



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

Zoning Board of Appeals
John Lee, Chair
Drew Delaney, Vice Chair
Robert Fitzgerald, Clerk
David Anderson, Member
Judith Conroy, Member
Timothy Hoegler, Assoc. Member
Mark Major, Assoc. Member

DECISION - ZONING BOARD OF APPEALS CASE NO. 22-4

APPLICANT:
Thomas J. Powers

OWNER OF RECORD:
Dianne Beatty for BPC Realty Trust

LOCATION OF PROPERTY INVOLVED:
132, 136, 140 Washington Street
Walpole Assessors Map: 20-32
Zoning District: Business (B)

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TOWN OF WALPOLE
TOWN CLERK

APPLICATION:

A **Special Permit** under Zoning Bylaws Section 5-B.1.3.g. of the Walpole Zoning Bylaws to allow the two upper floors of a proposed three story building to be used for residential units.

On March 16, 2022 a Public Hearing was opened and held in the Main Meeting Room of Walpole Town Hall, 135 School Street, for the purpose of receiving information and discussing the case before the Board. The public hearing was subsequently continued to April 20, 2022, May 18, 2022, June 1, 2022, August 17, 2022, September 7, 2022, October 5, 2022, November 2, 2022, December 7, 2022, January 18, 2023, February 15, 2023, March 20, 2023, and May 15, 2023. Of these continued public hearings, all were continued without testimony with the exception of March 16, 2022, September 7, 2022, and May 15, 2023. The public hearing also received eight (8) separate extensions of time as requested by the applicant and granted by the Board. The Public Hearing was closed on May 15, 2023 and a decision was rendered.

On May 15, 2022 the following members were present and voting:

John Lee, Chair
Drew Delaney, Vice Chair
Robert Fitzgerald, Clerk
Dave Anderson, Member
Judy Conroy, Member

VOTE OF THE BOARD

A motion was made by Ms. Conroy and seconded by Mr. Anderson to approve a **Special Permit** under section 5-B.1.3.g of the Walpole Zoning Bylaws, with conditions, to allow for the upper two floors of a proposed three story building to be used for residential units, as shown within the plan titled "East Walpole Clock Tower 132, 136, 140 Washington Street, Walpole, MA Site Plan" by Legacy Engineering LLC, 730 Main Street, Suite 2C, Millis, MA 02054, dated January 26, 2022, and revised April 6, 2023, and within the Architectural Renderings titled "Bird Clock Tower, Washington Street, Walpole, MA 02081" by Nativetec, 31 Munroe Street, Lynn, MA 01901, dated March 1, 2023 for property located at 132, 136, 140 Washington Street, Walpole, MA 02081.



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The vote was (5-0-0) in favor of granting the Special Permit: (Lee-aye, Delaney-aye, Fitzgerald-aye, Anderson-aye, Conroy-aye), therefore, the application for a Special Permit is hereby granted, subject to the following conditions.

CONDITIONS:

1. The proposed residential units shall consist of six (6) total residential units, all proposed residential units are to be two-bedroom units as depicted in the architectural renderings titled "Bird Clock Tower, Washington Street, Walpole, MA 02081" by Nativetec, 31 Munroe Street, Lynn, MA 01901, dated March 1, 2023
2. Fire Lane markings/signage shall be installed on both sides of the access way and shown on the Final Site Plan.
3. Building plans will be submitted to the Fire Department, through the Building Department, for code compliance.
4. Per Fire Department request, a master key system shall be utilized and maintained.
5. Grilling shall not be permitted on any balcony.
6. Actions taken in regards to the layout of the public way along Chestnut Street shall be dealt with through further action with the Select Board.
7. The final plan of record approved by the Planning Board shall be submitted to the Zoning Board of Appeals and retained within the case record. Non-substantive changes to the final plan that do not impact the relief sought by this Special Permit are permissible and do not require further review by this Board.
8. 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.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B.1.3.g. of the Zoning Bylaws to allow second and third floor residential units in a Business (B) District. The Board finds that the proposed residential units on the second and third floor of the proposed new buildings are not injurious or dangerous, and shall not result in a negative impact 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.



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FINDINGS:

The Board issues the following findings pursuant to Section 2.2.B.(1) of the Zoning Bylaw:

- (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 has found that the proposed use complies with the standards of the relevant section of the bylaw as detailed in Section 5-B.1.3.g.ii as the proposed use is within the Business (B) Zoning District and the area used for dwelling units above the ground floor does not exceed a gross floor area of two (2) times the gross floor area of the ground floor. Therefore this criterion has been met.

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

The Board finds that the granting of this Special Permit will not adversely affect the neighborhood relative to traffic and parking. The property had previously been developed with a commercial use prior to burning down, the revival of this location will provide increased traffic in comparison to the existing condition, and the quantity of such traffic is not substantial enough as to adversely affect the immediate neighborhood. In addition, the Applicant has proposed one-way traffic through the property to minimize the potential for traffic conflicts, and plans to undertake roadway and sidewalk improvements adjacent to the property. Therefore this criterion has been met.

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

The proposed site is within the Business (B) Zoning District and surrounded by land zoned Business as well as General Residence. The proposed use of a mixed commercial and residential building fits into the character of the immediate neighborhood. Thus, the Board finds that the proposed use will not result in a number of residents, employees, customers, or visitors resulting in an adverse effect on the immediate neighborhood. Therefore this criterion has been met.

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

The project complies with the dimensional regulations of the zoning district in which it is located, and there are no applicable buffer requirements that impact the project. Therefore this criterion has been 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 project as a mixed-use residential building will not be dangerous to the immediate neighborhood through fire, explosion, emission of wastes, or other causes. As a result this criterion has been met.



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

The Board finds that the proposed project will not generate or would otherwise create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance of serious hazard as to adversely affect the immediate neighborhood. Therefore this criterion has been met.

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

The Board finds that the proposed development is surrounded by a mix of commercial, apartment, and single family homes and is in character with the immediate neighborhood. The Board finds that the proposed use would not adversely affect the immediate neighborhood and therefore, this criterion 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 proposed use is permitted by special permit in the Business (B) Zoning District for which the property is located and, as discussed above, the project meets the applicable standards for issuance of a special permit. The use has also been found to be compatible with the purpose of the Zoning Bylaw by encouraging housing for persons of all income levels. As a result, this criterion is met.

Based upon the vote and action of the Board it has been determined that the necessary Findings and Determinations noted in Section 2.2.B. of the Zoning Bylaw have overall been satisfied.

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 of 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 use".

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 of 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 with 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



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owner on 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

Robert Fitzgerald, Clerk

This decision was made on May 15, 2023 and filed with the Walpole Town Clerk on May 23, 2023