

The February 25, 2015 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:02 p.m. with the following members present:

Matthew Zuker, Chairman  
James DeCelle, Vice Chairman  
Craig W. Hiltz, Clerk  
Mary Jane Coffey, Member (not present)  
Susanne Murphy, Member  
Timothy Foley, Associate Member

**7:00 pm – Leigh Ann Luetzen, Trustee of LA Realty Trust – Case #20-14**

Matthew Zuker read the Public Hearing notice for **LEIGH ANN LUETZEN, TRUSTEE OF LA REALTY TRUST, Case #20-14**, with respect to property located at, 119 Pleasant Street, East Walpole, MA and shown on the Assessors Map 20 and Lot No. 194, General Residence Zoning District. Walpole, MA and shown on the Assessors Map 28 and Lot No. 182, Residence B Zoning District.

The application is for:

A SPECIAL PERMIT under Section 5.B.3. Residential c. of the Zoning Bylaws to allow the conversion of a non-conforming one family dwelling to a three family dwelling.

A SPECIAL PERMIT under Section 9.4.A-C, if determined applicable, to allow the conversion of a non-conforming one family dwelling to a three family dwelling on a grandfathered lot all as shown on a Plan entitled “119 Pleasant Street, Plan of Land in Walpole, MA” dated May 15, 2014 as last amended on November 3, 2014. Scale 1”=20’ drawn by Andrew C. Murphy, P.L.S., 9 Off Grove Street, Weymouth, MA 02189 and the proposed floor plans submitted with the application.

Mr. Zuker stated that this case was opened and continued without testimony on February 4, 2015.

Mr. Macchi attorney for the applicant stated that he wanted to start off by thanking the Zoning Board for the first withdrawal that was granted back in April of 2014. The reason for that withdrawal back in 2014 was the owner was named as the trust which wasn’t completely finalized. As a result of that we requested and were granted a withdrawal. We are here today for a conversion of a 1 family home to a 3 family home. This issue arose with the Planning Board as well. They contacted Town Counsel Ilana Quirk, who said the applicant could do the Planning Board and Zoning Board process together. However it was too late to do that. A lot of this presentation is a duplicate to what I presented to the planning board. LA Realty Trust is a family trust. This is for the Conroy Family. They are here tonight and are not trying to hide anything. It is a part of an overall estate plan. I understand how the board felt, it seemed like there was some misrepresenting. This is all a part of the Family Estate. I just wanted to give that to you because

you were very cordial with that request to withdraw. This really is a family thing. The Conroy's are very good with their properties and their tenants. They don't want to convert something and then just let it go. Mr. Macchi stated that he has a number of letters that came in to support this case. The first letter I want to submit is a letter from Janice Young (Exhibit A). The second letter is from Margaret O'Neil in support (Exhibit B) of the project. The third letter is from Denise Nietzel (Exhibit C) in support of the project.

Mr. Macchi stated he would like to paraphrase the Memorandum in Support of the Application for the Special Permits that he submitted with the application. However he wants it noted that the whole book is a part of the record. Mr. Macchi explained that the applicant is asking for the second Special Permit if the Board feels it is applicable. Mr. Macchi believes the Board is familiar with the property. It is in a general residence zone. We have submitted the plans to the Board. This lot was created in 1915. That date is very critical because in 1915 we didn't have the zoning bylaw. We had a building code but not the bylaw. This is important because it explains why the house is non-conforming. It is non-conforming because the house is on a lot with minimal frontage. That in of itself created an issue in Section 9. According to the bylaw page I'm passing out the lot is grandfathered in. The only way it would lose the grandfathering is if they changed any of the configurations. The house is on a conforming lot but it is considered non-conforming. They don't need the frontage due to that section of the bylaw (passes out section 6 of the bylaw that explains how it is grandfathered in & a copy of the lot-Exhibit D).

Mr. Macchi went on to explain that the next few pictures he is submitting to the record show the vegetative buffer which would act as a natural buffer and that this lot is the largest in the immediate area. He felt that this project would not be detrimental to the neighborhood. He also stated that he is not going to go through the site plan approval or use the site plan approval as leverage. He will try to go by the use. Within the application is a picture showing the house. This particular style of house was what was normal in the 1920's and 30's. The exterior of the house will not change. All of the changes will be done to the interior of the house. Also in the application a study that was done within the neighborhood. The study shows that 45% of the houses in the immediate area are multifamily homes. The application touches on the landscaping and the old shed that will be torn down. None of these changes will affect the property adversely. The site plan shows that we did what we needed to do. This project will not affect the safety of the neighborhood. As for parking, each unit requires 2 spaces, we show 6 spaces on the plan. Therefore we meet that requirement 100%. He continued to state that the applicant will not be changing the house or the footprint. It is only a use issue. The Applicant is converting the inside from a 1 family home with 5 bedrooms to a 3 family home with 3 bedrooms. The Planning Board approved the site plan not the use. Mr. Macchi would like the Board to note that there is no change to the exterior to this building. This will be three, one bedroom units. The Applicant is planning on repainting or re-siding the house. That is the only exterior change. As for traffic, a town consultant reviewed the traffic and found that the volume of traffic should have no significant impact to Pleasant Street. In regards to the number of people renting, it is anticipated that they will only have 1 possibly 2 people renting. There will not be a huge amount of people in the house. The Bylaw states the a General Residence Zone can be used for educational uses, a nursery school, cabinet making, a rooming house is allowed by a matter of right. The applicant just wants to have 3 units. A rooming house with 15 people could be there instead. The whole purpose of the General Residence Zone was to expand the multifamily but keep it compatible in

