



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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

Approved 8-26-08

Zoning Board of Appeals Meeting Minutes April 22, 2008

Members present: Richard Rand, Chairman; Mark Rutan, Clerk; Gerry Benson, Alternate; Sandra Landau, Alternate

Members excused: Richard Kane; Dan Ginsberg, Alternate

Others present: Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Janice Hight; Dilip Patel; Tim Shay; Rob Grenier, Continental Auto Sales; Renee O'Keefe; Bill Kearney, Protec Engineering; Linda Brenckle; David Borden; Mitchell Bamberger; Cara Johnson; Donna Higgins; Matt Sleeper; Brenda Sleeper; Bruce Reilly; Arup Khaund; Susan Orciuch; Ed Orciuch; Wan Lee; John Kaminsky; Mark Rutan; Ravi Chilakamarri

Chairman Rand called the meeting to order at 7:04PM.

Continued Public Hearing to consider the petition of Loren Street LLC for a Variance/Special Permit to allow the use of a commercial recreational facility in Industrial District A and in Groundwater Protection Overlay, Area 2, on the property located at 80 Lawrence Street

Chairman Rand appointed Gerry Benson as the third voting member for this hearing.

Chairman Rand noted that the applicant was not present for this evening's hearing. Ms. Joubert stated that she has received no follow-up communication since the last meeting.

Mr. Rutan stated that the board has no basis to proceed with the hearing since the applicant has failed to address any of the questions raised at the last meeting. Mr. Benson agreed.

Mark Rutan made a motion to close the hearing. Gerry Benson seconded, vote unanimous.

Gerry Benson made a motion to deny the petition, based on the lack of sufficient information. Mark Rutan seconded, vote unanimous. Motion denied.

Review Minutes of the Meeting of March 25, 2008 - Ms. Joubert noted that corrections were made so that all references to speakers are consistent.

Mark Rutan made a motion to accept the Minutes of the Meeting of March 25, 2008 as amended. Gerry Benson seconded, vote unanimous.

Ms. Joubert noted that the March 25th Minutes indicate that the board would vote at tonight's meeting about whether to support the Citizen's Petition regarding the structure of this board.

She stated that, though this board is not required to make a recommendation regarding a citizen's petition, Ms. Landau had voiced a desire to go on record with an opinion. Ms. Landau commented that a five-member board is better than the current three-member format, for all of the reasons that were previously discussed. She noted that having only three members makes it possible for one person to hold up a project, which she feels is unfortunate. She reiterated that it is a more equitable process with a larger board where majority rules. Mr. Benson agreed. Ms. Landau also noted that having a larger board would be helpful in situations where there might be a conflict of interest or member absences. Chairman Rand discussed concern about the challenges of recruiting volunteers to fill the board positions as was the case in the past. Ms. Landau voiced her opinion that recruiting alternates for the board is difficult because it is a less desirable position, but she does not feel there will be any problem attracting voting members. All five members present voiced support of the proposal to change to a five-member board. Mr. Rutan asked if anyone had any knowledge about how Richard Kane might feel about this proposal. Ms. Landau stated that she believes he would also be in favor of the change. Ms. Joubert agreed to prepare a memo to the Town Moderator voicing the board's support of the citizen's petition.

Public Hearing to consider the petition of Tarika and Dilip Patel for a Variance/Special Permit to construct a two-story addition to the existing house within the side setback on the property located at 214 Indian Meadow Drive 7:15PM

Chairman Rand appointed Sandra Landau as the third voting member for this hearing.

Mr. Patel explained that this petition was previously approved but, given the fact that too much time has lapsed without action on his part, he is required to resubmit his request. He reiterated that he is seeking permission to construct a two-story addition on his house, with livable space downstairs for his elderly father. He explained that the location of the addition is the only viable option due to the location of the septic tank and the front setback requirements. Ms. Landau recalled that the only issue with the project was the reduction of the side setback from 15 feet to 13 feet.

Mr. Farnsworth noted that the application is identical to what was previously submitted and approved. He reiterated that the original decision became void because of the applicant's failure to obtain a building permit within the appropriate time period. Ms. Joubert noted that there were no objections voiced at the previous hearing, and there was no appeal of the original decision.

Sandra Landau made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

Chairman Rand voiced his opinion that there is no reason not to approve this petition. Ms. Landau agreed. She also noted that the shape of the lot, soil conditions, and existence of a Shell Oil easement restrict what can be done on the parcel and provides sufficient grounds for the granting of a variance.

Mark Rutan made a motion to approve the request for a variance. Sandra Landau seconded, vote unanimous.

Public Hearing to consider the petition of Tim Shay and Allyn Phelps, Trustees of the 338 Main Street Realty Trust, for a Variance/Special Permit/Site Plan Approval to allow construction of a garage to an existing house and the sale of second-hand cars on the property located at 338 Main Street & 44 Hemlock Street, 7:30PM

Mark Rutan recused himself.

Chairman Rand appointed Sandra Landau and Gerry Benson as voting members for this hearing.

Janice Hight, 181 East Main Street, noted that the appropriate address is Hemlock *Drive*.

Bill Kearney of Protec Engineering discussed plans to construct a building to house a used car dealership on the 1.58 acre lot located at the corner of Route 20 and Hemlock Drive. He explained that there is currently a house and a mill shop building on the parcel, and noted that plans call for the existing house at the front of the site to be raised and a new 30 x 32 garage for auto detailing to be constructed. Mr. Kearney explained that there should be no additional traffic on Hemlock Drive resulting from this project, as access will be from Route 20.

Mr. Kearney also explained that most of the site will remain unchanged with regards to drainage, with the grade from Route 20 being maintained and carried up the site resulting in lowering the elevation at the back of the site by approximately 3 feet. In addition, there will be a sidewalk constructed along the front of the site, increased lighting, and hedges installed across the back of the site and along Hemlock Drive. Mr. Kearney noted that the project will have town water and an onsite septic system.

Chairman Rand asked about the nature of the hedges to be planted. Mr. Kearney stated that they will use arborvitae and rhododendrons, with Maple trees to be planted along Hemlock Drive. He explained that they had met with the Design Review Committee earlier in the day, which made the suggestion to include some different types of landscaping similar to what was done at the Day Care Center on the adjacent property.

Chairman Rand asked about drainage onsite. Mr. Kearney explained that most of the drainage issues have already been addressed with the proposed leaching basins, roof drains, and leaching galleys.

Chairman Rand asked about the drainage from the auto detailing garage. Mr. Kearney noted that the town is requiring the applicant to install a separate, three-chamber oil/water separator to handle drainage from the garage. This will allow for materials and sediments to be removed prior to infiltration into the groundwater. Chairman Rand asked about the chemicals to be used in the auto detailing operation. Mr. Kearney noted that they will be similar to the types of detergents one would use when washing their car at home.

Rob Grenier explained that he has been doing detailing work for the past 23 years and noted that all of the cleaners used in this operation are biodegradable. Chairman Rand asked about the volume of detailing business the applicant typically does. Mr. Grenier noted that he details only one or two cars a day during peak season.

Mr. Rand asked about the type of building to be constructed. Mr. Shay explained that it will be a wood frame structure with vinyl siding to blend into the neighborhood.

Chairman Rand asked about the plantings, and noted that no dimensions for them are included in the application packet. Mr. Kearney indicated that details about the quantity, type and size of the plantings are indicated on the plans.

Mr. Benson asked about the increase in impervious coverage on the two lots, and noted that one lot appears to have a fair amount of paving already. Mr. Kearny stated that he had calculated the existing impervious coverage and this was included in his drainage plan. Mr. Benson asked if the calculation was based on the individual lots or the total of both lots. Mr. Kearny explained it was based on the two lots, and noted that he still needs to obtain information on the calculations done in 1986. He also stated that he calculated the 20% increase based on the current conditions.

Mr. Benson asked if the existing septic tank is to be used. Mr. Kearny confirmed that it will be. Mr. Benson asked if all washing and detailing will be confined to the garage. Mr. Kearny confirmed that it will.

Ms. Landau asked about the number of cars to be stored on the lot at any time. Mr. Grenier explained that he currently carries approximately 40 cars, but would like the ability to have more if business dictates. Ms. Joubert noted that the number of vehicles is permitted by the license granted by the Board of Selectmen, which requires a separate public hearing.

Ms. Landau noted that this use is permitted by right in this district. Ms. Joubert confirmed that it is an allowed use, and explained that the applicant is required to appear before this board for a special permit because the parcel is located in a Groundwater 3 area. She also noted that the board has received a letter from the Town Engineer, on behalf of the Groundwater Advisory Committee, voicing approval of the project.

Mr. Farnsworth explained that the percentage of impervious coverage will be verified when the Building Permit application is filed, and that the bylaw allows an increase of up to 40% over what existed in 1986. If the project exceeds the allowable 40%, the applicant has the option of providing recharge. Mr. Farnsworth reiterated that the drainage calculations will be reviewed by the Town Engineer to confirm compliance.

Ms. Joubert noted that the board has received the following review letters for this project:

- A letter from the Fire Chief, dated April 8, 2008, in which he indicates that he has no issues or concerns.
- A letter from the Town Engineer on behalf of the Groundwater Advisory Committee, dated April 22, 2008, in which they voice support and offer the following recommendations:
 - An Operation & Maintenance Plan for the proposed drainage system is required.
 - The decision should include a condition requiring that the applicant provide the town with a list of chemicals to be used and stored on site.
- A letter from the Design Review Committee (DRC), dated April 22, 2008 in which they provide input and recommendations as follows:
 - The original proposal included an internally lit sign, but the applicant has agreed to provide an externally lit sign instead.
 - The applicant has also agreed to install plantings along the grass strip to provide a buffer between the sidewalk and the parking area.

- The DRC would prefer the use of White Pines instead of Sugar Maples as originally proposed, as this will provide better screening between the business and the residential neighborhood.
- In the area of spots 49, 56 and 63, the DRC has requested Maple trees with low lying shrubs planted in between to provide a visual break.
- Installation of a sidewalk is encouraged, with a hope that it will eventually run the entire length of Main Street.

Mr. Grenier explained that he has been in business in Northborough for 21 years without incident, and stated that he will do his best to be a good neighbor. He noted that only three cars will be visible when approaching from Hemlock Drive.

Ms. Joubert noted that there are currently three trees in front of the existing house and asked if these trees will remain. Mr. Shay noted that the largest tree will need to be removed to accommodate the proposed re-grading of the site. Ms. Joubert requested that attempts be made to preserve the younger trees, either in place or elsewhere on the site. Mr. Shay agreed to try if at all possible.

Ed Orciuch, 40 Hemlock Drive, noted that there is an area in the proposed parking lot where it dips considerably. He explained that the parking area appears to come quite close to his property and voiced concern about drainage flowing onto his property. Mr. Kearny stated that there is an existing 8-foot dip and noted that there will be some filling near the property line, but that drainage will be captured by a catch basin. Mrs. Orciuch voiced concern about impacts to her septic system, and asked what guarantees they have that there will be no increased flow onto their property. Mr. Kearny stated that there will be no detrimental impact to the septic system. Mrs. Orciuch reiterated her concern about an increase in drainage onto her property. Mr. Kearny noted that there are fine soils in that portion of the property, so there should be no issues.

Sean Durkin, 20 Maple Street, explained that the existing travel lane will be graded to a catch basin, and noted that the only drainage of concern is in the area of parking lot where there will be curbing and basins for directing and capturing the flow.

John Abbondanza, 19 Hemlock Drive, asked about the location for snow storage. Mr. Kearny noted that the proposed snow storage area is in a grassy area and is shown on the plans. Chairman Rand asked if the proposed area will be sufficient. Mr. Durkin voiced his opinion that it will be. Mr. Abbondanza noted that the proposed project will result in an increase in the amount of paved surface that will need to be plowed.

Mark Rutan, 22 Hemlock Drive, discussed the proposal to direct drainage to the low point. He noted that stormwater that currently falls on the grassy plot will now fall onto pavement and voiced his opinion that it will surely result in additional water flowing off the site. Mr. Kearny noted that the drainage standards are consistent throughout the Commonwealth. He explained the design and function of the proposed drainage system, with water being directed to chambers prior to discharge into the ground. He reiterated that there are good soils on the parcel, so all water should infiltrate fairly well.

Bruce Reilly, 17 Hemlock Drive, stated that the existing lot is primarily gravel, but it appears that the proposal is for the entire parcel to be paved with very little grass. Chairman Rand noted that there will be recharge units required to handle any increase in impervious

coverage. Ms. Joubert noted that the best example for the use of recharge is the Times Square Development. She explained that the lot is 100% impervious and is 100% recharged through the use of catch basins and sump pumps.

Mitchell Bamberger, 51 Little Pond Road, asked if the applicant has provided an impact statement on the emissions from the volume of vehicles. Ms. Joubert noted that this is not required under the bylaw. Mr. Bamberger voiced concerns about the potential increase in cancer rates, specifically for area residents and students at the nearby high school.

Mr. Kearny explained that the town requires the applicant to submit details about the chemicals to be used on site. Mr. Farnsworth added that the applicant is also required to notify the town prior to bringing any new chemicals to the site. Mr. Bamberger asked how often the town checks the chemical inventory. Mr. Farnsworth stated that there is no provision in the bylaw for any type of regular inspection. Mr. Bamberger reiterated concern that there is no estimate of the potential health hazards. Mr. Farnsworth noted that there is no indication that there are any health hazards related to the proposed use. Mr. Bamberger disagreed, and noted that there are some toxic agents used in conjunction with the washing and detailing operation. Mr. Farnsworth voiced his opinion that the nearby parking lot at Algonquin High School is far more detrimental to the environment than any of the nearby businesses, including the proposed used car lot.

Chairman Rand voiced concern about chemicals getting into the groundwater. Ms. Joubert noted that there have been no environmental impacts reported at the applicant's current location, which is also within a Groundwater 3 area. Mr. Durkin explained that the applicant had hired ENSTRAT, who submitted the list of products and materials for chemical analysis to determine their impacts to the groundwater, and that no detrimental impacts were reported.

Mr. Bamberger reiterated his concern about the potential for an increase in the number of cancers in the area, and appealed to the board's good judgment. Ms. Landau asked Mr. Bamberger if he had seen a copy of the letter regarding the chemical analysis. Mr. Bamberger commented that, as he is not a chemical or civil engineer, the letter does little to allay his fears.

Ms. Landau noted that the applicant has provided a list of chemicals and the quantities of each to be stored on site, and has agreed to purchase a containment cabinet for storage.

Mr. Bamberger voiced concern that the town is simply relying on good faith that the applicant will volunteer information about any new chemicals brought onto the site, and he is seeking assurances that no health hazards will result from the proposed use. Ms. Landau reiterated that the board has no authority for enforcement, inspection, or issuing of sanctions against the applicant other than to require that he provide the list of products and chemicals being used. Mr. Bamberger reiterated his appeal for the board to exercise good judgment, and noted that it is within the board's right to deny the petition.

John Kaminski, 7 Laurel Avenue, questioned the number of employees at the business. Mr. Grenier noted that he currently has three employees and does not anticipate adding any additional staff at this point.

Mark Rutan asked about the lighting plan. Mr. Kearny stated that it will be similar to that of the Day Care Center next door, which utilizes light poles that do not infringe on neighboring properties. Ms. Orciuch noted that the light on the back of the Mill Shop building shines into her backyard and she would prefer that it not.

Ms. Orciuch asked for confirmation that the project does not include an automated car wash. Mr. Grenier confirmed that it does not.

Ravi Chilakamarri, 47 Hemlock Drive, voiced concern about the increase in noise. Mr. Grenier stated that he does not anticipate a significant change in noise levels.

Matthew Sleeper, 24 Hemlock Drive, noted that the intersection of Hemlock Drive and Route 20 is quite busy and asked if there are any plans to mitigate the potential for an increase in traffic and accidents. He also stated that he would prefer that an arborvitae screening be installed to seal off the area at the back of the house and create a sense of neighborhood.

Mr. Grenier explained that his business does not generate an excessive amount of traffic, and commented that a dozen visitors per day is considered a busy day. Mr. Orciuch voiced concern about the potential for congestion and accidents at the entrance to Hemlock Drive with cars slowing down to look at vehicles on the lot.

