



# TOWN OF NORTHBOROUGH PLANNING BOARD

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## Planning Board Meeting Minutes July 7, 2015

**Members in attendance:** Theresa Capobianco, Chair; Michelle Gillespie; George Pember; Leslie Harrison; Amy Poretsky

**Others in attendance:** Kathy Joubert, Town Planner; Gerhard & Nicole Reineke, 10 Juniper Brook Road; Barbara Mulligan, 1 Juniper Lane; Elizabeth Bryant, 5 Juniper Brook Road; Diane & Rob Webster, 4 Juniper Brook Road; Rachel Berk, 1 Juniper Brook Road; Dan & Karen McDonald, 18 Juniper Brook Road; Bradley Swartz, 11 Juniper Brook Road

**Chair Theresa Capobianco opened the meeting at 7:00PM.**

**Discussion with Gerhard Reineke re: bylaw proposal to regulate farm animals on residential parcels of less than 5 acres**

**Gerhard Reineke, 10 Juniper Brook Road**, expressed appreciation to the board for allowing him the opportunity to discuss a proposal for a bylaw to restrict farm animals on small residential lots. He noted that, while he is not opposed to small residential agriculture, he would like to see some regulations that will allow it without spoiling the neighborhood. He also commented that he is not looking to restrict activity on larger parcels.

Mr. Reineke indicated that he had done some research and found towns that already have such bylaws. He noted that Pittsfield and Milford have permit requirements and, while he is not interested in imposing permit requirements, he does wish to control the number of animals on a parcel based on its size. Mr. Reineke explained that Northborough already has existing stable laws that seem to be working, so he is not looking to modify those in any way.

Mr. Reineke provided a presentation (attached) that highlighted some of the regulations in place in other Massachusetts towns, reasoning for the bylaw, and some proposed bylaw content for the board's consideration. He asked for the board's support in bringing the new bylaw to the 2016 Town Meeting.

Mr. Reineke noted the following guidelines utilized when drafting language for the bylaw:

1. Minimum acreage requirement for farm animals/exotic animals.
2. Any animal under 6 months of age would not count.
3. Additional acreage required for smaller animals (goats, chickens)
4. No roosters to be allowed due to noise.
5. Fencing requirements and location of animal pens from lot lines.
6. Overall sanitation/sanitary keeping of animals

Ms. Capobianco thanked Mr. Reineke for his efforts and asked if there are any issues with respect to overlap with the proposed bylaw and the existing stable bylaw. An audience member commented that the wording was written to exclude horses.

Ms. Capobianco asked about the significance of the lot size of less than .65 acre for the rooster prohibition. Mr. Reineke explained that he had tried to use a standard lot size and find something reasonable, and emphasized that the lots in the Juniper Brook neighborhood are too small for the keeping of a rooster. Ms. Capobianco asked if there had been any consideration about doing audibility or noise volume studies.

**Nicole Reineke, 10 Juniper Brook Road**, stated that she would welcome any suggestions about noise regulations, and noted that noise and odor are two major factors for seeking this new bylaw. Mr. Pember asked the group if they had brought the matter to the Board of Health. Mr. Reineke indicated that they had, but had not received a positive response. Ms. Reineke stated that, unless there is a bylaw in place, the Board of Health has no ability to enforce restrictions.

Ms. Joubert explained that the state statute allows towns to adopt bylaws to restrict activity on lots smaller than 5 acres, which is usually done within the zoning bylaw from which the Board of Health will typically adopt a companion piece. Ms. Capobianco asked if there is any issue with including noise regulations within the bylaw. Ms. Joubert indicated that this is a new issue for her, and she has not yet done sufficient research to address it. She offered to look at bylaws from other towns and advise the board of her findings.

Ms. Harrison questioned what impact the new bylaw would have on uses that are already in place. Ms. Joubert explained that those residents would be grandfathered. Ms. Harrison expressed a desire to know the magnitude of the problem town-wide. Ms. Joubert reiterated that this is a new subject for her. She stated that the issue was briefly discussed in 2009 when the town was working on zoning bylaw revisions, but there were other issues that were a higher priority for the subcommittee so this issue was not addressed. She noted that the raising and keeping of chickens is on the rise, so the matter is now becoming more of an issue. She stated that, while she has not received many complaints, she is aware that this neighborhood has been speaking with the Board of Health quite extensively. Ms. Gillespie noted that there is an issue in this particular neighborhood, but reiterated that the offending party would be grandfathered and thus be allowed to continue.

