



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 3.19.10

**Planning Board
Meeting Minutes
February 5, 2019**

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

Others in attendance: Kathy Joubert, Town Planner; Robert Frederico, Building Inspector

Chair Theresa Capobianco called the meeting to order at 7:00PM.

Master Plan Steering Committee Update – Ms. Poretsky explained that the Steering Committee went through the remainder of the action items not yet addressed, and was able to get through most of them. She noted that the next public outreach meeting is scheduled for 7:00pm on February 13th at the Zeh School.

In response to a question from Ms. Poretsky, Ms. Joubert indicated that the consultant will be updating the website and will post the draft recommendations. Ms. Poretsky mentioned that there are a considerable number of recommendations and suggested that people review them in advance of the public forum.

Ms. Capobianco inquired about smart growth and the missing middle concept. Ms. Poretsky indicated that the Steering Committee does not yet have detailed information on these models but will be receiving it before the next meeting. She commented that one of the priorities will be to determine what residents want to see in the downtown area. Ms. Capobianco expressed her hopes for a good turnout and participation at the upcoming public forum.

Ms. Gillespie noted that there appears to be clear consensus from the committee about the issue of open space and much interest in the 100-year and 500-year storm events, and climate change. She also stated that, on the issue of affordable housing as it relates to the demographic that is being priced out of town, Rick Leif had made a point to request that the committee figure out what that price point actually is. He emphasized that there is a group of people who do not qualify for low income housing but is being squeezed out of town. He expressed a desire to help that group of people, specifically the senior population who has lived in town for years and is looking to downsize but finding they cannot afford to do so and remain in town.

Ms. Gillespie also discussed the issue of inclusionary zoning, and the desire to get actual housing units in lieu of a lump sum payment since the lump sum payment does not effectively resolve the issue. She also noted that the Steering Committee had talked about economic development and the importance of having an economic development professional on staff in Town Hall, though the budget may not allow for this.

Ms. Gillespie also voiced her opinion that inclusionary zoning is a key element that she would like to see included in the Master Plan. She noted that the Steering Committee also addressed the issue of solar energy, and whether the town should reconsider adopting a solar bylaw. Ms. Capobianco suggested looking ahead to the 2020 Town Meeting where some of these matters can be addressed, and noted that some may not be ready for consideration until 2021. She also recalled that, the last time it was considered, the solar bylaw issue was a challenge. In response to a question from Ms. Gillespie, Ms. Joubert confirmed that the town does not currently have a bylaw for large scale solar projects. She explained that individual residential solar installations do not require a zoning bylaw, and are becoming much more prolific in town. She also noted that some communities have both small scale and large scale solar bylaws.

Ms. Joubert explained that solar regulations are constantly evolving and if this is something the community decides to pursue, the town will work in conjunction with the state. She voiced her assumption that the town would likely want to advocate for rooftop and parking lot installations instead of solar farms that require substantial tree removal.

Consideration of Minutes - Consideration of the Minutes of the meeting of January 15, 2019 were deferred to the next meeting.

Proposed Zoning Amendments for 2019 Annual Town Meeting – Ms. Joubert noted that she had provided board members with a revised draft (copy attached) based on the discussion at the board’s last meeting, and requested that the board vote on each of the articles to be placed on the warrant.

Special Permit, C. Criteria (Section 7-03-040) - Ms. Joubert discussed the proposal to modify the language as noted and confirmed that the Zoning Board of Appeals (ZBA) has voiced support for the revision.

Michelle Gillespie made a motion to approve the article as written. Anthony Ziton seconded; motion carries by unanimous vote.

Design Review, E. Appointment of the Design Review Committee (Section 7-03-060) – Ms. Joubert explained that the revised language is as discussed at the board’s last meeting and has the support of the ZBA. Ms. Gillespie asked for input about how to move forward to implement the change. Ms. Joubert noted that, if approved, Town Counsel will provide direction for how to implement as well as how to stagger terms.

Ms. Joubert noted that she had spoken with the Town Administrator about the board's desire to handle appointments differently than is done with other boards and he indicated the need for this board to be consistent with town policy in which the sitting appointee is allowed to remain on the board if they are interested in doing so. She noted that the Chairman of the particular board/committee can also be asked if the member should be reappointed. She stated that, should the sitting member not seek or be recommended for reappointment, the town would then move to advertise to fill that vacancy. Ms. Joubert also explained that, in the past, candidates for the DRC have been vetted and then presented to the Planning Board for consideration. Ms. Gillespie reiterated that the only way a member who wishes to remain on a board could be removed is if the Chairman expresses a desire for them not to be reappointed.

Ms. Capobianco suggested an edit to the location of the comma in the following sentence, to remove it from after *disciplines* and place it after *Planning Board*:

Such Committee shall be chaired by a member of the Planning Board and shall additionally consist of four (4) members with a preference given to the following disciplines, for three-year terms

Ms. Martinek agreed.

Ms. Martinek recalled that the board was going to solicit input from the DRC members about whether there is another level of architect that could qualify to serve should the board have difficulty filling a vacancy. Ms. Joubert noted that the additional language stipulating "with preference given to the following disciplines" will suffice and enable to board to appoint as appropriate.

Amy Poretsky made a motion to approve the revised language for the appointment of DRC members and to approve the article. Michelle Gillespie seconded; motion carries by unanimous vote.

Temporary sale of holiday horticultural products (Section 7-05-020) - Ms. Joubert noted that the proposed language is what was arrived at during the board's last meeting, and has the support of the ZBA. She also stated that the Table of Uses (page 44) is to be revised, so there are two separate articles needing approval; one to define the use and another article to place the use in the Table of Uses.

In response to a question from Ms. Capobianco about any concerns with the article, Mr. Frederico indicated he has none. He voiced his opinion that the article as written covers all bases with legitimacy. Ms. Martinek asked if the article covers the roadside flower sales. Ms. Capobianco mentioned the roadside stand on Route 20 that operates spring through fall and expressed a desire to allow it. Mr. Frederico agreed to review.

Mr. Zitton suggested maybe there should be some definition about what "temporary" means, as he would not like to see someone bend the rules and end up with a year-round operation. Ms. Capobianco

suggested leaving the language as currently written and revising it further should the need arise in the future.

Michelle Gillespie made a motion to approve the article as per the revised draft for the temporary sale of holiday trees, wreaths, flowers, and similar horticultural products. Kerri Martinek seconded; motion carries by unanimous vote.

Michelle Gillespie made a motion to approve the article to see if the town will vote to amend part 7, Section 7-05-030, Table of Uses Table 1, Table of Uses, Part B. Commercial and Industrial Uses to add temporary outdoor sales of holiday horticultural products. Anthony Ziton seconded; motion carries by unanimous vote.

Special Permit Required (Section 7-08-020) – Ms. Joubert explained that the language in the most recent draft was arrived at in conjunction with the ZBA, who requested that it be modified to read as follows:

The Zoning Board of Appeals may grant a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension is a similar or less detrimental use, and in making such determination the Zoning Board of Appeals shall consider whether the proposed use is different in character or in its effect on the neighborhood or on the property in the vicinity.

Ms. Joubert noted that the members of the ZBA had a lengthy discussion about this particular section and felt that, at this time, the additional language proposed by Amy Poretsky was a bit of an over-reach.

Ms. Poretsky provided board members with information from the Citizen Planner Training Collaborative (CPTC) and referenced the following language in the document:

“...where local zoning allows for expansion or change of preexisting nonconforming uses or structures, the expansion or change must comply with the current zoning requirements”

She suggested that Northborough’s bylaw, as written, requires the nonconforming use to be less detrimental but does not require that it come into compliance, but her interpretation of the state code is that the original intent is to allow a use to continue (be grandfathered) but if changes in zoning use are made the goal should be to conform with current bylaws. She discussed an issue at a recent meeting of the Board of Selectmen during which it was said that a car lot going from nonconforming to nonconforming was not required to go to the ZBA. Mr. Frederico explained that the use had not been abandoned for more than 2 years, so was statutorily grandfathered. In response to a question from Ms. Poretsky, Ms. Joubert stated that any changes to the nature of the use would require a hearing with the ZBA. She also explained that the license issued by the Board of Selectmen is different than zoning.

Ms. Poretsky stated that she prefers the revised language, but was unsure whether changing the wording would actually have the desired effect. She mentioned the time and money such applications cost the developer and the neighbors, and suggested that the goal of the revision was to stop allowing developers the opportunity to apply to change from one nonconforming use to another nonconforming use as it is expensive for the developer and expensive and stressful for the neighbors.

Ms. Capobianco asked Ms. Poretsky if she is trying to eliminate nonconforming uses, and cautioned about doing so because of the adverse impacts on businesses. Ms. Poretsky stated that grandfathering will always apply but she would like to negate the opportunity for establishment of a different nonconforming use.

In response to a question from Ms. Poretsky about modifying the article Ms. Capobianco stated that the entire language is what the board had given to the ZBA to review and approve, and she would not be in favor of making further changes on the eve of having to vote on it. Ms. Poretsky noted that she tried to discuss the nonconforming use bylaw with the planning board at their meeting in December and again in January and was denied. She also noted that writing and changing bylaws is under the purview of the planning board. Mr. Frederico indicated that the paragraph in question needs to remain. Ms. Poretsky noted that the CPTC document states that “local governments can prohibit the expansion or change of preexisting nonconforming uses or structures.” Ms. Capobianco asked if any research was done as to where in town we have nonconforming uses. Ms. Poretsky inquired about how many nonconforming uses have been before the ZBA and how many have been approved. Ms. Capobianco voiced concerns about impacts to business owners who may not be able to market their properties. Ms. Poretsky suggested that the town will never be able to realize their vision for the downtown area as long as changes in nonconforming uses are allowed, thereby making the Master Plan process a waste of time. Ms. Joubert stated that nonconforming uses or structures have not been discussed on the Master Plan level. She also indicated that, to really understand this, the board would need to look at the entire document Ms. Poretsky is referencing and not just a couple of pages. She noted that the members of the ZBA had discussed the changes Ms. Poretsky proposed and felt that it was too extensive and provided revised language that they could support. She also reiterated that the articles must be submitted to the Town Administrator tomorrow.

Ms. Gillespie voiced her opinion that the board is heading in the right direction, which is a good thing. She stated that this is a complicated subject and suggested that the board agree to continue to work moving forward to address areas of specific concern.

Ms. Poretsky discussed a class she had attended where a model Village Bylaw was discussed, where it was noted that part of the Village Bylaw says that if you ~~have~~ allow a use variance or nonconforming use to continue, you could be making the new village bylaws null and void by allowing a loophole. Ms. Capobianco suggested that the board take the time to do some research and determine if there is a specific area in town that should be protected. She also voiced her opinion that the ZBA would likely not be in favor of eliminating the nonconforming use entirely as it is a big change for the town that could affect a lot of landowners. Ms. Poretsky was skeptical that it would affect many as grandfathering is

still allowed and the landowners would have plenty of uses still available in their zoning district. Ms. Capobianco commented that, if only one person is adversely impacted, then the subject requires serious consideration. Ms. Poretsky stated that, in her experience, it has been the neighbors that have been affected. Ms. Capobianco indicated that the neighbors are the ones that need to show up at ZBA meetings to discuss their concerns and any impacts, and they are the ones that have the right of appeal. She reiterated her uncertainty that the ZBA would support such a drastic change. She also emphasized that the board cannot eliminate due process; a developer has the right to be heard on an application as do the neighbors.

Ms. Poretsky cited the CPTC document that states “where local zoning allows for changes, expansion must comply with current zoning requirements” and asked Mr. Frederico for his thoughts. Mr. Frederico stated that he was not sure where this language came from or who wrote it, and would not be able to address it at this time. Ms. Poretsky agreed to email the entire document to Mr. Frederico for his review and comment.

Ms. Martinek recalled the discussion about the Village Bylaw and the caution about nonconforming uses and use variances and whether or not they still belong. She indicated that, while she does not want to make things hard on landowners, her perception is that this is sometimes used as a loophole and she would like the board to consider how we can tighten up the bylaw going forward to minimize that.

Ms. Martinek discussed a recent application where it was noted in the paperwork that the project required a variance but the applicant convinced the town that a nonconforming use would suffice. Ms. Capobianco explained that the confusion with that particular case was with the fact that the applicant thought that it was a completely different use but, in actuality, it was a continuation of the use. Ms. Martinek reiterated her desire to eliminate the potential for a loophole in the bylaw. Ms. Capobianco emphasized the need for the board to trust the judgment of the Planning Department and Zoning Enforcement Officer, who are responsible for making these determinations.

Michelle Gillespie made a motion to approve the article to see if the town will vote to amend Part 7 of the Northborough Town Code, the Northborough Zoning Bylaw, Section 7-08-020, Special permit required, A. by deleting the text shown in strikethrough and adding the text shown underlined, or take any action relative thereto. Kerri Martinek seconded; motion carries by unanimous vote.

Signs (Section 7-09-040) - Ms. Joubert indicated that there were no changes to the language since the board’s last review.

Ms. Martinek discussed hours of operation for electronic message centers (EMCs). She noted that they are currently required to be turned off between the hours of midnight and 6AM, and asked if the board might want to change that. Mr. Frederico reiterated the challenge with enforcing different regulations, which is further exacerbated with signs that are grandfathered under the previous bylaw. In response to a question from Ms. Martinek about a Sunset Clause that was previously mentioned, Ms. Joubert

explained that the Sunset Clause is only applicable if the town takes signs out of the Zoning Bylaw and moves it to the General Bylaw.

Ms. Martinek voiced her understanding that the ZBA can impose special conditions on a sign. Mr. Frederico mentioned a current case in which the ZBA was asked to allow an applicant to extend the hours of illumination for a business that operates 24 hours a day.

Ms. Martinek discussed her desire to learn more about animation and non-business related content, and noted Mr. Frederico's input about community signs. Mr. Frederico agreed that the matter is worth investigation and a change may be warranted. He explained that the strict regulation stipulates that the content of a sign must be restricted to the specific business on the property, which is fairly restrictive especially when it comes time to have any type of sign for the good of community. He suggested that this might be worthy of further discussion over the next year. He noted that, from September through Christmas, almost every weekend involves a community group doing some type of event that they advertise by posting signs throughout town. He commented that this is a large part of the fabric of the community and, historically, Building Inspectors have taken a blind eye to it. Ms. Martinek expressed a desire to allow for signs for activities that are done for the good of the community. Ms. Gillespie expressed her belief that there was language added to the bylaw to address these signs.

Ms. Joubert noted that Ms. Martinek had asked if the basic requirements apply to all signs throughout the bylaw and noted that the last section, permit not required, allows for signs for nonprofit organizations. Ms. Joubert also explained that, when the town revised the zoning bylaw in 2009, the sign bylaw was not part of the conversation. She informed the board that, when the time comes for the zoning bylaw to be looked at, the sign bylaw will need to be changed based on a Supreme Court decision that pertains to content on a sign since the court ruled that a town cannot zone for content.

Ms. Martinek questioned basic requirements as they pertain to flashing, moving and animated content. Mr. Frederico noted that there are specifics in terms of the duration of the sign itself, transition times from one slide to the next, blinking, etc. He also noted that there is a formula for testing the intensity of a sign, and advised that board that he has already included money in the budget to purchase the light meter. He also stated that, because of the current language, he does have the ability to ask a sign owner to turn down the brightness.

In response to a question from Ms. Martinek about including suggested definitions for the section, Mr. Frederico also mentioned that the biggest issue that has arisen with electronic message centers relates to brightness and he has found owners to be compliant when he has asked them to turn it down.

Ms. Martinek asked the other members of the board for their thoughts about the times of illumination permitted for these signs. Ms. Capobianco questioned whether it is even an issue, given the areas where they are permitted. Mr. Ziton voiced his opinion that it would create too much of a challenge to enforce. In response to a question from Mr. Ziton, Ms. Joubert clarified the bylaw and noted that, going forward, the only place where the board would like to allow electronic message boards is in the Highway

Business and Industrial Districts. Ms. Poretsky asked about the possibility of imposing a requirement that electronic message boards must automatically shut off an hour after the business closes. Ms. Joubert confirmed that the board could do so but this would result in different regulations for different types of signs. Ms. Gillespie expressed a desire to avoid imposing regulations that might be detrimental to small business owners who benefit from advertising through these types of signs. She voiced opposition to the proposed change.

In response to a question from Ms. Poretsky about whether EMC signs can be mounted on buildings, Ms. Joubert indicated that they are allowed as a free standing sign or as part of a free standing sign.

Michelle Gillespie made a motion to approve the article to see if the Town will vote to amend Part 7 of the Northborough Town Code, the Northborough Zoning Bylaw, Section 7-09-040, Signs B. Definitions; D. Basic requirements, G. Signs in Business Districts (1) Type, size and number of signs. There shall be not more than the following on each lot: (c) Highway Business District [1] [a] Freestanding sign; H. Signs in the Industrial District (3) Freestanding signs, by adding the text shown underlined, or take any action relative thereto. Anthony Ziton seconded; motion carries by unanimous vote.

Duplex Bylaw Waiver – Ms. Martinek discussed the waiver in the duplex bylaw and voiced her opinion that it creates a lot of disconnect. She recalled that the subject came up at the board's last meeting and, given the late hour, was deferred to afford the board sufficient time to devote to the discussion. Ms. Martinek noted that Ms. Capobianco had made the point that town residents voted for the waiver at Town Meeting, so she went back through the records to have a better understanding of the reaction and support for it. She also mentioned that the waiver had been added at the last minute and the language was not included on the warrant that was posted on the town website. In reviewing the recording of the Town Meeting, she discovered that the language for the waiver was read by the Town Moderator, and not included on the warrant. Ms. Martinek suggested that the late hour when the issue was addressed at Town Meeting when people were tired, and the fact that the waiver language was not provided in writing for people to review in advance of the vote, resulted in it getting approved without adequate discussion. She stated that the only change she is proposing is the elimination of the waiver and the footnote pertaining to it.

Mr. Ziton voiced his belief that people voted for the dimensional and density requirements and the waiver was simply an auditory add on. He noted that there has only been one applicant seeking a waiver so far, but he thinks it stresses all parties involved when someone wants to seek a waiver. He voiced support for eliminating the waiver. Ms. Poretsky agreed.

Ms. Gillespie asked if removal of the waiver would result in the applicant having to seek a variance from the ZBA. Mr. Frederico confirmed that to be the case. Ms. Gillespie asked, in the event the Planning Board denies a waiver, would an applicant have the ability to then go to the ZBA for a variance. Ms. Joubert confirmed an applicant would be able to do so.

Ms. Gillespie mentioned her displeasure with April 3, 2018 meeting when the subject of the waiver was proposed because she felt like the board had made a decision about requiring 150 feet of frontage. She noted that, initially, she did not want to approve the waiver but the board then talked about how it empowered the Planning Board a bit more.

Ms. Gillespie suggested that the topic may have been difficult for the public to understand, but she has concerns about removing it if it will result in developers seeking a variance. She emphasized concerns that this will result in taking away a tool that allows the board to better control duplex developments. Ms. Martinek noted that a project must meet specific criteria to obtain a variance.

Ms. Capobianco stated that in her opinion, if any board member were to foreclose the idea of ever issuing a waiver under the present bylaw, that would be contrary to both the Massachusetts Constitution and the board member's oath of office. She stated that every applicant should be judged individually, and any failure to do that could be a violation of the applicant's rights. Ms. Martinek and Ms. Poretsky disagreed that such prejudgment had occurred or would occur.

Ms. Gillespie recalled that Judi Barrett, the consultant hired by the town to provide guidance for the duplex bylaw, was not in favor of the waiver. She voiced her desire to get clarification of Ms. Barrett's comments.

For the benefit of anyone viewing this meeting, Ms. Joubert explained that nothing inappropriate was done by this board or at the 2018 Annual Town Meeting. She stated that she had asked Ms. Barrett to clarify her position on the waiver, based on the comments that were made at a DRC meeting that were attributed to her. Ms. Barrett confirmed that she had said that she would not have included a waiver; however, she also stated that going back to modify the change just a year later is not advisable. She emphasized the importance of allowing a bylaw to exist to see how it works, and revisiting it a few years later once you have had the chance to do so. Ms. Joubert also noted that Ms. Barrett had asked her to advise the board that she does not recommend going back to the town with this change so soon.

With regards to any changes to the articles that may come about as the result of the public hearing, Ms. Gillespie asked if it is possible to provide those changes in writing at Town Meeting. Ms. Joubert agreed to ask about doing so.

Ms. Gillespie reiterated that she would not want to eliminate a tool that allows the Planning Board to control duplex developments. Ms. Poretsky questioned how to modify the language. She indicated that she could understand a waiver of the 150 feet of frontage for a project that is within a few feet, but would not like to see any granted that would take it back to the 100 feet, which is what the board sought to change.

Ms. Martinek noted that the inclusion of the waiver provision was proposed by the applicant who later came to the board seeking such waiver. Ms. Gillespie emphasized that the board can deny a waiver if

they determine a project to be detrimental to the neighborhood. She also reiterated that she would not like to allow for an applicant denied a waiver to seek a variance from the ZBA. Ms. Martinek asked why the board chose to increase the minimum required frontage to 150 feet if it can be changed along the way. Ms. Gillespie explained that the 150 feet was aimed at preservation of residential areas where there were a lot of properties with 100 feet of frontage. She also voiced her understanding that the subject of duplexes is a very emotional thing, and towns are struggling with it. She noted that there are lots in town that just do not conform, and she appreciates having the opportunity to have a waiver available for a situation where a duplex might make sense. Ms. Joubert explained that there are numerous waiver provisions throughout the bylaw.

Ms. Gillespie recalled that, when the town revised the zoning bylaw, the mindset was that the special permit should go with the variances so that an applicant would not be required to go to multiple boards so a lot was shifted to the ZBA. She reiterated that the waiver provision brings the matter back to the Planning Board.

Ms. Poretsky reiterated that, by allowing this waiver, the result is that the required frontage goes back to 100 feet and she wondered why every single applicant would not seek a waiver for the reduced frontage. Mr. Ziton commented that he did not understand that eliminating the waiver would take away some of the board's ability to control and manage duplex developments, and he believes it is important to do so. Ms. Joubert recalled that the increase in the minimum frontage was primarily driven by concerns about the scale of these projects in a single family neighborhood, and the board arrived at 150 feet to provide more room on the lots.

Ms. Poretsky voiced support for elimination of the waiver. Ms. Martinek maintained that the waiver creates a disconnect, there were valid reasons for the minimum frontage of 150 feet, and the waiver proposal by an eventual applicant came in at the last minute and she questioned whether is worth having. Ms. Joubert reminded the board that the only place where the waiver is to be considered is in the RC district.

In response to a question from Ms. Gillespie about whether any variance have been granted for reduced frontage, Ms. Joubert indicated that she does not recall the ZBA granting a lot frontage variance for width in the past.

Ms. Poretsky made a motion to approve the article to see if the town will vote to amend part 7 of the Town Code, , the Northborough Zoning Bylaw, Section 7-06 020 by removing the footnote and deleting the waiver. Ms. Martinek seconded; vote was 2 in favor (Amy Poretsky & Kerri Martinek) and 3 opposed.

Ms. Joubert agreed to make the change to the bylaw related to the DRC and submit the articles to the Town Administrator.

Next Meeting – March 5, 2019.

ZBA Application for Forbes Road– Ms. Joubert noted that Aspen Aerogels is proposing to do some internal modifications, which requires them to appear before the ZBA because the property is located in a groundwater district. She explained that the applicant must first appear before the Groundwater Advisory Committee, which is tentatively scheduled for next week.

Meeting adjourned at 9:30PM.

Respectfully submitted,

Elaine Rowe

Board Secretary