



**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. 20-29

APPLICANT:

Christine Goodrich

SITE:

9 Ginley Road, Walpole, MA 02081

Assessor's Lot No. 18-266

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TOWN OF WALPOLE

Original relief requested: The grant of a VARIANCE under Section 6-.B.1. of the Zoning Bylaw to allow the construction of a 24' x 24' garage to have a 23.8 ft. front yard setback, where a thirty (30) ft. setback is required in Zoning District RB.

Amended relief requested: The grant of a SPECIAL PERMIT under Section 9.4.A. of the Zoning Bylaw to allow the enlargement or extension of the applicants existing nonconforming single-family dwelling by construction of a 24' x 24' garage to have a 23.8 ft. front yard setback, where a thirty (30) ft. setback is required in Zoning District RB as shown on the plan entitled: "Proposed Addition Plan of Land in Walpole, Massachusetts" dated July 31, 2020 last revised 9/15/20 prepared by Colonial Engineering, Inc., or any further relief the Board deems necessary.

On September 16, 2020 a Public Hearing was opened and continued without testimony to 10/7/20, and then to 11/18/20. On November 18, 2020 via Zoom Meeting, the Board heard testimony from the applicant for the first time since the opening, for the purpose of receiving information and voting upon a decision as to the granting of the Special Permit requested. The members who were present and voting:

NAMES OF VOTING MEMBERS

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

VOTE OF THE BOARD:

A motion was made by Murphy and seconded by Coffey, that the Board grant the applicant a Special Permit under Section 9.4.A of the Zoning Bylaw to allow the construction of a 24' x 24' garage with a 23.8 ft. front yard setback, where a thirty (30) ft. setback is required in Zoning District RB, with the recognition that it will not be substantially detrimental to the neighborhood. The vote was 5 - 0 - 0 in favor by roll call vote: Lee-aye; Murphy-aye; Fitzgerald-aye; Coffey-aye; Delaney-aye, therefore, the Special Permit is hereby granted subject to the following conditions:

1. The garage shall be constructed according to the plans submitted at the public hearing as shown on the plan entitled: "Proposed Addition Plan of Land in Walpole, Massachusetts" dated July 31, 2020 last revised 9/15/20 prepared by Colonial Engineering, Inc.,

REASONS FOR DECISION

The Board finds that the proposed garage is in character with the neighborhood and will not be detrimental to the neighborhood. The Applicant has taken the needs of the Town as well as the character of the area into account and incorporated the same into his design. The Board finds that the Applicant meets all of the requirements for the granting of the requested Special Permit.

FURTHER FINDINGS

1. Section 2: Administration, 2. Special Permits, A. Finding and Determination required that:

Special Permits may be granted by the Board of Appeals and the Planning Board (the Special Permit Granting Authority or "SPGA"), as provided in this Bylaw, only for uses which are in harmony with the purposes and intent of this Bylaw and which shall be subject to any general or specific rules prescribed herein and to any appropriate conditions, safeguards, and limitations on time and use.

The Board finds that Section 9.4.A. of the Zoning Bylaw, requires a finding that "such enlargement or extension will not be substantially more detrimental to the neighborhood than the existing nonconforming building.". The Board finds that the proposed garage is in character with the neighborhood. The Board further notes that the surrounding single-family dwellings within the neighborhood have existing garages with similar architectural features. The nonconformance requiring this special permit is due to the existing single-family dwelling that was constructed in 1969 being already within the thirty (30) ft. front yard setback. Accordingly, the proposed garage is not substantially more detrimental to the neighborhood than the preexisting nonconforming building.

2. Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

Prior to granting a Special Permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

- (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 expansion of the single-family dwelling by the construction of a 24' x 24' garage is in harmony with the purposes and intent of the By-Law and satisfies the conditions of approval as set forth below.

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

The Board finds that the proposed garage will not generate sufficient traffic so as to adversely affect the immediate neighborhood, due to the purpose of the garage is to house the vehicles of the applicant that already reside at the property. Therefore, this condition is satisfied.

- (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 garage will not generate a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

- (d) shall comply with the dimensional requirements applicable to 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 notes that the lot was preexisting non-conforming due to the single-family dwelling already being within the thirty (30) ft. front yard setback, with the home being built in 1969, pre-dating the current front yard setback requirements for Zoning District RB. In accordance with Section 9.2.F a lot deficiency so created is treated as a grandfathered non-conforming lot and the changes or alterations requested by the Applicant are therefore subject to Section 9 and the subject of this Special Permit. Therefore, this condition is satisfied.

- (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 expansion of the preexisting nonconforming single-family dwelling, by the construction of a 24' x 24' garage will not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes or other causes. Furthermore, comments from the Fire Department and Police Department indicated that they had no concerns regarding this proposal. Therefore, this condition is satisfied.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds that the proposed addition will not create any noise, dust, heat, smoke, fumes, odor, glare, or other nuisance, other than during the construction process. Therefore, this condition is satisfied.

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

The Board finds that the proposed garage, even though it's within the front yard setback, will be in character with the immediate neighborhood located in Zoning District RB. Furthermore, the size and architectural design of the proposed garage are similar with other garages within the immediate neighborhood. Therefore, the proposed garage will not adversely affect the character of the immediate neighborhood, and this condition is satisfied.

- (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 encourage housing for persons of all income levels...: *"to encourage the most appropriate use of the land"*. The proposed garage complies with the performance standards of the Bylaw and as such is consistent with the intent and purpose of *Section 9.4.A*. The extension of nonconformity will not create substantial detriment to the surrounding neighborhood, and will allow proper storage for the applicants vehicles. As a result, this condition is satisfied.

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.

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

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 thereof, if a substantial use thereof has not

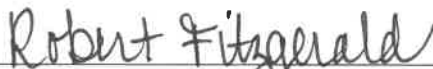
sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.”

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 or 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 in 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 of 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.

ZONING BOARD OF APPEALS

WALPOLE


Robert Fitzgerald, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on November 18, 2020 and filed with the Town Clerk on December 2, 2020.