

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
(781) 251-2598

Karyn Flynn, Administrative Assistant
kflynn@townhall.westwood.ma.us
(781) 767-6344

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 Petitioner, Mark Karafotias, his request to amend the Special Permit previously granted by the Board on August 3, 2015 pursuant to the Westwood Zoning Bylaw, Section 4.5.6 to construct a garage addition within the setbacks. The amendment was to expand the relief originally granted to reflect the as-built location of the garage, which further encroaches upon the side setback.

PROPERTY OWNER(S): Mark Karafotias

LAND AFFECTED: 2 Overlook Avenue, Westwood, MA
Map 18 Lot 017

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): Mark J. Karafotias

PETITIONER(S): Mark J. Karafotias
2 Overlook Avenue
Westwood, MA 02090

LAND AFFECTED: 2 Overlook Avenue
Westwood, Massachusetts 02090
Map 18, Lot 017

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 of the Carby Street Municipal Office Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioners' request to amend a Special Permit previously granted by the Board under former Westwood Bylaw Section 4.5.6 [Nonconforming Uses and Structures] on August 3, 2015 to construct a garage within the side setback. Property located in Single Residence District C (SRC).

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

APPLICABLE SECTION OF THE 2015 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.

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 2 Overlook Avenue. The Petitioner proposes to amend an existing Special Permit to reflect a variation in as-built dimensions and further encroachment into the side setback. The Board of Appeals is the Special Permit Granting Authority.
2. In its August 3, 2015 decision, the Board approved a Special Permit for the project to be constructed in conformity with a plot plan prepared by David Denny, P.L.S., Denny Land Surveying & Engineers, 51 Park Drive, Boston, MA 02215, dated June 4, 2015.
3. Due to an error in pouring the foundation, the dimensions of the garage as constructed have shifted closer to the side lot line than originally approved by the Board, with the rear of the garage 5.1' from the lot line where 6.3' was approved, and the front of the garage 4.3' from the lot line where 4.9' was approved.
4. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioner's construction, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Petitioner's 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.
5. The Petitioner continues to meet 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 to amend the Special Permit granted by the Board on August 3, 2015 according to the Westwood Zoning Bylaw Section 4.5.6 then in effect.

1. The Project shall be constructed in conformity with the submitted as-built plan prepared by David Denny, P.L.S., Denny Land Surveying & Engineers, 51 Park Drive, Boston, MA 02215, dated May 11, 2017, consisting of one (1) sheet.
2. This amended 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.

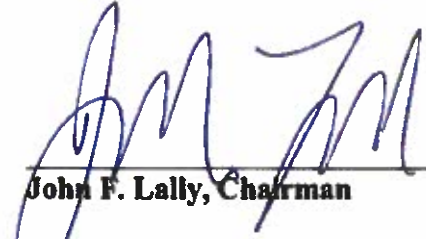
RECORD OF VOTE

The following members of the Board of Appeals voted to grant the Special Permit amendment for the above mentioned project: John Lally, David Belcher, and Douglas Stebbins.

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



WESTWOOD ZONING BOARD OF APPEALS



John F. Lally, Chairman



Douglas C. Stebbins



David M. Belcher

12/20/17
Date

2 Overlook Ave- Karafotias

TOWN CLERK
TOWN OF WESTWOOD

2018 JAN - 8 P 4: 09