



# TOWN OF NORTHBOROUGH PLANNING BOARD

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

---

Approved 4/2/13

## Planning Board Meeting Minutes October 2, 2012

**Members Present:** Rick Leif, George Pember, Michelle Gillespie, Leslie Harrison, Theresa Capobianco

**Others Present:** Kathy Joubert, Town Planner; Robert Jachowicz, Tony Abu, Carol Chione, Amy White, Anthony Chione, Nick Muskopf, Cornelia and Ronal Patch, Charles Caliri, Abina Sullivan Sean Durkin, Katee Carver, Vito Colonna, Jarrett Craver, Karen Ares, Brian Smith, Laura Hovey, Chris Hovey, Joan Maher, Brad Petrishen, Sue Galante, Chris Galante.

Chairman Leif opened the meeting at 7:00 pm.

### **Public hearing to consider amendment to Special Permit granted to Abu Construction Inc. for “Bigelow Farms” at 100 Lincoln Street**

Mr. Leif read the legal notice for this public hearing.

Mr. Pember recused himself from this public hearing.

Developer Tony Abu was present and explained his request for an amendment to the Special Permit granted to Abu Construction for Bigelow Farms, 100 Lincoln Street. Copies of the plan identified as Option A had been distributed to board members.

Referring to Option A, Mr. Abu stated the originally approved plan for the subdivision showed Building 13 as 60 feet from the front property line along Lincoln Street. Mr. Abu explained that, after designing that building, he found it to be too close to a wetland area on the lot. Therefore, he is requesting to be allowed to locate Building 13 further away from the wetlands and 45 feet from the front property line.

In response to questions from board members, Mr. Abu stated there is only 1 unit in Building 13 and all the other foundations planned for the project are in.

Mr. Abu explained the reason the subject building was originally located 60 feet from the property was because one of the Planning Board members at the time wanted it back that far.

Ms. Joubert stated the required minimum front setback in the district is 30 feet, so at 45 feet from the front property line, the building will be in conformance with zoning. She noted that, at the time of the hearing for the subdivision, only one member wanted Building 13 further back on lot. All other members agreed with its location on the original plans.

Ms. Joubert noted the Town Engineer, Fred Litchfield, submitted a letter to the board indicating they prefer the placement of Building 13 as shown on Option A, as only a tiny corner of the building touches the 100-foot wetland buffer and that is entirely acceptable.

Mr. Leif confirmed the Conservation Commission is fine with the building's location just inside the 100-foot wetland buffer, and stated the orientation of Building 13 appears to be of the same as it was on the original plan.

Ms. Joubert suggested the board include as a condition of their approval that the site plan be updated and recorded. She noted the revised plan was reviewed by staff members and the only comment came from the Town Engineer, who suggested including a condition that the site plan be updated and recorded.

Ms. Gillespie noted the project was nicely done.

Charlie Caliri, Juniper Brook Road questioned why the board suggested the 60-foot front setback.

Mr. Leif explained the zoning for the district required a 30-foot setback, but one member suggested to double it so it wouldn't be as close to Lincoln Street.

Ms. Gillespie stated that in the beginning, they didn't want to be intrusive to the neighborhood. One member had a concern about it, and the board supported the 60-foot setback. However, as it's panned out, she doesn't think the 60-foot setback is necessary because the project is not as intrusive as the board thought it would be.

Ms. Joubert noted that with the requested 45 feet front setback is still further from Lincoln Street than zoning for the district requires.

Ms. Harrison motioned to close the hearing. Ms. Gillespie seconded the motion and the vote was unanimously in favor of the motion.

Ms. Joubert stated one woman, who lived on the opposite side of Lincoln Street, looked at the application and had no problem with it. Another person, from John Edwards Drive, called to determine if the rear buildings were going to change. Since it did not include a building near his property, the resident had no problem with it.

Mr. Leif stated that, at the time of the original public hearing, he could not recall a lot of public comment on the front setback, just the comment from the board member.

Ms. Capobianco motioned to grant the amendment to the Special Permit for Bigelow Farms to allow Building 13, 41 Lydia's Way, to be no less than 40 feet from the front property line, and with the conditions that the 2004 site plan be revised to incorporate "Option A", and construction of the project shall conform to the revised site plan. Ms. Gillespie seconded the motion and the vote was unanimous.

**Public hearing to consider Scenic Road application of Tim Shay LLC for site located at 130 Main Street with frontage on Brigham Street (scenic road)**

Chairman Leif read the legal notice for the public hearing.

Vito Colona from Connorstone was present for the hearing. He displayed a plan of the site for those present, and indicated the size and location of the 3 buildings planned for the site. He stated there is sufficient parking for the proposed uses and access to the site will be from Main Street and Brigham Street. Circulation through the site has been reviewed and approved by the Fire Chief. The development will be serviced by Town water and sewer connections. Drainage to the site is straight-forward and includes an infiltration system.

Mr. Colona explained they have filed for a Scenic Road permit for the removal of 55 feet of stone wall and some street trees along Brigham Street in order to create the driveway access into the site and the drainage system. Mr. Colona noted the area where the stones will be removed is shown in blue on the plan. Stones and other materials removed will be reused. Several trees will be removed, including a dead 6" tree that is located in the middle of the driveway area. He identified the location of the other trees to be removed on the plan. He stated trees were evaluated for sight distance when entering and exiting the driveway. To the north, the site distance is fine, however to the south there is a lot of brush that will have to be cleared before they can get a definitive sight-distance measurement and determine if trees have to be removed. He noted they will try to save as many trees as possible, and the dead tree will have to be removed. Mr. Colona stated the stones removed will be reused.

Ms. Capobianco asked if the driveway will be an emergency exit. Mr. Colona said it would not be.

Ms. Harrison and Ms. Capobianco stated, if it's not a safety concern, they would like to see the amount of stone wall to be removed reduced to 45 feet.

Ms. Capobianco asked if a reduction of 10 feet would change the line of sight. Mr. Colona said it would not.

Mr. Pember asked if the 2 trees closest to Route 20 are staying. Mr. Colona replied they would be staying because the sight distance is good.

Ms. Joubert stated she, the DPW Director and Town Engineer reviewed the plans and were in support of the removal of all 3 trees. For sight distance on Brigham Street, they believe both of the living trees need to come down and also both the Town Engineer and the DPW Director were in support of the 55 feet of removal because they take into consideration the way drivers tend to creep into the street when exiting a site.

Mr. Colona identified on the plan the location of the 10-feet of stone wall that would remain if the removal of the stone wall was reduced from 55 feet to 45 feet.

Ms. Joubert stated sight distance looking towards Main Street is not a problem, but looking towards Brigham Street is a problem.

Ms. Harrison stated she would like the Town Engineer to tell the board if a 45-foot removal of stone wall would work.

Mr. Leif asked if the applicant's engineer was at the meeting at which she, the DPW Director and Town Engineer reviewed the plans. Ms. Joubert stated he was not. She explained town staff reviews scenic road application site plans to see if they can minimize the removal of portions of stone walls and trees. They look at how much does have to be removed, how much should be removed and the amount the applicant requests to be removed.

Mr. Leif asked Ms. Joubert if the Planning Board has the ability to approve or deny the application, or to place conditions in their decision. Ms. Joubert responded the purpose of the bylaw is to help maintain stone walls in the town because of a concern that people were cutting them down, burying them, or taking them out of town. The Planning Board identified the roads that are designated as scenic and adopted the bylaw. The bylaw allows the Planning Board to determine the linear feet of stones to be removed and what will be done with the stones. Sometimes the Planning Board leaves that up to the developer. As far as trees, if a tree is in the town's right of way, sometimes the DPW will take it down and sometimes the applicant is willing to take it down. In some decisions, the board has asked the applicant to plant trees somewhere else on the property to replace the trees removed. The application is not for a special permit, but rather a decision as to what criteria the board will place.

Ms. Joubert noted the project itself cannot be discussed because it is in litigation. Only comments, questions or information regarding the scenic road application can be discussed. The applicant is continuing to go through the permitting process despite the litigation, however he cannot receive a building permit until the litigation has been resolved.

Mr. Leif opened up the hearing for public comment, and stated comments have to be related to the plan presented this evening. Input will only be considered on that, which is the removal of 55 feet of stone wall and 5 trees.

Carol Chione, 15 Brigham Street stated the meeting minutes indicate the access driveway off Brigham Street is to be one-way. She also stated she disagrees with Ms. Joubert regarding the authority of the Planning Board, and also noted Mr. Pember is making money as the attorney for the owner of the property.

Mr. Pember recused himself.

Ms. Chione stated the scenic road bylaw allows the town to preserve the qualities and character of the town way and the Scenic Road Act defines all trees within a public way or on the boundaries as public shade trees. She asked the board to refuse to consent to allow the removal of 55 feet of stone wall and 3 public shade trees at the 130 Main Street/Brigham Street site. The purpose of the scenic road bylaw was not to allow someone to take down more than 15 feet of a wall and then replace it.

Ms. Capobianco read the section of the Scenic Road bylaw relating to Ms. Chione's comment, as follows:

***TEARING DOWN OR DESTRUCTION OF STONE WALLS*** - *The destruction of more than fifteen (15) linear feet of stone wall involving more than one (1) cubic foot of wall material per linear foot above existing grade, but shall not be construed to include temporary removal and replacement at the same location with the same materials.*

Ms. Capobianco stated that, according to the definition in the bylaw, the proposed plans would not be considered destruction of the wall.

Ms. Chione stated that Mass General Laws say the Planning Board can decide to approve or not approve.

Ms. Capobianco stated she read the scenic road bylaw in its entirety and it states that if the project doesn't satisfy the criteria, the board can deny the permit. There are 7 criteria in **Section 2-52-060 Considerations** of the Scenic Road bylaw, as follows:

**2-52-060 Considerations**

*The planning board's decision on any application for proposed action affecting scenic roads shall be based on consideration of the following:*

- A. Preservation of natural resources.*
- B. Environmental values.*
- C. Historical values.*
- D. Scenic and aesthetic characteristics.*
- E. Public safety.*
- F. Compensatory actions proposed, such as replacement of trees or walls.*
- G. Other sound planning consideration.*

Ms. Capobianco asked Ms. Chione if she is saying the plan meets none of the criteria. Ms. Chione responded the plan does not meet any of the criteria.

Mr. Colona said he was not at the meeting, but if the meeting minutes say it is a one-way access, two trees could be saved because it will be enter-only.

Mr. Leif stated he has driven by the site and the driveway wasn't obvious to him, but he did see a bit of a break in the wall.

Ms. Joubert stated staff looks at these projects and considers there may be a change to in the future. It may be a one-way access in or an emergency access, but that may change.

Aaron Hutchins, 91 Brigham Street, stated it seems that Ms. Capobianco was suggesting the board does have the ability to approve or deny the permit. He said that needs to be clarified and he would like the board to say no to the plans with certainty.

Mr. Leif stated the permit has been granted for the multi-use development and part of those plans includes a driveway off Brigham Street. The board can talk about how the driveway is created in relation to the scenic road bylaw. Whether the board can approve or deny a permit does not bear on this application because the applicant has been granted a driveway there. The Planning Board's role is to manage the impact on the stone wall and the trees. The question of saying yes or no would be applicable if the applicant had not received approval of the plan.

Mr. Hutchins asked if there was a possibility of the board denying the permit.

Mr. Leif stated that in this situation, given the applicant has a permit to create the project with the approved driveway on Brigham Street and a stone wall on that property is in the right of way, the applicant has to come to the Planning Board and the board's job is to manage the destruction of the wall.

Lisa Maselli, 13 Main Street, stated she believes the board has the right to say no.

Ms. Joubert stated one board's decision cannot effect or reverse another board's decision. The intent of the scenic road bylaw is to protect and manage stone walls and trees in the town's right of way. Managing growth is not done through the scenic road bylaw. It's an avenue for which the board can manage stone walls and trees. There is no appeal process and it is not a yes or no process. In this case, stones removed for the access driveway will be used in other parts of the wall.

Mr. Leif stated the ZBA has already approved the plans with two driveways and the Planning Board has to manage the wall and the trees. Tonight, the board needs to come up with a way to manage the cut.

Ms. Capobianco stated if there is a reasonable alternative, it should be considered.

Ms. Joubert stated what is before the board is a plan to remove 55 feet of stone wall and 3 trees. Altering the site plan is not before the board and should have been done in the public hearing process.

Jarrett Craver, 19 Brigham Street, stated it will affect him if the stone wall and trees are taken down. The property will look nothing like it does now. The board is supposed to preserve these things. He stated the board better get their facts straight before they make a decision.

Karen Ayers, 31 Leland Drive, asked how this project can move forward while it's in litigation.

Mr. Leif stated the applicant cannot receive a building permit until the project is out of litigation, but he has a right to go to other boards until that time.

Charles Caliri, 50 Juniper Brook Road, stated the proposed exit/entrance of Brigham is wider than his house. The cars and trucks pass on that street all the time. He suggested the entrance could be reduced to 15 feet and the removal of only 20 feet of wall would be reasonable.

Mr. Leif stated the ZBA has approved the plan.

Ms. Joubert read the ZBA decision aloud.

Ms. Gillespie stated the applicant will need to submit a new plan showing 45 feet of wall to be removed and the reduced number of trees to be removed.

Ms. Joubert stated the board has the option of telling the applicant they don't agree with the 55 feet of wall removal and want the number of trees to be removed to be reviewed.

Mr. Leif stated the driveway is allowed and the question is how much is to be removed. What's not in question is the board needs to make a decision on the scenic road permit. There is no need to discuss whether or not the board has the authority to deny the permit. He stated he recommends continuing the hearing and asking the applicant to bring in a revised plan showing the access driveway off Brigham Street as either two-way or one way and how much linear feet of stone wall and how many trees will need to be removed. He said he would like to see if the driveway could be made smaller.

Mr. Colona stated the amount of stone wall to be removed has to be 55 feet and not less with this plan because they have to push the incline of stone wall over. He suggested he could send the plan back to the traffic engineer.

Ms. Joubert suggested the board is looking at determining if less stone wall and trees can be removed, and if the driveway opening can be smaller.

Ms. Gillespie asked if the brush on the other side of the lot can be removed. Mr. Colona said it will be.

A resident asked if the historical commission has any say in this application since it involves a scenic road. Ms. Joubert says it does not.

Ms. Chione stated several residents believe applicants should file with the Planning Board before they go before the ZBA. Mr. Leif responded the board makes recommendations on applications before they go to ZBA.

Ms. Harrison motioned to continue the hearing to October 16<sup>th</sup> at 6:30 pm, Ms. Gillespie seconded the motion and the vote was unanimously in favor of the motion.

#### **Continued Discussion on Mixed-use Zoning**

Ms. Joubert stated she will have copies of all landscaping sections for the board at the next meeting.

#### **Comments on Scenic Road hearing**

Ms. Joubert stated every board has their own jurisdiction. The Planning Board's is scenic roads. A decision previously made by other boards is not under the Planning Board's jurisdiction. After staff reviews applications in-house, they give as much guidance as they can to boards. Staff looked at the 130 Main Street access off Brigham Street as a full-function driveway. If the board feels it should be less than 55 feet, but staff is recommending 55 feet, it's the board's call to make.

Mr. Leif stated the board prefers the opening be smaller and that some of the trees be retained for a lot of reasons. Rather than just picking some numbers out of the air, he suggested having the applicant come back with some other alternatives.

Ms. Gillespie stated the applicant wanted an entrance/exit there and it's a compromise to have it one way.

#### **Sign Bylaw**

Ms. Gillespie stated business owners have approached her with their own revisions to the sign bylaw. She recommended they call Ms. Joubert and the Planning Board. The business owners said they would create a subcommittee and go to town meeting themselves. They want to make a change this year and she told them they should come before the Planning Board and the sooner the better.

The meeting adjourned at 8:45 pm.

Respectfully submitted,  
Debbie Grampietro  
Board Secretary