



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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ZBA Approved 5-26-09

Zoning Board of Appeals & Planning Board Joint Meeting Minutes March 3, 2009

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

ZBA Members Present: Dick Rand, Dick Kane, Sandra Landau, Dan Ginsberg

Others Present: Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer; Jack Pierce, Fran Bakstran, Brian Smith, Carolyn Harrington, David Murphy, Norm Corbin, Jeffrey Leland, Ralph Stevens, Jeri Stevens, Donald Maier

Chairman Rick Leif called the Planning Board meeting to order at 7:00 pm.

Continued Public hearing to consider Special Permit Common Driveway Application for James Vogel at 496 West Main Street

Applicant: James Vogel
Engineer: Quinn Engineering
Date Filed: December 29, 2008
Decision Due: 90 days from close of hearing

Kathy Joubert stated the applicant has submitted a letter requesting the public hearing be continued to the next Planning Board meeting. She noted a letter requesting a waiver from common driveway regulations has also been submitted by the applicant.

Michelle Gillespie motioned to continue the hearing for a Special Permit Common Driveway application for 496 West Main Street to April 7, 2009 at 7:00 pm. Daniel Lewis seconded the motion and the vote was unanimously in favor of continuing the hearing.

Chairman Dick Rand called the ZBA meeting to order at 7:05 pm.

Joint meeting with the Zoning Board of Appeals to finalize zoning bylaw text and zoning districts

The Town Administrator has asked for all final language for all documents be submitted to him by March 23rd. All comments and edits from tonight's meeting will be sent to Judi Barrett tomorrow and then that zoning draft will go to Town Counsel on March 9th or 10th. It will take a week for Town Counsel to review it, then it will be passed on to the Town Administrator and will be made available to the public on March 23rd.

Ms. Joubert stated their cable TV show will be filmed on April 8th. The taping is not limited to a certain number of people. As many people as possible participating would be great. It will be set up as a round table discussion. Ms. Joubert stated she has invited Selectman Fran Bakstran and IDC Chairman Mark Donahue to participate and Kathy Dalglish will put together

a script for the taping. She asked members to notify her by email if they would like to participate and what they would like to discuss.

The final zoning bylaw document for the town meeting warrant is due on March 23rd and will be the document presented at town meeting. The public hearing will be held in April and any changes to the document from that hearing will be presented as amendments on town meeting floor.

Ms. Joubert stated she will be presenting a summary of the zoning changes to senior citizens on March 9th at 1:00 pm at the Senior Center. She has also spoken to four-five groups to date and has asked the Historical Society if she can speak at one of their upcoming meetings.

Review of February 09 Draft of the Proposed Zoning Bylaw

Mr. Lewis:

Page 51, Maximum Front Setback: footnote that it doesn't apply to existing buildings - Kathy will make this change.

Page 90, b2 - Food Service Establishment: eliminate drive-thru so requirements are the same as any other restaurant

Mr. Rosenberg:

Page 39 - Uses, Home Occupation: check if reference to Section 7-20-050 is correct. What would reference be? Mr. Farnsworth stated it's a reference to definitions, but it's not in definitions anymore. Ms. Joubert will check on this.

Mr. Leif:

Page 112 - Open Space Residential Design, Section 7-10-010, Part B: According to Town Counsel, it should read "Planning Board *may* grant a special permit." Using "must" instead of "may" has not stood the test in other towns. Also, 6 or more units has been changed to 2 units.

Ms. Landau stated "may" also implies "may not", so it leaves the Planning Board with all the options.

All members were fine with leaving it as is.

Site Plan Review Section

Ms. Joubert stated the December version included the Planning Board as the special permit granting authority (SPGA) for Site Plan Review for non-residential construction not requiring a special permit and ZBA as SPGA for those that would require a special permit. If the renovation or change is more than 1000 square feet it would go to the Zoning Board and with renovations under 1000 square feet it would go to the Planning Board. This goes back to what was in the December draft. In the January draft the ZBA was doing all Special Permit Site Plan Reviews.

Ms. Joubert stated she takes everyone's comments, marks up one copy of the bylaw, scans it and sends it to Ms. Barrett electronically. Ms. Joubert has two people proofing in her office and Ms. Joubert and Mr. Farnsworth also proof.

Mr. Ginsberg stated he has some typographical errors to share by email with Ms. Joubert.

Community Input - Feedback on multi family housing in downtown area

Mr. Leif stated he has been a proponent of multi-families in order to try to get different kinds of home factors in town. Based on community input they have a proposal that he hopes will resolve their issues. He referred to use regulations starting on page 37.

Page 41, Residential uses in Commercial and Industrial Districts: he recommends changing it from Single-family dwelling attached, up to a maximum of 8 units allowable only by special permit to Not Allowed. Change from BA to NO and delete Footnote 8.

Multi-families in downtown business, BB East and BB West: Mr. Leif recommends not allowing them in Downtown Business and BB East and only allowing multi-families in BB West.

Page 38, Multi-families in Residential districts

Mr. Leif stated right now zoning doesn't allow multi-families anywhere except in Main Street Residential by special permit and Downtown Neighborhood. He suggests not allowing multi-families in Main Street residential and only allowing in Downtown Neighborhood.

Mr. Leif stated this gives some ability to get some multi-families on a reasonably small scale and allow the choice in some areas of town, but moved from the area where there are concerns. Ms. Joubert stated footnote 4 would have to change, also.

Mr. Farnsworth suggested Downtown Neighborhood on the chart should be a Y/BA with a reference to the footnote. It makes it more visible. He stated they may want to do the same with the other footnote 8.

Mr. Leif and Mr. Farnsworth stated the ZBA will be the special permit granting authority.

Mr. Ginsberg confirmed neighborhood feedback that has prompted these changes as to do with the fear that a single-family house will turn into a multi-family. He also asked if this fits with the long-range Community Development Plan.

Mr. Leif agreed and added it is also to protect the historic district. There have been a number of negative comments about multi-families. He stated it's a little different than the Community Development Plan. It was a philosophical view.

Ms. Joubert reminded those present that a multi-family in this district can only be done through conversion.

In response to a question from Ms. Gillespie, Ms. Joubert stated notices for the community meetings went to everyone in the downtown business, downtown neighborhood, downtown residential and Industrial B districts and then those residents who are 1 - 2 parcels past the district.

Ms. Gillespie stated she was concerned that they would be making decisions on the content of the proposed bylaw prior to hearing from people at the March 18th and 26th community meetings. She stated she and Mr. Lewis have heard from people that they want multi-families in the downtown area. Multi-families could be condos and don't have to be affordable.

Mr. Lewis stated he thinks it is appropriate to have multi-family units downtown. It creates a downtown that's more livable and the apartments there now fit very well. He would hesitate to take them out completely.

Mr. Leif stated mixed use is still allowed, but they won't be allowing people to build non-owner occupied multi-family buildings.

Mr. Lewis stated mixed use makes a lot of sense and is a way to have units that are naturally affordable.

Ms. Gillespie stated she's fine with mixed use, but concerned because it won't be presented to those in Business East until March 26th.

Mr. Leif stated if they leave it as it is for now and wait until the March 26th meeting, they would have to propose an amendment at town meeting to make changes. If they make changes tonight and then get feedback from the BB East meeting they could propose an amendment to make a further change. The current draft reflects input they've already received.

Ms. Gillespie stated everyone should be told and heard from before they take it out. It's only fair to wait for their feedback.

Mr. Leif stated they could change downtown and Main Street residential and not change BB East. He would like BB East people to understand no multi-family would be allowed in BB East.

Ms. Gillespie stated this was triggered by property owners who wanted to do something, like people who want to have antique shops. She stated they're not giving someone the opportunity who might want to do two units or two condos. She's not happy that they're making a decision on something they thought would be good and if people want it, they should put it back in.

Mr. Leif stated the proposal is to change zoning as he'd originally stated, leaving multi-families only in BB West. The other change is a possible extension of the downtown business area to where the BA district is now.

Mr. Rosenberg stated if they make a change to the downtown business district it will change the scope of it. He suggested doing one or the other first, and added there are two issues at play.

Mr. Leif stated Ms. Gillespie and Mr. Lewis have spoken with Roger Leland in regard to changes in the downtown that may affect the use of his property.

Ms. Joubert explained Mr. Leland was concerned that the overall square-footage of the business he might want to do could exceed 15,000 square feet. If it's limited to a single 15,000 square-foot building it would mean a big box couldn't come in. As written, it doesn't take the rights away with which Mr. Leland was concerned.

Mr. Rosenberg stated there is the potential lots could be combined which could result in multiple establishments.

Mr. Lewis stated it will create a nicer downtown.

Ms. Joubert stated the majority of the uses in the district today are new business and redevelopment - St. Mary's Credit Union, a nail salon, the nursing home, Tony Abu's property, 73-85 West Main Street and the development of Pierce's gas station. They are proposing to go back to leaving Business A as Downtown Business so the only downtown neighborhood we would have is north of downtown - Hudson Street and the railroad. West of the center would become colored pink instead of purple on the map.

Mr. Kane and Mr. Rand agreed it makes sense.

Ms. Joubert noted the Downtown Business district requires buildings closer to the street but only for new construction.

Mr. Lewis suggested they consider it eliminating it in Business East, stating large setbacks make more sense in that area. Business East is a transitional area and it may make for a better transition.

Ms. Joubert stated the minimum lot sizes in Business A and Business East are different - 4,000 square feet and 20,000 square feet respectively - and someone would have to meet that requirement.

Ms. Gillespie stated that would be a problem for the proposed Hillside Plaza on West Main Street.

Mr. Farnsworth noted there's a difference between frontage and lot size.

Mr. Rosenberg stated the area is currently zoned Business A and the proposed Downtown Business has the same dimensions with the exception of the new maximum front setback requirement, but that is new everywhere. The requirement would be challenging to some land there. It's not as dense as Church Street and South Street and hasn't been for 30 years. The Business East dimensions do sort of apply.

Mr. Leif stated they should think about it and come back to it. His sense would be to go with Downtown Business.

Mr. Lewis, Mr. Kane and Mr. Rosenberg agreed with Mr. Leif to change the size of the Downtown Business back to Business A. The map would change by changing the pink area west of the purple area to purple. Also, multi-family items in the table would change for Main Street Residential, Downtown Business and Business East. They would keep Main Street Residential business in tact.

Mr. Rosenberg suggested they could divide the extension of the district and the multi-family issues into 3 - 4 decisions.

Geri Stevens, 64 Main Street, stated she appreciated the response to her comments, but wants to clarify them. She stated she is not opposed to apartment uses in the General Residential district, but rather she is opposed to the density. They are proposing to take away what already exists and works well. She doesn't think allowing 4 or more units was advisable, however she would not like to have it taken out entirely. She would just like the number of units changed. It is a good way to provide housing that is a little less expensive and a good use in the larger homes. She suggested allowing 2 - 3 units.

Mr. Leif asked Ms. Stevens if she was referring to both the Main Street Residential and Downtown Business districts.

Dave Murphy, 43 Main Street, stated that on both of those areas the concern was clarification of units allowed by right as opposed to by special permit. He stated he doesn't know how they are now and what the change would be and his concern was density. It might help if they could clarify the current zoning versus the amendment.

Mr. Leif stated the current zoning in affect allows no multi-families, so any existing today were done before zoning came into existence and are non-conforming, either done by special permit or variance. Anything being discussed tonight could be granted through a variance by the Zoning Board of Appeals, and a variance is difficult to acquire. The proposed zoning will allow 8 units by right and up to 24 by special permit only by conversion of the existing building in the downtown area and in the Main Street Residential (MSR) district, up to 4 units by special permit only by conversion of the existing building.

Ms. Joubert noted that currently in the General Residential District single or two-families are allowed by right. In the downtown area zoning currently allows residential on the second and third floor without any limit to the units. It just has to be a mixed use combined with the residential use.

Mr. Farnsworth stated he was never been faced with that situation and it would've gone before the ZBA if there had been.

Mr. Leif stated it was changed to make it more appropriate and parking more appropriate. MSR change it so make it more appropriate and parking more appropriate.

MSR proposes up to 4 units by conversion of an existing building only. There had been a discussion that it should be limited to owner-occupied only. He stated that the more he thought about it, it just makes sense to take multi-families out of that zone.

Ms. Joubert clarified that the proposed zoning for the MSR district allows the same as what is allowed today.

Brian Smith, 97 Main Street, stated an in-home business would be allowed in the proposed zoning. He questioned what kind of in-home business that would be.

Ms. Joubert responded it would include businesses such as a bed and breakfast by special permit and a home business workshop by right.

Mr. Farnsworth explained home occupation today must be inside the home. The proposed allows the business to be in the home or in a detached structure on the property.

Mr. Smith stated the proposed bylaw is a very complex document and involves a lot of philosophy as to how the town will look and who will live here and there are a lot of elements to think about. He stated that unless he grossly misunderstands the process, passage of the bylaw is by a 2/3 of the people in town who get to vote on the zoning. So it should be what people want to see for the whole town - people who own property are not going to have a chance. There is a lot here besides zoning that will go into it. There was a nice survey presented by landscape students which included a lot of good things and none of that's been done. That may be the cart before the horse before these things are addressed. The 2004 Community Development plan is a philosophy. People need to see plans to see how dangerous

it will be to walk and what the setback will mean. It's dangerous there now. There's a lot here besides zoning that need to be considered. It's leapt from philosophy into zoning and it there's a weak link in the chain it's going to derail the whole thing.

Mr. Leif stated Mr. Smith is right in that the zoning is only one of a number of elements. There is no doubt the bylaw today has a lot of deficiencies in it. The proposed will not be approved by the entire town, but moves in the right direction. To do nothing, to say that there's going to be points of disagreement so we should just leave everything the way it is and do nothing until it's all figured out could take years. He stated they should do this as best as they can and make changes over time. They had a view when they started the project and still generally feel it's a good thing. He agrees there is a lot of detail behind it, and they're trying to make adjustments through the comments from the community meetings. He feels strongly they need to go forward, present it and make adjustments. It's better than the current bylaw and can be modified going forward.

Mr. Smith suggested they shouldn't be discouraged if it goes down in defeat.

Mr. Leif stated it will be easier to defeat with a 2/3 majority vote, but in general this will help the town. He'd like to work with it over time to continue to fine-tune it.

Ms. Gillespie stated most comments have been from the downtown area and Stop & Shop was basically what triggered the updating of the bylaw. People wanted the Planning Board to be more active because they didn't understand how Stop & Shop could locate there. Right now, a WalMart could be located downtown. Roger Leland gets call all the time to bring in big business so what addresses people's concerns is what Mr. Smith will be voting against.

Mr. Smith stated it's too much to bring forward. It has nothing to do with deficiency in the zoning for big box stores.

Ms. Gillespie stated they are hearing constantly that the kids of people who grew up in town can't afford to live in this community. There's a need for more housing options.

Mr. Smith asked why this has to be done along Main Street and suggested another place could be found for it.

Fran Bakstran, Selectman, 76 Cedar Hill Road, stated the zoning subcommittee spent a lot of time on this to determine what people want our town to be like and alternative housing came up as to what they wanted to offer in the town. In response to Mr. Smith's statements Ms. Bakstran stated that what he is saying is there should be some place for it as long as it's not where he lives. Downtown is a natural place for it and the use lends itself to the downtown. She stated the whole town gets to vote, not just those who it affects as opposed to those it doesn't. She stated if he agrees with the philosophy, then he should let staff and the boards handle zoning. They are the paid officials for the town. She stated she had heard there was going to be less multi-family use than originally proposed, but she had not heard there would be none. She questioned why it wouldn't be kept where it's working but with a reduction in units. Taking it out of the Business East district means there's a presumption on input from people who don't live or own property down there. There are large tracts of land there. It shouldn't be taken out because there might be a problem in the future. Take it out if there is a problem. The proposed zoning has to be promoted and the bad information that's been publicized on the internet or through chatter that the proposed zoning will encourage tear downs of historic homes needs to be discredited. Good information needs to be put out there. It might not work for some people's back yards, but it might work for the whole town.

Mr. Kane stated a great deal of effort has been made by these combined boards and although it's not a perfect document, they are doing their best to address input from the populace of the town.

Ralph Stephens, 64 Main Street, stated they want to keep in mind that there is no town common and although it is not a focus of this document, landscaping with grass and flowers should be encouraged.

Vote: Mr. Kane motioned to extend the Downtown Business district to include the western part of the Downtown Neighborhood district. Ms. Gillespie seconded the motion and the vote was unanimously in favor.

Downtown Business District - Multi-family use

Mr. Leif stated the proposal is to change allowed multi-family use in the Downtown Business district to not allowed.

Ms. Landau asked why this was proposed and what harm there is in leaving it to the discretion of the ZBA.

Mr. Leif stated the proposal now is to allow the use by right.

Ms. Landau stated she wouldn't mind if it was by special permit. The ZBA is supposed to be exercising its judgment. She questioned why the option would not be left.

Mr. Leif stated he thinks that the mix of residential and business in buildings makes sense in that area of town but apartment buildings was not his view for the center of town.

Ms. Landau stated every apartment building is not like a hotel. A Victorian home could be made into apartments.

Ms. Gillespie stated that, again, people are assuming that it's going to be a big-box apartment building. Instead, as on Hudson Street, an addition is added on to the back. It allows the homeowner to do more.

Mr. Rosenberg stated he agrees with Mr. Leif on this. The townhouses and mixed use fit basically what's there and what we want to evolve towards. He is less comfortable with apartments.

Mr. Rand stated he agrees with Ms. Landau about having more affordable houses in the downtown area.

Mr. Rosenberg stated mixed use supports that.

Mr. Rand stated there are a number of other streets in town that won't have the attraction the main street will have. It's more appropriate.

Mr. Lewis suggested reducing the number of units to 8 or 12 - a more manageable size.

Mr. Farnsworth stated that the developer of the apartment building on the corner of Blake Street and Pierce Street contemplated 9 units instead of the resulting 12 units, but with 9

units it wasn't worth building. The 12 units made it more affordable to building. An 8-unit apartment building would not have been worth it.

Ms. Joubert said there is a lot of concern about teardowns, but that could happen now under the current zoning. The proposed bylaw is about choices. In the downtown business district if the original building at the corner of Blake Street and Pierce Street was still in existence it would have to be renovated to an apartment building by conversion, and it would've cost more money to convert. She stated she doesn't believe they should be making the decision as to whether a building should stand or not. There are protections.

Mr. Leif stated he was trying to err on the side of caution in a case in which someone was proposing to demolish a building and rebuild.

Ms. Bakstran stated that because of the expansion west, two uninhabited houses built in the 1950's, next to Coleman House and Westbrook Road, would have to be done by conversion and nobody will renovate them.

Vote: Proposal to change multifamily in Downtown Business to allow no units by right and up to 12 units by special permit - 6 members in favor and 2 opposed.

Mr. Rosenberg stated the area of West Main Street where Dunkin Donuts is located will be changed to allow twelve units, where as currently in the proposed zoning it is 4 - 8 units.

