

**Town of Westwood**  
Commonwealth of Massachusetts



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2018 APR 26 P 4:29 ZONING BOARD OF APPEALS

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, Charles and Lisa Goodman, their request for a Special Permit pursuant to the Westwood Zoning Bylaw Section 4.5.3.2.2 to construct an addition that vertically extends an existing wall within the setback, and their request for a Variance pursuant to Section 4.5.3.3 to construct a garage within the setbacks.

PROPERTY OWNER(S): Charles and Lisa Goodman

LAND AFFECTED: 39 Buckmaster Road, Westwood, MA  
Map 28 Lot 173

The signed decision for the petition was filed at the office of the Town Clerk on **April 26, 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): Charles and Lisa Goodman**

**PETITIONER(S):** Charles and Lisa Goodman  
39 Buckmaster Road  
Westwood, Massachusetts 02090

**LAND AFFECTED:** 39 Buckmaster Road  
Westwood, Massachusetts 02090  
Map 28, Lot 173

**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, March 21, 2018 at 7:00 PM in the Champagne Meeting Room, Carby Street Municipal Building, 50 Carby Street, Westwood, Massachusetts 02090, to consider the Petitioners' request for a Special Permit pursuant to the Westwood Zoning Bylaw Section 4.5.3.2.2 to construct an addition that vertically extends existing walls within the setbacks, and for a Variance pursuant to Section 4.5.3.3 to construct a garage within the setbacks. Property located in Single Residence C District (SRC).

**BOARD MEMBERS:** David W. Krumsiek, Chairman  
John F. Lally  
David M. Belcher

**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.

**4.5.3.4 Special Provisions for Reconstruction of Single and Two-Family Structures after Catastrophe or Voluntary Demolition.** Any single and two-family nonconforming structure may be reconstructed after a catastrophe or voluntary demolition only in accordance with the following provisions:

- 4.5.3.4.1 Reconstruction of said premises shall commence within one (1) year after such voluntary demolition, or within two (2) years after such catastrophe, which time period may be extended by the Building Commissioner for good cause.
- 4.5.3.4.2 The building as reconstructed:
  - 4.5.3.4.2.1 Shall be located on the same footprint as the original structure, and shall only be as great in volume or area as the original nonconforming structure; or
  - 4.5.3.4.2.2 Shall comply with all current setbacks, and building coverage and height requirements, except that if the lot does not comply with lot, area and frontage requirements, it must comply with a building height limit of twenty-five (25) feet.
- 4.5.3.4.3 In the event that the proposed reconstruction does not meet the provisions of Section 4.5.3.4.2, a special permit pursuant to Section 4.5.3.2, or a variance pursuant Section 4.5.3.3, as applicable, shall be required from the Board of Appeals for such reconstruction.

- 4.5.4 **Abandonment or Non-use.** A nonconforming use or nonconforming structure which has been abandoned, or not used for a period of two (2) years, shall lose its protected status and be subject to all of the provisions of this Bylaw.
- 4.5.5 **Reversion to Nonconformity.** No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

## 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>2</sup> (sq ft)	Minimum Front Setback <sup>3</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>5</sup>	30 <sup>6</sup>	25	50
5.2.2	20,000	90	90	15,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.3	40,000	125	125	30,000	40	20 <sup>7</sup>	30 <sup>8</sup>	25	50
5.2.4	15,000	90	90	12,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.5	80,000	175	175	60,000	40	20 <sup>7</sup>	30 <sup>8</sup>	25	50
5.2.6	12,000	90	90	12,000	25	15 <sup>5</sup>	30 <sup>6</sup>	25	50
5.2.7	80,000	175	175	60,000	40	20 <sup>7</sup>	30 <sup>8</sup>	25	50
5.2.8	4,000	40	40	4,000	10	15 <sup>5</sup>	15	25	80
5.2.9	4,000	40	40	4,000	0	15 <sup>5</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

### 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.

### 10.3 SPECIAL PERMITS

- 10.3.1 **Special Permit Granting Authority.** Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.
- 10.3.2 **Application.** An application for a special permit for uses designated in the Zoning Bylaw shall be filed with the Town Clerk, who shall forthwith transmit it to the Special Permit Granting Authority. The Special Permit Granting Authority shall hold a public hearing within sixty-five (65) days of the filing date and shall render a decision within ninety (90) days from the date of the public hearing. Failure to take final action within the ninety (90)-day period shall be deemed to be a grant of the special permit.
- 10.3.3 **Decision.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:
- 10.3.3.1 Social, economic or community needs which are served by the proposal;
  - 10.3.3.2 Traffic flow and safety, including parking and loading;
  - 10.3.3.3 Adequacy of utilities and other public services;
  - 10.3.3.4 Neighborhood character, aesthetics and social structures;
  - 10.3.3.5 Impacts on the natural environment; and
  - 10.3.3.6 Potential fiscal impact, including impact on Town services, tax base and employment.
- 10.3.4 **Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.
- 10.3.5 **Conditions.** Special permits may be granted with such reasonable conditions, safeguards or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw.
- 10.3.6 **Plans.** An Applicant for a special permit shall submit a plan in substantial conformance with the requirements of the Special Permit Granting Authority.
- 10.3.7 **Regulations.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this Section.
- 10.3.8 **Fees.** The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits.
- 10.3.9 **Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within two (2) years following the filing of the special permit approval (plus such



time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, Section 17 from the grant thereof) with the Town Clerk.

