

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

**PROPERTY OWNERS:** Michael and Linda Walsh

**PETITIONER:** Michael Walsh  
9 Westwood Terrace  
Westwood, MA 02090

**LAND AFFECTED:** 9 Westwood Terrace  
Westwood, Massachusetts 02090  
Map 18 Lot 058

**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 September 21, 2022 at 7:00 P.M. via remote participation to consider the Petitioner's request for a Special Permit pursuant to the Westwood Zoning Bylaw Sections §4.5.2.2 [Extension of a Nonconforming Use] and 4.5.3.2.2 [Special Permit Alterations of Nonconforming Structures – Vertical Extension]. Applicant proposes a second story addition over an existing garage for home office. The side setback of the existing structure is 14.9' where 15' is required and the rear setback is 8.1' where 15' is required. The second story addition would encroach on the side and rear setbacks to the same extent as the existing structure. The property is located in the Local Business B (LBB) zoning district.

**BOARD MEMBERS:** John Lally, Chairman  
Michael McCusker  
Danielle Button

**APPLICABLE SECTIONS 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.

**4.5.3.2 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:

**4.5.3.2.2** 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.

## **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 9 Westwood Terrace. The existing single-family residence is a pre-existing nonconforming structure due to violations of both the rear setback and west side setback.
2. The Petitioner is proposing to construct a second story addition over an existing garage that would extend the existing rear and side garage walls vertically at the same distance from the lot line as the existing walls. Relief in the form of a Special Permit pursuant to Sections §4.5.2.2 and 4.5.3.2.2 were requested. The Board of Appeals is the Special Permit Granting Authority.
3. Any adverse effects of the Petitioner's 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.

4. The Petitioner’s 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.
5. The Petitioner has met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

### **DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioner’s request for a Special Permit pursuant to Sections §4.5.2.2 and 4.5.3.2.2 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in substantial conformity with the submitted site plan titled “Plan of Land Showing Proposed Additions 9 Westwood Terrace in Westwood, Mass”, prepared by Toomey Land Surveying, 48 Summit Avenue, Walpole, MA 02081, dated April 12, 2022 and construction plans titled “Phase 1 Additions and Alterations for 9 Westwood Terrace, Westwood, MA”, prepared by Bourque Design, 39 Emerson Road, Suite 124A, Waltham, MA 021451, dated April 11, 2022, consisting of consisting of nineteen (19) sheets titled: List of Drawings, EX0, EX1, EX2, EX3, D1, A, A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, E1 and E2
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.

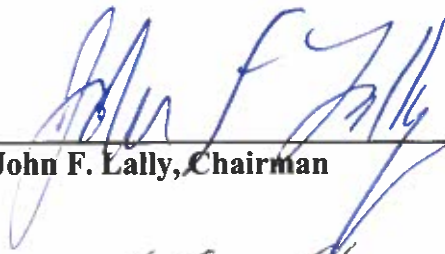
### **RECORD OF VOTE**

The following members of the Board of Appeals voted to grant the Special Permit for the above-mentioned project: John Lally, Michael McCusker and Danielle Button.

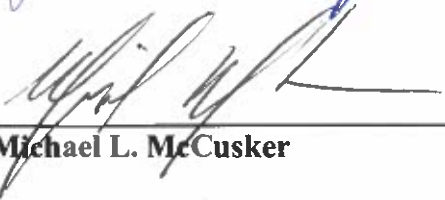
The following members of the Board of Appeals voted in opposition to the grant of the Special Permit: None.



**WESTWOOD ZONING BOARD OF APPEALS**

  
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**John F. Lally, Chairman**

  
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**Michael L. McCusker**

  
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**Danielle Button**

9/27/22  
Date

**9 Westwood Terrace**