

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

**PROPERTY OWNER(S):** Brian and Jessica Clinton

**PETITIONER(S):** Donald L Grose on behalf of Property Owners  
Brian & Jessica Clinton  
44 Baker Street  
Westwood, MA 02090

**LAND AFFECTED:** 44 Baker Street  
Map 21, Lot 227

**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 22, 2021 at 7:00 P.M. via remote participation to consider the Petitioner’s request for a Variance pursuant to Westwood Zoning Bylaw Section §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and Section §10.4 [Variances]. Said hearing was continued to Wednesday, October 20, 2021 at 7:00 P.M. via remote participation to allow for the board’s consideration of revised plans that might be considered under alternate forms of relief, including consideration of a Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.3.2.3 [Special Permit Alterations of Nonconforming Structures – Overhang, Porch or Portico]. The application proposes to construct a porch that encroaches into the front yard setback. The property is located in the Single Residential D (SRD) zoning district.

**BOARD MEMBERS:** John Lally, Chairman  
Michael McCusker  
Linda Walsh

**APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW**

**4.5 NONCONFORMING USES AND STRUCTURES**

4.5.1 **Applicability.** Nonconforming uses and structures, as defined in Section 2.0 of this Bylaw, may continue. Any alteration of a nonconforming use, or any alteration of a nonconforming structure, shall require authorization in accordance with this section. An alteration of a structure is a modification, structural change, extension, or reconstruction of the structure.

4.5.2 **Nonconforming Uses.**

4.5.2.1 **Permitted Alterations of Nonconforming Uses.** A structure that conforms dimensionally to current zoning regulations while its use no longer conforms can be altered without needing a special permit if the Building Commissioner determines that the proposed alteration falls under any of the following circumstances:

4.5.2.1.1 There is no extension or expansion of the exterior of the structure.

4.5.2.1.2 There is no interior expansion that would intensify the use.

4.5.2.1.3 The alteration is made for the purposes of conforming to the building code for health and safety purposes.

4.5.2.2 **Special Permit Required for Alteration to Nonconforming Use.** The Board of Appeals may grant a special permit to modify, alter or extend a nonconforming use in accordance with this Section only if it determines that such modification, alteration or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and the town. To be considered insubstantial, the Board must find that the proposed use reflects the nature and purpose of the prior use, there is no difference in the quality, character or degree of the proposed use and the proposed use is not different in its effect on the neighborhood.

4.5.3 **Nonconforming Structures.**

4.5.3.1 **Permitted Alterations of Nonconforming Single and Two-Family Residential Structures.** Nonconforming single and two-family residential structures may be altered upon a determination by the Building Commissioner that such proposed alteration does not increase the nonconforming nature of said structure. The following circumstances shall be deemed not to increase the nonconforming nature of said structure and may be permitted as of right:

4.5.3.1.1 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot area, where the alteration will still comply with all of such current requirements.

4.5.3.1.2 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot frontage, where the alteration will still comply with all such current requirements.

4.5.3.1.3 Alteration to a structure which violates one (1) or more required setbacks, where the alteration will now comply with all current setback, yard, building coverage and building height requirements

regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.1.4 Alteration to a side or face of a structure which violates a required setback, where the alteration will not increase the setback violation, and will comply with building height restrictions, regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.1.5 Alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions of Section 5.0 of this bylaw shall not be exceeded.

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 does not meet the requirements of Section 4.5.3.1 nor of Section 4.5.3.2, and that the nonconforming nature of a structure would be increased by the proposed extension, alteration or change, a variance from Board of Appeals shall be required to allow such extension, alteration or change. In addition, no nonconforming structure 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.

**4.5.3.4 Special Provisions for Reconstruction of Single and Two-Family Structures after Catastrophe or Voluntary Demolition.** Any single and two-family nonconforming structure may be reconstructed after a catastrophe or voluntary demolition only in accordance with the following provisions:

4.5.3.4.1 Reconstruction of said premises shall commence within one (1) year after such voluntary demolition, or within two (2) years after such catastrophe, which time period may be extended by the Building Commissioner for good cause.

4.5.3.4.2 The building as reconstructed:

4.5.3.4.2.1 Shall be located on the same footprint as the original structure, and shall only be as great in volume or area as the original nonconforming structure; or

4.5.3.4.2.2 Shall comply with all current setback, yard and building coverage requirements, and shall have 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 lot frontage requirements.

4.5.3.4.3 In the event that the proposed reconstruction does not meet the provisions of Section 4.5.3.4.2, a special permit pursuant to Section 4.5.3.2 or a variance pursuant Section 4.5.3.3, as applicable, shall be required from the Board of Appeals for such reconstruction.

**4.5.4 Abandonment or Non-use.** A nonconforming use or nonconforming structure which has been abandoned, or not used for a period of two (2) years, shall lose its protected status and be subject to all of the provisions of this Bylaw.

**4.5.5 Reversion to Nonconformity.** No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

### 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 44 Baker Street within the Single Residential D (SRD) zoning district. The property is nonconforming in lot area, with 12,500 SF provided where 15,000 SF is required. The structure is non-conforming in relation to the front setback requirement, with 24.4' provided where 25' is required.
2. The Petitioner proposes to construct a covered porch that encroaches into the front setback 6' feet further than the existing nonconforming structure, with a landing and stairs that exceed the size requirements of Building Code section r311.3, leaving a setback of 12.5' provided where 25' is required. Such encroachment would require relief in the form of a Variance pursuant to Sections §4.5.3.3 and §10.4. In addition, the project, as originally designed, would create a new nonconformity by exceeding the maximum building coverage area, with building area coverage of 27.1% where a maximum of 25% is permitted pursuant to Section §5.2.4. This new nonconformance would require relief in the form of an additional Variance pursuant to Section §10.4. The Board of Appeals is the Variance Granting Authority.
3. The Petitioner states that the covered porch is necessary for handicapped accessibility. The Building Commissioner noted that the proposed porch does not include a ramp and is not handicapped accessible.
4. The Petitioner does not conclusively demonstrate that 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 in which the Subject Property is located a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.
5. 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.
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 Petitioner has not met the requirements for the requested Variances pursuant to the Westwood Zoning Bylaw.
8. In the alternative, the Petitioner proposes to construct a covered porch that encroaches into the front setback 4' feet further than the existing nonconforming structure, with a landing compliant with the size requirements of Building Code section r311.3, leaving a setback of 20.4' provided where 25' is required. The redesigned plans comply with the 25% maximum building coverage area requirement of Section §5.2.4. Such lesser encroachment would require relief in the form of a special permit pursuant to Section 4.5.3.2.3. The Board of Appeals is the Special Permit Granting Authority. No other zoning relief is required.
9. Any adverse effects of the Petitioners' proposed construction, as revised, 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.
10. The Petitioners' proposal, as revised, 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 because of traffic congestion, or other reason, and any adverse effects of the proposed use do not outweigh its beneficial aspects, all in view of the particular characteristics of the site and of the proposal in relation to that site.
11. The Petitioners have met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

**DECISION and CONDITIONS**

The Board of Appeals voted unanimously to deny the Petitioner's original request for Variances pursuant to Sections §4.5.3.3 and §10.4 and to grant the Petitioner's revised request for a Special Permit pursuant to Section §4.5.3.2.3 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted site plan titled, "Certified Plot Plan Located at 44 Baker Street, Assessors Parcel #021-0227, Westwood, MA, Norfolk County", prepared by Christopher C. Charlton, PLS of Continental Land Survey LLC, 105 Beaver Street Franklin, MA, dated October 12, 2021, and with design plans titled, "Accessible Porch and Entry, Clinton Residence, 44 Baker Street, Westwood, MA", prepared by D. L. Grose & Associates, 267 Singletary Lane, Framingham, MA, dated October 12, 2021, consisting of three (3) sheets, including A, 4 and 5.
2. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.

**RECEIVED**

*By Town Clerk at 3:02 pm, Nov 17, 2021*

3. 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.
4. **The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and any construction performed under the permit may be ordered to be undone.**
5. 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 Petitioner 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.

#### **RECORD OF VOTE**

The following members of the Board of Appeals voted to deny the requested Variances and grant the requested Special Permit for the above mentioned project, as revised: John Lally, Michael McCusker, and Linda Walsh.

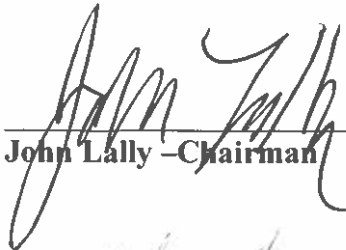
The following members of the Board of Appeals voted in opposition to the motion to deny the requested Variances and grant the Special Permit for the above mentioned project, as revised: None.



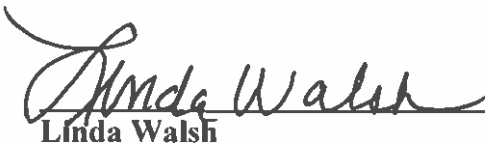
**RECEIVED**

By Town Clerk at 3:03 pm, Nov 17, 2021

**WESTWOOD ZONING BOARD OF APPEALS**

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

  
\_\_\_\_\_  
Michael McCusker

  
\_\_\_\_\_  
Linda Walsh

11/17/2021  
Date

44 Baker Street