



Approved 10/27/09

**Zoning Board of Appeals
Meeting Minutes
August 25, 2009**

Members present: Richard Rand, Chairman; Mark Rutan, Clerk; Richard Kane; Sandra Landau, Alternate; Dan Ginsberg, Alternate

Members excused: Gerry Benson

Others present: Kathy Joubert, Town Planner; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Fred Litchfield, Town Engineer (arrived at 8:00PM); Paul Kinchla, Jr.; Marie Kinchla; Doug Stone; Renee Solis; Virginia Flagg; Nancy & Alan Stone; Mark & Deborah Ballard; Paul Kemp; Joan Clementi; Steve Poole, Lakeview Engineering; David Gillespie; Steven Schwartz; Jitendra Seth; Peter Carlino; John Mshooshian

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

Chairman Rand read the legal notice into the public record and appointed Sandra Landau and Dan Ginsberg as voting members for tonight's hearings.

Public Hearing to consider the petition of Paul J. Kinchla, Jr. and Marie C. Kinchla for a Variance/Special Permit to allow the use of a duplex to be constructed on the property located at 168 South Street, 7:00PM

On behalf of the applicant, Doug Stone discussed plans to construct a duplex on the property. He noted that a single lot at 168 South Street had recently been subdivided, and the applicant is seeking approval to construct a single duplex on the parcel. He explained that there is currently a detached garage located close to the street that will be razed, and the duplex will be sited approximately 200 feet behind where the garage currently sits. He also noted that the project will be served by town water and sewer.

Mr. Stone explained that each unit will feature 3-bedrooms and a 2-car garage, and noted that there are approximately 28 two-family dwellings located in the vicinity. He stated that this project is not a low income or 40B development, but will help to meet one of the objectives of the Town's development plan which seeks to provide moderately priced, quality housing. He explained that the units will be priced below \$400,000, which will offer choices in new construction well below the current average offering of \$619,000. He also noted that the structure will likely be unseen from the road.

Chairman Rand asked about the location of the driveway. Mr. Stone explained that the driveway will run along the area to the left side of the existing garage.

Mr. Ginsberg asked about the existing home on the site. Mr. Stone reiterated that the lot was recently subdivided, and stated that the home is on the adjacent lot. Mr. Ginsberg indicated that there appears to be an existing structure shown on the plot plans. Mr. Stone stated that the recent subdivision provides a buildable lot, and explained that the existing home will remain on the adjacent lot and the detached garage will be razed.

Mr. Rutan asked if there are any issues because of the new curb cut. Ms. Joubert noted that this parcel is located on a town road, so there are no issues with the curb cut. Mr. Rutan asked if the house on the adjacent parcel meets all of the required setbacks. Mr. Farnsworth confirmed that all setbacks were met at the time when the lot was subdivided.

Mr. Ginsberg noted the presence of a wetland at the rear of the lot, and asked if this will have any effect on the proposed project. Mr. Stone noted that the wetlands were flagged and are well beyond 100 feet from the construction.

Mr. Ginsberg asked for clarification on the two parcels. Mr. Farnsworth explained that there was a land swap with 168 South Street in order to get an adequate lot size.

Mr. Ginsberg stated that the application is not clear as to what is being requested. Ms. Joubert explained that the only approval that is needed is for a special permit for use. She noted that the property is an ANR lot on an existing town road and has the required lot size and frontage. A single family home could legally be sited on the property, but a special permit is required for the construction of a duplex.

Mr. Farnsworth stated that the decision needs to be clear that the approval is for lot 2 as shown on the ANR plan that was cut out of 168 South Street. Ms. Joubert asked if the ANR plan has been filed at the Registry of Deeds, and noted that the Town Assessor will not assign an address to the property until the filing has been done.

Mark Ballard, 184 South Street, noted that his home abuts this property and voiced concerns about construction of a duplex. He submitted a petition from other residents who are opposed to the project but could not attend this evening's hearing. He noted that, while there are other two family dwellings in the area, there are many single family homes that also need to be considered. He voiced concern that the presence of a duplex will drastically lower the value of his home, and noted that the corner of the proposed duplex is only 80 feet from the corner of his home.

Mr. Ballard also raised issues with the elevation of the property. Given that there are rock bluffs running through the property, he assumes construction will require blasting and voiced concern about impacts to his property. He also voiced concern about drainage, and noted that drainage from his property, and others, flows along this property and he wants to be sure it will not be negatively effected.

Mr. Ballard stated that he had received no advance notice about the proposed project and has not had time to research and fully prepare for tonight's hearing. He voiced his opinion that the failure to notify the abutters about the proposed construction is both short-sighted and not very neighborly.

Mr. Ballard also discussed concerns about noise and traffic resulting from two 3-bedroom units. He is further concerned that the property could potentially become rental units, which could be detrimental to the neighborhood. He voiced his opinion that a single family home would be better for the site.

Mr. Stone noted that the duplex development on Winn Terrace and the three-plex on Hudson Street have both been very successful and there continues to be a high demand for these types of units. Mr. Rutan asked if the project will be sold as a single unit or as two separate units. Mr. Stone indicated that the two units will be marketed individually.

Mr. Ballard noted that there are still a lot of unknowns about the project, including the location of the driveway and proposed elevations. Chairman Rand explained that the project will be required to meet all of the specifications and regulations of the Building Inspector.

Mr. Farnsworth reiterated that tonight's hearing is to consider the application for the use of a two family dwelling, and all other issues fall outside the purview of this board. He commented that the applicant has the right to build a single family home, which could be even larger than what is being proposed, as long as it meets the building code and setbacks.

Mr. Ballard reiterated concerns about drainage, and voiced his opinion that a single family house would likely have less drainage impact than the proposed duplex. Mr. Farnsworth noted that the drainage would depend on the size of the structure, and noted that both a single family and a two-family house must comply with the same requirements and procedures.

Ms. Landau explained that the Zoning Board of Appeals is a statute-bound board, and can only rule based on what the zoning law states. While the board members acknowledge and understand the objections raised, they cannot rule based on those issues. She also reiterated that construction of a large, single family home would not require any approvals.

Ms. Landau cited the criteria that must be met for a special permit, as stipulated in section 7-03-040 in the Zoning Bylaw, as follows:

- A. A Special Permit may be issued only for uses which are in harmony with the general purpose and intent of the zoning Bylaw, provided that:
 1. The proposal is in substantial harmony with the Northborough Master Plan and other plans approved or amended from time to time by the Northborough Planning Board, and with the purposes of this bylaw;

2. The proposed site is an appropriate location for such use;
3. The use as developed will not adversely affect the neighborhood;
4. There will be no nuisance or serious hazard to vehicles or pedestrians;
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use;
6. The proposed use will conform to any special requirements of the special permit granting authority as stated in its written decision; and
7. The proposal could not reasonably be altered to reduce adverse impacts on the natural environment, to be compatible with historic development patterns of the town, or to preserve historically significant buildings.

Mrs. Ballard asked if there is a group or committee where she can take her concerns. Mr. Farnsworth noted that the bylaw requires that the project meet the town's setbacks, which is the only stipulation for the positioning of the structure. He also noted that the town's bylaw is more restrictive than the state building code, which allows for a building to be situated directly on the property line.

Nancy Stone, 180 South Street, asked whether the board's decision is based solely on the presentation or if the members actually visit the site. Chairman Rand explained that most members do visit the property, but the decision is based primarily on whether the engineered plan meets all of the requirements and specifications of the bylaw. Ms. Stone voiced her opinion that the issues raised this evening appear to be a moot point. Ms. Landau stated that they are not moot, but are beyond the authority of the board. Ms. Stone asked what would be a reason to deny the project. Ms. Landau referred to the criteria in the bylaw. Mr. Ballard asked if the criteria are different for a single family house. Ms. Joubert explained that there are no criteria for a single family house. She also noted that the criteria are not specifically for a duplex; they are criteria for a special permit. Mr. Ballard asked if there is any consideration about the fact that the application was submitted as 168 South Street, which gave the appearance that it was much farther from his home than it actually is.

Mr. Ballard noted that one of the criteria in the bylaw stipulates that the use must not adversely affect the neighborhood, and voiced his opinion that the abutters' concerns should support the fact that it does. Mr. Farnsworth explained that the use must not affect the neighborhood any more than a normal single family residence would. Mrs. Ballard stated that a duplex would result in more residents, thus more activity, which would therefore more adversely effect the neighborhood.

Renee Solis, 26 Thaddeus Mason Road, questioned whether the land is buildable given the amount of ledge, rock, and trees. Mr. Farnsworth noted that the developer determines if the lot is buildable and presents an engineered plan that must meet the requirements of the building code and town bylaw. Mr. Ballard asked about the drainage issue. Mr. Farnsworth stated that it will be considered when the building permit application is reviewed.

