

Town of Westwood

Commonwealth of Massachusetts

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



ZONING BOARD OF APPEALS

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2018 JAN - 8 P (481) 167-6344

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, Daniel and Rada Hallissey their request for a Special Permit pursuant to the Westwood Zoning Bylaw, Section 4.5.3.2.2 to construct a second floor addition that raises the average height of the single family residence within the side setback.

PROPERTY OWNER(S): Daniel and Rad Hallissey

LAND AFFECTED: 63 Loring Street, Westwood, MA
Map 16 Lot 68

The signed decision for the petition was filed at the office of the Town Clerk on January 8, 2018.

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 & Rada Hallissey

PETITIONER(S): Daniel & Rada Hallissey
63 Loring Street
Westwood, MA 02090

LAND AFFECTED: 63 Loring Street
Westwood, Massachusetts 02090
Map 16, Lot 68

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, December 20, 2017 at 7:00 PM in the Champagne Meeting Room, Carby Street Municipal Office Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioners' request for a Special Permit pursuant to Section 4.5.3.2.2 of the Westwood Zoning Bylaw to construct a second floor addition that raises the average height of the single family residence within the side setback. Property located within the General Residential District (GR).

BOARD MEMBERS: John F. Lally
Douglas C. Stebbins
David M. Belcher

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

4.5 NONCONFORMING USES AND STRUCTURES

4.5.1 Applicability. Nonconforming uses and structures, as defined in Section 2.0 of this Bylaw, may continue. Any alteration of a nonconforming use, or any alteration of a nonconforming structure, shall require authorization in accordance with this section. An alteration of a structure is a modification, structural change, extension, or reconstruction of the structure.

4.5.2 Nonconforming Uses.

4.5.2.1 Permitted Alterations of Nonconforming Uses. A structure that conforms dimensionally to current zoning regulations while its use no longer conforms can be altered without needing a special permit if the Building Commissioner determines that the proposed alteration falls under any of the following circumstances:

4.5.2.1.1 There is no extension or expansion of the exterior of the structure.

4.5.2.1.2 There is no interior expansion that would intensify the use.

4.5.2.1.3 The alteration is made for the purposes of conforming to the building code for health and safety purposes.

4.5.2.2 Special Permit Required for Alteration to Nonconforming Use. The Board of Appeals may grant a special permit to modify, alter or extend a nonconforming use in accordance with this Section only if it determines that such modification, alteration or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood and the town. To be considered insubstantial, the Board must find that the proposed use reflects the nature and purpose of the prior use, there is no difference in the quality, character or degree of the proposed use and the proposed use is not different in its effect on the neighborhood.

4.5.3 Nonconforming Structures.

4.5.3.1 Permitted Alterations of Nonconforming Single and Two-Family Residential Structures. Nonconforming single and two-family residential structures may be altered upon a determination by the Building Commissioner that such proposed alteration does not increase the nonconforming nature of said structure. The following circumstances shall be deemed not to increase the nonconforming nature of said structure and may be permitted as of right:

4.5.3.1.1 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot area, where the alteration will still comply with all of such current requirements.

4.5.3.1.2 Alteration to a structure which complies with all current setbacks, building coverage and building height requirements but is located on a lot with insufficient lot frontage, where the alteration will still comply with all such current requirements.

4.5.3.1.3 Alteration to a structure which violates one (1) or more required setbacks, where the alteration will now 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.

4.5.3.1.4 Alteration to a side or face of a structure which violates a required setback, where the alteration will not increase the setback violation, and will comply with building height restrictions, regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.1.5 Alteration to a nonconforming structure which will not increase the footprint of the existing structure provided that existing height restrictions of Section 5.0 of this bylaw shall not be exceeded.

4.5.3.2 Special Permit Alterations of Nonconforming Structures. In the event that the Building Commissioner determines that a proposed alteration to a nonconforming structure does not meet the requirements of Section 4.5.3.1, the Board of Appeals may grant a special permit to make alterations to a nonconforming structure in accordance with this Section only if it determines that such alteration does not substantially increase the nonconforming nature of said structure and would not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of alterations to nonconforming structures may be considered for a special permit by the Board of Appeals:

4.5.3.2.1 Horizontal extension of an exterior wall at or along the nonconforming distance within a required setback as the existing wall, provided that existing height restrictions shall not be exceeded, regardless of whether the lot complies with current lot area and lot frontage requirements.

4.5.3.2.2 Vertical extension of an existing exterior wall at or along the same or greater distance from a lot line, provided that the structure has a building height of no more than twenty-five (25) feet, if constructed on a lot that does not comply with current lot area and/or lot frontage requirements, or a building height no greater than permitted by this Bylaw if constructed on a lot that complies with current lot area and/or lot frontage requirements.

4.5.3.2.3 Construction of an overhang, porch, portico, or similar decorative feature, which extends no further than four (4) additional feet into a required setback area, provided that the Board of Appeals makes a positive finding that the proposed design element is de minimis in nature and improves the aesthetic quality of the property.

5.2 TABLE OF DIMENSIONAL REQUIREMENTS¹

	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 (%)	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 ⁶	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 ⁶	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 ⁶	25	50													
5.2.8	4,000	40	40	4,000	10	15 ⁵	15	25	80													
5.2.9	4,000	40	40	4,000	0	15 ⁵	15	25	80													
5.2.10	10,000	100	100	10,000	50	15 ⁸	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 Petitioners propose to construct a second story addition which will raise the height of the building in the left side setback of the single-family residence at 63 Loring Street. Relief in the form of a Special Permit to alter a nonconforming structure was requested. The Board of Appeals is the Special Permit Granting Authority.
2. The Subject Property constitutes an existing nonconforming 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 5,700 SF where 12,000 SF is required.
4. The lot frontage of the Subject Parcel is 75' where 90' is required.
5. The proposed second story addition will violate the side setback requirement, with 13.2' provided where 15' is required for a structure taller than 15' in height.
6. The proposed second story addition will extend vertically the existing exterior walls at or along the same or greater distance from the lot lines.
7. 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.
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, 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 4.5.6 of the Westwood Zoning Bylaw.

1. The Project shall be constructed in conformity with the submitted plan prepared by Dean Jafferian, 373 Main Street, Plympton, MA 02367, submitted to the Board on November 14, 2017, consisting of twelve (12) sheets, and in conformity with the submitted plot plan prepared by James W. Nieva, P.L.S., Dunn

McKenzie Land Surveying and Civil Engineering, 206 Dedham Street, Norfolk, MA 02056, dated September 13, 2017, consisting of one (1) sheet. The Petitioners shall pursue completion of the Project with reasonable diligence and continuity.

2. 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.
3. **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.**
4. 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: John F. Lally, Douglas C. Stebbins and David M. 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

John F. Lally, Chairman

Douglas C. Stebbins

David M. Belcher

12/20/17
Date

63 Loring Street-Hallissey

2018 JAN - 8 P 4: 11
TOWN CLERK
TOWN OF WESTWOOD

