

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

PROPERTY OWNER(S): William Lestan

PETITIONER(S): William Lestan
38 Alder Road
Westwood, MA 02090

LAND AFFECTED: 38 Alder Road
Westwood, Massachusetts 02090
Map 35, Lot 053

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 Variance pursuant to the Westwood Zoning Bylaw Section §5.2.3 [Dimensional Requirements] for retroactive approval of a series of retaining walls and fences that exceed 7' in height within the front and side yard setbacks. Property is located in the Single Residential C District.

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

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

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	90	12,000	25	15 ⁵	30 ⁶	25	50		
5.2.2 SRB ¹³	20,000	90	90	15,000	25	15 ⁵	30 ⁶	25	50		
5.2.3 SRC ¹³	40,000	125	125	30,000	40	20 ⁷	30 ⁸	25	50		
5.2.4 SRD	15,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50		
5.2.5 SRE ¹³	80,000	175	175	60,000	40	20 ⁷	30 ⁸	25	50		
5.2.6 GR	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50		
5.2.7 SR	80,000	175	175	60,000	40	20 ⁷	30 ⁸	25	50		
5.2.8 LBA	4,000	40	40	4,000	10	15 ⁹	15	25	80		
5.2.9 LBB	4,000	40	40	4,000	0	15 ⁹	15	25	80		
5.2.10 HB	10,000	100	100	10,000	50	15	15	50	80		
5.2.11 I	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80		
5.2.12 IO	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80		
5.2.13 ARO	80,000	175	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.

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 38 Alder Road. Retroactive relief in the form of a Variance pursuant to Section §5.2.3 was requested. The Board of Appeals is the Variance Granting Authority.
2. Two retaining walls and a fence within close proximity to one another were installed on the Subject Property.
3. The total combined height of the structure exceeds 8' where 7' is the maximum allowed by Bylaw §6.3.10.
4. The structure encroaches into the front yard setback, with 23' provided where 40' is required.
5. The structure encroaches into the right side yard setback, with 3.6' provided where 15' is required. In those areas measuring 100' from the front lot line, 6' is required.
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 the requested relief may not 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.
7. The Board finds that literal enforcement of the provisions of the Bylaw would not involve substantial hardship to the Petitioner, 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.
8. The Petitioner has not met the requirements for a Variance pursuant to the Westwood Zoning Bylaw.

DECISION and CONDITIONS

At a meeting of the Board of Appeals on Wednesday May 20 2020, the Board voted to deny the Petitioner's request for a Variance pursuant to Section 5.2.3 of the Westwood Zoning Bylaw.

RECORD OF VOTE

The following members of the Board of Appeals voted in opposition to the Petitioner's request for a Variance: Michael McCusker.

The following members of the Board of Appeals voted in favor of the Petitioner's request for a Variance: John Lally and Douglas Stebbins.



RECEIVED
By Town Clerk at 12:58 pm, May 29, 2020

WESTWOOD ZONING BOARD OF APPEALS



John Lally - Chairman



Douglas Stebbins, Clerk



Michael McCusker

5/20/2020
Date

38 Alder Road