

**City of Waltham**  
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

MEMORANDUM

TO: City Clerk's Office  
FROM: Zoning Board of Appeals  
DATE: August 1, 2008  
RE: Case #2008-13 – 60 Mountain Road –, Decision Filed on May 8, 2008 and Granted on April 29, 2008

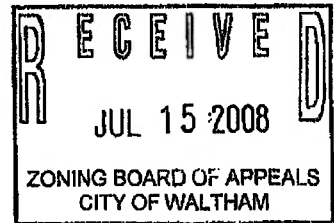
Please find enclosed a copy of a motion by Petitioner to fix a clerical/scrivener's error by Petitioner's Counsel. At the meeting held on July 22, 2008, the Zoning Board of Appeals accepted the motion, with a unanimous (5:0) vote in favor to accept. Please attach to the decision in the above-referenced case.

Thank you!

Pam Doucette

Enclosures:  
Cc: Building Department

**CITY OF WALTHAM  
BOARD OF APPEALS**



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**PETITION OF**

**JODI L. GANGI and  
MICHAEL J. WATERS**

**for Variances from the  
Requirements of the Zoning  
Ordinance**

**CASE NO. 08-13**

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**MOTION TO AMEND PETITION AND DECISION**

Now come the Petitioners in the above entitled matter and request that this Board allow an inconsistency between the Petition (and subsequently the Decision) and the plans to be corrected by changing the distance for the existing and proposed front yard setback from 27.6 feet to 24.5 feet as correctly shown on both the Abutters Plan and the Site Plan which were submitted during the hearing and incorporated into the Decision of the Board.

As a result of a clerical error on the part of counsel, the distance for the southerly side yard of 27.6 feet was set forth in the petition as the existing and proposed front yard setback.

As no additional relief was requested from the existing conditions, Petitioners ask that the record be corrected by allowing the amendment which will accurately reflect the existing and proposed front yard setback as shown on the plans, to be 24.5 feet.

Respectfully submitted,  
JODI J. GANGI and  
MICHAEL J. WATERS,  
By their attorney,

Dated: July 15, 2008

By:   
DEBORAH A. SAWIN

N/F  
SORIN, RUSSELL  
& KIERSTEN

N/F  
76 MOUNTAIN RD REALTY TRUST;  
ARAKEL & ELIZABETH ARAKELIAN

MARY P. H&UX

N17°43'30"E  
16.59'  
N40°57'00"E  
67.41'

N/F  
WATERS, MICHAEL J. &  
JODI L. GANGL  
180.71'

N85°25'25"W

LOT AREA  
13,670 sq ft  
PROP. LOT COVERAGE: 10.5%

PROPOSED  
1 STORY  
ADDITION  
AREA: 148 sq ft

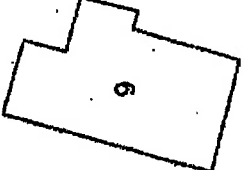
1 STY WOOD  
#60  
5

N77°43'45"E  
132.36'  
WOOD  
GAR.  
24.51'

26.0'  
R=145.00  
L=107.31'

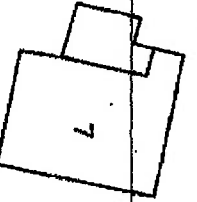
#60

N/F  
HARRINGTON, ROBERT S. &  
CAROL J. H&UX, T/E



#50

N/F  
ABORN, DOROTHY M.



#42

AIN ROAD

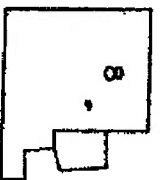
#41

N/F  
MANLEY, KATHLEEN A.

N/F  
PARRAVANO, ARDUINO D. &  
SONIA M.

