

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

PROPERTY OWNER(S): Michael & Sonja Burke

PETITIONER(S): Michael & Sonja Burke
101 Willard Circle
Westwood, MA 02090

LAND AFFECTED: 101 Willard Circle
Westwood, Massachusetts 02090
Map 24, Lot 021

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 at which time testimony was received and the hearing continued to Wednesday, May 20 2020 at 7:00 PM via remote participation. The Board convened to consider the Petitioner's request for a Special Permit pursuant to the Westwood Zoning Bylaw Section §8.5 [Accessory Apartments] to construct an accessory apartment addition to the existing single family home. The application also requested a Variance pursuant to the Westwood Zoning Bylaw Section §5.2 [Dimensional Requirements] to construct the addition in the left side setback. Property is located in the Single Residential A District.

BOARD MEMBERS: John Lally, Chairman
Douglas Stebbins, Clerk
Michael McCusker

APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW

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.

5.2 TABLE OF DIMENSIONAL REQUIREMENTS¹

DISTRICTS		DIMENSIONAL REQUIREMENTS										
	Minimum Lot Area (sq ft)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Nonwetland Area ² (sq ft)	Minimum Front Setback ³ (feet)	Minimum Side Yard Setback ⁴ (feet)	Minimum Rear Yard Setback ⁴ (feet)	Maximum Building Coverage (%)	Maximum Impervious Surface (%)			
5.2.1	SRA	12,000	90	12,000	25	15 ⁵	30 ⁶	25	50			
5.2.2	SRB ¹³	20,000	90	15,000	25	15 ⁵	30 ⁶	25	50			
5.2.3	SRC ¹³	40,000	125	30,000	40	20 ⁷	30 ⁸	25	50			
5.2.4	SRD	15,000	90	12,000	25	15 ⁵	30 ⁶	25	50			
5.2.5	SRE ¹³	80,000	175	60,000	40	20 ⁷	30 ⁸	25	50			
5.2.6	GR	12,000	90	12,000	25	15 ⁵	30 ⁶	25	50			
5.2.7	SR	80,000	175	60,000	40	20 ⁷	30 ⁸	25	50			
5.2.8	LBA	4,000	40	4,000	10	15 ⁹	15	25	80			
5.2.9	LBB	4,000	40	4,000	0	15 ⁹	15	25	80			
5.2.10	HB	10,000	100	10,000	50	15	15	50	80			
5.2.11	I	40,000	200	12,000	50	15 ¹⁰	15 ¹¹	50	80			
5.2.12	IO	40,000	200	12,000	50	15 ¹⁰	15 ¹¹	50	80			
5.2.13	ARO	80,000	175	60,000	50	30 ¹²	30	30	50			

