



**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*

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**DECISION - ZONING BOARD OF APPEALS CASE NO. 23-2  
A REVISION OF ORIGINAL CASE NO. 22-1**

**APPLICANT:**

High Plain Holdings, LLC

**OWNER OF RECORD:**

High Plain Holdings, LLC

**LOCATION OF PROPERTY INVOLVED:**

173 High Plain Street  
Walpole Assessors Map: 35-385  
Zoning District: Business (B)

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**MODIFICATION APPLICATION:**

A **Modification of the existing Special Permit** Case No. 22-1 in order to update the plan of record that was approved by the Planning Board and eliminate condition 11 on the existing ZBA decision.

On February 15, 2023 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 closed on February 15, 2023 and a decision was rendered.

On February 15, 2023 the following members were present and voting:

Drew Delaney, Vice Chair  
Robert Fitzgerald, Clerk  
Judy Conroy, Member  
David Anderson, Member  
Timothy Hoegler, Associate Member

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**VOTE OF THE BOARD TO MODIFY THE SPECIAL PERMIT**

A motion was made by Ms. Conroy and seconded by Mr. Fitzgerald to approve a **Modification of the existing Special Permit** Case No. 22-1 in order to update the plan of record approved by the Planning Board and eliminate condition 11 on the original ZBA decision, as shown within the plan titled "173 High Plain Street, Walpole, MA Site Plan" by Legacy Engineering LLC, 730 Main Street, Suite 2C, Millis, MA 02054, dated December 20, 2021, and revised October 27, 2022, for property located at 173 High Plain Street, Walpole, MA 02081.

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



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**CONDITIONS:**

\*Conditions have been amended to reflect the approved Special Permit Modification of Case No. 23-2, and the conditions set forth below supersede the conditions set forth in the Board's decision in Case No. 22-1.

1. The proposed residential units shall consist of eight (8) total units, all proposed units are to be two-bedroom units as depicted in the architectural renderings titled "173 High Plain St., High Plain Holdings, LLC," by Context, dated September 27, 2021 and revised June 21, 2022.
2. Of these proposed units, one (1) unit shall be deeded affordable to and occupied by a household whose annual income is less than 80 percent of the area median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period in perpetuity through the use of an affordable housing restriction as defined in Massachusetts General Law, Chapter 184, Section 31.
3. All applicable documentation confirming the legal creation of said affordable unit shall be provided before the issuance of a certificate of occupancy.
4. The proposed first floor commercial space shall be utilized for professional office space only. There shall be not more than three (3) tenants within this first floor commercial space.
5. Grilling shall not be permitted on any balcony.
6. Vehicles utilized for the moving of tenants to and from the site, and the delivery of goods or packages, shall be parked solely within the project site, and at all times avoid parking along High Plain Street.
7. Per Fire Department request, a master key system shall be utilized for all proposed door locks.
8. Signage and other applicable pavement markings shall be utilized within the proposed parking lot identifying and separating commercial parking spaces from residential parking spaces.
9. A "no left turn" sign with restricted hours shall be placed by the entrance to the site. The restricted hours shall be determined by the project developer and applicable municipal staff at a later date, and implemented before the issuance of a certificate of occupancy.
10. Street line painting adjacent to the limits of the project on High Plain Street shall be revised if approved by the both the Town Engineer and Select Board at a later date.
11. 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.
12. A row of 9-10 foot tall arborvitae trees shall be planted along the rear property line, along the proposed rear fence, at a separated distance of no more than 6 feet between the main stem of each tree.



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**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 requested Modification of the existing Special Permit is warranted.

**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 2.0 multiplied by 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 Modification of the existing Special Permit will not adversely affect the neighborhood relative to traffic and parking. The property directly abuts an existing apartment-style development, and is along an existing State Route (Route 27), which can exhibit higher levels of traffic during peak hours. Within the applicant's traffic report titled "173 High Plain Street, Walpole, MA, Traffic Impact Analysis," by Kimley Horn, and dated April 2022, it was concluded that the build-out of the proposed project at 173 High Plain Street will not extend lengths of traffic queues at the High Plain Street and Washington Street intersection, or generate enough vehicular trips to impact eastbound left-turn or southbound thru/right-turn lane movements. Overall, the proposed use of an eight (8) residential unit mixed-use building with twenty-five (25) parking spaces will not result in substantial increase in vehicular or pedestrian traffic as to adversely affect the immediate neighborhood. 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 the Residential B (RB) Zoning District. As noted above, the primary impact to the neighborhood is the traffic generated by the project, which is not a substantial increase above existing traffic volumes as described in the Applicant's traffic report. The Applicant has agreed to limit the use of the commercial space to professional office space, which will have a relatively limited traffic and parking demand. Moreover,



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the project provides the number of off-street parking spaces required under the Bylaw for the intended uses. 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 Board finds that the building shown on the submitted plan titled "173 High Plain Street, Walpole, MA Site Plan," by Legacy Engineering LLC, 730 Main Street, Suite 2C, Millis, MA 02054, dated December 20, 2021, and revised July 14, 2022 complies with all dimensional requirements applicable to the Business (B) Zoning District in which the site is located. The proposed project also complies with the required buffer zone requirements as stated within Section 5-G of the Zoning Bylaws, by establishing a twenty-six (26) foot buffer between the site and the abutting property that is zoned Residential B (RB). 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, with commercial uses limited to professional office, 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.

- (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 both single-family residential homes and an existing apartment-style development. Residential apartment-style units, while not a predominate percentage of the surrounding neighborhood, are also not out of place within the existing conditions of the immediate neighborhood. It is the ultimate determination 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.



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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.

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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 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 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*

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Robert Fitzgerald, Clerk

This decision was made on February 15, 2023 and filed with the Walpole Town Clerk on February 24, 2023.