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Bk: 41002 Pg: 186 Page: 1 of 5
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ATTEST: John R. Buokley, Jr. Register
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OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

P.O. BOX 293
NORWELL, MASSACHUSETTS 02061
(781) 659-0018 • Fax (781) 659-1892

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TOWN OF NORWELL
MAY 19 2010
TOWN CLERK
PATRICIA M. ANDERSON

FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

File No. 10-05

A True Copy
Attest:

A PUBLIC HEARING was held on May 5, 2010, by the Norwell Zoning Board of Appeals under Massachusetts General Laws, Chapter 40A, at the Norwell Town offices, 345 Main Street, Norwell, MA, on the application of:

George R. Junior, Trustee
Heavenly Vision Trust
P. O. Box 551
Marshfield Hills, MA 02051

Laura A. Day
Asst. Town Clerk
Jan. 30, 2012

Under Section 1324 of the Norwell Zoning Bylaw to **issue a withheld building permit** and a **Variance** under 1322 a, b, and c from Lot Frontage required under Section 2431, for property located at Masthead Drive, being a subdivision comprised of Lots 1-1 and 2A-1, and Lot 2B-1 a/k/a **Masthead Drive Extension**, with a total land area of 11.56 acres and 50 feet of frontage. The parcels referenced are shown on Assessor's Map 29B Block 78, Lots 166, 168, and 128, recorded at Registry of Deeds BK 19659 PG 166-167, located in Residential District A, the Salt Marsh Conservation District, Flood Plain, and North River Corridor.

The Public Hearing for this application was duly noticed in *The Norwell Mariner* on April 15, 2010, and April 22, 2010, and posted at the Norwell Town Hall.

The Applicant was in attendance at the hearing to present the application. Mr. Dana Junior spoke in favor of the application with no one speaking in opposition.

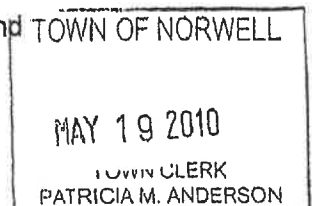
The Board received the following information into its files:

1. Copy of the legal notice
2. Abutters List

3. Application, completed and signed by the applicant, date-stamped April 7, 2010, by the Town Clerk
4. Assessors Card Print-out for the lots
5. Letter from the applicant, dated 4/5/10, date-stamped 4/7/10 by the Town Clerk, submitting the application
6. Letter of 9/7/07 from the Norwell Building Inspector
7. Letter of 11/15/09 to George R. Junior
8. Letter of 12/16/09 from the Norwell Building Inspector to George R. Junior
9. Letter of 12/18/09 to Norwell Building Inspector from George R. Junior
10. Legal citations (two pages)
11. Suggested draft approval from George R. Junior
12. Deed transferring ownership to George R. Junior, Trustee, recorded at Plymouth Registry of Deeds 12 Apr 2001 at Bk 19659 Pg 166-167
13. Deed transferring Ownership from Dominic R. Tedeschi to George R. Junior, Trustee, recorded at Plymouth Registry of Deeds 01 Feb 2001 at Bk 19330 Pg 125-126
14. Prior deed copies (two)
15. Plan showing Sheet 3 of 4 for Masthead Drive layout
16. November 7, 1973 decision by Norwell Zoning Board of Appeals on Masthead Drive, North River Estates and plan of Masthead Drive dated Nov. 6, 1973
17. Order of Conditions issued by the Norwell Conservation Commission on 11/18/08
18. Plan entitled "Proposed Disposal System/Lot 2B-1 Masthead Drive/Norwell, Mass." (the "Lot Plan") consolidating the three lots previously created by subdivision, as prepared by Environmental Engineering Technologies, located at 465 Furnace Street, Marshfield, MA, dated February 25, 2008, as revised March 25, 2010, signed and stamped by Robert C. Crawford, Registered Professional Engineer, and Neil J. Murphy, Registered Land Surveyor.

