



TOWN OF NORTHBOROUGH Zoning Board of Appeals

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

Approved 3-24-09

Zoning Board of Appeals Meeting Minutes September 23, 2008

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

Others in attendance: Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary; Michael Durkin; Attorney Roger Leland; Attorney Kay Doyle, Kopelman & Paige, Town Counsel; Wayne Belec, Waterman Design; Brett Boullianne; Patrick Nealon; Paul Cacciatore; Kathleen TEMPLACK; Alan & Wendy Gonsenhauser; Peter Bemis

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

Remand public hearing allowing Anthony L. Fiore, Trustee, Pierina Park Realty Trust, to re-present ZBA Case No. 07-12 for a Variance/Special Permit to construct three 2-family dwellings on the property located at 231 South Street, 7:00PM

Kay Doyle, Town Counsel, explained the applicant and the town had agreed jointly to remand this hearing back to the board for reconsideration. She noted that the record on the original presentation was not as developed as it could be, so the applicant is here tonight to re-present the details of the project and discuss justifications for approval.

Attorney Roger Leland explained that the property involved is comprised of 4 ANR lots, and the applicant is seeking to construct duplexes on three of the lots. He voiced his opinion that this is a very important market for the town and two-family homes are consistent with the neighborhood.

Wayne Belec of Waterman Design discussed the details of the project. He noted that the property is a 4.6 acre parcel located on the northeast side of South Street, with an existing 1.5 story ranch-style home that is served by town water and private sewer. He explained that the site is generally wooded, with the exception of the area around the existing home. He also noted that soils on the site are C and B soils, with B soils on the southern portion of the parcel. Mr. Belec also noted that the property lies in a residential zone, groundwater 3 district, with elevations ranging from 310 ft. to 386 ft.

For the record, Mr. Belec reiterated that the property consists of 4 ANR lots that were endorsed by the Planning Board at the end of last year. He explained that the project as currently designed and previously presented is shown with a common driveway design, which was approved by the Planning Board with a condition that the applicant

tie the stormwater management system into the municipal system. He explained the proposal is to retain the existing house and construct three duplexes on the parcel, with each unit approximately 1800 to 2000 square feet in size. He noted that there had been numerous discussions with town staff, including the Fire Chief, and the applicant has met the requirements of all entities. Mr. Belec explained that the common driveway decision also includes conditions about site lighting to ensure that there are minimal impacts to the neighboring homes.

Mr. Belec discussed the proposed stormwater management system, which incorporates rain gardens to attenuate the excess runoff. In addition, the basin will be tied into the existing drain manhole in South Street, which has been exposed and elevated.

Mr. Kane questioned whether the Fire Chief is satisfied with all elements of the proposal. Mr. Belec stated that they have demonstrated the Fire Department's ability to maneuver their equipment throughout the site, and he believes that the Chief is satisfied. He noted that, as part of the low impact design, they have attempted to minimize pavement as much as possible. Though they have left some areas green, they have provided enough of a gravel base and grading to accommodate truck turning.

Mr. Kane asked if town staff is satisfied with the proposal. Ms. Joubert confirmed that they are, and noted that details of the common driveway decision were worked out with both the Town Engineer and DPW Director.

Mr. Ginsberg asked if the proposal is identical to what was previously presented. Mr. Belec indicated that the plans have not changed except that the common driveway particulars have been worked out in more detail.

Mr. Kane asked about parking. Mr. Belec noted that each unit will have a 2-car garage, with room for an additional two vehicles outside the garage and another in the turning area.

Mr. Rutan asked about snow removal. Mr. Belec stated that the left shoulder along each side of the drive will be used for snow storage, and that Fire Department access will not be obstructed by snow.

Chairman Rand opened the hearing to the public for questions and comments.

Brett Boullianne, 215 South Street, recalled that there were two major issues raised at the previous hearing for this project. One was the fact that the proposed project doubles the number of cars traveling on the common driveway versus single family housing. He also wondered why the town has single family zoning if we are not going to abide by it. He reiterated his concerns and voiced his opinion that allowing duplexes on this parcel is detrimental to the neighborhood. He does not agree that this project is consistent with the neighborhood, and noted that there are no other duplexes visible from his property.

Patrick Nealon, 235 South Street, stated that he has the same concerns as he voiced at the previous hearing for this project. He noted that the impacts to traffic on Route

135 are a serious concern, especially given that this is already a dangerous intersection. He stated that, with the construction of three duplexes, there will be upwards of 16 additional cars on what is already a bad corner. Mr. Nealon also noted that lights from the cars traveling down the common driveway will negatively impact his property. He reiterated his concerns about traffic, and negative impacts to property values.

Paul Cacciatore, 9 Northgate Road, reiterated his concerns about the safety of his small children, given the number of vehicles that will be using this common driveway. He agreed that this is a dangerous section of roadway, and the conditions will be worse with cars trying to turn into and out of the proposed common driveway. He also voiced concern about changing the character of what has always been a single family neighborhood.

Mr. Belec noted that some of these issues were addressed during the common driveway process, and the site distance in both directions was acceptable to town staff. The applicant was also asked to provide a line of sight easement and has agreed to open it up even further to address Mr. Litchfield's concerns. Mr. Belec stated that, while the applicant is sensitive to the abutters' concerns about the traffic, the situation will exist regardless of whether the site is developed. Chairman Rand asked if the purchasers of the units will be responsible to maintain the easement. Mr. Belec confirmed that they will be.

Mr. Ginsberg asked about the deed. Attorney Leland noted that the applicant has the ability, by right, to put in four single driveways and that the construction of a common driveway will at least address the issues of drainage and line of sight. He disagreed that the proposed project will detract from property values, and reiterated his opinion that this proposal is preferable to four single family units with four separate driveways.

Ms. Joubert noted that, when the common driveway went before the Planning Board, they were aware that it could be used to serve either single family or duplex housing. She also explained that Planning Board decisions for common driveways all contain a condition requiring a written agreement to be recorded at the Registry of Deeds for maintenance of the driveway and a line of sight easement. Ms. Joubert stated that the Planning Board is requiring a landscape buffer, a minimum of 12 feet wide, to be installed along the northerly side of the property to address the light problem. Based on town staff's review, she believes that there is sufficient elevation to prevent the lights from being a problem, but the Planning Board has included this condition as an added measure.

Kathleen Temlack explained that she is new to the area and though she is unsure about the property's location, she would be concerned about fire truck access. She voiced concern that vehicles parked along the side of the driveway could block access to the property in the event of an emergency. Chairman Rand noted that the plan had been reviewed by the Fire Chief, who has indicated no concerns. Mr. Belec concurred, and explained that his simulation software has confirmed that the plan provides adequate turning radius for the department's largest truck. Ms. Temlack also voiced concern about six families trying to agree on the use and maintenance of the common driveway.

Mr. Nealon asked about the timeline for construction, and the potential disruption it may cause. Given the size of the project, he anticipates considerable truck traffic on South Street. Mr. Belec noted that it will likely take less than a year to construct the roadway.

Ms. Joubert asked Mr. Nealon about his concerns about headlights from the driveway. Mr. Nealon noted that the area between the proposed driveway and his house is wide open, with no visual barrier between his property and the proposed development. He also voiced concern about impacts to his property from displaced wildlife.

Mr. Kane asked if the Planning Board imposed any conditions in their decision to require the applicant to complete all infrastructure work prior to any occupancy permits being granted. He also questioned whether the project, when complete, would have a homeowner's association. Mr. Leland confirmed that it will. Mr. Belec addressed Mr. Kane's concerns about completion of the common driveway, and noted that it is more efficient to do all of this work at once. He commented that, if they do opt to go with the common driveway approach, the entire roadway would be cut out first, followed by construction of the basin and connections to the municipal system.

Chairman Rand asked if the project will be served by town water and sewer. Mr. Belec confirmed that it will be. Attorney Doyle asked if it would be possible for the applicant to provide a landscape buffer on the side of the parcel that abuts Mr. Nealon's property. Mr. Belec voiced his opinion that this could be agreed to, if it is possible to do so. It was also suggested that a survey could be done in the field to determine the actual impacts from approaching traffic. Mr. Leland voiced caution about committing to costly measures that could ultimately jeopardize the project. Ms. Joubert asked if there is enough vegetation on the property that could potentially be maintained. Mr. Belec stated that, rather than committing to a landscape buffer on behalf of the applicant, he would prefer to commit to doing a site walk with Mr. Nealon during construction to inventory the existing vegetation and see where additional landscaping is warranted. Ms. Joubert commented that, since there may be differences of opinion between what the town, applicant, and abutters consider to be adequate, she would prefer to have the details agreed to now. Mr. Leland agreed to leave the existing vegetation in place to provide a 12-foot wide buffer.

Mr. Cacciatore asked for clarification about the number of vehicles that can be parked at each unit. Mr. Belec indicated that there can be two cars inside and an additional two cars outside each garage.

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

**Public Hearing to consider the petition of Alan & Wendy Gonsenhauser for a Variance/Special Permit to add a 4-season sunroom to the back of the existing home on a lot with less than the required lot width located at 254 West Street
7:51PM**

Alan Gonsenhauser explained that he is seeking a less than 10-foot reduction in the required lot width to allow him to construct a 4-season sunroom on his property. Ms. Landau asked if the project complies with the side setbacks allowed under the bylaw. Ms. Joubert confirmed that it does. Ms. Landau voiced her opinion that, because the lot tapers, the shape of the lot creates a hardship under which the variance can be granted. Mr. Gonsenhauser also noted that the immediate abutters have indicated that they have no issues with the proposal.

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

Public Hearing to consider the petition of McCarthy Pools for a Variance/Special Permit to allow an existing pool to remain within the required 25-foot distance from the rear property line on the property located at 47 Wesson Terrace 7:56PM

Peter Bemis explained that the homeowner has been doing a good deal of work on the home, including an upgrade to the in-ground pool that was done by McCarthy Pools. He explained that, during the course of the work, the pool was inadvertently placed too close to the rear lot line so the homeowner is now before the board for a variance to allow the pool to remain 14 feet from the lot line. Mr. Bemis explained that the previous pool was in the same location since it was installed in the 1980's, but that work was done without a plot plan. Mr. Kane asked why this issue was not discovered when the permit was obtained. Mr. Bemis noted that the plan submitted for the permit was in compliance, but the as-built plan showed that there was an error made during installation, so he is here to plead for a variance. He also explained that though the rear setback is 25 feet, pools are allowed to be within 15 feet. Mr. Ginsberg voiced his opinion that the key point for this decision is the fact that the fence from the old pool was maintained. Mr. Bemis noted that the mature vegetation in the area of the pool was all maintained. He also noted that there is a sewer easement that does encumber the property, so there is no other viable location for the pool. Members of the board agreed that, since there was no plot plan on record for the old pool, it is quite likely that it was also too close to the lot line.

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

DECISIONS:

231 South Street – Chairman Rand voiced his opinion that the proposed project is a good use of the property, and that the resulting stormwater improvements will benefit the neighborhood. Mr. Kane noted that there were some areas of concern and Mr. Leland has indicated an interest in addressing those concerns. Chairman Rand commented that the situation with the headlights would exist regardless of whether single family homes or duplexes are built on the site. Mr. Rutan reiterated that the stormwater improvements will improve conditions at the site and for the neighbors. Ms. Landau voiced her opinion that conditions are needed in the decision to ameliorate any of the difficulties that the abutters have raised. Mr. Rutan agreed that there are serious traffic concerns along this section of Route 135, but noted that they are not the result of

this proposed construction. Mr. Kane indicated that he would prefer to condition the decision to require the applicant to complete the infrastructure before building the homes or granting occupancy permits. Ms. Joubert stated that such a condition is not within this board's jurisdiction.

Richard Kane made a motion to grant a special permit to allow for the construction of three duplexes on the property per the submitted plan dated 7/31/07. Ms. Landau cited the following criteria on which the approval was based:

- The proposed project is an appropriate use for the site
- The use does not adversely affect the neighborhood
- The project poses no nuisance or serious hazards
- Adequate facilities are provided
- The proposed use will conform to any special requirements as stated in the decision.

Ms. Landau also asked if the board had received a letter from the Fire Chief confirming that he is satisfied. Ms. Joubert voiced her understanding that he is.

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

Attorney Doyle voiced her opinion that there appear to be some second thoughts within the applicant's team as to whether the common driveway is the best idea, and cautioned the board about conditioning the special permit when the decision is based on the plan as presented. She stated that, should the applicant opt to go with a different design, it is imperative that they be required to come back to the board to modify the special permit.

254 West Street – Mark Rutan stated that he sees no reason not to approve. Members of the board agreed. Ms. Landau noted that the shape of the lot creates the hardship.

Mark Rutan made a motion to grant a variance to reduce the minimum required lot width to 140 feet based on shape of the lot. Richard Kane seconded, vote unanimous.

47 Wesson Terrace – Ms. Landau noted that there were no abutters present to voice objection, and voiced her opinion that the topography of the lot creates a hardship.

Mark Rutan made a motion to grant a variance to reduce the required rear setback to 12 feet based on the topography of the lot. Richard Kane seconded, vote unanimous.

Avalon Bay – Ms. Joubert explained that the Town Administrator had received a letter from Kopelman Paige, dated Aug 22, 2008, in response to a draft request made by Avalon Bay. She noted that, with the acquisition of the O'Mara land, Avalon Bay is now discussing plans to construct additional units. She explained that issues arise because of the regulated cap on large scale projects, which for this town is 200 units. She noted that Avalon Bay originally went to the Board of Selectmen and obtained permission for 350 units, and the comprehensive permit was granted. Under the guidelines of the comprehensive permit, an increase of more than 10% is considered a substantial

change and therefore would require a public hearing. For changes below the 10%, the board can make their own determination as to whether it is substantial or not. Ms. Joubert voiced her understanding that Avalon Bay is proposing an additional 32 units, and even though it is below the 10% threshold, Town Counsel advises that it is up to the board to decide if it is substantial enough for a public hearing to be warranted. She also believes that Avalon Bay is waiting for that decision from this board before they proceed.

Mr. Kane questioned what would be gained by going through another public hearing. Ms. Joubert explained that the town is discussing further mitigation with the applicant, and noted that a public hearing would allow abutters to participate in the process. Mr. Ginsberg voiced his opinion that there will be a new set of abutters based on the property's location. Mr. Benson asked about mitigations for the new abutters, similar to what was already agreed to for the rest of the development. Mr. Joubert commented that a public hearing would give the board and any abutters the ability to seek them. In addition, it would allow the board the opportunity to vet out the details of the unit mix. She also explained that, when the town does the 2010 census, calculations show that we will have a deficit of 20 affordable units, and noted that the additional units that Avalon is considering will help us reach our threshold.

Ms. Joubert explained that Avalon has questioned whether the board will consider these additional units to be a substantial change. Mr. Ginsberg voiced his opinion that it is, and noted that he would like the abutters to have the benefit of a presentation at a public hearing with the ability to respond. He noted that there is no way to impose conditions on the new portion without a public hearing. Ms. Landau agreed, and emphasized the importance of allowing the public to be heard. She recommended that the board rule that this is a substantial change. Members of the board agreed.

Richard Kane made a motion to consider the addition of 32 units to be a substantial change to the project. Mark Rutan seconded, vote unanimous.

Minutes of the Meeting of August 26, 2008 - Richard Kane made a motion to approve the Minutes of the Meeting of August 26, 2008 as submitted. Mark Rutan seconded, vote unanimous.

Adjourned at 8:42PM.

Respectfully submitted,

Elaine Rowe
Board Secretary