



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. 22-9

APPLICANT:

Glaro Development Corp.

OWNER OF RECORD:

Glaro Development Corp.

LOCATION OF PROPERTY INVOLVED:

51 Providence Highway
Walpole Assessors Map: 21-12
Zoning District: Highway Business (HB)

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APPLICATION:

A **Special Permit** under Zoning Bylaws Section 5-B.1.4.p.ii of the Walpole Zoning Bylaws to allow modifications to the existing approved drive-thru window on site.

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 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
Judy Conroy, Associate Member

VOTE OF THE BOARD

A motion was made by Mr. Fitzgerald and seconded by Mr. Delaney to approve a **Special Permit** under section 5-B.4.p.ii of the Walpole Zoning Bylaws, with conditions, to allow for the proposed modification of the existing drive-through as shown within the plan labeled "Dunkin' 51 Boston-Providence Highway Site Plan," by Legacy Engineering LLC, 730 Main Street, Suite 2C, Millis, MA 02054, dated April 25, 2022, and revised July 7, 2022, for property located at 51 Providence Highway, Walpole, MA 02081.

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



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CONDITIONS:

1. There shall be an installation of a monitored fire alarm system during the building renovation process.
2. The applicant shall prepare a separate plan depicting the proposed sidewalk within the State Highway (Route 1), as it relates to the Town of Walpole's Union Street Sidewalk Extension project. The applicant shall agree to work with the Town on applying for a MassDOT permit (on behalf of the Town) for the Town's installation of the future sidewalk.
3. 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.p.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;**

The Board has found that that the proposed use and modification complies with the standards of the relevant section of the bylaw and, 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 along Providence Highway/Route 1. The surrounding neighborhood consists primarily of commercial properties based and zoned Highway Business (B). The proposed use would not result in an increase of vehicular or pedestrian traffic as to adversely affect the immediate neighborhood. The Board finds that the two-lane proposal for the drive-through may help to reduce the queue lengths and times during peak hour traffic. 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 alterations to the drive thru will not result in an increase in employees and will more appropriately manage traffic entering and existing the drive through. 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.



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- (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 "Dunkin' 51 Boston-Providence Highway Site Plan," by Legacy Engineering LLC, 730 Main Street, Suite 2C, Millis, MA 02054, dated April 25, 2022, and revised July 7, 2022 complies with all dimensional requirements applicable to the Highway Business (B) zoning district in which the project 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 will not be dangerous to the immediate neighborhood or to the existing premises through fire, explosion, emission of wastes, or other causes. The site itself is already developed and has been in use with a drive-through window for many years. 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 would not generate 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 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 drive-through modification is consistent with the area and immediate neighborhood and will result in more efficient movement of cars through the property. 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 Highway Business (B), and the proposed modification to the existing drive-through window 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.



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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 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 July 20, 2022 and filed with the Walpole Town Clerk on July 29, 2022