



Town of Dennis

685 Route 134, South Dennis, MA 02660 / Telephone: 508-394-8300 Fax: 508-394-8309

36 Depot Street

ZBA SPECIAL PERMIT STAFF REVIEW – January 27, 2025

NOTE TO THE APPLICANT: The staff review is prepared for the Board of Appeals and is provided to applicants to inform them of issues that have arisen during the review of the application. The hearing is based upon the plans originally filed – the plans that the public were able to review upon receiving notice.

APPLICANT:	James Feeley c/o Jack Herndon of Senie & Associates, P.C.
PROJECT ADDRESS:	36 Depot Street Dennisport, MA 02639
MAP AND LOT NUMBER:	Map 40 Lot 89 (0.11 acres – 5,036 sf)
APPLICANT ADDRESS:	8 Sheehan Drive, Shrewsbury MA, 01545
CASE NUMBER:	SP-031200-2024
ZONING:	Resort Residential (RR)
HEARING DATE:	January 27, 2025

1. **Project Summary; Request per Zoning Bylaw; Plan Citations**
2. **Plans Specifications; Basic Site Data**
3. **Actions Requiring Findings**
4. **§ 1.4.2.1 Special Permit Granting Authority – Criteria and Proposal**
5. **Town Department Comments**
6. **Proposed Conditions**

PROPOSAL	Renovation of total house including walls, insulation, windows, siding, etc.
PROJECT SUMMARY	<ul style="list-style-type: none"> • Two single-family structures are on this extremely undersized non-conforming lot. • The property was granted a Variance with conditions on February 28, 2022. • Among other conditions the Variance allowed for some future alteration or addition within a specified Building Envelope and subject to Special Permit Review. • The Applicant received a Building Permit from the Town of Dennis on June 17, 2024. • Applicant began renovating Structure 2 and majority of the work is complete. • However, The Building Commissioner halted work when he discovered that what was being built was not what was approved. • Plans have been revised to get under the 30% FAR threshold. Elevations are same as those originally submitted but the second-story floor area has been reduced by marking half of the second floor “open to below” to bring the F.A.R. down. • No Septic Plan is on record and a Title V inspection is required. • No Road Opening Permit was applied for before the fencing and front yard were completely removed and replaced with 3 parking spots backing into a busy road. • Entire site denuded of vegetation including the required 10-foot vegetated buffer. • History of non-compliance and/or lack of permits will require extra safeguards.
REQUEST	Finding per: § 2.4.1.2.B - Actions Requiring a Finding that the proposal is NOT Substantially More Detrimental (B.1) for an Increase in the footprint of a structure that <u>does not comply with one or more required setbacks</u> where the <u>alteration will extend lot coverage or building height</u> where a structure does not conform to current setback

	requirements; (B.2) Increase in the lot coverage of a structure where the structure currently exceeds lot coverage; (B.3) Increase in building height for any structure with a non-conformity subject to item B1 above if the increase in height is located within the portion of the structure that is non-conforming or for any structure covered by item B2 above;
PLOT PLAN	Plot Plan of 36 Depot Street Dennisport, MA prepared for James A., Jr. & Allysen M. Feeley by Outermost Land Survey Inc., 1 Independence Way Brewster, MA 02631. Plan consisting of 1 sheet with existing conditions, Septic System Profile and Design with Test Hole Logs. Plan dated November 7, 2024 by Donald T. Poole. Revised December 10, 2024.
BUILDING PLANS	Plan of 36 Depot Street Dennisport, MA prepared for James Feeley by Michele Cudilo, P.E. 123 Cottonwood Lane, Centerville, MA 02632-1979 and Yoana K. Guzman 5 Madison Ct Nantucket, MA 02554. Plan consisting of 3 sheets with Proposed floor plan Elevations, Framing Plans & Sections, and Details. Plan dated 04-19-24; revised 01-15-25, stamped by Michele Cudilo.
OTHER	ZBA Variance granted February 28, 2022 for Map 40 Lot 89.

1.3.2 Plans and Specifications

REQUIREMENTS	PROVIDED ON PLAN
CERTIFIED PLOT PLAN INCLUDING	
LOCUS MAP	Yes
PERIMETER DIMENSIONS, INCLUDING FRONTAGE	Yes
AREA OF LOT	5036 sf
NAMES OF STREETS	Depot Street and "Way"
NAMES OF ABUTTING PROPERTY OWNERS	Map & Lot
DISTANCES EXISTING AND PROPOSED STRUCTURES TO PROPERTY LINES	Yes
PROPOSED ADDITONS/ALTERATIONS OF EXISTING BLDGS W/ SETBACKS	Yes
PROXIMITY OF WETLANDS	None
EXISTING AND PROPOSED TOPOGRAPHYAND/OR OTHER LAND ISSUES	No
DIMENSIONS OF EXISTING AND PROPOSED STRUCTURES	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE PROPOSED CONDITIONS	yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE EXISTING CONDITIONS	No

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	50'	37.5'	37.5'
Front Setback	50'	27.3'	27.3'
Right Side Setback	25'	1.5	1.5
Left Side Setback	25'	8'	8'
Rear Setback	25'	28.5	28.5
Lot Area	80,000	5050	5050
Lot Width	100'	37.5'	37.5'
Non-conforming floor space within Setbacks			
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period			Addition w/in setback granted 2022.
Cumulative footprint size of all structures			

Cumulative lot coverage (footprint) percent for all	15%	20.1%	23.4%
Cumulative floor space of all structures (F.A.R.)			
Cumulative floor space to lot area % all structures	30%	25	29.9%
			Should be on Site Plan

§ 2.4.1.2 B Actions Requiring a Finding that the proposal is NOT Substantially More Detrimental

ACTION	FINDING
B1 - Increase in the footprint of a structure that does not comply with one or more required setbacks where the alteration will extend lot coverage or building height where a structure does not conform to current setback requirements;	
B2 - Increase in the lot coverage of a structure where the structure currently exceeds lot coverage;	
B3 - Increase in building height for any structure with a non-conformity subject to item B1 above if the increase in height is located within the portion of the structure that is non-conforming or for any structure covered by item B2 above; and 2.4.1.2 C	

§ 1.4.2.1 To hear and decide applications for special permits upon which the Board is empowered to act under this By-Law pursuant to M.G.L. ch. 40A. Special permits may be granted only upon a finding by the Board that the proposed use will not create a nuisance, hazard or congestion, or other significant harm to the neighborhood, nor cause derogation from the general purpose and intent of the By-Law, the stated district intent or applicable use criteria. It shall be the responsibility of the applicant for any special permit to show, to the satisfaction of the Special Permit granting authority, that the following criteria are met:

- a. The use is allowed by special permit in the district in which proposed, pursuant to §2.2.2 - Use Regulations Schedule; **The site is used for residential purposes and will continue to be used as such.**
- b. Suitability of the site for the proposed use in light of the applicable district intent, as provided in §2.1.5; **Residential uses are allowed within this district but this site is particularly constrained.**
- c. Adequacy of management of traffic flow within the site as well as in relation to adjoining streets and properties, so as to minimize unsafe or harmful impacts of the use; **Alterations to the site have created a negative impact on the “Way” and along Depot Street that should be mitigated.**
- d. Compatibility of the proposed use with surrounding land uses, so as to minimize harmful impact or conflict with existing desirable neighborhood character, including views, vistas and other aesthetic values; **The property is an extremely undersized non-conforming lot. While this is a pre-existing non-conforming situation, the recent developments at the site (not following Building Permit, removal of all vegetation, new parking backing into Depot Street, etc.) require some mitigation and extra safeguards.**
- e. Adequacy of provision of utilities and other necessary or desirable public services; **The addition will not increase the need for utilities or other public services.**
- f. Adequacy of control of artificial light, noise, litter, odor or other sources of nuisance or inconvenience to adjoining properties, public ways and neighborhoods; **The addition, as conditioned, shall not generate light, noise, litter, odor or other sources of nuisance.**
- g. Adequacy of protection from degradation and alteration of the natural environment, including but not limited to slopes and other topographical features, vegetation, wetlands, groundwater and water bodies and wildlife habitat. **The addition has already degraded the natural environment which should be restored as much as possible.**

TOWN DEPARTMENTS COMMENTS:

- **PLANNING:**

- Currently two single-family structures are on this extremely undersized non-conforming lot. There are two more parcels with a house on each behind these two that are accessed via a “Way” along the side, very close to these houses, that are also shown on the GIS Maps as 36 Depot Street (Map 40 Lots 87 and 88). Original structures were built in 1940
- The property was granted a variance with conditions on February 28, 2022:
 - *“Pursuant to Bylaw Section 2.4.1.2 to grant lawful status to Lot 1 on a plan recorded at Book 278 Page 34 from 1973 and allow for potential future expansion within a designated building envelope, with potential upward expansion for either two single family units or one two-family unit by Special Permit.”*
 - See the Decision for the “Hardships”.
 - **Conditions:**
 1. *The lot is granted variance from minimum lot size requirements and is allowed to remain in its current size.*
 2. *The property may continue to be used for residential purposes without the need for further Variance relief.*
 3. *The property may have the residences altered or replaced with a new structure(s) as long as the structure(s) are located within the building envelope on the plan accompanying this decision.*
 4. *New structure(s) on the property may either be two single family dwellings or one two-family dwelling.*
 5. *Future changes on the site shall be subject to normal Dennis Site Plan or Special Permit review processes as appropriate as long as condition 3 and 4 are complied with.*
- The Applicant received a building permit from the Town of Dennis on June 17, 2024. Upon receiving the building permit, the Applicant began renovating structure 2 and is now finished with the majority of the work.
- However, The Building Commissioner halted work when he discovered that what was being built was not what was approved.
- Proposed renovation adds one bedroom (at least). Per Health Department notes below no Septic Plan is on record and a Title V inspection is required.
- The new structure will have two stories with two bedrooms.
- Plans has been revised to get under the 30% F.A.R. threshold. The elevations are the same as those originally submitted but the second-story floor area has been reduced by marking half of the second floor “open to below” to bring the F.A.R. down.
- Due to the location of the property in a dense residential neighborhood near the water, the time of year construction and not blocking the road conditions have been added.
- The proposal is significantly larger than the existing house, but it is flood compliant and improves a couple of setbacks and is under the bulk thresholds.
- The Board can find that a lawful pre-existing non-conforming structure exists on the property and the proposed addition, as conditioned, will not be substantially more detrimental to the neighborhood than the existing structure.

- **NATURAL RESOURCES:** Property is not in Conservation jurisdiction.

- **HEALTH:** No septic records on file. Title V system inspection required.

