

TOWN OF NORWELL  
TOWN CLERK

2013 NOV -6 PM 3:18

RECEIVED



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

### Members

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

### Associate Members

Michael E. Kiernan, Clerk  
Thomas P. Harrison

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

File No. 13-11

A PUBLIC HEARING was held by the Norwell Zoning Board of Appeals pursuant to Massachusetts General Laws, Chapter 40A, at the Norwell Town offices, 345 Main Street, Norwell, MA on September 11, 2013, continued to October 2, 2013, October 9, 2013 and October 30, 2013 on applicant VRT Corp.'s request for a variance from the provisions of section 4850.6(d)(2) of the Norwell Zoning Bylaw concerning length of dead end roadways in Open Space Residential Development ("OSRD") subdivisions. Substantive testimony was taken on September 11, 2013 and October 9, 2013 and a site walk attended by the voting members of the Board and the Applicant's representatives, T. Andrew Reardon, the Fire Chief, and Jack McInnis, the Water Superintendent, was held on October 9, 2013. The Board closed the hearing on October 30, 2013, deliberated and voted to grant a variance to:

**VRT Corp.**  
**80L Washington Street**  
**Norwell, MA 02060**  
**Attn: Michael Verrochi**

Under Section 4850, OSRD Development Plan Design, Section .6(d), Roadway Design and Construction (2) (Dead end roads) of the Norwell Zoning Bylaw. The parcels referenced are shown on Assessor's Map 5D, Block 12, Lot 25 and located in Residential B and the Aquifer Protection Zoning Districts.

The Public Hearing for this application was duly noticed in *The Norwell Mariner* on August 22, 2013 and August 29, 2013 and posted at the Norwell Town Hall.

The Applicant was in attendance at the hearing and the application was presented by Applicant's attorney Diane C. Tillotson, development consultant Eugene Mattie, and project engineer Josh Bows of Merrill Associates. Immediate abutters Brian Magner and Chad Forman spoke in favor of the project and no one spoke in opposition.

The Board received the following information into its files:

1. Copy of the legal notice.
2. Abutters List (Norwell and Hingham).
3. Application completed and signed by the applicant, date-stamped August 1, 2013, by the Town Clerk.
4. Assessors Card Print-out for the lots.
5. Letter from the Applicant's attorney dated August 1, 2013, date-stamped August 1, 2013 by the Town Clerk, submitting the application.
6. Bay Path Lane Extension II OSRD Development Plan and plans showing layout of Bay Path Lane.
7. Property deed recorded in the Plymouth County Registry of Deeds at Book 2384, Page 379 and Articles of Merger recorded in the Plymouth County Registry of Deeds at Book 5554, Page 384.
8. Order of Taking recorded in the Plymouth County Registry of Deeds at Book 6804, Page 15 for Bay Path Lane layout.
9. Planning Board Decision dated May 8, 2013.
10. Conservation Commission ORAD dated April 18, 2013.
11. Public Notice Authorization.
12. List of previous subdivisions approved by the Planning Board between 1995 and 2008 showing multiple waivers from the limitation on length of dead end roadways.
13. Norwell Fire Chief Memorandum of October 10, 2013, to Board of Appeals, attached to and forming a part of this decision
14. Ortho Drawing labeled Sheet 1 of 1, dated September 2012, and entitled "Approximate Trail Location", showing overview of emergency access from paved cul-de-sac end of Bay Path Lane to pumping station of the Town of Norwell Water Department with two areas to be leveled marked by circles and notations
15. Water Department letter of October 29, 2013, to the Board of Appeals, attached to and forming a part of this decision

#### FINDINGS:

This application is for a Variance of a 1,000-foot roadway length in the Open Space Residential Development ("OSRD") section of the Norwell Zoning Bylaw, for a proposed subdivision at the end of Bay Path Lane. The subdivision proposes eight lots on approximately 17.7 acres of land, approximately 15.15 acres of which are upland and 2.55 acres of which are wetland. The site is currently wooded with a large area of bordering vegetated wetlands west of the proposed development; the project would set aside more than 50% of the total acreage as open space conservation land.

RECEIVED

2013 NOV -6 PM 2:58

TOWN OF NORWELL  
TOWN CLERK

3/18 pmx



The proposed subdivision includes a third extension of Bay Path Lane since the original subdivision was approved on June 1, 1965. The Applicant's attorney represented Bay Path Lane was approved as a Town roadway in approximately 1983. The existing paved portion of Bay Path Lane from its intersection with Grove Street to the existing cul de sac is approximately 1,480 feet. The present public layout extends approximately 120 feet beyond the existing paved portion of the street and beyond the cul de sac and is currently grassed over and utilized as an extension of the existing lawn areas of two immediate abutters to the project, both of whom spoke in favor of the project. The project proposes an additional length of the public way of approximately 300 feet for a total of 470 - 480 feet of new pavement. Accordingly, the variance request is to permit an additional 360 feet of roadway.

