

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

**PROPERTY OWNERS:** Harry J. Davis and Chelsea A. Davis

**PETITIONER:** Harry Davis  
48 Birch Tree Drive  
Westwood, MA 02090

**LAND AFFECTED:** 48 Birch Tree Drive  
Westwood, Massachusetts 02090  
Map 14 Lot 060

**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 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 Sections §4.5.3.2.2 [Alterations of Nonconforming Structures-Vertical Extension] and §4.5.3.2.3 [Portico]. The Petitioner proposes to construct a second story addition to the right side of an existing single-family residence and a portico over the front entry. The addition will vertically extend the existing first floor walls, which violate the side setback at 10.8' where 20' is required. The existing house also violates the front setback at 36' where 40' is required. The proposed portico will be located 32.7' from the front lot line. The lot is nonconforming due to a lack of frontage, lot width, and lot area. The property is located in the Single Residence C (SRC) zoning district.

**BOARD MEMBERS:** John Lally, Chair  
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:

**4.5.3.2.1** Horizontal extension of an exterior wall at or along the same nonconforming distance within a required setback as the existing wall, provided that existing

height restrictions shall not be exceeded, regardless of whether the lot complies with current lot area and lot frontage requirements.

- 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.
- 4.5.3.2.3** Construction of an overhang, porch, portico, or similar decorative feature, which extends no further than four (4) additional feet into a required setback area, provided that the Board of Appeals makes a positive finding that the proposed design element is de minimis in nature and improves the aesthetic quality of the property.

### 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 48 Birch Tree Drive. The existing house sits on a nonconforming lot due to a lack of frontage, lot width and area. The existing structure is nonconforming due to violations of the front setback and both side setbacks.
2. The Petitioner is proposing to construct a second story addition to the right side of an existing single-family residence and a portico over the front entry. The addition will vertically extend the existing first floor walls, which violate the side setback at 10.8' where 20' is required. The project also proposes a portico will be located 32.7' from the front lot line. Relief in the form of a Special Permit pursuant to Sections §4.5.3.2.2 and §4.5.3.2.3 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 Sections §4.5.3.2.2 and §4.5.3.2.3 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, "Proposed House Addition at No. 48 Birch Tree Drive in Westwood, MA" prepared by RIM Engineering Co. Inc., P.O. Box 32, Mansfield, MA 02048, dated November 7, 2023 and architectural plans titled "Davis Residence Improvements 48 Birch Tree Drive-Westwood, MA" prepared by Winslow Design, 27 Green Street, Medfield, MA 02052, dated September 16, 2023 consisting of 4 sheets titled: A-3, A-4, A-5 and A-6.
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 Linda Walsh.

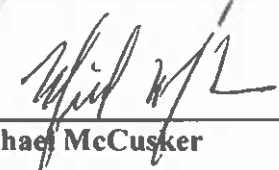
The following members of the Board of Appeals voted in opposition to the grant of the Special Permit: None.

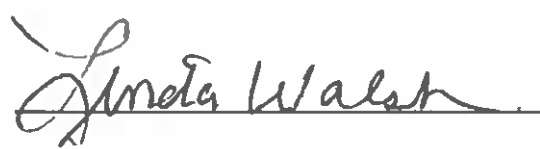
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**WESTWOOD ZONING BOARD OF APPEALS**

  
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**John F. Lally, Chair**

  
\_\_\_\_\_  
**Michael McCusker**

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

12/28/23  
**Date**

**48 Birch Tree Drive**