Alan Stone, 180 South Street, agreed with the drainage concerns raised by others and noted that the impacts could be serious. He voiced his opinion that construction of a large, two-family dwelling and the additional asphalt might result in more drainage and he is worried about his basement flooding. Chairman Rand reiterated that drainage does not fall under this board's purview, but falls under the Building Inspector's authority.

Joan Clementi, 30 Thaddeus Mason Road, voiced concern that building a duplex in a neighborhood of single family homes will bring down the value of the other properties. Mr. Farnsworth stated that other projects in town have had no property devaluation when duplexes were constructed in the neighborhood. He suggested that Ms. Clementi speak to the Town Assessor about the Winn Terrace project and others in town. Ms. Clementi noted that the neighbors had received no notification that the lot was to be made buildable. Ms. Joubert stated that there is no regulation requiring the town or owner to do so. Ms. Clementi voiced concern that the displaced wildlife will end up in her back yard.

Paul Kemp, 19 Riley Road, explained that his home is located immediately behind the lots being discussed. He noted that his plot plan and deed show a right of way through the property in question. He stated that his lot was made up of four separate parcels, one of which previously belonged to Willis Lebossiere that had a right of way from his dwelling with access to South Street. Mr. Kemp believes that this right of way crosses through the new lot that was created with the subdivision of the lot at 168 South Street and questioned whether the right of way has been preserved. Ms. Landau suggested that this would be a matter for Mr. Kemp to discuss with an attorney or research for himself at the Registry of Deeds. Mr. Stone voiced his understanding that the right of way did not appear on the deed for the property that was subdivided.

Virginia Flagg stated that she was appearing on behalf of the owner at 178 South Street, who has voiced concerns about the drainage culvert that he does not wish to see disturbed. He also voiced concern about the safety of his grandchildren. Ms. Landau reiterated that concerns about drainage should be discussed with the building inspector. She also noted that the other concerns can be discussed directly with the developer for some form of compromise, but do not fall under this board's authority.

Mr. Farnsworth explained that it is his responsibility to ensure that the proposed project does not result in a substantial increase in runoff to the abutting properties than what presently exists.

Mr. Ballard questioned the true need for properties in this price range. In his research, he has found that 38 of the 88 listings available in town today are in the \$150,000 to \$400,000 range, one of which is the house at 168 South Street that has been on the market for close to a year. He commented that he is not convinced that there really is a need for more properties in this price range. Ms. Landau noted that this is not an issue that can be considered by this board.

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

Ms. Joubert asked Mr. Stone to provide a copy of the deed for the file. She also asked Mr. Ballard if he would like to submit his petition to be included in the file.

Continued hearing to consider the petition of Dimitrios Voyiatzis for Variance/Special Permit/Site Plan Review to allow a 13,268 square-foot two-story mixed use building to be used for restaurant, retail, commercial and/or office use on the property located at 73-85 West Main Street, 7:55PM

Steve Poole from Lakeview Engineering discussed the applicant's proposal to construct a mixed-use project on the parcel. He explained that the property consists of three parcels of land that previously contained houses which have been demolished. He noted that the three parcels are being combined to make one lot, and the applicant is proposing two buildings, each housing three retail spaces, with a single center entrance driveway divided by a center island. The plan also includes a sidewalk with entrances at the front of the buildings, and additional entrances at the rear of the building where the primary parking area will be located. He explained that the utilities will come off the street, and dumpsters will be located in screened locations along the sides of the buildings.

Fred Litchfield, Town Engineer arrived.

Mr. Poole explained that the site sits at the base of a steep hill, and the runoff flowing down the slope will be picked up and diverted to an infiltration system via catch basins and a trench drain, with an overflow system to tie in around the building and into the existing drainage system. Mr. Poole noted that one of the buildings will have an outside patio or play area.

Mr. Poole discussed the landscaping plan, which features trees along the roadway and within a center island and low growth shrubs in front of the buildings. Mr. Kane questioned the types of trees to be planted. Mr. Poole stated that the plans include pear trees and mountain laurel. Mr. Kane asked if the trees will be sufficient height so that the limbs will not interfere with vehicles driving by.

Mr. Poole explained that several different renditions of the plan have been reviewed with town staff. He also noted that they had previously been to the Planning Board and received a negative response to their original proposal, so they have now come back with a plan to meet the downtown zoning. It is his understanding that the Planning Board has voiced their support of the new concept plan being presented this evening.

Mr. Rutan questioned the proposed 10-foot wall at the rear of the project, and the steepness of the slope. Mr. Poole stated that the slope will be 2-to-1, with a 6-foot wall. Mr. Rutan asked about fencing. Mr. Poole indicated that there will be safety fencing, which will likely be black pvc-coated chain link.

Mr. Ginsberg voiced appreciation to the applicant for conforming to the new concept of the new downtown business district. He noted that one of the buildings is proposed to be within 3 feet of the edge of the property and asked if this will create issues with line

of sight. Mr. Poole indicated that there should be adequate sight distance. He also noted that the entrance has been oversized to provide adequate access for emergency vehicles.

Mr. Kane asked how the steep slope will be treated. Mr. Poole explained that it will be graded and hydroseeded, with erosion control matting to keep the seed in place. He discussed plans to meet with the Earth Removal Board to review details and specifics for the erosion control measures to be used.

Mr. Kane asked Mr. Poole what hardships exist to justify the request for a variance. Mr. Poole stated that the topography of the lot creates the hardship.

Ms. Joubert asked Mr. Poole how far into the front setback the project will encroach. Mr. Poole stated that he is requesting that the front setback be reduced to 3 feet, as the buildings are 3.6 feet from the property line.

Ms. Joubert suggested that the applicant investigate whether there are any landscaping requirements for the parking lot.

Ms. Joubert confirmed that the Planning Board had some concerns about the previous plan, but is in favor of this proposal and has provided a written comment letter to that effect. She also noted that this plan still needs to go before the Design Review Committee (DRC) and the Groundwater Advisory Committee (GAC). She recommended that this hearing be continued pending comments from the DRC and GAC. Mr. Poole was in agreement with continuing the hearing.

Mr. Kane asked about snow removal. Mr. Poole indicated that there are some small areas for snow storage along the sides of the buildings, but he anticipates that most snow will need to be hauled offsite.

Chairman Rand requested that the applicant provide a written request for a continuance of the hearing. Mr. Ginsberg asked if the board had received any communication from the public about this project. Ms. Joubert noted that the abutters had all received proper notice about tonight's hearing, but she has received no formal comment.

Mark Rutan made a motion to continue the hearing to September 22, 2009 at 7:00PM. Richard Kane seconded, vote unanimous.

Discussion re: AVB Northborough, Inc. request for insubstantial change to comprehensive permit to reflect proposed change in subsidy program and related changes

David Gillespie discussed the letter that was submitted on behalf of the applicant for an insubstantial change to the comprehensive permit to allow a change in the subsidy program. He noted that, given the current market conditions, the original agency is unable to issue debt to support Avalon Bay. Though Avalon Bay has the ability to finance this project themselves, under the Chapter 40B regulations they are required to have a subsidizing agency at the state level. Mr. Gillespie noted that the subsidy

change was approved by the Board of Selectmen last week, but the applicant needs to have approval from this board.

Ms. Landau asked if Town Counsel has provided an opinion on the matter. Ms. Joubert stated that Town Counsel had reviewed the LIP application and noted that the first step was for the applicant to bring the matter to the Board of Selectmen. Since the Board of Selectmen has agreed to the subsidy change, the applicant now needs the Zoning Board to agree that this is an insubstantial change. Ms. Joubert explained that Town Counsel has language that she is recommending the town adopt considering this an insubstantial change. At Chairman Rand's request, Ms. Joubert has provided the board with a copy of the applicable portion of the decision and a draft decision for consideration.

Ms. Joubert explained that the most significant change is that Mass Housing is no longer involved, and that LIP through DHCD is the new subsidy. She noted that this provides further protection for the town, and affords the town the authority to ensure that the profitability is not exceeded. Since CHAPA is no longer taking on the role of monitoring agency, Ms. Joubert has contacted four alternate firms that do this type of monitoring. If none of them proves viable, she will look to Avalon Bay to provide additional sources.

Ms. Landau noted that the board simply needs to determine if the substitution of LIP for Mass Housing is an insubstantial change and to provide a decision to that effect.

Chairman Rand asked if DHCD does its own monitoring of these projects. Steve Schwartz confirmed that they monitor the affordability portion as long as the limited dividend provision is applicable.

Dan Ginsberg made a motion to accept Town Counsel's suggested language declaring that this be accepted and approved, and agreeing that the requested changes are insubstantial. Mark Rutan seconded, vote unanimous.