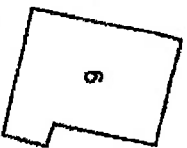
#47

N/F  
MCLACHLIN, CATHERINE M. &  
47 MOUNTAIN RD NOM TR; CAT

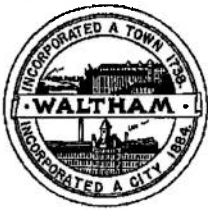


#53

CAISSIE



#61



**The City of Waltham**  
**ZONING BOARD OF APPEALS**

April 29, 2008

**NOTICE OF DECISION**

CASE NUMBER: #2008-13

NAME OF PETITIONER/OWNER: Jodi L. Gangi and Michael J. Waters

LOCATION OF PROPERTY: 60 Mountain Road

DATE OF HEARING(S): April 29, 2008

DATE OF DECISION: April 29, 2008

DATE OF FILING OF DECISION WITH CITY CLERK: May 8, 2008

DATE OF NOTIFICATION TO BUILDING INSPECTOR: May 8, 2008

FINAL DATE FOR FILING OF APPEAL FROM THIS DECISION: May 28, 2008

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws Chapter 40A. All plans referred to in the decision have been filed with the Planning Board and with the City Clerk.

**DECISION**

GRANTED XX  
DENIED       

**ROLL CALL**

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Barbara Rando	X		Edward T. McCarthy, Jr.		
Michael J. Cotton			Oscar L. LeBlanc		
Bruce Morris	X		Glenna Gelineau	X	
Mark A. Hickernell	X		Marc S. Rudnick		
John Sergi	X		Michael R. Squillante		

## PETITION

**Case #:** 2008-13. **Petitioners:** Jodi L. Gangi and Michael J. Waters. **Nature of Appeal:** Application for Variances. **Subject Matter:** Petitioner seeks permission to construct, use and maintain an addition to the northerly side of the house which will connect the house to the garage. **Location and Zoning District:** 60 Mountain Road, Residence A-2 Zoning District. **Provisions of Zoning Ordinance Involved:** 4.11. **Specific Manner in Which Subject Matter Varies from Zoning Ordinance:** Article 4.11 requires (a) a front yard setback of forty feet and the existing and proposed front yard setback is 27.6 feet; (b) side yards of 20 feet and the northerly side yard will be 3.8 feet from the existing garage; and (c) a lot area of 15,000 square feet and the existing and proposed lot area is 13,558 square feet.

### ON MOTION DULY MADE AND SECONDED THE BOARD ADOPTED THE FOLLOWING FINDINGS OF FACT:

The Board of Appeals of the City of Waltham makes the following Findings of Fact after hearing on the above-captioned Petition for Variances:

1. This Board of Appeals having met all legal prerequisites by proper publications and posting as provided in Massachusetts General Laws, Chapter 40A, Section 11, and having also notified by mail all parties in interest and having heard all the evidence is now empowered to exercise the power to grant or deny the variances sought by the Petitioners;
2. The locus is known as and numbered 60 Mountain Road and is located in a Residence A-2 Zoning District;
3. The requested variances are from the provisions of Article 4.11 which requires: (a) a lot area of 15,000 square feet and 13,670 feet are existing and proposed; and (b) side yards of twenty (20') feet and existing northerly side yard from the garage is 3.8 feet at the closest point; and (c) a front setback of 40 feet and the existing and proposed is 26.0 feet;
4. The requested variances are dimensional in nature and as such this Board has both the power and the authority under M.G.L. c.40A, Sections 10 and 14 and under the Zoning Ordinance of the City of Waltham, Article 7, Section 7.2 and 7.3, to grant them;
5. The triangular shape of the lot (which is approximately 30 feet wider in the front than it is in the rear) and the location of the existing buildings and improvements on the lot together create a unique situation especially affecting this lot but not others in the zoning district;
6. These deviations have existed for almost fifty years (with respect to the lot) and almost twenty years with respect to the garage, without adversely impacting the neighborhood or appearing out of character with surrounding properties;

