

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

PROPERTY OWNER(S): Gee Tso

PETITIONER(S): Gee Tso
29 Colby Way
Westwood, Massachusetts 02090

2016 OCT 18 P 12:40

TOWN CLERK
TOWN OF WESTWOOD

LAND AFFECTED: 29 Colby Way
Westwood, Massachusetts 02090
Map 36, Lot 133

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 20, 2016 at 7:00 PM in the Champagne Meeting Room of the Carby Street Municipal Office Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioner's request for a Special Permit under Section 4.5.6, entitled Special Permit and/or a Variance from Section 5.2.1 entitled Table of Dimensional Requirements in order to add a bedroom on top of the existing attached garage with a total of five dormers across the front of the house and a covered portico over the front door. The Subject Property is located in the Single Residence C (SRC) District. The hearing was closed on July 20, 2016 and the Board voted to grant a Special Permit pursuant to Section 4.5.6.

A request for reconsideration of the Board's decision was subsequently received from the Building Commission, asking that the Board reconsidered the Petitioner's request as a variance, rather than a special permit. A new hearing was advertised and for September 21, 2016 at 7:00 PM in the Champagne Meeting Room of the Carby Street Municipal Building, 50 Carby Street, Westwood, MA 02090 to allow the Board's reconsideration of its July 20, 2016 decision. On September 21, 2016 the Board received documentation of extensive research by Town Staff and an opinion from Town Counsel that the Board had provided the proper form of relief in its July 20, 2016 granting of a special permit for the Project. The Board voted to deny the Building Commissioner's request for reconsideration of its July 20, 2016 decision, and therefore declined to open a new public hearing. The Board reaffirmed its July 20, 2016 decision to grant a Special Permit pursuant to Section 4.5.6.

BOARD MEMBERS: David W. Krumsiek, Chairman
Douglas C. Stebbins
John F. Lally

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

4.5 NONCONFORMING USES AND STRUCTURES

- 4.5.1 **Applicability.** This Section shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by M.G.L. Chapter 40A, Section 5 at which this Bylaw, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.
- 4.5.2 **Nonconforming Uses.** The Board of Appeals may grant a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:
- 4.5.2.1 Change or substantial extension of the use.
- 4.5.3 **Nonconforming Structures.** The Board of Appeals may grant a special permit to reconstruct, extend, alter or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:
- 4.5.3.1 Reconstructed, extended or structurally changed.
- 4.5.3.2 Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.
- 4.5.4 **New or Expansion of Nonconformity.** The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required setback, shall require the issuance of a special permit from the Board of Appeals.
- 4.5.5 **Nonconforming Single and Two-Family Residential Structures.** Nonconforming single and two-family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Building Commissioner that such proposed reconstruction, extension, alteration or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:
- 4.5.5.1 Alteration to a structure which complies with all current setback, yard, building coverage and building height requirements but is located on a lot with insufficient lot area, where the alteration will also comply with all of said current requirements.
- 4.5.5.2 Alteration to a structure which complies with all current setback, yard, building coverage and building height requirements but is located on a lot with insufficient lot frontage, where the alteration will also comply with all of said current

requirements.

4.5.5.3 Alteration to a structure which encroaches upon one (1) or more required setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.5.4 Alteration to the side or face of a structure which encroaches upon a required setback area, where the alteration will not encroach upon such area to a distance greater than the existing structure regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.5.5 Alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions shall not be exceeded.

4.5.6 **Special Permit.** In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration or change where it determines that the proposed modification will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

5.2 TABLE OF DIMENSIONAL REQUIREMENTS¹ 2016

DISTRICTS	DIMENSIONAL REQUIREMENTS										
	Minimum Lot Area (sq ft)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Nonwetland Area ² (sq ft)	Minimum Front Setback ³ (feet)	Minimum Side Yard Setback ⁴ (feet)	Minimum Rear Yard Setback ⁴ (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 SRB ¹³	20,000	90	90	15,000	25	15 ⁵	30 ⁶	25	50		
5.2.3 SRC ¹³	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 SRE ¹³	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		

DIMENSIONAL REQUIREMENTS - SRC from 1989 with lot area and lot frontage values from Comprehensive Permit Plan

Minimum Lot Area (sq ft)	Minimum Lot Width (feet)	Minimum Nonwetland Area (sq ft)	Minimum Front Setback (feet)	Minimum Side Yard Setback (feet)	Minimum Rear Yard Setback (feet)	Minimum Building Coverage (%)	Maximum Impervious Surface (%)
12,000	89	89	30	15	25	25	50

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 Petitioner's proposes to add a bedroom on top of the existing attached garage with a total of five dormers across the front of the house and a covered portico over the front door. Relief from the maximum allowable height within a side setback pursuant to Section 5.2.1, entitled Table of Dimensional Requirements was requested. The Board of Appeals is the Special Permit Granting Authority.
2. The Subject Property was developed pursuant to a Comprehensive Permit issued by the ZBA on April 10, 1989 for The Commons at Westwood, now known as Chase Estates. The Comprehensive Permit was later amended by subsequent action of the ZBA taken on September 17, 1992 and memorialized in a letter dated October 15, 1992.
3. In accordance with said Comprehensive Permit, as amended, the minimum lot size for the Subject Property of 12,000 SF, and minimum lot frontage of 89', were approved as shown on the submitted lotting plan for that development. The lot area of the Subject Property remains at 12,000 SF and the lot frontage remains at 89'.
4. In accordance with said Comprehensive Permit, as amended, the minimum setback requirements pertaining to the Subject Property were approved as: 30 ft. front setback, 15 ft. side yard setback, and 25 ft. rear setback.
5. In accordance with said Comprehensive Permit, as amended, all other dimensional requirements pertaining to the Subject Property are as prescribed in the Zoning Bylaw for the SRC District, including the maximum building height requirement of 25'.
6. The existing building violates the side yard setback requirement with s 12.5 ft. provided where 15 ft. is required.
7. The proposed addition to this single story house will continue the non-conforming side yard setback of 12.5 ft. provided where 15 ft. is required.
8. The proposed dormers will increase the building height to 30'6" where a maximum of 25' is allowed.
9. The Board of Health issued a memorandum dated July 20, 2016 outlining requirements of the Health Department prior to construction.
10. The Subject Property constitutes an existing non-conforming structure because the garage is within the side yard setback, and is eligible for consideration as a Special Permit pursuant to Section 4.5 [Nonconforming Uses and Structures].
11. The proposed alterations will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
12. 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.
13. The Petitioner's proposed construction 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.
14. 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 4.5.6 of the Westwood Zoning Bylaw.

1. The Project shall be constructed in conformity with the submitted architectural plan prepared by SAMI, LLC, 28 Old Town Road, Walpole, MA 01081, dated June 14, 2016, consisting of ten (10) sheets, and in conformity with the submitted plot plan prepared by John F. Toomey, Toomey-Munson & Associates, Inc., 89 Access Road, Unit 12, Norwood, MA 02062, dated July 8, 2016 consisting of one (1) sheet. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
2. The memorandum from the Board of Health to the Board of Appeals dated July 20, 2016 shall be made part of this decision and the conditions of said letter shall be carried out as specified:

The Petitioner shall use a waste hauler, licensed by the Westwood Board of Health to dispose of the construction debris.

If necessary during construction, the Petitioner shall provide a portable toilet, licensed by the Westwood Board of Health.

The Petitioner may be required to have an asbestos inspection conducted in compliance with DEP Asbestos Regulations prior to the renovation of the building.

3. This Special Permit shall not take effect until a copy of this 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 by the Petitioner to the Building Commissioner, Town Clerk and the Board of Appeals.
4. **The persons exercising rights under a duly appealed special permit do 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: David W. Krumsiek, John F. Lally, and Douglas C. Stebbins.

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



WESTWOOD ZONING BOARD OF APPEALS

The Board of Appeals hereby certifies that the attached hereto is a true and complete copy of the Board's decision and that said decision and any plans referred to therein have been filed with the Board of Appeals.

David W. Krumsiek, Chairman

John F. Lally

Douglas C. Stebbins

10/18/16
Date

29 Colby Way - Tso