



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 1-20-09

Planning Board & Zoning Board of Appeals Joint Meeting Minutes October 21, 2008

Planning Board Members Present: Rick Leif, Bob Rosenberg, Michelle Gillespie, Daniel Lewis and George Pember

ZBA Members Present: Dick Rand, Dick Kane, Mark Rutan and Dan Ginsberg

Others Present: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Attorney Mark Donahue, Fletcher, Tilton & Whipple; Scott Weiss, The Gutierrez Company; Robert Weidknecht, Beals & Thomas; Angela Meehan, Community Opportunities Group; Gary Waters; Attorney Marshall Gould, Gould & Ettenberg; Kevin Giblein & Alan Hight, Brendon Properties II LLC; Bill Bigelow, Bigelow Nurseries

Chairman Rick Leif opened the meeting at 7:00 pm.

Public Hearing to consider Special Permit, Site Plan Approval, and Earth Removal Permit for “Bartlett @ 495 Center”

Applicant: Northborough Land Realty Trust
Engineer: Beals and Thomas, Inc.
Date filed: September 19, 2008
Decisions: Special Permit = 90 days from close of hearing
Site Plan = December 17, 2008

Attorney Mark Donahue explained the original Special Permit, Site Plan Approval and Earth Removal Permit issued by the Planning Board on May 17, 2005 for this project expired on May 17, 2007 and they are now seeking the same permits and approvals with the new application.

Robert Weidknecht, Engineer from Beals & Thomas, gave a brief overview of the project. He stated the subject property is bound by Bartlett Street on the southern side and the aqueduct curves around it and then runs parallel with it. It is a long parcel that becomes narrower as it goes to the west. The highest point is near Bartlett Street at the center of the property. A portion of the site is in Groundwater Overlay Protection District Area which is shown on the plan. Drainage goes through the wetlands and under the aqueduct. A gravity system for sewer service extends from Bartlett Street to the Marlborough municipal system. The stormwater management plan has not changed and includes catch basins, deep sumps and water

quality inlets at two locations to handle parking lot runoff. Roof runoff divides into the filtration system to recharge groundwater and the overflow heads to the detention basin in the northerly part of the site. The plan meets all requirements of the Groundwater Protection Overlay District bylaw.

Reports included with the application are an Impact Report, Operation and Management Plan, Stormwater Calculations and a Stormwater Pollution Protect Plan as required by DEP and a Traffic Analysis, which is the same as previously submitted. The Project Narrative describes how the project responds to special permit requirements.

Mr. Leif asked why the project had not been started within the time frame of the first special permit granted.

Mr. Weiss stated it was an oversight on their part to let the special permit lapse.

Mr. Leif stated some conditions about what would be stored in the building should be included since they are not sure who will be in the building and what kind of material will be stored there.

Mr. Weiss stated they understand this and will be working it out with Town staff, with the Planning Board as the final arbitrator.

Mr. Leif asked if it is anticipated that all construction at Cedar Hill and Bartlett Street would be done.

Mr. Weiss responded that was correct.

Ms. Joubert stated the DPW Director, Kara Buzanoski, has some conditions about which she has talked to Mr. Weiss. She stated the plan is the same, with the same date and a revision date.

Mr. Litchfield agreed with Ms. Joubert, stating the plans and concerns are the same. The Conservation Commission issued an Order of Conditions at the same time the original Special Permit was issued by the Planning Board, and which expires in three years. The applicant has asked for an extension and the Conservation Commission has extended the same application as is being currently presented.

Mr. Leif asked Mr. Litchfield if the Groundwater Advisory Committee had raised any additional concerns. Mr. Litchfield replied they had not.

