Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals

Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
John Lee, Associate Member

FILE

DECISION - BOARD OF APPEALS CASE NO. 03-19

APPLICANT:
Timothy Shields

LOCATION OF PROPERTY INVOLVED:
27 John Turco Drive
Walpole Assessors Map 17, Parcel 230
Zoning District: RB

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APPLICATION:

A **Special Permit** under Section 5-B.2. of the Zoning Bylaw to allow the construction of a 24'x24' Accessory In--Law Suite that will be attached to the existing house.

On March 20, 2019 a Public Hearing was held and continued to April 3, 2019 in the Richard Stillman Community Room of the Walpole Police Station for the purpose of receiving information and voting upon a decision as to the granting of a **Special Permit**.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Associate Member

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A motion was made by Coffey and seconded by Murphy to grant a Special Permit under Section 5-B.2. of the Zoning Bylaw to allow the construction of a 24'x24' Accessory In--Law Suite that will be attached to the existing house.

The vote was **(5-0-0) in favor**; (Lee, Fitzgerald, Murphy, Coffey, Delany voting); therefore the application for a **Special Permit** is hereby **granted**, subject to the following conditions:

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 Accessory In-Law Suite shall be constructed according to the revised plans submitted at the Public Hearing on April 3, 2019, dated January 21, 2019, by Legacy Engineering, 730 Main Street, Suite 2C, Millis, MA 02054.

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

10. 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.

11. 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.

12. There shall be no additional relief granted.

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 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 A & B as set forth above. 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 the addition of the Accessory In-Law Suite will not result in an adverse effect on the neighborhood relative to traffic. 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 Accessory In-Law Suite will have no visitors or excessive traffic which would negatively impact the neighborhood. There will be no employees or customers and the only disruptions will be temporary during the construction of the addition. 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 the single-family dwelling, as modified to accommodate the Accessory In-Law Suite, conforms to the dimensional requirements of the Zoning Bylaw as shown on plans dated January 21, 2019 which were presented at the public hearing on April 3, 2019. The addition complies with the lot coverage and setbacks requirements as found in Table 6-B.1. Table of Dimensional Regulations within the By-Law. No buffer zones are required in RB district. 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 Accessory In-Law Suite is residential and there are no activities or products being used or stored on the locus which would cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste 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 so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential. Some noise and minimal dust will be generated for a short period of time during construction. However, at the public hearing, three abutters voiced that they have reviewed the proposed plans and are in favor of the construction of

the Accessory In-Law Suite. 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 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 and the proposed Accessory In-Law Suite as conditioned herein, is consistent with the area and immediate neighborhood. The plans presented at the public hearing comply with the requirements of the By-Law and the Accessory In-Law Suite will be integrated with the existing single-family home so as to maintain the appearance of a single--family house. Furthermore, three (3) abutters also testified that they had reviewed the plans and were in favor of the approval of the proposed design. 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 By-Law 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 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

Robert Fitzgerald

Robert Fitzgerald, Clerk

RF/am

cc: Town Clerk
Engineering
Planning Board
Applicant
Board of Selectmen
Building Inspector

This decision was made on April 3, 2019 and filed with the Town Clerk on April 16, 2019.