

Zoning Board of Appeals (ZBA) Request
ZBA-1493

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 4:27pm

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 *

Variance

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 650-41, Table of Lot Area, Yards, and Height of Structures (lot coverage); Section 650-48.A(7) (required parking spaces); Section 650-48.C(5)(a)[2] (front parking setback); Section 650-48.C(5)(b)[2] (rear parking setback).

Variance Information

What is the soil condition, shape or topography of YOUR lot or structure which DISTINCTLY affects your lot, as distinguished from other lots in the zoning district which it is located *

See enclosed memorandum.

What is the HARDSHIP that is CAUSED by the soil condition, shape or topography of your lot or structure stated above. PERSONAL INCONVENIENCE is NOT a hardship. A hardship imposed a substantial financial penalty or directly affects your use of the land or structure as it is zoned *

See enclosed memorandum.

State how the variance you are requesting, if granted, will not nullify or detract from the intent or purpose of the Zoning Ordinance *

See enclosed memorandum.

State how the variance you are requesting, if granted, will not diminish the public welfare or well-being *


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

City of Marlborough, MA

Your Profile

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

Resources

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

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

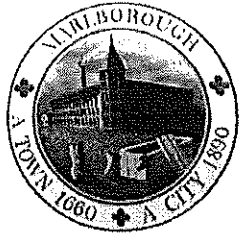
[Employee Login \(https://marlboroughma.viewpointcloud.io\)](https://marlboroughma.viewpointcloud.io)

Portal powered by **OpenGov**

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

Parcel Number	GIS Number	Camia 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 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	01752	1010
78-24	M_193155_899_038	78-24	FERRECCHIA DR	FMM REALTY TRUST	C/O CHRIS DEMOS	73 FERRECCHIA DR		MARLBOROUGH	MA	01752	1320
78-25	M_193143_899_077	78-25	FERRECCHIA DR	DEMERS DENNIS J	LINDA S DEMERS	49B NORTHBORO RD		MARLBOROUGH	MA	01752	1320
78-29	M_193015_898_927	78-29	65 BOSTON POST RD WEST	BOSTON POST ROAD BUILDING 65 LLC		40 MECHANIC ST STE 220		MARLBOROUGH	MA	01752	3400
78-3A	M_192822_899_067	78-3A	121 NORTHBORO RD EAST	RIMA 121 NORTHBOROUGH 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	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	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	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	01752	1010
78-9	M_193072_899_094	78-9	61 NORTHBORO RD EAST	FONSECA FABIO		61 NORTHBORO RD EAST		MARLBOROUGH	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: Variance Application: 80-82 Northborough Road East (Oxbow Urban LLC)

Dear Board Members:

On behalf of my client Oxbow Urban LLC, I respectfully submit a variance application for the property located at 80-82 Northborough Road East (the "Property"), in accordance with Section 650-58.B(2) of the Marlborough Zoning Ordinance.

The Property is currently developed with two commercial buildings and accessory parking with an existing lot coverage of 72%. The Property is subject to a parking and access easement over approximately 25% of the overall lot area.

Oxbow Urban seeks to redevelop the Property with a 30-unit apartment building. As shown on the enclosed plan, the project would reduce the overall lot coverage to 64% and provide new landscaped areas along Northborough Road East. As set forth in the denial letter provided by the Building Commissioner, the project's design would require the following dimensional variances:

1. Lot coverage, Section 640-41, Table of Lot Area, Yards, and Height of Structures, 64% vs. the required 30% maximum.
2. Front parking setback, Section 650-48.C(5)(a)[2], 17.1 feet vs. the 50 feet required for six parking spaces along Northborough Street East.
3. Rear parking setback, Section 650-48.C(5)(b)[2], 2 feet vs. the 7 feet required for a portion of the parking lot.

MIRICK O'CONNELL

Zoning Board of Appeals
July 27, 2022
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4. Required parking spaces, Section 650-48.A(7), 60 spaces vs. 75 spaces.¹

The Property has steep slopes along its northern, western, and southern boundaries, restricting the placement of the new building, parking, and the residential open space area required under Section 650-18.A(9). In addition, the Property is elongated with respect to its street frontage, resulting in the 50-foot front setback occupying a larger portion of the overall lot area than would be the case with a more traditional lot shape. Further, the parking and access easement requires that roughly 25% of the eastern portion of the Property must remain impervious and unavailable for open space. These conditions are unique to the Property in this neighborhood and in the Business Zoning District.

Granting a variance from the lot coverage and parking setback requirements of the Zoning Ordinance, set forth above, to accommodate the project would not cause a substantial detriment to the public good or a substantial derogation from the intent and purpose of the Zoning Ordinance. First, the project would *decrease* the overall lot coverage of the Property from 72% to 64%, while also placing expanded landscaped areas along Northborough Road East, making for a greener lot that is better screened from the public way and neighboring properties. Second, the parking setback along Northborough Road East would be approximately the same as current conditions, but with enhanced landscaping to screen the spaces from the road. Third, the parking setback along a small portion of the rear boundary line would be located close to a neighboring property's parking lot and would replace an existing commercial building.

To the extent necessary, granting a variance for the required number of parking spaces would not cause a substantial detriment to the public good or a substantial derogation from the intent and purpose of the Zoning Ordinance. The project would involve a 30-unit apartment building with 15 one-bedroom units and 15 two-bedroom units. 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) 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 results in *two and one half parking spaces per unit* for a project where half of the units are one-bedroom. This would lead to an over-parked lot with significant impervious surface going unused. Such a result is contrary to the open space and lot coverage requirements for this type of use. Accordingly, not only would the relief not be a detriment to the neighborhood, it would likely be beneficial.

¹ Please note that the applicant has submitted an administrative appeal of the Building Commissioner's determination on this point, and contends that the project, as designed, complies with the Zoning Ordinance with respect to the required number of parking spaces.

MIRICK O'CONNELL

Zoning Board of Appeals

July 27, 2022

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The project would be a significant upgrade compared to the current commercial use of the Property. With the improved lot coverage and landscaping, the project's deviations from the Zoning Ordinance's dimensional controls are reasonable given the Property's elongated shape, steep topography, and large parking easement.

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	98.4'±	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:

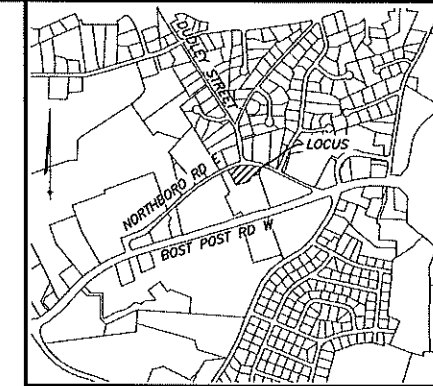
-  RESIDENT AREA COMPLIANT WITH SLOPE REQUIREMENT PER §650-18.9(a)(1)
-  RESIDENT AREA COMPLIANT WITH DIMENSION REQUIREMENT PER §650-18.9(a)(2)
-  NON-EXCLUSIVE PARKING AND ACCESS EASEMENT

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**

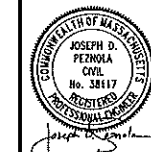
Marlboro, Massachusetts 01752

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) 460-1111, Fax (508) 460-1121
www.hancockassociates.com



NO.	BY	APP.	DATE	ISSUE/REVISION	DESCRIPTION
1	JDP	JDP	7/8/22	RD	DATE: 7/8/22 DESIGN BY: RD
2	JDP	JDP	7/8/22	RD	SCALE: 1"=20' DRAWN BY: RD
3	JDP	JDP	7/8/22	RD	APPROVED BY: JDP CHECK BY: JDP

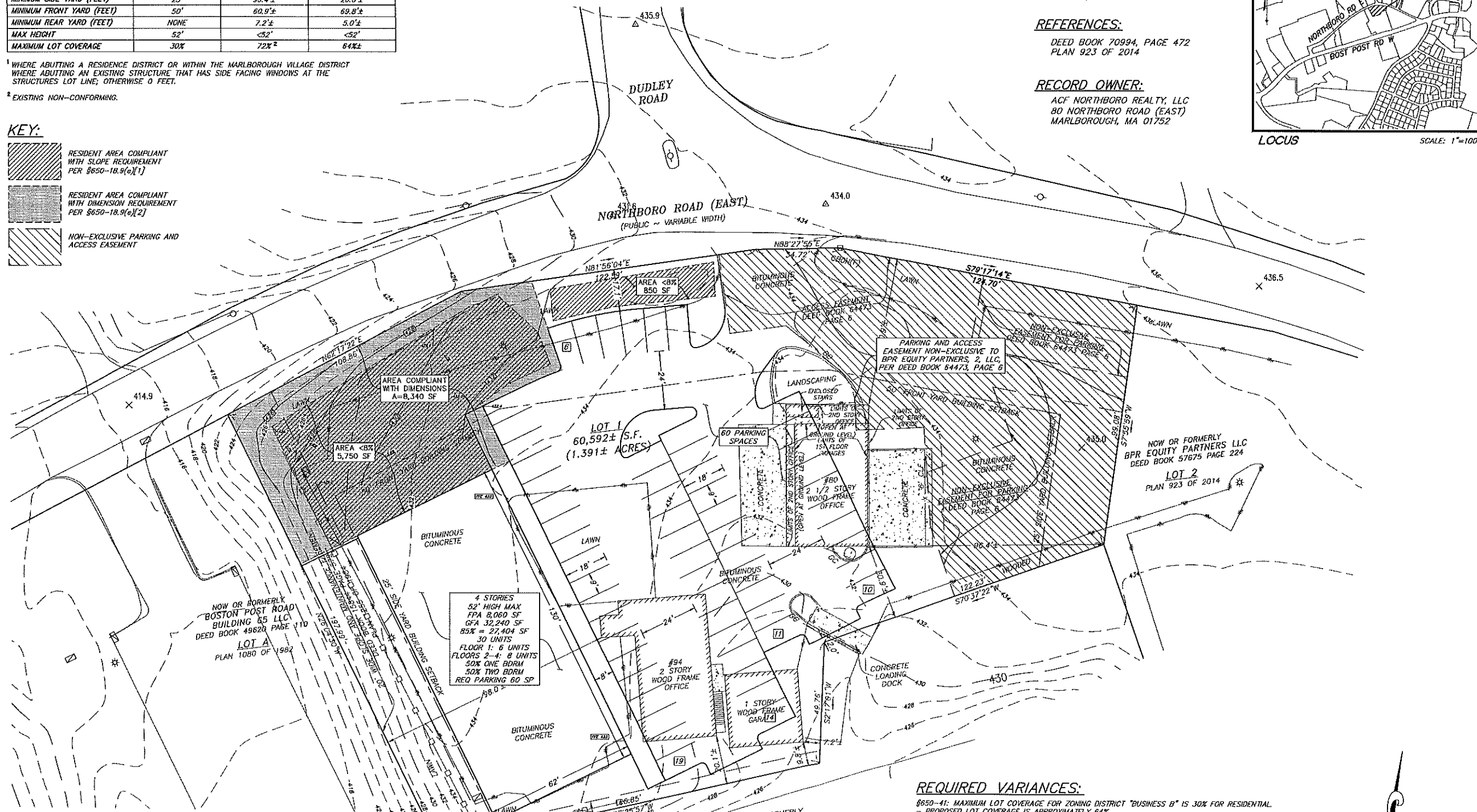
**ZONING BOARD
OF APPEALS
SITE PLAN**

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 [30 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'