- **ENGINEERING:**

- Renovation work appears to have been completed recently on the front building closest to Depot Street, and the rear unit appears to be under construction/renovation. It is assumed that this plan is for the proposed addition to the rear building.
- It is unclear if the recent work on both the front and the rear may have enlarged any previously existing footprints. The front building has a shower on the south side and a deck on the north/west which do not appear to match the assessing records. Any new footprint should be confirmed to be part of the prior permits for the recent renovation work.
- Wonders if any additional bedrooms will be created, requiring an upgrade to the septic, or will new foundation work require setback variances to existing components? Currently the area over the septic system is cleared and used for storage. Will there be **parking above these components, and if so, are the components designed for vehicle loading (H-20)?**
- **The project does not appear to meet the intent of the Stormwater By-Law.** The overall ground disturbance appears in excess of 500s.f. **The recent site work, and work currently under way should have utilized linear erosion and sediment controls,** and a stone construction entrance due to the size of ground disturbance. The existing shell driveway appears to be containing sediment on-site, so this may be adequate to replace the stone construction entrance if properly maintained.
- **No linear controls were observed during a site visit on December 30, 2024.** The sand surface of the disturbed areas appeared to be stable, however it is possible that sediment has or can run off the property and may affect adjacent properties without proper controls in place. Controls should be provided & maintained as soon as possible to minimize erosion.
- All disturbed areas of the site should be stabilized and re-vegetated or surfaced appropriately for parking to minimize erosion
- **All buildings need roof drains discharging to subsurface drywells or stone drip trenches.**
- It appears that a new shell parking area has been constructed between the front building and Depot Street. Based on the date of the aerials, this parking area was constructed after 2023. The map indicates a fence and landscaping in this front yard until 2022.
- **The Engineering Department did not receive a Road Opening Permit for the construction of this parking area, and has the following comments:**
 - **A Road Opening Permit would normally be required for construction of any new parking.**
 - The current site plan shows the shell surface approximately 5ft off the southern property line. At the recent site visit, it was observed that the shell parking extends up to the fence running along the south property line. It is likely **three cars could park in this area, all requiring backing out on to Depot Street.**
 - Unless waived or determined to be applicable by the ZBA, the following sections of the Zoning By-Law appear to apply.
 - Under 2.3.4.1.b, a 10ft. vegetated buffer is required to the side property lines.
 - Under 3.1.6.1, backing of vehicles onto public ways is only permitted for single family use
 - As part of the ZBA review, it should be determined if prior alterations at the site, or the current proposal, is subject to an overall parking review under 3.1.2. Additional waivers for pre-existing parking, or adjustments to the parking layout may be required if determined to be applicable by the ZBA.
 - ***DZBL § 3.1.2 Applicability - Existing buildings, structures and land uses are not subject to these off-street parking and loading requirements and may be rebuilt, altered or repaired, but not enlarged, altered or subject to a change in use so as to increase demand, without becoming subject to these requirements.***

<p>PROPOSED CONDITIONS</p>	<ol style="list-style-type: none"> 1. The lot owners shall apply for all required permits and will comply with the intent of the Dennis Stormwater By-law, all requirements of the Dennis Conservation Commission and Board of Health and any other permits that are required. 2. Construction shall not commence before 7:00 am nor continue after 7:00 pm Monday through Friday and shall not commence before 7:00 am nor continue after 5:00 pm on Saturdays. No construction shall occur on Sundays. 3. The addition shall not generate new light, noise, litter, odor or other sources of nuisance. Any new lighting shall be restricted to downward-shielded motion sensitive security lighting that is “Dark-Sky” compliant. 4. <u>No further work shall be commenced until</u> a Title V Inspection has been completed and approved by the Department/Board of Health. 5. Failure to comply with all conditions in the Board of Health Inspection and/or Permit shall be deemed cause to revoke the ZBA Special Permit and Certificate of Occupancy. 6. <u>No further work shall be commenced until</u> a landscaping plan restoring the 10’ buffer to the greatest degree possible with other landscape improvements and incorporating Town Engineering Curb Cut review and approval of the new parking on Depot Street, is reviewed and approved by the Planning Board. 7. <u>No further work shall be commenced until</u> the lot owners shall apply for and receive a curb cut permit from Town Engineering for the parking area in front of Structure 1 on Depot Street and redesign as approved before a Certificate of Occupancy is issued. 8. Any off-street parking shall be a pervious surface. 9. All buildings shall have roof drains discharging to subsurface drywells or stone drip trenches. 10. The contractor shall be responsible for maintaining Depot Street and the “Way” in a condition free of accumulated sediment during construction and all appropriate drainage and erosion control measures as suggested by town engineering comments shall be implemented. 11. Construction vehicles shall not park in or block Depot Street and the “Way”. 12. There shall be no exterior construction (including foundation work) or heavy equipment between the Friday before Memorial Day and the day after Labor Day. 13. The floor area denoted on the approved plans as “open to below” must remain open with uses limited per code and the Floor Area Ratio shall not exceed 30% Floor Area Ratio (F.A.R.) per § 2.4.1.2.D.3.
-----------------------------------	---