



Town of Dennis

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**4 Spadoni Way Special Permit**

**ZBA SPECIAL PERMIT STAFF REVIEW – February 20, 2025**

<b>APPLICANT:</b>	Thomas W. Buckley C/O the Law Offices of Singer and Singer
<b>PROJECT ADDRESS:</b>	4 Spadoni Way, Dennis, MA
<b>MAP AND LOT NUMBER:</b>	Map 322 Parcel 19
<b>APPLICANT ADDRESS:</b>	34 Mitchelle Lane, Braintree, MA (02184)
<b>CASE NUMBER:</b>	SP-024656-2023
<b>ZONING:</b>	R-40; Old King’s Highway Historic; AE Flood Zone
<b>HEARING DATE:</b>	February 24, 2025;

<b>PROPOSAL</b>	Request to remove a condition from a Special Permit issued in 2024. The approved project was to raze a one-story, cottage and replace it with an elevated 2.5 story single-family dwelling. The Applicant has not been able to rescind the unbuilt segment of the “private way” as required in condition 9, so they are asking to remove the condition.
<b>REQUEST</b>	Findings per: <b>§ 2.4.1.2 C2</b> - Special Provisions for Relocation/Reconstruction of 1 or 2-Family Structures Not Located within Existing Footprint; <b>§ 2.4.1.2 D 2-3</b> - Actions Requiring a Finding of Substantially More Detrimental.
<b>PROJECT SUMMARY</b>	<ul style="list-style-type: none"> <li>• Request to remove a condition from a Special Permit issued in 2024.</li> <li>• Project was to raze a one-story, cottage and replace it with a 2.5 story, single-family dwelling which is also elevated to meet flood regulations.</li> <li>• Project was approved with conditions last year but the applicant has not been able to get neighbors to agree to rescind the unbuilt segment of the “private way” as required in condition 9.</li> <li>• Applicant then proposed to rescind just the section of the private way on this property. Town Counsel made it clear this could not be done because other people have rights in the Way.</li> <li>• Therefore, Applicant is requesting Zoning Board of Appeals remove the condition 9.</li> <li>• The approval was to raze a one-story, single-family dwelling on a very small lot and replace it with a much more imposing elevated 2.5 story seasonal single-family.</li> <li>• Proposal elevates the building to meet flood plain regulations. Therefore, height does not begin until it reaches the Base Flood Elevation (BFE) at elevation 14 or 5’8” above the existing grade. Thus, proposed structure is 37’ 8” tall with 32’ being above BFE.</li> <li>• Proposed building is 25’ wide by 20’ long with 11’ by 9’ decks on both the first and second floors stacked on the west and a 7’ by 6’ landing on the front leading to stairs.</li> <li>• A proposed 4’ by 4’ elevator shaft was not allowed by the Building Commissioner.</li> <li>• The proposed building is taller than it is wide.</li> <li>• A Private Way that runs through the lot, complicates the non-conforming setbacks.</li> <li>• If setbacks are measured from the Way, as is the usual standard, the project cannot be built as proposed. Therefore, the condition to remove the way was added.</li> </ul>

<b>PLOT PLAN</b>	Site Plan of #4 Spadoni Way, Dennis, MA prepared for Thomas Buckley by Down Cape Engineering Inc., 939 Main Street (Rte 6A) Yarmouthport, MA 02675. Plan consisting of 1 sheet with existing and proposed conditions, Septic System Profile. Plan dated November 15, 2023.
<b>BUILDING PLANS</b>	Proposed Building Plans and Elevations of #4 Spadoni Way, Dennis, MA prepared for Thomas Buckley by McPhee Associates, Inc., located at 1382 Route134, PO Box 799 East Dennis MA, 02641-0799 consisting of 2 pages, dated November 1, 2023.
<b>OTHER</b>	Existing building elevations of #4 Spadoni Way, Dennis, MA prepared for Thomas Buckley by McPhee Associates, Inc., located at 1382 Route134, PO Box 799 East Dennis MA, 02641-0799 consisting of 1 page, dated November 1, 2023. No stamp.

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	50'	65'	65'
Front Setback	25'	6.1'	12.6'
Right Side Setback	15'	6.6'	15.1'
Left Side Setback	15'	32.7'	15.2'
Rear Setback	25'		
Lot Area	40,000	3,927 sf	3,927 sf
Lot Width	100'	65'	65'
Non-conforming floor space within Setbacks		404 sf*	522 sf*
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period			118/404 = 29.2%*
<i>* Not counting unconstructed private way and detailed floor calculations were not provided.</i>			
Cumulative footprint size of all structures		453 sf-573 sf	577 sf w landing
Cumulative lot coverage (footprint) percent for all	15%	11.5% - 13.3%	14.7% Plans;
Cumulative floor space of all structures (F.A.R.)		453 sf	1,273 sf +/-
Cumulative floor space to lot area % all structures	30%	11.5%	<b>Appeared to exceed 30% FAR</b>
Building Height	35'	12' – 14'	32' + 5'8" BFE

§ 2.4.1.2 C - Special Provisions for Relocation/Recon. of 1 Family Structure Not Located w/n Existing Footprint

ACTION	FINDING
C2 - Voluntary demolition and reconstruction of a building or structure which is non-conforming by dimension on any other location on the lot in which it is located outside of the existing non-conforming footprint unless it conforms with the dimensional regulations of the zone in which it is located or the non-conforming nature of the new proposed structure is found to be substantially less non-conforming by the ZBA	Significant increase in building height occurs in both front and rear setbacks, though front setback is less non-conforming, <b>“rear” setback is crossed, even with removal of private way. Shed (under 200 sf) was used as justification along with improved setback in front.</b>

