



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Town Hall
135 School Street
Room 212
Walpole, MA 02081
508-660-7250

**DECISION-WALPOLE ZONING BOARD OF APPEALS
CASE NO. 02-20**

APPLICANT
Sayed Halabi

LOCATION OF PROPERTY INVOLVED

1363-1391 Main Street
Walpole Assessors Map 40, Parcel 152, Zoning District B

APPLICATION

A Special Permit under Section 5-B(3)g of the Zoning Bylaw to allow second and third floor residential units, located at 1363-1391 Main Street, Walpole MA, 02081.

On February 5, 2020, March 18, 2020, May 20, 2020, June 17, 2020, July 15, 2020 a Public Hearing was in the Main Meeting Room of Town Hall for the purpose of receiving information as to the granting of a Special Permit request. Said public hearing was closed and voted on.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk,
Drew Delaney, Member

Applicant, Sayed Halabi ("Applicant"), applied to the Zoning Board of Appeals to obtain a Special Permit under Section 5-B(3)(g) to allow second and third floor residential units at 1363-1391 Main Street. The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Walpole. Notice of the hearing was mailed to the Applicant, his attorneys (if any) of record, to the Planning Board, and to all others required by law. Notice of the hearing was published on January 22, 2020 and January 29, 2020 in the Times Advocate, a newspaper published in Walpole. A copy of said notice is as follows:

Notice of Hearing:

Town of Walpole Zoning Board of Appeals

Notice is hereby given that the Board of Appeals of the Town of Walpole will hold a PUBLIC HEARING in the MAIN MEETING ROOM of WALPOLE TOWN HALL on WEDNESDAY, February 5, 2020 at 7:00 P.M. on an Application from Sayed Halabi, Case #02-20, with respect to property located at 1363-1391 Main Street, Walpole, MA, Zoning District B. This Application is for a Special Permit under Section 5.B(3)g of the Zoning Bylaws to allow second and third floor residential units.

Robert Fitzgerald, Clerk
Times Advocate January 22, 2020 & January 29, 2020.

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman John Lee, and Board Members Robert Fitzgerald, Susanne Murphy, Rick Merrikin, Jane Coffey, and Associate Member Drew Delaney. Also present at the hearing was Community Development Director, Ashley Clark, and Administrative Board Secretary, Amy Messier.

First night of Public Hearing, February 5, 2020

The case was presented by Applicant Sayed Halabi, also in attendance was the Applicant's project civil engineer of DGT Associates, Kevin Riopelle, and the project architect, Lucio Trabucco of Nunes Trabucco Architects. Chairman Lee called the meeting to order at approximately 9 P.M. and read the notice of hearing into the record. Chairman Lee read into the record the Town department comments submitted to the Board in advance of the hearing. He noted that the Sewer & Water Commission requested that the Applicant appear before that Commission for water and sewer connections at the site of the proposed project. Comments from the Town Engineer included the following: the grade of the proposed entry to the site was steep; the Applicant will need to apply to the Massachusetts Department of Transportation ("MassDOT") for a curb cut permit; there are concerns of multiple Town departments of the lack of an adequate turn-around for trash removal, delivery vehicles, and public safety vehicles; Conservation and Engineering have concerns that the current design will increase sheet-flow of stormwater onto Main Street; concerns of water quality and icing on the steep slope; the Applicant will need to file with the Planning Board for Site Plan Approval; the Applicant will need to file a Notice of Intent with the Conservation Commission; the Applicant has not provided any traffic related information, proposed volume, site distance, or impacts to adjacent driveways.

The Applicant then described the nature of the existing building and site that consists of two structures (Leo's Pizza and 1A Auto Sales). The Applicant explained that he is proposing to demolish both structures on the property, and build the proposed structure as shown on the plans submitted. The Applicant's architect then presented the Board with a Power-Point presentation of the existing conditions on the site, and the proposed project, which consists of eighteen (18) residential units on the second and third floors, commercial space on the first floor, with both above and below grade parking.

