



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Zoning Board of Appeals
John Lee, Chair
Drew Delaney, Vice Chair
Bob Fitzgerald, Clerk
David Anderson, Member
Judith Conroy, Member
Timothy Hoegler, Assoc. Member

**DECISION
ZONING BOARD OF APPEALS CASE #22-29**

**APPLICANT:
Gabriel Casado**

**SITE:
26 Park Lane, Walpole, MA**

**Assessor's Map 28, Lot 151
Zoning District Residential A**

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The request for a VARIANCE under Section 6.B.1 Schedule of Dimensional Regulation, for relief to the minimum side yard setback within the Residential A Zoning District.

On December 7, 2022, a public hearing was opened for the purpose of receiving information and voting upon a decision as to the granting of the Variance requested.

PRESENT & VOTING MEMBERS:

John Lee, Chairman
Drew Delaney, Vice Chair
Robert Fitzgerald, Clerk
Judith Conroy, Member
Timothy Hoegler, Member

VOTE OF THE BOARD:

A motion was made by Ms. Conroy and seconded by Mr. Delaney, to approve a Variance requested pursuant to Section 6-B.1 of the Zoning Bylaws for relief from the minimum side yard setback within the Residence A, based on the plan titled "Plan of Land in Walpole, Massachusetts, 26 Park Lane," by C.S. Kelley Land Surveyors, 25 Center Street, Pembroke, MA 02359, dated September 28, 2022, and architectural renderings titled "Proposed Two Story Addition to 26 Park Lane – East Walpole, MA," by Design Concepts by Dennis Valeri, dated August 16, 2022, with conditions.

The vote was (5-0-0) in favor: Lee-aye; Delaney-aye; Fitzgerald-aye; Coffey-aye; Anderson-aye, therefore, the Variance is hereby granted, subject to the following conditions:

CONDITIONS:

1. The proposed addition for which relief has been sought shall be consistent with the Plan provided titled "Plan of Land in Walpole, Massachusetts, 26 Park Lane," by C.S. Kelley Land Surveyors, 25 Center Street, Pembroke, MA 02359, dated September 28, 2022, and architectural renderings titled "Proposed Two Story Addition to 26 Park Lane – East Walpole, MA," by Design Concepts by Dennis Valeri, dated August 16, 2022.
2. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Zoning Board of Appeals, Walpole Town Clerk and Walpole Building Department.
3. Surplus excavated material from the proposed addition shall be removed except that required to backfill the proposed foundation and existing driveway.

REASONS FOR DECISION:

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure 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 to the appellant or petitioner.*

The subject property is preexisting nonconforming to the current zoning dimensional regulations within the Residence A Zoning District. The property's area is 12,229 S.F. while the required area for the Zoning District is 30,000 S.F. the property is also nonconforming with frontage being that the existing frontage is 80 feet and the required frontage for the Zoning District is 150 feet. The applicant however is seeking relief from the side yard setback for which they are conforming. The side yard setback with the Residence A Zoning District is 20 feet. The applicant is afforded modest relief from the side yard setback requirement as expressed within Section 6.C.9 of the Zoning Bylaws, which in part states that where the required side yard width for a main building may be reduced one (1) foot for each ten (10) feet in a Rural or Residence A District... provided, however, that the side yard distance shall not be so reduced to less than fifteen (15) feet in a Rural or Residence A District. Taking this relief into consideration, the applicant is looking for a relief of six (6) and half feet from the side yard setback as their proposed two-car garage addition will be eight (8) and a half feet from the right side yard property line.

The existing side yard setback on the right side of the dwelling is compliant with the dimensional regulations for the Residence A Zoning District at twenty-two (22) feet and the existing left side setback is compliant with twenty (20) feet. While both side yards are compliant with the Residence A Zoning District's dimensional regulations, there is very little room for modifications to the existing dwelling given then property's limitations with a nonconforming lot size and frontage. The proposed right side yard where relief is sought is also the side of the property's existing driveway, existing one-car garage, and avoids existing underground utility lines. It is for these reasons that the right side of the property is the most logical location of the addition/two-car garage. The applicant considered positioning the proposed garage to the rear of the property, but they would be hindered by the drop in elevation from the front to the rear yard and would also need to remove the dwelling's existing back deck. Given the existing dimensions, shape, topography, and conditions of the property, it was found by the Board that literal enforcement of the Residence A Zoning District's side yard setback would involve substantial hardship to the applicant.

2. *Desirable relief may be granted without substantial detriment to the public good.*

It is the finding of the Board that relief from the side yard setback in this case will not be substantially detrimental to the public good. The relief granted does create a nonconforming issue, however the proposed addition of a two-car garage is consistent with the single-family residential use of the immediate neighborhood and character of the Residence A Zoning District. The application itself received seven (7) letters of support from abutters, including a letter from the neighbor directly impacted from the proposed encroachment on the side yard setback. The application also received no letters from municipal departments that expressed concern for the relief sought. The proposed

addition was ultimately deemed to be in character with the immediate neighborhood and the requested relief of the side yard setback was determined to be non-detrimental to the public good.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the relief may be granted without nullifying or derogating from the intent or purpose of the bylaw. The property is a preexisting nonconforming lot that has less than the required square footage or frontage for a property zoned within the Residence A Zoning District. The existing side yard setbacks on both the right and left side of the lot meet the requirements for the district, but because of the shape and reduced size of the lot there is very little space to propose a modification to the dwelling that is within the side yard. Due to the existing conditions of the property, both in terms of shape and topography, the usable space for the proposed addition is limited. In this situation the Board finds that the granting of a Variance meets the threshold needed for the relief the applicant seeks, while not derogating from the intent or purpose of the bylaw.

APPEALS FROM THIS DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLZONING BOARD OF APPEALS

Robert Fitzgerald

Robert Fitzgerald, Clerk

cc: Town Clerk
Building Inspector
Applicant

This decision was made on December 7, 2022 and filed with the Town Clerk on December 21, 2022.