

ZONING DECISION
of
The Town of Norwell

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2013 SEP 18 PM 2:51

FINDINGS AND DECISION
of
The Norwell Zoning Board of Appeals
File No. 13-12

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A PUBLIC HEARING was held on September 11, 2013, by the Norwell Zoning Board of Appeals under MA General Laws, Chapter 40A, Section 10, in the Norwell Town offices, 345 Main Street, Norwell, MA, on the application of:

Karen A. Wischmeyer, Trustee
Karen W. Wischmeyer Realty Trust
170 Stetson Road
Norwell, MA 02061

For a Variance under Sections 2432, 2450 (a), and 2450 (c), as the minimum lot width measured at the 150 foot setback line is less than 100 feet and the lot area at the same line is less than 11,500 square feet. Each of the aforementioned fails to conform with the requisite zoning requirements. The applicant seeks relief from these requirements in the form of a Variance in order to establish the property as a legal lot. The property is located at 170 Stetson Road and shown on Assessor's Map 29A, Block 78, Lot 123 and Block 78, Lot 164, Registry of Deeds Book 7802, Page 10 in Residential District A and the Historic Building, Site, Scenic Street.

The PUBLIC HEARING for this application was published in *The Norwell Mariner* on August 22, 2013 and August 29, 2013 and was posted at The Norwell Town Hall.

The application was presented by Attorney Eric P. Rothenberg. One neighbor by the name of Paul Joseph of 169 Stetson Road made inquiries with regard to the proposed subdivision of land. No one else spoke in favor of or in opposition to the application with the exception of Attorney Rothenberg.

FILE DOCUMENTATION:

The board received the following information into its files:

1. Copy of the legal notice.
2. Assessor's card.
3. Abbuters list.

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A completed application for Public Hearing signed by the applicant, Karen A. Wischmeyer, as Trustee of the Karen W. Wischmeyer Realty Trust. A copy of the application was received from Karen Ann Murphy to the Karen W. Murphy Realty Trust, as well as a copy of the Amendment to the Trust, were attached to the application for Public Hearing. The aforementioned application, along with the attachments, were received and date stamped by the Board of Appeals and the Town Clerk on August 7, 2013.

5. Correspondence to the Norwell Zoning Board of Appeals from Karen A. Wischmeyer, Trustee of the Karen W. Wischmeyer Realty Trust dated September 11, 2013. The aforementioned correspondence authorized Attorney Eric P. Rothenberg and Ross Engineering Company, Inc. to represent her before the Norwell Zoning Board of Appeals as pertaining to her application for a Variance at 170 Stetson Road.
6. A Plan prepared by Ross Engineering Company, Inc. of 683 Main Street, Norwell, Mass. 02061, entitled "Plan of Lots For Stetson Road in Norwell, Mass." The aforementioned Plan depicted proposed Lots 4 and 5 but did not show previously subdivided lots northwest of those depicted on this Plan. The previously conveyed out lots received ANR approval from the Planning Board prior in time. The aforementioned was date stamped by the Town Clerk on August 7, 2013.

FINDINGS:

1. The proposed Lot 4 as identified on the Plan prepared by Ross Engineering Company, Inc. entitled "Plan of Lots For Stetson Road in Norwell, Mass." fails to comply with the lot width requirement as outlined in Section 2432 and 2450(a).
2. Pursuant to 2450(c) the Lot area between the setback line and the way is only 8,866 square feet where 11,500 square feet is required.
3. A Variance is permitted if all the requisite criteria of Section 1322 are satisfied. The applicant's argument was that the proposed application almost complied with Zoning By-Laws and that the applicant's alternative would be to build a long driveway into the property which would be less desirable to the Town and the applicant.
4. Section 1322 Variances are issued rarely and only when the applicant has satisfied all three requisite criteria.
 - a) The Board finds that the applicant failed to substantiate that a literal enforcement of the By-Law would create a substantial hardship, financial or otherwise to the applicant. The Board finds that the applicant's proposed subdivision of land which does not comply with width and lot area setback requirements constitutes a self-imposed hardship created by the applicant.

- b) Pursuant to 1322(b) the applicant submitted no evidence and/or testimony related to soil conditions, shape or topography of the land sufficient to satisfy the second prong required for the issuance of a variance.
- c) The Board finds that relief cannot be granted without nullifying or substantially derogating the intent or purpose of the By-Law.

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 deny the application for a Variance in accordance with M.G.L. Chapter 40A, Section 6 and Section 1322 of Norwell Zoning By-Laws for the proposed subdivision of land at 170 Stetson Road.

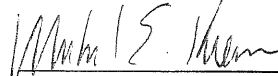
CONDITIONS APPLYING TO ALL DECISIONS:

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.**


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Michael E. Kiernan


David Lee Turner


Lois S. Barbour

NOTICE OF APPELATE RIGHTS: Any decision of the Board of Appeals may be appealed to the Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activities undertaken at the applicants risk during the appeal period.

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