



# TOWN OF NORTHBOROUGH

Town Offices

63 Main Street

Northborough, Massachusetts 01532

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Approved 8/28/07

## Planning Board & Zoning Board of Appeals Joint Meeting Minutes June 12, 2007

### 6:45 pm - Zoning Board of Appeals (ZBA) Meeting

**Zoning Board of Appeals Members Present:** Dick Rand, Dick Kane, Sandra Landau, Dan Ginsberg, Gerry Benson and Mark Rutan (arrived @ 7:07 pm)

**Others Present:** Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer; Judi Barrett, Community Opportunities Group

**Vote on Variance Extension for The Loop:** In the absence of Mark Rutan, Sandra Landau was appointed a voting member. Dick Kane moved to extend by 6 months the variance approved by the Zoning Board of Appeals on May 22, 2007 to Case No. 05-30, Southwest Cutoff (The Loop project). Sandra Landau seconded the motion and the vote was unanimously in favor of the extension.

**Election of Officers:** The ZBA postponed election of officers until Mark Rutan is present.

The Board recessed for 10 minutes until the start of the 7:00 pm joint meeting.

### 7:00 pm - Joint Planning Board/ZBA Meeting

**Planning Board Members Present:** Rick Leif, Bob Rosenberg, Don Hewey, George Pember, Michelle Gillespie

### Comprehensive Zoning Reorganization

#### Rick Leif

- Gave overview of subcommittee work on Comprehensive Zoning Rewrite & Reorganization
- Subcommittee members include: Fran Bakstran, BOS; Dan Ginsberg, ZBA; Rick Leif, Planning Board; Mark Donahue, IDC; Tom Reardon, DRC
- Subcommittee working on revising zoning bylaw in its entirety
- Recommendations from Community Development Plan being incorporated into rewrite
- Ultimately, Planning Board and ZBA should jointly agree on changes to zoning for Town Meeting 2008
- Intent is for both boards to work together on reviewing key sections of bylaw as subcommittee continues to work on other sections of the bylaw
- Felt 3 sections of zoning as "guts" and boards needed to review changes
  - Section 7-10 for review tonight - basic ground rules for how Town handles zoning;
  - 2nd area - Section 7-04
  - 3rd area - Table Of Dimensional Regulations

- Would maybe see joint meetings as Subcommittee finishes changes
- When whole is complete, a final joint meeting to go over whole package
- Subcommittee has decided that they will go through each section with Judi Barrett, Consultant from Community Opportunities Group, complete it and hand it over to Planning Board
- Subcommittee will be done with that particular at that point and do not expect it to come back to them
- Hope would be that as we progress and Judi finishes with overview, we give comments, make changes, etc. and Judi will make an updated draft
- 3rd scenario - we have issues with Subcommittee and can't come to agreement with what changes will be and decide what we'll do next
- Each section sub finishes with is in our hands
- Again, 7-10, 7-04 and Table of Dimensional Requirements

(ZBA member Mark Rutan arrived at 7:07 pm.)

#### **Judi Barrett - Overview of Section 7-10**

- Current site plan bylaw includes whole body of procedures for site plan review
- Have noted there are some places where design review kicks in
- Design review will have its own section
- This particular section about procedures and another will be about standards

#### **Don Hewey**

- Site plan review the way it reads seems clear the it's a new submission
- Follows pg 9 - applications for site plan review
- Is empowering building inspector
- What's to prohibit us from approving site plan and having developer submit revised plan?

#### **Judi Barrett**

- Something eligible to go to site plan review committee only if under Site Plan Approval - Applicability - thresh-hold of what applicants must meet
- Have situations with smaller projects pertaining to first section
- If project needs 15 parking spaces, can't go to building inspector as Site Plan Review Committee because doesn't meet criteria

#### **Rick Leif**

Planning Board has issued approval, made changes, changes below threshold and could go to Building Inspector as Site Plan Review Committee

#### **Dan Ginsberg**

- My interpretation is that once it's gone to one board, board will control entire life of project

#### **Bill Farnsworth**

- Looking at specifics
- Planning Board or ZBA always says site plan approved "per the plan dated \_\_\_\_"
- I use same thing
- Sometimes board will approve it "substantially as per the plans"
- Then I have the ability to ask if it changes the idea of the permit
- I will deny and hold back building permit if change is substantial
- Depends on how the decision is written

#### **Don Hewey**

- Don't see checks and balance

- Is Building Department keeping track of all site plan reviews?
- Planning Board would not even know that someone's come back with a minor change
- Don't want people to be doing end-runs on the Planning Board

**Judi Barrett**

- If Planning Board is site plan approval authority, you are placing conditions on a building permit
- If someone wants to come back and change something, they have to come back to the board who granted it.
- The building inspector is not empowered to change conditions of the site plan approval

**Bill Farnsworth**

- I go to both board meetings to find out what the intentions are so when they come back to me with a change, I'll know if it meets the intent of the site plan approval

**Rick Leif**

- Building inspector's job if someone comes to them with a proposal
- A modification to a condition issued by the Planning Board
- Building inspector is point person to make that decision

**Don Hewey**

- Requires a new plan that changes everything?

**Bill Farnsworth**

- When they go to site and do ground work, they may end up coming in to file a request for a modification

**Sandra Landau**

- Could section be introduced with a brief narrative with what Judi and Bill just said?
- Applicants will be a lot less confused

**Judi Barrett**

- Yes, that would be fine.

**Dick Rand**

- Section is pretty straight-forward
- Much clearer than it was

**George Pember**

- Clarification - site plan approval by Planning Board
- Just want to make sure the goal is one-stop shopping. Applicant is before one board and being bounced back and forth between two boards
- Applicants will not always be coming before Planning Board, some applicants will be before ZBA for site plan approval
- Special permits and variances not necessarily with Planning Board

**Judi Barrett**

- Not for variance - only ZBA issues variances
- If use requires special permit then Special Permit Granting Authority (SPGA) is also the site plan review board
- Depends on location of project

**Rick Leif**

- Won't see actual review table until we get this settled

- For special permits, go to use table and see if allowed by right
- If not, then see which board will review project
- Special permit site plan review either before ZBA or Planning Board, based on what the use table designates
- Site plan approval by Planning Board for all uses allowed by right
- Only time when its not the case is when you look at use table and not allowed by right, then either ZBA or Planning Board will do the project

**Kathy Joubert**

- Someone could be before both boards in situation where site plan review is with Planning Board but applicant is applying for a variance. Only ZBA grants variances.

**Fran Bakstran**

- Problem is the heading
- Heading will be changed to Site Plan Procedures

**Dick Kane**

- In past, Kathy gave us the sample bylaw from Citizen Planner Training Collaborative (CPTC)
- Sites a case where you go to both boards
- Planning Board sets conditions then goes to ZBA

**Rick Leif**

- If we follow what's written, it will never happen

**Kathy Joubert**

- CPTC is run out of UMASS, a non-profit group that provides training to municipalities
- Site plan done different ways in many communities

**Judi Barrett**

- Mass General Laws are silent on site plan review

**Rick Leif**

- If at some point we decide there are going to be some situations where we want ZBA to issue decisions and Planning Board comments - are the comments conditions or comments? Town counsel has provided a response to this and the comments from the Planning Board are taken as comments not conditions when provided to ZBA.
- Variances - if Planning Board is going to issue the site plan approval, either for use by right, or use by special permit and variance required, Planning Board will not issue decision until variance issued by ZBA
- Planning Board will withhold decision until ZBA issues variance

**Dick Kane**

- If variance not approved, what's the action?

**Judi Barrett**

- Then use isn't permitted

**Kathy Joubert**

- Given the engineering costs associated with developing plans, an applicant will generally not proceed with a site plan application until obtaining a variance. If ZBA does not grant variance, applicant will not file site plan application.

**Judi Barrett**

- Need relief before they can go to Planning Board

**Rick Leif**

- Site plan approval with variance - both boards involved

**Sandra Landau**

- Re: Section 7-04, would like to request the same kind of narrative that encapsulates what section says.

**Judi Barrett**

- Can put it in zoning document or in zoning booklet but not part of the bylaw
- If not in zoning bylaw, do not have to go to Town Meeting to make administrative changes
- Not part of zoning adopted by Town Meeting - you can change them
- If you want to adopt them, then you have to go to Town Meeting for every change, no matter how small.

**Sandra Landau**

- Dick Rand and I did over Variance application
- Still had problems
- Worried if it's not in front of their faces, they'll be confused

**Judi Barrett**

- If reintroducing instruction text where we've taken it out, it ties hands of building inspector

**Rick Leif**

- Point of narrative is to explain detailed steps
- If we change steps it will be a trigger to know we have to change narrative also

**Sandra Landau**

- So often if you only knew intent of drafter, you'd know better
- Sheds light on what you should or shouldn't do

**Judi Barrett**

- Part of bylaw or in zoning booklet?

**Bill Farnsworth**

- In building code, commentaries tell what intent of change was
- Changing commentaries - don't need to go to Town Meeting
- Change in bylaw goes to Town Meeting

**Dick Kane**

- Fundamentals ought to be kept in bylaw
- Doesn't mean we can't have an additional narrative

**Judi Barrett**

- The more you restate things, the more likely in subsequent amendments, things may get confused or misstated.
- Can put in wording - but won't be as detailed

**Sandra Landau**

- Fine with that

**Bob Rosenberg**

- Page 5, Section 2, last sentence - why is there no site plan when applicant applying for a permit for a non-conforming use?

**Judi Barrett**

- Principle was that if you have a use that is non-conforming and non-detrimental but change is another non-conforming use, you would end up with a minor change triggering a site plan.
- Would you want to do it for every one?

**Fran Bakstran**

- In first reading, we did struggle with whether a new non-conforming use will trigger a special permit site plan review

**Judi Barrett**

- Change does require a special permit, but not sure about site plan review
- Example: have non-conforming structure and want to build small addition
- ZBA is SPGA for special permit, but project not big enough to trigger site plan review
- Would you want them to go through site plan review for small project?
- Remove sentence and each SPGA can adopt own regulations and weigh submission requirements

**Kathy Joubert**

- Most are residential, small changes

**Judi Barrett**

- Easiest thing to do is to take sentence out
- Would be done by regulation
- Would say you want something that says site plan approval shall not be required
- Not making single-family home subject to site plan approval
- Would go to ZBA to alter non-conforming structure
- Why would they have to meet submission requirements for site plan review when new home doesn't require site plan review?

**George Pember**

- That was my first question.

**Don Hewey**

- Could just say any non-residential use

**Judi Barrett**

- Better way is with regulations
- Minor submission requirements could be laid out in regulations
- Site plan special permit is a special permit for a site plan

**Dick Kane**

- Putting it in definitions?

**Judi Barrett**

- Yes.

**George Pember**

- If plan is to convert single family to duplex, would need a special permit site plan?

**Judi Barrett**

- You would have within the regulations of the SPGA different regulations for submissions
- The board could have different submission requirements for different sized-project.

**Sandra Landau**

- That's what we do when we issue a special permit anyway.
- We cover requirements in site plan, but not the whole site plan requirements

**Judi Barrett**

- The board, through rules and regulations, may require different submission requirements for different sized projects.
- Nothing in bylaw now that says you can't make your own regulations
- Writing legislation right now
- The more prescriptive, you run the risk of limiting what the board can do
- Limiting opportunities to prohibit board for doing what's reasonable
- Board could also waive some submission requirements for reasonable cause

**Kathy Joubert**

- Consensus is to develop regulations for both ZBA and Planning Board

**Judi Barrett**

- I won't do that until bylaw finished
- Will look at last sentence on Page 5, Section 2

**Don Hewey**

- Rules and regulations sound like a good idea
- How do we know those things that need to be in the rules and regulations?

**Judi Barrett**

- Won't know until bylaw finished and approved

**Rick Leif**

- Day after Town Meeting in May will have to have rules and regulations in place

**Don Hewey**

- Can we be advised along the way?

**Judi Barrett**

- You'll know whenever this refers to the rules and regulations of the board.
- You'll know it because it will say it.

**Rick Leif**

- Will be good for Planning Board to see in general terms where these places are
- Subcommittee, Kathy and Judi will be making decisions about what won't be carried on to Town Meeting
- Would be nice if, as those decisions are being made, could be a list to see them

**Judi Barrett**

- I can't take on anymore.
- When document says "rules and regulations" - that's where they are

**Rick Leif**

- Can understand people will get uncomfortable

- Could note as “dropped - state statute not needed” and “dropped - in rules and regulations”
- Don’t mean they have to be written yet

**Judi Barrett**

- Can the boards’ representatives on Subcommittee keep you as board members informed? They should be providing updates to the respective boards.

**Sandra Landau**

- Never operated under rules and regulations. Understand now why we are going this route.

**Judi Barrett**

- Simply saying the document is queuing you that if you need something else besides that, you have to do it internally
- Have no problem in August giving you a list
- Given work in my contract and what needs to be accomplished with the subcommittee, I am not able to do it right now

**Don Hewey**

- Relying on staff to know what has been taken out and where it is

**Judi Barrett**

- Encourage you not to overcomplicate it
- Can adopt interim rules
- Give yourself time
- Don’t want to adopt rules and regulations because you don’t know if bylaw will get approved
- When all sections done, will put together a list

**Sandra Landau**

- Don’t want to ask you to do more than you’re expected to do.

**George Pember**

- Page 4, G. - lapse of special permit
- How is ‘has begun” interpreted?

**Sandra Landau**

- Had discussion on what “has begun” means

**Bill Farnsworth**

- Once you obtain permit, then you have a time to start construction
- Means to get a building permit in hand

**Dick Kane**

- Would be wise to leave out “except for good cause”?

**Judi Barrett**

- Would not feel comfortable with that

**Bill Farnsworth**

- Applicant in court for 9 months, does that extend it out?

**Dick Kane**

- We just extended a major project tonight.



**George Pember**

- Page 6 B.(1) - Why is it Special Permit Granting Authority or Planning Board?

**Judi Barrett**

- Could apply to both site plan approval by Planning Board or site plan special permit

**Don Hewey**

- Re: "submission of complete site plan application" - what is complete?

**Judi Barrett**

- Complete in accordance with rules and regulations

**George Pember**

- Page 7 2.(b)?

**Judi Barrett**

- Means every reasonable step has been taken by applicant
- Boards will disagree on what is reasonable
- Could also say commercially reasonable
- Have you done everything you could?

**Rick Leif**

- If board feels they haven't, conditions could be attached to the plan

**Dan Ginsberg**

- Also defines what applicant has to be thinking about before filing

**Judi Barrett**

- Incorporated into site plan criteria

**Sandra Landau**

- Not an unusual term
- Assume board members will be reasonable
- If not, they won't get elected or they'll get sued over and over again

**Don Hewey**

- Same page, same place (Page 7, 2)
- Should it say Planning Board or SPGA?

**Rick Leif**

- Talked about 2 changes
- Under 7-10-050 - adding narrative for clarity
- Under A(2), reviewing that last sentence
- Not aware of any other changes

**Michelle Gillespie**

- Going to change to "Site Plan Procedures"?

**Judi Barrett**

- Yes.
- Some towns have preamble that explains permitting process

**Kathy Joubert**

- We have development guidebook that explains permitting process for industrial and commercial projects.

**Dick Kane**

- Would be good to have it in the same document when dealing with major developers

**Bob Rosenberg**

- Top of Page 10 - talks about site plan review by site plan review committee (E & F)
- What is outcome of a site plan review?
- The verb that ends up being used is approval or conditional approval - intentional?

**Judi Barrett**

- Yes, a site plan review that becomes an approval

**Bob Rosenberg**

- Applicant has gone through site plan review and got site plan approval?

**Judi Barrett**

- I would be calling it site plan review in context of a special permit

**Bob Rosenberg**

- Doesn't clearly say who approves
- Does say that building inspector solicits information, but not clear

**Judi Barrett**

- Think preceding paragraph makes it clear, but will change it if it's not clear to you
- Ultimately building inspector making determination based on advise he receives

**Bill Farnsworth**

- State building code has a section in there under administration for site plan
- Certain criteria has to be admitted to building inspector
- Part of what he deems necessary and what's outlined in building code
- Three things - site plan approval, site plan review and special permit
- Review is not an approval, approval is not a review

**Judi Barrett**

- In most towns site plan approval here is site plan review there

**Rick Leif**

- All information to make determination provided, either Planning Board, SPGA or building inspector is going to say do it, or do it with conditions
- End result is either Planning Board, ZBA or building inspector is going to say fine or do it with conditions

**Judi Barrett**

- Pertinent part is "what's my avenue of appeal?"
- Building inspector's is the only decision that can be appealed through that route

**Dick Kane**

- Review committees are granting approval - thought they weren't?

**Judi Barrett**

- They aren't.

**George Pember**

- Page 10 - why put in special sentence that says all fines paid will go to the Town?
- Who else would get it?

**Judi Barrett**

- Language from existing Northboro non-criminal disposition bylaw
- Revenue comes into a community and is either restricted or not

**Sandra Landau**

- Second part of sentence is unclear
- Does that mean that the town's legal fees get paid?

**Judi Barrett**

- Yes, if they're awarded
- Making clear its not restrictive revenue - the town gets the money
- If your costs aren't awarded by the court, then that revenue comes to the town

**Dick Kane**

- Limit of \$300
- Every year before town meeting we review a list of the fees and fines
- Will it be included in that operation?

**Kathy Joubert**

- No, a state statute involved
- Town didn't set fee

**Sandra Landau**

- Instead of stating amount, say "as outlined in state statute"

**Judi Barrett**

- Don't care if language changed, but make sure it cross-references the correct section of Chapter 40A

**Bill Farnsworth**

- Have \$300 or as outlined
- With this in here, people see amount

**Rick Leif**

- Can Kathy or Judi summarize changes from this meeting and send it to us?

**Kathy Joubert**

- Will send out the meeting minutes to everyone

**Rick Leif**

- Before we break up, when Section 7-04 is done, give us time to read it and then reconvene

**Don Hewey**

- Should Section 7-04 and dimensional requirements come together?

**Rick Leif**

- Section 7-04 will generate interesting discussions
- Will do table after that
- Also look at table of contents

- Proposed 3 joint meetings, but may need more to finalize the whole document
- Those 3 sections define guts of zoning

**Planning Board motion to adjourn:** Bob Rosenberg moved to adjourn the meeting, Don Hewey seconded the motion and the vote was unanimous.

**ZBA resumed Board meeting at 8:40pm:**

**ZBA Election of Officers:** Dick Kane moved to keep officers the same, with Dick Rand as Chairman and Mark Rutan as Vice Chairman. Mark Rutan seconded the motion and the vote was unanimous.

**ZBA motion to adjourn:** Dick Kane moved to adjourn the meeting, Mark Rutan seconded the motion and the vote was unanimous.

The joint meeting adjourned at 8:45 pm.

Respectfully submitted,

Debbie Grampietro, Administrative Assistant  
Engineering, Planning & Zoning Board of Appeals