the area. Mr. Macchi stated in regards to Section 9, the non-conforming issue basically deals with the exterior. The footprint of the house will stay the same. The outside of the building will not change with the exception of new paint or siding and new windows. I asked your board to make that determination. I will tell you that we dealt with all of the Planning Board issues. There are no traffic issues. All in all when you take a look at this I believe we met the criteria.

Mr. Macchi concluded by saying that they have done everything possible from designing this to making sure everything fits. The fire department stated that the property needed sprinklers. We have addressed the fire departments comments. I will tell you that I have a number of people here at the public hearing who will testify that this proposal should be granted.

Mr. Zuker- stated that getting the site plan was a good thing. He said that the Applicant did a thorough job. Mr. Zuker asked if anyone from the audience would like to speak on behalf of this application.

Marie Maloney stated that she grew up on Union Street and knows the neighborhood very well. She stated that she has known the Conroy family for years. They are wonderful property owners

Joe Major of 34 Rhodes Avenue stated that Jack Conroy and Judy Conroy bought a home right next door to me. He has been a great homeowner. He keeps up his property. He is helpful with everyone in the neighborhood.

Leigh Ann (Conroy) Luetzen said that she is looking forward to moving forward with this project should it get approved. My husband has enjoyed living in some of the properties that my parents have owned.

Mr. Zuker read in the board comments from Police, Planning, Board of Health, Conservation Commission, Town Engineer and Fire Department. It was mentioned that the Fire Department stated after reviewing the Massachusetts building Code, and conferring with the Building Commissioner, it appears that the proposal to convert a single family home into a three family dwelling will require a sprinkler system to be installed as a result of a residential occupancy use group change and this proposal will also require that all residential fire alarm requirements be met according to current building and fire life safety codes. It was also noted that the Board of Health stated at its January 13, 2015 meeting voted 3-0-1 that they have no specific concerns except that the pavement for the six additional parking spaces does not exceed the impervious cover limit allowed.

Mr. Macchi said that regarding the Board of Health comments that they are not getting close to the impervious overage. They have created a storm water management system. No water will run to any neighbor.

Mr. Hiltz asked on the initial special permit, it states 5.B.3, what exactly are you referring to?

Mr. Macchi stated when you can have conversion to a 3 family it needs to be tied to water and sewer.

Mr. Hiltz mentioned on the application it states Residential c. which states: Three-family detached dwelling is located on a lot having an area of at least thirty thousand (30,000) square feet and if connected to or to be connected at the time of construction with the public sewer system. However e. states: The conversion and/or use of a one-family dwelling existing on January 1, 1956, as a dwelling for not more than two (2) families. It does not say a 3 family.

Mr. Macchi said you have to look at when the lot was created. The lot was valid because it was created before 1925. We chose that section of the bylaw because that is what Town Counsel said. I have an email from Town Counsel that shows that.

Mr. Zuker asked Mr. Macchi is he had a copy of that email.

Mr. Hiltz stated that he just wants to make sure the application has the right section. My next question is regarding the neighborhood. Do you have a breakdown in terms of how many houses are 2 families or 3 families? I just want to know how many of the multi-family houses are 3 family.

Mr. Macchi stated the chart in the application shows the breakdown.

Mr. Hiltz said that the chart in the application just states multi..

Mr. Macchi stated that the records just say multi. He said he is not trying to be evasive, that is just what it states.

Mr. Macchi gave Mr. Zuker Town Counsels email.

Mr. Foley mentioned that the language in the Bylaw states not more than a 2 family.

Mr. Hiltz said looking at the plans you are putting a deck off the back. Mr. Hiltz was confused because he thought the Applicant was not adding anything to the exterior.

Mr. Macchi stated that the Town's building code does not consider stairs as part of the building. They do not count them.

Mr. Hiltz noted that it says stairs and deck.

Mr. Macchi said it was just the wording on the plans. You cannot just start a stairway from the door going down. There needs to be a slight landing.

Mr. Zuker mentioned that it was still an exterior change. However it meets the setbacks.

Mr. Hiltz stated that he would recommend the 9.4. because of the deck addition. He had no further questions.

Mr. Zuker said from the standpoint of the neighborhood, it is not detrimental. I'm still stuck on the lot itself and whether a variance is required or not. That is not here or there. For a one and 2 family having the insufficient frontage is OK. For a lot to be grandfathered in, it should be a vacant lot. From a use standpoint, I am just bringing this to your attention. I have some issue with that, but it is not what you are here for.

Mr. Macchi said because of this whole process, a sincere effort was put in to address all of these issues.

Mr. Zuker said that the applicant has done a good job. He stated that he wished they were applying for a variance as well because he felt it would make the project 100% clean. That is just his 2 cents.

Ms. Murphy felt it is a perfect project for that area and she is ready to make a motion.

Mr. Foley mentioned that he was OK with the project. His concerns had to do with the drainage but you put in the drains.

Mr. Macchi stated that the applicant has addressed storm water.

Mr. Foley mentioned that could be the one thing that was the problem but you eliminated it.

Mr. Zuker said we may see you again or we may not.

Mr. Macchi stated that sometimes there are differences of opinion

A motion was made by Mr. DeCelle, seconded by Mr. Foley, to close the public hearing.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy and Foley voting)

A motion was made by Craig W. Hiltz and seconded by Timothy Foley, that the Board grant Leigh Ann Luetzen, Trustee of the LA Realty Trust, a Special Permit under Section 5.B.3 Residential c. to allow the conversion of a one family dwelling to a three family dwelling as shown on a Plan entitled "119 Pleasant Street, Plan of Land in Walpole, MA" dated May 15, 2014 as last amended on November 3, 2014, Scale 1"=20' drawn by Andrew C. Murphy, P.L.S., 9 off Grove Street, Weymouth, MA 02189 and the proposed floor plans submitted with the application.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Murphy and Foley voting); therefore the Special Permit under 5.B.3 Residential c. is hereby granted.

### **REASONS FOR DECISION:**

It is the finding of the Board of Appeals that the Applicant was able to meet the requirements of

Section 5.B.3. Residential c. and is consistent with the development of the proposed conversion in a General Residence District. Accordingly, the Board determines that the granting of Special Permit under this By Law is warranted.

### **Section 2 A and B Requirements as required for a Special Permit under Section 5.B.3.**

#### **Section 2 A. General**

**Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or “SPGA”), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.**

The Board finds that the proposed use/conversion in the General Residence (GR) District is in harmony with the purposes and interest of the By Law which specifically provides for multi-family use in the GR District. The Board further finds that it has been provided specific information as to the requirements for a Special Permit and finds that the Site Plan Approval requirements having been met noting the Planning Board Decision dated September 26, 2014.

#### **Section 2.B. (1)**

**(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;**

The Board finds that the proposed use is in harmony with the purposes and intent of the ByLaw as, in fact, the project is located in the General Residence district which is the only district under the Bylaw allowing a multi-family residence. The proposed conversion does not entail significant exterior changes. All upgrades and embellishments to the exterior will be consistent with the character of the neighborhood, will not change the height, mass, or setbacks and will utilize traditional building materials. An analysis of the seventy-four (74) properties in the General Residence area of the locus revealed that thirty-two (32) of the properties or forty-five percent (45%) are multi-family which is consistent with the proposed conversion.

**(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;**

The Board finds that the ingress/egress access point (driveway) will remain unchanged. The allotted parking spaces and asphalt driveway will have no adverse effect as to pedestrian and vehicular movement so as to adversely affect the neighborhood. The proposed conversion will neither impact the convenience and safety of vehicular and pedestrian traffic within the site nor affect the current conditions on adjacent streets. Pleasant Street between Union and Wolcott Streets is 42’ wide which is almost 4’ wider than Union Street making this one of the widest streets in the Town. The entrance is bordered by a stop sign to the North at Union and Wolcott Street, 360 feet away from the driveway, and a stop/yield island to the south at the intersection of Pleasant and Wolcott Streets, 512 feet away from the driveway. The Planning Board consultant, Wayne Feiden, FAICA of Feiden Associates, report found in part:

1. The volume of traffic should have no significant impact on Pleasant Street. Using an average of 10 Average Trips (one-way) per Day (ADT) the 20 new one-way trips generated are insignificant. The line of sight is good and the capacity of the road is sufficient. The alignment with Burns Ave is not ideal (ideally it would be opposite or further away). This issue does not, however, pose any significant problems.

There is minimal vehicular traffic or pedestrian traffic noting the conversion is for one (1) bedroom residential units on a large lot. NOTE: the current dwelling contains six (6) bedrooms and the proposed conversion reduces the same to three (3).

**(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

The Board finds that the existing dwelling has six (6) bedrooms and as such can accommodate six (6) residents. The proposed conversion to three (3) one (1) bedroom units can only accommodate a maximum of six (6) persons however it is anticipated that some of units will only be occupied by one (1) person. In substance there will be minimal change or reduced occupancy with no adverse effect on the immediate neighborhood. The conversion being residential in nature will have no employees or customers and minimal visitors, if any.

**(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The Board finds there is ample lot area, front yard setback, side yard width and rear yard depth. Further there are no buffer zones required in the GR district for a residential dwelling.

**(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

The Board finds as the existing and requested conversion is residential in nature there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of wastes or other causes. However the Board would like the applicant to address the comments the Walpole Fire Department submitted which state that the dwelling will require a sprinkler system to be installed as a result of a residential occupancy use group change and all of the residential fire alarm requirements must be met according to current building and fire life safety codes.

**(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;**

The Board finds the existing and proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood.

**(g) shall not adversely affect the character of the immediate neighborhood; and**

The Board finds the immediate neighborhood and, in fact, the general area is in the General Residence District which under the Walpole Zoning ByLaws is the only district wherein, under Section 5B, multi-family dwellings are allowed as well as a host of other uses such as, but not limited to, multi-family dwellings, bed and breakfast or tourist homes, agricultural use building, churches, educational use, nursery schools, private clubs, portions of dwellings for a workroom for resident beautician, dressmaker, photographer, cabinet maker, painter, plumber, etc. A rooming house is allowed as a matter of right as well as the garaging and maintaining of trailers. As stated previously, an analysis of the seventy-four (74) properties in the General Residence area of the locus revealed that thirty-two (32) of the properties or forty-five percent (45%) are multi-family which is consistent with the proposed conversion.

**(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.**

The Board finds that the purpose of the Zoning ByLaw in part states, “to encourage housing for persons of all income levels...” “to encourage the most appropriate use of the land”. The conversion of the single family dwelling to a three family dwelling is consistent with the purpose of the ByLaws. The three (3) one (1) family units will provide housing for a significant number of individuals and/or families to have their own unit to rent at a lower cost without which they may be financially unable to obtain housing.

#### **VOTE OF THE BOARD**

A motion was made by Craig W. Hiltz, seconded by James DeCelle that Board grant Leigh Ann Luetzen, Trustee of the LA Realty Trust a Determination under Section 9.4.A to allow that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The vote was **4-1-0 in favor** (Zuker, DeCelle, Hiltz, Foley voting in favor, and Murphy voting in opposition), therefore the Board determines that the applicant requires a Special Permit to make an alteration to the building is **granted**.

#### **VOTE OF THE BOARD**

A motion was made by Craig W. Hiltz, seconded by Susanne Murphy that the Board grant Leigh Ann Luetzen, Trustee of the LA Realty Trust a Special Permit under Section 9.4. to allow the conversion of a non-conforming one family dwelling to a three family dwelling on a grandfathered lot as shown on a Plan entitled “119 Pleasant Street, Plan of Land in Walpole, MA” dated May 15, 2014 as last amended on November 3, 2014, Scale 1”=2-‘drawn by Andrew C. Murphy, P.L.S., 9 Off Grove Street, Weymouth, Ma 02189 and the proposed floor plans submitted.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Murphy and Foley voting), therefore the Special Permit under Section 9.4, is hereby **granted**.

### **REASONS FOR DECISION:**

It is the finding of the Board of Appeals that the Applicant was able to meet the requirements of Section 9.4 and is consistent with the development of the proposed conversion in a General Residence District. Accordingly, the Board determines that the granting of a Special Permit under this By law is warranted.

#### **Section 9.4 Requirement as required:**

The Board finds the lot complies with Section 9:2.B.(1)(a) in that the non-conformity existed prior to March 31, 1925. The lot being 119 Pleasant Street, Walpole, MA has the benefit thereof as being a lawfully created lot. As such, the dwelling was constructed on a lot not conforming as to its frontage and the 80% circle.

#### **Section 9.4**

**4A. ...a determination that such enlargement or extension will not increase the nonconforming nature of the structure, or that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming structure....**

The Board finds the proposed addition of the exterior stairway/deck reflected on the plans presented at the Public Hearing does not increase the non-conforming nature of the structure and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure as the proposed conversion does not entail significant exterior changes. All upgrades and embellishments to the exterior will be consistent with the character of the neighborhood, will not change the height, mass, or setbacks and will utilize traditional building materials. An analysis of the seventy four (74) properties in the General Residence area of the locus revealed that thirty-two (32) of the properties or forty-five percent (45%) are multi-family which is consistent with the proposed conversion. All existing landscaping providing buffering will be maintained. The Applicant has agreed to a stipulated condition that the existing vegetated buffer between its locus and the adjacent McMullen property will be maintained. There is no proposed signage other than to identify the property as requested by the Town for safety purposes. The site is already developed. The proposed conversion is an upgrade to the interior and exterior of the building and grounds. There is no Master Plan or Open Space and Recreational Plan provisions that would apply to the site of proposed improvements. The project involves interior modifications to accommodate the conversion. The exterior enhancements will maintain the existing drainage patterns on site. The site has adequate sewer and water capacity, that no street opening is required as the asphalt drive only runs to the lot line. The Town regulations provide for trash collections for 1, 2, and 3 family homes. The ingress/egress access point (driveway) will remain unchanged. The allotted parking spaces and asphalt driveway will have no effect as to the convenience and safety of pedestrian and vehicular movement within the site. The proposed conversion will neither impact the convenience and safety of vehicular and pedestrian

traffic within the site nor affect the current conditions on adjacent streets. The entrance is bordered by a stop sign to the North at Union Street, 360 feet away from the driveway, and a stop/yield island to the South at the intersection of Pleasant and Wolcott Streets, 512 feet away from the driveway. The location on Pleasant Street is a most ideal place to exit and enter a driveway because of the width, sight distances and location of regulatory signage which is reflected by non-existent motor vehicle accidents over the years. The number of parking spaces provided, six (6), meets the Town Zoning Bylaw requirements under Section 8: Table 8.3.1 Parking Code 1 for two (2) parking spaces for each unit accommodated on the premises. The building having been constructed in the early 1900's predates current Zoning.

**4B. ... (including compliance with Site Plan Approval requirements, where applicable)...**

The Board finds the proposed undertaking has been approved by the Planning Board which issued its Decision on September 26, 2014, with no appeals having been taken. The substance of the Planning Board findings being based upon the following.

*A. Applicants for both Limited and Full Site Plan Review must make every reasonable effort to achieve consistency with the following site development standards and guidelines:*

*(1) Conserve and protect natural features that are of some lasting benefit to the site, its surrounding area and the town at large.*

The locus has been developed since the early 1900's. The proposed conversion has no effect on the natural beauty of the site nor does it change any setbacks or dimensions of the building. The only paving is over the existing driveway and an extension thereof to provide parking in order to meet the requirements of providing two (2) parking spaces per unit. There are no natural features to conserve or protect on site that benefit the surrounding area or Town at large.

*(2) Protect slopes in excess of fifteen percent (15%) against erosion, runoff, and unstable soil, trees and rocks. Appropriate measures shall be taken to stabilize the land surface from unnecessary disruption. Stabilization measures shall be the responsibility of the property owner.*

There are no slopes being affected. Should there be any minor disruption, the same will be stabilized.

*(3) Buildings, structures, fences, lighting and fixtures on each site shall be placed so as to not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.*

The existing building is being utilized and other than providing six (6) parking spaces there will be no significant change to the property as to interfere with traffic circulation, safety, nor will there be any interference with the use and enjoyment of adjacent properties.

*(4) All roadway and driveway design shall take into consideration safe sight*

*distances at intersections and along all traveled ways, in accordance with appropriate AASHTO requirements. As much as possible, clear sight distances shall take into account topography, density of dwelling units or intensity of use, and horizontal and vertical alignment.*

The proposed conversion does not have any impact on the existing roadway network. The site driveway is existing and is proposed to remain. Further, there are no known deficiencies with the sight distances associated with the existing driveway.

- (5) *Provide adequate illumination of parking lots and other areas for vehicular and pedestrian circulation. In a residential district, no freestanding illumination devices shall be installed to a height exceeding fifteen (15) feet. All illumination shall be directed and/or shielded so as not to shine beyond the perimeter of the site or interfere with traffic.*

All lighting to be attached to the building will focus downward. There should be no adverse impact to abutting properties. Again, any lighting will be situated so as not to shine beyond the perimeter of the site or interfere with traffic.

- (6) *All areas designed for vehicular use shall be paved in accordance with the roadway and parking lot design standards of the Town of Walpole.*

The Applicant as part of the conversion proposes to pave the existing gravel driveway and provide parking in accordance with the Town of Walpole standards.

- (7) *All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground.*

The proposed conversion of the existing building does not entail or require modification as to the utilities which already exist.

- (8) *All surface water runoff from structures and impervious surfaces shall be managed in accordance with Subsection 11, Drainage Standards*

The only proposed impervious surface is the asphalt drive which will be pitched to a stone swale and shall be managed in accordance with the appropriate drainage standards.

**4C. ... provided that the Board of Appeals finds that such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming building...**

The Applicant respectfully submits that the conversion involves the interior of the building and as such there is no enlargement or extension of the building besides the conforming deck/landing on the second and third floors leading towards the outside stairs. The Applicant proposes to retain certain existing trees and vegetation and taking into consideration the totality of the application the proposal is not more detrimental to the neighborhood than the existing building

on the non-conforming lot.

**7:00 pm – Habib Mourad of H & J Washington, LLC – Case #1-15**

Mr. Zuker read the Public Hearing notice for **HABIB MOURAD OF H & J WASHINGTON, LLC, Case #1-15**, with respect to property located at 346-348 Washington Street Walpole, MA and shown on the Assessors Map 27 and Lot No. 46, General Residence Zoning District.

The application is for:

A SPECIAL PERMIT under Section 5-B.3.i of the Zoning Bylaws to allow use for a resident Beautician, AKA Cosmetologist and allowable uses per section.

