



TOWN OF NORTHBOROUGH Zoning Board of Appeals
Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

DECISION

**COMPREHENSIVE PERMIT
33 MAIN STREET AND 37-39 MAIN STREET**

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I. BACKGROUND

APPLICANT

Habitat for Humanity MetroWest/Greater Worcester, Inc.

The term "Applicant" shall include the Applicant's successors and assigns where the term is applicable, and shall also include any condominium association that is formed to manage or govern any aspect of the project.

PROPERTY OWNER

Habitat for Humanity MetroWest/Greater Worcester, Inc.

PUBLIC HEARING

The public hearing opened on Tuesday, July 12, 2016 and was closed on July 12, 2016, pursuant to notice duly published and mailed to parties of interest on June 23, 2016. Board members Richard Rand, Fran Bakstran, Brad Blanchette, Jeffrey Leland and Mark Rutan were present throughout the hearing.

DECISION DATE

July 12, 2016

THE PREMISES

The subject parcels of land are located at 33-35 and 37-39 Main Street, Northborough Assessors' Map 63, Parcels 85 and 86, respectively; and were recorded at the Worcester District Registry of Deeds on 7/12/1974, Book 5537, Page 139. They are located in the Main Street Residential District and Groundwater Protection Overlay District Area 3.

A plan entitled "Plan of Land, 33 & 37-39 Main Street, Northborough, MA, Sheet 2 of 2, Site Plan", dated 06/25/16, revised 07-05-16 and 7/12/16, shows the new Lot 1, and was prepared for Habitat for Humanity MetroWest/Greater Worcester, Inc. and Trico, Inc., by H. S. & T. Group, Inc.; and signed and stamped by Daniel J. Tivnan, Registered Professional Land Surveyor and Hossein Haghazadeh, Registered Professional Engineer.

THE PROJECT

The Applicant is proposing to combine the two subject properties at 33-35 Main Street and 37-39 Main Street to create one lot, which will be shared by two existing buildings; and is proposing to change the use of the two buildings from a total of six apartments (2 apartments in one building and 4 apartments in the other building) to four affordable homeownership (condominium) units, (2 units in each of the two buildings). The proposed 4 units will consist of two 2-bedroom units, one 3-bedroom unit and one 5-bedroom unit. Two units will be designated as "local preference", one will be designated as "veteran preferred" and one will be designated as "general". The first-floor units in each building will be handicapped-accessible.

A 9-space parking area is proposed in the rear of the site, with two van-accessible spaces and a handicapped-accessible walkway to service both buildings.

An easement will be provided by Trinity Church and Trico, Inc. to allow residents of the buildings to access the church parking lot and Hudson Street.

At their meeting on July 12, 2016, the Groundwater Advisory Committee was in favor of the proposed stormwater management plan, shown on the revised site plan dated 7/12/16, which includes two sub-surface infiltration systems on the lot to handle runoff from the parking area and an infiltration basin near the buildings to handle roof runoff.

There will be no exterior renovations to the two subject buildings.

Funding for the project will be provided by Habitat for Humanity MetroWest/Greater Worcester, Inc. and the Northborough Affordable Housing Corporation.

Habitat for Humanity MetroWest/Greater Worcester will run the affordable housing lottery per state regulations.

The homeowners of the affordable units will each have a 20-25 year mortgage that will be held by Habitat for Humanity MetroWest/Greater Worcester, Inc.

A permanent affordable housing deed restriction will be placed on each unit.

Habitat for Humanity MetroWest/Greater Worcester, Inc. will be the monitoring agent for the condominium association and the homeowners will be responsible for their homes and maintenance.

The project is documented in the following materials:

1. A Comprehensive Permit Application dated May 19, 2016;
2. A Zoning Interpretation Request Form from Zac Couture, HST Group, for 33 Main Street, Map 63 Parcel 85, and 37-39 Main Street, Map 63 Parcel 86, signed by Joseph M. Atchue, Inspector of Buildings, on 5/18/16;
3. A document entitled "List of Waiver Requests from Town of Northborough Bylaws" for 33 & 37-39 Main Street, Northborough, MA, dated May 18, 2016;
4. A certified abutters list for parcels 300 feet from 33 & 37-39 Main Street, Map 64, Parcels 85 & 86, signed by Susan M. Reagan for the Board of Assessors, dated May 17, 2016, and a Northborough, MA GIS Viewer map for 33 & 37-39 Main Street – Map 63/85 and 63/86 – 300ft Abutters, dated May 16, 2016;

5. A document entitled "Mortgage and Security Agreement" for 33-35 & 37-39 Main Street, Northboro, recorded at the Worcester District Registry of Deeds on 10/03/2003, Bk: 31869, Page: 68;
6. An 8" x 11" black and white plan entitled "Sketch of Land, 33 & 37-39 Main Street, Northborough, MA, prepared for Habitat for Humanity MetroWest-Greater Worcester, by H.S. & T Group, Inc.
7. A document entitled "Habitat for Humanity MetroWest/Greater Worcester Draft Proposal for Affordable Housing, 33 & 37-39 Main Street, Northborough, Mass.";
8. An 8-page document entitled "Purchase and Sale Agreement" from the Law Office of George E. Pember, Dated May 17, 2016;
9. A 6-page document entitled "Purchase and Sale Agreement" dated May 9, 2016;
10. A document from Zac Couture, Senior Project Engineer, H. S. & T. Group, Inc., to "All Northborough Town Offices", Dated 07-06-16, Subject: Revised Site Plans and Stormwater Management for 33-35 & 37-39 Main Street 40B Comprehensive Permit, including a Calculation Sheet for Increase to Impervious Surface for 33 & 37-39 Main Street, Northborough, MA, signed by Zac Couture on 07-05-16;
11. Two 24" x 36" plans entitled "Plan of Land, 33 & 37-39 Main Street, Northborough, MA, prepared by H.S. & T. Group, Inc., for Habitat for Humanity MetroWest/Greater Worcester, Inc. and Trico, Inc., with sheets identified as: Sheet 1 of 2, Existing Plan, dated 05/08/16, revised 07/05/16 and 7/12/16; and Sheet 2 of 2, Site Plan, dated 05/08/16, and revised 06/25/16, 07-05-16 and 7/12/15, signed and stamped by Daniel J. Tivnan, Registered Professional Land Surveyor and Hossein Haghanizadeh, Registered Professional Engineer;
12. A set of three 11" x 17" architectural plans entitled "Habitat for Humanity, 33-35 Main Street, Northborough, MA", prepared by R.C. Searles Associates for dated 3/25/16, with sheets identified as: 1 of TBD, As-Built Elevations Building #1; 2 of TBD As-built Elevations Building #1; and Sheet 3 of TBD, As-Built Floor Plans Building #1;
13. A set of four 11" x 17" architectural plans entitled "Habitat for Humanity, 37-39 Main Street, Northborough, MA", prepared by R.C. Searles Associates for dated 3/25/16, with sheets identified as: 1 of TBD As-Built Elevations; 2 of TBD As-built Elevations; and Sheet 3 of TBD, As-Built Floor Plans Building #2; and 4 of TBD As-Built Floor Plans Building #2; and
14. A letter to the Zoning Board of Appeals from Jeffrey Legendre, Northborough Fire Department, FF/Paramedic, Fire Prevention, dated June 1, 2016, Subject: 40B Comprehensive Permit – 33, 37-39 Main Street.

II. DETERMINATIONS

Following its public hearing and based on the evidence submitted to the Board from all sources, the Board makes the following determinations:

1. **Consistency with statutory local needs**

Under the terms of M.G.L. Chapter 40B, Section 20, Northborough has met low and moderate housing needs.

2. **Impact on Local Planning Concerns**

After hearing testimony on any potential impacts, the Board determined the proposal, as presented during the hearing process and subject to the conditions listed below, will not endanger the health and safety of the occupants and abutters.

At the public hearing, the Board heard testimony and received written comments from town boards and officials, including Jeffrey Legendre from the Fire Department and Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee.

The Applicant, Habitat for Humanity MetroWest/Greater Worcester, Inc., Tim Firment, Executive Director; and its representatives, including Rick Leif, Treasurer, Northborough Affordable Housing Corporation; Patrick J. Burke, P.E., Project Manager, H. S. & T. Group, Inc.; and Zac Couture, Senior Project Engineer, H. S. & T. Group, Inc., testified and submitted written documentation.

Among the issues discussed by Town officials were an easement to allow residents of the buildings to access the church parking lot for access to Hudson Street; the mix of unit sizes in terms of number of bedrooms; maintenance of the units; the drainage system; the issuance of an eligibility letter from DHCD; and the waivers requested by the Applicant. In response, the Applicant submitted revised plans. The Board imposes by this decision a number of conditions to protect the Town's interest and address health and safety concerns.

3. **Statutory Requirements**

The Board determines that the Applicant has met the statutory requirements of G.L. c.40B to apply for the comprehensive permit; the Board recognizes that since the Town has met its statutory minimum affordable housing goals, although the Board is authorized to grant this comprehensive permit, its decision to grant this comprehensive permit with conditions, or to deny this permit, may not be appealed by the Applicant to the Housing Appeals Committee.

II. FINDINGS AND DECISION

After due consideration of the Application, the record of the proceedings and the materials submitted to the Board, the Board finds that the Project, as conditioned by this decision, will be consistent with local needs. The conditions provide a number of reviews and other protections for the Town and the neighborhood.

Based upon the above determinations and the conditions listed below, the Board finds the Project meets the requirements for a Comprehensive Permit under G.L. c. 40B.

The Board therefore voted to grant the requested Comprehensive Permit for the renovation and conversion of two principle buildings on one lot for the use of four affordable homeownership (condominium) units as described in the materials submitted by the Applicant; and the requested waivers, as follows:

1. A **WAIVER** from **Section 7-03-040**, Special Permit with Site Plan, from any requirement associated with obtaining a Special Permit with Site Plan Approval;
2. A **WAIVER** from **Section 7-03-050**, Site Plan Approval, from any requirement associated with obtaining Site Plan Approval;
3. A **WAIVER** from **Section 7-05-030**, Use Regulations, Table of Uses, Table 1. Part A., to allow the use of multi-family dwellings in the Main Street Residential District;

4. A **WAIVER** from **Section 7-06-020**, Table of Density and Dimensional Regulations, as the two buildings are pre-existing and will not change in size or location; and
5. A **WAIVER** from **Section 7-06-030H**, Density & Dimensional Regulations, Supplemental Regulations, to allow two principal buildings to be located on the same lot with a minimum separation between them of less than 20 feet.

IV. CONDITIONS

Said grant is made subject to the following conditions that the Board deems necessary in order to assure consistency with the purposes of G.L. c. 40B:

A. Regulatory Conditions

1. The total number of units that may be created in the two existing principle buildings on the site is two 2-bedroom units, one 3-bedroom unit and one 5-bedroom unit. Except as more particularly provided for in this decision, the Project shall be constructed in conformance with the following **PLANS** of record:

Site Plans

- Two 24" x 36" plans entitled "Plan of Land, 33 & 37-39 Main Street, Northborough, MA, prepared by H.S. & T. Group, Inc., for Habitat for Humanity MetroWest/Greater Worcester, Inc. and Trico, Inc., with sheets identified as: Sheet 1 of 2, Existing Plan, dated 05/08/16, revised 07/05/16 and 7/12/16; and Sheet 2 of 2, Site Plan, dated 05/08/16, and revised 06/25/16, 07-05-16 and 7/12/15, signed and stamped by Daniel J. Tivnan, Registered Professional Land Surveyor and Hossein Haghazadeh, Registered Professional Engineer;

Architectural Plans and Specifications

- A set of three 11" x 17" architectural plans entitled "Habitat for Humanity, 33-35 Main Street, Northborough, MA", prepared by R.C. Searles Associates for dated 3/25/16; and
 - A set of four 11" x 17" architectural plans entitled "Habitat for Humanity, 37-39 Main Street, Northborough, MA", prepared by R.C. Searles Associates for dated 3/25/16.
2. The Applicant shall not receive any building permit until the Applicant has executed and delivered a Regulatory Agreement (the "Regulatory Agreement") in the form approved by MA Department of Housing and Community Development and the Board.
 3. The combined four affordable homeownership (condominium) units within the Project shall be low or moderate income as defined in M.G.L. c. 40B and the regulations promulgated thereunder (herein the "Affordable Units").
 4. The four Affordable Units shall remain so in perpetuity or for the longest period permitted by law. An affordable housing restriction, enforceable by the Town of Northborough, requiring that the Affordable Units remain affordable in perpetuity, shall be recorded senior to any liens on the Affordable Units.
 5. Insofar as allowed under M.G.L. c. 40B and the regulations promulgated thereunder and other applicable law, with respect to at least 50% (two) of the Affordable Units, the Applicant shall provide a preference category for Northborough town employees, employees of the regional school district serving Northborough, Northborough residents, their parents and

children. With respect to at least 25% (one) of the Affordable Units, the Applicant shall provide a preference category for a US Veteran. These preferences shall be implemented through the designated monitoring agent, which shall also review the Applicant's fair housing marketing plan and which shall also be reviewed by the Zoning Board of Appeals. The costs associated with the marketing plan, including the advertising and processing for the Affordable Units, shall be borne by the Applicant.

6. The Board approves Habitat for Humanity MetroWest/Greater Worcester, Inc. as the Monitoring Agent for the Project.
7. If at any time it appears that the Applicant is in violation of the Regulatory Agreement, following a hearing of which the Applicant has been given prior written notice, of no less than fourteen days, the Board may pursue such enforcement rights as it may have under the Regulatory Agreement and/or the Affordable Housing Restriction and/or applicable law.

B. Board Conditions

8. A recorded 20-foot wide access easement deed as proposed on the submitted site plan entitled "Plan of Land, 33 & 37-39 Main Street, Northborough, MA, Sheet 2 of 2, Site Plan, dated 05/08/16, and revised 06/25/16, 07-05-16 and 7/12/15, prepared by H.S. & T. Group, Inc., for Habitat for Humanity MetroWest/Greater Worcester, Inc. and Trico, Inc, signed and stamped by Daniel J. Tivnan, Registered Professional Land Surveyor and Hossein Haghazadeh, Registered Professional Engineer, shall be provided prior to the issuance of any occupancy permit.
9. A copy of the proposed access easement through the Church parking lot should be submitted prior to the issuance of any occupancy permits and should be noted in the final decision granted by the Zoning Board of Appeals.
10. An as-built plan shall be submitted to the Town Engineer for review and 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 asbuilt 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) and should be noted in the final decision granted by the Zoning Board of Appeals.
11. The issuance of a Department of Housing and Community Development DHCD Eligibility letter shall be obtained prior to the issuance of any building permit.

C. General Conditions

12. There will be no construction activity on the Premises before 7:00 a.m. or after 7:00 p.m., Monday through Friday and before 9:00 a.m. or after 5:00 p.m. on Saturday. There will be no construction on the Premises on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas, unless by written authorization of the Inspector of Buildings/Zoning Enforcement Officer.
13. The Applicant shall locate all utilities within the Premises underground.
14. The interior of the buildings shall be constructed substantially as represented on the architectural plans submitted to the Board.

15. The Applicant shall obtain, prior to construction, any Board of Health permits and approvals that may be required with respect to the Premises and the Project.
16. The Applicant will install the proposed drainage system pursuant to the Plans prepared by H.S. & T. Group, Inc., dated July 12, 2016. All utility work shall be performed and conducted in conformance with the DPW regulations of the Town, if any. All such work shall be performed in accordance with current engineering and construction standards. All construction shall be done to best management standards.
17. The bottom of the infiltration basin shall be at least 2 feet above the seasonal high water table as specified in the Massachusetts Stormwater Management Policy.
18. Prior to issuance of Building Permits, the Applicant shall provide to the Town Engineer, a final approved stormwater management operation and maintenance plan, including detail with respect to inspection, maintenance and potential repair, and including the specific activities needed to conduct the routine and less frequent maintenance required.

D. Construction and Bonding

19. Prior to starting any Authorized Activity, the Applicant shall provide to the Inspector of Buildings:
 - a. The name, address and business telephone number of the individual who shall be responsible for all activities on site;
 - b. A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid.
 - c. Proof that all required federal, state and local licenses and permits have been obtained; Proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work.
20. The Applicant shall keep the site clean during construction. Upon completion of all work on site and prior to site As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.
21. The catch basin shall be cleaned and the parking lot swept at the end of construction. Thereafter, the Applicant, and subsequently the condominium association, shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practice, as the same may, from time to time, change. The Applicant, and subsequently the condominium association, shall send notice to the Town Engineer prior to the commencement of any such cleaning and the entity engaged by the Applicant or the condominium association for such cleaning shall certify to the Town Engineer that such cleanings were conducted in accordance with generally accepted practice.
22. The Applicant shall establish a Condominium Association for all units in the development, and the Applicant and subsequently the Association shall be responsible for:
 - a. Contracting for plowing, sanding and snow removal;
 - b. Retaining a service provider for site maintenance and establishing a regular schedule for site maintenance;
 - c. Conducting yearly inspection, maintenance and cleaning of all elements of the drainage system.

- d. Filing an annual report with the Town Engineer, not later than April 30th, that the annual drainage system inspection has been completed and all deficiencies corrected;
 - e. Maintaining any and all easements shown on the Plans.
23. This Comprehensive Permit shall be issued to Habitat for Humanity MetroWest/Greater Worcester, Inc. and shall not be transferable, except in accordance with the provisions of M.G.L. c. 40B and with prior written approval of the Board.
24. This Comprehensive Permit shall expire, if the Applicant has not, for whatever cause, obtained building permits for the units within three years of the date this decision becomes final, or if the Applicant has not completed construction on the Project within five years of the date this decision becomes final unless extended by the Board. The decision is deemed to have become final upon the date the decision is filed with the Town Clerk if no appeal is filed and otherwise the date the last appeal is decided or otherwise disposed of.

V. WAIVERS

The Applicant shall comply with all State land use regulations and other laws and regulations and permits issued thereunder, and shall comply with the Town of Northborough current Zoning Bylaw, Rules and Regulations for the Subdivision of Land, and other local development controls except as provided in the list of Waiver Requests in the Findings and Decision section of this decision.

VI. SUCCESSORS AND ASSIGNS

The provisions of this Comprehensive Permit shall be binding upon the successors and assigns of the Applicant, and the obligations hereunder shall run with the land. In the event that the Applicant sells, transfers, or assigns any of its interest in the Project, this Comprehensive Permit shall be binding upon the purchaser, transferee or assignee, and any such sale, transfer or assignment, except the sale of units to homebuyers in accordance with this Comprehensive Permit, shall be subject to the prior approval of the Zoning Board of Appeals, which approval shall not be unreasonably withheld or delayed.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided by G.L. c.40A, §17.

NORTHBOROUGH ZONING BOARD OF APPEALS



Richard Rand, Chairman