Chairman Lee opened the hearing to the public for comment, which included Bill Garapolous who has businesses abutting the side and rear of the property, and stated that the project would be an improvement to the property, and also expressed concerns regarding parking and vehicle turn-around space.

With Board and Town department comments needing to be further addressed by the Applicant, Fitzgerald motioned to continue the hearing to March 18, 2020 at 7 P.M. in the Main Meeting Room of Town Hall, seconded by Murphy, the motion carried 5-0-0 (Lee, Fitzgerald, Murphy, Coffey, Merrikin).

Second night of public hearing, March 18, 2020 (Zoom Conference)

Lee opened the hearing, Murphy motioned to continue the hearing at the Applicant's request, with a signed extension already submitted to 5/20/2020 at 7PM with meeting location to be determined, seconded by Coffey, the motion carried 5-0-0 (Lee, Fitzgerald, Murphy, Coffey, Merrikin).

Third night of the hearing, May 20, 2020 (Zoom Conference)

Lee opened the hearing, Applicant was present, along with his project civil engineer, Kevin Riopelle of DGT Associates and the project architect, Lucio Trabucco of Nunes Trabucco Architects. The Applicant presented a Power-Point presentation, and explained to the Board that he submitted revised plans on 5/18/20, depicting reduced retail space, decreased number of units from 18 to 16 (14 two- bedrooms and 2 one- bedroom units), and the grading of the driveway leading to the underground garage has been decreased substantially due to Town Engineer's concerns, with parking spaces below grade have been reduced from 34 to 32. There's also been an addition of a sidewalk from the rear parking lot to the front of the building. The Applicant stated that the project is not abutting any residential zones, which does not require any buffering, however, he has provided vegetation for buffering on the revised plans. Lastly, there has been the addition of a paved fire engine hammerhead turnaround, located in the rear of the property, to accommodate Fire Dept. requirements and concerns earlier mentioned on the original plans. Lee asked the Applicant whether he'd consider making ten percent (10%) of the proposed units affordable, to which the Applicant stated that he'd look into it, along with addressing the future of the billboard on the property at the next hearing. With additional information needed, Murphy motioned to continue the hearing at the Applicants request to June 17, 2020 at 7PM via Zoom Conference, seconded by Coffey, *Roll Call Vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye.* The motion carried 5-0-0.

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Fourth night of the public hearing, June 17, 2020 (Zoom Conference)

Lee opened the hearing. The Applicant was present, along with the Applicant's engineer and architect. Clark read comment letters from the Town Engineer and Deputy Paul Barry of the Fire Dept. that were recently submitted that reflect comments based on the most recent submissions by the Applicant. Coffey voiced her concerns with the fire truck turn-around and would like to see definitive verbiage from the Fire Dept. and Engineering that indicates that the proposed project layout is safe. Lee asked if there were any abutters present on the conference call that are here for this case, which no one indicated that they were. Lee stated that further clarification regarding the safeness of the project in terms of the fire truck turn-around is needed in order to move forward. Halabi interjected that the Fire Dept.'s most recent letter, dated 6/17/20 stated that the fire engine turn-around is acceptable under CMR 527, and that the fire engine turn-around can have a 3 pt. turn, which is a legal turn-around, and that they prefer to drive around the building if possible as a preference, but as far as the fire engine turn-around, the proposed one *is* legal and acceptable. Fitzgerald stated that he was able to read the comments from the departments, and thought that if the Board was inclined to close the hearing tonight, the Board could take the recommendations from engineering and fire and discuss whether those should be binding conditions within the ZBA decision. Murphy voiced concern over the mechanisms in place to prevent the cars from coming into contact with the building. The Applicant stated that there is a sidewalk with 6 inch granite curb for protection and prevention from vehicles coming into contact with the building. When asked by

