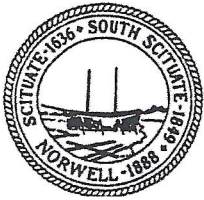


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OFFICE OF  
BOARD OF APPEALS

## 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, Clerk

### Associate Members

Ralph J. Rivkind  
Roy W. Bjorlin  
Matthew H. Greene  
Stephen T. Bright

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

File No. 18-31

A **PUBLIC HEARING** was held on March 20, 2019, continued for a site visit at 386 River Street, on April 24, and continued for further hearing May 1, 2019, by the Norwell Zoning Board of Appeals at the Norwell Town offices, 345 Main Street, Norwell, Massachusetts on the application of:

**Aneta E. and Jerzy Hrebenko**  
**386 River Street**  
**Norwell, MA 02061**

For a **Variance** under Section 2442 (Side and Rear Yards) of the Norwell Zoning Bylaws to construct a two-car garage on the property within the 20' setback. The property is located at at **386 River Street** in the Residential District A as shown on Assessor's Map 25C, Block 70, Lot 12, and recorded at the Plymouth County Registry of Deeds in Book 28667, Page 255. The house was built in 1986 and the lot consists of 2.13 acres.

The public hearing was duly noticed in *The Norwell Mariner* on February 28, 2019 and March 7, 2019 and posted at the Norwell Town Hall in accordance with the Open Meeting Law.

The Board received the following information into its files:

1. Application dated 2/13/19 signed by the owner Jerzy Hrebenko and submitted by Applicant Representative Merrill Engineers and Land Surveyors, 427 Columbia Road, Hanover Ma 02339.
2. Certified Plot Plan dated 2/7/19 and submitted with application from Merrill Engineers and Land Surveyors.
3. Revised 4/5/19 Certified Plot Plan submitted in 5/1/19 from Merrill Engineers and Land Surveyors (the "Plan").
4. Assessor's card for 386 River Street, Norwell, MA.
5. Order of Conditions from Town of Norwell Conservation Commission dated 4/3/19.

On March 20, 2019, Mr. Hrebenko presented the Application to the Board and described the project. He noted that he was seeking to build a two-car garage on his property that would be approximately four feet from the northern lot line. After hearing Mr. Hrebenko's presentation, the Board determined to take a site visit on April 24, 2019. All three hearing panelists attended the site visit. A further hearing was held on May 1, 2019. No neighbors or abutters appeared at the hearings or at the site visit.

**FINDINGS:** The Board makes the following findings:

1. The lot consists of 2.13 acres, a substantial portion of which are wetlands. The lot also contains a steep drop-off in elevation from the house down to the wetlands.
2. There is no garage on the property and the house is set at the back of a heavily wooded lot. The Conservation Commission denied the Applicant permission to build the garage within 50 feet of the wetland border. Accordingly, there is no feasible location for the garage other than in the location shown on the Plan.
3. The lot adjacent to the northern lot line is wooded. The back of the garage will be located within approximately four feet of the northern lot line.
4. Mr. Hrebenko stated that they needed to build a garage because his wife has a serious degenerative disease and she will not be able to get in or out of a car safely unless the car is in a covered area. Mr. Hrebenko indicated that the garage will enable Ms. Hrebenko to continue to live in her home.
5. A literal enforcement of the provisions of this Bylaw would involve a substantial hardship to the Applicant because Ms. Hrebenko has encountered a medical necessity that would ultimately force her to leave her home if the Bylaw is literally enforced.
6. The lot is unique in the Zoning District because of its extreme changes in elevation, and the substantial wetlands on the property. Other lots in the Zoning District do not have the same combination of elevation changes and

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wetlands. As a result, only a small portion of the lot contains a buildable area.

7. The proposed relief may be granted without substantial detriment to the public good. Indeed, it is the Board's view that it is a public good to allow people to build structures on their properties to accommodate medical necessities so that they can stay in their homes.
8. The proposed relief may also be granted without nullifying or substantially derogating from the intent or purpose of this Bylaw since the proposed garage will not materially impact the adjacent lot and since the Applicant attempted to locate the garage in another area on the lot but was denied permission to do so by the Conservation Commission. As a result, allowing the garage to be located adjacent to the northern lot line will be consistent with the Town's conservation efforts.

#### **DECISION OF THE BOARD:**

Based on the application and evidence presented, and its findings above, upon motion duly made and seconded, Members Brown, Rivkind, and Barbour **VOTED** unanimously to grant a **Variance** in accordance with Section 2442, to allow the Applicant to construct a garage on the property located at **386 River Street**, in accordance with the Plan.

#### **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 (20) 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 Board of Appeals within two (2) years from the date this decision is filed with the Town Clerk or it shall lapse.

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Lois S. Barbour

Philip Y. Brown

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.