



Town of Dennis

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91 Depot Street

ZBA VARIANCE STAFF REVIEW – February 20, 2025

APPLICANT:	Terrance P. Brennan C/O Paul Tardif of Law Offices of Paul R. Tardif
PROJECT ADDRESS:	91 Depot Street U-14 Dennisport MA 02639
MAP AND LOT NUMBER:	58-49-12
APPLICANT ADDRESS:	490 Main Street, Yarmouthport, MA 02675
CASE NUMBER:	ZVAR-25-1
ZONING:	Resort Residential (RR)
HEARING DATE:	February 24, 2025

1. Project Summary; Request per Zoning Bylaw; Plan Citations
2. Plans Specifications; Basic Site Data
3. Actions Requiring Findings
4. Town Department Comments
5. Proposed Conditions

PROPOSAL	Add a second-floor egress (stairs and landing) which encroach into the front yard setback
PROJECT SUMMARY	<ul style="list-style-type: none"> • To add an exterior means of egress to a multi-unit residential building built in 1960. • New fire escape would be second means of egress for second story (only two-story unit in building) on the south side of the building, which fronts on Lower County Road. • Multi-Unit building with 13 residential units is on a corner lot in the Resort Residential District with 50' front, side and rear setbacks. Virtually entire property is in setbacks. • Current building is 24.9' from Lower County Rd; proposed stairs would be 21.2' away. • Stairs and landing are only 3.5' wide. • Project is in Dennisport in the RR District. If it were in the DP Village District, the DP and WD Architectural Design Guidelines allow the Building Commissioner to approve fire escapes if they are in the rear or side yard and are minimum size necessary. <ul style="list-style-type: none"> ○ § 9.7.1.2. <i>Architectural features, which do not add usable area to a structure, such as elevators, wheelchair ramps, and fire escapes (side and rear yard only), provided such architectural features are the minimum necessary to serve the purpose for which it is intended.</i> • There is a small side yard where the stairs could conceivably be placed due to existing balconies and patios extending into setback, but there are also a chimney and electric utilities. • If allowed, new vegetative screening should be added.
MGL Variance	<u>MGL 40A, Section 10:</u> <i>The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to</i>

circumstances relating to the **soil conditions, shape, or topography** of such land or structures and especially affecting such land or structures *but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

REQUIRED FINDING #1 SOIL, SHAPE OR TOPOGRAPHY:

- 1) **Circumstances relating to the Soil Conditions:** To make the required finding that a parcel is entitled to a variance due to uniquely poor or inadequate soil conditions, the Board of Appeals must conclude that: ...
- 2) **Circumstances relating to the Shape:** Massachusetts courts have consistently held that a lot's peculiar or unusual shape, without more, does not give cause to grant a variance.
 - a) Equally consistent has been the court's conclusion that a lot lacking sufficient area does not justify the grant of a variance ...
 - b) "It's reference to 'shape' lead us to believe that it confused the 'shape' of the lot with its 'size' which is a different attribute and a consideration which section 10 does not include." McCabe v. Zoning Board of Appeals of Arlington, 10 Mass. App. Ct. 934, 1980
 - c) "Variances are not normally available to remedy deficiencies in frontage and area." DiCicco v. Berwick, 27 Mass.App.Ct. 312, 314 (1989).
- 3) **Circumstances relating to the Topography:** ... Simply avoiding added costs or reducing difficulties associated with development of property with steep slopes or difficult topography does not, without more, provide legal justification for a variance...
- 4) **REQUIRED FINDING #2 HARDSHIP:** Massachusetts's courts have held that the "hardship" "...must relate to the premises for which the variance was sought". Hurley v. Kolligian, (1955).
 - a) In addition, the "hardship" must be linked, or be caused by, the land's unique or problematic soil conditions, shape or topography. In other words, based on the evidence presented in Required Finding #1, there is a demonstrated hardship.
 - b) The statute requires that the Board of Appeals connect the unique circumstances of the lot (eg its soil conditions, shape or topography) *to the hardship that unique circumstances create*.
 - c) "Unless circumstances relating to the soil conditions of the land, the shape of the land or topography of the land cause the hardship, no variance may be granted lawfully". Tsagronis v. Board of Appeals of Wareham, 415 Mass. 329, 331 (1993).
 - d) "...any other considerations unrelated to the underlying real estate are irrelevant to the board's inquiry into the question of substantial hardship...Since the hardship relates to the land itself, the finding of substantial hardship was not improper." Paulding v. Bruins, 18 Mass. App.Ct. 707, 711, (1984) citing Huntington v. Zoning Board of Appeals of Hadley, 12 Mass. App.Ct. 710, 715-716 (1981).
 - e) One oft-repeated situation is where the petitioner has created the hardship from which she now needs relief. "...well-established principle in our cases prohibiting self-imposed hardships as a basis for obtaining a variance. Adams v. Brolly, 46 Mass. App.Ct. 1, 4 (1998), citing a long line of Massachusetts cases.
 - f) Similarly, Massachusetts courts are not sympathetic to the claim that but for the grant of a variance, the applicant will suffer "economic" or "competitive" hardships. "The possible hardship suffered if the variance is denied does not relate to the locus, but

