



Town of Dennis

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14 JUDITH ANN ROAD, DENNIS

ZBA VARIANCE STAFF REVIEW – January 22, 2026

APPLICANT:	Steven Nally
PROJECT ADDRESS:	14 Judith Ann Road, Dennis MA 02638
MAP AND LOT NUMBER:	Map 324 Lot 9 (0.14 acres – 450sf (5998sf on plan))
APPLICANT ADDRESS:	14 Judith Ann Road, Dennis MA 02638
CASE NUMBER:	ZVAR-25-5
ZONING:	R-40; OK Historic
HEARING DATE:	December 22, 2025; Continued to January 26, 2026

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	Demolish an existing cottage and construct a 2.5 story single family home on a small lot.
STAFF PROJECT SUMMARY	- To demolish a 492-sf one-bedroom cottage built in 1945 on a 5,998-sf corner lot and build a 2.5 story 2,437-sf four-bedroom home with a full basement. - Due to the house being on a small corner lot, the front and left side setbacks are 25'. - The house fronts on Judith Ann Way (a 40' wide town road) with Rose Mary Lane (a 30' wide private road) on the left. Rose Mary Lane is a travelled way with a street sign. - The existing dwelling is conforming to the front and left 25' setbacks but not to the right setback. The proposal has about 42.6-sf of non-conforming area on the right side. - The proposed right side is conforming but does not conform to the 25' left setback. The Site Plan incorrectly lists the left setback as 15' and therefore does not calculate the increase in non-conforming area. - With a 25' setback on Rose Mary Lane on the left of the new house it encroaches into the setback by 5.72 feet. The house is 2.5 stories with a partially finished full basement; a portion of the loft space also crosses the 25' left setback. - The proposed house has approximately 462 sf encroaching not including the basement. Proposed house is 35.4 feet long with 5.72 feet crossing the 25' setback, $\{(35.4 \times 5.72) = 202.5 \text{ times two floors} = 405 \text{ sf. Plus the loft area of } 57\text{-sf}\}$. - The proposed non-conforming area on the left is 1,084% larger than the existing non-conforming area on the right based on the 25' left setback. - Several similar plans with different numbers in the Basic Data Summary changed. The existing lot coverage is 8.69%. On one plan the proposed lot coverage surpasses the 15% limit at 16.24% but another plan dated 8/27/25 lists the lot coverage at 14.62% - Floor Area is not calculated but would be over 40% F.A.R. - In any case, the applicant has not revised the plan for a Special Permit but is asking for a Variance.

MGL VARIANCE OVERVIEW	<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 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.</i> 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: a) within the zoning district in question, the soil limitations are attributable only to the parcel subject to the application; (See for example, <u>Brackett v. Board of Appeal of Building Department of City of Boston</u>, 311 Mass 52 (1942), where all the parcels, or many of the parcels within a zoning district are negatively affected by current zoning or natural conditions on real property, the court concluded many years ago that the appropriate action is a <u>rezoning, not parcel by parcel variances</u>); b) the soil limitation would affect anyone attempting to use the property as permitted by relevant regulations, <u>Id.</u> at 116; and c) testimony or other evidence supports the conclusion that the parcel is truly unique with respect to soil or geologic conditions (See <u>O'Brian v. Board of Appeals of Brockton</u>, 3 Mass. App.Ct. 728 (1975) where the court upheld the grant of a variance where the lower court judge found that the property would be "economically useless for development of a single-family residence under the terms of the zoning code" due in part to "adverse soil conditions". 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 <u>lacking sufficient area does not justify the grant of a variance</u> under this Required Finding. See for example, <u>Mitchell v. Board of Appeals of Revere</u>, 27 Mass. App. Ct. 1119 (1989), "...if the hardship arises solely from the fact that the lot is too small to qualify as a buildable lot under the zoning ordinance or to achieve exemption under the grandfather clauses applicable to lots created before zoning. In these circumstances section 10 give the Board of Appeal no authority to grant 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." <u>McCabe v. Zoning Board of Appeals of Arlington</u>, 10 Mass. App. Ct. 934, 934 (1980), c) "Variances are not normally available to remedy deficiencies in frontage and area." <u>DiCicco v. Berwick</u>, 27 Mass.App.Ct. 312, 314 (1989). 3) Circumstances relating to the Topography: Cases that have been decided on topographical constraints follow the same pattern as those discussed previously. 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. a) "The hardship in this case is not 'owing to the topography' of the land. The slope does not prevent the erection of a house. Rather the hardship arises solely from the fact that the lot is too small to qualify as a buildable lot under the zoning ordinance to achieve exemption under
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	the grandfather clauses applicable to the lots created before zoning". <u>Mitchell v. Board of Appeals of Revere</u>, 27 Mass.App.Ct. 1119, 1120 (1989). b) Cases where the Courts have upheld the grant of a variance due to topographical constraints provide clear links to a resulting hardship. c) "...the terrain and contour is such that construction on the locus requires locating the dwelling in a position as not to comply with the sideline requirements...the hardship did not arise from 'changes and commitments made by the ...defendant after purchasing the land with a zoning law limitation on its use..." <u>Crosby v. Board of Appeals of Weston</u>, (1975). REQUIRED FINDING #2 HARDSHIP: Massachusetts's courts have held that the "hardship" "...must relate to the premises for which the variance was sought". <u>Hurley v. Kolligian</u>, (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) <i>to the hardship that unique circumstances create</i>. 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". <u>Tsagronis v. Board of Appeals of Wareham</u>, 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." <u>Paulding v. Bruins</u>, 18 Mass. App.Ct. 707, 711, (1984) citing <u>Huntington v. Zoning Board of Appeals of Hadley</u>, 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. <u>Adams v. Brolly</u>, 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 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). 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." 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...We do not think, however, that it can be concluded that the specific hurt here found to at least five residential properties is not a substantial derogation of purpose. 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).
APPLICANT CASE FOR VARIANCE	• The lot area and width are smaller than the current requirement (5,998 sf vs. 40,000 sf). • The lot shape (rectangle) constrains additions.

