

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

**PETITIONER &
PROPERTY OWNER:** Bonnie Tan-Lai
50 Fox Hill Street
Westwood, MA 02090

LAND AFFECTED: 50 Fox Hill Street
Map 09, Lot 092

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, April 27, 2022 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] and a Special Permit pursuant to Westwood Zoning Bylaw Section §4.3.3.2 [Accessory Uses-Motor Vehicle Storage]. The applicant proposes to demolish the existing single story home and rebuild a two story single family home on the existing foundation adding a four car garage addition. The proposed height of the new single family structure is approximately 26'11" where a maximum of 25' is allowed. The lot is nonconforming due to insufficient lot area, insufficient frontage, and insufficient lot width. The property is within in the SRE (Single Residence E) zoning district.

BOARD MEMBERS: John Lally, Chairman
Danielle Button
Mark Callahan

APPLICABLE SECTION 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.

4.3 ACCESSORY USES

4.3.1 Table of Accessory Uses. The Table of Accessory Uses designates which Accessory Uses are allowed in each zoning district.

A Use is permitted by right in any district under which it is denoted by the letter “Y”.

A Use is prohibited in any district under which it is denoted by the letter “N”.

A Use may be permitted by special permit from the Board of Appeals in any district under which is denoted by the letters “BA”.

A Use may be permitted by special permit from the Planning Board in any district under which is denoted by the letters “PB”.

ACCESSORY USE	DISTRICTS												
	SRA	SRB	SRC	SRD	SRE	GR	SR	LBA	LBB	HB	I	IO	ARO
4.3.3 ACCESSORY USES IN RESIDENTIAL DISTRICTS													
4.3.3.2 Private garage and/or the parking or storage area of more than three (3) motor vehicles, or of more than one (1) commercial vehicle with a gross vehicle weight of less than 26,000 pounds, but only where in connection with a Principal Use on the same premises.	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N

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 50 Fox Hill Street within the Single Residential E (SRE) zoning district. The property is nonconforming due to insufficient lot area, insufficient frontage, and insufficient lot width.

2. The Petitioner proposes to demolish the existing single story home and rebuild a two story single family home on the existing foundation adding a four car garage addition. The proposed height of the new single family structure is approximately 26’11” where a maximum of 25’ is allowed. The proposed new building height would require relief in the form of a Variance pursuant to Sections §4.5.3.3 and §10.4. The Board of Appeals is the Variance Granting Authority. The addition of a four car garage would require relief in the form a Special Permit pursuant to Section §4.3.3.2

3. The Petitioner states that the existing basement space is lacking in natural light as it is and unusable as currently constructed. The proposed height of new home construction would allow for a cathedral ceiling on the second floor and playroom in the attic space.
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 applicant proposes to demolish the existing single story home and rebuild a two story single family home on the existing foundation, height not to exceed 25' adding a four car garage addition. This proposal requires relief in the form of a Special Permit pursuant to Westwood Zoning Bylaw Section §4.3.3.2 [Accessory Uses-Motor Vehicle Storage].
9. Board of Appeals is the Special Permit Granting Authority. No other zoning relief is required.
10. 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.
11. 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.

12. 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 Sections §4.3.3.2 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted site plan titled, "Proposed Alterations, 50 Fox Hill Street, Westwood, MA" prepared by CCR Associates Inc., 40 Mears Ave., Quincy, MA 02169, dated January 6, 2022.
2. Petitioners shall revise construction plans prepared by JCBT Architect, 585 Washington Street, Quincy, MA 02169, dated January 1, 2021 to not exceed the 25' maximum allowable building height for Single Residence E (SRE). Revised plans to be approved by Building Commissioner to meet maximum height requirement at time of building permit submittal. The Project shall be constructed with the approved revised plans.
3. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
4. 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.
5. **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.**
6. 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, Danielle Button and Mark Callahan.

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.



WESTWOOD ZONING BOARD OF APPEALS

John Lally

John Lally, Chairman

Danielle Button

Danielle Button

Mark Callahan

Mark Callahan

5/11/22
Date

50 Fox Hill Street