



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 16-02

PROPERTY LOCATION: 16, 17, 18, 21 & 22 Dunia Lane

PETITIONER & PROPERTY OWNER: Dunia Gardens LLC/Mohamad Ramadan

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 41888 Page: 261

This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of Dunia Gardens LLC/Mohamad Ramadan to amend the Comprehensive Permit granted for ZBA Case No. 05-34, by allowing the rear setbacks of five dwelling units in the Dunia Gardens condominium complex to be less than the minimum required 25 feet from the rear property lines on the properties located at 16, 17, 18, 21 and 22 Dunia Lane.

APPLICATION

1. On January 21, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of amending the Comprehensive Permit granted for ZBA Case No. 05-34 by allowing the rear setbacks of five dwelling units to be less than the required 25 feet from the rear property lines on the properties located at 16, 17, 18, 21 & 22 Dunia Lane.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on February 8, 2016 and February 15, 2016; and was mailed to abutters and other parties in interest on January 25, 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 certified abutters list for parcels 300 feet from 16, 17, 18, 21 & 22 Dunia Lane, Map 35, Parcel 33 dated 1/20/2016, including a cover sheet signed by Susan M. Reagan for the Town of Northborough Board of Assessors, dated 1/20/16, and a Northborough, MA GIS Viewer map entitled "Dunia Lane", dated 1/20/16; and
 - b. A 24" x 36" black and white plan entitled "Foundation As-Built of Building #8 & 9 Dunia Lane in Northborough, Mass.", dated August 28, 2009, with revisions dated July 2, 2010, May 1, 2012, May 19, 2014, November 21, 2014, and January 20, 2016, prepared for Dunia Gardens LLC by Connorstone Consulting Civil Engineers and Land Surveyors; stamped and signed by Ronald R. Turchi, Registered Professional Land Surveyor, on 1/20/16.

HEARING

Applicant Mohamad Ziad Ramadan presented the Application at a duly noticed public hearing of the Board on February 23, 2016 in Conference Room B of the Northborough Town Office, 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. Ramadan stated he is asking for relief from the required rear setback of 25 feet for dwelling units in the Dunia Gardens condominium development at 16, 17, 18, 21 and 22 Dunia Lane. He reviewed the plan submitted to the board in his Application and explained the site off Hudson Street is a Chapter 40B Comprehensive Permit project. When it was approved, the waiver list in the decision was not accurately stated. The project consists of 28 townhouses, all planned with 10-foot by 12-foot decks off the back. However when they were built, dwelling units 16, 17, 18, 21 and 22 did not include decks, only stairs. The decks were then built exactly as per the approved plan. Mr. Ramadan explained he applied for occupancy permits for the subject 5 dwelling units and was told by the Building Inspector that the units would not meet the minimum rear setback requirement of 25 feet in the zoning district because the waivers listed in the decision were not accurate. Mr. Ramadan stated he is now asking for an amendment to the Comprehensive Permit that will allow the subject dwelling units to be less than 25 feet from their rear property lines.

Kathy Joubert, Town Planner, noted that regulations of a Comprehensive Permit override local zoning and therefore a Variance is not required for the dimensional relief sought by the Applicant.

Raju Matthews, 245 Hudson Street, expressed concern that he will lose his privacy because his property directly abuts 21 and 22 Dunia Lane. Mr. Ramadan stated the ground rises there and there is a tree buffer between the abutting back yards.

No letters in opposition to the project were received by the Board.

The hearing was closed on February 23, 2015.

FINDINGS OF FACT

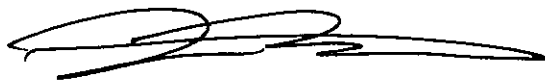
1. The subject site on Dunia Lane, off Hudson Street, is located in the Residential C District and Groundwater Protection Overlay District Area 3.
2. The subject dwelling units identified as 16, 17, 18, 21 and 22 Dunia Lane are part of the Dunia Gardens townhouse condominium homeownership development built per a Comprehensive Permit granted on August 22, 2006 for ZBA Case No. 05-34.
3. The Application by Dunia Gardens, ZBA Case No. 05-34, was in accordance with Massachusetts General Laws Chapter 40B, Sections 20-23 and acted as Chapter 774 of the Acts of 1969 and rules and regulations promulgated thereunder.
4. The Dunia Gardens development includes 28 dwelling units located in 9 separate buildings. The subject dwelling units at 16, 17 and 18 Dunia Lane are located in Building #8 (a triplex); and the subject dwelling units at 21 and 22 Dunia Lane are located in Building #9 (a duplex).

5. In the Residential C District, the minimum required distance of a principle structure to a rear property line is 25 feet. However, regulations for a development built under a Comprehensive Permit override the requirements of the Northborough Zoning Bylaw.
6. While applying for occupancy permits for the subject 5 dwellings, the Applicant discovered the list of waivers in the decision for the Comprehensive Permit granted for ZBA Case No. 05-34 was not accurate in that it did not include dimensional waivers for the subject dwelling units at 16, 17, 18, 21 and 22 Dunia Lane.
7. The Applicant is requesting waivers to allow the distances of the decks on the subject dwelling units from their rear property lines to be as follows:
 - *The 16 Dunia Lane deck to be no less than 13 feet from the rear property line;*
 - *The 17 Dunia Lane deck to be no less than 10 feet from the rear property line;*
 - *The 18 Dunia Lane deck to be no less than 12 feet from the rear property line;*
 - *The 21 Dunia Lane deck to be no less than 17 feet from the rear property line;*
and
 - *The 22 Dunia Lane deck to be no less than 18 feet from the rear property line*

DECISION

1. On February 23, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **WAIVER** to allow the decks on the dwelling units at 16, 17 and 18 Dunia Lane, in Building #8, to be no less than 10 feet from the rear property lines.
2. On February 23, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **WAIVER** to allow the decks on the dwelling units at 21 and 22 Dunia Lane, in Building #9, to be no less than 17 feet from the rear property lines.
3. 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