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*Town of Norwell*  
**BOARD OF APPEALS**  
**Public Hearing Minutes for**  
**Variance on Lot 84 Winter Street**  
**March 9, 2022**

**MEETING DATE:** Wednesday, March 9, 2022  
**TIME SCHEDULED:** 7:30 P.M.  
**LOCATION:** Osborn Room at Norwell Town Hall  
**PANEL MEMBERS:** Philip Y. Brown, Vice Chair  
Ralph J. Rivkind, Clerk  
Stephen H. Lynch  
**OTHER MEMBERS PRESENT:** Lois S. Barbour, Chair  
Daniel M. Senteno  
Nicholas K. Dean  
William Lazzaro

**On Behalf of the Applicant** Jeffrey A. De Lisi, Attorney for Applicant  
Gregory J. Morse, R.P.E., of Morse Engineering

**CALL TO ORDER:** The public notice for the continued public hearing on Lot 84 Winter Street was read by Member Lynch. Members for this hearing included Hearing Chair Brown with Members Rivkind and Lynch completing the three-member panel. This hearing was continued from the opening of the refiled application on December 8, 2021.

Attorney De Lisi introduced the applicant's engineer, Gregory J. Morse, who had reviewed the application and prepared a stormwater report on the property with plans for a potential location for placement of a single dwelling. Attorney De Lisi proposed a vegetated buffer area around the property perimeter to mitigate for runoff. Gregory J. Morse, registered engineer with Morse Engineering, presented the plan and stormwater report submitted on 2/9/22. Mr. Morse indicated the subject parcel slopes westerly or southwesterly with no current structures on the property. His stormwater calculations submitted for the property was based on approximately 127,000 sq. ft. His plan proposes a gravel driveway over the narrow portion of the land that would become paved where the lot expands. Soil testing has been conducted with the soils classified as sandy loam. The 125' circle shown will comply with the 20' setback under the zoning bylaw. Mr. Morse stated the goal is to mitigate runoff with water collection designed for up to a 100-year storm. The gravel portion of the driveway and the proposed berm would reduce run-off.

Member Brown questioned whether post-construction would be better than or equal to the existing, pre-construction site. Mr. Morse stated the proposed mitigation would be improved after development, citing that any development discharge cannot exceed predevelopment in order to meet Stormwater Standard 2. Member Brown questioned whether this could improve abutting property stormwater issues; if this lot is treated, could it benefit the entire area? He asked whether Mr. Morse had evaluated the surrounding area? Mr. Morse stated that he knows the area well. Member Brown again asked whether the proposed stormwater treatment would benefit the entire area and road? Mr. Morse replied that it could affect stormwater but would not impact groundwater. He noted the subject lot is at a higher elevation than other abutting lots.

Member Rivkind questioned who would hold the future responsibility for keeping the runoff as is? Member Lynch expanded that question by asking who enforces the maintenance and mitigation strategies after the property is sold. What will be the burden on a future homeowner? He noted there are many complicated components to consider. Member Lynch further reminded Attorney De Lisi that he had previously agreed that the Board can seek to help mitigate hardship, but cannot transfer hardship [such as the stormwater issues] in that effort.

Attorney De Lisi stated the current proposal is different from a subdivision and single lots do not normally require this level of review and would be exempt from this level of review. He noted that the owner could file on an annual basis that the use remains as permitted.

Member Lynch asked how can we have a condition to ensure integrity of the model?

Attorney De Lisi stated the homeowner could file a yearly affidavit, and the Variance could contain a condition for a deed restriction to require annual filing on the stormwater.

Member Rivkind again questioned who the enforcer would be. If plan is not being followed but the homeowner files a report stating it does comply—does the Building Department enforce this?

Chair Barbour asked to reread the public notice, which is for Variance for lot width and frontage to refocus the discussion. Why is this discussion about stormwater? Where is the discussion to address the three prongs of the variance?

Attorney De Lisi stated the discussion about stormwater does not relate to a variance at all. He noted the issue is lot shape requirements, which are to ensure vital and safe access to the buildable portion of the lot. He said there is a unique condition of the property relating to soil, shape or condition of lot. In the current configuration the parcel can support multiple lots in a 2-house subdivision, but one dwelling cannot be built due to the lot shape of the Norwell Zoning Bylaw. Attorney De Lisi mentioned a previously submitted Planning Board letter of support. However, that letter of support, dated February 25, 2021, stated the shape of the lot was similar to one that could be addressed under an estate lot bylaw that the Planning Board was working on. [N.B. No such bylaw has yet been presented to the Norwell Annual Town Meeting.]

Attorney De Lisi mentioned the possibility of 40B as an alternative that he stated could require tens of thousands of dollars for engineering.

Chair Barbour stated we cannot anticipate future applications and must focus on the current variance application in front of us.

Attorney De Lisi claimed that the application did not derogate from the intent of bylaw and was not an issue, nor was it an abuse of the ANR process. He stated a single-lot was the most appropriate use for neighborhood.

Chair Barbour interjected to read the 3-prong requirements of a variance to refocus discussion on the Application in front of the panel.

Attorney De Lisi stated the denial would pose a financial hardship and that it would be a hardship for the Applicant to go through the Planning Board process and would be worse for neighborhood than a single lot.

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Member Brown stated the three panel members had site walked the property and asked panel members for additional questions.

Member Rivkind stated his question about enforcement was still outstanding and how would this be handled with a transfer of ownership. Do we have to wait for a disaster and have neighbors sue? The current property owner leaves once the property is sold to a future homeowner with stormwater mitigation maintained. What happens if a future homeowner suffers financial hardship and is unable to comply with required maintenance?

Attorney De Lisi suggested a deed restriction for the enforcement as a creative way of handling. Member Rivkind stated this is a 50-year problem and not a 50-day problem including downspouts and driveway. De Lisi questioned Mr. Morse whether they could put a swale instead of a depression that would be virtually maintenance-free. He indicated the proposed roof/gutter system would be relatively maintenance free and could be imposed as a condition.

Member Rivkind is concerned about the house in the front lot. Even with a deed restriction, a condition could still be an inconvenience to abutters or others in the neighborhood if water overflows onto the property of others. What is the incentive for providing proper maintenance?

Attorney De Lisi suggests that "being dragged in front of the ZBA" would be a deterrent.

Chair Barbour stated this is not within the jurisdiction of the ZBA, which is not in a position to accept escrow to manage or monitor compliance.

Member Lynch acknowledged the board is out of their lane. He stated the Applicant's hardship is self-created, the board is tasked with addressing the three prongs of the variance before them, and suggested the Board move to a vote to which Member Rivkind agreed. Prior to doing so, Panel Chair Brown called for any further comment from members of the public for new information.

Public Comments: Brian O'Donnell of 190 Cross Street stated he has lived on an abutting property for 42 years and knows all about water. He further stated there is no such thing as non-maintenance and this is a self-created hardship as the lot was known to be non-buildable at the time it was purchased. Soil conditions and shape/topography alone do not constitute the requirements needed to grant a variance.

Upon a motion duly made and seconded, Members Lynch moved to deny with Member Rivkind seconding. Member Brown called for a vote with Members Rivkind and Lynch **VOTING** to deny the Variance application on property known as Lot 84 Winter Street with Member Brown **VOTING** to approve.

*These minutes have been approved with reading of the minutes waived by unanimous vote of the Board of Appeals at a public meeting duly held on 4/6/22 in accordance with M.G.L. c40A, Section 11, and the Massachusetts Open Meeting Law.*

Signed:  Date: 4/6/22  
As Clerk/Assistant Clerk

Next scheduled meeting: April 6, 2022