

TOWN OF NORWELL
TOWN CLERK

2014 AUG -6 AM 8:08

RECEIVED



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, Asst. Clerk

Associate Members

Thomas P. Harrison
Ralph J. Rivkind

FINDINGS AND DECISION *of* The Norwell Board Of Appeals

File No. 14-4

Public Hearings were held on June 4, 2014, June 25, 2014 and July 30, 2014 by the Norwell Zoning Board of Appeals (the Board), at the Norwell Town Offices, 345 Main Street, Norwell, MA, on the revised Application (the Application) of:

Village Motors South Inc.
75 Pond Street
Norwell, MA 02061 (Applicant)

The Application requests **Site Plan Review** (Sections 1500, 1510), **Special Permits** (Sections 2340 Business District C, 2341(i)) and **Variances** (Sections 2471 Building Coverage, 2472 Open Space Area; 3150 Parking Area Design & Location; 3152 Setback, 3156 Parking Lot Plantings; 3222 and 3223, Street and Sideline Planting of the Norwell Zoning Bylaws) to renovate and add an addition to the existing building, with reconstructed parking and utilities (the Project).

The original Application and plans were filed with the Board and Town Clerk on April 11, 2014. The Public Hearing for this filing was duly noticed in the Norwell Mariner on May 15, 2014 and May 22, 2014 and posted by the Town Clerk, as required by the Open Meeting Law. The Application and plans were reviewed by the Planning Board as well as distributed to other interested and requisite boards, committees and offices for their review and comment.

John Boardman, P.E. of Hancock Associates, presented the Application to the Board and provided testimony about the revised Application and exhibits. The Applicant was represented by

Bruce A. Issadore, Esq. Kevin O'Toole, of Regent Associates, Inc., who was in attendance, provided additional testimony and evidence to the Board in support of the revised Application. Dan Leahy, on behalf of the Applicant, was also in attendance.

FILE DOCUMENTATION (includes without limitation):

The following documents, plans and reports were received into evidence and marked as Exhibits, in accordance with the numbering below:

1. Copy of the legal notice.
2. Abutters List.
3. A septic system for the Project approved by the Board of Health on 6/3/14.
4. Original Application for Site Plan Review, Special Permit and Variances consisting of the following:
 - a. Letter dated 4/8/14 to Norwell Board of Appeals from John Boardman, P.E. of Hancock Associates, re 75 Pond Street, Date Received: 4/11/14. Said letter included items "b" through "i" below.
 - b. Original Application for Public Hearing requesting Site Plan Review, Special Permit and Variances signed by the Applicant dated 4/07/14, date-stamped 4/11/14 by Town Clerk.
 - c. Deed to Main Street Village, LLC. dated 5/21/09 and recorded with Plymouth Registry of Deeds in Book 37232, Pages 95-96.
 - d. Decision of Zoning Board of Appeals on application of Richard D. Bokavich, South Shore Imported Cars filed with the Town Clerk on 10/15/97 and recorded with Plymouth Deeds in Book 15645, Page 53-55.
 - e. Site Plan Review: Supplemental Information, Pages 1 through 6.
 - f. Norwell Board of Appeals Public Notice Authorization signed by Applicant.
 - g. Redevelopment Permit Site Plan Porsche of Norwell, 75 Pond Street, Norwell, MA prepared for Village Motors South Inc. by Hancock Associates dated 4/09/14, Sheets 1 through 8. Sheets 1, 3-5, 7-8 signed and stamped by Joseph D. Peznola, Registered Professional Engineer on 4/19/14; Sheet 2 signed and stamped by Scott R. Jalbert, Registered Land Surveyor on 3/27/14; and Sheet 6 signed and stamped by James Emmanuel, Registered Landscape Architect.
 - h. Stormwater Report in Support of Redevelopment Permit Site Plan for Porsche of Norwell, MA dated 3/31/14, prepared by Hancock Associates.
 - i. Full size architectural plan with project date of 2013-9 of Main Level Floor Plan, Upper Level Floor Plan, Exterior Elevations, Sheets A1.1, A1.2, A5.1, signed and stamped by Mark Regent, Regent Associates, Inc. indicating progress date of 03-26-14; and Electrical Site Lighting Plan, Sheet E1.1, signed and stamped by James P. Stroke, Registered Professional Engineer on 3/26/14.
5. Letter of Transmittal dated 7/09/14 to Board from John Boardman, P.E. of Hancock Associates, attaching cover letter dated 6/11/14 re 75 Pond Street; revised Redevelopment Permit Site Plan Porsche of Norwell 75 Pond Street, Norwell MA prepared for Village Motors South Inc. by Hancock Associates dated 4/9/14, revised 6/12/14; Stormwater Report in Support of Redevelopment Permit Site Plan for Porsche of Norwell dated 3/31/14, revised 6/11/14, prepared by Hancock Associates; and Groundwater Sampling Summary prepared by Green Environmental dated May 2014.
6. Letter of Transmittal dated 7/15/14 to Board from John Boardman, P.E. of Hancock Associates, attaching cover letter dated 7/11/14 re 75 Pond Street; revised Redevelopment Permit Site Plan Porsche of Norwell 75 Pond Street, Norwell MA prepared for Village Motors South Inc. by Hancock Associates dated 4/9/14, revised 6/12/14 and 7/11/14, Sheets 1 through 8, received 7/16/14 by the Board of Appeals.

