



Town of Northborough

Zoning Board of Appeals

63 Main Street
Northborough, Massachusetts 01532-1994
508-393-5019 ~ 508-393-6996
dgrampietro@town.northborough.ma.us

Approved March 27, 2007

Zoning Board of Appeals Meeting Minutes February 27, 2007

Members in attendance: Mark Rutan, Acting Chairman; Richard Kane; Dan Ginsberg, Alternate; Gerry Benson, Alternate; Sandra Landau, Alternate

Members excused: Richard Rand, Chairman

Others in attendance: Kathy Joubert, Town Planner; William Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Fred Litchfield, Town Engineer; Attorney Mark Donahue; Andrew Baum, Places Site Consultants Inc; Mark O'Hagan, Patricia James, T&G; Eugene Bostock, Carol Bostock, Selectmen Bill Pantazis, Frank DeFalco, Rick Leif, Bruce Gordon, Frank Zimmerman, Donald Keller, Jean Langley, Library Director; Michelle Rehill, M. Crowley, Bob Rosenberg, Selectmen Jeff Amberson, Jane Clark, Nancy Kellner, Natalie Eringros, Barry Brenner, Town Administrator; Ammar Alzahr, Donald Keller

Acting Chairman Mark Rutan called the meeting to order at 7:03PM.

Public Hearing to consider the petition of Frank Zimmerman for a Variance/Special Permit to demolish an existing house and build a new single-family home with a full basement, which will exceed the gross floor area of the existing house by fifty percent (50%), on the property located at 106 Whitney Street, 7:04PM

Mark Rutan appointed Gerry Benson as the third voting member for this hearing.

Frank Zimmerman explained that the house that was on the property did not have a full basement, with approximately half of it set on rocks. The new house is not much larger than the original, but the existence of a full basement results in an increase in the gross living area of more than the 50% that is allowable under the bylaw.

Mr. Kane noted that the new home appears to be a duplex, and has already been completed. He asked about the status of the project and the building permit. Mr. Zimmerman stated that he has an oral agreement with the Building Inspector to allow him to begin construction. Depending on the outcome of this hearing, he will either proceed as planned or instruct his contractor to fill in a portion of the basement. He explained that he did not that this portion of the bylaw applied to his project.

Mr. Ginsberg asked about the board's course of action, specifically given that the new house is mostly completed. He also noted that the original house was built in 1900 and asked Mr. Zimmerman if the Historical Society approved its demolition. Mr. Farnsworth confirmed that the demolition of the original house went through the proper approvals. He also explained that, if this board denies the request, the contractor will be required to modify the basement so that it will have less than a 6-foot ceiling height.

Mr. Kane voiced his opinion that the basement poses no issues and the project is not detrimental to the neighborhood. Mr. Farnsworth agreed, and noted that the footprint of the new home is no larger than the original house.

Mr. Rutan asked about egress from the basement. Mr. Farnsworth explained that there is a set of steps up to the main house, and this is all that is required under the building code.

Mr. Farnsworth informed the members of the board that the applicant has been very cooperative since learning of the issue with non-conformity, and has submitted an accurate and complete application.

Carol Bostock of 96 Whitney Street voiced approval of the project, and noted that all of the neighbors are very pleased with the work that has been done. She sees no problem with allowing the applicant to have a full basement.

Richard Kane made a motion to close the hearing. Gerry Benson seconded, vote unanimous.

Public Hearing to consider the petition of Donald and Katherine Anderson Keller for a Variance/Special Permit to construct a workshop within the side setback on the property located at 10 Chapin Court, 7:10PM

Mark Rutan appointed Dan Ginsberg as the third voting member for this hearing.

Donald Keller explained that he has already received approval from the Conservation Commission for the construction of a garage/workshop on his property. He noted the close proximity to the wetland, and stated that the Conservation Commission would like the project to be as far from that wetland as possible. Therefore, he is asking to construct the building 5 feet from the property line. Mr. Kane asked if it is possible to build the project in compliance with the 15 foot setback as required in the bylaw. Mr. Farnsworth explained that the pre-existing nonconformity allows the applicant to build up to the same setback as currently exists, which is 11.1 feet. Mr. Kane asked if it is possible to build the project to comply with the required setback. Mr. Keller stated that he will not have sufficient area in front of the building (south facing side) to access the doors. Mr. Kane and Ms. Landau asked for clarification. Mr. Rutan asked how close the project is to the wetland. Mr. Keller explained that he is required to be 33 feet from the BVW, as was agreed during his hearing with the Conservation Commission. He explained that the closer he can get to the property line, the further from the wetland he will be able to be. Mr. Ginsberg asked if the two buildings shown on the adjacent lot are out-buildings. Mr. Keller explained that the two buildings are sheds and are not his property.

Mr. Ginsberg asked Mr. Litchfield to comment on the project. Mr. Litchfield confirmed that the applicant is seeking permission to encroach in the setback in order to minimize the impact of the structure and associated grading on the nearby wetlands. Mr. Ginsberg commented that the topography of the lot is causing the issue at hand. Mr. Rutan reiterated that allowing the applicant to be 6 feet closer to the property line will get him an additional 6 feet off the wetland.

Mr. Rutan invited comments from the audience and noted that there were no abutters present. Mr. Keller explained that he has spoken with his neighbors and they have no issue with his proposed project. Mr. Benson asked if the building is to be one story. Mr. Keller stated that it will be a one-story structure with some storage above. Mr. Rutan asked if there will be a stairway for access to the storage area. Mr. Keller indicated there will be. Mr. Farnsworth stated that he will review the plans to determine if it complies with the one-story bylaw, and noted that this board is simply ruling on whether the applicant can locate the structure closer to the property line.

Mr. Kane voiced his opinion that the structure appears to be a 2-car garage. Mr. Keller stated that it will be possible to fit two vehicles, and he plans to have wide doors. Mr. Farnsworth asked if the board had concerns about the use of the building, and noted that the board has the authority to impose conditions as to its use if they deem it necessary.

Mr. Ginsberg reiterated that the board is merely granting a variance from the side lot setback and that the actual approval of the building structure will be covered during the building permit process. Mr. Farnsworth reiterated that the board can impose restrictions if they so choose. Ms. Landau voiced her opinion that there is no reason to do so, and that the soil conditions created by the existing wetland provides the justification for granting a variance.

Dan Ginsberg made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of the Northborough Board of Library Trustees for a Variance/Special Permit to expand and renovate the existing Northborough Free Library and related parking areas on the property located at 34 Main Street, 7:22PM

Mark Rutan appointed Sandra Landau as the third voting member for this hearing.

Andrew Baum, of Places Site Consultants, discussed the proposed renovation. He noted that the existing library is a 2-story, 14,900 square foot building located on a 63,000 square foot parcel with vehicle access from Patty Lane and pedestrian access from Main Street. The current building includes the original 5,500 square foot structure, a 9,400 square foot addition constructed in 1974, and a 32 stall parking area.

Mr. Baum explained that the proposal is to demolish the 1974 addition and build a new, enhanced, larger two-story structure to the south of the original library. The site is located in a General Residential district, and the use is permitted by right. Since the parcel lies in a Groundwater 3 district, a special permit is required to allow for the expansion of a pre-existing nonconforming use. The applicant is also seeking approval for a reduction of the required parking.

Mr. Baum noted that the vehicle access will still be from Patty Lane, and the renovation will include a 65 stall parking area, with one-way circulation around the lot and 3 handicapped stalls to be located to the rear of the building. The main entrance will be located more in proximity to the parking lot at the rear of the site, and the building will feature a bump-out, single story, 100-seat meeting room. Pedestrian access will be identical to what exists today.

Mr. Baum explained that the building will continue to be served by municipal sewer, located off the rear of the site. In addition, there will be gas and electric service from Main Street. Mr. Baum also stated that, as part of the renovation project, the old septic system will be removed. The current drainage system includes a series of catch basins connecting to the existing drainage at the housing authority to the rear and to the municipal system via Summer Street. Due to the increase in impervious coverage, the applicant is proposing a recharge system for roof runoff and the newly paved surfaces, which will result in improved water quality. There will also be a stormwater treatment unit to treat for TSS and floatables, which will tie into the existing system as an overflow.

A lighting plan, included in the packet provided, features 14-foot cutoff fixtures to minimize glare while providing sufficient light to ensure safety for users of the facility. An emergency exit will be located at the connector, with a maintenance exit within the original structure and a series of additional exits at the rear of the new section. Mr. Baum noted that the project has already been to the Groundwater Advisory Committee, and they have provided a comment letter for this board.

Mr. Baum explained that the project was presented to the Planning Board, and their primary concern was with the aesthetics of the transformer. They had inquired about the height and asked if it could be placed in an underground vault. Mr. Baum explained that the transformer will be 5 feet high, and that an underground vault is not permitted for this use. He has proposed a hedge row around the transformer to diminish the visual impact. Mr. Baum also explained that National Grid will require an area within 10 feet of the transformer where their service truck can be parked. He is proposing to provide a reinforced lawn area for this purpose. He noted that a curb cut will not be required for access to this area.

Mr. Rutan asked if the septic system to be removed is currently in use. Mr. Baum indicated that it is not. Mr. Rutan noted that the stormwater is currently piped offsite and asked if the proposed recharge could result in flooding. Mr. Baum noted that the material onsite is sandy and gravelly, which will absorb water quite readily. Also, since the bottom of this system will be about 8 feet lower than the existing system, he is not concerned about flooding or drainage problems for any of the abutters.

Mr. Kane asked if the plan includes a sprinkler system. Mr. Baum confirmed that the entire building will have sprinklers with the exception of the electrical room.

Mr. Ginsberg asked about snow removal and storage. Mr. Baum noted the limited amount of onsite storage and explained that the parallel parking area along the back will be used for this purpose, with excess snow to be hauled offsite when necessary.

Mr. Ginsberg asked about the proposal for fewer parking spaces than are required under the regulations. Mr. Baum noted that the proposal includes parallel parking stalls along the access driveway, which will also be widened to a 24-foot aisle.

Ms. Landau asked about the location of the book return box, and was pleased that it will have drive-up access.

Mr. Kane asked about review by the Fire Department. Mr. Baum explained that the major concern was with regard to adequate access to accommodate the turning radius of the truck, which he confirmed will not be a problem.

Mr. Ginsberg asked if the existing front door on Main Street will be used for emergency egress. Mr. Baum confirmed that it will be. Mr. Rutan asked about the current parking configuration. Mr. Baum noted that there are 32 stalls, which is undersized based on the current regulations. He noted that the building is being expanded by 40%, while the parking area is being expanded by 100%.

Mr. Ginsberg referenced a letter from Town Administrator, Barry Brenner, regarding the parking area located ½ mile from the site. Mr. Baum explained that there is municipal parking approximately 800 feet away, which will be more practical once the stop light and crosswalk are installed at the Route 20/Hudson Street intersection. Ms. Landau voiced her opinion that this lot will likely be used only when events are being held at the library. She noted that there never seems to be any parking shortages during normal traffic times. She also noted that the site plan shows signage for the overflow parking, which will be helpful.

Mr. Ginsberg commented that the current signage on Main Street is good, and voiced his assumption that it will continue to be at least as good. Mr. Baum noted that there are no changes proposed to the signage on Main Street. Mr. Ginsberg asked if something could be done about the crabapple trees that create a mess along the sidewalk. Mr. Baum explained that some of the crabapples trees will be replaced with newer specimens.

Mr. Rutan read a comment letter from the Groundwater Advisory Committee, dated February 27, 2007, into the record. Mr. Baum noted that he has no issues with the content of this letter.

Mr. Rutan read a comment letter from Town Staff, dated February 27, 2007, into the record.

Mr. Rutan read a comment letter from the Fire Department, dated February 21, 2007, into the record.

Ms. Landau asked if the project went before the Planning Board for Site Plan Review. Mr. Baum explained that the Planning Board has reviewed the plans, but that the project is before this board for Site Plan Review as this is the approval granting authority.

Mr. Benson asked about noise impacts from the HVAC system. Mr. Baum noted that it will be placed on a 7.5' x 9.5' pad that will be surrounded by an enclosure and tall plantings to minimize sound levels. He explained that, during the review process with the Building Inspector, Mr. Farnsworth had indicated that the enclosure may not comply

with the zoning regulations, so they are looking into moving it to another location to meet the 15 foot setback. This will place it farther away from the abutters than is currently shown. Mr. Benson asked if there is a rated sound level for the unit. Mr. Kane asked if there is a baseline level to go by to ensure that the situation is not made worse. Mr. Kane asked about the existing unit and questioned whether there is any sound data for the current conditions, and noted that this is what the applicant will be held to per the bylaw. Mr. Baum agreed to ask his mechanical consultant about this issue.

Mr. Benson asked about the electrical transformer. Mr. Baum noted that the wires will run overhead to the pole at the sidewalk, then underground to the building. He confirmed that there will be no new overhead wires to the building

Planning Board Chairman Rick Leif confirmed that his board had reviewed the site plan and will be providing comments before the March meeting of the ZBA.

Bruce Gordon of 18 Patty Lane explained that he lives directly across the street from the library parking lot. He stated that, currently, there is sufficient light pollution at night to enable him to see well enough to read a book. By extending the parking out to the end of Patty Lane, he is concerned that there will be an increase in the amount of light in that area. Ms. Landau asked if the light is a problem only when the library is in use. Mr. Gordon explained that the lights currently stay on overnight, and reiterated his concern about more lights being added at the end of the access drive. Mr. Kane asked what is providing the light source presently. Mr. Gordon noted that there is light from the pizza place and the center of town.

Mr. Ginsberg noted that the light fixtures being proposed will be down-reflecting. Mr. Baum noted that many of the existing fixtures are flood lights mounted on poles, whereas the new lights will be a dome type that actually focuses the light in a downward fashion. Mr. Gordon commented that these lights will still add ambient light. Mr. Rutan asked if the outer lights could be shut off earlier in the evening, with the ones closer to the library staying on for security reasons. Mr. Baum agreed to discuss these controls with his electrical engineer. Mr. Ginsberg suggested that there must already be some lighting at the end of the access driveway, so any increase will be minimal especially given the fact that the new lights will be downward-facing units. Mr. Rutan asked if there is currently a street light on the corner of the driveway and Patty Lane. Mr. Gordon noted that there is a light at the end of the street. Mr. Ginsberg suggested that the decision include a condition that accommodations be made to address the issue of light pollution.

Mr. Gordon asked where the town is getting the property to accommodate the additional parking spaces. He noted that the fence line runs through the area shown on the plans as parking spaces. Mr. Baum explained that the town owns a strip of land approximately 55 feet wide that can accommodate the parking spaces, with the chain link fence being relocated.

Mr. Ginsberg asked if the driveway will be shifted back toward the apartments. Mr. Baum noted that there will be a slight adjustment to where the curb cut is on Patty Lane.

Mr. Gordon asked about the line of trees that runs along the fence line. Mr. Baum indicated that they will be removed. Mr. Gordon noted that these trees act as a buffer and voiced displeasure that such a large amount of green will be removed. Mr. Baum

explained that a 6-foot fence will be installed as a buffer. Mr. Gordon reiterated that he is not in favor of removing so many trees, and asked to be put on record as being opposed to both the lighting plan and tree removal. He also noted that there is no addition of green on the existing lot. Ms. Landau asked Mr. Baum to give more thought to ways to mitigate both of these issues.

Mr. Rutan asked how many parking spaces will be gained by removing the trees. Mr. Baum noted that it will be 7 stalls. Mr. Rutan asked if the trees would need to be removed if the parking spaces were eliminated. Mr. Baum said it is likely they would.

Ms. Landau suggested that Mr. Baum solicit input from Mr. Gordon as to any thoughts he may have for alternative ways to remedy the situation. Mr. Ginsberg suggested that the Town's Tree Warden look into the matter, especially given the fact that it appears that some mature Maple trees will be destroyed. Mr. Baum noted that many of these trees are in poor condition, and stated that some new trees will be planted around the perimeter of the parcel. Mr. Ginsberg stated that he would like to hear more about the tree issue at the next meeting.

Mr. Gordon noted that the removal of trees will result in an increase in carbon in the air. Ms. Landau reiterated that she would like to see Mr. Baum try to address these concerns. Mr. Ginsberg agreed that other options should be explored.

Mr. Ginsberg asked if the Planning Board had raised any issue with the planting plan. Mr. Leif explained that the issue about the row of Spruce trees did not come up at the Planning Board meeting, but they did address some of the other planting ideas.

Dave Murphy of 43 Main Street asked if there have been any discussions about traffic increases, specifically with cars trying to turn left onto Patty Lane from Route 20. Mr. Baum noted that no issues were raised with regard to this particular project. Mr. Litchfield explained that the town is in the process of hiring a consultant to review the downtown area. He explained that Mass. Highway's plans will impact whatever is planned, and it is impossible to give a definitive answer until the consultant makes recommendations. Mr. Murphy noted that the traffic impact in and out of Patty Lane remains a complete unknown. Ms. Landau voiced her opinion that increasing the size of the library will not increase the usage, with the exception of the occasional special event. She stated that the lack of parking is more of an issue than the traffic in and out of the site.

Sandra Landau made a motion to continue the hearing to March 27, 2007 at 7:00PM. Richard Kane seconded, vote unanimous.

Ms. Landau voiced her desire to get a report on any progress that may have been made with regard to the lighting and tree removal issue, as well as any input from the Planning Board.

Landscape Plan for Church Street Village, 344 Church Street

Mark Rutan appointed Dan Ginsberg as the third voting member on this matter.

Mr. O'Hagan explained that a landscaping plan had been submitted back in September that showed some larger plantings on the island. He noted that some low-lying plants have been substituted for some of the larger plants previously proposed.

Ms. Joubert explained that, based on the condition in the decision, she had sent an email to the board members to confirm her interpretation that town staff could review and approve the landscaping plan on the board's behalf. She stated that the Chairman had agreed but felt that, because of the wording of the condition, it should be brought back before the board so that the final record will reflect that the landscaping plan was reviewed. Ms. Joubert also noted that the building permits cannot be issued until the landscaping plan is reviewed. She stated that the plan has been reviewed by town staff, as well as Mark O'Hagan and Mark Rhodes, and it is satisfactory to all parties. Ms. Joubert stated that the plan is basically the same as what was originally submitted, other than the addition of the street names.

Richard Kane made a motion to accept and approve the landscape plan dated Feb 27, 2007 as the final landscape plan for Church Street Village. Dan Ginsberg seconded, vote unanimous.

Housing Lottery for Church Street Village – Ms. Joubert explained that a public information meeting was held last night. She noted that applications will be due March 21st, and the lottery drawing is scheduled for March 27th.

Discussion - 35 West Main Street revised plan, 8:20PM

Mark Rutan appointed Gerry Benson as the third voting member for this matter.

Frank DeFalco appeared on behalf of Mr. Alzahar to ask the board to reconsider their decision of May 11, 2006. He explained that the original "Drawing A" showed an area for the sale of three automobiles, and a diagram for a single bay addition to the existing service station. The applicant is now not planning to add the extra bay, but would instead propose to store one vehicle for sale in that location. The original plan also provided 7 parking spaces to the rear of the lot which now will not be provided. Mr. DeFalco explained that the applicant is asking the board to reconsider and allow for the sale of one vehicle.

Ms. Landau asked if there are any guidelines for determining whether a change is substantial or not. Ms. Joubert stated that there is no written guideline, and there is no precedent before this board.

Mr. Kane noted that the applicant had previously sent a letter requesting that the board reconsider their decision, and now questions whether the applicant has the right to re-apply.

Mr. Rutan noted that both he and Ms. Landau have used this facility for service, and they are both offering to recuse themselves if anyone feels it is warranted. There were no objections to Mr. Rutan and Ms. Landau ruling on this matter.

Mr. Ginsberg asked if the issue before this board is the approval for the applicant to sell one vehicle. Mr. Farnsworth explained that the issue tonight is to make a determination whether the new proposal is a substantial change from what the decision was made on.

If the board determines it is, then the applicant can submit a new application. If not, he will be required to wait two years before he can resubmit. He also noted that the board has to consider that the eventual decision will only rule on whether the use (sale of automobiles) is allowable, and will not dictate the number that can be sold.

Mr. Kane voiced his understanding that the applicant needs a license from the Board of Selectmen in order to sell automobiles at the site. Mr. Farnsworth explained that the first step is for the applicant to obtain a variance to allow the nonconforming use. If the applicant is successful, he would then go before the Board of Selectmen with a license application for the sale of used cars.

Mr. Kane recalled that the Fire Chief had raised serious concerns at the previous hearings, and he does not see a substantial change from that standpoint. He noted that the plans indicated an outlet to Gale Street, though there is no outlet or easement in place. Mr. DeFalco stated that the applicant will not be allowing any cars to be parked along the east side. If approved, he will limit the used car sales to one vehicle at a time that will be located where the addition had previously been proposed. The fact that they have eliminated plans for the additional bay is a substantial change over what was originally presented.

Mr. Alzahrar recalled that the Fire Chief's major concern was with the driveway between the bank and his service station. He noted that the new proposal has no work proposed in that area, and he is only asking to park one vehicle on the other side, so that area will remain clear for emergency vehicle access.

Ms. Landau noted that the board will seek input from the Fire Chief on any new proposal. Tonight's decision is only about whether to allow Mr. Alzahrar to reapply, and any new application will be subject to the same process and standards.

Mr. Ginsberg commented that this does not appear to be a major change. The applicant is asking to place one car for sale in a spot in front of the station, and he questioned why this board is involved. Mr. Farnsworth reiterated that the applicant requires a variance from zoning compliance because the sale of second hand cars is not an allowed use.

Mr. Rutan noted that he would be comfortable with allowing the applicant to reapply if the new plan is acceptable to the Fire Chief. Members of the board agreed. Mr. Farnsworth stated that the board should not defer the matter back to the Fire Chief. He suggested that the board make a determination as to whether this is a substantial change, and allow the applicant to discuss his new plan with the Fire Chief and Town staff and reapply.

Ms. Landau recommended that the board rule that this is a substantial change. Selectman Jeff Amberson agreed that the applicant should be given the opportunity to pursue the matter based on the changes he is now proposing.

Gerry Benson made a motion to consider this a substantial change. Richard Kane seconded, vote unanimous.

Decision for Case No. 06-06, 14-24 West Main Street

Mark Rutan appointed Sandra Landau as the third voting member for this decision.

Mark Rutan explained that the hearing was closed at the last meeting, but that the board has the right to have the hearing re-opened if they deem it necessary. He noted that the board is still bound by the time limits, and must render a decision within 90 days of the date that the hearing was originally closed. Ms. Joubert explained that the decision needs to be reached by April 23rd, but the board currently has no April meeting scheduled.

Mr. Kane noted that re-opening the hearing would enable the board to obtain comments from the Planning Board. Mr. Ginsberg explained that, though the hearing was closed at the last meeting, he understands that there is now new information, specifically input from the Planning Board, that the board needs to consider before making a decision.

Attorney Mark Donahue voiced bewilderment at the course of events, and the fact that it is evident that he is the only person "in the dark". He voiced frustration that, despite 7 months of hearings, it is only now coming up that the Planning Board wishes to offer comments on this project. He reiterated his displeasure with such disregard for his client's schedule and interest. He also noted that it is quite clear that conversations have taken place between the board members in violation of the open meeting law. Mr. Ginsberg explained that the Planning Board apparently felt that their input had not been considered, and simply wanted to ensure that they had the opportunity to comment. Mr. Donahue commented at the inaccuracy of that statement, especially given the 7 months that have passed since the hearing began.

Mr. Kane explained that the Planning Board and ZBA had a joint meeting on February 20th where the hearing process, not the CVS project, was discussed. It was at that time that the issue was discovered. Attorney Donahue insisted that there has clearly been some discussion since the close of the hearing and his client has not been included. He also emphasized that the Planning Board had ample opportunity for input over the course of the last several months, and voiced his opinion that their concerns have already been addressed. The fact that this action will now throw the client's project into turmoil at the beginning of the building season is of substantial concern.

Mr. Rutan explained that the board can now either re-open the hearing or choose not to if they feel that there is nothing substantial that might alter their decision. He also noted that the members of the Planning Board were in the audience while this board was hearing the petition and Planning Board members did not offer comments while in attendance.

Ms. Landau reminded Attorney Donahue that the applicant had requested a continuance on three occasions because he was not ready, and voiced her opinion that it is unfair to now say that this board is jeopardizing the project and its timetable. Attorney Donahue stated that, since the close of the hearing in January when the board asked Ms. Joubert to draft a decision, his client has been working under the assumption that this was moving toward an approval, and his anticipated commencement in Spring 2007 is now in significant jeopardy. Ms. Landau explained that the board has 90 days from the close of the hearing to issue a decision, and she is confident that it can still meet that deadline.

Mr. Rutan agreed that a decision by March 27, 2007 should still be within the board's abilities. Mr. Ginsberg asked Ms. Joubert about her presentation during the hearing, in which she indicated that there had been several months of work when the applicant met with various town entities, consultants, and boards, and the outcome was a consolidation and consensus of everyone's input. Ms. Joubert confirmed that the applicant's presentation to this board was what he thought to be a culmination of those meetings. Mr. Ginsberg asked Ms. Joubert if she agreed that there was an agreement between the various entities. Ms. Joubert noted that the board has received three memos from town staff discussing what the review process was, what the comments were, and any resolution that may have come about.

Mr. Kane noted that he had sent a memo to Ms. Joubert, in email form, raising concerns he had about traffic. He explained that he had done so in order to prevent further delays with the project. He also noted that he made it clear at the last meeting that he was less than thrilled with the resolution as proposed by the applicant.

Mr. Ginsberg voiced his understanding that the board now has three options; re-open the hearing, let the hearing remain closed but indicate that they are not ready to sign the decision, or vote on the decision. Ms. Landau noted that the difficulty is that the board has no way of knowing what comments or concerns might be voiced by the Planning Board. Mr. Ginsberg noted that the members will not know unless they re-open the hearing. Mr. Kane voiced his opinion that re-opening the hearing would be the fairest treatment for the applicant, because any degree of concern on behalf of the board members might result in a denial. Ms. Landau agreed, and questioned how soon the board could expect input from the Planning Board. It was mentioned that the Planning Board will meet on March 19th, and Ms. Landau suggested that they could discuss it at that time and be asked to provide comments immediately.

Attorney Donahue strongly suggested that the board get a written opinion from Town Counsel before the next meeting. Ms. Joubert noted that, historically, the Planning Board has provided comments for this board's consideration and this board determines whether or not those comments are incorporated into conditions in the decision. Ms. Joubert also suggested that the board request an extension of the 90-day timeline. If an extension is not obtained, the decision needs to be made by April 23rd.

Mr. Rutan voiced his opinion that the board will not need the extension, and could certainly seek one later if it becomes necessary. He would prefer to see the board use the looming deadline to drive itself to a reasonable closure. Ms. Landau reiterated that she feels it would be fairer to all parties to have the hearing re-opened. Mr. Kane suggested that the board get an opinion from Town Counsel in addition to re-opening the hearing. Mr. Rutan agreed that, where the ZBA is the deciding body, he would also prefer to get an opinion from Town Counsel. He also questioned whether the Planning Board has the ability to impose conditions on this board's decision or if their comments are simply an advisory that the ZBA can choose to implement or not.

Attorney Donahue noted that the proposed use is allowed as of right. Ms. Joubert also noted that there was a question in the minutes from a previous meeting about whether the site plan approval was before the proper board, to which Mr. Farnsworth responded that it was. It was also noted that this is an application for a special permit for site plan review by the ZBA with a review by the Planning Board, which would indicate that it is

not mandatory to allow an action by the Planning Board. Ms. Landau voiced her opinion that it would be helpful to know what the comments are, even if they are only advisory.

Ms. Joubert agreed to check with the Town Administrator as to whether the board can solicit the opinion of Town Counsel. Mr. Ginsberg voiced his opinion that the board should base their decision tonight on the fact that any comment from the Planning Board is advisory. Mr. Landau reiterated her opinion that the board owes it to everybody involved to have all of the information before rendering a decision. This is a major project for the town and we need to ensure it is done right.

Sandra Landau made a motion to re-open the hearing and request that a formal comment from the Planning Board be submitted in a timely manner to enable the Zoning Board of Appeals to reach a decision at their meeting on March 27, 2007. Richard Kane seconded, vote unanimous.

The Loop – Ms. Joubert informed the board that she was notified by Town Counsel that a settlement has been reached between the developer and the abutter for The Loop project.

Minutes of the Meeting of January 23, 2007 – approved.

Sandra Landau made a motion to approve the Minutes of the Meeting of January 2007 as drafted with the minor spelling modifications as noted. Richard Kane seconded, vote unanimous.

DECISIONS:

106 Whitney Street – Richard Kane made a motion to grant a variance based on hardship due to the soil conditions unique to the lot. Gerry Benson seconded, vote unanimous.

10 Chapin Court – Ms. Landau noted that the purpose of this request is to preserve the wetland, which is beneficial and favorable.

Dan Ginsberg made a motion to grant a variance to permit the building to be no closer than 5 feet to the property line per the petition, based on the topography and soil conditions. Richard Kane seconded, vote unanimous.

April meeting – Ms. Joubert reminded the board that a decision needs to be made about rescheduling of the April meeting, which falls on the date of Town Meeting. Members of the Board discussed the possibility of scheduling a meeting in the early part of May, and agreed to make a decision by March 27, 2007.

Adjourned at 9:33pm

Respectfully submitted,

Elaine Rowe
Board Secretary