	<p>rather to the preclusion of Sunoco’s competitive and economic advantage...we stated that ‘to hold...a personal hardship as one affecting the locus would treat... declining profit derived from a nonconforming use as in itself a hardship permitting a variance to enlarge and expand that use.’ Obviously, the converse situation (granting of a variance to permit the owner of the locus to increase profits) does not qualify as a hardship permitting the granting of a variance." <u>Wolfson v. Sun Oil Company</u>, 357 Mass. 87, 90 (1970), citing <u>Sullivan v. Board of Appeals of Belmont</u>, 346 Mass. 81(1963).</p> <p>REQUIRED FINDING # 3 PUBLIC GOOD: The third Required Finding is the Board’s conclusion that the variance can be granted "without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw."</p> <p>a) "The test of the statute is general; the effect of a variance on the intent or purpose of the ordinance must be determined by appraising the effect on the entire neighborhood affected... The balancing of public advantage against the hurt to individuals which is inevitable with zoning is appropriately done in connection with the enactment or amendment of the ordinance or by-laws... It is of limited operation in determining whether a proposed variance meets the rigid statutory conditions." <u>Cary v. Board of Appeals of Worcester</u>, 340 Mass. 748, 753 (1960).</p>
REQUEST	<ul style="list-style-type: none"> Finding per: <u>MGL 40A, Section 10:</u> <i>That a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise...</i>
PLOT PLAN	Plot Plan of 91 Depot Street, Dennisport MA prepared for Terrance Brennan by J.M O’Reilly & Associates Inc. 1573 Main Street, P.O. Box 1773 Brewster, MA 02631. Plan dated November 15, 2024. No Stamp.
BUILDING PLANS	Architectural Plans of 91 Depot Street, Unit #14, West Dennis MA, prepared for the Brennan Residence by McPhee Associates Inc. 1382 Route 134, P.O. Box 799, East Dennis, MA 02641-0799. Plan dated 2025-01-28. No stamp
OTHER	Proposed Floor and Elevation Plans
OLD DEC.	?

1.3.2 Plans and Specifications

REQUIREMENTS	PROVIDED ON PLAN
CERTIFIED PLOT PLAN INCLUDING	
LOCUS MAP	No
PERIMETER DIMENSIONS, INCLUDING FRONTAGE	Yes
AREA OF LOT	Yes
NAMES OF STREETS	Yes
NAMES OF ABUTTING PROPERTY OWNERS	No
DISTANCES EXISTING AND PROPOSED STRUCTURES TO PROPERTY LINES	Yes
PROPOSED ADDITONS/ALTERATIONS OF EXISTING BLDGS W/ SETBACKS	Yes
PROXIMITY OF WETLANDS	No
EXISTING AND PROPOSED TOPOGRAPHYAND/OR OTHER LAND ISSUES	No
DIMENSIONS OF EXISTING AND PROPOSED STRUCTURES	Yes

ARCHITECTURAL DRAWINGS ILLUSTRATING THE PROPOSED CONDITIONS	No
ARCHITECTURAL DRAWINGS ILLUSTRATING THE EXISTING CONDITIONS	No

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	100'	258	258
Front Setback	50'	24.9	21.2
Right Side Setback	50'	10	10
Left Side Setback	50'	9.8	9.8
Rear Setback	0'	0	0
Lot Area	560,000	17,096 sf	17,096 sf
Lot Width	150'	124'	124'
Non-conforming floor space within Setbacks	40 sf	5,231 sf	5,296 sf
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period	40	5,231	5,296
Cumulative footprint size of all structures	15	4,880 sf	4,880 sf
Cumulative lot coverage (footprint) percent for all	15%	28.5 %	28.5 %
Cumulative floor space of all structures (F.A.R.)	30		FAR no increase
Cumulative floor space to lot area % all structures	30%		

§ MGL 40A, Section 10: Variance

Variance Request based on:	FINDING
Soil conditions	No
Shape of the lot	No
Topography	No
Showing substantial hardship, financial or otherwise	

TOWN DEPARTMENTS COMMENTS:

• **PLANNING:**

- To add an exterior means of egress to a multi-unit residential building built in 1960.
- Virtually entire property is in setbacks. However, due to L-shape of building the proposal could be allowed by Special Permit if it were towards the east or west rather than south.
- Current building is 24.9' from Lower County Rd; proposed stairs would be 21.2' away thus requiring a variance.
- Stairs and landing are only 3.5' wide but would impact (somewhat) a parking space.
- Project is in Dennisport in the RR District. If it were in the DP Village District, the DP and WD Architectural Design Guidelines allow the Building Commissioner to approve fire escapes if they are in the rear or side yard and are minimum size necessary.
 - § 9.7.1.2. Architectural features, which do not add usable area to a structure, such as elevators, wheelchair ramps, and fire escapes (side and rear yard only), provided such architectural features are the minimum necessary to serve the purpose for which it is intended.
- There is a small side yard where the stairs could conceivably be placed due to existing balconies and patios extending into setback, but there are also a chimney and electric utilities.
- If allowed, new vegetative screening should be added.

- The Applicants primary case for a variance is that is it a safety measure.
- It is difficult to understand how a hardship for a variance is justified.
- Approval from the Condominium Association
- Proposal should be continued at this time until approval from Condominium Association is received and the plans are revised to the east or west or a stronger case for hardship is made.

- **NATURAL RESOURCES:** N/A

- **HEALTH:**

- **BUILDING:** The egress was not requested by Building, as stated.

- **ENGINEERING:**

- This project appears to result in a ground disturbance greater than 500sf. and is therefore required to meet the intent of the Stormwater By-Law. If the disturbance exceeds 20,000sf., a Stormwater Management Permit will be required.
- The contractor should be responsible for maintaining the Road free of accumulated sediment during construction. Inlet protection should be provided.
- Construction activities should be coordinated with the abutter.
- Provide construction period erosion controls to contain sediment and infiltrate runoff on-site.
- Consideration should be given to constructing vegetated swales between the proposed dwelling and the resource area/abutting property lines to contain and infiltrate runoff onsite.
- Disturbed areas should be stabilized and revegetated as soon as practical.
- Due to the size of overall site disturbance, the project should be phased.
- It appears that proposed extensions of the existing driveway along the south and west property lines may encroach on the 10ft. vegetated buffer required under 2.3.4.1.b.

POSSIBLE CONDITIONS IF APPROVED	<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. Failure to comply with all conditions in the Conservation Commission Order of Conditions shall be deemed cause to revoke the ZBA Special Permit. 5. 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. Additional screening should be provided in areas where vegetation is removed or the grade is altered. 6. The contractor shall be responsible for maintaining the road and common driveway in a condition free of accumulated sediment during construction and all appropriate drainage and erosion control measures as suggested by town engineering shall be implemented. 7. There shall be no exterior construction (including foundation work) or heavy equipment between the Friday before Memorial Day and the day after Labor Day. 8. Construction vehicles shall not park in or block the road.
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