



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

NORTHBOROUGH TOWN CLERK
RCUD 2021 NOV 24 PM 2:42

ZBA CASE NO. 21-12

PROPERTY LOCATION: 200 Bartlett Street

PETITIONERS: Paula Devereaux o/b/o R.J. Devereaux Corporation

PROPERTY OWNERS: Bartlett Street Realty Trust

Recorded with the Worcester District Registry of Deeds: Bk: 13894, Pg 46

This document is the **DECISION** of the Northborough Zoning Board of Appeals to consider the petition of Paula Devereaux o/b/o R.J. Devereaux Corporation for a Variance for an industrial use on the property located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial Zoning District and Groundwater Overlay District Areas 1 and 3.

Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021, this meeting of the Northborough Board of Appeals will be conducted via remote participation.

APPLICATION

1. On August 25, 2021, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for a Variance for an industrial use on the property located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial Zoning District and Groundwater Overlay District Areas 1 and 3.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on September 3 and September 10, 2021; and was mailed to abutters and other parties of interest on September 1, 2021.

EXHIBITS

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

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A set of three 8.5" x 11" sheets entitled 'Variance Application Narrative';
 - b. A Zoning Interpretation Request Form for 200 Bartlett Street, submitted by Paula Devereaux, Esq., signed by Robert J. Frederico, Inspector of Buildings/Zoning Enforcement Officer, dated April 12, 2021; and
 - c. A two-page letter ('Response Letter') to Paula Devereaux from Robert Frederico, Inspector of Buildings/Zoning Enforcement Officer, dated April 12, 2021; and
 - d. A certified abutters list for parcels 300 feet from 200 Bartlett Street, Northborough, MA prepared by the Northborough Board of Assessors, and a GIS Viewer Map of the site, titled 200 Bartlett Street-300ft abutters, both dated August 11, 2021; and
 - e. A set of two 2 8.5" x 11" sheets entitled 'Decision, ZBA Case No. 07-10'; and
 - f. A one page 8.5" x 11" sheet entitled 'Certificate of No Appeal' for ZBA Case No. 07-10; and
 - g. A set of three 8.5" x 11" sheets entitled 'Decision, ZBA Case No. 08-04'; and

- h. A one page 8.5" x 11" sheet entitled 'Certificate of No Appeal' for ZBA Case No. 08-04; and
 - i. A Deed for 200 Ridge Road, Northborough, Worcester County, Massachusetts, recorded at the Worcester District Registry of Deeds on December 26, 1991, Bk 13894, Pg 46; and
 - j. An 8.5" x 11" color copy of a GIS map depicting the location of buildings and structures on the property at 200 Bartlett Street, dated March 19, 2021;
 - k. A set of four 8.5" x 11" sheets entitled '2102 Devereaux Corp. Facilities, 200-202 Bartlett Street, Northborough, MA 01532, dated August 24, 2021; and
 - l. An 8.5" x 11" sheet entitled 'Vehicles, 200-202 Bartlett Street, dated August 23, 2021; and
 - m. An 11" x 17" sheet entitled 'Vehicles, 200-202 Bartlett Street, dated August 24, 2021; and
 - n. A set of two 24" x 36" black and white sheets entitled 'ZBA Petition Plan of 200-220 Bartlett Street', prepared by Connorstone Engineering, Inc., dated August 24, 2021; and
 - o. One 24" x 36" color sheet entitled 'Proposed Site Plan-Typical Use' for the property at 200 Bartlett Street, prepared by Dario Designs, Inc., dated August 24, 2021; and
 - p. One 24" x 36" color sheet entitled 'Proposed Site Plan-Maximum Use' for the property at 200 Bartlett Street, prepared by Dario Designs, Inc., dated August 24, 2021; and
 - q. A set of four 8.5" x 11" sheets entitled 'Material List, 2102-200 Bartlett Street', prepared by Dario Designs, Inc., dated October 13, 2021; and
 - r. A set of four 8.5" x 11" sheets entitled '2102 Devereaux Corp. Facilities', prepared by Dario Designs, Inc., dated August 23, 2021; and
 - s. A set of eight exhibits comprised of a total of ninety-five 8.5" x 11" sheets ('Materials & MSDS Sheets'); and
 - t. An 8.5" x 11" color sheet entitled 'Maintenance Building, Proposed Plan', dated October 20, 2021.
2. A letter to the Groundwater Advisory Committee from the Town Engineer regarding 200 Bartlett Street, Map 66, Parcel 7, dated September 13, 2021; and
 3. A letter to the Chairman of the Zoning Board of Appeals from the Town Engineer, on behalf of the Groundwater Advisory Committee, regarding 200 Bartlett Street, Map 66, Parcel 7, dated September 28, 2021; and
 4. A 349-page document entitled 'Revised Material List', prepared by Dario Designs, Inc., dated October 13, 2021;
 5. An 8.5" x 11" floor plan entitled 'Maintenance Building-Proposed Plan', prepared by Dario Designs, Inc., dated October 13, 2021;
 6. A letter to the Groundwater Advisory Committee from the Town Engineer regarding 200 Bartlett Street, Map 66, Parcel 7, dated October 19, 2021;
 7. A letter to the Chairman of the Zoning Board of Appeals from the Town Engineer, on behalf of the Groundwater Advisory Committee, regarding 200 Bartlett Street, Map 66, Parcel 7, dated October 25, 2021; and

8. An email from Janeen Callaghan to the Groundwater Advisory Committee, forwarded to the ZBA, dated September 23, 2021.

HEARING

Attorney Paula Devereaux, representing the R.J. Devereaux Corporation, presented the Application at a duly noticed public hearing of the Board on September 28, 2021 and was present at the continued public hearing on October 26, 2021. At the request of the board, the September 28, 2021 meeting was continued to October 28, 2021. The hearing was closed on October 26, 2021.

Voting members present throughout the September 28, 2021 hearing were Fran Bakstran, Chair, Richard Rand, Paul Tagliaferri, Mark Rutan, Brad Blanchette and alternate member Suzy Cieslica. Voting members present throughout the October 26, 2021 hearing were Richard Rand, Chair, Fran Bakstran, Paul Tagliaferri, Brad Blanchette and alternate member Jeff Leland; alternate member Suzy Cieslica was promoted to a voting member.

The R.J. Devereaux Corporation is a family-run business that does underground utility work for gas companies such as Eversource and National Grid. They have a purchase and sale agreement with the current owners at 200 Bartlett Street but it is conditioned on getting the approvals needed to operate its business at that location. The Applicant intends to repair and service vehicles used for its contracting business and a variance for this accessory use is required because the accessory use is prohibited in Groundwater Overlay Protection District 1.

The property at 200 Bartlett Street is located in two different Groundwater Overlay Protection Districts ("GOPD"), Areas 1 and 3. Three buildings occupy the property, including Lamy's Automotive, an auto repair business which is a pre-existing use in a building located in GOPD 1 and properly permitted. The Applicant is proposing to occupy the two other buildings on the property. The largest building on the property is located in GOPD 1 and is proposed for the administrative uses of computer and safety training purposes and will not house any hazardous waste. The other building, located in GOPD 3, is proposed to be a support yard for their fleet of approximately 27 vehicles and also where small equipment will be periodically maintained. Heavy maintenance will be farmed out elsewhere.

The R.J. Devereaux Corp. is before the board for a variance for the accessory use of automotive repair. The main use will be as a contractor's yard which requires a special permit from the Planning Board, but the Applicant is first before the ZBA because automotive repair is an accessory use which is prohibited in Groundwater 1.

The Applicant was before the Groundwater Advisory Committee on September 14, 2021 and was asked to return and provide a more detailed list of chemicals and their MSDS sheets. The Applicant returned before that board on October 20, 2021 and provided a revised list of chemicals with MSDS sheets for each along with proposed containment pallets and cabinets, as well as a floor plan for the proposed maintenance building. In his letter to the ZBA, drafted on October 25, 2021, Mr. Litchfield said the Groundwater Advisory Committee recommends that the following conditions be attached to any approval:

1. The total volume of chemicals allowed to be stored on site shall be 758 gallons. The material list of chemicals and proposed floor plan for the proposed maintenance building should be referenced in any approval for future reference. The proposed floor plan is intended to be for reference only and modifications within the building are acceptable provided the floor drains capture the entire floor area and there are adequate storage cabinets for all chemicals listed above.
2. The proposed maintenance building shall be equipped with floor drains connected to a tight tank which is to be sized to accommodate all chemicals stored within the building and any sprinkler water discharged during a catastrophic event for a period of time to be determined by the Fire Chief.
3. Each of the proposed buildings shall be heated with natural gas.
4. The construction materials stored on site shall be permanently covered.

5. The entire site shall be regraded and repaved to include a berm around the entire limit of the paved surfaces to allow the drainage system to capture all runoff. The site plan shall include a drainage system design which shall be in conformance with all Federal, State, and local stormwater regulations.
6. The applicant shall submit a status report from a Licensed Site Professional (LSP) regarding environmental compliance of any, and all previous contamination on this site prior to the issuance of a building permit.
7. The applicant shall submit the following items with the site plan application:
 - a. Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) of any industrial waste treatment or disposal system or any wastewater treatment system over fifteen thousand (15,000) gallons per day capacity.
 - b. For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation.
 - c. Analysis by a technically qualified expert certifying that the quality and supply of the underlying groundwater resources will not be degraded to the point whereby a hazard to public health or ecological damage results.
8. The applicant's site plan shall confirm that the increase in post-development net runoff volume shall not exceed existing conditions by more than fifteen percent (15%), the impervious cover of the building lot is increased over existing conditions by no more than forty percent (40%) or the lot coverage does not exceed that amount of lot coverage permitted by underlying zoning where proponent can demonstrate and certify, except to the extent of naturally occurring pH and temperature components of surface water quality and groundwater quality standards, that runoff waters leaving the developed site via surface flow will not cause a violation of Class B water quality standards (314 CMR 4.00) and runoff waters leaving the site via groundwater recharge will not cause a violation of Class I groundwater quality standards (314 CMR 6.00), and on-site sewage disposal is less than or equal to two hundred twenty (220) gallons per day per ten thousand (10,000) square feet of lot area and any water supply developed on site shall not diminish total safe yield of any Town of Northborough water supply.
9. The applicant's site plan shall confirm that there shall be no on-site disposal of any waste or process materials, no outside storage of toxic or hazardous materials, have controlled/contained drainage facilities in areas of potential spillage or release, adequate contingency plans in case of spillage or release and approved routing of suppliers and haulers of any toxic or hazardous materials to or from the site. The proponent for a building or occupancy permit must demonstrate on an annual basis to the Building Department and Board of Health that all applicable federal, state and Town of Northborough licenses, permits and standards for the handling, use, storage, and disposal of any regulated materials have been obtained or met.

Attorney Devereaux stated the R. J. Devereaux Corp. is accepting of all those conditions and intends to comply with them during ownership of the property.

Mr. DiMare noted the location of the maintenance building in Groundwater Overlay District Area 3 which will house hazardous waste. He next shared the floor plan of that building, which showed the locations of the chemical storage in what he said was a 'belt and suspenders' type of approach; every chemical they are storing will be kept in specific storage containers, there will be floor drains and a tight tank.

Mr. DiMare also wanted to note that they did not encroach on any of the wetlands setbacks in order to be a little greener.

Mr. Tagliaferri asked Mr. Frederico about his April 12, 2021 letter to Attorney Devereaux. He wanted to confirm that the main use will be as a contractor's yard and that they are asking for the accessory use of auto repair within the building located in Groundwater 3. Mr. Frederico said their use is primarily as a contractor's yard in order to perform the maintenance needed to be done on some of their equipment. The maintenance division is

subordinate to the use of the property. Mr. Frederico said the Applicant will still require a Special Permit from the Planning Board.

There were no further questions from the board.

The Chair noted that the board received an email from Janeen Callaghan (a presumed resident although no address was provided) that she had written to the Groundwater Advisory Committee and forwarded to the ZBA. The Chair assumed that those questions were reviewed and discussed at their meeting. There were no other questions or comments from the public.

Mr. Blanchette made a motion to close the hearing, Ms. Bakstran seconded. All were in favor.

The public hearing was closed on October 26, 2021.

FINDINGS OF FACT

1. The subject property is located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial Zoning District and Groundwater Protection Overlay Districts 1 and 3.
2. The Applicant is seeking a Variance for an industrial use on the property located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial Zoning District and Groundwater Protection Overlay District Areas 1 and 3.
3. Per 7-07-010D(2)(a)[7], automotive service and repair shops are prohibited in Groundwater Protection Overlay District Area 1.
4. Contractor's yards in the industrial Zoning District require a Special Permit from the Special Permit Granting Authority (Planning Board) per 7-05-030, Table 1, Part B.
5. The hardship is owing to circumstances relating to soil conditions, shape or topography of the land or structures, affecting only the subject land or structures but not affecting generally land or structures in the same zoning district.
6. A literal enforcement of the applicable provision of the Zoning Bylaw would involve substantial hardship, financial or otherwise, but not of a personal nature, to the petitioner or appellant;
7. The relief sought may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.

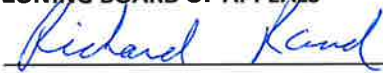
DECISION

1. **On October 26, 2021**, after due consideration of the Application, the Board unanimously voted to Grant a **VARIANCE** to allow the accessory use of automotive repair on the property located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial Zoning District and Groundwater Protection Overlay Districts 1 and 3, with the following conditions:
 - a. The accessory use of automotive repair shall be contained within the maintenance building located in Groundwater Overlay District Area 3;
 - b. An annual inspection for review of chemicals and volumes;
 - c. The servicing and maintenance of vehicles and equipment shall be limited to vehicles and equipment owned and/or used in the ordinary course of business by R. J. Devereau as the owner of the property. The owner or subsequent owners of this property shall also be limited to servicing and maintaining vehicles and equipment owned and/or used in the ordinary course of the business owned by the property owner. The service and maintenance of other vehicles not owned or used by the property owner shall be prohibited.
 - d. Servicing of small and large autos shall be owned or in the care, custody or control of the present owner, their subcontractors, or their employees;
 - e. All types of maintenance work to be performed will be done in Groundwater Overlay Protection District Area 3.

- f. The total volume of chemicals allowed to be stored on site shall be 758 gallons. The material list of chemicals and proposed floor plan for the proposed maintenance building, (both are attached) and should be referenced in any approval for future reference. The proposed floor plan is intended to be for reference only and modifications within the building are acceptable provided the floor drains capture the entire floor area and there are adequate storage cabinets for all chemicals listed above.
- g. The proposed maintenance building shall be equipped with floor drains connected to a tight tank which is to be sized to accommodate all chemicals stored within the building and any sprinkler water discharged during a catastrophic event for a period of time to be determined by the Fire Chief.
- h. Each of the proposed buildings shall be heated with natural gas.
- i. The construction materials stored on site shall be permanently covered.
- j. The entire site shall be regraded and repaved to include a berm around the entire limit of the paved surfaces to allow the drainage system to capture all runoff. The site plan shall include a drainage system design which shall be in conformance with all Federal, State, and local stormwater regulations.
- k. The applicant shall submit a status report from a Licensed Site Professional (LSP) regarding environmental compliance of any, and all previous contamination on this site prior to the issuance of a building permit.
- l. The applicant shall submit the following items with the site plan application:
 - [1] Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) of any industrial waste treatment or disposal system or any wastewater treatment system over fifteen thousand (15,000) gallons per day capacity.
 - [2] For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation.
 - [3] Analysis by a technically qualified expert certifying that the quality and supply of the underlying groundwater resources will not be degraded to the point whereby a hazard to public health or ecological damage results.
- m. The applicant's site plan shall confirm that the increase in post-development net runoff volume shall not exceed existing conditions by more than fifteen percent (15%), the impervious cover of the building lot is increased over existing conditions by no more than forty percent (40%) or the lot coverage does not exceed that amount of lot coverage permitted by underlying zoning where proponent can demonstrate and certify, except to the extent of naturally occurring pH and temperature components of surface water quality and groundwater quality standards, that runoff waters leaving the developed site via surface flow will not cause a violation of Class B water quality standards (314 CMR 4.00) and runoff waters leaving the site via groundwater recharge will not cause a violation of Class I groundwater quality standards (314 CMR 6.00), and on-site sewage disposal is less than or equal to two hundred twenty (220) gallons per day per ten thousand (10,000) square feet of lot area and any water supply developed on site shall not diminish total safe yield of any Town of Northborough water supply.
- n. The applicant's site plan shall confirm that there shall be no on-site disposal of any waste or process materials, no outside storage of toxic or hazardous materials, have controlled/contained drainage facilities in areas of potential spillage or release, adequate contingency plans in case of spillage or release and approved routing of suppliers and haulers of any toxic or hazardous materials to or from the site. The proponent for a building or occupancy permit must demonstrate on an annual basis to the Building Department and Board of Health that all applicable federal, state and Town of Northborough licenses, permits and standards for the handling, use, storage, and disposal of any regulated materials have been obtained or met.

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, they shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 9.
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**



Richard Rand, Chair