



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 13-10

PROPERTY LOCATION: 318 Main Street

PETITIONER & PROPERTY OWNER: 318 Post Road Corporation

RECORDED WITH WORCESTER REGISTRY OF DEEDS: Book 03219, Page 251

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of 318 Post Road Corporation for a Variance to allow, in Groundwater Protection Overlay District Area 3, the expansion of the existing on-site sewage disposal system to service a proposed restaurant to be located in the building at 318 Main Street, GIS Map 47, Parcel 93.

APPLICATION

1. On May 30, 2013, 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(3)(c), Area 3, of the Northborough Zoning Bylaw, to allow on-site sewage disposal in an amount less than or equal to 330 gallons per 10,000 square feet of lot area, on the property located at 318 Main Street.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on June 10, 2013 and June 17, 2013, and was mailed to abutters and other parties in interest on June 6, 2013.

EXHIBITS

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

1. Application Package for Hearing before the Zoning Board of Appeals, including:
 - a. A Quitclaim deed for five tracts of land in Northborough, Worcester County, Massachusetts, recorded at the Worcester District Registry of Deeds on October 31, 1949, Book: 3219 Page: 251;
 - b. A plan entitled "Septic Sketch Plan at 381 Main Street in Northborough, MA.", prepared by Connorstone Consulting Civil Engineers and Land Surveyors, dated April 22, 2013; and
 - c. A certified abutters list of parcels 300 feet from 318 Main Street, with a cover sheet signed by Mary E. Carey, For the Board of Assessors, dated May 28, 2013 and including a Commercial Property Record Card for 318 Main Street, Map 47, Parcel 93, dated 5/30/2013 and a Northborough, MA GIS Viewer Map with a lot outlined in red identified as 318 Main Street, Northborough, MA;
2. A letter to Richard Rand, Chairman, Northborough Zoning Board of Appeals, from Mark L. Donahue, Fletcher Tilton, PC, re: 318 Post Road Corporation, Application for Variance, 318 Main Street, Northborough, Massachusetts, dated June 25, 2013;

3. A 21-page document addressed to Richard Rand, Chairman, Northborough Zoning Board of Appeals, from Mark L. Donahue, Fletcher Tilton PC, re: 318 Post Road Corporation, Application for Variance, 318 Main Street, Northborough, Massachusetts, dated July 9, 2013, with a 3-page cover letter; a 3-page letter to Smith & Loveless, Inc., from the Department of Environmental Protection entitled "General Use Certificate", dated February 19, 2013 (Exhibit A); 10 pages of information re: Smith & Loveless, Inc., Modular Fixed Activated Sludge Treatment (FAST) (Exhibit B); and a 2-page document entitled "Modular FAST Budget Proposal", Restaurant Project, June 25, 2013 (Exhibit C).
4. A letter from Fred Litchfield, Town Engineer, to the Zoning Board of Appeals, on behalf of the Groundwater Advisory Committee, dated July 16, 2013, re: 318 Main Street, Map 47, Parcel 93.

HEARING

At the June 26, 2013 Zoning Board of Appeals meeting, the public hearing for 318 Main Street was opened by Chairman Rand. Kathy Joubert, Town Planner, read a letter to the Northborough Zoning Board of Appeals from Mark L. Donahue, Fletcher Tilton, PC, re: 318 Post Road Corporation, Application for Variance, 318 Main Street, Northborough, Massachusetts, dated June 25, 2013, in which Mr. Donahue requested a continuance of the public hearing for 318 Main Street to July 23, 2013. The Board voted unanimously to continue the public hearing to July 23, 2013 at 7:00 pm.

Attorney Todd Brodeur, Fletcher Tilton, PC, and Mike Sullivan, Engineer, Connorstone Consulting Civil Engineers and Land Surveyors, representing the Applicant, 318 Post Road Corporation, presented the Application at a duly noticed public hearing of the Board on July 23, 2013, in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting Board members Fran Bakstran, Mark Rutan, Richard Kane, Robert Berger, Brad Blanchette were present throughout the proceedings.

Mr. Brodeur explained the Applicant wants to expand the existing restaurant area of the building at 318 Main Street from 125 seats to 200 seats for a new restaurant user. In order to do this, the existing septic system on the site must be expanded to a size that would be equal to 330 gallons per day per 10,000 square feet of lot area, which requires a Variance from Section 7-07-010D(3)(c)(3), Groundwater Protection Overlay District, Area 3, of the Northborough Zoning Bylaw. The current capacity of the septic system servicing the property is 220 gallons per day per 10,000 square feet of lot area.

No persons present spoke against the project and the Board did not receive any letters in opposition to the project.

The hearing was closed on July 23, 2013.

FINDINGS OF FACT

1. The subject property at 318 Main Street is located in the Business East District and Groundwater Protection Overlay District Area 3.
2. The Applicant is proposing to expand the existing septic system by 50% for the purpose of servicing a 200-seat restaurant in the commercial building on the subject site.
3. In Groundwater Protection Overlay District Area 3, any on-site sewage disposal for commercial development is required to be less than or equal to 220 gallons of flow per 10,000 square feet of lot area.
4. The capacity of the existing septic system servicing the commercial building on the subject property is 220 gallons of flow per day per 10,000 square feet of lot area. The Applicant is proposing to expand the existing septic system to a capacity of less than or equal to 330 gallons of flow per day per 10,000 square feet of lot area. Currently, the amount of flow per day is 6,000 gallons, and that will change to 9,000 gallons per day with the proposed expanded septic system. Therefore, a Variance is required from Section 7-07-010D(3)(c)(3), Groundwater Protection Overlay District, Area 3, of the Northborough Zoning Bylaw.
5. The Applicant will use a FAST (Fixed Activated Sludge Treatment) Unit, certified for general use in the Commonwealth of Massachusetts, that will be incorporated into the proposed expanded septic system in order to significantly improve the quality of the effluent being released to the environment and permit the proposed

expanded septic system to model conditions that would be expected from a much smaller system, particularly in terms of nitrogen loading from the effluent.

6. In a letter from Fred Litchfield, Town Engineer, to the Zoning Board of Appeals, on behalf of the Groundwater Advisory Committee, dated July 16, 2013, re: 318 Main Street, Map 47, Parcel 93, Mr. Litchfield states: *"A request for a variance such as this is generally not supported by this Committee, however in this case the applicant has agreed to install an enlarged septic system over what is currently in place and install an alternative technology, Fixed Activated Sludge Treatment (FAST) system which is currently approved by the Massachusetts Department of Environmental Protection for nitrogen sensitive areas. This FAST system will reduce the amount of nitrogen discharged from the enlarged septic system into the groundwater to a level below what is currently being discharged from the existing septic system. Therefore, the Groundwater Advisory Committee voted unanimously in favor of recommending approval of the requested variance with conditions."*
7. Soil conditions on the site are extremely conducive to a larger septic system that meets or exceeds the state standards for septic systems. The depth to groundwater in the area is also significant, both conditions constituting unique circumstances for the grant of the requested Variance. The site is also hemmed-in by other developed properties so that expansion of lot area is not readily available to the Applicant.
8. The commercial building at 318 Main Street was constructed with the idea of having as its premier tenant a full-service restaurant. Two restaurants have attempted to operate at the site, each having approximately 75 seats. Neither has been successful due in large part to the failure to have adequate turnover of seats in the restaurant. A new restaurant operator desires to utilize the site but needs to have 200 seats. Such expansion of seats requires the proposed expansion of the septic system. Therefore, a literal enforcement of the application of the Zoning Bylaw would involve substantial hardship.
9. The septic system as designed will need to be approved by the Northborough Board of Health and will meet or exceed all design standards for the Massachusetts Sanitary Code. The septic system will be designed with the additional capacity of reducing nitrogen through a process prior to disposal of sewage flow to the ground material. The denitrification is not required by Title V, but will significantly improve the quality of the effluent being discharged to the groundwater. Therefore, the relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Northborough Zoning Bylaw.
10. The expanded septic system, located in Groundwater Protection Overlay District Area 3, will continue to serve the purposes and concerns of the Groundwater Protection Overlay District, particularly with the denitrification (FAST) system as part of the septic system. Therefore, the proposed expansion of the existing septic system, which will allow expansion of seating needed for a full-service restaurant in the commercial building on the site, will protect, preserve and maintain the existing and potential groundwater supply and groundwater recharge areas within the known aquifers of the town, as well as preserve and protect present and potential sources of water supply for the public health and safety, and conserve the natural resources of the town.

DECISION

1. On July 23, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** to allow on-site sewage disposal for a commercial building to be less than or equal to 330 gallons of flow per day per 10,000 square feet of lot area, and the expansion of the existing septic system on the property locate at 318 Main Street, in Groundwater Protection Overlay District Area 3, with the following conditions:
 - a. The Applicant shall submit all plans for expanded septic system to the Northborough Board of Health and receive all necessary permits and approvals from the Board of Health prior to construction. The septic system plan to be submitted by the Applicant shall, in all events, include the implementation of a modular fixed activated sludge

treatment (FAST) system as manufactured by Smith and Loveless Company, Inc., and approved for general use in the Commonwealth of Massachusetts pursuant to the certificate of the Massachusetts Department of Environmental Protection dated February 19, 2013.

- b. The applicant shall be required to remove grease from grease traps on a quarterly basis for the first two years from the date of the issuance of the certificate of occupancy for the restaurant. The applicant shall provide the Board of Health with documentation verifying all pumping of the grease traps. Any reduction in the frequency of this pumping schedule after the two year period must be approved by the Board of Health.
 - c. Quarterly reports verifying the nitrogen level is no greater than the proposed amount of 1.9 lbs. per day for the daily flow of 9000 gallons in accordance with the letter from Attorney Donahue dated July 9, 2013 (as referenced above) shall be submitted to the Board of Health. Any reduction in the frequency of this reporting schedule after the two year period must be approved by the Board of Health.
 - d. Copies of all maintenance contracts shall be forwarded to the Town Engineer and Board of Health.
 - e. 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 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).
 - f. The applicant shall obtain an earthwork permit prior to the start of any construction.
 - g. The applicant shall submit an annual report to the Town Engineer verifying all maintenance and inspections have been completed in accordance the original approval on the drainage system.
2. 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.
 3. 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."
 4. If the rights authorized by the VARIANCE 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. 10.

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


FRAN BAKSTRAN, CHAIRMAN