Ms. Joubert stated Ms. Buzanoski, DPW Director, had talked with Mr. Weiss about work done in association with the A. Duie Pyle project at 210 Bartlett Street. The landowner is the same for 210 Bartlett Street and the subject site, and the projects are of the same type. Ms. Buzanoski has requested the Planning Board include the following two conditions in their decision: 1) The applicant will repave Bartlett Street from the Northborough town line to the proposed warehouse on the northerly side of the road; and 2) Two water lines will be prepared in front of Bartlett Street, as per a

verbal agreement with the company. Ms. Joubert stated Ms. Buzanoski is aware the building may not be started in two months from now, but she has an agreement that the work will be done.

Ms. Joubert stated she has some conditions from the A. Duie Pyle decision she thought would be appropriate for this application. She explained Bill Farnsworth, Zoning Enforcement Officer/Inspector of Buildings, requested a sound analysis be done before the work is done at the site and use of Route 20 for traffic. There are several references to traffic generated at the site hearing to I-495 and limiting traffic in residential neighborhoods to residential traffic only.

Mr. Weiss said he has talked with Ms. Buzanoski about the trench work and has met with her on the site. They are working out the plan and scheduling the work to be done. He stated the two conditions Ms. Buzanoski requested make sense.

Mr. Donahue stated the traffic conditions are acceptable. Right now they don't know what the use of the building will be and what type of trucks will be involved. He asked not to prohibit trucks but if the concern is about tractor-trailers, he understands and it makes sense. He stated he is sure they can work out the language for the decision.

Ms. Joubert stated not knowing what will be there makes it hard to put in a condition, but since the building proposed is twice the size of the warehouse at 210 Bartlett Street, there will probably be a warehouse on the site.

Mr. Rosenberg referred to paragraph 3.2.10, Sewage Disposal, on Page 3-4 of the Project Narrative and asked for a clarification of sewage disposal.

Mr. Weidknecht stated the sewage will flow through a gravity system all the way to Marlborough's municipal system.

Mr. Rosenberg asked if the abutters had been notified. Ms. Joubert stated they had been notified by certified mail.

Mr. Rosenberg stated something has been removed from the water quality information from the previous proposal regarding DEP regulations.

Mr. Weidknecht stated DEP changed their regulations in January 2008 and they have calculations based on previous DEP requirements prior to January 2008.

Mr. Lewis stated a lot of concerns have been addressed but the building is not addressed and not the Planning Board's role in this case.

Mr. Rosenberg wanted to discuss the traffic information presented in Section 11 of the Project Narrative.

Mr. Weiss stated with a warehouse use the primary traffic generated will be that which is associated with an office building use, with the most traffic in the morning

and at night. The volume is about 120 - 145 vehicles during the peak time frame and that includes both entering and existing vehicles, so they're really talking about 2 cars per minute on an average. That average is smaller than traffic on Main Street and is a pretty small amount of vehicles added to the roadway. Route 495 is well able to handle the volume of tractor-trailers. From a traffic perspective, there will be very little impact to the number of vehicles on the roadway. Tractor-trailer trucks coming to and from the East could be limited. Also in the traffic memorandum safety is addressed entering and exiting the site and there are some Areas noted where vegetation will be cut back.

Mr. Rosenberg asked if, looking at the nature of the use and conjectured traffic, they are making any estimates as to the amount of heavy vehicle traffic compared to passenger vehicle traffic.

Mr. Weiss stated they knew the specific tenant they wouldn't, because it could be used to store material with transient traffic. It really depends on the use. He stated a traffic analysis was not done because the quantity of the traffic would be so small as to be minimal and would not change the operation. The heaviest traffic would be to and from the East heading toward Marlborough.

Gary Waters, 18 Strirrup Brook Lane, stated his house is at the end of street and since the A. Duie Pyle has been in operation there have been periods when there has been a lot of noise in the evening including a lot of honking and acceleration of trucks down the street during their 3rd shift. He stated it is very audible from his house and requested the board address handling of the noise in evening hours for this project and for the A. Duie Pyle operation.

Mr. Weiss stated in the subject location trucks won't be accelerating to get up a hill like they have to for the A. Duie Pyle site. If anything, there would be less of a noise issue.

Ms. Gillespie asked Mr. Waters if he had talked with anyone at the Town Hall about this problem. Mr. Waters replied he had not and Ms. Gillespie suggested he talk with the Building Inspector, who will go out to the site.

Mr. Waters asked if it was possible with this project to restrict tractor trailers to only going east to I-495.

Mr. Donahue stated the trucks need access to Lyman Street and to Route 9. He suggested limiting truck traffic to using Bartlett Street, but stated that to prohibit access in a westerly direction wouldn't work because it's an important access road.

Mr. Waters stated his main concern is noise in the evening.

Mr. Leif stated if activities of the tenant become unacceptable to neighbors, they can come in and the Board will deal with it. The Board needs to make sure the facility is appropriate for the size of the lot and that the property is within reasonable

boundaries for supporting neighborhoods. The course of action is to go to the Building Inspector about it.

Mr. Waters asked how a restriction would be worded in the decision.

Mr. Leif stated they can pretty much follow the wording in the A. Duie Pyle decision.

Ms. Joubert suggested continuing the hearing in order to address the DPW Director's issues in the decision and to rewrite the wording for truck traffic. The next meeting could be held on Monday, November 3rd or Wednesday, November 5th as Election Day is Tuesday, November 4th.

Mr. Rosenberg asked if the Fire Chief had had the opportunity to review the applicant's responses to his review letter.

Ms. Joubert stated the response letter was given to him, but she doesn't know if he's reviewed it.

Ms. Gillespie motioned to continue the hearing to Monday, November 3, 2008 at 7:00 pm. Mr. Pember seconded the motion and the vote was unanimous.

Mr. Rosenberg left the meeting at 7:50 pm.

Zoning Reorganization - Southwest Cutoff Zoning

Angela Meehan, Community Opportunities Group, was present, as well as Marshall Gould, Kevin Giblin and Alan Hight.

The boards and those present reviewed a memo from Judi Barrett, Community Opportunities Group regarding Southwest Cutoff zoning, dated October 19, 2008.

Chairman Dick Rand opened the ZBA meeting at 7:55 pm.

Mr. Leif explained the boards had discussions on Areas 1 and 2 and the boundary line between the two Areas. The goal is to make a final decision tonight for town meeting.

Ms. Meehan stated the approach Ms. Barrett recommended was to do an overlay district which she entitled Major Development Overlay District (MDOD), which would make the uses in the Area now valid and make it more of a commercial district.

Mr. Pember stated there was a discussion about moving the line of Area 2, to move Area 1 down a little further, but there isn't much land in Area 2 that isn't part of The Loop.

Ms. Joubert stated that at the last meeting they had come to the conclusion that they can't move Area 1 down because of the location of The Loop driveway and SUASCO land.

Mr. Giblin, referring to Area 1, stated there is a 50-acre Area that is landlocked and is not appropriate for development. He has an agreement with Bob Borgatti to purchase this land and thought they might come up with a creative way to include housing that is more affordable

Ms. Joubert stated they had originally talked with Mr. Giblin about the possibility of cluster development with Area 1 northwest being residential, commercial or a combination of the two along West Main Street.

Mr. Giblin stated he would have the right of access to that land through the entrance to The Loop.

Ms. Meehan reviewed the allowed uses in the proposed MDOD on page 1 of Ms. Barrett's Recommended Amendments - Southwest Cutoff Study Area 2. She explained the zoning was designed to follow where the large commercial development would go and extends to The Loop 2 Area. It makes the planned uses in conformance with zoning.

It was noted that restaurants not serving alcohol would be allowed by right and those serving alcohol would be allowed by special permit.

A discussion was held on item D2a on page 2 in which a special permit would be required for one retail store exceeding 25,000 square feet of gross floor Area, or two or more retail stores on the same lot. Ms. Joubert stated it could either be a store larger than 25,000 square feet of gross floor Area or multiple stores of any size. Mr. Leif stated the concept was that up to a 25,000 square foot building could be done by right. Mr. Gould stated it could be changed to read "one retail store up to 25,000 square feet of gross floor area or up to 25,000 square feet of retail use" allowed by right.

