



# 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. 16-13**

**PROPERTY LOCATION: 313 Brigham Street**

**PETITIONERS & PROPERTY OWNERS: Lando and Samantha Bates**

**RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 49168 Pg: 326**

RECEIVED  
NORTHBOROUGH TOWN CLERK  
2016 NOV -4 AM 11:04

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of Lando and Samantha Bates for a Variance to allow a proposed single-family dwelling on a non-conforming 56,367 square-foot lot that will be created by the division of 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 June 23, 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 7-07-010D(1)(a)[7], Overlay Districts, Groundwater Protection Overlay District, Use Regulations, Area 1, Residential Developments, to allow a proposed single-family dwelling on a lot of 56,367 square feet that will be created by the division of the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C District and Groundwater Protection Overlay District Area 1.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on July 11, 2016 July 18, 2016; and was mailed to abutters and other parties in interest on July 7, 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 and signed by Joseph M. Atchue, Inspector of Buildings, on July 12, 2016;
  - b. A 15-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 Quitclaim Deed for 313 Brigham Street, Northborough, Massachusetts, recorded at the Worcester District Registry of Deeds on 6/22/12, Book 49168 Page 326;

- e. 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;
  - f. 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, signed by the Planning Board on 2/10/2016; and recorded at the Worcester District Registry of Deeds on 2/19/16, Plan Book 918, Plan 39;
  - g. A 3-page document entitled "Unofficial Property Record Card – Northborough, MA, dated 3/20/2016, for property located at 313 Brigham Street, Parcel 93, Map 29;
  - h. A document entitled "OLIVER: Mass GIS's Online Mapping Tool", dated 6/20/2016;
  - i. A Zoning Board of Appeals Application for Hearing for 7 Winn Terrace, ZBA Case No. 08-10, filed 6/17/2008;
  - j. A set of Zoning Board of Appeals meeting minutes dated July 22, 2008, Approved 8-26-08;
  - k. A letter to Richard Rand, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated July 22, 2008, Re: 7 Winn Terrace, Map 64, Parcel 34;
  - l. A ZBA decision for Case No. 04-07, 71 Pleasant Street, dated July 13, 2004, date-stamped by the Town Clerk on July 13, 2004;
  - m. A document entitled "Northborough Zoning Board of Appeals Case History", dated May 24, 2004, ZBA Case #04-07, 71 Pleasant Street;
  - n. A ZBA decision for Case No. 16-08, Property Location: 313 Brigham Street; Petitioners and Property Owners: Lando and Samantha Bates, date-stamped by the Town Clerk on June 3, 2016; and
  - o. A 24" x 36" plan entitled "ZBA Plan, Proposed Single Family Residences, 313 Brigham Street, Northborough, MA, prepared for Lando & Samantha Bates by MAC Property Service, dated June 16, 2016.
2. A letter to Fran Bakstran, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated July 25, 2016, re: 313 Brigham Street, Map 93, Parcel 29; and
  3. A letter to Dick Rand, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated September 27, 2016, re: 313 Brigham Street, Map 93, Parcel 29.



## **HEARING**

Applicants Lando and Samantha Bates presented the Application at a duly noticed public hearing of the Board on July 26, 2016 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. The hearing was continued to August 23, 2016 and September 27, 2016. 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 but participated as a resident of Northborough.

At the meeting on July 26, 2016, the Applicant was granted a continuance to the August 23, 2016 meeting in order to acquire requested documents from Town offices.

At the August 23<sup>rd</sup> meeting, Mr. Bates explained he is proposing to create a non-conforming 56,367 square-foot lot (Lot #1), and a conforming 80,000 square-foot lot (Lot #2) on his 3.1 acre site at 313 Brigham Street, and also plans to construct a 4-bedroom, single-family home on each lot. The site is in Groundwater Protection Overlay District Area 1 and a Variance is required to allow the creation of the proposed non-conforming 56,367 square-foot lot. The public hearing was continued to the September 27<sup>th</sup> meeting in order for the Applicants to present the project to the Groundwater Advisory Committee.

On September 27, 2016, the Applicants, along with their engineer, Nick Leoleis, were present and Mr. Bates presented a color copy of the proposed plan. He indicated he had been before the Groundwater Advisory Committee and they voted unanimously to recommend approval of the project.

Mr. Leoleis explained the site is serviced by well water. It is unusually shaped, with 292 feet of frontage that narrows significantly in an easterly and westerly direction down to a lot width of approximately 168 feet. He noted the soil on the property consists of loam, gravel, 6-inch rounded rock and fine sand and recharges the groundwater supply below the surface. The topography of the site is flat and new runoff will be minimal.

Mr. Leland, 23 Pleasant Street, voiced his opinion as a Town resident, stating that, if the intent of the groundwater protection overlay is to protect the wells, moving the house and septic system further away from the well head does meet that intent. He stated for that reason, he believes the proposal is better than what currently exists on the site.

The hearing was closed on September 27, 2016.

## **FINDINGS OF FACT**

1. The subject property at 313 Brigham Street is 136,367 square-feet in area, and is located in the Residential C District and entirely in Groundwater Protection Overlay District Area 1.
2. In the Residential C District, the minimum required lot area is 40,000 square feet. However, Groundwater Protection Overlay District Area 1 requires the minimum lot size to be 80,000 square feet in the Residential C District.
3. In January 2016, the Applicants divided their 3.13-acre lot into two lots, identified as Lot #1 (30,000 square feet) and Lot #2 (106,367 square feet), per an ANR plan approved and signed by the Planning Board in February 2016.

4. The Applicants are now proposing to recombine the subject property into one non-conforming 56,367 square foot lot (Lot #1), and one conforming 80,000 square-foot lot (Lot #2), per the plans submitted and dated June 16, 2016. Therefore, a Variance is required to allow the creation of a non-conforming 56,367 square-foot lot in Groundwater Protection Overlay District Area 1 from Section 7-07-010, Overlay Districts, Groundwater Protection Overlay District, Use Regulations, Area 1, Residential Developments, of the Northborough Zoning Bylaw.
5. The Applicants are proposing to demolish the existing structures on the site, remove an existing septic system, and construct a new 4-bedroom, single-family dwelling with a new septic system on Lot #1. A new 4-bedroom, single-family dwelling with a new septic system is also proposed on Lot #2.
6. In a letter to Dick Rand, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated September 27, 2016, re: 313 Brigham Street, Map 93, Parcel 29, Mr. Litchfield states the Groundwater Advisory Committee voted to recommend the approval of the requested Variance with suggested conditions.
7. The proposed Lot #1 meets all the dimensional requirements of the Residential C District, but does not meet the lot area requirement of Groundwater Protection Overlay District Area 1. The proposed Lot #2 meets all the dimensional requirements of the Residential C District and of Groundwater Protection Overlay District Area 1.
8. Due to circumstances relating to the unusual shape of the lot and the septic systems on the site, affecting the subject property but not necessarily properties in the same zoning district, 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.
9. The relief sought will not constitute a substantial detriment to the public good, nor will it substantially derogate from the intent or purpose of the Northborough Zoning Bylaw, as the residential use of the property will not change.

#### **DECISION**

1. On September 27, 2016, after due consideration of the Application, the Board voted 4 in favor, none opposed to **GRANT** a **VARIANCE** from Section 7-07-010D(1)(a)[7], Overlay Districts, Groundwater Protection Overlay Districts, Use Regulations, Area 1, to allow the creation of a non-conforming 56,367 square foot lot on the property located at 313 Brigham Street, Map 93, Parcel 29 and per the plan submitted and identified as:

*"A 24" x 36" plan entitled "ZBA Plan, Proposed Single Family Residences, 313 Brigham Street, Northborough, MA, prepared for Lando & Samantha Bates by MAC Property Service, dated June 16, 2016"*

#### **And with the following conditions:**

- a. The project shall be built substantially in accordance with the plan submitted with the application which is titled ZBA PLAN, unstamped, prepared by MAC Property Service and dated June 16, 2016.



- b. The applicant shall provide recharge of 100% of the proposed impervious cover for lot 1 as shown on the plan submitted with the application.
  - c. The applicant shall file an impervious cover calculation sheet for both lots, as shown on the plan submitted with the application, with the Building Inspector prior to receiving any building permits which will be kept on file for future reference.
  - d. The applicant shall file an as-built plan of the construction on lot 1 as shown on the plan submitted with the application, in order to confirm 100% of the impervious cover has been captured and properly recharged as required in condition #2 prior to obtaining a certificate of occupancy.
- 2. 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."
  - 3. 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. 9.
  - 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**



---

**RICHARD RAND, CHAIRMAN**