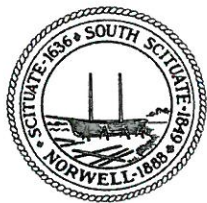


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OFFICE OF
BOARD OF APPEALS

TOWN OF NORWELL

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

Members

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Philip Y. Brown, Vice Chair
Ralph J. Rivkind, Clerk

Associate Members

Daniel M. Senteno
Nicholas K. Dean
William J. Lazzaro
Stephen H. Lynch

FINDINGS AND DECISION *of* The Norwell Board of Appeals

File No. 22-02

A PUBLIC HEARING was held on March 9, 2022, and continued to May 11, 2022, by the Norwell Zoning Board of Appeals under MA General Laws, Chapter 40A, Sections 6 and 10, in person at the Norwell Town Offices, 345 Main Street, Norwell, MA and broadcast live from the Osborn Room on Comcast Channel 9 and Verizon Channel 40 with a Zoom option, for the application of:

Hajjar Management Co., Inc.
30 Adams St.
Milton, MA 02186

For a Site Plan Review and Special Permit under Norwell Zoning Bylaw §§ 201-3.4A and § 201-8.3 D4 to construct a 3500 sq foot addition to the existing building with a drive-up window for pharmacy use and for a Special Permit under § 201-12.3 for parking reduction from the required 67 spaces to 66 spaces. Property is located at **111, 113, and 119 Washington Street** in Business District B and Aquifer Protection District as shown on Assessor's Map 11B, Block 20, Lots 11, 12 & 13 and recorded at the Plymouth County Registry of Deeds in Book 33854, Page 83 and Book 18316, Page 80. The lots consist of 2.29 acres.

The Public Hearing was duly noticed in the *Mariner* on February 16, 2022, and February 23, 2022, 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 all other interested and requisite boards, committees and offices for their review and comment.

Scott Rogers of J.K. Holmgren Engineering of 1024 Pearl Street, Brockton, MA, presented the Application to the Board and responded to questions. There were no voiced or written opposition or support for this application, which is a refile of the Site Plan and Special Permit applications and subsequent decisions under ZBA Files 19-02 and 20-26 that have expired.

FILE DOCUMENTATION (includes without limitation): The following documents, plans, and reports were received into evidence but not limited to:

1. Copy of the legal notice
2. Abutters List
3. Assessor's cards for 111/ 113/ 119 Washington Street, Norwell
4. Decision copy for ZBA File 19-02, filed May 15, 2019 with the Norwell Town Clerk
5. Decision copy for ZBA File 20-26 modification of File 19-02 to add a pharmacy drive-in window, filed December 14, 2019, with the Norwell Town Clerk
6. Form A-3 ANR Plan for 111-119 Washington Street to merge Lots k/a 111-119 Washington Street, as shown on Assessors Map 11B, Block 20, Lots 11-13
7. Application, signed by Charles C. Hajjar, Trustee, on 1/18/22, and date-stamped by the Town Clerk on 2/2/22, consisting of the following:
 - "Project Special Permit Request Narrative", detailing resubmission of the project detailed in the Board's decisions in File 19-02 and File 20-26
 - Site Development Plan set, entitled "Proposed Retail Addition/ 111, 113, & 119 Washington Street, Norwell/ Plymouth County, Massachusetts for: Hajjar Management Co. Inc., dated 8/18/20, as prepared, signed, and stamped by John K. Holmgren, R.P.E., consisting of sixteen (16) drawings, as follows:

DWG C-1	Cover-General Notes-Legend Sheet
DWG C-2	Existing Conditions Plan
DWG C-3	Demolition Plan
DWG C-4	Layout & Materials Plan
DWG C-5	Grading & Drainage Plan
DWG C-6	Utility Plan
DWG C-7	Landscape Development Plan
DWG C-8	Sediment & Erosion Control Plan
DWG C-9	Operation & Maintenance Plan
DWG C-10	Detail Sheet
DWG C-11	Detail Sheet
DWG C-4A	Overlay Plan #1
DWG C-7A	Overlay Plan #2
PRE-01	Preliminary Floor Plan, © 2016 Walgreen Co.
8. Plans previously submitted with Files 19-02 and 20-26
 - DWG S-1 Septic Design Plan
 - DWG S-2 Septic Design Plan
 - DWG S-3 Septic Design Plan
 - Lighting Proposal Plan, dated, 5/2/18, rev. 6/14/18, from LSI of Cincinnati, OH

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9. Time Limit Extension Agreement, date-stamped by the Town Clerk on 4/7/22, extending the time in which the Board may file a decision to expire on 7/1/22
10. "Planning Board Report & Recommendations" to the Board of Appeals, dated April 27 2022

FINDINGS OF THE BOARD: Based upon the evidence submitted, testimony taken, and Planning Board recommendations received, the Board finds:

1. The Property is known and numbered as 111/ 113/ 119 Washington Street and is shown on the Assessors Map 11, Block 20, Lot 57, Lots 11, 12, and 13, as recorded at the Plymouth County Registry of Deeds in Bk 33854 PG 83 and BK 18316 PG 80, consisting of 2.29 acres with lots merged for purposes of zoning, as confirmed by the ANR, noted in Paragraph 6 above.
2. The Property is located within the Business B Zoning District and the Aquifer Protection District.
3. The existing building, constructed in 1989, and the site in general have been and will continue to be used for business purposes, an allowed use.
4. The current application, ZBA File 22-02 is a refile of the Site Plan and Special Permit applications and subsequent zoning relief granted under ZBA Files 19-02 and 20-26 that have expired. The Applicant proposes to expand the existing building by construction of an addition that will also include a drive-thru window for use by the pharmacy.
5. **Norwell Planning Board Recommendations:** The Applicant has met with the Planning Board, which made the following recommendations cited in its report of April 27, 2022 that are incorporated by reference into these findings and made a part of this decision.
6. As recommended by the Norwell Planning Board, the Board of Appeals finds the Site Plan requirements of NZBL §§ 201-3.4.D. and 201-8.3.D.(4) for addition of a drive-thru window and Parking requirements of NZBL § 201-12.10. have been met, as follows:
 - a. **§ 201-3.4.3.D(1):** *"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."*

ZBA Findings: The Board finds the uses or structures would not be detrimental, offensive, or incompatible, as the proposed business uses of "Retail stores, salesrooms or service establishments . . . and [r]estaurants" are allowed by right under §§ 201-8.3.C., *Permitted Business Uses*. However, it should be noted that such uses that require a Special Permit under the Zoning Bylaw are not included in this decision, unless otherwise currently existing by right or constructed with benefit of proper building permits **and** had met all allowed zoning requirements at the time of construction.
 - b. **§ 201-3.4.3.D(2):** *"The convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and land."*

ZBA Findings: The Board finds that the convenience and safety of vehicular and pedestrian movement within the site and in relation to

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adjacent streets and land met in accordance with the Planning Board's reports of May 11, 2019, November 19, 2020, and April 27, 2022. The Board of Appeals makes particular note that the proposed parking spaces previously approved numbered sixty-six (66), which at that time met zoning requirements. Further, the Planning Board indicates that, "the inclusion of two (2) extra landscaped islands will reduce impervious coverage in a more visible and aesthetically pleasing manner than often-used pervious pavers."

- c. **§ 201-3.4.3.D(3):** "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."

ZBA Findings: The Town's consulting engineer previously reviewed the stormwater management plan submitted and finds the submitted plans substantially meet state and local requirements. In his email of 12/21/18, Health Agent Ben Margro confirmed approval of the septic design with conditions. Trash removal will be by the Applicant's private contractor.

- d. **§ 201-8.3 D.(4): Business District B uses** allowed by special permit include, "Such similar uses as the Board of Appeals may approve."

ZBA Findings: The Board finds that a drive-thru window in a pharmacy is a reasonable and desirable convenience for customers who may be unable to enter the building for a variety of health and physical reasons or matter of convenience. Drive-thru windows are a standard feature in many pharmacies and are, therefore, deemed reasonable for the Board to allow by Special Permit.

