



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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## DECISION

NORTHBOROUGH TOWN CLERK  
RCUD 2022 APR 6 PM 12:05

**ZBA CASE NO. 21-14**

**PROPERTY LOCATION: 40 Lawrence Street and 0 Lawrence Street**

**APPLICANT and PROPERTY OWNER: Propertunities LLC**

**RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Plan Book 444, Plan 46  
and Plan Book 449, Plan 113**

This document is the **DECISION** of the Northborough Zoning Board of Appeals on the petition of Propertunities LLC, for a Special Permit under section 7-07-010 of the Zoning Bylaw to extend a use in Groundwater Protection Overlay District Area 3 by 50 feet into a more restricted Groundwater Protection Overlay District area, Area 2, on the property at 40 and 0 Lawrence Street, shown on Assessors' Map 105 as Parcels 3 and 4, in the Residential C District and Groundwater Protection Overlay District - Areas 2 and 3.

## APPLICATION

1. On September 20, 2021, the Applicant filed with the Town Clerk an Application to the Zoning Board of Appeals for a **Special Permit** to extend a use in Groundwater Protection Overlay District Area 3 by 50 feet into a more restricted Groundwater Protection Overlay District area, Area 2, on the property with a stated address of 40 and 44 Lawrence Street and also identified as 40 and 0 Lawrence Street, shown on Assessors' Map 105 as Parcels 3 and 4, in the Residential C District and Groundwater Protection Overlay District - Areas 2 and 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:

Application to the Zoning Board of Appeals, including standard application form and :

1. A cover letter dated August 10, 2021 from George Connors, Counselor at Law, to the Zoning Board of Appeals and Groundwater Committee; and
  - a. A Quitclaim Deed for 40 Lawrence Street, Northborough, MA, 01532, recorded at the Worcester District Registry of Deeds on February 8, 2019, Plan Book 60027, Page 84; and
  - b. An 8.5" x 11" black and white copy of an ANR plan for lots A, B & C, Northborough, MA 01532, Worcester District Registry of Deeds Plan Book 444, plan 46, dated August 23, 1977; and
  - c. An 8.5" x 11" black and white copy of an ANR plan for lot D, Northborough, MA 01532, Worcester District Registry of Deeds Plan Book 449, plan 113, dated April 10, 1978; and

- d. An 8.5" x 11" black and white copy of an ANR plan for 40 Lawrence Street, Northborough, MA 01532, Worcester District Registry of Deeds Plan Book 956, Plan 18, dated April 7, 2021 and prepared Jarvis Land Survey;
  - e. A certified abutters list for parcels 300 feet from 40 and 0 Lawrence Street, Northborough, MA, signed by Tiffany Peters for the Town of Northborough Board of Assessors, and a GIS Viewer map of the site, both dated September 2, 2021; and
  - f. Two black and white 8.5" x 11" sheets entitled "Calculation Sheet for Increase to Impervious Surface" for the property at 40 Lawrence Street ("existing house"); and
  - g. Two black and white 8.5" x 11" sheets entitled "Calculation Sheet for Increase to Impervious Surface" for the property at 0 Lawrence Street ("proposed house"); and
  - h. One 8.5" x 11" color sheet entitled "GIS GW MAP", dated January 20, 2021, with color sheet entitled "zoning" dated January 20, 2021 with annotation and 'map theme legends' page; and
  - i. One 8.5" x 11" color sheet portraying parts of Groundwater Overlay District Areas 2 and 3 (GW2 and GW3); and
  - j. Copy of a forwarded email from Rylee C.W. Mayo-Fiske, Connorstone Engineering, Inc., to Robert Frederico, dated August 17, 2020, with August 17, 2020 letter from Attorney George Connors to Robert Frederico, Zoning Enforcement Officer and Zoning Interpretation Request Form, Northborough GIS map excerpt entitled "40 Lawrence St" dated August 12, 2020, and a plan entitled "Sketch Plan 40 Lawrence Street Northborough, MA"; and
  - k. A 24" x 36" plan dated December 9, 2020 with revision dates January 20, 2021 and July 15, 2021, entitled "Proposed Sewage Disposal System" for the property at 0 Lawrence Street, Northborough MA prepared for Propertunities, LLC by Connorstone Engineering, 10 Southwest Cutoff, Suite 7, Northborough, MA; and
  - l. A 24" x 36" plan dated December 9, 2020 with a revision date of January 20, 2021, entitled "Proposed Sewage Disposal System" for the property located at 40 Lawrence Street, Northborough MA prepared for Propertunities, LLC by Connorstone Engineering, 10 Southwest Cutoff, Suite 7, Northborough, MA; and
2. A letter from the Fire Chief to the Zoning Board of Appeals, dated September 22, 2021, with his comments; and
  3. An email from the Director of Public Works to the Town Engineer and the Town Planner, dated September 23, 2021, with his comments; and
  4. A copy of a memo from the Town Engineer to the Groundwater Advisory Committee, dated October 19, 2021, with his comments; and
  5. A memo from the Town Engineer to the Chairman of the Zoning Board of Appeals, dated October 25, 2021, regarding the Groundwater Advisory Committee's October 20, 2021 meeting; and
  6. An email from George Connors to the Planning Administrative Assistant dated October 26, 2021, requesting a continuance to the next meeting date; and

7. An email exchange between the Town Engineer and Town Counsel, dated November 2 and 9, 2021; and
8. An email from George Connors to the Town Engineer, dated November 15, 2021, requesting a continuance to the next meeting date; and
9. An email memo from Town Counsel to the Town Engineer, dated January 11, 2022; and
10. A memo from the Town Engineer to the Chair of the Zoning Board of Appeals, dated January 21, 2022, regarding the Groundwater Advisory Committee's January 20, 2022 meeting; and
11. An email from George Connors to the Planning Administrative Assistant dated January 26, 2022, requesting a continuance to the next meeting date; and
12. A letter from George Connors to the Zoning Board of Appeals RE: the Lawrence Street Groundwater Special Permit, dated February 15, 2022; and
13. A memo from the Building Inspector and Zoning Enforcement Office to the Zoning Board of Appeals, dated February 22, 2022.

## **HEARING**

**Consideration of the petition of Propertunities LLC for a Special Permit to extend a use in Groundwater Protection Overlay District Area 3 by 50 feet into a more restricted Groundwater Protection Overlay District area, Area 2, on the property at 40 and 0 Lawrence Street, shown on Assessors' Map 105 as Parcels 3 and 4, located in the Residential C Zoning District and Groundwater Protection Overlay District - Areas 2 and 3.**

The Application was scheduled to be heard on October 26, 2021 but was continued to the Board's November meeting at the Applicant's request. On November 15, 2021, the Applicant's attorney, Mr. George Connors, emailed the Town Engineer with a request to continue the hearing to the next scheduled meeting date in January 2022.

Attorney Connors, representing Propertunities LLC, presented the Application at duly noticed public meetings on January 25, 2022 and February 22, 2022. Voting members at the January 25, 2022 session of the public hearing were Richard Rand, Chair; Fran Bakstran, Mark Rutan, Paul Tagliaferri, Brad Blanchette, and alternate members present were Jeff Leland and Suzy Cieslica; all were present at the February 22, 2022 session of the public hearing.

On January 25, 2022, Attorney Connors explained that there is an existing house on the lot located at 40 Lawrence Street and an existing garage and outbuilding on an adjacent lot that was created via the Approval Not Required (ANR) process. The septic system serving the existing home at 40 Lawrence Street will be replaced; the existing garage and outbuilding on the adjacent lot will be demolished and replaced with a single family home, which will be situated in part within Groundwater Protection Area 2. The proposed septic system and the remainder of the proposed home will be located within Groundwater Protection Area 3. Attorney Connors stated that under existing conditions, there is no infiltration, and that under the post-development condition, stormwater will be infiltrated into the ground.

Attorney Connors said there is a clear distinction between the base zoning district and the overlaying zoning district. In this Application, the Applicant is seeking to invoke the provision which requires a special permit to extend the Groundwater Protection Area 3 uses into Groundwater Protection Area 2

by 50 feet. In Groundwater Protection Area 3, residential development of single-family dwelling units is permitted – as allowed in the underlying Residential C district, and that district requires a minimum lot area of 20,000 square feet. Attorney Connors said that an overlay district does not preclude using land within Groundwater Protection Area 2 because the underlying zoning district's minimum lot size requirement has been met.