Mr. Leif stated they need to decide on a concept for Area 2 that makes sense.

Ms. Meehan stated with the overlay district their options aren't limited. They don't have to create a new zoning district. She explained that Area 3 could be a new district or could be in the overlay district on top of the existing Industrial A zoning.

Ms. Joubert clarified the proposed MDOD would not be applied to all industrial Areas, but would be limited to Area 2 in this study. It will be restricted to this part of town and would need to be a specific reference in the zoning bylaw.

Mr. Gould asked the boards to explain what the intent of this is.

Mr. Leif stated the intent was to try and reduce the amount of development by variance. The Area has not developed as an industrial district and the intent now is to zone Area 2 as commercial/retail and Area 1 as residential. Area 3 needs to be fine-tuned and Area 4 would stay as-is.

Mr. Gould stated that is consistent with what Mr. Giblin said.

Mr. Leif stated this is the first time they've seen Ms. Barrett's memo. They're not sure this can be ready to be included in the revised zoning bylaw by 2009 Town Meeting.

Mr. Marshall stated when the boards have their educational meetings/workshops regarding the zoning reorganization they need to invite the major landowners of the Area to participate.

Ms. Joubert agreed but noted those meetings are quite a bit ahead of where the boards are now. Right now they are trying to decide if this is along the lines of what the Planning Board and ZBA, a two land-use boards, would like to see and then to bring into conformance what is in that Area now.

Mr. Leif stated the larger purpose is that Ms. Barrett is allowed as much time as she needs for the zoning revisions that are already done. Tonight's meeting was to see how long it would take the issues with the Southwest Cutoff Area to get in shape.

Mr. Kane stated the Southwest Cutoff Area should be delayed for 2010 Town Meeting. He doesn't think anything is wrong with what has been proposed, but stated there will be quite a bit of work necessary to get it ready.

Mr. Leif stated they haven't talked with Ms. Barrett about when the final draft of everything else will be ready. He said they need it no later than December 1st. He added he doesn't think they should bring any of the Southwest Cutoff Area in front of her.

Mr. Pember noted there was still disagreement about Area 1.

Ms. Meehan suggested that if they can make core decisions tonight, and if they agree general concepts are good in Areas 2 and 3, it could be integrated into the other revised zoning. She encouraged them not to write it off.

Ms. Joubert stated she doesn't think there have been a lot of insurmountable issues raised. The purpose of adding this section to the contract was to look at the commercial development happening in the area. The question is if this is what they are envisioning for the Area 2.

Mr. Rutan confirmed that generally they're saying an option for Area 2 is the MDOD over Industrial A.

Mr. Ginsberg stated the concept of the 4 areas makes sense.

Mr. Leif asked if anyone had any disagreement with Area 2. Mr. Rand stated it was what they had in mind and Mr. Ginsberg stated it is consistent with what we know at this point, which is mainly to put the commercial/retail planned for the area in conformance with zoning.

Mr. Gould stated that, knowing the potential of the 50 acres in Area 1 for some type of housing, they may want flexible zoning to give the Special Permit Granting Authority (SPGA) an overlay for commercial and residential uses or just residential. That would allow commercial or residential, and the residential would not be typical because it would be coming off The Loop roadway - perhaps condos. He stated he does not think they need to move down the boundary of Area 1.

Ms. Joubert stated adding a residential use to Area 2 would apply to all of Area 2 and that would open up a whole new development concept.

Mr. Gould stated that normal residential use requires access off an existing way. This will be an access off The Loop road, like AvalonBay.

Ms. Joubert stated Mr. Giblin doesn't own all of it now, including the storage facility and the cell tower. There's a lot of land involved and it's up to the Board to apply residential zoning to the whole district.

