



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 9-23-08

Zoning Board of Appeals Meeting Minutes August 26, 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; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Richard Scotland; Sean White; Attorney Marshall Gould; Kevin Giblin; James Almonte, Waterman Design; David Gillespie, AvalonBay; Kurt Sjoste, New England Development; Donald Lavin; Laura Elia

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

Public Hearing to consider the petition of Richard A. Scotland for a Variance/Special Permit to allow placement of a shed within the 15-foot required distance from the property line on the property located at 15 Stratton Way, 7:01PM

Mr. Scotland discussed his desire to erect a shed on his property for the storage of landscaping and lawn mowing equipment. He explained that there is a utility easement to the rear of the house and an access easement along one side, as indicated on the drawing provided with his application. He also noted that the location for the shed, as shown on the diagram provided, is the only area where the land is flat enough to accommodate it.

Mr. Scotland indicated that his neighbors have no objection to having the shed placed on the property line, as it will be hidden by an existing hedge. He also explained that complying with the 15-foot setback would result in the shed encroaching on the driveway, and reiterated that the proposed location is the only option available due to the topography of the land and the existing easements.

Chairman Rand requested confirmation that the shed is to be 2 feet from the property line. Mr. Scotland agreed that he will place it as far away as possible from the property line. Mr. Scotland explained that there is an existing stone wall along a portion of the property where it drops off considerably, which makes it difficult to locate the shed much further away than what is shown.

Mr. Kane questioned the setback from the utility easement. Mr. Farnsworth stated that there is no setback. Mr. Scotland explained that there is an existing stone wall that prohibits placement of the shed in the area where the easement is located. Mr. Scotland reiterated his plans to keep the shed as far off the property line as possible, as

long as he can keep it on flat land. Mr. Rutan asked if there will be access behind the shed so that the hedges can be trimmed. Mr. Scotland confirmed that there will be.

Chairman Rand asked about the height of the shed. Mr. Scotland estimated it would be 11 to 12 feet tall. Ms. Landau commented that relying on the consent of the existing neighbors does not deal with the long term considerations. Mr. Scotland stated that he would be willing to remove the shed in the future should anyone ever object to it.

Mr. Farnsworth stated that this board has typically not allowed any structures to be closer than 3 feet from the property line. Mr. Scotland agreed to maintain a minimum of a 3-foot setback. Chairman Rand asked about the possibility of moving the shed up to the edge of the driveway. Mr. Scotland voiced concerns about safety. Mr. Kane suggested rotating the shed 180 degrees so that the door would open to the other side. Mr. Rutan noted that it would be somewhat unsightly to have the back-side of the shed facing the driveway.

Chairman Rand invited comments from the audience, but none were voiced.

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

Public Hearing to consider the petition of Sean White for a Variance/Special Permit to allow the vertical expansion of an existing, non-conforming deck to create a 3-season porch on the property located at 9 Milk Porridge Circle, 7:17PM

Sean White discussed his plans to enclose an existing deck to form a 3-season porch on his home at 9 Milk Porridge Circle. He explained that the deck was in existence when he purchased the home, and he only recently learned that it encroaches in the 15-foot setback. For that reason, a special permit is needed in order for him to complete the work for the 3-season porch. He also stated that his project will not encroach any more than what currently exists, and will not create a nuisance or serious hazard. He indicated that the 3-season porch will be located to the rear of his house, and there is sufficient foliage to isolate it. He also stated that he has no intention of insulating, plumbing or heating the porch at this time.

Chairman Rand asked how close the existing deck is to the property line. Mr. White noted that the architect has indicated that it is approximately 12 feet from the line.

Mr. Rutan asked if the overhang of the eaves creates further encroachment and if this is of any concern. Mr. Farnsworth voiced his opinion that the eaves would not create any issues. Mr. Farnsworth also noted that converting the deck to a 3-season porch does not result in any change of use. Because this is considered to be an alteration of an existing non-conforming structure, a special permit is needed to protect the homeowner's rights.

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

DECISIONS:

15 Stratton Way – Mr. Rutan voiced his opinion that since this is simply a one-story shed that will be screened from the surrounding property and is not encroaching on any nearby property, there should be no adverse affect to the neighborhood by allowing it. Ms. Landau commented that there should be a condition that the structure must be no closer to the property line than 3 feet and asked the applicant to place it even further away if at all possible. Mr. Kane reiterated that the applicant has agreed to remove the shed if it ever becomes a problem.

Mark Rutan made a motion to grant a variance based on the topography of the lot, with the condition that it be no closer than 3 feet to the property line. He reiterated that the proposed location is the only level place to put the shed. Richard Kane seconded, vote unanimous.

9 Milk Porridge Circle – Ms. Landau voiced her opinion that the impact from the proposed 3-season porch is minimal, given the fact that there is already an existing deck.

Mark Rutan made a motion to grant a special permit as per the plan submitted. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Leslie S. Carey, Trustee of Loop Realty Trust, for Variances, Special Permits and Site Plan Review, to allow business and commercial uses in the Industrial A District on the properties located at 370 Southwest Cutoff and 370-Rear Southwest Cutoff, 7:26PM

Attorney Gould explained that the original Loop development was approved for 575,000 square feet of retail and restaurant space. He noted that the applicant is now before the board for approval of Phase 2, involving an additional 60,000 square feet of space on a portion of the land formerly owned by the O'Mara family. He explained that the front portion of the O'Mara lot will be developed as part of the Loop, with the back portion to be part of the AvalonBay project.

Attorney Gould stated that the Phase 2 application now before the board is a mirror application to that which the board dealt with for the original Loop project. He discussed the letter he submitted to the board dated July 23rd (copy attached) that summarizes the variances and special permits being sought for this project.

Attorney Gould noted that, by acquiring the O'Mara property, the applicant is able to move the signs away from the abutting residential area in Shrewsbury. He explained that the signs would have been much more visible to the abutters in their original location.

Attorney Gould stated that the applicant is not asking to move forward with the Site Plan review at this time. What is shown in the application is a 3-story building with a 20,000 square foot footprint. It is being shown as such because that is what fits on the front piece of the O'Mara parcel.

Attorney Gould explained that Mr. Giblin has recently partnered with New England Development to gain assistance with securing some of the major tenants and get the project progressing more quickly. He noted that it now appears that a 3-story building is not feasible at this location, but they are seeking approval for the additional square footage in hopes of incorporating it into additional one-story structures elsewhere in the project.

Mr. Ginsberg asked about the name change for the shopping center. Attorney Gould noted that the name was changed to "Shops 9@20" when New England Development became a major partner. Mr. Giblin commented that the name of the development may change again prior to completion. Attorney Gould stated that the final decision will be made prior to submission of the sign wording for final site plan approval.

Attorney Gould explained that an additional tenant pylon will now be located on a portion of the O'Mara property. He commented that what started out as a very large project has now become a monumentally large project. He explained that it was originally thought that two highway ramps would need to be redone, but Mass Highway has indicated that the developer will need to do all four ramps. He also noted that the costs of everything for this project are far greater than what was originally anticipated.

Mr. Giblin explained that he had to find sewage capacity of 150,000 gallons per day before he could move forward with the project. In order to do so, he purchased a new meter to connect to the Marlborough treatment plant. The result of the investigation was the discovery of two subdivisions in town where it appears that roof drains and sump pumps are being directed to the sewer system. He will now have to help remedy the situation for up to 100 houses in order to find the 150,000 gallons of flow he needs to obtain the sewage capacity for his project.

Chairman Rand asked if the applicant will be doing any work on the bridge at Routes 9 & 20. Mr. Giblin stated that he will be required to do everything but the bridge, which will be a major undertaking. He noted that the bridge needs to be widened to accommodate another lane on each side and raised 4 to 6 feet, which will require re-grading Route 9 almost all the way back to the Lincoln car dealership. Mr. Benson inquired whether not addressing the bridge will create a traffic bottleneck at that location. Mr. Giblin voiced his opinion that the improvements he is doing should ensure adequate traffic flow, though admittedly it would be far better if the bridge were also improved.

Mr. Benson asked if landlord pylon #1 still needs to be 200 feet high, given the changes discussed this evening. Attorney Gould noted that many of the trees will remain to provide a buffer to abutting properties, so the height is required to provide visibility from the east.

Attorney Gould explained that the O'Mara property is the subject of a 1981 variance by this board, a copy of which is included in the application. The property is on Industrial-zoned land, and the variance was granted with a traffic condition restricting access to

Route 9 via the westbound ramp only. Given that, any potential use of this property would require a private easement.

Attorney Gould discussed other proposed development in the vicinity of this project. He noted that New England Development has an option on the property currently occupied by East Coast Golf, and is in negotiations with a large retail store for the development of a 120,000 square foot store and gas station. An additional 30,000 square feet of retail space is also proposed to accommodate a few smaller stores. Attorney Gould stated that he expects that project and a revision to the Avalon Bay project will be coming before this board in the next 30 to 60 days.

