



**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, Assoc. Member*  
*Timothy Hoegler, Assoc. Member*

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**MINUTES  
WALPOLE ZONING BOARD OF APPEALS  
December 7, 2022**

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

Absent: 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 11/2/22).**

Case No.22-4 opened at 7:00 P.M.

Mr. Lee stated that the Board had a letter from the applicant requesting a continuance for the case to the Board's meeting on January 18, 2023.

**Motion** by Ms. Conroy and seconded by Mr. Delaney to continue Case No. 22-4 to January 18, 2023 for 7:00 P.M. at Town Hall.

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

**Motion** by Ms. Conroy and seconded by Mr. Delaney to grant an extension of time on the case until February 28, 2023.

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

**Case No. 22-27, 931 Main Street Realty Trust, 931 Main Street, Special Permit under Section 8.4.C. of the Zoning Bylaws to allow less than the minimum parking requirement. (Continued from 11/2/22)**

Case No. 22-27 opened at 7:05 PM.

Mr. Lee stated that the Board had a letter from the applicant requesting a continuance for the case to the Board's meeting on January 18, 2023.

**Motion** by Ms. Conroy and seconded by Mr. Delaney to continue Case No. 22-4 to January 18, 2023 for 7:00 P.M. at Town Hall.

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

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**Motion** by Ms. Conroy and seconded by Mr. Delaney to grant an extension of time on the case until February 28, 2023.

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

**Case No. 22-29, Gabriel Casado, 26 Park Lane, Variance pursuant to Section 6-B.1. Schedule of Dimensional Regulations for relief to the minimum side yard setback within the Residence A (RA) Zoning District.**

Case No. 22-29 opened at 7:08 PM.

Mr. Lee read into the record the public hearing notice and comment letters from the Board of Health, Engineering, Conservation and Fire Departments. He also noted a letter of support had been received which was signed by nine abutters.

Applicant Gabriel Casado appeared before the Board and gave a brief summary of the project. The project consisted of the construction of an attached two car garage with primary living space above.

Mr. Lee noted that a Variance was not something the Board grants often as there needed to be a hardship.

Mr. Casado explained there were several reasons which related to his hardship. First, he noted that his lot was undersized by nearly 60%. Second, he cited concerns over lot shape and topography which he believed made him eligible for a Variance. He explained the yard was pie shaped and the only area where the addition could be placed was the right side. Additionally, the water and sewer were located on the left side of the property and the rear would require too much fill and concrete to reach the current grade.

Mr. Casado cited section 6.C.9 of the zoning bylaws which allowed for 1ft. reduction to the side yard setback for every 10ft of insufficient frontage, with a 15ft. setback limit, whereas the underlying dimensional requirement within the Residence A zoning district required a 20ft. side setback. The frontage was short by 70ft. from the required 150ft. of frontage needed within the Residence A zoning district. This would allow Mr. Casado to reduce the side yard setback requirement to 15ft.

Mr. Deschenes helped to clarify the bylaw for the Board.

Mr. Fitzgerald believed the Board had the ability to approve the project under a Special Permit as opposed to a Variance. It was a unique opportunity as this was a single family dwelling which was preexisting nonconforming.

Mr. Lee believed seeking a Special Permit was a better approach.

Mr. Deschenes argued that the relief had to be granted under a Variance because the applicant proposed a new non-conformity as the side yard setback was currently conforming on the side of the proposed addition.

Ms. Conroy wanted to discuss the pros and cons of each avenue for relief. While a Variance was more difficult to receive due to the high decision standard, she believed that the applicant's stated hardship qualified for a Variance. Ms. Conroy asked if there was a neighbor to the right. Mr. Casado confirmed there was an abutter to the right, however they were located where the topography began to grade down and drop off. Ms. Conroy did not believe the proposal was a detriment and noted the neighborhood consisted of unique houses.

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Mr. Lee asked the applicant to confirm the location of utilities. Mr. Casado presented existing plans and noted that DPW originally thought the utilities were located in the area of the addition but had since revised their letter.