Mr. Giblin noted there are a lot of retail developments with associated housing all across the state, including Bay State Commons in Westborough and The Natick Mall.

Mr. Pember suggested the solution is flex zoning in Area 2, which has to be in a certain portion - maybe 15 acres or more, and excludes other areas.

Ms. Meehan pointed out that the proposed zoning in Area 3 - Business District South - wouldn't change from light industrial and commercial. In current zoning it is Residential C and Industrial A. It could be included in an overlay district, or it could be left to develop as it is. It depends on what the board wants to do.

Ms. Joubert stated they don't want to make the uses there non-conforming. They're mostly warehouses that are conforming and include offices and retail sales. They are all businesses that moved into warehouse space. With an overlay district, two types of uses could be there - uses in the underlying zone and uses that would apply to the overlay district. There are a few residential areas, including both sides of Smith Pond. The option is to keep it residential, adding business and calling it something else.

Mr. Lewis stated it would tend to add more uses to the existing issues involving the neighborhoods in the area.

Mr. Rand stated he would like to keep it industrial and add uses.

Mr. Gould stated it may be good to limit industrial uses there now in order to avoid uses that are detrimental to an aquifer.

Mr. Leif stated that, in Area 1, because of land, a lack of roadway, its residential nature and sensitive areas, they should be zoning it along residential lines. Will there be access off West Main Street? Will there access from West Main Street to The Loop and does the board want this to happen?

Mr. Pember stated Mr. Giblin said that, because of the wetland Area, access to Area 1 is restricted and it's not physically possible today to put in a road from West Main Street to Route 20.

Mr. Giblin stated Bigelow's may be able to do it. They would have to expand the existing bridge.

Mr. Lewis stated it seems like residential zoning makes sense except right along West Main Street.

Mr. Leif stated on West Main Street current zoning anticipates this being zoned business west, which is an enhancement of current Business B zoning there now on both sides, but doesn't include Bigelow's, which is residential. All of the Zecco property gets included in the Business B West.

Mr. Pember stated the proposed Area 1 residential would include Bigelow's and the Borgatti property, which is currently industrial.

Ms. Joubert stated the study includes 3 scenarios - the uses would be grandfathered but with an overlay district the underlying uses would stay conforming. There would be a potential for Mr. Giblin to develop 50 acres of the Borgatti property, buy the Bigelow land and have access through Bigelow's to West Main Street.

Ms. Meehan stated there is a density bonus in trade for open space. The amount of density bonus area is important. She reviewed the 5 options for Area 1 listed on pages 1 and 2 in Ms. Barrett's Southwest Cutoff Zoning memorandum.

Dick Kane left at 9 pm.

Ms. Joubert stated if the board wants residential development of a different density there, it makes sense that they have higher density zoning, whether it's town houses or affordable units. It's a version of option #2, where you have an overlay district, whether Industrial A or Residential B, then an overlay by special permit, where housing is encouraged.

Ms. Gillespie stated option #2 works for her. Lower cost houses will work better - cluster developments and open space. It preserves what people to be preserved. It won't be big mansions. She doesn't like the idea of a floating zone. Too many people will destroy it at Town Meeting. Floor Area Ratio is difficult for Mr. Farnsworth to work with and Mr. Lewis says it doesn't make sense in this area. Mr. Pember was wondering if Berberian's should be incorporated into Area 1. Ms. Joubert said it shouldn't, that it should be left as it's zoned and there would be an overlay district for commercial and an overlay for residential.

Mr. Leif stated the hope is that they would not be creating an area where variances would be needed by commercial use moving into residential zones.

Mr. Pember stated there is no industrial use in Area 1 right now. He questioned why they would leave it as industrial if they want it to be residential. There is no industrial use there right now anyway - just Armeno's. He suggested rezoning it as residential.

Mr. Rutan asked if Bigelow's would become non-conforming. Ms. Joubert stated they would be grandfathered.

Mr. Lewis suggested the change would make their land more valuable.

