

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

PROPERTY OWNER(S): 405 Nahatan Street LLC

PETITIONER(S): 405 Nahatan Street LLC
159 Walpole Street
Norwood, Massachusetts 02062

LAND AFFECTED: Nahatan Street
Map 29, Lot 206

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, November 15, 2023, at 7:00 PM via remote participation to consider the Petitioners' request for a Variance pursuant to the Westwood Zoning Bylaw Sections §5.2 [Table of Dimensional Requirements] and §10.4 [Variances]. The newly created lot is lacking in Minimum Non-Wetland Area. The required minimum Non-Wetland Area is 60,000 sq. ft., and the proposed lot has 48,959 sq. ft. The lot was created by an Approval Not Required (ANR) plan in September 2022. The lot is currently vacant and does not have an assigned street address. The property is located in the SRE (Single Residential E) zoning district.

BOARD MEMBERS: John Lally
Michael McCusker
Linda Walsh

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAWS

5.2 TABLE OF DIMENSIONAL REQUIREMENTS¹

DISTRICTS		DIMENSIONAL REQUIREMENTS								
		Minimum Lot Area (sq ft)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Nonwetland Area² (sq ft)	Minimum Front Setback³ (feet)	Minimum Side Yard Setback⁴ (feet)	Minimum Rear Yard Setback⁴ (feet)	Maximum Building Coverage (%)	Maximum Impervious Surface (%)
5.2.1	SRA	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.2	SRB¹³	20,000	90	90	15,000	25	15 ⁵	30 ⁶	25	50
5.2.3	SRC¹³	40,000	125	125	30,000	40	20 ⁷	30 ⁸	25	50
5.2.4	SRD	15,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.5	SRE¹³	80,000	175	175	60,000	40	20 ⁷	30 ⁸	25	50
5.2.6	GR	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.7	SR	80,000	175	175	60,000	40	20 ⁷	30 ⁸	25	50
5.2.8	LBA	4,000	40	40	4,000	10	15 ⁹	15	25	80
5.2.9	LBB	4,000	40	40	4,000	0	15 ⁹	15	25	80
5.2.10	HB	10,000	100	100	10,000	50	15	15	50	80
5.2.11	I	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80
5.2.12	IO	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80
5.2.13	ARO	80,000	175	175	60,000	50	30 ¹²	30	30	50

5.3 NOTES FOR TABLE OF DIMENSIONAL REQUIREMENTS Revised November 21, 2023@2:31PM
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- 1 Shall not apply to sewage pumping stations operated by the Town.
- 2 The term “Nonwetland Area” shall mean land other than the fresh water wetland as that term is defined in M.G.L. Chapter 131, Section 40. The Minimum Nonwetland Area shall be measured in contiguous square feet. The Minimum Nonwetland Area requirement of 12,000 square feet in all Residential Districts shall apply to all lots created prior to the date of adoption of this provision. M.G.L. Chapter 40A, Section 6 may also limit the requirements for certain other lots.
- 3 The minimum front setback distance shall be measured from the nearest street line; provided, however, that where the street has a right-of-way width of less than forty (40) feet, the setback distance shall be measured from a line on the lot twenty (20) feet from and parallel to the center line of said street.
- 4 The minimum side yard and rear yard setbacks shall be the minimum horizontal distance from the lot line to the nearest point of a building or structure.
- 5 Except that a portion of any building or structure not exceeding fifteen (15) feet in height shall be set back a minimum of ten (10) feet from the side lines of its lot, and a detached accessory building or structure having a height of less than fifteen (15) feet and a front setback of at least seventy-five (75) feet shall be set back a minimum of three (3) feet from the side lines of its lot.
- 6 Except that a detached accessory building or structure having a height of less than fifteen (15) feet shall be set back a minimum of three (3) feet from the rear line of its lot.
- 7 Except that a portion of any building or structure not exceeding fifteen (15) feet in height shall be set back a minimum of fifteen (15) feet from the side lines of its lot, and a detached accessory building or structure having a height of less than fifteen (15) feet and a front setback of at least one hundred (100) feet shall be set back a minimum of six (6) feet from the side lines of its lot.
- 8 Except that a detached accessory building or structure having a height of less than fifteen (15) feet shall be set back a minimum of six (6) feet from the rear line of its lot.
- 9 Unless the wall facing a side lot line is either a party wall or, if adjoining another lot in the same district, a wall with its outer face coincident with such line. The space between buildings or structures, if any, shall not be reduced to less than fifteen (15) feet.
- 10 Except that if the side yard abuts a railroad right-of-way, there shall be no minimum side yard setback.
- 11 Except that if the rear yard abuts a railroad right-of-way, there shall be no minimum rear yard setback.
- 12 Each side yard setback shall be increased by one (1) foot for each foot that the height of the building exceeds fifteen (15) feet; provided always that the side yards shall total not less than forty (40) percent of the lot width.
- 13 See Section 8.3 OPEN SPACE RESIDENTIAL DEVELOPMENT for density and dimensional requirements for OSRD.

10.4 VARIANCES

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- 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

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In consideration of all 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 Nahatan Street Map 29 Lot 206 and within the Single Residence E (SRE) Zoning District. The property is currently vacant.
2. The Petitioners is seeking relief in the form of Variance from Section §5.2 [Table of Dimensional Requirements] and pursuant to Section §10.4 [Variances] of the Westwood Zoning Bylaws. The newly created lot is lacking in Minimum Non-Wetland Area. The required Minimum Non-Wetland Area in the Single Residence E (SRE) zoning district is 60,000 sq. ft. The subject property has 48,959 sq. ft. The Board of Appeals is the Special Permit and Variance Granting Authority.
4. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioners' requested relief, and having particular expertise in said local conditions, has found that the Petitioners have not demonstrated 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, that might justify the Board's deviation from literal enforcement of the provisions of this Bylaw. As such, relief may not be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.
5. The Petitioner has not met the requirements for a Variance pursuant to the Westwood Zoning Bylaw.

DECISION and CONDITIONS

On November 15, 2023 the Board of Appeals voted unanimously to deny the Petitioners' request for a Variance pursuant to Westwood Zoning Bylaw Sections §5.2 [Table of Dimensional Requirements] and §10.4 [Variances].

RECORD OF VOTE

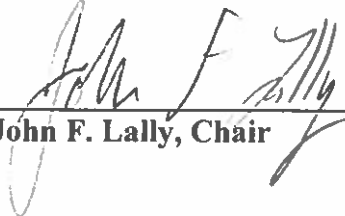
The following members of the Board of Appeals voted to deny the Variance for the above-mentioned project: John Lally, Michael McCusker, and Linda Walsh.

The following members of the Board of Appeals voted in opposition to denial of the Variance: None.



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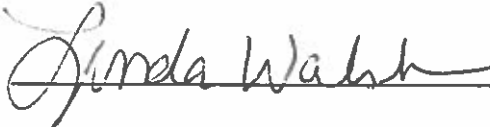
WESTWOOD ZONING BOARD OF APPEALS



John F. Lally, Chair



Michael McCusker



Linda Walsh

11/21/23
Date

Nahatan Street Map 29 Lot 206