

**Town of Westwood**  
Commonwealth of Massachusetts

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



**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 Petitioners, Thomas & Frances Gallagher, their request for a Variance pursuant to the Westwood Zoning Bylaw, Section 4.5.3.3 entitled Variance Required for New or Expansion of Nonconformity to permit a single family residence located within the front setback requirement of Section 5.2.1 entitled Table of Dimensional Requirements.

PROPERTY OWNER(S): Thomas & Frances Gallagher

LAND AFFECTED: 60 Dover Terrace, Westwood, MA  
Map 09 Lot 132

The signed decision for the petition was filed at the office of the Town Clerk on **July 5, 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 BOARD OF APPEALS  
of the  
TOWN OF WESTWOOD**

**PROPERTY OWNER(S): Thomas & Frances Gallagher**

**PETITIONER:** Thomas & Frances Gallagher  
81 Curve Street  
Needham, MA 02492

**LAND AFFECTED:** 60 Dover Terrace  
Westwood, MA 02090

**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, June 21, 2017 at 7:00 P.M. in the Champagne Meeting Room at the Carby Street Municipal Building, 50 Carby Street, Westwood, MA 02090 to consider the Petitioner's request for a Variance from Section 4.5.3.3 of the Westwood Zoning Bylaw for a single family residence constructed within the front setback. Property located in Residential Zoning District C.

**BOARD MEMBERS:** David W. Krumsiek, Chairman  
John F. Lally  
Danielle L. Button

**APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW**

**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 same 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.

**4.5.3.3 Variance Required for New or Expansion of Nonconformity.** In the event that the Building Commissioner determines that a proposed alteration to a nonconforming structure increases the nonconformity or results in a new nonconformity and does not meet the requirements of Section 4.5.3.1 nor of Section 4.5.3.2, a variance is required in accordance with Section 10.4 of this bylaw. If the nonconforming nature of a structure would be increased by the proposed alteration, a variance from Board of Appeals shall be required to allow such alteration. In addition, no nonconforming structure, commercial or residential, shall be altered to accommodate a substantially different use, or to accommodate the same use in a substantially different manner or to a substantially greater extent, unless a variance allowing said alteration is granted by the Board of Appeals.

## **SECTION 5.0 DIMENSIONAL REQUIREMENTS**

### **5.1 GENERAL**

In all Districts, no building or structure, except a one-story accessory building or structure of accessory use, shall be constructed on a lot unless said building or structure and lot are in conformance with the "Dimensional Requirements" specified in the table of Dimensional Requirements set forth herein for the district in which said building or structure and lot are located and no more than one building or structure constructed as a dwelling, or so used, shall be located on each such lot except as may otherwise be provided herein. In all Districts, no building or structure (except for a flag, utility or light pole) or swimming pool shall be constructed so as to be nearer to the street line or nearer to the side lines or rear line of its lot unless its location is in conformance with said Table. Nothing herein shall prevent the projection of eaves, chimneys or cornices not exceeding eighteen (18) inches in width, or of uncovered steps, window sills or belt courses into any minimum setback distances or other open space.

In the case of an Open Space Residential Development project proposed under sub-article 8.3 in this bylaw, the dimensional and density requirements established therein shall take precedence over those established in Section 5.2, TABLE OF DIMENSIONAL REQUIREMENTS for purposes of increased design flexibility and enhanced open space preservation.

Section 5.2 TABLE OF DIMENSIONAL REQUIREMENTS

	Minimum Lot Area (sq ft)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Nonwetland Area <sup>1</sup> (sq ft)	Minimum Front Setback <sup>2</sup> (feet)	Minimum Side Yard Setback <sup>4</sup> (feet)	Minimum Rear Yard Setback <sup>4</sup> (feet)	Maximum Building Coverage (%)	Maximum Impervious Surface (%)
5.2.1	12,000	90	90	12,000	25	15 <sup>3</sup>	30 <sup>6</sup>	25	50
5.2.2	20,000	90	90	15,000	25	15 <sup>3</sup>	30 <sup>6</sup>	25	50
5.2.3	40,000	125	125	30,000	40	20 <sup>7</sup>	30 <sup>6</sup>	25	50
5.2.4	15,000	90	90	12,000	25	15 <sup>3</sup>	30 <sup>6</sup>	25	50
5.2.5	80,000	175	175	60,000	40	20 <sup>7</sup>	30 <sup>6</sup>	25	50
5.2.6	12,000	90	90	12,000	25	15 <sup>3</sup>	30 <sup>6</sup>	25	50
5.2.7	80,000	175	175	60,000	40	20 <sup>7</sup>	30 <sup>6</sup>	25	50
5.2.8	4,000	40	40	4,000	10	15 <sup>3</sup>	15	25	80
5.2.9	4,000	40	40	4,000	0	15 <sup>3</sup>	15	25	80
5.2.10	10,000	100	100	10,000	50	15	15	50	80
5.2.11	40,000	200	200	12,000	50	15 <sup>10</sup>	15 <sup>11</sup>	50	80
5.2.12	40,000	200	200	12,000	50	15 <sup>10</sup>	15 <sup>11</sup>	50	80
5.2.13	80,000	175	175	60,000	50	30 <sup>12</sup>	30	30	50

