



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

Zoning Board of Appeals
John Lee, Chairman
Drew Delaney, Vice Chair
Robert Fitzgerald, Clerk
David Anderson, Member
Judith Conroy, Member
Mark Major, Assoc. Member
Tim Hoegler, Assoc. Member

DECISION- WALPOLE BOARD OF APPEALS CASE NO. 23-11

APPLICANT

Kathleen Watson and Kevin Plunkett

LOCATION OF PROPERTY INVOLVED:

11 Pilot's Way
Walpole Assessors Map 26, Parcel 239

APPLICATION:

An ADMINISTRATIVE APPEAL of the Zoning Enforcement Officer's issuance of by-right building permit for the construction of an in-ground pool on the grounds that the owner is in violation of Zoning Bylaws Section 5-D Excavation or Filling of Earth.

NOTICE OF HEARING:

Pursuant to Massachusetts General Laws, Chapter 40A, Sections 8 and 11, notification of a public hearing for Case 23-11 was advertised on March 2, 2023 and March 9, 2023 in a newspaper of local circulation (*Hometown Weekly*). 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** in the **MAIN MEETING ROOM** of Walpole **TOWN HALL** on **MONDAY, March 20, 2023 at 7:00 P.M.** on an Application from **Kathleen Watson and Kevin Plunkett (of 7 Pilots Way)**, **Case # 23-11**, with respect to property located at **11 Pilots Way, Walpole, MA**, within the Residence B (RB) Zoning District.

This Applicants are requesting an administrative appeal regarding the Building Commissioner's issuance of building permit BR-22-304 at 11 Pilots Way for an in-ground pool on the grounds that the owner is in violation of Section 5D: Excavation or Filling of Earth.

All are invited and encouraged to review the plans prior to the public hearing. This can be done by accessing the ZBA – Current Applications page on the Town Website (www.walpole-ma.gov) or by emailing Lauren Michalski, Plan Reviewer, at lmichalski@walpole-ma.gov.

BACKGROUND AND DELIBERATION:

On August 15, 2023 a building permit (BR-22-304) was issued at 11 Pilots Way for the installation of an in-ground swimming pool. Inspectional Services had determined that this use was allowed as-of-right and

RECEIVED
2023 MAR 31 A 10:56
TOWN OF WALPOLE
TOWN CLERK

did not require additional relief through the Zoning Board of Appeals for a Special Permit. The applicants who live at 7 Pilots Way, an abutting property to 11 Pilots Way, raised concern with the issuance of the building permit as well as the perceived inaction by the Building Commissioner to require the owners of 11 Pilots Way to file for additional relief according to Zoning Bylaws Section 5-D.

A formal Complaint was submitted by the applicants to the Building Commissioner on January 25, 2022. The Building Commissioner responded to this Complaint on February 15, 2023, in which he found that there were no violations of either the building code or the Walpole Zoning Bylaws. The applicants appealed this decision formally to the Zoning Board of Appeals. The application was accepted by the Town Clerk on March 7, 2023.

A hearing before the Board was scheduled and opened on March 20, 2020. Testimony was heard from applicants, Kathleen Watson and Kevin Plunkett of 7 Pilots Way; Building Commissioner Jim Crowley; Daniel Shea, 11 Pilots Way homeowner; Daniel Merrikin, Mr. Shea's engineer; and members of the public.

At the March 20, 2023 public hearing, the hearing was opened, closed, and the matter at hand was deliberated and voted upon. The members who were present, deliberating, and voting:

John Lee, Chairman
Drew Delaney, Vice Chair
Robert Fitzgerald, Clerk
David Anderson, Member
Judith Conroy, Member

The Board's deliberation focused on the interpretation of Zoning Bylaws Sections 5-D.3.A, 5-D.3.C and 5-D.4.A. The applicant's Ms. Watson and Mr. Plunkett argued that Zoning Bylaw Section 5-D.3.A stated grade changes could not exceed one foot. They stated that installation of the pool at 11 Pilots Way caused the grade of the yard to increase by more than a foot and therefore should be held to the standards of Section 5-D.3.A., which would require a Special Permit from the Board.

Commissioner Crowley presented his reasoning for not having the owners of 11 Pilots Way seek a Special Permit. He stated that the section referenced by the applicants is only for excavation or filling operations within a residential use that occur independently of any other incidental use. Commissioner Crowley stated that it was clear under Section 5-D.3.C that excavation or filling of earth that was done incidental to the construction or installation of certain residential uses is exempt from the requirements of a Special Permit.

The Board asked follow up questions to both the applicants and Commissioner Crowley in order to better understand the existing conditions of both properties, and what the change in grade would be at 11 Pilots Way. Ms. Conroy asked the applicants if the backyards of both their property and their neighbor (11 Pilots Way) were at the same grade prior to the project. Ms. Watson stated that they were not, as Pilots Way is on a hill and that their property is downhill of 11 Pilots Way.

Mr. Lee asked if there were previous problems they (the applicants) experienced regarding water in their basement. Ms. Watson explained there were previous issues due to the installation of a basketball court at 11 Pilots Way. She had a swale made on her property to mitigate the water runoff because of this project.

Mr. Delaney asked if the land had always been contoured to their property. Ms. Watson explained when the homes were first constructed, there was never a problem. Mr. Delaney asked if there was always a natural decline towards her property. Ms. Watson said yes.

Daniel Merrikin, engineer for 11 Pilots Way, stated that he was hired recently in order to construct a retaining wall and drainage system to mitigate any potential runoff issues that could arise from the installation of the pool.

Ms. Conroy asked to confirm the change in grade with the pool installation. Mr. Merrikin stated the change in grade was about two (2) feet. Mr. Merrikin further noted that based on the proposed plans, the impervious area at the property would be reduced as the asphalt basketball court is being removed which would further help to reduce any potential water runoff.

Ms. Conroy asked what the consequences could be for not agreeing with the Building Commissioner. Mr. Crowley explained that if the Board agreed with the applicant's interpretation of the bylaw, then any pool, or residential construction that exceeded the threshold would require a Special Permit from the Board. He believed that the Zoning Bylaw provided clear exemptions for excavation and filling of earth when directly tied to an incidental use as defined within Section 5-D.3.C. This was further stated within Section 5-D.4.A., which addresses residential actions that shall require a Special Permit. The language of Section 5-D.4.A directly exempts uses listed in Section 5-D.3.C., which includes incidental excavation or filling tied to the installation of a swimming pool.

Mr. Lee stated that he understood the applicant's concerns, but the bylaw needed to be read in its entirety. He believed that the Building Commissioner's interpretation was the correct interpretation of the bylaw.

VOTE OF THE BOARD:

MOTION made by Mr. Delaney and seconded by Mr. Anderson to deny the administrative appeal.

The motion carried 5-0-0 (Lee-aye, Delany-aye, Fitzgerald-aye, Conroy-aye, Anderson-aye)

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 20 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

This decision was made on March 20, 2023 and filed with the Town Clerk on March 31, 2023.