	- Nearby lots have similar setback issues. - Strict enforcement of the setback would prohibit reasonable expansion. - The lot predates zoning and the lot size and setback constraints make it difficult for modern, accessible, year-round living.
REQUEST	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	Site Plan of 14 Judith Ann Road, Dennis prepared for Steven J. Nally by Paul E. Sweetser, P.O. Box 1146 Dennisport, MA 02639. Plan consisting of 1 sheet with existing and proposed conditions. Plan dated Nov. 11, 2022; Revised 10-03-25 by Paul E. Sweetser.
BUILDING PLANS	Plan of 14 Judith Ann Road, Dennis prepared for Julie & Steve Nally by Moore Home Design Company of Cape Cod, LLC; P.O. Box 2124, 949 Long Pond RD Brewster, MA. Plan consisting of 5 sheets with First & Second Floor Plan, Basement & Loft Floor Plan, Front & Right-side Elevation, and Rear & Left side Elevation. Plan dated 5-8-2025.

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	5,998 sf on plan
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	NA
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	Yes

Basic Site Data	Req./ Allowed	Existing	Proposed
Frontage	50'	60'	60'
Front Setback	25'	26.45'	25.64'
Right Side Setback	15'	12.63'-13.11	15.8'
Left Side Setback	25'/15' on plan	25.62'	19.28'
Rear Setback	25'	45.15'	33.88'
Lot Area	40,000 sf	5,998 sf	5,998 sf
Lot Width		60'	60'
Non-conforming floor space within Setbacks	25' left setback	42.6-sf on R	462 sf on L
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period			1,084 %

Cumulative footprint size of all structures		521 sf	974 sf
Cumulative lot coverage (footprint) percent	15%	8.69% on plan	16.24% on plan
Cumulative floor space of all structures (F.A.R.)			40 %

§ MGL 40A, Section 10: Variance

Variance Request based on:	FINDING
Soil conditions	
Shape of the lot	
Topography	
Showing substantial hardship, financial or otherwise	

TOWN DEPARTMENTS COMMENTS:

• **PLANNING:**

- The Applicant has not made a legitimate case for a hardship based on MGL 40A, Section 10 for *soil conditions, shape, or topography and a Hardship* to grant a variance.
- Rather than a hardship based on soil conditions or shape they cite nearby non-conformities and re-interpret Footnote 3 of the Intensity of Use Schedule.
- As noted, the small corner lot is constrained by Rose Mary Lane which makes the left side setback 25' instead of 15'. The existing dwelling is conforming to front and left 25' setbacks, but encroaches 2'-3' on the right with about 42.6-sf of non-conforming area on the right side.
- The existing small house encroaches into the right setback an average of 2.13 feet and is conforming on the left to the 25-foot setback.
- The proposed house encroaches 5.72 feet into the left 25' setback and conforming on right.
- The proposed house has approximately 462-sf encroaching into the left setback (not including basement). Proposed house is 35.4 feet long with 5.72 feet crossing the 25' setback, $\{(35.4 \times 5.72) = 202.5\}$. 202.5 times two floors = 405 sf. Plus the loft area in setback of 57-sf.
- The proposed non-conforming area on the left (462 sf) is 1,084% larger than the existing non-conforming area on the right (42.6-sf), far exceeding 40%.
- The Applicant could expand by Special Permit without a variance. They would have to abide by the 25' left setback (due to Rose Mary Lane) and maintain the existing 2' +/- encroachment on the right side. The applicant could build a larger house by building an approximately 22' wide by 40' long house within the existing setbacks and under 15% lot coverage. They would only be able to add approximately 17-sf of non-conforming area for a total of 60 sf of non-conforming area.
- The notion of being able to "swap" the non-conforming setback from one side to the other is new to the Planner. In any case, even if that were allowed, the new building cannot increase the non-conforming setback and needs to stay under 40% increased non-conforming area.
- The floor plans show a 2.5 story house but the massing of the Gambrell appears as a 3-story house. Floor Area is not calculated but would be over 40% F.A.R. The plan should be revised to be under 30% F.A.R. on this tiny lot where the applicant seeks a variance and a house five times the size of the existing cottage.
- Applicant should check whether they can get the flow for a four-bedroom septic on this lot.
- Existing cottage nothing special but over 75 years old is subject to Demolition Delay (§61-3).
- 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 existing lot coverage is 8.69% with the proposed lot coverage on a plan dated stamped October 29 stating 14.6%. However, plans stamped October 3 are the exact same with only change being lot coverage calculation surpassing the 15% limit at 16.24%. Presumably the calculating for the “pergola” on the front of the house was removed. Multiple plans submitted has added confusion.
- Once revised the site plans should include full, accurate and consistent site data and dimensions. Due to the size of the site and proposed parking should be pervious and on plan.
- On January 15, 2026 the applicant and his attorney met with the Building Commissioner and Town Planner. The applicant’s attorney tried to make the case that footnote 3 to Intensity of Use Schedule (2.3.2) allows the reconstructed house to use the average of the two abutting lots. It is the understanding of the Building Commissioner and Town Planner that Footnote 3 only applies to empty buildable lots, not lots with existing houses. Nor does it allow for new non-conformities as are proposed in this case. If Footnote 3 were re-imagined as applying to all lots, including those with existing structures, it could change virtually every ZBA Special Permit review.
 - **2.3.2 Footnote 3: *Where a lot is abutted at its street frontage by two (2) lots, each with existing buildings, the front yard setback requirement shall be determined by computing the numerical average of the existing front yard setbacks of those two abutting lots...***
- The Applicant should withdraw without prejudice and then revise the proposal to be able to be approved as a Special Permit.
- ***Otherwise the Variance should be denied.***
- **NATURAL RESOURCES:** Not in Conservation jurisdiction.
- **HEALTH:** Complete septic application will be required for upgrade of existing system.
- **BUILDING:** Referral dated November 4, 2025 *“Current proposed setbacks will require a Variance. Should the proposed plan be amended to make the side (right) setback minimum 15 feet the single pre-existing non conformity can be swapped to the Rosemary front setback but must maintain a minimum 22.63-foot setback and maximum 14.99% coverage”*.
- **ENGINEERING:**
 - The project as presented has the potential to alter greater than 500sf of ground, and is therefore required to meet the intent of the Town of Dennis Stormwater By-Law.
 - Construction period linear erosion and sedimentation controls should be provided at a clearly defined limit of work as close as practical to contain the area of disturbance.
 - No proposed grading or new top of foundation elevation has been indicated on the plan. If any sitework will be conducted, and surface elevations adjusted as part of the project, stormwater will need to be contained and infiltrated on-site.
 - All roof drainage shall be contained by gutters and downspouts and directed to separate subsurface infiltration areas, or discharged to stone drip trenches along the roof drip line.
 - Any existing screening to abutting properties should be maintained to the extents practical.
 - If any new driveway is proposed with access off Judith Ann Road, a Road Opening Permit will be required. Plans showing the new driveway location in compliance with the 10ft. vegetated sideline buffer setback, as well as any proposed grading to prevent off-site discharge of runoff to the Town Road or abutting properties will need to be included with the ROTP application.
 - The existing driveway should be utilized for parking of construction vehicles and storage of materials. No parking of construction vehicles should be permitted for extended periods.
 - Contractor shall be responsible for maintaining Judith Ann Road (Town Paved) free of sediment during construction and Rose Mary Lane (Private) to pre-construction conditions.

- **Planning Recommendation:**

- The Applicant should withdraw without prejudice and then revise the proposal to be able to be approved as a Special Permit. ***Otherwise, the Variance should be denied.***

POSSIBLE CONDITIONS IF APPROVED	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 Board of Health Permit 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. 6. Additional screening should be provided in areas where vegetation is removed or the grade is altered. 7. Any off-street parking shall be a pervious surface. 8. Construction vehicles shall not park in or block the road. 9. The contractor shall be responsible for maintaining the roads 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. 10. There shall be no exterior construction (including foundation work) or heavy equipment between the Friday before July 4 and the day after Labor Day or on legal holidays. 11. A Road Opening permit will be required for construction of the new driveway before a Building Permit is issued. 12. Complete septic application and Board of Health approval is required before a Building Permit is issued. 13. The proposed demolition must be referred to the Historic Commission per the Demolition Delay General Bylaw (§61-3).
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