



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

John Lee, Chairman  
Susanne Murphy, Vice Chair  
Robert Fitzgerald, Clerk  
Mary Jane Coffey, Member  
Craig Hiltz, Member

**FILE**

**DECISION – BOARD OF APPEALS CASE NO. 21-18**

**APPLICANT  
Ron Fucile**

**LOCATION OF PROPERTY INVOLVED:  
87 Lewis Avenue, Walpole, MA  
Walpole Assessors Map 33, Parcel 281**

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TOWN OF WALPOLE  
TOWN CLERK

**APPLICATION:**

A Special Permit under Section 6-C.4.A of the Zoning By-Laws for a second principal building on a lot as shown on a plan entitled: “87 Lewis Avenue Proposed Site Plan”, dated September 13, 2018, prepared by Glossa Engineering, Inc. as amended.

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On October 17, 2018 a Public Hearing was held, in the Main Meeting Room of Town Hall, for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

John Lee, Chairman  
Craig W. Hiltz, Member  
Mary Jane Coffey, Member  
Robert Fitzgerald, Clerk

**VOTE OF THE BOARD:**

A motion was made by Hiltz and seconded by Fitzgerald, that the Board grant the Applicant a Special Permit under Section 6-C.4.A of the Zoning By-Law for a second principal building on a lot as shown on a plan entitled: “87 Lewis Avenue Proposed Site Plan”, dated September 13, 2018, prepared by Glossa Engineering, Inc. as amended.

The vote was 4-0-0 in favor; therefore, the Special Permit under Section 6-C.4.A is hereby **granted** subject to the following conditions:

### **CONDITIONS:**

1. The Applicant shall review with the Town Engineer, Margaret Walker, the October 16, 2018 letter from John Glossa representing the Applicant's proposed resolutions to the Town Engineer's October 10, 2018 comment letter, and resolve any additional concerns raised by Ms. Walker in response to the October 16<sup>th</sup> letter.
2. Prior to receiving a Certificate of Occupancy, the Applicant shall provide a legally binding agreement, covenant or restriction regarding the maintenance of the common sewer line serving the two principal buildings on the site, satisfactory to the Town Engineer.
3. The second principal building shall be constructed as shown on the plans submitted with the Application.
4. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Board of Appeals, Town Clerk and Building Department.
5. When ownership of the property changes, the new owner(s) shall notify the Building Commissioner so as to update records.
6. The Applicant shall receive a Certificate of Occupancy from the Building Department before occupying the second principal building.
7. Utilities shall be in place as shown on the plans submitted with the Application.
8. The life safety devices (smoke and CO detectors) in the second principal building shall be in compliance with the current fire code.
9. There shall be no additional relief granted.

### **REASONS FOR DECISION**

It is the finding of the Board that the Application met the requirements of Section 6-C.4.A to allow the requested second dwelling unit on a lot in the General Residence District. The Board finds the Applicant properly applied for all relief necessary in accordance with the Zoning By-Laws for this project as confirmed by the Building Commissioner/Zoning Enforcement Officer. The Board finds that the project is in character with and follows the intent of the General Residence District. Accordingly, the Board has determined that the Special Permit requested is warranted.

## FINDINGS:

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

***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 Applicant proposes to add a 2<sup>nd</sup> single-family dwelling unit on a 60,000 sf lot. The required lot size in the GR district is 15,000 sf. Moreover, pursuant to the Section 6-C.4 and 5-B.1.3.d.iii, multiple buildings on a lot in the GR District require a maximum density of 10,000 sf per unit. Due to the large lot area of the Property, the Project would result in a density of 30,000 sf per dwelling unit, which far exceeds the requirement in this District. Thus, the Board finds that the proposed use conforms to the Bylaw's stated purposes and intent for the GR district, namely: "[t]he purpose of this district is to provide area for high density, single, and multifamily residential land use, public, semi-public, institutional and recreational uses and professional offices compatible with low density, residential land uses, and to provide a transition area between single family residential and commercial or industrial land uses." See Bylaw Section 4.2.A(4).

2. Section 2: Administration, 2. Special Permits, B. Finding and Determination required 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 that the proposed use complies with the criteria and standards set forth in Section 6-C.4.A of the Bylaw, namely: "*that the design and placement of the buildings will be in harmony with the general character of the neighborhood streetscape, driveways, building placement, setbacks, volume and spacing.*" Due to the location of the 2<sup>nd</sup> dwelling unit on the rear of lot, it will not be visible either from the street or from any of the abutter's homes. There will remain one driveway to the Property from the street, in the same location where it exists currently; therefore, the appearance of one (1) single-family home will be maintained from the street. Finally, the 2<sup>nd</sup> dwelling unit maintains the required setbacks from the front, side and rear of the lot; maintains the required lot coverage; and is appropriately spaced from the existing home on the lot. Further, a resident across the street from the Property spoke in favor of the project. Therefore, the Board finds that the design and placement of the 2<sup>nd</sup> dwelling unit is in harmony with the general character of the neighborhood.

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

The ingress/egress access point (driveway) will remain in the same location as it currently exists. The addition of a 2<sup>nd</sup> dwelling unit will not generate a significant number of new trips, thereby having no adverse effect to pedestrian and vehicular movement on Lewis Avenue. Therefore, the Board finds that the addition of a 2<sup>nd</sup> dwelling unit will not adversely affect the vehicular and pedestrian traffic of the immediate neighborhood.

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

The proposed 2<sup>nd</sup> dwelling unit will consist of 1,668 sf and three (3) bedrooms, to accommodate one (1) additional family. The 2<sup>nd</sup> dwelling unit, being residential in nature, will have no employees or customers. Therefore, the Board finds that there is unlikely to be an adverse affect to the neighborhood or school system as a result of the Project.

- (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 proposed project is in compliance with all of the Zoning By-Laws' requirements as to lot area, frontage, setbacks, lot coverage, etc. 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 proposed 2<sup>nd</sup> dwelling unit is residential in nature, and therefore the Board finds that the proposed project is unlikely to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions 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 proposed 2<sup>nd</sup> dwelling unit is residential in nature, and therefore the Board finds that the proposed project is unlikely to 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 immediate neighborhood and, in fact, the general area is in the General Residence District which under the Walpole Zoning By-Laws is the only district wherein, under Section 6-C.4.A, multiple dwelling units are allowed on a lot 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. Further, a Residential Care Continuum and Age Qualified Village, Independent and Assisted Living are allowed by Special Permit. Clearly, the GR District was created for the purpose of significantly expanding the uses allowed as of right and, where appropriate, the density of development as in the case at hand by Special Permit. Moreover, the immediate neighborhood consists of residential uses and the Project fits consistently within the fabric of the neighborhood. Therefore, the Board finds that the proposed project is unlikely to adversely affect the character of the immediate neighborhood.

**(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 purpose of the Zoning By-Law in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". Therefore, the Board finds that the proposed project is consistent with the purpose of the By-Law.

### CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

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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 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 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 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

Robert Fitzgerald, Jr.  
Robert Fitzgerald, Clerk

cc: Town Clerk                      Engineering                      Planning Board  
Board of Selectmen   Building Inspector                      Conservation Commission

This decision was made on October 17, 2018 and filed with the Town Clerk on October 29, 2018.

cc: Town Clerk Engineering Planning Board  
Board of Selectmen Building Inspector Conservation Commission