



**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

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TOWN OF WALPOLE
BOARD OF APPEALS

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.

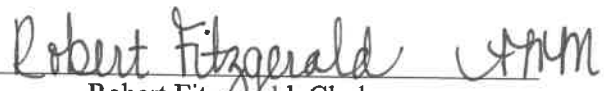
The Board finds that under Section 11 of the Zoning Bylaw, the purposes of the Flood Plain Overlay District are *“to protect the public health, safety, and general welfare from the hazards of seasonal or periodic flooding of land, to protect human life and property, to preserve the natural flood control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