

David W. Krumsiek, Chairman
David M. Belcher
Douglas C. Stebbins

Town of Westwood
Commonwealth of Massachusetts



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ZONING BOARD OF APPEALS
NOTICE OF DECISION

TOWN CLERK
TOWN OF WESTWOOD

In compliance with the General Laws of the Commonwealth of Massachusetts, you are hereby notified that the Board of Appeals has unanimously voted to deny the Petitioner, Linda Tucker, her request for a Special Permit pursuant to Section 4.5.3.2.2 [Special Permit Alterations of Nonconforming Structures] to construct a second story addition on the subject property, which would vertically extend an existing exterior wall located within the setbacks. Property located within the Single Residential District C (SRC).

PROPERTY OWNER(S): Susan Bergen / WB Design LLC

LAND AFFECTED: 91 Green Hill Road
Westwood, Massachusetts 02090
Map 027, Lot 130

The signed decision for the petition was filed at the office of the Town Clerk on **September 4, 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**

2018 SEP -4 P 3 55

PROPERTY OWNER(S): Susan Bergen / WB Design LLC

TOWN CLERK
TOWN OF WESTWOOD

PETITIONER(S): Linda Tucker
159 Belmont Street
Easton, MA 02375

LAND AFFECTED: 91 Greenhill Road
Westwood, Massachusetts 02090
Map 027, Lot 130

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, August 15 at 7:00 PM in the Champagne Meeting Room of the Carby 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 [Special Permit Alterations of Nonconforming Structures] to construct a second story addition on the subject property, which would vertically extend an existing exterior wall located within the setbacks. Property located within the Single Residential District C (SRC).

BOARD MEMBERS: David Krumsiek, Chairman
Douglas Stebbins
David 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 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.

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.

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 (%)		
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 Petitioner has proposed to construct a second story addition which would raise the height of the structure within the side setback. The proposed addition will require a Special Permit pursuant to Section 4.5.3.2.2. The Board of Appeals is the Special Permit granting authority.
2. The lot area of the Subject Parcel contains a total of 18,444 sq. ft. where 40,000 are required.
3. The lot frontage of the Subject Parcel is conforming at 140' where 125' are required.
4. The existing single family structure is located 15.8' from the left side setback, which is conforming for a structure no more than 15' in height.
5. The proposed addition would increase the structure to above 15' in height, requiring a side setback of 20'.
6. 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 adverse effects of the proposed use outweigh its beneficial aspects, all in view of the particular characteristics of the site and of the proposal in relation to that site.
7. The Board has considered the impact of the Petitioners' proposed construction on the neighborhood character, aesthetics and social structures and determined the proposal to be substantially more detrimental than the existing structure to the neighborhood.
8. The Petitioners have not met the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

DECISION

The Board of Appeals voted unanimously to deny the Petitioners' request for a Special Permit pursuant to Section 4.5.3.2.2 of the Westwood Zoning Bylaw.

RECORD OF VOTE

The following members of the Board of Appeals voted to deny the Special Permit for the above mentioned use: David Krumsiek, Douglas Stebbins and David Belcher.

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



WESTWOOD ZONING BOARD OF APPEALS

David W. Krumsiek - Chairman

Douglas Stebbins

David M. Belcher

8/15/18

Date

91 Green Hill Road-Tucker

2018 SEP -4 P 3:55
TOWN CLERK
TOWN OF WESTWOOD

