

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

PROPERTY OWNER(S): Lisa Lennon

2019 JUL 25 P 2: 59

PETITIONER(S): Lisa Lennon
70 Tamarack Road
Westwood, Massachusetts 02090

TOWN CLERK
TOWN OF WESTWOOD

LAND AFFECTED: 70 Tamarack Road
Westwood, Massachusetts 02090
Map 40, Lot 020

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, July 17, 2019 at 7:00 PM in the Champagne Meeting Room at Carby Municipal Office Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioner's request for a Special Permit under Section 8.5 [Accessory Apartments] of the Westwood Zoning Bylaw to allow an accessory apartment on the property of the single family residence. Property located in Single Residence C (SRC) District.

BOARD MEMBERS: John Lally
Michael McCusker
Douglas Stebbins

APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW

8.5 ACCESSORY APARTMENTS

8.5.1 **Purposes.** The purposes of this section are as follows:

- 8.5.1.1 to offer greater housing choice by allowing varied mixes of housing type, compatible with community character; and
- 8.5.1.2 to encourage preservation of community character through the continued ownership of existing residential properties and their surrounding landscapes.

- 8.5.2 **Special Permit Required.** An Accessory Apartment shall require the issuance of a special permit by the Board of Appeals in compliance with the provisions of this Section.
- 8.5.3 **Applicability.** The principal dwelling or accessory building or structure to be altered or constructed to contain an Accessory Apartment shall be a single-family dwelling or building accessory thereto.
- 8.5.4 **Limited Number of Special Permits.** The maximum number of special permits to be issued and in effect shall not exceed two percent (2%) of the current number of single-family and two-family dwelling units in Town. All applications for a special permit pursuant to this Section shall be acted upon in the order in which they are filed.
- 8.5.5 **General Requirements.** An Accessory Apartment shall be subject to the following general requirements:
- 8.5.5.1 There shall be no more than one (1) Accessory Apartment per lot.
 - 8.5.5.2 No Accessory Apartment shall be permitted on a property which also contains a Conversion of a One-family Dwelling pursuant to Section 8.1.
 - 8.5.5.3 No Accessory Apartment shall be permitted on a property which also contains a boarding house.
 - 8.5.5.4 The owner of the premises within which the Accessory Apartment is located shall occupy either the principal dwelling or the Accessory Apartment. For purposes of this Section, the owner shall be one or more individuals who constitute a family, who holds title to the premises, and for whom the premises is the primary residence for voting and tax purposes. An affidavit certifying owner occupancy shall be filed with the Building Commissioner upon initial occupancy and every four years thereafter.
 - 8.5.5.5 Adequate provision shall be made for the disposal of sewage, waste and drainage to be generated by the occupancy of the Accessory Apartment, in accordance with the requirements of the Board of Health.
- 8.5.6 **Design Requirements.** An Accessory Apartment shall be subject to the following design requirements:
- 8.5.6.1 The exterior character of the property containing an Accessory Apartment within a principal or accessory building or structure shall maintain the appearance of a single-family property.
 - 8.5.6.2 The floor area of the Accessory Apartment shall not be less than five hundred (500) square feet.
 - 8.5.6.3 The floor area of the Accessory Apartment shall not exceed the lesser of nine hundred (900) square feet, or thirty-three percent (33%) of the floor

area of the combined dwelling or dwellings if the footprint of the principal dwelling remains unchanged, or twenty-four percent (24%) of the floor area of the combined dwelling if the footprint of the principal dwelling is enlarged.

8.5.6.4 Adequate provision shall be made for direct ingress and egress to and from the Accessory Apartment without passage through any other portion of the principal structure, except that passage to and from the Accessory Apartment shall be permitted through a garage or breezeway connected to the principal structure.

8.5.6.5 All stairways to upper stories shall be enclosed within the exterior walls of the building in which the Accessory Apartment is located.

8.5.7 **Alterations, Relocations, or Additions.** The Board of Appeals may allow for the alteration or relocation of a structure proposed for conversion under this section, and may allow for the construction of one or more additions to said structure, if in the Board's determination, the proposed alteration, relocation, or addition does not significantly change the exterior character of the property.

8.5.8 **Parking Requirements.** An Accessory Apartment shall be subject to the following parking requirements:

8.5.8.1 Off-street parking shall be provided for each automobile used by an occupant of the Accessory Apartment. Said parking shall be in addition to the number of parking spaces required pursuant to Section 6.1.3.1 of this Bylaw.

8.5.8.2 Each parking space and the driveway leading thereto shall be paved or shall have an all-weather gravel surface. No motor vehicle shall be regularly parked on the premises other than in such a parking space. No parking space shall be located within a street right-of-way.

8.5.8.3 If a total of more than four (4) parking spaces are required to serve the principle dwelling and the Accessory Apartment, the provision of such additional spaces shall require a special permit pursuant to Section 4.3.3.2 of this Bylaw.

