



Town of Dennis

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**36 Depot Street**

**ZBA SPECIAL PERMIT STAFF REVIEW – May 15, 2025**

*NOTE: New information is printed in Bold Print.*

<b>APPLICANT:</b>	James Feeley c/o Jack Herndon of Senie & Associates, P.C.
<b>PROJECT ADDRESS:</b>	36 Depot Street Dennisport, MA 02639
<b>MAP AND LOT NUMBER:</b>	Map 40 Lot 89 (0.11 acres – 5,036 sf)
<b>APPLICANT ADDRESS:</b>	8 Sheehan Drive, Shrewsbury MA, 01545
<b>CASE NUMBER:</b>	SP-031200-2024
<b>ZONING:</b>	Resort Residential (RR)
<b>HEARING DATE:</b>	January 27, 2025; <i>Heard and Continued to March 20, 2025. March 20 continued with testimony to April 28, 2025. <b>4/28 continued with testimony to May 19, 2025.</b></i>
<b>Eligible</b>	J. Kyrimes, D. Chamberlain, G. Barber, E. Ridley, A. Ridley

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

<b>PROPOSAL</b>	Renovation of total house including walls, insulation, windows, siding, etc.
<b>PROJECT SUMMARY</b>	<ul style="list-style-type: none"> <li>• <b><i>At the April 28, 2025 cont'd public hearing, ZBA requested the approved Building Plans from 2024. These were reviewed with the Applicants attorney on May 8.</i></b></li> <li>• <b><i>The Applicant submitted revised Building Plans on Wednesday May 14 offering to resolve two of the three admitted violations to the approved 2024 Building Plans reviewed with the applicant's attorneys, Building Commissioner and Town Planner.</i></b> <ul style="list-style-type: none"> <li>○ <b><i>The dormer on the south was illegally extended app. 4' – to be resolved.</i></b></li> <li>○ <b><i>The second floor on the east was extended 1.5'-2' – to be resolved.</i></b></li> <li>○ <b><i>The approved 2024 plans show the south wall of the back building was supposed to be 13'9" wide from outside wall to outside wall, whereas the revised plans show 14'9" – not resolved.</i></b></li> </ul> </li> <li>• <b><i>Plans dated March 20, 2025 and sent April 24 were discussed at the April 28, 2025 meeting. However, it was pointed out at this meeting that the arrangement, with two parallel parking spots along the 10' Private Way", would be difficult for cars to maneuver. No new site plan has been submitted since April 28 Meeting.</i></b></li> <li>• <b><i>The Applicant also submitted an argument (on 5/14) that the property is no longer subject to the 30% rule per § 2.4.1.2.D.3 because, they claim, the 2020 Variance made it so that they are not a pre-existing non-conforming structure.</i></b></li> <li>• <b><i>This clearly was neither the intention of the Board or the fifth Condition of the Variance:</i></b></li> </ul>

	<p>5. <u>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.</u></p> <ul style="list-style-type: none"> <li>• <b>The Variance did not create a legally conforming lot, it created a “lawfully pre-existing non-conforming lot” because the land had no legal zoning status at all.</b></li> <li>• <b>After site visit April 23, it was apparent significant work was done on front house without any permits. Application and approval of all permits is conditioned herein.</b></li> <li>• Two single-family structures are on this extremely undersized non-conforming lot.</li> <li>• The property was granted a Variance with conditions on February 28, 2022.</li> <li>• Among other conditions the Variance allowed for some future alteration or addition within a specified Building Envelope and subject to Special Permit Review.</li> <li>• The Applicant received a Building Permit from the Town of Dennis on June 17, 2024.</li> <li>• Applicant began renovating Structure 2 and majority of the work is complete.</li> <li>• However, The Building Commissioner halted work when he discovered that what was being built was not what was approved.</li> <li>• Plans were 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.</li> <li>• Title V inspection performed in April passed under old regulations for 4-bedrooms.</li> </ul>
<b>REQUEST</b>	Finding per: <b>§ 2.4.1.2.B</b> - Actions Requiring a Finding that the proposal is NOT Substantially More Detrimental <b>(B.1)</b> 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>(B.2)</b> Increase in the lot coverage of a structure where the structure currently exceeds lot coverage; <b>(B.3)</b> 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;
<b>PLOT PLAN</b>	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. <b>Revised March 19, 2025.</b>
<b>BUILDING PLANS</b>	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.
<b>OTHER</b>	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%
<b>Revised Site Plan has FAR but old FAR of 37%</b>			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 with negative impact on the “Way” and along Depot Street have been somewhat mitigated with revised plan.**
- 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/safeguards.**
- e. Adequacy of provision of utilities and other necessary or desirable public services; **No increase in need.**
- 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. Revised plan mitigates as much as possible.**

