



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 21-15, 39-43 King Street AMENDMENT

PROPERTY LOCATION: 39-43 King Street

PETITIONER and PROPERTY OWNER: Rashid Shaikh, ZHS Trust

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 55555 Pg: 182

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of Rashid Shaikh for Special Permit with Site Plan Approval to change the unit count from sixty-six units to eighty-eight units for the previously approved assisted living facility at 39-43 King Street, Map 45, Parcel 105, located in the Business West Zoning District and Groundwater Protection Overlay District Area 3.

In accordance with the provisions of MGL Chapter 40A, Section 9, the Northborough Zoning Board of Appeals will hold a public hearing on Tuesday, October 26, 2021 at 6:00pm to consider the following applications. 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. No in-person attendance by members of the public was permitted.

APPLICATION

1. On September 22, 2021, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for an **Amendment to a Special Permit with Site Plan Approval** to change the unit count from 66 units to 88 units at the previously approved assisted living facility at 39-43 King Street, Map 45, Parcel 105, located in the Business West Zoning District and Groundwater Protection Overlay District Area 3.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on October 6, 2021 and October 13, 2021; and was mailed to abutters and other parties on October 6, 2021.

EXHIBITS

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

NORTHBOROUGH TOWN CLERK
RCUD 2022 JAN 12 AM8:33

1. Application for Hearing before the Zoning Board of Appeals, including:
 - a. A two-page cover letter dated September 22, 2021 from Rashid Shaikh, ZHS Trust, to the Zoning Board of Appeals;
 - b. A certified abutters list for parcels three hundred feet from 39-43 King Street, Northborough, MA, signed by Brian Fernandes for the Town of Northborough Board of Assessors, and a GIS Viewer map of the site, both dated September 23, 2021;
 - c. A 24" x 36" plan entitled "A2, Conceptual Basement Floor Plan", dated September 7, 2021, prepared for Assisted Living at 39-43 King Street by DMS Design, LLC, 100 Cummings Center, Suite 339C, Beverly, MA;

- d. A 24" x 36" plan entitled "A2, Conceptual Lower Basement Floor Plan", dated September 7, 2021, prepared for Assisted Living at 39-43 King Street by DMS Design, LLC, 100 Cummings Center, Suite 339C, Beverly, MA;
 - e. A 24" x 36" plan entitled "A3, Conceptual First Floor Plan", dated September 7, 2021, prepared for Assisted Living at 39-43 King Street by DMS Design, LLC, 100 Cummings Center, Suite 339C, Beverly, MA;
 - f. A 24" x 36" plan dated September 7, 2021 entitled "A4, Conceptual Second Floor Plan, Third Floor Plan" prepared for Assisted Living at 39-43 King Street by DMS Design, LLC, 100 Cummings Center, Suite 339C, Beverly, MA; and
 - g. A Zoning Interpretation Request Form for the property at 39-43 King Street, by Robert Frederico, Inspector of Buildings/Zoning Enforcement Officer, dated September 24, 2021.
2. A 36" x 48" plan entitled "Conceptual First Floor Plan", dated September 7, 2021, revised November 12, 2021, prepared for prepared for Assisted Living at 39-43 King Street by DMS Design, LLC, 100 Cummings Center, Suite 339C, Beverly, MA.
 3. A letter from the Fire Chief to the Planning Board, dated September 23, 2021.
 4. An email from the Fire Chief to the Town Planner, dated November 17, 2021.
 5. Email correspondence from the Applicant to the Inspector of Buildings/Zoning Enforcement Officer, Town Planner, Town Engineer and Fire Chief, dated November 22, 2021.

HEARING

Applicant Rashid Shaikh, ZHS Trust, and Sid Silveira, DMS Design, LLC, presented the application at duly noticed public hearings of the Board on October 26, 2021 and November 23, 2021.

Voting members present on October 26, 2021 were Richard Rand, Chair; Fran Bakstran, Mark Rutan, Paul Tagliaferri, Brad Blanchette; Jeff Leland, Suzy Cieslica, Alternates. Voting members present on November 23, 2021 were Richard Rand, Chair; Fran Bakstran, Mark Rutan, Paul Tagliaferri, Jeff Leland, Suzy Cieslica, Alternates. Ms. Cieslica was promoted to a voting member.

At the October 26, 2021 hearing, Mr. Shaikh explained that he'd been before the Zoning Board of Appeals in 2018 and received Site Plan Approval and a Special Permit to build a 66-unit assisted living facility on the property at 39-43 King Street. At that time, Zoning Board of Appeals members and King Street residents requested access from route 20 to King Street. The Applicant agreed to those changes and worked with the Town to convey a portion of King Street for the purpose of using it for public use. ZHS Trust applied to Mass DOT for the new curb cut and reached an agreement after approximately 18 months. Another year was spent to sign an MOU with the Town to convey a portion of 38 King Street for public access.

A two-year extension was granted by the Zoning Board of Appeals on September 24, 2019 at the request of Mr. Shaikh.

During the time, new demands in the market rose and all-new facilities were built in the area. Since their max unit count of 66 units was initially derived from the 10,000 gallon/day maximum septic count, the Applicant decided to connect to the Town's sewer.

Mr. Shaikh was before the board to request an increase of sixty-six units to 88 units to be attractive, efficient, and reasonable to financiers, all without changing the building's footprint.

An increase of parking spots from 44 to 55 was also requested. Mr. Silveira agreed that the footprint of the building had not changed and neither did the outside aesthetics. The unit count was increased by changing the configuration of the units and reducing their size.

Chair Rand asked how many employees they will have on any given shift. Mr. Silveira said that nine employees will be the most working at one time.

Chair Rand asked if the Fire Chief has seen these new plans. Ms. Joubert said there was a review letter from the Fire Chief dated September 23, 2021, in which he made the following points:

- There is no hydrant listed on the plans, so it is not able to be determined if it is located properly for use with the Fire Department Connection.
- The change to one entrance/exit is not acceptable. The developer is proposing a large population of at-risk individuals. The Fire Department is already limited to access to the rear of the building due to topography and reducing to one entrance will further complicate any potential operations.
- The areas on the plan labeled "Area of Refuge" do not appear to be of sufficient size, however, that can be addressed in the building plan review.
- While not a direct component of the Fire Department Site Plan Review, the number of proposed staff is very low for a facility with 62 assisted living bed and 26 memory care beds; in the last 12 months, the Fire Department responded to 62 EMS calls at assisted living facilities in town. The call volume is not an issue, but the response level goes to show the burden place on the staff at these facilities.

Mr. Sheikh said that he did not receive that letter. Ms. Joubert apologized that it was not forwarded.

The hearing was continued to gather more information.

At the continued hearing on November 23, 2021, the Applicant submitted a plan titled 'Conceptual First Floor Plan', dated September 7, 2021, revised November 12, 2021, prepared by DMS Design, LLC, and noted the changes made at the request of the Fire Chief:

- A second curb cut was added to have traffic flow through 38 King Street onto Southwest Cutoff entrance.
- The fire hydrant was placed within 85' of the facility.
- Areas of refuge were added on opposite sides of the building.

Ms. Bakstran was concerned about the influx of traffic on King Street with residents needing to be driven to appointments and errands. Mr. Shaikh said many services will be provided at the facility and transportation via van will be provided.

Mr. Rutan did not see a great increase in traffic going down King Street since the new access across the street to Route 20 will be the preferred access. He thought sixty-six people within the footprint was better rather than 88 but he thought the increase of units was more economically viable. He is depending on the EOEA to make sure it is run properly for the number of residents in this facility.

Mr. Leland agreed with Mr. Rutan; these facilities want to maximize the number of beds to make them economically viable. He felt that the improvements made to the sewer as well as the extra lot for fixing King Street made it a worthwhile project; he was in favor.

Chair Rand was also in agreement with Mr. Rutan and Mr. Leland. He felt the parking was adequate and liked the new access from King Street onto Route 20.

Ms. Bakstran appreciated Mr. Rutan's belief that it is about economics, however, there will be more traffic. For her, it was also about putting eighty-eight people in the same footprint where before it was 66, which in her opinion would not improve the quality of the services they receive.

Ms. Bakstran was also concerned that if the application was not approved by the Executive Office of Elder Affairs, the Town would be left with an apartment building with eighty-eight studio apartments. Mr. Leland expressed a similar concern. Mr. Frederico said if it is allowed as presented and plans fall through, the building can be used for whatever is allowed by right in Business West.

Scott Rogers, 26 Tomahawk Drive asked the Applicant what the anticipated staffing levels are and the parking requirements for those staff. Mr. Shaikh said they will be sure to choose the right operator, and even if he provides a typical staffing level at this point, it will not be accurate, the operator will be the one to hire the right number of people for the right mix of units.

Mr. Frederico contacted the Executive Office of Elder Affairs and learned that the minimum staffing requirements for such a facility is four people: an executive director, a manager, and two people always in a memory care unit; beyond that, it's at the discretion of the operator of the facility to submit a staffing plan to the Department of Elder Affairs for review. That plan is supposed to be reviewed by the Administrator every quarter or six months.

Mr. Frederico had also determined that fifty-five parking spaces was sufficient; he did not think that staffing models would go down that much if the Applicant had stayed with the original 66 units.

Mr. Tagliaferri asked how the Fire Department would access the rear of the building. Because of the grade in the back, the trucks would not be able to get there. Mr. Shaikh showed the access points on the plan and the areas of refuge. Mr. Silveira stated the Building Code reads they don't need access completely around the building, but access to the rear of the building needs to be within 250' from the street. Mr. Frederico added that building will be 'completely sprinkled' and the areas of refuge because of the inability for a fire truck to get around the back. He distinctly remembers the Fire Chief being on board with the areas of refuge, the hydrant's location close to the building, two entries, and the fully sprinkled building, despite being able to get to the back of the building.

There were no further comments from the board. The board received no letters in opposition.

The hearing was closed on November 23, 2021.

Mr. Rutan made a motion to amend the special permit with site plan approval to allow an increase from 66 units to 88 units and for a total of 55 parking spots at the previously approved assisted living facility at 39-43 King Street, as shown with the revised plans dated November 12, 2021, with the two entrance/exits to King St and 55 parking spaces, Ms. Bakstran seconded.

Roll call vote was as follows:

Mr. Rutan: "aye"
Ms. Bakstran: "nay"
Mr. Tagliaferri: "aye"
Mr. Leland: "aye"

Chair Rand: "aye"

The amendment passed 4:1.

FINDINGS OF FACT

1. The subject property at 39-43 King Street, Map 45, Parcel 105, is in the Business West Zoning District and Groundwater Protection Overlay District Area 3.
2. The Applicant received approval from the Zoning Board of Appeals on May 16, 2018 for Site Plan Approval and a Special Permit to construct a 66-unit facility with 44 parking spaces.
3. A two-year extension was granted by the ZBA on September 24, 2019.
4. The Applicant will be connecting to Town sewer and is no longer restricted to the daily limit of 10,000 gallons of wastewater.
5. The Applicant is proposing to construct an 88-unit assisted-living facility on the subject property at 39 and 43 King Street with access coming through the property at 38 King Street.
6. The Applicant is proposing to add 11 parking spaces on the subject property at 39-43 King Street.
7. The Applicant plans on an increase to the number of units at the proposed facility with no changes to the building's footprint.
8. Areas of refuge and a rear egress were added to the site plan at the request of the Fire Chief.
9. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
10. The use as developed will not adversely affect the neighborhood.
11. There will be no nuisance or serious hazard to vehicles or pedestrians.
12. The proposed use will conform to any special requirements of the Special Permit Granting Authority as stated in its written decision.
13. The site is an appropriate location for the proposed use.

DECISION

1. On November 23, 2021, after due consideration of the Application, the Board voted four in favor and one opposed to **GRANT an AMENDED SPECIAL PERMIT WITH SITE PLAN APPROVAL** per Section 7-03-050A(2), Administration and Enforcement, Site Plans, Applicability, Special Permit with Site Plan Approval, to change the unit count from 66 units to 88 units and to change the parking lot count from 44 parking spaces to 55 parking spaces at the previously approved assisted living facility at 39-43 King Street, Map 45, Parcel 105, located in the Business West Zoning District and Groundwater Protection Overlay District Area 3.
2. 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.
3. The **SPECIAL PERMIT** and **SPECIAL PERMIT WITH SITE PLAN APPROVAL** 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."

4. If the rights authorized by the **SPECIAL PERMIT** 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. 9.

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

A handwritten signature in blue ink that reads "Richard Rand". The signature is written in a cursive style and is positioned above a horizontal line.

RICHARD RAND, CHAIR