



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. 22-26

APPLICANT:

Eriberto Perez

OWNER OF RECORD:

Eriberto Perez

LOCATION OF PROPERTY INVOLVED:

278 Fisher Street
Walpole Assessors Map: 13-56
Zoning District: Residence B (RB)

APPLICATION:

A **Special Permit** under Section 5-B.1.3.N, Schedule of Use Regulations of the Walpole Zoning Bylaws, to allow more than one (1) commercial vehicle within a Residential B (RB) Zoning District.

On October 5, 2022, a public hearing was 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 the requested Special Permit.

On October 5, 2022, the following members were present and voting:

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

Motion was made by Mr. Delaney, and seconded by Ms. Conroy, to approve a **Special Permit** under section 5-B.1.3.N. of the Walpole Zoning Bylaws to allow more than 1 commercial vehicle on site at 278 Fisher Street, Walpole, MA, with 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:

CONDITIONS:

1. Maximum of two (2) commercial vehicles allowed to be parked at the premises.
2. Maximum commercial vehicle weight is limited to two (2) tons per vehicle.
3. There shall be no more than two (2) trailers allowed on site.

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4. All vehicles shall be registered.
5. The operation of a landscaping business on site is prohibited, absent to grant of additional zoning relief. For clarity, the Board expressly does not authorize the operation of a landscaping business with this decision.
6. No storage of materials for the purpose of commercial landscaping shall be kept on site.
7. 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.

DECISION RATIONALE

The Board finds that the additional commercial vehicle, as conditioned, is permissible and 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;**

Section 5-B.1.3.N. of the Bylaw does not provide any specific criteria or standards for the grant of this special permit.

- (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 additional commercial vehicle will not result in an adverse effect on the neighborhood relative to traffic. As such, 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 Board finds that the additional commercial will not result in an increase of residents, employees, customers, or visitors to the site. There shall be no employees or customers as the property is zoned for residential use and as this permit is conditioned, shall not be utilized for the operation of a business, specifically a landscaping business. The Board finds that because of the condition prohibiting the operation of a landscaping business on-site, there will not be an adverse effect on the neighborhood, and therefore 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;**



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The Board finds that the proposed use is non-structural and therefore there is no impact on the dimensional regulations of the property. Any proposed future changes to the property will need to comply with the dimensional regulations allowed within the Residential B (RB) Zoning District. Additionally, no buffer zones are required for this use. 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;**

The Board finds that the proposed additional commercial vehicle will be used off-site, and for the Applicant to access their place of employment or job sites. As conditioned herein, no storage of commercial landscaping supplies are to be allowed on site. Therefore, there are to be no activities or products being used or stored at the location which would cause any danger to the immediate neighborhood of the premises through fire, explosion, emission or wastes, or other causes. As result, this criterion is satisfied.

- (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 additional commercial vehicle will be used off-site, and likely returned to the site when not in use by the Applicant. Nothing proposed by the Applicant as it relates to the storage of an additional commercial vehicle shall be used, generated, or would otherwise create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance and/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 storage of an additional commercial vehicle, as conditioned herein, will remain consistent with the area and immediate neighborhood. Therefore, the Board is satisfied 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 finds that the purpose of the Zoning Bylaw in part states, "shall include the promotion of public health, safety, morals or general welfare, including, all of the stated objectives of the Zoning Act as amended, including: to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic, congestion, confusion and other dangers...: *"to encourage the most appropriate use of the land"*. The proposed storage of an additional commercial vehicle within a residentially zoned district, as conditioned, complies with the performance standards of the Bylaw and is consistent with the intent and purpose of Section 5-B.1.3.N. As a result, this criterion is satisfied.



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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 October 5, 2022 and filed with the Town Clerk on October 13, 2022.