5.3 NOTES FOR TABLE OF DIMENSIONAL REQUIREMENTS

- 1 Shall not apply to sewage pumping stations operated by the Town.
- 2 The term "Nonwetland Area" shall mean land other than the fresh water wetland as that term is defined in M.G.L. Chapter 131, Section 40. The Minimum Nonwetland Area shall be measured in contiguous square feet. The Minimum Nonwetland Area requirement of 12,000 square feet in all Residential Districts shall apply to all lots created prior to the date of adoption of this provision. M.G.L. Chapter 40A, Section 6 may also limit the requirements for certain other lots.
- 3 The minimum front setback distance shall be measured from the nearest street line; provided, however, that where the street has a right-of-way width of less than forty (40) feet, the setback distance shall be measured from a line on the lot twenty (20) feet from and parallel to the center line of said street.
- 4 The minimum side yard and rear yard setbacks shall be the minimum horizontal distance from the lot line to the nearest point of a building or structure.
- 5 Except that a portion of any building or structure not exceeding fifteen (15) feet in height shall be set back a minimum of ten (10) feet from the side lines of its lot, and a detached accessory building or structure having a height of less than fifteen (15) feet and a front setback of at least seventy-five (75) feet shall be set back a minimum of three (3) feet from the side lines of its lot.
- 6 Except that a detached accessory building or structure having a height of less than fifteen (15) feet shall be set back a minimum of three (3) feet from the rear line of its lot.
- 7 Except that a portion of any building or structure not exceeding fifteen (15) feet in height shall be set back a minimum of fifteen (15) feet from the side lines of its lot, and a detached accessory building or structure having a height of less than fifteen (15) feet and a front setback of at least one hundred (100) feet shall be set back a minimum of six (6) feet from the side lines of its lot.
- 8 Except that a detached accessory building or structure having a height of less than fifteen (15) feet shall be set back a minimum of six (6) feet from the rear line of its lot.
- 9 Unless the wall facing a side lot line is either a party wall or, if adjoining another lot in the same district, a wall with its outer face coincident with such line. The space between buildings or structures, if any, shall not be reduced to less than fifteen (15) feet.
- 10 Except that if the side yard abuts a railroad right-of-way, there shall be no minimum side yard setback.
- 11 Except that if the rear yard abuts a railroad right-of-way, there shall be no minimum rear yard setback.
- 12 Each side yard setback shall be increased by one (1) foot for each foot that the height of the building exceeds fifteen (15) feet; provided always that the side yards shall total not less than forty (40) percent of the lot width.
- 13 See Section 8.3 OPEN SPACE RESIDENTIAL DEVELOPMENT for density and dimensional requirements for OSRD.

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 8.5.5.4 shall be grounds for automatic expiration.

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 101 Willard Circle. Relief in the form of a Special Permit pursuant to Section §8.5 was requested. The Board of Appeals is the Special Permit Granting Authority. Relief in the form of a Variance pursuant to Section §5.2 was also requested. The Board is the Variance Granting Authority.
2. The lot area of the Subject Property is 13,600 SF where 12,000 SF is required in the SRA (Single Residence A) 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 Section 8.5 of the Westwood Zoning Bylaw.
8. The current left side setback is conforming at 15.3' where 10' are required for a structure no more than 15' in height.
9. The proposed addition would create a new nonconformity into the left side setback, reducing the setback to 8' where 10' are required.
10. The proposed encroachment into the side setback is composed of a covered landing, does not exceed 4' and the Board finds the covered landing to be de minimis in nature as a decorative feature that improves the aesthetic quality of the structure.
11. The Petitioner has met all the requirements for a Special Permit pursuant to Section 4.5.3.2.3.
12. The parcel contains substantial wetland and flood plain areas in the rear of the lot. It is this topography, unique to the Applicant's property, which is causing a literal enforcement of the Bylaw to create a hardship for the Applicant, especially in consideration of the few alternate options available to the Applicant due to the limited size of the lot and its buildable area.

13. 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.
14. 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.
15. The Applicant has met the requirements for a Variance 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 and Variance pursuant to Section 8.5 and 5.2, respectively, of the Westwood Zoning Bylaw subject to the following conditions:

1. The Project shall be constructed in conformity with the submitted plot plan and design plans prepared by David Sharff Architect, P.C, 16 Pound Street, Medfield, MA 02052, consisting of three (3) sheets, dated May 19, 2020. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.
7. 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 in favor of the Petitioners' request for a Special Permit and Variance: John Lally, Douglas Stebbins, and Michael McCusker.

The following members of the Board of Appeals voted in opposition to the Petitioners' request for a Special Permit and Variance: None.



RECEIVED
By Town Clerk at 12:56 pm, May 29, 2020

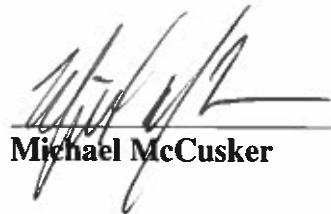
WESTWOOD ZONING BOARD OF APPEALS



John Lally -Chairman



Douglas Stebbins, Clerk



Michael McCusker

5/20/2020
Date

101 Willard Circle