

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

PROPERTY OWNER: Banner Realty Trust

PETITIONER: Arthur McGuire, Trustee
PO Box 650
Green Harbor, MA 02041

LAND AFFECTED: 122 Edgewood Drive
Westwood, Massachusetts 02090
Map 35 Lot 127

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 July 17, 2024 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 § 4.5.3.2.1 [Alterations of Nonconforming Structures-Horizontal Extension], §4.5.3.2.2 [Alterations of Nonconforming Structures-Vertical Extension], and §4.5.3.3 [Special Permit - Expansion of Nonconformity]. The Petitioner proposes to construct a two-car garage and second story addition to an existing single-family structure. The proposed alteration to the front wall of the house would require Special Permits as it is both a horizontal and vertical extension. The newly constructed south wall of the house would also be extended to accommodate a second story where the is currently only a single story. This would result in an increased nonconformity of a higher structure in the side setback. The existing house is nonconforming as it violates the front setback at 33.1' with 40' required and the south side setback at 11.5' where 15' is required. The subject lot is nonconforming due to a lack of area. The property is located in the Single Residence C (SRC) zoning

BOARD MEMBERS: Michael McCusker, Chair
Linda Walsh
Mark Callahan

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.

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 122 Edgewood Road, and within the Single Residence C (SRC) zoning district.
2. The parcel is nonconforming due to a lack of area. The existing structure is nonconforming due to violations of the front and south side setbacks.
3. The Petitioner proposes to construct a two-car garage and second story addition to an existing single-family structure. The proposed alteration to the front wall of the house would require

Special Permits as it is both a horizontal and vertical extension. The newly constructed south wall of the house would also be extended to accommodate a second story where the is currently only a single story. This would result in an increased nonconformity of a higher structure in the side setback.

4. Relief in the form of Special Permits pursuant to Sections §4.5.3.2.1, §4.5.3.2.2 and §4.5.3.3 was requested. The Board of Appeals is the Special Permit Granting Authority.
5. 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.
6. 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.
7. 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 §4.5.3.2.1, §4.5.3.2.2 and §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 "122 Edgewood Road Westwood, MA Proposed Plot Plan" prepared by Peter Nolan and Associates, LLC, 80 Jewett Street, Suite 1, Newton, MA 02458, dated October 19, 2019, and design plans titled "122 Edgewood Road Westwood, MA -Architectural Permit Set Plans" prepared by Spruhan
2. Engineering, P.C., 80 Jewett Street, Suite 1, Newton, MA 02458 dated October 9, 2019 consisting of 17 sheets.
3. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
4. 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.
5. **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.**

6. 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: Michael McCusker, Linda Walsh and Mark Callahan.

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



WESTWOOD ZONING BOARD OF APPEALS

Michael McCusker

Linda Walsh

Mark Callahan

7/22/24
Date

122 Edgewood Drive