



Town of Dennis

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71 Old Main Street

ZBA SPECIAL PERMIT STAFF REVIEW – January 20, 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:	Joseph & Jessica Holberg C/O Jonathan Polloni
PROJECT ADDRESS:	71 Old Main Street West Dennis, MA 02670
MAP AND LOT NUMBER:	Map 82 Lot 7 (0.50 acres – 19,772 sf)
APPLICANT ADDRESS:	947 North Marion Street, Oak Park, IL (60302)
CASE NUMBER:	SP-028999-2024
ZONING:	R-40; South Dennis Historic
HEARING DATE:	September 23, 2024; Heard and continued to February 24, 2025. @/24/25 continued without testimony to March 24 , 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 and change of use
PROJECT SUMMARY	• Renovation of a two-story existing barn. • Proposal was to renovate the interior of an old barn to add a game-room and wet-bar on the first floor and a bedroom, study, and bathroom on the second floor. • The property sits at a low elevation within the AE flood zone and will be required to be elevated to meet current floodplain requirements. • No change to the barn’s external appearance or footprint is proposed except exterior stairs and raising the structure approximately 4 feet for flood zone. • The existing barn, estimated to be at least 100 years old, encroaches the side yard setback within 1 foot from the lot line. As a result, approximately 420 sf of the barn is located within the side yard setback. • Since the original hearing the state passed Chapter 150 of the Acts of 2024 into law making Accessory Dwelling Units under 900 sf protected by right under Chapter 40A Section 3 (dover Amendment). • The revised proposal is a 760 sf ADU on the first floor with unheated storage on the second floor. Plan lists that it will be heated by Building will not allow. • The key question is whether the change of use in an existing space within the setback is an increase in the non-conforming floor area. If the proposal was a new structure it would not be allowed. But the structure exists, is being lifter per flood regulations as is allowed, and the new use is protected.

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</u> lot coverage or <u>building height</u> where a structure does not conform to current setback requirements; (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; and C § 2.4.1.2.D -Actions Requiring a Finding of Substantially More Detrimental (D.1) The creation of any new non-conformity where no non-conformity currently exists; (D.2) 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. (for the purposes of this section non-conforming floor space shall mean the total area of finished living space on all floors, storage space , including basements and non-conforming sheds, or uncovered porch/deck located <u>within a required setback area</u>)
PLOT PLAN	Site Plan of 71 Old Main Street Dennis MA, prepared for Joseph and Jessica Holberg by Warwick & Associates Inc., 63 Country Road Box 801, North Falmouth Mass. (02556). Plan consisting of 1 sheet with existing and proposed conditions, Septic System Profile and Design with Test Hole Logs. Plan dated 10-29-23 Revised 5-24-24 by Gary Labrie.
BUILDING PLANS	Plans of 71 Old Main Street Dennis MA, prepared for Holberg Residence, by Cotuit Bay Design LLC, 43 Brewster Road, Mashpee MA (02649). Plan consisting of 3 Sheets with, Proposed Barn first and second Floor Plan & Existing Barn First and Second Floor Plan, Existing Elevations (North, South, East, West) and Proposed Elevations (North, South East, West). Plans dated 8-22-2023, 8-7-2024 & 8-22-2024. Revised 2/10/2024

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	Yes
NAMES OF STREETS	Yes
NAMES OF ABUTTING PROPERTY OWNERS	Yes
DISTANCES EXISTING AND PROPOSED STRUCTURES TO PROPERTY LINES	Yes
PROPOSED ADDITONS/ALTERATIONS OF EXISTING BLDGS W/ SETBACKS	Yes
PROXIMITY OF WETLANDS	Yes
EXISTING AND PROPOSED TOPOGRAPHYAND/OR OTHER LAND ISSUES	Yes
DIMENSIONS OF EXISTING AND PROPOSED STRUCTURES	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE PROPOSED CONDITIONS	Yes
ARCHITECTURAL DRAWINGS ILLUSTRATING THE EXISTING CONDITIONS	Yes

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	50'		
Front Setback	25'	19 sf	19 sf
Right Side Setback	15'	15.8 sf	15.8 sf
Left Side Setback``	15'	1'	1'

Rear Setback	25'	92.2 sf	88.8 sf
Lot Area	40,000	19,772 sf	19,772 sf
Lot Width	100'		
Non-conforming floor space within Setbacks		420 sf	420 sf
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period			
Cumulative footprint size of all structures			
Cumulative lot coverage (footprint) percent for all	15%	12.9%	14.9%
Cumulative floor space of all structures (F.A.R.)			
Cumulative floor space to lot area % all structures	30%	15.93%	19.75%

§ 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;	
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:

- 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.**
- 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.**
- 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; **Proposed alterations will not increase traffic to the site.**
- 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; **Site will continue to be used in a fashion similar to that of other properties and historical use.**
- 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.**
- 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 will not generate light, noise, litter, odor or other sources of nuisance.**
- 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 will not degrade the natural environment.**

TOWN DEPARTMENTS COMMENTS:

- **PLANNING:**

- The proposal is to raise an old (historic) barn out of the flood zone and convert the empty “storage” space to living space.
- The proposal was considered at the time of application by the Building Commissioner as a detached dwelling which is not allowed. A new State law, that took effect in February 2025, allow Accessory Dwelling Units (ADU), including detached units, by-right in single family zoning districts if they are less than 900 square feet.
- The proposal includes a small addition at the back of the main house which is within the setbacks and is well under the bulk thresholds.
- A question remains if the ADU by-right is permissible, whether the change of use to living space within the setback increases the non-conforming area. In which case the barn must also be moved off of the property line to be less non-conforming.
- 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 applicant continued the public hearing, as requested, until February when the new State ADU statute took effect and allows for limited detached dwellings.
- The applicant needs to be reviewed by Conservation and Health.
- If the applicant simply wants to elevate the structure with the existing use they could apply to Building.
- Per the issue of whether converting to living space increases the non-conforming space, the section states “**...non-conforming floor space shall mean the total area of finished living space on all floors, storage space...**”.
- The Board can find that a lawful pre-existing non-conforming structure exists on the property but **can** find, that the proposed elevation of the barn will not be substantially more detrimental to the neighborhood than the existing structure.
- Furthermore, the **change of use is protected under the new law and the section of the bylaw counts both living and storage space.**

- **NATURAL RESOURCES:** 8-29-24: Emailed applicant that they need to file RDA due to location within the flood zone.

- **HEALTH:** Property located in an Environmentally Sensitive Area and will require a 16B variance from the Board of Health at a Public Hearing

- **BUILDING: Before ADU under 900 sf protected by State.** Dwelling unit 2 per 2.3.2 requires Minimum 80,000 sq ft lot, 150 lot width, 25-foot side setback. The creation of more than 40% new finished floor space in minimum side setback.

- **ENGINEERING:**

- This project as presented appears to result in a ground disturbance (addition footprint and access for construction etc) greater than 500sf. and is therefore required to meet the intent of the Stormwater By-Law.
- The existing driveway and parking area should be utilized as a construction entrance, and for parking of vehicles and storage of materials. The contractor should be responsible for maintaining Old Main Street free of accumulated sediment during construction.
- Provide temporary construction period linear erosion controls at a defined work limit as close to the area of construction as practical to contain sediment and infiltrate runoff on-site. Runoff, or sediment generated during construction, should not be discharged from the site to abutting properties or the road layout.

- Disturbed areas should be stabilized and revegetated as soon as practical following construction to minimize erosion.
- Roof drains should be provided on all new construction (and existing dwelling as required) to contain and direct roof runoff to subsurface drywells or stone drip trenches for infiltration
- Existing screening to abutting properties should be maintained to the extents practical. Any areas where less than 10ft. of vegetated buffer exists along the property lines, the applicant should consider means to provide additional screening to the abutters so far as practical.
- The project does not propose to revise or reconstruct the existing driveway. If the driveway will be reconstructed or revised it should be graded with a low point within the property boundary to direct runoff to adjacent natural areas for infiltration, or a suitable drainage system provided. No runoff from the driveway surface should be discharged to abutting properties or Old Main Street.
- Project to be reviewed with Conservation Department due to work within flood zone

PROPOSED CONDITIONS if elevation of barn is allowed at this time.	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. Failure to comply with all conditions in any Conservation permit or the Board of Health Permit shall be deemed cause to revoke the ZBA Special Permit. 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. The historic barn must be retained though elevated. If during construction the proposal changes it must return to the ZBA for Special Permit/Variance review and the demolition must be referred to the Historic Commission per the Demolition Delay General Bylaw (§61-3). A further Special Permit shall not be valid and a Building Permit shall not be issued until such time as the Historic Commission votes that the building is not preferably preserved or the demolition delay expires. 5. Any off-street parking shall be a pervious surface. (No pavers or pavement). 6. 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. 7. Grading should be limited to what is absolutely necessary and as many existing trees as possible should be maintained. Disturbed areas should be stabilized and revegetated as soon as practical following construction to minimize erosion. 8. 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 as suggested by town engineering comments shall be implemented. 9. Construction vehicles shall not park in or block the road. 10. There shall be no exterior construction (including foundation work) or heavy equipment between the Friday before Memorial Day and the day after Labor Day. 11. The second floor shall be unheated. 12. Any revision to plans as required by the Building Commissioner or other Town reviews shall be filed with the Planning Department before a Building Permit is issued.
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