Mr. Lee asked the Board to confirm the relief that was needed. He noted that it could be approved via a Special Permit and noted a Variance required a higher standard of relief. The Board discussed the issue that a Variance was noted on the legal ad and did not account for any additional relief. Mr. Lee believed that since the Special Permit carried a lower threshold of relief, the Board could proceed without re-advertising. Mr. Deschenes did not believe that was common practice. Mr. Lee agreed, but believed this was allowed because the applicant could not seek more relief from the Board than what was originally advertised. Ms. Conroy felt the case should be re-advertised to state the proper relief.

Regarding the applicant's eligibility for a Variance, Mr. Lee believed that the topography and sewer items were meaningful in this case. He noted that the application proposed a two car garage and asked Mr. Casado if he reduced the scale to a one car, would the project be in compliance and not require a Variance. Mr. Casado responded that he currently had a one car garage which was to be demolished and reconstructed. There was the option of an oversized one car garage, but he would not have enough room for two cars without relief from the Board. Mr. Lee asked if the existing garage accounted for any of the space in the proposed two car garage. Mr. Casado confirmed that the space was accounted for and was to be incorporated into the two car garage area.

Mr. Delaney believed that this project was eligible for a Variance. Mr. Fitzgerald agreed and briefly reviewed the criteria.

Mr. Hoegler asked if the Board denied the Variance, could the applicant return the Board for a Special Permit. Mr. Lee said in the case, the Board would deny the Variance without prejudice and he would return to the Board for a Special Permit.

Mr. Lee asked the Board to finalize the Variance relief and flush out if this project met the criteria. The Board members were comfortable proceeding with a Variance.

Ms. Conroy asked about the interior layout and window placement. She understood the topography challenges and did not believe this project posed a detriment. Mr. Lee also asked about any interior changes to the front dining area. Mr. Casado noted there was a set of stairs that led to the kitchen which would be removed and replaced with a window.

Mr. Delaney asked about the trailer that was currently on the property. Mr. Casado said it would be removed.

Mr. Lee reviewed the side yard setback and reiterated the while the limit was 20ft, the applicant could reduce the side yard setback to 15ft by right as shown in the bylaw, and the applicant proposed an 8.5ft side yard setback.

Mr. Lee asked if Mr. Casado wished to close the public hear. Mr. Casado responded that he would like to close the public hearing.

**Motion** by Ms. Conroy and seconded by Mr. Delaney to close the public hearing.

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

**Motion** by Ms. Conroy and seconded by Mr. Delaney to grant a Variance, according to the plans submitted, and with the condition that any surplus excavation material would be removed, as requested by town engineering.

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

### **Board Business – 2023 Zoning Board Meeting Schedule**

Mr. Deschenes brought up the 2023 meeting schedule which continued the pattern of the Board meeting on the first and third meeting of the month.

The Board decided to strike the April 19, 2023 and August 2, 2023 meeting dates from the schedule. Mr. Hoegler pointed out that the Town Meeting schedule could pose a conflict in the spring and fall. The Board asked Mr. Deschenes to confirm the Town Meeting schedules to ensure there would be no conflict. This item would be taken up at a future meeting once the schedules were confirmed.

### **Board Business - Acceptance of Performance Bond: Cedar Edge & Cedar Crossing 40B Development** *For site stabilization under Comprehensive Permit, Condition C.2.i*

Mr. Deschenes provided the Board with background on the proposed 40B development at Cedar Edge & Cedar Crossing, specifically there would likely be building permits issued in the spring of 2023. As part of the Comprehensive Permit, a site stabilization bond was required to mitigate any environmental impacts should the developer leave the project of site work stop after a twelve month period. Mr. Deschenes noted this had already been vetted through Town Counsel and applicable departments. Mr. Deschenes stated that the Board would need to vote to accept the Bond as they had the authority on this matter.

Mr. Lee felt the \$350,000.00 bond amount was reasonable for the site.

Mr. Fitzgerald asked if the bond would be held until the completion of construction. Mr. Deschenes confirm it would be held for that duration.

