

Town of Westwood
Commonwealth of Massachusetts

David W. Krumsiek, Chairman
John F. Lally
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ZONING BOARD OF APPEALS

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2018 JUN 29 A 11:01
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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, Lisa & Mark Wissmar, their request for a Special Permit pursuant to the Westwood Zoning Bylaw, Section 4.5.3.2.3 for construction of a front porch that extends no further than 4' into the setback.

PROPERTY OWNER(S): Lisa & Mark Wissmar

LAND AFFECTED: 52 Westland Avenue, Westwood, MA
Map 28 Lot 067

The signed decision for the petition was filed at the office of the Town Clerk on **June 29, 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): Lisa & Mark Wissmar

PETITIONER(S): Lisa and Mark Wissmar
52 Westland Avenue
Westwood, MA 02090

LAND AFFECTED: 52 Westland Avenue
Westwood, Massachusetts 02090
Map 28, Lot 067

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 18, 2018 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 for a Special Permit pursuant to Westwood Zoning Bylaw Sections 4.5.3.2.1, 4.5.3.2.2 and 4.5.3.2.3 and/or a Variance pursuant to Section 4.5.3.3 to construct a covered front porch and new side door landings, and construct a connection between the existing single family residence and the existing detached garage. Property located in Single Residential C Zoning District (SRC).

BOARD MEMBERS: David M. Belcher, Acting Chairman
Gregory J. Donovan
Charles D. Reilly

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 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.

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 proposes to construct a covered front porch, new side door landing and connection between the side door landing and existing detached garage on the exterior of the existing single family home. Relief in the form of a Variance to build the porch more than 4' into the front setback was requested. The Board of Appeals is the Variance Granting Authority.
2. The lot area of the Subject Parcel is 7,850 SF where 40,000 SF is required.
3. The lot frontage of the Subject Parcel is 75' where 125' is required.

4. The existing single family structure violates the front setback, with 30.1' provided where 40' is required.
5. The porch as proposed would measure 30.4' by 7.7', further violating the front setback requirement by more than 4', with 22.4' provided where 40' is required.
6. The Board finds that the proposed project does not satisfy requirements of a Variance as established in Bylaw Section 10.4. Specifically, the Petitioners have not established that owing to circumstances relating to soil conditions, shape or topography of the land or structures and especially affecting such land or structures but not affecting generally the zoning district, a literal enforcement of the Bylaw would involve substantial hardship, and that granting such relief would not nullify or substantially derogate from the intent or purpose of the Bylaw.
7. The Board may consider any zoning relief that may be required in adherence to the Westwood Zoning Bylaw.
8. At the hearing, the Petitioner verbally agreed to reduce the depth of the porch by 3.7', which would violate the front setback requirement by not more than 4' and be eligible for zoning relief in the form of a Special Permit under Bylaw Section 4.5.3.2.3.
9. The Board finds that the proposed project as revised during the hearing to reflect a front porch of no more than 4' is de minimis in nature and constitutes an overhang, porch, portico, or similar decorative feature.
10. The Board finds that the proposed addition of a side porch landing and connection between the existing single family residence and existing detached garage does not substantially contribute to the property's nonconformity.
11. Subject to submittal of a project plan reflecting the adjustment of dimensions on the front porch, the Petitioner has 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 4.5.3.2.3 of the Westwood Zoning Bylaw.

1. The Petitioner shall submit revised plans to the Zoning Agent and Building Department prior to final building permit approval reflecting a dimensional reduction of the proposed front porch, which shall not exceed a depth of 4'.
2. With the exception of the above revisions, the Project shall be otherwise constructed in conformity with the submitted plans prepared by Amy Semmes, A.I.A., 120 Auburn Street, Medford, MA 02155, dated February 20, 2018, consisting of twelve (12) sheets, and in conformity with the submitted plot plan prepared by Frank Iebba, P.L.S., Essex Engineering & Survey, PO Box 650217, West Newton, MA 02465, dated March 19, 2018, consisting of one (1) sheet.

3. The Petitioners shall pursue completion of the Project with reasonable diligence and continuity.
4. 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.
5. **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.**
6. 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: David Belcher, Gregory Donovan and Charles Reilly.

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

David M. Belcher - Chairman

Charles D. Reilly

Gregory J. Donovan

6/20/18
Date

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