Phil Macchi II, the attorney representing the applicant asked the Board to look at the application booklet that he had submitted to the record. He stated much like the last presentation he would like to paraphrase the Memorandum in Support of the Application for the Special Permit that he submitted with the application. However he wants it noted that the whole book is a part of the record. He then went on to explain that last year the Applicant applied for a building permit and received it. At the time Jack Mee was the Building Inspector. The construction has been completed. The new Building Commissioner determined that it should fall under the workroom of a Beautician because there was a salon sink and there could be some hair work done. The new Building Commissioner stated that we are stuck in a bylaw from the 50's so therefore we need to get this Special Permit. I would like to direct you to the pictures. Exhibit 3 shows the exterior and exhibit 4 shows the interior. The renovations were all on the first floor. If you look at Exhibit D that is the front entry way, facing the bathroom. In the third picture you can see the sink in question and that is why we are here before you tonight. That is a summary of what happened and what we are looking for. To describe the use, it is not going to be a full service hair salon. The tenant works off site. The tenant would like to see people in her house occasionally. Sometimes there will be no haircutting and it might just be a consult. Other times there could be a haircut. We are unclear about what relief would be granted and what the conditions would be. I know the Building Commissioner and Town Engineer both had parking issues. We are willing to state that no more than 2 parking spots will be allowed.

Ms. Murphy wanted to know if this house has been a beauty parlor before.

The applicant Mr. Habib Mourad stated it has not been a beauty parlor previously.

Mr. DeCelle wanted to know what was above the garage and where in the two family house does this beautician live.

Mr. Macchi II stated that there is another apartment above the garage that is uninhabited and the tenant (beautician) lives in the unit in the front of the house.

Mr. DeCelle wanted to know how many parking spaces this house has.

Mr. Macchi II stated that you can fit 6 cars out back and 1 out front.

Ms. Murphy mentioned that it would require more parking if that guest house above the garage had people living in it.

The Applicant said that no one is living in that apartment.

Mr. DeCelle felt that you would need to assume that it was being used.

Mr. Macchi II said that the bylaw states you need to have 2 parking spaces per unit and the property has that.

Ms. Murphy felt that 8 spaces would be needed.

Mr. Macchi II stated that they have 7.

Mr. DeCelle wanted to know if the Applicant lived at this property.

The Applicant explained that he does not live at this property.

Mr. Hiltz wanted to know if the garage apartment was tied to one of the two units in the main house.

Mr. Zuker stated that it is a guest house and is an accessory structure.

Mr. Hiltz felt that one of the units would have to own the garage out back.

Mr. Zuker mentioned that they could state one unit has three parking spaces, the other unit has 2 parking spaces and the Studio apartment has two parking spaces.

Mr. Macchi II said that studio is not rented out and the units out front are two bedrooms. He went on to say that there are two tenants and no one wants to use the studio above the garage.

Mr. Foley said so one tenant will have 4 parking spaces.

Mr. DeCelle felt that made sense.

Mr. Macchi II felt that this is an accessory use business. It is just intended to be an occasional business. It is goes beyond that then she will be fined \$300/day for not doing what she is supposed to.

Mr. Hiltz felt that the Board could add a condition to the decision that states there are 7 spaces total.

Mr. Zuker read in Board comments from the Building Department, Town Engineer, Sewer and Water Commissioners, Planning Board, Conservation Commission, Board of Health, Police Department and Fire Department.

Mr. Macchi II said that they do not have a problem with the parking. As far as customers go, if we can come up with a rational number, then we do not have a problem with that. The actual business is different, she is going to do very few haircuts, and most of this is office work.

Mr. DeCelle said no photo shoots or anything like that.

Mr. Macchi II said that she may consult with a specific person but it is not a beauty parlor and it is not an office, it is a combo of the 2. She is consulting on glamour and aesthetics.

Ms. Murphy asked in East Walpole?

Mr. Macchi II stated that they did a real nice job fixing the place up.

Mr. DeCelle asked if this business would be run solely out of the 1<sup>st</sup> floor space.

Mr. Macchi II said correct.

Mr. DeCelle mentioned that now we need to address the hours.

Mr. Hiltz wanted to know if there would be any signs out front.

Mr. Macchi II said that they have an accessory sign.

Mr. Zuker wanted to know the hours of the business. He noted that you cannot have a client over until 2:00 a.m.

Mr. Foley mentioned that it might be unusual hours. He felt until 11 p.m. would be fair.

Mr. Macchi II said he is just looking for some flexibility. There is a house on one side and nothing on the other side.

Mr. Zuker asked if 8am-10pm would work.

Mr. Macchi II stated that would be fine. To address Mr. DeCelle's point the 10:00 pm is the cut off for clients not for friends and family.

Mr. Hiltz said no we will just say meeting with clients will be restricted until 10:00 pm.

Ms. Murphy wanted to know if the garage has a separate address.

Mr. Macchi II stated no.

Mr. Hiltz mentioned that the parking will need to be defined.

Mr. Zuker said the total number of parking spaces the applicant is going to offer will be 7 total spaces. Client/customer vehicles will be 2 of the 7 spaces and will conform to parking space regulation of the bylaw.

Ms. Murphy wanted to know if the tenant had any employees.

Mr. Hiltz said that the number of parking associated with this use would be limited to 2. 2 total, 2 employees, 2 clients, 1 employee and 1 resident.

Mr. Macchi II said that they are asking for some flexibility, I will ask the permit be granted and then it goes to the Building Commissioner in terms of use.

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle, to close the public hearing.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy and Foley voting)

A motion was made by Craig W. Hiltz and seconded by James DeCelle, to approve with conditions a **SPECIAL PERMIT** under Section 5-B.1. (Use Table) 3. (Residential): i. to allow the use of the existing building accessory to the dwelling located at 346 - 348 Washington Street, Walpole, MA 02081 as the workroom of a resident beautician or other person engaged in a customary home occupation provided that the use conforms with Sections 5-B.1. (Use Table) 3. (Residential): i subsections i., ii., iii., iv., and v.

The vote was **(5-0-0) in favor** (Zuker, DeCelle, Hiltz, Murphy and Foley voting); therefore the application for a **SPECIAL PERMIT** is hereby **GRANTED** subject to the following conditions:

### **CONDITIONS**

1. As stipulated by the Applicant, the first floor unit such use is and remains clearly secondary to the use of the premises for dwelling purposes and the workroom shall only be used by a resident/tenant living on the premises.
2. As stipulated by the Applicant, no trading in merchandise shall be regularly conducted except for the sale of products made by the resident or of parts or other items customarily maintained in connection with and incidental to its performance.
3. As stipulated by the Applicant, such use shall not have a material adverse affect on the value of the land and buildings in the neighborhood.
4. As stipulated by the Applicant, the external appearance and general aspect of the building so used is and shall remain in conformity with the residential character of the neighborhood.
5. As stipulated by the Applicant, there shall be no outside display of goods or products, storage of materials of equipment, or any other outward evidence that the premises is being utilized for any purpose other than residential (except for an accessory sign as provided in the Zoning Bylaw).

6. If the nature of the use changes, the Applicant, or its successor in interest, may apply to the Zoning Enforcement Officer for a determination that (i) this Special Permit covers such changes, (ii) the Applicant needs to request a modification of this Special Permit, (iii) the Applicant needs to apply for new a Special Permit, or (iv) the change is not allowed under the Zoning By-Law.
7. As stipulated at the Public Hearing, the applicant will supply a total of 7 parking spaces. At any one time, no more than 2 of the 7 parking spaces will be used in association with the beautician or customary home occupation use. The applicant must conform to the parking space regulation of the Zoning Bylaw for the two residential units.
8. As stipulated at the Public Hearing the hours the tenant will be able to meet with clients will be 8:00 a.m. - 10:00 p.m.

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## **REASONS FOR DECISION**

It is the finding of the Board that with the above imposed conditions the Applicant was able to meet the requirements of Section 5-B.1. (Use Table) 3. (Residential): i sub-sections i. – v. of the Zoning By-Laws. In that with the above imposed conditions the Board finds that the use of the existing accessory building as a workroom for a resident beautician or other person engaged in a customary home occupation there will not be a negative impact on the neighborhood, traffic, or the Town.

## **FURTHER FINDINGS**

**Section 2: Administration, 2. Special Permits B. Finding and Determination.** requires that:

*Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:*

- (a) *does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;*

The Board finds that use table sets forth specific criteria or standards for the granting of a Special Permit in Section 5-B.1. (Use Table) 3. (Residential): i sub-sections i. – v. The Board makes its findings with regard to those subsections as follows:

- i. Such use is clearly secondary to the use of the premises for dwelling purposes;*

The Board finds that the business use of the outbuilding is clearly secondary to the use of the premises for dwelling purposes. Looking purely at the investment made by the Applicant, the dwelling on the premises is a very nice multi-family two story house valued by the Town Assessor at \$149,800. By way of comparison, the outbuilding is currently valued at \$22,400.00. The Applicant rents the two (2) units to individuals or families. Given the size and location of the studio, the outbuilding is not suitable as a stand alone rental. The garage was renovated into its current form purely as an accommodation to a tenant and will only be rented to one of the tenants living in the dwelling, which is a condition of approval noted above. Additionally, as previously noted, the studio will be rented to only one of the families inhabiting dwelling and the other family will not use the outbuilding whatsoever. Taken as a whole, it becomes readily apparent that the requested use is a secondary concern to the use of the property for both the Applicant and any tenants living on the premises. Accordingly the Board finds this condition satisfied.

- ii. No trading in merchandise is regularly conducted except for the sale of products made by the resident himself or of parts or other items customarily maintained in connection with and incidental to its performance;***

Based on the evidence presented at the Public Hearing, the Board finds that there is no trading of merchandise conducted on the premises. As such, this criterion is satisfied.

