

OFFICE OF  
BOARD OF APPEALS

## TOWN OF NORWELL

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## FINDINGS AND DECISION

*of*

**The Norwell Board of Appeals**

*for*

***Approval of SITE PLAN MODIFICATION for Additional Parking***

**File No. 22-08**

A PUBLIC HEARING was held on June 15, 2022, and continued to August 8, 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, on the application of:

**Longwater Norwell, LLC  
c/o James Rader  
80 Washington Street, Building J-40  
Norwell, MA 0206**

For **Site Plan Review** under Norwell Zoning Bylaw §§ 201-3.4A to expand by 75 parking spaces an existing commercial parking area, drainage, utilities and landscaping at **136 Longwater Drive** in Business District C-2, the Watershed and Wetlands Protection

District, and the Aquifer Protection District, as shown on Assessor’s Map 17, Block 18, Lot 28 and recorded at the Plymouth County Registry of Deeds in Book 48233, Page 46. The lot consists of 7.45 acres.

The Public Hearing was duly noticed in the *Mariner* on May 5, 25, 2022 and June 1, 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.

Donald F. Bracken of Bracken Engineering, Inc. of 905 S Main St., Mansfield, MA, presented the Application to the Board and with counsel for the Applicant, Gary M. Markoff of Sherin and Lodgen LLP of 101 Federal St., Boston, MA, responded to questions. At the meeting on 6/15/22, Mr. Danieli, an abutter with property at 95 Longwater Drive, expressed concern about the status of an outlet and provided a photo that was entered into evidence. Subsequently, the owner agreed to meet with Mr. Danieli, although no confirmation has been received that such a meeting took place. No other concerns were expressed in writing or during the public hearing.

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

1. The April 2022 Site Plan Application, which consists of Form ZBA-1 (Application for Public Hearing) as executed by the Applicant on April 23, 2022.
2. The 2022 Site Plan, which is entitled: “Proposed Parking Lot Expansion at #136 Longwater Drive Norwell Massachusetts” and dated August 24, 2020, as revised April 28, 2022, and updated as noted, prepared by Bracken Engineering, Inc. consisting of 9 sheets and signed and stamped by Donald F. Bracken, Jr., PE.
  - DWG 1 Cover Sheet
  - DWG 2 Existing Conditions
  - DWG 3 Site Preparation & Demolition Plan
  - DWG 4 Sediment & Erosion Control Plan
  - DWG 5 Layout and Landscaping Plan, signed and sealed by Alan M. Grady, PLS
  - DWG 6 Grading, Drainage and Utilities
  - DWG 7 Construction Notes and Details
  - DWG 8 Construction Details
  - DWG 9 Operation & Maintenance Plan
3. Photometric Lighting Plan Drawing, entitled “Site Lighting-Revised #3, prepared by REFLEXLIGHTING of 7 Tide St., Boston, MA 02210, dated 4/25/22 and revised 6/22/22; not stamped or signed.
4. Submittal packet with a description of the proposed work together with an “Application for Public Hearing,” inclusive of Form ZBA 1 and ZBA 1A. A copy with page 6 revised was included in data submitted on June 22, 2022.

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5. "Stormwater Report for 136 Longwater Drive, Norwell MA" dated August 24, 2020, last revised June 21, 2022, as prepared by Bracken Engineering, Inc, signed and sealed by Donald F. Bracken, Jr., PE.
6. Response letter dated June 21, 2022, prepared by Bracken Engineering, Inc.
7. Plans consisting of two drawings entitled "WB-40 (40' Semi Trailer) Vehicle Turning Analysis" and "27' Refuse ruck Vehicle Turning Analysis", dated 6/21/22, as prepared by Bracken Engineering, Inc., signed and sealed by Donald F. Bracken Jr., PE.
8. Overview aerial plan.
9. Operation and Maintenance Plan, consisting of 12 pages and one drawing, dated 6/21/22, as prepared by Bracken Engineering, Inc., signed and sealed by Donald F. Bracken Jr., PE.
10. The Chessia Consulting Services LLC Peer Review Reports, dated May 15, 2022, and July 7, 2022, and the Chessia Consulting Services, LLC Summary dated July 15, 2022.
11. August 2, 2022, e-mail from Applicant's counsel re: title issues.
12. Memorandum from MDM Transportation Consultants, Inc. dated July 13, 2022.
13. Extension form for time in which to file a decision to 9/30/22.
14. Photograph of stormwater outlet submitted by John Danieli on 6/15/22

**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 136 Longwater Drive (Assessor's Map 18, Lot 28) on 7.5 acres of area with a 718.75 feet of frontage on Longwater Drive of which 5.82 acres is upland and the remaining area part of a drainage/retention basin which is a wetland resource constructed in a Business C-2 [ZBL §201-6.2E.(2)] and in the Aquifer Protection District in 1982 in the Assinippi Office Park as shown on subdivision plans approved and modified by the Planning Board in the 1970s and 1980s.
2. On February 6, 1986, a special permit/site plan approval decision was filed by the Norwell Board of Appeals for the Property that allowed the construction of a 35,500-sf office/warehouse, light manufacturing facility with ninety-five (95) parking spaces in lieu of the One Hundred thirty-five (135) parking spaces required. The Decision is recorded at Plymouth Registry of Deeds Book 6712, Page 294.
3. Applicant proposes to create seventy-five (75) new surface parking spaces (14 in front of the building and the remainder to the east of the building by the loading area) with a paved connection for the parking areas and to maintain three curb cuts.
4. The Property is outside of any identified historic/cultural districts under jurisdiction of the Historical Commission, State, or National Registers of Historic Places.
5. According to the Chessia Report (July 7, 2022, page 2), and based on a MassGIS review, the site does not contain protected wildlife habitat areas or certified or potential vernal pools. The site is not in the FEMA flood hazard zone. The site is not tributary to a public surface water supply according to MassGIS and is not in a Zone II of public water supply wells. A portion of the locus is in the Town of Norwell Aquifer Protection District and the Zone II is located close to the northeast corner of the property.

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6. The Planning Board made the following recommendations in its report, dated August 4, 2022, to the Zoning Board of Appeals, as cited below:

1. *The Property is located in the Assinippi Office Park and is shown on subdivision plans approved and modified by the Planning Board in the 1970s and 1980s. The Property drains to a retention/detention basin (“Drainage Basin”). On June 26, 1980, the Norwell Conservation Commission issued an Order of Conditions for the Drainage Basin. (See Book 4849, Page 374). The Drainage Basin was created by enlarging an existing wetland area. The Drainage Basin was constructed during 1982. The Drainage Basin was designed so that the inlets and the single outlet (an 18-inch pipe and spillway located on 95 Longwater Circle) would be at or higher than the high level of the surface water in the Drainage Basin.*
7. *Multiple properties and Longwater Circle and Longwater Drive drain to the Drainage Basin. Many plans and documents indicate that it was the intent of the Assinippi Office Park Developer to use the Drainage Basin for the benefit of all owners and operators in the Office Park. However, while multiple drainage easements are shown on plans and referred to in various instruments, it is not established as to what party or parties have the benefit of the drainage easements. As noted below, the Town took some drainage rights (as shown on a 1987 As-Built Plan) in action taken during 1989. A title opinion to the ZBA will be required to determine who has the rights and obligations to maintain and repair the Drainage Basin and its infrastructure.*
8. *In 1998, Assinippi Park Associates, a developer of the park, conveyed land in the Office Park but retained drainage easements rights (see Book 15862, Page 169) and no information has been provided as to whether the owners of the various lots over which the drainage easements are located have been deeded drainage easements and, if so, whether those rights include rights to maintain the outlet pipe and spillway that form the outlet for the Drainage Basin.*
9. *On February 6, 1986, a special permit/site plan approval decision was filed by the Norwell Board of Appeals for the Property that allowed the construction of a 35,500-sf office/warehouse, light manufacturing facility and allowed 95 parking spaces in lieu of the 135 parking spaces required. (See Decision, recorded at Plymouth Registry of Deeds Book 6712, Page 294.)*
10. *On April 6, 1989, the Norwell Select Board laid out Longwater Drive as a public way. On April 26, 1989, the Select Board issued an Order of Taking to take the necessary interests to support accepting Longwater Drive as a public way. On May 6, 1989, Norwell Town Meeting accepted Longwater Drive as a public way. On June 15, 1989, the Order of Taking was recorded (Book 15862, Page 169) and the as-built plan upon which the taking was based was recorded (Plan Book 32, Page 441). A title opinion to the ZBA as to the Town’s rights and obligations is needed.*
11. *In 2020, when the Applicant first applied for permission to the ZBA and the Conservation Commission for new site plan review, Town Officials noted that the water surface level in the Drainage Basin was above the designed level and the drainage inlets and the single outlet (the 18-inch pipe at the spillway) were flooded and this was causing surcharging of stormwater and “popping” of manhole covers on Longwater Drive.*
12. *During 2020, long delayed maintenance of the Drainage Basin took place, and the single outlet for the Drainage Basin (i.e., the 18-inch outlet pipe and related spillway) was cleared of silt and debris and overgrowth; and, as a result, the*

- surface water level of the Drainage Basin dropped below the level of the inlets and the 18-inch outlet, as required under the approved design.
13. The original 2020 site plan review applications were either withdrawn (ZBA) or revised (Cons. Com.) and a new, revised site plan was received by the ZBA in April of 2022 and referred to the Planning Board for technical review.
14. During the Planning Board's review of the revised 2022 Site Plan, the Applicant's engineer noted during the initial presentation that the inlets and the single outlet for the Drainage Pond are under water again and the Site Plan notes that the surface water level at the Drainage Pond was above its designed level, despite the fact that drought conditions currently existed.
15. Based upon discussion at the meetings held by the Planning Board, the Board determined that the single outlet pipe for the Drainage Basin (the 18-inch pipe located on the property of 95 Longwater Circle) was clogged again. While the pipe has a diameter of 18 inches, during July of 2022 and despite drought conditions, the pipe was blocked to such an extent that less than an inch of water was flowing into the top of the 18-inch outlet pipe. As a result of the blockage, the surface water level at the Drainage Basin was again far above the level it was designed for, and the inlets and single outlet were flooded, and the Drainage Basin was unable to function as designed during a storm event.
16. The Planning Board determined that:
- The 18-inch outlet pipe at the Drainage Basin was significantly clogged during the site plan review process, until August 3, 2022, when it was cleaned out by a crew hired by the Applicant.
  - The banks of the water channel to the rear of the spillway have been damaged by scouring caused by the spillway overflowing and the banks of the channel need to be repaired.
  - The Drainage Pond has been breached in a separate location.
17. The Planning Board determined that the Drainage Basin cannot function as designed unless the 18-inch outlet pipe is cleared and that cleaning occurred on August 3, 2022 by the Applicant.
18. The Planning Board determined that the surface level of the Drainage Basin at the high level observed during drought conditions in July (before the outfall pipe was cleared) cannot be maintained - unless a modification of the approvals for the design of the Drainage Basin and its outlet pipe and spillway are made and approved. This would require a revised order of conditions or a new order and modification to the prior subdivision approval.
19. The Planning Board determined that the high level of the pond during drought conditions meant that, during a storm event, surcharging of catch basins on Longwater Drive likely would occur again, causing manhole covers to pop up into the air and this could cause injuries and property damage and would be a very unsafe condition. In addition, it could cause flooding downstream, which also could result in injuries and property damage.
20. The Planning Board determined that the drainage infrastructure that the Property relies upon was not functioning as designed; but will return to functioning as designed following the August 3, 2022, 18-inch outlet pipe clearing by the Applicant.
21. The Property is outside of any identified historic/cultural districts under jurisdiction of the Historical Commission, State, or National Registers of Historic Places.

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22. According to the Chessia Report (July 7, 2022, page2), based on MassGIS review, the site does not contain protected wildlife habitat areas or certified or potential vernal pools. The site is not in the FEMA flood hazard zone. The site is not tributary to a public surface water supply, according to MassGIS and is not in a Zone II of public water supply wells. A portion of the locus is in the Town of Norwell Aquifer Protection District and the Zone II is located close to the northeast corner of the property.

7. Paragraph 7 of the Planning Board report notes that a title opinion would be required to determine which entity/entities has/have the rights and obligations to maintain and repair the Drainage Basin and its infrastructure. The Board of Appeals agrees. However, this ambiguity has developed over an extended period of time with subsequent changes in laws and regulations that places this determination outside of the authority of the Board of Appeals. Similarly, although the Board of Appeals agrees that additional title work noted in Paragraphs 8 and 10 would shed light on these obligations, the fact remains that this Applicant and any abutters must work cooperatively for the benefit of all properties served by this stormwater infrastructure in order to ensure the public health, safety, and welfare of property and persons.

### ***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 and with the written recommendations of the Norwell Planning Board, dated August 4, 2022, limited, however, by those special conditions enumerated below and made a part of this decision, and upon a motion duly made and seconded, Members Barbour, Lazzaro, and Lynch **VOTED** unanimously to grant **Site Plan Modification** under Norwell Zoning Bylaw § 201-3.4 to add seventy-five (75) surface parking spaces and improve related drainage, utilities, and landscaping to the Property in accordance with the following:

### ***SPECIAL CONDITIONS:***

1. ***PROPERTY DEVELOPMENT:*** The proposed project shall be developed in accordance with the approved plans. However, a 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.
2. ***SITE PLAN MODIFICATION:*** Prior to commencement of work, the Applicant shall provide evidence that the site plan has been modified as recommended by Peer Review Engineer John Chessia to redesign the grading at the easterly curb cut of Longwater Drive, without adjusting

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- catch basin rims, but maintaining a slope of 1% in order to shift the highpoint at the easterly access as close to Longwater Drive as is feasible.
3. **NPDES PERMIT:** A copy of the NPDES Permit, if one is required, shall be provided to the Building/Zoning Office for the work shown on the approved Plan.
  4. **RECORDING OF THE DECISION:** A certified copy of this Decision with all documents referenced in Paragraph 5 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.
  5. **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: The Site Plan entitled: “Proposed Parking Lot Expansion at #136 Longwater Drive Norwell Massachusetts” and dated August 24, 2020, as revised April 28, 2022, and updated as noted, prepared by Bracken Engineering, Inc., as signed and sealed by Donald F. Bracken, Jr., P.E.
    - DWG 5 Layout and Landscaping Plan, also signed and sealed by Alan M. Grady, P.L.S.
    - DWG 6 Grading, Drainage and Utilities
  6. **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 5 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: As construction of the approved expanded parking would not trigger the requirement for a building permit, evidence of recording of the Board’s Decision and documents specified above shall be provided to the Building Zoning Office, prior to commencement of any work on the proposed project.**
  7. **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.
  8. **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.
  9. **DESIGN ENGINEER CERTIFICATION:** Prior to the Zoning Board of Appeals sign-off on this project, 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.

10. **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.
11. **CERTIFICATES OF COMPLETION**: No certificate of completion 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**: Prior to the commencement of any work hereunder, this Decision granting Site Plan Approval Decision 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 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.
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.
2. **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.
3. **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.

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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 for this case are:

Lois S. Barbour  
William J. Lazzaro  
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:** The decision of the Board of Appeals granting Site Plan Approval when independent of a Special Permit may be appealed in accordance with Massachusetts General Laws, Chapter 249 Section 4.