

Town of Westwood
Commonwealth of Massachusetts

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



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ZONING BOARD OF APPEALS

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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, Daniel Thunberg, his request for a Special Permit pursuant to the Westwood Zoning Bylaw, Section 4.5.6 to construct a second story addition raising the height of the single family home in the front and side setbacks.

PROPERTY OWNER(S): Daniel Thunberg

LAND AFFECTED: 142 Birch Tree Drive, Westwood, MA
Map 9 Lot 135

The signed decision for the petition was filed at the office of the Town Clerk on **May 15, 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): Daniel and Maria Laura Thunberg

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PETITIONER(S): Daniel Thunberg
142 Birch Tree Drive
Westwood, MA 02090

TOWN CLERK
TOWN OF WESTWOOD

LAND AFFECTED: 142 Birch Tree Drive
Westwood, Massachusetts 02090
Map 9, Lot 135

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, April 26 at 7:00 PM in the Selectmen's Meeting Room of the Town Hall, 580 High Street, Westwood, MA 02090 to consider the Petitioners' request for a Special Permit pursuant to Section 4.5.6 of the Westwood Zoning Bylaw to construct a second story addition, raising the height in the side and front setbacks of the single-family residence. Property located within the Single Residential District C (SRC).

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

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

	DIMENSIONAL REQUIREMENTS										
	DISTRICTS	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	

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 Petitioners propose to construct a second story addition which will raise the height in the front and side setbacks of the single-family residence at 142 Birch Tree Drive. Relief from the minimum setback requirements 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 constitutes an existing non-conforming structure and is eligible for consideration as a Special Permit pursuant to Section 4.5 [Nonconforming Uses and Structures].
3. The lot area of the Subject Parcel is 16,426 SF where 40,000 SF is required.
4. The lot frontage of the Subject Parcel is 92' where 125' is required.
5. The proposed second story addition will violate the side setback requirement, with 19.6' and 19.5' provided on the west and east sides respectively where 20' is required for a structure taller than 15' in height.
6. The proposed second story addition will not exceed an average building height of 25'.
7. The Board of Health issued a memorandum dated April 14, 2017 outlining requirements of the Petitioner during construction.
8. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioners' proposed construction, and having particular expertise in said local conditions, have taken a view that 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.
9. 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, 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.
10. 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 4.5.6 of the Westwood Zoning Bylaw.

1. The Project shall be constructed in conformity with the submitted plan prepared by Karl F. Sauerbrey, Architect, 582 Hopkins Hill Road, W. Greenwich, RI 02817, undated, consisting of seven (7) sheets, and in conformity with the submitted plot plan prepared by Joseph L. Calabro Jr., P.L.S., Miller Surveying Services, 60 Crosby Street, Quincy, MA 02169, dated 3/14/17, consisting of one (1) sheet. The Petitioners 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 April 14, 2017 shall be made part of this decision and the conditions of said letter shall be carried out as specified:

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

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

The Petitioners are 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 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.
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 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 W. Krumsiek, Douglas C. Stebbins and John F. Lally.

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



WESTWOOD ZONING BOARD OF APPEALS

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TOWN CLERK
TOWN OF WESTWOOD

David W. Krumsiek - Chairman

John F. Lally

Douglas C. Stebbins

4/26/17
Date

142 Birch Tree Drive-Thunberg