



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 16-12

PROPERTY LOCATION: 39 & 43 King Street

PETITIONER & PROPERTY OWNER: ZHS Realty Trust

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 531401 Pg: 258

This document is the decision of the Northborough Zoning Board of Appeals on the petition of ZHS Realty Trust for Variances, a Special Permit to allow the proposed use of eight multifamily dwelling units in two buildings on the property located at 39 King Street; a Special Permit to allow the use of eight multifamily dwelling units in two buildings on the property at 43 King Street in the Business West District and Groundwater Protection Overlay District Area 3, and a Special Permit with Site Plan Approval for both lots.

APPLICATION

1. On June 23, 2016, 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 7-05-030, Table 1, Part B Commercial and Industrial Districts to construct 8 multifamily dwelling units on both 39 & 43 King Street for a total of 16 dwelling units; a **VARAINCE** per Section 7-05-030 Table 1 Part B to combine 39 & 43 King Street into one lot resulting in a total of 16 multifamily dwelling units on one lot; a **VARIANCE** per Section 7-06-030 H to allow two principal buildings on the combined properties of 39 & 43 King Street; and **SPECIAL PERMIT WITH SITE PLAN APPROVAL** per Section 7-03-050 D.

The Application was then amended to include: a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow an internal side setback to be less than the required 20-foot distance from a side property line on the property located at 39 King Street; a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow a proposed retaining wall to be less than the required 20 feet from the side yard setback on the property located at 39 King Street; a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow an internal side setback to be less than the required 20-foot distance from a side property line on the property located at 43 King Street; and a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow the front property line (frontage) to be less than the minimum required distance of 150 feet on the property located at 43 King Street.

2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on July 11, 2016 and July 18, 2016, and was mailed to abutters and other parties in interest on July 7, 2016.

2016 DEC 22 PM 12:08
NORTHBOROUGH TOWN CLERK

EXHIBITS

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

3. Application for Hearing before the Zoning Board of Appeals, including:

- a. A Zoning Interpretation Request Form for 39 and 43 King Street, Map 82, Parcels 30 and 31, submitted by John Grenier and signed by Joseph M. Atchue, Inspector of Buildings, on 6/16/16;
- b. A Quitclaim Deed for 43 King Street, Parcel I and Parcel II, Northborough, Massachusetts, recorded at the Worcester District Registry of Deeds on 12/20/14, Bk: 53101, Pg: 258;
- c. A certified abutters list for parcels 300 feet from 39 and 43 King Street dated June 22, 2016; and a Town of Northborough, MA map for 39 and 43 King Street dated June 22, 2016;
- d. A Stormwater Management Report for 39 & 43 King Street, Northborough, Massachusetts, dated June 23, 2016, prepared for ZHS Realty Trust by J.M. Grenier Associates, Inc., signed and stamped by John M. Grenier, Civil Registered Professional Engineer;
- e. An 8.5" x 11" Approval Not Required plan entitled "Plan of Land in Northborough, Mass., dated June 18, 1971, recorded at the Worcester District Registry of Deeds on June 25, 1971, Plan Book 349, Plan 83;
- f. A plan entitled "Plot Plan in Northboro, Mass.", dated 10/31/83, signed by Theodore Brahm, Registered Land Surveyor;
- g. A set of nine 24" x 36" plan sheets entitled "Site Development Plan for 39 and 43 King Street, Northborough, Massachusetts" dated June 23, 2016, prepared for ZHS Realty Trust by J.M. Grenier Associates Inc., signed, stamped and dated by John M. Grenier, Civil Registered Professional Engineer, on June 23, 2016, with sheets identified as follows: Sheet 1 of 9, Cover Sheet; Sheet 2 of 9, Existing Conditions Plan; Sheet 3 of 9, Layout Plan; Sheet 4 of 9, Grading and Drainage Plan; Sheet 5 of 9, Utility Plan; Sheet 6 of 9, Sewer Extension Plan; Sheet 7 of 9, Landscape Plan; Sheet of 8, Erosion & Sedimentation Control Plan; and Sheet 8 of 9, Detail Plan;
- h. A set of nine 24" x 36" architectural plans for 39 and 43 King Street, Northborough, MA, dated 6/12/16, prepared for ZHS Realty Trust, prepared, signed and stamped by Jerome R. Dixon, Registered Architect, with sheets identified as follows: Building 39 Unit Layout 1st Floor Plan, Sheet A11; Building 39 Unit Layout Second Floor Plan, Sheet A12; Building 43 Unit Layout 1st Floor, Sheet A11; Building 43 Unit Layout Second Floor Plan, Sheet A12; King Street Elevation, Sheet A20; Architectural Site Plan, Sheet C10; Architectural Site Plan, C10; Landscape Concept Site Plan, Sheet L10; and 39-43 King Street, Northborough, MA, Finished Materials Chart & Color Coordination Map;

- i. A 24" x 36" plan entitled "Existing Conditions Plan of Land in Northborough, MA, dated 6/16/16, Deed Book 53101, Page 254; and Deed Book 53101, Page 258, prepared for ZBS Realty Trust by Blackstone Valley Mapping & Consulting and Rod Carter Associates, Land Surveyors;
- j. A Stormwater Management Report for 39 & 43 King Street, Northborough, Massachusetts, dated June 23, 2016, revised July 26, 2016, prepared for ZHS Realty Trust by J.M. Grenier Associates, Inc., signed and stamped by John M. Grenier, Civil Registered Professional Engineer;
- k. A 24" x 36" plan entitled "Landscape Concept Site Plan, Sheet L10", dated 7-29-16, prepared for ZHS Realty Trust, 39 & 43 King Street, Northborough, MA, prepared, signed and stamped by Jerome R. Dixon, Registered Architect;
- l. A set of seven 24" x 36" architectural plans entitled "Architectural Site Plan, 38, 39, 43 King Street, Northborough, MA, dated 7-29-16, prepared for ZHS Realty Trust, prepared, signed and stamped by Jerome R. Dixon, Registered Architect, with sheets identified as follows: Architectural Site Plan, Sheet C10; Architectural Site Plan 38 King Street, Sheet C12; 38 King Street Elevation, Sheet A20; Building 39, Units 1 through 4 Elevations, Sheet A21; Building 29, Units 5 through 8 Elevations, Sheet A22; Building 43, Units 9 through 12 Elevations; Buildings 39, 43 King Street Back Elevation, Sheet A24;
- m. An email message from John Grenier to Kathy Joubert and Rashid Shaikh, dated August 22, 2016, requesting a continuation of the public hearing for 39 & 43 King Street from July 26, 2016 to August 23, 2016, date-stamped by the Town Clerk on August 22, 2016;
- n. A 2-page document entitled "Lumière" regarding Aspen 1900-OA LED Halogen incandescent bollard, dated August 4, 2016;
- o. A 5-page color document entitled "The eSHINE Pedestrian Light Systems: Where Solar Meets Safety", Manufactured by Valent Light, dated 2015-2016;
- p. A 9-page document entitled "DMF" with information on DRD2 Recessed LED Downlight General New Construction 4", 5", 6" Aperture, Product Specification;
- q. A cover letter to the Northborough Zoning Board of Appeals from John M. Grenier, P.E., dated August 5, 2016 re: Site Plan Special Permit Application, with revised layout plans identified as "a set of ten 24" x 36" plan sheets entitled "Site Development Plan for 39 and 43 King Street, Northborough, Massachusetts" dated June 23, 2016, revised 8/2/16, prepared for ZHS Realty Trust by J.M. Grenier Associates Inc., signed, stamped and dated by John M. Grenier, Civil Registered Professional Engineer, on 8/2/16, with sheets identified as follows:

Sheet 1 of 9, Cover Sheet; Sheet 2 of 9, Existing Conditions Plan; Sheet 3 of 9, Layout Plan; Sheet 4 of 9, Grading and Drainage Plan; Sheet 5 of 9, Utility Plan; Sheet 6 of 9, Sewer Extension Plan; Sheet 7 of 9, Erosion & Sedimentation Control Plan; Sheet 8 of 9, Detail Plan; Sheet 9, Detail Plan; and Sheet L10, Landscape & Lighting Plan;

- r. Two 24" x 36" plans entitled Site Development Plan for 39 & 43 King Street, prepared for ZHS Realty Trust by J.M. Grenier Associates Inc., dated June 23, 2016, revised 8/2/16 and 9/20/16, with sheets identified as: Sheet 3 of 9, Layout Plan; and Sheet 4 of 9, Grading and Drainage Plan;
- s. An email message from Rashid Shaikh to Kathy Joubert dated September 26, 2016, requesting a continuation of the public hearing for 39 & 43 King Street from September 27, 2016 to October 25, 2016, date-stamped by the Town Clerk on September 26, 2016;
- t. A set of five 24" x 36" architectural plans for 39 and 43 King Street, Northborough, MA, dated 10-10-16, for ZHS Realty Trust, prepared, signed and stamped by Jerome R. Dixon, Registered Architect, with sheets identified as follows: Building 1 Units 1 through 4 Elevations, Sheet A21; Building 2 Units 5 through 8 Elevations, Sheet A22; Building 3 Units 9 through 12 Elevations, Sheet A23; Landscape Concept Site Plan, Sheet L10; and Architectural Site Lighting Plan, Sheet L12;
- u. An email message from Rashid Shaikh to Kathy Joubert dated October 24, 2016, requesting a continuation of the public hearing for 39 & 43 King Street from October 25, 2016 to November 22, 2016, date-stamped by the Town Clerk on October 24, 2016;
- v. A Stormwater Management Report for 39 & 43 King Street, Northborough, Massachusetts, dated June 23, 2016, revised November 10, 2016, prepared for ZHS Realty Trust by J.M. Grenier Associates, Inc., signed and stamped by John M. Grenier, Civil Registered Professional Engineer;
- w. A set of eight 24" x 36" plan sheets entitled "Site Development Plan for 39 and 43 King Street, Northborough, Massachusetts" dated June 23, 2016, revised 8/2/16, and 11/10/16, prepared for ZHS Realty Trust by J.M. Grenier Associates Inc., signed, stamped and dated by John M. Grenier, Civil Registered Professional Engineer, on 11/10/16, with sheets identified as follows: Sheet 1 of 8, Cover Sheet; Sheet 2 of 8, Existing Conditions Plan; Sheet 3 of 8, Layout Plan; Sheet 4 of 8, Grading and Drainage Plan; Sheet 5 of 8, Utility Plan; Sheet 6 of 8, Erosion & Sedimentation Control Plan; Sheet 7 of 8, Detail Plan; and Sheet 8 of 8, Detail Plan; and
- x. A 24" x 36" photometric plan for 39 & 43 King Street, Northborough, MA, prepared by Ryan Thompson, dated 11/15/16.

4. A letter to Dick Rand, Chairman, Zoning Board of Appeals from Michelle Gillespie, Chairman, Design Review Committee, Re: 39-43 King Street, dated November 22, 2016;
5. A letter to the Zoning Board of Appeals from David Parenti, Fire Chief, dated July 14, 2016, Subject: Variance and Special Permit with Site Plan Approval for 39 & 43 King Street, dated June 22, 2016;
6. A letter to Mr. Rashid Shaikh from Stephanie Bacon, Health Director, dated 8/26/16;
7. An email from Rashid Shaikh to Gary Dulmaine, forwarded to Debbie Grampietro, dated November 21, 2016;

HEARING

Applicant Rashid Shaikh, ZHS Realty Trust, and John Grenier, Engineer, JM Grenier Associates, Inc., presented the Application at a duly noticed public hearing of the Board on July 26, 2016 in Conference Room B of the Northborough Town Office, 63 Main Street, Northborough, MA 01532. The public hearing was continued at the request of the Applicant to the meetings on August 23, 2016, September 27, 2016, October 25, 2016 and November 22, 2016. Voting members Richard Rand, Fran Bakstran, Jeffery Leland, Brad Blanchette and Mark Rutan were present throughout the proceedings.

Mr. Grenier explained the Applicant is proposing to locate 8 multifamily dwelling units on each of the properties at 39 King Street and 43 King Street. A total of 16 multifamily dwelling units will be located within four buildings. The sites are located in the Business West District. Variances will be needed for a shared side setback; for frontage on 43 King Street; and for a side setback for 39 King Street. In addition, a Special Permit and Special Permit with Site Plan Approval are required for the use of multifamily structures in the Business West District. Both of the parcels are approximately one acre each. Currently, the southerly lot (43 King Street) has an abandoned home on it; and the northerly lot (39 King Street) is vacant except for a paved driveway.

Mr. Grenier stated the front of the site is flat, but the site slopes significantly down to the rear. A bordering vegetated wetland is located across the rear of the two properties and a portion of the two properties is in Groundwater Protection Overlay District Area 3. Stormwater facilities have been designed for the development; and an operation and maintenance plan for drainage has been reviewed by the Town Engineer.

Mr. Grenier stated the project has been reviewed by the Design Review Committee, the Conservation Commission and the Board of Health, as well as various Town staff, including the Fire and Police Chiefs, the Town Engineer, the Building Inspector and the Town Planner.

Kathy Joubert, Town Planner, noted the Applicant has been before the Design Review Committee five times, has worked diligently with them, and the members are satisfied with the final plans presented at tonight's meeting.

Abutter Linda DeWolfe, 29 King Street, expressed concerns about the proposed retaining wall; its stability; and its close proximity to her property line.

Abutter E. J. Sowden, 15 King Street, expressed concerns about increased traffic and safety in the proposed parking areas and on King Street.

The hearing closed on November 22, 2016.

FINDINGS OF FACT

1. The subject properties at 39 King Street and 43 King Street are located in the Business West District and Groundwater Protection Overlay District Area 3.
2. In the Business West District, the use of multifamily dwellings is allowed by **Special Permit** from the Zoning Board of Appeals, per Section 7-05-030, Use Regulations, Table of Uses, Table 1. Part B, Commercial and Industrial, of the Northborough Zoning Bylaw. In addition, a **Special Permit with Site Plan Approval** is required for the proposed multifamily development on 39 and 43 King Street, per Section 7-03-050A (1&2), Administration and Enforcement, Site Plans, of the Northborough Zoning Bylaw.
3. The two multifamily buildings proposed on 39 King Street (Lot 1) are identified as Building 1 and Building 2; and the two multifamily buildings proposed on 43 King Street (Lot 2) are identified as Building 3 and Building 4.
4. The Applicant is proposing to construct two 2-story buildings on the property at 39 King Street (Lot 1), each building containing four 24-feet by 38-feet, 3-bedroom multifamily dwelling units, for a total of 8 multifamily dwellings on Lot 1.
5. The Applicant is also proposing to construct two 2-story buildings on the property at 43 King Street (Lot 2), Building 3 containing five 24-feet by 38-feet 3-bedroom multifamily dwelling units and Building 4 containing three 24-feet by 38-feet 3-bedroom multifamily dwelling units for a total of 8 multifamily dwellings on Lot 2.
6. Total number of multifamily dwelling units for Lots 1 & 2 is 16 multifamily dwelling units.
7. Each multifamily dwelling unit will have a 6-foot deep by 16-foot wide balcony off the back of the unit which will be supported with brackets in order to avoid using posts within the 30-foot no disturb buffer zone of the bordering vegetated wetlands located along the rear of the units.
8. The properties at 39 King Street and 43 King Street share an internal side property line.
9. In the Business West District, the required distance of a structure to a side property line is 20 feet. The proposed Building 2 on 39 King Street is located ten feet from the internal side property line, and the proposed Building 3 on 43 King Street is also located ten feet from the internal side property line. Therefore, a **Variance** is required from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow the distance of Building 2 to the internal side property line to be ten feet; and a **Variance** is required from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow the distance of Building 3 to the internal side property line be ten feet, per the Northborough Zoning Bylaw.
10. In the Business West District, the minimum required length of a front property line (frontage) is 150 feet. The proposed frontage of the property at 39 King Street is 138.73 feet, and therefore, a **Variance** is required from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, of the Northborough Zoning Bylaw, to allow the front property line of 39 King Street to be 138.73 feet in length.
11. In the Business West District, the minimum required distance of a structure to a side property line is 20 feet. The proposed distance of Building 1 from the side property line is

3 feet and therefore, a **Variance** is required to allow Building 1 to be three feet from the side property line on the property located at 39 King Street.

12. An existing building and shed on the property at 43 King Street (Lot 2) will be removed, along with pavement in the front yards of both 39 and 43 King Street.
13. A retaining wall around the side and rear of the buildings 1-3 will be a maximum of 35 feet high. A fence proposed on top of the retaining wall will be a minimum of 42 inches in height and will have approximately 60 LED solar lights on top.
14. The proposed retaining wall will be designed by a structural engineer and will be made of precast blocks with footings.
15. The septic system proposed to service the 16 dwelling units is located in the front of the subject sites off King Street and the design has been approved by the Board of Health.
16. The subject sites will have Town water service.
17. Two parking spaces per multifamily dwelling unit are required for a total of 32 spaces and 4 additional spaces are required for visitors. The Applicant is proposing to provide 16 units with garage spaces, 16 exterior spaces, and 4 exterior spaces for visitors, for a total of 36 parking spaces.
18. Two snow storage areas for the proposed development are located in the front of the site off King Street and between Buildings 3 and 4 on 43 King Street.
19. An area across the rear of the subject sites is in Groundwater Protection Overlay District Area 3 and will not be impacted by the proposed multifamily development.
20. The proposed development is within the 100-foot buffer zone of a bordering vegetated wetland, with the 30-foot no build zone and the 15-foot no disturb zone located across the rear of the site. An erosion control barrier is proposed between the 30-foot no build zone and the 15-foot no disturbance zone across the rear of the property.
21. The Conservation Commission issued an Order of Conditions for the project at 39 & 43 King Street, DEP file #247-1117, on September 1, 2016.
22. The drainage design for the proposed development meets or exceeds all requirements of the Town of Northborough and the Department of Environmental Protection, as it provides reduction of peak rates and volumes of runoff, and improves the quality of site runoff that flows toward wetland areas, and offsite, by achieving the removal of a minimum of 85% total suspended solids for all new paved areas. The drainage design as proposed will improve the quality of runoff that currently exists on the site.
23. The Stormwater Management Report for 39 & 43 King Street, Northborough, Massachusetts, dated June 23, 2016, revised November 10, 2016, prepared for ZHS Realty Trust by J.M. Grenier Associates, Inc., signed and stamped by John M. Grenier, Civil Registered Professional Engineer, was reviewed and approved by the Town Engineer.
24. In a letter to Dick Rand, Chairman, Zoning Board of Appeals from Michelle Gillespie, Chairman, Design Review Committee, Re: 39-43 King Street, Dated November 22, 2016, the Design Review Committee recommended approval of the proposal as presented at their meeting on November 18, 2016, and offered comments.

DECISION

1. On November 22, 2016, after due consideration of the Application, the Board voted 1 in favor, 4 opposed to **APPROVE** a **SPECIAL PERMIT** and to **APPROVE** a **SPECIAL PERMIT WITH SITE PLAN APPROVAL** per Sections 7-05-030, Use Regulations, Table of Uses, Table 1. Part B, Commercial and Industrial; and 7-03-050A (1), Applicability, New Multi-Family Structure; to allow the use of 16 multifamily dwelling units in four buildings (4 multifamily dwelling units in Building #1, 4 multifamily dwelling units in Building #2, 5 multifamily dwelling units in Building #3, and 3 multifamily dwelling units in Building #4) on the property located at 39 & 43 King Street. The motion to approve did not carry. The members opposed to granting the Special Permits stated the development as proposed would be detrimental to the neighborhood based on traffic concerns including but not limited to difficulty exiting King Street to travel west on Southwest Cutoff and exiting King Street to travel west on West Main Street and the proposal is overly dense and does not conform to the existing neighborhood of single-family homes and auto-related businesses. Therefore the proposal does not meet the intent of the Northborough Zoning Bylaw.
2. On November 22, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow an internal side setback to be no less than 10 feet from the required 20-foot distance from the internal side property line on the property located at 39 King Street.
3. On November 22, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow a proposed retaining wall to be no less than 3 feet from the side yard setback on the property located at 39 King Street.
4. On November 22, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow an internal side setback to be no less than 10 feet from the internal side property line on the property located at 43 King Street.
5. On November 22, 2016, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-06-020, Density & Dimensional Regulations, Table 2. Table of Density & Dimensional Regulations, to allow the front property line of 43 King Street to be 138.73 feet in length, per the plans submitted and identified as:
 - a. A set of eight 24" x 36" plan sheets entitled "Site Development Plan for 39 and 43 King Street, Northborough, Massachusetts" dated June 23, 2016, revised 8/2/16, and 11/10/16, prepared for ZHS Realty Trust by J.M. Grenier Associates Inc., signed, stamped and dated by John M. Grenier, Civil Registered Professional Engineer, on 11/10/16, with sheets identified as follows: Sheet 1 of 8, Cover Sheet; Sheet 2 of 8, Existing Conditions Plan; Sheet 3 of 8, Layout Plan; Sheet 4 of 8, Grading and Drainage Plan; Sheet 5 of 8, Utility Plan; Sheet 6 of 8, Erosion &

Sedimentation Control Plan; Sheet 7 of 8, Detail Plan; and Sheet 8 of 8, Detail Plan;

- b. A 24" x 36" photometric plan for 39 & 43 King Street, Northborough, MA, prepared by Ryan Thompson, dated 11/15/16; and
 - c. A set of five 24" x 36" architectural plans for 39 and 43 King Street, Northborough, MA, dated 10-10-16, for ZHS Realty Trust, prepared, signed and stamped by Jerome R. Dixon, Registered Architect, with sheets identified as follows: Building 1, Units 1 through 4 Elevations, Sheet A21; Building 2, Units 5 through 8 Elevations, Sheet A22; Building 3, Units 9 through 12 Elevations, Sheet A23; Landscape Concept Site Plan, Sheet L10; and Architectural Site Lighting Plan, Sheet L12.
- 6. 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.
 - 7. 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."
 - 8. If the rights authorized by the **VARIANCES** 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.

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



RICHARD RAND, CHAIRMAN