



**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. 21-12

APPLICANT:

Mary LaRosa

OWNER OF RECORD:
JN Kelly Realty Four LLC.

LOCATION OF PROPERTY INVOLVED:

324 East Street
Walpole Assessors Map: 27-368
Zoning District: Residential B (RB)

APPLICATION:

A **Special Permit** under Sections 9.3.A and 9.3.C of the Zoning Bylaw to continue a nonconforming use for the same purpose while expanding the total floor area by no more than fifty percent.

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 voting upon a decision as to the granting of a Special Permit.

On September 15, 2021 the following members were present and voting:

John Lee, Chairman
Jane Coffey, Member
Drew Delaney, Member
David Anderson, Member
Judith Conroy, Associate Member

A motion was made by Ms. Coffey, and seconded by Mr. Anderson to grant a Special Permit under Section 9.3.A and 9.3.C of the Zoning Bylaw to allow the razing of the house of 324 East Street and its reconstruction according to the plan set by Boran LA, Architectural Designer, of 237 Everett St., Allston, MA 02134, titled "Kelly Residence, 324 East Street, Walpole, MA," dated November 2019.

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

CONDITIONS:

1. 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.

2. The two-family dwelling unit shall be constructed according to the plans submitted by the applicant and discussed at the Public Hearing on September 15, 2021, dated November 2019, by Boran LA, Architectural Designer, of 237 Everett St., Allston, MA 02134, titled "Kelly Residence, 324 East Street, Walpole, MA."
3. No change in grade on the lot is proposed, therefore none should be permitted other than what is required to provide a positive slope away from the new foundation.
4. If the existing water service and sewer service on the lot are inspected by the Engineering Department and found to be in poor condition either or both shall be re-laid by the applicant in order to provide service for the re-built dwelling.
5. The foundation height shall not exceed two (2) feet above grade.
6. The new building shall not exceed a height of thirty-one (31) feet.
7. In accordance with Sections 9.3.A and 9.3.C of the Zoning Bylaw, alteration, extension, or expansion of the nonconforming use shall not increase the existing total floor area by more than fifty (50) percent.
8. Building plans, including the locations of all existing life safety devices, shall be submitted through the Building Department for review of all life safety devices.

REASONS FOR DECISION:

It is the finding of the Board that the Applicant was able to meet the requirements of Section 9.3.A and 9.3.C to allow the allow the razing of and reconstruction of a nonconforming use for the same purpose while expanding the total floor area by no more than fifty (50) percent. In the case of 324 East Street, the existing total floor area is 4,423 S.F. and the proposed total floor area after alterations would be 5,422 S.F. which represents a total floor area increase of 22.6%. Therefore, 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;**

As detailed herein, the new two-family dwelling unit complies with the provisions of Sections 9.3.A. and 9.3.C. of the Zoning Bylaw. 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 expanded two-family dwelling unit will not increase vehicular or pedestrian traffic, as the proposed nonconforming use is existing on the site currently. 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 expanded two-family dwelling unit will not result in the increase in the number of residents or visitors that would adversely affect the immediate neighborhood (employees and customers do not apply to this residential site). 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;**

The Board finds that the proposed structure does not increase the nonconformity of what already exists, complies with all dimensional regulations within the applicable zoning district, and there are no buffer zone requirements associated with this use. 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 finds that two-family residential dwellings are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. The proposed alterations and expansions will need to comply and be up to code with all existing building and fire 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 Board finds that the proposed two-family residential dwelling unit will not create more substantial noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance so 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;**

While the use is nonconforming, the design, layout, and height are in keeping with the character of the immediate neighborhood. Given that the existing structure is a two-family dwelling unit, the alteration and expansion of that same use will be consistent with the property's current purpose. 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 alteration and expansion of the existing nonconforming two-family dwelling unit is appropriate given the requirements outlined within the applicable sections of the Zoning Bylaw. Therefore, the Board finds that this criterion is met.

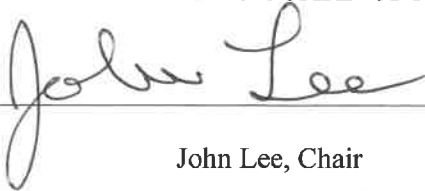
Additionally, the necessary Findings and Determinations noted in Sections 9.3.A and 9.3.C. of the Zoning Bylaws have been satisfied and addressed through this Decision and the conditions.

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



John Lee, Chair

PD

cc: Town Clerk
Applicant
Building Inspector

This decision was made on September 15, 2021 and filed with the Town Clerk on September 29, 2021.