8.5.8.4 Where there are more than four (4) outdoor parking spaces associated with the principal dwelling and the Accessory Apartment, said parking spaces shall be screened with evergreen or dense deciduous plantings, walls or fences, or a combination thereof acceptable to the Zoning Board of Appeals. Said screening shall be sufficient to minimize the visual impact on abutters and to maintain the single-family appearance of the neighborhood.

8.5.9 **Building Permit and Certificate of Occupancy Required.** No accessory apartment shall be constructed without the issuance of a building permit by the Building Commissioner. No use of an Accessory Apartment shall be permitted unless a

certificate of occupancy therefor, issued by the Building Commissioner, shall be in effect. A certificate of occupancy shall not be issued unless the Building Commissioner determines that the accessory apartment is in conformity with the provisions of this Section and any special permit issued therefor.

- 8.5.10 Expiration of Special Permit.** A special permit issued pursuant to this Section shall automatically become null and void upon the expiration of ninety (90) days following such time as neither the principal dwelling nor the accessory apartment is occupied as the primary residence of the owner thereof for voting and tax purposes. Failure to provide recertification of owner occupancy pursuant to Section 8.6.5.4 shall be grounds for automatic expiration.

ACCESSORY USE

DISTRICTS

4.3.3 ACCESSORY USES IN RESIDENTIAL DISTRICTS, CONTINUED

	SRA	SRB	SRC	SRD	SRE	GR	SR	LBA	LBB	HB	I	IO	ARO
4.3.3.7 Parking or storage area, for use by the occupant of the dwelling, for the purpose of parking or storing in the rear of the yard and not substantially visible from the street one of the following: one (1) unoccupied recreational vehicle of less than thirty (30) feet length; one (1) inoperative passenger vehicle which has not been partially or wholly dismantled.	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N
4.3.3.8 Parking or storage area, for use by the occupant of the dwelling, for the purpose of parking or storing in the rear of the yard and not substantially visible from the street one (1) unoccupied recreational vehicle of thirty (30) feet length or more.	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N
4.3.3.9 Personal kennel, Veterinary kennel or animal clinic or hospital, if located on the same premises as a dwelling unit and conducted by a resident thereof.	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N
4.3.3.10 Yard Sale, limited to no more than two days per sale, and no more than two sales per year on any residential property	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N
4.3.3.11 The use by a resident builder, carpenter, painter, plumber or other artisan for incidental work and storage in connection with this off-premise trade, subject to the conditions in Section 4.4.1.	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N
4.3.3.12 Accessory apartment consisting of a second dwelling unit located within a detached one-family dwelling or a building accessory thereto, subject to the conditions in Section 8.5.	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N

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 an accessory apartment within a reconstructed single family home. The proposed Accessory Apartment use requires a Special Permit pursuant to Section 8.5 [Accessory Apartments]. The Board of Appeals is the Special Permit Granting Authority.
2. The lot area of the Subject Property is 41,500 SF where 40,000 SF is required in the SRC (Single Residence C) zoning district.
3. The proposed accessory apartment is in compliance with the minimum and maximum square footage requirements established in Section 8.5.
4. The Town has not exceeded the maximum number of special permits (2% of single-family and two-family dwelling units in Town) to be issued for accessory apartments.
5. The Petitioner's 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.
6. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioner's proposed construction, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Petitioner's 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.
7. The Petitioner has met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

DECISION and CONDITIONS

On July 17, the Board of Appeals voted unanimously to grant the Petitioner's request for a Special Permit pursuant to Section 8.5 of the Westwood Zoning Bylaw subject to the following conditions:

1. The Project shall be constructed in conformity with the submitted plan prepared by John Carthas, 4 Rosina Way, Whitman, MA 02381, consisting of one (1) sheet, dated March 2019, and in conformity with the submitted plot plan prepared by Brendan P. Sullivan, P.L.S., Cavanaro Consulting, 987 Main Street, Norwell, MA 02061 dated February 7, 2019, consisting of one (1) sheet. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
2. The Special Permit shall incorporate the conditions requested by the Board of Health in the memorandum it submitted to the Board on July 12, 2019:
 - a. The applicant shall hire a pest control company to inspect the premises for rodents and/or wildlife and to exterminate if necessary; and,
 - b. Provide a copy of the invoice and the inspection report to the Health Department prior to demolition of said building.
 - c. Only Town licensed waste haulers shall be used.
 - d. If portable toilets are required only Town licensed providers shall be used.
 - e. Project shall conform to pre-existing plan already on file with the BOH
3. This Special Permit shall incorporate the conditions requested by the Conservation Commission in the memorandum it submitted to the Board on July 12, 2019:
 - a. The project is outside the 100 foot buffer zone so the applicant is not required to file under the Wetland Protection Act or Wetland Bylaw. 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 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.**
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 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.
7. This Special Permit shall automatically become null and void upon the expiration of ninety (90) days following such time as neither the principal dwelling nor the Accessory Apartment is occupied as the primary residence of the owner thereof for voting and tax purposes. Failure to provide recertification of owner occupancy pursuant to Section 8.6.5.4 shall be grounds for automatic expiration.

RECORD OF VOTE

On July 17, 2019, 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.