

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

PROPERTY OWNER: Gate House Kitchens Westwood LLC
345 Harrison Avenue
Boston, MA 02118

PETITIONER: Dylan Pelz
345 Harrison Avenue, 1212
Boston, MA 02118

LAND AFFECTED: 32-36 Southwest Park
Westwood, Massachusetts 02090
Map 17, Lot 064

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 20, 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 is seeking a special permit after constructing a utility "shed" over the electric meters located on the exterior of the existing commercial building. Upon electrical inspection, it was determined that interior rated materials had been used on the outside of the building. The applicant was advised that for the meter equipment to remain, a structure must be constructed to protect the equipment from outside elements. The shed is located 6.5' from the side setback where 15' is required. The existing building side setback is nonconforming at 10.9'. The lot itself is non-conforming due to a lack of required frontage. The property is located in the HB (Highway Business) zoning district.

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 32-36 Southwest Park. The existing commercial building is nonconforming as it violates the side setback at 10.9' with 15' required, and the lot itself is nonconforming as it lacks the required frontage in the Highway Business (HB) zoning district.
2. The Petitioner is seeking relief for a 16.2' x 5.3' utility shed structure constructed over an electric meter bank. The shed extends into the side setback 6.5' from the side lot line where 15' is required. The existing building is nonconforming at 10.9' from the side setback
3. A contractor working on behalf of the Petitioner, installed interior rated electrical components to the building's exterior electrical meter bank. The Town's Electrical inspector Kevin Malloy discovered this violation while conducting an inspection of the work. The applicant requested to keep the materials, citing long lead times due to supply chain issues and requested to build a structure to protect components from the elements. The Electrical inspector and Building inspector provided guidance to the applicant to design a structure that would be weather tight and meet both building and electrical codes.
4. The Building Commissioner instructed the Petitioner on numerous occasions to apply with Planning for review prior to building the utility shed. The applicant did not and constructed the utility shed without review.
5. The Petitioner had received prior Administrative Environmental Impact Design Review (EIDR) conditional approval from the Town Planner in January 10, 2022 for a "change of use" with no exterior alterations.
6. On March 8, 2023 the applicant applied to modify the Administrative EIDR approval with the Planning Division. Acting Town Planner Nora Loughnane conducted a site visit and discovered multiple exterior renovations done without Planning Division approval. The applicant request for a modification was denied and the applicant was instructed to apply for Administrative Environmental Impact Design Review (EIDR) for all exterior renovations.
7. The Petitioner received Administrative Environmental Impact Design Review approval from the Town Planner Elijah Romulus on July 31, 2023. As a condition of approval, the applicant had to apply with the Zoning Board of Appeals for the nonconforming utility shed structure constructed in the in the side setback.
8. Relief in the form of a Special Permit pursuant to Section §4.5.3.3 [Special Permit required for New or Expansion of Nonconformity] was requested. The Board of Appeals is the Special Permit Granting Authority.

9. 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.
10. 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.
11. 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 conformity with the submitted site plan entitled "Plot Plan", prepared by R.E. Cameron & Associates, Inc., 681 Washington Street, Norwood, MA 02062, stamped by Scott D. Cameron, Professional Land Surveyor, dated April 5, 2023, revised through June 28, 2023, and stamped on July 7, 2023. Consisting of one (1) sheet.
2. Approval of this Special Permit shall be subject to such conditions set forth by the Town Planner's Administrative Environmental Impact Design Review approval issued July 31, 2023.
3. If the Project, or any Condition imposed in this Decision, requires permit, license, or other approval from any other board, committee, or agency of the Town of Westwood or other regulatory agency of the Commonwealth or the federal government, the Applicant shall make an appropriate application for the same, and shall obtain all required approvals prior to the start of any work.
4. The Applicant shall pursue completion of the Project with reasonable diligence and continuity.
5. 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.
6. **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.**
7. 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.

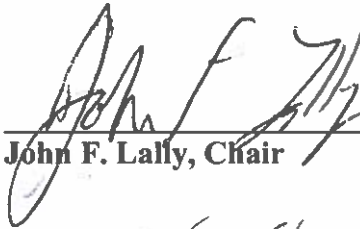
RECORD OF VOTE

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.

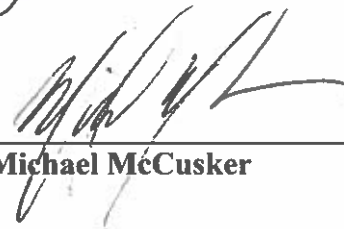
The following members of the Board of Appeals voted in opposition to the grant of the Special Permit:
None.



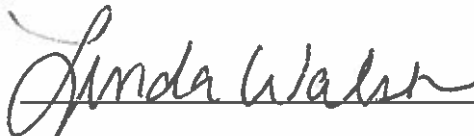
WESTWOOD ZONING BOARD OF APPEALS



John F. Lally, Chair



Michael McCusker



Linda Walsh

9-28-23
Date

32-36 Southwest Park