Sheets 1, 3-5 and 7-8 signed and stamped by Joseph D. Peznola, Registered Professional Engineer on 7/11/14. Sheet 2 signed and stamped by Scott R. Jalbert, Registered Land Surveyor on 6/11/14. Sheet 6 signed and stamped by James Emmanuel, Registered Landscape Architect.

7. Letter from the Norwell Planning Board, dated July 9, 2014, to the Board, entitled: Site Plan Review – 75 Pond Street (Porsche Dealership) a copy of which is attached.

FINDINGS OF THE BOARD:

Based upon the evidence received, including the Exhibits, Plans marked by the Board for identification, and the review by the Norwell Planning Board (Exhibit 7), the Board finds:

1. The Property (the Property) is known and numbered as 75 Pond Street and is shown on the Assessors' Map as 11A, Block 17, Lot 36 in Business District C-1, containing 60,000 square feet with 156 feet of frontage on Pond Street and 400 feet of frontage on Accord Park Drive, shown in detail on the Plans, Exhibit 6.
2. The Property is entirely within the Business C-1 Zone. The Property presently contains an automobile dealership that has operated at this Property for many years. The Applicant proposes to renovate the existing structure and to add 2,095 additional square feet to the existing building.
3. On October 15, 1997, this Board granted Site Plan Review under Section 1500 and Variances to Sections 2472 (Open Space), 3156 (Parking Lot Planting) and Section 3157 (Bicycle Racks), for the existing building and facilities on the Property. The use required no special permit as it was a permitted use at that time.
4. The Property has been continually used as an automobile dealership for many years.
5. ***Norwell Planning Board Recommendations:*** The Board adopts, by incorporation by reference, the specific recommendations voted by the Norwell Planning Board on July 9, 2014 (Exhibit 7), to which no objection was raised in public hearings before the Board, specifically included as conditions to be met or observed by the Applicant, unless otherwise noted or waived by this opinion.
6. ***Contents of Site Plan, Section 1520:*** If the details in the Plans, endorsed by the Board of Appeals for identification, are satisfied, the Applicant complies with Section 1520, *Contents of Site Plan*, of the Norwell Zoning Bylaw (NZBL), as all information, required in sub-sections a-o, have been provided.
7. ***Procedure, Section 1530:*** The Applicant complies with Section 1530, *Procedure*, of the NZBL, as all information required therein has been provided.
8. ***Criteria for Approval, Section 1540:*** As required in NZBL, Section 1540, *Criteria for Approval*, the Board has considered that the proposed Project constitutes a reasonable use of the site for the purposes permitted by the regulations for the district in which it is located. Indeed, the Applicant currently operates an automobile dealership on the site, and the site has been the location of an automobile dealership for many years.

9. **Site Plan Review Considerations:** The following sections of the NZBL require the Board of Appeals to consider:

- a. **NZBL Section 1541** requires the Board 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.*"
- b. **NZBL Section 1542** requires the Board to consider, "*The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and land.*"
- c. **NZBL Section 1543** requires the Board 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.*"

10. **Site Plan Review Determinations:** The Board, therefore, has made the following determinations for Site Plan and Zoning By-Law Variance requests:

- a. The Applicant currently operates an automobile dealership on the site, and the site has been the location of an automobile dealership for many years. The Board finds that the changes in the design of the proposed project resulting from the Planning Board Recommendations adequately address the Section 1541 and issues raised during the course of the public hearing.
- b. Based upon the plans submitted by Applicant and the remediation agreed to by the Applicant in accordance with the recommendations of the Town's traffic consultant, the Board finds this requirement will, upon implementation of the plans, be satisfied.
- c. The Applicant has made adequate provisions for the disposal of sewage. The Plans submitted show that a dumpster will be placed on site for disposal of refuse and other wastes. The Town's consulting engineer has reviewed the stormwater management plan submitted and finds the submitted plans substantially meet state and local requirements. Upon the implementation of the requirements aforesaid, set forth in part on the Plans, endorsed by the Board for identification, the requirements of this section of the bylaw will be satisfied.

The Board, therefore, finds the requirements of NZBL §§ 1541-1543 have been met.

11. **Grant of a Special Permit Section 2341(i)**, to establish salesrooms for automobiles. The Board determines that the continuation of the proposed use, as delineated and defined in the Application and Exhibits, will not be detrimental to the neighborhood in the Business C-1 Zoning District; that the conduct of the proposed use, as set forth in the Application and the Exhibits, will not significantly alter the character of the Business C Zoning District; that the conduct of the proposed use, as set forth in the Application and the Exhibits has not been and will not be injurious, noxious or offensive to the neighborhood.

12. **The requests for Variance set forth in the Application must meet, and the Board finds that:**

- (i) The Property is within a DEP Zone A and contains soils and topographical features that provide special handling and severely limit construction. The condition is unique to the Property, as most other lots in Business C-1 do not fall under the DEP Zone A

Regulations. In addition, the Property contains frontage on two roads (two frontage lines with a combined frontage of 556 feet) and is therefore, subject to additional and limiting set-back requirements, parking restrictions and requirements.

A second circumstance unique to the Property is the presence of wetlands and a stream. The soil conditions that create the wetlands are unique to the Property when compared with other property and business sites in the Zoning District.

In addition, the Property, approximately a 60,000 square foot lot, cannot be expanded or modified in shape or topography. The Property has, for many years, served as the site for an automobile dealership, an established use, with a known facility and location.

- (ii) The evidence submitted to the Board included the fact that automotive design, marketing, service, maintenance and repair require changing systems and facilities. The Applicant's business is a case in point. It requires that the old facility be renovated and an addition added to create a slightly larger and more complex building. The use of the Property will not change but the demands of the industry require changed facilities for the use. The condition does not affect generally the Zoning District, only this specific structure and land. To deny reasonable accommodation for changing technology and business requirements would impose substantial hardship on the Applicant.
- (iii) The Board finds that the continuation of this well established business use may be authorized without substantial detriment to the public good and in support of the established use, in accordance with the intent and purpose of the Zoning By-law.

Lastly, an automobile dealership has existed in this location for many years. As such, the Applicant asks to continue a use, not to create a new use. In addition, given that the Applicant proposes to replace the existing Volvo Dealership with a Porsche Dealership transacting business in the luxury car market, the use will be less intense than has been the case in the past. Thus, desirable relief can be granted without derogating from the public good or from the intent or purpose of the zoning by-law.

- 13. Grant of a Variance in accordance with Section 2471**, to allow the construction of the building and/or structures for the automobile dealership to exceed 18% of the lot area. As previously determined, a substantial hardship (financial or otherwise) affecting the Applicant exists due to unusual and unique circumstances affecting the land and structures at issue. A review of the Plans and related documents establishes that there is no substantial detriment to the public good, and the granting of the requested Variance will not nullify or substantially derogate from the intent or purpose of the bylaw. Construction on the Property is constrained due to an intermittent tributary to the rear of the Property which flows ultimately into Accord Pond, a protected drinking water supply. As such, due to DEP regulations, available soils that are otherwise buildable are not subject to construction, requiring design changes which would

not otherwise be necessary. The proposed building covers approximately 19.3% of the lot area comprising the Property, and thus the excess lot coverage is de minimus.

- 14. Grant of a Variance from Section 2472**, for less than one-third of the lot area to be free of structures, paving, storage areas or other elements which preclude vegetation. As previously determined, a substantial hardship (financial or otherwise) affecting the Applicant exists due to unusual and unique circumstances affecting the land and structures at issue. A review of the Plans and related documents establishes that there is no substantial detriment to the public good, and the granting of the requested Variance will not nullify or substantially derogate from the intent or purpose of the bylaw. Construction on the Property is constrained due to an intermittent tributary to the rear of the Property which flows ultimately into Accord Pond, a protected drinking water supply. As such, due to DEP regulations, available soils that are otherwise buildable are not subject to construction, requiring design changes which would not otherwise be necessary. The existing lot is almost fully paved in connection with the existing use. In the prior decision of this Board on October 15, 1997, this Board granted a variance from this requirement.
- 15. Grant of a Variance from Section 3150, specifically Section 3152** to construct more than five (5) parking spaces within the required front yard. As previously determined, a substantial hardship (financial or otherwise) affecting the Applicant exists due to unusual and unique circumstances affecting the land and structures at issue. A review of the Plans and related documents establishes that there is no substantial detriment to the public good, and the granting of the requested Variance will not nullify or substantially derogate from the intent or purpose of the bylaw. Construction on the Property is constrained due to an intermittent tributary to the rear of the Property which flows ultimately into Accord Pond, a protected drinking water supply. As such, due to DEP regulations, available soils that are otherwise buildable are not subject to construction, requiring design change which would not otherwise be necessary. The Property also fronts on two streets, making compliance with this provision difficult given an automobile dealership existing and proposed use. To lessen any impact, the Plans show that the parking variance significantly occurs only on the lesser traveled and less visual way south of the building on Accord Park Drive. The parking variance for spaces located off of Pond Street is de minimus.
- 16. Grant of a Variance from Section 3150, specifically Section 3156** to allow parking area to not have at least one tree per 8 parking spaces. Substantial hardship (financial and otherwise) would affect the Applicant and Application if the Cornell method of establishing unusual rainfall depths is required. As previously determined, there are unusual circumstances affecting the land and structures. The Board finds that the granting of the Variance will not be a substantial detriment to the public good and the granting of the Variance will not nullify or substantially derogate from the intent or purpose of such ordinance or bylaw. There is currently no or little vegetation or plantings on the Property and the plantings proposed will be an improvement over existing conditions for which variance relief has previously been granted. In addition, trees are not compatible with the proposed use and would create a maintenance issue regarding care of new vehicles on the Property for sale.
- 17. Grant of a Variance from Sections 3222 and 3223**, to allow for sideline plantings of less than five feet wide and street plantings of certain sizes within twenty feet of the street lines. Substantial hardship (financial and otherwise)

would affect the Applicant and Application if the Cornell method of establishing unusual rainfall depths is required. As previously determined, there are unusual circumstances affecting the land and structures. The Board finds that the granting of the Variance will not be a substantial detriment to the public good and the granting of the Variance will not nullify or substantially derogate from the intent or purpose of such ordinance or bylaw. There is currently no or little vegetation or plantings on the Property and the plantings proposed will be an improvement over existing conditions for which variance relief has previously been granted. The existing use of the Property has cars parked and offered for sale along Pond Street. Much of this will be eliminated in exchange for a clear visual of the building, which the Board finds is a better circumstance. Any trees along this frontage, which does not exist along any abutting properties on Pond Street, would adversely affect the ability of the building to be seen from Pond Street. The Applicant is using existing plantings along portions of the Property along Accord Park Drive.

18. The Project, if built in accordance with the Plans endorsed by the Board for identification, the Application, the Exhibits as submitted by the Applicant and this Decision will meet all site plan, special permit, variance, bylaw and statutory standards and requirements.

DECISIONS OF THE BOARD:

On July 30, 2014, based upon representations by the Applicant as delineated in the Findings of the Board above, the written recommendations of the Norwell Planning Board, dated July 9, 2014 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:

1. Grant **Site Plan Approval** (Section 1500 and 1510), for replacement of the existing automotive dealership with a new and expanded facility, reconstructed parking and utilities (the "Project").
2. Grant **Special Permit** (Sections 2340 and 2341(i)).
3. Grant **Variations** (Sections 2471, 2472, 3150, specifically Sections 3152, 3156, 3222 and 3223).

SPECIAL CONDITIONS:

1. The Property shall be developed in accordance with the Plans, Exhibit 6 signed by the Board for identification and subsequent revisions reviewed and approved by the Town's consulting engineer.

1(a) The details and requirements in the Plans, Exhibit 6, endorsed by the Board for identification and as finally revised, shall be observed and implemented and no occupancy permit shall be issued by the Inspector of Buildings until such compliance is completed.

Note: A copy of the complete set of the Plans endorsed by the Board for identification shall be filed with the Town Clerk with this Decision or within fifteen (15) days thereafter, as provided in Section 1550 of the Norwell Zoning Bylaw.

2. **Planning Board Recommendations:** The recommendations of the Norwell Planning Board detailed in the Board's Findings in Paragraph 5, are incorporated by reference as Special Conditions of this decision, except as otherwise specifically modified in these Special Conditions.

3. **Plan Compliance:** Any deviation from the Plans as endorsed by the Board for identification, and as specified in Special Conditions Paragraph 1, above, shall be subject to review by the Town's Consulting Engineer at the expense of the Applicant and may require at the sole discretion of the Board, a Modification of this Decision.
4. **General Signage Requirements:** All signs shall conform to requirements of the Norwell Zoning Bylaw and are subject to permitting by the Building Inspector, subject to approval of the Board of Appeals.
5. A plan for the loading and unloading of automobiles from a delivery vehicle shall be submitted to the Board for its review and approval before an occupancy permit for the new building is issued.

CONDITIONS APPLYING TO ALL DECISIONS:

6. **RECORDING OF THE DECISION:** A certified copy of this Decision with all documents referenced below 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.
7. **PLAN SET AND DOCUMENTS TO BE RECORDED WITH THIS DECISION:** The Applicant shall file mylar® sheets for the Plans of the Property and project, as endorsed by the Board of Appeals, with the Registrar of Deeds and/or Recorder of the Land Court.
8. **EFFECTIVE DATE OF APPROVAL:** The zoning approvals granted by the Board of Appeals shall take effect only at such time as this Decision, supporting documents as referenced above, and the approved plan set are filed with the Office of the Town Clerk of the Town of Norwell, and recorded with the Registrar of Deeds or Recorder of the Land Court. **NOTE: Evidence of recording of the Board's Decision and documents specified above shall be provided to the Building Inspector, prior to issuance of any building permit.**
9. **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.
10. **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.
11. **LAPSE OF VARIANCE:** The Applicant must exercise any Variance granted by the Board of Appeals within one year of the date this Decision is filed with the Office of the Town Clerk, or it shall lapse.
12. **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, Special Permit, and/or Variance 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.
13. **CONSTRUCTION MONITORING;** This project is subject to the construction monitoring and escrow requirements contained in Article H of the Rules and Regulations of the Board of Appeals, adopted 7/22/08, subject to any modifications as may be adopted from time to time.
14. **CERTIFICATES OF OCCUPANCY:** No certificate of occupancy shall be issued until such time as all conditions of the Board's decision are met.
15. **DESIGN ENGINEER CERTIFICATION:** Prior to the issuance of any occupancy permit, the Applicant's registered professional engineer, landscape architect, and

such other professionals that prepared the approved plans, shall certify to the Board or its agent that the location and elevation of all underground utilities, including drainage, water and sewer, and landscaping plan substantially conform to the plans approved by the Board of Appeals and reviewed by its consulting engineer.

16. **PEER REVIEW:** Further, 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 and detailed in this decision or any modifications thereto, prior to issuance of any Certificate of Occupancy.
17. **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. These plans shall show:
 - a. 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.
 - b. All utility easements; ties from building foundations to utility services.
 - c. Final site grading including all drainage structures and lot grading to demonstrate conformance to the approved drainage design, with a certification as to final grading that is.

The remainder of this page is intentionally left blank.

Phillip Y. Brown

Phillip Y. Brown

David Lee Turner

David Lee Turner

Thomas P. Harrison

Thomas P. Harrison

This space reserved for
Date Stamp of Town Clerk

RECEIVED

2014 AUG -6 AM 8:08

TOWN OF NORWELL
TOWN CLERK

Date Filed with Office of the Town Clerk

NOTICE OF APPELLATE RIGHTS: Any decision of the Board of Appeals may be appealed pursuant to Massachusetts General Laws, Chapter 40A, Section 17, to the Land Court or Superior Court Department 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.