



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

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

**DECISION ON NOTICE OF PROJECT CHANGE**

**G.L. c. 40B, §§20-23**

**HOUSING APPEALS COMMITTEE**

**Remand Hearing**

**Docket No. 2020-01**

**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 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 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. The Board voted to close the public hearing on January 6, 2021
5. On February 11, 2021 the Board voted to deny the modified Comprehensive Permit on the grounds that the Applicant refused to pay for peer review fees as allowed and required under 760 CMR 56.05(5)(a) and 760 CMR 56.05(5)(b).
6. The Board filed this decision with the Town Clerk's office on February 18, 2021.
7. On February 24, 2021, the Applicant filed with the Housing Appeals Committee a "Motion for Determination that Project Change was Constructively Approved, and Appeal of their Decision on Notice of Project Change," with a memorandum in support.
8. On April 15, 2021, the Applicant filed with the Housing Appeals Committee a motion for summary decision entitled "Motion for Summary Decision," seeking a determination that Board imposed excessive and unreasonable peer review fees in its consideration of the Notice of Project Change, and requesting that the Housing Appeals Committee remand the matter to the Board instructing it to impose a reasonable fee.
9. In a letter dated November 8, 2021, the Housing Appeals Committee (HAC) issued their Ruling on the Applicant's Motion for Determination that the Project Change was Constructive Approval, Appeal of the Board's Decision on Notice of Project Change, and Motion for Summary Decision. As described in detail through the Ruling, the HAC found that the Applicant's Motion for Determination that Project Change was Constructively Approved and Appeal of the Board's Decision on Notice of Project Change was denied. The Applicant's Motion for Summary Decision was also denied
10. As stated within the same Ruling dated, November 8, 2021, the HAC remanded the case back to the Board in order to engage the peer review services of Tetra Tech at the expense of the Applicant for reconsideration and review of its decision on the proposed changes to the subject project.

11. The HAC's Ruling from November 8, 2021 further stated that conditions one (1) and five (5) of the original November 16, 2020 joint motion to remand would be amended to state the following:  
  
"1. The Board's hearing shall commence no later than on December 6, 2021, unless the parties agree to a later date;" and  
"5. The public hearing shall close upon the conclusion of the presentation of evidence but no later than 120 days from the date the public hearing commences, unless extended by the parties"
12. The Board opened a duly advertised public hearing on December 6, 2021. The Board continued the hearing and heard and/or deliberated on testimony on the following dates: January 5, 2022, February 16, 2022, March 16, 2022, and May 4, 2022.
13. At the March 16, 2022 public hearing the Board and the Applicant agreed on an extension of the deadline to close the public hearing for the comprehensive permit to May 18, 2022.
14. Due to the lack of requested information, including a revised site plan, and the impending public hearing deadline, the Board voted to close the public hearing on May 4, 2022.
15. The Board deliberated on the Notice of Project Change at a duly notified public meeting on May 25, 2021 and June 1, 2022. On June 1, 2022, the Board voted to deny the Notice of Project Change.

## II. JURISDICTIONAL FINDINGS

16. The Applicant received a Project Eligibility Letter ("PEL") from MassHousing dated November 1, 2018 and submitted a copy to the Board with the original application. According to the PEL, the Applicant has demonstrated its eligibility to submit an application for a Comprehensive Permit to the Board, and the development fulfills the minimum project eligibility requirements set forth in 760 CMR 56.04(1) as follows:
  - a. The Applicant has formed a limited dividend entity, the Burns Avenue Development, LLC, which is a single-purpose entity created for the purpose of the Project. The Burns Avenue Development, LLC has a

principal place of business of 2 Warthin Circle, Norwood, Massachusetts. The Applicant has agreed to conform to the limited divided requirements of M.G.L Chapter 40B.

- b. The Applicant has included a copy of Purchase and Sale Agreements and certain deeds regarding the Property upon which the Board relies, in relevant part. According to the PEL, the Applicant has shown threshold evidence of site control sufficient to qualify as an Applicant for a Comprehensive Permit.
  - c. The Applicant has agreed to execute a Regulatory Agreement that limits its total profit and directs the redistribution of excess profit in accordance with the regulations adopted by the Massachusetts Department of Housing and Community Development (“DHCD”).
17. On April 25, 2019, the DHCD approved Walpole’s Housing Production Plan pursuant to 760 CMR 56.03(4). On September 10, 2021, the Town of Walpole received from DHCD a two-year certification period running from April 27, 2021 to April 26, 2023 due to meeting the statutory minima set forth in 760 CMR 56.03(1)(b) and 56.03(4)
  18. In a Ruling dated, November 8, 2021, the Housing Appeals Committee (HAC) issued their ruling on the Applicant’s Motion for Constructive Approval and Motion for Summary Decision. The Applicant’s Motion for Determination that Project Change was Constructively Approved and Appeal of the Applicant’s Decision on Notice of Project Change was denied. The Applicant’s Motion for Summary Decision was also denied.

### III. FACTUAL FINDINGS

19. The Board issued a conditioned Comprehensive Permit to the Applicant for a 32-unit townhouse-style development, with one-point of access off of 48 Burns Avenue, on January 13, 2020.
20. The Applicant’s first attempt at modifying their approved Comprehensive Permit for the Residences at Burns Avenue through a Notice of Project Change was ultimately denied by the Board February 11, 2021 on the grounds that the Applicant refused to cooperate in providing peer review funding as required under 760 CMR 56.05(5)(a) and 760 CMR 56.05(5)(b).

21. The Applicant's appeal of this decision and additional motions were ultimately denied by the Housing Appealing Committee as stated within their Ruling, dated November 8, 2021. On The Housing Appeals Committee order the case was remanded back to the Board to commence with a new public hearing to start no later than December 6, 2021.
22. The remanded public hearing was opened on December 6, 2021. At this public hearing the Board stated that they would seek a revised scope of work for peer review services from Tetra Tech which would generally focus on the proposed project changes specified in the notice of project change dealing with the second point of access on Brook Lane and the increase from 32 to 40 units.
23. At the January 5, 2022 public hearing the Board and Applicant agreed on the proposed scope of services and fee proposed by the Tetra Tech, for an amount of \$13,624. This action is consistent with rules and regulations under 760 CMR 56.05(5) which was the main point of contention in the February 11, 2021 Notice of Project Change denial.
24. At the February 16, 2022 public hearing Tetra Tech provided their initial review of all materials submitted by the Applicant. Tetra Tech concluded that the applicant's proposed site layout would need to be amended to account for the denial of proposed "building number 3's Units 11 & 12" as stated in the Massachusetts Department of Environmental Protection's (the "MassDEP") Superseding Order of Conditions, dated May 3, 2021. The Applicant was requested to provide a buildable revised plan that accounted for this building location denial as stipulated by the MassDEP's Superseding Order of Conditions, dated May 3, 2021.
25. A revised site plan with supplemental information was provided to the Board and its peer review agent for review on February 24, 2022 and February 28, 2022. Review of these revised materials was conducted by the peer review agent, Tetra Tech, as well as the Municipal Departments. Tetra Tech presented their findings to the Board and Applicant at the March 16, 2022 public hearing. At the conclusion of March 16, 2022 hearing, the Applicant was requested to provide revised materials that addressed comments from municipal departments, and the Tetra Tech for the Applicant's continued hearing date of May 4, 2022.
26. At the March 16, 2022 public hearing the Board and the Applicant agreed on an extension of the deadline to close the public hearing for the Notice of Project Change to May 18, 2022.

27. In the interim before the May 4, 2022 public hearing, no revised plans, letters, or follow-up material of any sort was submitted to the Board, their peer review agent, or any municipal official by the Applicant or their application team for review leading up to this continued public hearing date of May 4, 2022.
28. On the night of the May 4, 2022 public hearing, the Board received notice from the Applicant through an email at 8:45 P.M. that they wished to continue the public hearing until May 18, 2022 and extend a decision date to June 2, 2022. However, given the timing of the email (the May 4, 2022 meeting had already started at 7:00 P.M.), uncertainty of the email's contents (a decision date should be 40 days from the close of the public hearing, and June 2, 2022 would only be twenty-nine (29) days), and lack of any follow up or revised information from the Applicant from the previous public hearing on March 16, 2022, the Board ultimately made the decision to close the public hearing on May 4, 2022 in order to comply with regulatory time requirements to review and vote on a decision.

### **DECISION**

In accordance with the Housing Appeals Committee's November 8, 2021 Ruling, the Board opened the remanded public hearing on December 6, 2021. As also stated within the Ruling, the Board engaged the Civil Engineering firm, Tetra Tech, at the expense of Applicant for reconsideration and review of a decision for the Applicant's proposed changes to the subject project, in accordance with the original Remand Order. These proposed changes being the addition of eight (8) dwelling units, increasing the total proposed units from thirty-two (32) to forty (40), and the inclusion of a second point of access to the site from the adjacent Brook Lane. The Applicant agreed to the peer review fee in the amount requested, allowing for the Board to have the technical assistance sought and allowed under 760 CMR 56.05(5).

However, review and deliberation of the Applicant's initial submitted materials for the HAC remanded public hearing concluded that the applicant did not provide the most up to date revision of the proposed project modification. These initial submitted plans for the December 6, 2021 public hearing neglected to account for the required project change outlined in the Department of Environmental Protection's Superseding Order of Conditions, dated May 3, 2021 and later corrected within the Applicant's revised Riverfront Area Disturbance plan sheet by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, MA 01746, dated April 21, 2020, and revised February 22, 2021. This discrepancy would be noted by Tetra Tech and the Board at the Applicant's February 16, 2022 public hearing.

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The Applicant would correct this issue by submitting a subsequent revision to the site plan titled "Amended Site Development Plan, A Comprehensive Permit M.G.L.c.40B, The Residences at Burns Avenue, Walpole, MA"; by GLM Engineering Consultants, Inc., Holliston, MA 01746; dated April 21, 2020, with a revision date of February 23, 2022. Along with this revised site plan the Applicant provided related project submission material that accounted for the necessary correction. Review and deliberation of the properly revised site plan and material would take place at the March 16, 2022 public hearing. In addition to review and deliberation of the newly submitted materials, the Board and Applicant would also come to an agreement on a continuation to May 4, 2022 and a public hearing extension to May 18, 2022. The public hearing extension was needed for further review of project material as allowed as outlined in the revised condition five (5) of the Remand Order. At the conclusion of the March 16, 2022 meeting the Applicant was asked to provide before the continued hearing, revised plans that accounted for both Tetra Tech peer review comments and Municipal Department review comments.

In the interim period leading up to the continued public hearing date of May 4, 2022 no requested revised information, or notification of any sort was submitted by the Applicant. It became apparent to the Board that with the public hearing extension deadline of May 18, 2022 approaching, the Board would need to close the public hearing in order to make a decision and to stay within the regulatory timeframe, which had to already be extended once. While the Board could have kept the public hearing open until May 18, 2022, the consensus opinion of the Board was that this would not provide an adequate amount of time to review any new submitted materials. Given the lack of new information requested by the Board from the continuation of the previous hearing, there was no inclination that the Board could expect new information in the two (2) weeks between May 4, 2022 and May 18, 2022, when they had already nothing in the prior seven (7) weeks from the previous public hearing.

The Board took testimony and deliberated throughout the public hearing process and continued their deliberation from the close of the public hearing. Based upon the lack of adequate revised information requested of the Applicant by the Board, the Board determined that they were not within an adequate position to issue a conditional comprehensive permit modification. For this reason, the Board denies the Applicant's Notice of Project Change requesting substantial modification of the Comprehensive Permit.

**SIGNATURE PAGE TO FOLLOW**

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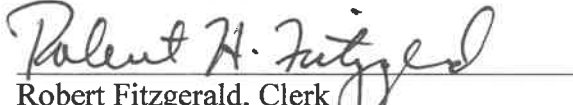
**RECORD OF VOTE**

The Board of Appeals voted, at its public meeting on June 1, 2022, on a motion from Ms. Coffey, and seconded by Mr. Delaney to deny the Notice of Project Change as written within the decision as written subject to minor edits.

The Board voted 4 in favor and 0 opposed to issue this decision denying the Notice of Project Change.

(Lee-aye, Delaney-aye, Fitzgerald-aye, Coffey-aye)

On June 1, 2022, the Board voted to authorize Robert Fitzgerald, Clerk to sign the decision on behalf of the Board.

  
Robert Fitzgerald, Clerk

Date:

Filed with the Town Clerk on June 3, 2022.

  
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.