



TOWN OF NORTHBOROUGH PLANNING BOARD

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Planning Board Meeting Minutes November 15, 2017

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

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Judi Barrett, Barrett Planning Group; K. Martinek, 16 Hemlock Drive

Chair Theresa Capobianco called the meeting to order at 7:10pm.

In response to a question from the Chair, Ms. Joubert discussed the Public Records Law requirement that board meeting minutes be completed and approved within thirty days or three meetings (whichever is longer) from the original meeting date. Ms. Capobianco asked Ms. Joubert if she had looked into the ethics compliance issue with the Town Clerk. Ms. Joubert indicated that she had not, but agreed to do so.

Discussion with Judi Barrett, Barrett Planning Group, regarding duplexes – Ms. Barrett noted that the town currently has a moratorium prohibiting construction of 2-family dwellings and voiced her understanding that the board is seeking her help to determine changes to the regulations, if any, to be presented at the upcoming Town Meeting. She explained that she had met with each board member individually to ascertain what the catalyst was for the imposition of the moratorium and what the concerns are about 2-family development. She explained that she will be providing board members with a follow-up questionnaire for completion and requested that they be returned directly to her.

Ms. Barrett commented that there are a number of ways for the town to address the subject of 2-family dwellings and she would like the board to consider what a decision is going to look like and how the board will handle the matter, whether by simple majority or super majority. In addition, she wondered about how those board members who are not in the majority will face the issue and how the board as a whole will handle it. She indicated that, based on initial discussions, it is clear to her that there is disagreement within the board and she is uncertain whether everyone will be satisfied with the eventual outcome.

Ms. Capobianco noted that the board has always used a simple majority and questioned how the board would go about changing it. Ms. Joubert suggested that a change may not be needed, as she believes that Ms. Barrett is simply concerned about how the board will proceed should a unanimous agreement

not be possible, and how the minority might react to such a circumstance. Ms. Capobianco stated that she would never abridge anyone's right to speak out against an issue, but she would be disappointed to see a board member launch a campaign that could result in a contentious situation. Ms. Harrison voiced her opinion that Ms. Barrett was brought in not as a mediator, but as a consultant to advise the board about the options available. Ms. Barrett commented that it is also her job to try to help the board reach a decision. She questioned whether the board's desire is for her to simply provide options for them to work out amongst themselves or if they would also like her to help facilitate a decision. Ms. Capobianco voiced her opinion that, to the extent that Ms. Barrett might be able to facilitate a decision, it would be beneficial.

Ms. Barrett explained that the board can continue to allow duplexes as currently written in the zoning bylaw, prohibit them outright throughout town, or find some sort of compromise between the two extremes. She noted that she has worked in 155 towns in Massachusetts and, no matter which approach you take, there will always be disagreement. She suggested that the board not put a lot of stock in what other towns are doing, but seek to do what they believe is best for Northborough.

Ms. Barrett noted that the zoning bylaw currently allows duplex housing by right in three districts and by special permit in one other. She indicated that some of the options available to the town include:

- Allow 2-family dwellings by special permit only (not an uncommon practice)
- Only allow 2-family dwellings as conversions of existing single family homes by special permit (also not uncommon)
- Continue to allow 2-family dwellings by right, with some type of quid pro quo with regards to lot area
- Allow 2-family dwellings but provide for some type of additional review
- Limit the districts where 2-family dwellings are allowed, and only allow them in districts with larger lot size requirements
- Require 2-family projects to go before the Design Review Committee

Ms. Barrett recalled that, when the town revised the zoning bylaws in 2007/2008, there was some heated discussion about height limitations, which the bylaw currently does not limit (either linear height or number of stories) in residential districts. She noted that the Building Inspector at the time did not believe such restrictions within the zoning bylaw were needed because the building code includes such regulations. She indicated that, though this is true, most zoning bylaws do contain height restrictions for single family and 2-family dwellings. She commented that the building code and zoning bylaws have different objectives, with the building code addressing health and safety whereas the zoning bylaw pertains to land use, intensity of use, and design. She reiterated concerns that Northborough's zoning bylaw contains no height restrictions beyond what is included in the building code, and suggested that the board may want to think about adding some. She also noted that she had heard concerns about recent 2-family projects being quite large and commented that height contributes to the sense of large scale. Ms. Capobianco suggested that Ms. Barrett include a question or two about this in the survey. Ms. Barrett confirmed that she plans to do so.

Ms. Barrett expressed a desire to get a sense of how much room for compromise exists as well as understanding what brought this all about. She indicated that she will be back before the board to discuss options for 2-family regulations and what the potential trade-offs might be. She also noted that the subject of affordability was raised and explained that there are some towns that require some affordability component for 2-family homes. She stated that the approach is not so much about requiring an affordable purchase price but rather that the cost be something that is more attainable for the demographic in town. She offered to provide the board members with options and let the members talk through it.

Ms. Capobianco asked Ms. Barrett to clarify her comment that over-regulating could result in the town not getting anything. Ms. Barrett explained that she can make suggestions as to how to regulate, but any one of them could be a tipping point and if the town goes too far, it may result in the town not getting any more 2-family homes. She commented that if the board opts to continue to allow them but imposes too much regulation, it could end up thwarting that decision.

Ms. Barrett also noted that what makes the conversation difficult is the fact that there are people out there making a lot a money on these projects, so if we focus too much on these developers we lose sight of the fact that owners who are seeking to profit from the sale of their properties are often the most vocal about changing the rules. She encouraged the board not to go down the path of what developers want but to work towards what the board wants for the town. She stated that she is confident that she can articulate what this is and translate it into regulations. She suggested that, between what that is and what the regulations currently allow, there is plenty of room to negotiate as long as the board is open to compromise. That said, she did recognize that there is enough of a difference of opinion on the board that any sort of extreme is not going to prevail. She indicated that she will do one or two more surveys with the board to get the information she needs to move forward. Ms. Joubert noted that warrant articles are due to the Town Administrator by February 5th.

Ms. Poretsky voiced concern about running out of time. Ms. Joubert questioned the board about the December meeting schedule. After discussion, the board agreed to meet again with Ms. Barrett on December 27th at 7:00PM. Ms. Barrett indicated that she will send out the additional survey within the week. Ms. Harrison stated that the issue is not about the board not being able to work together to reach an agreement, but is more about the members wrestling with the nitty gritty details, which is what they need Ms. Barrett's help to do. Ms. Barrett agreed to send out the questionnaire by Thanksgiving and give the board members a week to respond so that she can come back on December 27th with options based on those responses. Ms. Joubert noted that the contract with Ms. Barrett covers only two meetings.

Ms. Barrett suggested that, should the board decide to adopt additional regulations around 2-family housing, members may want have some additional standards that must be met. She noted that the table of uses may need to be amended, and/or the board may want to add a section to the existing special regulations to include supplemental regulations and cross reference the use table.

Ms. Joubert explained that town staff had suggested adding duplexes to the Site Plan Review process. She noted that staff has seen issues with driveways not being placed in the best location and abutters to some of the recent projects have voiced complaints about drainage issues exacerbated by the size of the structures.

Ms. Capobianco asked Ms. Barrett if she will be able to provide the board with information to review in advance of the December 27th meeting. Ms. Barrett agreed to provide a memo that outlines what she believes the board should be prepared to discuss. Ms. Joubert stated that she will ascertain how the current building inspector interprets the process for determining building heights and where those measurements are taken from. Ms. Barrett commented that Northborough is the only town she has worked in where there are no regulations in the zoning bylaw about height restrictions in the residential districts, and voiced her opinion that the board should be thinking now about what to put in place to mitigate tension over 2-family dwellings in addition to single family tear-downs.

Ms. Capobianco asked if the Zoning Board of Appeals (ZBA) has weighed in on the issue beyond Fran Bakstran. Ms. Joubert agreed to discuss it with them at their next meeting and invite them into the process in hopes that some of them might attend upcoming Planning Board meetings. Mr. Pember voiced his opinion that the ZBA may also have differing views on the issue.

Ms. Barrett indicated that she would like to get a copy of the current assessor's parcel map to see where older 2-family dwellings are and where new ones have recently been built to get a sense of the where they are going. Ms. Harrison stated that this would be very helpful to the board.

Ms. Gillespie asked if zoning bylaws can regulate different height restrictions based on the various neighborhoods in town instead of by district. Ms. Barrett noted that height restrictions would need to be imposed by district. She also commented that there is quite a bit of discussion needed about height regulations.

Ms. Joubert informed the board that Tony Abu, a town resident and local developer, has provided an email about the duplex issue, a copy of which has been provided to each member.

Recreational Marijuana – Ms. Joubert explained that she had provided the board members with documents from Town Counsel, in which they address some of the questions the board had raised as well as draft language for the two bylaws (general and zoning) for recreational marijuana, medical marijuana, and accessories to prohibit it in all districts. In addition, she noted that the zoning bylaw section contains language to prohibit use variances.

