



# Town of Northborough

## Zoning Board of Appeals

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### Zoning Board of Appeals Meeting Minutes May 22, 2007

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

**Others present:** Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Tony Abu; John Fouracre; Rick Leif

**Chairman Rand called the meeting to order at 7:00PM.**

**Public Hearing to consider the petition of FAB Realty Trust for a Variance/Special Permit to allow installation of tenant signs on an exterior wall of the building located at 290 West Main Street, 7:00PM** John Fouracre distributed pictures of the building, along with some of other properties around town. He explained that the building permit application for a sign for Wild Birds Unlimited had been denied because the proposed sign did not meet the code in the bylaw. At that time, the applicant requested permission to install a temporary sign until the matter could be resolved.

Mr. Fouracre explained that the applicant wishes to install a sign on the end of the building facing the street, above the two windows. Mr. Fouracre explained that the tenants on the first floor will utilize all of the allowable signage and the applicant is seeking permission for the addition signage for the remaining tenants.

Mr. Fouracre noted that he had taken pictures of signage throughout town that has previously been permitted. He noted that that *Anytime Fitness*, located in the old Town Hall building, has an entrance on the east side of the building, but their signage is on the front. Across the street, he found *The Learning Center*, who also has a sign that does not conform with the location of the entrance as is stipulated in the bylaw. Mr. Fouracre exhibited several other photos of businesses in town (Eyeglass Warehouse, 82 West Main Street, 155 Otis Street, 276 West Main Street) whose signage does not conform with the location of their entrance door. He voiced his opinion that his pictures illustrate the bylaw has previously allowed for this type of signage, and he is simply asking to be treated the same.

Tony Abu explained that, without knowledge of the bylaw, he designed this building to include blank areas for the location of signs. He also explained that the several of the businesses do not have doors facing the street and these tenants need the visibility of signs that face the street. He also voiced his opinion that the building is large enough to accommodate the additional signs.

Mr. Kane asked about the large pylon sign that was previously approved. Mr. Fouracre explained that this sign is in the process of being completed. Chairman Rand asked if the pylon sign will alleviate the need for these additional signs. Mr. Fouracre explained that the pylon sign cannot accommodate all of the businesses in the project. Mr. Kane asked about the size of the proposed signs, while Mr. Ginsberg asked how many there will be. Mr. Fouracre noted that there will be four signs, and each will be 16 square feet in size. Mr. Abu stated that there will be more than four as there are additional businesses in the back whose entrances will be completely hidden. He also stated that the signs will be done very tastefully, and reiterated the importance of visibility for the tenants. Mr. Ginsberg questioned how many more signs will be needed. Bill Farnsworth noted that the board can limit the number of signs as a condition in the decision.

Mr. Ginsberg asked Mr. Farnsworth for the basis of his previous denial. Mr. Farnsworth explained that the bylaw stipulates that there cannot be more than one wall sign for each business. Ms. Joubert noted that there is an exception (section 7-20-030) for businesses with a direct entrance other than the store front. Mr. Farnsworth noted that the bylaw allows for placement of a wall sign if the business has a direct entrance, with secondary signs allowed for businesses with in-direct entrances. He stated that the absence of an entrance on the end of the building is the basis for the denial.

Mr. Fouracre voiced his opinion that the bylaw pertains to having two signs for a business. He reiterated that the proposed sign is for additional tenants in the building. Mr. Farnsworth noted that the applicant is not appealing his decision; he is seeking a variance from the interpretation of the bylaw to allow signs on the side of the building. He indicated that the board can grant a variance with conditions on the number, size, and location of the sign.

Ms. Landau commented that she finds no issue with granting the variance. Mr. Farnsworth stated that he has no objection, and noted that the bylaw was written on a simplistic basis years ago. He noted that, as builders come up with a more creative approach to location and design of buildings, conditions for variances will arise. He also noted that the uniqueness of this parcel and project are justification for granting a variance.

Mr. Benson indicated that he would like clarification on the number signs to be installed. Mr. Kane asked about the potential tenant space on the second floor. Mr. Abu noted that presently he has two primary tenants and one sublet, for a total of three, but in the future there could be as many as 20. Mr. Farnsworth stated that the realistic number is between 8 and 10. Mr. Abu stated that the

board can condition a decision with a maximum allowable area for the sign, and he will simply make each sign smaller, if necessary, to fit each tenant. Mr. Ginsberg suggested that the sign encompass the area below the roof line and to the right of the false doors. Mr. Abu agreed.

Mr. Kane agreed that the decision should stipulate a maximum total sign area, and suggested that no individual sign should exceed 24 square feet. Mr. Ginsberg reiterated that the total area of the sign should be limited to the area between the right side of the false doors and the roof line. Mr. Rutan asked if there will be any issues if the false door is eliminated in the future. Mr. Kane suggested that the applicant would be required to go back to the Design Review committee for approval. Mr. Abu stated that there are no plans to remove those doors.

Mr. Farnsworth suggested that the roof line and the square footage need to be defined, and asked Mr. Fouracre to draw the area onto the photograph for reference. Ms. Joubert asked if all signs are proposed to be the same. Mr. Fouracre stated that all signs will be dark green with white lettering, with the only difference being the individual logos and font selections. Mr. Fouracre presented a photograph with the signage area clearly marked.

**Richard Kane made a motion to close the hearing. Mark Rutan seconded, vote unanimous.**

**Public Hearing to consider the petition of Ammar Alzahar for a Variance/Special Permit to sell one used car at the Citgo Service Station on the property located at 35 West Main Street, 7:38PM.** Mr. Alzahar appeared before the board seeking a use variance to allow the sale of one used vehicle on the property. Frank DeFalco spoke on behalf of Mr. Alzahar and explained that a new drawing had been provided showing the location for the vehicle being sold. He noted that they had met with the Fire Chief last month and the Chief was pleased with the changes that have been made since the original filing. Mr. DeFalco also indicated that the Chief has submitted a favorable letter to this board.

Chairman Rand stated that he often drives by the site and it is not unusual to see a vehicle parked on the sidewalk in front of the property. Mr. Alzahar confirmed that he will sometimes leave a car there that is due to be picked up, though it is never for an extended period of time. He also agreed to refrain from doing so in the future if the board has issue with it. Mr. Kane noted that the Fire Chief has previously made reference to an area that is to be left unobstructed at all times for emergency access, though his personal observation is that it is often obstructed. Mr. Alzahar stated that the vehicle being sold is to be located on the opposite side of the property. He discussed his intentions to clean out the area to the rear of the building and create 7 new parking spaces, which should alleviate the problem with cars parking in the front. Ms. Landau reiterated that the Fire Chief has requested that the area in front of the building be left open at all times. Mr. Kane commented that he has heard the Chief express safety

concerns with fuel deliveries and commented that he may choose to impose restrictions on delivery times. Mr. Alzahar stated that his lease stipulates that fuel deliveries must be done overnight due to the location of the business.

Chairman Rand noted that the applicant had failed to sign his permit application. Mr. Kane asked if the case can proceed, given the fact that the application was not signed. Ms. Joubert confirmed that the board can proceed as the applicant has since signed the application.

Mr. Ginsberg voiced his opinion that the board can now choose to support Mr. Alzahar's petition, given the fact that the Fire Chief has voiced his approval. Mr. Rutan agreed, on the condition that the 7 parking spaces are created in the back as previously discussed. Mr. Alzahar agreed to keep the area in the front clear until the new parking spaces can be created, and invited the board to contact him if they see any infractions. Mr. Farnsworth suggested that the decision include the condition about the parking area for the cars as this provides him the ability for enforcement. Mr. Rand asked if the parking spaces will be paved and lined. Mr. Alzahar confirmed that they will be.

Ms. Joubert stated that she had received a note from the Town Treasurer's office about a bylaw that allows for withholding of permits if there are any outstanding taxes. Ms. Joubert indicated that the applicant has outstanding taxes in the amount of \$174.76. Mr. Alzahar stated he thought that the issue of his outstanding taxes had been resolved. Ms. Landau suggested that the decision contain the conditions that these taxes must be paid, the front area must be kept clear as indicated in the Fire Chief's letter, and the 7 parking spaces in the rear must be available.

**Richard Kane made a motion to close the hearing. Mark Rutan seconded, vote unanimous.**

**Discussion: Zoning reorganization project, 7:55PM** – Rick Leif, Chairman of The Zoning Subcommittee, appeared before the board to provide a brief update/overview of the status of the work of this subcommittee. He also informed the board members that the subcommittee would like to hold a joint meeting with the ZBA and Planning Board on June 12<sup>th</sup>. He noted that documents had recently been distributed involving the bylaw sections being addressed. At this point, the focus is on section 7-10, which deals with administration and enforcement, and the site plan process.

Chairman Rand stated that he had not yet had an opportunity to review the documents.

Mr. Leif explained that the subcommittee meetings will continue until the bylaw and format are completely revised, which he anticipates will be done by early August. He explained that, once the ZBA and Planning Board are in agreement, the subcommittee will host a series of presentations for the community to discuss the changes. The goal is to prepare the constituencies for Town Meeting 2008.

Mr. Leif commented that Town Meeting 2008 is not as far away as one might think, and there is a great deal of work that still needs to be done by the subcommittee. He explained that there are three areas in the bylaw - the review process, use regulations, and table of dimensional regulations - that affect the ZBA and Planning Board. The two boards need to understand these in detail and arrive at a consensus. He suggested that as each section is completed, it will be sent out to the board members for review and discussion. His hope is to have a concurrence by late September so that everything can be finalized.

Mr. Leif explained that section 7-10 is completed and ready for discussion between the two boards. He also suggested that the board members be given a copy of the revised Table of Contents so that they can begin to understand the new numbering.

Mr. Leif reiterated that section 7-10 is ready for the ZBA and Planning Board to address. He noted that the subcommittee would prefer that this section not be sent back to them as the draft provided is their best effort. It is now up to the two boards to arrive at a consensus. Mr. Leif explained that the joint meeting is proposed for June 12<sup>th</sup>, and is based on the availability of the town's consultant. He stated that public education is critical to the success of this effort at Town Meeting, but that there is no sense in doing that until the two boards reach a consensus.

Ms. Landau asked if section 7-10 is new material or replaces something in the existing bylaw. Mr. Leif explained that the subcommittee takes content from the existing bylaw verbatim, and modifies it as they see fit. Ms. Joubert commented that portions of the current section 7-20 will be removed and put into the new section 7-10, with the end result being an entirely new bylaw. Ms. Landau asked if it will be clear as to which section is being replaced by new content. Mr. Leif noted that the new Table of Contents will make it easier to understand.

Ms. Landau asked about how the new bylaw interfaces with the new state zoning statute. Mr. Leif explained that the consultant is working on that issue. Ms. Landau commented that the new bylaw cannot contradict or be less restrictive than the state statute. Mr. Leif stated that he has not seen anything proposed that appears to be in violation.

Mr. Benson asked if the new bylaw will need to go to the Board of Selectmen for approval. Mr. Leif noted that it does not, but voiced his opinion that it will be important to have their backing before Town Meeting.

Ms. Joubert explained that one of the initial meetings was held with local developers and attorneys in an effort to get their input. This process will be repeated once the new bylaw is drafted, with an additional session to be held with property owners. The goal is to have support from all factors prior to Town Meeting.

Members of the Board agreed to meet on June 12<sup>th</sup> at 7PM. Mr. Kane asked if it would be beneficial to televise the meeting. Mr. Ginsberg suggested that it may be too early in the process. Ms. Joubert offered to send hard copies of section 7-10 and the Table of Contents to the members for their review before the June 12<sup>th</sup> meeting.

## **DECISIONS:**

**FAB Realty, 290 West Main Street** – Mr. Ginsberg voiced his opinion that, as long as the coverage area is limited, he has no issue with allowing a sign to be installed on the side of the building. Mr. Rutan noted that the space for the sign appears to be well defined.

Richard Kane made a motion to grant a variance with the following conditions:

- No single sign is to exceed 24 square feet in area.
- Multiple signs will be allowed as required as long as they do not exceed the approximate total area as shown on marked photograph dated 5/22/07.

Mark Rutan seconded, vote unanimous.

**35 West Main** – Richard Kane made a motion to deny the request. He noted that the Fire Chief has no major objection, though he did not specifically approve the petition either. Mr. Kane reiterated that he has observed the property since this process started and has never seen the area in question clear except for this evening. He noted that cars are constantly parked on the sidewalk, often for hours. He also feels strongly that this is spot zoning, and does not wish to create precedence for something that he does not feel is good for the town.

Mr. Benson noted that the applicant often has many cars for sale, even without having a permit. Mr. Farnsworth voiced his understanding that the permit to sell cars will enable Mr. Alzahr to buy cars at auction. He explained that Mr. Alzahr had previously applied to the Board of Selectmen, but that application was put on hold because it is not an allowed use on the property. Mr. Ginsberg stated that he would be in favor of approving the request, and that the Board of Selectmen can put a restriction on the number of vehicles that can be sold. Mr. Kane noted that, since the initial review letter from the Fire Chief, the applicant has been aware that the area at the front is to be kept clear but has continually failed to do so. This is cause for concern about what will happen if approval is granted. Mr. Benson voiced his opinion that it is more of an enforcement issue. Mr. Farnsworth stated that there is no regulation that prohibits parking of cars in that area, but conditioning a decision would make it enforceable. Mr. Ginsberg asked for clarification. Mr. Farnsworth reiterated that including this restriction as a condition in a decision would give him enforcement abilities.

Mr. Rutan commented that granting the permit may improve the conditions on the property. He is not comfortable with the applicant's proposal to simply move the

vehicles in the event of an emergency. Chairman Rand voiced his opinion that the site is not appropriately sized for this additional use.

Ms. Joubert voiced her opinion that the applicant should have made more of an effort to comply, given the fact that he knew he would be before this board for an approval. It appears that the conditions on the site are the same, with no improvement since his original appearance. Ms. Landau asked if the cars parked at the front of the site are in violation of any existing regulation, and suggested that the board may be holding the applicant accountable for observing a regulation that does not exist. Mr. Farnsworth commented that the situation is made worse by the addition of more vehicles. If a permit is granted, it should include conditions to help alleviate some of the problems that currently exist. Ms. Landau suggested that a decision with conditions could make it clear as to what can and can't be done on the site. Mr. Ginsberg suggested that the applicant will say anything to get what he wants, but questions compliance after the fact. Ms. Joubert suggested that allowing the sale of vehicles adds not only that vehicle, but additional vehicles from customers coming to see the vehicles being sold. Ms. Landau commented that the applicant will likely find cars upon request for a customer. Ms. Farnsworth noted that the variance is to allow for the sale of used vehicles, and he is uncertain as to the ability to restrict number of vehicles in the variance. He believes that the Board of Selectmen does have that ability with the issuance of their license. Mr. Kane stated that other used car lots in town have limits, and he is certain that it is a common practice to exceed those limits. Mr. Rutan stated that he would support the granting of an approval, specifically because it gives the board the ability to enforce keeping the lane open, thereby improving safety on the site. Ms. Landau agreed that it would be safer to grant the variance than to allow the applicant to continue as is.

Mark Rutan seconded the motion made by Mr. Kane to deny the petition. The vote was 2 in favor and 1 opposed (Mark Rutan opposed).

Members of the board agreed that the failure to maintain adequate passage and over-congestion of the site were valid reasons for denial.

**Review Minutes of the Meeting of March 27, 2007** – Richard Kane made a motion to approve the Minutes of the Meeting of March 27, 2007 as modified. Mark Rutan seconded, vote unanimous.

Mr. Farnsworth voiced his opinion that the Minutes should not be approved or modified via email communication between the board members as this could be a violation of the open meeting bylaw. Ms. Joubert agreed to clarify the process for handling of the minutes.

**Request for an extension of the variance for The Loop Project** – Ms. Joubert explained that a second extension has been requested due to the delays caused by the filing of an appeal. She noted that Attorney Gould is requesting an extension of the following for The Loop:

Use variance  
Sign variance  
Special Permit

Ms. Joubert explained that the permit issued for the Avalon project is valid for three years, so there is no action needed for that project at this time.

Richard Kane made a motion to grant a one-year extension (from date of expiration) on both variances and the special permit.

Ms. Joubert noted that work is still being done with regard to the issue of sewer permits.

Mark Rutan seconded the motion made by Mr. Kane, vote unanimous.

**Dunia Gardens – Hudson Street** – Ms. Joubert explained that she had received an email from Mr. Ramadan requesting permission to change the location of one of the affordable units in the project. Board members reviewed the plans on file and saw no issue with allowing the change.

Richard Kane made a motion to approve the request from the applicant to substitute unit #14 for the previously approved affordable unit, #8. Mark Rutan seconded, vote unanimous.

Richard Kane made a motion to adjourn. Mark Rutan seconded, vote unanimous.

**Adjourned at 9:04PM.**

**Respectfully submitted,  
Elaine Rowe  
Board Secretary**