

**Town of Westwood**  
Commonwealth of Massachusetts

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



**ZONING BOARD OF APPEALS**

Sarah Bouchard, Housing & Zoning Agent  
[sbouchard@townhall.westwood.ma.us](mailto:sbouchard@townhall.westwood.ma.us)  
(781) 251-2590

Karyn Flynn, Administrative Assistant  
[kflynn@townhall.westwood.ma.us](mailto:kflynn@townhall.westwood.ma.us)  
(781) 767-6340

**TOWN CLERK  
TOWN OF WESTWOOD**

**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 unanimously voted to grant the Petitioners, Peter and Mary Cuzzo of 17 Sexton Avenue, their request to overturn the decision of the Building Commissioner not to pursue enforcement of a shed located within the setback at the subject property. The Board concluded that the Petitioners' complaint was submitted to the Building Commissioner within the applicable statutory period of limitations.

PROPERTY OWNER(S): Joy Frances Colby

LAND AFFECTED: 18 Buckmaster Road, Westwood, MA  
Map 28 Lot 161

The signed decision for the petition was filed at the office of the Town Clerk on March 6, 2017.

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.

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

**PROPERTY OWNER(S): Joy Frances Colby**

**PETITIONER(S):** Mary & Peter Cuzzo  
17 Sexton Avenue  
Westwood, Massachusetts 02090

**LAND AFFECTED:** 18 Buckmaster Road  
Westwood, Massachusetts 02090  
Map 28, Lot 161

**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, January 18 at 7:00 PM at which time testimony was taken and which was continued to Wednesday, February 15 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 Appeal pursuant to Westwood Zoning Bylaw Section 10.1.7 [Appeals]. The Petitioners have filed their Appeal relative to a decision of the Building Commissioner established in letters dated October 27, 2016 and November 21, 2016 not to pursue zoning enforcement on a shed located within a setback at 18 Buckmaster Road. Property located within the Single Residence C District (SRC).

**BOARD MEMBERS:** David W. Krumsiek, Chairman  
Douglas C. Stebbins  
David M. Belcher

**APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW**

**10.1.7 Appeals.**

**10.1.7.1** Appeals to the Board of Appeals may be taken by a person aggrieved by reason of their inability to obtain a permit or enforcement action under this Zoning Bylaw, or may be taken by an officer or board of the Town or other person aggrieved by an order or decision of any administrative official under this Bylaw. The Petitioner shall file such appeal with the Town Clerk within thirty (30) days after the refusal of a permit or the issuance of the order of decision. The Petitioner shall forthwith transmit a Page 10-3 Westwood Zoning Bylaw as Revised through May 2, 2016 copy thereof, with the date of filing certified by the Town Clerk, with the Board of Appeals and the officer or board whose order or decision is being appealed. The Board of Appeals shall hold a public hearing within sixty five (65) days of the receipt of the petition 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 upon a petition within the one hundred (100)-day period shall be deemed to be a grant of the appeal.

**10.1.7.2** A person aggrieved by a decision of the Board of Appeals or the Special Permit Granting Authority or by the failure of the Board of Appeals to take final action concerning any appeals, application or petition within the required time or by the failure of a Special Permit Granting Authority to take final action concerning an application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to a court of competent jurisdiction within twenty (20) days after the decision has been filed with the Town Clerk. Notice of such action with a copy of the complaint shall be filed with the Town Clerk within said twenty (20) days.

**10.1.8 Repetitive Appeal, Application or Petition.** No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or Planning Board shall be favorably and finally acted upon within two (2) years after the date of such unfavorable action unless the Board which acted upon the appeal, application or petition, by a unanimous vote if the Board of Appeals or all but one of the members if the Planning Board, finds specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in its records. All but one of the members of the Planning Board must also consent to a repetitive appeal, application or petition initially acted upon by the Board of Appeals and submitted for reconsideration within two (2) years after the date of unfavorable action after notice is given to parties in interest of the time and place of the proceedings to consider consent.

## 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. Peter and Mary Cuzzo, whose address is 17 Sexton Avenue, Westwood, MA 02090 are the petitioners for an administrative appeal for certain land situated at 18 Buckmaster Road, Westwood, MA 02090 and owned by Joy Frances Colby, of 18 Buckmaster Road.
2. Said property is situated in the Single Residential C district.
3. The petitioners have filed an appeal relative to a decision of the Building Commissioner not to enforce zoning against a shed located within the setbacks. The Zoning Board of Appeals is the authority to hear administrative appeals.
4. The homeowner submitted a certified plot plan at the time of application for a building permit for reconstruction of the primary dwelling. The plot plan, dated April 26, 2006 and revised once on August 1, 2006 shows an existing shed within 1.8' of the rear setback and 2.0' of the side setback where 6' are required for a detached accessory structure having a height of less than fifteen feet.
5. According to verbal testimony by the homeowner, the shed was torn down and replaced by a larger sized shed in the same location in 2007.
6. As an accessory structure under 200 square feet, a building permit was not required for reconstruction of the shed.
7. The petitioners first submitted their written complaint requesting zoning enforcement to the Building Commissioner via an email from Peter Cuzzo dated August 31, 2015.
8. The Building Commissioner applied MGL Chapter 40A Section 7 in his determination that the complaint was untimely, allowing for a six year period of limitations following the commencement of the alleged violation.
9. In this case, the Board finds that since a building permit was not required for reconstruction of the shed due to its size, the determination of a timely request must rely on application of MGL Chapter 40A Section 7's 10 year period of limitations for parties aggrieved by a zoning violation where no building permit is issued.
10. The Board finds that the 2007 reconstruction of the shed within the setbacks constitutes a new violation.
11. The Board concluded that the Petitioners' complaint was submitted to the Building Commissioner within the applicable statutory period of limitations.

## **DECISION**

The Board of Appeals voted unanimously to grant the Petitioner's request to overturn the decision of the Building Commissioner.

## **RECORD OF VOTE**

The following members of the Board of Appeals voted to overturn the decision of the Building Commissioner not to pursue enforcement for the subject property: David W. Krumsiek, Douglas C. Stebbins and David M. Belcher.

The following members of the Board of Appeals voted to uphold the Building Commissioner's decision: None.



**WESTWOOD ZONING BOARD OF APPEALS**

**David W. Krumsiek - Chairman**

**Douglas C. Stebbins**

**David M. Belcher**

3/6/17  
Date

**18 Buckmaster Road – Cuozzo**

TOWN CLERK  
TOWN OF WESTWOOD  
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