Applicant VRT Corp. applied to the Norwell Planning Board for a special permit pursuant to the OSRD bylaw in January 2012. The special permit was denied by a Planning Board decision dated May 8, 2013. Among the reasons for the denial was that the Planning Board and Town Counsel interpreted Section 4850.6(b)(2) of the Norwell Zoning Bylaw as requiring a variance from the Zoning Board of Appeals where any dead end roadway exceeds the 1,000 foot maximum length specified in the OSRD Bylaw.

The Applicant contends a variance is not required. The Applicant's argument is that although subsection (d)(2) of Section 6 relating to OSRD development plan design states that dead-end roads with a maximum length of 1,000 feet are allowed in OSRD subdivisions, Subsection (b) of the same Section 6 states that the Planning Board may authorize a reduction in any of the intensity of use and dimensional requirements in the Zoning Bylaw. The Applicant also argues, in addition, access and length of newly designed subdivision roadways are matters uniquely within the purview of the Planning Board pursuant to the Subdivision Control Law. The Board notes that Applicant's counsel provided it with a list of subdivisions where the length of roadway provisions had been waived by the Planning Board to extend beyond the 550-foot standard subdivision length allowed in the Planning Board's Rules and Regulations.

The distinction between the subdivision waiver and a variance is significant. A variance application requires action by the Board of Appeals and the unanimous vote of the three-member panel for approval.

During the public hearing and in its deliberations, the Board of Appeals carefully examined the strict criteria for granting of a variance under G.L. c. 40A, §10 and the Norwell Zoning Bylaw Section 1322(a), (b) and (c) and determined that submitted evidence and testimony demonstrate that the application meets all such criteria, as described below. The Board notes that although variances are to be "granted sparingly," it has on limited occasions granted such relief in the past.

RECEIVED

TOWN OF NORWELL  
TOWN CLERK  
2013 NOV -6 PM 2:58  
318 pm

Of significant concern to at least one Board member was whether the emergency access proposed by the Applicant over the Town's Water Department property was real, as claimed, or illusory. To decide that issue, a site walk was arranged on Wednesday October 8, 2013, in the area between the Applicant's cul de sac at the end of the existing pavement on Bay Path Lane and the existing dirt path located on Town property leading to the Water Department pumping station. During that site walk, it became clear that only small vehicles would have adequate access between the Applicant's property line through Water Department property to the pumping station, where a gravel roadway then leads to Grove Street. However, in his memorandum, dated October 10, 2013, Fire Chief Reardon itemized requirements "to be addressed in order for the Fire Department to use that lane efficiently", including clearance to 10' in width and 10' in height to "allow [Fire Department] EMS units and small apparatus to access this area".

### **SECTION 1322(b), Soil Conditions, Shape and Topography**

Ms. Tillotson and the project engineer, Josh Bows, explained because of the wetland areas located on the west side of the site as confirmed by the Norwell Conservation Commission in its Order of Resource Delineation ("ORAD"), a loop road in another area to serve as an alternative was not possible in this case. The Board agreed that creation of a loop roadway in another area would likely create additional impervious surface, defeating one of the primary objectives of the OSRD Bylaw; i.e., to conserve open space.

While the Board discussed the fact that large areas of wetland are not unique to the district, the particular location of the wetlands on the subject site could otherwise preclude development of over 17 acres of land if the variance from length of dead end roadway is not approved. Moreover, the Applicant's attorney represented that a review of the zoning map indicates the vast majority of privately owned lots in this zoning district have been developed as house lot sites, including most existing lots on Bay Path Lane itself, and are not limited by wetlands in the same way as the subject parcel.

### **SECTION 1322(a), Substantial Hardship to the Applicant**

Despite the fact this lot contains over 17 acres, owing to the unique soil conditions, shape and topography of the parcel and the wetlands located on the parcel, VRT Corp. would be unable to develop this land, which the Applicant's attorney stated was contemplated as developable area when the subdivision roadway was extended in 1983. The inability to recognize any return on the financial investment of VRT Corp. in this property in the Board's view meets the criteria for substantial hardship, financial or otherwise.

RECEIVED

TOWN OF NORWELL  
TOWN CLERK  
2013 NOV -6 PM 2:58  
3:18 PM



**SECTION 1322, Detriment to the Public Good or Derogate from the Purpose and Intent of the Bylaw.**

Granting the variance to allow this OSRD development will not pose a substantial detriment to the public good or derogate from the purpose and intent of the bylaw. As conditioned, granting of this Variance could provide benefit to the Town in the form of agreed-upon easements in favor of the Water Department, as well as agreed-upon improvements and betterments on adjacent Town property. The Variance application to the Board relates only to the roadway length and no other action should presume to have been requested or granted in this decision. Such further action as may be required by the Norwell Planning Board to proceed with development of this project is outside of the scope of authority of the Board of Appeals.

The Fire Chief's public statements and his memorandum of October 10, 2013, upon which the Board must rely, further states the proposed "emergency access" is sufficient to serve public safety, provided the conditions in that memo are met.

