



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

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

---

**DECISION - ZONING BOARD OF APPEALS CASE NO. 22-15**

**APPLICANT:**  
Walpole 1333 LLC

**OWNER OF RECORD:**  
Walpole 1333 LLC

**LOCATION OF PROPERTY INVOLVED:**  
1337 Main Street  
Walpole Assessors Map: 41-151  
Zoning District: Business (B)

RECEIVED  
22 JUN 27 AM 9:57  
TOWN OF WALPOLE  
TOWN CLERK

---

**APPLICATION:**

A **Special Permit** under Zoning Bylaws Section 5-B.4.q.ii of the Walpole Zoning Bylaws to allow a walk-up service window.

On June 15, 2022 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.

On June 15, 2022 the following members were present and voting:

John Lee, Chair  
Drew Delaney, Vice Chair  
Robert Fitzgerald, Clerk  
Timothy Hoegler, Associate Member  
Judy Conroy, Associate Member

---

**VOTE OF THE BOARD**

A motion was made by Mr. Delaney and seconded by Ms. Conroy to approve a **Special Permit** under section 5-B.4.q.ii of the Walpole Zoning Bylaws, with conditions, to allow a walk-up service window for property located at 1329-1337 Main Street, Walpole, MA 02081.

The vote was (5-0-0) in favor of granting the Special Permit: (Lee-Aye, Delaney-Aye, Coffey-Aye, Conroy-Aye, Fitzgerald-Aye), therefore, the application for a Special Permit is hereby granted, subject to the following conditions.

**CONDITIONS:**

1. Signage shall be installed cautioning pedestrians about vehicles.
2. Signage shall be installed cautioning vehicles about pedestrians.



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

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

3. Fencing shall be installed from the corner of the building closest to the existing vehicular drive-through window, to the walkway in front of the building which is directly adjoining the proposed walk-up service window.
4. Bollards shall be installed in front of the building and along the existing walkway in order to prevent vehicles from going onto the sidewalk.
5. 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.

**REASONS FOR DECISION**

It is the finding of the Board that the Applicant was able to meet the requirements for issuance of a Special Permit for a walk up service window pursuant to Zoning Bylaws, 5-B.4.q.ii. As such, 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;**

Section 5-B.4.q.ii refers to a drive-in or stand for the dispensing of food, beverages, or goods from inside a building to persons standing or seated outside, within a business district which has an overall length of less than one-thousand (1000) feet, measured along the street of which the use has its principal access. The Board has found that the proposed use and design complies with the standards of this section of the bylaw, 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 Special Permit will not result in an adverse effect on the neighborhood relative to traffic and parking. The site is located on Main Street/Route 1A within the Town. The surrounding neighborhood is commercially based and zoned Business (B) and Limited Manufacturing (LM). The proposed use would not result in an increase of 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;**

As stated above, the surrounding neighborhood is a commercially zoned district which is regulated for this and similar uses. The Board finds that the proposed Special Permit 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.



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

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

- (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 "Certified Plot Plan 1329-1337 Main Street Walpole Ma 02081," by Bay Colony Group, Inc., 4 School Street, P.O. Box 9136, Foxborough, MA 02035, date May 13, 2022 complies with all dimensional requirements applicable to the Business (B) zoning district in which the premise is located. The proposed project does not interfere with any buffer zone requirements as stated within Section 5-G of the Zoning Bylaws. 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 conditioned by this Special Permit will not be dangerous to the immediate neighborhood or to the existing premises 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, as conditioned by this Special Permit would 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. 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 immediate neighborhood is commercial and the proposed walk-up service window is consistent with the area and immediate neighborhood. It is the ultimate determination that the proposed use would not adversely affect the neighborhood and therefore, the Board finds 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 purpose of the Zoning Bylaw in part states, "to support the economic well-being of the Town". The land for which this application is taking place is zoned Business (B), and the proposed use for a walk-up service window for a Frozen Custard store is allowed within this zoning district through the issuance of a Special Permit. As a result, this criterion is met.

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.

\*\*\*\*\*



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

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

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*

---

Robert Fitzgerald, Clerk