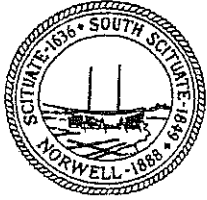


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OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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NORWELL, MASSACHUSETTS 02061
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FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

File No. 16-13

A **PUBLIC HEARING** was held on October 5, 2016, by the Norwell Zoning Board of Appeals (the Board), under Massachusetts General Laws, Chapter 40A, Sections 6 and 10, at the Norwell Town Offices, 345 Main Street Norwell, MA, on the Application of:

**Edward A. Anderson and Barbara Anderson a/k/a Barbara M. Visconti
(the Applicants), both of
43 Captain Vinal Way (the Property, Exhibit 3A)
Norwell, MA 02061**

For a Variance under Sections 1300, 1322, 1330, 2400 and 2442 (Side and Rear Yards) of the Norwell Zoning By-laws. The Applicants seek approval to add a 15'3" x 6' Deck to the back of the existing dwelling. The proposed Deck is designed and constructed to accommodate an elevator/lift that will provide access for a disabled, senior member of the present owners family, who will become a resident member of that family. A portion of the proposed deck does not meet the required side yard setback of 20' because a portion will be located 16' from the property line. The Property is located at 43 Captain Vinal Way, in Residential District A, shown on Assessor's Map 8B, Block 9, Lot 80 and described in the document filed at the Plymouth County Registry District of the Land Court in Certificate No. 76061, filed as Document No. 278962 and also recorded with Plymouth County Registry of Deeds in Book 8057, Page 142. The lot consists of 1.17 acres, according to said Plans (see Exhibit 3A made a part of this Decision). The present side line setback of twenty feet, which is the subject of this application, is shown on the SUBDIVISION PLAN OF LAND IN NORWELL, by Loring H. Jacobs and Associates, Inc., dated December 23, 1970, filed with Plymouth County Registry District of the Land Court with Certificate No. 41353, as it applies to Lots 49 and 48, shown in part on Exhibits 3B and 3C, made a part hereof. .

The Notice of the Public Hearing to be held on October 5, 2016, was published and duly noticed in the Norwell Mariner on September 15, and 22, 2016, posted by the Town Clerk and mailed to those entitled to such Notice, as required by law.

No members of the public attended the Public Hearing held by the Board. The Applicant, Edward A. Anderson, was present and presented evidence and testified at the Hearing. Mr. Anderson described the site, presented the information set forth above, the additional evidence referenced in the Findings, set forth below, and the documents, plans and pictures, which were marked as Exhibits, as follows:

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<u>Exhibit #</u>	<u>Description of Exhibit</u>
1.	The Application
1(a)	The Notice
2.	Pictures of the existing covered & screened deck and stairs.
3(a),	Tax-preliminary notice and tax bill with notations.
3(b).	Plan of sideline and present set-backs in black for house, porch and property line, in red for the proposed deck.
3(c).	Land Court Plan of common side line between Lot 49 and Lot 48.
4. (two sheets)	a. Existing porch and stairs b. proposed floor plan c. proposed rear elevation

FINDINGS:

Based upon the Exhibits, other evidence presented at the Public Hearing and judicial notice of the By-Laws and official records of the Town of Norwell, the Board makes the following findings:

1. The Applicants seek a Variance to add a 15'3"x6' deck, to the rear of the existing single family dwelling and porch on Lot 48, to provide additional open deck area for single family use and to provide an attachment area for an elevator/lift to provide access to the open deck and entrance area into the dwelling by an elderly family member who cannot climb stairs and is generally confined to the use of a movement support device. The elevator/lift shall be attached to the rear 15'3" side of the open deck so that it does not intrude into the 20' side line set back area along the Property Line, that runs between the Property and the contiguous Lot 49.
2. **The common boundary line between the Property and Lot 49, unlike all of the other 22 Lots with frontage on Captain Vinal Way, is not a straight line and has a different "shape." This different "shape" makes the four [4'] foot adjustment to the twenty (20') foot side line set back a de minimums adjustment to accommodate the addition of the 15'3" x 6' deck, with a conforming attachment and area for the elevator/lift, which shall be in conformance with the standard twenty (20') foot side line set back.**
3. **The granting of the requested variance will eliminate a substantial hardship to the Applicants caused by the irregular "shape" of the common boundary line between Lots 48 and 49, without nullifying or substantial detriment to the public good because the remaining sixteen feet of side line set-back is flat, unobstructed and provides the useable adequate access, in fact, and separation required as a purpose of the Zoning By-Law.**

DECISION OF THE BOARD:

Based on the evidence presented and its findings above, upon a motion duly made and seconded, the Board unanimously:

VOTED: to grant a Variance so that a portion of the Proposed Deck shown on Exhibit 3B may extend into the required side line set back area of twenty (20') feet, by four (4') feet, thereby reducing the side line set back for only that section of the Proposed Deck, to sixteen (16') feet, subject to the following special conditions:

SPECIAL CONDITIONS:

1. Construction plans and details shall be in accordance with the Exhibits in the Board's File Numbered 16-13, PROVIDED ALWAYS that the placement and side line set back for the 15'3" x 6' deck, set forth above, shall be not less than Sixteen (16) Feet and no other intrusions into the twenty (20') foot setback area shall be allowed or are to be made.
2. Construction Plans for the deck, aforesaid, and all associated work, including any elevator/lift, shall be reviewed by the Board before any Building Permit for the project is issued.

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 within one year from the date of this decision or by extension or it shall lapse.

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Philip Y. Brown

Philip Y. Brown

Ralph Rivkin

Ralph Rivkin

David Lee Turner

David Lee Turner

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.