

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

**PROPERTY OWNER(S): Brian & Shannon Hardiman**

**PETITIONER(S):** Brian Hardiman  
40 Westdale Road  
Westwood, MA 02090

**LAND AFFECTED:** 40 Westdale Road  
Westwood, Massachusetts 02090  
Map 17, Lot 125

**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 P.M. via remote participation to consider the Petitioner's request for variances and a special permit pursuant to the Westwood Zoning Bylaw Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity], §8.5.6.5 [Design Requirements; Stairways], §4.3.3.12 and §8.5 [Accessory Apartments]. The application proposes to construct an addition to the existing single family home that includes an accessory apartment. The addition as proposed would create a new nonconformity in the front setback and include an exterior staircase that is not enclosed, requiring variances. The addition would also include an accessory apartment, requiring a special permit. The property is located in the SRA (Single Residence A) zoning district.

**BOARD MEMBERS:** John Lally, Chairman  
Douglas Stebbins, Clerk  
David Belcher

**APPLICABLE SECTIONS 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 40 Westdale Road. 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. The Petitioner also initially requested Variances under Section §4.5.3.3 and §8.5.6.5. The Board of Appeals is the Variance Granting Authority.
2. The lot area of the Subject Property is 69,871 SF where 12,000 SF is required in the SRA (Single Residence A) zoning district.
3. The lot frontage of the Subject Property is 179' where 90' are required.
4. Revised plans were submitted by the Petitioner on February 20, 2021 that were subsequently reviewed by the Building Commissioner and determined by both the Board and Building Commissioner not to require a Variance under 4.5.3.3 or 8.5.6.5.
5. The proposed addition would be conforming to all setback requirements defined in the dimensional requirements of the Bylaw.
6. The proposed accessory apartment is in compliance with the minimum and maximum square footage requirements established in Section 8.5.
7. 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.
8. 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.
9. The Petitioner has met all the requirements for a Special Permit pursuant to Section 8.5 of the Westwood Zoning Bylaw.

## **DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioner's request for a Special Permit pursuant to Section 8.5 of the Westwood Zoning Bylaw subject to the following conditions:

1. The Project shall be constructed in conformity with the submitted plot plan consisting of one (1) page, prepared by CCR Associates, 40 Mears Ave, Quincy MA 02169, stamped by Patrick Roseingrave and dated February 22, 2021 and design plans prepared by IS Hernandez Services Inc, 111 Baker Street, West Roxbury, MA consisting of two (2) sheets labeled A-1 and A-2 only, dated July 15, 2020 and

revised through February 19, 2021. 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.

### **RECORD OF VOTE**

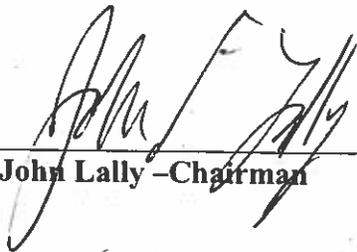
The following members of the Board of Appeals voted in favor of the Petitioners' request for a Special Permit: John Lally, Douglas Stebbins, and David Belcher.

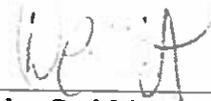
The following members of the Board of Appeals voted in opposition to the Petitioners' request for a Special Permit: None.



Received 3/19/2021 @ 10:09AM  
Westwood Town Clerk

**WESTWOOD ZONING BOARD OF APPEALS**

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

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

3/15/21  
Date

40 Westdale Road



Received 3/19/2021 @ 10:09AM  
Westwood Town Clerk

**WESTWOOD ZONING BOARD OF APPEALS**

**David Belcher**

3/15/21

**Date**

**40 Westdale Road**