



**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. 23-9**

**APPLICANT:**  
James Donovan

**OWNER OF RECORD:**  
James Donovan

**LOCATION OF PROPERTY INVOLVED:**  
57 Highland Street  
Walpole Assessors Map: 35-276  
Zoning District: Residence B (RB)

**APPLICATION:**

A **Special Permit** under 9.4.A of the Walpole Zoning Bylaws to construct a rear deck to a dwelling that is a pre-existing, non-conforming building in regard to its rear setback.

**DESCRIPTION OF PROJECT:**

The applicant is requesting a Special Permit in order to construct a rear deck on the pre-existing, non-conforming building, as shown on the plans submitted.

**PUBLIC HEARING:**

On April 5, 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 voting upon a decision as to the granting of Special Permit. The public hearing was closed that same evening.

On April 5, 2023 the following members were present and voting:

John Lee, Chair  
Drew Delaney, Vice Chair  
Bob Fitzgerald, Clerk  
Judy Conroy, Member  
David Anderson, Member

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A motion was made by Mr. Fitzgerald, and seconded by Mr. Anderson to approve the **Special Permit** under **Zoning Bylaw Section 9.4.A**, for 57 Highland Street to construct a rear deck to a dwelling that is a pre-existing, non-conforming building in regard to its rear setback based on the plot plan titled "Plan of land showing proposed deck, 57 Highland Street, Walpole, Ma" dated January 16, 2023 and building plan dated August 9, 2022.



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The vote was (4-1-0) in favor: Lee-Aye, Delaney-Aye, Fitzgerald-Aye, Conroy-Nay, Anderson-Aye; therefore, the application for a **Special Permit** is hereby granted, 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. The proposed deck to the non-conforming building shall be constructed according to the plot plan titled "Plan of land showing proposed deck, 57 Highland Street, Walpole, Ma" dated January 16, 2023 and building plan dated August 9, 2022.

**DECISION RATIONALE**

It is the finding of the Board that the Applicant was able to meet the requirements of Section 9.4.A to construct a rear deck to a dwelling that is a pre-existing, non-conforming building in regard to its rear setback. The Board finds that the modification will not be substantially more detrimental to the neighborhood than the existing structure. Accordingly, the Board has determined that the Special Permit requested is warranted. Specifically, 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 modification to the pre-existing, non-conforming single-family dwelling meets the criteria of Zoning Bylaw Section 9.4.A. As stated within Section 9.4.A of the Zoning Bylaws, any proposed enlargement or extension of a nonconforming one-family or two-family dwelling may be approved by Special Permit if the proposed change is deemed to not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board found that the proposed addition of a rear yard deck did not impact the nonconforming rear yard setback to an extent that would be deemed as more detrimental to neighborhood. 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;**

The Board finds that the modification to a pre-existing, non-conforming single-family dwelling will not result in an adverse effect on the neighborhood relative to traffic. The proposed modification to the single-family dwelling is the addition of a rear yard deck which will not result in additional vehicular and pedestrian traffic. Therefore, the Board finds that this criterion is satisfied.

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



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The Board finds that the proposed expansion to the dwelling, specifically a rear yard deck, will not increase the number of residents or visitors that would negatively impact the immediate neighborhood. There will be no employees or customers as it is a residential use, and the only disruptions will be temporary during construction. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood, and this condition 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 dwelling does not conform to the applicable dimensional rear yard requirements of the Residence B (RB) Zoning District in which the property is located. However, the dwelling is pre-existing nonconforming. Section 9.4.A of the Zoning Bylaws allows for enlargement or extension of a pre-existing nonconforming one-family or two-family dwelling so long as the Board finds that the proposed alteration will not result in a change that is deemed substantially more detrimental to the surrounding neighborhood than the existing nonconforming structure. The Board finds that the proposed deck to this single-family dwelling will not be substantially more detrimental to the surrounding neighborhood than the existing condition. 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 deck to a legally non-conforming single-family dwelling is residential, and there will not be any activities or products being used or stored at the location in relation to this application which would cause any danger to the immediate neighborhood or the premises through fire, explosion, emission or 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 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. Therefore, this criterion is satisfied.

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

The Board finds that a residential deck is in keeping and will not adversely affect the character of the immediate neighborhood. Therefore, the Board is satisfied that this condition 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;**



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The Board finds the proposed deck is compatible with the purpose of the Zoning Bylaw as relief for preexisting nonconforming dwellings is permissible provided that the Board deems the relief sought will not be substantially more detrimental to the neighborhood than the existing non-conforming structure. Furthermore, the relief sought is for a residential use within a residential zoning district and is therefore appropriate for that zoning district. Therefore, this criterion is 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*

Robert Fitzgerald, Clerk

This decision was made on April 5, 2023 and filed with the Town Clerk on April 14, 2023