## **10.4 VARIANCES**

**10.4.1 Permit Granting Authority.** Variances from the specific requirements of this Bylaw may be authorized by the Board of Appeals, except that variances authorizing a use not otherwise permitted in a particular zoning district shall not be granted.

**10.4.2 Application.** A petition for a variance shall be filed with the Town Clerk, who shall forthwith transmit it to the Board of Appeals. The Board of Appeals shall hold a public hearing within sixty-five (65) days of the receipt of the petition from the Town Clerk 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 within the one hundred (100)-day period shall be deemed to be a grant of the variance.

**10.4.3 Findings.** Before granting a variance from the requirements of this Bylaw, the Board of Appeals must specifically find that owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

**10.4.4 Procedures.** An application for a variance shall be filed in accordance with the rules and regulations of the Board of Appeals.

**10.4.5 Conditions.** Variances may be granted with such reasonable conditions, safeguards or limitations on time or use, including performance guarantees, as the Board of Appeals may deem necessary to serve the purposes of this Bylaw.

**10.4.6 Plans.** An Applicant for a variance shall submit a plan in substantial conformance with the requirements of the Board of Appeals.

**10.4.7 Regulations.** The Board of Appeals may adopt rules and regulations for the administration of this Section.

**10.4.8 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for applications for variances.

## **FINDINGS**

In consideration of all of the testimony and exhibits and documents submitted into the record before the Board, the Board makes the following findings of fact:

1. The Petitioner is requesting a variance from Section 4.5.3.3 to permit a newly constructed single family home to remain within the front setback. The necessary zoning relief is in the form of a Variance. The Zoning Board of Appeals is the Variance granting authority.
2. The property is a nonconforming lot, providing 16,838 sq. ft. where 40,000 sq. ft. is required.
3. The property previously contained a structure that was voluntarily demolished by the Petitioner in order to construct a new single family home. The Petitioner is acting as builder and homeowner. An application for a building permit included a certified plot plan locating the building in compliance with dimensional requirements of the SRC zoning district. An "as-built" certified plot plan was submitted to the Building Department prior to final inspection that measured the front setback as 34.4' where 40' is required.
4. The Petitioner cited substantial hardship relative to literal enforcement of the bylaw, involving both financial hardship relative to moving the structure and the circumstantial hardship of locating alternate residence should a certificate of occupancy not be issued for the dwelling.
5. The Board specifically finds that owing to circumstances relating to the shape, soils or topography of this parcel and the structures thereon that especially affect such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.

### **DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioner's request for a Variance from the Westwood Zoning Bylaw, Section 4.5.3.3 to allow the single family home to remain constructed within the front setback.

This grant of variance shall be exercised in accordance with Section 10.4. entitled Variances and Section 10.4.9 entitled Lapse as follows:

**10.4.9 Lapse.** Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse. The Board of Appeals, in its discretion and upon the written application of the Applicant, may extend the time for exercise of the variance for a period not to exceed six (6) months provided that the application for such extension is filed with the Board of Appeals prior to the expiration of the one (1) year period. If the request for an extension is not granted, the variance may be reestablished only after notice and new hearing pursuant to M.G.L. Chapter 40A, Section 10.

### **RECORD OF VOTE**

The following members of the Board of Appeals voted to grant the Variance for the above mentioned project: David W. Krumsiek, John F. Lally, and Danielle L. Button.

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





**WESTWOOD ZONING BOARD OF APPEALS**

**David W. Krumsiek - Chairman**

**John F. Lally**

**Danielle L. Button**

6/30/17  
Date

60 Dover Terrace-Gallagher

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TOWN CLERK  
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