A True Copy
Attest:

Harold Davis
Asst. Town Clerk
Jan 30, 2012



FINDINGS:

Board members had previously walked the site. The 11.56-acre lot has fifty (50) feet of frontage where eighty (80) feet are required. The lot fronts a cul-de-sac of an accepted town way, the circumference of which, when considered with the other existing lots, makes it impossible for Mr. Junior to obtain the required eighty (80) feet of frontage. Mr. Junior proposed to combine the three lots in accordance with the plan filed with the application.

During the public hearing and in its deliberations, the Board carefully examined the strict criteria for granting of a variance under M.G.L c. 40A s. 10 and the Norwell Zoning Bylaw §1322 a, b, and c and determined the submitted evidence and testimony demonstrate the application meets all such criteria, as described below.

Section 1322b, Soil Conditions, Shape, and Topography: Mr. Junior stated under the terms of the conditions set forth by the Conservation Commission in its Order of Conditions, only one house can be built on the referenced property in a location demarcated as Proposed Foundation on the Lot Plan. The house will be accessed through an existing cart path as also shown on the Lot Plan. The consolidated parcel is

comprised substantially of wetlands, borders the North River, and is in close conjunction to Route 3. The vast majority of lots in the zoning district are upland of the North River. Their shapes are not circumscribed by the North River, existing cul-de-sacs, or Route 3, and, further, do not contain the hydric soil conditions and pervasive wetlands found on this property. For these reasons, the Board concurred Mr. Junior meets the criteria for soil conditions, lot shape, and topography.

Section 1322a, Substantial Hardship to Applicant: Despite the fact the consolidated lot contains 11.56 acres, owing to the unique soil conditions, shape and topography of the parcel, Mr. Junior is unable to develop the three building sites he understood were available at the time he purchased the property. Because of the soil conditions, shape, and topography of the property, which preclude him from building three homes in accordance with the three-lot subdivision, Mr. Junior presented oral testimony that he is suffering severe financial hardship and is in danger of the property being foreclosed. Granting of a variance will enable the applicant to re-finance the property, which will ease his financial hardship. For these reasons, the Board concurred that Mr. Junior meets the criteria for substantial hardship.

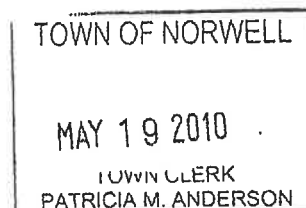
Section 1322, Detriment to the Public Good or Derogate from the Purpose of the Bylaw: Granting the variance to allow Mr. Junior a reduction in the required frontage will not pose a substantial detriment to the public good or nullify or substantially derogate from the intent or purpose of the bylaw. Given the nature of the cul-de-sac that this lot fronts; the 30-foot difference between the required eighty (80) feet of frontage and the actual frontage of fifty (50) feet on the ground will have no substantive impact on the neighboring lots. Indeed, while not precedential in any way, it is of interest to note that the Zoning Board previously granted a variance to a neighboring lot in 1973. For these reasons, the Board concurred that grant of the variance will not derogate from the purpose of the Norwell Zoning Bylaw nor be a detriment to the public good. In fact, the Board finds there is substantial *benefit* to the Town, as detailed in the following paragraph, entitled *Benefit to the Town*.

Benefit to the Town: Granting of the requested variance to allow for the potential construction of a single-family home on the consolidated parcel will provide substantial benefits to the town because it prevents the 11.56-acre parcel from potentially being developed more intensely through the application of other zoning laws and statutes. Finally, grant of the variance serves to:

1. Protect wetlands resource areas (Section 4200)
2. Protect the North River Corridor area
3. Protect the Salt Marsh Conservation District (Section 4100)
4. Protect the Flood Plain (Section 4200)
5. Enforce the Route 3 buffer requirement (Section 2444)
6. Preserve Intensity of Use compliance (2400)

A True Copy
Attest:

All of these benefits support the grant of the requested variance in this particular case.



