



# 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. 13-20**

**PROPERTY LOCATION: 35 West Main Street**

**PETITIONER: Ammar Alzahr**

**PROPERTY OWNER: Top Energy Auto Service, Inc.**

**RECORDED WITH WORCESTER REGISTRY OF DEEDS: Book 50650, Page 186**

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This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of Ammar Alzahr, for a Special Permit and Special Permit, Groundwater Protection Overlay District, to allow a proposed service bay to be attached to an existing structure on the property located at 35 West Main Street, GIS Map 63, Parcel 156.

## APPLICATION

1. On October 17, 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 7-08-020B, Non-Conforming Structures and Uses, Special Permit Required, of the Northborough Zoning Bylaw to allow construction of a new service bay to be attached to an existing, non-conforming structure; and a Special Permit per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, Use Regulations, Area 3, to allow construction of a new service bay to be attached to a non-conforming structure in Groundwater Protection District Area 3, on the property located at 35 West Main Street.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on November 11, 2013 and November 18, 2013, and mailed to abutters and parties in interest on October 28, 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 Quitclaim Deed for 35 West Main Street, recorded at the Worcester District Registry of Deeds on 03/28/13, Bk: 50650 Pg: 186;
  - b. A certified abutters list for parcels 300 feet from 35 West Main Street, including a cover sheet signed by Susan M. Reagan, for the Town of Northborough Board of Assessors, October 16, 2013; and a Northborough, MA GIS Viewer map for 35 West Main Street, dated 10/16/13; and
  - c. Two 8"x10" plans entitled "Proposed Addition for Top Energy Auto Service, Inc., 35 West Main Street, Northboro, MA 01532", prepared by DeFalco Engineering Services, signed and stamped by Frank D. DeFalco, Civil Registered Professional Engineer on February 20, 2009, stamped by the Town Clerk's Office on October 17, 2013.
2. 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: 35 West Main Street, Map 63, Parcel 156.

## HEARING

Frank DeFalco, Engineer, DeFalco Engineering Services, representing the Applicant, Ammar Alzahr, Top Energy Auto Service, presented the Application at a duly noticed public hearing of the Board on November 26, 2013 in Conference Room B of the Northborough Town Hall. 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. DeFalco stated the Applicant wants to construct a new service bay to be attached to the existing structure, which is now a non-conforming structure and use due to a 2009 zoning bylaw change and will require a Special Permit. In addition, the property is in a groundwater district and therefore the proposed construction requires a Special Permit, Groundwater Overlay Protection Area. The proposed additional service bay will be for state inspections only.

No abutters were present and the Board did not receive any letters in opposition to the project.

The hearing was closed on November 26, 2013.

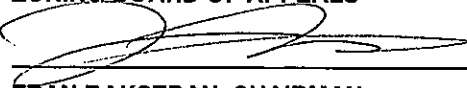
#### **FINDINGS OF FACT**

1. The subject property at 35 West Main Street is located in the Downtown Business District.
2. The Applicant is proposing to construct an additional service bay, for state inspections only, on the existing service station. The size of the proposed additional service bay is 14' x 32'.
3. The use of a service station is non-conforming in the Downtown Business District due to changes to the Northborough Zoning Bylaw approved at 2009 Town Meeting. The expansion of the non-conforming use of the subject service station requires a Special Permit per Section 7-08-020, Non-Conforming Uses and Structures, Special Permit Required, to allow the expansion of a non-conforming structure.
4. The subject property is also located in Groundwater Protection Overlay District Area 3. The expansion of the non-conforming use of a service station requires a Special Permit per Section 7-07-010D(3)(c)[1], Groundwater Protection Overlay District, Use Regulations, Area 3.
5. The proposed additional service bay will be attached to the existing service station on an area of the lot that is already paved.
6. 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: 35 West Main Street, Map 63, Parcel 156, Mr. Litchfield states the Groundwater Advisory Committee voted unanimously in favor of recommending approval of the requested Special Permits and offered their conditions.
7. The application does not indicate any existing drainage or the location of the underground storage tanks on the site and should. The roof runoff should be captured and recharged if possible. The applicant has submitted to the Engineering Department a revised plan of the property which does indicate the roof runoff will be sent to a proposed drywell, but this plan is dated October 16, 2013 and the roof drain line is sketched on in red ink.
8. The existing service station is the only station on the south side of Main Street and has served the Northborough community for many years. It is a small service station with two gas pumps.
9. The proposed addition of a service bay for state inspections on the existing non-conforming service station will not change the current use or operation on the site. Therefore, the proposed site is an appropriate location for the continued use of a service station.
10. The new service bay addition will allow the present building to be upgraded and modernized. There will be no driveways and no changes in traffic flow. Therefore, the use as developed will not adversely affect the neighborhood, and there will be no nuisance or serious hazard to vehicles or pedestrians.
11. The new service bay will be dedicated to state vehicle inspections and no other changes will be made to the current use of a service station on the site. Therefore, adequate and appropriate facilities will be provided for the proper operation of the proposed use.
12. The Applicant will agree to any special requirements of the special permit granting authority as stated in its written decision.

## **DECISION**

1. On November 26, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT a SPECIAL PERMIT** per Section 7-08-020B, Non-Conforming Structures and Uses, Special Permit Required, of the Northborough Zoning Bylaw, to allow construction of a new service bay to be attached to an existing, non-conforming structure on the property located at 35 West Main Street, per the plans submitted and identified as follows:
  - a. Two 8"x10" plans entitled "Proposed Addition for Top Energy Auto Service, Inc., 35 West Main Street, Northboro, MA 01532", prepared by DeFalco Engineering Services, signed and stamped by Frank D. DeFalco, Civil Registered Professional Engineer on February 20, 2009, stamped by the Town Clerk's Office on October 17, 2013.
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, to allow construction of a new service bay to be attached to a non-conforming structure in Groundwater Protection District Area 3, on the property located at 35 West Main Street, with the following conditions included 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: 35 West Main Street, Map 63, Parcel 156:
  - a. The application does not include all items as required in section 7-07-010 D (4) (a) [1-5] which is required of each application for a special permit. Since this is an expansion of an existing use and the types and quantities of materials stored on site are not increasing, this information, including a list of toxic and hazardous materials and quantities, shall be submitted prior to the issuance of a Building Permit and be kept on file in the Building Department for future reference.
  - b. Prior to the issuance of a Building Permit, the Applicant shall submit a calculation sheet for impervious coverage on the property.
  - c. Prior to the issuance of a Building Permit, the Applicant shall submit a revised site plan showing existing drainage, including roof runoff, the roof drain line and the location of underground storage tanks on the site.
  - d. A minimum of one permeability test shall be performed within any area proposed for subsurface infiltration of roof runoff to verify the rates of infiltration. The design of the proposed drywell shall be submitted to and approved by the Town Engineer prior to the issuance of a Building Permit.
  - e. An Operation and Maintenance Plan shall be provided to the Town Engineer and Groundwater Advisory Committee prior to the issuance of a Certificate of Occupancy, and shall then also be provided on an annual basis.
  - f. 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. 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."
5. 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. Iapse 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 black ink, appearing to read 'Fran Bakstran', is written over a horizontal line.

FRAN BAKSTRAN, CHAIRMAN