

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

**PROPERTY OWNERS &:  
PETITIONER:** 15 Connors Way, LLC  
11 Boulder Trail  
Walpole, MA 02081

**LAND AFFECTED:** 15 Connors Street  
Westwood, MA 02090  
Map 16, Lot 135

**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, July 20, 2022 at 7:00 P.M. via remote participation to consider the Petitioner's request for a for a Variance pursuant to the Westwood Zoning Bylaw Sections Section § 5.2.6 [Table of Dimensional Requirements] and [10.4 Variances]. The applicant proposes to demolish an existing single-story home and build a two-story single-family home. The proposed new construction violates the rear setback in two locations. The rear deck is 6'4" from the rear setback and the main house is 16'4", where 30' is required. The proposed rear setback violations, create a new nonconformity. The lot is nonconforming due to insufficient lot area. The property is located within in the GR (General Residence) zoning district.

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

**APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW**

**SECTION 5.0 DIMENSIONAL REQUIREMENTS**

**5.1 GENERAL**

In all Districts, no building or structure, except a one-story accessory building or structure of accessory use, shall be constructed on a lot unless said building or structure and lot are in conformance with the "Dimensional Requirements" specified in the table of

Dimensional Requirements set forth herein for the district in which said building or structure and lot are located and no more than one building or structure constructed as a dwelling, or so used, shall be located on each such lot except as may otherwise be provided herein. In all Districts, no building or structure (except for a flag, utility or light pole) or swimming pool shall be constructed so as to be nearer to the street line or nearer to the side lines or rear line of its lot unless its location is in conformance with said Table. Nothing herein shall prevent the projection of eaves, chimneys or cornices not exceeding eighteen (18) inches in width, or of uncovered steps, window sills or belt courses into any minimum setback distances or other open space.

In the case of an Open Space Residential Development project proposed under sub-article 8.3 in this bylaw, the dimensional and density requirements established therein shall take precedence over those established in Section 5.2, TABLE OF DIMENSIONAL REQUIREMENTS for purposes of increased design flexibility and enhanced open space preservation.

**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>4</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>8</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>8</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>8</sup>	25	50
5.2.8	<b>LBA</b>	4,000	40	40	4,000	10	15 <sup>9</sup>	15	25	80
5.2.9	<b>LBB</b>	4,000	40	40	4,000	0	15 <sup>9</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.
- 12 Each side yard setback shall be increased by one (1) foot for each foot that the height of the building exceeds fifteen (15) feet; provided always that the side yards shall total not less than forty (40) percent of the lot width.

<sup>13</sup> See Section 8.3 OPEN SPACE RESIDENTIAL DEVELOPMENT for density and dimensional requirements for OSRD.

## 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 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 15 Connors Street. Relief in the form of a Variance pursuant to Sections §5.2.6 [Table of Dimensional Requirements] and 10.4 [Variances] was requested. The Board of Appeals is the Variance Granting Authority
2. The lot area of the Subject Property is 11,430 SF where 12,000 SF is required in the GR (General Residential) zoning district.
3. The rear setback of the Subject Property is 16.4' where 30' is required
4. The Petitioner proposes to demolish the existing single-story home and build a two-story single-family home. The proposed new construction violates the rear setback in two locations. The proposed rear setback violations, create a new nonconformity. The project will require a Variance pursuant to Sections § 5.2.6 [Table of Dimensional Requirements] and [10.4 Variances].
5. The lot is steeply sloped on the west side of the property, where the drop off from the top of the site to the property line is approximately twenty (20) feet over a short distance, resulting in a slope of approximately 45°. Lot topography and shape result in the new single-family structure placement on lot to be limited. The new single-family structure is unable to meet the rear setback requirement for GR (General Residence Zoning District). The lot is nonconforming due to insufficient lot area.
6. The Board specifically finds that owing to circumstances relating to the shape, soils or topography of this parcel and the structures thereon that especially affect 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 Petitioner 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.
7. The Petitioners have met all the requirements for a Variance pursuant to the Westwood Zoning Bylaw.

## **DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioners' request for a Variance pursuant to Sections § 5.2.6 and 10.4 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted site plan titled "Zoning Board of Appeals Plan, 15 Connors Street in Westwood, MA" prepared by Site Design Professionals, LLC One Merchant Street, Suite 110, Sharon, MA 02067, dated June 10, 2022

and plans titled "15 Connors Street Westwood, MA 02090" prepared by Design By Sami LLC, 81 Oceanside Drive Scituate, MA 02066 dated May 16, 2022 and last revised June 16, 2022 consisting of three (3) sheets titled: Sheet 1 of 3, sheet 2 of 3, and Sheet 3 of 3.

2. The Petitioners shall pursue completion of the project with reasonable diligence and continuity.
3. The Petitioners shall fully comply will all conditions of other local permits and approvals, including all conditions of approvals which have been or may be granted by the Westwood Planning Board and the Westwood Conservation Commission.
4. This Variance 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 Variance does so at risk that a court will reverse the permit and any construction performed under the Variance may be ordered to be undone.**

This grant of variance shall be exercised in accordance with Section 10.4. entitled Variances and Section 10.4.9 entitled Lapse as follows:

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.

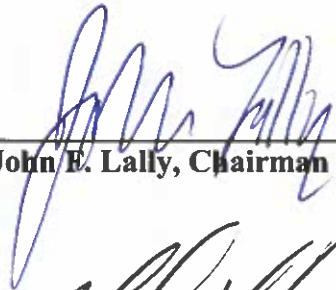
### **RECORD OF VOTE**

The following members of the Board of Appeals voted to grant the Variance for the above-mentioned project: John Lally, Michael McCusker and Linda Walsh.

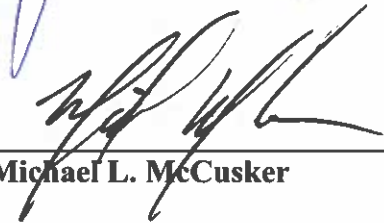
The following members of the Board of Appeals voted in opposition to the grant of the Special Permit: None.



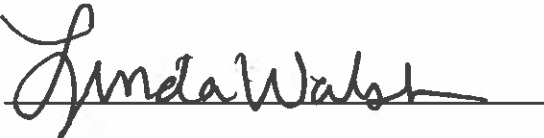
**WESTWOOD ZONING BOARD OF APPEALS**

  
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**John E. Lally, Chairman**

  
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**Michael L. McCusker**

  
\_\_\_\_\_

**Linda Walsh**

8/1/22  
Date

**15 Connors Street**