

## WALPOLE ZONING BOARD OF APPEALS MINUTES OF JUNE 2, 2021

A meeting of the ZONING BOARD OF APPEALS was held remotely via Zoom on WEDNESDAY, JUNE 2, 2021 AT 7PM. The following members were present on the Zoom Webinar:

John Lee, Susanne Murphy, Bob Fitzgerald, Jane Coffey, Drew Delaney, Patrick Deschenes (Community Development Director); George Pucci (KP Law); Amy Kwesell (KP Law); Judi Barrett (40B Consultant); Mike Yanovitch (Building Commissioner)

Lee opened the meeting at 7:03PM

### **Case No. 20-25, Robert Truax (on behalf of Walsh Brothers Building Co.), 300 Stone Street, Remand from Land Court:**

Lee opened the hearing, Rob Truax of GLM Engineering was present, along with Attorney Brian Almeida and John Walsh. Lee stated that two peer review scopes have been submitted to the board from GZA and Beals & Thomas to review floodplain issues, culverts and dam safety. Mr. Walsh asked the amount of the peer review scope, in which Mr. Deschenes stated that the peer review scope from GZA totaled the amount of \$3,000.00, and \$2,700.00 from Beals & Thomas. Mr. Deschenes stated that the anticipated peer review schedule is approximately 4-5 weeks for review. On behalf of the applicant, Mr. Almeida stated that the applicant is willing to pay the \$3,000.00 for the GZA peer review. Mr. Lee stated that Mr. O'Leary submitted a letter into the record on 6/1/21, however, the board has not had time to review the submission, and is not comfortable discussing the submission at this time. Mr. Pucci recommended that the public submission be sent to the applicant, and stated that it would be favorable if the applicant responded to the submission at some point in the future during this process. Mr. Yanovitch stated that the public submission has been provided to the applicant, and that himself and staff have reviewed it, and was able to track back to the 1940's and discount what the opponent has provided, as well as confirm that the site is a buildable site outside of the special permit that is being requested. Mr. Lee suggested 7/21/21 as a date to continue the hearing to in order to allow time for peer review to submit their findings. Murphy motioned to accept the peer review scope from GZA, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye, the motion carried 5-0-0. Murphy motioned to continue the public hearing to 7/21/21 at 7pm, seconded by Coffey, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Delaney-aye, Coffey-aye. The motion carried 5-0-0.

### **Case No. 05-20, Wall Street Development Corp., Dupee Street (Map 35; Parcel 380-1), Comprehensive Permit:**

Mr. Lee stated that this is a closed hearing, and explained to the board that it's been brought to his attention by speaking with Mr. Deschenes earlier in the day that the applicant still owes money from the peer review that has been completed on this project by Tetra Tech, in the sum of \$4,396.00. Mr. Lee stated that the applicant is well aware of the outstanding balance, and that it has put the board in a difficult position. Mrs. Barrett stated that the regulations allow the board to deny an application if the applicant doesn't pay the peer review fees, and suggested the possibility of placing a condition within the Comprehensive Permit that states that no building permit shall be issued until the outstanding peer review fees are paid. Mr. Lee asked Mr. Pucci what his opinion was on Mrs. Barrett's recommendation, in which Mr. Pucci echoed Mrs. Barrett's suggestion that there be a condition addressing the outstanding peer review fees within the comprehensive permit. Mr. Pucci also echoed Mrs. Barrett's statement that failure to pay the peer reviews fees is grounds for denial, however, doesn't recommend that the board deny the project solely based on that factor due to a potential appeal within the jurisdiction of the HAC. Mr. Lee stated that while Condition A.16 of the draft decision states that the applicant shall provide payment of all remaining peer review fees in full within thirty days of the issuance of the Comprehensive Permit, he would also like an additional condition that states that the applicant shall provide payment of all remaining peer review fees in full before any building permits are issued, specifically in section of C.2. of the draft decision. Pucci recommended

that a penalty provision be added to include the cost of attorney fees. Mr. Lee asked the board members their thoughts on any outstanding issues or concerns they may have relating to the project, which included the following;

Mr. Fitzgerald: suggests adding a specific dollar amount of the outstanding peer review amount within the condition; concern over the possibly lengthy timeframe it could take for the outstanding amount of peer review to be paid; outstanding concern relating to comments previously made by the Fire dept. re: safety; health concerns.

Mrs. Murphy: concern with safety relating to fire truck turning onto site; concern over outstanding peer review funds

Mr. Delaney: not comfortable with project relating to watershed in the area and size of project; concerns over the lack of proper procedure re: outstanding peer review funds owed by applicant; stated he is not in favor of the project due to the above mentioned concerns

Mrs. Coffey: not in favor of the project; concerns relating to safety due to narrow road; concern over dangerous maneuvers of the fire apparatus; very dense project with no open space; unhappy about outstanding peer review funds; concerns relating to parking

Mr. Fitzgerald: expressed concern over the project being appealed and falling within the jurisdiction of the HAC if the board were to accept the denial decision. Mr. Fitzgerald reiterated that the board's decision of denial needs to demonstrate that the local needs outweigh the need for affordable housing in order to be upheld at the HAC, and that Walpole has currently not met the Safe Harbor status. Mr. Fitzgerald agreed with the board members that there is health and safety concerns relating to traffic and Fire Dept. access, however, he did not interpret the comments made by the Fire Dept. as saying that the project is absolutely unsafe and they are unable to provide adequate services, rather, that the Fire Dept. has reviewed the project and has safety concerns. Mr. Fitzgerald also expressed that he agrees that the project lacks open space, however, the open space component of the local needs is not specific to what's on site, and is more related to the town in general. Mr. Fitzgerald stated that he understands that the applicant has been less than forthcoming with the board, however, is concerned that there is not enough in the record to sustain the boards position of denying the Comprehensive Permit if it were to be appealed to the HAC.

Mrs. Murphy motioned to accept the draft decision as written, seconded by Coffey, roll call vote: Lee-no; Murphy-no; Coffey-no; Delaney-no; Fitzgerald-aye. The motion did not carry, 1-4-0. Mr. Lee stated that a draft decision for denial that include the conditions and reasons for denial will be drafted by Town Counsel and Mr. Deschenes for 6/9/21. The board will meet on 6/9/21 at 7pm via zoom for the purpose of reviewing the draft denial decision based on the boards vote to deny the Comprehensive Permit draft that was before them tonight.

### **Other Business - Discussion Items:**

**1. Sayed Halabi, Extension Request on Special Permit, re: 1363-1391 Main St. :** Mr. Halabi stated that he is seeking a one-year extension on his previously issued special permit in order to bring the Planning Board decision and Zoning Board decision closer together relating to their active timeframes for the purpose of securing a construction loan. Mr. Lee., along with other members of the board agreed that a new public hearing is needed in order for the one-year extension to be granted, and that Mr. Halabi should coordinate with staff to file appropriately. No further action at this moment was needed, and the item will be placed on a future agenda pending the proper filing by the applicant.

**2. Town of Walpole Sewer & Water Dept. – request to modify Condition No. 3 of Case No. 2-89 (hours of operation):** Mr. Marshall, Superintendent of the D.P.W. and Sewer & Water Dept. explained to the chair that his department is seeking a modification to a condition in a previously granted Decision relating to the change in the hours of operation at the Sewage Disposal Facility located at 130 Robbins Road. Mr. Lee., along with other members of the board agreed that a new public hearing is needed in order to modify the previous decision, and

that Mr. Marshall should coordinate with staff to file appropriately. No further action at this moment was needed, and the item will be placed on a future agenda pending the proper filing by the applicant.

**Minutes:** No minutes were accepted at this time.

**Executive Session under G.L. c§21(a)(3) to discuss strategy with respect to litigation regarding 55 SS LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee C.A. No 2021-02:**

Mrs. Kwesell recommended that the board make a motion to go into executive session from open session. Mr. Lee stated that once the board goes into Executive Session, it will not come back into regular session, and the board will adjourn from Executive Session. Mr. Fitzgerald motioned to go into Executive Session under General Laws Chapter 38, Chapter 21 a3 to discuss strategy with respect to litigation regarding 55 SS LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee C.A. No 2021-02, seconded by Mrs. Murphy, roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye, the motion carried 5-0-0.

**The board went into Executive Session at 8:13 PM**

Accepted 6/23/21