

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

PROPERTY OWNER(S): George Haseotes and Polyxeni Haseotes

PETITIONER: Michael Stallings
60 Claybrook Road
Dover, MA 02030

LAND AFFECTED: 129 Dover Road
Map 09, Lot 001

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, October 19, 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]. The Petitioner was issued a building permit for a detached shed, upon building inspection it was noted a sunroom had been built attached to the existing single-family home. The sunroom is attached by siding, roof flashing and interior trim. The attached structure is considered an addition rather than an accessory structure, and therefore subject to setback requirements for a building. The addition is located 20'3" from the rear setback where 30' is required, creating a new nonconformity. The existing single-family residence is non-conforming due to a front setback of 12'4" where 40' is required and an east side setback that is 12'4" where 20' is required. The lot is nonconforming due to insufficient lot area. The property is located in the SRC (Single Residential C) zoning district.

BOARD MEMBERS: John Lally, Chairman
Michael McCusker
Keith Flanders

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

4.5 NONCONFORMING USES AND STRUCTURES

4.5.1 **Applicability.** Nonconforming uses and structures, as defined in Section 2.0 of this Bylaw, may continue. Any alteration of a nonconforming use, or any alteration of a nonconforming structure, shall require authorization in accordance with this section. An alteration of a structure is a modification, structural change, extension, or reconstruction of the structure.

4.5.2 **Nonconforming Uses.**

4.5.2.1 **Permitted Alterations of Nonconforming Uses.** A structure that conforms dimensionally to current zoning regulations while its use no longer conforms can be altered without needing a special permit if the Building Commissioner determines that the proposed alteration falls under any of the following circumstances:

4.5.2.1.1 There is no extension or expansion of the exterior of the structure.

4.5.2.1.2 There is no interior expansion that would intensify the use.

4.5.2.1.3 The alteration is made for the purposes of conforming to the building code for health and safety purposes.

4.5.2.2 **Special Permit Required for Alteration to Nonconforming Use.** The Board of Appeals may grant a special permit to modify, alter or extend a nonconforming use in accordance with this Section only if it determines that such modification, alteration or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and the town. To be considered insubstantial, the Board must find that the proposed use reflects the nature and purpose of the prior use, there is no difference in the quality, character or degree of the proposed use and the proposed use is not different in its effect on the neighborhood.

4.5.3 **Nonconforming Structures.**

4.5.3.1 **Permitted Alterations of Nonconforming Single and Two-Family Residential Structures.** Nonconforming single and two-family residential structures may be altered upon a determination by the Building Commissioner that such proposed alteration does not increase the nonconforming nature of said structure. The following circumstances shall be deemed not to increase the nonconforming nature of said structure and may be permitted as of right:

4.5.3.1.1 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot area, where the alteration will still comply with all of such current requirements.

4.5.3.1.2 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot frontage, where the alteration will still comply with all such current requirements.

4.5.3.1.3 Alteration to a structure which violates one (1) or more required setbacks, where the alteration will now comply with all current setback, yard, building coverage and building height requirements

regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.1.4 Alteration to a side or face of a structure which violates a required setback, where the alteration will not increase the setback violation, and will comply with building height restrictions, regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.1.5 Alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions of Section 5.0 of this bylaw shall not be exceeded.

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 does not meet the requirements of Section 4.5.3.1 nor of Section 4.5.3.2, and that the nonconforming nature of a structure would be increased by the proposed extension, alteration or change, a variance from Board of Appeals shall be required to allow such extension, alteration or change. In addition, no nonconforming structure 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.

4.5.3.4 Special Provisions for Reconstruction of Single and Two-Family Structures after Catastrophe or Voluntary Demolition. Any single and two-family nonconforming structure may be reconstructed after a catastrophe or voluntary demolition only in accordance with the following provisions:

4.5.3.4.1 Reconstruction of said premises shall commence within one (1) year after such voluntary demolition, or within two (2) years after such catastrophe, which time period may be extended by the Building Commissioner for good cause.

4.5.3.4.2 The building as reconstructed:

4.5.3.4.2.1 Shall be located on the same footprint as the original structure, and shall only be as great in volume or area as the original nonconforming structure; or

4.5.3.4.2.2 Shall comply with all current setback, yard and building coverage requirements, and shall have 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 lot frontage requirements.

4.5.3.4.3 In the event that the proposed reconstruction does not meet the provisions of Section 4.5.3.4.2, a special permit pursuant to Section 4.5.3.2 or a variance pursuant Section 4.5.3.3, as applicable, shall be required from the Board of Appeals for such reconstruction.

4.5.4 Abandonment or Non-use. A nonconforming use or nonconforming structure which has been abandoned, or not used for a period of two (2) years, shall lose its protected status and be subject to all of the provisions of this Bylaw.

4.5.5 Reversion to Nonconformity. No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

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 129 Dover Road within the Single Residential C (SRC) zoning district. The property is nonconforming in lot area, with 11,750 SF provided where 40,000 SF is required. The structure is non-conforming in relation to the front setback requirement, with 12.4' provided where 40' is required and on the northeast side setback where 12'4 is provided and 20' is required
2. The Petitioner was the previous homeowner of 129 Dover Road, Westwood, MA at the time of the application with the Zoning Board of Appeals and through subsequent sale of the property on June 7, 2022.
3. The Petitioner was issued a building permit for a detached shed, and built a sunroom attached to the existing single-family home. The attached structure is considered an addition rather than an accessory structure, and therefore subject to setback requirements for a building. The addition is located 20'3 from the rear setback where 30' is required, creating a new nonconformity. Such encroachment 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.
4. The Petitioner states that the sunroom structure was permitted and it was attached to the existing single-family residence by his carpenters in error. The Building Commissioner noted that a detached shed was permitted and an addition was built, creating a new nonconformity.
5. The Petitioner was advised, in the course of the initial hearing session on September 21, 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 meet with the Building Commissioner to consider changes to the Project to eliminate the need for a Variance. The public hearing was continued to Wednesday, October 19, 2022 at 7:00 PM via remote participation. The Petitioner failed to attend the public hearing on October 19, 2022.
6. 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.
7. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioner's 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.

8. The Petitioner has not met the requirements for the requested Variances pursuant to the Westwood Zoning Bylaw.

DECISION and CONDITIONS

The Board of Appeals voted unanimously to deny the Petitioner's request for a Variance pursuant to Sections §4.5.3.3 and §10.4 of the Westwood Zoning Bylaw with the following conditions:

1. Petitioner and/or homeowner must apply with the Building Department for a demolition permit to remove the sunroom addition. Failure to do so will result in a Zoning violation and fees may be assessed.
2. Petitioner and/or homeowner must provide the Board of Health an asbestos survey prior to demolition.
3. Petitioner and/or homeowner must relocate the existing shed in the rear of the property so it rests fully on the subject property and adheres to rear and side setbacks appropriate for Zoning District C. Failure to do so will result in a Zoning violation and fees may be assessed.
4. Petitioner and/or homeowner shall pursue compliance of the above stated conditions with reasonable diligence and continuity as determined by the Building Department. Failure to do so will result in a Zoning violation and fees may be assessed.

RECORD OF VOTE

The following members of the Board of Appeals voted to deny the requested Variance: John Lally, Michael McCusker, and Keith Flanders.

The following members of the Board of Appeals voted in opposition to the motion to deny the requested Variance: None.



Received November 1, 2022@2:54PM
Westwood Town Clerk

WESTWOOD ZONING BOARD OF APPEALS

John F. Lally, Chairman

Michael L. McCusker

Keith Flanders

11/1/22
Date

129 Dover Road