
THE LAW OFFICES OF BELLO & MORTON LAW LLC

184 Main Street Wareham, Massachusetts 02571 · 508-295-2522

November 8, 2023

Wareham Zoning Board of Appeals

Memorial Town Hall

54 Marion Road

Wareham, MA 02571

*Re: Memorandum in Support of Granting of Special Permit Site Plan Review and
Variance for Petition # 21-23 for a Variance/Site Plan Review for 386 Main Street
Wareham MA 02571.*

Dear Board,

We wanted to supply additional information to the Board for its consideration in granting the Variance and Special Permit for Site Plan Review. My aim is to address the following:

- Standard for Approval of the Use Variance for 10 units use which includes the existing 4 family building as well as three separate duplexes.
- Evidence proving the Applicant's documentation to improve the existing driveway (right of way) and history of the property.

1. Standard for Approval of the Use Variance for 10 units use which includes the existing 4 family building as well as three separate duplexes.

Variance requirements under our bylaw:

1470 VARIANCES The Board of Appeals shall have the power to hear and decide applications for Variances from the provisions of the Zoning By-Laws, including the power to grant a Variance authorizing a Use or activity not otherwise permitted in the district in which the land or structure is located. A Variance may be granted when factors relating to soil conditions, lot shape, or topography of such land creates an impracticality or limits the location or positioning of a new structure or addition on a site or location that previously conformed to zoning requirements. An applicant must demonstrate that a literal enforcement of the Bylaw 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.

1471 USE VARIANCES The Board of Appeals is specifically empowered to grant Variances from the restrictions imposed by this By-Law as to use.

Here we have a Use Variance whereas per the use tables the Petitioner could have used the existing multi- family to add additional 10 units if all connected for Special Permit. The Petitioner has continually told the board that the nature of the neighborhood supports separate structures very much like other buildings around the area.

Throughout the Zoning Board process the Petitioner has paired the project down now to 3 duplex separate units- for a total of ten units on the site. It is important to note that initial prior to my client purchasing this property at Auction there were 3 units on the first floor, 2 units on the second and one more unit on the top floor. The property was a 6 unit boarding house and a became a blight to the community.

The topography and lot location warrants the need for the Variance. The lot itself has frontage on busy Main Street but access from High Street. The steep elevation from Main Street up creates an extremely difficult terrain for any sort of access from Main Street. Due to the terrain the access point from High Street is much more reasonable.

Literal enforcement of the Wareham By-Law would create a substantial hardship to the Petitioner who has purchased this antique home in hopes of restoration and improvement for the Town. Financially, the Petitioner has spent already tens of thousands of dollars in engineering research etc. to explore all options on site here: access from High Street, access from Main Street, redoing the plans reducing units and has worked very well with the Town here.

The desired relief may be granted “without substantial detriment to the public good.” Interestingly enough our By-Law is clear it is “to the public good” not just the two immediate abutters- this build would provide necessary housing for Wareham residents in a clean and thoughtful way. The fact that the immediate abutters may oppose a project is not reasonable grounds for not approving it. In fact during the process the opposing abutters were okay with the project if the access was off of Main Street not High Street. The opposition had no issue with the density on site when access was on Main Street. But the Petitioner thoroughly explored that access which the Fire Department had issue with, as well as several other ZBA members had serious concerns with because of the excessive traffic Main Street and the CVS plaza for vehicles and pedestrians alike.

Lastly the proposed Variance does not substantially derogate from the purpose of the By-Law. Our property is in the WV-2 district: Wareham Village 2 (WV2): The WV2 district is intended to promote moderate density residential development and compatible business uses outside the center of Wareham Village It is clearly an objective of the by law to encourage housing for all income levels, and encourage appropriate use of land. Our proposed build does not nullify the by laws intent.

2. Evidence proving the Applicant’s documentation to improve the existing driveway (right of way) and history of the property.

Attached for transparency is the title abstract from my title examiner of the T shaped section in question:

- 1/3 is currently in the Estate of Ed Love
- 1/3 is owned by the Raymond and Patricia Robinson
- 1/3 is owned by the Emma Louise Reed 2010 Irrevocable Trust

The first 1/3 which is currently of title to the Estate of Ed Love should have been conveyed to our locus in the back title. It is on us to clean up the title to property and have it conveyed accordingly.

Our parcel: 386-388 Main Street has the following language:

“TOGETHER with the use in common with others having a like right of twenty (20) foot right of way leading from High Street into the Bump Homestead, so called, and to its various subdivisions

The specific language in the abutters deeds are as follows:

“Also, one undivided one third part of the land in Wareham, Plymouth County, Massachusetts, being a “T” shaped parcel of land known as Bump Homestead and its various subdivisions...”

