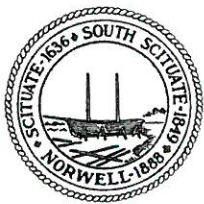


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OFFICE OF
BOARD OF APPEALS

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
Ralph J. Rivkind, Clerk

Associate Members

Daniel M. Senteno
Nicholas K. Dean
William J. Lazzaro
Stephen H. Lynch

FINDINGS AND DECISION *of* The Norwell Board of Appeals

File No. 21-16

A Public Hearing by the Norwell Zoning Board of Appeals was opened on August 18, 2021, at 7:45 P.M., continued to September 29, 2021, and closed on October 13, 2021, under MA General Laws, Chapter 40A, Sections 6 and 10, in the Norwell Town Offices, 345 Main Street, Norwell, MA for the application of:

Kevin and Linda Burns
10 Bay Path Lane
Norwell, MA 02061

For a **Section 6 Finding** under M.G.L. c. 40A and **Special Permit** under Sections 201-3.2A, 201-3.3B and 201-4.4 B(1)(c) (Nonconformance), and a **Variance** under 201-3.2B, 201-9.4B(1) of the Norwell Zoning Bylaw to add a first floor master suite to the single-family dwelling, situated on a .52-acre lot, where one acre is required. The applicant is also seeking relief from the 20 ft setback, proposing a 10 ft setback. The property is located at **10 Bay Path Lane** in Residential District B as shown on Assessor's Map 5D, Block 12 Lot 30, and recorded at the Plymouth County Registry of Deeds in Book 12405, Page 135. The dwelling was constructed in 1966.

The Public Hearing for this application was duly noticed in *The Mariner* on July 28, 2021, and August 4, 2021, and posted by the Town Clerk, in accordance with the Open Meeting Law.

Applicant Kevin Burns was in attendance at the 8/18/21 and 10/13/21 public hearings at which he was represented by Architect Paulette O'Connell who presented the application. [N.B. No evidence was taken on 9/29/21, as two of the original panel members were not available that evening and the Applicant requested a continuance.] Ms. O'Connell noted the proposal meets all setback requirements, except for the easterly side of the dwelling where the addition is proposed, which would range between 10.0' and 13.2' from the sideline.

The following members of the public spoke in favor of this application:

William Peebles of 35 Grove Street
Robert Galbois of 62 Bay Path Lane
BJ Roussos of 23 Bay Path Lane
John Gallagher of 20 Harolds Way
Michelle Lackey of 16 Bay Path Lane
Brandon Fitzpatrick of 8 Harolds Way

The Board received the following information into its files:

1. Copy of legal notice in *The Mariner*
2. Abutters List
3. Application, completed and signed by the applicant, date-stamped by the Town Clerk and the Board of Appeals on June 30, 2021
4. Assessors Card print-out for the lot
5. Copy of Quitclaim Deed confirming transfer of ownership to the Applicants, as recorded at the Plymouth County Registry of Deeds in Book 12405, Page 135
6. Copy of eight (8) Architectural drawings, prepared by OCO architecture design at P. O. Box 709 Hingham, MA 02043, showing existing dwelling and the proposed renovations, as dated 10/21/20
7. Site Plan drawing, prepared by Grady Consulting, L.L.C. of 71 Evergreen Street, Suite 1, Kingston, MA 02364, dated June 18, 2021, not stamped or signed

FINDINGS:

1. The residence is located at 10 Bay Path Lane, and was constructed in 1966 on a .52-acre lot that complied with zoning requirements at that time.
2. The proposed 22' x 30' addition with an 8' x 12' deck meets all setback requirements under the Norwell Zoning Bylaw, except the easterly side of the proposed addition that would vary from 10.0' and 13.2' to that sideline.
3. There are no wetlands located on or in proximity of the property that would fall under the jurisdiction of the Conservation Commission.
4. The Applicant was required to construct a new septic system for the house at its current location as a result of 2010 flooding and high groundwater that rendered the prior system unusable. The placement of the current septic system at the back of the house was necessitated by the lot shape and soil conditions.
5. Under Section 201-3.2B, the Board may grant a variance if all of the following are met:
 - (1) *A literal enforcement of the provisions of this bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.*
Finding: The Applicants purchased the property in 1993 and have made it their home and raised their children in that neighborhood since that time. They would

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like to stay in familiar surroundings and age-in-place but must consider declining mobility and health. The proposed addition would allow them to access and use their property in a friendly and compassionate neighborhood, as evidenced by the number of neighbors who attended the public hearings to support this application.

- (2) *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.*

Finding: Due to weather events that rendered their previous septic system unusable, they were required to construct a new system at the rear of their property, which was a buildable lot that complied with zoning at the time of its construction in 1966. The lot is somewhat pie-shaped. The required placement of the septic system now precludes constructing an addition at the rear of the dwelling.

- (3) *Desirable relief may be granted without either:*

- (a) *Substantial detriment to the public good; or*
(b) *Nullifying or substantially derogating from the intent or purpose of this bylaw.*

Finding: The Board finds the proposed use will not be injurious or otherwise hazardous to the community, as the dwelling and its addition will continue to be used for residential purposes, an allowed use in Residential District B. The addition will enhance use of the dwelling by residents with mobility or health issues brought on by aging. A significant number of neighbors attended the public hearings and supported this Application. It should not be the intent of this bylaw to drive elderly residents from their homes when relief can reasonably be granted. Further, the proposed construction will not significantly alter the character of the zoning district or that of the neighborhood, as this dwelling is located in a neighborhood with many larger dwellings.

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 Barbour, Senteno, and Dean were individually polled and **VOTED** unanimously to grant a **Section 6 Finding** under M.G.L. c. 40A and **Special Permit** under Sections 201-3.2A, 201-3.3B and 201-4.4 B(1)(c) (Nonconformance), and a **Variance** under 201-3.2B, 201-9.4B(1) of the Norwell Zoning Bylaw to add a first-floor master suite, subject to the following conditions.

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 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.

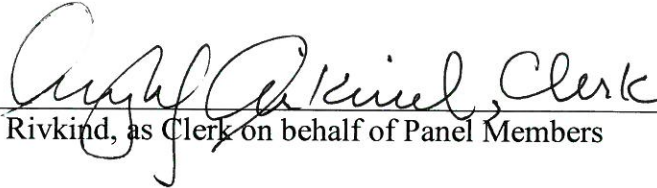
2. **RECORDING RECEIPT:** A copy of the recording fee receipt must be returned to the Board of Appeals. **NOTE:** No building permit shall be issued without such evidence.
3. **EFFECTIVE DATE OF APPROVAL:** The Variance granted by this Decision shall take effect only at such time as a copy of this Decision, 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. **LAPSE OF SPECIAL PERMIT:** The Applicant must exercise any Special Permit granted by the Board of Appeals within two years of the date this Decision is filed with the Office of the Town Clerk or as provided in any extension thereof as detailed in the Board's Rules, or it shall lapse.
5. **EXPIRATION OF VARIANCE:** The applicant must exercise any Variance granted by the ZBA within one (1) year from the date of this Decision is filed with the Office of the Town Clerk or as provided in any extension thereof as detailed in the Board's Rules, or it shall lapse.

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By unanimous vote of the Board of Appeals at its duly advertised meeting on October 13, 2021, its Clerk or Assistant Clerk is authorized to sign decisions on behalf of the panel members, which in this instance are:

Lois S. Barbour
Daniel M. Senteno
Nicholas Dean


Ralph J. Rivkind, as Clerk on behalf of Panel Members

Date Filed with Office of the Town Clerk

*This space reserved for
Date Stamp of 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.