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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

Members

Lois S. Barbour, Chair
Philip Y. Brown, Vice Chair
Ralph J. Rivkind, Clerk

Associate Members

Daniel M. Senteno
William J. Lazzaro
Stephen H. Lynch
Joseph E. LaFleur

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

File No. 22-11

The PUBLIC HEARING was opened on December 21, 2022, continued to and closed on January 25, 2023, by the Norwell Zoning Board of Appeals (the Board) under General Laws, Chapter 40A, Sections 6 and 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 Application of:

John and Amanda Burnheimer
344 Prospect Street
Norwell, MA 02061

For a **Section 6 Finding** under M.G.L. c. 40A and **Special Permit** under Sections 201-3.2A, 201-3.3, 201-4.4 B(1)(c) (Nonconformance), and 201-9.2 (Lot area) of the Norwell Zoning Bylaw to raze and reconstruct a pre-existing nonconforming single-family dwelling on a .6-acre lot, where one acre is required. The property is located at **4 Tiffany Road** in Residential District A as shown on Assessor's Map 28B, Block 75 Lot 48, and recorded at the Plymouth County Registry of Deeds Book 56520, Page 75. The dwelling was constructed in 1850.

The Public Hearing for this Application was duly advertised in *The Mariner* on November 30, 2022, and December 7, 2022, posted on the Town's website, and at the Norwell Town Hall as required in accordance with the Open Meeting Law.

The Applicant's Attorney, Jeffrey De Lisi, presented the application. Elizabeth Ziad of 10 Tiffany Road, a direct abutter, expressed concern about the wetness of the lot and potential flooding. The Board noted that the property had already received an Order of Conditions from the Norwell Conservation Commission and is outside of its area of authority.

FILE INVENTORY:

1. Application, dated 11/17/22, signed by the Applicant's Representative, Jeffrey A. De Lisi, date-stamped by the Town Clerk on 11/17/22.
2. Public Notice Authorization for advertising.
3. Attached to the submitted application, date-stamped by the Norwell Town Clerk on 11/17/22:
 - a. Assessor online database printout for 4 Tiffany Road
 - b. Quitclaim Deed conveying the property from David E. Smith, Trustee of the Alton J. Smith Revocable Trust to the Applicants, John Burnheimer and Amada Burnheimer, as recorded at the Plymouth County Registry of Deeds at Bk: 58520 Pg: 75 (1 of 3).
 - c. "Plan of Land/ River Street & Tiffany Road/ Norwell, Mass." (made for the estate of Eliza Jane Hopkins), dated November 5, 1959, as prepared by Perkins Engineering Associates, Rockland, Mass., signed and sealed by George I. Engle, Registered Land Surveyor; recorded at the Plymouth Co. Reg. of Deeds on December 8, 1959.
 - d. Property Tax Parcels showing 4 Tiffany Road and surrounding properties from MassMapper.
 - e. Overhead photographic view of the subject property
 - f. Certified Abutters List, dated November 15, 2022, as prepared by the Town of Norwell Board of Assessors, including (1) plan showing all properties within 300' of the parcel; (2) List of Certified Abutters; (3) mailing labels for owners shown on (2).
 - g. "Plan to Accompany ZBA Application", entitled "Raze & Rebuild of Single Family Dwelling at/ 4 Tiffany Road/ (Assessor's Parcel: 78-048 SHT. 28B/ Norwell, Massachusetts)", as prepared by Morse Engineering Co., Inc., signed and sealed by Jason Scott, Registered Professional Land Surveyor, dated 11/15/22.
4. Memorandum of 1/17/23 from Jason Scott, PLS, of Morse Engineering, confirming the "Existing" House Footprint of 1,458 SF; The proposed dwelling footprint is 1,603 SF and noted "Without Garage: 1,096 SF" (N.B. The "existing" dwelling was razed in July 2022, prior to submission of this application on 11/17/22.)
5. Letter of January 18, 2023, from Attorney Jeffrey A. De Lisi to the Norwell Zoning Board of Appeals, providing supplemental information, as requested by the panel at the opening of the public hearing.
6. Order of Conditions (SE52-1240: NCC#63(22), dated 1/26/22, as issued by the Norwell Conservation Commission to Paul Ricciardi of 101 Adams Street, Quincy, MA, the contractor who submitted that application for the property located at 4 Tiffany Road. The Order of Conditions was subsequently modified to allow

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- reorientation of the proposed dwelling to provide access from Tiffany Road with driveway access from River Street to be abandoned.
7. Architectural drawings, prepared by Architectural Design and Drafting Services, LLC, of 133 Main Street 2nd Floor, Southington, CT, entitled "House Plans/ Vaire Realty Trust/ 4 Tiffany Road, Norwell, MA, as signed and sealed by Christopher H. Zajda, Registered Professional Engineer, as revised 9/2/22 and 11/8/22, consisting of eleven (11) drawings:
 - DWG 1 Front Elevation
 - DWG 2 Foundation Plan
 - DWG 3 1st Floor Plan
 - DWG 4 2nd Floor Plan
 - DWG 5 Rear Elevation
 - DWG 6 Right Elevation
 - DWG 7 Left Elevation
 - DWG 8 Details with General Framing Notes and General Concrete and Masonry Notes
 - DWG 9 1st Floor Plan/ (Showing Hold Down, Portal Frame, and/ continuously sheathed braced wall Panel Locations
 - DWG 10 2nd Floor Plan/ (Showing Hold Down, Portal Frame, and/ continuously sheathed braced wall Panel Locations
 - DWG 11 Portal Framing at/ Garage Door
 8. Board of Health approval sign-off, dated 10/27/22
 9. Conservation Commission approval sign-off, dated 10/25/22
 10. Letter from Maureen Hurley, Attorney at Law, of 11 Driftway, Scituate, MA, as the contractor's attorney, dated July 12, 2021, to the Norwell Historic Commission relating to an "Application to Demolish" under the Norwell Zoning bylaw, claiming constructive approval for issuance of the demolition permit, submitted to the Building Office on 10/1/20 by Contractor Paul Ricciardi of 101 Adams Street, Quincy, MA, as the Historic Commission had failed to act.

FINDINGS:

1. The subject property known as 4 Tiffany Road is located in Residential District A, consisting of 0.6 acres where one-acre is required under current zoning.
2. The "existing" dwelling was constructed in 1850, prior to zoning.
3. The Demolition Delay time requirement has now expired due to constructive approval of the Historic Commission, as noted in the file inventory letter of July 12, 2021, from Maureen Hurley, Attorney at Law.
4. The Norwell Conservation Commission issued an Order of Conditions, dated 1/26/22 that was subsequently modified.
5. The Board has received sign-off approvals from the Conservation Commission and the Board of Health. N.B.: The Applicant and others involved in the proposed project must meet any and all additional requirements of other town, state, or federal statutes or regulations.
6. The ZBA understands an application for zoning relief was delayed due to illness of the contractor. However, the dwelling was inadvertently razed in July 2022 without benefit of the required zoning relief for which this Application was submitted.
7. The proposed project to construct a single-family dwelling will meet required front, rear, and side setbacks.

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8. The Board may issue a Section 6 finding pursuant to M.G.L. c. 40A and Special Permit under § 201-3.3. B. of the Norwell Zoning Bylaw, if it finds that:
 - a. “The conduct of the proposed use will not be detrimental to the neighborhood and zoning district . . .”

Finding: As the property will continue to be used as a residential dwelling unit, an allowed use in Residential District A, the Board finds the proposed construction of a new residential dwelling complies with sideline and rear setback requirements and will not be more detrimental to the neighborhood and zoning district in a neighborhood of similar residences.

- b. “. . . the proposed use will not significantly alter the character of the zoning district”.

Finding: The Board finds, as the property is located in Residential District A, the existing use as a residential dwelling unit is allowed by right and will, therefore, not alter the character of the zoning district.

- c. “The conduct of the proposed use will not be injurious, noxious, or offensive to the neighborhood by reason of the emission of odors, fumes, dust, smoke, noise or other cause, nor hazardous to the community on account of fire, explosion or other cause.”

Finding: As the property will continue to be used as a residential dwelling unit, the Board finds the proposed addition will not be injurious, noxious, or offensive to the neighborhood, as an allowed use.

DECISION OF THE BOARD:

Based on the evidence presented and its findings above and incorporated by reference herein, upon a motion duly made and seconded, Members Brown, Barbour, and Lynch (individually polled on Zoom) **VOTED** unanimously to grant a **Section 6 Finding** under M.G.L. c. 40A and **Special Permit** under Sections 201-3.2A, 201-3.3, 201-4.4 B(1)(c) (Nonconformance), and 201-9.2 (Lot area) of the Norwell Zoning Bylaw to raze and reconstruct a pre-existing nonconforming single-family dwelling on a 0.6-acre lot, subject to the following:

SPECIAL CONDITIONS:

1. The proposed construction shall comply with the submitted plans, detailed in Paragraphs 3(g) and 7 of the File Inventory.
2. The access driveway to River Street shall be abandoned and the dwelling shall be accessed exclusively from Tiffany 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 Register 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:** This Decision shall take effect only at such time as a copy of the Decision, certified by the Office of the Town Clerk of the Town of Norwell, is recorded with the Register of Deeds or Recorder of the Land Court.
4. **EXPIRATION:** The applicant shall exercise any Decision granted by the ZBA within two (2) years from the date of the Decision or it shall lapse.

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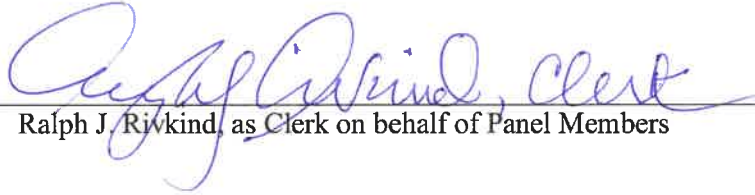
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By unanimous vote of the Board of Appeals at its duly advertised meeting on August 8, 2022, its Clerk or Assistant Clerk is authorized to sign decisions on behalf of the panel members, which in this instance are:

Philip Y. Brown
Stephen H. Lynch
Lois S. Barbour


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.