



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. 13-24

PROPERTY LOCATION: 338A Main Street

PETITIONER & OWNER: Timothy Shay, 338 Main Street Realty Trust

RECORDED WITH WORCESTER REGISTRY OF DEEDS: Book 43378, Page 399

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of Tim Shay, 338 Main Street Realty Trust, for a Special Permit and Special Permit, Groundwater Protection Overlay District, to allow the addition of a one-stall attached garage to the existing garage on the property located at 338 Main Street, GIS Map 47, Parcel 74.

APPLICATION

1. On October 28, 2013, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a SPECIAL PERMIT per Section 7-08-020a(1), Nonconforming Uses and Structures, Special Permit Required; and a SPECIAL PERMIT per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, Use Regulations, Area 3, of the Northborough Zoning Bylaw.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on November 11, 2013 and November 18, 2013 and was mailed to abutters and other parties in interest on October 28, 2013.

EXHIBITS

1. Submitted for the Board's deliberation were the following exhibits:
 - a. Application for Hearing before the Zoning Board of Appeals, including:
 - b. Quitclaim Deed for 338 Main Street, Northborough, MA, recorded at the Worcester District Registry of Deeds on 10/01/2008, Bk: 43378, Pg: 399;
 - c. An Approval Not Required (ANR) 8"x10" plan entitled "PLAN OF LAND, 338 MAIN STREET, RTE. 20, MASS.", prepared for 338 Main Street Realty Trust, prepared by Protec Engineering, Inc., dated Sept. 11, 2008, revised Sept. 17, 2008, stamped and signed by Bruce K. Kingsman, Registered Professional Land Surveyor;
 - d. Pages 5 and 6 of a ZBA decision for 338 Main Street and 44 Hemlock Drive for Site Plan Approval and Special Permit, Groundwater Protection Overlay District, approved on April 22, 2008;
 - e. Three 8"x10" plan sheets for Continental Auto Sales, identified as A1.1, First Floor Plan; A2.0, Rear Elevation; and A2.1, Right Elevation; prepared by Daniel J. Wezniack, Silver Street Architects, dated 10/25/13; and
 - f. A certified list of abutters within 300 feet of 338 Main Street, signed by Mary E. Carey for the Northborough Board of Assessors on October 18, 2013; a Northborough MA GIS Viewer map for 338 Main Street, Northborough, dated 10/17/2013; and a Commercial Property Record Card for 338 Main Street, dated 10/17/2013.

2. A 24"x36" plan entitled "PROPOSED LAYOUT PLAN, 338 Main Street, Rte. 20, Northborough, Mass; prepared for 338 Main Street Realty Trust by Protec Engineering, Inc., dated January 18, 2008 and revised April 9, 2008, stamped and signed by Ralph R. Romano, Jr., Registered Professional Engineer;
3. A letter to the Zoning Board of Appeals from Robert L. Grenier, President and Owner, Continental Auto Sales, Inc., dated November 13, 2013, RE: Garage Expansion at 338A Main Street; and
4. A letter to the Zoning Board of Appeals from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated November 25, 2013, RE: 338A Main Street, Map 47, Parcel 74.

HEARING

Applicant Timothy Shay presented the Application at a duly noticed public hearing of the Board on November 26, 2013 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, Massachusetts. Voting board members Fran Bakstran, Richard Rand, Richard Kane, Mark Rutan and Robert Berger, and non-voting alternate members Jeffrey Cayer and Brad Blanchette, were present throughout the proceedings.

Mr. Shay explained the tenant on his property at 338A Main Street, Continental Auto Sales, Inc., would like to construct a 20'x30' one-stall attached garage adjacent to the existing garage, at the rear of his office building, for the primary purpose of keeping cars out of inclement weather until they are picked up. The proposed garage will replace an existing tent and the 2 parking spaces on which the tent is located, which is mostly paved and has a small grass strip as well. No additional cars or traffic will be generated by the proposed garage. Mr. Shay stated the sale of used-cars is a pre-existing, non-conforming use on the property. The construction of the proposed garage requires special permits to extend the current pre-existing, non-conforming use in the zoning district and in the groundwater overlay protection district in which the property is located.

There were no abutters present and the board received no letters of opposition to the project.

The hearing was closed on November 26, 2013.

FINDINGS OF FACT

1. The subject property at 338A Main Street is located in the Business East District and Groundwater Protection Overlay District Area 3.
2. On April 22, 2008, a Special Permit and a Special Permit, Groundwater Protection Overlay District, were granted by the Zoning Board of Appeals, ZBA Case No. 08-07, for 338 Main Street and 44 Hemlock Drive, Tim Shay and Allyn Phelps (338 Main Street Realty Trust), Applicants, to allow construction of a garage to an existing house and the sale of second-hand cars on the subject property.
3. The owner of the business located on the subject property, Robert L. Grenier, Continental Auto Sales, Inc., wants to add a 20-foot by 30-foot one-stall attached garage adjacent to the existing garage off the rear of the office building. Continental Auto Sales, Inc., has sold second-hand cars on the subject property since 2008.
4. In the Business East District, the use of second-hand car sales has not been allowed since amendments to the Northborough Zoning Bylaw were approved at 2009 Town Meeting, and therefore the use on the subject property became pre-existing and non-conforming.
5. The addition of the proposed garage is an expansion of the pre-existing, non-conforming use of second-hand car sales on the subject property and therefore a Special Permit is required per Section 7-08-020A(1), Nonconforming Uses and Structures, Special Permit Required, of the Northborough Zoning Bylaw.

6. A Special Permit per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, Use Regulations, Area 3, of the Northborough Zoning Bylaw, is also required for the proposed expansion of the pre-existing non-conforming second-hand car sales use on the subject property due to its location in Groundwater Protection Overlay District Area 3.
7. In a letter to the Zoning Board of Appeals from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated November 25, 2013, RE: 338A Main Street, Map 47, Parcel 74, Mr. Litchfield states the Groundwater Advisory Committee voted unanimously in favor of recommending approval of the requested Special Permit (per Section 7-07-010D(3)(c)[1] of the Northborough Zoning Bylaw) and offered conditions.
8. The second-hand car sales use on the subject property by Continental Auto Sales, Inc., has been in business since 2008. Therefore, the subject site is an appropriate location for the use as proposed.
9. The addition of the 20-foot by 30-foot garage will be added to the rear of the existing office building and to the side of the existing garage. It will not be seen from Main Street and will not increase the number of cars on the site or traffic in the area. Therefore, the use as developed will not adversely affect the neighborhood.
10. Access to and from the site will be from Main Street only, as it has been since 2008. Therefore, there will be no nuisance or serious hazard to vehicles or pedestrians.
11. The proposed garage will be located on an area of the property on which 2 parking spaces and a tent are currently located, along with a small strip of land. Therefore, there will be no substantial change to existing impervious cover on the site and the number of parking spaces on the site will remain the same.
12. The same containment cabinet that was approved in 2008 will be used to store materials used in the operation of detailing vehicles. All cleaners that are used are biodegradable. Therefore, adequate and appropriate facilities will be provided for the property operation of the proposed use, and the proposed use will not adversely affect the quality or the yield of an existing or potential water supply.
13. The proposed use will not impair ambient groundwater quality or reduce existing recharge capacity beyond that allowed per Section 7-07, Groundwater Protection Overlay District, of the Northborough Zoning Bylaw.
14. The proposed use meets and will not derogate from the purpose and intent of Section 7-07, Groundwater Protection Overlay District, of the Northborough Zoning Bylaw.

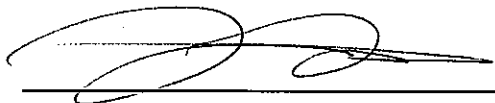
DECISION

1. On November 26, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT a SPECIAL PERMIT** per Section 7-08-020A(1), Nonconforming Uses and Structures, Special Permit Required, of the Northborough Zoning Bylaw, to allow the expansion of the pre-existing, non-conforming use of second-hand car sales by Continental Auto Sales, Inc., by allowing the construction of a 20'x30' one-stall attached garage adjacent to the existing garage on the property located at 338A Main Street.
2. On November 26, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT a SPECIAL PERMIT** per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, Use Regulations, Area 3, of the Northborough Zoning Bylaw, to allow the expansion of the pre-existing, non-conforming use of second-hand car sales, by Continental Auto Sales, Inc., by allowing the construction of a 20'x30' one-stall attached garage adjacent to the existing garage on

the property located in Groundwater Protection Overlay District Area 3 at 338A Main Street, with the following conditions:

- a. The Applicant shall submit a list of types and quantities of toxic and hazardous waste to be used on the site to the Town Engineer prior to the issuance of a certificate of occupancy.
 - b. The previously approved Operation and Maintenance Plan shall be included in any approval and reports shall continue to be provided to the Town Engineer and Groundwater Advisory Committee annually.
 - c. 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).
3. 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.
 4. If the rights authorized by the **SPECIAL PERMITS** are not exercised within two years from the time of granting, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.
 5. The **SPECIAL PERMITS** 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."

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



FRAN BAKSTRAN, CHAIRMAN