

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

**PROPERTY OWNER(S): Michael Francalangia**

**PETITIONER(S):** Michael Francalangia  
21 Stearns Street  
Westwood, MA 02090

**RECEIVED**

*By Town Clerk at 8:55 am, May 11, 2020*

**LAND AFFECTED:** 21 Stearns Street  
Westwood, Massachusetts 02090  
Map 21, Lot 164

**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 15 2020 at 7:00 PM via remote participation to consider the Petitioner's request for a Variance pursuant to the Westwood Zoning Bylaw Section §4.5.3.3 [New or Expansion of Nonconformity] to construct an addition that encroaches into the side yard 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:

- 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 Subject Property is located at 21 Stearns Street. Relief in the form of a Variance pursuant to Sections §4.5.3.3 was requested. The Board of Appeals is the Variance Granting Authority.
2. The Board duly posted and opened the public hearing on April 15, 2020 at which time it received testimony and a verbal request from the Petitioner to withdraw the application for a Variance without prejudice.

### **DECISION and CONDITIONS**

At a meeting of the Board of Appeals on Wednesday April 15 2020, the Board voted to grant the Petitioner's request for Leave to Withdraw Without Prejudice relative to the Variance requested for 21 Stearns Street pursuant to Section §4.5.3.3 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.

**RECEIVED**


***By Town Clerk at 8:55 am, May 11, 2020***

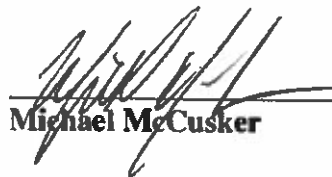
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## WESTWOOD ZONING BOARD OF APPEALS

  
\_\_\_\_\_  
John Lally - Chairman

  
\_\_\_\_\_  
Douglas Stebbins, Clerk

  
\_\_\_\_\_  
Michael McCusker

5/11/20  
\_\_\_\_\_  
Date

21 Stearns Street

