



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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## Zoning Board of Appeals Meeting Minutes August 28, 2007

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

**Others in attendance:** Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Attorney Aldo Cipriano; Kevin Lamy; Fran Bakstran; Peter Musacchio, Matthews International; Attorney Mark Donahue; Mr. Brennan

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

Sandra Landau was appointed as the third voting member for the board for this evening.

### **Public Hearing to consider the petition of Kevin Lamy for a Special Permit/Variance to allow use of an automotive repair business on the property located at 200 Bartlett Street, 7:00PM**

Attorney Cipriano appeared on behalf of the applicant and explained that the petition is for a use variance that is necessary according to the Building Inspector. Attorney Cipriano explained that the property was previously used as an equipment repair facility and the proposed new use will be for automotive repair and maintenance. He noted that Mr. Lamy has entered into an agreement to relocate the repair portion of his business, currently located on East Main Street, to the site at 200 Bartlett Street. Attorney Cipriano stated that the existing location with the service station component is not desirable to Mr. Lamy, and the Bartlett Street location allows him to provide a convenient location for his customers.

Attorney Cipriano explained that the lot is smaller than others around it, and the existing building houses a multi-bay garage that was formerly the Goodall repair facility. Given the small size of the lot, the shallowness of the rear yard, and the existing multi-bay garage, it is well suited for the car repair business. There has been a history of short-term tenancies at the site, and Mr. Lamy intends to stay for many years. Attorney Cipriano submitted a memorandum and finding to the members of the board (attached).

Chairman Rand asked how much of the property the applicant plans to use. He also questioned the number of vehicles to be stored outside. Mr. Lamy indicated that there will be approximately 10 vehicles stored in front of the building. Mr. Kane questioned if

the vehicle will be stored on land that is part of Mr. Lamy's leased area, and voiced concern about other tenants having issues with the outdoor storage of vehicles.

Mr. Benson asked about any homes nearby. Attorney Cipriano commented that the site is located beyond the residential portions of Bartlett Street. Chairman Rand asked about hours of operation. Mr. Lamy stated that the business will operate from 7:00AM to 6:00PM weekdays.

Attorney Cipriano explained that the applicant had the option to seek two different reliefs, including a special permit for groundwater overlay which will require drainage facilities. Before committing to that, Mr. Lamy wanted to ensure that he would be able to obtain the use variance. If granted, he intends to seek the special permit.

Mr. Benson asked if the applicant will be requesting any special signage, given that the portion of the property he will be using is at the rear. Mr. Lamy noted that the 4x8 frame from a previous tenant is still in place, and noted that he intends to use that for his signage. Attorney Cipriano explained that a more detailed proposal will be presented with the special permit filing.

Ms. Joubert clarified that the closest residential property is on the corner of Lyman and Bartlett Street. Mr. Farnsworth voiced his understanding that it is currently being rented as a home. Ms. Joubert commented that Bartlett Street becomes much more residential further north, and that this property is completely surrounded by industrial developments. Mr. Benson asked about any traffic issues. Mr. Lamy stated that he does not anticipate any impacts with his project, as he expects a maximum of only 30 cars entering and exiting each day.

Mr. Kane stated that he had been to the site many times for the previous business, which had a considerable amount of traffic. He does not expect Mr. Lamy will have anywhere near that amount of traffic, and sees no problem with the proposed use as it is fairly similar to the previous repair use. Mr. Litchfield commented that Bartlett Street is fairly wide, and the amount of traffic generated by Mr. Lamy's business should have no real impact. Mr. Litchfield explained that he had also recommended that Mr. Lamy pursue a use variance first because there is a considerable amount of engineering work involved for drainage for the special permit.

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

Richard Kane made a motion to grant a variance to allow use as an auto repair business. Mark Rutan seconded, vote unanimous.

**Public hearing to consider the petition of Forget-Me-Not Pet Crematory, Inc. for a Special Permit/Variance to allow use of a pet cremation operation on the property located at 80 Lyman Street, 7:15PM**

Ms. Joubert distributed copies of a letter from the Groundwater Advisory Committee dated August 28, 2007. She explained that the appeal of the Building Inspector's

decision was not advertised and therefore cannot be considered during this evening's discussion. She stated that, per Town Counsel, the board cannot hear anything regarding the appeal until it has been advertised. The board can, however, proceed with the hearing for the variance and special permit.

Attorney Mark Donahue stated that the appeal of the Building Inspector's decision becomes a moot point if the board votes to grant the use variance. Attorney Donahue noted that a representative from the equipment manufacturer is present this evening to discuss the operation. If the board opts to grant the use variance, he will then address the issue of the special permit for the groundwater overlay district. If not, the hearing can be continued until the issue of the appeal can be advertised.

Attorney Donahue explained that the applicant is seeking to operate a pet crematory on the property. The business will primarily service veterinarians and animal hospitals, but will also have facilities to serve private pet owners. He noted that the operation is relatively simple, though unique.

Peter Musacchio of the cremation division of Matthews International was present to discuss the machinery operation, and distributed brochures to the board members for reference. He explained that the company has been manufacturing cremation equipment since the 1940s, and that they are the major manufacturer of cremation equipment in the country. He stated that their equipment is UL listed, and conforms to the toughest standards for both operator and facility safety. In addition, the equipment has been tested by the Dept. of Health & Welfare and the Federal Government, even though the government does not permit or regulate cremation equipment. Mr. Musacchio also noted that the air permit application for the State of Massachusetts has already been filed in order to obtain permitting for the equipment to be used in this facility. He noted that the equipment features an optimal design to process pollutants prior to emitting the exhaust into the air. The top chamber houses the pets, and the skeletal remains are all that is left after the process. The pollutants flow to the back of the unit into the processing chamber, and there are state guidelines that must be adhered to by the operator.

Chairman Rand asked which state agency regulates this operation. Mr. Musacchio explained that it falls under the jurisdiction of the DEP. He also anticipates that the air permit will be approved fairly soon. Chairman Rand asked if it is typical for this type of operation to be permitted by a state agency. Mr. Musacchio confirmed that it is, and noted that there are 20 units currently permitted and operating in Massachusetts. Chairman Rand asked about the fuel source for the machinery. Mr. Musacchio explained that the machinery can operate on either liquid propane or natural gas and voiced his understanding that Mr. Brennan will be using natural gas. He noted that the only other utility requirement is an electrical hook up that is needed to run the panel.

Mr. Kane asked where the exhaust is emitted. Mr. Musacchio explained that it goes through the stack into the atmosphere. Mr. Kane asked about the types of particulates that are emitted. Mr. Musacchio stated that the emissions contain carbon monoxide, gases and pollutants with a very minute amount of animal remains in the form of ash. He explained that the equipment is a two chamber device, and everything is fully

processed in the bottom chamber. He also stated that a pollution monitoring control system operates to safeguard in the event that the unit starts processing too quickly.

Mr. Kane asked about the height of the stack, and if it contains any scrubbers. Mr. Brennan noted that the state requires that the stack be 10 feet above the roof height. Mr. Mussachio explained that extensive testing had been done in New York, which has the toughest standards for emissions. In that testing, it was proven that scrubbers are no longer needed. Mr. Benson inquired about any flare in the stack. Mr. Mussachio explained that the temperature varies from 1400-1800 degrees, and noted that the State of Massachusetts requires that the operator maintain a temperature of 1800 degrees. Mr. Kane asked about the temperature of the gas at the top of the stack, which Mr. Mussachio stated is about 800 degrees. Mr. Kane commented that this would result in smog from the stack on a humid day.

Mr. Rutan asked about maintenance. Mr. Mussachio stated that the company has the largest maintenance staff in the industry, and they plan to work with Mr. Brennan to determine a service and inspection protocol based on his volume of business. Mr. Rand asked if the exhaust will be visible. Mr. Mussachio noted that the emissions run clean when the system is operating properly, with a secondary chamber that performs complete combustion resulting in very little visible smoke. Mr. Brennan stated that the DEP requires that the secondary chamber maintain a temperature of 1600 degrees, which keeps the emissions from smoking.

Ms. Landau asked about the anticipated volume. Mr. Brennan commented that he would like it to be in the hundreds, but realistically his break even is 15-20 private cremations a week. He noted that this is a growing industry, and he hopes that the volume will grow to a point where he can make a living. Ms. Landau asked if there are similar operations in the area. Mr. Brennan noted that there are several on the south shore with larger machines, but nothing in central Massachusetts at this time.

Mr. Kane asked about Mr. Brennan's experience in this business. Mr. Brennan noted that he has none, but that he visited a similar operation and observed for a few days. He also noted that he has worked in the cereal industry for 20 years and has extensive experience with large ovens and dryers.

Ms. Landau inquired about the cost of a private cremation. Mr. Brennan noted that it ranges from \$100 to \$225, based on the weight of the pet.

Mr. Mussachio explained that when the equipment is installed, the technical staff will calibrate it and fully certify Mr. Brennan on its operation. Mr. Kane asked how often the interior of the ovens needs to be relined. Mr. Mussachio stated that it is generally done every 5 years, and voiced his expectation that this work will be done by technicians certified for this type of work. Mr. Kane stated that he has had experience with high temperature ovens and recognizes the importance of proper maintenance.

Mr. Rand asked about storage of pets on site. Mr. Brennan noted that pets will be picked up from veterinary facilities in opaque bags and stored in four chest freezers on site. He anticipates he will burn once a week, increasing to daily as his business grows.

He stated that he will have four chest freezers for communal storage, one for private, and one as a backup. As his business grows, he expects he will need to upgrade to walk-in freezers.

Chairman Rand asked Mr. Brennan how much of the building he will be occupying. Mr. Brennan stated that he will only need about 2,000 of the 5,000 square feet, but he is required to rent the entire building. Mr. Farnsworth noted that there is more than one building on the site and asked for clarification of which building Mr. Brennan will be occupying. Mr. Brennan stated that he is currently working out the lease agreement for the building at the back of the site. He explained that his signage will simply read "Forget Me Not", with no reference to the nature of the business. Chairman Rand asked Mr. Brennan how he will secure business. Mr. Brennan stated that 95% will come from visits he makes to veterinarians in the region, with the balance coming through his website. He does not expect that there will be much foot traffic in and out of the facility. He noted that his friend, who owns four such operations in the Chicago area, gets a total of one walk-in per week.

Mr. Brennan explained that 100% of the ash from a private cremation gets returned to the pet owner, while communal cremation is for those who do not want the remains returned to them. Mr. Kane asked where those remains will go. Mr. Brennan stated that he is working on arrangements with the Animal Rescue League in Boston for a burial location. He also stated that ashes are not a hazardous waste, and he anticipates the ashes will be taken by the Animal Rescue League as well.

Mr. Farnsworth noted that, if the variance is granted, the applicant will also need a special permit under the groundwater protection overlay.

Mr. Benson questioned why this use is not on the list of approved uses. Mr. Farnsworth stated that he could not confidently say that this use falls within one of the use classifications that is allowed by right. Since it is not an approved use, it is deemed to be prohibited. Mr. Farnsworth also stated that he had checked with Ms. Joubert and Mr. Litchfield and that they had collectively agreed that the applicant should come before this board.

Mr. Farnsworth reminded the board that they also need to hear the groundwater issue. Mr. Kane stated that he would like tonight's hearing to be continued until the board can hear the details of the appeal. Attorney Donahue suggested that the board first hear the information about the groundwater issue. He reiterated that the appeal will be a moot point if the use variance is granted.

Attorney Donahue addressed the groundwater issue by first stating that there will be no changes to the building or the impervious area on site. In looking at the use, the analysis concludes that there are no hazardous chemicals or materials used in the operation, there is no generation of potentially toxic materials or waste, no wastewater disposal occurs into the ground with exception of the sanitary sewer, and there is no underground storage of toxic or hazardous materials. Attorney Donahue also noted that he had spoken to the Groundwater Advisory Committee (GAC) the previous evening. Mr. Litchfield confirmed that the GAC had reviewed the project and felt that there was

no reason not to recommend approval. He reiterated that there is no residue, and no potential for damage to the groundwater. Mr. Kane asked how secure the containers are. Mr. Brennan stated that the urns and/or boxes will be sealed.

Chairman Rand read the comment letter from the Groundwater Advisory Committee into the record (copy attached).

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

**Case No. 05-34, 239 Hudson Street: Dunia Garden Regulatory Agreement, Deed Rider, Monitoring Services Agreement (CHAPA) and Monitoring Agreement (MassHousing)** - Ms. Joubert explained that there had been a delay in getting an electronic version of these documents for submission to Town Counsel for review. She stated that they were finally able to view them last week, and submitted comments to the applicant but has not yet had a response. She anticipates that the board will have it for their next meeting.

**The meeting of the Zoning Board of Appeals recessed at 7:54PM so that members could participate in a joint meeting with the Planning Board to discuss section 7-04 (use regulations) of the zoning bylaw.**

**The joint meeting between the Zoning Board of Appeals and the Planning Board adjourned at 9:33PM, at which time the ZBA meeting resumed.**

**Review of the Minutes of the Meeting of July 24, 2007** - Mark Rutan made a motion to accept the Minutes of the Meeting of July 24, 2007 as submitted. Richard Kane seconded, vote unanimous.

## **DECISIONS:**

**80 Lyman Street (Forget-Me-Not Pet Crematory)** - Mr. Rutan voiced his understanding of the burning process, and the disposition of any residual waste. Ms. Landau stated her approval, given the fact that the DEP has no issue with the operation. Mr. Kane stated that he is interested in hearing the details of the appeal since this is not a use that is allowed by right. Mr. Rutan reiterated that there is no need to hear the details of the appeal if the board is inclined to grant a variance. Mr. Kane stated that he would not be comfortable with granting a variance at this point since the enforcement officer had originally raised questions. Mr. Rutan noted that the applicant's attorney is asking the board to consider this a manufacturing use, which he does not personally agree that it is. He voiced his opinion that this is a use that is not covered anywhere in the zoning bylaw, and therefore requires a broader interpretation of the intent of the bylaw. Mr. Kane commented that this use is similar to a funeral home, of which some also include crematoriums. Ms. Joubert voiced her opinion that the board could have heard the details of the appeal if mortuaries were listed in the bylaw. Unfortunately, the only similar use listed for allowed uses in the business zone is that of undertaker. She noted that Town Counsel even commented that this term is antiquated.

Mr. Farnsworth clarified that the determination he made was that this use does not meet the uses as stated in the bylaw as a matter of right or special permit. However, any applicant has the right to either appeal a decision or request a variance. If the board agrees with his finding, then it is appropriate for the board to move to consideration of the variance. If the case is to be made on appeal, that issue is not under consideration this evening. Mr. Farnsworth also stated that if the board decides to grant a variance, a special permit is required under the groundwater overlay. He reiterated that the board must first take a vote on the issue of the variance.

Chairman Rand voiced agreement with Mr. Rutan's position that this is not a manufacturing process. He also agreed with Mr. Kane that the board should advertise the hearing for the appeal, and decide after those details have been heard. Mr. Rutan stated that he sees no justifiable reason to do so. He voiced his agreement that a variance is required, and voiced his opinion that it has been well addressed tonight. Mr. Benson voiced agreement with Mr. Rutan, and noted that as a business entity, this operation meets all of the requirements and he sees no reason to deny it. Mr. Kane expressed his desire to include restrictions on the approval that would require rebuilding/relining of the equipment by the manufacturer's service staff. Mr. Farnsworth stated that a use variance cannot be conditioned as suggested by Mr. Kane.

Richard Kane made a motion to approve the variance to allow use as a pet crematory, and noted that this is a reasonable use in the district and not detrimental to the neighborhood. Mark Rutan seconded, vote unanimous.

Mr. Rutan asked if it is possible to attach conditions to the special permit. Mr. Farnsworth indicated that this cannot be done as the special permit is only for the groundwater overlay. Mr. Rutan noted that the Groundwater Advisory Committee, in a letter dated August 28, 2007, has indicated that this project is not detrimental to the groundwater.

Mark Rutan made a motion to approve the special permit. Richard Kane seconded, vote unanimous.

**Adjourned at 9:50PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary