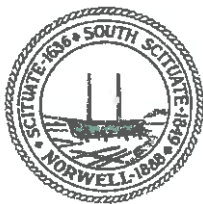


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OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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William J. Lazzaro
Stephen H. Lynch

FINDINGS AND DECISION

of

The Norwell Board of Appeals

File No. 21-22

LOT 84 WINTER STREET – VARIANCE RELIEF DENIAL

A public hearing was held on December 8, 2021, and continued to March 9, 2022, by the Norwell Zoning Board of Appeals (the Board) under General Laws, Chapter 40A, Section 9, in person at the Norwell Town Offices, 345 Main Street, Norwell, MA, and broadcast live from the Osborn Room on Comcast Channel 9 and Verizon Channel 40 with a Zoom option on the refiled Application of:

Martin Nagle
c/o Ohrenberger, De Lisi & Harris LLP
28 New Driftway
Scituate, MA 02066

For a **Variance** under § 201-3.2 B 1-3 of the Norwell Zoning Bylaw regarding § 201-9.3.B for lot width of 82.45 ft. where 150 ft. width at the setback line of fifty (50) ft. is required; and § 201-9.5.A(1), (2) and (3) (Lot shape) of the Norwell Zoning Bylaw. The property is located on **Lot 84 Winter Street**, consisting of 2.92 acres in Residential District A as shown on Assessor's Map 9D, Block 50, Lot 84, and as recorded at the Plymouth County Registry of Deeds in Book 24487, Page 317.

The Public Hearing for this Application was duly noticed in the *Mariner* on November 17, 2021, and November 24, 2021 and posted at the Norwell Town Hall as required by the Open Meeting Law.

The Applicant was represented by Attorney Jeffrey A. De Lisi, who presented the refiled application to the Board. Gregory J. Morse, R.P.E., of Morse Engineering attended the hearing on 3/9/22 to discuss his stormwater report and plan revisions.

At the meetings on 12/8/21 and 3/9/22, Brian O'Donnell of 190 Cross Street spoke against the application, stating that the hardship is self-created, as the subject property was purchased as a non-buildable lot.

At the meeting on 12/8/21, Russ Murphy of 230 Winter Street, an abutter to the subject property, expressed his opposition to the variance, questioning the lack of detail in the Morse Engineering letter, as well as the Planning Board's support of the proposal.

FILE INVENTORY: The Board received the following documents that include but are not limited to the following.

1. Email of 10/6/21 from Jeffrey A. De Lisi responding to Roberta Mahoney, ZBA's administrative assistant, approving readvertising of the public hearing at the Board's expense, as it had not previously been continued to a date certain, with a new date of 12/8/21.
2. Refiled application (previously ZBA File 21-13) letter of May 4, 2021, from Ohrenberger, De Lisi & Harris, LLP, including the following refiled documents, as date-stamped by the Norwell Town Clerk on October 7, 2021:
 - a. Letter of May 4, 2021, to the ZBA
 - b. Refiled Application for Public Hearing, date-stamped by the Town Clerk on October 7, 2021
 - c. Assessor's Field Card for the subject property, showing the owner as Martin Nagle.
 - d. Deed recorded with the Plymouth County Registry of Deed as filed in BK 54865 PG 41-2 on April 27, 2021, transferring ownership of 11,700 sq. ft. to another property previously owned by Mr. Nagle to Clare Sharkey, Trustee of Cross Street Realty Trust u/d/t dated May 29, 2021.
 - e. An ANR plan, prepared by Morse Engineering Co., Inc. as certified by [illegible signature], Registered Land Surveyor, signed and dated 3/13/21; and approved by the Norwell Planning Board, was filed with the Plymouth County Registry of Deeds on April 23, 2021, as recorded in Plan Book 65 Page 246, receiving final endorsement by the Norwell Planning Department on July 23, 2021, date-stamped by Norwell Town Clerk on 10/7/21.
 - f. Plan entitled, "Plan of Land—Winter Street (Assessor's Map 9D, Block 50, Lot 84) Norwell, MA", dated January 6, 2021, as prepared by Morse Engineering Co., Inc., showing a 150' circle required for a dwelling under NZBL§ 201-9.5.B. However, the lot does not meet the required lot width under NZBL § 201-9.3.
 - g. Public Notice Authorization.

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- h. Letter of February 19, 2021, from Attorney De Lisi to Norwell Planning Board with concept plan for two buildable lots and another showing a single-dwelling lot.
 - i. Email of February 25, 2021, from Kenneth R. Kirkland, former Town Planner.
 - j. Memo from Kenneth R. Kirkland of February 25, 2021, to the Norwell ZBA with Planning Board vote in support of the Variance, as the Planning Board is working on a proposed Estate Lot Bylaw.
3. The parcel, known as Lot 84 on Winter Street, consists of 127,700 sq. ft. or approximately 2.92 acres of vacant land.
 4. Signed extension for the time in which to file a decision, filed with the Town Clerk on 12/21/22, to expire on 5/1/22.
 5. Morse Engineering letter of 12/1/21, submitted prior to the opening of the public hearing that indicates the types of stormwater mitigation that is typical of residential properties.
 6. Attorney De Lisi also submitted as evidence two prior Variance decisions by the Board of Appeals for land on Summer Street (see ZBA Decision for File No. 20-27, as filed with the Town Clerk on 12/21/20), and another on Winter Street (see ZBA Decision for File No. 20-09, as filed with the Norwell Town Clerk on 3/26/20).
 7. Note: The property cited in ZBA File No. 14-13, filed with the Town Clerk on 10/29/14 on adjacent land, owned by Martin Nagle, the applicant for the current application, subsequently transferred that property to his alleged girlfriend, Clare Sharkey, Trustee of Cross Street Realty Trust u/d/t dated May 29, 2021.
 8. Plan of Land, dated 1/8/21, entitled "Plan of Land – Winter Street/ (Assessor's Map 9D, Block 50, Lot 84)/ Norwell, Massachusetts", as prepared by Morse Engineer, signed and sealed by Gregory J. Morse, R.P.E., date-stamped by Norwell Town Clerk on 10/7/21.
 9. Email of 12/11/21 from Chair Barbour to Chessia Consulting Services requesting peer review of the subject property for stormwater, as requested by panel members at the meeting on 12/8/21.
 10. Stormwater Plan consisting of two drawings, including Sheet 1, Stormwater Plan; and Sheet 2, Details; for "0 WINTER STREET/ (Assessor's Map 9D, Block 50, Lot 84)/ Norwell, Massachusetts", dated 2/9/22, as prepared by Morse Engineering Co., Inc. of 10 New Driftway, Suite 303, Scituate, MA 02066, signed and sealed by Gregory J. Morse, R.P.E., date-stamped as received by the Zoning Board of Appeals on February 10, 2022.
 11. Stormwater Report & Calculations, dated February 9, 2022, as prepared by Morse Engineering Co., Inc., of 10 New Driftway, P.O. Box 92, Scituate, MA, signed and sealed by Gregory J. Morse, R.P.E., received by the Zoning Board of Appeals on February 10, 2022.
 12. Stormwater calculations are based on lot size of 2.92 acres, according to the submitted report noted in Paragraph 11 above.
 13. Minutes for 12/8/21 public hearing (unapproved).
 14. Minutes for 3/9/22 public hearing (unapproved).

FINDINGS:

1. The Board has received three applications on this property with waiving of the filing fee on the latest two applications; refer to ZBA File No. 21-03, File No. 21-13, and the current File No. 21-22. The first application was withdrawn by the Applicant, as it was anticipated the Planning Board was preparing a zoning article to allow so-called estate lots that would meet certain criteria. The second application was filed on 5/5/21 after the proposed zoning change failed to materialize. A third application was refiled with the

Town Clerk on 10/7/21 due to lack of clarity as to when the Application was continued and was re-advertised at the Board's expense.

2. The property consists of vacant land known as Lot 84 Winter Street, as shown on Assessors Map 9D, Block 50, Lot 84.
3. The original application, dated 1/7/21, indicates the parcel has a lot area of 127,116 sq. ft. or approximately 2.92 acres with no wetlands identified. However, a deed identified in Paragraph 2.e above shows that an 11,700 sq. ft. portion was transferred on or about April 27, 2021, to an adjacent lot (i.e., Map 10C Block 50 Lot 49) on Cross Street, previously owned by Mr. Nagle and subsequently transferred to "Clare Sharkey, Trustee of Cross Street Realty Trust u/d/t dated May 29, 2021", identified by Attorney De Lisi at a prior meeting as Mr. Nagle's girlfriend.
4. Mr. Nagle is familiar with the variance process. Mr. Nagle purchased a similar, adjacent parcel located at Cross Street, as shown on Assessor's Map 10C, Block 50, Lot 49 from the Aloha Foundation on 9/3/2004, on which he submitted an application in 2014 for variance relief, similar to that currently before the Board. That application was for a dimensional Variance and although approved by a former Board of Appeals in 1997 was timely appealed by abutters, who first lost their appeal at the Superior Court level. However, abutters again appealed the Superior Court decision and after three actions by the Appeals Court the abutters' appeal was upheld. (See 98-P-1286 at 1-2: Green v. Norwell ZBA; and ZBA File No. 14-13, as filed with the Town Clerk on 10/29/2014.)
5. The Property for which Variance relief is currently requested was purchased by Mr. Nagle on or about 3/14/2003 for \$30,000.; presumably the original lot size was the 127,000 sq. ft. applied for in this application plus the 11,700 sq. ft. that was conveyed on or about 4/27/21.
6. Although Member Brown believed all three requirements for a variance had been met, Members Rivkind and Lynch did not agree. For approval of a Variance application, the panel's decision must be unanimous. The zoning relief requested was, therefore, denied.
7. As stated in the Norwell Zoning Bylaw under Section 201-3.2.B: *Such variance shall be granted only in cases where the Board of Appeals finds all of the following:*

- a. Section 201-3.2B (1): *A literal enforcement of the provisions of this bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.*

FINDINGS: The Applicant's attorney stated that it would be a substantial hardship for the owner to file an application with the Norwell Planning Board in order to obtain subdivision approval for two house lots for which significant engineering costs would be required. Members took notice that the Applicant, Martin Nagle, purchased this lot in 3/14/2003 for \$30,000, substantially below market value for a house lot in Norwell at that time. Further, Mr. Nagle had previously submitted an application to the Board of Appeals for similar Variance relief on an adjacent parcel that was denied in 2014 (see ZBA File No. 14-13). Therefore, the two panel members in opposition recognized a pattern of attempting to develop parcels that do not meet zoning and also recognized significant neighborhood opposition to this and prior iterations of the current Application. Further, the perceived threat of a 40B development on this property, if the current Application were denied, is not relevant to this application or to the dissenting members' opposition and does not conform with Attorney De Lisi's claim that a subdivision application would be too expensive and, therefore, impose a financial hardship to the Applicant. Members in opposition find the Applicant has not provided sufficient evidence to support this requirement, which is, therefore, not met.

- b. Section 201-3.2B (2): *The hardship is owing to circumstances relating to the soil*

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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.

FINDINGS: Although a Stormwater Report & Calculations and plans were submitted to the Board on 2/10/22, no peer review was undertaken, as there was no relevant section of the zoning bylaw under which the Town's consultant could review the Variance application. During the last public hearing, Mr. Morse stated he is familiar with the general area but made no attempt to distinguish the soil conditions of this parcel from other properties in the area. No evidence has been submitted to the Board that the "soil conditions", described by Mr. Morse as "sandy loam", are different from others in the zoning district. Further, the "shape or topography" is similar to that in the surrounding neighborhood, based on testimony of neighbors and a site walk of the property by panel members. Members in opposition find the Applicant has not provided sufficient evidence to support this requirement, which is, therefore, not met.

c. Section 201-3.2B (3): *Desirable relief may be granted without either:*

(a) *Substantial detriment to the public good; or*

FINDINGS: While residential use is allowed by right in Residential District A, it is only allowed by right if all requirements of the zoning bylaw are satisfied and the proposed project would deviate from the required dimensional requirements as to Lot Width and Lot Shape; that deviation is a substantial detriment. Members in opposition find the Applicant has not provided sufficient evidence to support this requirement, which is, therefore, not met.

(b) *Nullifying or substantially derogating from the intent or purpose of this bylaw.*

FINDINGS: All three panel members took a view of the property and reported that the traffic in the area made safe exiting from the property difficult with one member standing in the street to stop traffic, while another backed out onto the street. As the Board must consider public health, safety, and welfare as the primary purpose of its authority, it was clear that the proximity of other driveways and site distance concerns due to the location of the property in relationship to the street create a public safety concern. Members in opposition find the Applicant has not provided sufficient evidence to support this requirement, which is, therefore, not met.

8. Attorney De Lisi argued that this application is no different from the decisions referenced in Paragraph 6 of the File Inventory; however, Members Rivkind and Lynch disagreed, reminding those present that each variance application stands on its own merits and is not precedent-setting, which Attorney De Lisi acknowledged during the public hearing.

DECISION OF THE BOARD:

Based on the evidence presented and its findings delineated above and incorporated herein, upon a motion duly made and seconded, Member Brown **VOTED** to approve and Members Rivkind and Lynch **VOTED** to deny the **Variance** application for Lot Width and Lot Shape under Sections 201-3.2B (1), (2), and (3) of the Norwell Zoning Bylaw on property known as **Lot 84 Winter Street**. The application is, therefore, denied, as the decision must be unanimous to be approved.

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By unanimous vote of the Board of Appeals at its duly advertised meeting on July 23, 2020, its Clerk or Assistant Clerk is authorized to sign decisions on behalf of the panel members, which for this case are:

Philip Y. Brown
Ralph J. Rivkind
Stephen H. Lynch


Ralph J. Rivkind, as Clerk

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.