



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

**Zoning Board of Appeals**  
John Lee, Chair  
Drew Delaney, Vice Chair  
Bob Fitzgerald, Clerk  
Jane Coffey, Member  
David Anderson, Member  
Judith Conroy, Assoc. Member  
Timothy Hoegler, Assoc. Member

**DECISION- BOARD OF APPEALS CASE NO. 22-16**

**APPLICANT:**

295 Union Street Fee Owner, LLC  
c/o Casco Real Estate Partners, LLC

**OWNER OF RECORD:**

295 Union Street Fee Owner, LLC  
c/o Casco Real Estate Partners, LLC

**LOCATION OF PROPERTY INVOLVED:**

295 Union Street  
Walpole Assessors Map: 21, Parcels 13 & 14  
Zoning District: Highway Business (HB)

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TOWN OF WALPOLE  
TOWN CLERK

**APPLICATION:**

A **Special Permit** under Section 11.3.B of the Zoning Bylaw to allow for building and site improvements within the Flood Plain Protection Overlay District.

On June 15, 2022, a Public Hearing was opened and held in the Main Meeting Room of Walpole Town Hall at 135 School Street, for the purpose of receiving information and discussing the case before the Board. The Public Hearing was continued to July 20, 2022.

On July 20, 2022 the following members were present and voting:

John Lee, Chair  
Drew Delaney, Vice Chair  
Robert Fitzgerald, Clerk  
Dave Anderson, Member  
Timothy Hoegler, Associate Member

**VOTE OF THE BOARD:**

A motion was made by Mr. Fitzgerald, and seconded by Mr. Delaney, to grant a Special Permit under Section 11 of the Zoning Bylaw, with conditions, to allow the applicant to conduct their proposed building and site improvements within the Flood Plain Protection Overlay District, located at 295 Union Street, and based on plans titled "Site Plan for Redevelopment of 295 Union Street – Walpole, MA", submitted by RJO'Connell & Associates, Inc. 80 Montvale Avenue, Suite 201 Stoneham, MA 02180, dated 5/17/2022 and revised 6/16/22.

The vote was (5-0-0) in favor of granting the Special Permit: (Lee-aye, Delaney-aye, Fitzgerald-aye, Anderson-aye, Hoegler-aye), therefore, the application for the **Special Permit** addressed under Section 11 are hereby granted, subject to the following conditions:

### CONDITIONS:

1. The transformer on site will be protected by bollards against vehicle collision and shall be secured at an elevation greater than the base flood elevation.
2. All deliveries occurring after hours of operation must only access the site from Boston-Providence Highway.
3. All deliveries must be unloaded on site and not from the adjacent Union Street, Boston-Providence Highway, or other off-site location.
4. The proposed sewer connection shall comply with all requirements of the Town Engineer and Sewer & Water Commission.
5. The Applicant shall allow for a temporary access within 10' of the Right-of-way (ROW) for grading and/or the removal and replacement of fencing currently along the ROW, as well as the addition of accessible curb cuts at the site entrance from Union Street. These details may be formalized by right of entry prepared by the Town and endorsed by both parties at a later date. This condition will expire within three (3) years from the date of the agreed upon right of entry endorsement.
6. This decision shall be recorded with the Norfolk County Registry of Deeds and a copy shall be provided, along with proof of recording, to the Board of Appeals, Town Clerk and Building Department.

### REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 11. Specifically, the Board has made the following findings pursuant to Section 2.2.B. (1) and Section 11.3.B. of the Zoning Bylaw:

#### **Section 2.2.B. (1)**

- (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 location being within the flood plain protection overlay district predicated that the modifications of the buildings were to meet the criteria and standards set forth within Section 11 of the Zoning Bylaws. The Board found that the change proposed to the site would be in compliance with the special permit conditions of Section 11.3.B. Therefore, the Board finds that 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 modifications to the site area consistent with preexisting conditions currently taking place within the project site and surrounding neighborhood of the project site. Therefore, the Board finds that 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 applicant's proposed modification to the project site and existing buildings at 295 Union Street will not result in a significant increase in the number of employees or visitors that would adversely affect the immediate neighborhood. Therefore, the Board finds that this criterion 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 improvements to the project site and buildings will comply with all existing dimensional regulations within the Highway Business Zoning District. The existing required buffer of forty (40) feet will remain as required under Section 5-G of the Zoning Bylaws. Therefore, the Board finds that this criterion is met.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

All future proposed uses on the site will adhere to those allowed uses within the Highway Business Zoning District. All future uses are required to adhere to all applicable building, fire, and safety codes and regulations. Therefore, 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 proposed site is currently fully developed and any future uses of the site shall not create any significant additional noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard as to adversely affect the immediate neighborhood which is commercially zoned for Highway Business. Therefore, the Board finds that this criterion is met.

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

The proposed location is within the Highway Business Zoning District and is along the Boston-Providence Highway commercial corridor. The proposed site modifications are consistent with conditions found within this zoning district.. Therefore, 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 also finds that the proposed changes to the site, building and sewer connection will be designed according to all applicable building, fire, and safety regulations and will be compatible within the Flood Plain Protection Overlay District. Therefore, the Board finds that this criterion is met.

Additionally, the necessary Findings and Determinations noted in Section 11 of the Zoning Bylaws have been satisfied and addressed through this Decision and the conditions.

**Section 11.3.B**

- 1) The proposed use shall comply in all respects with the provisions of the underlying District unless subject to provisions of Section 9 of this bylaw.**

Proposed improvements to the already developed site comply in all respects with the provisions of the underlying zoning district of Highway Business (HB). This application is not subject to provision of Section 9 of the Zoning Bylaws. This criterion has been met.

- 2) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that compensatory storage is provided for the one hundred (100) year flood.**

Certification by a registered professional engineer has been provided by the applicant demonstrating that compensatory storage has been provided for the one hundred (1000 year flood. This criterion has been met.

- 3) Any new residential construction or substantial improvements (the cost of which equals or exceeds fifty percent (50%) of the market value of the structure) shall have the lowest floor, including basement elevated to or above the base flood level (the one hundred (100) year flood elevation) designated on the FIRM. Nonresidential structures must be flood-proofed and watertight to the base flood level.**

The proposed modifications are occurring to existing buildings and to an existing developed site. The building, as modified, shall be flood-proofed and watertight to the base flood level. This criterion has been met.

- 4) All structures (including subsurface structures) are designed so as to prevent contamination of floodwaters by chemicals, waste products, and other pollutants. The Board of Appeals may waive proof of this requirement if the same analyses will be required as part of a special permit application associated with the Water Resources Protection Overlay District.**

All existing and proposed structures, including subsurface structures, have been designed as to prevent contamination of floodwaters by chemicals, waste products, and other pollutants. This criterion has been met.

- 5) The Board may specify such additional requirements and conditions it finds necessary to protect the health, safety, and welfare of the public and the occupants of the proposed use.**

All conditions provided within the applicable section of this decision are adequate for the approval of this Special Permit request. This criterion has 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 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*

Robert Fitzgerald, Clerk

PD/rf

cc: Town Clerk  
Applicant  
Building Inspector

This decision was made on July 20, 2022 and filed with the Town Clerk on August 1, 2022.