



Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

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

DECISION - ZONING BOARD OF APPEALS CASE NO. 22-18

APPLICANT:
Matthew Naughton

OWNER OF RECORD:
Matthew & Susan Naughton

LOCATION OF PROPERTY INVOLVED:
11 Occident Circle
Walpole Assessors Map: 42-290
Zoning District: Residence B (RB)

APPLICATION:

A **Special Permit** under 9.4.A of the Walpole Zoning Bylaws to allow an addition to a non-conforming building.

On August 17, 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. The public hearing was further continued to September 21, 2022 and November 2, 2022.

On November 2, 2022 the following members were present and voting:

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

A motion was made by Ms. Conroy, and seconded by Mr. Delaney to approve the **Special Permit** under **Zoning Bylaws Section 9.4.A**, for 11 Occident Circle to allow an addition to a nonconforming building based on plans titled "Proposed Addition Plan of Land in Walpole, MA," dated May 5, 2022, and revised October 25, 2022 by Colonial Engineering Inc., 11 Awl Street, Medway, MA., with standard conditions.

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



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CONDITIONS:

1. Plans with life safety devices, such as smoke and carbon monoxide (CO) detectors, will be submitted to the Walpole Fire Department for review and approval, with a follow up Fire Department inspection to confirm conformance with approved plans.
2. 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 Zoning Board of Appeals, Walpole Town Clerk, and Walpole Building Department.
3. The proposed addition to the non-conforming building shall be constructed according to the plans submitted at the Public Hearing on August 17, 2022 titled "Proposed Addition Plan of Land in Walpole, MA for Matthew and Susan Naughton, 11 Occident Circle, Walpole, MA. 02081" by Colonial Engineering Inc., dated May 23, 2022 and revised October 25, 2022.

DECISION RATIONALE

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 non-conforming addition at the subject property. The Board finds that the non-conforming addition 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;**

The Board finds that, as conditioned herein, the proposed addition to a legally non-conforming single-family dwelling complies with all of the criteria of Section 9.4.A. as set forth above. As discussed in subsection (d) below, the project satisfies the criteria of Section 9.4.A. Therefore, the Board finds this criterion is satisfied.

- (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 addition to a legally non-conforming single-family dwelling will not result in an adverse effect on the neighborhood relative to traffic as the non-conforming building already exists, and the proposed addition to the single-family dwelling will not result in additional vehicular and pedestrian traffic that would adversely affect the immediate neighborhood. Therefore, the Board finds that this criterion is satisfied.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**



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The Board finds that the proposed addition to a legally non-conforming single-family dwelling will have a minimal amount of visitors and/or traffic concerns that would negatively impact the immediate neighborhood. There will be no employees or customers as it is a residential use, and the only disruptions will be temporary during construction. Accordingly, the Board finds that there will not be any adverse effect on the neighborhood, and this condition is satisfied.

- (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 existing building does not conform to the applicable dimensional requirements of the Residence B (RB) Zoning District in which the property is located. However, the subject building is a pre-existing nonconforming building. Section 9.4.A of the Zoning Bylaws allows for enlargement or extension of a pre-existing nonconforming building so long as the Board finds that the proposed alteration will not result in a change that is deemed detrimental to the surrounding neighborhood. The Board finds that the proposed addition to this single-family dwelling will not be substantially more detrimental to the surrounding neighborhood. As shown on the plan proposed during the November 2, 2022 public hearing, the nonconforming rear yard setback is not further reduced, which addressed a primary concern of the Board during the opening of the public hearing on August 17, 2022. Therefore, the Board finds that 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 addition to a legally non-conforming single-family dwelling is residential in nature and there will not be any activities or products being used or stored at the location which would cause any danger to the immediate neighborhood or the premises through fire, explosion, emission or wastes, or other causes. As 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 use is residential. Some noise and dust will be generated during construction. Nothing proposed by the Applicant will be used, generated, 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. Therefore, this criterion is satisfied.

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

The Board finds that the immediate neighborhood is residential and the proposed addition to a legally non-conforming single-family dwelling does not adversely affect the character of the immediate neighborhood. Therefore, the Board is satisfied that this condition 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;**



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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 addition to a legally preexisting nonconforming one-family dwelling complies with the purpose of the Zoning District in which the premises is located, and is consistent with the intent and purpose of Zoning Bylaws, Section 9.4.A Non-Conforming Buildings for which a Special Permit shall be sought. Therefore, the Board finds that this criterion is satisfied.

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 Norfolk 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 November 2, 2022 and filed with the Town Clerk on November 15, 2022