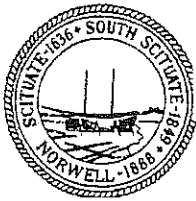


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TOWN OF NORWELL



OFFICE OF
BOARD OF APPEALS

345 MAIN STREET, P.O. BOX 295
NORWELL, MASSACHUSETTS 02061
(781) 659-8018 • Fax (781) 659-1892

Members

Lois S. Barbour, Chair
Philip Y. Brown, Vice Chair
David Lee Turner, Clerk

Associate Members

Thomas P. Harrison
Ralph J. Rivkind

FINDINGS AND DECISION

of

The Norwell Board Of Appeals

File No. 17-12

A PUBLIC HEARING was opened on August 2, 2017, and continued to September 13, 2017, and closed on October 11, 2017, by the Norwell Board of Appeals, under G.L. c. 40A. Sections 6 and 9, at the Norwell Town Offices. 345 Main Street, Norwell, Massachusetts, on the Applications of:

22 Forest Street Realty Trust
c/o Stephen O'Keefe, Trustee
P.O. Box 819
Pembroke, MA 02359

For a **Variance** under Section 2431 (Lot Frontage) of the Norwell Zoning By-Law, to construct a new 3,218 sq. ft. residential dwelling on a lot, located in Residential District A, where one-acre lot is required. The Property, known and numbered as **22 Forest Street** (the Property) contains 141,744 sq. ft. or 3.25 acres, where one-acre is required, as shown on Assessor's Map 21A Block 58 Lot 15, and recorded at the Plymouth County Registry of Deeds at BK 48384 PG 85.

The Public Hearing was duly noticed in the *Norwell Mariner* on 9/15/17 and 9/22/17 and posted by the Norwell Town Clerk at the Town Hall to meet requirements of the Open Meeting Law.

The Applicant was present at the first public hearing session and represented by his attorney, Jeffrey A. De Lisi, at the second and closing meetings of the Public Hearing.

There was high interest in this application, as evidenced by attendance of several members of the public, including one represented by her attorney, at the opening meeting of the public hearing. At that meeting no objection was expressed relating to demolition of the existing structure, a log cabin built in 1930, or construction of the proposed new residence that, as represented, will contain 3,218 sq. ft. However, abutters did express concern relating to any proposed "improvements" in the right-of-way access to the subject property and potential damage that could be caused by construction vehicles. No evidence was taken at the September 13, 2017, hearing as an extension request had been received from the Applicant's recently appointed attorney in a letter dated 9/12/17, that included his opinion that no variance was needed. Attorney Di Lisi appeared at both the 9/13/17 and the 10/11/17 meetings to ensure the Board had received his correspondence and to represent his client.

FILE DOCUMENTATION:

1. Copy of the legal notice
2. Assessors' Card, indicating the current structure was built in 1930, with list of abutters receiving notice
3. Completed application for a public hearing, filed July 12, 2017, signed by the applicant, on 6/28/17
4. Application for Disposal System Construction Permit from the Board of Health, dated 5/9/17, signed by Darren M. Grady P.E., as filed with the application
5. Board of Health application for Sub-surface Sewage Disposal Site Plan for #22 Forest Street, Norwell, Massachusetts, dated June 28, 2017, as prepared by Grady Consulting, LLC of 71 Evergreen Street, Suite 1, Kingston, MA 02364, consisting of one drawing, signed and sealed by Darren Grady, P.E., date-stamped by the Town Clerk on 7/12/17
6. Architectural plans, prepared by n:rd, dated 6/20/17 (unsigned), consisting of six drawings, including drawings A3 and A4, detailing front, side, and rear elevations, as stamped by the Town Clerk on 7/12/17
7. Conservation Commission Review of the property, dated 8/2/17, as signed by Conservation Agent Nancy Hemingway, relating to suitability of the proposed access "for construction and will require the filing of a Notice of Intent, prior to construction".
8. Prior decision of the Board of Appeals relating to the subject property for a Special Permit/Section 6 Finding decision, filed with the Norwell Town Clerk on November 9, 2007.

9. ANR Certification of Action of the Planning Board, dated 10/8/14, showing the subject property with the exception of a small triangular corner that related to a proposed Town pathway project (not recorded).
10. Attendance sign-in for the 8/2/17, meeting
11. Opinion from Edward P. Ryan, Town Counsel, to Eileen L. Kelly, Chair of the Norwell ZBA, dated February 16, 1983, relating to a definition of a right-of-way for "John Andrews Property, off Forest Street, dated received by the Norwell Board of Assessors on 1/2/1985
12. Letter of 9/12/17, from Jeffrey A. De Lisi of Ohrenberger, De Lisi & Harris, LLP, on behalf of the applicant, requesting a continuance and stating his opinion that the property is not in need of zoning relief.

FINDINGS OF THE BOARD: Based upon the evidence submitted and/or upon representations made by the Applicant during the public hearing, the Board finds the following:

1. The Property is a pre-existing non-conforming lot that contains 141,744 square feet, which includes an existing dwelling, a log cabin built in 1930, prior to the establishment of zoning in the Town of Norwell, for which access has consistently been a right-of-way without direct frontage on Forest Street.
2. The right-of-way is an unimproved drive that services and abuts other residences of the subject property, which the current residents do not want changed.
3. The lot consists of 141,744 sq. ft. or 3.25 acres, which is in excess of the one-acre required under Section 2421.
4. Although the lot has no existing frontage on Forest Street, the proposed dwelling will meet all sideline and setback requirements of Section 2430 (Lot Frontage and Width).
5. The existing dwelling will be demolished to meet the requirement of Section 2311 (Permitted Residential Uses).
6. Abutters requested that the existing drive over the right-of-way be preserved and not significantly widened. The Board of Appeals will not impose conditions relating to the right-of-way, which relates to property owned by others.
7. Further, the Conservation Agent provided documentation stating that a Notice of Intent must be filed with the Conservation Commission, relating to the right-of-way access to the subject lot over which the Board of Appeals has no authority under the submitted application.
8. In accordance with Section 1322, in the opinion of the Board of Appeals:
 - a. Section 1322 a) provides: "A literal enforcement of the provisions of this Bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant." As the existing residence was not abandoned and constructed in 1930, prior to the existence of zoning in the Town of Norwell, the Board finds a substantial hardship would exist, if demolition of the existing dwelling with replacement of a modern dwelling were not allowed.
 - b. Section 1323 b) provides: "The hardship is owing to circumstances relating to the 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.” As the lot was created prior to zoning with an existing residence constructed thereon, inhabited until a few months prior to this application, the Board finds the hardship relates to the shape of such land and does not generally affect the zoning district in which it is located.

- c. Section 1323 c) provides: Desirable relief may be granted without either: (1) substantial detriment to the public good; or (2) nullifying or substantially derogating from the intent or purpose of this Bylaw.” The Board finds the proposed demolition of the existing dwelling and construction of a new dwelling will not nullify or substantially derogate from the intent or purpose of this Bylaw. A residential dwelling currently exists on the lot, which is in excess of three (3) acres with documented easement access rights over an existing drive, the continued use of which is not opposed by neighbors who attended the public hearing.
9. The use of the proposed construction is residential, which is permitted by right under the Norwell Zoning Bylaw and, therefore, will not be detrimental to the neighborhood or zoning district.
10. The proposed use will not be injurious or otherwise hazardous to the community, as the proposed construction will continue to be residential, as allowed by right under the Norwell Zoning Bylaw.
11. The Applicant’s attorney, Jeffrey A. De Lisi, who attended the final meeting of the public hearing, agreed with the Board’s proposal to impose conditions similar to those granted in its Special Permit/Section 6 Finding decision on the subject property, as filed with the Norwell Town Clerk on November 9, 2007.

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DECISION OF THE BOARD:

Based upon evidence presented and its findings above incorporated herein, upon a motion duly made and seconded, the Board **VOTED** unanimously to grant the Variance application that will allow for the demolition of the existing dwelling and construction of the proposed new dwelling on property known as **22 Forest Street** in accordance with the filed plans, subject to the following.

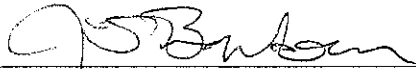
SPECIAL CONDITIONS:

1. ***SUBDIVISION***: The Property shall not be divided, subdivided, or reduced in size or shape.
2. ***INTENSITY OF USE***: The Property shall be limited in use to one single-family dwelling with permitted, associated appurtenant structures.
3. ***DEMOLITION AND CERTIFICATE OF OCCUPANCY***: No Certificate of Occupancy for the proposed residence shall issue until the existing dwelling has been demolished and debris properly disposed of. Further, the area upon which the log cabin currently exists shall be restored to meet ground level of the surrounding area and planted with lawn or landscaped with native plants consistent with the unimproved area of the lot.
4. ***REQUIREMENTS OF OTHER TOWN BOARDS***: This applicant shall meet all requirements of the Board of Health and the Conservation Commission per submitted documentation listed in the File Inventory, prior to issuance of a building permit.

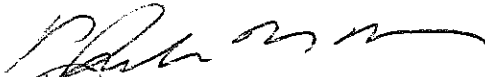
CONDITIONS APPLYING TO ALL DECISIONS:

1. ***RECORDING OF THE DECISION***: After receiving certification from the Town Clerk that no appeal has been taken within twenty days, or if appealed than dismissed or denied, a copy of the Board's decision must be filed with either the Registrar of the Plymouth County Registry of Deeds to be recorded and indexed in the grantor index under the name of the owner of record in the case of the unregistered land, or with the Recorder of the Land Court to be registered and noted on the owner's certificate of title in the case of registered land.
2. ***RECORDING RECEIPT***: A copy of the recording fee receipt must be returned to the Board of Appeals. ***NOTE: No building permit shall be issued without such evidence.***
3. ***EFFECTIVE DATE OF APPROVAL***: The zoning relief granted by this Decision shall take effect only at such time as a copy of this Decision, certified by the Office of the Town Clerk of the Town of Norwell, is recorded with the Registrar of Deeds or Recorder of the Land Court.
4. ***LAPSE OF VARIANCE***: The Applicant must exercise any Variance granted by the Board of Appeals within one year of the date this

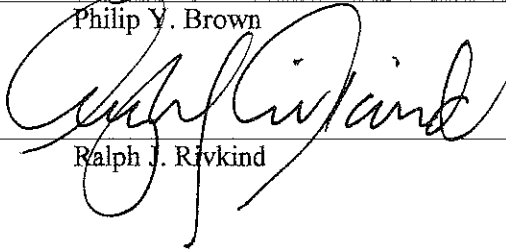
Decision is filed with the Office of the Town Clerk or as provided in any extension thereof as detailed in the Board's Rules, or it shall lapse.



Lois S. Barbour



Philip Y. Brown



Ralph J. Rivkind

Date Filed with Office of the Town Clerk

*This space is for Date Stamp of
Town Clerk*

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NOTICE OF APPELLATE RIGHTS: Any decision of the Board of Appeals may be appealed to Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.