



**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
SEPTEMBER 18, 2023**

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

Absent: David Anderson and Robert Fitzgerald

Also Present: Patrick Deschenes, Community Development Director

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

Case No. 22-22, Neponset Village, LLC, 5 Pleasant Street, for a Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B Section 20 through 23, as amended, to allow the construction of twenty-four (24) townhouse style condominiums within seven (7) buildings **Remanded from Housing Appeals Committee**

Case No. 22-22 opened at 7:00 P.M.

Mr. Lee said the Board received a request for continuation to November 1, 2023.

Motion by Mr. Hoegler, seconded by Mr. Delaney to continue the public hearing to November 1, 2023

Motion carried 5-0-0 (Lee –aye; Delaney –aye; Conroy -aye; Major-aye; Hoegler –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. (Continued from August 21, 2023)

Case No. 22-17 opened at 7:03 PM

Brent Tardiff, applicant's engineer, appeared before the Board. He provided revised plans as well as an aerial photo of the site from 1957. At the last meeting, the Board asked him to research the historic conditions from when the site became non-conforming. From the software he used, he was able to replicate the conditions of the site at that time and found that the current expansion proposed before the Board was less than a 50% increase based on the conditions in 1957.

Mr. Lee went over the current conditions and area.

Mr. Major asked how accurate the calculations were and if they could be relied upon. Mr. Tardiff said this was a large part of his job and he relied on these calculations often. He was confident they were accurate and could be accepted. Mr. Major still had questions on the accuracy of the calculations.

Ms. Conroy asked why this expansion was not considered a variance. Mr. Deschenes explained that the use had remained a pre-existing, non-conforming use and that the use had always been commercial. Ms. Conroy asked why parking code was not being used to calculate the number of spaces allowed. Mr. Deschenes said that the parking code only requires a minimum number of spaces for this use which has and that there is nothing preventing a property owner with this particular use exceeding their minimum parking requirement.

Jim Crowley, Building Commissioner, said the area had a lot of non-conforming lots, specifically along Christina Drive. He further explained why this expansion was not considered a Variance. Under 9.3.C of the Zoning By-laws, non-conformities could be expanded by 50%. Ms. Conroy asked how the square footage was calculated and why the second floor of the restaurant was not included. Mr. Crowley said the second floor was not needed as it was based off of the building footprint. Regarding the minimum parking code, Mr. Crowley explained the parking requirements were minimal and four chairs equaled 1 parking space. Ms. Conroy asked Mr. Crowley if he believed the applicant's calculations were accurate. Mr. Crowley said it was complicated, but did believe the numbers were accurate. He discussed the prior uses at this site which included a sandwich shop and gas station.

Ms. Conroy said there should be research conducted through deed history to ensure this was one parcel. Mr. Crowley confirmed the size and ownership were the same since 1947. Mr. Lee said that information cleared up some of his questions.

Robert Quinn, speaking on behalf of his brother who was an abutter, stated that he believed the restaurant was not in compliance with their existing Special Permit. After speaking with the Town Engineer, he found that the parcel was purchased in 1918. Based on the map from 1936, there was a Merchantile District surrounded by a residential use. There was another zoning amendment in 1947 and was zoned Residential B in 1956.

With respect to the property, Mr. Quinn stated the applicant listed the square footage that could be expanded was 13,711. Mr. Quinn urged the Board to look at other consequences such as detriment to the neighborhood such as an increase in noise and traffic. Mr. Quinn added that he attempted to do additional research and it was difficult to determine the non-conforming history. He believed it was in the best interest of the neighborhood that the request be denied.

Mr. Delaney stated that he believed the background details of this project was not clear but that based on the information provided by Mr. Tardiff, the proposed expansion was under the 50% and adequate provisions were being made for the neighborhood.

Mr. Crowley said the occupancy was 67 people which could not be increased. He noted that the second floor was not taken into the calculations as it was based on the footprint of the building.