The Applicant proposes that as a condition of approval to make at its sole expense improvements and betterments on Town property in order to construct an emergency access that will connect the Applicant's property along existing trails to and through adjacent Water Department land to the east in accordance with Fire Department and Water Department requirements.

**BENEFIT TO THE TOWN**

Granting the requested variance to allow the OSRD development process to proceed could provide substantial benefit to the Town, as the Applicant represented. The proposed development provides for a set aside of more than 50% of the 17+ acre parcel as conservation land. An additional access/egress to existing trails on Water Department land would connect to a network of trails in both Norwell and Hingham. Further, limited development in this aquifer protection district also allegedly preserves wetland resource areas.

The proposed emergency access connection between the proposed Bay Path Land extension subdivision and Water Department pumping station will permit emergency access not only to the subdivision, but also to Town property.

That access will also provide benefits to the Water Department in the form of a water gate valve, easements, and potential water connections to Water Department property.

These benefits, proposed by the Applicant, support the grant of the requested variance in this particular case.

RECEIVED  
TOWN OF NORWELL  
TOWN CLERK  
2013 NOV -6 PM 2:58  
3:18 PM

## 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 grant a variance under Section 4850.6(d)(2) of the Norwell Zoning Bylaw to allow extension of the existing Bay Path Lane public layout by approximately 360 feet, conditioned as set forth below:

**SPECIAL CONDITIONS:** The below special conditions were offered by the Applicant during the course of the public hearing and, as represented by the Applicant's attorney, are conditions agreed upon by the Applicant; the Board understands such are not to be considered as "conditions subsequent". Such agreements and representations are stated below for the public record. Further, the Fire Chief's memorandum of October 10, 2013, and the Water Department's letter of October 29, 2013, are hereby attached to and made a part of this decision.

1. As represented by the Applicant's attorney, the proposed OSRD project must receive a special permit from the Planning Board and must also receive definitive subdivision approval from the Planning Board.
2. As further represented by the Applicant's attorney, the Applicant and Town Counsel will jointly request a judicial remand to the Planning Board within a reasonable time after the filing of this decision in the Town Clerk's office to enable the Planning Board to further consider the matter.
3. The Applicant has proposed that as an agreed-upon condition of this Variance, it shall at its sole cost and expense construct an emergency access connection from the proposed development property through the adjacent Water Department land on the easterly side of the common property line to the Water Department pumping station, connecting to the existing gravel roadway to Grove Street. The portion of the access on Applicant's property shall be 25' in width and further capable of supporting vehicular traffic and shall be described in a recorded easement in a form acceptable to Town Counsel. The Fire Chief has approved this proposed emergency access as being acceptable to the Fire Department provided the following specific improvements are made to the Water Department's pathways to which the Applicant has agreed as a condition hereof:
  - a. The access and pathway must be cleared at the Applicant's sole expense to 10 feet in width and 10 feet of height per the Water Department correspondence, dated October 29, 2013; and
  - b. The pathway must be leveled in two specific locations; i.e., a large rise in a location approximately midway between the proposed Bay Path Lane extension project and the existing Water Department buildings and an area close to the pump house on the Water Department property. The Fire Department and VRT's engineers have agreed on the location of these two leveling areas. The Board of Water Commissioners at its meeting on Monday, October 28, 2013, voted to grant permission to VRT to improve the access and pathway in accordance with the specifications set forth above, and VRT Corp. has agreed to make those improvements at its sole expense.

TOWN OF NORWELL  
TOWN CLERK

3:18 p.m.  
2013 NOV -6 PM 2:58

RECEIVED



- c. Accordingly, this Board's grant of the variance request is conditioned upon VRT Corp. meeting the specifications set out in Fire Chief T. Andrew Reardon's memo of October 10, 2013, and Water Department correspondence of October 29, 2013, at the time it constructs the Bay Path Lane extension permitted herein and prior to the issuance of any building permit for the construction of any home in the proposed Bay Path Lane extension development. The Fire Chief's written concurrence that the pathways are acceptable to him shall be required prior to the issuance of any permit for the construction of any single family home and will include his approval of the portion of the emergency access over Applicant's property extending from Bay Path Lane (as extended) to the paths on the Water Department property.
- 4. As requested by the Fire Chief, the Applicant shall install a gate on its own property (to deter motorized vehicles access) near the boundary of the Water Department property and to provide keys for such gate to the Fire Department, Police Department, and Water Department.

**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 than 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.
- 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.

----- The remainder of this page is intentionally left blank. -----

RECEIVED  
 2013 NOV - 6 PM 3:18  
 TOWN OF NORWELL  
 TOWN CLERK  
 S. J. MA

*Lois S. Barbour*

Lois S. Barbour

*Philip Y. Brown*

Philip Y. Brown

*Thomas P. Harrison*

Thomas P. Harrison

Date Filed with Office of the Town Clerk

*This space reserved for  
Date Stamp of Town Clerk*

RECEIVED

2013 NOV -6 PM 2:58

TOWN OF NORWELL  
TOWN CLERK

*3:18 PM*

**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.