Attorney Gould stated that the application packet for Phase 2 of The Loop (Shops 9@20) includes pertinent references about hardships and reasons for the requests.

Mr. Rutan voiced concern about the proposed 60-foot building height for the portion of the O'Mara property, which is in close proximity to Route 9. Attorney Gould commented about the possibility that a hotel could be built at this location.

Mr. Ginsberg asked if abutters were notified about tonight's hearing. Attorney Gould confirmed that abutters were appropriately notified and that the application packet was available for review at Town offices.

Ms. Joubert suggested that it would make more sense for the applicant to file for exactly what is to be built on the parcel once plans are more definitive. Mr. Giblin voiced his desire to obtain variances and special permits now, and come back to the board later with a more specific plan. By doing so, he is better able to market the project and acquire tenants. Ms. Joubert reiterated that town staff has not yet done a site plan review.

Mr. Ginsberg questioned whether the board could act on this application, given the indefiniteness of the plan. Attorney Gould noted that the applicant is hoping that the board will close the hearing and render a decision because the issues are so similar to what was previously addressed. He also stated that the applicant is willing to defer or withdraw consideration of the special permit with site plan review (item G on page 7 of the application) and agreed to provide the town with a formal letter to that fact. He also noted that the applicant will come back to the board with a final plan for site plan review.

Mr. Ginsberg asked Ms. Joubert if there is any reason to treat this application differently than the previous one. Ms. Joubert did not believe there was, but noted that it is out of the norm to approve a variance without something more definitive. Mr. Ginsberg voiced his opinion that the applicant has a proven track record, and has earned the board's trust.

Ms. Joubert asked about the timetable moving forward, and questioned how soon the applicant anticipates he will be ready to file a site plan. Mr. Giblin stated that he expects to be back before the board with a site plan sometime in January. He reiterated that he needs approval for the additional 60,000 square feet of space to cover the costs he was forced to incur with the acquisition of the O'Mara property.

Ms. Joubert asked Mr. Giblin when he will be filing with the state for the additional 60,000 square feet of space. Mr. Giblin stated that he will be filing a Notice of Project Change, but has already been to Mass Highway to confirm that the proposed improvements are sufficient. He will also be filing with MEPA once he obtains approvals from this board.

Ms. Joubert asked Mr. Giblin if he anticipates coming back to this board to put something else on the O'Mara parcel if the 60,000 square feet being discussed tonight gets incorporated elsewhere into the project. Mr. Giblin indicated that he expects that something will end up being built on the site, though the details remain uncertain.

Mr. Kane commented that there is very minimal risk in granting an approval, since these approvals are not executable without a site plan review. He also voiced his approval of this project, which he believes is needed by the town.

Ms. Landau requested that Attorney Gould reference the specific case number in his letter to the board. Attorney Gould provided a hand-written letter to the board, which was read into the record by Chairman Rand. Attorney Gould agreed to provide a more formal letter to the town tomorrow.

Mr. Rutan asked if the applicant will be seeking additional liquor licenses. Mr. Giblin indicated that he will not.

Donald Lavin of 360 Southwest Cutoff asked if the existing entrance to the O'Mara property will be completely closed. Attorney Gould confirmed that it will be, and that the entrance to that property will be from the shopping center driveways.

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

DECISION:

Members of the board agreed that it makes sense to approve this request. Mark Rutan made a motion to approve the variances and special permits for all points, A through F, as requested in the application packet and clarified in the letter dated July 23, 2008 (copy attached) with the understanding the item G on the list was withdrawn without prejudice. Richard Kane seconded, vote unanimous.

Consideration of Meeting Minutes – Ms. Joubert noted that the Minutes from the following meetings need to be approved:

- April 22, 2008 (ZBA meeting)
- May 14, 2008 (joint meeting with the Planning Board)
- June 3, 2008 (joint meeting with the Planning Board)
- June 24, 2008 (joint meeting with the Planning Board)
- June 24, 2008 (ZBA meeting)
- July 22, 2008 (ZBA meeting)

Richard Kane made a motion to approve the Meeting Minutes for all of the above as written. Mark Rutan seconded, vote unanimous.

The meeting adjourned at 8:50 PM.

Respectfully submitted,

Elaine Rowe
Board Secretary