



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

**Zoning Board of Appeals**  
*John Lee, Chair*  
*Drew Delaney, Vice Chair*  
*Robert Fitzgerald, Clerk*  
*Mary Jane Coffey, Member*  
*David Anderson, Member*  
*Judith Conroy, Assoc. Member*  
*Timothy Hoegler, Assoc. Member*

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**DECISION - ZONING BOARD OF APPEALS CASE NO. 22-13**

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TOWN OF WALPOLE  
TOWN CLERK

**APPLICANT:**  
James Delaney

**OWNER OF RECORD:**  
James Delaney

**LOCATION OF PROPERTY INVOLVED:**  
11 Briarwood Lane  
Walpole Assessors Map: 53-6  
Zoning District: Residence A (RA)

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**APPLICATION:**

A **Special Permit** under Zoning Bylaws Section 5-D to allow excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use.

On June 15, 2022 a Public Hearing was opened and held in the Main Meeting Room of Walpole Town Hall, 135 School Street, for the purpose of receiving information and voting upon a decision as to the granting of Special Permit. This public hearing was continued to July 20, 2022.

On July 20, 2022 the following members were present and voting:

John Lee, Chair  
Drew Delaney, Vice Chair  
Bob Fitzgerald, Clerk  
Dave Anderson, Member  
Timothy Hoegler, Associate Member

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A motion was made by Mr. Anderson, and seconded by Mr. Delaney to approve a **Special Permit** under section 5-D(4)(A) of the Walpole Zoning Bylaws to allow excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use, with conditions, based on a plan titled "Hardscape and Grading Plan by MF Landscape and Design LLC., Delaney Residence 11 Briarwood Lane, Walpole, MA 02081," by MF Landscape and Design LLC, of 20 Concord Drive, Walpole, MA 02071, dated February 19, 2022, revised and submitted on July 13, 2022, located at 11 Briarwood Lane, Walpole, MA, 02081.

The vote was (5-0-0) in favor: Hoegler-Aye, Delaney-Aye, Fitzgerald-Aye, Lee-Aye, Anderson-Aye; therefore, the application for a **Special Permit** is hereby granted, subject to the following conditions:



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**CONDITIONS:**

1. No cutting or removal of earth shall take place on the property within a twenty (20) foot buffer zone extending from the boundary with the adjacent property on the easterly side of the property.
2. The outer boundary of the twenty (20) foot buffer zone shall be staked before excavation and such stakes shall remain in place throughout the excavation process.
3. The catch basin at the corner of Briarwood and Old Farm Road shall be protected during excavation activities.
4. Curbing accessing the site shall be protected during excavation activities.
5. The proposed excavation site shall be loamed and seed be installed no later than October 31, 2022.
6. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Zoning Board of Appeals, Walpole Town Clerk and Walpole Building Department.

**DECISION RATIONALE**

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-D. to allow excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use. The Board finds that the purpose of the excavation is in character with and follows the intent of the Zoning District in which it is located. Accordingly, the Board has determined that the Special Permit requested is warranted. Specifically, the Board made the following findings pursuant to Section 2.2.B.(1) and Section 5-D.6 of the Zoning Bylaw:

**Section 2.2.B. (1)**

- (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 Board finds that, as conditioned herein, the proposed excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use complies with all of the criteria of Section 5-D(6), as further discussed below. Accordingly, the Board finds this criterion is satisfied.

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

The Board finds that the excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use will not result in an adverse effect on the neighborhood relative to traffic. As such, the Board finds that this criterion is satisfied.



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- (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 excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use will not impact the amount of visitors or create traffic concerns that would negatively impact the immediate neighborhood. The purpose of the excavation is to level the backyard area to allow for typical residential uses of the backyard for play and other activities. There will be no employees or customers as the proposal is for residential purposes, and the only disruptions will be temporary during the excavation and filing process. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood, and this condition is satisfied.

- (d) shall comply with the dimensional requirements applicable to the zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The project does not involve the construction of structures and, therefore, setbacks from structures required under the zoning bylaw are not applicable. Nevertheless, the Board finds that the imposition of a 20-ft. buffer zone between the excavation and the adjacent property is appropriate and protective of the adjacent areas.

- (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 excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use is for residential purposes, and there will be no activities or products being used or stored at the location associated with this special permit which would cause any danger to the immediate neighborhood of the premises through fire, explosion, emission or wastes, or other causes. As result, this condition is satisfied.

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

The Board finds that the proposed use is residential. Some noise, vibration, heat, dust or other nuisances may be generated for a short period of time during excavation. However, the grading plan proposed by the Applicant is intended to provide additional residential backyard space. This proposal will not generate or create long-term impacts such as noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance of serious hazard as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

- (g) shall not adversely affect the character of the immediate neighborhood, and;**

The Board finds that the immediate neighborhood is residential and the proposed excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use, as conditioned herein, is consistent with the area and immediate neighborhood. Therefore, the Board is satisfied that this condition is met.



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- (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 the purpose of the Zoning Bylaw in part states, "to facilitate the adequate provision of water, water supply, drainage..." "to conserve the value of land and buildings, including the conservation of natural resources and prevention of blight and pollution of the environment" The proposed excavation and filling exceeding one-hundred (100) cubic yards of earth within a residential use complies with the performance standards of the Bylaw and as such is consistent with the intent and purpose of Section 5-D, Excavation or filling of earth, of the Bylaw. As a result, this condition is satisfied.

**Section 5-D.6**

- (a) Whether the activity is injurious or dangerous to the public health or safety or harmful to the amenities of the vicinity of the Town;**

The actions proposed will take place entirely upon privately owned property, for which the owner of said property will be held responsible. The extent of the project shall not exceed that which is depicted upon the applicant's submitted plans titled "Hardscape and Grading Plan, Delaney Residence 11 Briarwood Lane, Walpole, MA 02081," by MF Landscape and Design LLC, 20 Concord Drive, Walpole, MA 02071, dated and 2/19/22, revised and submitted on 7/13/22, which includes a 20-ft. buffer zone between the excavation area and the adjacent property. The Board has found that the proposed plans shall not be injurious or dangerous to the public health or safety or harmful to the amenities of the vicinity of the Town. Therefore, this criterion is met.

- (b) Whether the activity required the transportation of materials over particular public streets on which undue congestion or hazards will be created, or on which undue injury to the roadway surface will be sustained.**

The applicant through their project narrative has stated that any material not suitable for re-use on site will be removed and discarded at the Southridge Farm and Nursery, located at 399 South Street, Walpole, MA 02081. This action would result in the utilization of major public roads such as South Street and Washington Street. However, given the scale of the proposed project the action if needed should not result in undue congestion or hazards to the roadways. Likewise, the size of the proposed operation should not result in undue injury to the roadway surface. Therefore, this criterion is met.

- (c) Whether the activity shall result in significant negative impacts to the natural environment;**

The location and extent of the excavation and filling to take place is minimal and should not pose any significant impacts to the natural environment. National Resources Conservation Service (NRCS) soil survey data for the project location shows the presence of hydrologic soil group A-rated Hinckley loamy sand. This soil has a high infiltration rate, while also consisting of a high percentage of sand and gravel, and is listed as "slight" for erosion hazard. However, the applicant's intent for the grading project is to provide yard area for increased recreational use. As addressed in the applicant's plan, this will require the applicant to top-dress the graded hill and





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plant a stabilizing grass mix on the newly graded area. Given the proposed extent of the project, planting stabilization, and drainage capabilities of the soil, the project shall not result in a significant negative impact to the natural environment. Therefore, the criterion is met.

**(d) Whether the activity will result in a change of topography or cover disadvantageous to the most appropriate use of the land; and**

The proposed grading and filing of the site will result in a change to the topography. However, by the applicant providing appropriate separation between themselves and the neighbor's property, as conditioned herein, the grading should be conducted in a manner that provides appropriate stabilization of the post-excavation topography. The property is a residential use and the intent behind the applicant's proposal is in fitting with said residential use. Therefore, the criterion is met.

**(e) Whether the activity will be terminated within one (1) year.**

The applicant through their project narrative has stated that the proposed excavation/filling project will take place within late summer and early fall of 2022 and will be completed within a two (2) month timeframe from the start of excavation. This time frame would comply with the one (1) year timeframe requirements. Therefore, this criterion is met.

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Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant of thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good use".

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority of special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded with the Norfolk registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner on record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods



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provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.

**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*

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Robert Fitzgerald, Clerk

PD/rf

cc: Town Clerk  
Applicant  
Building Inspector

This decision was made on July 20, 2022 and filed with the Town Clerk on August 1, 2022.