## 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.
- 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.

## **SPECIAL PERMIT 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, located at 39 Buckmaster Road in Westwood, is a non-conforming lot, with a lot area of 6,120 sq.ft. where 40,000 sq.ft. is required and lot frontage of 60' where 125' is required.
2. The existing single-family residential structure currently violates the north and south side yard setback requirements with 9.9' and 15.3' provided where 20' is required for a structure exceeding 15' in height. The existing building violates the front setback requirement with 25.3' provided where 40' is required. The existing rear setback is conforming.
3. The Petitioner proposes to construct an addition to the existing single-family residence which will increase the height of the structure within the setbacks. The proposed new average building height will not exceed 25'.
4. The vertical extensions of the existing exterior walls will maintain the existing non-conforming distances from the front and side lot lines. The proposed construction will include an addition to the rear of the structure, but the rear setback will remain conforming.
5. The proposed addition to the existing single-family residential structure will require a special permit pursuant to Section 4.5.3.2.2 of the Westwood Zoning Bylaw. The Zoning Board of Appeals is the special permit granting authority.
6. Any adverse effects of the Petitioner's 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.
7. The proposed addition to the existing single-family residential structure 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 because of traffic congestion, or other reason, 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.
8. The Petitioner has met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

## **VARIANCE 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 contains an existing detached garage which violates the rear yard setback requirement with 5.1' where 6' is required for a detached accessory structure not exceeding 15' in height. The garage also violates the south side yard setback requirement with 3' provided where 15' is required.

2. The Petitioner proposes to demolish the existing garage and construct a new larger detached garage with the same non-conforming setbacks and with a height of less than 15’.
3. The proposed new detached garage structure will require a variance pursuant to Section 4.5.3.3 of the Westwood Zoning Bylaw. The Zoning Board of Appeals is the variance granting authority.
4. The Petitioner cited substantial hardship relative to literal enforcement of the bylaw which would require siting the proposed new garage structure a minimum of 15’ from the south side lot line. The Board determined that placement of the garage in compliance with the minimum side setback requirement would place the garage fully behind the residential structure with insufficient area for vehicles to maneuver from the driveway into the garage.
5. The Petitioner cited no substantial hardship relative to literal enforcement of the bylaw which would require siting the proposed new garage structure a minimum of 6’ from the rear lot line. The Board determined that placement of the garage in full compliance with the minimum rear setback requirement would have no adverse effect on the Subject Property.
6. 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
7. The Petitioner has met all the requirements for a Variance pursuant to the Westwood Zoning Bylaw.

### **DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioner’s request for a Special Permit pursuant to the Westwood Zoning Bylaw Section 4.5.3.2.2 to construct an addition that vertically extends an existing wall within the setback, and their request for a Variance pursuant to Section 4.5.3.3 to construct a garage within the setbacks, upon the following conditions:

1. The Project shall be constructed in conformity with the submitted plan titled “Proposed Plans and Elevations – 39 Buckmaster Road, Westwood, MA”, prepared by Huth Architects, 313 Washington Street Suite 212, Newton, MA 02458, dated February 20, 2018, consisting of nine (9) sheets, and in conformity with the submitted site plan titled “Proposed Plot Plan #39 Buckmaster Road in Westwood, MA”, prepared by Rober Survey, 1072A Massachusetts Avenue, Arlington, MA 02476, dated February 7, 2018, consisting of one (1) sheet (“Project Plans”), except that the new detached garage shall be located a minimum of 6’ from the rear lot line and 3’ from the side lot line, such that the Subject Property shall be fully compliant with the minimum rear yard setback requirements for both the residential structure and the garage.
2. The Petitioners shall pursue completion of the Project with reasonable diligence and continuity.

3. The memorandum from the Board of Health to the Board of Appeals, dated March 14, 2018, shall be made part of this decision and shall be carried out as follows:
  - a. The applicant shall use a waste hauler, licensed by the Westwood Board of Health to dispose of construction debris;
  - b. If necessary, the applicant shall provide a portable toilet, licensed by the Westwood Board of Health;
  - c. Interior/exterior renovations or demolition require an asbestos survey conducted in compliance with DEP Asbestos Regulations; and
  - d. The applicant shall hire a pest control company to inspect the premises for rodents and/or wildlife and to exterminate if necessary; and provide a copy of the inspection report to the Health Department prior to demolition.
4. This Special Permit and Variance 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.
5. **The person exercising rights under a duly appealed special permit and/or variance does so at risk that a court will reverse the permit and/or variance and any construction performed under the permit and/or variance may be ordered to be undone.**
6. This Special Permit shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within two (2) years following the filing of this decision with the Town Clerk (plus such time required to pursue or await the determination of an appeal referred to in M.G.L. Chapter 40A, Section 17 from the grant thereof). Prior to the expiration of this Special Permit, the Applicant may apply for an extension for a period not to exceed one (1) year if the substantial construction or use thereof has not commenced for good cause.
7. This Variance shall lapse if not exercised within one (1) year from the date of the filing of this decision. 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.

#### **RECORD OF VOTE**

The following members of the Board of Appeals voted to grant the Special Permit and Variance for the above mentioned project: David W. Krumsiek, John K. Lally, and David M. Belcher.

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



**WESTWOOD ZONING BOARD OF APPEALS**

**David W. Krumsiek - Chairman**

**John F. Lally**

**David M. Belcher**

2018 APR 26 P 4: 09  
TOWN CLERK  
TOWN OF WESTWOOD

3/21/2018  
Date

**39 Buckmaster Road-Goodman**

