



# TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 3.5.19

## Planning Board Meeting Minutes January 15, 2019

**Members in attendance:** Theresa Capobianco, Chair; Amy Poretsky; Anthony Ziton; Kerri Martinek; Michelle Gillespie

**Others in attendance:** Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Attorney George Pember; Tony Abu, Attorney Marshall Gould; Michael Scott, WDA Design Group; Attorney James Tashjian, Laura Ziton

**Chair Theresa Capobianco called the meeting to order shortly after 7:00PM.**

**Master Plan Steering Committee Update** – Ms. Gillespie noted that she was unable to attend the recent meeting of the Master Plan Steering Committee due to illness. Mr. Pember stated that, at this point, the committee is looking at the recommendations for action items. He indicated that the committee had hoped to get through all of the action items by the end of their last meeting but most of the discussion was focused on land use, specifically the downtown area, and the committee has not yet reached any definitive conclusions. In response to a question from Ms. Capobianco about any decisions that were made, Mr. Pember stated that there was some agreement reached on some of the recommendations but the committee still has a long way to go. Ms. Capobianco expressed her opinion that the committee may not be on track to complete the process on time. Ms. Poretsky agreed with Mr. Pember's summation of the meeting and noted that the next meeting will be held at the library on January 24<sup>th</sup>, at which time the committee hopes to get through the rest of the recommendations. She also expressed her desire to get the Planning Board's input on some of the issues.

Ms. Poretsky discussed the matter of Smart Growth that is under consideration by the Master Plan Steering Committee. She indicated that she had done some research and looked into what the towns of Hudson and Shrewsbury did since they had recently gone through their own Master Plan process. She explained that, for 40B, the town of Northborough is above the required 10% (currently at 12%), as is Hudson, so it was recommended that the town consider an Inclusionary Bylaw.

Ms. Poretsky explained that Smart Growth would require that the town adopt 40R, which addresses high density housing in which 25% would be required to be affordable but also gives developers the right to bypass zoning bylaws. She reiterated that, since the town is above the 10% threshold for affordable housing, we do not really need Smart Growth. She noted that the Steering Committee would like Ms. Joubert and the consultant to come back to the next meeting to further discuss the matter in

hopes of getting more clarity. In preparation for that meeting, Ms. Poretsky expressed a desire to obtain Planning Board input on the matter of Smart Growth.

Ms. Capobianco voiced concerns about 40R and stated that she would like to understand exactly what developers will be allowed to bypass, given the amount of work that the board has put into establishing the bylaws. Ms. Joubert stated that 40R is not a bypass situation like 40B, and 40R typically has state financing incentives attached to it. She noted that the state will provide the community with school money based on how many students will be generated by a 40R development. She also stated that 40R is very complicated. She explained that, generally, the town invites a developer to come in and do a 40R project and they are typically based around public transportation, which is not anything we currently have in town but there are other criteria that the town could likely meet. Ms. Joubert emphasized that everything in the Master Plan is merely a recommendation for the Steering Committee's consideration, and it is up to the town as to whether to move forward with implementing any of it.

Ms. Joubert discussed the option of inclusionary zoning, which she noted the town once had and may want to take a look at again. In response to a request from Ms. Capobianco, Ms. Joubert explained that inclusionary zoning is a specific bylaw with set criteria that sets a base for the percentage of a development to be reserved as affordable units and also sets what that affordability is. She stated inclusionary zoning is not required to comply with the state's affordable regulations/limits, and the inclusionary zoning bylaw would set the percentage. Ms. Joubert recalled that the bylaw in place in the late 1990's stipulated a percentage of 10%. She also mentioned that some communities will allow a developer to donate the value of a unit into an affordable housing trust instead of building an affordable unit. She discussed the "missing middle", a term that is given to a group of people that has been shut out of the housing market, and noted that there are ways that the town can address it through zoning. She mentioned that the Steering Committee has asked the consultant to come back with additional information about these programs for their next meeting.

Ms. Poretsky expressed a desire for the board to learn more, and noted that there is public outreach to be done in February that will include a visual preference survey. Ms. Joubert commented that a visual preference survey was previously done when the town developed the design guidelines and one is planned for the next public forum, which will also likely include a discussion of the recommendations. Ms. Gillespie requested that Ms. Joubert provide the same explanation about 40R and inclusionary zoning at the next Master Plan Steering Committee meeting as she did this evening. Ms. Joubert explained that the consultants will provide some information about smart growth districts and inclusionary zoning, and also noted that there is a website on smart growth that was put together by the state. Ms. Capobianco indicated that it will be helpful for her to have that additional information before she voices an opinion.

Mr. Ziton voiced skepticism that smart growth and 40R fit in town, and voiced his opinion that it is more applicable for towns that have large parcels of land, which is not the case in Northborough.

In response to a question from Ms. Martinek about where the recommendations came from, Ms. Joubert explained that they were provided by the consultant hired by the town who had prepared a list

of draft goals that the committee went through over a series of meetings. She noted that the consultant also provided a list of draft recommendations, based on the goals that were agreed to. Ms. Joubert indicated that the goal of the next Steering Committee meeting is to get through the rest of the recommendations that will then be presented as draft recommendations during the public forum.

**Review of 329-333 West Main Street ZBA Application with Michael J. Scott, PE, WDA Design Group and Marshall Gould, Esquire, Gould & Ettenberg, P.C.**

Attorney Marshall Gould and Michael Scott appeared on behalf of the applicant to discuss the ZBA application for the property located at 329-333 West Main Street that was previously used by the Zecco Company, a waste company that handled industrial and hazardous waste. Attorney Gould explained that the existing building was built by the Zecco Company, who was later bought by Metcalf & Eddy who eventually sold to the current owner of the property. He noted that the current owner operates an industrial waste company but has not been doing anything with hazardous waste. He explained that, for close to 50 years, there have been many tenants at the site including a tree removal service, welders, and numerous other businesses, with the welding company being the longest tenant of approximately 47 years.

Attorney Gould explained that a gentleman who lives in the area and operates a landscaping business in Marlborough is interested in purchasing the property and relocating his business to Northborough. He noted that this business is more of a green operation than most and does not involve a heavy use of chemicals. He also stated that the proposed use is similar to the current and prior uses on the site.

Attorney Gould reiterated that the current owner has been operating an industrial waste transport and storage business, and he provided photographs illustrating the typical vehicles used by the most recent tenant. He stated that the proposed landscaping use will involve storage of some chemicals, vehicles and equipment, and maintenance, all of which will be contained within the building. He also noted that there has been storage within unpaved areas which the applicant plans to pave.

Attorney Gould explained that the Building Inspector determined that the proposed use is a nonconforming use but it is a much less intensive and much less risky use than the existing and previous uses. In response to a question from Ms. Capobianco about whether this proposal will go before the Groundwater Advisory Committee (GAC), Mr. Litchfield confirmed that it will and noted that the hearing will be scheduled once he receives the additional information that he has requested from the applicant.

Mr. Scott explained that his client has been trying to get information from the business owner and seller, but has not yet been able to do so. Attorney Gould indicated that the buyer had quite a few contingencies for the purchase of the property, one of which was the inspection of the existing septic system that he understands will be replaced with an entirely new system. Attorney Gould stated that the buyer also wanted assurance that he would not have any issues under 21E, so a very thorough Phase 2 21E inspection was done, the results of which were very good and showed no reportable or unsafe conditions. He indicated that everything was within the limits allowed by law.

Ms. Capobianco asked if chemicals are currently being stored onsite. Attorney Gould voiced his assumption that the welder likely has some chemicals associated with the business but the seller is currently not storing any chemicals onsite, though he is parking some vehicles there.

Ms. Gillespie asked if the seller or applicant would be willing to share the results of the 21E inspection with town staff. Attorney Gould agreed to ask them to do so. In response to a question from Ms. Gillespie about hours of operation, Attorney Gould voiced uncertainty but noted that landscapers typically start very early. He mentioned that this question will likely come up during the ZBA hearing, and the ZBA has the authority to limit the hours of operation if they wish to do so.

Ms. Gillespie noted that landscaping businesses typically involve a lot of tree stumps and brush cutting, and asked if the applicant plans to do any composting onsite. Attorney Gould stated that this issue was never discussed. Mr. Scott explained that the business is mostly commercial and the applicant does not do a lot of tree work. He stated that there will be no composting or exterior storage of materials with the exception of a small pile of mulch when required for a job. Mr. Scott also stated that the applicant will likely bring clippings or brush to the site to store it temporarily, but it will be hauled out at the end of the week.

Mr. Ziton asked if the property was ever permitted for a waste disposal or waste management business. Attorney Gould stated that he has lived in town for 26 years and when he moved here there had already been multiple businesses at the site. He explained that he initially met Mr. Zecco and the welder who had his business there, and he believes that there were three uses at the time. He stated that the site has since gone through more special permitting for the expansion to allow office space. Mr. Ziton questioned whether any materials the new owner will have at the site will require new permits. Attorney Gould indicated that the applicant will be required to file applications with the Fire Department and provide the Town Engineer with a list of chemicals to be stored onsite. He also noted that the applicant will have a licensed pesticide person onsite.

In response to a question from Ms. Martinek, Attorney Gould confirmed that the use as determined by the Building Inspector is a contractor's yard. Ms. Martinek mentioned the previous industrial waste storage and disposal at the site and asked how long ago those uses were in operation. Attorney Gould noted that, from the time of the execution of the Purchase & Sale Agreement, the owner was not formally operating there but did have two employees working at the site. He indicated that, when he was there in the early fall, the business was operating and they were in the process of organizing and removing stuff from the property in hopes that they would be closing soon. Ms. Martinek requested clarification that as recently as last fall there had been hazardous materials at the site. Attorney Gould stated that the owner had one of his trucks onsite through last fall. When questioned by Ms. Martinek about whether the owner had permits for hazardous waste as recently as last fall, Attorney Gould stated that he could not answer with any certainty. He also explained that the owner's business is that of an industrial waste hauler, and he emphasized that there is a difference between a hazardous waste site and an industrial waste site.

Ms. Martinek asked how the town would know if the business owner is exceeding any minimum thresholds for storage of chemicals. Mr. Litchfield explained that there are no minimums for Groundwater, though the business owner is required to disclose what they will be storing onsite and provide adequate containment of those quantities to prevent any potential hazard to the groundwater supply. He commented that, though there are no limits for the GWAC, there are for the Fire Department. In response to a question from Ms. Martinek about the nature of materials to be stored onsite, Attorney Gould confirmed that they will include fuel, fertilizer, and similar products. Ms. Martinek asked if the applicant had been before the Groundwater Advisory Committee. Mr. Litchfield indicated that they have not and reiterated that the GWAC hearing will be scheduled once he receives the additional information he has requested. Ms. Martinek asked if the site is located within a flood zone. Mr. Scott indicated it is not, though it is within a groundwater overlay district. He also noted that there is a wetland system on the north side of the road so the project will be permitted through the Conservation Commission as well, and that hearing is pending a decision by the ZBA. Ms. Capobianco inquired about the ZBA hearing, which Attorney Gould indicated is scheduled for January 22<sup>nd</sup>. Ms. Martinek voiced concern about fertilizer and runoff flowing to the wetland, but Mr. Scott explained that all fertilizer will be stored inside the building. Ms. Capobianco explained that very specific containment facilities for chemicals and fertilizer will be required, and it is part of GWAC's job is to make sure that those containments are part of the site plan and that the building is constructed according to the site plan. Ms. Martinek requested that she be notified about the date of the Groundwater Advisory Committee meeting as she expects that many of her questions will likely be addressed there. Ms. Joubert agreed to notify all members of the Planning Board when the GWAC meeting is scheduled. She also expressed her expectation that the ZBA will open their hearing on January 22<sup>nd</sup> and it will likely be continued since the applicant will not yet have met with the GWAC.

Mr. Litchfield explained that the Groundwater Committee is an advisory committee and their meetings are public meetings, not public hearings. He noted that the applicant will make a presentation similar to the one done tonight and the GWAC will make a recommendation to the ZBA who then holds the public hearing.

Ms. Poretsky asked about the expected days of operation for the proposed business. Mr. Scott stated that the applicant has indicated that he operates 6 days a week and does plowing in the winter, but suggested that the question be raised during the ZBA hearing. Ms. Poretsky inquired about truck maintenance. Mr. Scott explained that truck maintenance will be done onsite similar to what has been done there in the past. Ms. Poretsky asked about truck washing and voiced concern about chemicals and fertilizer on the trucks running off during the washing process. Mr. Scott noted that this would be problematic in a groundwater district, so all work will be done within the building where there will be a system of trench drains that will flow to a tank that will be emptied and hauled offsite. He also noted that the stormwater system is designed to collect and treat stormwater runoff.

In regards to zoning, Ms. Poretsky noted that the proposal will be a change of use from one nonconforming use to another, and asked how far back the first use went. Attorney Gould explained that the gentleman he met with said that he had been involved since 2006. He noted that his client when he first started practicing in 1973 was Heritage Welding, who had been operating a business at

this site since sometime between 1970 and 1971. Ms. Poretsky commented that zoning in Business West has never been industrial, and suggested that the existing welding business may be an unlawful use. She stated that the welding business would have had to be in place before the bylaw was enacted in 1955. Attorney Gould commented that it would depend on what the zoning was in 1955 and what the definitions were back then. Ms. Poretsky reiterated that industrial use has never applied in this zone before and, if the use started unlawfully, it is not considered a nonconforming use.

Ms. Capobianco voiced her assumption that the applicant is before the board this evening pursuant to section 7-030-050, subsection D6 (page 7-17) that stipulates that the Planning Board shall conduct a technical review of the site plan and submit written comments to the ZBA. She emphasized the importance of ensuring that what the board is doing is in compliance with what is allowed in the bylaw. Ms. Joubert explained that the board is not required to provide comments to the ZBA but may do so. She noted that the board has been provided with a copy of the site plan draft and the ZBA application in which the applicant is requesting a determination that the new nonconforming use is not more detrimental than the existing nonconforming use. Ms. Capobianco voiced her opinion that the Planning Board's guidance is limited to the site plan review and not the special permit questions, and since the propriety of whether a special permit should be allowed or not is not what is before this board, comments should be restricted to the site plan. Ms. Joubert confirmed that the Planning Board can provide comments about the proposed use as far as the site plan but the special permit is under the purview of the ZBA. Ms. Capobianco indicated that she has reviewed the existing and proposed amendments to the site plan and noted that an area for containment of hazardous waste has been identified, and additional paving is proposed along with changes to the design of the parking area and, so far, it all sounds fine to her. She stated that her only reservations are with the applicant getting through the Groundwater Advisory Committee process and making sure that the containment areas are sufficiently sized, but she is confident that will happen.

Ms. Gillespie noted that the existing building is a 2-story wood frame building with a concrete foundation and asked if there is anything that would trigger a requirement of sprinklers. Mr. Scott indicated that the building already has sprinklers. In response to a question from Ms. Gillespie about Design Review, Ms. Joubert noted that there is no renovation proposed that would trigger a requirement for Design Review. Ms. Gillespie expressed a desire to address lighting and signage and suggested that the applicant prepare something about proposed signage, any additional lighting, and any means to provide a buffer to minimize impacts to residential abutters. Mr. Scott stated that there is an existing 30 to 50-foot wooded buffer that will remain untouched.

Ms. Gillespie noted that the plan shows 22 parking spaces and asked if there are any markings on the driveway proposed to indicate truck traffic. Mr. Scott commented that this will depend on how much space the applicant ends up using, and noted that he had tried on the site plan to evaluate the adequacy of the parking based on existing tenants. Ms. Gillespie requested that town staff evaluate the applicant's ability to improve lighting and/or signage, and emphasized the need for the lighting to stay on the property. She also reiterated her request for the 21E report to be shared with town staff. In response to a question from Ms. Gillespie about mulch storage, Mr. Scott discussed the area identified for such storage and areas where additional pavement will be installed. Ms. Gillespie asked if

the mulch piles are going to be similar to those at the Zecco facility down the street and expressed a desire not to see the area overrun with these very unsightly mounds. Mr. Scott indicated that the applicant is not a huge commercial operation so he does not envision large quantities of mulch being stored onsite. Ms. Gillespie commented that, had this project come before the Design Review Committee, they would seek to have some type of screening around it. Mr. Scott noted that there is a natural buffer that will screen it somewhat.

Ms. Poretsky asked about the impervious surface and whether the calculations were done on a single lot or the three lots that the applicant is seeking to combine. Mr. Scott confirmed that the calculations were based on the three lots.

Ms. Martinek commented that nonconforming use has a lot to do with impact to the neighbors and she is curious to know what the neighbors think. Ms. Poretsky stated that she had attended the Board of Selectmen meeting last evening where Mr. Coderre suggested that concerned residents attend tonight's meeting of the Planning Board. Ms. Capobianco explained that the ZBA meeting is the appropriate place for public comments because they are the deciding body, and reiterated that it is not appropriate for the Planning Board to take any public comments.

Ms. Martinek indicated that she was confused about the matter of hazardous waste storage and questioned such storage under previous operations. Attorney Gould noted that hazardous waste storage did occur during previous owners but not under the current owner, and such material was not stored in the ground but was stored in trucks onsite.

Mr. Ziton asked about his ability to comment on the issue of nonconforming use. Ms. Capobianco encouraged Mr. Ziton to comment on the site plan as that is the limitation of the Planning Board's purview and reiterated that anything concerning the special permit has to be addressed at the ZBA meeting.

In response to a question from Ms. Capobianco about whether there is anything that the board feels compelled to bring to the ZBA with respect to the site plan, board members agreed to the following:

- Need for appropriate lighting
- Need for appropriate signage, and a request that both be indicated on the site plan

Ms. Joubert agreed to send a memo to the ZBA from the Planning Board addressing these concerns.

Ms. Martinek asked how she can obtain clarification on her question about hazardous waste storage. Ms. Joubert offered to check with the Board of Health and Fire Department to see what their records show. She also noted that the GWAC would likely be seeking to get that information as well. Ms. Martinek reiterated her desire to get some definitive information about what was stored onsite and where she can find such information. Ms. Joubert agreed to investigate and advise.

**Minutes of the Meeting of December 4, 2018** – Ms. Joubert noted that the board members had been provided with revised minutes that incorporated edits provided by Ms. Martinek and Ms. Poretsky. She also explained that, for one of the proposed edits, she had checked her file and also directly with Mr. Reardon, and confirmed that Mr. Reardon was hired by the family to work on the project he mentioned and not by Mr. Abu.

Michelle Gillespie made a motion to accept the Minutes of the Meeting of December 4, 2018 as amended. Anthony Ziton seconded; motion carries by unanimous vote.

**General Discussion of Special Permit Process** – Ms. Capobianco noted that this discussion comes on the heels of the discussion at the December meeting, after which a draft decision was sent out and there was a fair amount of email communication with the Town Planner's office. She explained that, in an effort to improve the process, a draft decision will be provided to the board for review and discussion during meetings moving forward. She reminded board members that, once a hearing is closed, the board can no longer deliberate any further on the subject matter. She emphasized that, when reviewing the draft decision, board members may only look at material that was actually stated during the hearing and, if three or more members agree to include it in the decision then it will be. She also stated that, following completion of the draft, each member of the board will be asked to sign the decision at the Town Planner's office.

**Review of Decision for 222 West Main Street** – Ms. Capobianco noted that a draft decision was provided, after which many comments were made about what should be included in the decision or not. She stated that the board will review those comments together, as long as it in no way reopens the hearing or modifies or amends what was done or what was said at the hearing. She suggested that, if there is any doubt, then she will recommend that the process conclude at the next meeting after the board has had the chance to review the recording. An audience member asked about reopening the hearing. Ms. Capobianco explained that the board is not reopening the hearing or the discussion but is simply working to finalize the decision to be sure that it contains correct and accurate information.

Members of the audience voiced concerns about the issue of open meeting law as 222 West Main Street was not on the agenda and Ms. Capobianco suggested that the board address the decision at their meeting on February 5<sup>th</sup>. Ms. Joubert explained that there is no issue with the board discussing the matter this evening but agreed to defer to the February 5<sup>th</sup> meeting if the board would feel more comfortable with the discussion being posted on the agenda. She reiterated that no further discussion can be conducted. Ms. Poretsky indicated that she would be in favor of waiting until the February 5<sup>th</sup> meeting but noted that any changes being made to the language will not change the decision. Ms. Capobianco confirmed that the board is simply making edits to the language. Other members of the board agreed to move forward with the discussion.

Ms. Martinek asked if, in the future, it would be preferable not to close the hearing until the board has had an opportunity to discuss the language in the decision. Ms. Joubert noted that it can be done either way, but her recommendation has always been to keep the hearing open to allow the board to seek further information if questions arise during their deliberations.



Ms. Capobianco expressed a desire to address the language in the decision for the project at 222 West Main Street. She noted that the initial findings 1 through 12 in the draft decision are all derived from the documents that were submitted by the applicant or other committees or boards. She commented that she does not see anything in findings 1 through 12 that are contrary to those documents.

Ms. Poretsky stated that she would like to include a stipulation that the site abuts single family homes, a nursing home, and a church. Ms. Capobianco noted that the immediate abutter to the west is the nursing home, the immediate abutter to the north is a single family home and the immediate abutter to the east and south are streets and commercial uses. Ms. Poretsky didn't agree and reiterated her desire to have it added into the language of the decision. Ms. Gillespie agreed that it could be included but, to be fair, it should also include the commercial use across the street. After much discussion, members of the board agreed to edit the language to reflect that the 3.25 acre site abuts single family residential and commercial uses.

Ms. Poretsky requested that the board add that the existing house, barn, garage and pool are to be demolished and the lot will be subdivided into five individual lots so that it is clear that this is not a single lot going to multifamily use. Ms. Capobianco noted that finding #6 identifies the ANR plan.

Ms. Poretsky requested edits to finding #5 to include the size of the proposed house to indicate that the applicant originally proposed to build four, 5600 square foot two family homes to ensure that the decision is defensible. Ms. Capobianco questioned why we would stipulate the size of the duplexes but not the sizes of the single family homes. Ms. Joubert noted that the minutes reflect a range of 2400 to 2800 square feet per unit. Ms. Poretsky recalled that the original four duplexes were to be 2800 square feet per side. Ms. Capobianco indicated that she was not confident enough in the number to make the indication and she does not think it is necessary. Mr. Ziton mentioned that it appears we do not have definitive information on the size, so he is not sure it makes sense to include it in the decision. Ms. Capobianco suggested that the language could include two duplexes totaling 4800 to 5600 square feet on West Main Street.

Mr. Ziton commented that there was a lot more color in the minutes whereas the decision seems to be much more cut and dry. Ms. Capobianco asked if it is possible to incorporate a reference to the meeting minutes in the decision. Ms. Joubert stated that she has never done so and noted that minutes are part of the public file but not a transcript of the meeting. She also agreed that decisions are typically very cut and dry and the flavor of the meeting is what is reflected in the minutes. She also noted that the decision format is the form we have used for years and has been approved by Town Counsel.

Ms. Poretsky noted that finding #13 stipulates that the applicant requested a straw poll of the board regarding the granting of the waivers and she would like to add "for lot frontage and lot width". Members of the board agreed. Ms. Joubert noted that the waivers are already stated in the decision in the procedural background section, but she agreed to add the language to #13 as well. In response to a question from Ms. Capobianco about whether she would like to identify how each board member voted, Ms. Poretsky stated that she did not think it necessary to do so.

Ms. Poretsky requested the addition of a finding #14 to stipulate that denial of the waivers left the two lots for the two family units with insufficient lot width and lot frontage in accordance with section 7-050-030, Table of Uses. Ms. Capobianco stated that she was not sure that was so stated during the hearing. Ms. Joubert mentioned that the whole application is based on the fact that waivers were needed so, since the board did not grant the waivers, it is inferred. Ms. Capobianco reiterated her concern with including it since it was not so stated during the hearing.

Mr. Ziton voiced concern because he feels like the board voted on a permit that was never placed in a file with the Town Clerk and was never solidified. He noted that, after the vote, the permit that was on file was for the original 4 duplexes and asked if the board is comfortable with that procedure. Ms. Capobianco noted that the file consists of the original application, minutes of the public hearings that were held, and the applicant's request for a decision based on what we have in front of us that included the sketch with measurements. She indicated that the compilation in its entirety is what comprises the record. Ms. Joubert explained that there is not an official process to amend an application and how an applicant does so typically depends on the engineering firm and/or attorney that they employ. Some applicants submit a new cover page or letter explaining the modifications; some submit the info in an email; some refile the application as an amended application. The Town accepts all these forms.

Ms. Martinek asked if it is possible to add the breakdown of the vote within the decision section. Ms. Capobianco requested that Ms. Joubert do so whenever there is anything other than a unanimous vote. Ms. Poretsky asked if the reasons for denial that were mentioned during the hearing can also be included. Ms. Joubert explained that it is only possible to do so if it was part of the motion, and she does not believe it was. Ms. Poretsky voiced frustration that these details cannot be included. Ms. Martinek asked if these details can be included elsewhere in the decision, either under findings or in the public hearing section. Ms. Joubert noted that, if the board wants something on public record in the decision, it must be so stated during the hearing. She noted that individual members said different things but as a board did not make that finding. She mentioned that reasons for denial that were voiced are included in the minutes and emphasized that the decision is not a retelling of the minutes. Ms. Martinek suggested that, if Ms. Poretsky wants it reflected in the decision, there must be an area where it can be included. She noted that the decision includes comments made by residents but not much about comments made by the board.

Ms. Gillespie asked if meeting minutes are allowed in court, in the case of appeal. Ms. Joubert confirmed that they are. She noted that everything in the office file is part of the public document and would be part of an appeal. Ms. Capobianco noted that an attorney would never go with just the decision in defending it. She mentioned that part of her concern with adding a lot of details into the decision is that it obviates the need for minutes. Ms. Martinek suggested that, out of 22 pages of minutes, there has to be some sort of representation of board opinion. In response to a question from Ms. Capobianco about what she would like to add, Ms. Martinek stated that she would like to at least dedicate a paragraph to the board's concerns. Ms. Capobianco noted that the board did not collectively agree on anything that night, but Ms. Martinek stated that several board members expressed concerns as reflected in the minutes.

Ms. Gillespie asked if it is necessary for this to be completed tonight. Ms. Joubert explained that the state statute includes a reference that the decision should be done within 14 days but noted that we rarely meet that and there is no default approval if we fail to do so. Ms. Capobianco voiced her desire to conclude tonight, out of fairness to the applicant. In response to a question from Ms. Poretsky, Mr. Litchfield explained that the board has 90 days from the close of a hearing to take a vote, and 14 days to write a decision once the vote is taken.

Ms. Gillespie suggested adding wording to state that some of the board members had concerns related to traffic volume anticipated to be created by the two, 2-family dwelling units, the size and scale of the duplexes and the lack of consistency with the existing neighborhood. Ms. Capobianco stated that, if the board is going to include that, she would also like to include that two board members felt that the proposed duplexes were appropriate for the site.

Ms. Joubert agreed to revise the decision as discussed for signature.

Ms. Gillespie noted that she had attended a meeting of the Planning Board in Boylston and learned that they do not have a Town Planner and all decisions are written by the board. She explained that the board did not close their hearing and began writing the decision during the meeting so that they could address questions with the applicant. Ms. Capobianco stated that, from here on, the board will decide on a case by case basis about whether to close the hearing or leave it open pending review of the draft decision.

**2019 Annual Town Meeting – Zoning Amendments** - Ms. Capobianco stated that the board will pass over anything tonight that is pending review by other boards. Ms. Joubert noted that the proposed changes were sent to the ZBA, who will address them at their next meeting.

The board discussed the proposed Zoning Article amendments and agreed to the following:

***Design Review Committee***

Four appointed members, with a preference given to the following disciplines but not limited to, to be appointed for a three year term

2 licensed architects

1 degreed landscape architect

1 resident of the town with a related background

with a balance of representation as close as possible to this mix.

Ms. Martinek voiced concern about finding 2 licensed architects to serve and asked if there is another level of architect that would make sense if we can't find 2 licensed architects. Ms. Joubert agreed to ask the architects currently serving on the DRC.

**Seasonal Sales of Holiday Horticultural Products** – Ms. Joubert explained that the Building Inspector would like to include a clarification in the zoning because the town does not currently have anything in the bylaw and he would like to put some parameters around these seasonal sales. She noted that the proposal is to include it in the trade section under business uses as outdoor sales of holiday horticultural products, to be allowed in all business districts and the industrial area. Mr. Ziton suggested that the bylaw include a limitation of 30 or 45 days of continuous use. In response to questions from board members, Ms. Joubert explained that this bylaw applies to the temporary roadside stands that pop up around holidays. Ms. Capobianco noted that a time limitation is difficult to include because some events are brief while others last longer.

Ms. Capobianco requested the following revisions to the language

- Revise to read “....*temporary* nature...”
- Delete reference to Christmas and revise to read “....*any holiday season*....”
- Revise to include flowers in addition to trees, wreaths, and similar holiday horticultural products

**Electronic Message Centers** – Ms. Joubert noted that she and the Building Inspector spent a lot of time discussing and researching the topic, and she has provided the board with revised language with Mr. Frederico’s additions shown in red ink. She explained that there is a standard definition for electronic message centers, set by the United States Sign Council and the International Sign Association, so she does not think it makes sense to establish one that would be unique to Northborough. She indicated that what is being proposed is standard language that appears in bylaws of towns that have updated their bylaw about electronic message centers. She also noted that there is a formula to measure the intensity of illumination that is suggested by the sign industry and is also incorporated into the bylaws in other towns.

Ms. Joubert stated that the way our definition reads today is that changeable copy is either manual letters, such as part of the sign at CVS, or electronic message boards. She recalled that the board wanted something separate to address electronic signs and, in an effort to make sure a business will not include both, she suggests changing the definition of changeable copy signs to cover only manual method of changing the letters on the signs.

In response to a question from Ms. Gillespie, Ms. Joubert confirmed that this applies only to stand alone signs and not the small, neon window signs. Ms. Poretsky asked about gas stations. Ms. Joubert explained that gas stations are exempt, but any other existing electronic message board would be grandfathered.

Ms. Martinek asked if board members would like to reconsider the hours that illumination is allowed for these electronic signs since they can be quite bright. Mr. Litchfield stated that the intensity calculation can be used to control this. It was also noted that, since these signs are allowed only in the Highway Business and Industrial zones, it may not be an issue. In response

to a question from Ms. Capobianco about whether the board can impose new time restrictions on grandfathered signs, Ms. Joubert indicated that it is not possible to do so.

Ms. Joubert explained that warrant articles are due to the Town Administrator by February 4<sup>th</sup>, so she has reserved placeholders for these zoning article amendments since the board does not meet again until February 5<sup>th</sup>. She noted that the ZBA will address proposed amendments at the end of January, so she will be able to provide that feedback to the board on February 5<sup>th</sup>.

**Waivers for duplex developments** – Ms. Martinek mentioned that the board has discussed the issue of waivers in the past, and whether or not we want to remove them from the bylaw, but she does not see it addressed in the Zoning Article amendments. She referenced that Ms. Capobianco previously asked the board to consider whether or not they would ever approve a waiver before moving forward with the discussion to amend the bylaw. She said that she did not think that she sees a circumstance where she would approve a waiver and commented that the spirit of that was that we are wasting people’s time and money if the board never intends to grant them. Ms. Joubert recalled that, during the discussion at the last meeting, Ms. Gillespie felt that it would be too soon to address the issue at Town Meeting, since the revision was just adopted last year. Ms. Capobianco stated that she would not be inclined to bring this to Town Meeting, since there has been only one request for a waiver thus far and the majority of town residents voted to include the waivers. She also expressed her opinion that we are not yet in a position to say we are never going to use them. Ms. Poretzky voiced support for removing the waivers from the bylaw, and recalled comments made by Judi Barrett at a Design Review Committee (DRC) meeting where she stated that she would not have included the provision of these waivers. Ms. Capobianco commented that board opinion is likely split on the issue, and Ms. Poretzky suggested taking a vote. Ms. Capobianco reiterated that it is far too soon to be removing something that we just added to the bylaw and emphasized her concerns about saying that we will never grant a waiver without knowing circumstances or conditions, which she feels is grossly unfair to a potential applicant. She mentioned that the board voted to include the waiver in the bylaw and take it to Town Meeting for vote. She indicated that she would not support removing it from the bylaw but if the rest of the board wishes to, we will be doing so with a divided board and she cautioned the board that history will show that the likelihood of success is diminished when the board is divided. Ms. Martinek clarified that she recalled that Ms. Barrett had said that if we believe there are valid reasons for creating the bylaw with exact frontages, then the waiver is senseless and said that we should either take it out or “put the word on the street” that we’re never going to approve it, because we’re wasting people’s time and money. Ms. Martinek recalled that Ms. Barrett had said that at a Design Review Committee meeting and she was not the only member who heard it. Ms. Martinek further clarified that she personally thought that it is more a matter of believing in the original bylaw and not saying that you are not going to listen to an application with a fair mind. Ms. Capobianco reiterated that the bylaw with the waiver was supported by the majority of town residents, and voiced her opinion that going back with a proposal to remove the waiver is telling the residents that we don’t care what they said. Ms. Joubert suggested that Ms. Barrett’s comments made at a DRC are being taken out of context. She mentioned that the town has hired Ms. Barrett as a consultant in the past and will continue to do so, but she was not part of the Planning Board meeting where the waiver was first presented, she was not at the public hearing and was not part of any of the discussion about the waiver. Ms. Gillespie indicated that, given the late hour,

she would prefer to discuss this matter at the board's next meeting. She also suggested that, if the board is basing the discussion on a statement made by the consultant, it might be prudent to go back to the consultant for input. Ms. Gillespie reiterated her suggestion to table the discussion until the next meeting to allow the board to have a healthy discussion.

**Nonconforming uses** – Ms. Poretsky noted that the board passed over the article for nonconforming uses. She mentioned that Ms. Joubert had made some changes to the language, so she provided the planning board with a memo detailing her suggested changes that she would like to discuss as a planning board prior to Ms. Joubert addressing it with the ZBA. She noted that, when she had proposed changes to the bylaw relative to nonconforming uses, she had discussed removing language about a change of substantial extension of use but it appears to be included in the most recent draft. She questioned the reasoning behind doing so. Ms. Joubert noted that the revised version provided this evening does include the deletion of that reference. Ms. Capobianco explained that the ZBA does have the right not to support the proposed amendment, and voiced a preference to wait for the ZBA to weigh in before discussing it any further. She noted that, if the ZBA opts not to support the proposal, the Planning Board will not put it forward. Ms. Poretsky emphasized her desire to discuss it, and noted that it is the planning board's purview to bring forth bylaws. Ms. Capobianco indicated that she is not in favor of telling the ZBA how to do their job. Ms. Poretsky requested that the board members consider what she has addressed in the memo she provided. Ms. Gillespie commented that ZBA feedback will be provided at the board's next meeting. Ms. Joubert reminded the board that the bylaw amendments will also be submitted to Town Counsel who will advise if any of these changes can actually be made. She also mentioned that what we currently have in our zoning for nonconforming uses mirrors exactly what it says in the state statute, and reiterated that she remains uncertain about whether we have the ability to make these changes.

**Meeting adjourned at 10:10PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary