

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

PROPERTY OWNER(S): Bob Van Leeuwen and Maithili Rege

PETITIONER(S): Kevin Cloutier on behalf of Bob Van Leeuwen and Maithili Rege
19 Pear Tree Drive
Westwood, Massachusetts 02090

LAND AFFECTED: 19 Pear Tree Drive
Map 32, Lot 149

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, January 19, 2022, at 7:00 PM via remote participation to consider the Petitioners' request for a Special Permit pursuant to the Westwood Zoning Bylaw Sections §4.3.3.12 [Accessory Uses - Accessory Apartments] and §8.5 [Accessory Apartments], as well as the Petitioners' request for a Variance from Section §8.5.6.3 [Design Requirements], pursuant to Section §10.4 [Variances], to allow for an Accessory Apartment that exceeds the maximum size requirements. The Petitioners propose to legalize an unauthorized apartment within an existing single-family residential structure, in response to a Notice of Violation issued on December 9, 2019. The unauthorized apartment is approximately 1,668 square feet in area, while the maximum size permitted under Section §8.5.6.3 is 900 square feet. The unauthorized apartment constitutes 34% of the overall floor area of the residential structure, where a maximum of 33% is allowed under Section §8.5.6.3. The property is located in the Single Residential C (SRC) zoning district.

BOARD MEMBERS: John Lally
Michael McCusker
Danielle Button

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAWS

ACCESSORY USE	DISTRICTS												
	SRA	SRB	SRC	SRD	SRE	GR	SR	LBA	LBB	HB	I	IO	ARO
4.3.3 ACCESSORY USES IN RESIDENTIAL DISTRICTS, CONTINUED													
4.3.3.12 Accessory apartment consisting of a second dwelling unit located within a detached one-family dwelling or a building accessory thereto, subject to the	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N

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 principal 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.

10.4 VARIANCES

- 10.4.1 **Permit Granting Authority.** Variances from the specific requirements of this Bylaw may be authorized by the Board of Appeals, except that variances authorizing a use not otherwise permitted in a particular zoning district shall not be granted.
- 10.4.2 **Application.** A petition for a variance shall be filed with the Town Clerk, who shall forthwith transmit it to the Board of Appeals. The Board of Appeals shall hold a public hearing within sixty-five (65) days of the receipt of the petition from the Town Clerk 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 within the one hundred (100)-day period shall be deemed to be a grant of the variance.
- 10.4.3 **Findings.** Before granting a variance from the requirements of this Bylaw, the Board of Appeals must specifically find 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 it 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.
- 10.4.4 **Procedures.** An application for a variance shall be filed in accordance with the rules and regulations of the Board of Appeals.
- 10.4.5 **Conditions.** Variances may be granted with such reasonable conditions, safeguards or limitations on time or use, including performance guarantees, as the Board of Appeals may deem necessary to serve the purposes of this Bylaw.
- 10.4.6 **Plans.** An Applicant for a variance shall submit a plan in substantial conformance with the requirements of the Board of Appeals.
- 10.4.7 **Regulations.** The Board of Appeals may adopt rules and regulations for the administration of this Section.
- 10.4.8 **Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for applications for variances.
- 10.4.9 **Lapse.** Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse. The Board of Appeals, in its discretion and upon the written application of the Applicant, may extend the time for exercise of the variance for a period not to exceed six (6) months provided that the application for such extension is filed with the Board of Appeals prior to the expiration of the one (1) year period. If the request for an extension is not granted, the variance may be reestablished only after notice and new hearing pursuant to M.G.L. Chapter 40A, Section 10.

FINDINGS

In consideration of all 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 19 Pear Tree Drive within the Single Residence C (SRC) Zoning District.

2. The Petitioners propose to legalize an unauthorized apartment within an existing single-family residential structure, in response to a Notice of Violation issued on December 9, 2019. The unauthorized apartment is approximately 1,668 square feet in area, while the maximum size permitted under Section §8.5.6.3 is 900 square feet. The unauthorized apartment constitutes 34% of the overall floor area of the residential structure, where a maximum of 33% is allowed under Section §8.5.6.3.
3. Relief is requested in the form of a Special Permit pursuant to the Westwood Zoning Bylaw Sections §4.3.3.12 [Accessory Uses - Accessory Apartments] and §8.5 [Accessory Apartments], as well as in the form of a Variance from Section §8.5.6.3 [Design Requirements], pursuant to Section §10.4 [Variances], to allow for an Accessory Apartment that exceeds the maximum size requirements. The Board of Appeals is the Special Permit and Variance Granting Authority.
4. 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.
5. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioners' requested relief, and having particular expertise in said local conditions, has found that the Petitioners have not demonstrated 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 it is located, that might justify the Board's deviation from literal enforcement of the provisions of this Bylaw. As such, relief may not be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.
6. Absent the grant of a Variance from Section §8.5.6.3, pursuant to Section §10.4, the Board finds that it is unable to grant a Special Permit pursuant to Sections §4.3.3.12 and §8.5 without a reduction in size of the proposed Accessory Apartment to meet the requirements of §8.5.6.3. The Petitioners are unwilling to revise their plans to reduce the size of the proposed Accessory Apartment to comply with the requirements of Section §8.5.6.3

DECISION and CONDITIONS

On January 19, 2022, the Board of Appeals voted unanimously to deny the Petitioners' request for a Variance from the Westwood Zoning Bylaw Section §8.5.6.3, pursuant to Section §10.4, and for a Special Permit pursuant to the Westwood Zoning Bylaw Sections §4.3.3. and §8.5.

RECORD OF VOTE

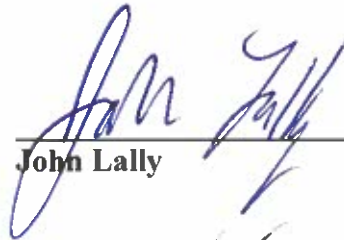
The following members of the Board of Appeals voted to deny the Variance and Special Permit for the above-mentioned project: John Lally, Michael McCusker, and Danielle Button.

The following members of the Board of Appeals voted in opposition to denial of the Variance and Special Permit: None.

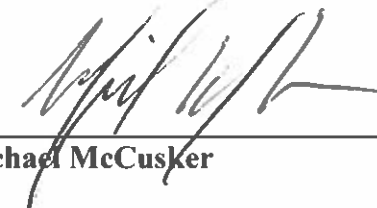


Received February 8, 2022 @3:58PM
Westwood Town Clerk

WESTWOOD ZONING BOARD OF APPEALS



John Lally



Michael McCusker



Danielle Button

2/8/22
Date

19 Pear Tree Drive