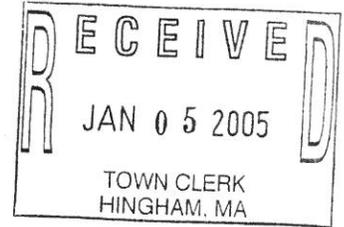


TOWN OF HINGHAM  
BOARD OF APPEALS



IN THE MATTER OF:

Applicant: Anthony and Jessie Barbuto  
29 Pine Street  
Hingham, MA

Premises: 29 Pine Street (Lot 5)  
Hingham, MA  
Deed Ref: Plymouth Registry of Deeds, Book 18895, Page 169, 170

**SUMMARY OF PROCEEDINGS:**

This matter came before the Board of Appeals on the application of Anthony and Jessie Barbuto ("Applicant") for variances from the minimum lot area and frontage requirements of Section IV-A of the Zoning By-Law and such other relief as necessary to establish the 16,720 sq.ft. lot at 29 Pine Street, in Residence District C, as a buildable lot.

A public hearing was duly held on Thursday September 16<sup>th</sup>, and was continued on October 21<sup>st</sup> and December 2<sup>nd</sup>, 2004 at the Town Hall before a panel consisting of Stephen McLaughlin, Chairman; Mario Romania, Jr., Vice Chairman; and Victor Popp, Clerk. Jeffrey Tocchio, esq. represented the Applicant before the panel.

**BACKGROUND:**

The petitioners submitted:

A supporting statement including:

- a brief history of the lot and surrounding lots (numbers 1 through 6),
- photos of Lots 4 and 5 showing Lot 5 in its current use as a storage place for contractors' vehicles
- drawing of the proposed structure on Lot 5
- plot plan for Lot 5

The petitioners want to allow their grandson and his family to build a home on Lot 5 for exclusive residential use. The petitioners and their family have lived in the neighborhood for decades, having acquired the property in 1970. The neighborhood is on the municipal sewer system. Recognizing the public interest in preserving open space, the petitioner had also offered to permanently encumber Lot 52 as open space. This offer was tied to the request for variance.



## **REQUESTED RELIEF:**

Variances from the minimum lot area and frontage requirements of Section IV-A of the Zoning By-Law to establish the 16,720 sq.ft. lot at 29 Pine Street, in Residence District C, as a buildable lot.

## **FINDINGS:**

1.) Unique Soil Conditions, Shape, and Topography: The Board took no issue with the petitioner's statements regarding typography, soil, and shape. The Board also favorably viewed the offer to encumber Lot 52 as open space as satisfying the intent of the Zoning By-Law. The Board also supported a change from the current lot usage as storage area for contractor's vehicles (which is inconsistent with the Zoning By-Law, but agreed to be common in the neighborhood by at least one Board member), to residential use. While some confusion existed on the separation of Lots 6 and 5 due to a foreclosure, it was deemed by the Board to be an issue not created by the petitioners, nor relevant to the variance request.

2.) Hardship: The Board found that since the lot can only be used as a non-conforming contractor's yard, and has no possible conforming use whatsoever, the hardship to the owner due to the difficulties of trying to sell such a lot located in a residential area is substantial. The hardship exists, therefore, to the owner and to the entire neighborhood.

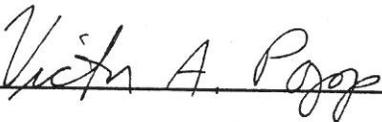
3.) Relief may be granted without substantial detriment to the public good: After a review of the photos of the current lot usage, and the plans of proposed structure, the Board agreed that the proposed residential use would represent an improvement. The subject lot is suitable for construction of a single-family home and would be entirely consistent with the Pine Street subdivision plan and existing residential development. Other lots of similar shape and topography in the neighborhood would be and are grandfathered for residential development without the necessity of a variance. In addition, the petitioners' offer for an open space encumbrance on Lot 52 was seen to provide the neighborhood an added benefit, which, in general, would not be possible in other variance requests. No abutters objected to the granting of the variance.

4.) Relief May be Granted without Nullifying or Substantially Derogating from the Intent or Purpose of the Zoning By-Law: One stated intent of the Zoning By-Law is to "encourage housing for persons of all income levels ... and encourage the most appropriate use of land throughout the Town ...". The requested relief advances both of these stated intentions, as the Lot will support construction of a single-family home which is "modest in scope" compared to typical new construction, and entirely consistent with the existing neighborhood and neighborhood character.

**DECISION:**

Upon motion duly made and seconded, it was unanimously voted to grant a variance from the minimum lot area and frontage requirements of Section IV-A of the Zoning By-Law to establish the 16,720 sq.ft. lot at 29 Pine Street, in Residence District C, as a buildable lot, subject to the following conditions:

- 1.) The residential structure and plot plan must be in substantial conformance with the plans submitted with the application, which limit the house size to 2,600 square feet of living area. The house shall be connected to the municipal sewer system.
- 2.) Lot 52 shall be permanently encumbered with an open space restriction to preserve its current agricultural use. This document shall be approved by the Zoning Administrator and Town Counsel as to form and content and thereafter recorded with the Registry of Deeds.
- 3.) Any and all commercial activity on Lots 5 and 52 shall cease prior to the issuance of a building permit for the dwelling.

  
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December 27, 2004  
Victor A. Popp, PE  
For the Hingham Board of Appeals