Ms. Joubert stated it depends on what the landowner envisioned for the land.

Mr. Leif confirmed everyone liked the concept of option #2 for Area 1.

Mr. Rutan stated there may be no reason to leave it industrial.

Mr. Lewis stated he would like to leave it a little more flexible along West Main Street.

Mr. Leif stated that people are saying that now all industrial land in Area 1 becomes residential. Would this be Residential B with an overlay of cluster zoning and use by special permit?

Mr. Bigelow stated they have no plans for the land, but there has been a lot of interest in the family to leave it as open space - to preserve the whole thing as open space, something like Dean Park in Shrewsbury. He asked if the land would be grandfathered if someone bought it.

Ms. Joubert stated they would need to talk to the Building Inspector and the Assessors Office to determine their classification and how grandfathering would apply.

Mr. Pember stated the usage can continue for an indefinite time under grandfathering, regardless of what the zoning becomes.

Mr. Leif stated they generally know what to do with 3 of the 4 areas. It will take them a month to go through the whole document. He hopes to get it in December and then they could finish it in January. They will need final drafts distributed to everyone by January 1st. During January there may be changes and then another final draft will need to be reviewed. The public information meetings could start in January. The intention of this group will be the proposed zoning and the Planning Board perspective will be community involvement. Time will be limited. He questioned if it will be possible to make headway on the Southwest Area between now and December 1st.

Ms. Joubert stated it is feasible if both boards meet at the Planning Board meeting on November 18th and they have the zoning proposals discussed tonight to review at that meeting. Ms. Meehan noted Judi Barrett would be unavailable that night, so the Planning Board and the joint meeting were changed to December 2, 2008. Ms. Joubert reminded everyone the meeting tonight was for the purpose of refining the language

for the proposed 4 areas of the Southwest Area Study and then they will decide one way or the other about including it in the revised zoning bylaw for 2009 Town Meeting.

Mr. Leif suggested they will need at least a week or two prior to December 1st to review the draft of the bylaw.

Ms. Joubert stated they will need the Southwest Area information by Monday, November 10th. Mr. Pember noted they will also need a revision of the map to reflect the changes. Mr. Lewis stated they will need to see more of the topography on the map.

Mr. Pember stated there is a major 50-acre parcel that needs to be sited in Area 2 and the Area east of Route 20 in Area 1 needs to be put into Area 3 (the farm land).

Ms. Meehan stated the areas generally follow the natural characteristics of the land. She will produce a map showing every lot and will take their comments/changes back to Ms. Barrett.

A vote to continue the discussion on the Southwest Area at one more meeting was 6 in favor of continuing, and 1 opposed.

Mr. Rand questioned why they would rezone the 50-acre parcel just for Kevin Giblin. Mr. Pember replied it is not just for him, but he's thinking about building affordable housing, which is good for the town and nobody else can get to the parcel except by his road. If the parcel is rezoned it will be good for the town.

Schedule for zoning bylaw and Southwest Area

- ❖ 11/10/08 - draft language for Southwest Area
- ❖ Week of 11/17/08 - joint meeting
- ❖ 12/1/08 - final draft of zoning bylaw

Approval of Minutes

Mr. Pember motioned to approve the minutes of September 30, 2008 as amended. Mr. Lewis seconded the motion and the vote was unanimously in favor.

ZBA adjourned their portion of the meeting at 9:45pm.

ZBA Application for 333 Southwest Cutoff

Ms. Joubert stated this application includes the same variances as requested for The Loop 2 and all uses allowed in the Business B District - commercial, retail, restaurant, banking, etc. The application specifically talks about a BJ's Warehouse. The size has varied and the plan includes a BJ's store, and gas station and then two other retail footprints at the front of the site, one a restaurant and the other a PetSmart store, which is a hotel (like a doggie day care) for pets.

Adjournment

The meeting adjourned at 10:00 pm.

Respectfully submitted,

Debbie Grampietro
Planning Board Secretary