



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

Zoning Board of Appeals
John Lee, Chair
Bob Fitzgerald, Clerk
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Member
Judith Conroy, Assoc. Member
Mark Major, Assoc. Member
Timothy Hoegler, Assoc. Member

DECISION- BOARD OF APPEALS CASE NO. 21-11

APPLICANT:

Acyn Zhong on behalf of Tesla

OWNER OF RECORD:

Transit Realty LLC

LOCATION OF PROPERTY INVOLVED:

295 Union Street
Walpole Assessors Map: 21-13
Zoning District: Highway Business (HB)

APPLICATION:

A **Special Permit** under Section 5-B.4.dd of the Zoning Bylaw to allow the establishment of an auto body repair business with automobile painting and washing within an existing structure and a **Special Permit** under Section 11 of the Zoning Bylaws to allow the substantial improvement of a building within the Flood Plain Overlay District.

On September 15, 2021, a Public Hearing was opened and held in the Main Meeting Room of Walpole Town Hall at 135 School Street, for the purpose of receiving information and discussing the case before the Board. The Public Hearing was continued to October 6, 2021.

On October 6, 2021 the following members were present and voting:

John Lee, Chairman
Robert Fitzgerald, Clerk
Drew Delaney, Member
Mark Major, Associate Member
Judith Conroy, Associate Member

A motion was made by Mr. Fitzgerald, and seconded by Mr. Delaney, to grant Special Permits under Section 5-B.4.dd and Section 11 of the Zoning Bylaw to allow Tesla to build out their pre-delivery center at 295 Union Street based on plans titled "Tesla Pre-Delivery Center Walpole, 295 Union Street, East Walpole, MA 02032," by Kimley-Horn and Associates, 300 Baker Avenue, Suite 300, Concord, MA 01742, dated 6/23/2021, and revised 9/29/2021, subject to the conditions discussed.

The vote was (5-0-0) in favor: Lee-aye, Fitzgerald-aye, Delaney-aye, Conroy-aye, Major-aye; therefore, the application for the two **Special Permits** addressed under Section 5-B.4.dd and Section 11 are hereby granted, subject to the following conditions:

CONDITIONS:

1. The transformer on site will be protected by bollards against vehicle collision.
2. All deliveries occurring after hours of operation must only access the site from Boston-Providence Highway.
3. A Tesla employee must be onsite for all after-hour deliveries.
4. All deliveries must be unloaded on site and not from the adjacent Union Street, Boston-Providence Highway, or other off-site location.
5. All storage of paints and solvents will meet applicable fire code requirements.
6. Paint used will contain low concentrations of Volatile Organic Compounds (VOC).
7. Paint booth emissions will comply with all applicable State and Federal regulations.
8. Battery storage on site shall be maintained at the minimum reasonable necessary for the delivery of new vehicles.
9. The proposed sewer connection shall comply with all requirements of the Town Engineer and Sewer & Water Commission.
10. A concrete containment basin shall be located under the pad-mounted transformer per applicable design code.
11. The bottom of the transformer shall be at an elevation greater than the base flood elevation.
12. This decision shall be recorded with the Norfolk County Registry of Deeds and a copy shall be provided, 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 of Section 5-B.4.dd and Section 11. The site in question has been used for automobile storage for a number of years, and the proposed work by the applicant is reflective of changes taking place within the building. An additional component of the project involves the discontinuation of the site's septic system and new connection to the municipal sewer utility line. Therefore, the Board has determined that the Special Permits requested are 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 use of an auto body repair business, as defined within section 5-B.4.dd, is allowed by Special Permit within the Highway Business Zoning District for which the property is located. The location being within the flood plain overlay district predicated that the modifications of the buildings were to

meet the criteria and standards set forth within Section 11 of the Zoning Bylaws. The Board found that the change proposed to the building would be in compliance with the special permit conditions of Section 11.B. Therefore, the Board finds that this criterion is met.

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

The Board finds that the proposed use is consistent with preexisting conditions currently taking place within the site and proximate location of the application. Therefore, 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 proposed use will provide a minimal creation of new jobs, no sales will take place on the site, and visitation will be limited to deliveries and operation of the facility. The applicant's proposed use of the structure at 295 Union Street will not result in a significant increase in the number of employees or visitors that would adversely affect the immediate neighborhood. Therefore, the Board finds that 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;**

As there are no structural changes to the exterior of the building, the Board finds that the proposed use will comply with all dimensional regulations within the Highway Business Zoning District. The existing required buffer of forty (40) feet will remain as required under Section 5-G of the Zoning Bylaws. Therefore, 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 has taken into consideration additional conditions for the storage of paints, solvents, and batteries as well as the filtering of paint fume emissions. All proposed work will be contained within the building and meet all applicable building, fire, and safety codes and regulations. Therefore, the Board finds that this criterion is 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 proposed site is currently fully developed and utilized for automobile storage and transportation. The proposed use of auto body repair, as defined within the Zoning Bylaws and as conditioned herein, within the existing building will not create any significant additional noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard as to adversely affect the immediate neighborhood. Therefore, the Board finds that this criterion is met.

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

The proposed location is within the Highway Business Zoning District and is along the Boston-Providence Highway commercial corridor. The proposed use is consistent with the type of businesses

allowed within this location and the abutting properties. Therefore, the Board finds 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 proposed use of an auto body repair establishment is appropriate with uses permitted within the Highway Business Zoning District. The Board also finds that the proposed changes to the interior of the building and sewer connection will be designed according to all applicable building, fire, and safety regulations and will be compatible within the Flood Plain Overlay District. Therefore, the Board finds that this criterion is met.

Additionally, the necessary Findings and Determinations noted in Section 5-B.4.dd and Section 11 of the Zoning Bylaws have been satisfied and addressed through this Decision and the conditions.

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 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

PD/rf

cc: Town Clerk
Applicant
Building Inspector

This decision was made on October 6, 2021 and filed with the Town Clerk on October 19, 2021.