



Case No.: _____

**Town of Ashland
Planning Department**

101 Main St.
Ashland, MA 01721
508.881.0101

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ashlandmass.com/316/Zoning-Board-of-Appeals

Application to Zoning Board of Appeals

Note: Application must be complete, with a certified plot plan and all application fees to be accepted.

1. Property Information:

Street Address: 35 Nickerson Road
Zoning District: INDUSTRIAL Overlay District: Photo Voltaic
Assessor's Map: 25 Lot: 340 Deed Book: 82373 Page: 501
Current Property Owner*: ORB INVESTMENTS LLC

2. Permit/Approval Sought:

Special Permit (Section 9.3) Amendment to Special Permit (Section 9.3) Variance (Section 9.2.2.2)
 Appeal of Building Inspector Decision (M.G.L. Ch. 40A) Comprehensive Permit (M.G.L. Ch. 40B)
Use Type: Residential: EXISTING HSE Commercial: Industrial: Zone Proposed Contractor Garage

3. Applicant Information:

Owner: Tenant: Prospective Purchaser/Tenant:
Name: ORB INVESTMENTS LLC Rahim Barbieri Mgr
Address: 7 Daisley Pl FRAMINGHAM 01702
Phone: _____ Email: _____
Agent's Name: George Connors
Agent's Address: 10 S.W. Cutoff Northborough MA 01532
Agent's Phone: 508-393-9727 Agent's Email: george@gfconnorslaw.com

4. Additional Information:

Are all real estate taxes and other assessments to the Town current?: yes
Is the parcel on a scenic road?: NO
Is this an amendment to a previously issued Special Permit? (attach approved permit): NO
Date structure was built? (Buildings built before 1940 may need review by Historical Commission.): 1-1952 (Access Card)
Is the property within 100 ft. of a wetland, within 200 ft. of a stream, or in a floodplain?: NO

5. Description of the Relief Sought: (Attach Letter of Denial of Building Permit.)

SPECIAL permits + DIMENSIONAL VARIANCES per Attached
letter/narrative of requested Relief/Details
Maintain Existing Pre-Exist-Non Conform House +
CONSTRUCT CONTRACTOR GARAGE SUBSTANDARD LOT

What specific zoning bylaws is this application associated with?: 9.2 + 3.3

6. Justification for why the application should be approved:

See Detailed ATTACHED Letter

7. Existing use and condition of the property and surrounding neighborhood: (Please list all relevant non-conformities.)

Mix of Rnd/Rco structures/uses - Multiple users MANY LOTS,
MANY SUBSTANDARD LOTS (Dimensional)

By signing below you assert this application is complete and accurate to the best of your knowledge:

Signatures:

Applicant/Agent: George Connors Applicant's Name: Richard Burbien Mgr ORB MV, LLC

Email Address: JRBARB@R177@SMU.COM Phone Number: 724-244-1630

Agent's Relationship to Applicant: Att/Agent Firm: GF Connors Counselor LLC

Owner: [Signature] Owner's Name: Richard Burbien Mgr ORB MV, LLC

*Note: If the applicant is not the owner, the owner **MUST** sign above or submit a letter of permission with the application.

Ashland Zoning Board of Appeals Fees

Application Type	Fee
Special Permit	\$250
Modification / Extension of Special Permit	\$200
Variance	\$490
Modification / Extension of Variance	\$400
Administrative Appeal of Building Inspector Decision	\$400

Peer Review Deposit	
2-15 Lots/Units	\$4,000
16-20 Lots/Units	\$6,000
21-25 Lots/Units	\$10,000
26-74 Lots/Units	\$20,000
75 or More Lots/Units	\$30,000
20 or Fewer Parking Spaces	\$2,500
21 or More Parking Spaces	\$5,000
Wireless Commercial Facility	\$3,000
Appeal of Building Inspector for 2+ Lots	\$1,000

Note: Unused Peer Review funds will be returned to the applicant at the end of the process. The applicant may request details on the account at any time from the Planning Department.

Public Hearing Associated Costs

Pursuant to State Law (M.G.L. Ch. 40A, Section 11), the ZBA requires public hearings for the above matters. There are additional fees for the following:

Abutter List	\$2 per abutter, \$50 max (Obtained and Paid at Assessors Department).
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The Zoning Board of Appeals may require a peer review consultant and/or posting of the project on coUrbanize.com at the expense of the applicant.

Please be aware that the Planning Department may hold back decisions and/or permits until all checks have been received.

RICHARD P BARBIERI 07-06
HAWTHORN PH. 508-879-7921
7 DAISLEY PLACE
FRAMINGHAM, MA 01702

9/28/2024

3462

53-7181/2113

Pay to the Order of Town of Ashland
Four hundred & 00/100

Date 

\$ 400.00

Dollars





Application Requirements

All applications must include a fully completed application form, all required documents, and a check for the full amount made to the Town of Ashland. Any application not complete may lead to the Zoning Board of Appeals issuing a denial without prejudice.

All applications must include:

- A letter of Denial of a Building Permit from the Building Commissioner.
- Abutters list (300') from the Ashland Assessors office (and other towns if applicable)
- A copy of the property card from the Assessors Office.
- One (1) 24x36" sized copy of the certified (signed and stamped by a registered land surveyor) Site Plan and must include a dimensional table of required and proposed setbacks.
- Sixteen (16) packets containing the following: a copy of the application, an 11x17" sized copy of the plot plan, and any supporting documentation. (Note: Make sure the 11x17" copies of the plans are readable. Feel free to consult with the Planning Department if at all unsure.)
- A .pdf copy of the submitted plans must be either handed in to the Planning Department or sent by email to planning@ashlandmass.com, and a georeferenced CAD file (MA State Plain NAD83 Feet) will be required for final approval.

Note that additional fees associated with the Public Hearing process must also be paid with a separate check, along with a copy of the abutters list. See Public Hearing Associated Costs on page 4 for details.

Criteria

The criteria for a Special Permit is either: (from Chapter 282 Section 9.3.2) "...the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site." or (from Chapter 282 Section 3.3.2/3.3.3) "...only if determines that such [change of use or change of a structure] shall not be substantially more detrimental than the existing nonconforming [use or structure] to the neighborhood."

Expect to discuss the following:

- Community needs served by the proposal
- Traffic flow and safety, including parking and loading
- Adequacy of utilities and other public services
- Neighborhood character and social structures
- Impacts on the natural environment
- Potential fiscal impact, including impact on town services, tax base, and employment

The criteria for a Variance is that you need to create or extend a nonconformity due to a hardship derived from the physical conditions of the lot or else the lot can't be used. Note that the threshold for granting a variance is somewhat substantial. (See MGL Ch. 40A Section 10.) *(See Section 10)*

George F. Connors
Counselor At Law

10 Southwest Cutoff, Northboro, MA 01532
Zero Cranberry Lane, Hopkinton, MA 01748
Phone (508) 393-6055 • Fax (508) 393-5242
george@gfconnorslaw.com

Ashland Zoning Board of Appeals
Town Hall
Main Street
Ashland, MA 01721
December 16, 2024

RE: - Barbieri Nickerson Ashland REQUEST FOR-

2 SPECIAL PERMITS AND A DIMENSIONAL VARIANCE

Dear Members of the Board:

Applicant, ORB Investments LLC., Richard Barbieri Manager, owner of land and building at 35 Nickerson Road, respectfully requests a **SPECIAL PERMIT** to construct a '**contractor garage**' on an existing dimensionally substandard lot. This lot is presently improved with a pre-existing+non-conforming residential building in the Industrial Zone. The applicant requests **DIMENSIONAL VARIANCE**, (tabulated below) for the expanded use.

Applicant also requests the Board grant a dimensional **SPECIAL PERMIT** to allow the **existing building** to remain as a residential structure/use, pursuant to Sections 3.3.1, 3.3.2, and 3.3.3 **Nonconforming Uses and Structures** and **Nonconforming Uses, Nonconforming Structures**, respectively. This existing 'building' was recently altered to remove an existing substandard garage (constructed without a foundation (was simply placed on the ground)) to provide a suitable width driveway to the back of the lot for the Contractor Garage. Here the existing building is lawfully in existence, lawfully and lawfully in use. The change to add an allowed use in the Industrial District is a less nonconforming use.

In order to minimize nonconformities, the applicant is designating the new contractor's garage as the principal use for the Industrial Zone and therefore the existing building becomes an accessory structure. A complex set of nonconformities exist and are somewhat mitigated by the change in use of the property to industrial.

The land is a small lot on the north side of Nickerson Road and contains a residential building amongst the various buildings and uses in the 'neighborhood.' The lot is generally flat and has a building which has been renovated to allow for a driveway to the rear as shown on the attached Petition Plan.

Relief from Section 4.0 Dimensional Requirements, at 4.1 Table of Dimensional Requirements:

ZONING REQUIREMENT

RELIEF REQUESTED

LOT

Area 30,000sf

Existing Lot at 16,000 sf

Frontage 150 feet

Existing Lot at 100 feet

PROPOSED GARAGE

Side Yard 30 feet

Proposed garage at 10 feet* **RELIEF REQUESTED**

Rear Yard 30 feet

Proposed garage at 10 feet* **RELIEF REQUESTED**

EXISTING BUILDING

Side yard 30 feet*

Existing 8.3 feet (east side only)

Set back 40 feet

Existing 30.2 feet

Existing Building at 8.3 feet from property line---Required 10 feet. **RELIEF REQUESTED**

Existing Building = 33% of main building floor area --required 25% **RELIEF REQUESTED**

Existing Building = 9% of lot area --50% allowed

Where the provisions (cited below) otherwise provide relief, the change of use is not clear,

* applicant has discussed these setbacks with the Fire Department

The existing building will remain and would therefore require a Special Permit in addition to the dimensional relief listed above. The genesis of the Nickerson Road area is clearly one that included residential uses where some remain while the area also supported industrial type uses. It is clear the residential use was customary to this area.

The Zoning Bylaw requires 30,000 sf and 150 feet of frontage in the Industrial Zone. This existing lot contains 16,000 sf with 100 feet of frontage. A majority of the lots in the area meet or exceed the minimum area, however several considerably less than 30,000 sf. Many lots have the minimum frontage, or more, but several have a minimum of 80 to 100 feet. (see GIS mapping).

Lots in the area are generally very intensive industrial 'contractor type' uses and several have some residential components.

The Zoning Code's Dimensional Table has reference to "Dwellings" providing a standard for height. It is clear some provisions for a dwelling exist within the Zoning Code.

Here the existing building and the proposed contractor garage are reasonable uses, commensurate with the existing neighborhood of Nickerson Road.

Applying the Powers Test-

(Powers v. Building Inspector of Barnstable, 363 Mass. 658 (1978). A use will be considered to be a change from the protected use if:

(a) The resulting use does not reflect the nature and purpose of the use existing when the zoning law took effect which made it nonconforming; or

(b) There is a difference in the quality or character, as well as the degree, between the resulting use and the originally protected use; or

(c) The resulting use is different in kind in its effect on the neighborhood from the originally protected use.)

Here the existing house use is not different in kind in the neighborhood from the original uses surrounding within the district, and is not different in character within this neighborhood.

DIMENSIONAL VARIANCES

The land is influenced by the pre-existing building (structure), and impacts the economic viability of highest and best use, that of an industrial use. By allowing for a 'conforming' use, the contractor garage, the use meets the Purpose and Authority of the Ashland Zoning Bylaw --- "to encourage the most appropriate use of land throughout the town, and to increase the amenities of the town".

Hardship accrues to both the Lot and Structure –

The **structure** is situated in the front of the lot, common at the time of construction, and not in violation of various dimensional zoning criteria. Accordingly, the structure, having great value, would constitute an economic hardship to make the land conform to current dimensional setbacks and coverage. This individual structure is unlike others in the area where the use, residential, is signally on the lot. The Statute provides for relief for Structures

*Section 10. The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or **structures** a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided however, that such variances properly granted prior to January first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.*

The **shape** of the land leaves a large 'back yard' area otherwise currently unusable, but available for contractor uses. These uses typically require larger vehicle access for turning movements, and thus necessitate the location of the garage to provide this maneuvering room, consequently the building as close as possible to the lot line. Many of the lots have buildings similarly close to lot lines. The applicant has discussed this 10 foot lot line separation with the Fire Department and found it is acceptable in this instance.


Here the structure, having been built in or around 1952 (Assessors Card) is 70 years old and therefore subject to the Ashland Historic Structures Demolition Delay Bylaw Chapter 125. While the structure may not be 'significant' it would be necessary to comply with the requirements of the bylaw causing further hardship.

Maintaining the existing structure and construction of a contractor garage on the premises presents no harm but instead provides for a more affordable housing option in the community. There is no “*substantial detriment to the public good or nullification or substantial derogation from the intent or purpose*” of the Ashland Zoning Bylaw here.

Reference to the 2003 Comprehensive Plan (select pages copied herein) indicate the desire to maintain and encourage commercial/industrial in the areas currently zoned.

Accordingly, summarizing the petitions request, the applicant desires relief to better conform to the Industrial Zone, and the present mix of uses, by making the proposed garage the principal use, and allowing the existing building to remain in place..

Very truly,



ORB Investments LLC
By their attorney
George Connors.

References

NONCONFORMING USES AND STRUCTURES.

3.3.1

Applicability. This zoning by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning by-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

3.3.2

Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

(A).

Change or substantial extension of the use;

(B).

Change from one nonconforming use to another, less detrimental, nonconforming use.

3.3.3

Nonconforming Structures. The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

(A).

Reconstructed, extended or structurally changed;

(B).

Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

From Dimensional Table ---note word "dwelling"

I	30000	150	40	30	30	2-35 for dwelling 5 for otherwise
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Section 10 Definitions-

Contractor's yard

Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

Accessory building

A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

Accessory building or use

A building not attached to any principal building or a use customarily incidental to and located on the same lot with the principal building or use, except that if more than twenty-five percent (25%) of the floor area or fifty percent (50%) of the lot area is occupied by such use, it shall no longer be considered "accessory."

Yard

A space open to the sky, located between a building or structure and a lot line, unoccupied except by fences, walls, poles, paving, and other customary yard accessories.



Chapter 125 Demolition Delay Bylaw for Historically or Architecturally Significant Buildings

2. Procedures

1.

No permit for the demolition of a building which, in whole or in part that is 70 or more years old shall be issued other than in conformity with the provisions of this bylaw, as well as in conformity with the provisions of other laws and bylaws applicable to the demolition of buildings and the issuance of permits generally.

Accessory building

A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

Accessory building or use

A building not attached to any principal building or a use customarily incidental to and located on the same lot with the principal building or use, except that if more than twenty-five percent (25%) of the floor area or fifty percent (50%) of the lot area is occupied by such use, it shall no longer be considered "accessory."

Contractor's yard

Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

- Illicit Discharges and Connections
- Ch 144 Streets and Sidewalks
- Ch 152 Subdivision of Land
- Ch 256 Taxation
- Ch 260 Trapping
- Ch 265 Vehicles, Abandoned, Junked and Unregistered
- Ch 270 Water Use Restrictions
- Ch 281 Wetlands Protection
- Ch 281 Wild Mammals, Feeding or Baiting of
- Ch 281A (Reserved)
- Ch 281B Youth Athletic Activities
- Ch 282 Zoning
- SECTION 1.0 PURPOSE AND AUTHORITY
- SECTION 2.0 DISTRICTS
- SECTION 3.0 USE REGULATIONS
- SECTION 4.0 DIMENSIONAL REQUIREMENTS
- SECTION 5.0 GENERAL REGULATIONS
- SECTION 6.0 SPECIAL REGULATIONS
- SECTION 7.0 SPECIAL RESIDENTIAL REGULATIONS
- SECTION 8.0 OVERLAY AND SPECIAL DISTRICT REGULATIONS
- SECTION 9.0 ADMINISTRATION AND PROCEDURES
- SECTION 10.0 DEFINITIONS
- Division 3: Select Board Regulations**
- Ch 285 Regulation of Multi-Channel Service Providers
- Ch 292 Vehicles and Traffic
- Division 4: Board of Health**

TABLE OF PRINCIPAL USE REGULATIONS

PRINCIPAL USES								
F. INDUSTRIAL USES	RA	RB	RM	CH	CD	CV	CN	I
Earth removal	N	N	N	N	N	N	N	Y
Light manufacturing	N	N	N	N	N	N	N	Y
Wholesale, warehouse, or distribution facility	N	N	N	N	N	N	N	Y
Mini-storage warehouse facility	N	N	N	N	N	N	N	Y
Manufacturing	N	N	N	N	N	N	N	Y
Construct on yard or landscaping business	N	N	N	N	N	N	N	Y
Junkyard or automobile salvage or graveyard	N	N	N	N	N	N	N	N
Land transportation terminal	N	N	N	N	N	N	N	BA
Assembly or packaging	N	N	N	N	N	N	N	Y
Research, laboratories, and development facilities	N	N	N	N	N	N	N	Y
Publishing and printing	N	N	N	N	N	Y	N	BA
Computer software development	N	N	N	Y	Y	Y	Y	Y
Computer hardware development	N	N	N	Y	Y	Y	Y	Y
Food and beverage manufacturing, bottling or processing facility	N	N	N	N	N	N	N	Y
Alternative energy and renewable energy manufacturing facilities	N	N	N	N	N	N	N	Y
Alternative energy and renewable energy research and development facilities	N	N	N	PE	N	N	N	Y

TABLE OF PRINCIPAL USE REGULATIONS