

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

PROPERTY OWNERS(S): Matthew Scafidi

PETITIONER(S): Matthew Scafidi
21 Edgewood Road
Westwood, MA 02090

LAND AFFECTED: 21 Edgewood Road
Map 35, Lot 157

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 Petitioner's request for a Variance pursuant to Westwood Zoning Bylaw Sections §5.2.3 [Dimensional Requirements for Single Residence C (SRC) District] and §10.4 [Variances]. The Petitioner proposes the construction of a portico that would extend 5.7' further into the nonconforming front setback than the existing structure, reducing that setback to 19.8' where a minimum of 40' is required and 25.3' exists. The property is located in the Single Residential C (SRC) zoning district. The public hearing was continued to Wednesday, February 16, 2022, at 7:00 PM via remote participation to allow for further consideration of a potential request for a Special Permit to allow a 4' deep portico pursuant to §4.5.3.2.3 [Construction of an overhang, porch, or portico].

BOARD MEMBERS: John Lally
Michael McCusker
Linda Walsh

APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW

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 increases the nonconformity or results in a new nonconformity and does not meet the requirements of Section 4.5.3.1 nor of Section 4.5.3.2, a variance is required in accordance with Section 10.4 of this bylaw. If the nonconforming nature of a structure would be increased by the proposed alteration, a variance from Board of Appeals shall be required to allow such alteration. In addition, no nonconforming structure, commercial or residential, 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.

5.2 TABLE OF DIMENSIONAL REQUIREMENTS¹

DISTRICTS		DIMENSIONAL REQUIREMENTS								
		Minimum Lot Area (sq ft)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Nonwetland Area ² (sq ft)	Minimum Front Setback ³ (feet)	Minimum Side Yard Setback ⁴ (feet)	Minimum Rear Yard Setback ⁴ (feet)	Maximum Building Coverage (%)	Maximum Impervious Surface (%)
5.2.1	SRA	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.2	SRB ¹³	20,000	90	90	15,000	25	15 ⁵	30 ⁶	25	50
5.2.3	SRC ¹³	40,000	125	125	30,000	40	20 ⁷	30 ⁶	25	50
5.2.4	SRD	15,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.5	SRE ¹³	80,000	175	175	60,000	40	20 ⁷	30 ⁶	25	50
5.2.6	GR	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.7	SR	80,000	175	175	60,000	40	20 ⁷	30 ⁶	25	50
5.2.8	LBA	4,000	40	40	4,000	10	15 ⁹	15	25	80
5.2.9	LBB	4,000	40	40	4,000	0	15 ⁹	15	25	80
5.2.10	HB	10,000	100	100	10,000	50	15	15	50	80
5.2.11	I	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80
5.2.12	IO	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80
5.2.13	ARO	80,000	175	175	60,000	50	30 ¹²	30	30	50

5.3 NOTES FOR TABLE OF DIMENSIONAL REQUIREMENTS

- 1 Shall not apply to sewage pumping stations operated by the Town.
- 2 The term "Nonwetland Area" shall mean land other than the fresh water wetland as that term is defined in M.G.L. Chapter 131, Section 40. The Minimum Nonwetland Area shall be measured in contiguous square feet. The Minimum Nonwetland Area requirement of 12,000 square feet in all Residential Districts shall apply to all lots created prior to the date of adoption of this provision. M.G.L. Chapter 40A, Section 6 may also limit the requirements for certain other lots.

- 3 The minimum front setback distance shall be measured from the nearest street line; provided, however, that where the street has a right-of-way width of less than forty (40) feet, the setback distance shall be measured from a line on the lot twenty (20) feet from and parallel to the center line of said street.
- 4 The minimum side yard and rear yard setbacks shall be the minimum horizontal distance from the lot line to the nearest point of a building or structure.
- 5 Except that a portion of any building or structure not exceeding fifteen (15) feet in height shall be set back a minimum of ten (10) feet from the side lines of its lot, and a detached accessory building or structure having a height of less than fifteen (15) feet and a front setback of at least seventy-five (75) feet shall be set back a minimum of three (3) feet from the side lines of its lot.
- 6 Except that a detached accessory building or structure having a height of less than fifteen (15) feet shall be set back a minimum of three (3) feet from the rear line of its lot.
- 7 Except that a portion of any building or structure not exceeding fifteen (15) feet in height shall be set back a minimum of fifteen (15) feet from the side lines of its lot, and a detached accessory building or structure having a height of less than fifteen (15) feet and a front setback of at least one hundred (100) feet shall be set back a minimum of six (6) feet from the side lines of its lot.
- 8 Except that a detached accessory building or structure having a height of less than fifteen (15) feet shall be set back a minimum of six (6) feet from the rear line of its lot.
- 9 Unless the wall facing a side lot line is either a party wall or, if adjoining another lot in the same district, a wall with its outer face coincident with such line. The space between buildings or structures, if any, shall not be reduced to less than fifteen (15) feet.
- 10 Except that if the side yard abuts a railroad right-of-way, there shall be no minimum side yard setback.
- 11 Except that if the rear yard abuts a railroad right-of-way, there shall be no minimum rear yard setback.

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 21 Edgewood Road, within the Single Residence C (SRC) zoning district. Relief in the form of a Variance pursuant to Section §4.5.3.3 was requested. The Board of Appeals is the Special Permit Granting Authority.
2. The Petitioner proposes the construction of a portico that would extend 5.7' further into the non-conforming front setback than the existing structure, reducing that setback to 19.8' where a minimum of 40' is required and 25.3' exists.
3. The Petitioner was advised, in the course of the initial hearing session on January 19, 2022, that the Board was unlikely to grant the requested Variance due to the Petitioner's inability to demonstrate the "uniqueness" of the property that is required pursuant to Section §10.4, and that the Board may favorably consider a proposal for a Special Permit pursuant to Section §4.5.3.2.3 [Construction of an overhang, porch, or portico] to construct a portico with a maximum depth of 4', extending an additional 4' into the nonconforming setback. The Board continued the hearing to February 16, 2022 to allow the Petitioner sufficient time to consider revising the project plans.

4. The members of the Board of Appeals in attendance at the January 19, 2022 public hearing were John Lally, Michael McCusker, and Danielle Button. The members of the Board of Appeals in attendance at the February 16, 2022 hearing were John Lally, Michael McCusker, and Linda Walsh. Prior to attending the February 16th public hearing, Linda Walsh reviewed the video recording of the January 19, 2002 public hearing and submitted a signed Confirmation of Evidential Review form, which form was recorded in the Office of the Town Clerk at 4:25 pm on February 16, 2022, with copy provided to the Board of Appeals Chair.
5. Prior to the Board of Appeals meeting on February 16, 2021, the Petitioner requested to withdraw the application without prejudice.

DECISION

At a meeting of the Board of Appeals on Wednesday, February 16, 2022, the Board voted unanimously via roll call to grant the Petitioner's request for leave without prejudice.

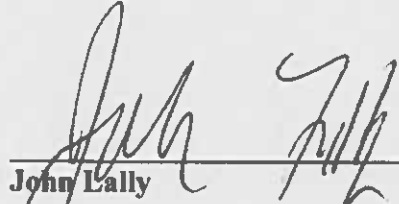
RECORD OF VOTE

The following members of the Board of Appeals voted in favor of the Petitioner's request for leave without prejudice: John Lally, Michael McCusker and Linda Walsh.

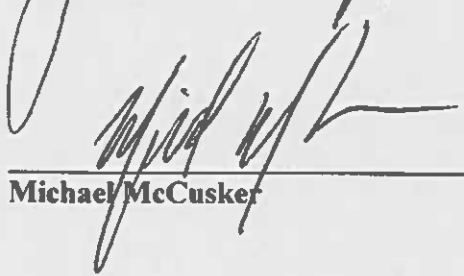
The following members of the Board of Appeals voted in opposition to the Petitioner's request for leave without prejudice: None.



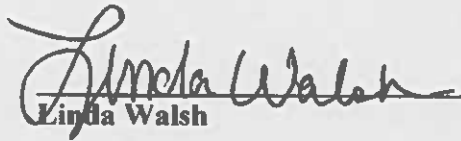
WESTWOOD ZONING BOARD OF APPEALS



John Lally



Michael McCusker



Linda Walsh

3/8/22
Date

21 Edgewood Road