Dunia Gardens – Ms. Joubert noted the condition in the decision for this project requiring the applicant to post a bond, which was previously set at \$230,000. She explained that the applicant is proposing to post the bond in the form of a tri-party agreement to be signed by the town, the developer, and the bank. She stated that Town Counsel has reviewed and approved the document, and she has two copies for signature by the board members.

Sandra Landau made a motion to accept the bond in the form of a tri-party agreement. Dan Ginsberg seconded, vote unanimous.

Review Minutes of the Meeting of June 23, 2009 – Mark Rutan made a motion to approve the Minutes of the Meeting of June 23, 2009 as submitted. Sandra Landau seconded, vote unanimous.

Review Minutes of the Meeting of July 28, 2009 – Ms. Landau noted a couple of minor edits. Mark Rutan made a motion to approve the Minutes of the Meeting of July

28, 2009 as amended. Sandra Landau seconded, vote unanimous with Dan Ginsberg abstaining.

DECISIONS

168 South Street – Mr. Rutan commented that he would have liked to see the deed included with the application packet along with the information about the other duplexes in the area. He also commented that he was not happy with the presentation, including the description of the location of the driveway. Mr. Kane agreed, and noted that the board normally references a plan when rendering a decision but there is no plan to reference for this decision. Mr. Rutan noted that the board is simply deciding on whether to allow the construction of a duplex, and a detailed drawing is not required in order to do so. Ms. Landau voiced her opinion that a drawing would have given more clarity about the proposal. Mr. Rutan reiterated that there are other duplexes nearby. He also questioned whether there is a real issue with the drainage. Members of the board agreed that there may be, but that it will come up during the building permit process. Mr. Rutan commented that the two 1800 square foot units could just as easily be one 3600 square foot single family home, so the resulting impact to the neighborhood is basically the same.

Mr. Rutan noted that the board has denied duplexes in the past when they were proposed for an area where duplexes did not previously exist. Given that there are other duplexes on South Street, he does not feel that the board has justification to deny this project. In considering the criteria for a special permit, the board members agreed as follows:

1. The proposal is in substantial harmony with the Northborough Master Plan and other plans approved or amended from time to time by the Northborough Planning Board, and with the purposes of this bylaw.
2. The proposed site is an appropriate location for such use. Members of the board reiterated that there are other duplexes in the vicinity of this parcel.
3. The use as developed will not adversely affect the neighborhood. Board members agreed that the impact would be the same for a single family home or duplex constructed on this site.
4. There will be no nuisance or serious hazard to vehicles or pedestrians.
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
6. The proposed use will conform to any special requirements of the special permit granting authority as stated in its written decision, though it was noted that there are none to be imposed.
7. The proposal could not reasonably be altered to reduce adverse impacts on the natural environment, to be compatible with historic development

patterns of the town, or to preserve historically significant buildings. Board members indicated that this item is not relevant to this project.

Mark Rutan made a motion to grant a special permit to allow for the construction of the duplexes, of a size generally as shown on the plans and specified in the application, on lot 2, 168 South Street. Richard Kane seconded, vote unanimous.

Application Packet – Ms. Joubert explained that she had asked Debbie Grampietro to send out copies of the revised application packets to the board members for their review and comment. She noted that it was updated to reference new section numbers in the revised bylaw, and to add a signature line for Bill Farnsworth. She explained that the new application packet includes a recommendation that applicants meet with the Building Inspector prior to submitting their application so that he can sign off that the application is complete. Mr. Farnsworth suggested that the statement in the application packet be revised to indicate that he has “reviewed” the application and not qualify that it is “complete”.

Ms. Joubert noted that there were some other changes to the packet, including reasons for applying for a special permit and/or variance, the specific criteria that must be met, and a cover page featuring a checklist. She suggested that the board members review the revised packet and email any questions or comments to her or Bill Farnsworth prior to the next meeting.

Next meeting – Ms. Joubert explained that the agenda for the next meeting will include the following:

- An application for the construction of duplexes on 7 lots off of Shady Lane. Ms. Joubert noted that the Planning Board is currently reviewing a definitive subdivision plan for this parcel, and the developer is now applying to the ZBA to build duplexes on those 7 lots.
- Laurence Place – Ms. Joubert explained that the present owner is seeking to have the age restriction lifted for this project.

Adjourned at 9:10PM.

Respectfully submitted,
Elaine Rowe, Board Secretary