- e. **§ 201-12.10. Special Permit for Parking:**

ZBA Findings: Due to the addition of the proposed drive-thru window, parking spaces previously approved to meet bylaw requirements were represented to be reduced by one space. However, the Board may grant a Special Permit upon its determination that special circumstances render a lesser provision adequate for all parking needs under § 201-12.3 and § 201-12.6. As the Applicant stated that the drive-thru window will provide stacking for up to five vehicles, the Board finds the requested reduction of one parking space to be reasonable and can, therefore, be allowed. Although the Planning Board's recommendation indicates a reduction of the required sixty-seven (67) spaces to sixty-five (65) spaces, the Applicant stated at the close of the public hearing that the reduction required would only be for one (1) space with a total of sixty-six (66) spaces to be provided. However, in the Board's decision for File No. 19-02, the total number of parking spaces were shown as sixty-six (66).

DECISION OF THE BOARD: Based upon the application and information submitted and representations by the Applicant's representatives as detailed in the Findings of the Board of Appeals above with the written recommendations of the Norwell Planning Board, dated November 19, 2020, all incorporated herein and made a part of this decision, upon a motion duly made and seconded, Members Barbour, Lynch, and Dean were individually polled and **VOTED** unanimously to grant:

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1. **Site Plan Approval**, as previously granted in its decision File 19-02, date-stamped by the Town Clerk on May 15, 2019, under Norwell Zoning Bylaw § 201-3.4 for modification of the proposed project to add a drive-thru window for the proposed pharmacy use,
2. **Special Permit for addition of a pharmacy drive-in window**, and
3. **Special Permit for reduction in parking** by one space or a total of sixty-six spaces to be provided, all subject to the following:

SPECIAL CONDITIONS:

1. **Prior Site Plan Review Decision (File No. 19-02):** All zoning relief granted and conditions of the Decision for File No. 19-02, as filed with the Norwell Town Clerk, on 5/15/19, shall remain in full force and effect, unless specifically modified herein.
2. **Extension of Prior Site Plan Decision (File No. 19-02):** As requested by the Applicant, all relief granted in the prior decision, filed with the Town Clerk on 5/15/19, unless specifically modified herein, shall be extended to expire concurrently with this decision (File No. 20-26).
3. **Property Development:** The proposed project shall be developed in accordance with the approved plans. However, a mylar set of the approved plans are subject to review by the Board’s consultant for compliance with the approved plan and any and all conditions contained herein. **Note:** A copy of the complete set of the approved 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 § 201-3.4.E. of the Norwell Zoning Bylaw.
4. **Project Escrow Account:** In accordance with the Board’s Rules in Article H (Projects Subject to Site Plan Requirements) under Sections 2 (Technical Review) and 3 (Performance Guarantees, As-Built Plans, Certificates of Occupancy), the Applicant shall provide escrow deposit, payable to the Town of Norwell, to meet the Scope of Services contract for the Town’s consultant.
5. **Planning Board Recommendations, dated 4/27/22:** Prior to issuance of a building permit, the Applicant shall provide sufficient evidence to the Norwell Building Office that all conditions contained within this decision have been met, including but not limited to the following:
 - a. Prior to starting any activity authorized by this endorsement [**Authorized Activity**], the Applicant shall submit to the Board of Appeals and Planning Board proof that the proposal has been evaluated by a Licensed Site Professional on a Soil Management Plan and a Health & Safety Plan pursuant to the Notice of Activity and Use Limitation, as amended, and by whose opinion states that such Authorized Activity is consistent with maintaining a condition of No Significant Risk. An opinion of Town Counsel that the LSP opinion is sufficient shall be obtained and the cost shall be borne by the Applicant.
 - b. Prior to starting any Authorized Activity, the Applicant shall submit to the Board of Appeals and Planning Board proof that the ANR Plan entitled “Plan of Land – 111-119 Washington Street” and endorsed by the Planning Board on April 10, 2019 has been recorded at the Plymouth County Registry of Deeds or Land Court, as applicable.

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- c. Prior to the start of any Authorized Activity, the Applicant shall obtain and provide the Board of Appeals and Inspector of Buildings a Stormwater Pollution Prevention Plan (SWPPP) with the NPDES Construction Works Permit.
- d. The Applicant shall work with the Town Planner to establish a reasonable replacement buffer.
- e. All dumpsters shall be properly maintained and shall be protected by a stockade fence with gate or by other fencing as appropriate. Said dumpsters shall be located and remain on bituminous asphalt or concrete bases, which shall be constructed to contain any leakage. The Applicant shall be responsible for trash disposal on a regular basis and shall ensure that the dumpster areas are maintained. There shall be no exterior storage of refuse materials, (including wooden pallets, cardboard boxes, etc.) within or adjacent to the designated dumpster areas.
- f. The Plan shall be revised to indicate proposed landscaping on Sheet C9 and, as appropriate, snow storage locations shall be adjusted to avoid trees and shrubs.
- g. The lighting on the rear of the building and the sides shall be motion-sensitive and on timers, so that lights do not remain on for an extended period of time.
- h. The Plans shall be revised to add a stop sign at the end of the drive-through land at the edge of the parking area.

Board of Health:

- i. There shall be no increase in sewage flow to the proposed subsurface sewage disposal system and no increase in square footage to the existing and proposed addition structures that results in an increase in sewage flow to the sewage disposal system.
- j. Such sewage disposal system has been designed for not more than 1443 GPD.
- k. Prior to the Board of Health’s issuance of a Certificate of Compliance, the system Owner shall obtain an Operation & Maintenance agreement per 310 CMR 15.

CONDITIONS APPLYING TO ALL DECISIONS:

- 1. ***RECORDING OF THE DECISION:*** A certified copy of this Decision with all documents referenced in Paragraph 2 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.
- 2. ***PLAN TO BE FILED WITH THE REGISTRY OF DEEDS AS PART OF THIS DECISION:*** The following drawing shall be filed as part of this decision:
DWG 4 of the plan set described in the File Documentation in Paragraph 7: “Layout and Materials Plan”, prepared by J.K. Holmgren Engineering, Inc. of 1024 Pearl Street, Brockton, MA, dated 8/18/20, signed and sealed by John K. Holmgren R.P.E., and shall also be signed and sealed by an R.P.L.S. to include any revisions necessary to meet the terms and conditions of this decision.

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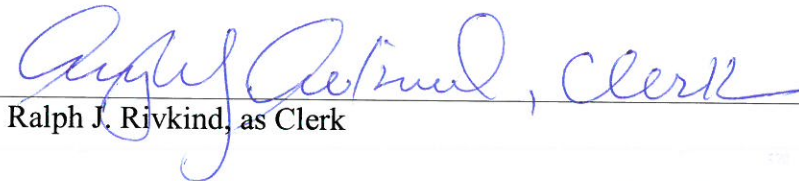
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3. **EFFECTIVE DATE OF APPROVAL:** The zoning approvals granted by the Board of Appeals shall take effect only at such time as this Decision and the supporting documents referenced above are filed with the Office of the Town Clerk of the Town of Norwell, 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 in Paragraph 2 above shall be provided to the Board of Appeals, as well as the Building Inspector, prior to issuance of any building permit.**
4. **LAPSE OF SITE PLAN APPROVAL:** The Applicant shall complete any work described in the site plan approved by the Board of Appeals within one (1) year of the date this Decision is filed with the Office of the Town Clerk or approval granted herein shall lapse.
5. **LAPSE OF SPECIAL PERMIT:** The Applicant shall exercise any Special Permit granted by the Board of Appeals within two (2) years of the date this Decision is filed with the Office of the Town Clerk or as provided in any extension thereof as detailed in the Board's Rules, or it shall lapse.
6. **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 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.

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By unanimous vote of the Board of Appeals at its duly advertised meeting on July 23, 2020, its Clerk or Assistant Clerk is authorized to sign decisions on behalf of the panel members, which for this case are:

Lois S. Barbour
Nicholas Dean
Stephen H. Lynch


Ralph J. Rivkind, as Clerk

Date Filed with Office of the Town Clerk

*This space reserved for
Date Stamp of Town Clerk*

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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.