



Town of Dennis

685 Route 134, South Dennis, MA 02660 / Telephone: 508-394-8300 Fax: 508-394-8309

**61 TAUNTON AVENUE**

**ZBA VARIANCE STAFF REVIEW – February 19, 2026**

|                            |  |
|----------------------------|--|
| <b>APPLICANT:</b>          | Myles J Calvey ET UX C/O Paul R Tardif of Tardif Law               |
| <b>PROJECT ADDRESS:</b>    | 61 Taunton Avenue, Dennis MA 02638                                 |
| <b>MAP AND LOT NUMBER:</b> | 345-61   |
| <b>APPLICANT ADDRESS:</b>  | 490 Main Street, Yarmouth Port, MA 02675                           |
| <b>CASE NUMBER:</b>        | ZVAR-26-1  |
| <b>ZONING:</b>             | R-40   |
| <b>HEARING DATE:</b>       | Applied & approved for a Special Permit in 2023; February 23, 2026 |

|                     |   |
|---------------------|---|
| <b>PROPOSAL</b>     | Variance to allow walkway and patio within 10 feet of boundary  |
| <b>MGL Variance</b> | <p><b><u>MGL 40A, Section 10:</u></b> <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 <b>soil conditions, shape, or topography</b> of such land or structures and especially affecting such land or structures <u>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.</u></i></p> <p><b>REQUIRED FINDING #1 SOIL, SHAPE OR TOPOGRAPHY OR STRUCTURE:</b></p> <ol style="list-style-type: none"> <li>1) <b>Circumstances relating to the Soil Conditions:</b> 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:             <ol style="list-style-type: none"> <li>a) within the zoning district in question, the soil limitations are particular to the parcel subject to the application;</li> <li>b) the soil limitation would affect anyone attempting to use the property as permitted by relevant regulations, Id. (Brackett) at 116; <b>and</b></li> <li>c) testimony or other evidence supports the conclusion that the parcel is truly unique with respect to soil or geologic conditions.</li> </ol> </li> <li>2) <b>Circumstances relating to the Shape:</b> A significantly unusual or unique shape that, for example, prevents siting a conforming building, and that is the cause of the hardship, may form the basis of a variance.</li> <li>3) <b>Circumstances relating to the Topography:</b> Cases that have been decided on topographical constraints follow the same pattern as those discussed previously.</li> <li>4) <b>Circumstance relating to Structure:</b> “Unusual existing buildings that are structurally sound, have remaining value, and are not well suited to conforming uses have also</li> </ol> |

|   |  |
|---|--|
|   | <p>been found sufficient, apart from all other considerations, to establish the uniqueness of the lot in question.” (Zone MA-CLE 9-1).</p> <p><b>REQUIRED FINDING #2 HARDSHIP:</b> 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).</p> <p>a) In addition, the "hardship" must be linked, or be caused by, the lands or structure’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.</p> <p>b) The statute requires that the Board of Appeals connect the unique circumstances of the lot (e.g. its soil conditions, shape or topography) <i>to the hardship that unique circumstances create</i>.</p> <p>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".</p> <p>d) "...any other considerations unrelated to the underlying real estate are irrelevant to the board’s inquiry into the question of substantial hardship...</p> <p>e) One oft-repeated situation is where the petitioner has created the hardship from which they now need relief.</p> <p><b>REQUIRED FINDING # 3 PUBLIC GOOD:</b> 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..."</p> |
| <p><b>APPLICANT PROJECT SUMMARY</b></p> | <ul style="list-style-type: none"> <li>• For a paved walkway and patio to remain within 10 feet of side boundary</li> <li>• The existing structure is 4 feet from the easterly side boundary. Prior house was 2’.</li> <li>• Prior one-story, two-br dwelling built in app. 1925, with a cement block barn located in the rear located within 50 feet of the coastal bank. The relief allowed for the razing and replacing of both the house and bank with the new 2 story home.</li> <li>• Construction resulted in a steeper slope in the rear. To address this issue, the applicant's contractor installed a retaining wall along the common boundary to provide lateral support and level the area around the new house.</li> <li>• Applicant claim for Variance is based on narrowness of lot and proximity to property line which required retaining wall and paving. Claims retaining wall was necessary to protect financial investment of new structure. Cost for removal of wall would be prohibitive, in addition to the danger that their abutter's lateral support would be compromised. Claims 2023 SP was tacit prior approval of what is now requested.</li> </ul>   |
| <p><b>REQUEST</b></p>                   | <ul style="list-style-type: none"> <li>• Finding per: <b><u>MGL 40A, Section 10:</u></b> <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 <b>soil conditions, shape, or topography</b> of such land or structures and especially affecting such land or structures <b>but not affecting generally the zoning district</b> 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></li> </ul>  |
| <p><b>PLOT PLAN</b></p>                 | <p>Site Plan of 61 Taunton Ave, Dennis MA, prepared for Myles &amp; Janet Calvey by J.M. O’Reilly &amp; Associates, Inc., 1573 Main Street, P.O. Box 1773 Brewster, MA 02631. Plan</p>   |

|                 |   |
|-----------------|---|
|                 | consisting of 2 Sheets with As-Built Patio with Proposed Alterations & Plantings and Existing Conditions Plan. Plan Dated 3-10-2023, stamped by John M. O'Reilly. (2023 SP) |
| <b>OLD DEC.</b> | Special Permit (2023-09-25) Raze single-family dwelling & replace w/ a larger dwelling  |

§ MGL 40A, Section 10: Variance

|  |         |
|--|---------|
| <b>Variance Request based on:</b>                    | FINDING |
| Soil conditions                                      |         |
| Shape of the lot                                     |         |
| Topography   |         |
| Showing substantial hardship, financial or otherwise |         |

**TOWN DEPARTMENTS COMMENTS:**

- **PLANNING:**
  - Recommend a Board Site Visit. Pictures do not seem to indicate a severely steep slope.
  - 2023 SP approved plans do not indicate large amounts of impervious surfaces as indicated on aerial images or anything at all on side of house. Plans show a small deck on the back, not a massive hardscaping of what appears to be much of the useable tiny, narrow lot.
  - Claim that 2023 ZBA SP was tacit approval is questionable. Board simply approved a less non-conforming building than the previous house which somehow existed closer to the property line without a retaining wall. If proximity to property line and steep slope was an issue, new house should have been centered on the lot.
  - Perhaps the Board should consider requiring landscape plans for all ZBA submissions.
- **NATURAL RESOURCES:** An Amended Order of Conditions was issued in December of 2025 allowing the walkway and portion of the patio outside of the 50' buffer zone to remain but anything within the 50' buffer zone to be removed and mitigation plantings are to be installed on the southern end of the property.
- **HEALTH:** No Comment
- **Building:** Per § 2.3.4.1.b “An area not less than ten (10) feet in width measured from and perpendicular to the lot line around the perimeter of the lot shall be landscaped with grass, trees, shrubs or other plants. Portions of this area may be paved for pedestrian and vehicular access but at no time shall the pedestrian and/or vehicular access be located within 10 feet of the side property lines...”. Applicant installed a brick walkway in narrow strip between house and property line. Keeping walkway requires a variance. Owner may wish to consider a permeable grass infill paver as is used at the Ocean Edge in Brewster parking area.
- **ENGINEERING:**
  - No comment as to if variance should be approved. However, agree with Building Dept determination that improvements appear to result in loss of an existing vegetated perimeter consistent with 2.3.4.1.b., even if the pre-existing dwelling is located less than 10ft. to the property line.