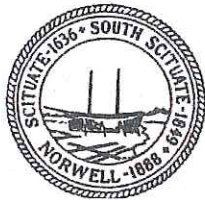


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OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295
NORWELL, MASSACHUSETTS 02061
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Members

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

Associate Members

Thomas P. Harrison
Ralph J. Rivkind

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

File No. 15-10

A **PUBLIC HEARING** was held on November 18, 2015, by the Norwell Zoning Board of Appeals under Massachusetts General Laws, Chapter 40A, Section 10, at the Norwell Town offices, 345 Main Street Norwell, MA on the application of:

Susan J. Bellavance
4 Shady Lane
Norwell, MA 02061

For a **Variance** under Section 1322 of the Norwell Zoning Bylaw. The applicant seeks approval to add a one-car garage due to medical necessity. The lot does not conform to minimum lot size requirement of 43,560 sq. ft. with only 7,197 sq. ft. The property is located at **4 Shady Lane** in Residential District B, as shown on Assessor's Map 12A Block 21 Lot 84 and recorded at the Registry of Deeds Book 27738, Page 326. The House was built in 1953.

The Public Hearing for this application was duly noticed in *The Norwell Mariner* on October 29, 2015, and November 5, 2015, and posted by the Town Clerk, in accordance with the Open Meeting Law.

The applicant was in attendance at the hearing to present the application. She noted that the proposal meets all setback requirements, except frontage, where 35' is required in Residential District B under § 2441, Front Yard, and 24.4' is proposed to accommodate the garage addition and meet the 10' side and rear yard setback requirement under § 2442. There was no opposing statement submitted either in person or in writing. A friend, Janet Naymie of 46 Hemlock Drive spoke in favor of the application.

The Board received the following information into its files:

1. Copy of legal notices in *The Norwell Mariner*
2. Abutters List
3. Application, completed and signed by the applicant, date-stamped by the Town Clerk and the Board of Appeals on October 21, 2015
4. Assessors Card print-out for the lot
5. Photograph of the front of the house showing the existing shed, submitted at the meeting
6. Drawing entitled "Plot Plan for Addition/#4 Shady Lane/Norwell, Massachusetts, prepared by Grady Consulting, LLC, of 71 Evergreen Street, Suite 1, Kingston, MA 02364, signed and sealed by Peter E Tuttle, Registered Land Surveyor, dated August 6, 2015
7. Drawing entitled "Single Bay Garage Addition/Bellavance Residence/4 Shady Lane, Norwell, MA," showing front, rear, and right-side elevations, as well as foundation and first floor plan for the proposed addition, prepared by Custom Home Designs of 260 South River Street, Marshfield, MA 02050
8. Conservation Commission Review for Zoning Board of Appeals purposes, signed by Conservation Agent Nancy Hemingway (no date), stating no wetlands on site. A comment states, "All soils must be controlled on site."
9. Board of Health sign-off, dated 10/21/15, stating "OK to build proposed garage".
10. Confidential letter from a physician attesting to the medical disability of the applicant's child

FINDINGS:

1. The residence is located on a corner lot at Shady Lane and Gerard Road, k/a 4 Shady Lane, and was constructed in 1953.
2. There is no building permit extant in Town files for the existing shed, which may, therefore, not have been legally constructed, according to testimony of the applicant. The shed is to be removed prior to construction of the proposed garage.
3. The proposed garage construction meets all setback requirements under the Norwell Zoning Bylaw, except for frontage of 28.4' on Shady Lane and frontage of 24.4' on Gerard Road. However, the proposed garage will be setback approximately 1.5' further than the existing shed, which will reduce the distance from Gerard Road to approximately 24.4', where 35' is required under § 2441 of the NZBL, an improvement over existing conditions that will reduce the nonconformancy.
4. There are no wetlands located on or in proximity of the property that would fall under the jurisdiction of the Conservation Commission.
5. The applicant has provided evidence of documented medical necessity.
6. The Board may grant a variance under § 1323, if all of the following are met:
 - a. *A literal enforcement of the provision of this Bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.*
 - The Board finds that the applicant would suffer a substantial hardship in the care of her child, as documented by the child's pediatrician.

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- b. *The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.*
 - The Board finds that circumstances affecting the existing structure are unusual in this zoning district.
- c. *Desirable relief may be granted without either: (1) substantial detriment to the public good; or (2) nullifying or substantially derogating from the intent or purpose of this Bylaw.*
 - The Board finds the proposed use will not be injurious or otherwise hazardous to the community, as the proposed construction will continue to be consistent with residential use, as allowed by right under the Norwell Zoning Bylaw.
 - The proposed construction will not significantly alter the character of the zoning district or that of the neighborhood, as many dwellings have attached 1- or 2-car garages.
 - The use of the proposed construction will continue to be residential, which is permitted by right under the Norwell Zoning Bylaw and, therefore, will not be detrimental to the neighborhood or zoning district.


DECISION OF THE BOARD:


In accordance with the submitted application and evidence presented during the public hearing and based upon its findings above, incorporated into and made a part of this decision, upon a motion duly made and seconded, members **VOTED** unanimously to grant the **Variance** from the requirements of § 2441 of the Norwell Zoning Bylaw in order for the applicant to construct a 1-car garage located at **4 Shady Lane** to meet all other setback requirements of the Norwell Zoning Bylaw.

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 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 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 must exercise any Variance granted by the ZBA within one (1) year from the date of this decision or it shall lapse.


Lois S. Barbour


Thomas P. Harrison


Ralph J. Rivkind

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.