7. These conditions were not created by the Petitioners and are not personal to the Petitioners;
8. Because the lot lines get narrower from the front of the lot to the rear, the Petitioners are unable to obtain such additional living area on either side of the house and because of the location of the pool they cannot expand to the rear;
9. The only other option would be a second floor which, because of the condition of the structure, would likely require that the house be raised to install a basement foundation for support and opened at the roof to add structural support for a second story before a new second floor could be built, all of which would cause a substantial hardship, both financial and otherwise;
10. The proposed addition of less than 150 square feet is in a location which will be in keeping with other development in the neighborhood;
11. The requested variances would not be injurious to the neighborhood in that none of the dimensional setbacks will change from the distances which currently exist and which have existed without detriment to the rights of the neighbors;
12. There will still be substantial open space between the Petitioners Property and the abutter to the north (where the addition is proposed) and visually the view will not be significantly different because the addition will be between two existing buildings;
13. The setbacks for all other abutters will continue to be more than is required under the Ordinance and therefore there will be no substantial detriment to the public good;
14. There will be a front and rear yard and side yards on both sides which means the Ordinance will not be nullified by the grant of the variances and there will be no substantial derogation because the Ordinance protects existing conditions and none of the proposed changes will be any closer to any lot line than the distances which currently exist; and
15. A number of the abutting neighbors have signed a letter in support of the Petition.

**THEREFORE, THE ZONING BOARD OF APPEALS FOR THE CITY OF WALTHAM AFTER DUE DELIBERATION, ON A MOTION DULY MADE AND SECONDED, UNANIMOUSLY VOTED:**

To grant the variances requested in Case No. 2008-13, and, based upon the adopted Findings of Fact which are attached hereto as part of this Decision, and incorporated herein by reference, cites as reasons the following:

That there are circumstances especially affecting this locus, but not generally affecting the Residence A-2 Zoning District in which it is located including an odd, triangular shape

and buildings and improvements which have existed in their current and proposed locations for over thirty years and which are presently legally non-conforming; and in order to be able to add additional living area to the existing house, in its current location, without adding on laterally, the current structure would have to be re-constructed to include a supporting frame which would include raising the house to install a basement and then reframing to add second floor framing to the ceiling of the first floor which would practically involve reconstructing the entire house, which would cause both a practical and a financial hardship; and these conditions cause hardship because they practically prevent the Petitioners from being able to gain more living area, within the parameters of the applicable setback requirements, despite the fact that even after construction just over one-half of the allowable lot coverage area will be used, which also causes hardship; and

The Petition may be granted without substantial detriment to the public good, because the resulting house shape and the location of the addition will be in keeping with the single story layout of other houses in the neighborhood, the location of the proposed addition will not adversely affect traffic along either abutting street and will not adversely impact any neighbor because of the differences in elevation, in layout of the houses and because of the actual distances which will remain between the houses and which has existed for over thirty years without noted adverse impact; And a number of the neighbors have signed a petition in favor of the proposal; and

There will be a front, rear yard and side yards on each side of the Property which means these provisions of the Ordinance will not be nullified by the grant of the variance and there will be no substantial derogation because the lot size and front yard setback are legally nonconforming and will remain so in a manner consistent with other development in the neighborhood and the side yard deficiency at the corner of the existing garage was also legally created and has been in existence for over thirty years without adverse effect and the protections underlying setback provisions, including open space and privacy will continue to be maintained by the existing topographical conditions and the development which has occurred in this neighborhood along curved roadways.

The grant of the variances is subject to the following conditions:

1. Any and all necessary permits shall be issued within one (1) year of the date of the filing of this decision with the City Clerk of Waltham and all work shall be completed within two (2) years of said filing date; and
2. All use of the property shall be substantially in accordance with the following plan introduced as evidence during the hearing, except that the Petitioners may widen the driveway to create two parallel parking spaces to the extent necessary:
  - a. "AREA PLAN OF LAND WALTHAM, MASSACHUSETTS SHOWING CONDITIONS AT 60 MOUNTAIN ROAD," prepared by VTP Associates, dated February 7, 2008; and
  - b. "SITE PLAN WALTHAM, MASSACHUSETTS SHOWING PROPOSED CONDITIONS AT #60 MOUNTAIN ROAD" dated February 7, 2008, by VTP

Associates Inc. Land Surveyors and Civil Engineers, (hereinafter referred to as the "Site Plan").

3. The siding and roofing of the new construction shall match that of the existing structure.

Barbara Rando, Chair  
Barbara Rando, Chair

DATE: 5/6/08