Ms. Reineke indicated that she had polled town residents for their opinions about the appropriate number of chickens on a lot of this size and the consensus was six. She also expressed a need to increase the required distance for fencing from the property line. She noted that the odor emanating from the parcel is damaging her property.

Ms. Reineke voiced concern about the grandfather clause and asked if sanitation issues would also fall under those same guidelines. Ms. Joubert explained that, per state statute, any use that is already in existence would be grandfathered and exempt from any new zoning regulation. Ms. Reineke asked how to address the sanitation issue in the neighborhood as well as ensuring compliance with existing regulations. Ms. Capobianco suggested that she seek assistance from the zoning enforcement officer and the Board of Health. She explained that the purview of this board is to explore and adopt bylaws for the town and, while it cannot address the existing situation, it can investigate ways to address the issue and improve it moving forward.

**Barbara Mulligan, 1 Juniper Brook Road**, asked if a neighbor with a rooster would not be required to comply with a new bylaw since they have had the roosters since prior to its adoption. Ms. Capobianco confirmed that to be the case, and asked if the town has a bylaw regarding keeping and

storing of waste. Ms. Joubert indicated that there may be a Board of Health regulation. She suggested that the Planning Board consider holding a joint meeting with the Board of Health to discuss the matter. She stated that the Board of Health does deal with offensive odor situations, but noted that she is not well versed in their regulations. Ms. Capobianco commented that the remedy may not lie within the town's zoning bylaws but may require a private action.

**Rob Webster, 4 Juniper Brook Road**, asked if there is ever a time where a law would not be subject to the grandfathering provision. Members of the board indicated that they did not believe so. Ms. Joubert reiterated that this is a state statute, and noted that Massachusetts is one of the few states in the country that has these grandfathering provisions in their zoning regulations. She also commented that matters covered in the general bylaw are not subject to this provision.

Ms. Poretsky commented that, while the subject resident would be grandfathered, the proposed bylaw would limit any future expansion on the site. Ms. Joubert commented that this would become a policing issue, which would be challenging when trying to deal with numbers of farm animals. A woman in the audience asked if the resident would be permitted to replace any animals that may die.

Ms. Reineke asked if it is possible to add a clause pertaining to noise and, if so, what would they be able to regulate. Ms. Capobianco suggested that this would still fall under zoning, with the neighbor being grandfathered. In response to a question from Ms. Gillespie, Ms. Joubert stated that there is nothing in the subdivision rules and regulations that would address the noise issue.

**Dan McDonald, 16 Juniper Brook Road**, asked if the group should pursue the issue during the winter months, since many of the neighbor's chickens will have died and not yet been replaced. Ms. Joubert noted that the bylaw, if passed, would not be effective until the April Town Meeting vote. Ms. Capobianco asked about the possibility of a Board of Health regulation requiring licensing, and questioned whether it that law would not have a grandfathering provision. Ms. Joubert indicated that it would not, and suggested that this is as another option to be explored. She reiterated her desire to investigate how other communities have addressed similar issues.

Ms. Capobianco asked about limiting or prohibiting roosters, or allowing them only during breeding months. Ms. Reineke stated that she would welcome the ability to limit roosters so the neighbor would not be allowed to get any more. She stated that she does not mind allowing them during breeding season, but they have remained. She noted a lack of respect when she tried to address the issue directly with her neighbor. Ms. Gillespie voiced her opinion that the Board of Health must have some ability to help, at least with the odor issues. Ms. Joubert agreed to discuss the situation with the Board of Health agent.

**Brad Swartz, 11 Juniper Brook Road**, explained that he lives next door to the property and while the chickens don't really bother him, he does object to the chicken feces all over his driveway. He also voiced frustration with the rooster that crows continually throughout the day. He noted that most people involved in these types of backyard agricultural uses are responsible citizens doing things the right way. Unfortunately, this is not the case in this neighborhood. Ms. Gillespie asked for clarification about the grandfathering provision, specifically whether the resident in question could be prohibited from replacing a rooster or if he will always be grandfathered to allow him to maintain the number of roosters he currently has. Ms. Joubert stated that she believes he would always be grandfathered. She reiterated that Northborough is not the first community to deal with this issue, and agreed to look into how others are addressing it. Ms. Capobianco emphasized that the board is limited in its ability to address the situation because of the way that the Commonwealth's laws are written.

