



# 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. 17-07

PROPERTY LOCATION: 5 Bearfoot Road

PETITIONER & PROPERTY OWNER: Berlin Landing Realty Trust

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 54488 Pg: 22

RECEIVED  
NORTHBOROUGH TOWN CLERK  
2017 JUL 31 PM 2:04

This document is the **DECISION** of the Northborough Zoning Board of Appeals to consider the petition of Berlin Landing Realty Trust, Scott Goddard, Trustee, for a **Variance from Section 7-05-030 Table of Uses Part B Commercial and Industrial Uses** to allow the use of duplexes in an Industrial District; a **Dimensional Variance** to allow the application of Residential C District setback regulations to two proposed lots in an Industrial District; a **Dimensional Variance** to allow the application of Residential C District lot area and frontage regulations to the subject site in an Industrial District; and **Variance** to allow the use of duplexes in an Industrial District, on the property located at 5 Bearfoot Road, Map 30, Parcel 33.

## APPLICATION

1. On May 19, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a for a **Variance** from Section 7-05-030 Table of Uses Part B Commercial and Industrial Uses to allow the use of duplexes in an Industrial District; a **Dimensional Variance** to allow the application of Residential C District setback regulations to two proposed lots in an Industrial District; a **Dimensional Variance** to allow the application of Residential C District lot area and frontage regulations to a site in an Industrial District; and **Variance** to allow the use of duplexes in an Industrial District, on the property located at 5 Bearfoot Road, Map 30, Parcel 33.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on June 12, 2017 and June 19, 2017; and was mailed to abutters and other parties of interest on June 9, 2017.

## EXHIBITS

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

1. Application for Hearing before the Zoning Board of Appeals, including:
  - a. A 9-page document from George F. Connors, Counselor At Law, to the Northborough Zoning Board of Appeals, RE: 5 Bearfoot Road, Berlin Landing Realty Trust – Variances; dated May 18, 2017, and date-stamped on May 19, 2017, by the Northborough Town Clerk;
  - b. A certified abutters list for parcels 300 feet from 5 Bearfoot Road and a Northborough, MA GIS Viewer map for 5 Bearfoot Road–300ft Abutters, both dated 5.26.17;

- c. An 8.5" x 11" color map showing the intersection of Bearfoot Road, Goddard Road and Solomon Pond Road, identified as "Locus";
- d. An 8.5" x 11" color locus map with asterisks on land abutting Pond View Way;
- e. A document entitled Unofficial Property Record Card – Northborough, MA, for property located at 5 Bearfoot Road, dated 3/1/2017;
- f. A Quitclaim Deed for 5 Bearfoot Road, Northborough, recorded at the Worcester District Registry of Deeds on 10/27/2015, Bk: 54488 Pg: 22;
- g. An 8.5" x 11" Approval Not Required (ANR) plan entitled "Plan of Land in Northborough, Mass", dated 10/17/78, signed by the Planning Board on August 22, 1978, recorded at the Worcester District Registry of Deeds on September 7, 1978, Plan Book 455, Plan 30;
- h. An 8.5" x 11" map showing land at the corner of Solomon Pond Road and Bearfoot Road, with lots identified as "Original Lot 101 Locus" and "Lot 101B";
- i. A 4-page document entitled "Order of Resource Area Delineation", for 5 Bearfoot Road, DEP File #247-1106, for Applicant Scott Goddard, Trustee, Berlin Realty Trust, issued and signed by the Northborough Conservation Commission on 2/16/16;
- j. An 8.5" x 11" Town of Northborough, MA map entitled "Lot Sizes", dated April 13, 2017, showing a portion of Bearfoot Road;
- k. An 8.5" x 11" Town of Northborough, MA map entitled "Surrounding Land Uses", dated April 13, 2017, showing the intersection of Bearfoot Road, Goddard Road, and Solomon Pond Road;
- l. An undated document entitled "Calculation Sheet for Increase to Impervious Surface: Groundwater Protection Overlay District" for 5 Bearfoot Road – Lot 101A, without the signatures of the Applicant or the Building Inspector;
- m. An undated document entitled "Calculation Sheet for Increase to Impervious Surface: Groundwater Protection Overlay District" for 5 Bearfoot Road – Lot 101B, without the signatures of the Applicant or the Building Inspector;
- n. A document entitled "Oliver: MassGIS's Online Mapping Tool" dated 4/13/17;
- o. A 24" x 36" plan entitled "Sketch Plan of Residential Use, Bearfoot Road, Northborough, MA., dated November 23, 2016, prepared for Berlin Landing Realty Trust, Scott Goddard, Trustee, by Connorstone Engineering Inc., signed and stamped by Vito Colonna, Civil Registered Professional Engineer, on 11/23/16; and date-stamped on May 19, 2017 by the Northborough Town Clerk;

- p. A 14-page document entitled "5 Bearfoot Road, Zoning Board of Appeals – June 27, 2017", submitted to the board on June 27, 2017 by Dawn Windsor Hines, 2 Pond View Way;
2. A letter to Dick Rand, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated June 26, 2017, RE: 5 Bearfoot Road, Map 30, Parcel 33;
3. A 7-page letter from Mary Bassett, 3A Pond View Way, to the Zoning Board of Appeals, dated June 27, 2017, re: 5 Bearfoot Road;
4. A 5-page document entitled "The Benefits of Urban Trees" by Chris Hastie, Warwick District Council, dated July 2003;
5. A 2-page document entitled "Newly Published Research Shows Small Doses of Nature Can Lead to Big Health Benefits", dated November 18, 2015;
6. A 9-page document entitled "The Trends on the Research of Forest Bathing in Japan, Korea and in the World"; and
7. A color 8" x 11" Google Map of Pond View Way dated 6/27/17.

#### **HEARING**

Attorney George Connors, Connorstone Consulting Civil Engineers and Land Surveyors, representing the Applicant, Scott Goddard, Berlin Landing Realty Trust, presented the Application at a duly noticed public hearing of the Board on June 27, 2017 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Fran Bakstran, Jeffrey Leland, Brad Blanchette, and Mark Rutan were present.

Mr. Connors explained the Applicant is proposing to build a duplex on each of two lots he plans to create (Lot 101A & Lot 101B) on the property at 5 Bearfoot Road. The subject property is located in the Industrial District, which does not allow the use of duplexes. The Applicant is seeking a Variance to allow the use of duplexes in an Industrial District; and Variances that would allow the application of Residential C use regulations, as well as Residential C dimensional regulations for setbacks, lot area and lot frontage, to the subject property. Mr. Connors stated the subject site is also in Groundwater Protection Overlay District Area 2; and wetlands are located on both of the proposed lots.

Mr. Connors stated the Applicant claims the dimensional regulations of the Industrial District, and the wetland resource buffer zone requirements for the site, make it difficult to do anything with the property.

Abutters Bill Donovan, 3B Pond View Way; Mary Bassett, 3A Pond View Way; Tom Blasko, 18 Pond View Way; Richard MacWilliams, 5B Pond View Way; and Dawn Windsor Hines, 2 Pond View Way, expressed opposition to the project. In addition, letters from two abutters, as well as a hard copy of a PowerPoint presentation, submitted to the board at the hearing, were in opposition to the project.

The hearing was closed on June 27, 2017.

## **FINDINGS OF FACT**

1. The subject 2-acre site at 5 Bearfoot Road is located in the Industrial District and Groundwater Protection Overlay District Area 2; and there is a significant wetland resource area on the site.
2. The Applicant is proposing to construct a duplex (2-family home) on each of two lots, identified as Lot 101A and Lot 101B, that he plans to create on the subject property. In addition, a driveway is proposed for each unit on Lot 101A; and one driveway is proposed for the two units on Lot 101B.
3. In the Industrial District, the use of a duplex is not allowed. Therefore, a **Variance** is required from Section 7-05-030, Use Regulations, Table 1. Table of Uses, Part B, Commercial and Industrial Districts, of the Northborough Zoning Bylaw, to allow the use of duplexes, as proposed, on the property at 5 Bearfoot Road.
4. In the Industrial District, the minimum required lot area is 60,000 square feet, and the minimum required lot frontage is 150 feet. In the Residential C District, the minimum required lot area is 20,000 square feet, and the minimum required lot frontage is 100 feet. The site is also in Groundwater Protection Overlay District Area 2, which requires a lot area of 40,000 square feet. The subject site meets all the dimensional requirements of the Industrial District.
5. The Applicant is requesting a **Variance** from Section 7-06-020, Table of Density and Dimensional Regulations, Table 2. Table of Dimensional Regulations, of the Northborough Zoning Bylaw, to allow the application of Residential C District setback regulations to the two proposed lots on the subject property located in the Industrial District.
6. The Applicant is requesting a **Variance** from Section 7-06-020, Table of Density and Dimensional Regulations, Table 2. Table of Dimensional Regulations, of the Northborough Zoning Bylaw, to allow application of the minimum lot area and minimum lot frontage required in a Residential C District to the subject property located in the Industrial District.
7. The subject lot was created in 1978 and complies with the current dimensional regulations of the Northborough Zoning Bylaw for a lot in the Industrial District.
8. The Northborough Wetlands Bylaw was created in 1989.
9. The Applicant purchased the subject property at 5 Bearfoot Road on 10/27/2015, as shown on a Massachusetts Quitclaim Deed submitted with his Application on May 19, 2017.
10. The Applicant received an "Order of Resource Area Delineation" for the subject property at 5 Bearfoot Road, that was issued and signed by the Northborough Conservation Commission on 2/16/16.
11. In a letter to Dick Rand, Chairman, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated June 26, 2017, RE: 5 Bearfoot Road, Map 30, Parcel 33, Mr. Litchfield stated the Groundwater Advisory Committee did not make a formal recommendation, as the applicant did not apply to a specific section of the Groundwater portion of the Zoning Bylaw, but offered their comments in the event a Variance is granted.

12. The property is on the corner of Bearfoot Road and Solomon Pond Road, and is across the street from a residential zone. It has been vacant since it was created in 1978, and has been considered a buffer from the Industrial development on Solomon Pond Road for the residents in the surrounding residential neighborhoods.
13. The site contains significant wetland resources that are unable to be used in Massachusetts and Northborough for building or development purposes under the Wetland Protection Act, the Northborough Wetlands Bylaw and the Federal Clean Water Act. As a result, the interior of the property is constrained by wetlands and wetland resource set-back distances (no-disturb, no structure) such that the land unconstrained by both the zoning setbacks and the wetland resources is so significantly small that it renders the lot unusable for any economic use.
14. The subject site at 5 Bearfoot Road, along with the Northborough Wetlands Bylaw, were created years before the Applicant purchased the lot in 2015.
15. The Applicant went before the Conservation Commission in January 2016 for a request for approval of the delineation of the wetland boundaries he presented to the commissioners, which they approved.
16. The subject site, in an Industrial District, is not an appropriate location for the proposed residential use of 2 two-family dwellings, one on each of two lots, as two-family homes are not allowed in the Industrial District.
17. The use as proposed will adversely affect the neighborhood, as the proposed duplexes will not fit in with other structures in the Industrial District.
18. The Applicant claims his hardships are due to the overly-constrained conditions on the lot, which are the result of the zoning requirements of the Industrial District and wetland resource buffer zone requirements.
19. The Applicant was aware of the conditions on the site when he bought the property and when he created the plan as proposed. Instead of proposing an Industrial use on the property, he is proposing a Residential use that requires multiple Variances. Therefore, any hardship would be self-imposed by the Applicant.

## **DECISION**

1. On June 27, 2017, after due consideration of the Application, the Board voted unanimously to **DENY** a **VARIANCE** from Section 7-05-030, Use Regulations, Table 1. Table of Uses, Part B, Commercial and Industrial Districts, of the Northborough Zoning Bylaw, to allow the use of 2 duplexes, one on each of two proposed lots identified as Lot 101A and Lot 101B, on the property at 5 Bearfoot Road, as the property has been kept industrial in order to keep it from becoming a residential lot in an Industrial District.
2. On June 27, 2017, after due consideration of the Application, the Board voted unanimously to **DENY** a **VARIANCE** from Section 7-06-020, Table of Density and Dimensional Regulations, Table 2. Table of Dimensional Regulations, of the Northborough Zoning Bylaw, to allow the application of Residential C setback regulations to the two proposed lots on the subject property located in the Industrial District.
3. On June 27, 2017, after due consideration of the Application, the Board voted unanimously to **DENY** a **VARIANCE** from Section 7-06-020, Table of Density and

Dimensional Regulations, Table 2. Table of Dimensional Regulations, of the Northborough Zoning Bylaw, to allow application of the minimum lot area and minimum lot frontage required in a Residential C District to the subject property located in the Industrial District.

4. On June 27, 2017, after due consideration of the Application, the Board voted unanimously to **DENY** a **VARIANCE** to allow duplex housing in the Industrial District, on the property at 5 Bearfoot Road.
5. 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**

  
\_\_\_\_\_  
**RICHARD RAND, CHAIRMAN**