

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

**PROPERTY OWNERS(S):** Charles and Ruth O'Shea

**PETITIONER(S):** Charles and Ruth O'Shea  
47 Salisbury Drive  
Westwood, MA 02090

**LAND AFFECTED:** 47 Salisbury Drive  
Map 13, Lot 163

**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 16, 2022, at 7:00 PM via remote participation to consider the Petitioners' request for a Variance pursuant to Westwood Zoning Bylaw Section §5.2.3 [Dimensional Requirement] and §10.4 [Variances]. The Petitioners propose to build a garage that would be located 6.3 feet from the side lot line, where the current structure is setback 16.6 feet and a minimum setback of 15 feet is required. While the existing structure complies with all zoning requirements, the lot is nonconforming due to a lack of width as well as a lack of area. The property is located in the Single Residential C (SRC) zoning district.

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

**APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW**

**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 REQUIREMENTS<sup>1</sup>

DISTRICTS		DIMENSIONAL REQUIREMENTS								
		Minimum Lot Area (sq ft)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Nonwetland Area <sup>2</sup> (sq ft)	Minimum Front Setback <sup>3</sup> (feet)	Minimum Side Yard Setback <sup>4</sup> (feet)	Minimum Rear Yard Setback <sup>3</sup> (feet)	Maximum Building Coverage (%)	Maximum Impervious Surface (%)
5.2.1	<b>SRA</b>	12,000	90	90	12,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.2	<b>SRB<sup>13</sup></b>	20,000	90	90	15,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.3	<b>SRC<sup>13</sup></b>	40,000	125	125	30,000	40	20 <sup>7</sup>	30 <sup>6</sup>	25	50
5.2.4	<b>SRD</b>	15,000	90	90	12,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.5	<b>SRE<sup>13</sup></b>	80,000	175	175	60,000	40	20 <sup>7</sup>	30 <sup>6</sup>	25	50
5.2.6	<b>GR</b>	12,000	90	90	12,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.7	<b>SR</b>	80,000	175	175	60,000	40	20 <sup>7</sup>	30 <sup>6</sup>	25	50
5.2.8	<b>LBA</b>	4,000	40	40	4,000	10	15 <sup>5</sup>	15	25	80
5.2.9	<b>LBB</b>	4,000	40	40	4,000	0	15 <sup>5</sup>	15	25	80
5.2.10	<b>HB</b>	10,000	100	100	10,000	50	15	15	50	80
5.2.11	<b>I</b>	40,000	200	200	12,000	50	15 <sup>10</sup>	15 <sup>11</sup>	50	80
5.2.12	<b>IO</b>	40,000	200	200	12,000	50	15 <sup>10</sup>	15 <sup>11</sup>	50	80
5.2.13	<b>ARO</b>	80,000	175	175	60,000	50	30 <sup>12</sup>	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 47 Salisbury Drive, within the Single Residence C (SRC) zoning district.
2. The property contains a single-family residence with an existing 10-foot wide garage that is currently setback 16.6 feet from the side lot line. While the existing structure complies with all zoning requirements, the lot is nonconforming due to a lack of width as well as a lack of area.
3. The Petitioners propose to build a garage that would be located 5 feet from the side lot line, where a minimum setback of 15 feet is required.
4. Relief is requested in the form of a Variance pursuant to the Westwood Zoning Bylaw Sections §5.2.3 [Dimensional Requirements] and §10.4 [Variances]. The Zoning Board of Appeals is the Variance Granting Authority.
5. 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, 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. The Petitioners have not met all the requirements for a Variance pursuant to the Westwood Zoning Bylaw.

#### **DECISION**

On February 16, 2022, the Board of Appeals voted unanimously to deny the Petitioner's request for a Variance from the Westwood Zoning Bylaw Section §5.2.3 [Dimensional Requirements] pursuant to Section §10.4 [Variances].

#### **RECORD OF VOTE**

The following members of the Board of Appeals voted to deny the Petitioners' request for a Variance: John Lally, Michael McCusker, and Linda Walsh.

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



**WESTWOOD ZONING BOARD OF APPEALS**

*John Lally*  
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*Michael McCusker*  
\_\_\_\_\_

*Linda Walsh*  
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3/8/22  
Date

47 Salisbury Drive