

THE RESIDENCES AT DARWIN COMMONS
DARWIN LANE – WALPOLE, MA
APPLICATION FOR COMPREHENSIVE PERMIT
UNDER M.G.L. C. 40B

ZONING BOARD OF APPEALS OF THE TOWN OF WALPOLE
COMPREHENSIVE PERMIT REGULATIONS
APRIL 28, 2022

SECTION 3.2.11 – LIST OF REQUESTED EXEMPTIONS AND WAIVERS

INTRODUCTION

The Applicant, Wall Street Development Corp. (the “Applicant”), requests waivers from certain local bylaws, regulations and other requirements in connection with the proposed development entitled “Darwin Commons”. The development is proposed pursuant to M.G.L. Chapter 40B and, in accordance with M.G.L. 40B, all local approvals for the proposed development are to be granted pursuant to a Comprehensive Permit to be issued by the Town of Walpole Zoning Board of Appeals (the “ZBA”) instead of being granted individually by other permitting authorities.

Under M.G.L. Chapter 40B, the ZBA performs a complete technical review of the Applicant’s plans and specifications during the Comprehensive Permit hearing, including but not limited to site plans, grading, stormwater management, erosion and sediment control, etc. All the work proposed on the development will be (i) performed in accordance with the plans of record approved by the ZBA or its designee, (ii) subject to the conditions contained in the Comprehensive Permit, and (iii) the inspections of the ZBA or its designee for compliance with the plans of record and the Comprehensive Permit.

The Applicant hereby requests waivers from the Local Requirements as follows and as outlined in the attached Table I.

1. Board of Appeals 40A Rules and Regulations:

The Zoning Board of Appeals (the "ZBA") Rules and Regulations are designed to address applications for Special Permits and Variances under M.G.L. c. 40A. As an affordable housing development, the Applicant seeks approval for Diamond Hill Estates pursuant to M.G.L. Chapter 40B. Accordingly, the proposed development will comply with the ZBA's 40B Rules (except for the provisions thereof from which waivers have been requested), and all local approvals for the proposed development are to be granted by a Comprehensive Permit issued by the ZBA. The applicant therefore requests a waiver from the ZBA's 40A Rules and Regulations and Section 2 of the Zoning Bylaws.

2. Board of Appeals Comprehensive Permit Regulations:

The Comprehensive Permit Regulations ("ZBA 40B Regulations") dated November 20, 2019 are designed to address applications for comprehensive permits submitted under M.G.L. c 40B, sec. 20-23. The ZBA 40B Regulations are inconsistent with Chapter 40B and the regulations promulgated by the Executive Office of Housing and Economic Development ("EOHED") under 760 CMR 56.00 (the "Regulations"), specifically, 760 CMR 56.05(1) and (2).

In addition, the ZBA 40B Regulations in Section 5.2 states:

"The Board shall open a public hearing on a complete application within thirty days of its receipt thereof provided that said complete application includes the filing fees and all the information required by these regulations. Unless one or more of the items of information required by these Regulations is waived by the Board, an application will not normally be deemed complete if it does not contain all of the filing requirements established herein. The Board may in its discretion allow one or more of the items of information required by these Regulations to be submitted during the Board's public hearing on an application."

The provisions of Section 5.2 of the ZBA 40B Regulations are inconsistent with and contrary to the provisions of the Regulation at 760 CMR 56 (2) which states:

“The Applicant shall submit to the Board an application and a complete description of the proposed Project. Normally the items listed below will constitute a complete description. Failure to submit a particular item shall not necessarily invalidate an application.”

Based on the information outlined above, the Applicant shall use its best efforts to comply with the provisions of the ZBA 40B Regulations to the extent practicable.

3. Walpole Rules and Regulations Governing the Subdivision of Land:

The proposed development of Darwin Commons does not involve a "subdivision" within the meaning of the Subdivision Control Law, M.G.L. c. 41, sec. 81K - 81GG. The Planning Board Rules and Regulations Governing the Subdivision of Land (the "Subdivision Regulations") have no applicability to the proposed development. However, to the extent that such Subdivision Regulations, or any part thereof, were to be deemed applicable, the Applicant hereby requests a waiver from such Subdivision Regulations or part thereof to the extent that such regulation would affect the proposed development as shown on the plans.

4. Planning Board Site Plan Review Rules:

As the development is proposed under M.G.L. Chapter 40B, the Zoning Board is the permit granting authority for all local approvals for the proposed development. To the extent the Site Plan Review Rules in Section 13 of the Zoning Bylaws are deemed applicable to the proposed development, the Applicant requests a waiver for the reasons described in Section 1, above, which is incorporated herein by this reference.

5. Walpole Stormwater Management and Erosion Control Bylaw:

To the extent that any provision of the Walpole Stormwater Management and Erosion Control Bylaw is deemed applicable to the proposed development, a waiver of such provision is hereby requested because the proposed development will be governed by the Commonwealth of Massachusetts Stormwater Management Standards and Stormwater Policy Handbook

TABLE I

SECTION	DESCRIPTION	WAIVER	NOTES
ZBA 40A Rules and Regulations			
40A Rules and Regulations and Section 2 of the Zoning Bylaws	As an affordable housing development, the applicant seeks approval of the project under M.G.L. Chapter 40B and will comply with the Board's 40B Rules and Regulations (unless otherwise requested)	40A Rules and Regulations and Section 2 of the Zoning Bylaws	
ZBA Comprehensive Permit Rules and Regulations			
Section 3.2.8	<u>Tabulation of Proposed Buildings</u>	Applicant requests waiver from providing building tabulations until the closing of the public hearings.	
Section 3.2.12	<u>Pro Forma</u> - a complete financial pro forma, detailing the projected costs and revenues of the proposed project.	Applicant requests waiver from regulation as they believe it is in excess to the requirements of M.G.L. 40B and as provided in the regulations in 760 CMR 56.05 (1) and (2)	
Section 3.2.13	<u>Impact Analysis of Natural and Built Environment</u>	Applicant Requests Waiver -- Information provided with other sections.	

SECTION	DESCRIPTION	WAIVER	NOTES
<p>Walpole Rules and Regulation Governing the Subdivision of Land, as amended through 2016</p>	<p>The local municipal subdivision rules and regulations</p>	<p>Being that this is not a subdivision the applicant requests a waiver from the town of Walpole's subdivision rules and regulations to the extent that such regulation would affect the proposed development as shown on the plans.</p>	
<p>Town of Walpole Zoning Bylaws</p>			
<p>Section 5-B Schedule of Use Regulations Table 5-B.3.d.iii</p>	<p>iii. If there is to be more than one (1) principle building on a lot, there shall be a minimum of 10,000 square feet of lot area per dwelling unit, regardless of how many buildings are on the lot or how many units are in a building.</p>	<p>Allow up to six (6) principle buildings on a lot with approximately 5,500 square feet of lot area per dwelling unit</p>	
<p>Section 5-D Excavation or Filling of Earth</p>			
<p>Section 5-D.2. Activities Prohibited</p>	<p>Clear-cutting of vegetation and stripping of topsoil on a site before a Building Permit has been issued by the Building Inspector for the intended use of the site is prohibited unless limited clearing is required for pre-development work including, but not limited to, site access, surveying, and test pits pursuant to accepted engineering practices.</p>	<p>Allow tree clearing and stripping of topsoil and site work to commence upon approval of the Comprehensive Permit.</p>	

SECTION	DESCRIPTION	WAIVER	NOTES
Section 5-D.3.E.	Activities approved as part of any Site Plan Review	Allow activities as required and shown on the plan as site plan review is not required.	
Section 5-D.4.A.	Under the provisions of this Section of the Bylaw, the Board of Appeals may authorize a Special Permit for the following activities: (A) Activities associated with a residential use that will involve the excavation or filling of one hundred (100) cubic yards of earth or more per year except those listed in Subsection 5-D.3.C above.	Allow excavation and /or filing activities required for the development, as shown on the plan without special permit.	
Section 6-B Schedule of Dimensional Regulations			
Section 6-B and Table 6-B.1.	<u>Residence B</u> Required Lot Area: 20,000S.F. Impervious Surface Buildings – 25% Total Impervious Surface – 40% Front Setback: 30’ Rear Yard Setback: 30’ Side Yard Setback: 20’	Waive compliance with requirements in a Residence B District as follows: Impervious Surface – Buildings 22.4%, Total Impervious Surface – 45.6% Allow rear yard setback of Unit 23 to be thirteen (13) feet.	

SECTION	DESCRIPTION	WAIVER	NOTES
Section 6-B and Table 6-B.1	Maximum Height – 35 feet	Allow maximum height to exceed 35 feet for Units 13 – 19 (walk-out basements).	
Table 6-B.1.C and Table 6-B.1.	Allow a building to be nearer to the line of a street than the “Required Setback Distance” or nearer to the side lines of its lot than the “Required Side Yard Width” or nearer to the rear line of its lot than the “Required Rear Yard Depth”, as specified in the chart in Section 6-B for the district in which the lot is located (Residence B District).	Allow rear yard setback of Building 7 to be 13.5 feet. Allow rear yard setback of Unit 22 to be sixteen (16) feet.	
Section 6-C Special Conditions			
Section 6-C.4.A	Not more than one principal building constructed as a dwelling or so used shall be located on a lot	Allow six (6) principal buildings with three (3) to six (6) units in each building totaling twenty-eight (28) units to be constructed and located on a lot without special permit	
Section 6-C.11	Uncovered and/or unenclosed porches, decks, platforms, landings or stoops, which are part of a required egress, shall not encroach more than forty-eight (48) inches into the setbacks.	Allow rear decks to encroach up to an additional seventy-two (72) inches beyond that permitted into the setbacks – Units 21 - 28.	

SECTION	DESCRIPTION	WAIVER	NOTES
Section 13 – Site Plan Review	The Applicant requested the following:		
As the development is proposed under M.G.L. Chapter 40B, the ZBA is the permit granting authority for all local approvals for the proposed development. Site Plan Review Rules as described in Section 13 of the Zoning Bylaws is not required.			
Walpole Stormwater Management and Erosion Control Bylaw and Regulations			
Walpole General Bylaws - Chapter 499 Stormwater Management – Article II Erosion Control - §499-16	Applicability	Waiver applicability to this development. Stormwater management design shall be in Compliance with the Massachusetts DEP Stormwater Management Standard and Stormwater Policy Handbook.	
Regulations - Part III (approved 11/14/2007 and revised 6/26/2019)	Stormwater Management Plans	Waive requirement. Stormwater management design shall be in compliance with Massachusetts DEP Stormwater Management Standards and Stormwater Policy Handbook.	

SECTION	DESCRIPTION	WAIVER	NOTES
Walpole Board of Sewer and Water Commission Regulations			
Water, Article III, Section N	Water Entrance Fees	Waive all entrance and system development fees for each unit.	
Sewer, Article II, Section C	Sewer Entrance Fees	Waiver all residential sewer connection fees for each unit.	
Sewer, Article IV, Section D	Inflow and Infiltration Fees	Waiver inflow and Infiltration fee for each unit	
Building Department			
Building Permit Fees	All associated building permit fees	Waive building permit fee on all affordable units.	