

Memorandum

Re: Application for Variance
Property Address: 18 Highland Road
Owner/Applicant: John F. Keating, Jr.

The petitioner, John F. Keating, Jr., has filed an application with the Zoning Board of Appeals to grant him a special permit and/or variances as required by the Zoning Bylaw to convert an existing structure at 18 Highland Road to a new use as a 2nd principal residential structure.

Mr. Keating has owned the property 18 Highland Road, originally built in 1914 consisting of a 3-family residence, since purchasing the property from his father, John F. Keating, Sr., in 1986. Mr. Keating now lives on the 3rd floor of the property with his wife and 2 adult children, ages 22 and 21. The apartments on the 1st and 2nd floors of the main house are rented to year-round tenants. The lot at 18 Highland Road contains 15,190 sq. ft.

There has also been located in the rear of the property since Mr. Keating purchased it a 2nd structure which was apparently built about the same time as the house. When Mr. Keating purchased the house in 1986, the 2nd structure had contained 800 sq. ft. and 4 bays. Mr. Keating does not know what the original use of the 2nd structure was. In 2003, Mr. Keating applied to the building inspector for permission to convert the 800 sq. ft. building to a 4th living unit on the premises which would be located entirely within the existing structure. In 2003 the property was located in what was then identified as Zoning District MR-30 which at the time required 30,000 sq. ft. of area and 150 ft. of frontage for the construction of even 1 single-family residence to be built on the property. Because of the requirements of Zoning District MR-30 in force at the time, the building inspector denied Mr. Keating's application to construct the 4th residential unit on the parcel within the existing structure. However, the Building Department did allow Mr. Keating to convert half of the structure to a recreation room and allowed Mr. Keating to install a bathroom containing a sink, toilet, and bathtub in the structure. At that time, the structure was also connected to Wareham town sewer and electric service was brought to the building. Although the 2nd structure is connected to town sewer and to the electrical grid, due to the limitations on the use of the building, it has fallen into disuse and is now used only as storage space.

In 2004, the zoning designation for 18 Highland Road was changed from MR-30 to Wareham Village 2. The Table of Principal Uses, Section 320, states that 3- to 4-family dwelling use is permitted in existing structures upon issuance of a special permit by the Zoning Board of Appeals.

Article 6 of the Zoning Bylaw provides that the first dwelling unit in WV-2 requires 15,000 sq. ft. and each additional dwelling unit requires an additional 2,000 sq. ft. Therefore, under the dimensional requirements of the Zoning Bylaw, 21,000 sq. ft. is required to

increase the number of dwelling units on the parcel from 3 to 4 units.

Mr. Keating is not requesting permission to expand the size or height of the existing structure. Mr. Keating's sole request is to convert the existing structure to residential use, which use appears to be now consistent with the current intent of the Zoning Bylaw.

M.G.L. Ch. 40A, Sec. 10, sets forth the 4 requirements that an applicant needs to fulfill before the Zoning Board of Appeals has the authority to grant a variance. The 4 requirements set forth in Sec. 10 (attached hereto) require the applicant to establish the following:

1. That there are circumstances relating to the applicant's land or structures that affect such land or structures specifically that do not affect generally the zoning district in which it is located.

At the original hearing, the applicant presented evidence to show that the lot currently has situated on it a 3-family residence and a separate 800 sq. ft. structure that originally was constructed with 4 bays which was previously modified after a building permit issued in 2003. By permit, the building inspector authorized the applicant to convert 400 sq. ft. of the structure for use as a recreation room containing a toilet, sink, and bathtub. The structure is connected to municipal sewerage. The structure was constructed prior to the applicant's obtaining title to the premises in 1985 and appears to have been built in 1914 and is assessed by the Town of Wareham for \$15,100.00. As a result of changes that have occurred over the years, the building has fallen into disuse and is now used for storage. The structure has a poured concrete foundation and is structurally sound. The existence of the 800 sq. ft. structure on the lot and the substantial construction of the lot with its characteristics including a complete bathroom and a connection to the municipal sewer system and its connection to the electric grid are circumstances which are specific to this lot which do not affect generally other lots in the zoning district. As a result, the petitioner's application meets requirement No. 1 of Sec. 10.

2. A literal enforcement of the provisions of the Bylaw would involve financial hardship, financial or otherwise, to the petitioner.

Neither Ch. 40A, Sec. 10, nor the Wareham Zoning Bylaw provide a definition for the hardship that the applicant is required to show that he will suffer if he is unable to proceed with the renovation of or construction on his property as described in his application. In our general lives, depending upon our personal and financial circumstances, what one person believes is a hardship may not appear to another person to be a hardship. In the realm of property use as encompassed by Ch. 40A, Sec. 10, hardship means something different than in the realm of determining whether someone has suffered a hardship and is, therefore, is entitled to a benefit or assistance caused by a physical disability or a shortage of financial resources which qualifies in that instance as a hardship.

