

Zoning Board of Appeals (ZBA) Request
ZBA-1492

Your Submission

Attachments

Guests (0)

✔ Filing Fee

▶ Initial Application Review

Internal Review

Schedule for Board Presentation

Record and decision

Submit to Building Commissioner-Tin Htway

Submit to the City Clerks' Office

Your submission

Submitted Jul 27, 2022 at 4:23pm

Contact Information

Brian Falk

Email address

bfalk@mirickoconnell.com

Phone Number

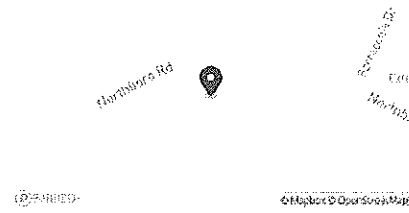
5089291678

Mailing Address

Mirick O'Connell 100 Front Street, Worcester, MA 01608

Location

82 NORTHBORO RD EAST
MARLBOROUGH, MA 01752



Application Information

I am requesting a *

Appeal

Applicant is *

Prospective Purchaser

Property Use *

Residential Revenue Bearing

Owner Information

Name *

Oxbow Urban LLC

Address *

75 Arlington Street, Suite 500

City *

Boston

State *

MA

Zip Code *

02116

Phone *

5089291678

Email *

bfalk@mirickoconnell.com

Owner has knowledge of, and consents to, this application *



Representative Information (If Any)

Name

Brian Falk

Company

Mirick O'Connell

Address

100 Front Street

City

Worcester

State

MA

Zip Code

01608

Phone

5089291678

Email

bfalk@mirickoconnell.com

General Information

Describe below what is being requested, such as what is the proposed action, relief, or construction on the property *

See enclosed memorandum.

Provide below all sections of the Zoning Ordinance (Chapter 650, Article(s), Section(s), Paragraph(s), Subsection(s)) which are pertinent to the Variance and/or Special Permit request (see denial letter) *

Section 650-48.A(7)

Appeal Information

State the specifics of the Appeal *

See enclosed memorandum.

Acknowledgement

I hereby request a hearing before the Zoning Board of Appeals regarding this application packet and I am aware that two (2) legal ads will be placed in the MetroWest Daily News or a newspaper of general circulation which will be billed directly to me or my representative. I am further aware that I am responsible for sending copies of the Notice of Hearing to all the abutters on the certified list at least fourteen (14) days prior to the hearing date and that I will submit the receipts confirming this mailing to the zoning office seven (7) days prior to the hearing. Finally, I am aware that I am required to record the board's certified decision and the certified plot plan with the Registry of Deeds in order for it to take effect.

Digital Signature *

 Brian Falk

Jul 27, 2022

Once you upload your documents and click confirm and submit, your application will be sent. Then you will receive an e-mail from City of Marlborough asking you to submit your appropriate fee.

bfalk@mirickoconnell.com

Your Profile

[Your Records \(/dashboard/records\)](/dashboard/records)

Resources

[Search for Records \(/search\)](/search)

[Claim a Record \(/claimRecord\)](/claimRecord)

