



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 3-2-10

Planning Board Meeting Minutes January 19, 2010

Members Present: Rick Leif, Michelle Gillespie, Daniel Lewis, George Pember, Leslie Harrison

Others Present: Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer; Dr. Lyna Watson, Deb Blasko, Tom Blasko, Laura Ziton, Anthony Ziton, Alan Archibald, Mary Archibald, Janet Sandstrom, William F. Donovan

Chairman Leif called the meeting to order at 7:00 pm.

Review of Zoning Bylaw Amendments for 2010 Annual Town Meeting

Wireless Communication Facilities Bylaw

Those present reviewed Ms. Joubert's memo of January 14, 2010 regarding Wireless Communication Facility (WCF) setback information obtained from other Massachusetts towns, which reads as follows:

Per the Board's discussion with residents at the November 17, 2009 Planning Board meeting regarding the residents' request to increase the setback distance between a WCF and a residential lot line and/or residential structure, I have summarized below setback information obtained from other MA communities.

The Northborough Zoning Bylaw, in the Industrial, Highway Business, Business South, Business West, Business East, and Downtown Business Districts requires a setback distance of 500' from the lot line of the nearest residential structure. The Planning Board may waive this requirement in exceptional circumstances to allow a lesser setback. The setback line of a WCF shall be a minimum of 1000' from any school property line.

Scituate

Requires a setback from property line equal to the height of the tower plus any attachments plus five feet.

Concord

Requires 1000' setback from single family residential dwelling for new tower. Waivers allowed for this setback as Town realized just about any tower would be within 1000' of a single family dwelling.

Dracut

Towers are to be 300' from residential structure. Variance required if closer.

Swansea

Towers are to be 300' from residential structure. Variance required if closer. Court recently overturned denial of tower that was to be closer than 300'. ZBA denied the variance and court ruled tower could be closer than 300'.

Hopkinton

Setback is equal to the vertical height of the towers, inclusive of any appurtenant devices. Tower height of 100' is allowed.

West Springfield

In Residential Communications Overlay District, towers if camouflaged (flagpole, lookout tower, faux tree), 200' setback from single, two or three-family residential structure. If conventional exposed structural and mounting components, 550' from single, two or three-family residential structure.

Towers up to 190' allowed.

Tewksbury

Setback of 400' from Residential and Multifamily Districts. Distance may be reduced if Board finds reduction in setback distance would produce a better result (aesthetically) to the neighborhood. Setback minimum distance shall not be less than 100'.

Tower height of 100'.

Winchester

Setbacks of district apply for towers. Town's preference is to install wireless facilities on existing structures and within church steeples.

Millbury

Setback is twice the height of the tower or a distance of 300', whichever is greater.

Shrewsbury

Cell towers are subject to same setbacks as those applicable to any structure. Depending on zoning district, setbacks range from 15' to 50'. When abutting a residential district, the Limited Business setback increases to 50' and the Limited Industrial setback increases to 100'.

Dover

Setback is 2.5 times the height of the tower. If near a residential dwelling, setback is 300'.

Marshfield

Setback is equal to height of tower (maximum height of tower is 150'). If near a residential dwelling, 500' setback.

Norwood

Setback of 500' to residential dwelling.

Andover

Setback is 3 times the height of the tower. Tower height cannot exceed 125', setback would be 375'.

Dennis

Setback is distance equal to height of the tower and maximum height of tower allowed is 150'. Exception is for towers located near lot of residentially zoned lot or a lot in residential use, setback follows this formula:

(height of tower in feet)² / (maximum allowed height in feet for district)

For example, 150' tower in industrial district (setback of 35') near residence = 150²/35=642.857. Tower would be placed 642.9' from residential lot line.

Fairhaven

Same as Dennis

Walpole

Setback is height of tower plus 10'.

Hamilton

Setback is equal to height of tower or 500' if structure nearby. Tower height of 55'.

Southborough

Setback is equal to height of tower which is 75' maximum.

Duxbury

Maximum tower height of 100' with setback equal to height of tower. This setback includes schools, nursing homes, and historic structures. Setback for tower from residential dwelling unit is 400'.

Ms. Joubert explained she gathered this information through a Planners List Serve online which connects to all municipal planners in Massachusetts. She noted for towns that do not have Town Planners, Planning Board members represent those towns on the list serve. She stated she asked for responses to the following questions:

- ❖ Does your town have a WCF bylaw?
- ❖ What are your setbacks from a residential lot and/or dwelling?
- ❖ What is your setback from a school and is it from the school itself or the property line?

Ms. Joubert stated the Town of Burlington responded today and they were the only community that had something specific to schools. For the most part, towns across Massachusetts responded – a cross-section of communities – some the size of Northborough. Across the board for setbacks from a residential lot/dwelling, the setback was typically the height of the towers with the addition of 5 – 10 feet. This is referred to as the fall zone, which is the projected distance the tower would fall if it was cut off at the base and fell flat. Some towns didn't have any specific WCF setbacks but used the setbacks for the zone, such as Shrewsbury. Some towns, including the Towns of Dennis and Fairhaven, used a formula to calculate the

setback. In Dennis the setback in their Industrial A zone is 35 feet, and their WCF setback is the height of the tower squared. The most restrictive community that responded was Concord, who requires a waiver be granted for every cell tower. It's a built-out community and just about everything proposed in town is 500 feet from a residential structure. Burlington has a 200-foot setback and an 800-foot setback to a school building. Town Planner responded that the school setback was a political issue.

Ms. Joubert stated Northborough is pretty restrictive compared to most of the other responding communities in Massachusetts. If the board wants to use the research, then they might want to consider changing the setbacks from the schools because the response shows that all towns except one don't have setbacks for schools. A ZBA application for a WCF at 265 Main Street, requesting a variance from the required distance from St. Bernadette's school, has been submitted. The Board of Selectmen has asked staff to move ahead with pursuing a WCF at the Police Station and that will need a variance for the distance from the lot line of Peaslee School at 190 Main Street. Ms. Joubert noted Northborough's WCF setbacks were modeled after the Town of Grafton's WCF bylaw, because at the time it had just successfully been passed. Staff had been working with residents of the Assabet Hill subdivision on a WCF bylaw and there was no scientific reasoning behind the approved setbacks.

Mr. Pember explained the Planning Board's job is to look out for the benefit of all of the town. If no more towers come into town then residents are restricted to Verizon or AT&T. The Planning Board's job is to encourage these companies to locate in town. Other towns basically use a fall distance as a basis for their setbacks and Northborough's setback is three times the fall distance. Unless there is a prevailing reason for the 500-foot and 1000-foot setbacks, it doesn't make sense to have them. The board would be denying people an opportunity to get better service in town.

Ms. Joubert stated the Town hasn't been taken to court yet on a setback issue, but Swansea was taken to court because a request for a variance to be closer than their required 300 feet from a residential structure was denied, the decision was appealed and the town was overruled because there was no scientific reason as to why the 300-foot setback existed.

Ms. Gillespie stated it might raise a red flag at the Attorney General's office if the board considered increasing the distance from a residential structure. She stated she thought the board could consider accepting more monopoles, rooftop installations or side of building installations with a minimum fall range and then they could be a little more restrictive on the taller WCFs.

Ms. Harrison stated the town's residential and school setbacks seem arbitrary and should be the same, whether it be 500 feet or 1000 feet.

Mr. Lewis stated he didn't realize how far off Northborough was from other towns and it seems like they could run into trouble if someone challenged their setbacks since they're not based on anything concrete. Having a reasonable setback makes sense and it should be more reasonable than 1000 feet.

Mr. Leif stated there is not enough time for the board to have a warrant article ready for February 15th. The current bylaw is just numbers and they could never explain why those numbers were decided upon. He stated he is in agreement that they should be different, but it's not something the board could do in time for this year's Town Meeting. He suggested it might be able to be done sooner if there was a special Town Meeting.

Ms. Gillespie asked Mr. Leif what other research was needed. Mr. Leif responded they could ask municipal planners for more specific information.

Tom Blasko, 18 Pond View Way, stated the reason he wants to change the residential setback to 1000 feet is because National Grid is able to reapply. He believes the reason for the 1000-foot setback from a school is for protection of the children from radiation and not strictly based on the fall zone. He stated he talked with a senior legal advisor for the FCC in Virginia who said Northborough does have siting authority and the power to deny a tower, but not randomly. He would like to have a moratorium to put towers on hold.

Anthony Ziton, 1A Pond View Way, asked about the possibility of a petition to get on this year's warrant. Ms. Joubert explained a citizen's petition requires 10 signatures. Mr. Leif explained that if it gets on the warrant and is presented at Town Meeting, the Moderator will ask Mr. Leif to comment. The Planning Board's comment will be that it's too premature to make any changes to the bylaw as the Board has not had the time to conduct additional research.

Mr. Ziton stated he is worried that with the cell tower explosion happening there could be towers from variances all over town. The town should address it now.

Mr. Leif stated there have been two applications in two years and prior to these applications, it has been several years since the last cell tower application. This application for 265 Main Street is the first application to request a variance from the bylaw.

Ms. Gillespie stated if the Board were to propose amendments to the WCF bylaw, they would be looking at making a change that will benefit the entire town, not just one neighborhood. She suggested the residents could wait and work with the board and staff to develop something.

Mr. Ziton stated he doesn't want to wait because he doesn't want it to fall through the cracks. Ms. Gillespie stated what the residents are suggesting is basically a band-aid. Mr. Ziton responded that was a fair statement. Mr. Leif stated the board's job is to do what makes the most sense.

Ms. Joubert explained that, when the WCF bylaw was created, the committee looked at overlay districts, certain zoning districts, a tiered preference and the group at the time was opposed to what was happening in their own back yard on a town structure. The proposal was to locate a cell tower on the town's water tank. Through their research they suggested not doing an overlay but rather looked at all districts, starting with the industrial district - and then looked at

Commercial and then last at Residential. Industrial was the preferred district at the time. She noted the town has denied two towers in the past.

Mr. Blasko asked if the board would support a moratorium. Ms. Joubert stated the State has very strict regulations regarding approving a moratorium. For a town to impose one, a remedy must be sought by the town i.e. residential growth is occurring at a rapid pace and the sewer plant is not functioning to capacity and can't accommodate the growth. The Town may be able to adopt a building moratorium and during the time frame, the sewer plant could be updated to accommodate the new growth. Mr. Blasko noted there was a moratorium before. Ms. Joubert stated at the time there was no WCF bylaw and two WCF applications had gone before the ZBA. The basis for the 6-month moratorium was that there was no bylaw and the Town wanted to work on one. Mr. Leif asked if they could say the bylaw needed to be revised and ask for a moratorium. Ms. Joubert stated they could ask the Town Administrator, but this is the first time in 15 years that a change has been suggested. Mr. Leif stated it's the first time the rationale behind the bylaw has been questioned. Ms. Gillespie asked if the moratorium would hold up the WCF proposed for the Police Station. Ms. Joubert stated it would.

Mr. Lewis, Ms. Harrison and Ms. Gillespie stated they would not support taking this to Town Meeting this year, but would support working on it for 2011 Town Meeting. Mr. Pember stated he didn't have a clear yes or no answer. Ms. Gillespie stated the board would not want to have the citizen's petition approved and then have the board have to rework it and try to convince the town again that another revision is the right way to go.

Deb Blasko, 18 Pond View Way, asked if a moratorium could be done for only the large cell towers. Mr. Leif stated it would weaken their case for a moratorium. It would be for all WCFs or none, not just some. Ms. Joubert noted a moratorium would apply to all WCFs, including side and roof-top mounts, those proposed by the Town and by National Grid.

Mr. Blasko suggested the board might want to consider not changing the setback from schools to 500 feet. Mr. Lewis stated the irony of the school-age children argument is that just about every child has a cell phone and they are probably more dangerous than the towers.

Mr. Leif reiterated that the board is not prepared to present anything at Town Meeting. Their options are to do nothing for this year or to consider a moratorium. The residents could present their citizen's petition, also. Mr. Blasko stated he would like a moratorium and does not want to wait for one or two years to see what comes before the Planning Board.

Mr. Pember stated he would support a citizen's petition for a moratorium. Ms. Harrison asked for his explanation. Mr. Pember stated Mr. Blasko brought some interesting points to light. He would like more input from Ms. Joubert and other folks. He stated he respects the health issues and possible permanent effects from WCFs. However, he stated he was very skeptical that it would pass. The board needs more information. He wondered who would pay for a consultant to work on the bylaw. He stated the town is really strapped for money this year. Ms. Gillespie noted the first bylaw was created because those people didn't want a tower on town-owned land and now this group of residents is concerned about them on industrial land. No one wants

them in their back yard, so a consultant would be necessary. If the board agreed with a moratorium, they should ask for a consultant. Mr. Zitton asked in what capacity the consultant would be involved.

Mr. Leif stated the question is if it make sense to propose a moratorium for cell towers. The crux of the matter is the setbacks, not so much the bylaw in general. The residents perspective is that a 1000-foot setback is better; the further away the better. That might not hold water. If the article passed and applications for variances were granted, the towers could go anywhere.

Ms. Harrison stated she feels the bylaw is conservative and she's concerned about the impact a moratorium would have on the Police Station tower. Ms. Joubert stated it would put a hold on the Police Station tower.

Mr. Leif stated his approach would be to do something for 2011 Town Meeting. The board is not ready for justification of a moratorium. The cleanest way to do it is to say it needs work, and our approach on Town Meeting floor will be not to support it because there's no time to do it properly. Mr. Lewis agreed, stating the board needs to look at it comprehensively and as a regular work item on their agenda.

Ms. Joubert noted there would be CMRPC resources they could use, after completion of the Open Space and Recreation Plan, to have CMRPC do a comprehensive review of the current WCF bylaw.

Mr. Pember stated he would support a moratorium. Mr. Leif, Ms. Gillespie, Ms. Harrison and Mr. Lewis stated they would not support it.

Ms. Harrison asked past citizen petitions. Mr. Farnsworth stated if a citizen's petition on a zoning article without Planning Board support gets defeated it can't come back to Town Meeting for two years. If the 500-foot change to 1000 feet doesn't pass, it can't come back to Town Meeting for two years. If the board wanted to do something next year, whatever they propose could not include what didn't pass the previous year.

Mr. Leif stated the board will go forward with plans to present changes at 2011 Town Meeting and the residents can go forward on their own.

Ms. Blasko asked who would be doing the research for the board. Mr. Leif stated Ms. Joubert, Mr. Farnsworth, other staff and possible outside agencies but if they'll need money, that would be tough. Ms. Blasko stated it's been very frustrating for them dealing with Ms. Joubert and Mr. Farnsworth. She said she feels like they work against them.

Mr. Leif stated the board's job is to manage the interest of the town. When we have these issues it's usually from a small portion of the town. Residents have the right to express their concerns, but the board has to look at what's good for the whole town. It's not right to intimate that somehow Ms. Joubert has something against you or your part of town. She has been doing the best job at looking at the broader perspective. He stated he understands the

residents' frustration that things aren't always decided in a way that's acceptable to everyone, but to say Ms. Joubert or any staff member is biased is not correct and it's not appropriate.

Ms. Gillespie stated the board worked with neighbors, who live behind Rocky's Ace Hardware when they were doing the zoning changes, to come to a compromise. She stated in this case she doesn't believe the neighbors have failed. Ms. Harrison stated it was because of the effort of the neighbors that National Grid withdrew its application. Ms. Gillespie stated the process takes time.

Mr. Leif stated the board will go forward with their review over the next year and the residents can come to the meetings. Mr. Blasko has his information and Ms. Joubert has her information and the board will work towards a new bylaw on which everyone may not agree.

Other Proposed Zoning Amendments

Ms. Joubert stated she, Mr. Farnsworth and Fred Lonardo, Assistant Building Inspector, have kept running lists of changes for the bylaw. Some are things from the old zoning bylaw that didn't make it into the new one approved at 2009 Town Meeting and others are issues that come up on a daily basis in the Building Department.

The proposed amendments, presented to the Planning Board in a memo from Ms. Joubert and Mr. Farnsworth dated 1/13/10, were reviewed. Explanations were noted by Ms. Joubert and Mr. Farnsworth.

Page 4, 7-02-040 Definitions. Add definition of Floor Area Ratio (FAR).

Explanation: There is currently no specific definition for Floor Area Ratio as it has just been introduced into the bylaw.

Page 7, Building permit 7-03-010 add (E) to read as follows: "Construction equipment operated by a paid contractor between the hours of 7:00am and 7:00pm daily, except Sunday and legal holidays. Operation of construction equipment by a paid contractor outside the hours specified above may be allowed by written permission from the Building Inspector." This language was in 2008 ZBL and was inadvertently omitted from the 2009 ZBL.

Explanation: Construction hours had been included in the zoning bylaw since 1994, however they were overlooked in the new bylaw. This adds them back in and the words "may be" will be added after the words "Construction equipment" in the first sentence.

Page 8, 7-03-020 Certificate of zoning compliance. Replace section title and wording of section with language from 2008 ZBL (7-24-030) to read as follows: Certificates of occupancy (A) No land shall be occupied or used, and no building or structure hereinafter erected or structurally altered shall be occupied or used unless a certificate of occupancy has been issued by the Building Inspector. Such certificate shall state that the structure and use of structure and land comply in every respect with the provisions of this chapter in effect at the time of issuance

or with a decision of the board of Appeals. (B) A certificate of occupancy shall be conditional on the maintenance of full compliance with the provisions of this chapter in effect at the time of issuance or with restrictions imposed in a decision of the Board of Appeals or other permit granting authority and shall become void if such compliance fails.

Explanation: A certificate of zoning compliance is similar to a developmental review. It's already being done but not in this way. The language in previous bylaws works better than this version. Suggesting to take this out and replace it with what they had about certificate of occupancy that was taken out.

Page 9, 7-03-040 Special permit (B) Public Hearing: Change the word "from" to "following" in the third sentence; "... than ninety (90) days from [following] the date of the public hearing...". "Following" is used in MGL Section 9.

Page 13, 7-03-050 Site plans (C) Site plan approval; Planning Board (2) Decision criteria [10] should be (c).

Page 24, 7-05-020 Clarification of uses (C) Residential uses; accessory (4) change last line in (4) to read as follows: "...single-family dwelling or detached existing structure, such as a garage or barn."

Explanation: This was originally awkwardly written and was like a combination of the old and new bylaw. The language has been clarified.

Page 25, Home Occupation Use 7-05-020 C. (6)(a)[1]: Change last line in [1] to read as follows: "such as medicine, dentistry, law, architecture, engineering, fine arts or home business office". "Home business office" is being added to assist with internet businesses and other types of home offices requiring business certificate from Building Inspector and Town Clerk.

Explanation: Some home businesses are not listed in the bylaw and the building inspector needs to classify all home businesses in order for the business owner to get a business certificate. The words "high degree" will be taken out.

Page 48, 7-06-030 Supplement regulations. Add following language as 7-06-030(C) Yard requirements (3) In residential districts (f) "Porches or piazzas, provided not enclosed, may be as near as 20 feet to side line of the street."

Explanation: Front steps are not subject to the front setback. The word "piazzas" will be changed to "steps".

Page 78, 7-08-040 Nonconforming single-family and two-family structures (A)(1), (3), (4): Delete the words "building height". There are no requirements for building height - see Table 2, page 52.

Page 78, Nonconforming single-family and two-family residential structures 7-08-040 A. (6): Change 50% back to 80% as approved at 2008 ATM.

Explanation: At 2008 Town Meeting the percentage was changed from 50% to 80%, but the change was not carried over to the proposed 2009 bylaw and was not approved at 2009 Town Meeting. It was an oversight and this corrects it.

Page 78, 7-08-040 Nonconforming single-family and two-family structures (A) add (7) to read as follows: "Alteration to a structure which is located in an area on the lot that does not comply with minimum lot width and any alterations thereto comply with all current setbacks and building coverage."

Explanation: This is being added because there are a lot of old lots that are pie-shaped and this was something that should have been included in the 2009 bylaw but was overlooked.

Page 121, 7-10-020 Common Driveways (A)(1) section (1) "... common driveways serving up to two (2) lots ...". Delete "up to".

Page 121, 7-10-030 Industrial/office campus development (B) change 7-02-040 to 7-03-040 and change 7-02-050 to 7-03-050

Ms. Joubert recommended including all the changes in one warrant article for Town Meeting. A draft warrant article, for the Board to review at the next meeting, will be prepared by Ms. Joubert based on this evening's comments.

Next Meeting: The next meeting will be held on February 2nd and zoning will be the only item on the agenda.

Old Business

Approval of Minutes: The minutes of November 3, 2009, December 15, 2009 and January 5, 2010 were approved as amended.

Bond Release for Galahad Estates: A bond release has been requested for Galahad Estates, however the developer owes the town money so the bond money will not be released until the town has been paid.

Mr. Pember recused himself from the discussion and vote on the Cyrus Brook Estates definitive subdivision plans.

Approval of Cyrus Brook Estates Definitive Subdivision Plans: The Cyrus Brook Estates definitive subdivision plans were submitted and later the applicant wanted to change the name of the road from Magnolia Way to Cyrus Way. Ms. Joubert checked with all departments and the revised name was acceptable to all.

Michelle Gillespie moved to approve the definitive subdivision plan and approve the street name of Cyrus Way. Mr. Lewis seconded the motion and the vote was four in favor, none opposed. The members will sign the plans in the Planning Office when the corrected version has been submitted.

Beechwood Circle: Chairman Leif signed the paperwork for the acceptance of Beechwood Circle at 2010 Town Meeting.

Meeting on Casinos: A meeting on casino land-use issues will be held at the Ashland library.

Planning Board Annual Report: Ms. Joubert distributed a draft version of the Planning Board's 2009 Annual Report for the board's review and comments.

Next meetings: February 2nd and February 15th. No hearings are scheduled for the February 15th meeting.

WCF Bylaw: Chairman Leif clarified that the board will not do anything regarding changes to the current WCF bylaw for 2010 Town Meeting.

The meeting adjourned at 9:45 pm.

Respectfully submitted,
Debbie Grampietro
Planning Board Secretary