Laurie Dwyer
Asst-Town Clerk
Jan 30, 2012

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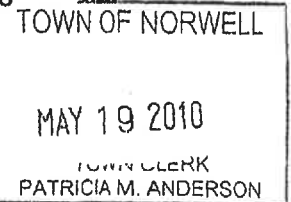
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DECISION OF THE BOARD:

Based on the evidence presented and its findings delineated above, upon a motion duly made and seconded, the Board **VOTED** unanimously to:

*Hallie A. Davis
Asst. Town Clerk
Jan 30, 2012*

1. grant a Variance of Section 2431 of the Norwell Zoning Bylaw on the property known as Masthead Drive Extension, so that a building permit can be issued for one residential dwelling and any appurtenant structures currently allowable under the Norwell Zoning Bylaw, and
2. allow withdrawal of the Section 1324 relief without prejudice, as requested by the applicant during the public hearing,
3. subject to the following:



SPECIAL CONDITIONS:

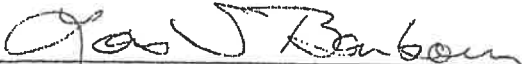
1. The property will be developed only in accordance with a recordable perimeter plan to be filed with the Registry of Deeds, comparable to the plan filed with the application entitled "Proposed Disposal System/Lot 2B-1¹ Masthead Drive/Norwell, Mass.," prepared by Environmental Engineering Technologies, located at 465 Furnace Street, Marshfield, MA, dated February 25, 2008, as revised March 25, 2010, signed and stamped by Robert C. Crawford, Registered Professional Engineer, and Neil J. Murphy, Registered Land Surveyor, consolidating the three former subdivision lots into one combined lot. This decision shall become effective only with recording of such a plan.
2. The Applicant must comply with the Order of Conditions issued by the Norwell Conservation Commission and dated 11/18/08.
3. There shall be no further division, subdivision, or ANR-division of the consolidated parcel by this Applicant or any subsequent owner of the described property.
4. The consolidated lot can be used only for a single-family home and no multiple-family housing is permitted on the described property at any time.
5. There shall be no additional clearing or vegetation trimming inside the buffer zone of the North River, unless the North River Commission and the Conservation Commission approve such clearing or trimming in advance.
6. The applicant must comply with all Board of Health regulations with respect to any septic system to serve any construction allowable under this decision.

CONDITIONS APPLYING TO ALL VARIANCES:

1. **RECORDING OF THE DECISION:** After receiving certification from the Town Clerk that no appeal has been taken within twenty days, or if appealed then dismissed or denied, a copy of the Board's decision shall 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 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.

¹ Plan note: Formerly Lots 1-1 (Plot 128/78/29B), 21-1 (Plot 165/78/29B) and 2B-1 (Plot 166/78/29B)

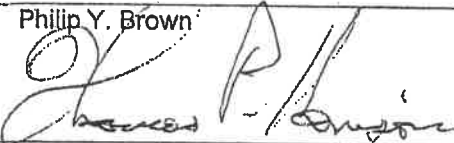
2. **RECORDING RECEIPT:** A copy of the recording fee receipt must be returned to the Board of Appeals. *NOTE:* No building permit shall be issued without such evidence.
3. **EFFECTIVE DATE OF APPROVAL:** The Variance granted by this Decision shall take effect only at such time as a copy of this Decision, 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. **EXPIRATION:** The applicant shall exercise any variance granted within one (1) year from the date the decision is filed with the Town Clerk, or by extension, or it shall lapse. The Board of Appeals may authorize only one six-month extension of a variance without a new application required.



 Lois S. Barbour



 Philip Y. Brown



 Thomas P. Harrison

*This space reserved for
 Date Stamp of Town Clerk*

TOWN OF NORWELL

MAY 19 2010

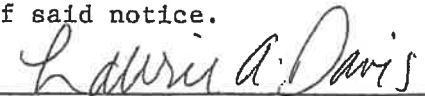
TOWN CLERK
 PATRICIA M. ANDERSON

Date Filed with Office of the Town Clerk

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.

I hereby certify that notice of approval of this application to issue a withheld building permit and a Variance submitted by George R. Junior to the Norwell Zoning Board of Appeals was received and recorded at this office on May 19, 2010, and that no appeal was received during the twenty days next after such receipt and recording of said notice.

DATE: Jan. 30, 2012



 TOWN CLERK - ASSISTANT TOWN CLERK

A True Copy

Attest: