



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 2.6.18

**Planning Board
Meeting Minutes
December 5, 2017**

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

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield; Town Engineer; Chuck & Jean Black, Kendall Homes

Chair Theresa Capobianco called the meeting to order at 7:05PM.

Discussion with Chuck Black RE: Condition in 2013 Special Permit Common Driveway Decision for 150 Church Street – Chuck Black appeared before the board to discuss the condition in the 2013 decision for his project on Church Street. He stated that he has done many quality projects in town over the years and has a good reputation. He noted that he had not done the original permitting for the project, which included construction of 4 homes on a common driveway on a parcel that previously housed a dilapidated home and outbuildings. He also commented that what currently exists on the parcel is a great improvement over previous conditions. He explained that, when he purchased the project, he had neglected to notice the condition in the decision that requires repair and reconstruction of the sidewalk.

Mr. Black noted that he had posted a bond with the Earthworks board and, though he could not recall the original amount of the bond, it was subsequently reduced to \$10,000 due to work completed on the project. He indicated that driveways for the individual homes have been completed and the common driveway needs a topcoat of asphalt. He explained that he had planned to do some sidewalk work in front of the property, but not to the extent required in the decision. He commented that much of the sidewalk on Church Street is in disrepair, and he and his paving contractor planned to put a leveling course on the existing sidewalk (about 200 linear feet) followed by a topcoat and the finished product will be functional and aesthetically pleasing. Mr. Black explained that Mr. Litchfield had requested that he rip up everything, put in an asphalt berm, re-gravel it in, and put down binder and topcoat. He voiced his opinion that the scope of work is grander than is necessary, and noted that his paving contractor agrees. He also commented that, since there is no real time crunch for the work to be done, he is before the board to ask the members to consider giving him creative license to finish the job in the spring.

In response to a question from Ms. Capobianco about the length of the sidewalk, Mr. Litchfield confirmed that it is approximately 200 feet. He also explained that there is a low point in Church Street

where the town will ultimately need to add a structure and indicated that he would not ask Mr. Black to incur that expense. He emphasized that he would simply like to have Mr. Black rebuild the sidewalk in front of the property as was agreed to in the decision. Ms. Capobianco asked if the town received a plan that did not show the repair and reconstruction. Mr. Litchfield stated that the decision calls for a sidewalk plan to be submitted to the DPW for approval prior to any house construction, but no plan was ever received. He indicated that Mr. Black purchased the property from the applicant who did the original permitting, and somehow obtained building permits without submitting the required sidewalk plan.

Mr. Litchfield explained that, when he asked for the sidewalk to be reconstructed per the decision, Mr. Black asked to meet onsite to discuss the matter in lieu of providing a plan. At the time of the meeting, Mr. Litchfield believed that the two had reached an agreement about resolution but Mr. Black later indicated that he did not agree and asked to appear before this board to discuss it. Ms. Capobianco asked Mr. Black if he had obtained a copy of the decision prior to purchasing the property. Mr. Black stated that he had only recently looked at it, and was unaware of the condition until Mr. Litchfield mentioned it.

Mr. Black commented that, although the decision calls for a plan, there is really no reason to re-engineer things or spend extra money, and he believes his reputation should speak for itself. Ms. Capobianco emphasized that no one is challenging Mr. Black's reputation. Mr. Pember voiced his opinion that a formal plan is not necessary, and asked Mr. Litchfield to clarify the difference between the two proposed reconstruction methods for the sidewalk and what the associated costs might be. Mr. Litchfield indicated that he is uncertain about the costs, and explained that the reason for requiring a plan was to be sure that everyone was in agreement about what needed to be done. He indicated that the sidewalk needs a fair amount of work. He explained that the soil underneath is not completely suitable, so the sidewalk needs more work than simply putting a layer of pavement on top of it. He confirmed that he had asked Mr. Black to remove the edge of the pavement and ensure that a proper berm pad is in place for the curbing to sit on, ensure good gravel is behind it, regrade, and put down two courses of asphalt for the sidewalk. Mr. Litchfield reiterated that simply laying down asphalt on top of what is currently there is not adequate. He also suggested that, had the plan been done prior to construction as required, much of this discussion could have been avoided.

Ms. Joubert noted that the board members were all present in 2013 when there was lengthy discussion with the project engineer about the sidewalk and, at the time, the board felt strongly enough about the issue that they wanted it included as a condition in the decision. Mr. Pember asked if this is standard construction practice. Mr. Litchfield confirmed that it is, and noted that it is not advisable to do any reconstruction that does not result in a permanent solution.

Mr. Black mentioned that he currently has a bond in place with the Earthworks Board, but not with the Planning Board, and voiced a desire to see if it might be possible to arrive at some sort of compromise. He emphasized that he was not the one who damaged the sidewalk and does not believe it should be his responsibility to fix it. Ms. Harrison reminded him that he bought into a contract that required him to do so, and the Town Engineer still believes the work is needed. Ms. Capobianco empathized, but voiced

her opinion that the sidewalks throughout town are in bad condition so, as a resident, she appreciates any opportunity to have them repaired. She also stated that, in her memory, every time this board has conditioned a decision it has been with intent. She suggested that including this condition in the decision would have been intended to remedy a bad situation and she would not be inclined to change it.

Mr. Black commented that he could address the issue in the spring in a way that he sees fit, and let the town retain his Earthworks bond. Ms. Capobianco voiced her opinion that the town would likely have other legal remedies, and suggested that Mr. Black would not wish to jeopardize his reputation. Mr. Black asked the members of the board to give the matter further consideration over the winter months.

Continued Zoning Discussion for 2018 Town Meeting

- **Recreational Marijuana Update**
- **Special Permit language Update**

Ms. Joubert provided a series of maps as was requested during the last meeting, when the board discussed looking at the impacts of a 300-foot, 500-foot, and 1000-foot buffer for a recreational marijuana facility to demonstrate that there are properties available in the Highway Business and Business South districts should an additional warrant article be needed in the event the proposed prohibition does not pass at Town Meeting.

Ms. Joubert discussed the map illustrating the 300 foot buffer, and noted the parcels highlighted in gray show the land that would be available for a recreational marijuana use. She explained that the same use codes were used as were when the medical marijuana bylaw was drafted, requiring a 300-foot buffer from schools, child care facilities, libraries, playgrounds, public parks, or a similar facility in which minors commonly congregate. She also noted that retail establishments under 10,000 square feet would be included.

Ms. Capobianco asked about lots that are only partially within the 300-foot buffer. Ms. Joubert indicated that the entire lot would be excluded, unless it was subdivided to create a lot entirely outside the buffer. Ms. Gillespie asked about the day care facility near the WalMart store, which Ms. Joubert confirmed is no longer there. Ms. Capobianco commented that there appear to be 8 lots in the Highway Business zone and two lots in the Business South zone where a recreational marijuana facility can be located; whereas a 500 -foot buffer would only result in 5 lots in the Highway Business and one in the Business South, and there would be no available lots in either zoning district if the town imposed a 1000-foot buffer.

Ms. Harrison voiced a preference to allow the use in the Highway Business zone with a 300-foot buffer zone and to not allow it in the Business South zone. Ms. Capobianco, Ms. Poretsky, and Ms. Gillespie all agreed. Mr. Pember stated that he would allow the use in both zones, with the 300-foot buffer. Ms. Joubert offered to draft a bylaw, similar to the one that was done for medical marijuana, with the limitations as stipulated by the board. Ms. Capobianco reiterated that the town is proposing an article to prohibit the use entirely, but we need to have an alternative should that article fail at Town Meeting.

Update regarding proposed changes to the language pertaining to special permits – Ms. Capobianco noted that Ms. Joubert had provided board members with a copy of an email from Town Counsel in which she advises the board not to move forward with the proposed language change relative to special permits. Ms. Capobianco commented that, at its very core, the constitution allows for the free alienation of property. She explained that a special permit runs with the property and a change in ownership does not alter the ability to use the property, but the proposed language revision would impede on an owner’s ability to sell a property with an existing use. Ms. Capobianco reiterated that Town Counsel has advised the board not to proceed with the proposed language revision, and she encouraged everyone to review the comment email. Ms. Harrison stated that she would be inclined to trust the opinion provided by Counsel.

Minutes of the Meeting of September 13, 2017 – Leslie Harrison made a motion to accept the Minutes of the Meeting of September 13, 2017 as amended. George Pember seconded; motion carries by unanimous vote.

Zoning Board of Appeals, January 23, 2018 meeting – Ms. Joubert discussed items on the agenda for the next ZBA meeting as follows:

222 West Main Street (corner of West Main Street & Lincoln Street) – there was an application filed for a use variance, but that application has been withdrawn without prejudice.

89 West Main Street (formerly UniSign) – Ms. Joubert noted that a revised application is still pending. In response to a question from Ms. Gillespie about the height of the proposed building, Ms. Joubert explained that the applicant has indicated that it is ground plus 3, which in essence is a 4-story building. Ms. Gillespie asked about height restrictions, and noted that a 4-story structure will be excessive on this small lot. Ms. Joubert noted that there isn’t a height limit in any of the residential zones or in Main Street Residential and Downtown Neighborhood. There is a height limit of 45’ in the Downtown Business district.

Ms. Capobianco asked if it is possible to get the applicant to construct a sidewalk in front of the project. Ms. Joubert stated it is not, and explained that Mass Highway is now requiring towns to sign a waiver accepting responsibility for maintenance of sidewalks along state roads, and the town is not willing to do so. She also explained that the Town Administrator has suggested that the town develop a sidewalk plan and he has agreed to address sidewalk construction as part of the Capital Improvement Plan presented at Town Meeting.

200 Bartlett Street – Ms. Joubert noted that a landscaping business has occupied the space and started operating without the appropriate permit.

Ms. Joubert noted that there is still time for additional applications to be submitted before the filing deadline.

Master Plan – Ms. Joubert noted that the town has hired VHB to collaborate on the Master Plan, and the contract is in the process of being finalized. She also commented that she anticipates the public process will start sometime in January.

Other Issues – Ms. Poretsky voiced concern about the illuminated signs that seem to be infiltrating the town, and asked if they are allowed in the downtown area. Ms. Joubert explained that the zoning bylaw was revised in 2015 to allow them in the Downtown Business, Business East, Business West, Business South, and Highway Business districts. She recalled that there were concerns about the proliferation of sandwich boards and temporary signs, so the bylaw was modified to allow signs with changeable copy. Ms. Poretsky stated that she did not envision illuminated signs for the changeable copy, and expressed a desire to revisit the subject as she does not want to see this type of signage in the downtown area since it will negatively change the character of the town. Ms. Harrison agreed that she would not want to see them in the downtown area or anywhere in town. Ms. Gillespie suggested that it might be possible to tone down the brightness and agreed to discuss the matter at an upcoming meeting of the Design Review Committee.

Next Meeting – Ms. Joubert noted that the next meeting is scheduled for January 8, 2018 at the Police Station as there are no meeting rooms available in Town Hall. She voiced her understanding that Judi Barrett is drafting a second survey to be provided to the board members in advance of the January 8th meeting. She also indicated that town staff is working to produce a map showing the locations of all existing 2-family dwellings in town.

Meeting adjourned at 8:10PM.

Respectfully submitted,

Elaine Rowe
Board Secretary