



**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
Dave Anderson, Associate

DECISION ON NOTICE OF PROJECT CHANGE
G.L. C. 40B, §§20-23

APPLICANT

Wall Street Development Corp – Burns Avenue Development, LLC

LOCATION OF PROPERTY INVOLVED

48 Burns Avenue

Walpole Assessors Map: 20; Lots 115, 119, 136 & 137

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I. PROCEDURAL HISTORY

1. The Walpole Zoning Board of Appeals (the “Board”) issued a Comprehensive Permit (the “Comprehensive Permit”) to Wall Street Development, LLC (the “Applicant”) pursuant to M.G.L. c.40B by virtue of a Decision (the “2020 Decision”) filed with the Walpole Town Clerk on January 13, 2020, for a project located at 48 Burns Avenue (the “Original Project”).
2. By letter dated April 23, 2020 (the “Notice of Project Change”), the Applicant submitted a request to the Board to amend the Comprehensive Permit for the Original Project pursuant to 760 CMR 56.05(11) to allow for a series of modifications to the Original Project, including: (i) an increase in the lot size by 16,536 square feet as a result of the pending acquisition of additional land by the Applicant (ii) an increase in the number of buildings from 6 to 8; (iii) an increase in lot coverage from 15.8% to 22.6%, (iii) an increase in the lot coverage by structures by 60% or 13,392 square feet, (iv) an increase the impervious surface associated with the Original Project by 27% or 12,995 square feet, (v) increase the number of units from 32 to 40, (vi) eliminate guest parking spaces, (vii) decrease setbacks to 15’ from 26’, a 73% decrease, and (viii) to construct a through street to provide two means of access and egress to the Project where only one point of access to a turnaround previously was provided.
3. At a public meeting on May 6, 2020, having reviewed and discussed the Notice of Project Change, the Board voted unanimously that the proposed changes to the Original Project are substantial pursuant to 760 CMR 56.05(11). The Board noted that MassHousing had also determined the changes to be substantial in their letter dated January 31, 2020. The Board notified the Applicant of the decision on May 7, 2020.

4. The materials submitted by the Applicant in support of its request for the Modified Comprehensive Permit included the following:

Submittal letter from Wall Street Development, LLC, dated April 23, 2020

Letter from Mass Housing dated January 31, 2020

Civil drawings dated April 21, 2020, and prepared by GLM Engineering Consultants, INC, Holliston, Massachusetts and stamped by professional engineer Paul E. Truax. (“New Site Plan”)

Sewer & Water Application for an extension/connection dated June 8, 2020 and associated plans, dated April 21, 2020 revised May 21, 2020.

Revised Site Plan dated April 21, 2020 with revisions dated May 21, 2020 and October 22, 2020.

Traffic Review dated November 16, 2020 prepared by Green International Affiliates, Inc., Westford, MA and signed by William Scully.

Landscape Plan dated November 22, 2020 prepared by Cosmos Associates.

Lighting Plan Photometric Study dated October 26, 2020 prepared by Speclines, Wakefield, Massachusetts and associated lighting specifications by GMR Enlights.

5. The Board opened a duly advertised public hearing on November 18, 2020. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: November 30, 2020 and January 6, 2021.
6. During the course of the public hearing, the Town staff, boards, commissions, and local residents submitted oral and written testimony with respect to the Notice of Project Change.
7. Pursuant to 760 CMR 56.06, on November 18, 2020, the Board identified that peer review consultants would be needed to advise the Board on technical matters and directed Staff to seek scopes of work.
8. At the hearing on November 30, 2020, the Board was provided with scopes of work from three consultants: Davis Square Architects for design review and Tetra Tech and BETA for engineering review. The Board discussed and voted to approve the scope of work provided by Tetra Tech. However, at the request of the Applicant, the Board agreed to table its selection of the peer reviewer for the design of the modified project.

9. The Applicant filed an administrative appeal to the Walpole Select Board challenging the Board's selection of Tetra Tech to perform the engineering peer review. On December 22, 2020, the Select Board found that there was no conflict of interest associated with the Board's selection of Tetra Tech, nor did the Select Board find that that Tetra Tech was unqualified to perform the requisite tasks of an engineering peer review. As a result, the Select Board voted to deny the Applicant's appeal.
10. When the hearing before the Board resumed on January 6, 2021, the Applicant informed the Board that, despite the Select Board's denial of its administrative appeal, it would not pay for the funds requested by the Board for Tetra Tech's peer review of the modified project. The Applicant stated at the hearing on January 6, 2021, "I just as soon have the Housing Appeals Committee adjudicate the decision. Your call." After further consideration, the Board then voted to close the public hearing.
11. The Board deliberated on the Modified Comprehensive Permit Project at duly noticed Public meetings on January 27, 2021 and February 11, and it voted to deny the Notice of Project Change.

DECISION

Pursuant to 760 CMR 56.05(5)(a), the Board is empowered to employ consultants in the areas of civil engineering, transportation, environmental resources, and design review of buildings and site where such services are not available from municipal employees. In the absence of cooperation by the Applicant, the Board may vote to "require that the Applicant pay a reasonable review fee in accordance with 760 CMR 56.05(b) for the employment of outside consultants ***chosen by the Board alone.***" 760 CMR 56.05(a) (emphasis supplied). Consequently, it is within the Board's sole discretion to choose its peer review consultants provided the fees are reasonable.

A fee is appropriate in light of the factors set forth in 760 CMR 56.05(b). Tetra Tech was to be utilized by the Board to review technical information prepared on behalf of the Applicant, the scope of work is limited to the Applicant's specific project, and all written materials prepared by Tetra Tech were to be included in the public record. Moreover, the Board's rules specifically call for the imposition of a fee under these circumstances. See Zoning Board of Appeals of the Town of Walpole Comprehensive Permit Regulations ("Board Rules"), Section 4 (Review Fees). Accordingly, the Board finds that the imposition of a fee is appropriate.

The total cost of the peer review proposal from Tetra Tech is \$13,624, a reasonable amount based upon the scope of the changes to the Original Project and the Board's experience in other matters involving the retention of peer review consultants which have not been contested. The Board considered factors set forth in 760 CMR 56.05(c) and concluded that the complexities associated with the increase in the number of units, major modifications to the site plan, including the creation of a through street and the addition of two buildings, and the projected hard construction costs of \$9,261,000.00 justified a fee of the amount requested in this case. Accordingly, the Board finds that the fee requested of the Applicant is reasonable.

Moreover, 760 CMR 56.05(5)(d) provides that “[t]he Board’s rules may provide that if the Applicant fails to pay the review fee within the stated time period, the Board may deny the Comprehensive Permit.” The Board Rules so provide. See Board Rules, Section 4 (“In accordance with 760 CMR 56.05(5)(c), if the applicant does not provide the Board with the requested fees within 7 days of such request, the Board may deny the Comprehensive Permit.”).

Based upon the substantial changes enumerated in paragraph two and the Applicant’s refusal to provide the reasonable peer review funds for the Board’s selected engineering peer reviewer, which deprived the Board of the ability to obtain necessary information to deliberate on the notice of project change and, consistent with 760 CMR 56.05(d) and Section 4 of the Board’s Rules, the Board denies the Applicant’s Notice of Project change requesting substantial modification of the Comprehensive Permit.

RECORD OF VOTE

The Board of Appeals voted, at its public meeting on February 11, 2021, to issue this Decision denying the Notice of Project Change as attested by the signatures below.

Members in favor of denial:

John Lee

Robert H. Fitzgerald

Andrew Delaney

Mary Jane Coffey

Dated: February 11, 2021

Filed with the Town Clerk on 2/18, 2021.

Elyse Vapora
Town Clerk

Notice: Appeals, if any, by any party other than the Applicant, shall be made pursuant to Massachusetts General Laws, Chapter 40A, s. 17, and shall be filed within twenty (20) days after the filing of this notice in the Office of the Town Clerk, Town Hall, Walpole, Massachusetts. Any appeal by the Applicant shall be filed with the Housing Appeals Committee pursuant to G. L. c. 40B, § 23, within twenty (20) days after the filing of this notice in the Office of the Town Clerk.