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**PLANNING BOARD**  
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NORFOLK, MASSACHUSETTS 02056

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TEL: (508) 528-2961  
FAX: (508) 541-3300

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## SPECIAL PERMIT APPLICATION

### DECISION NO. 2020-01

Date Voted: July 14, 2020

Applicant/Owner: John and Nancy Nolan  
23 Fairfield Circle  
Norwood, MA 02062

Designer: Gallagher Engineering  
4 Windsor Drive  
Norwood, MA 02035

Plan Dated: May 18, 2020

Location of Property: 75 Cleveland Street

Assessor's Reference: Map 16, Block 34, Lots 141-1

Zoning District: R-3

### BACKGROUND

In accordance with Section 9 of Chapter 40A of the Massachusetts General Laws, as amended, and Section E.2.h, Estate Lots, of the Norfolk Zoning Bylaws, a special permit for to allow construction of a single-family dwelling on a lot in a residential district lacking the minimum frontage of the district was requested by the applicant in an application dated May 19, 2020, received by the Planning Board on May 19, 2020.

A transmittal memo from the Planning Board soliciting comments on the application was sent with the application and plan to the Board of Health, Conservation Commission, Board of Public Works, Building Department, Fire Chief and Police Chief. The notice solicited comments and noted that the public hearing was scheduled on June 16, 2020.

Notices of the public hearing were published in the Attleboro Sun Chronicle on June 2, 2020 and June 9, 2020. The Planning Board convened the hearing on June 16, 2020 and closed it on that date.

The applicant proposes to allow construction of a single-family dwelling on this 590,238 square foot lot. The Estate Lot has 75.28 feet of frontage on Cleveland Street.

## **FINDINGS**

Based upon the evidence and testimony presented at the public hearing and as documented in the Detailed Record of this case, the Board makes the following findings:

1. The property consists of 590,238 square feet of land located on Cleveland Street in an R-3 residential zoning district, where a 55,000 square foot minimum lot size is required pursuant to Norfolk Zoning Bylaws Section E.1.b, Schedule of Dimensional Requirements.
2. The property is shown on a plan labeled "Plan of Land Norfolk, MA 75 Cleveland Street" prepared by Gallagher Engineering, Inc. (hereinafter the "Site Plan"), indicating topography, driveway and abutting house locations. The plan is dated May 20, 2020.
3. The proposed Estate Lot has 75.28 feet of frontage along Cleveland Street, pursuant to Norfolk Zoning Bylaws Section E.1.b. For conventional lots, 200 feet minimum frontage is required in an R-3 zone
4. The proposed dwelling is to be serviced by underground utilities.
5. The special permit criteria of Section E.2.h for an Estate Lot have been met as follows:

*a. E.2.h.2.a The area of the Estate LOT shall be at least three times the Minimum Lot Size for the district as set forth in Section E.1.b.*

As indicated on the Site Plan, the area of the Proposed Estate Lot is 590,238 square feet. The minimum lot size for the district as set forth in Norfolk Zoning Bylaws Section E.1.b. is 55,000 square feet. Three times the minimum lot size for the district is 165,000 square feet. The area of the Proposed Estate Lot at 590,238 square feet meets the requirement for a minimum of 165,000 square feet.

*b. E.2.h.2.b. The Estate LOT shall have at least 50 feet of FRONTAGE set forth in subsection E.1.c.1.*

As shown on the Site Plan, the Proposed Estate Lot has 75.28 feet of frontage on Cleveland Street, which meets the required minimum 50 feet.

*c. E.2.h.2.c. Front, rear, and side YARD setbacks. All buildings shall be located a minimum distance of 50 feet from abutting property lines.*

A topographic plan was provided illustrating that a house could be located on the Estate Lot in compliance with this provision.

*d. E.2.h.2.d. The Estate LOT shall comply with the requirements of Sections E.1.c and E.1.d, except that paragraph E.1.c.2 shall not apply. A LOT width of a least fifty (50) feet shall be maintained at all points between the FRONTAGE and the rear of the DWELLING.*

Norfolk Zoning Bylaw Section E.1.c concerns lot width, frontage, and required circle, access from frontage and setback line. Section E.1.d concerns front, side and rear yards. The proposed Estate Lot complies with the dimensional and access requirements of these sections.

