



**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

**MINUTES
WALPOLE ZONING BOARD OF APPEALS
October 5, 2022**

Present: John Lee (Chair), Drew Delaney (Vice Chair), Robert Fitzgerald (Clerk), Judith Conroy (Associate Member), Tim Hoegler (Associate Member)

Absent: Mary Jane Coffey, Dave Anderson

Also Present: Patrick Deschenes (Community & Economic Development)

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

Case No. 22-4, Thomas J. Powers, 132, 136, 140 Washington Street, Special Permit under Section 5-B.1.3.g of the Walpole Zoning Bylaws to allow for a three (3) story, six (6) unit, mixed-use residential development within the Business (B) Zoning district (Continued from 9/7/22).

Mr. Lee stated that the applicant's engineer had submitted a letter asking for a continuance to November 2, 2022 with an extension of public hearing time until December 21, 2022.

Motion by Ms. Conroy and seconded by Mr. Delaney to continue the case until November 2, 2022 at 7:00 P.M. at Town Hall and extend the public hearing until December 21, 2022.

The motion carried 5-0-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye)

Case No. 22-22, Neponset Village LLC, 5 Pleasant Street (Map 20, Parcel 63), 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 (Continued from 8/17/22).

Case No. 22-22 resumed at 7:02 P.M.

Mr. Lee explained the history of the case stating that the Zoning Board declared safe harbor at the opening of the public hearing the last time the case was before the Board. The applicant appealed the safe harbor invocation to DHDC, and DHCD responded stated that they did not find that the Board of Appeals met the required burden of proof to invoke safe harbor.

Mr. Deschenes further explained that that the Board has a decision to make now to either accept DHCD's decision or appeal that decision to the Housing Appeals Committee (the "HAC").

Mr. Lee stated that the Board would need to vote and make a decision tonight to determine how to proceed.

Mr. Fitzgerald stated that due to the facts and circumstances being similar to two previous cases the Board (Pinnacle Point and Darwin Common) had heard earlier in the year, he would recommend the Board take the same action to appeal.

Mr. Hoegler stated he felt the Board should be consistent.

Philip Macchi, Attorney for the applicant, stated that he had submitted a letter stating that his client would be requesting a continuance without testimony regardless of the decision from the Board.

Mr. Deschenes stated if the Board voted to appeal the decision, the Board could place the case on the agenda of a future meeting referencing that the case was in a state of “stayed” due to an ongoing appeal.

Mr. Fitzgerald stated that if the Board did vote to appeal that he would like a decision to be joined with that of the two previous HAC appeals (Pinnacle Point and Darwin Commons) as the legal question with all three cases was the same.

Motion by Ms. Conroy and seconded by Mr. Delaney to appeal the 9/27/22 decision of the Department of Housing and Community Development regarding the Neponset Village 40B project, to the Housing Appeal Committee.

The motion carried 5-0-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye)

Motion by Ms. Conroy and seconded by Mr. Delaney to continue the Case Number 22-22: Neponset Village 40B to November 2, 2022.

The motion carried 5-0-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye)

Case No. 22-26, Eriberto Perez, 278 Fisher Street, Special Permit under Section 5-B.1.3.N of the Walpole Zoning Bylaws to allow more than one commercial vehicle within a Residence B (RB) zoning district.

Case No. 22-26 opened at 7:11 P.M.

Mr. Lee read into the record the public notice and department comments from Police, Engineering, Building/Zoning Enforcement, and Health.

The applicant Eriberto Perez and his wife Claudia Perez introduced themselves and stated that the two commercial vehicles were for Mr. Perez and his brother who lived with them at their home on 278 Fisher Street. The trucks were for their work which took place off site.

Mr. Lee asked where the place of employment was that they drove to. Ms. Perez stated that it was in Allston, MA.

Mr. Delaney asked what type of business. Ms. Perez stated it was landscaping.

Ms. Conroy asked who used the trucks. Ms. Perez stated that it was Mr. Perez and his brother who lived with them.

Mr. Lee opened the hearing to the public.

Mr. Rizk of 282 Fisher Street stated that the Pérezes' were perfect neighbors and that there were quiet. Mr. Rizk stated that he did not have a problem with the size of the commercial trucks being stored at the house.

Ms. Goodwin of 286 Fisher Street stated that the Pérezes' were good neighbors and that they were fixing up their yard. She stated she had no issues with the neighbors.

Mr. Glossa of 268 Fisher Street stated that he had no problem with anyone owning and running their own business. However, we took issue with the size and placement of the fence that was installed by the Pérezes' and that he felt the Pérezes' were running their business out of the home.

Mr. Glossa stated that materials were in the yard that would indicate they were running a landscape business out of their house. Mr. Glossa stated that he had complained to the Building Inspector formally which resulted in the Pérezes' seeking the special permit.

Mr. Glossa presented plans from the registry of deeds showing a stone wall which highlighted the boundary between his property and the Pérezes' which had been utilized for a new fence installed by the Pérezes'. Mr. Glossa stated he believed they were in violation of zoning as the height in certain locations of the fence exceeded eight feet.

Ms. Fruci of 4 Walden Drive stated that she was opposed to the parking of multiple commercial vehicles at 278 Fisher Street due to public safety.

Mr. Perez stated that his yard is low in the back and that he did level it out. Mr. Perez also stated that there was material in the yard for that purpose but that material does not go out from his house to his jobs.

Mr. Lee stated that the issue was the commercial vehicles on the property not the fence or stone wall.

Ms. Conroy asked who would be using the trucks. Mr. Perez stated that it would only be him and his brother, who lived with him. Ms. Conroy asked how many vehicles were parked in the yard. Ms. Perez stated that it was two residential vehicles and two commercial vehicles.

Mr. Delaney asked if Mr. Perez could leave the commercial trucks at his place of employment. Mr. Perez stated that he could not.

Mr. Delaney asked Mr. Glossa for his main concern as a neighbor. Mr. Glossa stated that his main concerns was that the Perezes were running a business out of their house. Mr. Glossa stated that he was concerned about a conditioned special permit preventing the Perezes from resuming running a business from their house.

Mr. Lee stated that the applicant's would not be able to run a landscaping business out of their property and that if conditioned it would need to be enforced.

The Board discussed the special permit criteria defined under section 2.2 of the Zoning Bylaws.

Mr. Fitzgerald stated that all the criteria should be viewed through the lens of what they are being asked, which is to park one additional commercial vehicle at the property. Mr. Fitzgerald stated that he would be in favor of conditioning a special permit to limit the property to the parking of no more than two commercial vehicles and that no landscaping business be allowed on the property. Mr. Lee stated that he agreed with Mr. Fitzgerald.

Mr. Fruci of 4 Walden Drive asked if trailers count as commercial vehicles by themselves. Mr. Deschenes stated they did not. Mr. Fruci asked who would monitor the site for compliance. Mr. Lee stated that would be the Building Inspector who is also the Zoning Enforcement Officer.

Ms. Conroy stated that she would like to limit the number of utility trailers on this site to the number of commercial vehicles.

The Board discussed conditions for the potential granting of a special permit including a maximum of two (2) commercial vehicles allowed to be parked at the premises, a maximum commercial vehicle weight limited to two (2) tons per commercial vehicle, that no more than two (2) trailers be allowed on site, all vehicles to be registered, that the decision expressly does not authorize operation of a landscaping business on site, and that no storage of materials for the purpose of commercial landscaping shall be kept on site.

Mr. Lee asked the applicant if they wanted to close the hearing. Mr. Perez stated that he did.

Motion by Ms. Conroy and seconded by Mr. Delaney to close the public hearing for Case No.22-26 at 278 Fisher Street

The motion carried 5-0-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye)

Motion by Mr. Delaney and seconded by Ms. Conroy to approve a Special Permit under Zoning Bylaws Section 5-B.1.3.N, to allow more than one (1) commercial vehicle within a residential zoning district, with conditions.

The motion carried 5-0-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye)

Minutes Review: 7/20/22, 8/17/22, 9/7/22, 9/21/22

7/20/22 Minutes

Ms. Conroy asked about page 8 of the 7/20/22 minutes and what the last revised site plan for the 173 High Plain Street case was as the date given did not match when the meeting was. Mr. Deschenes agreed and thought the month may have been incorrectly written.

Mr. Fitzgerald stated that the acronym for ADU was given when it should be an accessory in-law suite. Mr. Fitzgerald also stated that there was an extra “intend” written on the 7th line of page 9 that should be removed.

The Board would hold to vote on the 7/20/22 minutes until after edits were made.

7/20/22 Executive Session Minutes

The word “full” on page 2, line 18 would be changed to “regular”

Motion Mr. Delaney and seconded by Mr. Fitzgerald to approve 7/20/22 executive session minutes

The motion carried 4-0-1 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-abstain; Hoegler-aye)

8/17/22 Minutes

Mr. Fitzgerald stated that on page 1 “Ms. Conroy-aye” should be added to the vote.

Motion by Mr. Delaney and seconded by Ms. Conroy to approve the 8/17/22 minutes with this edit.

The motion carried 5-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye).

9/7/22 Minutes

Mr. Fitzgerald stated that on page 5, second line of second paragraph, the word “Increase” should be changed to “access”.

Motion by Mr. Fitzgerald and seconded by Mr. Delaney to approve minutes from 9/7/22.

The motion carried 5-0 (Lee-aye; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye).

9/21/22 Minutes

Ms. Conroy noted that at the top of page 3 the vote was missing from the motion. Mr. Deschenes stated that he would add that vote.

Motion by Mr. Hoegler and seconded by Mr. Delaney to approve the minutes of 9/21/22.

The motion carried 4-0-1 (Lee-abstain; Delaney-aye; Fitzgerald-aye; Conroy-aye; Hoegler-aye).

Mr. Lee stated that Ms. Coffey would be stepping down from the Zoning Board of Appeals after 19 years of service to the Town.

Adjournment:

Motion: by Ms. Conroy to adjourn, seconded by Mr. Delaney.

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

Meeting adjourned at 7:29 pm