Murphy if that would be sufficient, the Applicant's representative stated that what is being proposed is the standard. Murphy inquired about guest parking, the Applicant stated that there is the parking lot and parking garage below for parking, and went on to explain that he can assign parking depending on what kind of tenants they have, however, that the Zoning Bylaw doesn't require labeled parking spaces for visitors, and that is something that would be addressed by management. The Applicant walked the Board through a complete power-point presentation of the renderings and plans of the project. Kevin Riopelle of DGT Assoc. stated that he had reached out to MassDOT regarding the potential crosswalk installation from the project site to across the street to the plaza, and explained that MassDOT gave them feedback that included the following; the crosswalk would require audiovisuals, push button, reflective beacons due to the speed allowance on Main St., which would ultimately need to be owned and maintained by the town. Another issue mentioned by MassDOT is that there is no pedestrian continuity on the opposite side of Main St. (no sidewalks along the commercial plaza's), and that there would have to be a larger study done due to these issues. MassDOT expressed that there could be potentially better options along Main St further to the South to connect to the plaza across Route 1A, or along the side of Dunkin' and the flower shop. Lee expressed concern over the following: the dramatic grading (12%) of the parking garage; the large amount of activity on a small site; measures taken to ensure there is no parking in the fire engine turn-around area; light emissions from the property (the use of "dark skies" fixtures). Murphy asked if the building will allow pets, the Applicant stated that he is unsure at this time regarding pets, and that it will be looked into. Delaney asked about the possibility of affordable units, in which the Applicant expressed that since is only a 16 unit property, that it would be difficult to incorporate them, therefore, none of these units will be considered "affordable". Delaney asked about the lighting on the site, the Applicant expressed that the proposed lighting is mostly at 0% spillage, with some points on the property having .01% spillage, with all lights facing down, and focusing on the parking lot. The lighting mounted on the building is also pointing down in order to properly light the sidewalks. Lee asked about the status of the billboard that was mentioned at the last hearing, the Applicant stated that there is a 10-year confidentiality clause, and that he could have it removed by December 2029 due to a recently signed new lease, and would be in favor of having a condition in the decision addressing the billboard. Coffey voiced concerns over the size of the lot and the amount of traffic, guest parking and inclement weather that may pose a safety hazard. Clark recommended putting together a draft decision of conditions to go over at the next hearing for this case that address all concerns from the Board. Murphy motioned to continue this hearing to July 15, 2020 at 7PM via Zoom Conference, seconded by Coffey, *Roll Call Vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye*. The motion carried 5-0-0.

Fifth night of the public hearing, July 15, 2020 (Zoom Conference)

Lee opened the hearing, The Applicant was present, along with the Applicant's engineer and architect. Murphy and Lee expressed concern over the allowance of dogs within the proposed building, and the proximity of the project being close to the road. Halabi suggested the possibility of potentially having a weight limit of potential dogs that may reside on the property, with the exception of dogs required as a result of a tenant disability or as otherwise required by law. The Board and the Applicant unanimously agreed that a thirty (30) pound weight limit on dogs would be sufficient. Murphy expressed that the decision should include a condition that all deliveries are to be made entirely on the premises, which the Board and the Applicant unanimously agreed should be encompassed within the decision. Lee expressed his concern regarding pedestrian traffic, and would like to include a condition in the decision that the Applicant will work with MassDOT to determine where a crosswalk would be the most appropriate and provide the crosswalk based on that determination. Clark refuted that due to the speed limit being forty (40) mph on Main Street, and the lack of an existing sidewalk, that a crosswalk from the Applicants property going across the Street to Bristol Square would be unrealistic, and would ultimately be part of a larger plan that the MassDOT would takeover. Clark recommended that the Board not include this condition, and instead, include a condition that the Applicant shall work with the MassDOT to determine what mitigation is the most appropriate, and provide said mitigation. Delaney voiced concern regarding

