

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

PROPERTY OWNER(S): Richard & Lori Lopes

PETITIONER(S): Lori Lopes
97 Colburn Street
Westwood, MA 02090

LAND AFFECTED: 97 Colburn Street
Westwood, Massachusetts 02090
Map 21, Lot 343

2019 JUL 25
TOWN CLERK
TOWN OF WESTWOOD

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 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 Special Permits pursuant to the Westwood Zoning Bylaw Sections §4.5.3.2.2 and §4.5.3.2.3 [Special Permit Alterations of Nonconforming Structures] to construct an addition to the single family residence that vertically extends the existing nonconformity in the side setback and adds a side porch with stairs that encroaches 4 additional feet into the side setback. Property is located in the Single Residential D 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:

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- 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 Subject Property is located at 97 Colburn Street. Relief in the form of a Special Permit pursuant to Sections §4.5.3.2.2 and §4.5.3.2.3 was requested. The Board of Appeals is the Special Permit Granting Authority.
2. On July 15, 2019, the Building Commissioner provided a memorandum to the Board regarding further review of the plans. The Building Commissioner stated that despite the original determination, the proposed addition to the single family home could be constructed by right and did not require a Special Permit under §4.5.3.2.2. The Board accepted this determination.
3. The Board duly posted and opened the public hearing on July 17, 2019 at which time it received a verbal request from the Petitioners to withdraw the application for a Special Permit under §4.5.3.2.3 without prejudice.

DECISION and CONDITIONS

At a meeting of the Board of Appeals on Wednesday July 17, 2019, the Board voted to grant the Petitioners' request for Leave to Withdraw Without Prejudice relative to the Special Permit requested for 97 Colburn Street pursuant to Section §4.5.3.2.3 of the Westwood Zoning Bylaw.

RECORD OF VOTE

The following members of the Board of Appeals voted to grant the Petitioners' request for the Leave to Withdraw Without Prejudice: John Lally, Douglas Stebbins, and Michael McCusker.

The following members of the Board of Appeals voted in opposition to the Leave to Withdraw Without Prejudice: None.