That being said the ownership is not the issue here but evidence of our right to improve the right of way by paving etc. I pulled together the information and case law for the Board to review:

I. The proposed Petition does not frustrate the purpose of the Right of Way.

Unless expressly denied by the terms of an easement, the owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement, at the servient owner's expense, to permit normal use or development of the servient estate, but only if the changes do not do the following:

1. Significantly lessen the utility of the easement;
2. Increase the burden on the owner of the easement in its use and enjoyment; or
3. Frustrate the purpose for which the easement was created.

Martin v. Simmons Props., LLC, 467 Mass. 1, 2 N.E.3d 885 (2014) (in a case involving registered land, the dimensions of such an easement, defined by reference to a Land Court plan, may be modified by the servient land holder so long as the purposes for which the easement was created are not frustrated, and the utility of the easement is not lessened).

II. The proposed Petition does not overburden the right of way.

To overburden an easement is to use the easement for a purpose different from that intended in the creation of the easement; to overload an easement means to use an easement appurtenant to serve land other than the land to which it is appurtenant. **Southwick v. Planning Bd. of Plymouth, 65 Mass. App. Ct. 315, 319 n. 12, 839 N.E.2d 351, 354, n. 12 (2005)**

When an easement is created by grant and the grant's terms do not limit the easement's scope, the easement can be used for the reasonable uses to which the dominant estate may be

devoted. See *Town of Bedford v. Cerasuolo*, 62 Mass. App. Ct. 73, 82, 818 N.E.2d 561, 569 (2004). Thus, an easement granted in general and unrestricted terms is not limited to the uses made of the dominant estate when the easement was created but is available for the reasonable uses to which the dominant estate may be devoted. See *Kubic v. Audette*, 102 Mass. App. Ct. 228, 231, 203 N.E.3d 1181, 1185 (2023).

In this regard, the Supreme Judicial Court has adopted the following: that the person who holds the land burdened by a servitude is entitled to make all uses of the land that are not prohibited by the servitude and that do not interfere unreasonably with the uses authorized by the easement or profit. *M.P.M. Builders, L.L.C. v. Dwyer*, 442 Mass. 87, 91-94, 809 N.E.2d 1053, 1057-1059 (2004)

All this considered please understand it is our position that the Board of Appeals can grant this Petition as it does not detrimental harm to the neighborhood and meets the Variance threshold for units due to the unique nature of the lot.

Please direct any and all questions to my attention.

Very Truly Yours,


Jilian A. Morton, Esq.

Report

Title No.....

Sheet No. /

Owner *See Below*

Description *Lot 1028 MAP 61 High St Wareham,
Ply. City, Ma*

Said Estate subject to

1. Mortgage to *NONE*

2. Restrictions or Conditions

3. Easements *Wareham Fire District 2203/392 (45)*

4. Bankruptcy *indexes are not complete*

5. Attachments

6. Decl. of Homestead *13914/305 (30), 25821/339 (39)*

7. Tax Liens *Town of Wareham 29-35/48 (42)*

8. Tax Titles

9. Water Liens

10. Legacies & Inheritance Tax

11. Plans *3325/48, MAP 61 (51-52)*

Said Estate entitled to

1. Passageway Rights *I believe all Adj. Parcels have rights*

2. Party Wall Rights

Remarks: *PD & E index is unreliable
See chain of Title (2)*

owners: *1/3 Albert E. Love & Edison M. Love T/C
1/3 Raymond & Patricia Robinson T/E
1/3 Emma L. Reed & Robert A. Junior Trustees
of Emma Louisa Reed 2010 Tr. Trust &
Robert A. Reed, Jr. individually, Patricia L. Nelson,
Debra Bacciochi & Michael Reed T/S*

My examination ends

7/3/23

Oliver T. [Signature]

EXAMINER

Chain of Title

1/3
 Albert E. Love
 Edison M. Love T/C
 ↓
 Ren to date
 No Deeds
 No probates
 —
 Insure they
 are dead

2093/42
 1/3
 Francis J. Butler
 Ann K. Butler T/E
 ↓

1/3
 Norma
 Fraser
 ↓
 13914/303
 Norma
 Fraser
 Life est
 with power
 to sell
 ↓

2668/499
 LB
 2698/330
 Richard & Stella
 Cristofori T/E
 ↓
 5934/133
 Death
 cert

8840/99
 Douglas Henshaw
 ↓
 Probate 90P 1104
 ↓
 Douglas Henshaw, Jr
 ↓
 25821/228
 Raymond Robinson
 Patricia Robinson T/E

21665/145
 Norma Life Est
 Remainder to
 Emma L. Reed
 Patricia L. Nelson
 Debora Bacciochi
 Michael A. Reed
 Robert A. Reed, Jr

38868/173
 Death cert
 Norma

39090/197
 Emma Louise Reed
 2010 Irrevocable Trust