Ms. Joubert indicated that she will prepare a use table for discussion at the next meeting. Ms. Gillespie noted that she had previously asked for Town Counsel's opinion about whether the town should consider holding a Special Town Meeting earlier than the planned Annual Town Meeting. Ms. Joubert explained that, at this point, Town Counsel is standing by their opinion that a Special Town Meeting is not necessary; however, the Board of Selectmen is committed to calling a Special Town Meeting if Town

Counsel obtains any additional information from the Attorney General's office that would indicate a special town meeting would be necessary.

Ms. Capobianco asked about allowing the use in the Highway Business District and whether doing so will result in effective prohibition because of the required setbacks.

Ms. Joubert referenced prior discussions about the need to have an article ready for where the use will be allowed in the event that the article to ban it fails at Town Meeting. She noted that the way that the town had originally regulated medical marijuana facilities was to allow them by right in the Highway Business District (along Route 9). She asked the board if they would like to consider allowing the use in the Industrial and/or Business South Districts (Lawrence and Otis Streets). Ms. Joubert discussed the zones as shown on the zoning map, and offered to draft some buffering maps for the board's next meeting in the event they want to consider adding the use in the Industrial or Business South zones.

Ms. Capobianco asked if anyone on the board is inclined to discuss allowing the use in other zones. Ms. Poretsky and Ms. Gillespie expressed a desire to leave it in only the Highway Business District. Ms. Harrison agreed, provided that it will not result in an effective prohibition. Mr. Pember indicated that he would be agreeable to allowing it in the Business South District but not in the Industrial zone due to the proximity to residential properties. Ms. Joubert noted that the likelihood of the prohibition not passing seems low, but the board needs to do its due diligence to give it a home should it fail. Mr. Pember voiced concern about the 300 foot setback and whether the proximity to the baseball fields will result in an effective prohibition. Ms. Poretsky noted that the bylaw allows a setback reduction of up to 25%. Ms. Joubert confirmed this to be the case, but noted that it would require that the applicant employ adequate security measures. In response to a question from Ms. Poretsky about who actually comes up with the adequate security measures, Ms. Joubert stated that she was unsure but most likely it would be a joint discussion with the Building Inspector and Police Chief.

Ms. Joubert agreed to go forward with revising the medical marijuana bylaw into language for the recreational marijuana bylaw, which she will send to Town Counsel for comment before the board's next meeting scheduled for December 5th.

Ms. Capobianco asked Ms. Joubert to evaluate how much is encumbered by the 300 foot setback from the baseball facility. Ms. Joubert agreed to do so.

Ms. Capobianco asked about language for the bylaw pertaining to special permits. Ms. Joubert stated that she has asked Town Counsel to provide draft language.

In response to a question from Ms. Gillespie, Ms. Joubert stated that the proposed language contains a prohibition of use variances for marijuana.

Master Plan – Ms. Joubert noted that reference checks were recently completed, and she expects to have the consultant selected before Thanksgiving.

Zoning Board of Appeals – Ms. Joubert explained that there were three hearings scheduled for the ZBA’s meeting on November 28th, but two of the applicants (89 West Main Street and 200 Bartlett Street) have requested continuances. There is a hearing scheduled for a project at 222 West Main Street, where the Planning Board previously signed an ANR for 5 building lots. She explained that Tony Abu is now looking at whether he will proceed with a residential development or explore the possibility of a commercial development on the site. Ms. Poretsky asked if the ZBA has ever approved a commercial project in a residential district.

Development on Church Street – Ms. Joubert explained that Chuck Black has requested time to speak with the board at an upcoming meeting and asked whether the board would prefer to do so at their December 5th or December 27th meeting. She noted that Mr. Black had developed the project of 5 single family homes on a common driveway off of Church Street, and is now disputing the requirement for sidewalk improvements imposed in the decision. Ms. Capobianco suggested that Mr. Black come to the December 5th board and asked Ms. Joubert to request written confirmation from him about what he would like to discuss.

Ms. Poretsky explained that she was asked by a town resident about whether the meetings for the Master Plan will be taped so they can be viewed on TV. Ms. Joubert voiced doubt that they would be, given the lack of staff to record the meetings. She commented that the meetings are open to the public and meeting minutes will be published.

Annual Holiday dinner – Members of the board discussed holding the annual holiday dinner at Romaine’s on either January 18th or 25th. Ms. Joubert agreed to poll town staff for their availability and advise.

Meeting adjourned at 8:20PM.

Respectfully submitted,

Elaine Rowe
Board Secretary