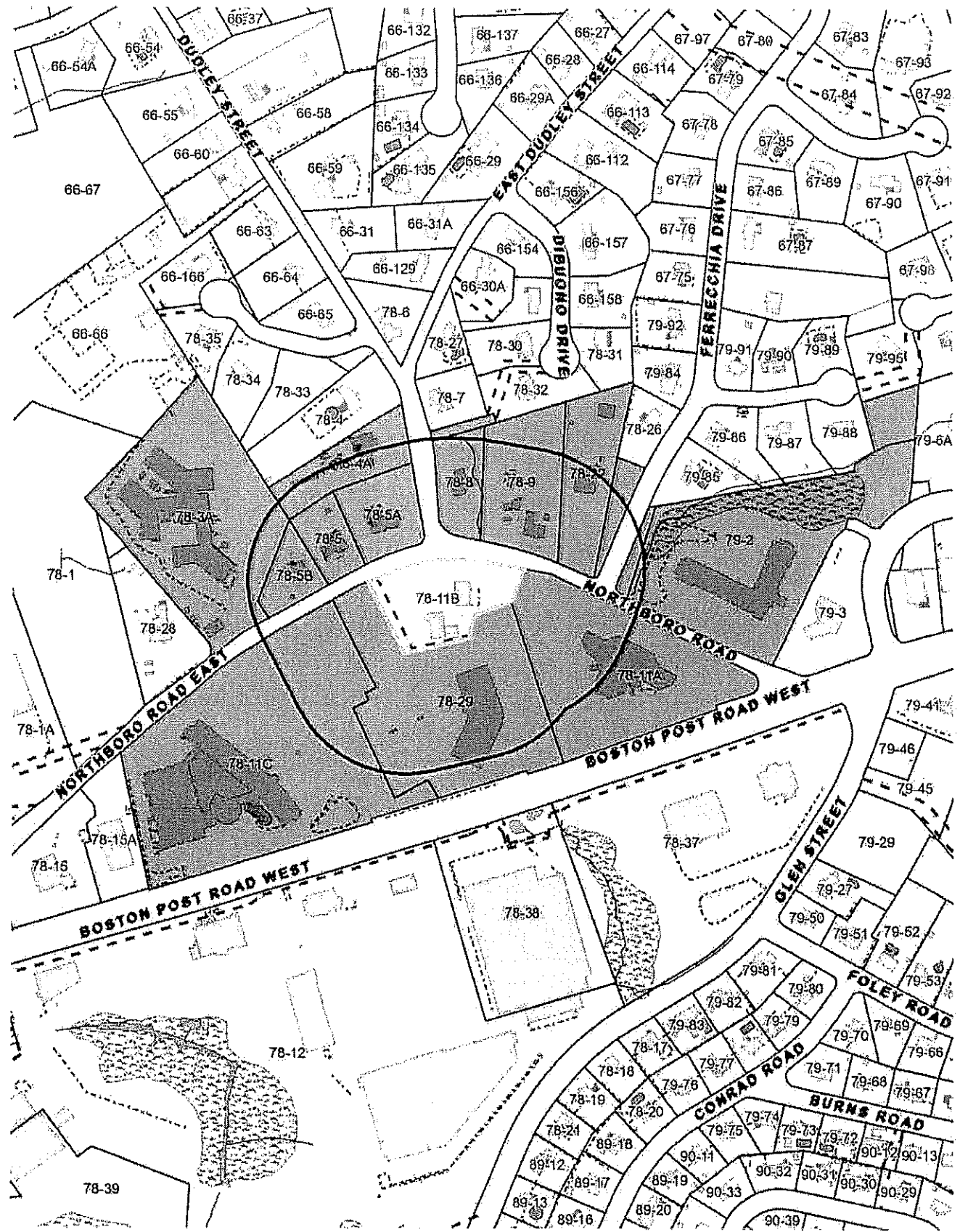
[Employee Login \(https://marlboroughma.viewpointcloud.io\)](https://marlboroughma.viewpointcloud.io)

Portal powered by **OpenGov**

ABUTTERS - 80-82 NORTHBOROUGH RD EAST, MARLBOROUGH, MA (78-11B) - 300 FT

| Parcel Number | GIS Number | Canal Number | Property Address | Owner Name | Co-Owner Name | Owner Address | Owner Address | Owner City | Owner State | Owner Zip | Use Code |
|---------------|---------------------|--------------|-----------------------------|---|----------------------------------|----------------------------------|----------------------------------|-------------------|-------------|------------|----------|
| 78-11A | M_193220_898 947 | 78-11A | 33 BOSTON POST RD WEST | BPR EQUITY PARTNERS LLC | | C/O K S PARTNERS LLC | 150 EAST 58TH ST STE 2000 | NEW YORK | NY | 10155 | 3400 |
| 78-11C | M_192871_898 886 | 78-11C | 123 BOSTON POST RD WEST | RB HOTEL MARLBOROUGH H LLC | C/O ROCKBRIDGE CAPITAL LLC | 4100 REGENT ST SUITE G | | COLUMBUS | OH | 43219 | 3000 |
| 78-22 | M_193121_899 100 | 78-22 | 49 NORTHBORO RD EAST | DEMERS DENNIS J | LINDA S DEMERS | 49 NORTHBORO RD EAST | | MARLBOROUGH MA | MA | 01752 | 1010 |
| 78-24 | M_193155_899 038 | 78-24 | FERRECCHIA DR | FMM REALTY TRUST | C/O CHRIS DEMOS | 73 FERRECCHIA DR | | MARLBOROUGH MA | MA | 01752 | 1320 |
| 78-25 | M_193143_899 077 | 78-25 | FERRECCHIA DR | DEMERS DENNIS J | LINDA S DEMERS | 49B NORTHBORO RD | | MARLBOROUGH MA | MA | 01752 | 1320 |
| 78-29 | M_193015_898 927 | 78-29 | 65 BOSTON POST RD WEST | BOSTON POST ROAD BUILDING 66 LLC | | 40 MECHANIC ST STE 220 | | MARLBOROUGH MA | MA | 01752 | 3400 |
| 78-3A | M_192822_899 067 | 78-3A | 121 NORTHBORO RD EAST | RIMA 121 NORTHBORO RD ROAD REAL PROPERTY LLC | | 1218 BROADWAY | | HEWLETT | NY | 11557 | 3040 |
| 78-4A | M_192959_899 120 | 78-4A | 24 DUDLEY ST | SALAMEH BASSAM | HANIA SALAMEH | 24 DUDLEY ST | | MARLBOROUGH MA | MA | 01752 | 1010 |
| 78-5 | M_192922_899 050 | 78-5 | 99 NORTHBORO RD EAST | OUELLETTE SUSAN M - TRUSTEE | SUSAN M OUELLETTE TRUST | 99 NORTHBORO RD EAST | | MARLBOROUGH MA | MA | 01752 | 1010 |
| 78-5A | M_192964_899 070 | 78-5A | 89 NORTHBORO RD EAST | DIMARCO ROSEMARIE TR | ROSEMARIE DIMARCO TRUST | 89 NORTHBORO RD EAST | | MARLBOROUGH MA | MA | 01752 | 1010 |
| 78-5B | M_192893_899 022 | 78-5B | 111 NORTHBORO RD EAST | CHELLAR TARAS | JUNE S CHELLAR | 263 OAK ST | | ASHLAND | MA | 01721-1096 | 1010 |
| 78-8 | M_193023_899 093 | 78-8 | 9 DUDLEY ST | GILL AJIT | GILL ARCHANA | 9 DUDLEY ST | | MARLBOROUGH MA | MA | 01752 | 1010 |
| 78-9 | M_193072_899 094 | 78-9 | 61 NORTHBORO RD EAST | FONSECA FABIO | | 61 NORTHBORO RD EAST | | MARLBOROUGH MA | MA | 01752 | 1010 |
| 79-2 | M_193205_899 030 | 79-2 | 19 NORTHBORO RD EAST | BRE/HV PROPERTIES LLC | | 11525 N COMMUNITY HOUSE RD | PO BOX 49550 PROP TAX 9645 | CHARLOTTE | NC | 28277-9550 | 3000 |

John H. Valade





City of Marlborough
BUILDING DEPARTMENT
140 MAIN STREET
MARLBOROUGH, MA 01752
TEL. (508) 460-3776 FACSIMILE (508) 460-3736
BUILDING_DEPT@MARLBOROUGH-MA.GOV

