DECISION - BOARD OF APPEAL CASE NO. 1-17

APPLICANT

Robert & Barbara Murphy

LOCATION OF PROPERTY INVOLVED:

28 Alton Street
Walpole Assessors Map 35, Parcel 206

APPLICATION:

A Special Permit under Section 5-B.2. of the Zoning Bylaw to allow an Accessory In-Law Suite in the single family home located at 28 Alton Street, Walpole, MA 02081.

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On February 1, 2017 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zuker, Chairman
Craig Hiltz, Clerk
Susanne Murphy, Member
Mary Jane Coffey, Member

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TOWN CLERK

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VOTE OF THE BOARD:

A motion was made by Ms. Murphy and seconded by Ms. Coffey to grant the Special Permit under Section 5-B.2. of the Zoning Bylaw to allow an Accessory In-Law Suite in the single family home located at 28 Alton Street, Walpole, MA 02081.

The vote was 4-0-0 in favor (Zuker, Hiltz, Murphy, Coffey voting); therefore, the Special Permit under Section 5-B.2. is hereby granted subject to the following conditions:

1. The Accessory In-Law Suite shall not be held in separate ownership from the principal dwelling 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 Board of Appeals, Town Clerk and 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 square footage of the Accessory In-Law Suite shall be as shown on the plan submitted with the Application.

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

7. There will be one water meter for the house and Accessory In-Law Suite unless the Applicant receives permission from the Board to install a second meter.

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

9. The parking and driveway for the house and in-law suite shall remain as-is. If the Applicant wishes to change the driveway, the proposed change will have to be reviewed and approved by the Board.

10. The Applicant will work with the Fire Department and E911 to determine if the Accessory In-Law Suite requires its own address.

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

REASONS FOR DECISION

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 in the Residence B District. The Board finds that the in-law suite is in character with and follows the intent of the Residence B District. Accordingly, the Board has determined that the Special Permit requested is warranted.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(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 the accessory in-law suite the proposed In-Law Suite complies with all of the criteria of Section 5-B.2 A & B as set forth below. Accordingly, the Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to

adversely affect the immediate neighborhood;

The Board finds that as conditioned above there are no changes to the existing parking or driveway. As such, 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 in-law suite should not be an adverse effect to the neighborhood. The proposed undertaking is specifically intended to allow the Applicant and her family to remain in their home. The addition is not designed to increase the number of residents. The single-family home being residential in nature will have no employees or customers. As such, the Applicant respectfully submits that there is no adverse effect to the neighborhood. 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 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 as shown on the plans submitted with the Application, the single-family dwelling conforms to the dimensional requirements of the Zoning By-Law. As this house is a residential use, there is no buffer zone required. Therefore, the Board is satisfied that this condition 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 in-law suite in the existing dwelling is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so 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 in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The architectural plans show the house is being renovated in a tasteful manner that is consistent with the size and construction of the other houses in the neighborhood. As such, the proposed extension and alteration will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

(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 in-law suite in the existing house will allow the owners to remain in their home, which is consistent with the purpose of the Bylaw. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the Zoning Bylaw and this condition is satisfied.

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

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 or 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 in 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 of 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

Craig W. Hiltz

Craig W. Hiltz, Clerk

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cc:	Town Clerk	Engineering	Planning Board
	Board of Selectmen	Building Inspector	Conservation Commission

This decision was made on February 1, 2017 and filed with the Town Clerk on February 13, 2017.