§ 2.4.1.2 D Actions Requiring a Finding of Substantially More Detrimental

ACTION	FINDING
D2 The increase in that portion of the floor space that is non-conforming by more than forty percent (40%) within any ten-year time period.	<b>Until the private way is rescinded the entire lot is non-conforming. Proposed is clearly more than 40% larger.</b>

<p>D3 The addition of floor space to a lawfully pre-existing non-conforming structure on a site that exceeds the fifteen percent (15%) lot coverage restrictions, if said addition would exceed a floor space to lot area of thirty percent (30%) excluding basement and uncovered porch/deck.</p>	<p>Does not exceed 15% Lot Coverage, <b>but it appears to exceed 30% Floor Area Ratio. The first 2 floors are 25' X 20' plus elevator (1,116 sf). The third "half" story has the massing of a full story and is at least another 250 sf. 1,366 sf is well over 30% FAR. Applicant has not provided detailed calculations.</b></p>
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§ 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; *2.1.5.2 District Intent: Low Density Residential – To provide sites for low density residential development, while respecting the existing character of the neighboring homes and properties, including compatible related home-oriented activities, and agricultural pursuits in a rural environment.* **The imposing 38' tall building does not respect the existing character of the neighboring small homes and will directly impact them due to proximity. This type of development due flood zone, is common, but this is a fairly extreme example of a tower on a tiny lot.**
- 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; **The site is limited for parking and the access drive (Spadoni Way) only has room for one car to pass at a time with no pull-outs. Any cars protruding into Spadoni would impact the ability for cars in one of the other 10 +/- homes on the Way.**
- 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 proposal will have an impact on other properties with light and shadows and character.**
- 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 should not generate light, noise, litter or odor but due to its height and proximity to other houses could be the source of nuisance such as blocking sunlight, casting shadows and looking into other properties.**
- 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 property in front of this house, of which it was once part, is lower than Taunton Avenue and is often flooded by runoff from the road.**

**TOWN DEPARTMENTS COMMENTS:**

- **PLANNING:**
  - The third floor (“finished loft”) appears as a fourth floor with elevation for flood.
  - From a 2D perspective the plan is less non-conforming on the front but creates a new non-conformity in the back. From a 3D perspective the proposal is much more imposing.
  - Proposal is very large for very small property that was created by deed, not a plan.

- Measured from the Private Way, as is usual, then the entire lot is non-conforming to setbacks. Thus, the proposed new structure cannot be built per §2.4.1.2 D.2 (40% rule).
  - Measuring from the rear lot line, creates a small developable donut hole, that allows for some increase.
  - **Planning Recommendation:**
    - Condition to rescind the Private Way should be retained.
    - If the road cannot be rescinded, Planning recommends the proposal be revised and scaled down and remove top floor to not be so imposing on the neighborhood.
    - If the applicant scaled the project down, perhaps they might have more success getting the neighbors to agree to rescind the Private Way.
  - **BUILDING:** Concurs setbacks should be measured from the Private Way.
  - **NATURAL RESOURCES:** Project approved by the Conservation Commission.
  - **HEALTH:** Property is located in an Environmentally Sensitive Area (ESA). Will require Board of Health Public Hearing for Raze and Rebuild. Tight Tank, designed for 2-Bedroom installed in 2019
  - **ENGINEERING: General Comments**
    - This project required to meet the intent of the Stormwater By-Law.
    - Provide temporary construction period linear erosion to contain and infiltrate runoff on-site.
    - Additional landscaping should be considered to provide the required 10' vegetated buffer.
    - Roof drainage directed to subsurface drywells and stone construction entrance should be provided.
    - Project must not impact travel along Spadoni Way.
- CORRESPONDENCE:** None received for this application as of February 20, 2025.
- Several letters and phone calls were received for original Special Permit Review.

<b>2024 CONDITIONS</b>	<ol style="list-style-type: none"> <li>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 including approval of the Old King's Highway Historic District.</li> <li>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.</li> <li>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.</li> <li>4. Failure to comply with all conditions in the Conservation Commission Order of Conditions shall be deemed cause to revoke the ZBA Special Permit.</li> <li>5. A Preconstruction meeting, to be coordinated through the Planning Department, is required with the Department of Public Works, Engineering, Conservation, Water, Building, Health and the Fire Department before work begins. This shall include clearing, cutting, digging, foundations, etc...</li> <li>6. Any off-street parking shall be a pervious surface.</li> <li>7. The contractor shall be responsible for maintaining the Road in a condition free of accumulated sediment during construction and all appropriate drainage and erosion control measures shall be implemented.</li> <li>8. The Applicant shall channel all roof runoff from the replacement dwelling into dry wells.</li> <li>9. <b><i>The Applicant shall obtain approval from the Dennis Planning Board to rescind the unbuilt segment of "private way" shown on Plan Book 64, Page 145 (1939) prior to issuance of a building permit to construct the replacement dwelling.</i></b></li> <li>10. There shall be no exterior construction (including foundation work) or work with heavy equipment between the Friday before Memorial Day and the day after Labor Day and Construction vehicles shall not park in or block the road.</li> <li>11. The Building Commissioner shall determine whether the elevator that extends the footprint is allowed as safety access.</li> </ol>
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