

**RECEIVED**

By Town Clerk at 11:43 am, Feb 28, 2020

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

**PROPERTY OWNER(S): Nancy & Edward Jacobs**

**APPLICANT(S):** Edward Jacobs  
26 Westview Terrace  
Westwood, MA 02090

**LAND AFFECTED:** 26 Westview Terrace  
Westwood, MA 02090  
Map 21 Lot 049

**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 Thursday, February 13, 2020 at 7:00 PM in the Jaillet Training Room, Westwood Police Department, 588 High Street, Westwood, Massachusetts 02090 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 a deck in the rear and side setbacks. Property is located in the Single Residential C District.

**BOARD MEMBERS:** John Lally, Chairman  
Douglas Stebbins  
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.

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 a deck 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 6,500 sq. ft. where 40,000 are required.
3. The lot frontage of the Subject Parcel is 65' where 40' are required.
4. The current rear setback is nonconforming at 22.2' where 30' are required.
5. The proposed deck addition would further encroach into rear setback, reducing the setback to 18.2' where 30' is required.
6. The current side setback is nonconforming at 12.8' where 20' are required.
7. The proposed deck addition would further encroach into side setback, reducing the setback to 8.5' where 20' is required.
8. The current structure is positioned on a steep hill toward the front of the property. It is this topography, 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.
9. 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.
10. 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.
11. 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**

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*By Town Clerk at 11:43 am, Feb 28, 2020*

**John Lally - Chairman**

**Douglas Stebbins, Clerk**

**Michael McCusker**

2/28/2020

**Date**

**26 Westview Terrace**