One description of "hardship" as it relates to real property is an inability to reasonable use of one's property. For example, if a zoning ordinance makes it impossible to construct a building on a vacant lot, an owner may have grounds for arguing hardship. The hardship must relate to the property itself. For example, limitation on the size of a home that may be built on a property could cause some personal hardship to an owner who may need additional bedrooms for a growing family. This, however, is not likely sufficient grounds for a variance as a hardship must be based on a unique or special condition of the property itself. In this case, the property at 18 Highland Road has a substantial 800 sq. ft. building located on the lot which is currently being used for storage. The applicant wants to put the building to some reasonable and economically viable use. The condition and size of the building itself, with plumbing and electric already installed and with a substantial structure and new roof, would allow the applicant to renovate the interior of the building to a residential unit at very reasonable cost. The creation of 1 new residential unit would allow the applicant to obtain rent for the unit. It will also allow the Town to gain another housing unit without building another structure in town. The applicant is not seeking to demolish an exiting building and replace it with a new larger building. Instead Mr. Keating is asking permission to re-purpose an older building that has fallen into disuse. If he is not able to put the building to a reasonably economically viable use, he will be deprived of the ability to either have members of his family reside in the new unit, or he will be deprived of the rent which he could derive from the rental of the residential unit to people needing a place to live.

What the applicant is asking for permission to do is similar to what has been done with other structures for a variety of reasons. In the early 20th century, carriage houses and barns were re-purposed when people stopped having horse-drawn carriages and animals on their property. It has been part of our culture to have people purchase and improve real estate in a reasonable manner consistent with the ever-evolving culture. Mr. Keating would like to renovate his existing building and improve his property, but he needs to do so in an economically viable manner. If he is prevented from improving his property in an economically viable manner consistent with changes in the neighborhood, it will cause him a financial hardship. These circumstances demonstrate that if he is denied the ability to improve his property in the reasonable manner he proposes, he will incur a substantial hardship which is encompassed in the 2nd requirement of Sec. 10.

3. That desired relief may be granted without substantial detriment to the public good.

The proposed renovation of the 800 sq. ft. structure will create 1 additional unit of housing. The stated goal of the recent study for the downtown Wareham area is to increase the availability of housing in and near Main Street. The project will involve re-purposing an existing building that the Town values at \$15,100.00. If the building cannot be put to an economically viable use and if it remains a storage facility, it will likely fall into disrepair and will likely eventually be demolished. The applicant wants

to re-purpose the building which would seem to be the ultimate act of recycling which is clearly considered to be in the public good. No neighbors appeared in opposition to the project in spite of notice having been given to all abutters. The applicant's property adjacent to the structure to be improved will most likely be also visually improved. The building will not be enlarged. No one's view will be impaired. No trees will be removed. The addition of 1 additional unit of housing in the existing building will not constitute a substantial detriment to the public good.

4. Without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw.

The 10 purposes of the Zoning Bylaw are listed in Sec. 130 of the bylaw attached hereto. The applicant's petition seems to comply with all of the 10 purposes, but in particular his proposed request to create 1 additional unit of housing in an existing building located in close proximity to Main Street seems to particularly comply with and advance purposes No. 6, 7, 8, and 9.

The applicant maintains that for the reasons set forth above, his application establishes all 4 requirements of M.G.L. Ch. 40A, Sec. 10, and requests that the Zoning Board of Appeals exercises its discretion and grant the variance and any special permits required for the applicant to be allowed to proceed with the renovation of the 800 sq. ft. structure referred to above.

Respectfully submitted,

John F. Keating, Jr.,
By his attorney,

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Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter ZONING

40A

Section 10 VARIANCES

Section 10. 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 ^①owing 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, ^②a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, ^③and that desirable relief may be granted without substantial detriment to the public good and ^④without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not

otherwise permitted in the district in which the land or structure is located; provided however, that such variances properly granted prior to January first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.

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ZONING OR PROTECTIVE BY-LAWS
TOWN OF
WAREHAM
MASSACHUSETTS

ARTICLE 1:
General Provisions

110 TITLE

This By-Law shall be known and may be cited as the "Zoning By-Law of the Town of Wareham, Massachusetts": hereinafter referred to as the "By-Law".

120 AUTHORITY

This By-Law is adopted pursuant to Authority granted by Chapter 40A of the General Laws of the Commonwealth of Massachusetts (MGL) and amendments thereto, herein called the "Zoning Act."

130 PURPOSE

This By-Law is enacted for the following purposes:

1. To lessen congestion in the streets; to conserve health;
2. To secure safety from fire, flood, panic and other dangers;
3. To provide adequate light and air;
4. To prevent overcrowding of land;
5. To avoid undue concentration of population;
6. To encourage housing for persons of all income levels;
7. To facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
8. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;
9. To encourage the most appropriate use of land throughout the Town, including consideration of the recommendations of the comprehensive plans of the Planning Board and the Regional Planning Agency; and,
10. To preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

140 APPLICABILITY

141 OTHER LAWS

This By-Law shall not interfere with or annul any By-Laws, rules or regulations, or permit, except that, where this By-Law imposes a greater restriction upon the use of buildings, structures, or premises than is imposed by existing provisions of law or by-Laws, this By-Law shall control.

142 CONFORMANCE

Construction or operations under a building permit or Special Permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of six (6) months after the issuance of the permit, and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

150 SERVERABILITY

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof.