

OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

File No. 12-4

PUBLIC HEARING(s) were held on March 7, 2012 and March 21, 2012, by the Norwell Zoning Board of Appeals (the Board) under Massachusetts General Laws, Chapter 40A, Sections 6, 8, 9, and 10, in the Norwell Town offices, 345 Main Street Norwell, MA on the Application (the Application) of:

**James P. and Eileen L. Kelly
278 Bowker Street
Norwell MA 02061, the Applicants**

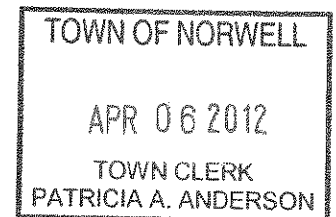
For an appeal from the denial of a Common Driveway Permit by the Building Inspector on January 23, 2012, and, in the alternative, a Special Permit or Variance for such common driveway, for the Property located on Grove Street, shown on Assessor's Map 8C, Block 39, as Lots 3 and 52, and described in the document recorded with the Registry of Deeds Book 5730, Page 306. The Property is located in Residential District A.

The Public Hearing for this application was duly noticed in *The Norwell Mariner* on February 16, 2012 and February 23, 2012, and posted at the Norwell Town Hall.

The Applicant's representative, Walter B. Sullivan, Esq. was in attendance at the hearing to present the proposed addition. The Applicants were also present.

The Board received the following documents and marked them as Exhibits, as noted:

1. Copy of the legal notice
2. Abutters Lists
3. Application, completed and signed by the applicants, date-stamped 2/7/12 by the Town Clerk, with the following Exhibits:
 - A. Plan of June 5, 2009, Common Driveway Plan
 - B. Copy of the Common Driveway By-Law Provision, Section 2318
 - C. Attorney Brodsky Letter of 11/11/11
 - D. Building Permit Application and Lot 6A House Concept Plans
 - E. Inspector of Buildings' Letter of Denial, dated 1/23/12
 - F. ANR Plan 5/24/10
 - G. Order of Conditions SE-52-934
 - H. Disposal System Const. Permit #S-06-55
 - I. Water Service Application 4/2/08
 - J. Planning Board Letter of 12/12/10
 - K. Attorney Sullivan Letter of 8/20/10



- L. Driveway Easement
 - M. Restrictive Covenant
 - N. Homeowners' Association Trust
4. Assessors Card Print-out for the lot
 5. Letter from Applicant's attorney of 2/17/12, date-stamped 2/17/12 by the Town Clerk including the following Exhibits:

FINDINGS OF FACT:

1. The Applicants are the owners of a little over six acres of land, the Property, located on Grove Street, shown on Exhibit A attached to the Application.
2. There is adequate frontage and upland area to divide the Property into two lots under the Norwell Zoning By-Law (the NZBL). See Exhibit F.
3. The access to Lot 6A, as shown on Exhibit A, is restricted and complicated by a small pond and wetland on both Lot 6A and Lot 6B, as shown on that Plan.
4. The Applicants propose to provide access for both lots over a common driveway, as authorized by NZBL Section 2318.
5. A Building Permit Application, with plans and supporting documents attached, for the construction of the driveway and common driveway to the proposed single family home to be constructed on Lot 6A were submitted to the Norwell Building Department.
6. On January 23, 2012, by a letter of that date, Exhibit E, the permit was denied "based on the 'common driveway' use proposed."
7. The Inspector of Building's denial also refers to the lack of a setback line and 150 foot building circle line. Exhibit F, a so-called ANR Plan of the two lots 6A and 6B, endorsed by the Norwell Planning Board on July 2, 2010, clearly shows that both lots satisfy the requirements.
8. The Common Driveway NZBL provision, Section 2318, II A, defines a Common Driveway" as a "driveway that is designed to serve a minimum of two (2) residential lots or a maximum of three (3) residential lots..."

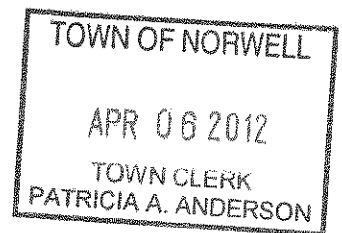
The Application is for a common driveway for two residential lots.

9. Section 2318 III A provides:

A. Building Permit Common Driveway: Up to 100 Feet in Length.

The Building Inspector may issue a Building Permit Common Driveway permit to allow a common driveway, as of right, provided that the Building Inspector is satisfied that all of the requirements set forth below are satisfied:

- i. The common portion of the driveway shall not exceed 100 feet in length;
- ii. The common driveway shall not serve more than 2 residential lots;



- iii. The common driveway application and plan shall conform to all of the requirements set forth below under s. IV, Standards and Criteria, subsections i-x; and
 - iv. A fee of \$100.00 was duly paid with the application. (Emphasis applied)
10. The Plan for the common driveway to serve Lots 6A and 6B is shown on Exhibit A, and sets forth that the "common portion of the driveway" is 100 feet in length. It also shows that it "shall not serve more than two (2) residential lots."
 11. The Exhibits, including the Easement, Restrictive Covenant and Homeowners Trust, clearly define, together with the Plan, Exhibit A, the "common driveway". The "common portion" of the driveway "shall not serve more than two (2) residential lots."
 12. The common driveway must meet and conform to all of the requirements in Section IV, Subsections i-x.
 13. An application fee of \$100 will be paid at the time the requested building permit is issued.

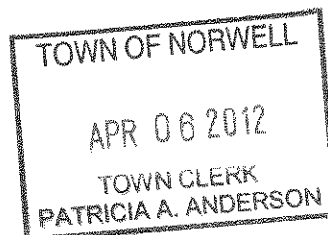
RULINGS OF LAW:

- A. The Applicants are entitled to a Building Permit Common Driveway permit, as of right, because their proposal does not exceed 100 feet in length.
- B. The Plan for the common driveway (Exhibit A) shows both the common driveway and the "common portion of the driveway." The Board rules that the definition of "The common portion of the driveway" is that related to that basic portion of the common driveway designed to serve both lots, Lot 6A and Lot 6B. Clearly, the Plan, Easement, and other supporting documents, show the "common portion" as 100 feet in length. The remaining portion is for the use of Lot 6A, and is not a part of the common use area. The By-Law does not define the "common portion" of the driveway in terms of lot ownership. If that were intended, it would have been stated.

DECISION OF THE BOARD:

Based upon the foregoing, the Board of Appeals, upon motion duly made and seconded, unanimously voted the following:

1. That the appeal from the Building Inspector's January 23, 2012 denial of Building Permit Common Driveway permit is GRANTED, the decision of the Building Inspector is overturned and the Building Inspector is directed to issue a Building Permit Common Driveway permit upon payment of the required fee and compliance with the

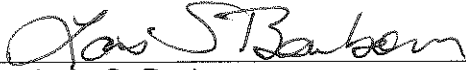


standards and requirements in Section IV, subsections i-x.

2. That the Applicant did not require a Special Permit for said common driveway as proposed, that the Special Permit granting authority for common driveways under Section 2318 is the Planning Board and accordingly no action is taken on this request because it is unnecessary and is beyond the scope of this Board's authority.
3. That the Applicant did not require a Variance for the common driveway as Proposed and accordingly no action was required on this request.

SPECIAL CONDITIONS:

The Building Inspector shall insure that the plans and documents comply with the standards and requirements in Section IV, Subsections i-x.



Lois S. Barbour



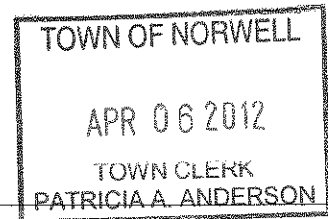
David Lee Turner



Thomas P. Harrison

*This space reserved for
Date Stamp of Town Clerk*

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.