



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 1/22/08

Zoning Board of Appeals Meeting Minutes September 25, 2007

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

Others in attendance: Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Attorney Doug Rowe; Attorney Roger Leland; Wayne Belec, Waterman Design Associates; Brett Boullianne, 215 South Street ; William Nealon, 235 South Street; Lorraine Leland, 28 South Street; Mike Durkin, 48 Moore Lane; Paul Cacciatore, 9 Northgate Road; Jeff Haynes, 209 South Street; Phil Lockwood, 11 Kendall Drive; Bill Joyce, 237 South Street; George Ford, 68 Wesson Terrace

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

Public Hearing to consider the petition of Anthony Fiore, Trustee, Pierina Park Realty Trust for a Variance/Special Permit to construct three 2-family dwellings on the property located at 231 South Street, 7:00PM

Roger Leland of Leland Law Associates appeared on behalf of the applicant to discuss the petition for a special permit to build three duplexes on this 4.6 acre parcel. He explained that the applicant sees a need for properties in this price range, which he understands are quite rare in town. He commented that many people who work in town cannot afford to live here. He also noted that many senior citizens would prefer to live with their children instead of in a senior residential facility, and he envisions that the duplex style will be well suited for this use as it will allow both privacy and close proximity. Mr. Leland also noted that there is a surplus of large single-family houses and explained that all of these factors contributed to the applicant's decision to seek this special permit. He stated that the property has the quality to be consistent with other homes in the area, and the project will not be detrimental to the neighborhood.

Mr. Leland explained that the project will be served by public water and sewer. He also noted that a great deal of time was spent working with the Fire Chief to ensure adequate safety. The applicant is proposing an area adjacent to the common driveway where people may safely pull over to drop off and pick up school children. He indicated that the terrain is very unique, and much time and effort went into the design.

Wayne Belec of Waterman Design Associates explained that there are topographical challenges with this particular site, with a topographical relief of approximately 76 feet.

He noted that the site features generally moderate topography in some areas, which ascends quickly in places. He explained that the vegetation is primarily deciduous vegetation with some stands of evergreens. He reiterated that he had spent considerable time working with town staff to look at different options for the site, including both the ANR and subdivision options. He explained that the ANR option called for creating four lots and retaining the existing house, while a by-right definitive subdivision would have resulted in a cul-de-sac of two ANR lots and six additional lots. He stated that the applicant was not in favor of this proposal as the alignment of the roadway would have required a significant amount of clearing, pushing the houses further back onto the lot. Based on the numerous discussions, the resulting proposal is for three duplexes to be served by a common driveway.

Mr. Belec noted that, in working with the design, his goal was to incorporate the popular low impact development, which attempts to mimic pre and post development conditions and watershed characteristics. The low impact development design also attempts to draw on practices from the past such as crowning the road so that water will pitch off the edges into swales instead of catch basins. With the topography on this site, it was necessary to meander the driveway up the slope in order to do so. He also explained that water quality basins and vegetated gardens have been incorporated as part of the drainage proposal. Mr. Belec also noted that the location of the buildings was dictated by the grading.

Mr. Belec explained that, in taking the concerns of the Fire Chief into consideration, the design calls for signage at each of the driveway changes for emergency response. He and the Chief also worked together to ensure an adequate turning radius for the largest emergency vehicles in the fleet. In trying to design a low impact development, he also attempted to minimize the pavement, and incorporate grass pavers for three-point turnarounds. With a 5% to 10% grade at elevation, the resulting cut will be 30 to 34 feet.

Chairman Rand asked about the length and width of the driveway. Mr. Belec stated that the driveway will be 630 feet long and 22 feet wide.

Mr. Ginsberg asked if the proposed roadway will become a public street. Mr. Belec noted that it will not. Mr. Ginsberg asked if there will be an association established for maintenance of the property and driveway. Mr. Belec confirmed that there will be, and that the maintenance program will include provisions to keep the common driveway clear of snow for emergency vehicle access.

Mr. Belec noted that the 10% grades will result in velocities that will require curbing to be provided, and indicated that he and the applicant are sensitive to the need to match pre- and post-development flows. He reiterated that this is a difficult site topographically, which makes the drainage a bit more complex. Mr. Ginsberg noted that the submittal indicates that this parcel is part of a 20+ acre site, but Mr. Rutan explained that the acreage includes what is now Kendall Drive. Mr. Ginsberg asked if the parcel is defined by deed. Mr. Leland confirmed that it is. Chairman Rand noted that the submittal shows 12-foot wide driveways. Mr. Belec stated that the driveway varies in width, with portions 12, 16 and 22 feet wide. Ms. Joubert explained that the common

driveway requires a special permit from the Planning Board and is not what is before the board tonight. She wanted to make it clear that the common driveway will be an entirely separate filing and public hearing.

Mr. Ginsberg asked if the project falls under the subdivision rules. Ms Joubert noted that the common driveway is in both the zoning bylaw and subdivision rules and regulations. Mr. Ginsberg asked if this project qualifies as a subdivision. Ms. Joubert indicated that it does not; and noted that it involves three individual lots and the applicant is seeking to construct one building on each. Mr. Belec clarified that the parcel contains four separate lots.

Mr. Rutan questioned why the applicant decided on duplexes rather than single family homes. Mr. Leland noted that the applicant has the right to build four buildings and that the marketplace is looking for duplexes, which requires permission from this board. He also stated that duplexes seem to be a major factor for people who want to have a shared house, and that these duplexes are more affordable than single family homes.

Mr. Rutan asked if there are any other duplexes in the vicinity. Mr. Leland noted that there are others, but not nearby. He commented that the project on Winn Terrace is similar to what is being proposed here.

Mr. Ginsberg asked about the price of the proposed duplexes, which Mr. Leland indicated will be approximately \$350,000 for each side. Mr. Ginsberg noted that offering duplexes enables the applicant to maintain the economic realization of the property. Mr. Leland commented that the single driveway serving the duplexes is preferable to multiple driveways opening onto Route 135 as would be needed for single family homes. He also noted that the Fire Chief had no objection to the common driveway.

Ms. Landau noted that there was no deed recording information (book # & page #) on the paperwork submitted and questioned if Peirin Realty Trust is the owner on record at the Registry of Deeds. She requested that the recording information be provided for the board's records.

Mr. Ginsberg asked if there is any indication of what the site might look like from the road. Mr. Leland noted that there will be a minimal view from the street. Mr. Ginsberg asked about vegetation. Mr. Leland noted that the site is currently heavily vegetated, and the plan is to remove only what is necessary.

Mr. Belec commented that tree wells will be placed around specimen trees in various locations throughout the site. In addition, there will be further trees planted as well as foundation landscaping around the units. He stated that one of the benefits of this plan over the cul-de-sac option is that it makes it possible to maintain more of the vegetation. He also stated that the current driveway for the home at 231 South Street will be relocated to come off of the common driveway.

Mr. Benson asked for details about the locations of the water gardens. Mr. Belec indicated on the plans where he plans to locate the proposed rain gardens, which will be vegetated for uptake and drainage enhancement.

Mr. Benson asked about natural drainage. Mr. Belec noted that the site will drain off the high point in a few directions. Mr. Benson asked where it settles. Mr. Belec stated that it runs over the road and the property line. He noted that there will be broad crested weirs to handle the water as it flows into the rain basins.

Mr. Benson asked if there will be any flow crossing rocks. Mr. Belec noted that the water will flow off the hill into a swale before it hits the driveway, with isolation in certain areas using stone check dams.

Mr. Benson asked about fire hydrants. Mr. Belec noted that there will be one hydrant and sprinklers as requested by the Fire Chief.

Ms. Joubert made reference to an email that was received from Marcia & Joseph Kirkpatrick, who were unable to be at tonight's meeting. Chairman Rand read the email correspondence (copy attached) into the record.

Bill Joyce of 237 South Street stated that there is currently a drainage problem from this site, and voiced his doubts about the effectiveness of the drainage proposal that was discussed this evening. He also noted that there are catch basins in the street that do not appear to be working properly.

Mr. Belec noted that drainage is typically the biggest concern for abutters, and commented that many developments are done where they do not attenuate those concerns. He noted that he will provide drainage calculations, stamped by an engineer, that will demonstrate that pre- and post- conditions can be met. He confirmed that post-development drainage will not exceed the pre-development conditions and, in some case, could possibly be less. Mr. Benson asked how the basin will be sized. Mr. Belec indicated that the basin will be sized for the 2, 10, and 100-year storm events, with an Operations and Maintenance plan for the maintenance of the structures. Mr. Kane asked if the plans include storm sewers for roadway runoff. Mr. Belec reiterated that, unlike a conventional system, this project will call for shedding water from the center line and pitching it into ditches sized for the storm events. Mr. Kane commented about flow onto Route 135. Mr. Belec noted that any overflow will collect in swales. Mr. Leland corrected his previous misstatement by noting that there are at least four duplexes at the top of the hill.

William Nealon of 235 South Street voiced concern about runoff into his yard. He noted that currently water flows from off the hill and questioned how the proposed construction will not make the situation worse. He also noted that he has previously had to purchase sandbags to keep the water from running into his garage.

Mr. Nealon commented about the location of the project in close proximity to a dangerous curve on South Street. Though the speed limit in that area is 25 mph, he frequently observes vehicles traveling close to 60mph. Given the dangerous conditions that already exist at that corner; he would be interested in getting input from the Police Dept. Mr. Nealon also explained that he has a 6-year old daughter and is concerned

about her safety and the privacy in his back yard, both of which will be jeopardized by this project.

Mr. Belec reiterated that the stormwater system as designed will be adequate, and he questioned how much of the runoff into Mr. Nealon's yard is attributable to Route 135 and the gutter flows. He noted that there are existing basins with piping coming in that goes nowhere. He reiterated that the design calls for no increase in the rates of runoff.

Mr. Leland commented that the project was designed with a common driveway because it was the best option. Mr. Belec commented that, if the applicant went with a by-right plan, he would not be required to appear before this board; he would not be required to have a stormwater management plan; and there would be four driveways coming out onto South Street.

Paul Cacciatore of 9 Northgate Road also voiced concern about safety. He noted that he has lived in his home for six years and has observed substantial traffic flow issues at this location. He stated that his main concern is with right hand turns into the proposed common driveway. He explained that the island at the intersection of Northgate Road and South Street had been removed in an effort to improve traffic flow. He also commented about the poor traffic conditions that already exist and voiced concern that the proposed common driveway will worsen an already bad situation, particularly for traffic attempting to turn left from Northgate Road onto South Street. He suggested that it would be prudent to get input from the Police Chief about the traffic impacts of the proposed project.

Attorney Douglas Rowe appeared on behalf of Mr. & Mrs. Boullianne of 215 South Street, and asked about the proposed elevations of units 3 and 4. Mr. Belec noted that they will be roughly 376. Attorney Rowe commented that lights from cars approaching the back two units will shine directly into the Boullianne's home. He suggested that shifting these units forward will result in the elimination of a substantial amount of pavement and eliminate the problem for the Boullianes.

Mr. Belec noted that several options had been considered, and commented that the elevation at the Boullianne's is approximately 6 feet higher than the proposed finished floor elevation. He also noted that, in order to accomplish the grades they are proposing a 4-foot retaining wall and a 2:1 slope with slope stabilization. He explained that the glare from the vehicle lights will be intercepted by the retaining wall, while light cast from outside structures will be intercepted by the slope. Mr. Belec also commented about the possibility of encountering ledge during construction, which would result in modifications to the plans.

Mr. Belec noted that the applicant had the opportunity to provide a 1:1 rip rap slope, but that the proposed 2:1 slope will allow for vegetation which will be aesthetically more pleasing.

Mr. Kane asked about the elevations at the intersection of the proposed driveway and Route 135. Mr. Belec noted that it will be approximately 311 to 312.

Attorney Rowe questioned the impact of shifting the driveway. Mr. Belec stated that the driveway must meet the Fire Chief's turning requirements.

Mr. Farnsworth reminded the board that the matter before them this evening is the application for a special permit to allow for a 2-family use within a residential zone. He reiterated that, as was stated earlier, the common driveway will be addressed by the Planning Board. He also noted that the applicant has, by right, the ability to construct four single family homes with four separate driveways on the parcel and suggested that the board consider the impact of a 2-family use vs. a single family use.

Attorney Rowe voiced his opinion that the project will adversely affect the neighborhood.

Brett Boullianne stated that when he bought his house, it was with the knowledge that it was located in a zone that allowed single family residential use only. He voiced his opinion that the applicant should not be permitted to construct condos on the property just to squeeze in more units. He commented that duplexes are not appropriate for this neighborhood and asked the members of the board to uphold the single family use restriction.

Jeff Haynes of 209 South Street stated that he has similar concerns and objections to those previously expressed. He reiterated that this is a neighborhood of single family homes, with the exception of the duplexes at the top of hill, and voiced his opposition to the construction of additional duplexes.

George Ford of 68 Wesson Terrace commented that this appears to be a market-driven problem, and questioned how many more of these opportunities to destroy the character of the neighborhood exist in town. He noted that most people's single biggest asset is their home and questioned the implications on the community at large by allowing this type of project. He questioned whether anyone will feel comfortable buying a home if there is a risk that a neighbor may choose to change the character of an adjoining lot.

Mr. Nealon commented that he had specifically inquired about this particular lot when he purchased his home and was informed that it was single family zoning. He voiced his opinion that the proposed project will lower the overall value of the neighborhood. He also commented that the philanthropic angle is not the true motivation, but it is more about maximizing the economic realization for the property owner while the South Street neighborhood gets destroyed.

Michael Durkin voiced surprise that the community has come to the point where we cannot offer a diversity of housing. He noted that there are duplexes at the top of the hill, as well as up and down Route 135. He also commented that ensuring the safety of the children will be easier with a single common driveway. He explained that the design for a common driveway was not driven by convenience but because of safety concerns. In addition, permitting this project as proposed will forever preclude access to the 6 acres at the back of the parcel. Mr. Durkin further commented that a purely economic motivation, as was previously alleged, would have resulted in an 8-lot subdivision.

Ms. Joubert noted, for the board's reference, that there are four or five duplexes less than a quarter mile south of the proposed project.

Ms. Landau commented that, without attempting to address the merits of this particular petition, this board has philosophically opposed allowing encroachment of multi family homes in a single family area. She noted that the board does not wish to subtly and slowly change single family neighborhoods.

Mr. Joyce asked if construction of eight units will require a special permit. Ms. Joubert noted that there are three ways that this property can be developed; 2 of which bring it to the Planning Board. Specifically, a common driveway or an 8 lot subdivision will require Planning Board approval. She also noted that the subdivision would involve 6 to 8 driveways onto a new roadway, which would then enter onto South Street. The only option that would not require Planning Board approval would be an ANR (Approval Not Required) Plan.

Mr. Kane questioned if a subdivision would result in the formation of a new town road. Ms. Joubert confirmed it would. Mr. Kane noted that, for the proposal under consideration this evening, the common driveway would remain a private road and therefore not require that the town assume maintenance of it. Ms. Joubert confirmed that the common driveway would not become the town's responsibility, and that a Homeowner's Association would be established strictly for the maintenance of the common driveway and any stormwater structures. She also noted that the Town Engineer and DPW Director will review the drainage calculations and any conditions for maintenance protocol and reportability.

Mr. Leland reiterated his request that the board consider this petition in a different light, given the fact that the town's older population has a need for this type of housing arrangement.

Mr. Joyce commented that the driveway will need to progress at a fairly steep slope, and he is uncertain about what is going to hold the hill up. Mr. Rutan suggested that those in opposition to this development should seriously consider the alternatives. He recalled an early proposal for a parcel on Maynard Street that started out as three houses served by a common driveway that later came back as a 6 lot subdivision. In the end, the neighbors were quite pleased when the developer settled for four houses on a common driveway. He reiterated his suggestion that the neighbors consider the alternatives that might result if this proposal is denied.

Mr. Cacciatore commented that single family homes will maintain the existing character of the neighborhood. Mr. Nealon questioned what is meant by the term "neighborhood" and commented that he does not consider the duplexes that are a quarter mile away to be in his neighborhood.

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

Case No 5-34, 239 Hudson Street – Ms. Joubert explained to the board that the applicant for this project was required to submit three documents that Town Counsel then reviews on behalf of the board. Town Counsel will typically make changes and adjustments, and the final documents are then signed by the applicant and this board. Ms. Joubert explained that, due to a recent change that put Mass. Housing in charge of all monitoring, the reference in the decision that cites CHAPA as the monitoring agent is inaccurate. Therefore, Town Counsel requested that the agreement be modified to reflect this regulatory change. Ms. Joubert noted that the town will also follow-up with Mass. Housing to ensure that they do not have any issue with the wording of the agreement. Ms. Landau stated that it is generally understood that a successor accrues the same rights and responsibilities as the predecessor, so she does not believe that this poses a problem.

DECISIONS:

231 South Street – Mark Rutan voiced his opinion that he is not comfortable with allowing duplexes in an area of single family homes, and would prefer to protect the sanctity of the neighborhood. Ms. Landau agreed. Mr. Rutan noted that the abutters clearly feel that the project will change the character of their neighborhood.

Mr. Kane also agreed, and stated that the immediate surrounding area is all single family homes and he sees no reason to alter that. Ms. Landau commented that while she appreciates Mr. Leland's comments about housing diversity, she does not think that the answer lies in turning single family residential neighborhoods into multi-family.

Mr. Ginsberg asked about the real impact to the neighborhood. Ms. Joubert voiced her opinion that it is never clear exactly why people are opposed to a project, and she believes that the three proposed building tucked into the development fit much better than 8 single family homes. She expects that the abutters will also have opposition to the development of single family homes on the property.

Mr. Farnsworth reiterated that the proposal is for duplexes. Mr. Rutan suggested that the board consider the impact to the neighborhood, and noted that tonight's hearing brought out every abutter within close proximity. Mr. Kane commented that the board has always tried to maintain single family zoning unless there was a strong reason not to.

Mark Rutan made a motion to deny the petition based on the board's finding that it is not appropriate for the site and will adversely affect the neighborhood. Richard Kane seconded, vote unanimous.

Adjourned at 8:45PM.

Respectfully submitted,

Elaine Rowe
Board Secretary