

OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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NORWELL, MASSACHUSETTS 02061
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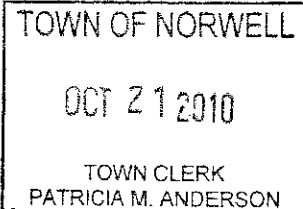
Michael E. Kiernan, Clerk
Thomas P. Harrison

FINDINGS AND DECISION

of

The Norwell Board of Appeals

File No. 10-17



The Public Hearing by the Norwell Zoning Board of Appeals was scheduled on September 22, 2010, and continued to October 6, 2010, under M.G.L. c. 40A, and Site Plan Review under the Norwell Zoning Bylaw, at the Norwell Town offices, 345 Main Street, Norwell, MA, on the application of:

**J P Realty Group LLC
Brian J. Donovan, Manager
516 East Second St., Unit B29
South Boston, MA 02126**

For a **Site Plan Review** (Section 1500, 1520), **Special Permit** (Sections 1400, 1420, 4300); and **Section 6 Finding** for Sections 1640, 1642, 2421 Lot Size; 2431 Frontage, 2432 Lot Width at Setback Line, 2433 Lot line less than 80' width, and 2442 Side and Rear Yards, of the Norwell Zoning Bylaw for the proposed dismantling of the existing structure to be replaced by a 1 1/2-story 1,764 sq. ft. wood-framed building with basement on property located at 335R Washington Street in Business District B, as shown on Assessors Map 12C Block 24 Lot 49, and recorded at the Registry of Deeds Bk 37938 PG 260. The nonconforming lot contains 11,557 sq. ft. of land, where 43,580 sq. ft. or one acre is required.

The application was date-stamped by the Board of Appeals and the Office of the Town Clerk on August 27, 2010. Notice of the opening public hearing was posted at Town Hall and duly advertised in the *Norwell Mariner* on September 2, 2010, and September 9, 2010, in accordance with the Open Meeting Law.

The Applicant, represented by his attorney Lawrence P. Mayo, Esq., with offices at 80 Washington Square, Norwell, was in attendance. Attorney Mayo presented the application to the Board and responded to questions. The Board examined the evidence listed in the file documentation included as part of this decision, paying particular attention to recommendations of the Planning Board. Members asked minor clarification questions about the project, noting the lot was created under M.G.L. 41 §81L.

There was some discussion of the parking lot sweeping requirement. Attorney Mayo indicated it would be unfair to require his client to sweep all pavement, as much is not his client's property. Similar concerns were expressed regarding the fencing, landscaping, and granite curbing recommendations of the Planning Board. Board members responded that the Board has no jurisdiction over property not part of the application and, therefore, could not impose conditions that involve the property of others.

Subsequently, Attorney Mayo suggested plan wording now incorporated into this decision, which states the applicant is responsible only for maintenance of his own property. The Planning Board recommendations were adopted, except as noted, and are now incorporated into this decision by reference and as further detailed in the conditions of this decision and in the final plans.

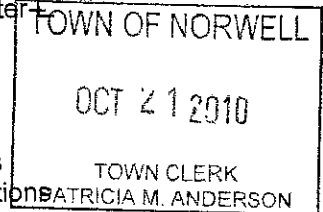
Although abutters were properly noticed, no member of the public was present to speak either in favor of or in opposition to the application.

FILE DOCUMENTATION:

1. *Site Plan Application*, Form ZBA-1, and *Site Plan Review: Supplemental Information*, Form ZBA-1A, date-stamped by the Town Clerk on August 5, 2010
2. Letter of July 28, 2010, signed by Lawrence P. Mayo, Esq., attorney for the Applicant, detailing the documents submitted and actions requested
3. Copy of Quitclaim Deed conveying the property to the applicant, as filed with the Plymouth County Registry of Deeds on November 19, 2009, at Bk 37938 Pg 260-261
4. Copy of JP Realty Group LLC Certificate of Organization of a Limited Liability Company
5. Reduced copy of a "Plan of Land," dated May 5, 1997, prepared by Ralph Harlow Cole, R.P.L.S., as filed with the Registry of Deeds on June 4, 1997, creating the subject lot
6. Copy of the Common Driveway and Parking Agreement between the owners of the two subdivided lots, as recorded at the Plymouth County Registry of Deeds on June 4, 1997, at Bk 15226 Pg 200
7. McMahon Transportation Engineers & Planners of 45 Bromfield Street, Boston, report, dated July 22, 2010, and signed by Gary R. McNaughton, P.E., PTOE, stating that little change in traffic can be anticipated as a result of the proposed project
8. Checklist for Stormwater Report, prepared by Robert C. Crawford, P.E., of E.E.T., Inc., 465 Furnace St., Marshfield, providing requisite stormwater information for pre- and post-construction impervious area, which shows impervious surface will be reduced from 8,170 sq. ft. to 8,134 sq. ft. on the lot, which is comprised of 11,558 +/- sq. ft., date-stamped by the Town Clerk on August 5, 2010
9. Preliminary Architectural Plans, dated February 10, 2010, prepared by Phoenix Collaborative Architects of Wakefield, MA, and stamped and signed by Peter Sandorse, A.L.A., consisting of the following:

Sheet A1	Proposed Foundation & Basement Plan
Sheet A2	Proposed First Floor Plan
Sheet A3	Proposed 2 nd Floor & Attic Floor Plans
Sheet A4	Proposed Exterior Elevations – Front and Rear Elevations
Sheet A5	Proposed Exterior Elevations – Left and Right Side Elevations
Sheet A6	Proposed Building Sections
Sheet A7	Proposed 1 st & 2 nd Floor framing Plans
Sheet A8	Proposed Attic Flr. & Roof Framing Plans
10. Project Plan Set for 335R Washington Street in Norwell, comprised of 4 drawings, dated February 12, 2010 with revisions to September 1, 2010, prepared by Environmental Engineering Technologies, Inc. of 465 Furnace Street, Marshfield, MA, stamped and signed by Robert C. Crawford, R.P.E., on 9/7/2010, and Neil J. Murphy, R.P.L.S. on 9/8/2010, as detailed below:

Sheet 1	Existing Conditions Plan, dated 9/1/10
Sheet 2	Site Plan & Proposed Disposal System
Sheet 3	Landscape & Construction Sequence Plan
Sheet 4	Detail Plan
11. Building Calculations tally with Existing and Proposed Conditions summaries
12. Copy of drawing entitled, "Site Plan & Proposed Disposal System/#335R Washington Street/ Norwell, Mass.; Map 24, Lot 49, dated February 12, 2010, rev. July 22, 2010,

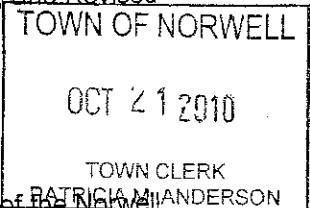


- prepared by Environmental Engineering Technologies Inc. of 465 Furnace St, Marshfield, MA, stamped and signed by Robert C. Crawford, P.E., and Neil J. Murphy, R.L.S.
13. Copy of partially completed Building Permit Application
 14. Advertising notice for Public Hearing
 15. Letter from the Norwell Historical Commission, dated June 30, 2010, signed by Vice-Chair David DeGhetto to Attorney Mayo
 16. The Conservation Agent signed a Conservation Commission Approval for Building Permit form based on a 3/25/10 site walk to construct within the existing footprint and noting no jurisdictional wetlands.
 17. Memorandum to the Board of Appeals from the Design Review Board, dated March 26, 2010, signed by Michael J. Tobin, with recommendations applicable to signage
 18. Chessia Consulting Services peer-review report to the Planning Board, dated August 20, 2010, signed by John C. Chessia, P.E.
 19. Memorandum of September 9, 2010 from the Norwell Planning Board, providing its comments and recommendations to the Board of Appeals
 20. Letter from Attorney Lawrence P. Mayo, dated September 13, 2010, providing four revised drawings to meet the Planning Board's recommendations to the Board of Appeals, including Existing Conditions Plan, Site Plan and Proposed Disposal System, Landscape and Construction Sequence Plan, and Detail Plan, and including a revised page 6 to the Site Plan Review (Supplemental Information), Form ZBA-1A; and Revised Checklist for Stormwater Report per DEP

FINDINGS OF THE BOARD:

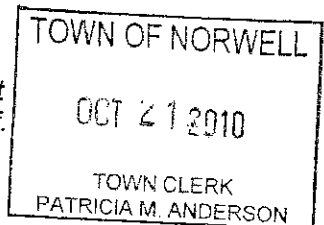
1. The Board of Appeals adopted the findings and recommended conditions of the Norwell Planning Board in accordance with its memorandum of September 9, 2010, as restated below, except as may be modified in the conditions of approval of this decision:

- a. That a **Site Preparation Plan** shall be included in the construction drawing set, which shall indicate the proposed methods and procedures for construction fencing or other means of securing the work area during construction and the locations and limits of any runoff control devices such as hay bales or siltation fencing. The plan should address access and control of sedimentation into Washington Street from trucks together with maintaining continued access to existing buildings on adjacent lots. Timing and the proposed sequence for construction should be specified. Said plan shall be recorded with the decision and approved site plan.
- b. That the Applicant shall be required to clearly indicate the limits of the **snow removal storage areas** on the plans. Snow storage areas shall be located as to reduce runoff onto adjacent properties or the snow shall be removed from the Property and properly disposed of by the operator(s) of the Property.
- c. That the Applicant shall provide an **Operation and Maintenance Plan** with the requirement that adherence to the O&M Plan shall be a condition of approval. The O&M Plan shall provide, at a minimum, for annual inspection of all components of the drainage and stormwater management systems by a registered professional engineer who shall file written annual reports with the Board of Appeals and the Highway Department. The O&M Plan shall provide for cleaning of all drain structures including catch basins and separators at least twice per year. The plan shall provide for sweeping of all parking areas once every three months. Use of pesticides, herbicides, and fertilizers shall be minimized, to the extent practicable, and should be applied by experienced and if applicable licensed personnel in accordance with manufacturers

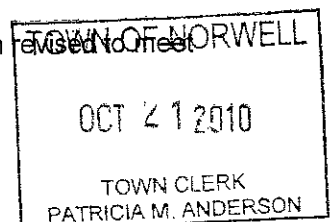


recommendations. The O&M Plan also shall provide for construction phase operation, requiring sweeping as necessary and erosion and sedimentation controls as necessary. The O&M Plan shall also indicate and provide specificity regarding how areas will be maintained between the overlapping use areas for #335, #335R, #339 and #341. The O&M Plan shall be recorded with the decision and approved site plan.

- d. That a **Landscaping Plan** shall be recorded with the decision and approved site plan that clearly defines the plants and trees to be removed and what is proposed. The applicant shall make best efforts to preserve the 18" caliper Cherry Tree adjacent to the proposed entrance and trees within the rear yard of greater than 8" caliper.
- e. Landscaping improvements shall be required on the grass island and along the left side of the driveway where the applicant's property abuts Washington Street. Improvements shall include granite curbing and low lying bushes and plants.
- f. That the proposed **lighting** at the site shall be reduced to provide only what is necessary for public safety. Lighting shall be compliant to the maximum extent feasible with the "Best Sky Lighting" recommendations of the International Dark Sky Association.
- g. That **additional test pits** as noted in the town consultant, John Chessia's, report shall be conducted and provided and reviewed by the Board of Appeals.
- h. The applicant shall submit documentation to the Board of Appeals that describes the **utility connections**, including the delivery, easements and any plans for modification.
- i. The **fencing around the dumpster** shall be replaced with wood or wood-like fencing material.
- j. That before Certificate of Occupancy is approved the applicant shall make best efforts to replace the existing **sign** along Washington Street with more visually appealing signage to be approved by Planning Staff.
- k. No **signage** proposed on the building shall be internally lit.
- l. That the Board of Appeals shall require the Applicant to obtain a final sign off from the **Fire Chief** indicating his assent to the final proposed plan before the requested zoning relief is granted.
- m. The applicant shall submit an **existing and proposed conditions plan** that identifies the impervious area locations, modifications and calculations.
- n. The Applicant complies with Section 1520, Contents of Site Plan, of the Norwell Zoning Bylaw (NZBL), as information required in sub-sections a-o, has been provided.
- o. The Applicant complies with Section 1530, Procedure, of the NZBL, as all information required therein has been provided and comments received from the Planning Board.
- p. As required in NZBL Section 1540, Criteria for Approval, the Board of Appeals has considered the proposed project, which constitutes a reasonable use of the site for the purposes permitted by district regulations:
- q. The Applicant has produced evidence that it owns the property
- r. The proposed project will not increase the non-conforming nature of the property, but reduces slightly the impervious surface from 8,170 sq. ft. to 8,134 sq. ft. on the lot, which is comprised of 11,558 +/- sq. ft.
- s. The proposed business or professional office use is permitted by right in Business District B under NZBL Section 2333b
- t. The proposed number of **parking spaces** shown on the submitted plans is nine (9), which complies with the requirements of NZBL Section 3120.

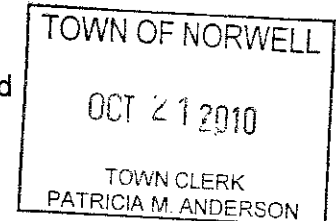


- u. The proposed **project signage** meets the requirements of NZBL Section 3300, Signs, as stated in the testimony by the owner, who indicated there will be a small sign above the doorway with the existing street signage to reflect the change in building occupancy without any increase in size.
2. **NZBL Section 1541** requires the Board of Appeals to consider, "The protection of the district in which the site is located and adjoining district against detrimental, offensive, or incompatible uses or structures on the site." The Board determined that the proposed use is allowed by right within the zoning district,
 3. **NZBL Section 1542** requires the Board of Appeals to consider, "The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and land." The proposed use is for a professional office. The applicant has submitted a report from a traffic consultant that states, "... little change in traffic can be anticipated as a result of the proposed project."
 4. **NZBL Section 1543** requires the Board of Appeals to consider, "The adequacy of the methods of disposal for sewage, refuse, and other wastes resulting from the uses permitted on the site, and the methods of drainage for surface water from its parking spaces and driveways." The Applicant is required by State Law to submit the appropriate applications to the Norwell Board of Health for disposal of sewage. The applicant submitted evidence that it shares a dumpster with an abutting property owner for disposal of refuse and other wastes. As the proposed project will result in little, if any, change in the topography of the lot or footprint of the building, the Planning Board did not require the applicant to provide drainage calculations. Further, the applicant proposes to install drywells to handle roof runoff. Therefore, the Board finds that the requirement of the bylaw relating to stormwater have been met.
 5. **NZBL Section 1640:** The Board examined the requirements of NZBL Section 1640 relating to nonconformancy. As noted in the Findings of the Planning Board, the proposed alteration of the existing building will not be substantially more detrimental than the existing structure, as the net floor area is somewhat reduced with a smaller footprint, a reduction of almost four feet in building height, and substantially improved landscaping. The use of the building will be commercial, as allowed by right, and fits within the character of the area, which is predominantly commercial in nature. In lieu of restoring the existing building, the applicant found it would be more economical to replace the structure. No increase in traffic or other public health, safety, or welfare concerns are anticipated by allowing the proposed project.
 6. **NZBL Section 1641:** The Board determined there has been no abandonment of the continuing use, which is allowed by right.
 7. **NZBL Section 1642:** The Board determined this section of the Bylaw does not apply, as the property's use is commercial. However, it makes specific note that there is a reduction in intensity of use because the footprint of the proposed building is slightly less, as is the height, than that of the existing building.
 8. **NZBL Section 3400:** The Norwell Historical Commission in its letter to Attorney Mayo, dated June 30, 2010, and signed by Vice-Chair David DeGhetto, states the Commission approves the applicant's plan to dismantle the existing building in accordance with a proposal by MLB Restorations in order to save the historic portions of the building for re-assembly at another location.
 9. The consulting engineer advised that all plans have subsequently been revised to meet Planning Board recommendations.



DECISION OF THE BOARD:

Based upon the evidence submitted and its findings delineated above, upon a motion duly made and seconded, the Board **VOTED** unanimously to grant approval of the **Site Plan and Special Permit**, as well as a **Section 6 Finding** under M.G.L. c. 40A, relative to nonconformancy of the lot, to allow for removal of the existing building, which is to be dismantled for future preservation as recommended by the Norwell Historical Commission, and replaced with an office building, further described in the submitted plans at the property known as **335R Washington Street**, subject to the following *Special Conditions* and *Conditions Applying to All Decisions*:



SPECIAL CONDITIONS:

1. The property shall be developed in accordance with the approved plans reproduced from mylar® sheets endorsed by the Board of Appeals, as follows:
 - a. **Site Development Plan Set**, prepared by EET, Inc., for Assessors Map 24 Lot, consisting of four drawings, stamped and signed by Robert C. Crawford, P.E., and Neil J. Murphy, R.P.L.S., as detailed below:

Sheet 1:	<i>Existing conditions Plan/ #335R Washington Street/ Norwell, Mass./ Map 24, Lot 49, dated 9/1/2010</i>
Sheet 2:	<i>Site Plan & Proposed Disposal System, dated 2/12/10 and revised 9/1/10</i>
Sheet 3:	<i>Landscape & Construction Sequence Plan, dated 9/1/10</i>
Sheet 4:	<i>Detail Plan, dated 9/1/10 (signed by Robert C. Crawford, P.E., only)</i>
2. **Planning Board Recommendations:** The September 9, 2010, recommendations of the Norwell Planning Board detailed in Paragraph 1, sub-paragraphs a-u of the Findings of the Board of Appeals above are incorporated by reference as part of this decision, except as may otherwise be specifically modified in these Special Conditions Paragraphs, especially 6 and 9 through 12, below.
3. **General Signage Requirements:** All signs shall conform to requirements of the Norwell Zoning Bylaw and are subject to permitting by the Building Inspector.
4. **Site Lighting:** The lighting system for the proposed project, as completed, shall conform to "Dark-Sky" standards to minimize light pollution and to conserve energy per Planning Board recommendation in paragraph f.
5. **Aquifer Protection District:** Any change in the impervious surface conditions that may be proposed in the future that impact the Property overall or in part shall require site plan modification with full drainage calculations.
6. **Drywell Soils Testing:** Test pit information has been provided for four tests performed in 1996 with two more recently. **Prior to issuance of a building permit**, in accordance with Planning Board recommendation 1(g), in the Board's Findings above, the applicant shall provide evidence to the Board through Chessia Consulting Services and the Building Inspector that the recommended soils' testing has been satisfactorily completed. Specifically, tests are required at each drainage detention facility, in front of the existing building, and under the proposed building, which should be performed after removal of the existing building.

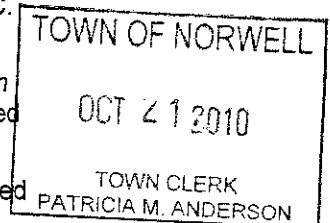
7. **Handicap Ramp:** Details of the handicap ramp shall be provided to the Inspector of Buildings with the Building Permit application.
8. **Parking:** All parking spaces shall be striped with dimensions that conform to requirements of the Norwell Zoning Bylaw.
9. **Construction:** The applicant shall provide evidence to the Inspector of Buildings that the **Stormwater Operations and Maintenance Plan** shall (1) require sweeping and erosion and sedimentation controls as necessary, and (2) indicate the hours construction activities can take place.
10. **Post Construction: Prior to issuance of an Occupancy Permit,** the applicant shall provide evidence to the Inspector of Buildings that the **Stormwater Operations and Maintenance Plan** shall provide: (1) a minimum of annual inspection of all components of the drainage and stormwater management systems by a Registered Professional Engineer, who shall file reports with the Board of Appeals and the Highway Department; (2) for cleaning of all drain structures including catch basins and separators twice per year; (3) sweeping of all parking areas once every three months and (4) that use of pesticides, herbicides, and fertilizers shall be minimized to the extent practicable and shall be applied in accordance with manufacturer's recommendations by experienced and, if applicable, licensed personnel.
11. Due to the complicated nature of ownership, easements, and approvals that may be required from MassHighway, the granite curbing and landscaping amendments of Planning Board recommendations in Findings Paragraphs 1(e) and is not required.
12. Because the dumpster fencing referred to in Paragraph 1(i) is located on the property of others, this recommendation is not required.

CONDITIONS APPLYING TO ALL DECISIONS:

13. **RECORDING OF THE DECISION:** A certified copy of this Decision with all documents referenced in Paragraph 1 shall be filed with the Registrar of Deeds or Recorder of the Land Court, as appropriate. The applicant shall return a copy of the recording fee receipt to the Board of Appeals for its files.
14. **PLAN SET AND DOCUMENTS TO BE RECORDED WITH THIS DECISION:** The Applicant shall file (1) with the Town Clerk, a copy of the approved Plan Set endorsed by the Board of Appeals as detailed in Special Condition Paragraph 1 above, and, (2) as part of this Decision, with the Registrar of Deeds and/or Recorder of the Land Court, specifically:

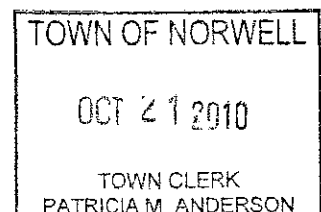
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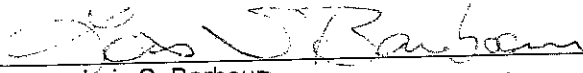
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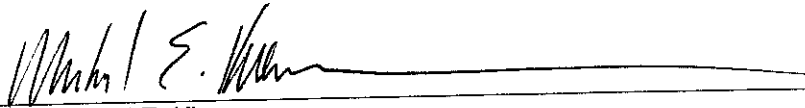
15. **EFFECTIVE DATE OF APPROVAL:** The zoning approvals granted by the Board of Appeals shall take effect only at such time as this Decision, the supporting documents as referenced in Paragraph 1 above, and the approved plan set are filed (1) with the Office of the Town Clerk of the Town of Norwell, and (2) recorded with the Registrar of Deeds or Recorder of the Land Court. **NOTE: Evidence of recording of the Board's Decision and documents specified in Paragraph 1 above shall be provided to the Inspector of Buildings, prior to issuance of any building permit.**
16. **LAPSE OF SITE PLAN APPROVAL:** The applicant shall complete any work described in the site plan approved by the Board of Appeals within one year of the date this Decision is filed with the Office of the Town Clerk or approval granted herein shall lapse.
17. **LAPSE OF SPECIAL PERMIT:** The applicant must exercise any Special Permit granted by the Board of Appeals within two years of the date this Decision is filed with the Office of the Town Clerk or it shall lapse.
18. **EXTENSION OF APPROVALS:** The Board of Appeals may grant an extension of such time as it may deem necessary to carry the approved site plan into effect. However, the applicant must file an application for any such extension prior to expiration or a new Site Plan and/or Special Permit application shall be required. Any such extension(s) shall be certified by the Board of Appeals to the Town Clerk and shall include the date on which any such extension is to lapse.
19. **AS-BUILT PLANS: Prior to issuance of a Certificate of Occupancy,** the property owner or Applicant shall provide *As-built* plans, signed and stamped by a registered professional engineer, landscape architect, and/or professional land surveyor, as appropriate, in accordance with Section 1560 of the Norwell Zoning Bylaw.
- a. These plans shall show:
- Pavement locations, building locations, lot lines, driveway locations, all utilities above and below ground such as water, gas, electric, septic, telecommunication, utility poles, manholes with rim elevations and inverts, catch basin rims and inverts, other drainage with pipe size and invert.
 - All utility easements; ties from building foundations to utility services.
- b. Further, *if required by the Norwell Inspector of Buildings*, the project design shall be checked against the filed *As Built* plans and reviewed by the Town's consulting engineer at the sole expense of the Applicant for compliance with the project plans as approved by the Board of Appeals.

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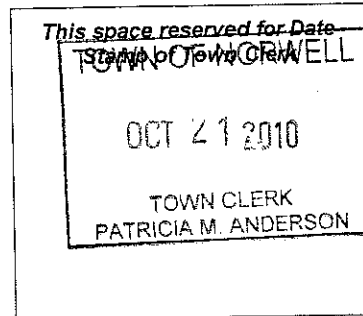



Lois S. Barbour


Thomas P. Harrison


Michael E. Kiernan

Date Filed with Office of the Town Clerk



NOTICE OF APPELLATE RIGHTS: Any decision of the Board of Appeals may be appealed to Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.