



**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

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

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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.

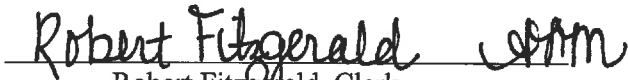
The Board finds that under Section 11 of the Zoning Bylaw, the purposes of the Flood Plain Protection Overlay District are “to protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural 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.