

OFFICE OF  
BOARD OF APPEALS

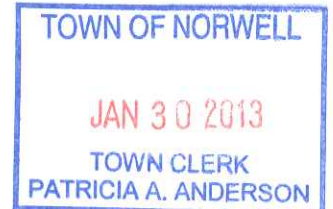
# TOWN OF NORWELL

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

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Thomas P. Harrison

## *FINDINGS AND DECISION* OF THE NORWELL BOARD OF APPEALS

**File No. 12-16**



A **PUBLIC HEARING** was held on January 16, 2013 by the Norwell Zoning Board of Appeals under Massachusetts General Laws, Chapter 40(a), Sections 6, at the Norwell Town offices, 345 Main Street, Norwell, MA, on the application of:

**John Barry**  
**300 Longwater Drive, 2<sup>nd</sup> Floor**  
**Norwell, MA 02061**

For a Special Permit and/or Section 6 Finding pursuant to Sections 1400 and 1600 of the Norwell Zoning Bylaws. The applicant sought a finding from the Zoning Board of Appeals for a division of the proposed site from one lot to two lots, each of which will have conforming frontage area and width. The existing house being a pre-existing dwelling that is non-conforming as pertains to the front yard setback on River Street being 25.7' from the road where 35' is required. The property is located in Residential District A at **435 River Street** and shown on Assessor's Map 27A as Block 72 Lot 21 and recorded at the Plymouth County Registry of Deeds Book 39861, Page 49. The existing dwelling was built in 1685.

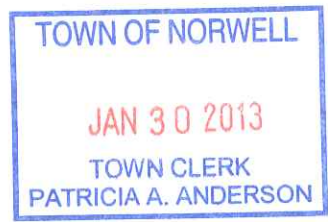
The Public Hearing for this application was advertised in *The Norwell Mariner* on December 27, 2012 and January 3, 2013 and posted by the Town Clerk at The Norwell Town Hall.

The applicant presented the proposed project as outlined in the application. No one spoke in opposition to the application.

### **FILE DOCUMENTATION:**

The board received the following information into its files:

1. Copy of the legal notice.



2. An abutters list
3. Assessors Card.
4. A completed application for public hearing signed by the applicant and the owner of the property. The aforementioned was date- stamped by the Town Clerk and the Board of Appeals on November 26, 2012.
5. A copy of correspondence to the Norwell Zoning Board of Appeals from Morse Engineering Company, Inc. dated November 16, 2012. The aforementioned correspondence outlined the applicant's wish to divide parcel 27A-72-021, located at 435 River Street into lots 1 & 2 shown on the plan submitted with the application. This correspondence also indicated that there are outbuildings on lot 2, which conform with existing setbacks and a small shed remaining on lot 1 is proposed to be torn down. The aforementioned correspondence was date-stamped by the Town Clerk and the Norwell Zoning Board of Appeals on November 26, 2012.
6. A copy of the special warranty deed conveying the property to Daniel J. Henderson Jr. on March 16, 2011. The aforementioned was date-stamped by the Town Clerk and the Board of Appeals on November 26, 2012.
7. An e-mail from Nancy Hemingway of the Conservation Commission to Judy Ockerbloom, secretary of the Norwell Zoning Board of Appeals, dated January 16, 2013. The aforementioned indicates that the Conservation Commission issued a determination NCC 36(12) which confirms the resource areas, jurisdictional buffer zones, and upland areas for 435 River Street. The e-mail specifically indicates that the applicant did not propose any work nor was any approved by the Conservation Commission. The e-mail did, however, authorize the landowner to perform work outside the 100' buffer zone without filing further applications with the Conservation Commission, but noted the requirement to re-file with the Conservation Commission for any work within the 100' buffer zone.
8. Correspondence to the Norwell Board of Appeals from Pattie and Peter Hainer dated January 16, 2013. The Hainer's correspondence expressed concerns with regard to designated boundary lines on the property; however, the correspondence also indicates that the areas in the boundary lines were corrected pursuant to a subsequent survey and that there were no remaining boundary line issues. The aforementioned was date-stamped by the Board of Appeals on January 16, 2013.
9. A Planning Board certificate of action pursuant to Massachusetts General Laws Chapter 41, Section 81P reflective of endorsement of the plan entitled "Plan of Land in Norwell, Mass. Showing Division of Parcel 27A-72-021 at

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JAN 30 2013  
TOWN CLERK  
PATRICIA A. ANDERSON

435 River Street into Lots 1 & 2". The plan was approved by the Planning Board on May 20, 2006 per their subdivision rules and regulation. The reasoning behind the Planning Board approval of the aforementioned is encompassed in this document. The aforementioned was date- stamped by the Town Clerk on January 9, 2013 and the Board of Appeals on January 15, 2013.