Ms. Joubert discussed a vacant parcel in the vicinity of 40 Hemlock that is currently owned by The Gutierrez Company. She explained that The Gutierrez Company has requested a condition in the decision to prevent any curb cut on Hemlock from this property, either now or in the future. They have also requested that evergreens be planted along Hemlock Drive in place of deciduous trees. Mr. Shay agreed to modify the planting plan to abide by the wishes of the neighborhood. Ms. Joubert indicated that the decision should include the plant varieties, locations, and planting details. Mr. Rutan noted that there is currently a line of arborvitae, planted by the homeowner, that has been in place for a number of years and still has not filled in as expected. He suggested that the applicant plant trees that are 6 feet or taller, and would also like the decision to include specification on the density of the plantings. He also suggested that the existing tree line be moved forward, which Mr. Shay agreed to.

Mr. Chilakamarri questioned the impact to property values in the area, and the resulting impact to tax revenues from those properties. Chairman Rand noted that, while the board does not wish to detract from the neighborhood, they are required to adhere to the bylaw.

Chairman Rand also asked if the runoff from the detailing operation can be captured in a contained tank and pumped off.

Chairman Rand read the letter from ENSTRAT into the record (copy attached).

Mr. Durkin explained that the Town Engineer requested the addition of a concrete structure between the garage and the catch basin after the letter from ENSTRAT was completed. While the letter indicates that there are no issues as designed, the Town Engineer has provided for yet another level of safety.

Mr. Bamberger suggested that the geologist from ENSTRAT who composed the letter is not knowledgeable enough about industrial chemicals to guarantee the safety of the community. He also asked how the hydrocarbons get broken down before infiltrating into the groundwater and questioned the remediation for the solvent that goes through that process. Chairman Rand voiced his opinion that the letter from ENSTRAT does not address that concern. Mr. Durkin reiterated that the products that are used in the operation are fairly benign. Mr. Rutan commented that the detergent added to the water will impact the effectiveness of the oil/water separator. Mr. Durkin noted that everything has been reviewed by the Town

Engineer, ENSTRAT's geologist, and the Groundwater Advisory Committee, so he is confident that there has been sufficient review and input by credible experts.

Mr. Orciuch questioned whether any future owner of the property will be required to adhere to the conditions of the decision. Mr. Farnsworth noted that, if the use is the same, any new owner will be bound by the same approval and conditions, including the chemical list provided to the town. He also stated that, if there is a difference in quantity and/or materials, the new owner will be required to submit a revised list for review and, if deemed more detrimental, will be required to appear before this board. Mr. Orciuch voiced concern should the new owner prove to be less reputable or trustworthy than this applicant.

Mr. Benson voiced his opinion that there is a legitimate concern about the nature of the runoff from the detailing business, which is a question of volume and circumstance. He suggested that there may be some guidance available from either DEP or a similar body. Mr. Farnsworth explained that there was a previous proposal involving a truck washing operation to be located elsewhere in town that was estimated at 15 to 20 trucks a day, and the DEP ruled that it posed no threat.

Mr. Grenier reiterated that the solvents used in his operation are biodegradable. Chairman Rand asked if the matter could be discussed with DEP, just to allay some of the concerns raised this evening. Ms. Joubert noted that, given that this project is a much smaller scale than the truck washing operation, she anticipates their response would be the same. She also stated that, given the fact that this application has been through internal review by professional staff, the board should consider the staffs' recommendation and the Groundwater Advisory Committee's recommendation that the proposed use does not pose a threat.

Mr. Bamberger asked how far the proposed project is from Stirrup Brook, and if it drains into the brook as this would impact the houses on the opposite side of the street. He reiterated the public's concerns about the potential health hazards.

Janice Hight, 181 East Main Street, introduced herself as a geologist and engineer experienced with hazardous waste cleanup. She voiced her professional opinion that the deleterious affects from this business would be less than that of the lawn spray used by homeowners.

Mr. Farnsworth noted that the houses in the neighborhood are on private septic systems, and that the material put into the ground by one house would be more hazardous than the proposed business.

Wan Lee, 25 Hemlock Drive, asked when the board needs to render their decision. He noted that the community will need to live with the consequences of the decision for a very long time, and requested that the board take sufficient time to consider such a critical decision. Chairman Rand explained that a decision must be made within 90 days of the March 27th filing date.

Mr. Rutan asked the board to review the criteria for their decision. Ms. Landau explained that the board members all have different backgrounds and areas of expertise. She noted that the board generally relies on guidance from town staff, consultants, and various committees since they don't always have the technical background to make these decisions on their own. She reiterated that the board is ultimately governed by the zoning bylaw.

Ms. Joubert reiterated that the use is an allowed use by right, with the special permit being necessary due to the property's location in a Groundwater district. She explained that second-hand car sales yards are allowed in this zoning district and, therefore, the board cannot prohibit it but can impose conditions in order to maintain the safety of the public.

Mr. Sleeper requested a "gentleman's agreement" about the installation of evergreen trees and asked that they be kept healthy and neat. Mr. Grenier agreed.

Ms. Orciuch voiced her opinion that storing 40 cars on the lot seems to be excessive, and reiterated concerns about safety. She noted that the proposed sign will further limit visibility at the intersection. She also cited the potential for vandalism at the business that could also bring increased, undesirable foot traffic to the neighborhood. Mr. Grenier stated that he has only been vandalized once in 21 years, so does not anticipate that this will be a problem. Ms. Orciuch inquired about installing a fence along the back of the parcel to prevent foot traffic from encroaching onto her property.

John Kaminski explained that he had purchased his home because of the residential feel of the neighborhood. While he understands that the applicant has the right to sell cars at this location, he also shares the other residents' concerns about traffic, safety and vandalism. Mr. Grenier explained that his use of security cameras acts a deterrent to vandals and loiterers. Mr. Shay agreed to install a 5-foot fence along the back of the parcel and to prohibit parking in the area that abuts the residential lot.

Mr. Lee asked the board to take sufficient time to do the necessary due diligence and consider their decision. Ms. Landau voiced her understanding of the concerns voiced by those present, but also noted that the applicant is eager to proceed with his project and the board has an obligation to move in a timely manner.

Arup Khaund, 18 Hemlock Drive, asked if the two-week notice given to abutters is sufficient notice given the seriousness of the decision. He explained that, in the course of his work with Saint Gobain, he deals with many chemicals and knows that there are strict requirements. He voiced his opinion that the neighbors need time to prepare their arguments. Ms. Landau noted that this project is located in an appropriate zone, and the board cannot prevent this use. Mr. Khaund stated that he would like the board to obtain an opinion from DEP to determine if they are in agreement with the statements made by the applicant.

Mr. Farnsworth noted that, based on the comments made this evening by town staff and in the documents provided, he is confident that the requirements of the zoning bylaw, special permit, Groundwater Advisory Committee, and Site Plan Approval have been met.

Chairman Rand stated that he has no issues with continuing the hearing to allow people the opportunity to do their homework. Ms. Landau voiced her opinion that a continuation is not necessary. Mr. Durkin explained that a 30-day delay will seriously impact Mr. Grenier's ability to keep his business in the Town of Northborough. Both Gerry Benson and Sandra Landau voiced their inclination to close the hearing.

Sandra Landau made a motion to close the hearing. Gerry Benson seconded, vote unanimous.

Members of the board discussed the request to use arborvitae in place of pine trees. Ms. Landau suggested that a nursery could provide valuable input on the best option to provide maximum maintainable coverage. It was noted that the neighbors have requested arborvitae, and Chairman Rand suggested 6-foot trees planted 3 to 4 feet on center. He also suggested

that they be planted up to the position of the last tree shown on the plan to provide a 30-foot line of site from Hemlock Drive. A 5 to 6-foot high black chain-link fence will also be installed along the property line between 338 Main Street and the homes on Hemlock Drive. In addition, there will be 3 maples (5 to 6 feet in height) planted in the front with low shrubs in between. The following additional conditions are to be included in the decision:

- The property will have an externally lit sign
- The applicant will provide a list of chemicals to be stored on site, and storage is to be in a containment cabinet
- There is to be no access to the property from Hemlock Drive.
- An Operation & Maintenance Plan is to be provided to the town.

Sandra Landau made a motion to approve the site plan and special permit with conditions as previously discussed. Gerry Benson seconded, vote unanimous.

Adjourned at 9:45PM.

Respectfully submitted,

Elaine Rowe
Board Secretary