



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. 16-05

PROPERTY LOCATION: 113 West Main Street

PETITIONER & PROPERTY OWNER: Tim Shay, TSHAY LLC

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 54622 Pg: 131

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This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of TShay LLC for Variances, Special Permits, and Special Permit Site Plan Approval, to allow the use of a proposed commercial building with associated parking, driveway, utility connections, drainage, and landscaping for retail, professional/business offices, professional service establishment, or medical/dental office, on the property located at 113 West Main Street, in the Downtown Business District and Groundwater Protection Overlay District Area.

APPLICATION

1. On March 8, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Special Permit Site Plan Approval per Section 7-03-050A(1)(a), Administration and Enforcement, Site Plans, Applicability, of the Northborough Zoning Bylaw, to allow a new commercial building for retail, professional/business office, professional service establishment, or medical/dental office uses, with associated parking, driveway utility connections, drainage and landscaping; a Special Permit per Section 7-07-010C(3), Groundwater Protection Overlay District, Establishment and Delineation, of the Northborough Zoning Bylaw, to allow the proposed use of a commercial building with parking in the front of the lot to extend 50 feet over the Groundwater Protection Overlay District Area 3 established line; a Variance from Section 7-06-020, Density and Dimensional Regulations, Table of Density and Dimensional Regulations, Table 2., to allow the front yard setback to be greater than the maximum allowed distance of 20 feet from the proposed commercial building on the lot; and a Variance from Section 7-09-030C(2)(a), Development Regulations, Off-Street Parking and Loading, Off-Street Parking and Design Standards, Location, Design and Construction of Off-Street Parking, to allow off-street parking to be located entirely in front of the proposed commercial building on the property located at 113 West Main Street, Map 62, Parcel 69, in the Downtown Business District and Groundwater Protection Overlay District Area 3.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on March 21, 2016 and March 28, 2016; and was mailed to abutters and other parties in interest on March 16, 2016.

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 113 West Main Street from TShay LLC signed by Joseph M. Atchue, Inspector of Buildings, on 3/7/16;
 - b. A document entitled "113 West Main Street, Northborough, MA, List of Requested Waivers", date-stamped by the Town Clerk's office on April 5, 2016;
 - c. A document entitled "Project Narrative & Stormwater Documentation" with a Northborough MA GIS View map for 113 Main Street, dated 2/15/16;
 - d. A document including Stormwater Drainage System Design Calculations; a Hydrological Report & Drainage Area Maps; NRCS Soil Data & Soil Test Results; and Stormwater Operations and Maintenance Plan and Long-Term Pollution Prevention Program;
 - e. A Quitclaim Deed for 113 West Main Street, Northborough, Massachusetts, recorded at the Worcester District Registry of Deeds on December 2, 2015, Book 54644 Page 131;
 - f. A plot plan entitled "Plan of Land in Northborough, Mass. owned by Edna W. Granger", dated May 1951, recorded at the Worcester District Registry of Deeds on May 29, 1951, Plan Book 174, Plan 10;
 - g. A certified abutters list for parcels 300 feet from 113 West Main Street, Map 62, Parcels 69, dated February 9, 2016; and a Northborough, MA GIS Viewer map for 113 West Main Street, dated 2/9/2016;
 - h. A set of 5 black and white 24" x 36" plans, prepared for TShay, LLC by Connorstone Engineering, dated February 16, 2016, stamped and signed by Vito Colonna, Civil Registered Professional Engineer on 3/16/16, with sheets identified as: Existing Conditions; Proposed Site Plan; Erosion Control Plan; Landscaping & Lighting Plan; and Construction Details for 113 West Main Street in Northborough, Mass;
 - i. A set of four 11" x 17" color architectural drawings prepared for TShay LLC, 113 West Main Street, prepared by Daniel J. Wezniak, AIA, Silver Street Architects, dated 03.01.16, with sheets identified as: A1.0, Front and Left Side Elevations; Preliminary Left Side Elevation; Preliminary Front/Rear Elevation; Preliminary First Floor Plan; and two 11" x 17" black and white plan sheets prepared for TShay LLC by Connorstone Consulting Civil Engineers and Land Surveyors, identified as: Sheet 4 of 5, Landscaping & Lighting Plan dated December 19, 2013; and Sheet 2 of 5, Proposed Site Plan dated February 16, 2016;

- j. A 24" x 36" black and white plan entitled "Lighting Layout Version B", prepared for Job Name: 113 West Main St, Northborough, MA, by RAB Lighting, dated 2/25/16.
 - k. A set of 8" x 11" black and white architectural plans prepared for TShay LLC, 113 West Main Street, prepared by Daniel J. Wezniak, AIA, Silver Street Architects, with sheets identified as: A1.0, Preliminary Elev With Shutters, dated 04.05.16; A1.0, Preliminary Elev No Shutters; Front Elevation & Front Elevation w/Shutters; Left Side Elevation & Left Side Elevation w/Shutters; and Right Side Elevation & Right Side Elevation w/Shutters.
- 2. A letter to the Zoning Board of Appeals from Fred Hurst, Captain, Fire Prevention, Northborough Fire Department, dated March 22, 2016, Subject: Special Permit and Special Permit with Site Plan Approval, 113 West Main Street;
 - 3. A letter to Fran Bakstran, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated April 4, 2016, RE: 113 West Main Street, Map 62, Parcel 69;
 - 4. A letter to Fran Bakstran, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Department of Public Works, dated April 4, 2016, RE: 113 West Main Street, Map 62, Parcel 69; and
 - 5. A memo to Fran Bakstran, Chairman, Zoning Board of Appeals, from Michelle Gillespie, Chairman, Design Review Committee; RE: 113 West Main Street dated April 4, 2016.

HEARING

Applicant Tim Shay, TSHAY, LLC, and Mike Sullivan, Engineer, Connorstone Consulting Civil Engineers and Land Surveyors, presented the Application at a duly noticed public hearing of the Board on April 5, 2016 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Jeffrey Leland, Brad Blanchette, and Mark Rutan were present throughout the proceedings.

Mr. Sullivan stated the Applicant is proposing to demolish the existing home on the subject lot at 113 West Main Street and construct a commercial building for the use of personal or business service, medical office, retail stores or office space. The site is in the Downtown Business District and Groundwater Protection Overlay District Area 3, and the groundwater line crosses a portion of the front of the property. In addition, the site slopes downward from the rear property line to the front property line. Originally, the proposal submitted to the boards showed the proposed building to be in the front of the site and perpendicular to West Main Street, with parking behind it. However, the Design Review Committee reviewed the plans and recommended the building be situated in the rear of the property, parallel to West Main Street, with parking in the front, due to the slope of the site. Mr. Sullivan noted the difference in elevation from the rear property line to the front property line is 14 feet.

Mr. Sullivan explained the stormwater management plan proposed will improve the quality of water discharging into the existing street system. A dumpster is proposed in the rear of the lot and required snow storage areas will be adequate. Mr. Sullivan noted open space proposed is greater than what is required. An existing evergreen buffer will remain and proposed lighting

will be pointing downward for the benefit of the residents who live in the condominium development abutting the rear of the property.

A resident of Brody Way was present and expressed support of the project, stating it will improve the site greatly. She asked about the proposed location of the dumpster in the rear of the site, and Mr. Shay stated it will be small with stockade fencing surrounding it.

The board did not receive any letters in opposition to the proposed project.

The hearing was closed on April 5, 2016.

FINDINGS OF FACT

1. The subject property at 113 West Main Street is .44 acres in size and is located in the Downtown Business District and Groundwater Protection Overlay District Area 3.
2. The Applicant proposes to demolish an existing single-family home on the subject site and construct a 2,200 square-foot building with associated parking, driveway, utility connections, drainage, and landscaping, for commercial use including personal or business service, medical office, retail stores or office space.
3. The use of the commercial building as proposed is allowed by right in the Downtown Business District and a Special Permit Site Plan Approval is required for the construction of the new commercial building as proposed, per Section 7-03-050A(1)(a), Administration and Enforcement, Site Plans, Applicability, of the Northborough Zoning Bylaw.
4. The original plans submitted by the Applicant showed the proposed commercial building to be located in the front portion of the site, perpendicular to West Main Street, with a parking area located in the rear of the site. However, on the recommendation of the Design Review Committee, the location of the proposed building was changed to the rear of the site facing West Main Street with parking entirely in the front of the building.
5. The proposed commercial building will be located 94.4 feet from the front property line. In the Downtown Business District, the maximum allowed distance of a principle structure to the front property line is 20 feet. Therefore, the Applicant is requesting a Variance from Section 7-06-020, Table 2., to allow the maximum distance of the proposed commercial building from the front property line to exceed 20 feet.
6. In the Downtown Business District, off-street parking is required to be located behind or beside the principle structure on the site and no parking shall be located closer to the front lot line than the front line of the principal structure nearest to the front lot line. Therefore, the Applicant is requesting a Variance from Section 7-09-030C(2)(a) of the Northborough Zoning Bylaw, to allow the proposed off-street parking to be located in the front of the site and entirely in front of the proposed commercial building on the site.
7. A portion of the subject site is located in Groundwater Protection Overlay District Area 3 and a Special Permit per Section 7-07-010C(3) is required to allow the use of a commercial building as proposed to extend 50 feet over the Groundwater Protection Overlay District Area 3 established line.
8. The proposed building will be connected to Town water and sewer services within West Main Street.

9. There is 5,135 square feet of existing impervious cover on the site and the proposed development will increase the impervious cover by 5,030 square feet, for a total proposed impervious cover of 10,165 square feet on the site. However, a subsurface detention system has been designed to mitigate runoff from the proposed roof and parking areas, and will maintain an offsite peak rate of runoff below pre-development levels.
10. Nine parking spaces are provided for the use of the commercial building as proposed, including one handicapped-accessible space, which meets the parking requirements of Section 7-09-030B of the Northborough Zoning Bylaw.
11. An existing evergreen buffer along the rear property line of the subject site and Brody Way will remain.
12. Additional landscaping includes a series of arborvitaes, hosta, knockout rose bushes, Japanese holly, pear trees and morning light grass.
13. A stockade fence will be placed along the entire property line abutting 109 West Main Street and around the dumpster proposed in the rear of the site.
14. A retaining wall will be located on the side property line that abuts 117 West Main Street and will extend the length of the building and around a portion of the rear of the building.
15. Three storage areas are located on the site. Two snow-storage areas are provided in the front of the site, and one snow-storage area is provided in the rear of the site.
16. The open space requirement for the proposed project on the site is 3,000 square feet and 9,000 square feet has been provided.
17. In a memo to Fran Bakstran, Chairman, Zoning Board of Appeals, from Michelle Gillespie, Chairman, Design Review Committee, RE: 113 West Main Street, dated April 4, 2016, Ms. Gillespie states the maximum front setback of 20 feet doesn't work well with sloped sites and in this particular location, the first floor elevation would be 5-6 feet above the proposed sidewalk, in addition to a retaining wall that would be necessary in front of the site. The revised site plan, showing a more gradual approach to the building and the front façade parallel to West Main Street, is the preferred design for this location.
18. All items in a letter to Fran Bakstran, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Department of Public Works, dated April 4, 2016, RE: 113 West Main Street, Map 62, Parcel 6, have been or shall be, addressed by the Applicant.
19. All items in a letter to the Zoning Board of Appeals from Fred Hurst, Captain, Fire Prevention, Northborough Fire Department, dated March 22, 2016, Subject: Special Permit and Special Permit with Site Plan Approval, 113 West Main Street, have been or shall be addressed by the Applicant.
20. In a letter to Fran Bakstran, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated April 4, 2016, RE: 113 West Main Street, Map 62, Parcel 69, Mr. Litchfield states the Groundwater Advisory Committee voted unanimously in favor of recommending approval of the requested Special Permit and offered their comments.

21. The proposed use of a 2,200 square foot commercial building for personal or business service, medical office, retail stores or office space on the property at 113 West Main Street is allowed by right in the Downtown Business District.
22. The use and scale of the proposed 2,200 square foot building is consistent with nearby uses, including Choice Cleaners at 105 West Main Street and Marlborough Savings Bank at 101 West Main Street. It will also provide services consistent with the Downtown Business District. Therefore, the proposed site is an appropriate location for the proposed use and will not adversely affect the neighborhood.
23. The proposed site access will be located on West Main Street and sufficient sight distance is provided in both directions. Therefore, there will be no nuisance or serious hazard to vehicles or pedestrians and the relief sought will not constitute substantial detriment to the public good or substantially derogate from the intent or purpose of the Zoning Bylaw.
24. The proposed plans provide adequate parking and site access for employees, customers, and emergency vehicles. Town water and sewer is available in West Main Street. Drainage connection for the proposed stormwater management system is located in West Main Street (Route 20). Therefore, adequate and appropriate facilities will be provided for the proper operation of the proposed use.
25. The project as proposed will not be substantially more detrimental to the water supply than the existing use and meets the requirements of Section 7-07-010, Groundwater Protection Overlay District, of the Northborough Zoning Bylaw.
26. Due to changes to the original plans suggested by the Design Review Committee, the location of the proposed commercial building is in the rear of the property and proposed parking spaces are in a portion of the front of the property located in Groundwater Protection Overlay District Area 3. Therefore, the use of the commercial building is in the less restricted portion of the lot and the established groundwater line may be extended into the more restricted portion of the site by not more than 50 feet per Section 7-07-010, Groundwater Protection Overlay District of the Northborough Zoning Bylaw.
27. Due to circumstances relating to the topography of the subject site, which slopes down 14 feet from the rear of the property to the front of the property; the location of a portion of the site in Groundwater Protection Overlay District Area 3; and the recommendation of the Design Review Committee to revise the plans such that two Variances are required, a literal enforcement of the applicable provision of the Zoning Bylaw would involve substantial hardship, financial or otherwise, but not of a personal nature, to the petitioner or appellant.
28. The use of a commercial building with associated parking, driveway, utility connections, drainage, and landscaping for retail, professional/business offices, professional service establishment, or medical/dental office, 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 or purpose of the Northborough Zoning Bylaw.
29. The proposed use will conform to any special requirements of the special permit granting authority as stated in its written decision and the proposal could not reasonably be altered to reduce adverse impacts on the natural environment, to be compatible with historic development patterns of the town, or to preserve historically significant buildings.

DECISION

1. On April 5, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT SITE PLAN APPROVAL** per Section 7-03-050A(1)(b), Administration and Enforcement, Site Plans, Applicability, of the Northborough Zoning Bylaw, to allow the use of a proposed 2,200 square-foot commercial building with associated parking, driveway, utility connections, drainage, and landscaping for retail, professional/business offices, professional service establishment, or medical/dental office, on the property located at 113 West Main Street, in the Downtown Business District and Groundwater Protection Overlay District Area, **per the plans submitted and identified as follows:**

- a. A set of 5 black and white 24" x 36" plans, prepared for TShay, LLC by Connorstone Engineering, dated February 16, 2016, and revised on 3/30/16, stamped and signed by Vito Colonna, Civil Registered Professional Engineer, with sheets identified as: Existing Conditions; Proposed Site Plan; Erosion Control Plan; Landscaping & Lighting Plan; and Construction Details for 113 West Main Street in Northborough, Mass;
- b. A set of 8" x 11" black and white architectural plans prepared for TShay LLC, 113 West Main Street, prepared by Daniel J. Wezniak, AIA, Silver Street Architects, with sheets identified as: A1.0, Preliminary Elev With Shutters, dated 04.05.16; A1.0, Preliminary Elev No Shutters; Front Elevation & Front Elevation w/Shutters; Left Side Elevation & Left Side Elevation w/Shutters; and Right Side Elevation & Right Side Elevation w/Shutters.

And with the following conditions:

- c. All sub-structures proposed in any paved areas shall be rated for a minimum of 85,000 lb. vehicle load.
- d. Revised lighting and signage plans shall be submitted to the Town Planner and Inspector of Buildings for their review and approval prior to the issuance of a building permit.
- e. All items in a letter to Fran Bakstran, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Department of Public Works, dated April 4, 2016, RE: 113 West Main Street, Map 62, Parcel 6, shall be addressed by the Applicant **and are as follows:**
 - i. The Applicant shall prepare and submit a MassDOT Access Permit Application and provide a copy of the permit to the Town Engineer prior to the issuance of a building permit.
 - ii. The Applicant shall obtain an Earthwork Permit prior to the start of any construction.
 - iii. The Applicant shall revise and show single sanitary sewer drop manhole with chimney and a detail of such shall be added to the drawings.

- iv. The Applicant shall revise the design to utilize the existing lateral and confirm the location by video inspection prior to construction.
- v. The Applicant shall show the existing water service location and curb stop.
- vi. The Applicant shall confirm that the existing 1" copper service is of adequate size. If so, connection of new 1" copper service shall be made at the curb stop.
- vii. A sewer manhole shall be installed at each change in direction, a detail of a sewer manhole shall be added to the drawings.
- viii. The Applicant shall remove the proposed sidewalk and wheelchair ramp from the project, and this area shall be prepared and graded for future installation of a sidewalk at this location.
- ix. The location of the ultimate discharge point of the drainage shall be outlined in order to confirm it does not return any stormwater to the municipal system.
- x. The vertical granite curbing shall be extended to the end of the property line.
- xi. The Applicant shall verify with turning template how a passenger vehicle exits parking spaces #4 and #5.
- xii. The Applicant shall revise and resubmit the buoyancy calculations.
- xiii. The Applicant shall revise and resubmit the Hydrologic Analysis.
- xiv. The proposed retaining wall shall be designed by a Professional Engineer as it exceeds four feet of exposed height and the Applicant shall provide a detail on the plan.
- xv. The proposed stockade fence shall not exceed six (6) feet in height and the Applicant shall provide a detail on the plan.
- xvi. The roof drain shall not be connected to the sub-drain at the southwesterly corner of the building.
- xvii. Vehicle access shall be prohibited to the rear of the building.
- xviii. No parking shall be allowed on the easterly side of the building.
- xix. Each of the items listed above shall be shown on a set of revised site plans to be submitted and approved by the Town Engineer prior to the issuance of a building permit.

2. On April 5, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT** per Section 7-07-010C(3) Groundwater Protection Overlay District, Establishment and Delineation, of the Northborough Zoning Bylaw, to allow the proposed use of a commercial building with parking in the front of the lot to extend 50 feet over the Groundwater Protection Overlay District Area 3 established line on the property located at 113 West Main Street, *with the following conditions:*
 - a. In the event the Special Permit from section 7-07-010 C (3) is granted, this project as submitted will not need to meet the requirements of section 7-07-010 D (1) (c) [3] as the lot would be considered pre-existing non-conforming and therefore would not be required to contain the required 20,000 square feet to allow the proposed use by right.
 - b. There shall be no storage of any hazardous chemicals on the site.
 - c. If a Medical Office is proposed in this building the applicant shall provide the information needed for containment of medical waste/supplies and request a modification to the Special Permit.
 - a. Per the "Stormwater Operations and Maintenance Plan and Long-term Pollution Prevention Plan", the Applicant shall submit annual reports to the Town Engineer including a record of all activities performed within the previous twelve months. The Town Engineer and the Groundwater Advisory Committee shall be provided copies of the contract, all inspection reports and all invoices for the work performed.
 - d. An as-built site plan shall be submitted to the Town Engineer for review and approval prior to the issuance of a certificate of occupancy. The as-built plan shall include, at a minimum, and as applicable to the project, a permanent benchmark, elevation of all pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; landscaping, lighting and all dates of fieldwork. 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 and the Town's vertical datum (U.S.G.S. Datum of 1988).
3. On April 5, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-020, Density and Dimensional Regulations, Table of Density and Dimensional Regulations, Table 2., to allow the location of the proposed commercial building to be no more than 95 feet from the covered porch to the front property line, on the property located at 113 West Main Street.
4. On April 5, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-09-030C(2)(a), Development Regulations, Off-Street Parking and Loading, Off-Street Parking and Design Standards, Location, Design and Construction of Off-Street Parking, to allow off-street parking to be located entirely in

the front portion of the site and in front of the proposed commercial building on the property located at 113 West Main Street.

5. The **VARIANCES** 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."
6. If the rights authorized by the **VARIANCES** 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.
7. The **SPECIAL PERMITS** 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."
8. If the rights authorized by the **SPECIAL PERMITS** are not exercised within two years from the time of granting, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 9.
9. 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.

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

A handwritten signature in dark ink, appearing to read 'Fran Bakstran', is written over a horizontal line.

FRAN BAKSTRAN, CHAIRMAN