Mr. Lee noted that if there was no construction for a 12 month period, the Board could act on the Bond.

Mr. Hoegler as if the bond amount would change if something happened in the middle of construction. Mr. Fitzgerald noted that the money was only for site stabilization.

Ms. Conroy asked what Town agents would monitor work quality. Mr. Deschenes said it would be between Conservation to monitor erosion controls and Civil Engineering.

**Motion** by Ms. Conroy and seconded by Mr. Hoegler to accept the site stabilization bond in the amount of \$350,000.00.

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

### **Board Business – Discussion on Zoning for Accessory In-Law Suites follow-up Discussion**

Mr. Lee said he spoke with Mr. Deschenes prior to the meeting and drafted proposed changes that he felt were positive.

Mr. Deschenes met with the Planning Board on December 1, 2023 and reported that they were receptive to the edits. The warrant was currently opened and the Board discussed the basic process. Mr. Deschenes' goal was to return to the Planning Board at their first meeting in January and present the final changes.

Mr. Lee asked if the Board needed to vote. Mr. Deschenes said it could be helpful.

Ms. Conroy noted that some of the Planning Board did not agree with all of the proposed edits which was a concern. She recommended that this item be sent to the Select Board for sponsorship on the town meeting warrant as it would allow the Zoning Board to accurately articulate the necessary changes without the risk of it being altered.

Mr. Deschenes said the process required a public hearing by the Planning Board.

Mr. Lee agreed with Ms. Conroy and felt a Select Board sponsorship was preferred. Mr. Deschenes said he would make sure that was coordinated prior to the closing of the warrant. Mr. Fitzgerald noted that the Planning Board could still make a recommendation. Mr. Lee was comfortable proceeding with the proposed changes.

Mr. Delaney asked if there was any follow up regarding the process for a new owner to re-register an in-law unit. Mr. Deschenes said there was no follow up because the units ride with the deed. The Building Commissioner did not believe it was required because it went with the property. Mr. Delaney wanted something in place to confirm standards were being upheld if a property ever changed hands. He felt there was progress made with regard to the structure of the bylaw, however he had concerns with its maintenance.

Mr. Deschenes said the in-law suite decision would be a part of the building permit which would allow for the Town to keep a record of all properties that were registered for this use.

Mr. Lee asked if the use could lapse in the event the property was sold and the new owner did not use the in-law suite for three (3) plus years. Ms. Conroy noted that there were some Towns that used a six (6) month threshold for the new owner to property utilize the suite or the second kitchen would need to be removed.

Ms. Conroy said there needed to be a process in place to flag when a property with an in-law unit changed hands and allow the new owner to update the status.

Mr. Fitzgerald understood the need for regulation, but did not believe a continuously updated record would solve the problem. He noted that a multi-family was not a typical allowed use in the areas where in-law suites were built.

Mr. Deschenes cited the ownership requirements and noted these potential issues could only be enforced when it was brought to the Town's attention.

Mr. Lee requested a vote to send the draft to the Select Board for them to sponsor the article on the spring town meeting warrant.

**Motion:** by Ms. Conroy seconded by Mr. Delaney to send a draft to the Select Board and ask them to sponsor the article.

**Discussion:** Ms. Conroy discussed requirement number eight (8) on page two (2) of the draft bylaw regarding the water meter. She suggested that point was clarified because the interconnected language was not clear. The prior language used was preferred.

Mr. Fitzgerald noted there were two references to definitions and thought it could be cleared. He suggested the definition within the bylaw should be removed and direct readers to the definition section. Ms. Conroy appreciated the definition within the bylaw and would prefer it only if it exactly matched what was in the definition section. The Board agreed with Ms. Conroy and felt as long as the definitions were always consistent, they could remain.

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

**Minutes Review: 11/16/2022**

Mr. Fitzgerald addressed a few minor edits to be made.

**Motion** by Ms. Conroy and seconded by Mr. Hoegler to approve the minutes as amended of 11/16/2022

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

**Adjournment:**

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

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

Meeting adjourned at 7:22 P.M.