

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

PROPERTY OWNER(S): Jennifer and Keith Flanders

PETITIONER(S): Keith Flanders
866 Gay Street
Westwood, MA 02090

LAND AFFECTED: 866 Gay Street
Westwood, Massachusetts 02090
Map 16, Lot 017

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, September 16 2020 at 7:00 PM via remote to consider the Petitioner's request for a Variance pursuant to the Westwood Zoning Bylaw Sections §8.5.6.5 [Design Requirements] to construct an exterior staircase to serve as egress for an accessory apartment located above a detached garage. Property is in the Single Residential E (SRE) District.

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

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

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 866 Gay Street. Relief in the form of a Variance pursuant to Section §8.5.6.5 was requested. The Board of Appeals is the Variance Granting Authority.
2. A special permit for the accessory apartment was granted on October 21, 2018 subject to the Petitioner's successful satisfaction of a condition requiring a plan for adequate ingress/egress to the proposed unit be provided to the Building Commissioner.
3. The proposed accessory apartment has only one interior staircase providing access to the unit, not two, and does not satisfy the Bylaw's requirement for adequate and direct ingress and egress.
4. The Petitioner has proposed to construct an exterior staircase to access the accessory apartment. The bylaw requires stairways to upper stories to be enclosed within exterior walls of the building.
5. 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.
6. 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.
7. 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 September 16 2020, the Board voted to deny the Petitioner's request for a Variance pursuant to Section 8.5.6.5 of the Westwood Zoning Bylaw.

RECORD OF VOTE

The following members of the Board of Appeals voted to deny the Petitioners' request for a Variance: John Lally, Douglas Stebbins, and Michael McCusker.

The following members of the Board of Appeals voted in favor of the Petitioners' request for a Variance: None.



WESTWOOD ZONING BOARD OF APPEALS

John Lally - Chairman

Douglas Stebbins

Michael McCusker

9/29/2020

Date

866 Gay Street