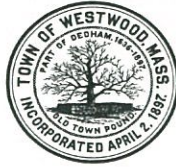


TOWN OF WESTWOOD
COMMONWEALTH of MASSACHUSETTS

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



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ZONING BOARD OF APPEALS

NOTICE OF DECISION

In compliance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, you are hereby notified that the Board of Appeals has voted unanimously to *deny* the application of Petitioner Karen Fechter for a Special Permit and/or Variance pursuant to Section 5.2.3 of the Westwood Zoning Bylaw, entitled Dimensional Requirements, to place a tool shed within the side yard setback.

Land affected: 10 North Street, Westwood, MA
Zoning District C

The signed decision for the petition was filed at the office of the Town Clerk on October 28, 2016.

Any appeal of this decision shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17 and a copy delivered to Office of the Town Clerk within twenty (20) days of the date that the decision was filed in the office of the Town Clerk.

2016 OCT 28 A 9:23
TOWN CLERK
TOWN OF WESTWOOD

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

PROPERTY OWNER(S): Karen Fechtor

PETITIONER(S): Karen Fechtor
10A North Street
Westwood, Massachusetts 02090

LAND AFFECTED: 10A North Street
Westwood, Massachusetts 02090
Map 34, Lot 088

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 21, 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 Petitioners' request for a Special Permit pursuant to Section 4.5.6 of the Westwood Zoning Bylaw and/or Variance from Section 5.2.3 of the Zoning Bylaw, to allow a tool shed located within the side yard setback of the existing two-family residence at 10 North Street. Property located in Single Residence C District (SRC).

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	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.2	20,000	90	90	15,000	25	15 ⁵	30 ⁶	25	50
5.2.3	40,000	125	125	30,000	40	20 ⁷	30 ⁸	25	50
5.2.4	15,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.5	80,000	175	175	60,000	40	20 ⁷	30 ⁸	25	50
5.2.6	12,000	90	90	12,000	25	15 ⁵	30 ⁶	25	50
5.2.7	80,000	175	175	60,000	40	20 ⁷	30 ⁸	25	50
5.2.8	4,000	40	40	4,000	10	15 ⁹	15	25	80
5.2.9	4,000	40	40	4,000	0	15 ⁹	15	25	80
5.2.10	10,000	100	100	10,000	50	15	15	50	80
5.2.11	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80
5.2.12	40,000	200	200	12,000	50	15 ¹⁰	15 ¹¹	50	80
5.2.13	80,000	175	175	60,000	50	30 ¹²	30	30	50

5.3 NOTES FOR TABLE OF DIMENSIONAL REQUIREMENTS

- 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.

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 the corner of North Street and High Street in Westwood, MA. The Petitioners propose to maintain a tool shed which was improperly placed within the side yard setback and which was ordered removed by the Building Commissioner. Relief from the minimum side setback pursuant to Section 5.2.3, entitled Table of Dimensional Requirements was requested. The Board of Appeals is the Variance and Special Permit Granting Authority.
2. The lot area of the Subject Property is 139,392 SF where 40,000 SF is required.
3. The street frontage of the Subject Property is 282' where 125' is required.
4. The tool shed violates the side setback with 4.93' provided where 6' is required.
5. The Subject Property does not constitute an existing non-conforming lot and is not eligible for consideration for a Special Permit pursuant to Section 4.5 [Nonconforming Uses and Structures]. The Zoning Board of Appeals considered the Petitioner's proposal as a request for a Variance from Section 5.2.3 of the Zoning Bylaw.
6. The Petitioner provided no credible testimony or evidence at the hearing to demonstrate circumstances relating to the shape and topography of the Petitioner's land, and especially affecting such land but not affecting generally the zoning district in which the Petitioner's land is located, that literal enforcement of Section 5.2.3 of the Zoning Bylaw would involve substantial hardship to the Petitioner, nor did the Petitioner provide credible testimony or evidence at the hearing to demonstrate 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 such bylaw.

DECISION and CONDITIONS

The Board of Appeals voted unanimously to deny the Petitioner's request for a Special Permit and/or Variance from Section 5.2.3 of the Westwood Zoning Bylaw.

RECORD OF VOTE

The following members of the Board of Appeals voted to deny the Special Permit and/or Variance 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 denial of the Special Permit and/or Variance: None.



WESTWOOD ZONING BOARD OF APPEALS

David W. Krumsiek - Chairman

John F. Lally

Douglas C. Stebbins

10/28/16
Date

10 North Street – Fechter

2016 OCT 28 A 9:23
TOWN CLERK
TOWN OF WESTWOOD