*e. E.2.h.2.e. The contiguous building LOT area as defined in Section E.1.f. (i.e., land that is not located within a designated flood plain or wetland) shall be at least two times the Minimum Lot Size for the District.*

The upland area of the Estate Lot exceeds the 110,000 square feet (55,000 square feet minimum required in the R-3 district x 2) of minimum area of uplands required for the R-3 district.

*f. E.2.h.2.f. The Planning Board shall not issue a special permit under this section except upon the following finding:*

*1) The applicant has provided for safe access for public safety vehicles and personnel to the dwelling unit to be constructed on the lot, and the intersection of such access driveway and the public way has been placed in the best location available to the applicant; and*

*2) The development of the property as an Estate Lot will have a less adverse effect on the character of the neighborhood and the protection of open space, significant or important natural resources and to historic structures or places (where such features are present) than other development options available to the applicant.*

The applicant has provided documentation and testimonial evidence at the public hearing regarding compliance with the requirements of the above sections. In particular, the driveway off Cleveland Street that provides adequate sight lines. The Planning Board finds that the applicant does comply.

*g. E.2.h.2.g. All utilities shall be installed underground.*

The applicant agrees to construct all utilities underground as required by the bylaw.

*h. E.2.h.3.a. The applicant shall submit with the special permit application a plan depicting the proposed Estate Lot. The plan shall be prepared by a registered landscape architect, civil engineer or land surveyor, and shall be in such form as will be required for recording with the Registry of Deeds or filing with the Land Court.*

The Site Plan was prepared by a Professional Land Surveyor. A final plan for endorsement prepared and signed and stamped by a civil engineer or Professional Land Surveyor and suitable for recording at the Registry of Deeds shall be submitted within 30 days of approval of this decision.

*i. E.2.h.3.b. In determining whether or not to grant a special permit for an Estate LOT, and in determining what conditions, if any, to impose on such a special permit the Planning Board may consider circumstances relating to soil conditions, topography, lot history, wetlands, proposed building locations, and public safety and convenience.*

The referenced circumstances were considered by the Board in reaching its decision reflected herein and in determining conditions for this Special Permit as enumerated below.

*j. E.2.h.3.c. No landowner shall be eligible for more than one Estate Lot from a single parcel of land, or from adjoining parcels of land in common ownership, based on the ownership status of the land as determined by, instruments and plans on file at the Norfolk County Registry of Deeds as of the effective date of this bylaw as amended (November 4, 2003). No Estate Lot shall be further subdivided. The Planning Board shall note such limitations, with a description of the land affected by them, in its written decision.*

This is the only Estate Lot created from the parcels that were held in common ownership as of November 4, 2003. This estate lot and donor lots have hereby exercised their rights to create an estate lot and shall not be further subdivided.

*k. E.2.h.4. The November 4, 2003 amendments to this Section E.2.h, shall not apply to any special permit application for an estate lot filed before the first publication of notice of the Planning Board hearing thereon (October 20, 2003). Any such application shall be governed by the provisions of this bylaw in effect as of the date it was filed.*

This application was filed after October 20, 2003, so the amendments do apply to this application.

6. The Special Permit Criteria of Section G.6.c have been met as follows:

1. *That the use is in harmony with the general purpose and intent of the bylaw:*

Section E.2.h of the Norfolk Zoning Bylaws allows pursuant to a Special Permit, construction of a single-family dwelling on a lot in a residential R-1 district, where such lot lacks the minimum frontage required for the district if certain criteria are met. As outlined above, the Board finds that each of the Section E.2.h criteria is met in this case. Based on these considerations and the detailed record of this case, the Board found that the Proposed Estate Lot is in harmony with the general purpose and intent of the bylaw. The applicant acknowledges that the Estate Lot creates a perpetual limitation of further development of the locus.

2. *That the use is in an appropriate location and is not detrimental to the neighborhood and does not significantly alter the character of the zoning district:*

The proposed Estate Lot has an area of 590,238 square feet (13.55 acres), which exceeds most of the other properties on Cleveland Street. Use of the site for a single-family residence is consistent with the abutting residential properties.

3. *Adequate and appropriate facilities will be provided for the proper operation of the proposed use:*

The residential use will be served by Town water or well and a private septic system and underground utilities, all of which will be permitted by the appropriate authorities before construction of the dwelling will take place.

4. *That the proposed use would not be detrimental or offensive to the adjoining zoning districts and the neighboring properties due to the effects of lighting, odors, noise, sewage, refuse materials, visual or other nuisances:*

The abutting properties are also zoned R-3. The proposed use of a single-family residence will be consistent with the abutting land and will not be detrimental to the abutting properties.

5. *That the proposed use would not cause undue traffic congestion in the immediate area.*

The traffic from the proposed Estate Lot would be the same as for a single-family dwelling constructed by right.

*6. That the proper site plan has been filed for approval and the proper number of copies has been submitted with the application for a special permit to the appropriate permit granting authority.*

The Board found that a proper site plan was filed for approval and that the proper number of copies was submitted with the application.

*7. That the use and/or purpose are consistent with the 1992 Master Plan, and as most recently updated:*

The Board found that the proposed residential use is consistent with the 1992 Master Plan as most recently updated in 2007.

#### **DECISION AND CONDITIONS OF APPROVAL**

In consideration of the above, the Board found that the proposal meets each of the Estate Lot special permit criteria and meets all the special permit criteria pursuant to Norfolk Zoning Bylaws Section G.6.c. The Board therefore voted to **grant** a Special Permit, subject to the conditions specified below, to allow the creation of an Estate Lot located on Cleveland Street in a residential R-3 district, such lot lacks the minimum frontage required for the district.

1. Lot 2 shall not be further subdivided so as to result in any additional building lots.
2. Prior to the issuance of a building permit, the applicant shall demonstrate to the Planning Board and to the Building Commissioner that this Special Permit Application Decision No. 2020-01 and endorsed plan have been recorded at the Registry of Deeds.
3. This Estate Lot special permit approval is subject to all other conditions imposed by the various Town boards, agencies or commissions. Any changes to the plans required by other Boards or Commissions shall be resubmitted to the Planning Board. Unless such changes are determined to be minor by the Planning Board, a formal modification of the special permit approval shall be required.
4. All utilities from the property line into and onto the subject property shall be constructed underground.
5. The applicant shall provide a copy of the endorsed plan to the Assessor's Office in order that they may update their records.

6. The existing home located on Lot #1, 75 Cleveland Street must be vacated and demolished within one month of occupancy of the new home on Lot #2.
7. The access to Lot #1 shall be reviewed and approval by the Fire Department prior to endorsement of the plan. The access requirements of the Fire Department shall be incorporated on the plan prior to endorsement.

The vote of the Board to grant the Special Permit was as follows:

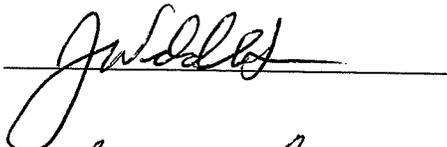
<u>Voting Planning Board Member</u>	<u>Grant/Not Grant</u>
Walter Byron, Chair	Grant
John Weddleton	Grant
Erin Hunt	Grant
Gary Searle	Grant
Chad Peck	Grant

Appeals, if any, shall be pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws, as amended, and shall be filed within twenty days of the filing of this notice, as stamped above, in the office of the Town Clerk.

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, as amended, this Special Permit is valid only after a copy of this decision bearing Town Clerk certification is recorded in the Registry of Deeds in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate(s) of title. The Town Clerk certification must indicate that twenty days from the stamped date have elapsed and no appeal has been filed, or if such an appeal has been filed, that it has been dismissed or denied.

This Special Permit must be exercised within 2 years of issue or it will become null and void.

NORFOLK PLANNING BOARD

  
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I hereby certify that 20 days have elapsed from the date of this decision and that no appeal has been filed in this office.

A True Copy Attest:

\_\_\_\_\_  
Town Clerk Date

- cc: Town Clerk, Applicant  
Certified abutters within 300'  
Planning Boards of Franklin, Millis, Medway, Wrentham, Medfield, Walpole, Foxboro  
Building Commissioner/Zoning Officer  
Zoning Board of Appeals  
Board of Health  
Conservation Commission  
Department of Public Works  
Board of Assessors  
Fire Chief, Police Chief  
Board of Selectmen