



**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. 23-3 AND 23-12**

**APPLICANT:**

John Walsh

**OWNER OF RECORD:**

J. Walsh Corporation

**LOCATION OF PROPERTY INVOLVED:**

1549 Washington Street  
Walpole Assessors Map: 47-55  
Zoning District: Residence A (RA)

**APPLICATION:**

A **Special Permit** under Section 12.3.C of the Zoning Bylaws to allow for the modification of a one-family dwelling that exceeds the impervious surface requirement for a residential use within the Water Resource Protection Overlay District and a **Special Permit** under Section 9.3. of the Zoning Bylaws for the reconstruction of a pre-existing non-conforming two-family dwelling.

**DESCRIPTION OF PROJECT:**

The Petitioner is requesting a Special Permit in order to demolish the existing two family dwelling and construct a new two family dwelling on the pre-existing, non-conforming lot, as shown on the plans submitted. The result of the construction will result in impervious surface covering 19.8% of the lot.

**PUBLIC HEARING:**

On March 20, 2023 a public hearing was opened for Case No. 23-3 and held in the Main 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 Special Permit. The public hearing was further continued to May 15, 2023 and later closed and voted on at the June 7, 2023 meeting.

On May 15, 2023 a public hearing was opened for Case No. 23-12 and held in the Main 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 Special Permit. The public hearing was further continued to and later closed and voted on at the June 7, 2023 meeting.

On June 7, 2023 the following members were present and voting:

John Lee, Chair  
Drew Delaney, Vice Chair  
Bob Fitzgerald, Clerk  
David Anderson, Member  
Mark Major, Associate Member



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**VOTE OF THE BOARD:**

A motion was made by Mr. Delaney, and seconded by Mr. Fitzgerald to approve the **Special Permit** under **Zoning Bylaws 9.3 (Case No. 23-3)**, for 1549 Washington Street to allow for a modification to a pre-existing, non-conforming two-family based on *Proposed Site Plan "1549 Washington Street, Walpole, Massachusetts" Dated February 1, 2023 and revised March 27, 2023, prepared by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, Ma 01746 with conditions.*

The vote was (5-0-0) in favor: Lee – aye, Delaney-Aye, Fitzgerald-Aye, Anderson-Aye, Major-Aye; therefore, the application for a **Special Permit** is hereby granted, subject to conditions.

A motion was made by Mr. Delaney, and seconded by Mr. Fitzgerald to approve the **Special Permit** under **Zoning Bylaws 12.3.C (Case No. 23-12)**, for 1549 Washington Street to allow for a modification to a pre-existing, non-conforming two-family dwelling that exceeds the impervious surface requirement for a residential use within the Water Resource Protection Overlay District based *Proposed Site Plan "1549 Washington Street, Walpole, Massachusetts" Dated February 1, 2023 and revised March 27, 2023, prepared by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, Ma 01746 with standard conditions.*

The vote was (5-0-0) in favor: Lee – aye, Delaney-Aye, Fitzgerald-Aye, Anderson-Aye, Major-Aye; therefore, the application for a **Special Permit** is hereby granted, subject to conditions

**CONDITIONS:**

1. Plans with life safety devices, such as smoke and carbon monoxide (CO) detectors, will be submitted to the Walpole Fire Department for review and approval, with a follow up Fire Department inspection to confirm conformance with approved plans.
2. 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.
3. The proposed dwellings shall be constructed according to the *Proposed Site Plan "1549 Washington Street, Walpole, Massachusetts" Dated February 1, 2023 and revised March 27, 2023, prepared by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, Ma 01746*
4. The Applicant shall provide updated architectural plans roof area calculations to the Building Commissioner prior to receiving building permits.

**DECISION RATIONALE:**

It is the finding of the Board that the Applicant was able to meet the requirements of Sections 9.3 and 12.3.C to allow the requested relief for a residential use that exceeds the impervious surface requirement within the Water Resource Protection Overlay District. The Board finds that the reconstruction is in



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character with and follows the intent of the Zoning District in which it is located. Accordingly, the Board made 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 finds that the proposed construction of a new two-family dwelling, meets the threshold needed for expansion of a non-conforming use as the percentage of both floor area and open ground area of the premises devoted to the use does not exceed the fifty (50) percent requirement outlined within Section 9.3 of the Zoning Bylaws. Additionally the increase of impervious surface over 15% within the Water Resources Protection Overlay District (Zoning Bylaws, Section 12.3.C.) has been accounted for by meeting the applicable performance and design standards for mitigating the impact of stormwater runoff. Therefore, the Board finds 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 construction of a new two-family dwelling will not result in an adverse impact to the neighborhood relative to vehicular or pedestrian traffic. The use of a two-family dwelling at this location, while non-conforming to the zoning district, has been in-place at this property for numerous years. Nothing will change at the property with respect to pedestrian or vehicular traffic. The Board finds that 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 Board finds that the proposed relief sought is residential in nature, which is acceptable for the Zoning District for which the property is located. While the use is non-forming, it is existing at this location currently and the new construction will not result in a change to what is already existing within the immediate neighborhood in regards to both residents and visitors. An increase of employees or customers is not applicable in this case as the use is residential. The Board finds that 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 proposed new construction will conform with respect to applicable dimensional requirements within the Residence A (RA) Zoning District in which the property is located. Given the use's non-confirming nature that use is protected so long as the increase in area does not exceed 50% of the existing floor or surface area of the current dwelling. This proposed construction meets that requirement. 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;**



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The Board finds that the proposed new constructed two-family dwelling, with applicable infiltration system, is residential in nature and designed appropriately. There will not be any danger to the immediate neighborhood or the premises through fire, explosion, emission or wastes, or other causes. As 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 use is residential. Some noise and dust will be generated during construction. 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 Board finds that this criterion has been met.

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

The Board finds that the immediate neighborhood is residential and the proposed reconstruction of a two-family dwelling with adequate roof infiltration system does not adversely affect the character of the immediate neighborhood, given that that the use is currently existing. The Board finds that this condition has been 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 proposed two-family dwelling, meets the purpose and standards of the Zoning Bylaws for which the applicant has sought their respective Special Permits from. Therefore, the Board finds that this criterion is satisfied.

Additionally, the Board has determined that the Special Permit requested is warranted. Specifically, the Board made the following findings pursuant to Section 12.4.C of the Zoning Bylaw:

- (a) complies with applicable performance and/or design criteria listed in section 12.3.C of the Zoning Bylaw;**

The Board finds that the proposed roof infiltration system complies with applicable performance and/or design criteria as shown in section 12.3.C. All performance and design specifications have been reviewed by a licensed civil engineer and have been deemed appropriately designed to conform to professional standards. Therefore, the Board finds that this criterion has been met.

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

Through guidance of Town Engineering, the Board finds that this proposed increase in impervious surface will not have any adverse environmental impact on any water body in the district as noted on the provided by the applicant's engineer. All runoff will be captured, contained on site, and infiltrated back into the ground in a manner which will not disturb surrounding water bodies. Therefore, the Board finds this criterion has been met.



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

Through guidance of Town Engineering, the Board finds that this proposed increase in impervious surface will not adversely affect an existing or potential water supply. With design standards met the infiltration of water will occur to a standard needed for approval of this relief. Therefore, the Board finds that this criterion had been met.

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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 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

*Robert Fitzgerald*

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Robert Fitzgerald, Clerk

This decision was made on June 7, 2023 and filed with the Town Clerk on June 16, 2023

