

David W. Krumsiek, Chairman
John F. Lally
Douglas C. Stebbins

Town of Westwood
Commonwealth of Massachusetts

Sarah Bouchard, Housing & Zoning Agent
sbouchard@townhall.westwood.ma.us
(781) 251-2598



2019 JUN -6 P 12: 30

ZONING BOARD OF APPEALS

TOWN CLERK
TOWN OF WESTWOOD

NOTICE OF DECISION

In compliance with the General Laws of the Commonwealth of Massachusetts, you are hereby notified that the Board of Appeals has unanimously voted to grant the Applicant, Brian Dunton, his request for a Variance pursuant to the Westwood Zoning Bylaw Section 4.5.3.3 [Variance Required for New or Expansion of Nonconformity] to construct an addition that encroaches into left side setback. Property is located in the Single Residential A District.

PETITIONER(S): Mr. Brian and Ms. Robyn Dunton
106 School Street
Westwood, MA 02090

LAND AFFECTED: 106 School Street
Map 23 Lot 088

The signed decision for the petition was filed at the office of the Town Clerk on 6/6/19. Any appeal of a decision of the Zoning Board of Appeals shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17 and a copy delivered to Office of the Town Clerk within twenty (20) days of the date that the decision was filed in the office of the Town Clerk.

**DECISION OF THE ZONING BOARD OF APPEALS
of the
TOWN OF WESTWOOD**

PROPERTY OWNER(S): Robyn & Brian Dunton

APPLICANT(S): Brian Dunton
106 School Street
Westwood, MA 02090

LAND AFFECTED: 106 School Street
Westwood, MA 02090
Map 23 Lot 088

HEARING:

The Board of Appeals for the Town of Westwood held a Public Hearing according to the General Laws of the Commonwealth of Massachusetts on Wednesday, April 24, 2019 at 7:00 PM in the EOC/Training Room, Westwood Police Department, 588 High Street, Westwood, Massachusetts 02090, at which time testimony was received and continued to Wednesday, May 22, 2019 at 7:00 PM in the EOC/Training Room to consider the Applicant's request for a Variance pursuant to the Westwood Zoning Bylaw Section 4.5.3.3 [Variance Required for New or Expansion of Nonconformity] to construct an addition that encroaches into the rear and left side setbacks. Property is located in the Single Residential A District.

BOARD MEMBERS: David Krumsiek, Chairman
John Lally
Douglas Stebbins

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

4.5 NONCONFORMING USES AND STRUCTURES

4.5.1 **Applicability.** Nonconforming uses and structures, as defined in Section 2.0 of this Bylaw, may continue. Any alteration of a nonconforming use, or any alteration of a nonconforming structure, shall require authorization in accordance with this section. An alteration of a structure is a modification, structural change, extension, or reconstruction of the structure.

4.5.2 **Nonconforming Uses.**

4.5.2.1 **Permitted Alterations of Nonconforming Uses.** A structure that conforms dimensionally to current zoning regulations while its use no longer conforms can be altered without needing a special permit if the Building Commissioner determines that the proposed alteration falls under any of the following circumstances:

4.5.2.1.1 There is no extension or expansion of the exterior of the structure.

4.5.2.1.2 There is no interior expansion that would intensify the use.

4.5.2.1.3 The alteration is made for the purposes of conforming to the building code for health and safety purposes.

4.5.2.2 Special Permit Required for Alteration to Nonconforming Use. The Board of Appeals may grant a special permit to modify, alter or extend a nonconforming use in accordance with this Section only if it determines that such modification, alteration or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and the town. To be considered insubstantial, the Board must find that the proposed use reflects the nature and purpose of the prior use, there is no difference in the quality, character or degree of the proposed use and the proposed use is not different in its effect on the neighborhood.

4.5.3 Nonconforming Structures.

4.5.3.1 Permitted Alterations of Nonconforming Single and Two-Family Residential Structures. Nonconforming single and two-family residential structures may be altered upon a determination by the Building Commissioner that such proposed alteration does not increase the nonconforming nature of said structure. The following circumstances shall be deemed not to increase the nonconforming nature of said structure and may be permitted as of right:

- 4.5.3.1.1 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot area, where the alteration will still comply with all of such current requirements.
- 4.5.3.1.2 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot frontage, where the alteration will still comply with all such current requirements.
- 4.5.3.1.3 Alteration to a structure which violates one (1) or more required setbacks, where the alteration will now comply with all current setback, yard, building coverage and building height requirements regardless of whether the lot complies with current lot area and lot frontage requirements.
- 4.5.3.1.4 Alteration to a side or face of a structure which violates a required setback, where the alteration will not increase the setback violation, and will comply with building height restrictions, regardless of whether the lot complies with current lot area and lot frontage requirements.
- 4.5.3.1.5 Alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions of Section 5.0 of this bylaw shall not be exceeded.

4.5.3.2 Special Permit Alterations of Nonconforming Structures. In the event that the Building Commissioner determines that a proposed alteration to a nonconforming structure does not meet the requirements of Section 4.5.3.1, the Board of Appeals may grant a special permit to make alterations to

a nonconforming structure in accordance with this Section only if it determines that such alteration does not substantially increase the nonconforming nature of said structure and would not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of alterations to nonconforming structures may be considered for a special permit by the Board of Appeals:

4.5.3.2.1 Horizontal extension of an exterior wall at or along the same nonconforming distance within a required setback as the existing wall, provided that existing height restrictions shall not be exceeded, regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.2.2 Vertical extension of an existing exterior wall at or along the same or greater distance from a lot line, provided that the structure has a building height of no more than twenty-five (25) feet, if constructed on a lot that does not comply with current lot area and/or lot frontage requirements, or a building height no greater than permitted by this Bylaw if constructed on a lot that complies with current lot area and/or lot frontage requirements.

4.5.3.2.3 Construction of an overhang, porch, portico, or similar decorative feature, which extends no further than four (4) additional feet into a required setback area, provided that the Board of Appeals makes a positive finding that the proposed design element is de minimis in nature and improves the aesthetic quality of the property.

4.5.3.3 Variance Required for New or Expansion of Nonconformity. In the event that the Building Commissioner determines that a proposed alteration to a nonconforming structure increases the nonconformity or results in a new nonconformity and does not meet the requirements of Section 4.5.3.1 nor of Section 4.5.3.2, a variance is required in accordance with Section 10.4 of this bylaw. If the nonconforming nature of a structure would be increased by the proposed alteration, a variance from Board of Appeals shall be required to allow such alteration. In addition, no nonconforming structure, commercial or residential, shall be altered to accommodate a substantially different use, or to accommodate the same use in a substantially different manner or to a substantially greater extent, unless a variance allowing said alteration is granted by the Board of Appeals.

FINDINGS

In consideration of all of the testimony and exhibits and documents submitted before the Board, the Board makes the following findings of fact:

1. The Applicant has proposed to construct an addition which would create new nonconformities in the side and rear setbacks. The proposed construction will require Variances pursuant to Section 4.5.3.3. The Board of Appeals is the Variance granting authority.
2. The lot area of the Subject Parcel contains a total of 7,523 sq. ft. where 12,000 are required.
3. The lot frontage of the Subject Parcel is 75' where 125' are required.
4. The proposed deck addition would encroach into rear setback, reducing the setback to 24.63' where 30' is required.
5. During the hearing, the Applicant verbally submitted a request to withdraw the request for relief in the rear setback, which was granted by the Board.
6. The current structure is less than 15' in average height and is therefore conforming to all setbacks.
7. The proposed side addition would reduce the left side setback to 13.85 where 15' is required for a building greater than 15' in height.
8. The proposed structure would measure an average height of 20' $\frac{3}{4}$ ".
9. The current structure is uniquely situated at an angle on the property, such that the entire house is tilted and not facing the street directly. This positioning causes the rear left corner of the house to encroach the side lot line more than if the house were positioned in a manner facing the street directly. It is this positioning, unique to the Applicant's property, which is causing a literal enforcement of the Bylaw to create a financial hardship for the Applicant, i.e., substantial construction involved in correcting the positioning, of the house, especially in consideration of the few alternate options available to the Applicant due to the limited size of the lot.
10. The Board has given full consideration to the local conditions that affect and may be affected by the Applicant's proposed construction, and having particular expertise in said local conditions, have taken a view that the requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Bylaw, all in view of the particular characteristics of the site and of the proposal in relation to that site.
11. The Board finds that literal enforcement of the provisions of the Bylaw would involve substantial hardship to the Applicant, owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district.
12. The Applicant has met the requirements for a Variance pursuant to the Westwood Zoning Bylaw.

DECISION

The Board of Appeals voted unanimously to grant the Applicant's request for a Variance pursuant to Section 4.5.3.3 of the Westwood Zoning Bylaw to construct an addition encroaching into the left side setback. This Variance shall be exercised subject to the following conditions:

1. The Project shall be constructed in conformity with the submitted site plan consisting of one (1) page and prepared by Glossa Engineering Inc., 46 East Street, East Walpole, MA dated February 29, 2019 and stamped by Andrew C. Murphy, P.L.S., and design plans consisting of six (6) pages, prepared by JP Hoffman Inc., 173 Center Street, Bridgewater, MA dated November 25, 2018. The Project shall exclude construction of the proposed deck in the rear setback. The Applicant shall pursue completion of the Project with reasonable diligence and continuity.
2. This Variance shall not take effect until a copy of the Decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the filing of the decision and either that no appeal has been filed or that an appeal has been filed within such time period, is recorded in the Registry of Deeds and indexed under the name of the property owner of record and the parcel address. A copy of these recordings shall be provided to the Building Commissioner, Town Clerk and the Board of Appeals.

This grant of variance shall be exercised in accordance with Section 10.4. entitled Variances and Section 10.4.9 entitled Lapse as follows:

10.4.9 Lapse. Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse. The Board of Appeals, in its discretion and upon the written application of the Applicant, may extend the time for exercise of the variance for a period not to exceed six (6) months provided that the application for such extension is filed with the Board of Appeals prior to the expiration of the one (1) year period. If the request for an extension is not granted, the variance may be reestablished only after notice and new hearing pursuant to M.G.L. Chapter 40A, Section 10.

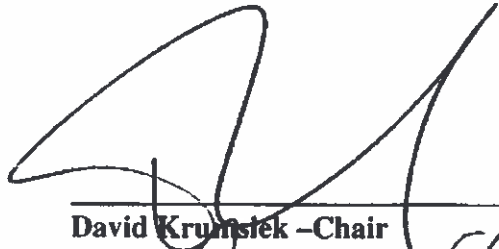
RECORD OF VOTE

The following members of the Board of Appeals voted to approve the Variance for the above mentioned use: David Krumsiek, John Lally and Douglas Stebbins.

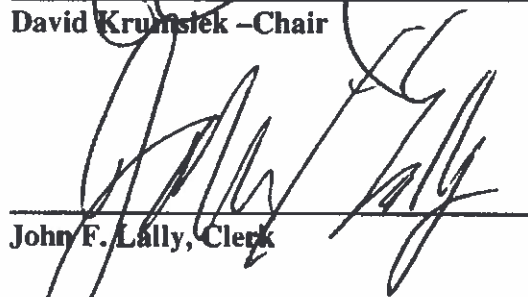
The following members of the Board of Appeals voted in opposition to the approval of the Variance: None.



WESTWOOD ZONING BOARD OF APPEALS



David Krumstek -Chair



John F. Lally, Clerk



Douglas C. Stebbins

6-6-19
Date

106 School Street

2019 JUN -6 P 12:30
TOWN CLERK
TOWN OF WESTWOOD

