

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

PROPERTY OWNERS(S): Stefanie Giuliano and Zabiul Abhar
& PETITIONER(S): 55 Webster Street
Westwood, MA 02090

LAND AFFECTED: 55 Webster Street
Map 16, Lot 390

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, March 16, 2022, at 7:00 PM via remote participation to consider the Petitioner's request for a Special Permit pursuant to Westwood Zoning Bylaw Sections § 4.5.3.2.3 [Construction of an overhang, porch, portico] and for a Variance pursuant to Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and §10.4 [Variances]. The Petitioners are proposing to construct a new covered front porch. The existing house has a nonconforming front setback of approximately 24' where 25' is required. The proposed construction of a 3.5' covered front porch will further encroach into the front setback. The Petitioners are also proposing to construct an addition to the existing structure, including a garage with upper story living area, which will have a north side setback of 14.7' where 15' is required and where the existing structure's north side setback is compliant at 15.2'. The lot is nonconforming due to a lack of frontage, width, and area. The property is located in the Single Residential A (SRA) zoning district.

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	SRB³	20,000	90	90	15,000	25	15 ⁵	30 ⁶	25	50
5.2.3	SRC¹³	40,000	125	125	30,000	40	20 ⁷	30 ⁸	25	50
5.2.4	SRD	15,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.5	SRE¹³	80,000	175	175	60,000	40	20 ⁷	30 ⁸	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 ⁸	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 55 Webster Street, within the Single Residence A (SRA) zoning district. Relief in the form of a Variance pursuant to Section §4.5.3.3 and Special Permit pursuant to Section § 4.5.3.2.3 a was requested. The Board of Appeals is the Variance and Special Permit Granting Authority.
2. The Petitioner proposes the construction a new covered front porch. The existing house has a nonconforming front setback of approximately 24' where 25' is required. The proposed construction of a 3.5' covered front porch will further encroach into the front setback. The Petitioners are also proposing to construct an addition to the existing structure, including a garage with upper story living area, which will have a north side setback of 14.7' where 15' is required and where the existing structure's north side setback is compliant at 15.2'. The lot is nonconforming due to a lack of frontage, width, and area. 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 March 16, 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. The Board continued the hearing for the Petitioner to obtain a compliant site plan and to consider changes to the Project to eliminate the need for a Variance. The public hearing was continued to Wednesday, April 27, 2022 at 7:00 PM via remote participation. On April 27, 2022 the hearing was continued without discussion to allow more time for plan revisions to Wednesday June 15, 2022, again to Wednesday July 20, 2022 and finally to Wednesday August 17, 2022 at 7:00 PM via remote participation.
4. Prior to the Board of Appeals meeting on August 17, 2022, the Petitioner submitted revised plans to the Building Commissioner for Zoning review and stated they no longer would require a Variance. On August 8, 2022 the Building Commissioner offered his determination that the Applicant had altered the proposed additions so that a variance was no longer required. A Special Permit under section 4.5.3.23 was still required for the proposed portico at the front entrance.
5. The Petitioner's revised plans propose to construct a new covered front porch on the existing house with a nonconforming front setback of approximately 24' where 25' is required. The proposed construction of a 3.5' covered front porch will further encroach into the front setback would require relief in the form of a Special Permit pursuant to Section 4.5.3.2.3. The Board of Appeals is the Special Permit Granting Authority. No other zoning relief is required.
6. The members of the Board of Appeals in attendance at the March 16, 2022 public hearing were John Lally, Linda Walsh, and Sean Coffey. The members of the Board of Appeals in attendance at the August 17, 2022 hearing were John Lally, Linda Walsh and Michael McCusker. Prior to attending the August 17th public hearing, Michael McCusker reviewed the video recording of the March 16, 2002 public hearing and submitted a signed Confirmation of Evidential Review form, which form was recorded in the Office of the Town Clerk at 3:10 pm on July 18, 2022, with copy provided to the Board of Appeals Chair.

7. Any adverse effects of the Petitioners' proposed construction 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.
8. The Petitioners' proposal 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.
9. The Petitioners have met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

DECISION

The Board of Appeals voted unanimously to grant the Petitioner's revised request for a Special Permit pursuant to Section §4.5.3.2.3 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted site plan titled, "Plan Showing Proposed Addition 55 Webster Street, Westwood, MA Norfolk County", prepared by D. O' Brien Land Surveying, 480 West Central Street, Franklin, MA 02038, dated July 26, 2022 and last revised August 4, 2022 and with design plans titled "Abhar Residence 55 Webster Street Westwood, MA" prepared by Walldorf Design Studio, 71 Mayfair Drive Westwood, MA 02090, dated November 5, 2021 and last revised June 15, 2022, consisting of five (5) sheets including: ID-3.01, AD-0.01, AD-1.01, AD-1.02 and AD-1.03.
2. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
3. 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.
4. **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.**
5. 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 grant the requested Special Permit for the above-mentioned project, as revised: John Lally, Michael McCusker, and Linda Walsh.

The following members of the Board of Appeals voted in opposition to the motion to grant the Special Permit for the above-mentioned project, as revised: None.



Received August 31, 2022 @3:30PM
Westwood Town Clerk

WESTWOOD ZONING BOARD OF APPEALS

John F. Lally, Chairman

Michael L. McCusker

Linda Walsh

8/31/22
Date

55 Webster Street