



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. 17-09

PROPERTY LOCATION: 318 Main Street

PETITIONER & PROPERTY OWNER: 318 Post Road Corp., f/k/a Fiske's Garden Center

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 7010 Pg: 192

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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 the use of a children's educational and/or daycare facility in the building located at 318 Main Street, Map 47, Parcel 93.

APPLICATION

1. On May 25, 2017, 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, Use Regulations, Table of Uses, Table 1. Part B; Commercial and Industrial Districts, of the Northborough Zoning Bylaw, to allow the use of a children's educational and/or daycare facility in the building located at 318 Main Street, in the Business East District.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on June 12, 2017 and June 19, 2017; and was mailed to abutters and other parties of interest on June 9, 2017.

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 318 Main Street, recorded at the Worcester District Registry of Deeds on April 1, 1969, Bk: 7010 Pg: 192;
 - b. A certified abutters list for parcels 300 feet from 318 Main Street dated 5/10/2017; and a Northborough, MA GIS Viewer map for 318 Main Street – 300ft Abutters, on May 10, 2017;
 - c. A decision for 318 Main Street, ZBA Case No. 14-02, dated February 25, 2014, recorded at the Worcester District Registry of Deeds on 04/01/2014, Bk: 52178, Plan: 237;
 - d. An 8.5" x 11" plan entitled "As-Built Plan for Post Road Marketplace in Northborough, Massachusetts", dated 7/13/2006; revised October 13, 2006, and January 29, 2007; prepared by Connorstone Consulting Civil Engineers and Land Surveyors; and
 - e. An 8.5" x 11" Approval Not Required (ANR) plan entitled "Plan of Land for Fiske Garden Center, 318 Main Street, in Northborough, MA",

dated 3/24/2000, prepared by Waterman Design Associates, Inc., for Leland Law Associates, signed by the Northborough Planning Board on 5/10/2000; and recorded at the Worcester District Registry of Deeds on 2/26/2001, Plan Book 765, Plan 97.

HEARING

Attorney Marshall Gould presented the Application, on behalf of Olga Holly and Mark Fitzgerald, at a duly noticed public hearing of the Board on June 27, 2017 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Jeffrey Leland, Brad Blanchette, and Mark Rutan were present.

Mr. Gould explained Ms. Holly is seeking a Variance to allow the use of a children's educational daycare and preschool facility in the building located at 318 Main Street. She is President of OH Art, Inc., and the name of her business is Three Apples School, which has been located in Suite 175 of the subject building since 2016.

Mr. Gould explained Ms. Holly previously had a business in Framingham teaching art, primarily to young people, and her intention at the subject location was to do the same. In addition, she offered babysitting for children to allow the students to arrive early or stay late, and be properly supervised. However, the demand for art instruction turned out be less than the demand for daycare, with art as one of the activities. Ms. Holly is hoping to have the use of a preschool in the subject building. During the licensing process, it was determined she will need a Variance to allow a for-profit preschool in the Business East District. In addition, Ms. Holly will need a license from the State for the daycare/pre-school use proposed in the subject building. She is hoping to get her program started at the start of the school year.

No person in attendance expressed opposition to the project and the board received no letters in opposition to the project.

The hearing was closed on June 27, 2017.

FINDINGS OF FACT

1. The subject property at 318 Main Street is located in the Business East District.
2. The Applicant is proposing to locate a for-profit daycare/preschool facility for children in Suite 175 of the building located on the subject site.
3. In the Business East District, a for-profit educational use is not allowed and therefore, a Variance is required from Section 7-05-020G(5)(a), Use Regulations, Classification of Uses, Business Uses, Services; and Section 7-05-030, Use Regulations, Table of Uses, Table 1. Table of Uses, Part B. Commercial and Industrial Districts, Services, Educational Use, Nonexempt, of the Northborough Zoning Bylaw.
4. The Applicant has had a business teaching art, with a babysitting component, in Suite 175 of the subject building since 2016. She now wishes to have a daycare/preschool facility that will include art as one of the activities for the children who would attend.
5. The age of the children attending the preschool will be 2 years 9 months to Kindergarten; with language, art and drama classes offered for children up to 12 years of age, in addition to the preschool.

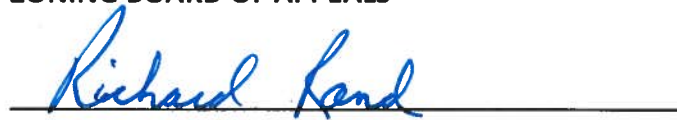
6. The proposed daycare/preschool facility will be open from 8:00 am to 5:30 pm, with related activities on the weekend.
7. The suite in which the Applicant has her business is approximately 2,400 square feet and is completely handicapped-accessible.
8. The entrance to Suite 175 is located on the westerly side of the subject building, which gets much less traffic than the area in the front of the building.
9. A playground is located in a fenced-in landscaped area in the rear of the site; and the children will walk together to the playground via a sidewalk on the side of the building. The children will not walk in the road; and there is very little traffic in the back of the building. In addition, the children will not be close to Main Street (Route 20), and the playground area is not visible from Main Street.
10. In the Business East District, the educational use of a for-profit daycare/preschool is not allowed and requires a Variance from the Zoning Bylaw. However, if the same use was proposed as a non-profit daycare/preschool, it would be allowed in the Business East District by right.
11. The Applicant needs to change her business of teaching art to a daycare/preschool facility that includes art as an activity for the children, so she may stay in the building in which she has had her business since 2016. Therefore, a literal enforcement of the Zoning Bylaw, which prohibits the proposed *for-profit* educational use in the Business East District, (but would allow it in the same zoning district if it was a *non-profit* educational use), would involve substantial hardship.
12. The proposed daycare/preschool facility in Suite 175 of the subject building at 318 Main Street is appropriate for the use as proposed.
13. The relief sought will not constitute substantial detriment to the public good and will not adversely affect the neighborhood or other tenants in the subject building.
14. There will be no nuisance or serious hazard to vehicles, pedestrians, or to children who attend the proposed daycare/preschool facility.
15. Adequate and appropriate facilities and staff will be provided for the proper operation of the proposed use on the site.

DECISION

1. On June 27, 2017, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-05-020G(5)(a), Use Regulations, Classification of Uses, Business Uses, Services; and Section 7-05-030, Use Regulations, Table of Uses, Table 1. Table of Uses, Part B. Commercial and Industrial Districts, Services, Educational Use, Nonexempt, of the Northborough Zoning Bylaw, to allow the use of a children's for-profit daycare/preschool facility in Suite 175 of the building located at 318 Main Street, Map 47, Parcel 93, in the Business East District.
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, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

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

A handwritten signature in blue ink, reading "Richard Rand", is written over a horizontal line.

RICHARD RAND, CHAIRMAN