



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chair
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Assoc. Member

DECISION- BOARD OF APPEALS CASE NO. 21-4

APPLICANT:

Arsitides Cruz I Jr.

OWNER OF RECORD:

Aristides Cruz I Jr. & Ashley Peterson

LOCATION OF PROPERTY INVOLVED:

4 Brown Drive
Walpole Assessors Map: 41-27
Zoning District: RB

APPLICATION:

A Special Permit under Section 9.4.A. of the Zoning Bylaw to allow the construction of an attached two-car garage (22'x24') within the rear-yard setback that is preexisting nonconforming.

On April 7, 2021 a Public Hearing was opened and held remotely via ZOOM Conference, for the purpose of receiving information and voting upon a decision as to the granting of a Special Permit.

On April 7, 2021 the following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member

A motion was made by Murphy, and seconded by Coffey to grant a Special Permit under Section 9.4.A of the Zoning Bylaw to allow the construction of an attached (22'x24') two-car garage within the rear-yard setback that is preexisting nonconforming at 4 Brown Drive, Walpole MA 02081.

The vote was (5-0-0) in favor; Roll Call Vote: Lee-aye, Murphy-aye, Fitzgerald-aye, Coffey-aye, Delaney-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 Board of Appeals, Town Clerk and Building Department.
2. The two-car garage shall be constructed according to the plans submitted at the Public Hearing on April 7, 2021, dated 2/11/21, by Curley & Hansen Surveyors, of 160 Pond St., Avon, MA 02322, titled "Proposed Garage w/ 2nd Floor Addition Site Plan of Land, #4 Brown Drive Walpole, MA" and "New Construction Garage Jr. Cruz, 4 Brown Drive Walpole, MA 02081" dated 2/15/21 by Dennis Colwell Architects, of 132 Central Street, Ste. 203, Foxboro, MA 02035.
3. All excavated foundation material not used to backfill the foundation shall be removed from the site so wasting of fill does not change drainage patterns, etc. as referenced in the Town Engineer's letter submitted at the Public hearing on April 7, 2021, dated 3/16/21.
4. Building plans, including the locations of all existing life safety devices, shall be submitted through the Building Department for review of all life safety devices.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 9-4.A to allow the requested two-car garage within the rear set-back that is preexisting nonconforming. The Board finds that the proposed attached two-car garage is in character with and follows the intent of the Zoning District in which it is located. 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;

As detailed herein, the proposed two-car garage complies with the provisions of Section 9.4.A. of the Zoning Bylaw, thus this criterion is met.

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

The Board finds that the proposed 2-car garage will not significantly increase vehicular or pedestrian traffic, as it will be used to store the existing homeowners' vehicles when not in use, and the number of occupants in the house will remain unchanged. Therefore, this criterion is 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 attached two-car garage will not result in the increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site) and during the Public Hearing the applicant stated that the addition of space above the garage area will be used for additional storage. Therefore this requirement is 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 structure does not increase the nonconformity of what already exists, and there are no buffer zone requirements associated with this use.

- (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 single family residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. The proposed attached garage will be storing the homeowners' two vehicles when they are not in use. As such, the Board finds that this criterion is 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 two-car garage will not create more substantial noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance so as to adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

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

The Board finds that the property lies within an existing single-family residential neighborhood and the proposed two-car garage is reasonable for the neighborhood. During the Public Hearing, the applicant stated that the height of the garage will be the same height as the existing single-family home. As such, the Board finds that 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 two-car garage is appropriate for the RB Zoning District, where single-family residential uses are allowed by right. As such, the Board finds that this criterion is met.

Additionally, the necessary Findings and Determinations noted in Section 9.4.A. of the Zoning Bylaw have been satisfied and addressed through this Decision and the conditions.

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 three 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, Clerk

RF/am

cc: Town Clerk
Applicant
Building Inspector

This decision was made on April 7, 2021 and filed with the Town Clerk on April 20, 2021.