TIN HTWAY
BUILDING COMMISSIONER

LAURENT "LARRY" LEMIEUX
PLUMBING & GAS INSPECTOR

JOHN CAIN
WIRING INSPECTOR

WILLIAM PAYTON
BUILDING INSPECTOR

ETHAN LIPPITT
BUILDING INSPECTOR

MICHAEL LEEDS
BUILDING INSPECTOR

ZONING DETERMINATION

July 20, 2022

Oxbow Urban LLC
c/o Brian Falk, Esq.
Mirick O'Connell
100 Front Street
Worcester, MA 01608
bfalk@mirickoconnell.com

ACF Northborough Realty, LLC, Owner
80 Northboro Road East
Marlborough, MA 01752

**RE: 80-82 NORTHBORO ROAD EAST, PARCEL ID #78-11B
PROPOSED MULTI-FAMILY BUILDING**

Mr. Falk,

Based upon the plot plan prepared by Hancock Associates, Inc. dated 7/8/2022, to locate a proposed 4 story, 30-unit multi-family structure at the property listed above.

The property is located in Zoning district (B). The proposed project does not conform with Chapter 650, Article 17, "Table of Use's", Chapter 650, Article 41, "Table of Lot Area, Yards and Height of Structures" and Chapter 650, Article 48, "Off Street Parking" of the City Code of Marlborough. This office offers the following comments:

1. The property is located in Zoning district (B). The proposed multi-family structure will require a Special Permit from the City Council.
2. The maximum lot coverage allowed in (B) Zoning District is 30%. The proposed project has a lot coverage of +/-64%. This will require relief in the form of a variance from the Zoning Board of Appeals.
3. Section 650-48.A(7), Off-Street Parking, provides that for multi-family dwellings: one off street parking space per dwelling unit, plus one off street parking space per bedroom; apartment buildings shall provide two off street parking spaces for each dwelling unit over and above access roadways and maneuvering. Based upon this office's

calculation, the number of parking spaces required is seventy-five (75) spaces. The Plot Plan shows that the Site, as improved, would have sixty (60) parking spaces. This will require relief in the form of a variance from the Zoning Board of Appeals.

4. Section 650-48.C(5)(a)[2], Off-Street Parking, provides that off-street parking for a multifamily use shall not be permitted in the area between the front lot line and the prescribed minimum front yard (building setback line), which is 50-feet in the Business Zoning District. The Plot Plan shows that the Site, as improved, would have six parking spaces located 17.1 feet from the Site's front lot line. This will require relief in the form of a variance from the Zoning Board of Appeals.
5. Section 650-48.C(5)(b)[2], Off-Street Parking, provides that the minimum setback for off-street parking for a multifamily use from rear and side lot lines shall be the same as the minimum width of the required side planting areas set forth in Section 650-47 of the Zoning Ordinance, which is 7 feet for a multifamily use on a lot with an area greater than 40,000 square feet. The Plot Plan shows that the Site, as improved, would have a parking area located 2 feet from the Site's rear lot line. This will require relief in the form of a variance from the Zoning Board of Appeals.

Your proposed project will require relief in the form of Variance's issued by the Zoning Board of Appeals, and a Special Permit issued by the City Council.

You have the right to appeal this determination to the Zoning Board of Appeals as stated in the City Code section 650-58.

An appeal from this determination may be taken to the Zoning Board of Appeals by filing a Notice of Appeal with the Zoning Board of Appeals within 30 days of the date of this determination letter. Further information should be obtained from the Board of Appeals secretary, Susan Brown at 508-460-3768.

The code in its entirety may be found at www.ecode360.com/MA1056

Sincerely,



Tin Htway
Building Commissioner
City of Marlborough, MA
(508)460-3776
thtway@marlborough-ma.gov
www.Marlborough-MA.gov

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

July 27, 2022

Zoning Board of Appeals
City Hall
Marlborough, MA 01752

Re: Administrative Appeal: 80-82 Northborough Road East (Oxbow Urban LLC)

Dear Board Members:

On behalf of my client Oxbow Urban LLC, I respectfully submit an administrative appeal from a determination of the Building Commissioner for the property located at 80-82 Northborough Road East (the "Property"), in accordance with Section 650-58.B(1) of the Marlborough Zoning Ordinance.

As part of the denial letter issued for a variance application, the Building Commissioner determined that the Property, as developed with a 30-unit apartment building, requires 75 parking spaces, based upon an interpretation of Section 650-48.A(7) of the Zoning Ordinance. That section is as follows:

(7) Multifamily dwellings: one off-street parking space per dwelling unit, plus one off-street parking space per bedroom; apartment buildings shall provide two off-street parking spaces for each dwelling unit over and above access roadways and maneuvering. (Emphasis added)

The Building Commissioner's interpretation of this provision is that the underlined text does not apply to the project because it contains just a single apartment building, rather than apartment *buildings*, and that the underlined text is in addition to the italicized text in the case of multiple apartment buildings on one parcel. Treating the italicized text as applicable to the project, as a 30-unit apartment building with 15 one-bedroom units and 15 two-bedroom units (45 bedrooms in total), the Building Commissioner concluded that the project requires 75 parking spaces.

We respectfully disagree with this interpretation and find that the underlined text in Section 650-48.A(7) governs the project as a separate requirement for apartment buildings and not as a supplement to the italicized text in Section 650-48.A(7), which governs multifamily dwellings *other* than apartment buildings.

MIRICK O'CONNELL

Zoning Board of Appeals
July 27, 2022
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The Zoning Ordinance defines “multifamily dwelling” as “[a] dwelling, including single-family attached units, designed for or occupied by three or more families.” (Section 650-5.B). The Zoning Ordinance does not provide a separate definition for “apartment building”, but treats this category as a separate type of multifamily use with unique landscaping requirements (Section 650-40.F(8)) as well as parking requirements (Section 650-48.A(7)).

Our reading of Section 650-48.A(7) is that two separate parking requirements are established for multifamily dwellings: one for “apartment buildings” (the underlined text) and one for other types of multifamily dwellings, such as three-family homes, townhouse style buildings, etc. (the italicized text). We believe this is a reasonable interpretation given the fact that an apartment building tends to have a lower parking demand than three-families, townhouses, and other multifamily dwelling types that function more like single-family homes and may also be owner-occupied.

A new, professionally-managed apartment building, such as the project proposed by Oxbow, would have a usual occupancy and vehicle demand of one resident/vehicle per one-bedroom unit and one or two residents/vehicles per two-bedroom unit. Requiring two spaces for each of 30 units (60 spaces) – as provided by the underlined text in Section 650-48.A(7) – would more than meet the expected parking demand for the project, given that half of the units would have, at most, one vehicle each.

Requiring 75 parking spaces for the project results in two and one half parking spaces per unit, despite half of the units being one-bedroom. This would result in a significant surplus of parking, with large areas of impervious surface at the Property going unused. Such a result is contrary to the open space and lot coverage requirements for apartment buildings under the Zoning Ordinance.

A two-space per unit parking requirement for an apartment building is high by industry standards, and far exceeds the parking requirement for identical uses in other City zoning districts (Wayside, Neighborhood Business, Executive Residential, and Results Way). Interpreting the Zoning Ordinance to require two and one half parking spaces per unit is unreasonable given the demand for parking at a professionally-managed apartment building and the Zoning Ordinance’s preference for green space at residential uses.

Further, we do not find that the underlined text in Section 650-48.A(7) should apply as a supplementary requirement in the case of multiple apartment buildings on a single parcel. The use of the plural “apartment *buildings*” is not unique in Section 650-48.A, which lists various uses in the singular and the plural without any obvious intent that a plural word indicates more than one use or structure on a single parcel. Such an interpretation would result in an even higher parking space ratio per unit for parcels with more than one apartment building, which would also be unreasonable given the demand for parking and the parking requirements for identical uses in other City zoning districts.

MIRICK O'CONNELL

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July 27, 2022
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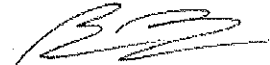
With respect to the language of a zoning ordinance, courts give deference to an interpretation by local officials, but “only when that interpretation is reasonable.” Pelullo v. Croft, 86 Mass.App.Ct. 908, 909-10 (2014). When interpreting a zoning ordinance, Massachusetts courts look to rules of statutory construction. See Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley, 461 Mass. 469, 477 (2012). Among the tenets of statutory construction under Massachusetts case law, courts “look to the statutory language as the ‘principal source of insight into legislative intent.’ When the meaning of the language is plain and unambiguous, we enforce the statute according to its plain wording ‘unless a literal construction would yield an absurd or unworkable result.’ We ‘endeavor to interpret a statute to give effect ‘to all its provisions, so that no part will be inoperative or superfluous.’ ” Shirley Wayside Ltd. Partnership Ltd., 461 Mass. at 477, citations omitted.

Based upon this approach to statutory construction, we believe that the Building Commissioner’s interpretation of Section 650-48.A(7) of the Zoning Ordinance is unreasonable because it renders the underlined text concerning apartment buildings superfluous and leads to an absurd or unworkable result – an excessive parking requirement that exceeds demand and generates unused impervious space on a residential parcel.

We therefore respectfully request that the Board grant this appeal and overturn the Building Commissioner’s determination of the parking requirement for this project.

We look forward to the public hearing before the Board, and thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

cc: Client

Encl.

ZONING TABLE:

PER §650-41: TABLE OF LOT AREA, YARDS, AND HEIGHT OF STRUCTURES

| ZONING DISTRICT: BUSINESS B | REQUIRED | EXISTING | PROPOSED |
|-----------------------------|------------------|---------------------|---------------------|
| MINIMUM LOT AREA | 5,000 SF | 60,592 SF± (1.4 AC) | 60,592 SF± (1.4 AC) |
| MINIMUM LOT FRONTAGE (FEET) | 50' | 390.87' | 390.87' |
| MINIMUM SIDE YARD (FEET) | 25' ¹ | 96.4'± | 26.0'± |
| MINIMUM FRONT YARD (FEET) | 50' | 60.9'± | 69.8'± |
| MINIMUM REAR YARD (FEET) | NONE | 7.2'± | 5.0'± |
| MAX HEIGHT | 52' | <52' | <52' |
| MAXIMUM LOT COVERAGE | 30% | 72% ² | 64%± |

¹ WHERE ABUTTING A RESIDENCE DISTRICT OR WITHIN THE MARLBOROUGH VILLAGE DISTRICT WHERE ABUTTING AN EXISTING STRUCTURE THAT HAS SIDE FACING WINDOWS AT THE STRUCTURES LOT LINE; OTHERWISE 0 FEET.

² EXISTING NON-CONFORMING.

KEY:

RESIDENT AREA COMPLIANT WITH SLOPE REQUIREMENT PER §650-18.9(a)(1)

RESIDENT AREA COMPLIANT WITH DIMENSION REQUIREMENT PER §650-18.9(a)(2)

NON-EXCLUSIVE PARKING AND ACCESS EASEMENT

ZONING:

"B" - BUSINESS

ASSESSORS:

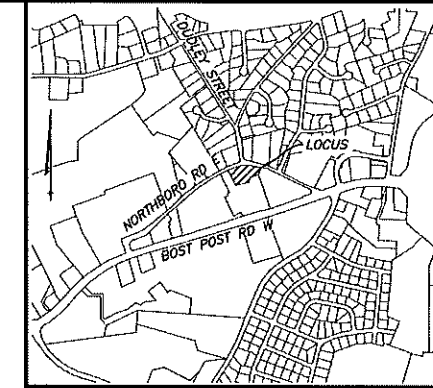
MAP 78, LOT 11B

REFERENCES:

DEED BOOK 70994, PAGE 472
PLAN 923 OF 2014

RECORD OWNER:

ACF NORTHBORO REALTY, LLC
80 NORTHBORO ROAD (EAST)
MARLBOROUGH, MA 01752



SITE ADDRESS
**#80-82
NORTHBORO RD**

Marlboro, Massachusetts 01752

PREPARED FOR:

**OXBOW
URBAN, LLC**

17 Arlington Street, Suite 500
Boston, Massachusetts 02116

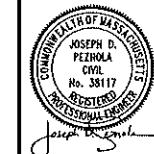
**HANCOCK
ASSOCIATES**

Civil Engineers

Land Surveyors

Environmental
Consultants

315 Elm Street, Marlborough, MA 01752
Voice (508) 468-1111, Fax (508) 468-1121
www.hancockassociates.com



| NO. | BY | APP | DATE | ISSUE/REVISION DESCRIPTION |
|-----|----|-----|------|----------------------------|
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| | | | | |

DATE: 7/8/22 DESIGN BY: RD
SCALE: 1"=20' DRAWN BY: RD
APPROVED BY: JDP CHECK BY: JDP

**ZONING BOARD
OF APPEALS
SITE PLAN**

PLOT DATE: Jul 08, 2022 2:21 pm

DWG: 26216SP.dwg

LAYOUT: ZBA FINAL

SHEET: 1 OF 1

PROJECT NO.: 26216

RESIDENT AREA REQUIREMENTS:

§650-18.9(a): THERE SHALL BE LANDSCAPED AREA PROVIDED EQUAL TO THE GREATEST SINGLE FLOOR AREA OF THE BUILDING OR EQUAL TO THE SUM TOTAL OF THE GREATEST SINGLE FLOOR AREAS OF ALL THE PRINCIPAL BUILDINGS. THE LANDSCAPED AREA SHALL MEET THE FOLLOWING REQUIREMENTS:

[1] AT LEAST 75% OF THE LANDSCAPED AREA HAS A GRADE OF LESS THAN 8%
LARGEST FLOOR AREA = 8,060 SF
REQUIRED (75% OF FLOOR AREA) = 6,045 SF UNDER 8%
PROVIDED = 6,400 SF -> OK

[2] THE WIDTH OF SUCH LANDSCAPED AREA SHALL AVERAGE AT LEAST 40 FEET AND IN NO CASE SHALL BE LESS THAN 30 FEET.
LARGEST FLOOR AREA = 8,060 SF
REQUIRED = 8,060 SF AT MINIMUM DIMENSIONS
PROVIDED = 8,340 SF -> OK

[3] THE LANDSCAPED AREA SHALL BE DESIGNED FOR RECREATIONAL USE BY RESIDENTS.

REQUIRED VARIANCES:

§650-41: MAXIMUM LOT COVERAGE FOR ZONING DISTRICT "BUSINESS B" IS 30% FOR RESIDENTIAL. - PROPOSED LOT COVERAGE IS APPROXIMATELY 64%.

§650-48.C(5)(a)(2): "OFF-STREET PARKING SHALL NOT BE PERMITTED IN THE AREA BETWEEN THE FRONT LOT LINE AND THE PRESCRIBED MINIMUM FRONT YARD [50 FEET]". - PROPOSED OFF-STREET PARKING ENDOACHES THE FRONT YARD SETBACK AREA, 17.1 FEET OFF THE FRONT LOT LINE. **

§650-48.C(5)(b)(2): "THE MINIMUM DISTANCE FOR PARKING SETBACK FROM SIDE AND REAR LOT LINES SHALL BE THE SAME AS THE MINIMUM WIDTH REQUIRED FOR SIDE LINE PLANTING AREAS AS DESCRIBED IN §650-47F [7 FT FOR MULTIFAMILY RESIDENTIAL ON >40,000SF LOTS]". - PROPOSED OFF-STREET PARKING IS 2.0 FEET OFF THE REAR LOT LINE.

** POTENTIAL RELOCATION OF FRONT PARKING TO SHARED EASEMENT AREA PENDING MODIFICATION OF EXISTING EASEMENT AGREEMENT WITH BPR EQUITY 2.

SCALE: 1" = 20'

