



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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ZBA and Planning Board Approved 9/30/08

Planning Board & Zoning Board of Appeals Joint Meeting Minutes September 2, 2008

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

Zoning Board of Appeals Members Present: Dick Rand, Mark Rutan (arrived at 8:00 pm), Sandra Landau, Gerry Benson, Dan Ginsberg

Others Present: Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings, Zoning Enforcement Officer; Attorney Richard Ricker, Brian Smith

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

Continued Public Hearing to consider modification to 1984 Special Permit decision for Birchwood Condominium Trust. Involves transfer of 12,978 square foot parcel (lot 44R, 12 Elizabeth Drive, Map 46 Parcel 155) from Birchwood Condominium Trust to Richard R. Record & Son, Inc.

Attorney Richard Ricker, representing Richard Record, made the presentation for this hearing. He explained 12 Elizabeth Drive is owned by Birchwood Condominium Trust. A portion of the rear of the property drops off dramatically and the flat portion at the bottom of the drop off has been used by Richard Record for his business for many years. There was a conflict over this situation that eventually was resolved by Worcester Superior Court and now Mr. Ricker is here before the board to amend the Special Permit Site Plan for Dingley Dell, by removing the subject portion of 12 Elizabeth Drive from the Special Permit Site Plan. Mr. Ricker stated the plan is in keeping with zoning bylaw and the property would remain used as it has been in the past. The property owner, Birchwood Condominium Trust, has signed off and is in agreement with this. It does not adversely affect the neighborhood and will cause no detriment to the area or to the public in general. It is an appropriate use of the property and is in according with the zoning bylaw.

Kathy Joubert, Town Planner, stated that, because the condominium is considered one lot, an amendment to the original decision is required to remove this piece of the property. She reviewed a draft of the decision for the amendment to the Special Permit Site Plan. She explained the plan will have to be modified to reflect the amendment. Ms. Joubert stated the use of the property by Richard Record and sons is not changing.

In response to a question by Bob Rosenberg, Bill Halter, Trustee, Birchwood Condominium Trust, stated the Trust is perfectly happy with this and believes it shouldn't have any adverse affect.

Mr. Ricker stated there was never a real dispute over the property or the amendment by either party. He explained the action was triggered by a decision of Richard Record to square off property lines for utilization of the land.

Bob Rosenberg motioned to close the hearing, Daniel Lewis seconded the motion and the vote was unanimous to close the hearing.

Amendment to Special Permit: Bob Rosenberg motioned to approve the amendment to the Special Permit Site plan per the decision dated September 2, 2008. Daniel Lewis seconded the motion and the vote was unanimous to approve.

Approval of Minutes

The Planning Board approved the minutes for the following meetings as follows:

June 24, 2008 (a joint meeting): Bob Rosenberg motioned to approve the minutes as written, Michelle Gillespie seconded the motion and the vote was unanimous to approve.

July 29, 2008: George Pember motioned to approve the minutes as amended, Bob Rosenberg seconded the motion and the vote was unanimous to approve.

August 4, 2008: Michelle Gillespie motioned to approve the minutes as written, Daniel Lewis seconded the motion and the vote was unanimous to approve.

Chairman Richard Rand opened the Zoning Board of Appeals meeting at 7:30 pm.

Joint Meeting with Zoning Board of Appeals and Community Opportunities Group RE: Draft zoning recommendations for Southwest Cutoff area

Judi Barrett and Angela Meehan, consultants from Community Opportunities Group, presented zoning recommendations for the Southwest area of Northborough. Ms. Barrett referred to a map of the subject area entitled "Conceptual Planning Areas", which was one of nine maps created for the presentation and included in their package entitled "Southwest Cutoff Land Use Study, Draft Interim Report" dated August 2008. Ms. Barrett stated that during the joint meeting process to review the proposed Zoning Bylaw to be presented at 2009 Town Meeting, members of the Zoning Board of Appeals suggested a study of the Southwest area of Northborough due to changes in the area including the 560,000 square foot commercial development known as "The Loop" and AvalonBay, a 350-unit apartment complex and possible other developments which may come along. Ms. Barrett stated they reviewed the finding of the latest Master Plan and analyzed existing conditions and development constraints using GIS data and data from their field reviews. As a result, they have three options from which the boards may choose.

Angela Meehan reviewed their report with those present, beginning with an explanation of the existing conditions.

Natural Resources: Ms. Meehan stated their natural resources overview explains the geology of the site, how it relates to the soil and how the area was formed. She explained they found the soils in the western and eastern portions of the area to be very different due to glaciers that traversed the landscape. The western side of the site is rocky, with various size stones, rocks and boulders, and with soil that is dense and stony. It is good for development but transmits water slowly and, therefore, is poorly suited for groundwater supply or sewage disposal. Due to these soil conditions, during periods of glacier melting, the western side

funneled water to the eastern portion leaving soils that are better for farming and storing groundwater. Over 48.8% of the area qualifies as federally recognized farmland. Some of the areas noted for their suitability for farming have more wetlands on one side and also richer, denser soils. Some areas have steep slopes and rock outcroppings which can be development constraints. The Loop project is built around these areas. There are also richer soils for farm land. The western side has fewer resources because water drains into the eastern side. One of the significant resources is Hop Brook, which drains southeasterly from Shrewsbury into a wetland area and is part of the SUASCO watershed. Aquifers in the area are designated on the map and show yield and restrictions for the amount that can be pumped per day. Other regulatory layers shown are the Groundwater Protection Overlay districts, with areas 2 and 3 in this area. Smith Pond is also in the southeastern section and is a significant water resource. To the extent they can be mapped, there is approximately 100 acres of wetland and 30 acres of open water in the study area.

Habitat: Habitat data is published by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), a division of MassWildlife. Their data denotes the study area as having rare species and rare wildlife - probably some significant species in a large portion of the study area - which is a development constraint.

Kathy Joubert noted The Loop and AvalonBay project went through all required NHESP steps and found there were no endangered species on the property.

Land Use Pattern: Ms. Barrett stated in some ways the study area does reflect the general zoning as an industrial area determined many years ago. There has been some industrial but it really departs along the roadway. Internal portions of the site are largely open land, but along the roadway corridors different types of developments have broken out. It is a logical area for some intense commercial development, with a little of the downtown commercial influence creeping in on from the northern portion along West Main Street. The northern section is the most interesting, with a significant amount of land uses and some commercial and industrial uses. There is a significant amount of municipal land along Route 20 as well. The southeastern portion of town is very pleasant, with a lovely roadway that has a nice feeling to it. There is not much access to internal portions of the site, which has 3 primary land uses. A “pre-Loop” and “post-Loop” distinction needs to be made here. Bigelow Nurseries is an agricultural use, Hop Brook is in that area and the Department of Conservation and Recreation (DCR) has landholdings. The DCR has large landholdings in the area. Northborough is one of 7-10 communities that has land owned by the Office of Flood Control and is used to control flow throughout the SUASCO River basin to prevent flooding down to Boston and Cambridge. The Town of Shrewsbury owns land in the area on which a sewage treatment plant is located, but is not in use. Ms. Barrett stated the areas of the map shaded in pale yellow are single-family homes on large lots - single-family residential use.

Ms. Meehan stated there are three major uses on the site with three big landowners - the Borgattis, Bigelow Nurseries and the State. If one of these properties were to be sold, it would have a major impact to the site.

ZBA member Mark Rutan arrived at the meeting at 8:00 pm.

Bill Farnsworth, Inspector of Buildings, Zoning Enforcement Officer, noted Tony Kwan owns land in the area also.

Ms. Joubert pointed out land that was previously owned by John O'Mara and stated that land has been approved for another 60,000 square feet of commercial/retail use. It had been

residentially used and now has a variance on it for commercial use. Although an application has not been filed yet, AvalonBay Communities will be extending its commercial use to this property with the addition of more residential units.

Mr. Pember asked about the status of Kimball Sand.

Ms. Joubert stated the developer of The Loop has first rights to the Kimball Sand property. The owner is extracting earth quickly in order to be off the property in 3 years. This property is the closest to the interchange. There has been no application filed yet, but there has been talk that a BJ's is planned to be located on the property across the street from the former O'Mara property which is the current site of East Coast Golf. She noted a cell tower is also located in that area.

Zoning: Ms. Meehan stated development in this area is changing much faster than can be kept up with and than what zoning would suggest, including most of the area in Industrial District A and the Business District C corridor around West Main Street, the Route 9/Route 20 interchange and some of the Residential District C area. This development is reflected in the Land Use map. The Groundwater Protection Overlays are not shown on this map, but influence development in this area, with District 2 and 3 present in the study area. Uses are allowed in the underlying district, but development can only produce a certain amount of water and cannot endanger public drinking water. Generally there hasn't been a predictor of what's happening on the site - no real framework in which to consider those changes. An obvious example is The Loop, which will alter the area.

Utilities: There is no map for utilities. The area is presently not serviced by town sewer. However, sewer service is being extended south along Route 20 by The Loop developers. Sewer capacity is an issue in this town because Northborough shares a plant with Marlborough and Marlborough has capacity issues. The town is applying to the Department of Environmental Protection (DEP) to ask for an increase in the allowance of water to be discharged. A watershed group will likely oppose those increases. The capacity issue may put constraints on development. Northborough purchases water from MWRA and has brought some wells back online so town water service may not be under as much constraint as town sewer service.

Traffic Circulation: Ms. Meehan explained the study's traffic statistics were derived from traffic studies of the area done for The Loop development, for the proposed Stop & Shop grocery store at 77 Main Street which included traffic information for the Southwest Cutoff area, from crash statistics from Mass Highway and from a Central Mass Regional Planning Commission (CMRPC) study done in 2003, in addition to their general observations from traveling in the area. Streets included in these traffic studies are Route 9, Route 20 (West Main Street and Southwest Cutoff), Davis Street, Otis Street, Tomblin Hill Road, Hitching Post Lane and Lawrence Street.

To put the traffic statistics for the area into perspective, Route 9 handles 50,000 vehicles per day (vpd). In comparison, Davis Street handles approximately 11,000 vpd including 3,718 vpd north of Route 20 and 6,868 vpd south of Route 20, on an average day.

Traffic Accidents: Ms. Meehan stated they were able to map collisions from Mass Highway data. About 80% of all collisions in the area are able to be mapped. Data was also gathered from residents at a community meeting on June 11, 2008. The traffic crash statistics are telling. Route 9 and Route 20 are magnets for traffic accidents. Part of The Loop development's traffic mitigation is a revision of the Route 9 and Route 20 on and off ramps,

coordinated with Mass Highway, in order to decrease accidents. Davis Street and Otis Street have a lot of accidents and that conception is shared by residents in the area. With the addition of new traffic signals at Davis Street and Route 20, accidents are expected to decrease by half. Along local roadways there are a fair amount of accidents on the fairly narrow, winding roads. Most of the data for the crash study is from 2005 and 2006. Ms. Meehan noted the table is more complete than the maps because not all accidents can be mapped.

Development Potential for Area: Ms. Barrett stated build-out studies include assumptions as to what can be done with the land which won't be as accurate as actual tests done by developers. The situation with The Loop is due to inappropriate zoning relative to suitability and irrelevant with respect to the market. The Master Plan stated it is not suitable for 6 million square feet of industrial space. Regarding Area 1, shown on the Conceptual Planning Areas map, Ms. Barrett suggests keeping as much open space in this area as possible. In Area 2 commercial development could be done and the Master Plan talked about commercial development as an option. She suggested leaving Area 3 industrial and Area 4 commercial with some residential. She stated residential development, planned carefully, is much less disruptive than large-footprint commercial development.

The maps show there is some similarity to the Master Plan. The basic characteristics are what they are. Ms. Barrett stated if the boards agree with their planning logic, they have some options. One option is to do nothing - to leave it Industrial A, and let developers come in and deal with it with a use variance. She would not recommend this as a planner. Pockets of it could be rezoned. They could take the position that The Loop is a foregone conclusion. Maybe it would be in the project's best interest and the town's as well, to get it out of the use variance mode and into compliance by creating a commercial overlay. Then if The Loop comes in with a substantial change to the plans they would need a special permit and not a variance. In Area 1 there is a need to protect land but build incentives for open space. It would protect the land and resources. If underlying zoning doesn't have to be changed, that's better, but she doesn't see it on the horizon there. Area 3 could be treated as a mixed-use overlay. Area 4, the highway district, should be left the way it is.

