



Town of Walpole Commonwealth of Massachusetts Zoning Board of Appeals

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

MINUTES WALPOLE ZONING BOARD OF APPEALS January 19, 2022

Present: John Lee (Chair), Drew Delaney (Vice Chair), Robert Fitzgerald (Clerk), David Anderson (Member), Mary Jane Coffey (Member), Judith Conroy (Associate Member), Timothy Hoegler (Associate Member), and Mark Major (Associate Member).

Also in attendance were Patrick Deschenes (Community & Economic Development), Stephen Natola (Community & Economic Development), George X. Pucci (Town Council)

Mr. Lee called the meeting to order at 7:00 P.M. and read the public hearing notice.

Case No. 21-16, Wall Street Development Corp., Darwin Lane (Map 42, Parcels 240 & 227-13), Comprehensive Permit pursuant to Massachusetts General Laws, Chapter 40B, Section 20 through 23 as amended, to allow the construction of twenty-eight (28) townhouse style condominiums, within six (6) buildings (Continued from 12/15/21)

Mr. Petrozzi of Wall Street Development Corporation presented a revised conceptual plan of the proposed project that reduced the size and density to 12 single family dwellings. Mr. Petrozzi stated that the size and design would be comparable to existing houses on Darwin Lane and Queen's Court. Mr. Petrozzi also addressed the proposed draft agreement between the ZBA and Wall Street Development regarding waiving safe harbor in exchange for reducing the scale of the proposed project.

Mr. Lee reminded the Board and the public that the Town's Safe Harbor status would last until April 2023. Mr. Lee discussed the rationale behind the possible agreement between the Board and Wall Street Development.

Ms. Conroy discussed Walpole's timeline of reaching safe harbor and the Board's history pertaining to this case. Ms. Conroy read a public comment letter from Attorney Dennis Murphy of Hill Law, which addressed the ZBA's previous decision to invoke Safe Harbor. Ms. Conroy questioned why the Board would consider moving forward with the case given their current safe harbor status.

Mr. Lee requested clarification from Town council, George Pucci, regarding Attorney Murphy's comments on Walpole's Safe Harbor certification.

Attorney Pucci stated that the application hasn't been denied, the hearing was continued after safe harbor was invoked on the opening of the public hearing. From there the applicant filed an appeal of the Board's invocation of safe harbor, which was denied by DHCD. Attorney Pucci stated that the Board had continued at their last hearing in December in order to discuss potential modification to the project's size. Attorney Pucci stated that the ZBA can still deny the applicant under their previous safe harbor invocation.

Mr. Anderson explained his decision to continue the hearing due to pending 40B projects in Walpole and the implications these projects could potentially have on Walpole's safe harbor designation. Mr.

Anderson stated that his thinking at the time was that working towards a smaller project now could be beneficial towards preventing a large project after safe harbor expires.

Mr. Deschenes clarified how Walpole achieved its safe harbor designation.

Mr. Lee invited the public to comment.

Attorney Dennis Murphy stated that all present abutters (who he represents) wanted the Zoning Board of Appeals to deny the revised proposal. Attorney Murphy stated that he felt the original application was denied and the applicant would need to refile a completely new application to construct 12 single-family homes. Attorney Murphy also stated that he felt that no matter what happens with other subsidized housing projects, the Town's safe harbor would be upheld for the entire two-year period.

Attorney Talerman reaffirms his client's willingness to further modify the plans and to go through the normal 40B process for the proposed development.

Ms. Coffey states her opposition to the development and that Walpole should uphold their safe-harbor status and go forward with the denial.

Mr. Fitzgerald explains his rationale for continuing the hearing: he had hoped the revised concept design would have changed his mind on the plans, he still currently opposes the new proposal due to the density and proximity to existing homes.

Mr. Delaney stated he voted to continue the hearing and was not in favor of 28 units or the revised 12 unit plan, but he believes there could be a development at this site at some point in the future.

Motion by Ms. Coffey and seconded by Mr. Delaney to close the public hearing for Case No. 21-16.

The motion carried 5-0-0 (Lee aye; Fitzgerald aye; Coffey aye; Delaney aye; Anderson aye)

Motion by Ms. Coffey and seconded by Mr. Delaney to move denial of Darwin Commons 40B comprehensive permit application pursuant to the board's previous declaration that the denial of the application is consistent with local needs under certified compliance with an approved housing production plan under the applicable provisions 760 CMR. 56.03, which has been appealed by the applicant but affirmed by the Massachusetts Department of Housing and Community Development by a decision dated November 24, 2021 without further appeal.

The motion carried 5-0-0 (Lee aye; Fitzgerald aye; Coffey aye; Delaney aye; Anderson aye)

Litigation Status Update

Attorney Pucci gave an update on the Dupee Street 40B appeal and the 300 Stone Street appeal.

Attorney Pucci stated that it was discussed with the Board and the project applicant that an HAC remand of the Dupee Street 40B project in order to discuss the turning radius changes would be the most desired process. The Board agreed on a remand hearing date of March 2, 2022

Attorney Pucci stated that for the appeal on 300 Stone Street, the court wants to try the hearing under a case stated procedure. This would involve no live testimonies or cross examinations. Town council and the plaintiff's attorney would agree to statement of facts; record before the board, peer reviews reports and similar documents will be put before the court as evidence. There would also be a site visit on March 18 at 8:00 A.M. Board members are free to attend.

Case No. 21-21, Briana Pinheiro, 18 Ponderosa Lane, Variance under Section 6-B.1 Schedule of Dimensional Regulations, for relief to the minimum side yard setback within the Residential B Zoning District (Continued from 1/5/22)

Briana and Chris Pinheiro explained their reason for a variance request. They had hoped to construct an addition to their home that would extend eight feet into the side setback where fifteen feet is required. The Pinheiros stated that they had no adjacent neighbors on the proposed side of the addition, and the project would allow all bedrooms of the house on the second floor of the home.

Mr. Lee stated that there are high standards for issuing a variance, and the ZBA's purpose is to grant variances if the applicant's situation shows a hardship given the physical limitations of the property. Mr. Lee stated that the shape of the applicant's lot was not irregular and the proposed addition would make the lot nonconforming.

The Pinheiros explained their rationale for why they wanted to go forward with the current design of the proposed addition and how it was the least impactful to the setbacks and neighborhoods.

Ms. Conroy outlined the three criteria for a variance: financial hardship, topography of the land, and character of the neighborhood.

Ms. Coffey objected to the proposed addition since it would be very out of place with the rest of the neighborhood.

Motion by Ms. Coffey and seconded by Mr. Delaney to close the hearing. (Lee aye; Fitzgerald aye; Coffey aye; Delaney aye; Anderson aye)

Motion by Mr. Delaney, seconded by Mr. Anderson to deny without prejudice.

The motion carried 5-0-0 (Lee aye; Fitzgerald aye; Coffey aye; Delaney aye; Anderson aye)

Board Business

Mr. Lee stated that despite COVID, he believes the Board can continue to meet in person safely. Members of the Board discussed the matter and all agreed they could continue to safely meet in person.

Minutes Review 1/5/21

Mr. Deschenes and Mr. Lee agree to move the approval of the executive session minutes from 1/5/22 to the next meeting.

Mr. Fitzgerald made two minor corrections to the drafted meeting minutes from 1/5/21.

Motion by Ms. Coffey and seconded by Mr. Delaney to accept the 1/5/22 meeting minutes as amended.

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

The next meeting is scheduled for February 2, 2022.

Adjournment

Motion by Ms. Coffey and seconded by Mr. Delaney to adjourn.

The motion carried 5-0-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Anderson-aye; Coffey-aye)

The meeting adjourned at 8:35 P.M.

Respectfully Submitted: Stephan Natola