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. 22-23

APPLICANT:
Donna Monteiro

OWNER OF RECORD:
Donna Monteiro

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LOCATION OF PROPERTY INVOLVED:
93 Summer Street
Walpole Assessors Map: 52-54
Zoning District: Residence B (RB)

APPLICATION:

A **Special Permit** under Section 5-B.2 Schedule of Use Regulations of the Walpole Zoning Bylaws to allow an Accessory In-Law Suite.

On September 7, 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 September 7, 2022 the following members were present and voting:

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

A motion was made by Ms. Conroy, and seconded by Mr. Delaney, to approve Case #22-23, 93 Summer Street for a **Special Permit** under section 5-B.2 of the Walpole Zoning Bylaws to allow an Accessory In-Law Suite at 93 Summer Street, with standard conditions, based on a construction plan titled "93 Summer Street", drawn by M. Rannikko, dated 5/18/22, and based on a plot plan titled, " #93 Summer Street building permit plan of Land" by Glossa Engineering dated 07/28/22.

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

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CONDITIONS:

1. The Accessory In-Law Suite shall not be held in separate ownership from the principal unit.

2. The Accessory In-Law Suite shall only be occupied by individuals within the third degree of kinship of the owner of the principal dwelling unit.

3. 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.

4. When ownership of the property changes, the new owner shall notify the Building Commissioner so as to update the Accessory In-Law Suite List.

5. The Accessory In-Law Suite shall be constructed according to the plans submitted at the Public Hearing on September 7, 2022, a construction plan titled "93 Summer Street", drawn by M. Rannikko, dated 5/18/22, and based on a plot plan titiled, "#93 Summer Street building permit plan of Land" by Glossa Engineering dated 07/28/22.

6. The applicant shall receive a Certificate of Occupancy from the Building Department before occupying the Accessory In-Law Suite.

7. No more than one (1) water meter shall be allowed for the dwelling.

8. There shall be no lodgers in either the original dwelling unit or the Accessory In-Law Suite.

9. The life safety devices (smoke and carbon monoxide (CO) detectors) in the main house and Accessory In-Law Suite will be brought into compliance with the current fire code.

10. Plans with smoke and 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 the approved plans.

11. The Applicant shall record a deed with the Norfolk County Registry of Deeds limiting the use of the house to no more than three bedrooms, including the proposed Accessory In-Law Suite.

12. Drywell tanks shall be maintained by the property owner.

13. A 36" cased opening will connect the Accessory In-Law Suite with the main dwelling unit; not a door.

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DECISION RATIONALE

It is the finding of the Board that the Applicant was able to meet the requirements of Section 5-B.2. to allow the requested Accessory In-Law Suite at the subject property. The Board finds that the Accessory In-Law Suite 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 Accessory In-Law Suite complies with all of the criteria of Section 5-B.2. as set forth above. Accordingly, the Board finds this condition 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 of the Accessory In-Law Suite will not result in an adverse effect on the neighborhood relative to traffic. As such, 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;

The Board finds that the proposed Accessory In-Law Suite will have a minimal amount of visitors and create minimal 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 the interior construction of the Accessory In-Law Suite. 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 single-family dwelling, as modified to accommodate the Accessory In-Law Suite, conforms to the applicable dimensional requirements of the Residence B (RB) Zoning District in which the property is located. All construction for the Accessory In-Law Suite will be compliant with the applicable dimensional regulations for the Residence B (RB) Zoning District as shown on the renderings submitted by the Applicant, which were presented at the Public Hearing on September 7, 2022. No buffer zones are required in the Residence B (RB) Zoning District, therefore, the Board is satisfied that this condition is met.

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(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 Accessory In-Law Suite is residential in nature and there are 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 condition 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 use is residential. Some noise and dust will be generated for a short period of time during construction. Nothing proposed by the Applicant is being 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 condition 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 Accessory In-Law Suite, as conditioned herein, is consistent with the area and immediate neighborhood. The renderings presented at the Public Hearing comply with the requirements of the Bylaw. 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;

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 Accessory In-Law Suite complies with the performance standards of the Bylaw and as such is consistent with the intent and purpose of Section 5-B.2. Accessory In-Law Suites of the Bylaw. As a result, this condition is satisfied.

Additionally, the necessary Findings and Determinations noted in Section 5-B.2. B. & C. of the Zoning Bylaw have been either satisfied or addressed through this Decision and its conditions.

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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".

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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 September 7, 2022 and filed with the Town Clerk on September 16, 2022.