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BY: KMLaplant

Case No R3 A 105 031507

### ZONING BOARD OF APPEALS RULING

Case No: R3-A-105, 03-15-07  
Petition Of: Andrew Harhay  
Zone: Residential District  
Application: Variance

A duly authorized public hearing was held Tuesday, May 15, 2007 at 7:30 PM in the Community Room, Holland Town Hall, 27 Sturbridge Road on the application of Andrew Harhay for a Variance to decrease the side setback requirement from 50 feet to 40 feet.

The petitioner submitted the following documents:

1. Completed application and filing fee signed by the Town Clerk.
2. Eight copies of plans for the existing house
3. Eight copies of a plot plan showing the location of the existing structure.
4. Property is listed in Deed Book 15798, Page 512.

Following the Chairman's comments regarding the powers and purpose of the Board, the rights of all concerned, the manner in which the hearing would be conducted, introduction of the members of the Zoning Board of Appeals and the reading of the legal notice, contractor Andre Cormier, representing owner Andrew Harhay, made a presentation to the Board.

Mr. Harhay owns lot #5 on Mashapaug Road, which was once part of a special conservancy district. The side line setback required in special conservancy is 40 feet. The engineers and surveyors prepared plans for Mr. Harhay using this 40 foot setback. However, when the special conservancy district was originally created, there was a possibility the land could have been used for something other than residential use. If the land was to be used for commercial purposes, a 50 foot setback was required as the property abutted a residential neighborhood. The intent of the 50 foot setback was to provide more of a buffer to an adjoining residential area next to a commercial project.

Mr. Harhay moved forward with his project and his plans were approved by the Conservation Commission and the Board of Health. All zoning lines showed a setback of 40 feet and the house and garage were laid out with this in mind. Months were spent pricing and preparing for this project. The lot is over 3 acres in size. The home is not oversized for this lot. The well was drilled and a building permit package was submitted. When the Building Inspector reviewed the package, he discovered a bylaw that required a 50 foot side line setback if the special conservancy lot abutted a residential zoned lot.

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This by law was missed on another lot by the building inspector (lot R-3-A-101), and a building permit had been issued. The surveyor and engineers involved all missed the bylaw in their reviews. The Building Inspector realizes the intent of the bylaw was not to put an extra restriction on residential use of the property but was intended to provide an extra buffer space against commercial use. However, the language of the bylaw does not address this, and because of this, he was forced to deny the building permit.

Mr. Harhay has spent thousands of dollars and over a year's time planning this home. He wishes to follow the allowed 40 foot setback in this zone rather than the 50 foot setback. Otherwise he must start over from the beginning and lose his porch and any possibility of having a garage attached to his home, and reduce the existing house plans to accommodate the 50 foot setback. The existing 40 foot setbacks already take away 80 feet of land from a lot which is only 150 to 160 feet wide. This leaves a relatively narrow area in which to build a structure. Meanwhile the house is partially constructed and cannot be completed until the setback issue is resolved.

Jack Keogh, Building Inspector, wrote a warrant to change the language of the bylaw to correct this situation for the Town Meeting scheduled on May 29, 2007. This change was approved at the Town Meeting held on that date.

The members of the Zoning Appeals Board reviewed the plot plans with Mr. Cormier and agreed to make a site review on Friday, May 18, 2007 at 8 AM, with a continuance scheduled for June 5, 2007 at 7:30 PM.

Abutter Carol Goodspeed, owner of undeveloped lots 28-32 off Ardmore Street was present, and had no objections to the project.

A site review was held May 18, 2007 at 8:00 AM Board members Sarto Caron, Ray Korny, Todd Mayo, Don Beal and Ron Seaburg were present. Contractor Andre Cormier was also present. Members of the Board measured the distance of the existing house from the left hand side property line as viewed from the street. They observed the house was constructed well within the 40 foot limit, but exceeded the 50 foot limit.

No abutters were present.

The continuance was held on Tuesday, June 5, 2007 at 7:50 PM. Contractor Andre Cormier and owner Andrew Harhay were present. The findings of the site review by the Zoning Board members were reviewed. All Board members were in favor of granting a variance.

