

Town of Westwood

Commonwealth of Massachusetts

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



ZONING BOARD OF APPEALS

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2017 JAN 30 A 11:58

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 Petitioner, 94 Oak Street LLC, a request for a Special Permit pursuant to the Westwood Zoning Bylaw, Section 6.3.10 entitled Special Permit for Perimeter Fence to install a retaining wall and fence with a combined height not to exceed 8 feet.

PROPERTY OWNER(S): 94 Oak Street, LLC

LAND AFFECTED: 94 Oak Street, Westwood, MA
Map 35 Lot 189

The signed decision for the petition was filed at the office of the Town Clerk on **January 30, 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): 94 Oak Street, LLC

PETITIONER(S): 94 Oak Street, LLC
42 Riverdale Avenue
Newton, Massachusetts 02458

LAND AFFECTED: 94 Oak Street
Westwood, Massachusetts 02090
Map 35, Lot 189

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, 2017 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 Variance pursuant to Section 6.3.10 of the Westwood Zoning Bylaw, Perimeter Fence Special Permit, to install a retaining wall and fence with a combined height of over 8 feet. Property located in Single Residence District C (SRC).

BOARD MEMBERS: David Krumsiek, Chairman
Douglas Stebbins
David Belcher

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

6.3.10 **Perimeter Fence Special Permit.** The Board of Appeals may grant a special permit to install a freestanding fence a maximum of eight (8) feet in height, or a fence installed on or immediately adjacent to a wall such that the fence and wall together have a combined height of a maximum of eight (8) feet, measured from the lowest point of grade adjacent to the fence or combined wall and fence, only upon its written determination that the adverse effects of the project will not outweigh its beneficial impacts on the Town or the neighborhood, in view of the particular characteristics of the site, and of the project in relation to the site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

- 6.3.10.1 degree to which existing landscaping, vegetation and other screening will be maintained;
- 6.3.10.2 proximity to abutting residences;
- 6.3.10.3 proximity to heavily traveled roadways; and
- 6.3.10.4 consistency with the interests of public safety, particularly sight distances for traffic visibility.

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 94 Oak Street. The Petitioner proposes to construct a retaining wall and privacy fence with a maximum combined height to exceed eight (8) feet tall privacy fence on the north side of the property. Relief from the maximum permissible fence height of six (6) feet, pursuant to Section 6.3.10, entitled Perimeter Fence was requested. The Board of Appeals is the Granting Authority for both Special Permits and Variances.
2. The lot area of the Subject Property is 43,124 SF where 40,000 SF is required.
3. The lot frontage of the Subject Property is 80.07' where 125' is required.
4. The Petitioners requested the additional height to accommodate a fence/guardrail located on top of a retaining wall that frames the driveway.
5. Due to the sloping topography of the lot, a retaining wall 5' in height is necessary to relocate the driveway with a sufficient turning area to its proposed location.
6. During the course of the hearing, the Petitioner amended the request for zoning relief from a Variance to a Special Permit to reflect a revised height of the fence and wall not to exceed 8'.
7. Any adverse effects of the Petitioners' 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.
8. The Petitioners' 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.
9. The Petitioners have 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 Petitioners' request for a Special Permit pursuant to Section 6.3.10 of the Westwood Zoning Bylaw pursuant to the following conditions:

1. The Project shall be constructed in conformity with the submitted plan prepared by Daniel J. Merrikin, P.E., Merrikin Engineering, LLP, 730 Main Street, Suite 2C, Millis, MA 02054, dated January 17, 2017, consisting of one (1) sheet. The Petitioners shall pursue completion of the Project with reasonable diligence and continuity.

2. The combined height of the fence and wall together shall have a maximum limit of eight (8) feet, measured from the lowest point of grade adjacent to the combined wall and fence.
3. Before commencing construction of wall and fence, the Petitioner must provide to the Building Commissioner a landscaping plan that has been approved and signed by the neighbor located at 88 Oak Street.
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 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.**
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 Applicants 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 Krumsiek, Douglas Stebbins and David Belcher.

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



WESTWOOD ZONING BOARD OF APPEALS

David W. Krumsiek - Chairman

Douglas C. Stebbins

David M. Belcher

1/30/17

Date

94 Oak Street – Fitzgerald