

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

Town of Westwood
Commonwealth of Massachusetts

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2019 JUN -6 P 12:33

ZONING BOARD OF APPEALS
NOTICE OF DECISION

TOWN CLERK
TOWN OF WESTWOOD

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 Petitioner, P.T. Reality Investors LLC, their request for Special Permits pursuant to the Westwood Zoning Bylaw Sections 4.5.2.2 [Alteration, Extension or Modification to Nonconforming Use] and 4.3.3.2 [Accessory Uses] to convert an existing garage with accessory apartment to a single family residence with parking or storage area of more than three (3) motor vehicles. Property is located in the Single Residential C District.

PETITIONER(S): P.T. Reality Investors LLC
2 Warthin Circle
Norwood, MA 02062

LAND AFFECTED: 446A High Street
Map 09 Lot 098

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): PT Realty Investors LLC

- PETITIONER(S):** PT Realty Investors LLC
2 Warthin Circle
Norwood, Massachusetts 02062
- LAND AFFECTED:** 446A High Street
Westwood, Massachusetts 02090
Map 09, Lot 098
- 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 Special Permit under Section 4.5.2.2 [Special Permit Required for Alteration to Nonconforming Use] and 4.3.3.2 [Accessory Uses] to convert an existing garage with accessory apartment to a single family residence with parking or storage area of more than three (3) motor vehicles. Property located in Single Residential C Zoning District.
- BOARD MEMBERS:** David W. Krumsiek, Chair
John F. Lally
Douglas C. Stebbins

APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW

4.3 ACCESSORY USES

4.3.1 Table of Accessory Uses. The Table of Accessory Uses designates which Accessory Uses are allowed in each zoning district.

A Use is permitted by right in any district under which it is denoted by the letter "Y".

A Use is prohibited in any district under which it is denoted by the letter "N".

A Use may be permitted by special permit from the Board of Appeals in any district

under which is denoted by the letters "BA".

A Use may be permitted by special permit from the Planning Board in any district under which is denoted by the letters "PB".

ACCESSORY USE

DISTRICTS

SRA SRB SRC SRD SRE SR SR LBA LBB HB I IO ARO

4.3.2 ACCESSORY USES IN ALL DISTRICTS

4.3.2.1 Any use allowed in that district as a Principal Use.

4.3.2.2 Any use allowed in that district by special permit as a Principal Use, subject to the same conditions as a Principal Use.

4.3.2.3 Uses, whether or not on the same premises as uses permitted as of right, accessory to uses permitted as of right, which are necessary in connection with scientific research or scientific development or related production.

4.3.2.4 When associated with otherwise permitted agricultural operations on a lot with not more than five (5) acres, the following: (1) kennel, (2) salesroom or stand, (3) any building or structure devoted to productive agricultural use which, together with any other such buildings or structures on the premises, covers more than five hundred (500) square feet or contains more than five thousand (5,000) cubic feet.

4.3.2.5 Commercial Outdoor Seating in association with permitted commercial uses pursuant to Section 4.4.2.

4.3.3 ACCESSORY USES IN RESIDENTIAL DISTRICTS

4.3.3.1 Private garage for not more than three (3) motor vehicles including not more than one (1) commercial vehicle with a gross vehicle weight of less than 26,000 pounds.

4.3.3.2 Private garage and/or the parking or storage area of more than three (3) motor vehicles, or of more than one (1) commercial vehicle with a gross vehicle weight of less than 26,000 pounds, but only where in connection with a Principal Use on the same premises.

4.3.3.3 Private greenhouse, stable, tool shed, playhouse, tennis court, swimming pool, or other similar building or structure for domestic use. Swimming pools shall be enclosed as required by the Massachusetts State Building Code, as amended from time to time.

4.3.3.4 Raising or keeping of animals as pets by the resident of the premises.

4.3.3.5 Renting of rooms by a resident owner, or the furnishing of table board in a dwelling by the resident owner, to not more than three (3) persons other than members of the family.

4.3.3.6 Home Occupation pursuant to Section 4.4.1

	SRA	SRB	SRC	SRD	SRE	SR	SR	LBA	LBB	HB	I	IO	ARO
4.3.2.1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4.3.2.2	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
4.3.2.3	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
4.3.2.4	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA
4.3.2.5	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y
4.3.3.1	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N
4.3.3.2	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N
4.3.3.3	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N
4.3.3.4	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N
4.3.3.5	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N
4.3.3.6	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N

4.4 NOTES FOR TABLE OF ACCESSORY USES

- ¹ Provided that any such uses shall be conducted primarily for the convenience of employees and the clientele of the principal use of the premises and shall be wholly within a building and have no exterior advertising display.**
- ² The total square feet of floor space within a parking garage as an accessory use shall not be included in the calculation of Floor Area Ratio.**

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.

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 parcel currently contains an existing single family home with detached barn. An existing nonconforming apartment is located in the detached barn. The Petitioner proposes to convert the barn to a single family residence, and total storage of more than three (3) cars on the property. The proposed use will require a Special Permit pursuant to Sections 4.5.2.2 [Special Permit Required for Alteration to Nonconforming Use] and 4.3.3.2 [Accessory Uses]. The Board of Appeals is the Special Permit Granting Authority.
2. The lot area of the subject property is 2.75 acres where 40,000 SF are required.
3. The lot frontage of the subject property is 329 feet where 125 feet are required.
4. The previous use of the subject property was a nonconforming residential use (apartment) in a residential district. The proposed residential use is also nonconforming. The proposed conversion to a single family home will result in two single family homes on a residential lot, subject to a condominium agreement.
5. The Petitioner has proposed this arrangement as an alternative to subdividing the parcel as a means of preserving the historic structure and allowing it to remain located at its present site.
6. The proposed residential use will not be substantially more detrimental than the existing nonconforming residential use to the neighborhood and the town. The proposed use reflects the nature and purpose of the prior use, and there is no difference in the quality, character or degree of the proposed use. The proposed use is not different in its effect on the neighborhood.
7. The proposed use to store additional vehicles is appropriate for the expansion of the residential use. The use of the vehicles will be consistent with that of a residential setting, for personal use by the occupants of the home.
8. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioners' proposed construction, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Petitioners' proposed 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.
9. The Petitioners' proposed construction will not have a material adverse effect on the value of the land and buildings in the neighborhood, or on the amenities thereof, or be detrimental to the normal use of the adjacent property, and it will not be injurious or dangerous to the public health or hazardous, and any adverse effects of the proposed use do not outweigh its beneficial aspects, all in view of the particular characteristics of the site and of the proposal in relation to that site.
10. 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 4.5.2.2 and 4.3.3.2 of the Westwood Zoning Bylaw.

1. The Project shall be pursued in conformity with the proposed use contained in the narrative submitted to the Board. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
2. No additional curb cuts shall be made to Route 109 High Street.
3. The proposed single family home to be constructed in the existing detached barn may not exceed 5 bedrooms.
4. The existing barn structure which is proposed for use as a single family home must be preserved so as to maintain its historic significance. Any substantial changes to the exterior of the structure that substantially deviate from the plans presented to the board are subject to public review and approval by the Board of Appeals as an amendment to the Special Permit.
5. The conditions requested by the Board of Health via email correspondence from the Health Director on May 20, 2019 shall be incorporated into this decision:
 - a. Petitioner must use a waste hauler to transport debris; and
 - b. Petitioner must use licensed vendors to provide portable restrooms during construction.
6. The conditions requested by the Conservation Commission via memorandum dated May 8, 2019 shall be incorporated into this decision:
 - a. If the 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.
 - b. 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.
7. The condition requested by the Planning Board via memorandum dated May 21, 2019 shall be incorporated into this decision:
 - a. Fox Hill Street is a designated scenic road. Any proposed cutting or removal of trees over 4 inches in diameter in the right of way of Fox Hill Street or removal of stone walls of over 15 linear feet requires prior approval of a scenic road application with the Planning Board and Tree Warden.
8. 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.

9. **The persons exercising rights under a duly appealed special permit do so at risk that a court will reverse the permit and any construction performed under the permit may be ordered to be undone.**
10. 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 Applicants 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: David W. Krumsiek, John F. Lally and Douglas C. Stebbins.

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



WESTWOOD ZONING BOARD OF APPEALS

David Krumsiek - Chair

John F. Lally, Clerk

Douglas C. Stebbins

6-6-19

Date

446A High Street

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