



TOWN OF NORTHBOROUGH Zoning Board of Appeals

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

DECISION

ZBA CASE NO. 18-04

PROPERTY LOCATION: 38 King Street and 39 & 43 King Street

PETITIONER & PROPERTY OWNER: ZHS Trust

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS:

Bk: 56305 Pg: 377 (38 King Street)

Bk: 55555 Pg 31401 Pg: 182 (39 & 43 King Street)

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TOWN CLERK

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of ZHS Trust for a **SPECIAL PERMIT** with **SITE PLAN APPROVAL**, to allow the construction of a building with 3 above-ground stories and a basement for the use of assisted living on the property located at 39 & 43 King Street, Map 82, Parcels 30 & 31; and a **VARIANCE** to allow a sign to be located at 38 King Street, Map 82, Parcel 20, for the purpose of advertising the King Street Assisted Living facility located at 39 and 43 King Street, in the Business West District.

APPLICATION

1. On December 26, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for a Special Permit with Site Plan Approval, to allow the construction of a building with 3 above-ground stories for the use of assisted living and a Variance to allow a sign to be located on 38 King Street, Map 82, Parcel 20, for the purpose of advertising the King Street Assisted-Living facility, on the property located at 39 & 43 King Street, Map 82, Parcels 30 & 31, in the Business West District.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on Monday, March 12, 2018 and Monday, March 19, 2018; and was mailed to abutters and other parties in interest on March 1, 2018.

EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A Zoning Interpretation Request Form for 39-43 King Street submitted by Rashid Shaikh and signed by Robert J. Frederico, Inspector of Buildings, on October 11, 2017;
 - b. A Fiduciary Deed for 38 King Street, Northborough, recorded at the Worcester District Registry of Deeds on 11/15/2016, Bk: 56305, Pg: 377;
 - c. A certified abutters list for parcels 300 feet from 39 & 43 King Street, signed by Julie Brownlee for the Board of Assessors, and a MA GIS Viewer map for 39 & 43 King Street, on November 2, 2017;
 - d. A decision for ZBA Case No. 16-12, 39 & 43 King Street dated December 22, 2017;
 - e. A 71-page document entitled "Stormwater Management Report, 39 & 43 King Street, Northborough, Massachusetts", dated December 22, 2017;

Prepared for ZHS Trust by J.M. Grenier Associates Inc., Project Number: G-443, Northborough, Massachusetts;

- f. A 19-page color lighting package for 39 and 43 King Street with information from Brownlee Lighting, Lithonia Lighting, and Gotham Architectural Downlighting;
 - g. A set of nine 24" x 36" plan sheets entitled "Site Development Plan for 39 & 43 King Street, Northborough, Massachusetts 01532", dated December 22, 2017, revised 3/21/18, prepared for ZHS Trust by J.M. Grenier Associates, Inc., signed and stamped by John M. Grenier, Civil Registered Professional Engineer on 3/21/18, with sheets identified as: Sheet 1 of 8, Cover; Sheet 2 of 8, Existing Conditions Plan; Sheet 3 of 8, Layout Plan; Sheet 4 of 8, Grading and Drainage Plan; Sheet 5 of 8, Utility Plan; Sheet 6 of 8, Erosion & Sediment Control Plan; Sheet 7 of 8, Detail Plan; and Sheet 8 of 8, Detail Plan; and Sheet L1.01, Landscape Plan for Assisted Living at 39 & 43 King Street, dated February 26, 2018, revised March 21, 2018, prepared by DMS design, llc, Architectural Design Services, and drawn by RBLA Design, LLC.; and
 - h. A color 8.5" x 11" architectural drawing of a sign entitled "39-43 King Street Assisted Living, SKA-1", prepared by DMS design, llc, dated 2.23.18.
2. A memo to Rashid Shaikh, Applicant and John Grenier, Engineer, from Scott Charpentier, Director, DPW; Fred Litchfield, Town Engineer; Bob Frederico, Inspector of Building/Zoning Enforcement Officer; David Parenti, Fire Chief; William Lyver, Police Chief; and Kathy Joubert, Town Planner, Re: 39-43 King Street ZBA Application, dated February 14, 2018;
 3. A two-page letter to Richard Rand, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, dated March 23, 2018, RE: 38-43 King Street, Map 82, Parcels 30 & 31.

