



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. 14-06

PROPERTY LOCATION: 12 Mill Street

PETITIONER & PROPERTY OWNER: Patricia Johnson

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 40162 Pg: 144

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This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of Patricia Johnson for a Variance, Special Permit and Special Permit, Groundwater Protection Overlay District to allow the construction of a two-family dwelling on the property located at 12 Mill Street, Map 54, Parcel 53.

APPLICATION

1. On May 29, 2014, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a **VARIANCE** from Section 7-05-030, Table 1, Part B; and **SPECIAL PERMITS** per Section 7-07-010D(3)(c)[6] and Section 7-08-020B of the Northborough Zoning Bylaw, to allow the reconstruction of a pre-existing, non-conforming dwelling and use of a two-family dwelling in the Downtown Business District and Groundwater Protection Overlay District Area 3, on the property located at 12 Mill Street.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on June 9, 2014 and June 16, 2014 and was mailed to abutters and other parties in interest on June 3, 2014.

EXHIBITS

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

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A Quitclaim Deed for "12 Mill Street, Northborough, MA 01532" recorded at the Worcester District Registry of Deeds on 11/14/2006, Bk: 40162 Pg: 144;
 - b. A certified abutters list for parcels 300 feet from 12 Mill Street, including a cover sheet signed by Mary E. Carey, for the Town of Northborough Board of Assessors, dated May 22, 2014, and a Northborough, MA GIS Viewer map entitled "12 Mill Street, Northborough, MA" dated 5/22/14;
 - c. A document entitled "Calculation Sheet for Increase to Impervious Surface: Groundwater Protection Overlay District, for 12 Mill Street" dated 6/6/14; and
 - d. Two plan sheets entitled "Site Development Plan for 12 Mill Street, Northborough, Massachusetts 01532", prepared for Patricia Johnson by J.M. Grenier Associates Inc., dated May 22, 2014; identified as Sheet 1 of 2, Layout Plan; and Sheet 2 of 2, Site Grading Plan; and
 - e. A plan sheet entitled "Site Development Plan for 12 Mill Street, Northborough, Massachusetts 01532", prepared for Patricia Johnson by J.M.

Grenier Associates Inc., dated May 22, 2014; identified as Sheet 1 of 1, Site Development Plan for 12 Mill Street, dated May 22, 2014, revised 6/18/14 (Revise Building Location).

2. A copy of a letter to the Chairman of the Board of Selectmen from Normand Corbin, Vice Chairman, Northborough Historical Commission, Regarding 12 Mill Street Demolition Delay, dated April 21, 2014; and
3. A letter to the Zoning Board of Appeals from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, Re: 12 Mill Street, Map 54, Parcel 53, dated June 20, 2014.

HEARING

John Grenier, Engineer, J.M. Grenier Associates, Inc., representing the Applicant, Patricia Johnson, presented the Application at a duly noticed public hearing of the Board on June 24, 2014, in Conference Room B of the Northborough Town Office, 63 Main Street, Northborough, MA 01532. Voting members Fran Bakstran, Richard Rand, Robert Berger, Mark Rutan, and Brad Blanchette were present throughout the proceedings.

Mr. Grenier presented the plans for the project, stating the existing home on the property located at 12 Mill Street will be demolished and a two-family dwelling, each unit with two bedrooms, is proposed. The property is located in the Downtown Business District and Groundwater Protection Overlay District Area 3. The property is also within 200 feet of Cold Harbor Brook, and a portion is within a 100-foot wetland buffer. A variance is required because two-family dwellings (duplexes) are not allowed in the Downtown Business District. Special permits are required for the use of a two-family dwelling in a groundwater district; and to allow the reconstruction of the pre-existing, non-conforming home on the property. The existing home is approximately 75 feet from the front property line and the proposed two-family dwelling will be located approximately 60 feet from the front property line. A new septic system has been designed for the two-family use to replace an existing cesspool that has not been used for approximately 10 years.

The proposed project has been reviewed by the Conservation Commission and Groundwater Advisory Committee.

Mr. Grenier stated multi-family dwellings are allowed in the Downtown Business District, but would be hard on the proposed septic system, and therefore they are proposing the two-family dwelling with a total of 4 bedrooms. There are other duplexes and multi-family dwellings on Mill Street, so the proposal will be in keeping with the feel of the existing neighborhood. Mill Street is residential and not like the Downtown Business area.

Abutter Cathy Staniunas, 14 Mill Street, raised concerns about runoff going onto her property, and the condition of Mill Street before and after the proposed construction.

No person present spoke in opposition to the project and no letters in opposition to the project were received by the Board.

The hearing was closed on June 24, 2014.

FINDINGS OF FACT

1. The subject property at 12 Mill Street is located in the Downtown Business District and Groundwater Protection Overlay District Area 3. Mill Street is a dead-end street.
2. The Applicant is proposing to demolish the existing home on the site and replace it with a two-family dwelling unit.

3. In the Downtown Business District, the use of a two-family dwelling (duplex) is not allowed and therefore a Variance is required from Section 7-05-030, Table 1. Table of Uses. Part B., Commercial and Industrial Districts, of the Northborough Zoning Bylaw.
4. In Groundwater Protection Overlay District Area 3, the use of a two-family dwelling is allowed by Special Permit per Section 7-07-010D(3)(c)[6] Groundwater Protection Overlay District, Use Regulations, Area 3, Two-family and multifamily residential development, of the Northborough Zoning Bylaw.
5. In the Downtown Business District, the maximum allowed distance from the front line of the principle structure (to be demolished) to the front property line is 20 feet. The existing home on the subject property is located 75.7 feet from the front property line and therefore is a pre-existing, non-conforming structure. The proposed two-family dwelling on the site will be located 60.1 feet from the front property line and therefore the Applicant will be reducing the non-conformity by approximately 15 feet.
6. A Special Permit is required for the reconstruction of the pre-existing, non-conforming structure on the subject site per Section 7-08-020B of the Northborough Zoning Bylaw.
7. Although the subject property at 12 Mill Street is in the Downtown Business District, Mill Street is a residential area in which other two-family and multi-family dwellings are located.
8. The subject property is located entirely within Groundwater Protection Overlay District Area 3.
9. A calculation sheet for impervious surface on the site has been submitted and indicates the subject property is 24,028 square feet in area and the total existing impervious surface on the property is 1,668 square feet. The allowed increase to the existing impervious surface is 3,354 square feet and the proposed impervious surface is 1,592 square feet. Therefore, the project as proposed meets the Groundwater Protection Overlay District Area 3 requirement that the impervious surface of the building lot shall not exceed existing conditions by more than fifteen percent (15%).
10. The proposed two-family dwelling will be serviced by Town water and a proposed new septic system, to be located in the front yard, in the area in which the driveway will be located. An existing cesspool on the site will be collapsed.
11. The proposed septic system on the 24,028 square-foot subject property has been designed to accommodate the use of the two-family, 4-bedroom dwelling and will meet the requirement of Groundwater Protection Overlay District Area 3 that any on-site sewage disposal will be less than or equal to 220 gallons per day per 10,000 square feet of lot area, or up to 440 gallons per day for the use on the subject lot.
12. A stormwater maintenance plan will be submitted to the Town Engineer for review, and includes the incorporation of a berm, in a proposed landscape area on the site, that will prevent runoff from going onto a neighbor's property.
13. In a letter to the Zoning Board of Appeals from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, Re: 12 Mill Street, Map 54, Parcel 53, dated June 20, 2014, the members voted unanimously in favor of recommending approval of the requested Special Permit with conditions.
14. The upper and lower riparian zones of Cold Harbor Brook are located within the subject property and a portion of the property is within a 100-foot wetland buffer, both of which limit disturbance of the lot and affect the intensity of development on the lot.
15. The Applicant filed a Notice of Intent with the Conservation Commission and the hearing was closed on June 9, 2014.

16. The Applicant chose to construct a two-family dwelling, with a total of 4 bedrooms, instead of a multi-family dwelling (allowed by Special Permit in the Downtown Business District) so as not to overtax the proposed septic system.
17. Due to circumstances relating to the location of a septic system in the front portion of the property, as well as the location of the property within the upper and lower riparian zones of Cold Harbor Brook and within the 100-foot buffer zone of a bordering vegetated wetland, which limits the area and intensity of disturbance allowed on the site, affecting only the subject land but not generally affecting land or structures in the same zoning district, a literal enforcement of the Zoning Bylaw would involve substantial hardship.
18. The proposed structure will be less nonconforming with regard to the front yard setback than the existing structure on the lot.
19. The proposed impervious surface on the site and the proposed on-site sewage disposal for the two-family, 4-bedroom use meet the requirements of Groundwater Protection Overlay District Area 3.
20. The proposed two-family dwelling use is consistent with adjacent uses on Mill Street, which include two-family dwellings across the street and multi-family dwellings elsewhere on the street. In addition, the property is located at the end of a Mill Street, which is a dead-end street, and therefore, the proposed two-family dwelling will not adversely affect the neighborhood, nor will there be any nuisance or serious hazard to vehicles or pedestrians.
21. While the subject lot falls within the Downtown Business District, Mill Street is not located on a major street where the setback restrictions are intended.
22. The relief sought for the reconstruction of the non-conforming structure on the subject lot will not be substantially more detrimental than the pre-existing non-conforming structure to the neighborhood, and the proposed use is similar in character and in its effect on the neighborhood and other property in the vicinity.
23. The proposed project as presented may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.
24. Adequate parking has been provided for the proposed two-family dwelling.
25. The site has been designed to minimize site alterations while complying with other applicable regulations, including Board of Health regulations regarding the location of on-site sewage disposal systems and disturbance within the riverfront area. The existing residence on the site is not historically significant. Therefore, the proposal as presented 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 June 24, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** required from Section 7-05-030, Table 1. Table of Uses. Part B., Commercial and Industrial Districts, of the Northborough Zoning Bylaw, to allow the use of a two-family dwelling (duplex) with a total of 4 bedrooms in the Downtown Business District on the property located at 12 Mill Street.
2. On June 24, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT** per Section 7-08-020B to allow the reconstruction of the pre-existing, non-conforming structure on the property located at 12 Mill Street.
3. On June 24, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT** per Section 7-07-010D(3)(c)[6], Groundwater Protection Overlay

District, Use Regulations, Area 3, to allow the use of a two-family dwelling (duplex) with a total of 4 bedrooms in Groundwater Protection Overlay District Area 3 on the property located at 12 Mill Street, per the plans submitted and identified as:

- a. Two plan sheets entitled "Site Development Plan for 12 Mill Street, Northborough, Massachusetts 01532", prepared for Patricia Johnson by J.M. Grenier Associates Inc., dated May 22, 2014; identified as Sheet 1 of 2, Layout Plan; and Sheet 2 of 2, Site Grading Plan; and
- b. A plan sheet entitled "Site Development Plan for 12 Mill Street, Northborough, Massachusetts 01532", prepared for Patricia Johnson by J.M. Grenier Associates Inc., dated May 22, 2014; identified as Sheet 1 of 1, Site Development Plan for 12 Mill Street, dated May 22, 2014, revised 6/18/14.

And with the following conditions:

- c. The septic loading shall not exceed 440 gallons per day for the lot.
 - d. An Operation and Maintenance Plan for Stormwater Management shall be prepared by the Applicant which includes the following: The Town Engineer shall be notified before the work is performed and shall be afforded the opportunity to inspect the work. The Town Engineer and the Groundwater Advisory Committee shall be provided copies of the contract, all inspection reports and invoices for the work performed annually. All material removed from the drainage system shall be disposed of offsite.
 - e. Prior the issuance of the first occupancy permit, the Operation and Maintenance Plan for Stormwater Management shall be recorded by the Applicant at the Worcester District Registry of Deeds.
 - f. Any changes in the impervious cover proposed as the project gets built must be verified by the as-built drawing and will require a new calculation sheet.
 - g. Prior the issuance of the building permit, a permeability test shall be performed by the Applicant and the results shall be provided to the Town Engineer.
 - h. An as-built site plan shall be submitted to the Town Engineer for 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 utilities, pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; 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).
4. The **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."
 5. If the rights authorized by the **VARIANCE** are not exercised within one year from the time of granting, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

6. 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."
7. 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. 10.
8. 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**



FRAN BAKSTRAN, CHAIRMAN