

OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295
NORWELL, MASSACHUSETTS 02061
(781) 659-8018 • Fax (781) 659-1892

Members
Lois S. Barbour, Chair
Philip Y. Brown, Vice Chair
David Lee Turner
—
Associate Members
Michael E. Kiernan, Clerk
Thomas P. Harrison

FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

File No. 13-3

A PUBLIC HEARING was held on May 1, 2013, by the Norwell Zoning Board of Appeals (the Board) under Massachusetts General Laws, Chapter 40A, Sections 6 and 9, at the Norwell Town Offices, 345 Main Street, Norwell, MA on the Application of:

**Foxrock Longwater II Realty, LLC f/n/a
Foxrock Norwell Campus, LLC
100 Newport Avenue Extension
Quincy, MA 02171 (the Applicant)**



For a Special Permit under Norwell By-Law Sections 1400, 1420, 2340 (Business District C), 2341 (a) and (e), 4300 (Aquifer Protection District), 4351 (a) and 4352 for professional office space, in excess of 5,000 square feet with ancillary research laboratory space, at **141 Longwater Drive**, (the Property) is located in Business District C-2 and the Aquifer Protection District, the existing "Warehouse Building", a portion of the Property, shown on Assessors' Map 17B, Block 18 Lot 53 and described in the document recorded in Plymouth Registry of Deeds Book 38431, page 82.

The Public Hearing for this Application was duly noticed in *The Norwell Mariner* on April 11, 2013 and April 18, 2013, and posted at the Norwell Town Hall, and was sent to abutters and others in accordance with statutory requirements.

Howard M. Kelman, Esq., of Winokur, Serkey & Rosenberg, P.C., representing the Applicant, presented the Application to the Board and responded to questions during the course of the Public Hearing. Various experts and consultants were also in attendance and provided testimony on behalf of the proponent. Representatives of the Applicant and proposed Tenant, Battelle Memorial Institute were also in attendance at the hearing.

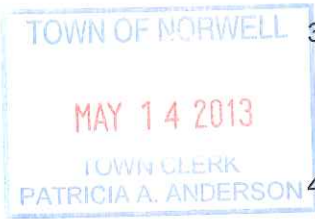
The Board received the following documents (marked as Exhibits) into its files:

Exhibit Numbers

1. Application completed and signed by the Applicants, date-stamped March 27, 2013, by the Town Clerk with Addendum to Application for Public Hearing re Disposal and Safety Methods for Hazardous Materials concerning Battelle Memorial Institute; List of Solvents, Gases, Solids and Liquids; Leased Area Floor Plan; Battelle Layout and

Foxrock Longwater II Realty, LLC Certificate of Organization of a Limited Liability Company filed with the Secretary of the Commonwealth on April 12, 2010.

2. (A) Copy of legal notice
(B) Abutters Lists
(C) Assessors Field Card
3. Copies of Tenant's three-part Emergency Preparedness Documentation for its Existing Duxbury location; Battelle Duxbury Operations Environmental Protection Reference Material; Contingency Plans for Hazardous Waste Management Unit, Part I; Environment Safety and Health Plan, Part 2; Contingency Plan for Emergency Response Planning, Part 3
4. Site Plan showing location of the Aquifer Protection Zone line, proposed outside storage tank/shed, concrete pad for nitrogen tank and existing building
5. Medical Storage Facility
6. Letters to the Board, both dated April 30, 2013, from the Norwell Board of Health and Water Department



The Property, the subject of this Decision, is the existing warehouse building formerly owned and occupied by Wearguard at 141 Longwater Drive in Norwell. This building and the site in general have been and continue to be used as professional office space with related facilities.

The evidence supports a finding that there is adequate parking, traffic circulation and infrastructure for the uses applied for by the Applicant and also supports a finding that the proposed uses are in keeping with the character of the Zoning District and, if the Special Conditions set forth herein are satisfied and maintained, the ancillary use of a research laboratory will not be injurious, noxious or offensive as a result of odors, fumes, noise or other hazards, including fire, explosions or other cause.

The Special Conditions in this Decision and the facts set forth in Exhibit 6 demonstrate that the requirements and standards for the Aquifer Protection zone and in federal and state standards for drinking water will be satisfied.

FINDINGS:

1. **Grant of a Special Permit per Section 2341(a)**, to allow a research laboratory with incidental assembly or test manufacture. The Board has determined that all requirements for a Special Permit with respect to the Applicant's intended research and laboratory use will be satisfied and complied with; that the conduct of the proposed use will not injurious, noxious or offensive to the neighborhood by reason of the emission of odors, fumes, dust, smoke, noise or other cause, nor hazardous to the community on account of fire, explosion, or other cause; and that the research and laboratory use in the Aquifer Protection District will not cause any significant degradation of the quantity or quality of groundwater supplies and, further that groundwater quality resulting from on-site waste disposal and other on-site operations will not fall below federal or state standards for drinking water at any down-gradient property boundary.

2. **Grant of a Special Permit per Section 2341(e)**, to establish a professional office use in excess of 5,000 gross square feet. The Zoning Board determined that the conduct of the proposed use of the premises as a professional office over 5,000 gross square feet will not be detrimental to the neighborhood in the Business District C-2 nor will the proposed use materially alter the character of the Zoning District.

3. **Grant of a Special Permit per Section 4351(a)**, to allow use involving secondary usage or storage of toxic or hazardous materials in quantities greater than normally associated

with usual household use in the Aquifer Protection District. The Zoning Board determined that the intent of this Bylaw as well as its specific criteria will be satisfied by compliance with Special Conditions herein set forth and groundwater quality resulting from on-site waste disposal and other on-site operations will not fall below Federal or State standards for drinking water at the down-gradient property boundary as long as the Special Conditions aforesaid, are maintained and satisfied and updated to meet all relevant State and Federal requirements.

4. **Grant of a Special Permit in accordance with Section 4352.** The Applicant has and will continue to comply with all provisions of Sections 4352, 4353, and 4354, inclusive, relative to the proposed laboratory use in the Aquifer Protection District, by meeting, maintaining and satisfying all State and Federal requirements, aforesaid. (Also see Exhibit 6)

5. The Applicant's proposed use of approximately 35,000 square feet for use as a professional office and laboratory meets all special permit, bylaw and statutory standards and requirements and no additional zoning relief is required.

DECISION OF THE BOARD:

Based upon representations by the Applicant as delineated in the Board of Appeals' findings above, and other evidence received into the public record and presented during the Public Hearing, upon a motion duly made and seconded, the Board **VOTED** unanimously to grant Special Permits in accordance with Sections 2341(a), 2341(e), 4351(a) and 4352 (a)-(d), upon the following Special Conditions.

SPECIAL CONDITIONS:

1. No building permit shall be issued unless and until the Applicant files with this Board a certification, signed by an authorized officer of Battelle, that the design and construction details of the research laboratory space and associated storage and other spaces and facilities will comply with all applicable State and Federal laws and regulations.
2. No occupancy permit shall be issued unless and until the Applicant files with this Board, the Water Commissioners, the Board of Health and the Fire Chief, a certification by an authorized representative of Battelle, that the following have been adopted, are in full force and effect and are in compliance with all applicable State and Federal laws and regulations and apply to and will be observed for the use of the Property.
 - A. Contingency plans for emergency response planning;
 - B. Environment, safety and health plan;
 - C. Contingency plan for hazardous waste management unit; and
 - D. Operational plan for the facility that meets all relevant State and Federal laws and regulations, with all of the aforesaid certified by authorized representatives of Battelle as properly and legally adopted and in full force and effect, and will be upgraded when necessary to meet and satisfy all State and Federal requirements and laws with regard to the use and maintenance of the Property and its use by the Applicant.



CONDITIONS APPLYING TO ALL DECISIONS:

1. **RECORDING OF THE DECISION:** After receiving certification from the Town Clerk that no appeal has been taken within twenty days, or if appealed

then dismissed or denied, a copy of the Board's decision must be filed with either the Register of the Plymouth County Registry of Deeds to be recorded and indexed in the grantor index under the name of the owner of record in the case of unregistered land, or with the Recorder of Land Court to be registered and noted on the owner's certificate of title in the case of registered land.

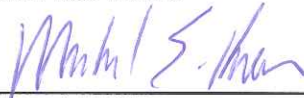
2. **RECORDING RECEIPT:** A copy of the recording fee receipt must be returned to the Board of Appeals. *NOTE:* No building permit shall be issued without such evidence.
3. **EFFECTIVE DATE OF APPROVAL:** This Decision shall take effect only at such time as a copy of the Decision, certified by the Office of the Town Clerk of the Town of Norwell, is recorded with the Register of Deeds or Recorder of the Land Court.
4. **EXPIRATION:** The applicant must exercise any Decision granted by the ZBA within two (2) years from the date of the Decision or it shall lapse.



Lois S. Barbour



David Lee Turner



Michael E. Kiernan

Date Filed with Office of the Town Clerk

*This space reserved for
Date Stamp of 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.