



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 13-04

PROPERTY LOCATION: 333 Southwest Cutoff

PETITIONER: New England Baseball Enterprises, LLC

PROPERTY OWNER: Northacres, LLC

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 22708 Pg: 069

This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of New England Baseball Enterprises, LLC for a Variance to allow drive-through food service use in a proposed retail building; a Special Permit to allow the use of a restaurant serving alcoholic beverages; and a Special Permit to allow the use of a bank or automated teller machine on the property located at 333 Southwest Cutoff, Map 109, Parcels 9, 11, 12 and 13.

APPLICATION

1. On April 9, 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 7-05-030, Table 1., Table of Uses, Part B., to allow drive-through food service use in a proposed retail building in the Industrial District and Major Commercial Development Overlay District; and Special Permits per Section 7-07-030, Major Commercial Development Overlay District, to allow the use of a restaurant serving alcoholic beverages and the use of a bank or automated teller machine, on the property located at 333 Southwest Cutoff.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on April 29, 2013 and May 6, 2013, and was mailed to abutters and other parties in interest on April 18, 2013.

EXHIBITS

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

1. Application for Hearing before the Zoning Board of Appeals including:
 - a. A document entitled "Town of Northborough, Zoning Board of Appeals" RE: New England Baseball Enterprises, LLC, Application for Special Permit and Variance, Major Commercial Development Overlay District, 333 Southwest Cutoff, Northborough, Massachusetts, "Memorandum of Petition in Support of Application for Special Permit"
 - b. Four Commercial Property Record Cards for owner Northacres, LLC, identified as Map 109, Block 9, 0 Southwest Cutoff; Map 109, Block 11, 333 Southwest Cutoff; Map 109, Block 12, 0 Southwest Cutoff; and Map 109, Block 13, 0 -Off Lawrence Street;
 - c. A Northborough, MA GIS Viewer map entitled "Southwest Cutoff – Abutting Northacres LLC Properties", dated 2/20/2013;

- d. A Quitclaim Deed for 333 Southwest Cutoff, Northborough, MA, recorded at the Worcester District Registry of Deeds on 6/22/00, BK 22708, PG 069;
 - e. A certified abutters list for parcels 300 feet from 0, 333, 0 Southwest Cutoff and 0 –Off Lawrence Street, Northborough, MA 01532, including a cover sheet signed by Mary E. Carey, for the Town of Northborough Board of Assessors, dated February 20, 2013;
2. A letter to the Town of Northborough Planning Department from Fire Chief David Durgin, dated April 22, 2013;
3. A Memorandum dated May 8, 2013 to David M. Durgin, Fire Chief from Jonathan Charwick, Sr. Project Manager, Activitas, Project: New England Baseball Enterprises, LLC – 333 Southwest Cutoff, re: Northborough Fire Department Review of Special Permit Application – Activitas Response; and two 11"x17" plan sheets showing Southwest Cutoff (Route 20), entitled "Proposed New England Baseball Facility/Mixed-Use Retail Development, Northborough, Massachusetts, prepared by Activitas, and identified as Exhibit 1, AutoTurn Analysis, AASHTO – SU Truck; and Exhibit 2, AutoTurn Analysis, AASHTO – SU Truck;
4. A Memo to Dick Rand, Chairman, Zoning Board of Appeals and Rick Leif, Chairman, Planning Board, from Dan Nason, DPW Director; David Durgin, Fire Chief; Fred Litchfield, Town Engineer; Fred Lonardo, Inspector of Buildings/Zoning Enforcement Officer; Jamie Terry, Health Agent; Kathy Joubert, Town Planner; and Mark Leahy, Police Chief, RE: New England Baseball Enterprises LLC @ 333 Southwest Cutoff, dated May 10, 2013;
5. A Memorandum dated May 13, 2013 to Dick Rand, Chairman, Zoning Board of Appeals and Rick Leif, Chairman, Planning Board, from Dan Nason, Public Works Director, with copies to David Durgin, Fire Chief; Fred Litchfield, Town Engineer; Fred Lonardo, Inspector of Buildings/Zoning Enforcement Officer; Jamie Terry, Health Agent; Kathy Joubert, Town Planner; Mark Leahy, Police Chief; John Coderre, Town Administrator; Kim Hood, Assistant Town Administrator; and Paul Corbosiero, Water and Sewer Supervisor, Subject: New England Baseball Enterprises LLC, 333 Southwest Cutoff;
6. A letter to Richard Rand, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated May 14, 2013, RE: 333 Southwest Cutoff, Map 109, Parcels 11 and 12;
7. A set of three 24" x 36" plan sheets entitled "Planning Board, New England Baseball Enterprises, Inc., East Coast Golf Site, Northborough, MA", dated April 3, 2013, by Activitas, and identified as "Locus Map/List of Drawings (cover sheet); EX-01, Existing Conditions Plan, 333 Southwest Cutoff, by Waterman Design Associates, Inc., dated 4/03/13; and SP1.1, Proposed Site Plan, Planning Board, April 3, 2013, by Activitas; and
8. A hard copy of a slide show presentation entitled "New England Baseball Enterprises, LLC, New England Ruffnecks Baseball, Special Permit for Major Commercial Development Overlay District.

HEARING

Andrew Collins of New England Baseball Enterprises, LLC, the Applicant; Patrick Maguire, Activitas; Jonathan Charwick, Activitas; Bob Meesho, MDM Transportation; and Attorney Mark Donahue, representing New England Baseball Enterprises, LLC, presented the Application at a duly noticed public hearing of the Board on May 14, 2013, in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Dick Kane, Robert Berger, Jeffrey Cayer, and Brad Blanchette were present throughout the proceedings.

Mr. Donahue stated New England Baseball Enterprises, LLC operates a college development baseball program for boys between the ages of 13 and 18, known as the New England Ruffnecks. They have been in operation since 2003 and conduct development programs for students who wish to participate in baseball activities and college. In order to better serve its growing needs, New England Baseball Enterprises has sought to establish a competition baseball facility in Northborough. Although a previous location was rejected by the Zoning Board of Appeals, the 29.06-acre site at 333 Southwest Cutoff, located in the Industrial District and the Major Commercial Development Overlay District, presents an excellent opportunity. The site has a unique shape and location in that it is in close proximity to the interchange of Route 9 (Belmont Street in Northborough) and Route 20 (Southwest Cutoff), as well as to a significant retail development known as Northborough Crossing across the street. He noted the subject site is the current location of the East Coast Golf facility.

Mr. Donahue explained the development proposed includes three full-size baseball diamonds enclosed by fencing; a concession area for participants and their families; an administration training building; and three buildings for retail use. A restaurant serving alcohol has been proposed for one of the retail buildings and the use of a drive-thru window for food service, or a bank or automated teller machine, is proposed for the smallest of the three retail buildings.

Mr. Donahue stated the use of a bank or automated teller machine and the use of a restaurant serving alcoholic beverages are allowed by Special Permit in the Major Commercial Development Overlay District. The Applicant is seeking a Variance for drive-through food service use, as it is not allowed in either the Major Commercial Development Overlay District or the Industrial District.

Mr. Donahue explained there are criteria for Site Plan Approval in the Major Commercial Development District specific to large commercial development. He stated uses other than a restaurant serving alcohol, a bank or automated teller machine, or drive-through food service on the site, will be consistent with those permitted as of right per Site Plan Approval for the Major Commercial Development Overlay District.

Mr. Donahue the reuse of the property from the existing golf-training facility and driving range to the proposed use of a baseball competition facility with three retail/commercial uses along Southwest Cutoff (Route 20) is consistent with the Master Plan for development in the area and will serve as a benefit to the Town.

No one spoke in opposition to the project and the Board did not receive any letters in opposition to the project.

The hearing was closed on May 14, 2013.

FINDINGS OF FACT

1. The subject site at 333 Southwest Cutoff is 29.06 acres in size and is located in the Industrial District and the Major Commercial Development Overlay District. Zoning requirements of the Major Commercial Development District supersede the zoning requirements of the Industrial District.
2. The Applicant proposes to locate a college-development baseball training complex known as the New England Ruffnecks on the site. The proposed baseball training complex, for players' ages 13 yrs to 18 yrs, will include 3 full-sized, fenced-in baseball diamonds; a concession stand for participants and their families; and an administration building, all of which will be located in the back portion of the site.
3. In addition, the Applicant proposes to locate three retail buildings in the front portion of the site on Southwest Cutoff (Route 20). The use of a restaurant serving alcoholic beverages will be located in one of the three retail buildings. A drive-through food service use, or a bank or automated teller machine use, is proposed for the smallest of the three retail buildings.

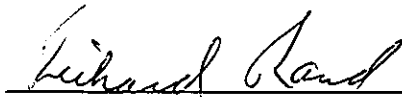
4. In the Major Commercial Development Overlay District, the use of a restaurant serving alcoholic beverages is allowed by Special Permit per Section 7-07-030D(2)(b), Use Regulations, Uses Allowed by Special Permit, of the Northborough Zoning Bylaw.
5. In the Major Commercial Overlay District, the use of a bank or automated teller machine is allowed by Special Permit per Section 7-07-030D(2)(f) of the Northborough Zoning Bylaw.
6. The use of drive-through food service is not identified as a use permitted by right or Special Permit in the Major Commercial Overlay District, and is not allowed in the Industrial District. As the Major Commercial Development Overlay District is silent regarding the use of drive-through food service, the requirements of the Industrial District apply. Therefore, a Variance is required from Section 7-05-030, Table of Uses, Table 1. Part B, Commercial & Industrial Districts, of the Northborough Zoning Bylaw.
7. The location of the subject site, in close proximity to Northborough Crossing and the interchange of Route 20 (Southwest Cutoff) and Route 9 (Belmont Street), makes it uniquely suited for the use of a full-service restaurant and a bank or automated teller service, or a drive-through for food service.
8. The retail component of the proposed project is located in close proximity to Southwest Cutoff (Route 20) and will utilize the existing signalized intersection which serves as the primary entrance for Northborough Crossing, and which was designed with future development of the subject site at 333 Southwest Cutoff in mind.
9. All comments included in a memo to Dick Rand, Chairman, Zoning Board of Appeals and Rick Leif, Chairman, Planning Board, from Dan Nason, DPW Director; David Durgin, Fire Chief; Fred Litchfield, Town Engineer; Fred Lonardo, Inspector of Buildings/Zoning Enforcement Officer; Jamie Terry, Health Agent; Kathy Joubert, Town Planner; and Mark Leahy, Police Chief, Re: New England Baseball Enterprises LLC @ 333 Southwest Cutoff, dated May 10, 2013, have or will be addressed by the Applicant. The comments in the above-referenced memo are as follows:
 - 1. *Given the high volume of existing traffic and the projected traffic for these developments, additional street lights are needed for this area of Route 20.*
 - 2. *We anticipate pedestrians from the baseball fields walking across Route 20 to access the existing Burger King and Starbucks. A pedestrian crosswalk and signal should be added to this portion of Route 20.*
 - 3. *Confirmation is needed from the Applicant as to the pervious nature of the proposed turf fields.*
 - 4. *The Health Agent need to be contacted if the Applicant proposes a well for irrigation purposes.*
 - 5. *Due to the existing high volume traffic accidents and the high volume of medical incidents at and the around the Northborough Crossing and Avalon developments, timely public safety response is critical and this additional commercial development will add demand to the existing workload of both the Fire and Police Departments.*
10. In a letter to Richard Rand, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, RE: 333 Southwest Cutoff, dated May 14, 2013, Mr. Litchfield states *"The outdoor recreation use is allowed in all Groundwater areas and the commercial uses as proposed are allowed within Groundwater Area 3 in accordance with Section 7-07-010D(1)(c)[3], provided there is no accessory use involving the manufacturing, storage, application, transportation and/or disposal of toxic or hazardous materials"*.

11. In a memo to David M. Durgin, Fire Chief, from Jonathan Charwick, Senior Project Manager from Activitas, dated May 8, 2013, the Applicant's design team for the project, consisting of Activitas, Waterman Design, and MDM Transportation, has addressed, or will address, the items included in a letter from Fire Chief David Durgin to New England Baseball Enterprises, LLC, dated April 22, 2013, Subject: 333 Southwest Cutoff.
12. Comments regarding possible impacts to the municipal sewer system in Route 20, and changes to the water line from Lawrence Street to Route 20 from the proposed development, are included in a memo to Dick Rand, Chairman, Zoning Board of Appeals, and Rick Leif, Chairman, Planning Board, from Dan Nason, Public Works Director, dated May 13, 2013, Subject: New England Baseball Enterprises LLC, 333 Southwest Cutoff, and have been, or will be, addressed by the Applicant.
13. The subject site will have one primary entrance at a signalized intersection, recently created in conjunction with the AvalonBay/Northborough Crossing development. It is anticipated the vast majority of patrons to the site will arrive at the site by way of Route 9 (Belmont Street). There is the possibility of an additional entrance (but not an exit) to the property, which is subject to Massachusetts Department of Transportation (MDOT) jurisdiction. The signalized intersection insures the appropriate traffic controls, so as to ensure sufficient capacity along Southwest Cutoff, to accommodate the projected traffic from the proposed restaurant and bank. Therefore, major street intersections and roads within a minimum radius of two miles of the boundary of the development will provide sufficient capacity to accommodate current and projected future traffic in a safe and efficient manner.
14. The shape and location of the land are unique conditions within the Industrial District. The site is unique in its immediate proximity to the interchange of Route 20 (Southwest Cutoff) and Route 9 (Belmont Street), and unique in its close proximity to the significant retail components in the area. The introduction of Northborough Crossing on the opposite side of Southwest Cutoff, which includes two drive-through restaurants, demonstrates the unique nature of the property in its current configuration. The unique situation will only be amplified with the creation of the outdoor commercial recreation use as proposed by the Applicant. The site is uniquely suited for the type of food service establishment that requires the Variance as demonstrated by the Board's granting of similar variances to two uses across the street.
15. No detriment to the public good is recognized from the proposed Variance. As shown on the site plans submitted April 9, 2013, entitled "A set of three 24" x 36" plan sheets entitled "Planning Board, New England Baseball Enterprises, Inc., East Coast Golf Site, Northborough, MA", dated April 3, 2013, by Activitas, and identified as "Locus Map/List of Drawings (cover sheet); EX-01, Existing Conditions Plan, 333 Southwest Cutoff, by Waterman Design Associates, Inc., dated 4/03/13; and SP1.1, Proposed Site Plan, Planning Board, April 3, 2013, by Activitas", all of the uses proposed on the site will access and exit the site from one control point which is established as a signalized intersection. Internal circulation has been developed within the site so as to permit all uses to easily co-exist. The drive-through food service facility proposed has been designed so as to permit appropriate queue link to be segregated from all other vehicular movements within the development and from related parking areas. Therefore, the relief sought will not constitute substantial detriment to the public good.
16. The proposed site is appropriate for the use of a full-service restaurant, a bank or automated teller machine, and a drive-through food service.
17. There will be no nuisance or serious hazard to vehicles or pedestrians.
18. Adequate and appropriate facilities will be provided for the proper operation of the proposed uses.

DECISION

1. On May 14, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT** the following **VARIANCE** and **SPECIAL PERMITS**, contingent on Site Plan Approval:
 - a. A **VARIANCE** from Section 7-05-030, Table 1., Table of Uses, Part B., of the Northborough Zoning Bylaw, to allow drive-through food service use in a proposed retail building in the Industrial District and the Major Commercial Development Overlay District, on the property located at 333 Southwest Cutoff;
 - b. A **SPECIAL PERMIT** per Section 7-07-030D(2)(b), Major Commercial Development Overlay District, Use Regulations, Uses Allowed by Special Permit, of the Northborough Zoning Bylaw, to allow the use of a restaurant serving alcoholic beverages on the property located at 333 Southwest Cutoff and
 - c. A **SPECIAL PERMIT** per Section 7-07-030D(2)(f), Major Commercial Development Overlay District, Use Regulations, Uses Allowed by Special Permit, of the Northborough Zoning Bylaw, to allow the use of a bank or automated teller machine on the property located at 333 Southwest Cutoff.
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.
5. The **SPECIAL PERMIT** 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."
6. If the rights authorized by the **SPECIAL PERMITS** are not exercised within two years 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



RICHARD RAND, CHAIRMAN