

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

**PROPERTY OWNER &  
PETITIONER:** Marcia and Adam Feldman  
127 Pond Street  
Westwood, MA 02090

**LAND AFFECTED:** 127 Pond Street  
Westwood, Massachusetts 02090  
Map 21, Lot 011

**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 9, 2023 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 §4.5.3.3 [Special Permit required for New or Expansion of Nonconformity]. The Petitioner proposes to remove an existing deck and construct a larger deck attached to a single-family residence at 21.2' from the rear lot line, where 30' is required. The existing deck is nonconforming and violates the rear setback at 26'. The existing nonconforming structure violates front, side and rear setbacks. The lot is nonconforming as it is lacking in area and frontage. The property is located in the Single Residence C (SRC) zoning.

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

**APPLICABLE SECTIONS OF THE WESTWOOD ZONING BYLAW**

**4.5.3.3 Variance or Special Permit 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, the Building Commissioner shall determine whether any proposed additional or increased nonconformities will be substantially more detrimental to the neighborhood than those that currently exist. If in the opinion of the Building Commissioner, the proposal is more detrimental, a variance shall be required in accordance with Section 10.4 of this bylaw. If the Building Commissioner determines that the additional nonconformities are de minimus or are not substantially more detrimental to the neighborhood than a special permit shall be required. 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.

## **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 127 Pond Street. The existing single-family residence is nonconforming as it violates the front, rear and side setbacks.
2. The Petitioner is proposing to remove an existing deck and construct a larger deck attached to a single-family residence at 21.2' from the rear lot line, where 30' is required.
3. Relief in the form of a Special Permit pursuant to Section §4.5.3.3 was requested. The Board of Appeals is the Special Permit Granting Authority.
4. 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.
5. 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.
6. 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 4.5.3.3 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 Showing Proposed Deck, 127 Pond Street, Westwood, MA", prepared by D. O'Brien Land Surveying, 480 West Central Street, Franklin, MA 02038, dated April 21, 2023 and hand drawn framing plan titled "127 Pond Street Westwood, MA" prepared by Domenick Rossi dated June 15, 2023.
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.

**Received July 25, 2023@4:12PM  
Westwood Town Clerk**



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**WESTWOOD ZONING BOARD OF APPEALS**

  
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**John F. Lally, Chair**

  
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**Michael McCusker**

  
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**Linda Walsh**

7/25/23  
**Date**

**127 Pond Street**

**Received July 25, 2023@4:12PM  
Westwood Town Clerk**