children potentially crossing the street due to a pediatricians office being located across the street. Halabi voiced that its highly unlikely that his property can serve and provide a crosswalk, and expressed concern that a condition regarding a sidewalk could hinder the project if the condition could not be met, however, is willing to agree to a condition that he will work with MassDOT for future recommendations of a crosswalk being included. Fitzgerald stated that the jurisdiction regarding traffic and pedestrian safety/access is ultimately up to MassDOT and not the Applicant. Lee recommended that a condition be included in the decision that the garage door to the proposed building should remain open in the event there is traffic queuing or a safety issue in which it is required/ suggested by the police, or emergency services. At the request of the applicant, Murphy motioned to close the hearing, seconded by Delaney, *Roll Call Vote: Lee-aye, Fitzgerald-aye, Murphy-aye, Delaney-aye.* The motion carried 4-0-0.

VOTE OF THE BOARD:

A motion was made by Murphy and seconded by Delaney to grant a Special Permit under Section 5-B(3)g of the Zoning Bylaw to allow second and third floor residential units, located at 1363-1391 Main Street, Walpole MA, 02081, with conditions.

The vote was **(4-0-0)** in **favor** (Lee, Murphy, Fitzgerald and Delaney voting), therefore the Request for a **Special Permit** is hereby **granted, subject to the following conditions:**

CONDITIONS:

- 1- All lighting to be directed inward on property and shielded as much as possible to not project onto surrounding lots.
- 2- Placard with property management contact information is to be placed near the main entrance on the exterior of the building.
- 3- “NO PARKING” shall be painted on pavement in the hammerhead fire engine turn around area (“hammerhead area”) along with a posted sign somewhere along the hammerhead curb that reads “NO PARKING”.
- 4- All tenant leases and agreements shall include language prohibiting parking in the hammerhead area of the parking lot.
- 5- All tenant leases and agreements shall include language prohibiting the use of propane, charcoal, and wood grills on any balconies.
- 6- The hammerhead area shall be clear of snow as part of the snow management plan for the site; including the area between the two peninsulas.
- 7- The public sidewalks adjacent to the subject property’s Main Street boundary will remain in place to the extent possible by Applicant; however the ultimate control over that area lies with the Department of Transportation. The Applicant does not own or control this portion of land.
- 8- Prior to the issuance of a certificate of occupancy for the project, Applicant shall obtain MassDOT access permits as required by MassDOT. If MassDOT access permits are required in the name of the Town for the water and or sewer connection, the Applicant shall prepare all required plans and documents and supply to the Town’s Engineering Dept. for submission to MassDOT and pay application fees if any.

- 9- Concrete tire stops or pylons to be installed near sidewalk where parking spaces face storefronts on the side of the building.
- 10- Existing billboard on property to be removed no later than December 31st, 2029
- 11- The second and third floor residential units shall be constructed according to the plans submitted at the public hearing by DGT Associates of 1071 Worcester Road, Framingham, MA 01701, stamped by Frederick W. King, Civil Engineer, and Nunes and Trabucco Architects of 109 Highland Avenue, Needham, MA, 02492, sheets CE-01, A1.0, A1.1 and FT-01.
- 12- The Board has expressed its concern regarding the potential for tenants or visitors of the project to attempt to walk across Route 1A to access businesses or other activities on the opposite side of Route 1A. The Board recognizes that Route 1A and its associated right-of-way is under the jurisdiction of MassDOT and, therefore, the Board cannot require the construction or installation of a cross-walk to accommodate such pedestrian traffic. However, the Board expects that the Applicant will work with MassDOT to evaluate potential locations for safe pedestrian passage across Route 1A for tenants or visitors of the building located at 1363-1391 Main Street, and, to the extent MassDOT requires the installation of such a cross-walk, the Applicant shall pay for all costs for the crosswalk, associated signage and lighting.
- 13- Garage door(s) for vehicles entering from Main Street shall remain open permanently if and when the Chief of Police, or his/her designee determines that traffic conditions are unsafe when cars are entering the garage.
14. With the exception of dogs required as a result of a tenant disability or as otherwise required by law, no dogs larger than thirty (30) pounds are allowed to reside at the property
15. All delivery vehicles shall pull off of Route 1A and into the parking area to park temporarily for the purpose of loading and unloading.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B(3)g to allow second and third floor residential units in a Business District. The Board finds that the proposed residential units on the second and third floors of the proposed new building are not injurious or dangerous, and shall not result in negative impacts to the environment or public, and that the proposed residential units will not be detrimental to the area by reason of appearance, or impact on neighboring uses. Accordingly, the Board has determined that the Special Permit requested is warranted. The Board made the following findings pursuant to Section 5-B(3)g.:

FINDINGS:

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

(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 this condition is satisfied based on the findings noted above pursuant to Section 5-B(3)g of the Zoning Bylaw. In addition, according to Section 5-B(3)(g)(ii), within the Business zoning district, the area used for dwelling units above the ground floor shall not exceed a gross floor area 2.0 times the gross floor area of the ground floor. According to the Applicant and plans submitted, as revised, the gross floor area of the ground floor is 11,174ft. and the gross floor area of the dwelling units above the ground floor is 20,240ft. Therefore, the project complies with this requirement.

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

The intent of the Zoning Bylaw regarding the Business District is to accommodate and house commercial businesses and the vehicular and pedestrian traffic that they produce. During the public hearing process, the Applicant stated that having the second and third floors of the building as residential housing will restrict and reduce the vehicular and pedestrian traffic impacts to the area, since the residential units will, for the most part, produce the traffic of the residents within the sixteen (16) units, versus commercial space that would generate traffic for employees, and customers.

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

The immediate neighborhood is within the Business District, consisting of commercial buildings that include residents, employees, customers and visitors. The Board finds that the building and its intended uses of commercial space on the first floor, and residential space on the second and third floors, will not have a number of residents, employees, customers, or visitors that would adversely affect the immediate neighborhood, as the immediate neighborhood consists of the same. Therefore, the Board finds that this condition is met.

(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 that according to the plans submitted at the public hearing, the proposed building, with second and third floor residential units, conforms to the dimensional requirements of the Zoning Bylaw. As this property is located within the Business District, there is no buffer zone required. Therefore, the Board finds 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 proposed building will be primarily residential in nature, with commercial uses on the ground floor, and located in the Business District, with no direct residential abutters, and therefore will not be dangerous to the immediate neighborhood or the premises through fire, explosion, emission of wastes, or other causes.

(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 other than at the time of construction, the proposed building with the second and third floors being used for residential use only, 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. Therefore, the Board finds that this condition is met.

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

The Board finds that as shown on the plans submitted at the public hearing, that the proposed building will be an upgrade to the site compared to what is existing. The Applicant has provided vegetation for screening purposes to other properties, paving of the parking lot, and a building that is an upgrade from the current one, which visually improved the site, and the immediate neighborhood. The immediate neighborhood houses newer buildings compared to what currently exists on the site, and therefore the proposed building and site improvements will positively affect the character of the immediate neighborhood, and therefore shall not adversely affect the character of the immediate neighborhood. Therefore, the Board finds that this condition is met.

(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 building is located within the Business District, with the second and third floor being strictly used as residential space, and the first floor as commercial space. This project will accommodate businesses and residents, and is making more use of the land than what currently exists. The proposed project is also an upgrade visually to the existing site and neighborhood.

Additionally, the necessary Findings and Determinations noted in Section 5.B(3)g of the Zoning Bylaw have been satisfied and addressed through this Decision and the conditions.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit, accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

BF/am

cc: Town Clerk
Applicant
Building Inspector

This decision was made on July 15, 2020 and filed with the Town Clerk on July 28, 2020.

