

THE COMMONWEALTH OF MASSACHUSETTS  
TOWN OF PEMBROKE  
BOARD OF ZONING AND BUILDING LAW APPEALS  
100 CENTER STREET  
PEMBROKE, MASSACHUSETTS 02359



CASE #11-16

August 18, 2016

Premises: 17 Marlymac Way, Pembroke as shown on Assessors' Map F-10,  
Lot 152, Book 9148, Page 694

Zoning District: Residence District A.

Petitioner HarborOne Bank c/o Robert W. Galvin, Esq., Galvin & Galvin,  
PC., 10 Enterprise Street, Suite 3, Duxbury, Massachusetts 02332-  
3315

Date of Filing  
Application: May 6, 2016

Dates of Public  
Notice: May 20, 2016 and May 27, 2016

Date of Mailing  
& Posting Notice: May 23, 2016

Petition: Requesting a variance from the provisions of the Zoning By-laws  
of the Town of Pembroke (hereinafter "the By-law") Sec. IV, 1.D.1  
(Lot Size/Width-Depth) and Sec. VI. E. Variances to construct a  
single family home on a lot with sufficient frontage and area but  
lacking the ability to locate a circle 150' in diameter within the lot.

Decision: Unanimously Approved.

In the exercise of its discretionary powers, at a regular meeting of the Town of Pembroke Board of Zoning and Building Law Appeals (hereinafter "the Board") held on June 20, 2016, the Board, with members, Frank Baldassini, Frederick Casavant IV, and Sharon McNamara, present and voting, voted unanimously (3-0) to grant the petitioner, HarborOne Bank, the requested variance from the provisions of the By-law including Sec. IV, 1.D.1 (Lot Size/Width-Depth) and Sec. VI. E. Variances to construct a single family home on a lot with sufficient frontage and area but lacking the ability to locate a circle 150' in diameter within the lot which said zoning relief will enable the applicant to

construct a single family dwelling on the lot which meets other dimensional requirements of the by-law.

The Board bases its decision on the following facts:

1. The petitioner, HarborOne Bank, is the current owner of the property known as and numbered 17 Marlymac Way, Pembroke, MA (aka Lot 8) which said property is shown on the Pembroke Assessor's Map F-10, Lot 152 and is located in the Residence District A.
2. The subject property was a part of definitive subdivision approved in 2002 by the Planning Board and was preceded by a prior subdivision approval dating back to 1999 before there was any requirement in the zoning bylaw to be able to locate a 150' diameter circle within the lot to maintain a certain width/depth and was formerly owned by Taylor Street Realty Trust.
3. HarborOne lent funds to a borrower and used Lot 8 as collateral for the loan in 2005 while the subject property was still buildable and enjoyed protection from zoning changes as a lot shown on an approved definitive subdivision plan under Gen. L. c. 40A §6 para. 5.
4. HarborOne completed the foreclosure process after the expiration of the time period for zoning protection in April of 2016 and represents that it was unable to extend the zoning protection until after it acquired title.
5. The subject property when laid out on the subdivision plan approved by the Planning Board conformed to all existing dimensional standards at the time of approval and the subdivision was completed and built out with the exception of this lot.

## 2. MATERIALS SUBMITTED FOR THE RECORD:

- Applications filed with the Town Clerk's Office on May 6, 2016;
- Chaulk Plan displayed at Meeting on June 20, 2016 by Scott Rogers, PE
- Certified List of Abutters
- Required Filing Fees.

The application and notices of public hearings relative thereto, the Board's staff and consultant notes, exhibits and correspondence, the transcript and minutes of all hearings and all other written submissions received in the ordinary course of the proceedings before the Board are incorporated by reference into the record.

## 4. FINDINGS:



Based on the facts found by the Board above which are incorporated herein by reference, the Board makes the following findings:

A. The subject property is elongated, contains well in excess of the lot area necessary to be a buildable lot, is in the process of having its wetlands bounds confirmed since there is a significant wetland on or abutting the parcel to the rear, and as shown to the Board contains a significant building envelope in which a proposed home could be located within the subdivision and away from the closest abutter outside the subdivision. There is also a drainage easement in the front of the property making it impractical to use the front portion of the property nearest to the abutter.

B. The shape of the lot is highly irregular, is not permitted under current standards, is unique in the subdivision and in general in the immediate area/neighborhood which is similarly zoned. This shape is connected to the need for zoning relief since the lot is not sufficiently wide/deep enough without the requested relief.

C. A literal enforcement of the by-law results in a substantial hardship to the petitioner because the once buildable lot is no longer buildable and there was little that the bank could do while the former borrower owned the property. In addition the lot is taxed as a buildable lot and is likely to be far more valuable as a building lot.

D. Desirable relief may be granted without substantial detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the bylaw since the original zoning scheme and plan for this property was to be residential in nature, the future effect of the relief will be to have a home on this property with substantial area of upland, and this use is consistent with the uses made in the rest of the subdivision and the neighborhood in which it is located.

## 5. REASONS FOR DECISION:

Based on the foregoing findings, the Board's grant of a variance is consistent with standards for the granting such variance of the By-law, involves a unique and distinctive shape situation which was not the result of the petitioner's actions, would result in a substantial hardship, financial or otherwise to the petitioner if the relief were not granted, and will not derogate from the intent of the By-law which is designed to protect and enhance the visual environment of the Town, particularly in Residence District A, and promotes the safety, convenience and welfare of the residents of the Town of Pembroke.

## 6. CONDITIONS:

The granting of this variance is subject to the following conditions:

The home shall be constructed in the orange envelope as shown on the drawing by J. K. Holmgren Engineering, Inc. dated April 29, 2016.

Any judicial appeal from this decision shall be made pursuant to Mass. Gen. L. c. 40A, §17 and any such appeal shall be filed within twenty days from the filing of this decision with the office of the Town Clerk of Pembroke.

If substantial use of the rights authorized by this variance is not exercised within one (1) year of the date on which a copy of this decision is filed with the Town Clerk, then the zoning relief granted herein shall expire, unless otherwise extended by the Board.

PEMBROKE ZONING BOARD OF APPEALS



Frank Baldassini, Chairman



Sharon McNamara, Clerk



Frederick Casavant IV, Alternate