Town Engineer Litchfield said the Groundwater Advisory Committee met and sought an opinion from Town Counsel. The Groundwater Advisory Committee stipulated that the property condition items discussed by Attorney Connors are true and accurate; that the maximum impervious lot coverage requirement of 15% is met, infiltration is provided where none was provided before, that there is no increase in net runoff volume above 15% in the post-development condition for either lot, and both lots have septic systems that are improvements over what was there before.

In his January 21, 2022 letter to the Zoning Board of Appeals (ZBA) on behalf of the Groundwater Advisory Committee, Mr. Litchfield said that the Committee was uncomfortable rendering a recommendation on the requested special permit because of the legal questions. He summarized the Zoning Enforcement Officer's argument that one can't use the land area in a more restrictive zone to satisfy the minimum lot area requirement in a less restrictive zone. He stated that Town Counsel agreed with Zoning Enforcement Officer Frederico's determination that regardless of whether or not the special permit is granted, the lot adjacent to 40 Lawrence Street and identified as 0 Lawrence Street (Assessors' parcel 105-4) is unbuildable because it does not meet the minimum lot size requirement of 40,000 square feet within Groundwater Protection District Area 2.

Mr. Frederico said that since approval of the ANR plan creating the 40 Lawrence Street lot and the adjacent lot, approved April 7, 2021, Plan Book 956, Plan 18, any kind of 'grandfathering' is now gone and the proposed new home must conform to today's Zoning Bylaw. As of now, Mr. Frederico believes that the undeveloped lot is unbuildable unless the Applicant has obtained a dimensional variance from the Zoning Board of Appeals.

Mr. Litchfield reiterated that the Zoning Bylaw provision allowing for a special permit to move a Groundwater Protection District line into the more restrictive Groundwater Protection area was not intended to allow two lots to be built where only one building lot existed prior.

Chair Rand explained that he believes a dimensional variance from the 40,000 square foot minimum lot size requirement is needed. Attorney Connors said he would have to discuss that with his client and asked to continue the hearing so he could have time to evaluate that.

Attorney Connors requested a continuance to the Board's February 22, 2022 meeting. Mr. Blanchette made a motion to continue the hearing to the ZBA's next meeting on February 22, 2022. Mr. Rutan seconded. All voting members were in favor.

At the Board's February 22, 2022 meeting, Attorney Connors referenced his letter dated February 15, 2022. He explained that the proposed development on Assessor's Parcel 105-4 involves demolishing structures with a larger footprint within Groundwater Protection Area 2 (1,056 square feet) than the proposed new house (900 square feet), improving existing conditions by infiltrating stormwater, and relocating the private sewer collection system on Parcel 105-26 out of Groundwater Protection Area 2 and replacing it with a Title 5-compliant system.

Attorney Connors asserted that the Groundwater Protection Overlay District specifies that a single-family home is allowed within Area 3 consistent with the minimum lot size of the underlying Residential C District, which is 20,000 square feet, but that Groundwater Protection Area 3 itself does not have a

specific square footage requirement as opposed to Groundwater Protection Area 1 and Groundwater Protection Area 2. Attorney Connors stated that the provisions later in the bylaw allow for two-family structures on lots with a minimum area of 40,000 square feet. He noted that the totality of the two lots in question is roughly 49,000 square feet but with an existing house that will remain. Attorney Connors stated that in Groundwater Protection Area 3, you can have a two-family structure on a 20,000 square foot lot, and that it appears clear that the underlying district allows for the construction of a new house on the lot proposed to be developed and the use of the existing lot.

Attorney Connors explained that there is a basic disagreement about the words "overlay" and "underlying" and he believed this Application met the requirements of Groundwater Protection Area 2; he added that even if you disagree with that, there are provisions to use 40,000 square foot lots for duplex housing. He noted that duplex housing is two units on the land and in this case there will be two individual houses, which he felt was unjust to require. He said the Applicant is requesting consideration under the bylaw and the groundwater protection provisions, even though he disagreed with the interpretation of the terms "overlay" versus "underlying".

Mr. Rutan asked why there is discussion regarding a duplex. Attorney Connors replied that it is an alternative provided for in the Zoning Bylaw that he thought would make sense, but there is no proposal to construct a duplex.

Ms. Bakstran asked if the proposed house could be moved forward out of Groundwater Protection Area 2. Attorney Connors responded that perhaps the house location could be moved so that very little of it is within the Groundwater Protection Area 3, if that were to satisfy the Board.