Ms. Reineke questioned whether there is any wording that can be added to the proposed bylaw to address the noise and sanitation issues. Ms. Capobianco reiterated that the grandfathering provision would limit the town's ability to improve this specific situation. Mr. Reineke asked if the Planning Board would consider the proposed bylaw for the next Town Meeting.

Ms. Reineke asked about other options that might help make the current issue more tolerable for everyone, specifically with regards to fencing and containment regulations. She voiced her understanding that there is a law pertaining to poultry trespassing that allows fines to be imposed. Ms. Capobianco noted that there would be an enforcement issue, but asked Ms. Joubert to investigate the possibility of addressing the containment matter.

Mr. Swartz asked about limitations on the number of animals based on the size of the property. He noted that the neighbor has built a cage under his deck to house goats and voiced concern about the addition of more animals on this small lot. He voiced frustration about the situation, which is damaging properties and impacting property values in the neighborhood.

Ms. Reineke discussed the licensing suggestion. She indicated that it would not make sense to register each individual animal, but might be beneficial to register the address and the animal headcount at that address. She asked if a licensing regulation would fall under the zoning bylaws or general bylaws. Ms. Joubert indicated that licensing would be addressed in the general bylaw.

An audience member asked if there is anything in the bylaw requiring upkeep and proper sanitation. Ms. Capobianco indicated that there is nothing addressing upkeep. She also indicated that the issue of sanitation might be regulated, but only with regards to what falls within the Board of Health bylaw.

Ms. Capobianco polled the members of the board about their willingness to consider proposing this bylaw at the next Town Meeting. Ms. Harrison expressed a desire to hold a public hearing to determine the magnitude of the problem. Mr. Pember stated that he would prefer to meet with the Board of Health or their agent to investigate what can be done before moving forward with a new bylaw. Ms. Gillespie and Ms. Poretsky agreed.

Ms. Capobianco suggested holding a joint meeting with the Board of Health, with a public hearing to be held afterwards if warranted. She noted that the town tends to be reluctant about adopting a restrictive bylaw and expressed a preference to look at options that might be available through the Board of Health. Ms. Gillespie asked Ms. Joubert to provide a GIS map showing the small lots in town and who might be affected by the proposed bylaw.

Ms. Capobianco expressed the board's interest in continuing this discussion and agreed to notify the group when a meeting with the Board of Health is scheduled.

**Election of Officers** – George Pember made a motion to nominate Theresa Capobianco as Chairperson for the upcoming year. Leslie Harrison seconded; motion carries by unanimous vote.

Theresa Capobianco nominated Michelle Gillespie as Vice Chair for the upcoming year. Amy Poretsky seconded; motion carries by unanimous vote.

**Discussion re: Nonconforming Uses** – Ms. Poretsky discussed her desire to change the bylaw as it pertains to nonconforming uses. She stated that she had read bylaws from other towns, and noted that the purpose of the nonconforming bylaw is to allow the nonconformity to continue with the eventual goal of moving it back to conforming. She indicated that Northborough's bylaws are written in a way that allows expansion of a nonconformity, and voiced opposition to this approach.

Ms. Capobianco asked for clarification about the nonconforming provision. Ms. Poretsky explained that, when she attended a CTPC workshop discussion regarding Section 6 of Chapter 40A requires that any expansion or change must comply with current zoning bylaws, which is something she would like to see Northborough implement. She cited a recent project proposed at the Indian Meadow Golf Course, where an expanded nonconforming use was before the ZBA, and voiced her opinion that a proper nonconforming provision would have disallowed the project without the need for a citizens group to insist that the project be denied. Ms. Capobianco commented that a use variance would then come into play. Ms. Joubert explained that, like any bylaw, the issue lies with how the board interprets both the bylaw and decides what is more detrimental. Ms. Capobianco agreed that there will always be applicants who can make their case and make an argument for meeting the spirit of the bylaw. Ms. Poretsky noted that other communities have bylaws that stipulate that a proposed use must be a similar or more restricted use. Ms. Capobianco reiterated her opinion that this will still not eliminate the issue.

Mr. Pember indicated that he will need more time to study the proposal. He discussed a client who now has issues because the recent rezoning resulted in his property now being located in a residential district. He noted that the property has always been an office building, but because of the rezoning his client was required to obtain a special permit in order to re-lease one of his office units.

Ms. Gillespie suggested that the board look at what the ZBA has approved over the past year and see how this proposal would apply to some of those cases. Ms. Joubert asked Ms. Poretsky to clarify exactly what it is that she is trying to accomplish. Ms. Poretsky reiterated that the current bylaw allows the expansion of nonconformity, and she is proposing language that would allow applicants to continue with a current nonconformity but not expand or change it. Ms. Capobianco noted that the bylaw currently allows for a change if it is not substantially more detrimental than the existing nonconformity. Ms. Poretsky commented that this is a very gray area. Ms. Capobianco agreed that any potential change is worth looking at, but suggested that it would be beneficial to examine the overall effect of such a change. She voiced skepticism about the effectiveness of this change, given that the town's bylaw allows for a use variance.

Ms. Capobianco expressed a desire to discuss the issue with the ZBA, as the board would need their buy-in. Ms. Poretsky asked Ms. Joubert to provide details about how many nonconforming uses have come before the ZBA recently. Ms. Joubert agreed to provide a spreadsheet covering the past 5 years. Ms. Gillespie asked Ms. Joubert if the ZBA has seen things over the past year that would warrant additional changes to the bylaw.

Ms. Gillespie asked Ms. Joubert if discussions about the Master Plan have begun. Ms. Joubert indicated that they have not, but she expects to do so in the fall. Ms. Gillespie recalled that the Planning board had requested that two of its members be allowed to sit on the subcommittee.

Ms. Poretsky discussed her recent attendance at a CPTC workshop. She stated that she was told that, while use variances are allowed, they would be denied under appeal. She voiced her understanding that there must be no other viable uses for a property in order for a use variance to be granted, and elimination of the use variance was recommended. Ms. Joubert agreed to provide the board with information about use variances that have been granted over the past 10 years.

Ms. Poretsky expressed a desire for the Planning Board to further discuss the nonconforming bylaw before meeting with the ZBA. Ms. Capobianco suggested adding this discussion to the agenda for the August meeting, when the board can decide how to proceed.

**Review Meeting Minutes** – George Pember made a motion to approve the Minutes of the Meeting of March 3, 2015. Amy Poretsky seconded; motion carries by unanimous vote.

George Pember made a motion to approve the Minutes of the Meeting of May 19, 2015. Amy Poretsky seconded; motion carries by unanimous vote.

**Next Meeting, August 4, 2015** – Ms. Joubert informed the board that there is one application for the August 4th meeting, which seeks approval for installation of a cell tower at 386 West Main Street (Pendleton Square). She noted that the proposed tower will be approximately 1800 feet from the existing tower at Fox Meadow, which she believes is full. Ms. Poretsky noted that the bylaw requires cell towers to be at least a mile apart. She also asked if Verizon is co-located on the existing tower. Ms. Capobianco asked if the town has details about which providers are on each of the existing poles in town. Ms. Joubert indicated that the Building Department has this information. She explained that, if the applicant is unable to comply with the one mile distance, they are required to prove that they cannot co-locate on the existing pole. Ms. Capobianco asked Ms. Joubert to provide a cell tower map showing locations and radii.

**ZBA applications** – Ms. Joubert discussed the following applications that have been submitted for the ZBA's next meeting

- **261 Main Street (vacant property adjacent to the Computer Exchange)** – Ms. Joubert explained that the applicant is interested in dividing the property and is seeking to have the building footprint approved to allow him to market the property. She noted that, since the current owner will not be the eventual developer, they are asking for permission to defer appearance before the Design Review Committee until a buyer is found.
- **1C Belmont Street** – Ms. Joubert explained that the applicant is seeking approval to install a sign on his property for stores at Northborough Crossing. She noted that a variance is needed because the sign will be on another property.

Ms. Gillespie asked Ms. Joubert to research what type of cell tower activity is being seen in nearby towns. She also asked why the applicant is not doing rooftop installations.

Adjourned at 8:30PM.

Respectfully submitted,

Elaine Rowe, Board Secretary