10. Plan of Land in Norwell, Mass. Showing Division of Parcel 27A-72-021, 435 River Street into Lots 1 & 2 prepared by JS Barry Development located at 200 Longwater Drive, 2<sup>nd</sup> floor, Norwell, Massachusetts 02061. The plan is dated December 14, 2012 and was date-stamped by the Board of Appeals on December 20, 2012 and the Town Clerk on December 21, 2012.

Pattie and Peter Hainer of 427 River Street spoke at the Public Hearing and expressed concerns with regard to a prior error to the lot lines. Mrs. & Mr. Hainer acknowledged that all lot line discrepancies were remedied by virtue of a subsequent land survey and acknowledged that they have no issues with the lot lines as shown on the plan submitted with the application. David DeGhetto of 303 River Street, who is a member of the Norwell Historical Commission, addressed the Board of Appeals with regard to the Demolition Delay Bylaws. His belief is that the outbuildings as identified on the plan submitted to the Board of Appeals would require compliance with the Demolition Delay Bylaws. The structures to be razed consist of a shed, a porch, a storage area, a cabana, and a swimming pool.

**FINDINGS:**

1. The Lot referred to as "Lot 1" on the subdivision plan is 44,025 square feet where 43,560 square feet is required. The pre-existing house is 25.7' from the road and 21.7' from the lot line created by the subdivision of 435 River Street. The dwelling was built before the adoption of Zoning Bylaws.
2. Lot 2 as shown on the plan submitted to the Board of Appeals contains 115,730 square feet where 43,560 square feet is required. A pre-existing barn is on Lot 2, which is more than 50' from the front yard setback and 23.6' from the sideline setback. Other structures listed as a shed, a storage area, a porch, a cabana, and a swimming pool are also on the property. The Board finds that prior to the razing of the aforementioned structures, the Applicant is required to comply with the Demolition Delay Bylaws.
3. The Board finds that the subdivision of 235 River Street does not increase the non-conforming nature of the existing dwelling or the barn on Lots 1 & 2 respectfully.
4. Pursuant to Massachusetts General Laws 40A and Section 1642 of the Norwell Zoning Bylaws, the Board finds that the subdivision of the property

located at 435 River Street does not increase the non-conforming nature of the property and will not be substantially more detrimental to the neighborhood than the existing structure.

5. Based upon the application submitted, the Board finds that the Applicant is entitled to a Section 6 finding based upon the findings of the Board as outlined above.

**DECISION OF THE BOARD:**

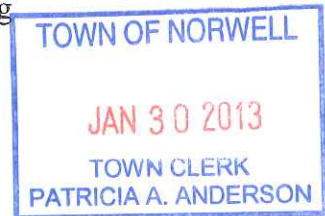
Based upon its findings as set forth above and upon a Motion duly made and seconded, the Board of Appeals unanimously **VOTED** to grant a Special Permit/Section 6 Finding in accordance with Massachusetts General Laws Chapter 40A Section 6 & Section 1642 of the Norwell Zoning Bylaws finding that the subdivision of 435 River Street does not result in any increase of the pre-existing non-conformity (front yard setback) and is not substantially more detrimental to the neighborhood than the existing structure was prior to the subdivision of the property.

**SPECIAL CONDITIONS:**

1. Prior to demolition of the outbuildings as identified in the application, the Applicant must comply with the Demolition Delay Bylaws.
2. The Applicant is to comply with all other aspects of the Norwell Zoning Bylaws.


**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 then 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 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 Special Permit 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.

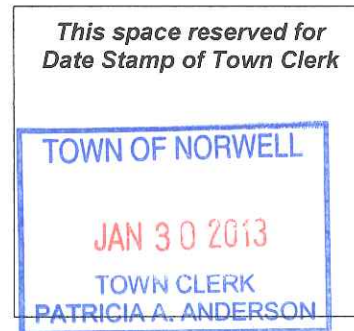
4. **EXPIRATION:** The Applicant must exercise any Special Permit granted by the Zoning Board of Appeals within two (2) years from the date of the decision or it shall lapse.

  
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Michael E. Kiernan

  
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Lois S. Barbour

  
\_\_\_\_\_  
Thomas P. Harrison

Date Filed with Office of the 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.