



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. 16-19

PROPERTY LOCATION: 352 Church Street

PETITIONER: David Franca, Church Street LLC

PROPERTY OWNERS: Robert Chysna

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 16464 Pg: 218

2017 MAR - 1 AM 10:40
RECORDED
TOWN CLERK

This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of David Franca, Church Street LLC, for a Variance and an Appeal to allow a proposed single-family home to be less than the required 500 foot distance from an existing Wireless Communication Facility on the property that abuts the subject property at 352 Church Street, Map 42 Parcel 46.

APPLICATION

1. On October 20, 2016, 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 7-10-040E(9), Special Regulations, Wireless Communications Facilities, General Requirements, Setbacks in Residential Districts, to allow a proposed single-family home to be less than the required 500 foot distance from an existing Wireless Communication Facility on the property that abuts the subject property at 352 Church Street, Map 42 Parcel 46; and an **Appeal** of the Zoning Enforcement Officer's zoning interpretation that the pre-existing Wireless Communication Facility on the abutting lot prohibits the subject lot at 352 Church Street from being buildable.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on November 7, 2016 and November 14, 2016; and was mailed to abutters and other parties in interest on October 26, 2016.

EXHIBITS

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

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A Zoning Interpretation Request Form submitted by Attorney George F. Connors on behalf of Applicant David Franca; signed by Joseph M. Atchue, Inspector of Buildings/Zoning Enforcement Officer, dated 9/27/16;
 - b. A 13-page document (Exhibit 1), including a 3-page cover letter, to Joseph Atchue, Zoning Enforcement Officer and Building Inspector from George F. Connors, Counselor at Law, dated September 23, 2016, Re: Zoning Bylaw Clarification, 352 Church Street, Northborough, Assessors Map 42 Parcel 46;
 - c. A copy of Tax Map 42, Northborough, Massachusetts, (Exhibit 2);

- d. An Approval Not Required (ANR) Plan for Robert H. & Lynda Chysna, entitled "Plan of Land in Northborough, MA, dated Mar. 19, 1996, signed by the Northborough Planning Board on 4.9.16 (Exhibit 3);
- e. A Quitclaim Deed for Church Street, recorded at the Worcester District Registry of Deeds on July 27, 1994, Bk: 16464 Pg: 218 (Exhibit 4);
An email From: Mike Sullivan, Subject: fwd: 352 Church Street; To: gfconnors@comcast.net, dated Mon, Sep 19, 2016 08:20 AM;
- f. A certified abutters list for parcels 300 feet from 352 Church Street, Map 42 Parcel 46, signed by Julie Brownlee for the Board of Assessors on 10-11-2016;
- g. A Northborough, MA GIS Viewer map identified as "Subject Lot", dated 9/14/16, property location 352 Church Street (Exhibit 5);
- h. A Northborough, MA GIS Viewer map identified as "Tower", dated 9/14/16, property location 352 Church Street (Exhibit 6);
- i. A plan entitled "Proposed Sewage Disposal System", 352 Church Street, for Franca Enterprise Services, prepared by Connorstone Engineering, dated 7-28-16 (Exhibit 7);
- j. A Certificate of No Appeal and Zoning Board of Appeals' Decision for Case No. 96-27, Church Street, Assessors Map 54, Lot 12, Northborough, MA; Petitioner Cellular One; recorded at the Worcester District Registry of Deeds on August 7, 1997, Book 19062, Page 341 (Exhibit 8);
- k. An Earth Removal Board Permit granted to Robert & Linda Chysna and Cellular One, Church Street, Northboro, MA, for the removal of barrow materials commencing on March 5, 1997 for a period of one year. A free standing 150 foot tower to be built; recorded at the Worcester District Registry of Deeds, Book 19062 Page 349 (Exhibit 9);
- l. A Certificate of No Appeal and Zoning Board of Appeal's Decision for Case No. 04-12, 348 Church Street, Petitioner Nextel, recorded at the Worcester District Registry of Deeds on 09/13/2004, Bk: 34590 Pg: 310;
- m. An Unofficial Property Record Card – Northborough, MA, for property located at 348 Church Street, Map 42, Parcel 18; Property Owner Chysna, Robert H & Lynda S, Trustees, R.L. C. Church Realty Trust (Exhibit 10);
- n. An Unofficial Property Record Card – Northborough, MA, for property located at 356 Church Street, Map 42, Parcel 19; Property Owners Gaudet, Peter Andrew and Huang, Wei;
- o. An 8.5" x 11" entitled "Proposed Sewage Disposal System", 352 Church Street, identified as "Alternative Layout Concept", for Franca Enterprise Services, prepared by Connorstone Engineering, dated 7-28-16, revised 10/3/16; (Exhibit Y)

- p. An 8.5" x 11" plan entitled "Proposed Sewage Disposal System", 352 Church Street, for Franca Enterprise Services, prepared by Connorstone Engineering, dated 7-28-16 (Exhibit Z);
- q. A 5-page letter to the Northborough Zoning Board of Appeals from George F. Connors, Counselor at Law, dated November 21, 2016, Re: 352 Church Appeal and/or Variance Request; and
- r. A 3-page letter to the Northborough Zoning Board of Appeals from George F. Connors, Counselor at Law, Re: Zoning Variance at 352 Church Street. Supplemental Requested information relative to the Wireless Bylaw adoption date, dated January 12, 2017; and
- s. A 24" x 36" plan entitled ""Proposed Sewage Disposal System", 352 Church Street, for Franca Enterprise Services, prepared by Connorstone Engineering, dated 7-28-16, revised 10-3-16.

HEARING

Attorney George Connors, representing the Applicant, David Franca, Church Street LLC, presented the Application at a duly noticed public hearing of the Board on November 22, 2016 and January 24, 2017 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Brad Blanchette and Mark Rutan were present throughout the proceedings. Mr. Leland recused himself at both meetings.

At the meetings on November 22, 2016 and January 24, 2017, Mr. Connors stated Mr. Franca wants to buy the vacant property at 352 Church Street and construct a single-family home on the lot. The owner of the property at 352 Church Street, Robert Chysna, lives in a single-family home at 348 Church Street, which directly abuts 352 Church Street and on which a Wireless Communications Facility (WCF) is located. Mr. Connors explained that, according to the Northborough Zoning Bylaw, a WCF shall not be located less than 500 feet from its base to the nearest residential structure. Per plans submitted by the Applicant, a proposed single-family dwelling on 352 Church Street will be located approximately 350 feet from the WCF on 348 Church Street. Mr. Connors noted a proposed septic system, along with a wetland resource area, prevented the proposed single-family home to be located closer to the front property line and further away from the existing WCF on 348 Church Street.

At the January 24, 2017 meeting, information was submitted that indicated there was no bylaw in place for WCFs in 1996, when the existing WCF at 348 Church Street was permitted and constructed. The Town adopted the Wireless Communications Facility bylaw in 1998.

Mr. Connors stated the Applicant is seeking a Variance to allow a proposed single-family dwelling to be less than 500 feet from the base of the existing WCF on 348 Church Street. He is also seeking an Appeal of the Inspector of Buildings/Zoning Enforcement Officer's Zoning Interpretation that the property at 352 Church Street is unbuildable due to the location of a pre-existing WCF on the abutting lot at 348 Church Street. He noted this is not a case of a WCF proposed to be located less than 500 feet from a residence, but rather a single-family home proposed to be located less than 500 feet from a WCF. Mr. Connors stated he believes the WCF bylaw does not apply to this situation.

The participating ZBA members expressed support of the Inspector of Buildings/Zoning Enforcement Officer's zoning interpretation.

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 January 24, 2017.

FINDINGS OF FACT

1. The subject property at 352 Church Street is located in the Residential A and Residential B Districts.
2. The Applicant is proposing to construct a single-family home on the subject property, which is currently vacant.
3. The owner of the subject property, Robert Chysna, also owns the abutting property at 348 Church Street, on which a 150 foot high Wireless Communications Facility is located and was allowed by Special Permit and Site Plan Approval per ZBA Case No. 96-27. A single-family home is also located on the property at 348 Church Street.
4. In a Zoning Interpretation Request Form submitted by Attorney George F. Connors on behalf of Applicant David Franca, signed by Joseph M. Atchue, Inspector of Buildings/Zoning Enforcement Officer, dated 9/27/16, Mr. Atchue states *"the use of a single-family dwelling is allowed in both the Residential A and B zoning districts, however there is a pre-existing WCF on the abutting lot which prohibits this lot from being buildable."*
5. The Applicant is seeking an Appeal of the Inspector of Buildings/Zoning Enforcement Officer's interpretation that the property at 352 Church Street is not buildable due to its proximity to an existing WCF on the abutting property at 348 Church Street.
6. Per Section 7-10-040E(9), Special Regulations, Wireless Communications Facilities, General Requirements in Residential Districts, the setbacks shall be a minimum of 4 times the maximum height of the Wireless Communications Facility from the nearest lot line, but not less than 500 feet as measured from the base of the WCF to the nearest residential structure.
7. Per plans submitted by the Applicant, the single-family home proposed on 352 Church Street will be located less than 500 feet (350 feet) from the base of the Wireless Communications Facility and therefore a Variance is required from Section 7-10-040E(9) of the Northborough Zoning Bylaw.
8. In 1996, the subject lot at 352 Church Street and the lot at 348 Church Street were created via an Approval Not Required (ANR) plan.
9. In 1996, the use of a Wireless Communications Facility was granted on the property at 348 Church Street per Special Permit and Site Plan Approval of the Zoning Board of Appeals, ZBA Case No. 96-27.
10. In 1998, the Town of Northborough adopted a Wireless Communications Facilities Bylaw.
11. In 1999, houses were built on both sides of the property at 348 Church Street; and more recently, a 40B Comprehensive Permit development that directly abuts 348 Church Street was constructed.

12. The house at 348 Church Street is 400 feet from the WCF; the abutting house at 356 Church Street is 350 feet from the WCF on 348 Church Street; and some buildings in the 40B Comprehensive Permit develop abutting 348 Church Street are within 500 feet of the WCF at 348 Church Street.
13. Section 7-10-040, Wireless Communications Facilities, of the Northborough Zoning Bylaw, requires a proposed WCF to be no less than 500 feet from its base to a residential structure. It does not, however, address the Applicant's situation in which he is proposing to locate a single-family home on 352 Church Street that will not meet the required distance of a residential structure to the base of an existing WCF on the abutting lot at 348 Church Street.
14. The construction of a single-family home on the subject property at 352 Church Street, proposed to be located less than 500 feet from the WCF at 348 Church Street, will not adversely affect the neighborhood, as the residential use proposed is the same as those on abutting properties and the WCF has been on the property at 348 Church Street since 1996.
15. The relief sought will not constitute substantial detriment to the public good and may be given without nullifying or substantially derogating from the intent or purpose of the Northborough Zoning Bylaw.
16. Due to circumstances relating to the proposed location of a septic system in the front yard and a wetland resource area on the subject site, which prohibits the proposed single-family home on 352 Church Street to be located 500 feet from the WCF located on the property at 348 Church Street, affecting only the subject land but not generally affecting land or structures in the same zoning district, a literal enforcement of the Zoning Bylaw would involve substantial hardship.
17. Adequate and appropriate facilities will be provided for the proper operation of the proposed single-family home.
18. The proposed use will conform to any special requirements of the special permit granting authority as stated in its written decision.
19. The proposal could not reasonably be altered to reduce adverse impacts on the natural environment, to be compatible with historic development patterns of the town, or to preserve historically significant buildings.

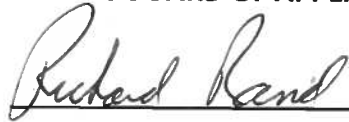
DECISION

1. On January 24, 2017, after due consideration of the Application, the four participating members voted unanimously to **GRANT** a **VARIANCE** from Section 7-10-040E(9), Special Regulations, Wireless Communication Facilities, General Requirements, Residential requirements, of the Northborough Zoning Bylaw, to allow a proposed single-family home on the subject property at 352 Church Street to be located less than 500 feet from the base of the Wireless Communications Facility located at 348 Church Street.
2. 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.”

3. 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.
4. 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.

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

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

RICHARD RAND, CHAIRMAN