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OFFICE OF  
BOARD OF APPEALS

## TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295  
NORWELL, MASSACHUSETTS 02061  
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### ***SECTION 6 FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS***

#### ***SITE PLAN APPROVAL with SPECIAL PERMITS - Site Redevelopment***

#### **File No. 22-06**

A public hearing was opened on May 11, 2022, and continued to June 1, 2022; June 15, 2022; June 27, 2022; and closed on August 8, 2022, 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, and broadcast live from the Osborn Room on Comcast Channel 9 and Verizon Channel 40 with a Zoom option on the Application (the Application) of:

**LA Realty Trust  
341 Washington Street  
Norwell, MA 02061**

For **Site Plan Review** under § 201-3.4 and **Special Permits** under §§ 201-3.3 and 201-4.4A (Nonconformance) of the Norwell Zoning Bylaw. Applicant proposes to raze the existing non-conforming structures and to construct an approximate 3,920 sq. ft. 1- story building with supporting infrastructure for a professional service use at **341 Washington Street** in Business District B, and the Aquifer Protection District, as shown on Assessor's Map 12C, Block 24, Lot 021 and recorded at the Plymouth County Registry of Deeds in Book 12291, Page 35. The lot consists of .57 acres.

The application was duly noticed in *The Mariner* on May 25, 2022, and June 1, 2022, and posted at the Norwell Town Hall to fulfill requirements of the Open Meeting Law.

The Applicant, Garth Hoffman of LA Realty Trust, and Al Loomis of McKenzie Engineering Group presented the application to the Board and responded to member questions. No member of the public either during the meeting or in writing prior to the meeting expressed support or opposition to this application.

**FILE INVENTORY:** Documents submitted, including but not limited to the following, were received by the Board:

1. Form ZBA-1 Application for Public Hearing, dated 4/27/22, signed by the Applicant, LA Realty Trust, received and stamped by the Board of Appeals on 4/28/22 and by the Town Clerk on 4/28/22.
2. Form ZBA-4 Time limit extension agreement to expire on 8/31/22, dated 6/17/22, signed by the Applicant, LA Realty Trust, received and stamped by the Board of Appeals on 6/21/22 and by the Town Clerk on 6/22/22.
3. Form ZBA1-A Site Plan Review: Supplemental Information.
4. Form ZBA-2 Public Notice Authorization.
5. "Site Development Plans – 341 Washington Street, (Assessor's Parcel No. 24-021) Norwell Massachusetts" dated 4/27/22, as revised 6/21/22, all signed and sealed by Bradley C. McKenzie, P.E., of McKenzie Engineering Group, with additional revisions as noted.

- DWG 1 Cover Sheet (rev. 7/22/22)
- DWG 2 General Notes, Legend & Abbreviations (rev. 7/22/22)
- DWG 3 Existing Conditions Plan
- DWG 4 Site Layout Plan (rev. 7/22/22)
- DWG 5 Grading & Utility Plan (rev. 7/22/22)
- DWG 6-9 Construction Details (rev. 7/22/22)
- DWG 10 Erosion & Sedimentation Control Plan (rev. 7/22/22)
- DWG 11 Landscaping Plan (rev. 7/22/22)
- DWG 12 Construction Plan/Erosion & Sedimentation Control Plan (rev. 7/22/22)

6. Architectural Plan set, dated 1/26/22, as revised 3/3/22, for "Body Mechanics Physical Therapy, 341 Washington Street, Norwell MA 02061", prepared by R2 Architects and signed and sealed by Robert F. Reifeiss, Registered Architect, consisting of 19 drawings, as detailed below:

- A0.00 Cover Sheet
- A1.01 Architectural Foundation Plan
- A1.02 Architectural Floor Plan
- A1.03 Floor Finish Plan
- A1.04 Reflected Ceiling Plan
- A1.05 Roof Plan
- A2.01 Exterior Elevations
- A2.02 Exterior Elevations
- A2.03 Interior Elevations
- A3.01 Building Sections & Details
- A3.02 Rake and Vestibule Sections
- A4.01 Entry Vestibule Plan Details

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- A5.01 Partition Type, Finish Schedule MAAB Ht Standards
- A6.01 Door Schedule & Entry Details
- A6.02 Window Schedule & Details
- S100 Foundation Plan & General Notes
- S101 Roof Framing Plan & Truss Elevations
- S200 Foundation Details
- S201 Framing Details

7. Report entitled "Drainage Calculations and Stormwater Management Plan", dated 4/27/22 and revised through 7/21/22, prepared by McKenzie Engineering Group; not signed or sealed.
8. RAB Lighting Plan, prepared by Jeremy Boudrot, dated 7/19/22.
9. Planning Board Report and Recommendations to the ZBA, dated 8/3/22.
10. Chessia report, dated August 7, 2022, based on the Revised Site Plan drawings, as submitted by Al Loomis on 8/4/22, to address the Planning Board's Report and Recommendations of 8/3/22, including:
  - a. Standalone O & M Plan with BMP Plan added at the end of the document.
  - b. Site Layout Plan showing additional snow storage areas.
  - c. Grading & Utility Plan showing the proposed 141 contour at the west side of the proposed parking area connected to the existing 141 contour as well as the relocated silt sock.
  - d. PDF of the Landscape Plan with the proposed relocated silt sock included to illustrate protection of trees to be retained. Note that the 8" maple at the northeast corner of the proposed trash enclosure, previously noted to be retained is now noted to be removed as the grading necessary for the trash enclosure will likely compromise it.

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**FINDINGS:** The Board made the following findings:

1. The Property is located in a Business B-6 District and in the Aquifer Protection District and has 24,782 square feet of lot area and 128 feet of frontage on Washington Street.
2. The Applicant is seeking approval to raze two existing structures (982 s.f. and 1,820 s.f., respectively), retire and replace the existing septic, construct new stormwater infrastructure and construct a new 3,920 s.f., 1-Story building for a professional service use (a physical therapy use).
3. The lot is dimensionally nonconforming as to lot area. The two existing buildings are nonconforming as to front yard and rear yard setbacks and the current use is nonconforming as to parking dimensional requirements. The proposed project will eliminate the front and rear yard and parking nonconformities.
4. The setback from the centerline of the way will be 73.5 feet, which does not comply with ZBL §201-9.4.A(1) as that requires 75 feet; however it does conform with ZBL §201-9.4.A(2) which allows a required yard to be the average of the setbacks for the two abutting lots with the average setback for the two abutting lots being 55.2 feet from the centerline.
5. The Planning Board submitted the following recommended conditions in Paragraph V of its Report and Recommendations, dated 8/4/22, to which panel members voted to adopt in whole, as incorporated into these Findings and restated in its entirety below:

General:

1. *After receiving certification from Town Clerk that no appeal has been taken within twenty (20) days, or if appealed than dismissed or denied, a copy of the ZBA's Decision, with the*

relevant plan sheets shall be filed with either the Registrar 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 recorded land, or with the Recorder of the Land Court to be registered and noted on the Owner's certificate of title in the case of registered land.

2. No lighting shall be placed on the building or on the Property that spills light onto adjacent property.
3. Contact data for the project manager shall be provided to the Building Department and Planning Office before the start of construction.
4. No Building Permit shall issue unless:
  - a. A copy of the recording fee receipt and the book and page for the recording of the decision and plan sheets has been returned to the ZBA.
  - b. Evidence is provided to the ZBA and the Building Official that a copy of the ZBA's Decision, certified by Town Clerk, has been duly recorded with the Registrar of Deeds or Recorder of the Land Court.
  - c. Soil conditions at the subsurface infiltration system have been reviewed by an agent of the Town at the time of excavation and prior to any fill being placed to confirm that conditions are consistent with the assumption in the design calculations.
  - d. The Site Plan has been revised to add the 141 contour on the west side of the parking lot area as noted in the July 7, 2022 peer review report. Note: A revised sheet was received on August 2, 2022 and is being peer reviewed for the ZBA by Engineer Chessia.<sup>1</sup>
  - e. The Site Plan has been revised to conform to the front setback requirements of ZBL §201-9.4.A(1) by revising the Site Plan to show that one of the following conditions has been satisfied:
    - i. The building shall be moved back 1.5 feet to provide 75 feet of distance between the front of the building and the way centerline;
    - ii. The applicant shall obtain dimensional variance relief from the 75-foot distance requirement; or
    - iii. A note has been placed on the Site Plan that confirms that the front of the building shall be setback in accordance with the average front yards of the lots abutting on either side of the Property as provided for under footnote 2 of ZBL §201-9.4.A(1).<sup>2</sup>
  - f. An O&M shall be provided that includes a plan indicating the location of BMPs, snow storage areas, and the other items as required in the DEP Handbook. Note: An O&M was provided on August 2, 2022 and is being peer reviewed for the ZBA by Engineer Chessia.<sup>3</sup>
  - g. The silt sock shall be relocated on the plans to indicate the limit of work outside of the location of trees proposed to remain. If any trees are to be removed, they need to be shown on the plan. Note: A revised plan sheet was provided on August 2, 2022 and is being peer reviewed for the ZBA by Engineer Chessia.<sup>4</sup>
  - h. The Stormwater Conditions set forth in the July 7, 2022, Chessia Report, attached hereto, at pp. 11-14, must be satisfied.<sup>5</sup>
  - i. An opinion from Applicant's counsel regarding the status of shared access (whether there are easements or just a license) and be reviewed for sufficiency by Town Counsel.

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<sup>1</sup> Per report, dated 8/7/22, from Chessia Consulting Services, the "141 contour" has been added to the plan.

<sup>2</sup> Per report, dated 8/7/22, from Chessia Consulting Services, the front setback is understood to comply.

<sup>3</sup> Per report, dated 8/7/22, from Chessia Consulting Services, the O&M has been updated to conform to the recommended condition.

<sup>4</sup> Per report, dated 8/7/22, from Chessia Consulting Services, "[t]he silt sock has been adjusted as requested to protect trees to remain."

<sup>5</sup> Per report, dated 8/7/22, from Chessia Consulting Services, the "[r]ecommended conditions are included per Condition c. regarding confirmation of soil conditions. The gutter sizing calculations have been submitted and meet requirements."

- j. Provide further snow storage.<sup>6</sup>
- k. DOT approval for the curb cut changes shall be obtained; however, a building permit may issue if a bond is provided by the Applicant running to the Town, in an amount that satisfies the Building Department as sufficient to provide for removal of the building, should DOT deny approval after a building permit issues.

No occupancy permit shall issue unless:

- a. A certified as-built plan, confirming that the impervious surface coverage, post-construction, does not exceed the maximum allowed, has been provided to the Building Department and Planning Office and that the lighting satisfies these conditions. The lighting conditions shall continue to be observed and there shall be no light spillage to the adjacent property.
  - b. DOT approval for the curb cut changes has been obtained and evidence of same is provided by the Applicant to the Building Department.
- 6. Hours of operation shall conform to the Town's requirements.
  - 7. Any new signage shall undergo the required review.
  - 8. The Applicant shall exercise any relief granted by the Board of Appeals within two (2) years of the date this Decision is filed with Town Clerk or as provided for in any extension thereof as detailed in the Board [of Appeals]'s Rules, or it shall lapse.

6. **SPECIAL PERMIT FINDINGS:** The Board of Appeals may grant a Special Permit under NZBL § 201-3.3B, if all of the following conditions are satisfied:

(1) *The conduct of the proposed use will not be detrimental to the neighborhood and zoning district;*

**Finding:** The Board finds the planned use for the proposed project on the nonconforming lot as shown on the site plan, as reviewed in the peer review and Planning Board reports, will be reasonable, appropriate, and an allowed structure for service use to provide physical therapy and would not be detrimental, offensive, or incompatible, as the proposed business uses of "Retail stores, salesrooms or service establishments . . ." are allowed by right under §201-8.3.C., Permitted Business Uses.

(2) *The conduct of the proposed use will not significantly alter the character of the zoning district; and*

**Finding:** The Board finds the proposed project to construct one building for a physical therapy service business, an allowed use, will replace two existing buildings to be demolished include similar uses. Therefore, the Board finds the proposed use will not significantly alter the character of the zoning district.

(3) *The conduct of the proposed use will not be 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.*

**Finding:** The proposed project for the service business will replace existing two buildings and remove three nonconformities relating to setbacks and parking. The proposed use and occupancy for physical therapy is an allowed service use. Therefore, the Board finds the proposed use will not be more injurious or hazardous to the community than the two existing buildings and/or uses.

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<sup>6</sup> Per report, dated 8/7/22, from Chessia Consulting Services, "[a]dditional snow storages areas have been added to the plans as recommended."

## DECISION OF THE BOARD:

Based upon the evidence presented and its findings detailed above and incorporated herein and forming a part of this decision, upon a motion duly made and seconded, Members Dean, Lazzaro and Lynch **VOTED** unanimously to grant **Site Plan Approval** under § 201-3.4 and **Special Permits** under §§ 201-3.3 and 201-4.4A to raze the existing non-conforming structures and to construct an approximate 3,920 sq. ft. 1- story building with supporting infrastructure for professional service use at **341 Washington Street** in Business District B in accordance with the submitted plans, dated April 27, 2022, as revised through 7/22/22, subject to the following:

## SPECIAL CONDITIONS:

1. **RECORDING OF THE DECISION:** A certified copy of this Decision with all documents referenced in Paragraph 2 below shall be recorded at the Applicant's expense 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 SET AND DOCUMENTS TO BE RECORDED WITH THIS DECISION:** The Applicant shall file the following Mylar® sheets, as endorsed by the Board of Appeals on \_\_\_\_\_, and detailed below, with the Registrar of Deeds and/or Recorder of the Land Court, specifically:
  - Drawings for the "Site Development Plans – 341 Washington Street, (Assessor's Parcel No. 24-021) Norwell Massachusetts" dated 4/27/22, as revised 7/22/22, all signed and sealed by Bradley C. McKenzie, P.E., of McKenzie Engineering Group
  - DWG 4 Site Layout Plan (rev. 7/22/22)
  - DWG 5 Grading & Utility Plan (rev. 7/22/22)
  - DWG 11 Landscaping Plan (rev. 7/22/22)
  - Lighting Plan RAB as prepared by Jeremy Boudrot, dated 7/19/22
3. **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 in Paragraph 2 of these Special Conditions 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.**
4. **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 4/30/14 as ratified on 6/25/14, subject to any modifications as may be adopted from time to time.
5. **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.
6. **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

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detailed in this decision or any modifications thereto, prior to issuance of any Certificate of Occupancy.

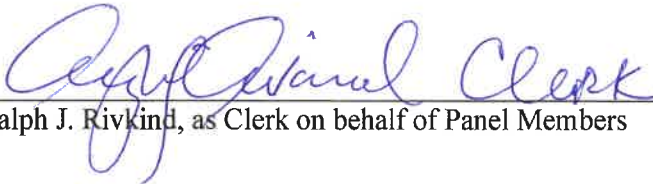
7. **AS-BUILT PLANS:** *Prior to issuance of a Certificate of Occupancy*, the property owner or Applicant shall provide two full-sized paper copies as well as digital copies of *As-built* plans, signed and stamped by a registered professional engineer, landscape architect, and/or professional land surveyor, as appropriate, in accordance with § 201-3.4 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.
8. **CERTIFICATES OF OCCUPANCY:** No certificate of occupancy shall be issued until such time as all conditions of the Board’s decision are met.

**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 than dismissed or denied, a copy of the Board’s decision must be filed with either the Registrar 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 the unregistered land, or with the Recorder of the 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:** The zoning relief granted by this Decision shall take effect only at such time as a copy of this Decision, certified by the Office of the Town Clerk of the Town of Norwell, is recorded with the Registrar of Deeds or Recorder of the Land Court.
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 as provided in any extension thereof as detailed in the Board’s Rules, or it shall lapse.
11. **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.

By unanimous vote of the Board of Appeals at its duly advertised meeting on August 8, 2022, its Clerk or Assistant Clerk is authorized to sign decisions on behalf of the panel members, which in this instance are:

Nicholas K. Dean  
William J. Lazzaro  
Stephen H. Lynch

  
\_\_\_\_\_  
Ralph J. Rivkind, as Clerk on behalf of Panel Members

Date Filed with Office of the Town Clerk

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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