

OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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

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-
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FINDINGS AND DECISION of the **NORWELL BOARD OF APPEALS**

File No. 12-1

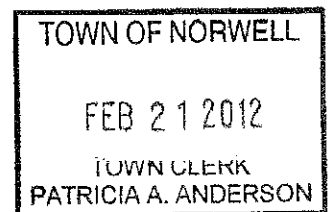
A **PUBLIC HEARING** was held on February 8, 2012, by the Norwell Zoning Board of Appeals (the Board), under Massachusetts General Laws, Chapter 40A, Sections 6, 9 and 11, at the Norwell Town offices, 345 Main Street Norwell, MA, upon the Application (the Application) of:

Augie Bloomstein
36 West Street
Whitman, MA 02382, the Applicant

For the Property (the Property) known and numbered as 42 Main Street, owned by Robert M. Burnside of 50 Main Street, in said Norwell, (the Owner) according to the Application submitted for and signed by him. (See Certificate of Title #115808, Book 579, Page 8 on file with the Registry District of Plymouth County, which Certificate is an attachment in Exhibit 3).

The Application, filed with the Board on January 12, 2012 and with the Town Clerk on January 13, 2012, requests a "Special Permit and/or Section 6 Finding" so that the Property of approximately 1.8 acres, (Parcel 7) that satisfies present zoning requirements, can be used as two sites for single family dwellings. The two sites, hereinafter described and identified as Lots 9 and 10, do not meet the following zoning requirements in Zoning Residential District A¹:

1. Lot Size – Lot 9 does not contain the required square feet of upland (43,560 sq. ft. is required...Lot 9 contains 30,382 sq. ft. of upland - see the Site Plan referenced in Footnote 1. See Footnote 2)²
2. Lot Width – Lots 9 and 10 do not meet lot width requirements
3. Lot Shape – Lots 9 and 10 do not meet lot shape requirements
4. Lot Frontage – Lot 10 does not meet lot frontage requirements



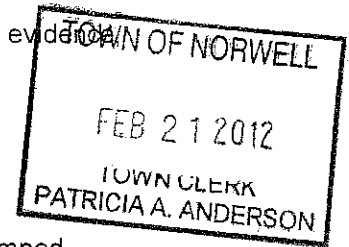
The Public Hearing for this application was duly noticed in *The Norwell Mariner* on January 19, 2012, and January 26, 2012, and posted at the Norwell Town Hall and distributed as required by law.

¹The Property is located in Zoning Residential District A and the Aquifer Protection District. See the Site Plan hereinafter referenced and filed with the Application. Exhibits 6, 7 and 8.

²See the Application Exhibit 3– page 1 for lot areas and frontages; page 2 for lot sizes, widths, shapes and frontages.

The Applicant and his attorney, Paul J. Driscoll, Esquire, of Marshfield, were present, participated in the hearing and presented evidence and arguments in favor of the requested relief.

The Board noted the following Documents in its file and received them into evidence together with additional documents, all marked as Exhibits, as noted:



<u>EXHIBIT</u>	<u>DOCUMENT</u>
1.	Copy of the legal notice
2.	Abutters List
3.	Application, completed and signed by the Applicants, date-stamped January 13, 2012 by the Town Clerk. The Application, with the following documents attached, constitutes <u>Exhibit 3</u> : 1) Certificate of Title #115808 Robert M. Burnside, owner; 2) Assessors Map (Norwell) 19A; 3) Norwell Planning Board, Certificate of Action (Bloomstein)
4.	Assessors Card Print-out for the lot
5.	Letter from Applicant's Engineer, dated January 12, 2012, dated-stamped January 12, 2012 by the Norwell Division of Inspections submitted with the Application
6.	Site Plan # 42 Main Street, by Grady Consulting, LLC dated, January 12, 2012, received with the Application on January 12, 2012 (the Site Plans)
7.	Plan of Land# 42 Main Street Assessors Map 19A, Block 53, Lot 7, by Grady Consulting, LLC, dated September 28, 2011
8.	The Plan, Exhibit 7 – colored and showing the proposed division-Lots 9 and 10, approved as an ANR Plan under G.L. c.41, §81L & §81P, with the location of proposed new structures, drives, elevations
9.	White ring binder that contains A) Copies of Exhibits 6, 7 and 8; B) Color pictures – 42 Main Street structure and facsimile pictures of structures that Applicant proposes to construct on Lots 9 and 10; 78 Main Street; 74 Main Street; 60 Main Street; 68 Main Street; 67 Main Street; 57 Main Street; 54 Main Street; 49 Main Street; 47 Main Street; C) Assessors Map 19A with notations of picture locations and a wetland location on Lots 9 and 10; D) Applicants figures for certain property noted in Exhibit 9
10.	Statement by Owner

FINDINGS:

1. The Property, that is about 1.8 acres, presently contains a small single-family dwelling and a non-conforming accessory building, in poor condition, which has not been used for more than two years.³
2. In the Fall of 2011, the Applicant submitted plans to the Norwell Planning Board, under G.L.c.41 §81L, and §81P, that proposed to divide the Property into two lots, that would not comply with and satisfy existing Zoning By-Law requirements.
3. On October 28, 2011, the Norwell Planning Board endorsed one of the plans, Exhibit 7, "approval under the subdivision control law not required", a so-called ANR (Approval Not Required) plan, with several notations including: "endorsement of this plan shall not be an indication, express or implied, that the parcels or structures shown on this plan conform to applicable zoning requirements."
4. The ANR plan divided the Property, also known as Lot 7, into two lots, shown as Lots 9 and 10 on Exhibits 6, 7 and 8.

³Based upon information provided and statements made at the public hearing.

5. The Applicant proposes to remove the small single family dwelling now situated on Lot 9, and the accessory building, now situated on Lot 10, and replace them with new single family dwellings, as shown in the concept plan, Exhibit 8, and in the facsimile pictures in Exhibit 9.
6. The Application requests that this Board grant a Special Permit and/or Section 6 Finding that would allow the use of Lots 9 and 10 as generally set forth in Exhibit 8 and grant relief from the requirements of Norwell Zoning By-Law Sections 2421⁴ (lot size), 2431⁵ (lot frontage), 2432 (lot width) and 2450⁶ (lot shape), as appropriate and relevant to each lot.
7. General laws, Chapter 40A, Section 6 provides that, "[p]re-existing non-conforming structures or uses may be extended or altered..." upon certain findings by this Board.
8. The Norwell Zoning By-Law designates the Board as the Special permit granting authority and sets forth the standards to be applied. Zoning By-Law, Sections 1410 and 1420.
9. In the Application and Exhibits, the Applicant proposes to demolish the two existing structures on Lot 7 and replace them with new single family dwellings (see Exhibits 8 and 9) through the Special Permit and/or Section 6 Finding (G.L. c. 40A, §6 (see third paragraph) process).
10. The Norwell Zoning By-Law provides, in Section 1641, "A nonconforming use which has been abandoned or discontinued for a period of two years or more shall not be re-established and any future use shall conform with the by-law". The provision is expressly authorized by G.L. c. 40A, §6 (see third paragraph).
11. The use of the non-conforming accessory building, including any residential use, has been abandoned and not used for over two years. In addition, the building has not been used as a single family dwelling for far longer than two years, and therefore, that use, if it ever occurred, has been abandoned.
12. The Board finds that based upon the foregoing, there is no second non-conforming single family dwelling use or structure that would allow this Board to issue a Special Permit or make a Section 6 Finding that allows the use of the Property (original Lot 7) or the ANR Lots 9 and 10 as non-conforming sites for two single family dwellings. See Smalley v. Planning Bd. of Harwich, 10 Mass.App.Ct. 599, 603 (1980). Gifford v. Planning Bd. of Nantucket, 376 Mass 801, 807 (1978).
13. The Board finds that when the Applicant divided the Property (Lot 7), under G.L. c. 41, §81L, to create Lots 9 and 10, any protected status of the single family dwelling and the non-conforming accessory building, as pre-existing non-conforming structures, was eliminated. See Branagan v. Zoning Bd. of Appeals of Falmouth, (2009) Mass. App. Ct., Docket No. 08-113k pursuant to Rule 1:28. Commonwealth v. Connor C, 432 Mass 635, 640 (2000).

⁴Section 2421 requires that the minimum lot size "shall be one acre".

⁵ Sections 2431 and 2432 require that the minimum lot frontage at the street line shall be 80 feet, and that the minimum lot width at the required set back line in a Residential District shall be 50 feet.

⁶Section 2450 requires that the shape of each lot meet certain width measurements and that a circle of 150 feet can be inscribed within the lot lines.

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14. The existing dwelling and accessory building on the newly created lots shown on the ANR Plan endorsed under G.L. c. 41, Section 81L and 81P, as requested by the Applicant, lost any and all non-conforming status they may have had when the plan was endorsed by the Planning Board. After such ANR Plan approval, all changes to existing buildings or to the use of the land are required to meet the requirements in the presently existing Zoning By-Law. The Applicant's attempt to use the Special Permit, non-conforming use process, to expand, change, modify or replace any non-conforming buildings on the lots shown on the ANR Plan was negated by the approval of that Plan. Branagan and case cited, *Supra*. 4. Norwell Zoning By-Law Section 2412 set forth below in Footnote 7.

15. The Applicant has not presented law or facts that would support the request for a Special Permit or a G.L. c. 40A, §6 Finding "that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood.

16. The Board finds that the division^{and} of use of the 1.8 acre parcel, the Property, as two non-conforming lots, without meeting the statutory requirements in the Subdivision Control Law, G.L. c. 41, - sections 81K to 81GG, inclusive, violates the intent and purposes of that law as set forth in G.L. c.41, §81M, and, therefore, would be more detrimental than the existing non-conforming use of Lot 7 to the neighborhood and Town, and, in addition, would violate the purposes and authority of the Norwell Zoning By-Law, as set forth, in part, in Section 1100, and , therefore, would also be more detrimental than the prior and existing, non-conforming uses, before such division, to the neighborhood.

DECISION OF THE BOARD:


At the conclusion of the evidentiary hearing, and while in continued open hearing and session, based upon the evidence submitted and the Board's Findings delineated above, upon a motion duly made and seconded, the Board of Appeals **UNANIMOUSLY VOTED** to **DENY** the requested Special Permit and Section 6 Finding set forth in the Application.



 Lois S. Barbour



 David Lee Turner



 Thomas P. Harrison

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⁷Zoning By-Law, Section 2412 provides: No lot shall be created nor shall an existing lot be changed in size or shape except through a public taking, or except where otherwise permitted herein, so as to result in violation of the requirements set forth in these Intensity of Use Regulations.

Date Filed with Office of the Town Clerk

*This space reserved 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.