

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

**PROPERTY OWNER(S): Michael Siagel & Kirsten Sydney**

**PETITIONER(S):** Shaughn MacGilvray  
88 Gloucester Road  
Westwood, MA 02090

**RECEIVED**

*By Town Clerk at 9:54 am, Oct 22, 2019*

**LAND AFFECTED:** 34 Lake Shore Drive  
Westwood, MA 02090  
Map 28 Lot 106

**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, October 16, 2019 at 7:00 PM in the Champagne Meeting Room of the Carby Municipal Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioners' request for a Special Permit pursuant to Westwood Zoning Bylaw Sections §4.5.3.2.2 and 4.5.3.2.3 [Special Permit Alterations of Nonconforming Structures] to construct a second story addition that raises the height of the structure in the setbacks as well as a covered porch that extends no more than 4' additional feet into the front setback. Property is located in the Single Residential C District.

**BOARD MEMBERS:** John Lally, Chairman  
Douglas Stebbins, Clerk  
Michael McCusker

**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.

## **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 Petitioner proposes to construct a second story addition to the single family home that would raise the height of the home in the side setback, requiring relief in the form of a Special Permit. The Board of Appeals is the Special Permit Granting Authority.
2. The lot area of the Subject Parcel is 10,315 SF where 40,000 SF is required.
3. The lot frontage of the Subject Parcel is 60' where 125' is required.
4. The existing north side setback is currently 13.7' where 20' is required for a structure over 15' feet in height.
5. The existing south side setback is currently 9.7' where 20' is required for a structure over 15' feet in height.
6. The proposed second story addition to the existing attached garage would raise the height of the structure above 15' in height.
7. The existing front setback is currently 26.7' where 40' is required.
8. The proposed front portico addition would reduce the front setback to 23.3'.
9. The proposed front portico addition is de minimis in nature and improves the aesthetic quality of the structure.
10. The proposed front portico addition will not encroach more than 4' into the front setback.
11. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioners' construction, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Petitioners' construction will not outweigh its beneficial impact to the Town, or the neighborhood, in view of the particular characteristics of the site and the proposal in relation to that site.
12. The Petitioners have met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

## **DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioner's request for a Special Permit pursuant to Section 4.5.3.2.2 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted plot plan consisting of one (1) page, prepared by D. O'Brien Land Surveying, 480 West Central Street, Franklin, MA, dated September 11, 2019, 2019 and stamped by Dennis S. O'Brien, P.L.S., and with the submitted plans consisting of six (6) pages, prepared by High Rock Design, Westwood, MA, dated September 16, 2019 and stamped by Shaughn MacGilvray, R.A.. The Applicant shall pursue completion of the Project with reasonable diligence and continuity.
2. The comments provided to the Board by the Board of Health on September 25, 2019 shall be made part of this decision and approval shall be conditioned upon successful completion of the following:
  - a. Construction debris shall only be removed using a Town licensed waste hauler.
  - b. If portable toilets are required only Town licensed providers shall be used.
3. The comments provided to the Board by the Conservation Commission on October 8, 2019 shall be made part of this decision and approval shall be conditioned upon successful completion of the following as applicable:
  - a. If land disturbance associated with the proposed project is between 5,000 SF and ½ acre, the applicant will be required to file an application for Administrative Stormwater Management Approval. If the land disturbance associated with the proposed project is ½ acre or more, the applicant will be required to file an application with the Conservation Commission for a Stormwater Management Land Disturbance Permit.
4. This Special Permit 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.
5. **The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and any construction performed under the permit may be ordered to be undone.**
6. This Special Permit shall lapse within a specified period of time, of not more than two (2) years, which shall not include such time required to pursue or await the determination of the appeal referred to in Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Prior to the expiration of the Special Permit, the Applicant may apply for an extension of the Special Permit for a period not to exceed one (1) year if the substantial construction or use thereof has not commenced for good cause.

### **RECORD OF VOTE**

The following members of the Board of Appeals voted to grant the Special Permit for the above mentioned project: John Lally, Douglas Stebbins, and Michael McCusker.

The following members of the Board of Appeals voted in opposition to the grant of the Special Permit: None.



**WESTWOOD ZONING BOARD OF APPEALS**

**RECEIVED**  
By Town Clerk at 9:54 am, Oct 22, 2019

**John Lally - Chairman**

**Douglas Stebbins, Clerk**

**Michael McCusker**

10/16/19  
Date

**34 Lake Shore Drive**