Ms. Bakstran asked if the new lot itself meets the underlying criteria of 20,000 square feet.

Mr. Litchfield referred to the Building Inspector's letter, explaining that because there are not 20,000 square feet of land within Groundwater Protection Area 3, the lot doesn't satisfy the minimum lot size requirement for a buildable lot.

Attorney Connors said he disagreed with that; noting that in in the Residence C District, the underlying zoning district, the area requirement is 20,000 square feet. Mr. Litchfield noted that was not true in the Groundwater Protection Area 2.

Mr. Tagliaferri reiterated that the Applicant doesn't have 20,000 square feet free and clear in Groundwater Protection Area 3, and that parcel 105-4 is not buildable because of that.

Mr. Frederico provided an overview of his letter to the Zoning Board of Appeals dated February 22, 2022. He clarified that the letter pertained to Parcel 105-4, not the adjacent parcel with the existing home.

Mr. Tagliaferri asked if Parcel 105-4 will be considered a buildable lot if issued a groundwater protection special permit in accordance with Zoning Bylaw section 7-07-010.C.

Mr. Frederico said probably not. He understands that there is a difference in how he and Attorney Connors interpret underlying versus overlay districts. Mr. Frederico stated that, in his opinion, this lot will need a dimensional variance to be considered buildable.

Attorney Connors disagreed.



Mr. Litchfield explained that the Town has interpreted the Zoning Bylaw to mean that land within the more restrictive Groundwater Protection Area 2 cannot be used to satisfy the minimum lot size requirement for Groundwater Protection Area 3, 20,000 square feet. Town Counsel rendered a written opinion supporting the Building Inspector's interpretation. In Mr. Litchfield's opinion, these two lots are not buildable separately. If they were to be combined as one, the land area would be sufficient for a use permitted in Groundwater Protection Area 3 or in Groundwater Protection Area 2, as the lot would be more than 40,000 square feet. Furthermore, at the time the Groundwater Protection Overlay District was adopted, there was one house and one garage on the other lot, even though there were two lots. The Applicant bought the land at a foreclosure and is trying to get two lots where there was originally one house and one garage. Mr. Litchfield thought it was appropriate to allow the Applicant to have one house, one septic system, one lot.

There was no public comment.

Mr. Rutan made a motion to close the hearing. Mr. Tagliaferri seconded. Roll call vote followed, all were in favor. The public hearing was closed on February 22, 2022.

### **DELIBERATION**

Mr. Rutan said he believed that the overlay districts were created because the operation of a household on a property impacts the groundwater, therefore there is a requirement in these districts for a certain square footage. He stated that in Groundwater Protection Area 3, the Town wants 20,000 square feet within that Area 3 and if a part of the construction is in Groundwater Protection Area 2, then the Town wants 40,000 square feet so as not to negatively impact the aquifer. He agreed with staff's interpretation of the Groundwater Protection Overlay District Bylaw.

Ms. Bakstran stated she thought that was a valid argument though she disagreed with Mr. Rutan's interpretation of the overall intent of the bylaw. She said that the lines of the two parcels are just lines on a piece of paper which could be changed so as to have more than 20,000 square feet in Groundwater Protection Area 3 on the front of the property and just disregard the back part of the property which is Groundwater Protection Area 2. She stated her opinion that the groundwater will be protected better with the proposed development of these two lots. She thought it was reasonable to give relief but thought it was equally valid not to.

Mr. Tagliaferri said he agreed with Mr. Frederico's letter; even if the Board grants the requested special permit, the lot is still unbuildable.

Chair Rand said he agreed with staff and Mr. Rutan, and that the Application is being handled in the wrong manner, because the Applicant doesn't have the right application for what it is trying to accomplish.

Ms. Cieslica agreed that she can see what the Applicant wants but that it needs to go about it in the right way.

Mr. Leland said he understood where Ms. Bakstran was coming from, but he wasn't sure that the lines can be moved to satisfy the minimum lot size requirement within the less restrictive Groundwater Protection Area 3 given the existence of the house with a septic system.

Mr. Rutan made a motion to grant a special permit to allow 50 feet of relief into Groundwater Protection Area 2 from Groundwater Protection Area 3 for the construction of a dwelling on the property at 44 Lawrence Street (0 Lawrence Street). Ms. Bakstran seconded. Roll call vote was as

follows: Mr. Rutan—nay; Ms. Bakstran—nay; Mr. Tagliaferri—nay; Mr. Blanchette—nay; Chair Rand—nay.

The Application was denied.

#### **FINDINGS OF FACT**

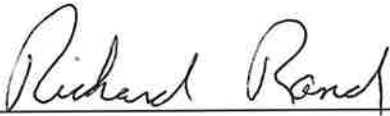
1. The subject property at 40 and 0 Lawrence Street is in the Residential C District and Groundwater Protection Overlay District Areas 2 and 3.
2. The Application pertains to 40 and 0 Lawrence Street, designated as Assessor's parcels 105-3 (existing house) and 105-4 (existing garage).
3. The Applicant proposes to remove the garage on Assessor's parcel 105-4 and construct a single-family house on that parcel, and install new septic systems for each parcel. The existing and proposed single-family houses on each parcel straddle the line dividing Groundwater Protection Areas 2 and 3.
4. The Applicant is proposing to extend a use in Groundwater Protection Area 3 by 50 feet into the more restricted Groundwater Protection Area 2 on the properties at 40 and 0 Lawrence Street. Per section 7-07-010.C(3) of the Zoning Bylaw, where a Groundwater Protection District boundary line divides a lot in single or common ownership at the time such district is established, a use authorized on the less restricted portion of such lot may be extended into the more restricted portion but in no case for more than fifty (50) feet over the established line; a special permit from the special permit granting authority for said extension shall be required in accordance with subsection (D)(4) of this section.
5. Per Zoning Bylaw section 7-07-010.D(1)(b)[2], in Groundwater Protection Area 2, residential development of single-family dwellings is permitted by-right on lots of at least forty thousand (40,000) square feet in area, such that the increase in post-development net runoff volume shall not exceed existing conditions by more than fifteen percent (15%) or such that the impervious cover of the building lot is increased over existing conditions by no more than fifteen percent (15%), such determination to be made by the Building Department in conjunction with the Town Engineer.
6. Per Zoning Bylaw section 7-07-010.D(1)(c)[2], in Groundwater Protection Area 3, residential development of single-family dwellings is permitted by-right as follows: as allowed in the underlying district, such that the increase in post-development net runoff volume shall not exceed existing conditions by more than fifteen percent (15%) or such that the impervious cover of the building lot is increased over existing conditions by no more than fifteen percent (15%), such determination to be made by the Building Department in conjunction with the Town Engineer.
7. As depicted on the plan submitted with the Application and referenced in the narrative portion of the Application entitled "Proposed Sewage Disposal System", prepared by Connorstone Engineering, dated 12/9/20, revised through 7/15/21, the majority of the proposed new dwelling on Assessors' parcel 105-4 (identified as Lot D-R on the plan) would be located within Groundwater Protection District Area 2. Per section 7-07-010.D(1)(b)[2], the Zoning Bylaw allows single-family dwellings by right on lots of at least 40,000 square feet in that groundwater protection area; however, the Groundwater Protection Area 3 portion of the lot does not contain 20,000 square feet, the minimum area requirement in the underlying Residential C District.
8. The Groundwater Advisory Committee unanimously agreed not to make a recommendation to approve or deny a special permit under Zoning Bylaw section 7-07-010.C(3), per the Town Engineer on behalf of the Groundwater Advisory Committee, in a letter to Chair Rand, Northborough Zoning Board of Appeals, dated January 21, 2022, RE: 40 & 44 Lawrence Street, Map 105, Parcels 3 & 4.

9. The proposed development is not permissible because the Zoning Bylaw provision under which the Applicant is requesting a special permit, Section 7-07-010.C(3), authorizes the Zoning Board of Appeals to grant a special permit to extend a use from a less restrictive Groundwater Protection Area (Area 3) into a more restrictive Groundwater Protection Area (Area 2), not to alter the dimensional requirements of the more restrictive Groundwater Protection Area (here, Area 2).

**DECISION**

1. On February 22, 2022, after due consideration of the Application, the Board voted unanimously to **DENY** the Application for a **Special Permit** to extend use by 50 feet into a more restricted zone on the property at 40 and 0 Lawrence Street, Assessors' Map 105, Parcels 3 and 4, in the Residential C District and Groundwater Protection Overlay District Areas 2 and 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.

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

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

**RICHARD RAND, CHAIR**