

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

PROPERTY OWNER(S): David Staaf & Lisa Krock Staaf

PETITIONER(S): Peter Zahka, Esq.
12 School Street
Dedham, MA 02026

David & Lisa Staaf
438 Pond Street
Westwood, MA 02090

LAND AFFECTED: 438 Pond Street
Westwood, Massachusetts 02090
Map 28, Lot 247

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, February 24, 2021 at 7:00 PM via remote participation to consider the Petitioner's Appeal pursuant to Westwood Zoning Bylaw Section 10.1.7 [Appeals]. The Petitioner has filed the Appeal relative to a decision of the Building Commissioner established in a letter dated October 28, 2020 defining the property's legal frontage as located on Reservoir Road. Property located within the Single Residence C District (SRC).

BOARD MEMBERS: John Lally, Chair
Douglas Stebbins
David Belcher

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

10.1.7 Appeals.

10.1.7.1 Appeals to the Board of Appeals may be taken by a person aggrieved by reason of their inability to obtain a permit or enforcement action under this Zoning Bylaw, or may be taken by an officer or board of the Town or other person aggrieved by an order or decision of any administrative official under this Bylaw. The Petitioner shall file such appeal with the Town Clerk within thirty (30) days after the refusal of a permit or the issuance of the order of decision. The Petitioner shall forthwith transmit a Page 10-3 Westwood Zoning Bylaw ω Revised through May 2, 2016 copy thereof, with the date of filing certified by the Town Clerk, with the Board of Appeals and the officer or board whose order or decision is being appealed. The Board of Appeals shall hold a public hearing within sixty five (65) days of the receipt of the petition and shall render a decision within one hundred (100) days from the date of filing. Failure by the Board of Appeals to take final action upon a

petition within the one hundred (100)-day period shall be deemed to be a grant of the appeal.

10.1.7.2 A person aggrieved by a decision of the Board of Appeals or the Special Permit Granting Authority or by the failure of the Board of Appeals to take final action concerning any appeals, application or petition within the required time or by the failure of a Special Permit Granting Authority to take final action concerning an application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to a court of competent jurisdiction within twenty (20) days after the decision has been filed with the Town Clerk. Notice of such action with a copy of the complaint shall be filed with the Town Clerk within said twenty (20) days.

10.1.8 Repetitive Appeal, Application or Petition. No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or Planning Board shall be favorably and finally acted upon within two (2) years after the date of such unfavorable action unless the Board which acted upon the appeal, application or petition, by a unanimous vote if the Board of Appeals or all but one of the members if the Planning Board, finds specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in its records. All but one of the members of the Planning Board must also consent to a repetitive appeal, application or petition initially acted upon by the Board of Appeals and submitted for reconsideration within two (2) years after the date of unfavorable action after notice is given to parties in interest of the time and place of the proceedings to consider consent.

2.0 Definitions

In this Bylaw, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the Bylaw. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building", "structure", "lot" or "parcel" shall be construed as being followed by the words "or any portion thereof". The word "person" includes a firm, association, organization, partnership, company or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this Bylaw.

Lot, Corner A lot on a corner fronting on two (2) intersecting streets. In the case of a corner lot, one lot line shall be designated as the front lot line by the Building Commissioner, following a review of relevant criteria including street address and orientation of existing structures, and the opposite lot line shall be designated a rear lot line, for setback and yard requirements.

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. Peter Zahka, Esq., whose address is 12 School Street, Dedham, MA 02026 and David Staaf and Lisa Krauk Staaf of 438 Pond Street, Westwood, MA 02090 are the Appellants for an administrative appeal for certain land situated at 438 Pond Street, Westwood, MA 02090.
2. Subject property is situated in the Single Residence E district.
3. Subject property is located on a corner lot, bounded by Pond Street to the north and Reservoir Road to the west.
4. The Petitioner has filed an appeal relative to a decision of the Building Commissioner to determine the legal frontage of the property to be on Reservoir Road. The Zoning Board of Appeals has the authority to hear administrative appeals.
5. The existing single family residence located at 438 Pond Street is oriented towards Pond Street. It is nonconforming in the front and rear yard setbacks, with 29.1' and 12.2' provided where 40' and 30' are required, respectively.
6. The lot is nonconforming on area, with 15,355 SF provided where 40,000 SF are required.
7. The Petitioner has proposed to demolish the existing structure and replace with a new single family residence. The building permit application for the new construction triggered a review of the legal frontage for the corner lot.
8. The Building Commissioner concluded that the legal frontage for the subject property is on Reservoir Road because the length of the property along Reservoir Road (153.2') would more closely meet the requirements of the Zoning Bylaw (125') than that of the length of the property along Pond Street (93.9').
9. The Board finds that the front lot line for this parcel should follow Pond Street due to the orientation of the existing structure toward Pond Street, the history of dimensional requirements and probable intention of the lot configuration at the time of construction, and maintenance of a street address at 438 Pond Street.

DECISION

The Board of Appeals voted unanimously to grant the Petitioner's request to overturn the decision of the Building Commissioner.

RECORD OF VOTE

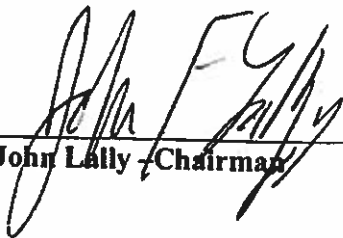
The following members of the Board of Appeals voted to overturn the decision of the Building Commissioner to determine legal frontage for 438 Pond Street: John Lally, Douglas Stebbins and David Belcher.

The following members of the Board of Appeals voted to uphold the Building Commissioner's decision: None.




RECEIVED
By Town Clerk at 9:57 am, Mar 19, 2021

WESTWOOD ZONING BOARD OF APPEALS



John Lally - Chairman



Douglas Stebbins, Clerk

3/15/21
Date

438 Pond Street



RECEIVED
By Town Clerk at 9:57 am, Mar 19, 2021

WESTWOOD ZONING BOARD OF APPEALS

David Belcher

3/15/21
Date

438 Pond Street