

Town of Southborough
BOARD OF APPEALS

SOUTHBOROUGH, MASSACHUSETTS 01772

9 CORDAVILLE ROAD
SOUTHBOROUGH, MASSACHUSETTS 01772-1662
508-485-0717 ext. 1

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Town Clerk
Town House
Southborough, MA 01772

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March 14, 2018

Notice of Decision on an Application for a Variance

Property Address: 154-156 Northboro Rd. Map 70 Parcel 2; Recorded Worcester Registry of Deeds Book 44802
Page 166

Appellant(s): Mr. Joel Aho, 438 Massachusetts Ave. Apt. 323, Arlington, MA 02474

Application Filed: January 30, 2018
The Board opened the public hearing on February 28, 2018 at 7:15pm in the Public Meeting Room of Southborough Town Hall with regard to the petition for the appellants for the following:

Petition: Variance request is to allow for a 15 front setback and a 5 foot rear setback exclusively to construct a retaining wall as shown on plan dated January 5, 2018. The Variance is pursuant to Sec. 174-8.6 E (3)(a) front setbacks 50' and Sec. 174-8.6 E (3)(b) rear setbacks 50'.

Sitting as a Board: Andrew R. Dennington, Chairman
Leo F. Bartolini Jr.
Craig Nicholson
David Williams
Paul Drepanos

For the Appellant(s): Mr. Joel Aho
438 Massachusetts Ave. Apt 323
Arlington, MA 02474

Mr. Christopher Alphen
Blatman, Bobrowski & Haverty, LLC.
9 Damonmill Square
Concord, MA 01742

Mr. Bill Hall
Stamski and McNary
1000 Main St.
Acton, MA 01720

Procedural History:

1. An application for a Variance was filed in the Office of Southborough Building Department on January 30, 2018.
2. The application for a Variance is to allow for a 15 foot front setback and 5 foot rear setback exclusively to build a retaining wall per plan dated January 5, 2018.
3. The applicant is seeking a variance from Sec. 174-8.6 E(3)(a) front setbacks 50' and Sec. 174-8.6DE (3)(b) rear setbacks 50'.
4. The record owner of the subject property is Nu-Yankee, LLC, 171 Locke Drive, Suite 114, Marlborough, MA.
5. A public hearing before the Zoning Board of Appeals was duly noticed in the Metro West Daily News on both Wednesday, February 14, 2018 and February 21, 2018.
6. The Public Hearing for the Variance application opened on February 28, 2018 and closed in the same evening.

Plans / Documents:

1. An authorization letter from current owner, Nu Yankee, LLC, dated October 16, 2017.
2. Copy of current deed dated 9/3/2009, Book: 44802, Page: 166.
3. Letter from the Building Commissioner / Zoning Enforcement Officer Mark Robidoux to Mr. Aho dated January 8, 2018.
4. Partial copy of Purchase and Sale Agreement between Marcello Mallegni, Nu Yankee, LLC and Joel Aho dated June 12, 2017.
5. Previous Town of Southborough 2008 expired variance decision granted to Mountain View Park, LLC.
6. Town of Southborough Assessor's property card.
7. Google maps aerial views.
8. Architectural plans by Boston Design Partners created January 5, 2018.
9. Certified Conceptual Site Plan dated January 5, 2018.

Findings:

1. The proposal constitutes a Variance request under the Town of Southborough Zoning Bylaw.
2. The property is located in the Industrial park, IP zoning district.
3. The applicant is proposing construction of (2) buildings on one parcel containing (10) units each and will not meet either rear or side setback requirements.

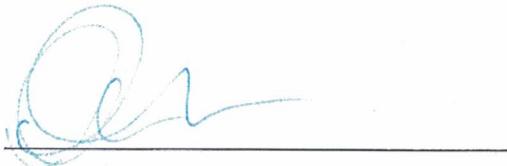
4. A variance is warranted due to the unique shape of the lot in question. The lot contains 4.65 acres but is only approximately 105-110 feet deep. The lot is bounded in the rear by a railroad line. Due to the unique shape of this lot, literal enforcement of the otherwise applicable 50' front and rear setback requirements would deprive the applicant of the ability to make virtually any economically viable use of the lot. Unless relief from the front and rear setbacks is granted, the applicant would only be able to construct a structure approximately 10 feet deep.
5. Because there will be no vehicular access to the front of the proposed building, and all parking will be in the rear, it is unlikely that the sought-after 15' front setback will lead to trucks accessing the site by backing into and out of Northboro Road.
6. The sought-after 5' rear setback is solely for the purpose of constructing a retaining wall along a portion of the rear property line, as depicted on the submitted plans. That retaining wall would help facilitate grading of the property in order to construct the proposed buildings. The proposed retaining wall would border the railroad line and would not be visible from Northboro Road.
7. The Board determined that aesthetic and safety concerns related to the proposed uses for this project could be addressed as part of the applicant's contemporaneously submitted Special Permit application. At its February 28, 2018 meeting, the Board voted to approve the applicant's variance request, and to continue the public hearing on that Special Permit application to March 28, 2018. The Board contemplates further consideration of proposed conditions at the continued March 28, 2018 hearing.
8. The Board specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Decision and Vote of the Board:

At its meeting on February 28, 2018, the Zoning Board of Appeals voted unanimously (5-0), to grant the Variance pursuant to Sec. 174-8.6 E(3)(a) front setback 50' to allow for a 15 foot front setback and Sec. 174-8.6 E(3)(6) and rear setback 50' for a 5 foot rear setback exclusively for the construction of the retaining wall as shown on the plan dated January 5, 2018 prepared by Stamski and McNary, Inc., 1000 Main Street, Acton, MA.

After review of all evidence and facts presented at this hearing, and after deliberations on the same, voted unanimously (5-0) on a motion made by Mr. Nicholson, and seconded by Mr. Bartolini, with member voting as follows to grant the requested Variance to allow for a 15 foot front setback and 5 foot rear setback exclusively for the construction of the retaining wall depicted on plan dated January 5, 2018:

Andrew R. Dennington	Yes
Leo F. Bartolini Jr.	Yes
Craig Nicholson	Yes
David Williams	Yes
Paul Drepanos	Yes



Andrew R. Dennington, Chair

Signing on behalf of the Zoning Board of Appeals

Filed with the Town Clerk on:

March 14, 2018

**** NOT VALID FOR RECORDING UNTIL CERTIFIED BY THE TOWN CLERK OF SOUTHBOROUGH****

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Law, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: _____

Date: _____

James F. Hegarty, Town Clerk
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