action, the Plaintiff seeks an annulment of the Decision, which is attached hereto as Exhibit VI.

Parties

1. The Plaintiff is a Massachusetts Corporation that was organized on October 9, 1992, and has a business address of 11 Saddle Way, Walpole, Massachusetts 02081.
2. Defendants John Lee, Susanne Murphy, Robert Fitzgerald, Mary Jane Coffey, and Drew Delaney (collectively the “ZBA Members”) are the duly appointed members of the ZBA, and are named in their capacity as members of the ZBA and not individually. All of these Defendants have a mailing address c/o the ZBA of Walpole Town Hall, 135 School Street, Walpole, Massachusetts 02081.

The Property

3. The Property is located in the Flood Plan Protection Overlay District (the “District”), as described in Section 11(1) of the Town of Walpole’s Zoning By-Laws (the “By-Laws”). Exhibit I, Page 1-2.
4. Despite being located in the District, the Property does not have any standing water located thereupon.
5. The water present on the Property derives from a spillway which redirects storm water on to the Property (the “Spillway”). Exhibit II, Page 2, Paragraph 5.
6. The Project was brought before, and received the approval of, the Town’s Conservation Commission (the “ConCom”).
7. Among other things, the ConCom considered the Project’s impact on flooding with respect to the surrounding environment.
8. The Project was brought before, and received an Order of Conditions from, the Department of Environmental Protection (“DEP”). Exhibit III.

9. Among other things, the DEP considered the Project's impact on flooding with respect to the surrounding environment.
10. The Project was reviewed by the Town Engineer for the Town, who commented amongst other things that the Project seemed to meet the requirements of the By-Laws with respect to the District. Exhibit II.
11. The Town's zoning enforcement officer, the building commissioner, expressed support for the Project.
12. The Project was brought before the ZBA for a hearing on December 21, 2020 (the "First Hearing").
13. At the outset of the First Hearing, without having yet heard from the Applicant, a member of the ZBA summarily stated that the ZBA held the standard position that it strongly preferred not to authorize any projects in the District.
14. Without gathering any pertinent information about the Project, and without any discussion of the required standards under the By-Laws generally or with respect to the District, the ZBA voted 3-2 in denying the relief requested by the Applicant (the "Initial Decision"). Exhibit I.
15. The Initial Decision found that all of the special permit criteria under the By-Laws had been met, other than the concerns raised about the Project with respect to the District.
16. The Initial Decision cited the Town Board of Health's lack of support for the Project as a major keystone of its rationale in denying the Project. Exhibit I.
17. By way of a Complaint filed on January 15, 2021, the Applicant appealed the Initial Decision to this Honorable Court (21 MISC 000023; Foster, J.) (the "Land Court Action").

18. Counsel for the ZBA offered counsel for the Applicant the opportunity to remand the Land Court Action back to the ZBA, to allow for the opportunity for the ZBA to option a peer review of the Project and then rehear the Project.
19. The Land Court Action was remanded to the ZBA on March 24, 2021.
20. After soliciting bids, the ZBA selected GZA GeoEnvironmental, Inc. (“GZA”) to perform the peer review of the Project.
21. The Applicant paid Three Thousand (\$3,000) Dollars for GZA to perform the peer review.
22. GZA wrote a letter to the ZBA dated July 15, 2021 (the “GZA Letter”).
23. The GZA Letter concluded that the Project met the requirements of Section 11.3.B.2 of the By-Laws. Exhibit V, Pg. 3.
24. The GZA Letter erroneously contended that the entirety of the Property was within the 100-year flood plain, when only a portion of the Property is contained therein, the majority of which is not on the part being developed with respect to the Project.
25. The remainder of the GZA Letter speculated as to the consequence that the Project would have as to the classification of a nearby dam, entirely unrelated to the requisite analysis under the By-Laws.
26. The re-hearing of the Project was heard on July 21, 2021 (the “Rehearing”).
27. By a 5-0 vote, the ZBA once again denied the special permit for the Project, and issued the Decision. Exhibit VI.

Count I
(Mass. Gen. L. ch. 40A, § 17)

28. Plaintiff incorporates the allegations in paragraphs 1-27 of the complaint, as if the same were set forth at length herein.
29. Plaintiff, as the applicant for the Special Permit, is aggrieved by the Decision.
30. The ZBA, in both its deliberations on the Initial Decision and the Decision, did not properly consider the standard set forth in the By-Laws.
31. The ZBA, in both its deliberations on the Initial Decision and the Decision, did not properly consider the standard set forth in the By-Laws instead relying upon vague and unspecified concerns with respect to the District as a whole that are inapplicable to the Project, including but not limited to those set forth in the GZA Letter.
32. The Decision, which essentially only consists of a regurgitation of certain portions of the By-Laws and GZA Letter without analysis, fails to articulate the ZBA's rationale regarding the foregoing provisions of the By-Law.
33. The paucity of debate or inquiry during the Initial Hearing and the Rehearing reveals that the ZBA rejected the Project based on vague, generalized, and unsubstantiated concerns related to the District at large rather than the merits of the Project under the relevant provisions of the By-Laws.
34. The ZBA members who voted against the Special Permit did so based on imperceptible, generalized concerns regarding the District that were unfounded based upon the Plaintiff's filings and presentations before the ZBA, nor were they justified by the GZA Letter, which echoed similar generalized concerns regarding the District at-large.

35. The ZBA's reliance on the Town Board of Health is misplaced, as the Board of Health likewise echoed a general disdain for construction in the District, and steps that could be taken to mitigate those harms during construction, rather than any particularized concern with respect to the Project itself. Exhibit IV.
36. The foregoing is explained by the ZBA's true rationale in rejecting the Project, to maintain the status quo with respect to the Spillway, said redirection of water constituting a trespass by the Town upon the Property, with the Town having no easement by agreement or prescription for the same.
37. The Project proposed to alter the manner in which the water is redirected from the Spillway and onto the Property.
38. The only concerns regarding the Project in relation to the District are those caused by the Town's conduct with respect to the Spillway.
39. The Project would have alleviated the burden of the water redirected by the Spillway, and in doing so would have satisfied those generalized articulated concerns raised by the ZBA, and also accomplished the aims of the District at large.
40. In light of the foregoing, the ZBA should have reached the conclusion that the granting of the Special Permit would be beneficial to the community pursuant to the factors provided by the provisions of the By-Laws, particularly in light of the unique circumstances present on the Property, including the Spillway.
41. In light of the allegations set forth hereinabove, the Decision, in all relevant respects, is unreasonable, whimsical, capricious and arbitrary, and should therefore be annulled.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter judgment:

1. Annuling the Decision;
2. Awarding Plaintiff their reasonable attorney's fees and costs; and
3. Granting such further relief as this Court deems necessary or appropriate.

Respectfully Submitted,

Walsh Brothers Building Company, Inc.,

By their Attorneys,

/s/ Brian C. Almeida, Esq.

Brian C. Almeida, Esq.

B.B.O. No. 669005

Alan B. Almeida, Esq.

B.B.O. No. 016013

Connor & Hilliard, P.C.

1350 Main Street

Walpole, MA 02081

(508)668-4774

Dated: August 5, 2021

CERTIFICATE OF NOTICE GIVEN PURSUANT TO M.G.L. ch. 40A § 17

Norfolk, ss.

I, Brian C. Almeida, hereby certify that on this 4th day of August, 2021, I have served a copy of the foregoing Complaint, along with notice of the action, by Federal Express Overnight and Certified Mail, Return Receipt Requested, with the Town Clerk of the Town of Walpole, within twenty (20) days of August 2, 2021, pursuant to M.G.L. ch. 40A § 17.

/s/ Brian C. Almeida, Esq.

Brian C. Almeida, Esq.

EXHIBIT I



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Assoc. Member

DECISION – BOARD OF APPEALS CASE NO. 20-25

APPLICANT:

Walsh Brothers Building, Co.

SITE:

300 Stone Street; (Lot 2), Walpole, MA 02081

Assessor's Map 34, Parcel 54

RECEIVED
21 JAN -4 PM 9 1
TOWN OF WALPOLE

A SPECIAL PERMIT under Section 11 of the Zoning Bylaws to allow the construction of a single-family dwelling in an area designated as a Flood Plain District, located at 300 Stone Street (Lot 2), Walpole MA 02081

On December 21, 2020 a Public Hearing was held via Zoom Meeting, for the purpose of receiving information and voting upon a decision as to the granting of the Special Permit requested. The members who were present and voting:

NAMES OF VOTING MEMBERS

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Member

VOTE OF THE BOARD:

A motion was made by Fitzgerald and seconded by Coffey, that the Board grant Walsh Brothers Building Co. a Special Permit under Section 11 of the Zoning Bylaws to allow the construction of a single-family dwelling in an area designated as a Flood Plain District, as shown on the plan entitled: "Site Development Plan, Lot 2, 300 Stone Street, Walpole, MA 02081" dated December 17, 2019, prepared by GLM Engineering Consultants, Inc.

The vote was 2 - 3 - 0 in opposition, by roll call vote: Lee-no; Murphy-no; Fitzgerald-aye; Coffey-aye; Delaney-no, therefore, the Special Permit is hereby denied.

REASONS FOR DECISION

The Board finds that the proposed single-family dwelling within the Flood Plain Protection Overlay District was not in harmony with the purpose and intent of the Bylaw. According to Section 11(1) of the Bylaw, the purpose of the Flood Plain Protection Overlay District is to “*protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the Flood Plain.*” The Board found that the proposed project did not adequately protect adjacent and downstream properties from the hazards of periodic flooding, among other things. Thus, The Board finds that the Applicant failed to meet all of the requirements for the granting of the requested Special Permit.

FURTHER FINDINGS

1. Section 2: Administration, 2. Special Permits, A. Finding and Determination required that:

Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or “SPGA”), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.

Under Section 11 of the Zoning Bylaw, the purposes of the Flood Plain Overlay District are “*to protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the Flood Plain.*” The Board found that the proposed project, including the proposed alterations to the flood plain, did not protect the public health, safety and general welfare from the hazards of seasonal or periodic flooding to the rear of and downstream of the property. As described during the hearing, the property slopes significantly from the front (along Stone Street) to the rear of the property, causing any flood waters within the property to flow to the rear and off the property toward other existing developments.

2. Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

Prior to granting a Special Permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(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 specific criteria for the grant of the requested special permit are set forth in Section 11(3)(B) of the Zoning Bylaw. This section provides that the Board *may* grant a special permit if such criteria are satisfied. While there was general discussion of these criteria during the hearing, the Board, as noted above, found that the proposed single-family dwelling and associated filling and excavation within the Flood Plain District was not adequately protective of the public health, safety and general welfare -- particularly with respect to properties to the rear and downstream of the property.

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

The proposed single-family dwelling within the Flood Plain District would not produce or have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood, as the project is residential in nature. Therefore, the Board finds that this condition 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 single-family dwelling would not have a number of residents, customers, or visitors, so as to adversely affect the immediate neighborhood, as the project is residential in nature. Therefore, the Board finds that this condition is satisfied.

- (d) shall comply with the dimensional requirements applicable to 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 proposed single-family dwelling within the Flood Plain District, in the Zoning District RB conforms to the dimensional requirements of the Zoning Bylaw, as shown on the plan submitted at the public hearing, entitled: "Site Development Plan, Lot 2, 300 Stone Street, Walpole, MA 02081" dated December 17, 2019, prepared by GLM Engineering Consultants, Inc. The plans comply with the lot coverage and setback requirements as found in Table 6-B.1. Table Dimensional Regulations within the By-Law. No buffer zones are required in the RB district. Therefore, the Board finds that this condition is satisfied.

- (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 single-family dwelling within the Flood Plain District would not be dangerous to the immediate neighborhood of the premises through fire or explosion. However, the Board could not determine that the proposal would not pose danger to the immediate neighborhood of the premises through other causes due to the location and depth of the perennial stream on the property, that is normally 2-3 feet deep, however, could become 4-5 feet in depth during a large rain event. Although the applicant is proposing to add approximately five-hundred cubic feet of flood storage, the Board determined that the addition of the five-hundred cubic feet is insignificant when considering the entire flood plain area. Therefore, the Board finds that this condition is not satisfied.

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

The Board finds that the proposed single-family dwelling within the Flood Plain District will not create any noise, dust, heat, smoke, fumes, odor, or glare, as to adversely affect the immediate neighborhood. However, the Board could not determine whether the proposed project could potentially create other nuisance, or serious hazards as to adversely affect the immediate neighborhood due to concerns regarding the drainage area, particularly the lack of catch basins within the area, culvert elevations in relation to the proposed basement elevation and the age and condition of the two thirty-six inch culverts that are located under Stone Street and across to the property of 300 Stone Street. The Board expressed concern over the adequate drainage and flow of runoff water in

during a large rain event. The applicant has proposed to enhance the discharge that is directed through the property with a spillway and grass swale, however, during the public hearing, an abutter to the property expressed concern over the possibility of the project causing additional runoff onto his business property. The Board found that due to the lack of information on the age and condition of the culverts, and the absence of catch basins, that nuisance or serious hazard as to adversely affect the immediate neighborhood could not be ruled out. Therefore, the Board finds that this condition is not satisfactorily met.

(g) shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the proposal of a residential single-family dwelling is in character of the neighborhood. However, the Board could not determine that the proposal would not adversely effect the character of the immediate neighborhood due to the possibility of detrimental flooding on the property itself, the abutting properties, and Stone Street. Therefore, the Board finds that this condition is not satisfactorily 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.


The Board finds that under Section 11 of the Zoning Bylaw, the purposes of the Flood Plain Overlay District are "to protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the Flood Plain." Due to a lack of information regarding the age and condition of the culverts, lack of catch basins within the immediate and surrounding area, opposition of the Board of Health, outstanding concerns from the Town Engineer, identical proposed basement elevations in relation to Clarks Pond, and the possibility of causing detriment to the surrounding neighborhood and public good during a large rain event, the Board was unable to determine that the proposed project was compatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located. As such, the granting of this Special Permit is denied.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

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, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on December 21, 2020 and filed with the Town Clerk on January 4, 2021.

EXHIBIT II



Town of Walpole
Commonwealth of Massachusetts

Town Hall
135 School St.
Walpole, Ma. 02081
Phone (508) 660-7213
Fax (508) 660-7323
cbalduf@walpole-ma.gov

Town Engineer
Carl J. Balduf, P.E., P.L.S.

TO: John Lee, Chairman
Zoning Board of Appeals

FROM: Carl J. Balduf
Town Engineer

RE: Special Permit – Section 11– Flood Plain Protection Overlay District
Lot 2 – 300 Stone St.
Proposed Single Family Residence

DATE: December 15, 2020

This office has received the following;

- A three sheet 24”X36” plan set titled “Site Development Plan Lot 2 – 300 Stone Street Walpole, Massachusetts” Prepared For: Walsh Brothers Building Co. Inc. 10 Saddle Way Walpole, Ma 02081” dated December 17, 2019 prepared by GLM Engineering Consultants, Inc.
- A digital request for review within the View Point permitting system dated October 22, 2020 with comments due by December 16, 2020.
- Various other application materials of varying dates uploaded to the View Point system.

We are providing the following comments on the plans only;

- 1) The proposed design appears to meet the requirements outlined in Zoning Bylaw Flood Plain Protection Overlay District Section 11.3.B. (1-5)
- 2) A foundation drain shall be required. The drain should discharge to daylight somewhere near the end of the proposed grass swale.
- 3) Attached to this memorandum are ties to installed sewer and water services for this lot. The service stubs should be accurately shown on the plans. The sewer stub appears to be very close to the front left (northerly) lot corner. This may need to be re-installed from the back of walkway to keep it on the lot.

- 4) A driveway detail should be included showing roundings going into the site. The apron shall be graded to the street to keep gutter water in the roadway. DPW would consider terminating the sidewalk as at the driveway as the remaining sidewalk appears to be on the lot.
- 5) The site currently receives street stormwater through a bituminous swale coming from the adjacent driveway and continuing to a proposed swale on the northerly portion of the lot. This is historic and has occurred for some time. The Conservation Commission has approved the existing discharge and proposed swale and required the maintenance to be a private responsibility. The Board of Appeals could strengthen this requirement by providing this concept in its Decision.
- 6) We ask that the Board require a municipal easement around the Perennial Stream headwall and stream bed for future maintenance. No improvements are planned currently but at some point there will need to be work on the culverts under Stone St. and removal of debris along the stream. A sketch showing approximate location is attached. The exact details of the location of the easement can be worked out with this office. If this is to occur we suggest the applicant provide the easement plan and the Town handle the conveyance documents. If the Applicant has a title search for the lot it should be provided.

We remain available via email or office phone should there be any questions.

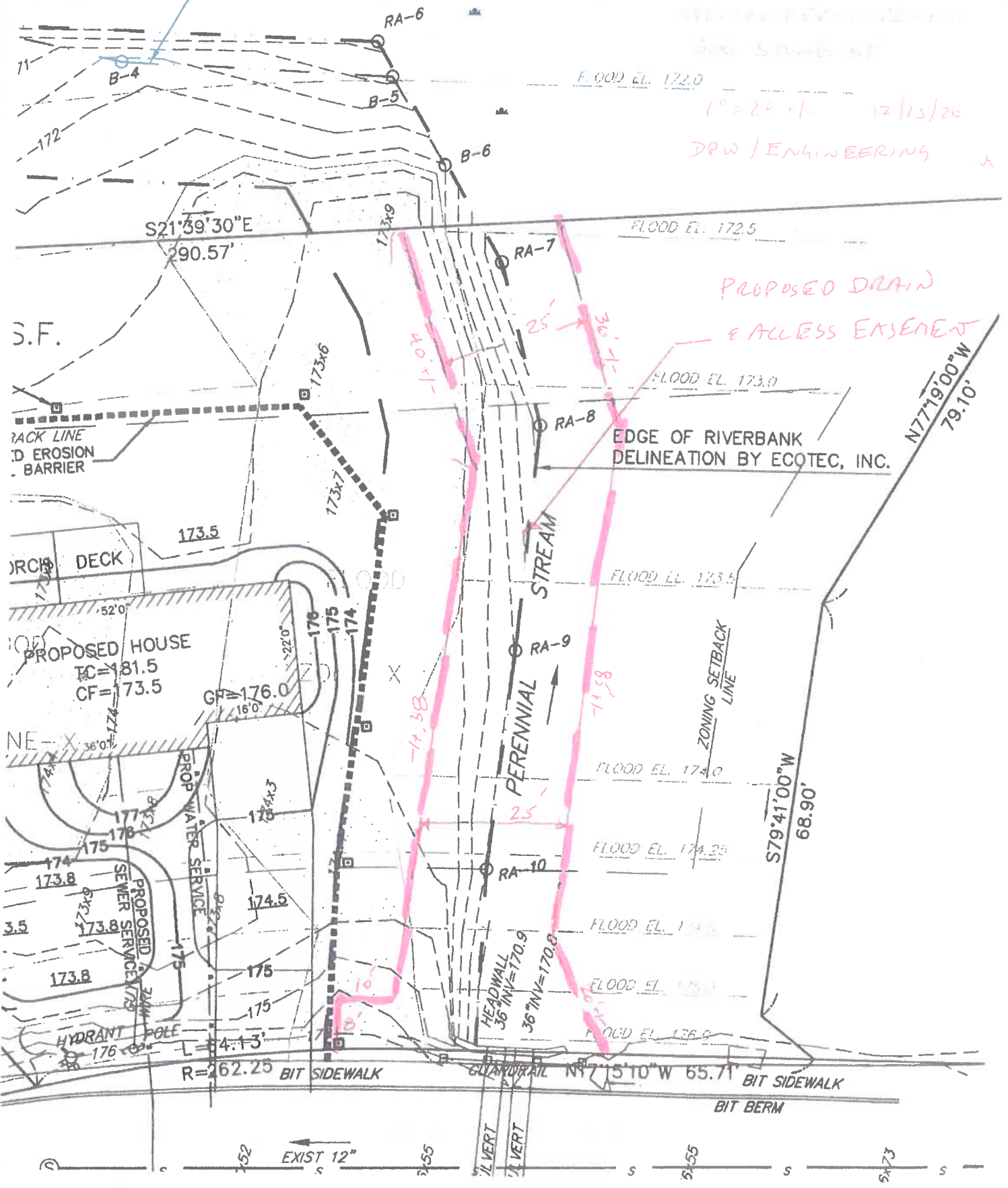
attachments

Cc: Files
R. Truax, GLM Engineering
Sewer & Water Commission

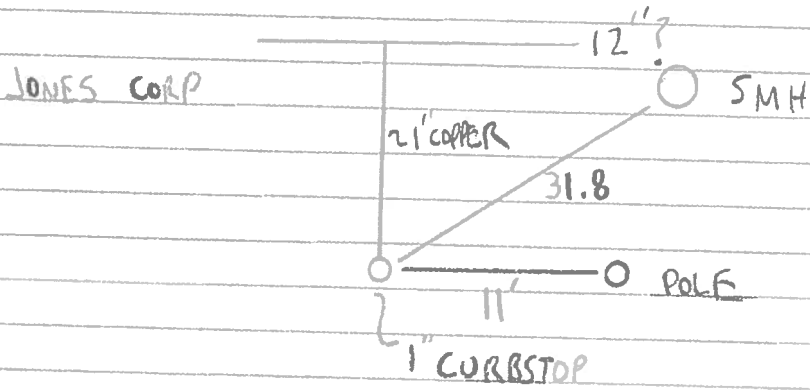
H:/documents/zba/specialpermits/300stonest.doc

EDGE BORDERING VEGETATED WETLAND
 DELINEATION BY ECOTEC, INC.

PLAN - 12/15/20
 1" = 20' +/- 12/15/20
 DPW / ENGINEERING

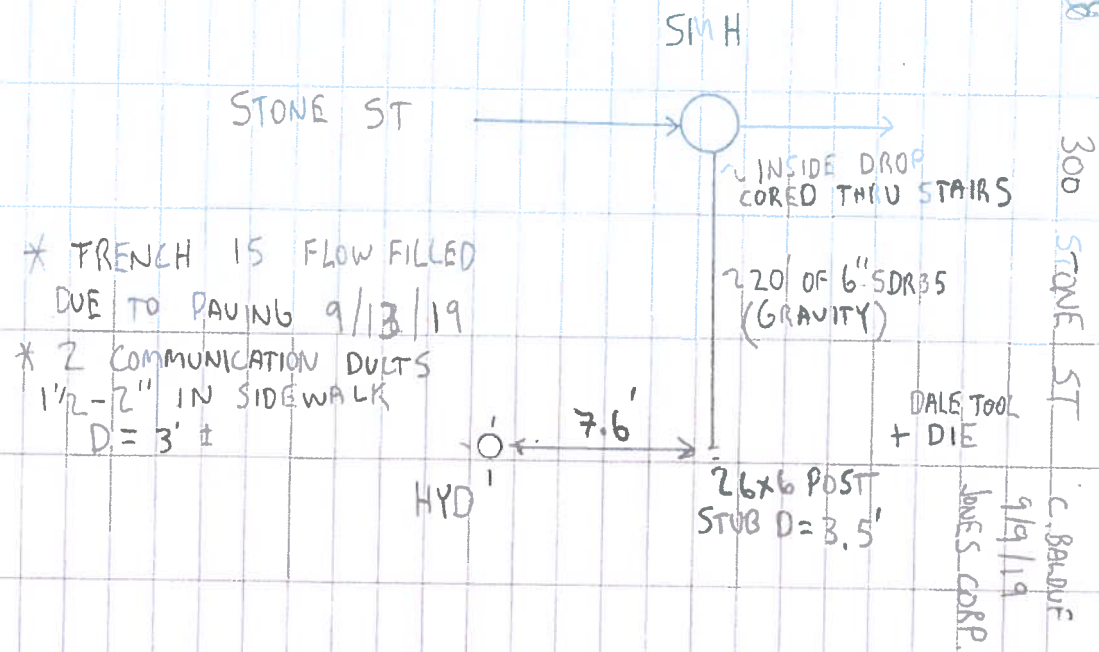


300 STONE ST 1" WATER



CLARK'S POND

98



* FRENCH IS FLOW FILLED
DUE TO PAVING 9/13/19
* 2 COMMUNICATION DULTS
1 1/2 - 2" IN SIDEWALK
D = 3' ±

DALE TOOL + DIE

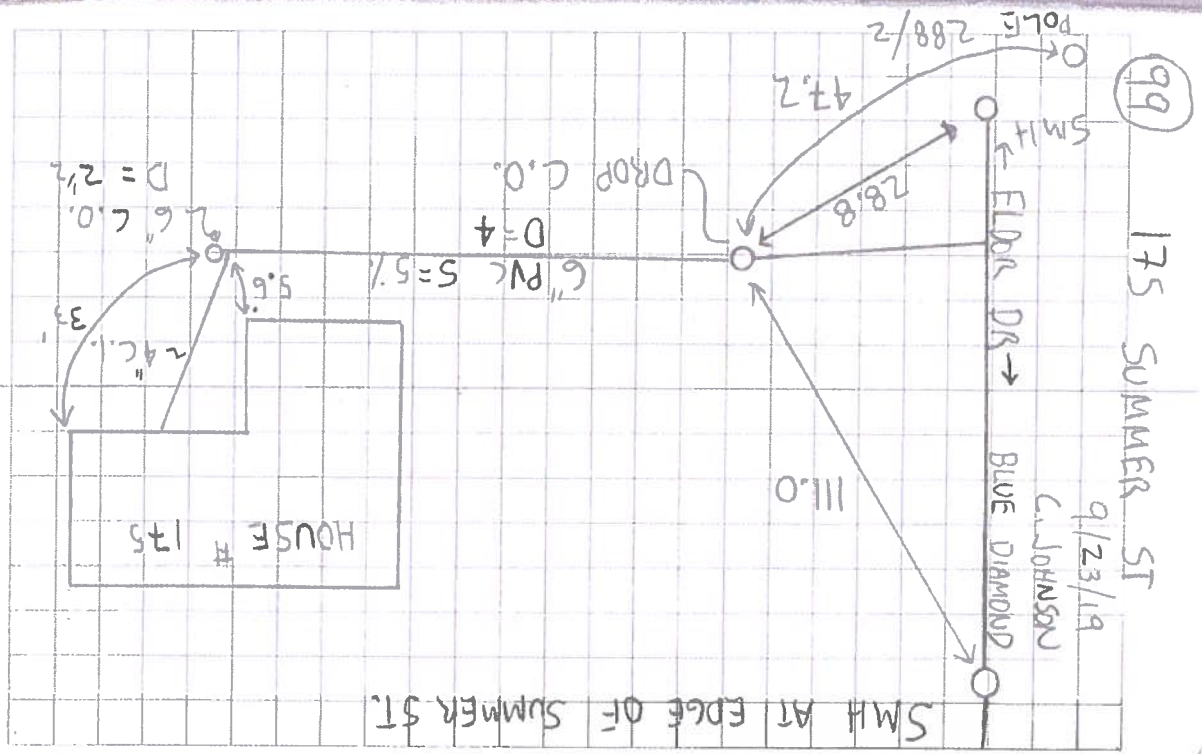
C. BARQUE
9/19/19
JONES CORP.

300 STONE ST

HYD

26x6 POST
STUB D = 3.5'

7.6'



99

175 SUMMER ST

C. JOHNSON
9/23/19

BLUE DIAMOND

ELDER DR

POLE 288 1/2

47.2

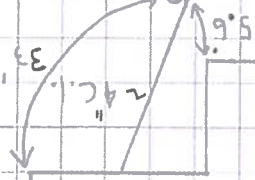
28.8

11.0

6" PVC S = 5%
D = 4

DROP C.O.

2.6' C.O.
D = 2 1/2



SMH AT EDGE OF SUMMER ST.

EXHIBIT III

CONSERVATION
COMMISSION



*Town of Walpole
Commonwealth of Massachusetts*

Town Hall
Room 212
135 School Street
Walpole, MA 02081
Phone (508) 669-7268
Fax (508) 668-2071

March 26, 2020

John Walsh, Walsh Brothers Building Co. Applicant *Original sent*
11 Saddle Way
Walpole, MA 02081


Lawrence Richards Dale Tool & Die Co. - Owner
238 Stone Street
Walpole, MA 02081

Enclosed is the Walpole Conservation Commission's Order of Conditions for 300 Stone Street, Walpole, MA, DEP #315-1218 under the Wetlands Protection By-Law and Wetlands Protection Act.

Please note that no work shall commence until the following steps are completed:

1. **Record the Order of Conditions at the Registry of Deeds and return recording information to the Conservation Commission office.**
2. The conditions should be read and signed by the contractor and the form at the end of the Order be returned to the commission
3. Notify the Conservation Commission office when erosion controls are installed and prior to commencement of construction
4. Provide the name and number of the contractor to the Conservation Commission

Please return a copy of the new recording to the Conservation Commission for our records

LH/am 
Cc:
Planning (PDF)
Building (PDF)
DEP- SERO – Certified and PDF
Administration (PDF)
GLM Engineering (PDF)

Very Truly Yours,
Conservation Commission



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 315-1218
 MassDEP File # _____
 eDEP Transaction # _____
 Walpole
 City/Town

A. General Information

Please note:
 this form has
 been modified
 with added
 space to
 accommodate
 the Registry
 of Deeds
 Requirements

Important:
 When filling
 out forms on
 the
 computer,
 use only the
 tab key to
 move your
 cursor - do
 not use the
 return key.



1. From: Town of Walpole
 Conservation Commission

2. This issuance is for (check one):
 a. Order of Conditions b. Amended Order of Conditions

3. To: Applicant:
 John Walsh
 a. First Name b. Last Name
 Walsh Brothers Building Co.
 c. Organization
 11 Saddle Way
 d. Mailing Address
 Walpole MA 02081
 e. City/Town f. State g. Zip Code

4. Property Owner (if different from applicant):
 Lawrence Richards
 a. First Name b. Last Name
 Dale Tool & Die Co.
 c. Organization
 238 Stone Street
 d. Mailing Address
 Walpole MA 02081
 e. City/Town f. State g. Zip Code

5. Project Location:
 Lot 2- 300 Stone Street Walpole
 a. Street Address b. City/Town
 34 54
 c. Assessors Map/Plat Number d. Parcel/Lot Number
 Latitude and Longitude, if known: 42d08m22s 71d14m30s
 d. Latitude e. Longitude



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
315-1218
MassDEP File #

eDEP Transaction #
Walpole
City/Town

A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Norfolk County
a. County Norfolk County b. Certificate Number (if registered land) 484
5799
c. Book 5799 d. Page 484
7. Dates: a. Date Notice of Intent Filed 1/02/2020 b. Date Public Hearing Closed 2/26/2020 c. Date of Issuance 5/1/2020
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
Site Development Plan, Lot 2- 300 Stone Street, Walpole, MA
a. Plan Title Site Development Plan, Lot 2- 300 Stone Street, Walpole, MA
GLM Engineering Consultants, Inc. Joyce E. Hastings P.L.S.
b. Prepared By GLM Engineering Consultants, Inc. c. Signed and Stamped by Joyce E. Hastings P.L.S.
4-24-20 1"=20'
d. Final Revision Date 4-24-20 e. Scale 1"=20'
NOI w/ECO Tech Wildlife Habitat Evaluation App. B Report 12-16-2019
f. Additional Plan or Document Title NOI w/ECO Tech Wildlife Habitat Evaluation App. B Report 12-05-19

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- a. Public Water Supply b. Land Containing Shellfish c. Prevention of Pollution
d. Private Water Supply e. Fisheries f. Protection of Wildlife Habitat
g. Groundwater Supply h. Storm Damage Prevention i. Flood Control
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
 315-1218
 MassDEP File # _____

eDEP Transaction # _____
 Walpole
 City/Town

B. Findings (cont.)

Denied because:

- b. the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3. Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 25 a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. c/y dredged	f. c/y dredged		
7. <input checked="" type="checkbox"/> Bordering Land Subject to Flooding	19.8	19.8	41.9	41.9
	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	276.4	276.4	875.1	875.1
	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input checked="" type="checkbox"/> Riverfront Area	10,200	10,200		
	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	10,200	10,200		
	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP
315-1218
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B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



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B. Findings (cont.)

* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23 Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24 Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number 315-1218 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
(1) is subject to the Massachusetts Stormwater Standards
(2) is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
 - 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 - 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 - 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

see attached

- 20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? Yes No
2. The Town of Walpole hereby finds (check one that applies):
Conservation Commission

- a. that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw	2. Citation
---------------------------------	-------------

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:
Walpole Wetland Protection Bylaw ch 561 div 2
1. Municipal Ordinance or Bylaw 2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.
The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):
see attached



Massachusetts Department of Environmental Protection
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E. Signatures

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.
Please indicate the number of members who will sign this form.
This Order must be signed by a majority of the Conservation Commission.

1. Date of Issuance
4
2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy must be mailed, hand delivered or filed electronically at the same time with the appropriate MassDEP Regional Office.

Signatures:

Albert E. Goetz Jr.
RD Burchesky *RD Burchesky*
RD Burchesky
RD Burchesky
Emb. D. V. Johnson

by hand delivery on to Applicant by certified mail, return receipt requested, on to DEP
Date 5/01/2020 Date 5/01/2020

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



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Provided by MassDEP:
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G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Town of Walpole
Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Town of Walpole
Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Lot 2 - 300 Stone Street
Project Location

315-1218
MassDEP File Number

Has been recorded at the Registry of Deeds of:

Norfolk
County

Book

Page

for: Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

**Request for Departmental Action Fee
Transmittal Form**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number: _____

Provided by DEP

A. Request Information

1. Location of Project

a. Street Address _____ b. City/Town, Zip _____
c. Check number _____ d. Fee amount _____

2. Person or party making request (if appropriate, name the citizen group's representative):

Name _____
Mailing Address _____
City/Town _____ State _____ Zip Code _____
Phone Number _____ Fax Number (if applicable) _____

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name _____
Mailing Address _____
City/Town _____ State _____ Zip Code _____
Phone Number _____ Fax Number (if applicable) _____

4. DEP File Number: _____

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



B. Instructions

1. When the Departmental action request is for (check one):
- Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
 - Superseding Determination of Applicability – Fee: \$120
 - Superseding Order of Resource Area Delineation – Fee: \$120



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

**Request for Departmental Action Fee
Transmittal Form**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number _____

Provided by DEP

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>)
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

DEP# 315-1218
Location: 300 Stone Street
Plan: GLM Engineering, Inc.
Plan rev. signed 4/24/2020 Joyce Hastings, PLS and Paul E. Truax, PE

**SPECIAL CONDITIONS
MA WETLAND PROTECTION ACT AND
WALPOLE WETLANDS PROTECTION BYLAW**

Finding: This Order of Conditions is for a single family house and associated utilities and grading constructed within the 100-foot buffer zone of BVW and within the 200 foot riverfront area of Spring Brook. The plan includes No Alteration plaques at the 25-foot No Alteration boundary under the Walpole Wetlands Protection Bylaw and infiltration of roof drains.

1. This Order shall apply to any successor in control or successor in interest of the property described in the Notice of Intent and accompanying plans. These obligations shall be expressed in covenants in all deeds to succeeding owners of portions of the property.
2. The Walpole Conservation Commission shall be notified in writing at the time of all transfers of title on this property prior to the issuance of the Certificate of Compliance. All buyers, purchasers, successors and/or assigns shall certify to the Walpole Conservation Commission receipt of a copy of the plan of record, Notice of Intent, and Order of Conditions for this project. A copy of said certificate shall be provided to the Commission upon transfer of title.
3. The Conservation Commission reserves the right to enter upon the property at reasonable hours to inspect the site for compliance with all orders issued herein.
4. The form provided at the end of this Order shall be completed and stamped at the Registry of Deeds. This form should be returned to the Commission prior to the commencement of work. Construction may commence after the expiration of the 10-day appeal period and if no request for appeal has been filed with the Department of Environmental Protection. Any Order not recorded by the Applicant before work commences may be recorded by the Commission at the Applicant's expense.
5. For any change made or intended to be made in the plans or in the work, the applicant shall file a new Notice of Intent or inquire in writing of the Commission whether or not the change is substantial enough to require a new Notice of Intent.
6. This document shall be included in all construction contracts and subcontracts dealing with the work proposed.
7. All contractors and all subcontractors shall be given a copy of this Order of Conditions before they commence to work. During the construction phase for this project, an on-site foreman, directing engineer, or designated construction manager shall have a copy of this Order of Conditions at the site, familiarize him or herself with the conditions of this Order of Conditions and adhere to such conditions.
8. Prior to any work commencing, a sign shall be displayed showing **DEP # 315-1218**

DEP# 315-1218
Location: 300 Stone Street
Plan: GLM Engineering, Inc.
Plan rev. signed 4/24/2020 Joyce Hastings, PLS and Paul E. Truax, PE

**SPECIAL CONDITIONS
MA WETLAND PROTECTION ACT AND
WALPOLE WETLANDS PROTECTION BYLAW**

preferably not placed on a living tree.

9. The Walpole Conservation Commission shall be notified in writing at least two (2) business days in advance of construction to enable the Commission to inspect the site to ensure that the conditions have been met.
10. Failure to comply with this Order of Conditions may result in revocation of this Order of Conditions and may require a re-filing by the Applicant. If warranted, an Enforcement Order and fines may also apply.
11. The construction site manager or Applicant project manager (persons who will oversee the project on site and who has the ability to make decision) shall furnish the Conservation Agent with their names, address and 24-hour telephone contact number and sign sheet at the end of this Order of Conditions at least two business days before start of any work.

EROSION CONTROLS

12. **Prior to any construction and/or cutting** of vegetation, the location of the erosion controls/limit of work boundary shall be **staked by survey** in the field. The survey stakes shall be placed at the down grade limit of the erosion control location, identified as limit of work on the stake, and securely left in place until removal of erosion controls is approved by Conservation Agent or Commission.
13. The staked erosion control line shall be inspected and approved by the Conservation Agent prior to any other work occurring. ***Inspection**
14. Limited vegetation and tree cutting, prior to erosion control installation, may occur as approved by the Conservation Agent
15. Prior to the beginning of construction, the erosion controls shall be placed **up gradient** of the surveyed stakes and of all resource areas as shown on the plan, between all disturbed areas and the wetlands.
16. All siltation and erosion controls as specified on the plan shall be employed and installed as per manufacturer's specifications except as otherwise directed by the Conservation Commission or its Agent.
17. Any changes to the erosion controls as specified on the plan shall be made in writing to the Conservation Agent or Commission unless the changes are in addition to the proposed.

DEP# 315-1218
Location: 300 Stone Street
Plan: GLM Engineering, Inc.
Plan rev. signed 4/24/2020 Joyce Hastings, PLS and Paul E. Truax, PE

**SPECIAL CONDITIONS
MA WETLAND PROTECTION ACT AND
WALPOLE WETLANDS PROTECTION BYLAW**

18. The approved erosion control method is a compost sock or microbial filter mitt of 8- 18 inches (the recommended size for the site conditions), a silt fence staked up-grade with an orange construction fence. The orange construction fence and silt fence can be replaced with an orange silt fence.
19. The erosion controls shall be inspected weekly and/or before and after a rainfall of 1-inch or more. Modifications to the erosion controls shall be made immediately if necessary including removal of accumulated sediments of 25% or greater of the height of erosion controls.
20. Upon final grade, loam and prior to seed and fertilizers are applied silt fence shall be installed along the lot frontage until landscaping is stable (grass has grown in).
21. The site shall be permanently stabilized and the erosion controls inspected and site approved by the Conservation Agent prior to removal of erosion controls.

GENERAL

22. All stockpile areas shall be located outside the buffer zone, or when space is limited, as far as possible from the resource area. Any stockpiles within a resource area buffer zone shall be surrounded by silt fence.
23. All construction debris shall be removed from the site and/or properly secured on site during construction
24. The site perimeter shall be inspected at the end of each construction day and any fallen or blown materials from the project shall be removed from the resource areas and buffer zone.
25. Vehicle fueling shall not take place within regulated resource areas or buffer zones or within 50-feet of the storm drains.
26. During construction sediments are to be kept off the public way. If sediments are tracked onto the public way then the street shall be swept clean by the end of the construction day.
27. The jurisdictional flood plain elevations shall be maintained as shown on the plan no additional filling is allowed to these areas. **CONTINUED CONDITIONS****

DEP# 315-1218
Location: 300 Stone Street
Plan: GLM Engineering, Inc.
Plan rev. signed 4/24/2020 Joyce Hastings, PLS and Paul E. Truax, PE

**SPECIAL CONDITIONS
MA WETLAND PROTECTION ACT AND
WALPOLE WETLANDS PROTECTION BYLAW**

28. The stormwater grass swale and sediment basin shown on the plan along the northerly property boundary shall be maintained by the property owner by cleaning out sediment accumulation when it reaches 25% of the capacity of the basin and swale. **CONTINUED CONDITIONS****
29. The perennial stream at the southerly end of the property shall be maintained to allow free flow. **CONTINUED CONDITIONS****
30. No additional alteration of the riverfront area on the lot shall occur beyond the no alteration boundaries as shown on the plan.
CONTINUED CONDITIONS**
31. ****Use of herbicides and pesticides within the buffer zone shall be limited.
CONTINUED CONDITIONS**
32. ****Use of fertilizers shall comply with the requirements of 330 CMR 31.00 including but not limited to CONTINUED CONDITIONS**:**
- a. No fertilizers containing phosphorus shall be applied in the absence of current soil test indicating the supplemental phosphorus is required;
 - b. No fertilizers shall be applied intentionally, or otherwise, to impervious surfaces and if so applied, shall be immediately cleaned up;
 - c. All record keeping requirements shall be followed.
33. ****Roof recharge chambers shall be actively maintained to properly recharge roof run-off.
CONTINUED CONDITIONS ****
34. **CERTIFICATE OF COMPLIANCE REQUIREMENTS**
Upon completion of this project, the Applicant shall submit the following to the Conservation Commission to receive a Certificate of Compliance.
- a. A letter from the Applicant's engineer certifying that all the work has been completed according to the plan and the DEP Form requesting a Certificate of Compliance.
 - b. An "as-built" plan prepared, signed and stamped by a registered professional engineer or land surveyor of the Commonwealth, for the public record.

DEP# 315-1218
Location: 300 Stone Street
Plan: GLM Engineering, Inc.
Plan rev. signed 4/24/2020 Joyce Hastings, PLS and Paul E. Truax, PE

**SPECIAL CONDITIONS
MA WETLAND PROTECTION ACT AND
WALPOLE WETLANDS PROTECTION BYLAW**

- c. Verification on the As-built plan of the installation and location of the roof infiltrator including the entire location of the manifold system and clean out points.
- d. Location and label of the foundation drain pipe.

BYLAW CONDITIONS

- 35. 25-feet from the wetland boundary shall remain as the No Alteration Area. This is a no build no alteration area. Any change to the no alteration area may be a violation of the Walpole Wetlands Protection Bylaw.
- 36. The following No alteration plaques (NAP) of min. 3" X 5 " environmental plastic or brass shall be glued with epoxy and fastened with screws to concrete or granite bounds in the field at locations shown on the plan and shall be maintained in perpetuity. The Owner agreed to install and maintain the bounds and plaques as a condition of this Order for the purpose of demarcating the permanent "no alteration area" as defined in the Walpole Wetlands Protection Bylaw. **CONTINUING CONDITION****

**NO DUMPING OR ALTERATION
OF LAND BEYOND THIS
MARKER**
Per Order of the Conservation Commission

DEP# 315-1218
Location: 300 Stone Street
Plan: GLM Engineering, Inc.
Plan rev. signed 4/24/2020 Joyce Hastings, PLS and Paul E. Truax, PE

**SPECIAL CONDITIONS
MA WETLAND PROTECTION ACT AND
WALPOLE WETLANDS PROTECTION BYLAW**

37. To be signed by the Managing Contractor and returned to the Conservation Department prior to beginning the project:

I _____, representing _____

have read and have a copy of the above conditions.

Contractor's Signature Phone Number _____

*** CONTINUING CONDITIONS

EXHIBIT IV

Board of Health

William Morris, **Chairman**
Carol Johnson, Clerk
Richard Bringhurst, MD
Richard Beauregard
Mona Bissany, RPH



Town Hall
135 School Street
Walpole, Ma. 02081
Phone (508) 660-7321
Fax (508) 660-6345

Town of Walpole
Commonwealth of Massachusetts

To: Board of Appeals

From: Board of Health

Re: Special Permit
300 Stone Street

Date: November 12, 2020

The Board of Health at its November 10, 2020 meeting voted unanimously that they are not in favor of construction within the wetland buffer zone. The Board urges the applicant to adopt the standard best practices for mosquito mitigation and work with Norfolk County Mosquito Control for spraying and standing water treatments, institute regular cleaning of gutters and provide proper grading of buffer zone areas in order to prevent low points that draw and hold water.

C. You and Your Passengers

Please provide the full name, address, and DOB or Age for all passengers in your vehicle. Then write the corresponding code in each of the boxes for each occupant of the vehicle (yourself and all passengers). A list of the possible codes is provided at the bottom of this section.

C1. Passenger 1 (Last, First, Middle) Hayden Ashton, Francis	C2. Address 434 Washington St Natick	City MA	State 02062	Zip Code 01-23-2012	C3. DOB 01-23-2012	C4. Sex Male
C5. Passenger 2 (Last, First, Middle)	C6. Address	City	State	Zip Code	C7. DOB	C8. Sex
C9. Passenger 3 (Last, First, Middle)	C10. Address	City	State	Zip Code	C11. DOB	C12. Sex

	Seating Position	Safety System Used	Air Bag Status	Ejected From Vehicle?	Trapped?	Injured?	Transported for Medical Care?	Name of Medical Facility
Driver	1	1	4	0	0	9	1	
Passenger 1	5	1	4	0	0	10	1	
Passenger 2								
Passenger 3								

Seating Position 1 Front seat - left side (or motorcycle driver) 2 Front seat - middle 3 Front seat - right side 4 Second seat - left side (or motorcycle passenger) 5 Second seat - middle 6 Second seat - right side 7 Third row - left side (or motorcycle passenger)	8 Third row - middle 9 Third row - right side 10 Sleeper section of cab 11 Enclosed passenger area 12 Unenclosed passenger area 13 Trailing unit 14 Riding on vehicle exterior 97 Other 99 Unknown	Safety System Used 0 None used 1 Shoulder and lap belt 2 Lap belt only 3 Shoulder belt only 4 Child safety seat 5 Helmet 97 Unknown	Air Bag Status 1 Deployed-front 2 Deployed-side 3 Deployed both front and side 4 Not deployed 5 Not applicable 97 Unknown
Ejected From Vehicle? 0 Not ejected 1 Totally ejected 2 Partially ejected	Trapped? 0 Not trapped 1 Freed by mechanical means 2 Freed by non-mechanical means 97 Unknown	Injured? 1 Fatal 7 Suspected serious injury 6 Suspected minor injury 8 Possible injury 10 No apparent injury	Transported for Medical Care? 1 Not transported 2 EMS (emergency service) 3 Police 97 Other 99 Unknown

D. Other Vehicle(s) Involved in the Crash

D1. Number of occupants in the Vehicle: two	D2. Number of injured occupants: 0	D3. Was Vehicle Damage above \$1000? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	D4. Moped? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	D5. Hit and Run? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
D6. Driver's License Number: S51838542	D7. License State: MA	D8. DOB: 02/21/2005	D9. Age: 19	D10. Sex: <input checked="" type="checkbox"/> M <input type="checkbox"/> F <input type="checkbox"/> X <input type="checkbox"/> U
D11. License Class: <input checked="" type="checkbox"/> D <input type="checkbox"/> A <input type="checkbox"/> C <input type="checkbox"/> B <input type="checkbox"/> M		D12. Commercial Driver's License Endorsements: <input checked="" type="checkbox"/> P (Passenger transport) <input type="checkbox"/> T (Doubles/Triples) <input type="checkbox"/> S (School Bus)		
D13. Vehicle Travel Direction: <input checked="" type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W		D14. Name of Vehicle Driver (Last, First, Middle): Hodgens, Francis		
D15. Street Address: 35 ADIN St		City: Hopedale	State: MA	Zip Code: 01747

D16. Insurance Company: Government Employees	D17. Vehicle Registration #: 4BL757	D18. Reg. Type: PAN	D19. Reg. State: MA	D20. Vehicle Year: 2007	D21. Vehicle Make: Volvo
D22. Indicate your type of vehicle:	<input type="checkbox"/> 4 Bus (16 or more passengers) <input type="checkbox"/> 5 Bus (9-15 passengers) <input type="checkbox"/> 6 Single-unit truck (2 axles) <input type="checkbox"/> 7 Single-unit truck (3 or more axles) <input type="checkbox"/> 8 Truck/trailer	<input type="checkbox"/> 9 Truck tractor (bobtail) <input type="checkbox"/> 10 Tractor/semi-trailer <input type="checkbox"/> 11 Tractor/doubles <input type="checkbox"/> 12 Tractor/triples <input type="checkbox"/> 13 Unknown heavy truck	<input type="checkbox"/> 14 Motor home/recreational vehicle <input type="checkbox"/> 15 Moped <input type="checkbox"/> 16 Low Speed Vehicle	<input type="checkbox"/> 17 All terrain vehicle (ATV) <input type="checkbox"/> 18 Snowmobile <input type="checkbox"/> 97 Other <input type="checkbox"/> 99 Unknown	<input type="checkbox"/> 1 Passenger car <input type="checkbox"/> 2 Light truck (van, mini-van, pick-up, sport utility) <input type="checkbox"/> 3 Motorcycle

D23. Full Name of Vehicle Owner (Last, First, Middle): Hodgens, Christopher	D24. Street Address: 35 ADIN St	City: Hopedale	State: MA	Zip Code: 01747
--	--	-----------------------	------------------	------------------------

D25. What Was Your Vehicle Doing Prior to the Crash?	D26. Vehicle Damaged Area (check up to three)	<input type="checkbox"/> 0 None <input type="checkbox"/> 10 Undercarriage <input type="checkbox"/> 11 Totaled <input type="checkbox"/> 97 Other <input type="checkbox"/> 99 Unknown
<input type="checkbox"/> 1 Travelling straight ahead <input checked="" type="checkbox"/> 2 Slowing or stopped (traffic) <input type="checkbox"/> 3 Turning right <input type="checkbox"/> 4 Turning left <input type="checkbox"/> 5 Changing lanes <input type="checkbox"/> 6 Entering traffic lane <input type="checkbox"/> 7 Leaving traffic lane <input type="checkbox"/> 8 Making U-turn <input type="checkbox"/> 9 Overtaking/passing <input type="checkbox"/> 10 Backing <input type="checkbox"/> 11 Parked <input type="checkbox"/> 97 Other <input type="checkbox"/> 99 Unknown		

See back for 3rd vehicle

EXHIBIT V



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ENVIRONMENTAL
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MANAGEMENT

249 Vanderbilt Avenue
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T: 781.278.3700
F: 781.278.5701
F: 781.278.5702
www.gza.com



*** FINAL DRAFT ***

July 15, 2021
GZA File No. 175211.00

Mr. John Lee, Chair
Town of Walpole
Walpole Zoning Board of Appeals
135 School Street
Walpole, MA 02081

RE: Engineering Peer Review
Proposed Residential Development
300 Stone Street (Lot 2)
Walpole, MA

Dear Mr. Lee:

In accordance with our proposal, dated May 21, 2021, GZA GeoEnvironmental, Inc. (GZA) is pleased to provide the Town of Walpole Zoning Board of Appeals (Client) this engineering peer review letter for the proposed single-family dwelling and associated surface grading at 300 Stone Street, Walpole (Site). The Project Applicant is Walsh Brothers Building Company (Applicant).

GZA evaluated the Applicant's proposal with respect to conformance with current engineering practices and the Section 11 of the Walpole Zoning Bylaws dealing with construction of a single-family dwelling withing a designated Flood Plain District. Elevations noted in this letter are referenced to North American Vertical Datum of 1988 (NAVD88). GZA's engineering peer review is subject to the **Limitations** provided in **Attachment A**.

SITE DESCRIPTION

Based on GZA's review of site drawings developed by GLM Engineering Consultant, Inc. (GLM), dated February 24, 2020 (revised), the Site consisted of a fully wooded, currently undeveloped parcel (Lot 2) having a total area of 0.62 acres (27,045 ft²). An aerial photograph taken in 1969 shows a structure on the Site. However, a subsequent aerial from 1978 no longer shows the structure present, per images from HistoricalAerials.com. Refer to **Figure 1** for existing conditions plan. Ground surface elevations across this existing Site range from about El. 171 feet in the eastern portion of the lot (next to the existing stream) to about El. 176 feet to the west (abutting the Stone Street roadway embankment). Please note that there is no datum reference cited by the site plans developed by GLM (last dated April 21, 2020). GZA confirmed with GLM through the Town of Walpole that all elevations shown on the site plans are in the North American Vertical Datum of 1988 (NAVD88). Elevations in this letter refer to the NAVD88 datum unless otherwise noted.

The lot is situated on the northeastern side of Stone Street, with the predominant hydrologic feature being Spring Brook¹, which trends west to east through the southern third of the Site. Stream flow in the brook emanates from Clarks Pond, located on the west side of Stone Street.

¹ The FEMA Preliminary FIRM shows this stream as Diamond Brook.

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An Equal Opportunity Employer M/F/V/H



Water is conveyed from the Pond via twin, 36-inch diameter, 40-foot long reinforced concrete pipes (RCP).

These culverts along with a portion of the Stone Street embankment constitute a dam, which impounds the water of Clarks Pond. The dam is regulated by the Commonwealth of Massachusetts Department of Conservation & Recreation (MADCR). The DCR's database indicates the name of the dam is "Summer Street Culvert", with coordinates: 42.13898877 (degrees in Latitude) and - 71.24146432 (degrees in Longitude) (**Figure 4**). Water level in the pond is controlled by small, 4.5 foot-wide spillway with wooden weir boards immediately upstream of the culvert inlets. The boards are set such that the normal pool is at an approximate elevation of 174.3. The MADCR dam safety database indicates that the dam is privately owned (Foxpole Properties²), is about 6.5 feet in structural height, and has a Small Size and Low Hazard Classifications. Pursuant to the DCR Dam Safety Regulations (302CMR10.00), a Low Hazard Dam is "located where failure of the dam [i.e. sudden, uncontrolled release] may cause minimal property damage to others [abutters]. Loss of life is not expected." Based on GZA's reconnaissance of the Site vicinity, the dam embankment is approximately 35 to 50-feet long. Selected photographs from GZA's site visit on June 15, 2021 are included in **Attachment B**.

A separate drainage feature adjacent to the Site is a bituminous swale located immediately off of Stone Street near the northwest corner of the Site. Surface runoff from the roadway is conveyed from this paved swale to the Site, which generally runs along the northerly property boundary before discharging to the brook. As provided in a letter from Carl Balduf, Town Engineer, to the Walpole ZBA, this paved swale and related drainage feature is "historic". The swale became visible on Google Earth Images dated 2008. GZA does not have the information on exact construction date/year of the swale. Furthermore, the Conservation Commission requires maintenance of this drainage system to be a private responsibility.

SITE PROXIMITY TO FLOODPLAIN

The Site is situated within Walpole's Flood Plain Protection Overlay District and is fully encompassed within the 100-year floodplain as published in the latest Flood Insurance Rate Map (FIRM) by FEMA (effective date July 17, 2012). Relevant portions of the FIRM are presented in **Figure 2**. Base flood water surface elevation across the site ranges from approximately 170.0 to 174.0 (NAVD88), based on the published FIRM. The 100-year flood level in Clarks Pond, in the vicinity of the Stone Street dam outlet is at Elevation 177.0. Based on the average roadway grade elevation of 176.5 (taken from the GLM site base map), the dam/roadway would be likely overtopped and susceptible to an erosion failure during the 100-year flood. Shallow flooding depths of about 0.5 foot would be expected across the majority of the Site, under the 100-year event (not including dam failure). However, flood depths in the brook would be more in the range of 2 to 3 feet, with related higher flow velocities.

PROPOSED SITE DEVELOPMENT AND MITIGATION MEASURES

GZA's understanding of the applicant's proposed dwelling configuration and floodplain mitigation measures were primarily derived from review of the GLM engineering drawings (see **Figure 3**). The dwelling is to have a 1,460 ft² footprint with slab-on-grade foundation. The top of foundation slab is to be set at elevation 174.0 with a finished ground floor elevation of 176.0, which is above the published FEMA 100-year flood elevation. However, other portions of the property surrounding the dwelling structure will remain in the 100-year floodplain. Based on the Applicant's documentation, mitigation measures due to the proposed land disturbance will primarily include creation of new flood storage to compensate flood volume loss due to filling and re-grading of the Site. Based on the use of simple flood storage

² GZA understands that the information (such as name of the dam and ownership) contained in the MADCR database could be erroneous. According to the record provided by the Town, Clarks Pond and 10-feet around the Pond is owned by the Town of Walpole under the Conservation Commission.



compensation techniques, the estimated storage volume loss of 276 ft³ will be compensated with a volume of 875 ft³, a 3 to 1 ratio.

In addition, the proposed development is to include a small “sediment basin” located near the northwest corner of the property (**Figure 3**). This basin is to be about 1.5 feet high, with a riprap spillway set at a level about 0.5 feet below the top of the basin. A new grass-lined swale will allow roadway stormwater from the existing paved swale, along with some site runoff, to enter the basin. It appears that the basin will operate as a detention basin, however it is unclear how this structure’s storage volume and spillway configuration were sized (i.e. design storm) and how the basin would operate under the 100-year storm. Please note that GZA did not review regulatory requirements for the proposed detention basin per Massachusetts Clean Water Act.

CONCLUSIONS AND RECOMMENDATIONS

Based on our review of the documents provided, GZA concludes the following:

1. The compensatory storage calculation fulfills the requirement in Section 11.3.B.2 of the Zoning By-Law. However, in GZA’s opinion, reliance solely upon the compensatory storage is an oversimplified mitigation technique given the Site’s extremely sensitive location immediately north of Clarks Pond, in close proximity to Spring Brook, as well as the property being fully within the 100-year floodplain. The compensatory volume technique is static and does not properly address the potential changes in actual flow dynamics at and near the brook as a result of encroachment of the Site’s flood overbank areas due to filling and other land disturbances. Potential changes in flood flow conveyance, due to the proposed filling, may alter flow velocities resulting in increases in water surface elevations. The proposed construction seems to be constricting the flow area downstream of the Stone Street culverts so that depths may increase at the Site and vicinity. This may exacerbate flooding on and off the Site as well as alter the tailwater characteristics at the downstream end of the dam’s outlet culverts at Stone Street. At a minimum, GZA recommends that the Applicant commission the performance of a detailed backwater computer simulation to estimate the 100-year water surface profile under both pre- and post-development conditions. The analysis, using HEC-RAS or other comparable hydraulic program, should be done from a point downstream of the Site and up through the Stone Street culverts up to Clarks Pond.
2. The Walpole ZBA determined (in their original decision letter dated December 21, 2020) that the project does not satisfy the requirements of Section 11.1 of the Zoning By-Law because it is not protective of public health, safety, hazards from periodic flooding nor has it been shown how the project preserves existing flood control characteristics. GZA also notes that Section 11.3.B.5 states: “*The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use.*” Regardless of the proposed filling to raise the finished ground floor above the base flood level, GZA’s current opinion based on information provided to us and our engineering experience with similar projects is that the dwelling residence would likely remain at risk during base flood conditions, as the floodplain will otherwise encircle the dwelling, which could be subject to flowing water when potential overtopping of the road from the Pond occurs. As noted in Item No. 1 above, the Applicant has not provided information that demonstrates how the development may (or may not) influence existing flood control characteristics and/or off-site flooding characteristics.
3. It should also be noted that the property’s location immediately downstream from a regulated dam also has potential consequences for the dam’s owner and possibly the Town (in the event of dam failure). A dwelling will most likely be within the inundation area of a dam breach. This could trigger reclassification of the dam to



Significant or perhaps High Hazard, where dam failure may or would likely cause loss of life, respectively³. Significant and High Hazard dams have additional regulatory requirements including more frequent visual dam inspections, potentially larger spillway design floods, and preparation of an Emergency Action Plan. Additionally, based on the information in the effective FIRM, the dam is likely to overtop during the 100-year flood which could result in dam failure (and by default result in damage or destruction of Stone Street, which forms the dam's embankment). Encroachment of the Spring Brook floodplain due to filling may alter flow velocities, which could raise water levels up to or beyond the Stone Street dam outlet elevation. This could result in exacerbating the overtopping potential of the dam.

4. Additional hydrologic and hydraulic engineering information should be provided related to the design of the Sediment Basin. Specifically, an inflow/outflow storage routing computation should be provided that quantifies the contributory rate of runoff to the basin emanating from the roadway and from the Site. How accumulated sediment will be removed and other maintenance/performance of the basin under the 100-year flood should be included.

Please contact the undersigned if you have any questions or comments related to the contents of this engineering peer review letter.

Very truly yours,
GZA GEOENVIRONMENTAL, INC.

Bin Wang, P.E., CFM
Senior Project Manager

Peter H. Baril, P.E.
Consulting Engineer

David M. Leone, P.E., CFM
Associate Principal

Chad W. Cox, P.E.
Consultant/Reviewer

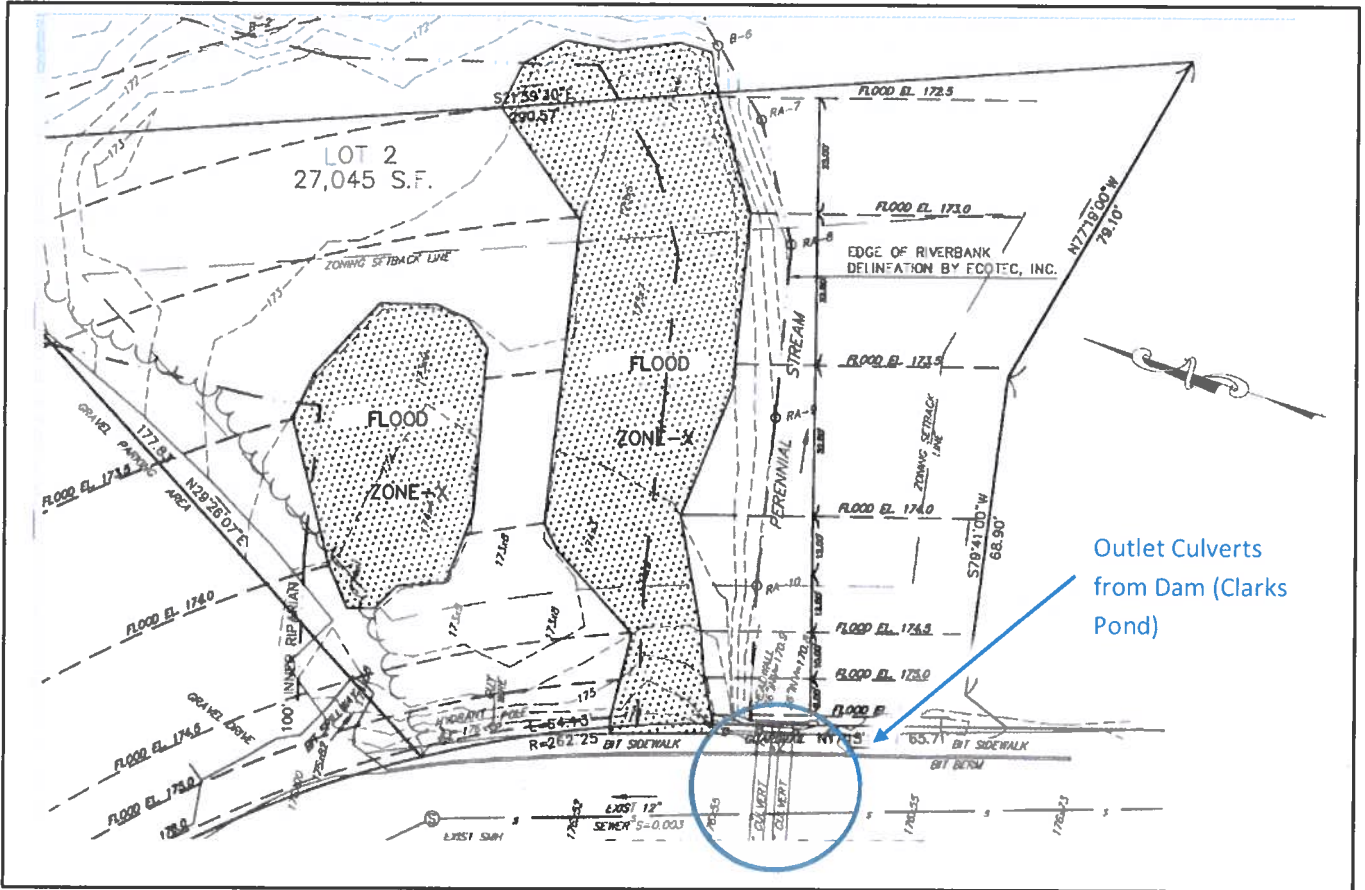
³ GZA notes the hazard potential classification of dams is the responsibility of the Massachusetts Department of Conservation and Recreation, Office of Dam Safety in accordance with Massachusetts Dam Safety Regulations (302CMR10).



FIGURES



Figure 1: Existing Site Conditions – 300 Stone St Lot 2, Walpole, MA

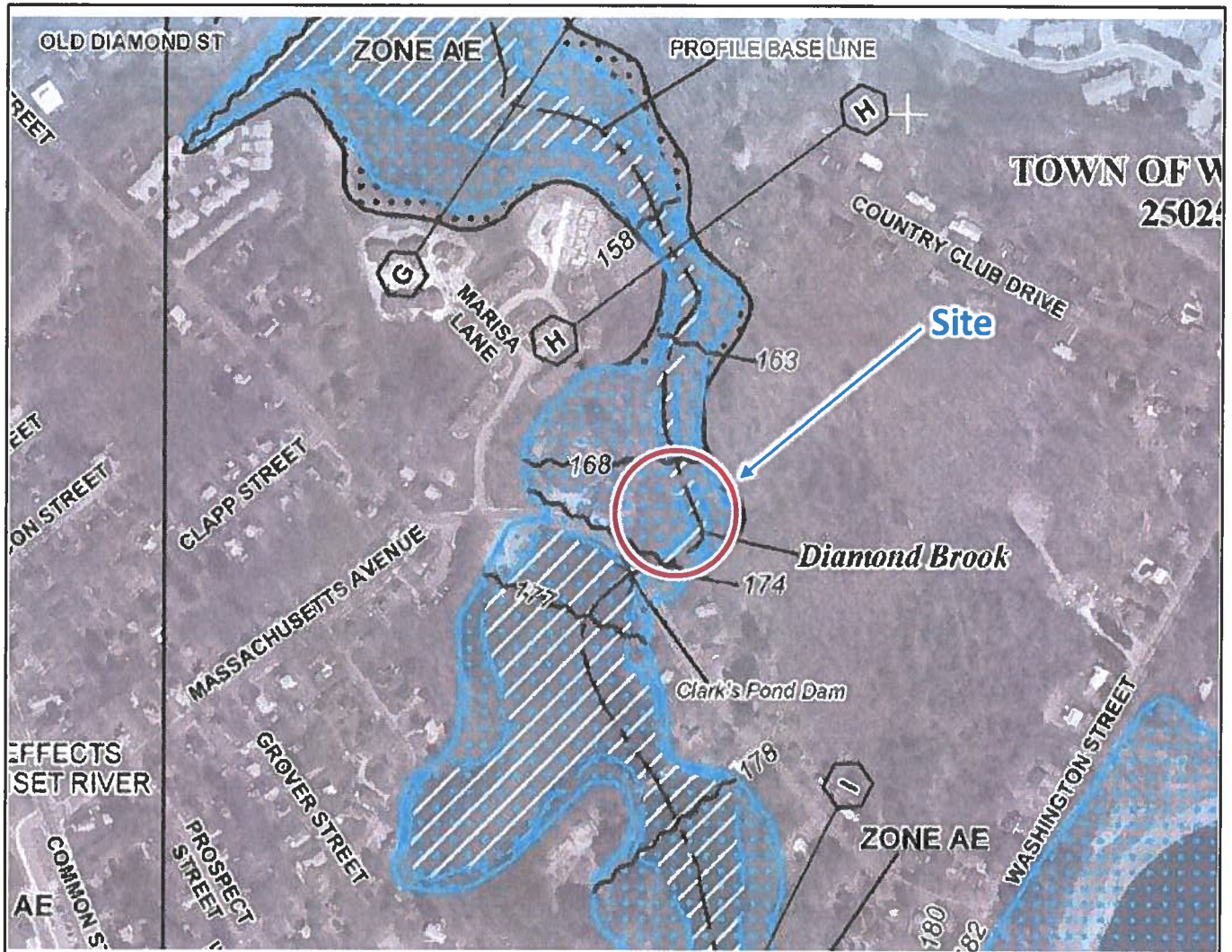


Notes:

1. Not to scale; excerpt from "Site Development Lot 2 – 300 Stone Street, Walpole, Massachusetts", Original Scale 1" = 20'. Plan # 27, 337. Last dated April 21, 2020.
2. GZA did not confirm with the project engineer (GLM) the source of the flood zone designation shown on this drawing.



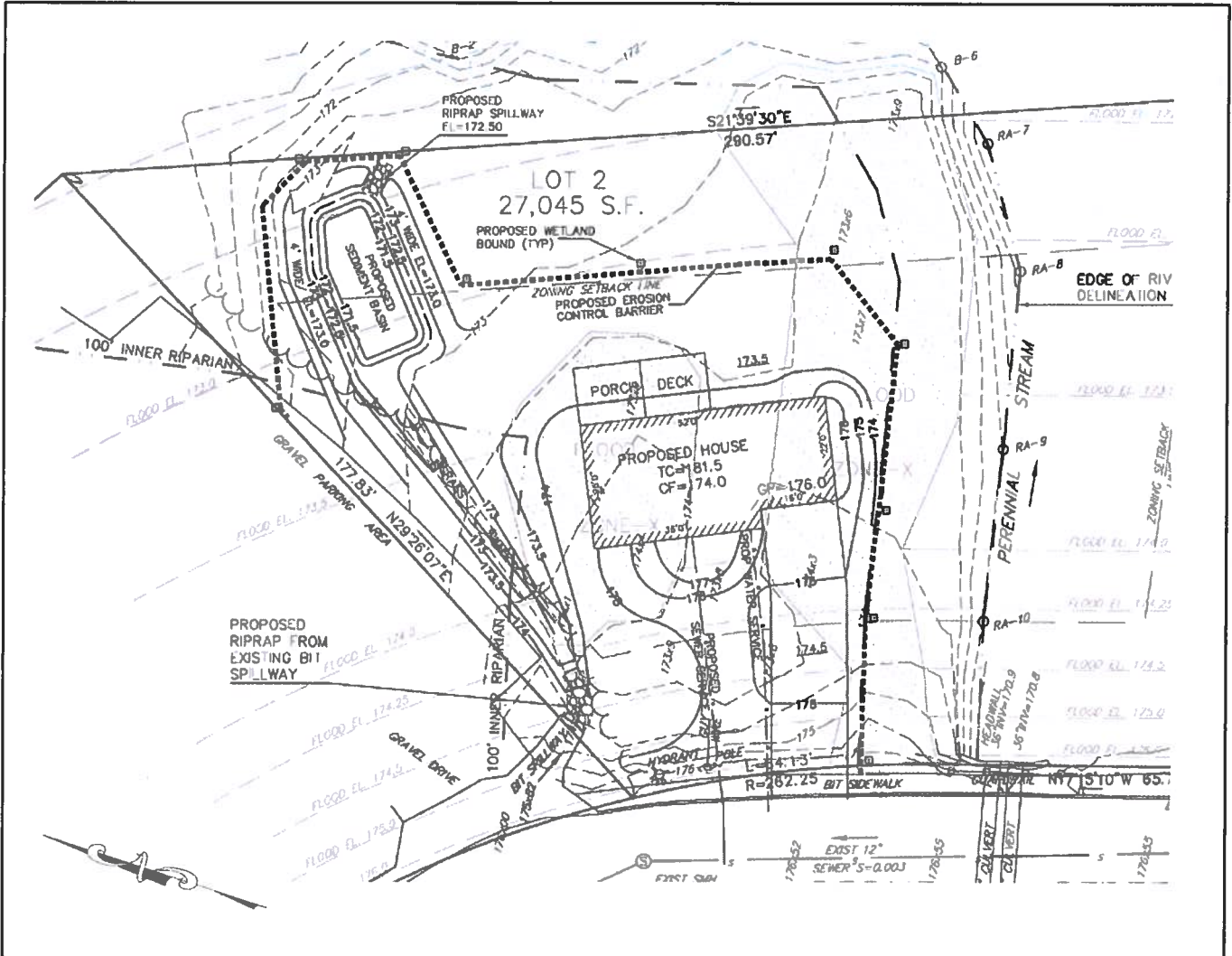
Figure 2: FEMA Flood Insurance Rate Map (2012)



Note: Not to scale; excerpt from FEMA FIRM Panel # 25021C0188E, Effective Date July 17, 2012.



Figure 3: Proposed Development at 300 Stone St Lot 2, Walpole, MA

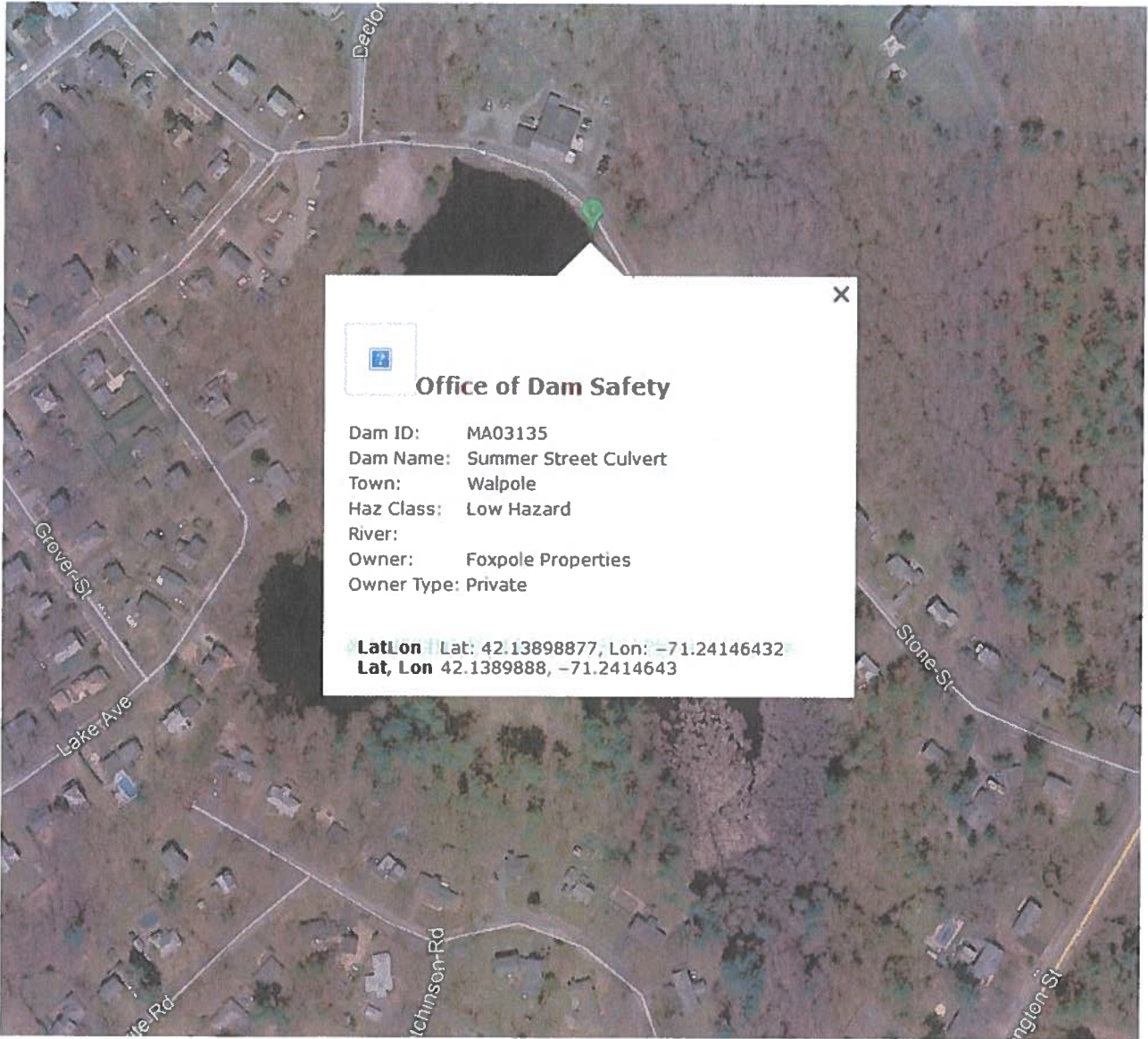


Notes:

1. Not to scale; excerpt from "Site Development Lot 2 – 300 Stone Street, Walpole, Massachusetts", Original Scale 1" = 20'. Plan # 27, 337. Last dated April 21, 2020.
2. GZA did not confirm with the project engineer (GLM) the source of the flood zone designation shown on this drawing.



Figure 4: Screen Capture of Office of Dam Safety Database in Google Earth View





Engineering Peer Review (July 15, 2021)
300 Stone Street, Walpole, MA
GZA File No. 175211.00
Page | 10

ATTACHMENT A
Limitations



Use of Report

1. GZA prepared this report on behalf of, and for the exclusive use of our Client for the stated purpose(s) and location(s) identified in the Proposal for Services and/or Report. Use of this report, in whole or in part, at other locations, or for other purposes, may lead to inappropriate conclusions; and we do not accept any responsibility for the consequences of such use(s). Further, reliance by any party not expressly identified in the agreement, for any use, without our prior written permission, shall be at that party's sole risk, and without any liability to GZA.

Standard of Care

2. GZA's findings and conclusions are based on the work conducted as part of the Scope of Services set forth in Proposal for Services and/or Report and reflect our professional judgment. These findings and conclusions must be considered not as scientific or engineering certainties, but rather as our professional opinions concerning the limited data gathered during the course of our work. If conditions other than those described in this report are found at the subject location(s), or the design has been altered in any way, GZA shall be so notified and afforded the opportunity to revise the report, as appropriate, to reflect the unanticipated changed conditions.
3. GZA's services were performed using the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services, at the same time, under similar conditions, at the same or a similar property. No warranty, expressed or implied, is made.

Subsurface Conditions

4. The generalized subsurface conditions provided in our Report are based on widely-spaced subsurface explorations and are intended only to convey trends in subsurface conditions. The boundaries between strata are approximate and idealized and were based on our assessment of subsurface conditions. The composition of strata, and the transitions between strata, may be more variable and more complex than indicated. For more specific information on soil conditions at a specific location refer to the exploration logs.
5. In preparing this report, GZA relied on certain information provided by the Client, state and local officials, and other parties referenced therein which were made available to GZA at the time of our evaluation. GZA did not attempt to independently verify the accuracy or completeness of all information reviewed or received during the course of this evaluation.
6. Limitations related to the technical aspects of the cost estimate analysis have been discussed in the main body of this document. Assumptions have been made based on available information/data and engineering judgment.

Limits to Observations

7. Natural resource characteristics are inherently variable. Biological community composition and diversity can be affected by seasonal, annual or anthropogenic influences. In addition, soil conditions are reflective of subsurface geologic materials, the composition and distribution of which vary spatially.
8. The observations described in this report were made on the dates referenced and under the conditions stated therein. Conditions observed and reported by GZA reflect the conditions that could be reasonably observed based upon the visual observations of surface conditions and/or a limited observation of subsurface conditions at the specific time of observation. Such conditions are subject to environmental and circumstantial alteration and may not reflect conditions observable at another time.
9. The conclusions and recommendations contained in this report are based upon the data obtained from a limited number of surveys performed during the course of our work on the site, as described in the Report. There may be variations



between these surveys and other past or future surveys due to inherent environmental and circumstantial variability.

Reliance on Information from Others

10. Preparation of this Report may have relied upon information made available by Federal, state and local authorities; and/or work products prepared by other professionals as specified in the report. Unless specifically stated, GZA did not attempt to independently verify the accuracy or completeness of that information.

Compliance with Codes and Regulations

11. We used reasonable care in identifying and interpreting applicable codes and regulations. These codes and regulations are subject to various, and possibly contradictory, interpretations. Compliance with codes and regulations by other parties is beyond our control.

Additional Services

12. GZA recommends that we be retained to provide services during any future: site observations, design, implementation activities, construction and/or property development/redevelopment. This will allow us the opportunity to: i) observe conditions and compliance with our design concepts and opinions; ii) allow for changes in the event that conditions are other than anticipated; iii) provide modifications to our design; and iv) assess the consequences of changes in technologies and/or regulations.



ATTACHMENT B
Site Photographs



300 Stone Street – Peer Review	Site Visit: 06/15/2021	Project Number 01.175211.00
Photo 1 Looking northeast at the Site	Bituminous spillway / stormwater swale	



Photo 2 Looking east at the Site and Stone St	Bituminous spillway / stormwater swale; fire hydrant;
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300 Stone Street – Peer Review		Site Visit: 06/15/2021	Project Number 01.175211.00
Photo 3	Looking at the Site/ end of guardrail	Stormwater drain (PVC pipe); guard rail	
			

Photo 4	Outlet Structure	Concrete weir	
			



300 Stone Street – Peer Review		Site Visit: 06/15/2021	Project Number 01.175211.00
Photo 5	Culvert (looking downstream)	Two 36"-diameter outlet culverts from Clarks Pond	
			
Photo 6	Looking north at the site	Wooded lot; fallen trees/branches	
			

EXHIBIT VI



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Assoc. Member

DECISION – BOARD OF APPEALS CASE NO. 20-25

APPLICANT:

Walsh Brothers Building, Co.

LOCATION:

**300 Stone Street; (Lot 2), Walpole, MA 02081
Walpole Assessor's Map 34, Parcel 54**

APPLICATION:

A SPECIAL PERMIT under Section 11 of the Zoning Bylaws to allow for the construction of a single-family dwelling in an area designated as being within the Flood Plain Protection Overlay District, located at 300 Stone Street (Lot 2), Walpole MA 02081

RECEIVED
21 AUG - 2 PM 1:52
TOWN OF WALPOLE
TOWN CLERK

NOTICE OF HEARING:

Pursuant to Massachusetts General Laws, Chapter 40A, Section 11, notification of a Public Hearing for Case 20-25 was advertised on April 21, 2021 and April 28, 2021 in a newspaper of local circulation (Times Advocate). The Language of this Public Hearing notice was as follows:

**Town of Walpole
Zoning Board of Appeals**

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a **PUBLIC HEARING** (On a Remand from Land Court) via **ZOOM CONFERENCE** on **WEDNESDAY, MAY 5, 2021 at 7:00 P.M.** on an Application from **Robert Truax, Case #20-25**, with respect to property located at **300 Stone Street, Walpole, MA**, Zoning District RB.

This Application is for a Special Permit under Section 11 of the Zoning Bylaws to allow the construction of a single-family dwelling in an area designated as Flood Plain District. This Application may be viewed at the Office of the Board of Appeals.

BACKGROUND AND DELIBERATION:

On December 16, 2020 the Board opened the Public Hearing for the original Special Permit application of this case. This Public Hearing was continued to December 21, 2020 where a motion to grant the Special Permit received a two (2) in favor and three (3) opposed vote which therefore denied the Special Permit under Section 11 of the Zoning Bylaws. The Zoning Board of Appeals (the "Board") found that the proposed single-family dwelling within the Flood Plain Protection Overlay District was not in harmony with the purpose and intent of the Bylaw. The Board also found that the proposed project did not adequately protect adjacent and downstream properties from the hazards of periodic flooding. This decision from the Board was appealed by the Walsh Brothers Building Company (the "Applicant").

Upon review from Land Court, the case was remanded back to the Board as a new Public Hearing with respect to a Special Permit application under Walpole Zoning Bylaws, Section 11: Flood Plain Protection

Overlay District. The Public Hearing was opened on May 5, 2021. At this Public Hearing it was agreed upon between both the Board and the Applicant that the Board would procure the assistance of outside independent peer review for the Special Permit application. This Public Hearing was continued to June 2, 2021 where after review of submitted peer review scopes of work, the Board chose the firm GZA GeoEnvironmental ("GZA") from Norwood, MA to conduct peer review of the case as it relates to Section 11 of the Walpole Zoning Bylaws. The Public Hearing was again continued to July 21, 2021 in order to provide time for GZA to conduct their review.

GZA provided a review letter to the Board on July 15, 2021, which was subsequently sent to the Applicant. The Applicant themselves provided a response letter to the Board on July 20, 2021. At the July 21, 2021 Public Hearing, the consultant presented their findings to the Board. GZA determined that while the compensatory storage calculations provided by the Applicant in their plans fulfill the requirement of Section 11.3.B.2, this reliance upon compensatory storage should also take into consideration the site's sensitive location north of Clarks Pond, proximity to Spring Brook, and location within the 100-year floodplain. The peer review continued to state that the compensatory volume technique is static and does not properly address the potential changes in actual flow dynamics at and near the brook as a result of encroachment of the site's flood overbank areas due to filling and other land disturbances. These potential changes could alter flow velocities and result in an increase of water surface elevations and may exacerbate flooding on and off the site. GZA recommended that the Applicant provide a detailed backwater computer simulation to estimate the 100-year water surface profile under both pre- and post-development conditions. At the July 21, 2021 Public Hearing the Applicant stated that they would not be undertaking this additional study and disagreed with GZA's assertion that the entire project was within the 100-year floodplain.

Peer review from GZA also referenced the Board's previous decision which states that the project did not satisfy the requirements of Section 11.1 of the Zoning Bylaws as the plan was not protective of public health, safety, and hazards from periodic flooding nor does it show how the project preserves existing flood control characteristics. It was the opinion of GZA that regardless of the proposed filling to raise the finished ground floor above the base flood level, the proposed dwelling would still likely remain at risk during base flood conditions, as the floodplain will otherwise encircle the dwelling, which could be subject to flowing water when there is potential overtopping of the adjacent Stone Street from Clark's pond. GZA expressed that additional information from the Applicant on how the development may or may not influence existing flood control characteristics and/or off-site flooding characteristics would be beneficial.

There was also concern about the site's location immediately downstream from the dam at Clark's Pond. If the dam were to overtop during a 100-year flood then a dwelling, such as the proposed dwelling, will most likely be within the flooding area of the dam breach. GZA concluded that additional hydrologic and hydraulic engineering information should be provided related to the design of the proposed sediment basin. The Public Hearing was closed on July 21, 2021, and the meeting was continued to July 28, 2021 to deliberate on the decision.

VOTE OF THE BOARD:

MOTION made by Mr. Fitzgerald and seconded by Mrs. Murphy, that the Board grant Walsh Brothers Building Co. a Special Permit under Section 11 of the Zoning Bylaws to allow the construction of a single-family dwelling in an area designated as within the Flood Plain Protection Overlay District, as shown on the plan entitled: "Site Development Plan, Lot 2, 300 Stone Street, Walpole, MA 02081" dated December 17, 2019, revised 4/21/2020, prepared by GLM Engineering Consultants, Inc.

In Favor: None.

**Opposed: John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member**

The vote was zero (0) in favor and five (5) opposed resulting in a vote of 0-5-0 which did not carry the motion. The result of the vote denied the Special Permit.

MOTION made by Mrs. Murphy and seconded by Mr. Fitzgerald to adopt the decision as drafted, with edits discussed at the July 28, 2021 meeting.

**In Favor: John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member**

Opposed: None.

The vote was five (5) in favor and zero (0) opposed, resulting in a vote of 5-0-0, which carried the motion. The result of the vote accepted the draft decision as the final decision.

REASONS FOR DECISION

The Board finds that the proposed single-family dwelling within the Flood Plain Protection Overlay District was not in harmony with the purpose and intent of the Bylaw. According to Section 11(1) of the Bylaw, the purpose of the Flood Plain Protection Overlay District is to *“protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the Flood Plain.* The Board found that the proposed project did not adequately show how it would protect adjacent and downstream properties from the hazards of seasonal or periodic flooding. While compensatory storage was provided as necessary in Section 11.3.B.2, it cannot be the sole determining factor in granting of this Special Permit. Given the sites proximity to the floodplain, Spring Brook, and being immediately downstream from the dam at Clark’s Pond; the potential risk of public health, safety, and general welfare outweigh the benefits of this project. The Board finds that the Applicant did not adequately meet the requirements for the granting of the requested Special Permit.

FURTHER FINDINGS

1. Section 2: Administration, 2. Special Permits, A. General required that:

Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or “SPGA”), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.

Under Section 11 of the Zoning Bylaw, the purpose of the Flood Plain Overlay District is to *“to protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the*

ground water table and water recharge areas within the Flood Plain.” The Board found that the proposed project, including the proposed alterations to the flood plain, did not protect the public health, safety and general welfare from the hazards of seasonal or periodic flooding to the rear of and downstream of the property. The findings from the Board’s peer review consultant, GZA GeoEnvironmental, also highlight the potential risk of this sort of development within such an environmentally sensitive location.

2. Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

Prior to granting a Special Permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

- (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 specific criteria for the grant of the requested special permit are set forth in Section 11(3)(B) of the Zoning Bylaw. This section provides that the Board *may* grant a special permit if such criteria are satisfied. The Board, as noted above, found that the proposed single-family dwelling and associated filling and excavation within the Flood Plain District was not adequately protective of the public health, safety and general welfare -- particularly with respect to properties to the rear and downstream of the property.

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

The proposed single-family dwelling within the Flood Plain Protection Overlay District would not produce or have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood, as the project is residential in nature and is allowed with the underlying zoning district. Therefore, the Board finds that this condition 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 single-family dwelling would not have a number of residents, customers, or visitors, so as to adversely affect the immediate neighborhood, as the project is residential in nature and permitted with the underlying zoning district. Therefore, the Board finds that this condition is satisfied.

- (d) ***shall comply with the dimensional requirements applicable to 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 proposed single-family dwelling within the Flood Plain Protection Overlay District, in the Zoning District RB conforms to the dimensional requirements of the Zoning Bylaw, as shown on the originally submitted plan, entitled: “Site Development Plan, Lot 2, 300 Stone Street, Walpole, MA 02081” dated December 17, 2019, prepared by GLM Engineering Consultants, Inc. As well as the revised plan for which the peer review consultant referenced their feedback from entitled: “Site Development Plan, Lot 2, 300 Stone Street, Walpole, MA 02081” dated December 17, 2019, revised 4/21/2020, prepared by GLM Engineering Consultants, Inc. The plans comply with the lot coverage and setback requirements as found in Table 6-B.1. Table Dimensional Regulations within

the Zoning Bylaws. No buffer zones are required in the RB district. Therefore, the Board finds that this condition is satisfied.

(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 single-family dwelling within the Flood Plain Protection Overlay District would not be dangerous to the immediate neighborhood of the premises through fire or explosion. However, the Board could not determine that the proposal would not pose danger to the future inhabitants of the premises, immediate neighborhood of the premises, and downstream properties from the location of the premises. The proposal did not properly address the potential changes to the flood flow conveyance from the proposed filling which may result in an increase in water surface elevations and exacerbate flooding on and off the site. The Board finds that this condition is not satisfied.

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

The Board finds that the proposed single-family dwelling within the Flood Plain Protection Overlay District will not create any noise, dust, heat, smoke, fumes, odor, or glare, as to adversely impact the immediate neighborhood. However, the Board could not determine whether the proposed project would potentially create other nuisance, or serious hazards as to adversely affect the immediate neighborhood. This was due to concerns regarding the potential impacts from filling and other disturbances at the site. The proposed construction would seem to constrict the flow area downstream of the Stone Street culverts which could exacerbate flooding on and off site. The Board found that due to the potential hazards posed on the site and surrounding area from filling, that nuisance or serious hazard as to adversely affect the immediate neighborhood could not be ruled out. Therefore, the Board finds that this condition is not met.

(g) shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the proposal of a residential single-family dwelling is in character of the neighborhood. However, the Board could not determine that the proposal would not adversely impact the character of the immediate neighborhood due to the possibility of flooding on the property itself, the abutting properties, properties downstream from the adjacent Spring Brook, and Stone Street itself. Therefore, the Board finds that this condition is not 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.

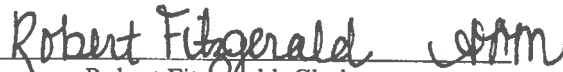
The Board finds that under Section 11 of the Zoning Bylaw, the purposes of the Flood Plain Protection Overlay District are *"to protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control characteristics, and the flood storage capacity of the flood plain, and to preserve and maintain the ground water table and water recharge areas within the Flood Plain."* Due to a lack of information regarding the potential impacts to the flood control characteristics of the site from filling and construction and those impacts downstream from the site and surrounding area, vulnerability of the site due to being immediately downstream from the dam at Clark's pond, and location within the 100-year floodplain, the Board has determined that the proposed project was not compatible with the purpose of the Zoning Bylaw or the purpose of the Zoning District in which the premises is located. As such, the granting of this Special Permit is denied.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

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, Clerk

- cc: Elizabeth Gaffey, Town Clerk
Michael Yanovich, Building Inspector
George Pucci, Town Counsel
Brian Almeida, Attorney
John Walsh, Walsh Brothers Building Company
Robert Truax, GLM Engineering Consultants

This decision was made on July 28, 2020 and filed with the Town Clerk on August 2, 2021.