Ms. Gillespie stated they've heard from the property owners who have saved their property in order to develop it when they retire. She stated she is in favor of reduction of units and preservation of the buildings.

Mr. Leif stated the proposal now is to change Business East from Y to N in the table.

Mr. Rosenberg stated Business East starts at the Assabet River so they shouldn't just think about Bartlett Street. There are probably a half-dozen or more houses down towards the Bartlett Street end that might have been built in the 1950s on an acre or two of land, which will change. Those houses are going to get replaced with something. Then think about properties from White Cliffs to the Assabet River. The Business East is not homogenous as a district. The slope up from the Assabet River has a lot more Main Street Residential use than it has in comparison to the Bartlett Street portion of Main Street

Mr. Ginsberg stated allowing up to 12 units will make it consistent.

Mr. Rosenberg stated they should be careful about applying that idea from properties up to Maple Street historic homes. He questioned if there's a flaw in where they're drawing the line for downtown residential.

Regarding the proposed adjustment of zones to property lines and the White Cliffs parcel, Mr. Murphy asked how the value and control of the property changes if the zone changes.

Mr. Farnsworth stated they can go 50 feet into the zone and that can be extended by the ZBA. The current bylaw says by right its 50 feet on either side of the zone line and that can be extended beyond 50 feet up to 2 acres with a special permit - over 2 acres would require a variance. White Cliffs has a non-conforming use and therefore is grandfathered.

Mr. Kane stated if the zone is more restricted, it's grandfathered.

Mr. Lewis stated it would be grandfathered unless the use was changed.

Mr. Murphy stated the White Cliffs lot would be moved entirely into the business zone as opposed to what they are now.

Mr. Lewis stated it puts them in the zone in which they belong.

Mr. Leif and Ms. Joubert stated it pre-dates zoning, which was adopted in the 1950s. At that time, districts were determined by measuring 200 feet from the center of the street on both sides.

Mr. Rosenberg stated it also predates technology.

Mr. Murphy clarified his question, stating he is asking if it will change the rights of the property owner to have the lots in the new zone.

Ms. Landau left the meeting at 9:15 pm.

Ms. Joubert stated it doesn't change the rights of the owner, but changes the use that can be there. Today White Cliffs could be torn down and a subdivision could be built there. White Cliffs is residentially zoned, so someone could come in off of Stratton Way and put a subdivision back there.

Mr. Benson asked if there is some way there could be an incentive for adaptive use for these historic properties - using them in a way that makes sense economically today.

Ms. Joubert stated there are federal tax incentives, she doesn't know about state incentive and there are no town tax incentives.

Mr. Benson stated it would sense to have incentives that would encourage use.

Ms. Joubert stated she doesn't know enough about it, but could ask the Historical Commission.

Ms. Bakstran stated there may be some kind of abatement, but the historic district has to be established. She will look into it.

Regarding the Doyle building on Monroe Street, Ms. Gillespie asked how they would entice someone to keep the building as is, but create 4 units inside.

Ms. Bakstran stated incentives are a home rule thing, they can't just create them in Northborough, and it starts with the establishment of an historic district.

Vote: Proposal to change Business West and Business East from Yes to ZBA Special Permit up to 12 units only - 4 in favor and 3 opposed.

Vote: Proposal to change Main Street Residential from ZBA Special Permit up to 4 units only to not allowed - 6 in favor, 0 opposed.

Mr. Benson stated he doesn't think it should be totally denied.

Ms. Bakstran questioned what the house next to the Library can be used for if not for residential.

Mr. Leif responded it could be used for professional office space, a bed and breakfast or for someone to live there as well.

Ms. Joubert stated multi-families are already in there. Granting variances across the board is not the way to do things.

Ms. Joubert stated they need to address the adult day care issue, performance standards and review of the zoning maps at the next joint meeting on March 17th.

The meeting adjourned at 10:00 pm.

Respectfully submitted,

Debbie Grampietro
Planning Board/Zoning Board of Appeals