



**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: 20-10**

**PROPERTY LOCATION: 329 -333 West Main Street**

**PETITIONER/APPLICANT: Amy Poretsky and Joanne Krause**

**PROPERTY OWNER: S&S Hudson Trust, LLC**

**RECORDED WITH THE WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 62157 Pg: 281**

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the Administrative Appeal Petition of Amy Poretsky and Joanne Krause, appealing the determination of the Northborough Inspector of Buildings/Zoning Enforcement Officer regarding the use of the property located at 329-333 West Main Street, Map 81, Parcels 13, 14 and 15 in the Business West District and Groundwater Protection Overlay District - Area 3.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the meetings of the Northborough Zoning Board of Appeals on this appeal were conducted via remote participation.

**APPLICATION**

On May 22, 2020 Amy Poretsky filed a letter with the Town Clerk, which stated, in part, it was an appeal of a determination made by Robert Frederico, CBO, Building Inspector and Zoning Enforcement Officer, in a letter dated May 11, 2020 to Joanne Krause stating 329 West Main Street may be used as a contractor's yard.

On June 15, 2020 Joanne Krause and Amy Poretsky filed an Application form with the Town Clerk for a hearing before the Zoning Board of Appeals of an appeal of the determination made by the Building Inspector and Zoning Enforcement Officer, to allow the use of a contractor's yard on the property located at 329-333 West Main Street, shown on Assessors' Map 81 as Parcels 13, 14 and 15 in the Business West District and Groundwater Protection Overlay District - Area 3.

Notice of the July 28, 2020 public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on Monday, July 13, 2020 and July 20, 2020; and was mailed to abutters and other parties in interest on July 7, 2020.

**EXHIBITS**

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

1. A letter dated May 20, 2020 from Amy Poretsky to the Zoning Board of Appeals, received by the Town Clerk on May 22, 2020, containing the following items:
  - a. April 27, 2020 note from Amy Poretsky to Mr. Frederico;
  - b. Three photos dated April 26, 2020;
  - c. Zoning Interpretation Request Form dated August 29, 2017;

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- d. Zoning Interpretation Request Form dated September 28, 2017;
  - e. Zoning Interpretation Request Form for 329 West Main Street, submitted by Christopher Splaine, and signed by Robert Frederico, Inspector of Buildings/Zoning Enforcement Officer, on October 22, 2019;
  - f. Two 24"x36" sheets, dated April 24, 2020, labeled Plan Showing Existing Building Surveyed for New Bridge Granite Corporation 329 West Main Street Northborough Massachusetts, prepared by Jarvis Land Survey, Inc; and
  - g. A 24"x36" plan set, dated September 4, 2020, identified as: Sheet 1 of 3 Parking Improvement Plan, Sheet 2 of 3 Erosion Control Plan, and Sheet 3 of 3 Construction Details of 329 West Main Street in Northborough MA; prepared by Connorstone Engineering Inc of Northborough MA.
2. Application form dated June 15, 2020 for hearing before the Zoning Board of Appeals, including:
- a. A certified abutters list for parcels 300 feet from 329-333 West Main Street, signed by Julie Brownlee for the Town of Northborough Board of Assessors, dated June 2, 2020;
  - b. A Quitclaim deed for 329 West Main Street and 333 West Main Street and a right of way adjacent to 333 West Main Street, Northborough; recorded at the Worcester District Registry of Deeds on July 21, 2000, Book: 22820, Page: 011;
  - c. A letter dated April 28, 2020 from Robert Frederico, CBO, Building Inspector/Zoning Enforcement Officer, to Joann Krause;
  - d. A letter dated May 11, 2020 from Robert Frederico, CBO, Building Inspector/Zoning Enforcement Officer, to Joann Krause;
  - e. Two 11"x17" maps labeled Existing Conditions Plan #329-#333 West Main Street prepared for Kevin Labadini Corporation, owner Allstate Power-Vac Inc, dated November 14, 2018, containing hand drawn parking spaces and parked truck locations; and
  - f. Letter dated April 21, 2020 from Joanne Krause to Robert Frederico, Building Inspector/Zoning Officer.
3. A twelve (12) page slide presentation entitled "Appeal for the zoning interpretation that 329-33 W Main St Northborough is now an allowed use as a contractor's yard" from Amy Poretsky, presented to the Board at the July 28, 2020 hearing session;
4. An email dated July 29, 2020 from Amy Poretsky to Brad Blanchette and Kathy Joubert containing questions from Ms. Poretsky and answers from an unidentified party and referenced as Ms. Poretsky's attorney;
5. A letter to Fran Bakstran, Chairperson, Northborough Zoning Board of Appeals, from Fred Litchfield, Town Engineer, dated September 29, 2020, RE: 329-333 West Main Street, Map 81 Parcel 13;
6. A memo to Robert Frederico, Building Inspector and Zoning Enforcement Officer from David J. Doneski, KP Law, dated January 17, 2020, RE: 329 West Main Street, Northborough; Permissible Use Determination;
7. A memo to Northborough Zoning Board of Appeals from David J. Doneski, KP Law, dated October 26, 2020, RE: Appeal from Decision of Building Inspector Regarding Use of Property at 329 West Main Street;

8. A letter to Robert Frederico, Zoning Enforcement Officer, from George Connors, attorney for S&S Hudson Trust, LLC, dated July 7, 2020, RE: 329 West Main Street – Enforcement Notice of June 25, 2020;
9. A letter to Northborough Zoning Board of Appeals from George Connors, attorney for S&S Hudson Trust, LLC, dated July 27, 2020, RE: 329 West Main Street – Building Inspector/Zoning Enforcement Officer (S&S Hudson Trust, LLC, landowner);
10. A letter to Northborough Zoning Board of Appeals from George Connors, attorney for S&S Hudson Trust, LLC, dated August 11, 2020, RE: 329 West Main Street – Building Inspector/Zoning Enforcement Officer (S&S Hudson Trust, LLC, landowner);
11. A letter to Robert Frederico, Building Inspector and Zoning Enforcement Officer, from George Connors, dated October 19, 2020, RE: 329 West Main Street – S&S Hudson Trust LLC;
12. A letter to Fran Bakstran, Chairperson, Zoning Board of Appeals, from Mark J. Lanza, dated October 26, 2020 RE: Amy Poretsky's and Joanne Krause's Administrative Appeal of the Zoning Enforcement Officer's Decision dated April 28, 2020 re: Use of 329-333 West Main Street, Map 81, Parcels 13, 14, and 15, Northborough, Massachusetts as a Contractor's Yard; and
13. A Quitclaim Deed, provided by Kathy Joubert, Town Planner, for 0 West Main Street, 329 West Main Street and 333 West Main Street, described as 333 West Main Street (parcel 1), 329 West Main Street (parcel 2), and a right of way adjacent to 333 West Main Street (parcel 3), Northborough; recorded at the Worcester District Registry of Deeds on April 3, 2020, Book: 62157, Pages: 281-286.

#### **HEARING**

Amy Poretsky, 47 Indian Meadow Drive, and Joanne Krause, 10 Buckhill Road, the Applicants, were present at the duly noticed public hearing on July 28, 2020; and both were present at the continued public hearing on October 27, 2020. The hearing was closed on October 27, 2020.

Voting members Fran Bakstran, Chairperson; Richard Rand, Brad Blanchette, Mark Rutan and Paul Tagliaferri; and alternate members Jeff Leland and Leslie Harrison, were present throughout the proceedings on July 28, 2020 and October 27, 2020. Attorney David Doneski, KP Law, was also present for part of the October 27, 2020 hearing session to assist the Board members.

Ms. Poretsky and Ms. Krause made a presentation on both hearing dates explaining their belief the present use of the property is in violation of the special permit decision in ZBA Case No. 87-16; that the property has not been continuously used as a contractor's yard; that the present tenant is operating a contractor's yard without proper permits; and that the activity at the site should cease and desist. At the July 28, 2020 hearing session Ms. Poretsky presented twelve (12) power point slides outlining the reasons for their appeal and referenced past zoning interpretation forms from Mr. Frederico. Also provided by Ms. Poretsky were responses to three questions she asked a land use attorney. The responses were from an unnamed source and no material with the respondent's name or affiliation was provided to the Board.

Board members requested information from Town Counsel regarding the Building Inspector's interpretation of the special permit decision in ZBA Case No. 87-16. The Building Inspector stated that a special permit granted by the ZBA in 1987 (no. 87-16) allowed for use of the Property as a contractor's yard, that such use of the property has continued since that time, and that the use is therefore protected as a pre-existing nonconforming use (under the provisions of section 6 of the Zoning Act, Chapter 40A of the General Laws). On that basis, the Building Inspector determined that, except for an

underground tank connected to a garage floor drain, no zoning enforcement action was required and that a loss of protected use status under Zoning Bylaw section 7-08-050 had not occurred.

Questions for Town Counsel included: 1.) Is the Building Inspector's interpretation that the use of the Property is the same use as allowed under the 1987 Special Permit and therefore the Special Permit still applies; 2.) Confirm or not that based on the Building Inspector's interpretation, the use as a contractor's yard allowed by the 1987 Special Permit remains a valid use of the Property as that use has not stopped since 1987; and 3.) Section 7-08-050 of the Zoning Bylaw states, "A nonconforming use or structure that has not been used for a period of two (2) or more years shall lose its protected status and be subject to all of the provisions of this bylaw." The Building Inspector states the property has been in continuous use as a contractor's yard since 1987 and therefore this section of the Zoning Bylaw does not apply.

On October 27, 2020 Mr. Doneski reviewed his responses provided to the Board in a memo dated October 26, 2020, which cited the decisions in Powers v. Building Inspector of Barnstable, 363 Mass. 648, 653 (1973) and Town of Orange v. Shay, 68 Mass. App. Ct. 358, 363-64 (2007); and stated his conclusion that he did not have reason to disagree with the factual determination made by Mr. Frederico that the use of contractor's yard authorized under the 1987 Special Permit has been carried out at the property since that time and there has not been a period of two or more years of non-use that would make Section 7-08-050 of the Zoning Bylaw, regarding loss of protected nonconforming use status, applicable to that use.

Several residents spoke in favor of the Appeal.

The public hearing was closed on October 27, 2020.

#### **FINDINGS OF FACT**

1. The subject property is identified as 329-333 West Main Street, Assessors' Map 81, Parcels 13, 14, and 15 and is in the Business West District and Groundwater Protection Overlay District - Area 3.
2. The property at 329 West Main Street contains 282 feet of frontage along West Main Street and approximately 2.14 acres of land.
3. The original building on the site was built in 1984; and an expansion and free-standing garage were added in 1988. The site also contains a paved shared parking facility, gravel travel areas, subsurface drainage infrastructure, a 20-foot wide waterline easement containing an existing subsurface waterline, and is serviced by overhead electric, municipal water, gas, and a subsurface sewage disposal system located on the adjacent lot.
4. The matter is before the Board by way of an appeal of the May 11, 2020 decision of the Building Inspector that he does not find reason to take zoning enforcement against the property.
5. In a letter dated August 11, 2020, from Mr. Michael Dello, Director of Accounting, Allstate Power Vac Inc. dba ACV Enviro (recently renamed ACV Environmental Services, Inc.) to the Zoning Board of Appeals, Mr. Dello states ACV Enviro operated a facility on the property at all times from July 25, 2000 through April 3, 2020, at which time it sold the premises to S&S Hudson Trust, LLC.

**DECISION**

**On October 27, 2020**, after due consideration of the **Appeal**, the Board voted two in favor, three opposed to approve the Applicants' appeal. With fewer than four members voting to overrule the decision of the Building Inspector and Zoning Enforcement Officer the Appeal was denied and the Building Inspector's determination that a contractor's yard may be operated at 329-333 West Main Street remains in effect.

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



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**FRAN BAKSTRAN, CHAIRMAN**