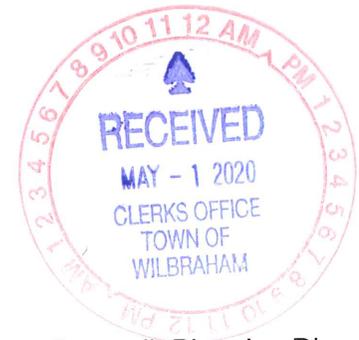


**PLANNING BOARD  
TOWN OF WILBRAHAM**  
240 Springfield Street  
Wilbraham, Massachusetts 01095



Jeffrey Smith, Chairman  
John McCloskey  
James Moore  
Tracey Plantier  
James Rooney  
Gordon Allen, Associate



John Pearsall, Planning Director

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**Pursuant to the COVID-19 emergency, this Notice of Decision originally approved on March 11, 2020 has been amended with technical corrections by vote of the Planning Board on April 22, 2020 to bring said decision into conformance with timeline changes imposed under Section 17 of Chapter 53 of the Acts of 2020 signed into law by Governor Baker on April 3, 2020**

**NOTICE OF DECISION  
SPECIAL PERMIT APPLICATION**

DATE: March 11, 2020  
APPLICATION: Special Permit SP20-01  
Accessory In-Law Apartment Special Permit (Sections 3.9.2.15 & 4.10)  
APPLICANT: Michael O'Neal & Nga Nguyen  
PROPERTY: 8 Highmoor Drive  
Wilbraham, MA 01095  
ZONE: R-40

This decision of the Wilbraham Planning Board concerns the application of Michael O'Neal & Nga Nguyen requesting the transfer and assignment of existing Special Permit (SP10-04) issued to Diane Toski by the Planning Board on August 25, 2010 which authorized the establishment of an accessory ("in-law") apartment in the existing residence located at 8 Highmoor Drive pursuant to Sections 3.6.2.15 and 4.10 of the Wilbraham Zoning By-Law in effect at that time and being Sections 3.9.2.15 and 4.10 of the currently revised and amended Wilbraham Zoning By-Law in accordance with the following plans and information on file with the Planning Board:

- Exhibit 1. MORTGAGE SURVEY PLAN 8 HIGHMOOR DRIVE WILBRAHAM, MA OWNED BY Yvonne Isabelle, Diane Toski & Thomas Toski, prepared by Joseph Troiano, R.L.S. P.E., dated October 29, 1992;
- Exhibit 2. SECOND FLOOR IN-LAW PLAN 8 HIGHMOOR DRIVE WILBRAHAM, MA (Floor Plan, 1 Sheet), prepared by Laura's Drafting & Design, undated; and
- Exhibit 3. NOTARIZED LETTER OF OCCUPANCY signed by Nga Nguyen dated February 2, 2020.

**NOTICE OF PLANNING BOARD DECISION – AMENDED (APRIL 22, 2020)**  
**SPECIAL PERMIT APPLICATION OF O’NEAL & NGUYEN (SP20-01)**

**March 11, 2020**

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Following a duly advertised public hearing held on March 11, 2020, the Planning Board, acting as the Special Permit Granting Authority, voted (5-0) to grant the requested special permit transfer and assignment subject to the following conditions:

1. This special permit (SP20-01) comprehensively and completely amends, replaces and supersedes special permit (SP10-04) issued to Diane Toski by the Planning Board on August 25, 2010. All conditions imposed under said previous special permit shall no longer remain in effect.
2. This decision is intended to facilitate the transfer and assignment of previous Special Permit (SP10-04) referenced herein-above from Diane Toski to Michael O’Neal and Nga Nguyen pursuant to the procedures specified under condition #7 of said Special Permit. Approval is hereby granted to allow a portion of the existing residence at 8 Highmoor Drive to be continued for use as an existing accessory in-law apartment consisting of two bedrooms, living/dining area, kitchen, bathroom and associated incidental and subordinate areas in strict conformance with the with the approved plans and the conditions listed herein.
3. The new owner of the subject property shall file an updated Declaration of Covenants at the Hampden County Registry of Deeds. A time-stamped copy of this recorded Declaration shall be provided to the Planning Board and the Building Inspector prior to applying for a building permit. The recorded Declaration shall include the following requirements which shall continue to operate as conditions of this special permit:
  - A. That Michael O’Neal (husband) and Nga Nguyen (wife) shall occupy the principal residence, and that the accessory apartment shall be occupied only by family members related to Michael O’Neal and Nga Nguyen as defined by Section 4.10 of the Wilbraham Zoning By-Law.
  - B. At the beginning of each calendar year, the owner shall file a notarized statement with the Planning Board listing the name and family relationship of all occupants residing on the premises in the principal residence and the accessory apartment.
  - C. The special permit for the accessory apartment shall terminate upon any change in occupancy in violation of the terms of the special permit. In such event, the owners of the dwelling must dismantle the cooking facilities for the accessory apartment and restore the dwelling to a single-family residence forthwith.
  - D. The special permit for the accessory apartment shall also terminate upon the sale of the property or transfer of the title of the dwelling. In such event, the owner of the dwelling must dismantle the cooking facilities for the accessory apartment and restore the dwelling to a single-family residence as a condition of sale or transfer of title, unless a new special permit is obtained from the Planning Board.
3. This approval is subject to full compliance with all applicable requirements of the Wilbraham Fire Department including the installation and proper operation of smoke & carbon monoxide detectors and alarms and all applicable requirements of the Board of Health including the design and proper maintenance of the subsurface sewage disposal system.
4. Members and agents of the Planning Board shall have the right to enter and inspect the premises with reasonable written notice to ensure continuing compliance with the terms of this special permit.

**NOTICE OF PLANNING BOARD DECISION – AMENDED (APRIL 22, 2020)**  
**SPECIAL PERMIT APPLICATION OF O'NEAL & NGUYEN (SP20-01)**

**March 11, 2020**

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5. This special permit shall not be valid until the notice of this decision of the Planning Board bearing the certification of the Town Clerk [that twenty (20) days has elapsed **as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020** and that no appeal has been filed] has been recorded in the Hampden County Registry of Deeds within the chain of title of the affected property and noted in the Registry's Grantor Index under the name of the owner(s) of record or is recorded and noted in the owner's Certificate of Title. The fee for recording or registering this document shall be paid by the owner/applicant.
  6. No occupancy permit shall be issued for the principal or accessory dwelling until the notice of this decision of the Planning Board has been recorded in the Hampden County Registry of Deeds as specified herein.
  7. This special permit is granted to the applicant(s) personally as owner(s) of said property and cannot be transferred, nor does it run with the land. The accessory apartment authorized by this special permit may be continued as a lawful use under new ownership if the new owner applies for re-approval of the special permit and the Planning Board determines that conditions imposed under the original special permit remain unchanged. Minor changes may be approved without a hearing by the Planning Board; however, the Planning Board, in its sole discretion at the time of reapplication by a new owner, may require compliance with all applicable procedures of the Zoning By-Law.
  8. Any changes to the Plans approved under this Special Permit shall require the Applicant to file for an amendment to this Special Permit, or to inquire of the Planning Board in writing whether the change is substantial enough to require a new filing. Any errors in the Plan shall be considered changes and the above procedure shall be followed.
  9. The provisions of this special permit shall apply and be binding upon the applicant, its employees, and all successors and assigns in interest or control. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this special permit. This special permit does not relieve the applicant or any other person of necessity of complying with all other applicable federal, state or local statutes, by-laws or regulations.

#### **REQUIRED FINDINGS**

Based on the submissions of the Applicant and the testimony and evidence gathered at the public hearing, the Wilbraham Planning Board finds that:

1. The subject property is located at 8 Highmoor Drive and is depicted as Lot 19 as shown on a Form A (nonsub) plan endorsed by the Wilbraham Planning Board on October 1, 1969 and recorded in the Hampden County Registry of Deeds in Book of Plans 119, Page 116.
2. The subject property contains approximately 34,760 square feet of land and has approximately 170 linear feet of frontage on the public way known as Highmoor Drive which conformed to the minimum lot area and minimum frontage requirements in existence when the lot was established in 1969.
3. The subject property has been subsequently rezoned from Residence-34 (R-34) to Residence-40 (R-40) and is a pre-existing nonconforming lot with respect to current minimum frontage and minimum lot area requirements imposed under section 4.4.10 of the Zoning By-Law.

**NOTICE OF PLANNING BOARD DECISION – AMENDED (APRIL 22, 2020)**  
**SPECIAL PERMIT APPLICATION OF O’NEAL & NGUYEN (SP20-01)**

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4. The subject property contains an existing single-family dwelling which is a permitted use in the R-40 Zoning District and which structure conforms to the applicable dimensional requirements imposed under Section 4.4.10 of the Zoning By-Law.
5. The existing single-family dwelling contains an existing accessory dwelling unit which was authorized to function as a separate and subordinate housekeeping unit from the principal single-family dwelling use by Special Permit (SP10-04) issued to Diane Toski, the previous owner of the subject property, by the Planning Board on August 25, 2010 pursuant to Sections 3.6.2.15 and 4.10 of the Wilbraham Zoning By-Law in effect at that time and being Sections 3.9.2.15 and 4.10 of the currently revised and amended Wilbraham Zoning By-Law.
6. The Applicant, Michael O’Neal and Nga N. Nguyen as husband and wife, purchased the subject property from Diane Toski in 2019 as evidenced by deed recorded on May 3, 2019 in Hampden County Registry of Deeds in Book 22652, Page 221.
7. On February 10, 2020, Michael O’Neal and Nga N. Nguyen filed an special permit application to allow the assignment of the existing accessory (in-law) apartment special permit pursuant to the procedures specified under condition #7 of said special permit.
8. Subsequent to filing the special permit application it was determined that original special permit (SP10-04) had not been recorded in the Hampden County Registry of Deeds in violation of condition #5 of said special permit and that the proper procedure for continuing the proposed use would be to apply for a public hearing and the issuance of a new special permit in the applicant’s name.
9. Michael O’Neal & Nya Nguyen and their children intend to reside in the principal dwelling unit located on the premises and the accessory apartment will be occupied by family members related to Michael O’Neal and Nga Nguyen in conformance with the requirements imposed under Section 4.10 of the Wilbraham Zoning By-Law.
10. The proposed accessory in-law apartment use as approved herein meets or exceeds the standards and criteria imposed under Section 4.10 of the Zoning By-Law.
11. The proposed accessory in-law apartment use as approved herein meets or exceeds all of the special permit findings required under Section 13.6.5 of the Zoning By-Law.

**CERTIFICATION:**

Present and voting in favor: Chairman Jeffrey Smith, John McCloskey, Tracey Plantier, James Rooney and Gordon Allen serving in his capacity as the designated Alternate Voting Member.

NOTICE OF PLANNING BOARD DECISION – AMENDED (APRIL 22, 2020)  
SPECIAL PERMIT APPLICATION OF O'NEAL & NGUYEN (SP20-01)

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**APPEAL**

ANY APPEAL OF THIS DECISION OF THE PLANNING BOARD MUST BE MADE TO A COURT OF COMPETENT JURISDICTION WITHIN TWENTY (20) DAYS FROM THE DATE THIS DECISION WAS FILED WITH THE WILBRAHAM TOWN CLERK, PURSUANT TO SECTION 17, CHAPTER 40A OF THE GENERAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, AS AMENDED, **AND AS SUCH TIMEFRAMES ARE SUSPENDED AND EXTENDED PURSUANT TO SECTION 17 OF CHAPTER 53 OF THE ACTS OF 2020.**

FOR THE WILBRAHAM PLANNING BOARD

  
\_\_\_\_\_  
John Pearsall, Planning Director

This is to certify that no notice of appeal was received during the twenty (20) days that have elapsed since the filing of the above decision with this office **and in accordance with such timeframes that have been suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.**

\_\_\_\_\_  
Carole Tardif, Town Clerk