



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. 16-08

PROPERTY LOCATION: 313 Brigham Street

PETITIONERS & PROPERTY OWNERS: Lando and Samantha Bates

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 49168

Pg: 326

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This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of Lando and Samantha Bates for Variances to allow the use of two single-family homes to be located on two proposed lots with less than the required minimum lot area; to allow one lot to have less than the required frontage; and both lots to have less than the required lot widths, on the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C District and Groundwater Protection Overlay District Area 1

APPLICATION

1. On April 21, 2016, 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 7-06-030, Table 2, to allow Lot 1 of two proposed lots, identified as Lot 1 & Lot 2, to have 92 feet of frontage; a Variance from Section 7-06-030, Table 2, to allow proposed Lot 1 to have 50 feet of lot width and proposed Lot 2 to have 75 feet of lot width; and a Variance from Section 7-07-010D(1)(a)(7) to allow the proposed Lot 1 to be 53,269 square feet in area and to allow the proposed Lot 2 to be 53,098 in area in Groundwater Protection Overlay District Area 1 on the property located at 313 Brigham Street.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on May 9, 2016 and May 16, 2016; and was mailed to abutters and other parties in interest on April 27, 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 313 Brigham Street from Lando Bates signed by Joseph M. Atchue, Inspector of Buildings, on 4/12/16;
 - b. A 4-page document entitled "Summary";
 - c. An 8.5" x 11" plan entitled "Mortgage Inspection Plot Plan in Northborough, Mass." with a lot identified as being on Brigham Street, dated 6.13.12, prepared by P.N. Associates, Inc., stamped by Paul G. Josephson, Professional Land Surveyor
 - d. A 2-page letter dated April 29, 2016 from Lando and Samantha Bates addressed to "Dear Neighbors"; an 8.5" x 11" Approval Not Required plan entitled "Plan of Land of 313 Brigham Street in Northborough, Mass." prepared for Lando & Samantha Bates, by Connorstone Engineering, January 19, 2016, stamped and signed by Varoujan H.

Hagopian, Professional Land Surveyor, on 1/19/16; and an 8.5"x11" plan entitled "ZBA Plan Family Residences, 313 Brigham Street, Northborough, MA, identified as Groundwater District Area 1, Town Tax Map 93 Parcel 29" prepared for Lando & Samantha Bates by MAC Property Service, dated April 5, 2016.

- e. A Quitclaim Deed for 313 Brigham Street, Northborough, Massachusetts, recorded at the Worcester District Registry of Deeds on 6/22/12, Book 49168 Page 326;
 - f. A certified abutters list for parcels 300 feet from 313 Brigham Street, Map 93, Parcels 29, dated 4/19/16; and a Northborough, MA GIS Viewer map for 313 Brigham Street, dated 4/19/2016;
 - g. A 24" x 36" Approval Not Required plan entitled "Plan of Land of 313 Brigham Street in Northborough, Mass." prepared for Lando & Samantha Bates, by Connorstone Engineering, January 19, 2016, stamped and signed by Varoujan H. Hagopian, Professional Land Surveyor, on 1/19/16; and
 - h. A 24" x 36" plan entitled "ZBA Plan Family Residences, 313 Brigham Street, Northborough, MA, identified as Groundwater District Area 1, Town Tax Map 93 Parcel 29" prepared for Lando & Samantha Bates by MAC Property Service, dated April 5, 2016.
- 2. A letter to Fran Bakstran, Chairman, Zoning Board of Appeal, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, Re: 314 Brigham Street, Map 93, Parcel 29; and
 - 3. A letter to the Zoning Board of Appeals from Roy K. Evarts, 106 Sunset Drive, Northborough, MA 01532, dated May 24, 2016, Subject: Lando & Samantha Bates Multiple Variances Request.

HEARING

Applicant Lando Bates presented the Application at a duly noticed public hearing of the Board on May 24, 2016 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Brad Blanchette, and Mark Rutan were present throughout the proceedings. Board member Jeffrey Leland recused himself from this hearing.

Mr. Bates explained he and his wife own the property at 313 Brigham Street, which is 106,367 square feet in area with 192 feet of frontage. There is a house and a barn on the site that have been there since 1956 and the barn will be removed. He noted he recently received Planning Board approval to subdivide 313 Brigham Street into two lots with one lot containing the house and one lot containing the barn.

Mr. Bates stated he wants to further divide the lot with the barn into two separate lots identified as Lot 1 and Lot 2, and construct a 4-bedroom single-family dwelling on each lot. Both lots will have a septic system and will be serviced by well water. The property is in a groundwater protection overlay district which requires lots of at least 80,000 square feet in area and neither of the two proposed lots will meet that requirement. In addition, Lot 1 will not meet the required 100 feet of frontage, and neither lot will meet the required lot width of the Residential C District in which the property is located. Mr. Bates stated he is requesting a Variance for lot area in a groundwater district and Variances for lot width and frontage in the Residential C District. He

stated the proposed use of two 4-bedroom single-family homes will meet groundwater requirements for impervious surface post construction, and the two lots would each meet and exceed front, side and rear setback requirements of the zoning district.

Mr. Bates noted the subject property contains more than 80,000 square feet in area and the zoning district allows the use of a 2-family dwelling by special permit.

Residents of 89 Sunset Drive, 98 Sunset Drive, 106 Sunset Drive, 287 Brigham Street and 305 Brigham Street were present and expressed opposition to the project due to concerns regarding the significant relief being sought, septic system loading, traffic and pedestrian safety.

The board received a letter from resident Roy K. Evarts, 106 Sunset Drive, in which he expressed his concerns regarding the applicant's requests for variances.

The hearing was closed on May 24, 2016.

FINDINGS OF FACT

1. The subject property at 313 Brigham Street is located in the Residential C District and entirely in Groundwater Protection Overlay District Area 1.
2. The subject lot was created by the division of another lot into two lots and an existing house and barn have been located on the subject property since 1956.
3. The subject property, with 106,367 square feet in area and 192 feet of frontage, meets the minimum requirements for area (20,000 square feet) and frontage (100 feet) in the Residential C District; and also meets the minimum required area (80,000 square feet) in Groundwater Protection Overlay District Area 1.
4. The Applicants propose to remove the existing barn on the site, divide the subject lot into two lots, identified as Lot 1 and Lot 2, and construct a single-family home on each lot.
5. The proposed Lot 1 will be 53,269 square feet in area and the proposed Lot 2 will be 53,098 square feet in area. In Groundwater Protection Overlay District Area 1, the required lot size is 80,000 square feet. Therefore, a Variance is required from Section 7-07-010D(1)(a)[7], Overlay Districts, Groundwater Protection Overlay Districts, Use Regulations, Area 1, to allow both proposed Lot 1 and proposed Lot 2 to be less than 80,000 square feet in area.
6. Lot 1 is proposed to have 92 feet of frontage and a minimum of 100 feet of frontage is required in the Residential C District. Therefore, a Variance is required from Section 7-06-020, Table 2., Density and Dimensional Regulations, Table of Density and Dimensional Regulations, to allow Lot 1 to have less than 100 feet of frontage in the Residential C District.
7. The proposed Lot 1 will be 50 feet in width and the proposed Lot 2 will be 75 feet in width. In the Residential C District, the minimum allowed lot width is 100 feet. Therefore, a Variance is required from Section 7-06-020, Table 2., Density and Dimensional Regulations, Table of Density and Dimensional Regulations, to allow both Lot 1 and Lot 2 to have less than 100 feet of lot width in the Residential C District.
8. In a letter to Fran Bakstran, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, Re: 313 Brigham Street, Map 93, Parcel 29, Mr. Litchfield states:

"The Groundwater Advisory Committee voted unanimously to not recommend the approval of the requested Variance for the following reasons:

- 1) *A variance of this type is usually only granted if Town sewer is available and this lot does not have access to Town sewer.*
 - 2) *This lot did not exist prior to the adoption of the Groundwater portion of the Zoning Bylaw and in fact was just created in February of this year based on a state statute which allows the separation of one lot into two when there are two structures on a single lot which did exist prior to the adoption of zoning. “*
9. The Applicants propose to create two non-conforming lots dividing the subject lot that conforms to area, frontage, and all dimensional requirements of the Residential C District and Groundwater Protection Overlay District Area 1.
 10. Any hardship would be self-imposed by the Applicants as they are proposing to create two lots that they know will be non-conforming in multiple ways.

DECISION

1. On May 24, 2016, after due consideration of the Application, the Board voted 4 in favor, none opposed to **DENY** the **VARIANCE** from Section 7-07-010D(1)(a)[7], Overlay Districts, Groundwater Protection Overlay Districts, Use Regulations, Area 1, to allow both proposed Lot 1 and proposed Lot 2 to be less than 80,000 square feet in area, on the property located at 313 Brigham Street, Map 93, Parcel 29, due to the fact that the Applicants are proposing to divide the existing conforming lot in order to create two lots that are non-conforming.
2. On May 24, 2016, after due consideration of the Application, the Board voted 4 in favor, none opposed to **DENY** the **VARIANCE** from Section 7-06-020, Table 2., Density and Dimensional Regulations, Table of Density and Dimensional Regulations, to allow Lot 1 to have less than 100 feet of frontage in the Residential C District.
3. On May 24, 2016, after due consideration of the Application, the Board voted 4 in favor, none opposed to **DENY** the **VARIANCE** from Section 7-06-020, Table 2., Density and Dimensional Regulations, Table of Density and Dimensional Regulations, to allow both Lot 1 and Lot 2 to have less than 100 feet of lot width in the Residential C District.
4. 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