**TOWN DEPARTMENTS COMMENTS:**

- **PLANNING:**

- Currently two single-family structures are on this 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”.
  - Variance 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 at 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.*
      - Plans were revised to get under the 30% F.A.R. threshold. The elevations are the same as but the 2<sup>nd</sup> story floor area was reduced by making half of 2<sup>nd</sup> floor “open to below”. **However, now the Applicant is arguing that the 30% rule per § 2.4.1.2.D.3 does not apply to them**
      - **Revised plans were received Thursday March 20, 2025, withdrawn and resubmitted April 23. Issues remain due to over-development of the site.**
        - **The 3 parking spots in front created without a Road Opening backing into a busy road have been removed.**
        - **Portions of the deck in front over the setback line to be removed.**
        - **New landscaping in front to replace what was removed and some within the required 10’ vegetated buffer has been added.**

- Revised parking shows one parking spot between the houses (1), one behind the back house (4) and two spots parallel to the private way (2 & 3). However, Engineering points out that getting in and out of parallel spots will be difficult.
- Plan shows area set aside for Emergency Vehicle Turning Access Easement. It is unclear how this would be kept clear but is a good gesture.
- The area between the houses could fit two parking spots, though it would be tight. Two spots could fit in the back and allow for easier access.
- Because the property is so densely developed, has a small septic approved under old regulations, and has limited and cramped parking, the Board should consider whether to add a condition that no Short-Term Rentals (STR) would be allowed on this property. STR tend to be used more intensely and ever-changing users of this difficult parking situation could cause problems.
- The resolution of the third Building violation of the back wall of the back house would require a major reconstruction. The Board might consider forgiving this violation if the Applicant
  - 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**: Based on a quick review of plans submitted April 24, 2025:
- Inherent difficulties with the parking:
  - Parallel spots difficult to maneuver and turn around.
  - If space 2 is used, how does the vehicle in space 1 get out?
  - Proposed parking doesn't provide the 10ft veg buffer strip. A variance may be required.
  - If this option is approved, the front improvement/parking should be completely removed and revegetated to provide a minimum 10ft. sideline buffer.
  - If a portion of the parking in the front remains, and requires backing onto Depot Street, this would require a variance for multi-family use.
  - This address of this property has not been formally changed to #34 Unit A and #34 Unit B. Engineering needs the owner's email and the phone numbers or emails of the properties in the back, to process the formal change process.
- 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.
- Parking above septic components must be 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. Shell driveway appears to be containing sediment on-site, so may be adequate to replace the stone construction entrance.
- 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 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 constructed after 2023. *Revised plan shows this to be removed.*
- A Road Opening Permit would normally be required for construction of any new parking.
- 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.
  - *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.*

<b>PROPOSED 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.</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 Board of Health Permit or Inspection Requirements shall be deemed cause to revoke the ZBA Special Permit and Certificate of Occupancy.</li> <li>5. No further work shall be commenced until the lot owners shall apply for and receive Building Permits for all work done on both houses.</li> <li>6. There shall be no Short-Term Rentals (Per Chapter 64G) allowed on this property.</li> <li>7. The 10-foot vegetated buffer along the southern property line shall be restored and maintained the entire length of the property line.</li> <li>8. The proposed Emergency Vehicle Turning Radius on the northeast corner of this property shall be maintained open to allow for access to the back lots.</li> <li>9. Any off-street parking shall be a pervious surface.</li> <li>10. All buildings shall have roof drains discharging to subsurface drywells or stone drip trenches.</li> <li>11. 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.</li> <li>12. Construction vehicles shall not park in or block Depot St. or the 10’ Private Way.</li> <li>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.</li> <li>14. A revised Site Plan shall be submitted showing two parking spaces between the houses and two in back, the Emergency Vehicle Turning Radius, removal of parking along Depot Street and sufficient planting, the restored 10-foot vegetative buffer along the southern property line, and buildings accurate to approved plans.</li> </ol>
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