- iii. Such use will not have a material adverse affect on the value of the land and buildings in the neighborhood;***

The Board finds that based on the location of the beautician workroom and the layout of the property; there is no significant visual indication that a business is being conducted at 346 Washington Street. Directly across from this property is the office/warehouse/workshop of Cedar Link Fence Company. Additionally, within a quarter of a mile to the north, Washington Street becomes commercial. As there is only minimal traffic generated by this business the use is largely unnoticed. Accordingly, the Applicant respectfully submits that there will not be any adverse affect on the value of the land and buildings in the neighborhood. Accordingly, the Board finds that there will not be any adverse affect on the value of the land and building in the neighborhood and this condition is satisfied.

- iv. The external appearance and general aspect of the building so used is in conformity with the residential character of the neighborhood;***

The Board finds that externally the structure looks largely as it did when it was initially constructed. The Applicant has installed conventional windows and doors instead of a garage doors and windows. However, aesthetically the structure looks like an accessory building that belongs in a neighborhood similar to any other detached garage or outbuilding. Thus, this criterion is satisfied.

- v. There is no outside display of goods or products, storage of materials of equipment, or any other outward evidence that the premises is being***

*utilized for any purpose other than residential (except for and accessory sign as hereinafter provided).*

The Board finds that due to the nature of the business, there is no outward evidence that the premises are being utilized for any purpose other than residential and this subsection is satisfied.

**(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;**

The Board finds that the business use does not generate any employee traffic and only minimal traffic from clients. This traffic in relation to the normal household traffic generated by the two families living on the premises is insignificant. As such, there is no impact on the immediate neighborhood. Therefore, this condition is satisfied.

**(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

The Board finds that the business use is accessory to an allowed dwelling as such there are no residents attributed to the business. Based on the nature of the business the only visitors to the studio are by appointment only and usually consist of one person at a time. All product and supplies are delivered by U.S. mail or other delivery service. The deliveries are made during normal business hours and made by standard delivery trucks. Thus, there is no impact to the immediate neighborhood in granting a Special Permit for the requested use. Therefore this condition is satisfied.

**(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements of Section 5-G;**

The Board finds that the buildings as shown on the plan entitled, "Mortgage Inspection Plot Plan, H and J Washington, LLC 346 - 348 Washington Street, Walpole, MA" dated May 24, 2012, drawn by New England Land Survey; do not violate zoning requirements with regard to structures and property line offsets. The structures comply with all applicable dimensional requirements to include buffer zone requirements. NOTE: In a GR district the buffer width shall match the minimum applicable setback. Therefore, the Board is satisfied that this condition is met.

**(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

The Board finds that the Applicant's business conforms to all health and safety laws and regulations promulgated by the Town of Walpole, the Commonwealth of Massachusetts, and the Federal Government. Also, the use that is the subject of the present Special Permit request does not generate waste or create a fire hazard. As such, the immediate neighborhood is not in danger of fire, explosion, emission of wastes or other hazards originating from the site. Therefore this condition is satisfied.

***(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed use does not create any noise, vibration, heat, smoke, fumes, odor, glare, or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. All products used on-site are water soluble and do not create fumes. The conduct of the beautician work will not be noticeably apparent to anyone outside of the building. Moreover, the use of the building will conform with all pertinent laws and regulations to ensure that there is no adverse affect to the immediate neighborhood as a result of operations therein. Therefore, this condition is satisfied.

***(g) shall not adversely effect the character of the immediate neighborhood;  
and***

The Board finds that the garage has been renovated may times in the past. The most recent renovation prior to the present remodeling was in 1998 when the exiting in-law setup on second floor of the structure was updated by way of a valid building permit. Most recently the garage was converted into a studio in accordance with a validly issued building permit. The Applicant received a Certificate of Occupancy for the same on January 12, 2015. Also, there will not be any outward indication that a business is being operated on the premises. Furthermore, Washington Street will not be affected in any manner by this use. The primary and most intensive use of this property is as a two family dwelling, which is allowed by right and in character with the residential neighborhood along Washington Street. Therefore, the requested use will tie in with the existing character of the neighborhood and there will not be any adverse effects. Thus, this condition is satisfied.

***(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.***

The Board finds that the By-Law clearly allows accessory home offices, places of work, and storage provided that certain criteria are met to safeguard the residential character of the neighborhood. Furthermore, the Applicant stipulated that to several conditions of Approval to ensure compatibility with the purposes of the Zoning Bylaw and GR District. As such, this use conditioned appropriately, is entirely compatible with the purpose of the zoning by-law. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the zoning by-law and this condition is satisfied.

The Board finds that no other Special Permit(s)/Variance(s) are required from this Board for the use of the accessory building as the workroom of a resident beautician or other customary home occupation.

### **Minutes:**

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to approve the February 4, 2015 meeting minutes as written.

The vote was **4-0-1 in favor**. (Zuker, DeCelle, Hiltz and Foley voting in favor; Murphy abstaining)

A motion was made by Mr. Foley, seconded by Mr. DeCelle to adjourn the meeting at 9: 13 p.m.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Murphy and Foley voting)

Craig W. Hiltz  
Clerk

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Minutes were approved on May 13, 2015.