

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

**PROPERTY OWNER:** David and Margaret Harvey

**PETITIONER:** David Harvey  
28 Lorraine Road  
Westwood, MA 02090

**LAND AFFECTED:** 28 Lorraine Road  
Westwood, Massachusetts 02090  
Map 09 Lot 173

**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 December 14, 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 Section §4.5.3.2.2 [Special Permit Alterations of Nonconforming Structures – Vertical Extension]. The application proposes to enclose an existing deck and convert it to finished living space. The existing structure is nonconforming due to violating the front and north side setbacks. At the front, the home is located approximately 27'5' from the lot line where 40' is required. The north side of the structure is 5'3' from the lot line where 20' is required. The deck being converted to enclosed space is located 6'2' from the north side lot line. The property is located in the Single Residential C (SRC) Zoning District.

**BOARD MEMBERS:** John Lally, Chairman  
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:

**4.5.3.2.2** 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 28 Lorraine Road within the Single Residence C (SRC) zoning district, the lot area of the subject property is .52 acres. The existing single-family structure is nonconforming due to violation of the front and north side setback. The existing front setback is 27.5' where 40' is required. The north side of the structure is 5'3' from the lot line where 20' is required.
2. The Petitioner is proposing to enclose an existing deck and convert it to finished living space. This proposed construction would raise the height in nonconforming side setback. Relief in the form of a Special Permit pursuant to Section §4.5.3.2.2 was 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 Section 4.5.3.2.2 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted site plan titled "Plan to Accompany NOI for 28 Lorraine Road, Westwood, MA", prepared by C & G Survey Company, 37 Jackson Road, Scituate, MA 02066, dated July 29, 2015 and design plans titled "The Harvey Residence, 28 Lorraine Road, Westwood, MA 02090", prepared by Trevor Laubenstein, Architect, 375 Clapboardtree Street, Westwood, MA 02090" dated August 8, 2015 and last revised March 10, 2016, consisting of eighteen (18) sheets
2. The Applicant 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 Applicant 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 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 F. Lally, Chairman**

  
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**Michael L. McCusker**

  
\_\_\_\_\_  
**Linda Walsh**

12/27/22  
**Date**

**28 Lorraine Road**