



**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. 23-28

APPLICANT:
Michael Cook

OWNER OF RECORD:
Dolphin Realty Trust

LOCATION OF PROPERTY INVOLVED:
2085 Main Street
Walpole Assessors Map: 45-38
Zoning District: Limited Manufacturing (LM)

APPLICATION:

A **Special permit** under Section 5-B.1.4.dd to allow an auto body repair and customization use at the site and a **special permit** under Section 12.3.C (2) & (6) to allow the use, storage and handling of certain toxic or hazardous materials in amounts greater than household quantities and the storage of liquid petroleum products.

DESCRIPTION OF PROJECT:

The applicant is requesting Special Permits to open an auto body repair and customization use onsite. Along with this new use there will be the need to use, store and handle certain toxic or hazardous materials as well as petroleum products associated with the business. These amounts are greater than household quantities.

PUBLIC HEARING:

On September 18, 2023 a public hearing was opened and held in the Select Board Meeting Room of Walpole Town Hall, 135 School Street, for the purpose of receiving information and voting upon a decision as to the granting of the Special Permits.

On September 18, 2023 the following members were present and voting:

John Lee, Chair
Drew Delaney, Vice Chair
Judith Conroy, Member
Mark Major, Associate Member
Timothy Hoegler, Associate Member

A motion was made by Ms. Conroy, and seconded by Mr. Hoegler to approve the **Special Permit** under **Zoning Bylaws Section 5-B.1.4.dd**, for 2085 Main Street to allow for an auto body and customization use.



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The vote was (5-0-0) in favor: Lee-Aye, Delaney-Aye, Conroy -Aye, Hoegler-Aye, Major-Aye; therefore, the application for a **Special Permit** is hereby granted,

A motion was made by Ms. Conroy, and seconded by Mr. Major to approve the **Special Permit** under **Zoning Bylaws Section 12.3.C (2)&(6)**, with conditions, for 2085 Main Street to allow for the use, storage and handling of certain toxic or hazardous materials in amounts greater than household quantities and the storage of liquid petroleum products based on a plan titled "2085 Main Street Existing Conditions Plan of Land" dated August 18, 2023, prepared by Legacy Engineering, 730 Main Street, Suite 2C, Millis, MA 02054.

The vote was (5-0-0) in favor: Lee-Aye, Delaney-Aye, Conroy -Aye, Hoegler-Aye, Major-Aye; therefore, the application for a **Special Permit** is hereby granted,

Both approvals are subject to the following conditions:

CONDITIONS:

1. 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 Zoning Board of Appeals, Walpole Town Clerk, and Walpole Building Department.
2. All materials, including cars, shall be stored inside the building.
3. Toxic and hazardous materials shall be limited to the four materials outlined in the applicant's toxic and hazardous materials list provided to the Board.
4. The applicant shall maintain a spill response kit adequately sized for the volumes of materials onsite.
5. The applicant shall notify the Board of Health for the storage of hazardous materials.

DECISION RATIONALE

It is the finding of the Board that the Applicant was able to meet the requirements of both Sections 12.3.C and 5-B.1.4.dd, in order to for auto body repair and customization use onsite as well as the use, storage and handling of certain toxic or hazardous materials in amounts greater than household quantities and the storage of liquid petroleum products. Accordingly, the Board has determined that the Special Permits requested are properly applied. The Board make 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;**

Through review, the Board finds that the proposed work at the site adequately addresses the defined use requirements and design standards as specified within each respective section of the zoning bylaws (Section 12.3.C and 5-B.1.4.dd). Therefore, the Board finds this criterion is satisfied.

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



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The Board finds that the proposed auto body use and hazardous material storage will not result in an adverse impact to the neighborhood relative to vehicular or pedestrian traffic. As described by the applicant, the auto body use will generate customers only by appointment. Vehicles that will be restored will remain on site for long periods of time which will not generate significant daily traffic. Therefore, the Board finds this criterion 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 proposed use will have employees on site during normal business hours. All customer will be on site by appointment only. The Board finds this will not have an adverse effect on the immediate neighborhood. Therefore, the Board finds this criterion is satisfied.

- (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 Board finds that the use sought and work to be performed on site will not impact dimensional requirements. Therefore, the Board finds that 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 use will include the storage of toxic and hazardous materials. The applicant has taken measures to inform the Board in detail regarding the materials and will work closely with the Board of Health and applicable State agencies to ensure they will be stored and monitored to legal standards. There will not be any danger to the immediate neighborhood or the premises through fire, explosion, emission or wastes, or other causes. Therefore, this criterion has been met.

- (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;**

Nothing proposed by the Applicant will be used, generated, or would otherwise create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard as to adversely affect the immediate neighborhood. The applicant will install and maintain a spill kit which will handle any material spill that could be hazardous. Therefore, this criterion is satisfied.

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

The Board finds that the immediate neighborhood is both residential and limited business. The proposed use does not adversely affect the character of the immediate neighborhood as this property has been historically used for a variety of commercial uses. Therefore, the Board is satisfied that this condition is satisfied.



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- (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 proposal meets the standards needed for relief through a Special Permits as defined within the applicable sections of the Zoning Bylaw. The use is also appropriate for the Zoning District in which the premises is located. Therefore, the Board finds that this criterion is satisfied.

In addition to the basic findings listed in Section 2, the Special Permit Granting Authority shall consider the following factors when developing a decision to deny, approve or approve with conditions.

SPECIAL PERMIT USE REQUIREMENTS PER SECTION 12.4.C

- (1) Complies with applicable performance and/or design criteria listed in Section 12.3.C of the Zoning Bylaw**

Conditions have been placed to ensure maximum safety of toxic and hazardous materials on site. All measures comply with design criteria found in the bylaw.

- (2) Will not, during construction or thereafter, have an adverse environmental impact on any water body or course in the district**

There is no external construction proposed with this application as the intent is to utilize the existing structures on site. The parcel is located near wetlands, however there will be no adverse environmental impact by this use as mitigation has been appropriately designed and accounted for.

- (3) Will not adversely affect an existing or potential water supply.**

There will not be any adverse effect to the water supply. The applicant will work with the Board of Health to ensure that all toxic and hazardous materials will be stored properly and monitored.

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



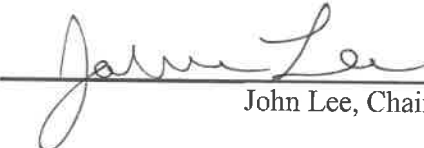
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such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority of special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied 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 Norfolk 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 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



John Lee, Chair

This decision was made on September 18, 2023 and filed with the Town Clerk on September 29, 2023