



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

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

**MINUTES
WALPOLE ZONING BOARD OF APPEALS
MAY 8, 2023**

Present: John Lee (Chair), Drew Delaney (Vice Chair), Robert Fitzgerald (Clerk), Judith Conroy, Mark Major and Tim Hoegler

Absent: David Anderson

Recused: Judy Conroy

Also Present: Patrick Deschenes, Community Development Director, George Pucci, Town Counsel

Mr. Lee called the meeting to order at 7:00 P.M.

Case No. 20-21, Wall Street Development Corp, 48 Burns Avenue (Parcel 20-136)/ Union Street (Parcel 20-119)/ Brook Lane (Parcel 20-115)/ Burns Avenue (Parcel 20-137), On remand from the Housing Appeals Committee, Request for Project Change/ Amendment to a Comprehensive Permit under G.L. c.40B §§20-23 to amend the previously approved project by moving the point of access to Brook Lane; and the construction of twenty (20) single-family dwellings, instead of the previously approved thirty-two (32) townhouse units within six (6) building accessed from Burns Avenue. Case No. 22-30 opened at 7:01 P.M.

Mr. Lee explained that waivers were discussed at the last meeting. Some waivers were put on hold and the applicant updated the waiver list for the Board to reflect the changes to the plan.

Waiver: Subdivision Fee Schedule

Mr. Deschenes explained the applicant already paid an application fee and if the waiver was not granted, it would result in a duplicate fee. George Pucci, Town Counsel, agreed.

The Board approved the waiver.

Waiver: Section III-1 Submission to the Planning Board – Definitive Subdivision Plan (Municipal Systems)

The Board approved the waiver.

Waiver: Section IV-2 – Dead End Streets (a), (b) and (c) (Dead End Street)

Mr. Lee said per the comment letter from the Fire Department, the length of the road could not be longer than 750-ft and the applicant had proposed 845-ft. He felt the Board needed to be consistent on this ruling as this was a safety issue.

Mr. Fitzgerald said the 750-ft rule was for the Town's subdivision rules and regulations, and because this project was governed under 40B, it could be handled differently. He understood the general rule, but felt there needed to be specific evidence that the applicant's proposal of 845-ft was unsafe. A consistent ruling would not be enough of a reason to deny the waiver and feared the Board could potentially lose control in an appeal.

Mr. Hoegler asked if the waiver had previously been approved. Mr. Lee said the previously approved plan for the project had a longer road although it was not a subdivision. Mr. Petrozzi confirmed that the previously approved private road was approved at 991-ft.

Mr. Major said it was not just 845-ft that was the issue, it was when it was in conjunction with the narrow road width, high unit density, and no true common open space area that it was difficult to grant the waiver. He was not comfortable with all of the waivers pertaining to this section. Mr. Lee agreed and noted it was a public safety issue.

Mr. Petrozzi asked if there were going to be formal votes made on these waivers. Mr. Lee said yes. Mr. Petrozzi noted the prior plan for 32 units with the same berm and road width was previously approved. He requested decisions for all waivers at the meeting so he would know the best way to proceed.

Mr. Delaney disagreed with the waiver but felt that under 40B the applicant could go past the 750-ft limit for dead-end roads. He wanted a more definitive answer as to the reasoning for the rule and was not opposed to granting it, but still felt there were safety concerns.

Mr. Lee pointed out that there were many waivers within this section. Mr. Delaney asked if the waivers could be broken up and voted on. His concern was making sure a fire truck could safely access the site.

Mr. Lee asked Mr. Pucci if this was something that was within the Board's right to break up the waivers. Mr. Pucci said the Board could handle it however they wanted. He encouraged them to focus on the waivers that were the most challenging.

Mr. Major said all three waivers together were problematic. He felt the road should be conditioned as a private way so the Town would not be responsible for maintaining the road under these conditions. Mr. Deschenes added that the process for accepting the road would need to happen through Town Meeting.

Mr. Major asked if the Board could condition the road as a private way. Mr. Pucci said yes. Regarding the 750-ft rule, Mr. Pucci cautioned the Board as they had no evidence of a safety violation which could land in the applicant's favor if the decision was appealed to the Housing Appeals Committee (HAC).

Waiver to allow for dead-end street to exceed 750-ft in length - The Board approved the waiver.

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Waiver to allow cul-de-sac at the closed end with a turnaround having an outside street line diameter of 94-ft – The Board approved the waiver.

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Waiver to allow turnaround pavement diameter of 82-ft – The Board approved the waiver.

Waiver: Section IV-3(a) (Street Alignments)

The Board approved the waiver.

Waiver: Section IV-5 (Width and Grade of Streets)

The Board approved the waiver via 3-2 vote (Major and Lee opposed)

Waiver: Section IV-8 (Lots)

Mr. Fitzgerald expected a lot by lot waiver list based on the discussion at the last meeting. Mr. Petrozzi said he did not make a lot by lot waiver list as many of these waivers applied to all of the lots. Mr. Talerman added that there was more detail under section 6-B.1 which corresponded with all of the lots.

Mr. Pucci said this should be handled lot by lot so not to have to rely on plans. Mr. Talerman explained the applicant was aware he would be bound by the plans. Mr. Pucci encouraged the Board to do what they felt comfortable with regarding the plans. He explained if having the waivers on the plans was clear to them, it was within their right to do so.

Mr. Deschenes noted the minimums were provided on the waiver list. Mr. Talerman said that all dimensions were on the plans and understood they would be required to return to the Board if there were any changes. Mr. Pucci told the Board they could proceed as long as they found it clear and understood what they were approving.

Mr. Fitzgerald agreed that everything was on the plans and made the distinction from subdivision waiver (frontage and lot area) versus zoning waivers (setbacks).

Jack Conroy, 38-40 Burns Ave, said the lots with the retention basin and swamp should be accounted for. Mr. Talerman understood Mr. Conroy's point, but noted it was legally incorrect. He explained the lots were owned by the developer and the HOA would be responsible for the maintenance of those lots.

Mr. Conroy asked what would happen if the HOA went away. He cautioned that there should not be any ambiguity on the plans.

The Board approved the waiver.

Waiver: Section V-1 (General) (Electrical)

Mr. Deschenes explained he spoke with Carl Balduf, Town Engineer, and there were no concerns regarding this waiver. The Board approved the waiver.

Waiver: Section V-6(a) (Roadway)

Mr. Lee stated the waiver was for a 22-ft wide roadway as opposed to the required 26-ft wide roadway.

Mr. Major was not in favor of the waiver as he believed the width was too narrow without the option of parking.

Mr. Delaney said it could pose a problem, especially in emergency situations.

Mr. Petrozzi said the road could be widened to 24-ft but noted that would result in the reduction of the grass strip.

Mr. Fitzgerald said he was inclined to agree to the waiver, however he wanted the suggested 15mph speed limit by the Town Engineer imposed.

The Board denied the waiver.

Mr. Talerman asked if there could be any substitution as this effectively denied the project. Mr. Lee did not feel it was the Board's responsibility to find an alternative option. Mr. Talerman agreed but noted this waiver denial could resort in his client appealing the Board's decision.

Mr. Pucci commented that the denial of the waiver did not deny the project.

Waiver: Section V-7(a)(b)(c) and (d) – Curbs and Gutters (Cape Cod Berm)

Mr. Hoegler was in favor of a Cape Cod Berm if the 22-ft roadway width was denied.

Mr. Delaney noted there would likely be cost savings with the berm, but reminded the Board that if it were ever a public way the Town would be required to maintain the upkeep. He added that berms entice on-street parking. While not against the waiver, he believed there needed to be granite curbing in some areas.

Mr. Major was in favor of the berm.

Mr. Lee requested granite curbing on the curves be a condition.

Mr. Fitzgerald asked why this was important. Mr. Deschenes explained that during the winter, it was very important for plows to get close to the edge of the streets. Mr. Lee added that it was also important to discourage parking on what could potentially be someone's lawn in the cul-de-sac.

The Board conditionally approved the waiver to allow the one (1) foot bituminous Cape Cod style berm on each side of the new roadway, with the exception of the project's radii which shall be granite curbing.

Waiver: Section V-8 (a) and (c) (Sidewalk)

The Board approved the waiver.

Waiver: Section V-9 (Grass Strip)

Mr. Lee noted this waiver was denied at the last meeting, however the Board wanted to revisit their decision. The Board approved the waiver.

Mr. Petrozzi suggested the removal of the grass strip in order to widen the road width. Mr. Lee said the removal the grass strip would only account for 2-ft which would not solve the problem. The waiver would be addressed within a condition of the decision

Waiver: Section 5-F.E (Construction Trailer)

The Board approved the waiver and would have it addressed within a condition of the decision

Waiver: Sections 6-B.1.C

Mr. Major believed a 10-ft setback was too narrow. The other Board members were in favor of the waiver.

Mr. Petrozzi requested a 10-ft setback on all lots.

Mr. Fitzgerald found that not all of the lots show requested setbacks on the plans. The waiver requested a minimum of 10-ft on all lots which meant some lots could have setbacks of greater than 10-ft and Mr. Fitzgerald wanted that shown on the plans.

Mr. Talerman explained his client wanted some flexibility on the plans in case a homeowner wanted to change the façade of the home. Mr. Fitzgerald said the plans needed to be more specific. Mr. Lee added that the Board would only grant waivers based on what was shown on the plans.

Mr. Petrozzi said the homes could change during construction. He noted that any change would require him to return to the Board to determine if the modification would be minor or substantial.

The Board approved the waiver.

Waiver: Table 6-B.1

Mr. Lee asked why the decks were necessary when there was only a 10-ft setback. He felt most of them were reasonable under 40B, but was concerned with the decks closer to Burns Avenue. He was not in favor of decks 8-ft from the property line. Mr. Major agreed.

Mr. Delaney said it was difficult to discuss with no new architectural renderings.

The Board was agreeable to the waiver with the exception of 8-ft setbacks for decks.

Mr. Petrozzi withdrew the waiver request for section 6-C.11 and the Board accepted the withdrawal.

Waiver: Section 7.3.G (Real Estate Sign)

The Board approved the waiver.

The Board wanted to condition this that the sign would only be to advertise this project and would not clear cut onto Union Street.

Waiver: Walpole General Bylaws – Chapter 499 Storm water Management – Article II Erosion Control ss499-16 (Storm water Applicability)

Rob Truax, Project Engineer, explained the project had been reviewed by DEP and the Conservation Commission.

The Board approved the waiver.

Waiver: Regulations – Part III (approved 11/14/2007 and revised 6/26/2019) (Storm water Management)

The Board approved the waiver.

Waiver: Section 1.2 (Protected Resource Areas)

The Board approved the waiver.

Waiver: Section 1.3 (Bordering Lands AKA Buffer Zone)

The Board approved the waiver.

Waiver: Section 1.4.1 (No Alteration Zone)

Mr. Petrozzi explained he complied with the Conservation Commission's request to restore the area. It was incorporated into the plans. He believed Ms. Hershey's concern was that the restoration would not be completed.

Mr. Pucci felt the Board should agree to this waiver and further condition it. He agreed that he thought the direction from Ms. Hershey was out of concern it would not be done.

The Board approved to the waiver.

Waiver: Fees

Wetlands fees (**Section 2.3.2**) were waived.

The Board did not agree to the waiving the other fees requested by Mr. Petrozzi.

The next meeting was set for Monday, May 15, 2023. Mr. Lee asked for the draft decision to be given to both parties by Wednesday, May 10.

General Discussion

Mr. Conroy asked who enforces the construction management plan. Mr. Lee said the Building Department would be responsible. Mr. Conroy was concerned with dust during construction.

Mr. Conroy asked who was responsible for the construction of the road. He asked if all lots needed to be completed before they were sold, or if the lots could be sold one by one. Lastly, he asked what would happen if a homeowner wanted to make any changes.

Mr. Talerma explained that changes would require the HOA to modify plans. Individual homeowners would not be allowed to change or modify the plan.

Mr. Pucci added that the final plans must match what was approved or conditioned within the approved plans and comprehensive permit.

Mr. Conroy noticed there were necessary waivers that the applicant did not include on the waiver list. He asked how much time the applicant had start to finish for this project. Mr. Deschenes said the applicant had three years to start the project.

Cathy Campbell, 31-35 Burns Ave, noted the proposed cul-de-sac was very close to her property. Mr. Truax confirmed it was 2-3ft away. Ms. Campbell asked if there were any guidelines for the road. Mr. Lee said it could go up to the property line. Mr. Pucci clarified that would only be allowed if the Board granted permission.

Ms. Campbell had the following three concerns:

1. Parcel "Burns Ave Private B" should be noted as owned by Terrance and Antionette Campbell.
 2. There were currently 8-9 trees shown on the landscaping plan as being on her property. She asked for they be removed as part of the final landscaping plan
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3. She asked that the privacy fence proposed on lot 12 be extended along her property line to block any light trespass from headlights.

Ms. Campbell showed a 2016 plan which showed parcels properly labeled. She did not want there to be conflicting documents filed with the Registry of Deeds.

There was a brief discussion over the fence. Mr. Petrozzi was not in favor of extending fencing and said that Ms. Campbell was within her right to install her own fence.

Mr. Conroy said there was a previous discussion of fencing but noted that plans were an option as well. He agreed that Mr. Petrozzi did not show the ownership of all of the abutting lots.

Mr. Talerman stated his client showed what was required.

Motion: by Mr. Delaney seconded by Mr. Hoegler to continue to May 15, 2023.

Motion carried 5-0-0 (Lee -aye; Delaney-aye; Fitzgerald -aye; Major-aye; Hoegler -aye)

Adjournment

Motion: by Mr. Hoegler seconded by Mr. Delaney to adjourn.

Motion carried 5-0-0 (Lee -aye; Delaney-aye; Fitzgerald -aye; Major-aye; Hoegler -aye)

Meeting adjourned at 9:07 P.M.