



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 JUNE 7, 2023

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

Absent: Judith Conroy

Also Present: Patrick Deschenes, Community Development Director

Mr. Lee called the meeting to order at 7:03 P.M.

Case No. 23-3, John Walsh Co., 1549 Washington Street, Special Permit under Section 9.3 of the Walpole Zoning Bylaws in order to demolish the pre-existing, non-conforming two family dwelling and construct a new two family dwelling within the Residence A (RA) Zoning District. (Continued from 5/15/2023)

Case No. 23-12, John Walsh Co., 1549 Washington Street, Special Permit under Section 12.3.C of the Walpole Zoning Bylaws for the modification to a preexisting nonconforming two-family dwelling that exceeds the impervious surface requirement for a residential use within the Water Resource Protection Overlay District. (Continued from 5/15/2023)

Cases No. 23-3 and 23-12 opened at 7:03 P.M.

Rob Truax, project engineer, appeared before the Board. He noted that at the last meeting there were concerns regarding house numbers as the original proposal had front doors facing Stone Hill Terrance while maintaining Washington Street addresses. Since the meeting, the project had been redesigned to have one unit facing Washington Street and the second unit would have a front façade on Washington Street which allowed both units to maintain Washington Street addresses.

The project also required a Special Permit under Section 12.3.C. Mr. Truax explained the system needed to handle one-inch of runoff. Four systems were proposed, one at each corner, to provide sufficient coverage. Updated architectural plans were not provided but could be provide as a condition of approval. Mr. Truax stated that the footprint would not change and if there were any changes, updated calculations would need to be provided.

Mr. Lee asked for the proposed addresses. Mr. Truax said 1549 and 1551 Washington Street.

Under section 9.3, the applicant was only allowed to increase the existing non-conforming dwelling by 50%. Mr. Fitzgerald asked how close the applicant was to that threshold. Mr. Truax said, based on the calculations, slightly less than 50% would be increased.

Gary Riggott, 1 Stonehill Terrace, asked when construction would begin. Mr. Walsh said the permit would be valid for two years but he was not sure when construction would begin.

Mr. Walsh requested to close the public hearing.

Motion by Mr. Delaney, seconded by Mr. Fitzgerald to close both public hearings.

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

Motion by Mr. Delaney, seconded by Mr. Fitzgerald to approve case no. 23-3 Special Permit with standard conditions along with the condition that they submit updated architectural plans with roof area calculations prior to receiving a building permit.

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

Motion by Mr. Delaney, seconded by Mr. Fitzgerald to approve case no 23-12 Special permit with standard conditions

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

Case No. 23-17, Joseph Dorsett, 104 Main Street, Special Permit under Section 9.3.C of the Walpole Zoning Bylaws for the expansion of an existing parking lot as it relates to a non-conforming use within the properties zoning district.

Case No. 23-17 opened at 7:15 PM

Joseph Dorsett appeared before the Board on behalf of the applicant. He explained this was a non-conforming commercial use within a residential area and provided the Board with calculations of what they were proposing as an increase in the non-conforming square footage. The proposed plan showed a proposed expansion of the parking lot. The proposal called for 13 new parking spaces. No additional curb cuts were proposed. He added the applicant was also willing to provide additional fencing and landscaping. The proposed parking lot expansion would be constructed with gravel instead of asphalt. Infiltration was proposed along with a large snow storage area.

Mr. Dorsett explained that the 50% expansion was measured through the non-conforming square footage of both the building and open ground area as described within the bylaw. Mr. Dorsett elaborated on how he arrived at the non-conforming square footage calculation and how a maximum of 13 parking spaces would fit within the square footage the applicant was allowed to expand to. Mr. Dorsett further stated that the site was currently unsightly and noted the proposed work would greatly help to beautify the area.

Mr. Delaney asked if the grade would be increased. Mr. Dorsett said there would be roughly 400 yards of fill which was comprised of material onsite to be graded in such a way that would drain into the detention basin. Mr. Delaney asked Mr. Dorsett if there were any concerns with dust. Mr. Dorsett said the area was currently vegetative but that he was open to suggestions and noted there was no lighting proposed.

At the request of Mr. Fitzgerald, Mr. Dorsett further explained how he arrived at the square footage calculations.

Paul Quinn, 12 Christina Drive, noted that it was the applicant who cleared the lot and made it an eyesore. Mr. Quinn further stated that excessive noise from the site had become routine for the neighbors, mainly on the weekends. Mr. Quinn was concerned that allowing additional parking would increase patrons thus exacerbating a noise issue. He thought this was a detriment as this was a non-conforming use within a residential area.

Mr. Lee explained that the Board was not permitting the use as it was preexisting non-conforming only permitted the expansion. He added that the applicant only had one opportunity to expand the conditions on site up to 50%, meaning the expansion of the parking lot as it was currently proposed would be the one and only expansion allowed. This also meant the footprint of the building could not be expanded.

Robert Quinn, non-resident but relative of Paul Quinn, noted there was no additional handicap parking in the proposed expansion. There should be two additional handicap spots both of which should have the shortest most accessible route which Mr. Quinn felt could not be achieved with the proposed plan. He agreed that the proposed expansion was a detriment. The square footage calculation included the patio area. According to Mr. Quinn, he believed that the applicant had never received a Special Permit for the patio or outdoor dining and did not believe that should be allowed to be included in the calculation. Mr. Quinn further noted that the applicant applied under Section 9.3C, however he believed that they should have filed under Section 9.6 (non-conforming parking).

Mr. Lee asked Mr. Dorsett about handicap parking. Mr. Dorsett said there was only one spot. Mr. Deschenes clarified that there should be two handicap spots, one to accommodate a van and another standard size spot.

Mr. Lee asked Mr. Dorsett about the status of the patio. Mr. Dorsett noted that the patio was always there and the applicant received limited site plan approve at the department head level. He needed more time to research when it was created.

Mr. Lee did not believe this was detrimental. He asked Mr. Dorsett if he worked with abutters. Mr. Dorsett said he reached out to immediate abutters but will take time to speak with additional abutters.

Mr. Deschenes explained that this project would also require site plan approval from the Planning Board.

Mr. Robert Quinn added that the one existing handicap parking spot was located on public property and the State was using it for storing materials.

Mr. Lee noted there needed to be more information provided on handicap parking, expansion of the patio and, to Mr. Fitzgerald's request, buffer requirement should be addressed. Mr. Dorsett agreed and asked for any interested neighbor's information so they could work together.

Ruthanne Jordan, 11 Christina Drive, added there was no fencing and believed there would be additional light shining into her home. Mr. Dorsett agreed to work with her as well.

Motion by Mr. Delaney, seconded by Mr. Fitzgerald to continue to July 17, 2023.

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

Case No. 23-18, Richard Homer, 389 North Street, Variance under Section 6-B.1 of the Walpole Zoning Bylaws for the construction of a garage addition within the rear setback of the property.

Case No. 23-18 opened at 7:51 PM.

Richard Homer, applicant, appeared before the Board. He explained that he purchased the property in 2016 with the intention of renovating the historic home. The previous owners specifically did not want to sell it to someone that would demolish the house. The home was built in the late 1700's and was uniquely on a corner lot. Mr. Homer proposed an addition which required a variance if he wanted to keep his historic address.

Mr. Homer added that the lot had adequate frontage on North Street and Raspberry Way. Currently, he had access to the property off of Raspberry Way and believed that the addition would be aesthetically pleasing to the neighbors. Mr. Lee explained to Mr. Homer that the threshold for a Variance is a high bar and he did not believe based on the explanation provided that Mr. Homer met the qualifications for a Variance. Mr. Homer stated the topography posed a hardship along with a blind driveway and constraints by the septic system location.

Mr. Major asked if there was an alternative plan. Mr. Homer explained he could change his address and construction the addition as-of-right. He wanted to avoid that in order to preserve the historic address. Based on the condition of the home when he bought it, Mr. Homer felt that anyone else would have torn it down. He felt he was doing the right thing by going through this process.

Mr. Fitzgerald said that address protection was not a hardship. He did not believe the Board was in a position to grant the variance.

Mr. Homer requested to close the public hearing and withdraw without prejudice.

Motion by Mr. Delaney, seconded by Mr. Fitzgerald to close the public hearing.

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

Motion by Mr. Major, seconded by Mr. Fitzgerald to accept the applicant's request to withdraw without prejudice.

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

Case No. 23-19, Anthony Yebba, 81 Diamond Street, Special Permit under the Zoning Bylaws, Section 9.3.C Nonconforming Uses, to allow for the expansion of the pre-existing, non-conforming multi-family use within the Limited Manufacturing zoning district.

Case No. 23-19 opened at 8:07 PM

Anthony Yebba, applicant, appeared before the Board. He explained there was a pre-existing apartment on the second floor of the existing property. Mr. Yebba also stated that he was seeking approval for a lodging house as-of-right within the limited manufacturing zoning district. Mr. Yebba requested a Special Permit in order to expand the apartment on the second floor by 50% onto the first floor. The future lodging home would only be on the right side of the property and would need final permission through the Select Board not the Zoning Board.

Mr. Lee asked when the apartment was approved. Mr. Yebba said it was there since the previous owner. He stated that he believed it to be a legal apartment.

Mr. Lee asked how an apartment was allowed within an LM zoning district. He stated that Mr. Yebba should provide additional information to explain this claim.

James Crowley, Building Commissioner, explained there was a factory in the basement and the apartment above was created to be a caretakers apartment. He did not have any further information.

Mr. Yebba explained he owned the property for five years and the previous owner owned it for 30 years. Mr. Lee noted there were ways to prove the apartment was legal and that Mr. Yebba needed to provide that information in order to proceed.

Jean St. George, 159 Diamond Street, lived in the neighborhood for 55 years. She did not believe the apartment was there and had concerns over the potential lodging use. She added there was an ongoing issue with traffic in the area.

Maggie Taurone, 153 Diamond Street, said the building had become an eyesore and the owner used to store demolished cars on site. There would also be tow trucks at all hours of the night.

Mr. Crowley explained there was an existing buffer of 40ft due to the properties zoning district and there was to be no parking or delivering or trucks within that buffer.

Mr. Lee asked Mr. Yebba how long it would take him to get the records to prove the apartment was legal. Mr. Yebba said he could have it ready for the next meeting. If the apartment expansion was not viable, he said he would proceed with an expanded lodging use instead.

Kyle Forte, 19 Old Diamond Road, said this would not have a positive impact on the neighborhood. He noted this was a tight-knit neighborhood and there had been lots of problems and paraphernalia found on the property.

Noreen Lazdowsky, 45 Diamond Street, stated that she believed that there was an apartment there for several years. She expressed concern over the use as there were many problems relating to this property in an area that was busy with a church, children, and a large elderly population.

Mr. Lee reminded the abutters that the only item for discussion was the expansion of the apartment and not the lodging house.

Mr. Yebba did not believe he was responsible for what went on in the parking lot after hours. He was also concerned about criminal activity and noted that his mother would be moving into 71 Diamond after it was renovated and that he was trying hard to clean up the area.

Ms. Taurone noted there was a sign at the property stating it was monitored 24/7 by camera. Mr. Yebba said the sign was there when he bought it and that there was no actual surveillance.

Motion by Mr. Delaney, seconded by Mr. Anderson to continue the public hearing to July 17, 2023.

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

Case No. 23-20, Lisa Bastianelli, 41 Forsythia Drive, Variance under Section 6-B.1 of the Walpole Zoning Bylaws in order to reconfigure the previously approved In-Law Suite (ZBA Case No. 22-20) to be within the side yard setback.

Case 23-20 opened at 8:34 PM.

Larry Bastainelli and Lisa Bastianelli appeared before the Board. Mr. Bastianelli explained they had recently received approval for an In-Law suite last year. Due to safety reasons, the stairs and deck were moved to a location non in conformance with the approved plan. The proposed elevator was also moved inside and the stairs were reconfigured. The second floor deck was moved within the side yard setback, however it was allowed to be within the setback if it was uncovered. Mr. Bastianelli stated that in an error by the contractor, a roof was put on that deck. In order to allow the covered deck within the setback, they had to seek a variance.

Mr. Lee believed this was a self-imposed hardship and the plans never should have been altered.

Mr. Bastianelli elaborated on the hardship. He explained that a safety concern prompted the changes to the plans and now that the deck was covered. He also stated that it was a financial hardship to resolve the problem by removing the roof. The stairs from the deck which were to be a main point of egress which caused the design to be changed. He and his wife would occupy the family suite, he wanted the deck and stairs covered in the winter months so it would provide a safe egress in the event of an emergency. He believed that it qualified for a Variance. Mr. Bastianelli noted the deck was only moved three feet and, if required, he would take the roof down despite the financial hardship.

Mr. Lee did not consider Mr. Bastianelli's explanation a valid hardship. He said the applicant should have come to the Board to modify the plans as soon as they knew the plans needed to be changed. By changing the plans without permission did not constitute the need for a Variance.

Paul Moccia, 41 Forsythia Drive, disagreed and argued that an uncovered deck and stairs created a serious safety concern and should be allowed even within the setback.

Motion by Mr. Delaney, seconded by Mr. Anderson to close the public hearing.

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

Motion by Mr. Anderson, no second to approve the Variance. **Motion failed.**

Motion by Mr. Fitzgerald, seconded by Mr. Hoegler to deny the Variance.

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

Board Business - Minutes

On page 5 of the May 15th minutes, Mr. Fitzgerald requested a change to his statement regarding the bylaw definition of tank. A change was also requested to be made from the removal of a cased in opening to the removal of a door.

Motion by Mr. Delaney, seconded by Mr. Major to approve the minutes from May 15, 2023 as amended.

Motion carried 6-0-0 (Lee -aye; Delaney-aye; Fitzgerald -aye; Anderson -aye; Hoegler- aye; Major - aye)

Motion by Mr. Delaney, seconded by Mr. Fitzgerald to approve the minutes from May 18, 2023.

Motion carried 6-0-1 (Lee -aye; Delaney-aye; Fitzgerald -aye; Anderson -abstain; Hoegler- aye; Major - aye)

General Board Discussion June 26 Meeting:

Mr. Deschenes explained to the Board that the Housing Appeals Committee had issued their ruling on Darwin Commons and Pinnacle point which was not in the Town's favor. The continuation of the public hearing began on May 11th, the date of the issued ruling. Another 40B project at 1015 East Street applied and all three cases would be heard at the June 26th meeting. The projects would be scheduled in 30 minute intervals. He added that the 40B at 1015 East Street was a friendly 40B.

Mr. Deschenes added that the previously approved 40B project at 55 Summer Street approached the Town and requested a modification. At this time, the Board needed to determine if the change was substantial. This needed to be done in 30 days, however the applicant waived the timeline and would agree to open the case on July 17 as a substantial modification.

Mr. Major asked how close the Town was to safe harbor. Mr. Deschenes said that by factoring in Summer Street and 1015 East Street, the Town should be at roughly 10.5%. The units from 55 Summer Street only resulted in a 2 year safe harbor and he would contact DHCD to obtain a safe harbor credit which could give the Town back time lost.

Adjournment:

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

Motion carried 6-0-0 (Lee -aye; Delaney-aye; Fitzgerald -aye; Anderson-aye; Major-aye; Hoegler-aye)

Meeting adjourned at 9:03 P.M.