Ruth Ann Jordan, 11 Christina Drive, said the existing restaurant was quiet. The area around Christina Drive was a family area. She was concerned the parking expansion could create more of a bar feel with increased noise.

Mr. Lee explained the Board's position and that he did not believe the applicant had answered all of their questions. Ms. Conroy agreed and that she wanted to protect the neighborhood and noted that the lot had been previously clear cut.

Mr. Major agreed and wanted to know more about when the property became non-conforming. Mr. Hoegler thought the applicant had provided as much information as possible. He felt this was a tough decision for the Board to render.

Mr. Deschenes asked the board what additional information they felt they needed. He noted the Building Commissioner had given his interpretation and that in 1956 the property became non-conforming as that was when the zoning map changed.

Mr. Tardiff stated the building and open area were existing to the best of his knowledge and that the second floor had only been an apartment until the early 2000s.

Mr. Lee explained that the applicant could choose to keep the hearing open and get more information for the next meeting, or close the hearing and the Board would vote. Mr. Lee stated that he felt the Board still needed more information to understand the need for additional parking.

Mr. Tardiff wanted to continue the public hearing. He noted on the new plans he provided that there were bollards proposed as well as a modified stockade fence placed out of the tree line which were concerns previously. Ms. Conroy asked if there was a handicap space where one of the bollards was proposed. Mr. Tardiff said that was no longer a van space.

Motion by Ms. Conroy, seconded by Mr. Hoegler to continue to November 1st.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Case No. 23-28, Michael Cook, 2085 Main Street, Special Permit under 5-B.1.4.dd Table of Uses of the Walpole Zoning Bylaws to allow for an auto body repair and customization use at the site and a Special Permit Section 12.3.C (2) & (6) of the Walpole Zoning Bylaws to allow the use, storage and handling of certain toxic or hazardous materials in amounts greater than household quantities and the storage of liquid petroleum products.

Case No. 23-28 opened at 8:10 PM.

Dan Merrikin, Project Engineer, appeared before the Board. He explained the parcel was historically used by a landscaping company. While the building would not change, the new use would be for Ford Bronco restoration. This was a niche, appointment only use. The existing building had a caretakers unit which would be utilized as well. The proposed use would be less intrusive than the current use of the property. An additional Special Permit was required as the property was within the WRPOD, however there were no changes that required Planning Board approval.

Regarding the storage and usage of hazardous materials, Mr. Merrikin presented a list of all materials that would be used.

Mr. Lee asked if the proposed use was allowed. Mr. Merrikin explained the autobody use did require a Special Permit. Mr. Lee noted a previous ZBA case that requested to use hazardous materials and said there would need to be similar conditions.

Mr. Delaney asked about the use of a spill kit. Michael Cook, applicant, said all waste would be managed in accordance with State procedures. Mr. Lee noted there would be a condition for the use of a spill kit.

Mr. Lee asked how many parking spaces were on the property. Mr. Merrikin said there were 12 parking spaces to the left of the building. Mr. Lee noted there was no concern from the Police Department's comment letter, however the Board of Health wrote a letter stating there needed to be conditions regarding the septic.

Ms. Conroy asked for the hours of operation. Mr. Merrikin said there would be normal business hours and customers would only be by appointment only.

Motion by Ms. Conroy, seconded by Mr. Hoegler to close the public hearing.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Motion by Ms. Conroy, seconded by Mr. Hoegler to approve the Special Permit under Section 5-B.1.4.dd.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Motion by Ms. Conroy, seconded by Mr. Major to approve the Special Permit under Section 12.3.C (2) & (6) with conditions.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Case No. 23-29, Sheryl Smith, 7 Robbins Road, Special Permit under Section 5-B.2 of the Walpole Zoning Bylaws to allow for an In-Law Suite.

Case No. 23-29 opened at 8:27 PM.

Sheryl Smith, homeowner, appeared before the Board to request a Special Permit for an in-law suite. Mr. Lee asked if the suite had already been constructed. Ms. Smith confirmed it was completed but was not aware of the Zoning Board process until the final inspection failed. She added the plans had always showed an in-law suite so this process came as a surprise to her. According to Ms. Smith, this unit was always going to be used as an in-law suite and she believed there was a miscommunication with the Building Department over the process.

Jim Crowley, Building Commissioner, said the plans showed it as a kitchenette. Once it was discovered it was going to be an in-law suite, the builder was notified. The builder said he would rectify the error but it was never corrected. Once it was time for the inspection, the in-law suite having been constructed required a Special Permit.

Mr. Lee went over the In-Law suite criteria. He asked how it tied into the existing home. Ms. Smith said it connected through the porch.

Ms. Conroy did not believe a porch was enough of a connection. She asked the board if they felt the space needed to be livable connection. Ms. Smith explained the area was utilized frequently and was heated. While the space was originally a porch, Ms. Smith had added enhancements to make it usable for four seasons and said it was more used as a family room than a porch. Mr. Lee asked how the suite would be accessed through the family room. Ms. Smith said through a door.

Mr. Lee discussed parking. He did not believe there was enough parking. Ms. Smith said there would be plenty of parking with a two car garage and ample driveway space.

Ms. Conroy asked Mr. Crowley if he believed that the family room connection was considered habitable space. Mr. Crowley said it was sufficient.

Mr. Lee did not believe there was continuous flow into the suite. Mr. Deschenes stated that could not be regulated by the Board.

Mr. Delaney believed it appeared to be a single family home and met the requirements.

Mr. Lee said parking needed to be contained onsite. Ms. Smith understood and said after construction, there would be no need to park on the street.

Mr. Lee said there would be standard condition as well as noting that parking should be kept onsite.

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

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Motion by Ms. Conroy, seconded by Mr. Hoegler to approve the Special Permit for and in-law suite with conditions.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Minutes:

6/26/23: Mr. Hoegler asked for the first paragraph on page 4 be clarified to make sure the proper abutters were speaking.

Motion by Ms. Conroy, seconded by Mr. Delaney to approve the minutes from June 26, 2023.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

8/21/23: Ms. Conroy asked that “without prejudice” be added to page 7.

Motion by Ms. Conroy, seconded by Mr. Hoegler to approve the minutes from August 21, 2023.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

9/6/23: Mr. Lee asked that the term “right of way” be changed to “public right of way”.

Motion by Ms. Conroy, seconded by Mr. Delaney to approve the minutes from September 6, 2023.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Burns Avenue Modification:

Ms. Conroy recused herself.

Mr. Lee explained that the applicant, Lou Petrozzi, requested a modification to his existing decision and the Board needed to determine if the changes were minor. He asked Mr. Crowley if he believed the changes were minor.

Mr. Crowley said the first three were minor and noted the condition discussing the hammerhead could also be amendment as the hammerhead no longer existed. Mr. Deschenes explained that language was inadvertently held over from a previous decision.

Mr. Crowley added that Conservation should be notified to make sure they confirm the work was to be done outside of the wetlands. Mr. Deschenes said the approval from the conservation commission was covered in the decision and further protected by the superseding order of conditions.

Mr. Delaney agreed that there were minor changes. Mr. Major and Mr. Hoegler agreed.

Motion by Mr. Delaney, seconded by Mr. Hoegler to accept applicant request for modification as a minor change.

Motion carried 3-1-0 (Lee – nay; Delaney-aye; Major – aye, Hoegler – aye)

Board Business:

There was a brief discussion over the articles on the warrant. The Board was surprised by the ADU proposal.

Paul Keen, 20 Old Post Road, asked the Board questions regarding in-law suites and asked the Board for general feedback regarding the use of kitchens and a Variance by way of approval. The Board provided an overview of the process.

Adjournment:

Motion: by Ms. Conroy seconded by Mr. Major to adjourn.

Motion carried 5-0-0 (Lee – aye; Delaney-aye; Conroy -aye; Major – aye, Hoegler – aye)

Meeting adjourned at 9:24 P.M.