No abutters were present.

Having considered the testimony of the petitioner and documentation presented and having had their questions answered by the petitioner, individual members of the Board voting were given the opportunity to express their opinion and reasons supporting their positions. The Board voted **UNANIMOUSLY (3-0) to GRANT WITH CONDITIONS**

this petition for a Variance as provided by Section V, Table 2, note "e" of the Holland Zoning By-Laws.

Each member of the Board of Appeals who heard and voted on this petition was polled individually.

**CONDITIONS:**

1. This approval does not relieve the applicant or any other person of the necessity to comply with all other applicable federal, state or local statutes, by-laws or regulations.
2. Permission is granted to continue construction on the existing house. The house is well within the 40 foot setback limits required for a residential property.
3. The bylaw requiring a 50 foot side setback limit for this property was changed by a unanimous vote at the Town Meeting held on May 29, 2007. Further approval of this change by the State of Massachusetts is pending.
4. This Variance is issued to relieve hardship, and allow construction of the residence to continue. The original intent of the bylaw requiring a 50 foot setback limit was to regulate commercial development, and not restrict residential development.
5. This Variance shall not take effect until this decision of the Board has surpassed a 20 day appeal period, signed by the Town Clerk as no appeals applied for, and is recorded in the Hampden County Registry of Deeds under the name of the owner of the land.
6. This Variance is issued to the applicant and shall not be transferred or assigned without the approval of the Zoning Board of Appeals.

**REASONS FOR GRANTING THE VARIANCE:**

1. The Board found the new construction will improve the property. Supplemented by the site review they conducted, it meets the criteria for the issuance of a Variance.
2. The site review, held on May 18, 2007, attended by ZBA members proved to be valuable. They determined the house under construction was within the 40 foot side setback requirement for a residential lot.
3. Issuing this Variance to permit further construction of this house pending State of Massachusetts approval of the bylaw change voted upon at the Town Meeting of May 29, 2007 is not detrimental to the public good. It relieves hardship for the owner and contractor.

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**CERTIFICATION:**

The following members of the Board of Appeals heard and voted on this petition:  
Don Beal, Ray Korny and Ron Seaburg.

**APPEALS:**

Appeals of this decision, if any, shall be made pursuant to Section 17 Chapter 40A of the General Laws of the Commonwealth of Massachusetts, as amended and shall be filed within twenty (20) days after filing of this decision in the office of the Holland Town Clerk. This appeal must be made to the Superior Court Department.

**EFFECTIVE DATE:**

No Special Permit or Variance, or any extension, modification or renewal thereof shall take effect until a copy of the decision bearing the Certification of the Town Clerk is recorded in the Hampden County Registry of Deeds, and indexed in the Grantor Index under the name of the owner of record or is recorded and noted in the owners Certificate of Title. The fee for recording or registering shall be paid by the owner or applicant.

**LAND AFFECTED:**

Parcel R3-A-105, Lot #5, Mashapaug Road, Holland, Hampden County, Massachusetts.

**PROPERTY OWNERS:**

Andrew Harhay,  
c/o Andre J. Cormier, Jr.  
Escape Estates, Inc.  
PO Box 154  
537 Main Street  
Sturbridge, MA 01566

**STATUTORY REQUIREMENTS:**

The statutory requirements have been complied with as set forth in the above decision.

**COPIES AND PLANS: PARCEL R3-A-105**

Copies of this decision and documents referred to herein were filed with the Town Clerk on June 7, 2007

**CERTIFIED June 7, 2007**

  
Donald R. Beal, Clerk

Case No. R3A 105031507

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I hereby certify that no appeals have been filed during the 20 day period. Any questions may be directed to the Office of the Town Clerk, 27 Sturbridge Road, Holland, MA 01521, phone number 413-245-7108, Ext. 12.

*Kristin M. LaPlante*  
Kristin M. LaPlante  
Town Clerk  
Holland, MA

DONALD E. ASHE, REGISTER  
HAMPSHIRE COUNTY REGISTRY OF DEEDS