Another option is to have a single overlay district on the whole area and give it a name such as the Southwest Overlay District, which would have no use or dimensional regulations. There would be a series of procedures for landowners to follow in order to bring conceptual plans for what they want to do with the area to a SPGA for a special permit. It would be a little like the Senior Residential Community Overlay District. It would go to town meeting and, if approved, it would become a planned development district. It would be authorized by town meeting to be built out according to the developer's master plan and a process would be created within the overlay for applicants to come forth with proposals. Ms. Barrett stated this would let people come in with market driven proposals in overlay districts. Town Meeting will create a vehicle then an applicant would apply for a special permit which must be within the parameters approved at Town Meeting to be created in the overlay. In Massachusetts, zoning is created by Town Meeting. This preserves town meeting's role to establish districts. It gets boards out of the position to have to decide if something qualifies for a variance and forces the applicant to deal with a legislative process. If the applicant wants to do something really different it would go back to Town Meeting. Also, if you have an area unsuitably zoned, when someone comes in and says they have a better use for it, there's an economic gain for whoever gets an economic value that wasn't there before. It's like a use variance situation for the town to share in the economic gain. There's a built-in negotiation process for someone who comes to the board to do this and basically an agreement between the board and the applicant.

Mr. Lewis asked Ms. Barrett how this area can be kept from becoming another Route 9 in Shrewsbury, with hodgepodge development.

Ms. Barrett stated when in the mitigation process the feeling of an area can be changed. It seems like an overlay for individual planned areas creates an orderly vehicle for the applicant and give the town the ability to decide what they want to see in the area.

Mr. Rutan asked what would happen if an applicant came before the board in June and town meeting wasn't going to be held for 10 months.

Ms. Barrett stated a special town meeting could be held at the expense of the developer. The town would not be paying for it. With respect to timing issues, developers have to do some planning too and plan ahead. The underlying zoning rights are not taken away and the process will make it very clear. It would be an opportunity to discuss gain for the town.

Mr. Pember stated he likes the concept for Areas 1 and 2. Area 4 is built up as much as it's going to be except for the Boston Hill portion in Northborough. He stated he does not like Area 3 and would not like it included. It doesn't make sense for Area 3 and suggested it might be a district on its own.

Mr. Leif stated there is a significant difference in the sizes and capacities of the roads. Route 20 and Route 9 are one type, while Otis Street and Davis Street are different. Development will put pressure on all streets and there's not too much potential for improvement. He stated he doesn't think Otis Street and Davis Street can be improved without taking property. He questioned how they can reconcile the inevitable impact of traffic on side streets and the inability to do anything about it.

Ms. Meehan agreed with Mr. Leif, stating there is a lack of road hierarchy. Circulation is improved by having smaller streets leading to larger streets and larger streets leading to the largest streets. Regarding Otis Street and Davis Street, in some ways there is capacity that is beyond mitigation. You can only do so much with mitigation and that's why commercial development is appropriate in some areas but not others. It's a quality of life issue. The zoning in Area 1 is preserving the area from that, but also reducing the amount of trips to that site. It is a huge problem.

Ms. Barrett stated another option is to have a use in the zoning bylaw called a major use development that would require a traffic plan and an enforcement plan for developers to come back to the SPGA board if there were problems traffic problems later.

Mr. Leif stated it's a question of whether or not off-site mitigation can be done.

Ms. Barrett stated roads could be built or modified to slow traffic down. This could be done by creating the illusion of a narrow street by building vegetation out into the road to slow people down - anything that can be done to slow people down. This would be included in the permitting process and would include a requirement for post-construction traffic monitoring.

Ms. Gillespie noted the issues with Speen Street and the surrounding neighborhoods in the area of the Natick Mall. She suggested Tomblin Hill could be made a one-way street

Mr. Leif stated the proposed zoning allows for commercial development in this zone, with larger retail of 50,000 square feet. Residential use and open space were not talked about and

Area 1 would be rezoned to allow fairly substantial development. But this suggestion makes a lot of sense and maybe we need to revisit BB West.

Ms. Barrett stated the use is not as intense as in BB East. They are trying to work with the existing configuration and deal with split lots. Her suggestion would be to change the zoning and get it out of the business district.

Ms. Joubert stated they will be affecting people who bought land for a specific purpose. There are a variety of landowners along West Main Street who clearly bought that land for commercial development - present landowners in Business B which is now going to be changed to BB West on a smaller scale.

Mr. Leif stated the concept of what's being presented makes some sense. There are some issues with the current zoning and uses for the land that need to be looked at. There's a need to look at the impact of commercial development in town and how areas around it are going to deal with it and handle it as best as possible. Needs of the neighborhoods, streets and wetland areas should be addressed. He stated he doesn't think this is the same as what they were thinking.

Ms. Meehan stated they are thinking of it as a lower impact development.

Mr. Leif stated there is a possibility over time for properties to be combined, creating larger lots in the current Industrial A and abutting business district. The question is how these would be managed. This presentation is talking about that on a larger scale where you could have a combination of Industrial A and Business B property. He stated he needs to think this over.

Regarding the option of a Southwest Overlay District, Ms. Joubert stated that looking at the physical constraints of the land, how it has evolved over time, how it is reflected in these 4 areas, a homeowner next to this area is going to know what can and can't be done on the property. That is helpful.

Ms. Barrett stated they would have the same results by allowing this area to be developed through variances. She stated she is not advocating for the overlays, but offering it as an option to allow growth to develop on a master plan by master plan basis. A district-wide maximum amount of feet could be included and when development reaches build-out, that would be it.

Ms. Landau stated it can be a problem when a town doesn't have Town Meeting as an elected body. There's no guarantee they'll be considering the interest of individual landowners and abutters. Ms. Landau explained that when people do attend, they seem to vote based on one thing only: how the proposal will or might affect them, personally, without consideration as to whether a particular issue might be good or bad for the town as a whole.

She acknowledged that having the Z.B.A., also not an elected body, make these kinds of decisions through the variance process does indeed also lend some uncertainty to the matter of what a property owner can expect will happen to abutting land. However, somehow, the smallness of the Board and their historical desire to accommodate to town residents who come before them, as well as their lack of personal interest in the matter at hand (if there is a personal interest they recuse themselves) makes it more likely that any

variance denied or granted will more closely reflect what they, with our broader perspective and somewhat greater experience than most town meeting members, sincerely believe will inure to the benefit of the greater community.

Mr. Ginsberg stated that is true with any zoning project.

Ms. Barrett stated she is not here to advocate for town meeting, but for an alternative that preserves town meeting's role in establishment of district and adoption of zoning.

Mr. Leif stated they need to consider the southern portion for commercial development, proposed zoning changes and an overlay concept for the northern part. It's not as clear as to what is appropriate in that area. There is a need to manage existing open space, wetlands and the neighborhoods. It may be a good idea to have an overlay in the northern area.

Ms. Barrett said she is concerned with Areas 2 and 3. She stated there is no other remedy for the developers in this area than to seek a use variance and there is another way to do it that is more defensible and creates economic benefits for the town.

Mr. Rutan questioned how much retail and commercial development can be pushed on the town and used the Stop & Shop proposal for 77 Main Street as an example. Ms. Barrett responded that Stop & Shop was a use allowed by right, not something that was pushed on anyone.

Mr. Benson stated the town will not benefit from the economic gain the developers received from the sale of the properties in this area and the variances granted to the applicants - the O'Mara's property, East Coast Golf's property and the Kimball Sand property.

Mr. Leif stated they need to schedule another meeting to see where they are. Members should send comments to Ms. Joubert about options or input as to whether they should go forward with the southwest area for 2009 Town Meeting.

Joint meetings were scheduled for September 16th and September 30th, both beginning at 7:00 pm. Judi Barrett will be at the September 30th meeting to talk with the boards about Southwest Cutoff.

The Planning Board and Zoning Board of Appeals voted to adjourn their meetings.

The meetings adjourned at 9:30 pm.

Respectfully submitted,

Debbie Grampietro
Administrative Assistant
Planning/Engineering/ZBA