HEARING

Applicant Rashid Shaikh, ZHS Trust; John Grenier, Engineer, JM Grenier Associates, Inc., and Sid Silveira, Architect, DMS design llc, presented the Application at a duly noticed public hearing of the Board on February 27, 2018 and March 27, 2018 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Brad Blanchette, Mark Rutan, Jeffrey Leland, and alternate member Paul Tagliaferri, were present throughout the proceedings.

At the meeting of February 27, 2017, Mr. Shaikh explained he is proposing to construct a state-of-the-art building with three above-ground stories and a basement for the use of assisted-living on the subject property. The property is in the Business West District, in which an assisted-living facility is allowed by Special Permit; and Site Plan Approval is required, as well. The property is also located in Groundwater Protection Overlay District Area 3.

Mr. Shaikh stated the proposed assisted-living facility will generate less traffic, and less impact to the area than his previous proposal for the site of multi-family dwellings in four buildings. He noted the project has been reviewed by the Fire Chief and Police Chief; and is currently before the Design Review Committee. He will be going before the Conservation Commission due to wetlands on the site.

Mr. Grenier explained the two parcels at 39 King Street and 43 King Street are each approximately an acre in size and are commonly owned by the Applicant. Together, the two parcels are over 90,000 square feet in area. The facility will have 66 units, each with one bedroom; a main dining room on the first floor with a deck, and one elevator. Required parking for the 66 units is 33 spaces; and a proposed underground garage will provide 22 spaces. There is a loop driveway for access to King Street; and

access to the underground garage in the south. The assisted-living facility as proposed meets or exceeds all the dimensional requirements of the Business West District.

A discussion was held regarding the safety of the building, including the two areas of refuge proposed for the residents of facility, that are to be located in the building.

Mr. Grenier explained the proposed drainage plan. He also discussed sight distance with Town staff. It was noted that the speed limit on Southwest Cutoff is 50 miles per hour and, heading south, there is a crown and curve in the road that are dangerous.

Mr. Silveira explained the landscaping plan, including the height of the building, the balconies on the back of the building, a proposed landscape buffer from King Street for the front of the building; plantings for the septic system areas in the front of the building; and proposed signage. Mr. Grenier noted the area in the back of the building is all wooded with substantial wetlands, and a proposed walkway in that area is only for emergency personnel access.

At the continued hearing on March 27, 2018, the Applicant submitted revised site plans, dated 3.21.18, titled Site Development Plan for 39 & 43 King Street, prepared by J.M. Grenier Associates Inc. and Blackstone Valley Mapping & Consulting and Mr. Grenier reviewed the changes to the site plans which include removal of the proposed subsurface covered garage to allow for the reduction of the width and length of the northerly and southerly side of the building from 63 feet to 57 feet; a proposed access across 38 King Street that will allow right and left turning movements onto Southwest Cutoff (Route 20); the relocation of the patio to the southern portion of the site; a parking area containing seven employee parking spaces added to 38 King Street and 37 parking spaces provided at 39 King Street for a total of 44 parking spaces; the grade in the back of the site has been improved at the request of the Conservation Commission; an initial response from MassDOT was favorable for a proposed curb cut through 38 King Street; and an initial response from the Board of Health was favorable for the proposed septic system.

Mr. Silveira noted signage has been moved and vegetation has been added along the buffer to abutting properties. The courtyard and its vegetation have been relocated. The building is still to be three stories above ground with a basement. The proposed curb cut that the Applicant has requested from MassDOT will not be restricted to the subject property; there are no plans to restrict access to anyone.

A proposed sign, to be located on 38 King Street, will require a Variance as it will be for the purpose of advertising the "King Street Assisted Living" facility at 39 & 43 King Street, which is on a lot other than the lot on which the sign will be erected.

Abutters Linda DeWolfe, 29 King Street; Amy Johnson, 34 King Street; and Edward Sowden, 15 King Street were present at both meetings and expressed concerns regarding a possible increase in traffic on King Street from the proposed project; the density of the project in the area of King Street, which is very narrow; and the existing dangerous conditions when trying to access either West Main Street or Southwest Cutoff from King Street.

The board received no letters in opposition to the project.

The hearing was closed on March 27, 2018.

FINDINGS OF FACT

1. The subject properties at 39 and 43 King Street are in the Business West District with a small portion of the rear of both properties are in Groundwater Protection Overlay District Area 3. Both properties are owned by the Applicant, ZHS Trust, along with 38 King Street, which is across the street from 39 and 43 King Street, and is not located in a Groundwater Protection Overlay District.
2. The Applicant is proposing to construct a 66-unit assisted-living facility on the subject properties at 39 and 43 King Street with access and additional parking at 38 King Street.

3. In the Business West District, the use of an assisted-living facility is allowed by Special Permit per Section 7-05-030, Table of Uses, Table 1. Table of Uses, Part B. Commercial and Industrial Districts; Principal Uses, Assisted Living facility; and per Section 7-06-030, Table of Density and Dimensional Regulations, Table 2. Table of Density and Dimensional Regulations, of the Northborough Zoning Bylaw.
4. Site Plan Approval is required for the new construction of the proposed assisted-living building, per Section 7-03-050A(1)(a), Administration and Enforcement, Site Plans, Applicability, New Construction of a Commercial Structure; and Section 7-03-050A(1)(c) Administration and Enforcement, Site Plans, Applicability, Construction of a New Parking Lot, of the Northborough Zoning Bylaw.
5. The Applicant's property at 38 King Street is 6969.6 square feet (.16 acres) in area and currently a building is located on the site.
6. The Applicant is seeking a Variance from Section 7-09-040G(2)(a), Signs, Signs in Business Districts, Location, to allow a 10.7 foot high by 6 foot wide free-standing sign as proposed to be located at 38 King Street, for the purpose of advertising the King Street Assisted-Living facility at 39 and 43 King Street, which is not on the property on which the sign will be erected. The sign will contain two panels below the main panel; one to identify the location of the lobby and reception; and one to identify the location of recreational areas
7. The property at 39 King Street is 40,946.4 square feet in area (.94 acres) and the property at 43 King Street is 52,707.6 square feet in area (1.21 acres). Currently, there is an existing house, pavement, brush and woods on the property at 43 King Street.
8. The square footage of both 39 and 43 King Street, together totaling 93,654 square feet in area, meets the minimum required lot area in the Business West District of 20,000 square feet.
9. The 66-unit assisted-living facility is proposed to be 58,775 square feet in gross floor area, and will be three stories high. The maximum required height of a building in the Business West District is 45 feet and the proposed building will be less than 45 feet in height.
10. Each of the 66 units will have one bedroom; a main dining room will be on the first floor; and there will be an elevator to service each floor.
11. Retaining walls are proposed on the north and south sides of the property at 39 & 43 King Street.
12. The total impervious area in the post-development condition is 45,643 square feet. The total percentage of impervious area in the post-development condition is 53.7%. The remaining portion of the site not developed is to remain wooded.
13. Proposed site drainage is separated into two subcatchment drainage areas which are separated in the post development condition through the use of infiltration chambers. This method is used in order to reduce peak runoff rates and treat runoff from new paved areas in order to meet Total Suspended Solids (TSS) removal requirements.
14. A proposed parking area at 39 and 43 King Street provides 37 spaces for the residents of the proposed assisted-living facility, including handicapped-accessible spaces. In addition, a parking area proposed on 38 King Street will provide 7 spaces for employees. A total of 44 parking spaces are provided, which meets the requirements of the Northborough Zoning Bylaw.
15. The location of parking spaces on the property at 38 King Street will depend on the Applicant obtaining a curb cut from MassDOT.
16. A dumpster is located near the parking area in the southeast side of the site, at the end of the building.

17. Three snow storage areas are located on the subject site; and a snow storage area is provided on the 38 King Street site.
18. Water and gas services from Southwest Cutoff will service the subject site at 39 and 43 King Street.
19. A 100-foot wetland buffer is located on the site in the front of the building and the 15-foot no disturbed zone is behind the building, in the rear of the property.
20. The proposal is in substantial harmony with the Northborough Master Plan as it is compatible with other uses in the Business West District.
21. The proposed site is an appropriate location for the use, as the proposed location on King Street is less desirable for many commercial uses but is compatible with proposed assisted living uses.
22. The proposed use as developed will not adversely affect the neighborhood; and there will be no nuisance or serious hazard to vehicles or pedestrian.
23. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, as adequate access and parking is provided for the proposed use; Town water and gas service will be brought to the site; and sufficient area for subsurface sewage disposal is available.
24. A proposed driveway to and from 38 King Street to the proposed assisted living facility will provide a better route for drivers to access Route 20 (Southwest Cutoff).
25. Originally, parking for employees of the King Street Assisted Living facility was located in an underground garage in the proposed building at 39 and 43 King Street. In order to meet a requirement of the Northborough Conservation Commission relating to grading in the rear of the site, the proposed building was scaled down; the underground garage was removed; and the proposed parking for employees, along with the proposed sign advertising the assisted living facility, were relocated to the site at 38 King Street.
26. The proposed sign on the property at 38 King Street will direct drivers to the 39 and 43 King Street assisted living building and will provide lighting for employees who use the parking area at night.
27. Due to circumstances relating to the topography of the site, with a wetland resource area that required a change to the grading in the rear of the site, which then required the relocation of a parking area, and the need for the proposed sign to advertise the proposed King Street Assisted Living facility, affecting only the subject lot, but not generally affecting land or structures in the same zoning district, a literal enforcement of the Zoning Bylaw would involve substantial hardship.
28. The sign as proposed will not constitute substantial detriment to the public good and the relief sought may be given without nullifying or substantially derogating from the intent and the purpose of the Zoning Bylaw.

DECISION

1. **On March 27, 2018**, after due consideration of the Application, the Board voted 4 in favor, 1 opposed, to **GRANT a SPECIAL PERMIT** per Section 7-05-030, Table of Uses, Table 1. Table of Uses, Part B. Commercial and Industrial Districts; Principal Uses, Assisted Living facility of the Northborough Zoning Bylaw, to allow the use of an assisted-living facility in the Business West District, on the properties located at 39 and 43 King Street.
2. **On March 27, 2018**, after due consideration of the Application, the Board voted 4 in favor, 1 opposed, to **GRANT a SPECIAL PERMIT** per Section 7-06-030, Table of Density and Dimensional Regulations, Table 2. Table of Density and Dimensional Regulations, of the Northborough Zoning Bylaw, to allow the proposed assisted-living facility to have 66 one-bedroom units on the property located at 39 and 43 King Street, per the plans submitted as follows:

- a. A set of nine 24" x 36" plan sheets entitled "Site Development Plan for 39 & 43 King Street, Northborough, Massachusetts 01532", dated December 22, 2017, revised 3/21/18, prepared for ZHS Trust by J.M. Grenier Associates, Inc., signed and stamped by John M. Grenier, Civil Registered Professional Engineer on 3/21/18, with sheets identified as: Sheet 1 of 8, Cover; Sheet 2 of 8, Existing Conditions Plan; Sheet 3 of 8, Layout Plan; Sheet 4 of 8, Grading and Drainage Plan; Sheet 5 of 8, Utility Plan; Sheet 6 of 8, Erosion & Sediment Control Plan; Sheet 7 of 8, Detail Plan; and Sheet 8 of 8, Detail Plan; and Sheet L1.01, Landscape Plan for Assisted Living at 39 & 43 King Street, dated February 26, 2018, revised March 21, 2018, prepared by DMS design, llc, Architectural Design Services, and drawn by RBLA Design, LLC.;
 - b. A color 8.5" x 11" architectural drawing of a sign entitled "39-43 King Street Assisted Living", SKA-1, prepared by DMS design, llc, dated 2.23.18,
 - c. A 24" x 36" plan entitled "King St Residences, 03-15-2018" photometric plan for 39-43 King Street, dated 2/23/18, revised 3/15/18, designed by Robert J. Lindstrom; Barcellos Lighting and Design; and
 - d. A 24" x 36" color plan entitled "Landscape Plan, Sheet L1.01" for Assisted Living at 39-43 King Street, Northborough, MA, prepared by DMS design, llc, dated 2/22/2018, revised 2/26/18 and 3/21/18.
3. **On March 27, 2018**, after due consideration of the Application, the Board voted 4 in favor, 1 opposed, to **GRANT a SITE PLAN APPROVAL** per Section 7-03-050A(1)(a), Administration and Enforcement, Site Plans, Applicability, New Construction of a Commercial Structure; and Section 7-03-050A(1)(c) Administration and Enforcement, Site Plans, Applicability, Construction of a New Parking Lot, of the Northborough Zoning Bylaw, for the proposed assisted-living facility on the property located at 39 & 43 King Street, with the following conditions. A revised set of plans including a detailed summary of the changes shall be submitted to the Town Engineer for his review. The issuance of any permit from the Town of Northborough shall not be granted until final approval of the revised plans is granted by the Town Engineer.
- a. Sight distance analysis, in both directions on King Street, shall be performed at both driveway entrances/exits on King Street.
 - b. Sight distance analysis shall be conducted for exiting onto Southwest Cutoff from King Street in both directions.
 - c. The sight distance calculations shall consider the speed of vehicles on Southwest Cutoff.
 - d. An Access Permit from MassDOT shall be required for work within Southwest Cutoff.
 - e. Approval of this project shall be based upon the approval of the proposed access to Southwest Cutoff by MassDOT. This approval shall be nullified without MassDOT approval of this configuration.
 - f. The Site Plan shall show an outline for the septic system; the suitability of the soils; and approval of the septic system from the Board of Health.
 - g. The Domestic and Fire Service lines shall be installed a minimum of ten (10) feet from the property line.
 - h. The Fire Service shall have an isolation valve to allow for independent operation from the Domestic line.

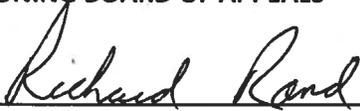
- i. The proposed hydrant shall be moved to the northerly limit of the property and the waterline shall be looped to West Main Street.
- j. Trench details shall be as shown in the Department of Public Works regulations.
- k. Bituminous concrete curb with returns shall be provided at all driveway entrances on King Street.
- l. All roadway trenches shall receive temporary patch for a minimum of 6 months and one winter season, after which full width roadway mill and overlay shall be provided within the limit of the utility extensions.
- m. Standard pavement section shall be 1½" top on 2½" binder with 12" compacted gravel borrow. The detail currently shown shall be revised.
- n. Trench detail for fill shall be specified.
- o. The plans shall indicate the purpose of the tight tank and how the size was determined.
- p. The construction entrance apron shall be extended to be a minimum of 75 feet from King Street and shall have a minimum of 3-inch stone throughout.
- q. The construction sequence shall be expanded to include time frames for each phase and dates throughout the construction process.
- r. The proposed retaining wall along the northerly property line shall show elevations for the top and bottom of the wall.
- s. The snow storage areas shall be enlarged so as to not impact any parking spaces or pavement area.
- t. The Applicant shall verify the topography is consistent with the Town's vertical datum by providing a permanent benchmark.
- u. The Applicant shall be responsible for arranging the relocation of all utilities located within King Street and Southwest Cutoff.
- v. A set of construction drawings shall be submitted to the Department of Public Works for review and approval prior to the issuance of any building permits.
- w. An as-built plan of the entire site shall be submitted to the Town Engineer for approval prior to the issuance of a certificate of occupancy. The as-built plan for the entire site shall include, at a minimum and as applicable to the project, a permanent benchmark, elevation of all utilities, pipe inverts and outlets, pipe sizes, materials, slopes; all drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. The drainage system shall also be certified by a Professional Engineer stating the drainage system was built substantially in accordance with the design and will perform as designed. The as-built plan shall be based on the Town's vertical datum (NAVD 88) and the horizontal datum (NAD 83). Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic copy compatible with the Town's GIS system.

4. **On March 27, 2018**, after due consideration of the Application, the Board voted 4 in favor, 1 opposed, to **GRANT** a **VARIANCE** from Section 7-09-040G(2)(a), Signs, Signs in Business Districts,

Location, to allow a free-standing sign, proposed to be located at 38 King Street, to advertise the King Street Assisted-Living facility at 39 and 43 King Street, which is not on the property on which the sign will be erected.

5. Appeals, if any from this decision shall be made pursuant to Massachusetts General Laws, Ch. 40A, Sec. 17 and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.
6. The **SITE PLAN APPROVAL, SPECIAL PERMITS** and **VARIANCE** shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating that "twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed it has been dismissed or denied."
7. If the rights authorized by the **SPECIAL PERMITS** are not exercised within two years from the time of granting, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 9.
8. If the rights authorized by the **VARIANCE** are not exercised within one year from the time of granting, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 9.

**TOWN OF NORTHBOROUGH, MASSACHUSETTS
ZONING BOARD OF APPEALS**

A handwritten signature in cursive script that reads "Richard Rand". The signature is written in black ink and is positioned above a solid horizontal line.

RICHARD RAND, CHAIRMAN