



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 8-26-08

## Zoning Board of Appeals Meeting Minutes July 22, 2008

**Members present:** Richard Rand, Chairman; Mark Rutan, Clerk (arrived at 7:04PM); Richard Kane; Sandra Landau, Alternate; Gerry Benson, Alternate; Dan Ginsberg, Alternate

**Others present:** Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Doug Stone; Jonathan Hanna, Hannaco; Rob Palenchar; Teresa Palenchar; Bob Marcello; Amy Rice; Donald Jones; Linda Wilson; Mary Ann Breault; Joanne Treistman

**Chairman Rand called the meeting to order at 7:03PM.**

Chairman Rand appointed Gerry Benson as the third voting member for the hearing (7 Winn Terrace).

Mark Rutan arrived.

Chairman Rand noted that Mr. Rutan arrived in time to vote on the hearing.

**Public Hearing to consider the petition of Jonathan Hanna for a Variance/Special Permit to allow a two-family dwelling in Groundwater Protection Overlay District Area 3 and on a lot with less than the required minimum lot size on the property located at 7 Winn Terrace.**

Jonathan Hanna discussed his plans to construct a duplex on the property at 7 Winn Terrace. He noted that a special permit is required for construction of a two-family dwelling in a Groundwater 3 overlay area. He also noted that a variance is required as well because the 16,800 square foot lot does not meet the 20,000 square foot minimum that is required. Mr. Hanna explained that the project will be connected to town water and sewer, and that he has taken all of the necessary steps to protect the groundwater, including no storage of hazardous materials onsite. He also stated that a comment letter from the Groundwater Advisory Committee had been submitted to this board.

Mr. Hanna explained that a two-family home is allowed on this lot by right, and his proposed project will meet or exceed all of the required setbacks. He explained that he has purchased house plans from Robert Moss, who recently developed the other five duplexes in this neighborhood, so that his project will be comparable to what currently exists.

Chairman Rand asked Mr. Hanna about the hardship for this application. Mr. Hanna explained that the lot is located in a general residential zone, but within a groundwater overlay district, which results in a hardship due to soil type.

Mr. Hanna displayed the plans for the project at Mr. Kane's request. Mr. Kane asked about the number of bedrooms for the proposed dwelling. Mr. Hanna noted that there will be three bedrooms in each unit. He reiterated that he is planning to build a unit identical to one built by Bob Moss in the same neighborhood. He also reiterated that there will be no threat to the groundwater because town water and sewer is already stubbed out on the property. In addition, the recharge systems have been designed and the project falls well below the allowable 15% increase in discharge.

Chairman Rand asked Mr. Hanna why he does not simply purchase another 4,000 square feet of land in order to meet the 20,000 square foot requirement. Rob Palenchar explained that this lot was created from splitting his property on Park Street, and increasing the square footage for the newly created lot would not enable him to maintain an adequate lot size for the parcel he retained on Park Street. Mr. Rutan asked if the parcels currently exist as two separate lots. Mr. Hanna stated that the division of the lot is on record at the Registry of Deeds. Doug Stone stated that the subdivision of the property into two lots was approved by the Planning Board in 2004. Ms. Joubert also commented that the lots as they currently exist do meet the zoning bylaw.

Mr. Farnsworth explained that, under the Groundwater Overlay, a special permit is required for a multi-family dwelling provided that the lot is a minimum of 20,000 square feet. Since this parcel falls below the minimum, a variance is needed. Chairman Rand commented that the applicant could build a single family home on this parcel without a variance being required.

Mr. Ginsberg asked Mr. Hanna if he had read the letter from the Groundwater Advisory Committee and agrees to those conditions. Mr. Hanna confirmed that he has agreed to the conditions contained in the letter. Chairman Rand read the comment letter from the Groundwater Advisory Committee into the record (copy attached).

Mr. Rutan asked about the stormwater management plan. Mr. Hanna explained that the system was redesigned and is now more elaborate than what was originally proposed in his application. He noted that gutters and downspouts are designed to recharge into the system. Mr. Hanna also noted that inspection of the stormwater management system needs to be a condition of the decision. Mr. Litchfield explained that there should be an easily accessible inspection port provided as part of the system, and that the system should be inspected annually to ensure that all structures remain in working condition.

Chairman Rand asked if Winn Terrace is a private road. Mr. Litchfield explained that it is in the process of becoming a public road.

Bob Marcello, 15 Park Street, explained that part of his back yard abuts this parcel. He stated that he is opposed to this project and feels that it is too big for the neighborhood. He noted that he was also opposed to the five units that Bob Moss had previously built. He reiterated his opposition and voiced his concern that this project will ruin his back yard.

Rob Palenchar explained that he had lived at 17 Park Street for 17 years and, due to a divorce, was looking to sell this lot so that he can afford to buy a small home for himself.

Nancy Federici explained that she is interested in purchasing one of the proposed units. She noted that she had previously lived on Blueberry Lane, where she had earned a town beautification award, and is looking for a way to move herself and her children back into

Northborough. Ms. Federici empathized with the concerns of the neighbors, but discussed the difficulty faced by single parents trying to find homes in town.

Maryanne Breault, 14 Winn Terrace, asked about the selling price for the units. Mr. Hanna stated that he plans to market them at \$389,000 per side. Ms. Breault explained that some of the neighborhood residents had asked the Palenchars to keep them informed should they decide to sell the property, and was disappointed that no one was ever notified that the parcel was for sale.

Donald Jones, 22 Park Street, explained that he was one of a few adults in the neighborhood who had actually grown up on Park Street. He noted that traffic conditions have worsened substantially since Bob Moss's development went in, and voiced his opinion that the neighborhood cannot afford another duplex.

Mr. Marcello commented that the neighbor behind him had been interested in buying this property and keeping it as open land. He reiterated his opinion that it is unfortunate to have another monstrous house go up in the neighborhood.

David Arambaru, 18 Winn Terrace, asked if a stop sign could be installed to better control the traffic. He noted that there are many children in the neighborhood, and voiced concern about the speed at which cars now travel on Winn Terrace. Mr. Litchfield explained that the neighborhood can petition the town for a stop sign once the street becomes a public way.

Mr. Palenchar voiced a desire to respond to the secrecy accusation. He stated that he had never been approached about an interest in purchasing his land. He said he did recently find communication in an email account that he rarely uses, but that it was too late to take any action.

Linda Wilson, 10 Winn Street, noted that there were 10 families on Winn Terrace before Bob Moss built his development, which added an additional 10 families. She questioned what would be considered housing overload and asked whether density is ever taken into consideration when rendering a decision. Ms. Wilson also noted that most people had bought in this neighborhood because of its small, single family character. She commented that her home is a 2600 square foot house on ½ acre of land, but this project proposes a 3,698 square foot structure on just over ¼ acre. She also voiced concern about the tremendous increase in traffic, and the safety of the neighborhood children. She questioned the rights of the neighborhood residents to voice their concerns, and asked what considerations they would be given.

Chairman Rand noted that the residents have the right to be heard here this evening, but that the board must rule based on the zoning bylaw. Ms. Joubert noted that there are setback requirements and height limitations, but no size restrictions on what the applicant can fit into that footprint. She stated that there are currently no floor area ratio restrictions in any district.

Ms. Landau explained that the board has some discretion when considering a variance, and that comments will be taken into consideration.

Ms. Wilson asked whether the impact of increased light pollution, noise pollution, or traffic has any bearing. Ms. Landau noted that the board will consider anything that impacts public welfare, but that it must also consider the rights of the petitioner. Ms. Wilson asked if the residents of the neighborhood have the time to conduct their own research on how this

project might pose a detriment to the area. Chairman Rand noted that the board must rule on the petition within 90 days of the filing date.

Mr. Farnsworth explained that the current bylaw has been in effect since 1956, and that residents have the ability to present to Town Meeting if they wish to regulate density, size, etc. He reiterated that the board can impose conditions on their decisions, but that they are limited to what those conditions can be and must adhere to the bylaw. He further explained that the board cannot set as conditions or use as a basis for denial something that is not restricted in the bylaw, nor can they apply special criteria to one specific neighborhood that does not apply to the entire zoning district.

Chairman Rand reiterated that the applicant could, by right, construct a 5,000 square foot single family home without any approval being required. Ms. Wilson asked if the property can support a home of this size. Mr. Farnsworth explained that Mr. Hanna has done the calculations for impervious coverage and knows that he can meet the criteria. He stated that the applicant can recharge back into the ground through a collection system to meet the requirement of the bylaw. Ms. Wilson stated that there is already any excess of water coming down the street, and voiced concern that this project will further exacerbate the problem.

An audience member commented that Mr. Moss's lawyer had stated that there would be no problem with increased runoff from his development, but this is not the case. Mr. Farnsworth stated that any issues with runoff and/or drainage can be addressed through the DPW and Town Engineer.

Joanne Treistman, 4 Winn Terrace, noted that the bylaw allows for two-family housing, but that this project is actually townhouses or condos. She suggested that the project does not meet the intent of the bylaw, and that the applicant should be required to advertise and sell this unit as a two-family house. She reiterated that this project is two conjoined homes, not a two-family house. She noted that this area is a neighborhood of single family homes that has existed for over 60 years, but that recent development has changed the character of the neighborhood.

Ms. Treistman commented that the town needs to be thinking about what we want to look like in 10 to 15 years. She stated that the Zoning Board has a responsibility to the residents, and voiced her hopes that the board members would wish to maintain the character of the town and the neighborhood. She voiced her opinion that the 1956 bylaw did not intend to be applied to allow for the construction of "monster" houses. Mr. Farnsworth stated that, when the zoning and building code was written, "family" meant individual separate living areas. He noted that zoning and building codes do not deal with ownership of property.

An audience member asked if work is already being done on the parcel, and questioned whether this project is already a "done deal". Mr. Hanna explained that permeability testing was done on the property.

Theresa Palenchar, 17 Park Street, stated that the unfortunate truth is that she and Bob are in a position where they have to sell the land. She noted that she too was opposed to the five duplexes that were recently built, but that she and Bob are working within the law. She reiterated that she would prefer to be able to retain the land, but the reality is that she is not in the position to do so.

Realtor Doug Stone noted that his job is to promote the best use of the land. He voiced his opinion that the applicant is in line with the zoning for the neighborhood, and noted that it is very difficult to find a 3-bedroom home in Northborough for under \$400,000.

Mr. Arambaru asked why Mr. Moss didn't try to acquire this parcel when he built his development, and questioned whether the lot in question is really buildable. Ms. Palenchar stated that Mr. Moss had attempted to purchase the parcel, but that at the time she was trying to hold onto it.

Ms. Wilson reiterated that there were neighborhood residents who would have made offers for the property had they known it was on the market. Ms. Palenchar stated that there had been comments about this being a possibility, but that no one had ever approached her with an actual offer.

Mr. Hanna reiterated that this lot is located within a general residential area, and his project meets all of the dimensional and setback requirements. He explained that his building will look like the others on the street, and noted that a single family home could be built right up to the 15-foot setback line with no approval being needed. Mr. Hanna also stated that he already has an agreement in place to install a fence between this property and the Palenchar's.

Mr. Marcello asked how far the building will be from the rear property line. Mr. Hanna explained that the bylaw requires a 25 foot setback, but that his plans show the building 35.93 feet away.

An audience member asked if there can be decks, pools, or other structures added to the home. Mr. Farnsworth explained that the setbacks will need to be maintained for any structure, as outlined in the general bylaw.

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

The Zoning Board of Appeals entered into a joint meeting with the Planning Board at 8:00PM.

The joint meeting of the Zoning Board of Appeals and the Planning Board adjourned at 9:30PM, at which time the meeting of the ZBA resumed.

## **DECISIONS**

**7 Winn Terrace** - Ms. Landau voiced her opinion that the petitioner complies with the standards for a variance with the possible exception of the last part of the description - "provided that there is no substantial detriment to the substantial good". She was uncertain whether adding this density would be considered substantial detriment to the public good. Mr. Ginsberg commented that the subdivision of the land was approved, and duplexes are allowed by right. Mr. Rutan commented that the variance is necessary only because of the lot's presence in a groundwater overlay district. Since the building will be connected to town sewer, protection of the groundwater is ensured so he sees no reason for denial. Ms. Landau noted that a larger single family home would be allowed by right. Mr. Rutan agreed that the property will be developed as a large single family home if not as a duplex. Ms. Joubert commented that none of the neighborhood residents had come in or called either her office or Mr. Farnsworth's about this project prior to tonight's meeting. Mr. Rutan reiterated his opinion that there is no difference between the impact of a duplex or a single family home. Mr. Farnsworth reminded the board about the importance of keeping within the text of what

is allowed. Mr. Ginsberg voiced agreement with Mr. Rutan's position that the groundwater protection objective is being met.

Mark Rutan made a motion to grant a variance based on the fact that the groundwater restriction is being met by both the proposed recharge and the fact that the building will be connected to town sewer. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit with the following conditions (as detailed in the comment letter from the Groundwater Advisory Committee dated July 22, 2008):

1. The lot must be connected to town water and town sewer as shown on the plans.
2. The attached Stormwater Operations and Maintenance Plan for the drainage system shall be recorded with any decision. The Stormwater Operations and Maintenance Plan shall include a log of all inspection and maintenance performed on the drainage systems and a copy of all records shall be forwarded to the Town Engineer on an annual basis. All inspections must be performed by a qualified professional at the expense of the owner of the subject property.
3. The applicant has indicated the type of proposed hear will be oil with the tanks located within the basement of the proposed building. Proper containment within double wall tanks must be provided.
4. An as-built site plan shall be submitted to the Town Engineer for approval prior to the issuance of a certificate of occupancy. The as-built plan shall include, at a minimum, and as applicable to the project, elevation of all pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic copy compatible with the Town's GIS system.

Richard Kane seconded, vote unanimous.

Richard Kane made a motion to adjourn. Mark Rutan seconded, vote unanimous.

**Adjourned at 9:46PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary