



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

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ZBA CASE NO: 14-12

PROPERTY LOCATION: 370 Southwest Cutoff

PETITIONER: 920 LLC

PROPERTY OWNERS: Brendon Properties Two, LLC and
Leslie S. Carey, Trustee of Loop Realty Trust

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 42001 Pg: 328;
Bk: 42001 Pg: 387; and Bk: 43797 Pg: 135

This document is the **DECISION** of the Northborough Zoning Board of Appeals the petition of 920 LLC for **VARIANCES** and **SPECIAL PERMITS** to allow retail, restaurant, bank and medical office/clinic uses, with appropriate access, signs and retaining walls, to be located on the property at 370 Southwest Cutoff, Map 109, Parcel 15 and Map 108, Parcel 2, in the Industrial District and the Major Commercial Development Overlay District.

APPLICATION

1. On September 4, 2014, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining **VARIANCES** from the Northborough Zoning Bylaw to allow reduced frontage; to allow vehicular access to a building site that is not through the frontage of the lot; to allow necessary retaining walls over 4 feet in height within the setback area; and to allow Pylon Signs to be larger than the maximum size allowed; and **SPECIAL PERMITS** from the Northborough Zoning Bylaw to allow two retail stores to be more than a total of 25,000 square feet; to allow restaurants including alcoholic beverages; and to allow a bank or automated teller machines.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on September 15, 2014 and September 22, 2014 and was mailed to abutters and other parties in interest on September 9, 2014.

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 "Attachment to ZBA Application, 920 LLC, Summary";
 - b. Copies of prior ZBA decisions for 370 Southwest Cutoff and 370 Southwest Cutoff Rear, as follows: Case No. 05-30, dated December 12, 2005; Case No. 5-30, dated June 7, 2006; Case No. 08-12, dated August 26, 2008; and Case No. 10-08, dated June 22, 2010.
 - c. A Quitclaim Deed for Route 20, Southwest Cutoff, Northborough, Mass., recorded at the Worcester District Registry of Deeds on 10/30/2007, Bk: 42001 Pg: 328;

- d. A Quitclaim Deed for Southwest Cutoff, Northborough, Massachusetts, recorded at the Worcester District Registry of Deeds on 02/13/2009, Bk: 43797 Pg: 135;
 - e. An 8.5" x 11" plan entitled "Plot Plan Prepared for Suzanne Stimson, 81 Meadow Road, Northborough, Massachusetts", dated August 25, 2014, stamped and signed by Kevin J. Jarvis on 08-25-14;
 - f. A certified abutters list for parcels 300 feet from 370 Southwest Cutoff, Map 108 Parcel 2 and 0 Southwest Cutoff, Map 109 Parcel 15, including a cover sheet signed by Susan M. Reagan, for the Town of Northborough Board of Assessors, dated August 18, 2014, and a Northborough, MA GIS Viewer map entitled "Map 109/15 & 108/2, 370 Southwest Cutoff, Northborough, MA" dated August 18, 2014;
 - g. An 8.5" x 11" plan entitled "Plan of Easements Land on Route 20, Northborough, MA" identified as "Site Layout, 19 Acre Site, Northborough Crossing, Avalon Apartments, Shops Way", dated 6/14/2010, prepared by Waterman Design Associates, Inc.;
 - h. Two architectural sheets for proposed Pylon signs created by ViewPoint Sign and Awning for Capital Group Properties, Northborough Crossing, identified as "Option 1. Double Sided Pylon Sign"; and Option 2. Double Sided Pylon Sign", dated 08/25/14; and
 - i. A 24" x 36" plan entitled "Layout and Materials Plan" for Northborough Crossing 2, 370 Southwest Cutoff, Northborough, MA, Variance Site Plan, dated 09/02/2014, prepared by Waterman Design Associates, Inc., for Loop Realty Trust and Brendon Properties Two, LLC.
2. A letter from David M. Durgin, Fire Chief, to the Zoning Board of Appeals dated September 15, 2014, Subject: 370 Southwest Cutoff – Application for a Variance and Special Permit;
 3. A letter from Kristen D. Las, AICP, Principal Planner and Economic Development Coordinator, Town of Shrewsbury, Massachusetts, to Richard Rand, Chairman, Zoning Board of Appeals, dated September 25, 2014, Re: Special Permit and Variance Application, 370 Southwest Cutoff; and
 4. A memo from Theresa Capobianco, Chairman, Planning Board, to the Zoning Board of Appeals, dated September 26, 2014, re: 370 Southwest Cutoff.

HEARING

Applicant William DePietri, 920 LLC; property owner Kevin Giblin, Brendon Properties Two, LLC; Attorney Marshall Gould, Gould and Ettenberg; and Paula Thompson, Engineer, Waterman Design, presented the Application at a duly noticed public hearing of the Board on September 30, 2014, in Conference Room B of the Northborough Town Office, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Robert Berger and Mark Rutan were present throughout the proceedings.

Mr. Gould stated the site is in the Industrial District and is within the Major Commercial Development Overlay District. The Applicant is proposing to develop approximately 19 acres of the site at 370 Southwest Cutoff, at Route 9 and Route 20, directly across from BJ's Gas, Burger King and Starbucks. The plan for the proposed development includes two 200-seat, 6,300 square-foot restaurants, one 17,700 square-foot retail building, one 24,300 square-foot retail building, a 2,000 square-foot bank and a 3,400 square-foot medical clinic.

Mr. Gould listed the Variances and Special Permits the Applicant is requesting for the proposed development, as follows: Variances to allow reduced frontage; to allow vehicular access to a building site that is not through the frontage of the lot; to allow necessary retaining walls over 4 feet in height within the setback area; and to allow 2 freestanding Pylon Signs for the development and for those signs to be larger than the maximum size allowed; and Special Permits to allow a retail store of more than 25,000 square feet or two retail stores on one lot; to allow the use of restaurants including alcoholic beverages; and to allow the use of a bank or automated teller machines.

Mr. Gould explained the whole site was originally owned by Robert and Mary Borgatti, and John O'Mara, and is close to 200 acres in size. It included the area of the Northborough Crossing development and the access drive known as Shops Way. An AvalonBay apartment complex is also located on the site and includes 385 dwelling units. The entrance to AvalonBay is off Shops Way.

Mr. Gould stated the Northborough Crossing/AvalonBay development is the largest project to be done over the last 10 years in Central Massachusetts, with well over 600,000 square-feet of retail use. The subject 19-acre site is part of the almost 200-acres that was master-planned for multiple uses, including the retail uses proposed in the subject Application, and is the final phase of the Northborough Crossing development. Original variances and permits were granted for this area of 370 Southwest Cutoff under ZBA Case No. 08-12, but have expired due to funding issues that required the Northborough Crossing project to be done in phases. Mr. Gould stated the proposed final phase of the Northborough Crossing development is the best use of the property.

No person present spoke in opposition to the project and the Board received no letters in opposition to the project.

The hearing was closed on September 30, 2014.

FINDINGS OF FACT

1. The subject property at 370 Southwest Cutoff is in the Industrial District and the Major Commercial Development Overlay District. The Major Commercial Development Overlay District is an overlay district superimposed on land in the Industrial District in the vicinity of the Southwest Connector, as shown on the Town of Northborough Zoning Map.
2. In the Major Commercial Development Overlay District, the density and dimensional requirements that apply in the Highway Business District shall apply per Section 7-07-030E; and signs in the Major Commercial Development Overlay District shall comply with provisions that apply to the Highway Business District per Section 7-07-030F(3) of the Northborough Zoning Bylaw.
3. The Applicant is proposing to develop approximately 19 acres of the site at 370 Southwest Cutoff, at Route 9 and Route 20, directly across from the existing BJ's Gas, Burger King and Starbucks. The plan for the proposed development includes two 200-seat, 6,300 square-foot restaurants, one 17,700 square-foot retail building, one 24,300 square-foot retail building and a mixed use building containing a 2,000 square-foot bank and a 3,400 square-foot medical clinic.
4. The subject property is comprised of three parcels identified as Parcel 2A, containing 11.63 acres; Parcel 2B, containing 6.26 acres; and Parcel 2C, containing 1.18 acres. Parcel 2A abuts the access drive to Northborough Crossing known as Shops Way. Parcel 2C has 70.49 feet of frontage on Southwest Cutoff (Route 20). These are the remaining parcels of the property formerly known as The Loop and now known as Northborough Crossing.
5. The frontage of the subject property is located on Southwest Cutoff (Route 20), and the east side of the subject property abuts Shops Way. The Applicant proposes access to the development from

Shops Way. Therefore, a Variance is required from Section 7-02-040, Definitions, Lot Frontage, of the Northborough Zoning Bylaw, to allow vehicular access to a building site that is not exclusively through the frontage of the subject lot.

6. In the Highway Business District, the minimum required frontage of a lot is 150 feet. The subject property has 70.49 feet of frontage on Southwest Cutoff (Route 20), and therefore a Variance is required from Section 7-06-030, Table 2., Table of Density and Dimensional Regulations, to allow the frontage of the subject site on Southwest Cutoff (Route 20) to be 70.49 feet.
7. The Applicant is proposing to construct necessary retaining walls within setback areas which are over 4 feet in height. Therefore, a Variance is required from Section 7-06-030, Table 2., Table of Density and Dimensional Regulations, to allow retaining walls over 4 feet in height to be located within the setbacks of the property.
8. The top of the retaining wall has a guardrail and the entire length of the wall has chain-link fencing.
9. The Applicant is proposing to locate one freestanding Pylon sign at the entrance to the site at Shops Way, and one freestanding Pylon sign at the Route 9 West ramp that will advertise the location of the proposed tenants on the site. In the Highway Business District, on a lot with 3 or more tenants, not more than 1 freestanding sign for each 10 tenants is allowed, and therefore a Variance is required from Section 7-09-040G(1)(c)[2], Signs, Signs in Business Districts, Highway Business District, Lot with three (3) or more tenants, Freestanding Sign, of the Northborough Zoning Bylaw.
10. The Applicant is proposing to locate one 270 square-foot freestanding Pylon sign at the entrance to the site at Shops Way and one 536 square-foot freestanding Pylon sign at the Route 9 West ramp. Both signs will be larger than the maximum allowed size of a freestanding sign for a site with more than 3 tenants of 100 square feet and 20 feet in height, as measured from the ground to the highest point of the site. Therefore, a Variance is required from Section 7-09-040G(1)(c)[2], Signs, Signs in Business Districts, Highway Business District, Lot with three (3) or more tenants, Freestanding Sign, of the Northborough Zoning Bylaw.
11. The proposed Pylon signs as described will be similar in size and shape to the Pylon sign allowed at the northerly secondary entrance to Northborough Crossing.
12. The Applicant is proposing to locate one 17,700 square-foot retail building and one 24,300 square-foot retail building on the site. In the Major Commercial Development Overlay District, a Special Permit is required to allow one retail store exceeding twenty-five thousand (25,000) square feet; or two (2) or more retail stores on one lot, per Section 7-07-030D(2)(a), Major Commercial Development Overlay District, Use Regulations, Uses allow by Special Permit, of the Northborough Zoning Bylaw.
13. The Applicant is proposing to locate two, 200-seat 6,300 square-foot restaurants serving alcohol on the site. In the Major Commercial Development Overlay District, a Special Permit is required to allow the use of a restaurant including alcoholic beverages per Section 7-07-030D(2)(b), Major Commercial Development Overlay District, Use Regulations, Uses allow by Special Permit, of the Northborough Zoning Bylaw.
14. The Applicant is proposing to locate a 2,000 square-foot bank on the site. In the Major Commercial Development Overlay District, a Special Permit is required to allow the use of a bank or automated teller machine per Section 7-07-030D(2)(f), Major Commercial Development Overlay District, Use Regulations, Uses allow by Special Permit, of the Northborough Zoning Bylaw.

15. Items in a letter from David M. Durgin, Fire Chief, to the Zoning Board of Appeals dated September 15, 2014, Subject: 370 Southwest Cutoff – Application for a Variance and Special Permit, will be addressed by the Applicant during Site Plan Review.
16. The subject site is part of almost 200 acres of land that was master-planned for multiple uses, including the retail uses proposed in the Application. The site was originally part of the Northborough Crossing commercial development, but the majority of the center was sold, leaving the subject 19 acres in the names of local ownership.
17. The three parcels comprise the 19-acre subject site are zoned Industrial. A small portion of the property fronts on Southwest Cutoff (Route 20) and a significant portion fronts on Shops Way.
18. The property has significant elevation changes of up to 50 feet, from its frontage on Southwest Cutoff.
19. The Northborough Crossing and AvalonBay developments are adjacent to the subject site. Directly across Shops Way from the subject site is the property used by BJ's Gas, Burger King and Starbucks. All of these uses are off Route 20 and are accessed by Shops Way, which was designed and built to handle the traffic requirements for all of the present uses, along with the proposed uses.
20. The subject property is in an area of Northborough adjacent to Route 20 (Southwest Cutoff) and very close to Route 9 (Belmont Street/Boston-Worcester Turnpike), and is in the Industrial District. Town Meeting in 2009 and 2010 approved this area for a Major Commercial Development Overlay District. Town Meeting and the Board of Selectmen approved five (5) alcoholic beverage licenses to be used on the site of Northborough Crossing, which includes the subject property. Thus far, none of the alcoholic beverage licenses have been utilized at Northborough Crossing. The proposed uses are compatible with adjoining parcels. The proposed uses will cause minimal impact that will be less than the impact of uses allowed as of right on Industrial property.
21. The shape, topography and location of the land is such that the proposed uses, signs, retaining walls and access from Shops Way are similar to those of Northborough Crossing. This land was part of the original Master Plan of Northborough Crossing and was originally planned to include the subject 60,000 square feet of developed gross floor area.
22. The subject property was part of the originally permitted Northborough Crossing. The shopping center was sold within the last year, but the sale did not include this undeveloped site. The property was always intended to be part of the Northborough Crossing shopping center. The development of the site for such use is appropriate and will not adversely affect the neighborhood. There will be no nuisance or serious hazard to vehicles or pedestrians. Adequate and appropriate facilities will be provided for the proper operation of this site.
23. The subject property is in an area of Northborough adjacent to Route 20 (Southwest Cutoff) and very close to Route 9 (Belmont Street). It was designed and built to handle the traffic requirements for all of the present uses, as well as the proposed uses described in the Application.
24. Due to circumstances relating to the unique location, size and topography of the subject site, affecting only the subject lots but not generally affecting land or structures in the same zoning district; and the limitations resulting from the site's location adjacent to two major highways, Route 9 and Route 20, including an adjacent entrance ramp off Route 20 to Route 9 West, a literal enforcement of the Zoning Bylaw would involve substantial hardship.

DECISION

1. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-02-040 of the Northborough Zoning Bylaw to allow vehicular access to a building site to be from Shops Way, and not exclusively through the frontage of the subject lot on the property located at 370 Southwest Cutoff.
2. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-02-040 of the Northborough Zoning Bylaw to allow the frontage of the subject site on Southwest Cutoff to be 70.49 feet on the property located at 370 Southwest Cutoff.
4. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-030 of the Northborough Zoning Bylaw to allow retaining walls over 4 feet in height to be located within the setback areas of the subject site located at 370 Southwest Cutoff.
5. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-09-040G(1)(c)[2] of the Northborough Zoning Bylaw to allow the location of one freestanding Pylon sign at the entrance to the site at Shops Way, and one freestanding Pylon sign at the Route 9 West ramp on the property located at 370 Southwest Cutoff.
6. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-09-040G(1)(c)[2] of the Northborough Zoning Bylaw to allow one freestanding Pylon sign at the entrance to the site at Shops Way to be no larger than 270 square feet; and one freestanding Pylon sign at the Route 9 West ramp to be no larger than 536 square feet on the property located at 370 Southwest Cutoff.
7. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT** per Section 7-07-030D(2)(a) of the Northborough Zoning Bylaw, to allow the use of one retail store exceeding twenty-five thousand (25,000) square feet; or two (2) or more retail stores on one lot, on the property located at 370 Southwest Cutoff.
8. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT** per Section 7-07-030D(2)(b) of the Northborough Zoning Bylaw to allow the use of two 200-seat, 6,300 square-foot restaurants serving alcoholic beverages, on the property located at 370 Southwest Cutoff.
9. On September 30, 2014, after due consideration of the Application, the Board voted unanimously to **GRANT** a **SPECIAL PERMIT** per Section 7-07-030D(2)(f) to allow the use of a 2,000 square-foot bank or automated teller machine on the property located at 370 Southwest Cutoff.
10. 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.
11. The **VARIANCES** 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."
12. If the rights authorized by the **VARIANCES** are not exercised within one year from the time of granting, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

13. 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."
14. 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.

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



RICHARD RAND, CHAIRMAN