



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 6/23/09

Zoning Board of Appeals Meeting Minutes May 26, 2009

Members in attendance: Richard Rand, Chairman; Mark Rutan, Clerk (arrived at 7:10PM); Richard Kane; Gerry Benson, Alternate; Dan Ginsberg, Alternate; Sandra Landau, Alternate

Others in attendance: Bill Farnsworth, Building Inspector; Fred Litchfield, Town Engineer; Elaine Rowe, Board Secretary; Kara Buzanoski, DPW Director (arrived at 7:10PM); Kathy Joubert, Town Planner (arrived at 7:20PM); Kevin Kieler; Ziad Ramadan

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

Chairman Rand appointed Gerry Benson as the third voting member for the first hearing.

Public Hearing to consider the petition of Solomon Pond Realty Trust for a Variance/Special Permit to allow a sign on an awning for the Tazza D'oro Espresso Bar and Pastry Shop on the property located at 35 Solomon Pond Road, 7:00PM

Kevin Kieler explained that when he had obtained approvals for the coffee shop and the awning, he never imagined that he would not be allowed to have the name of the business on the awning. He noted that the awning was already installed, inclusive of the business name, and that Mr. Farnsworth has informed him that a variance is required. Mr. Kieler voiced his opinion that, since there is a second business on the property, the awning sign acts as a directional sign and is necessary to keep patrons heading into the appropriate establishment. He explained that he is before the board this evening seeking approval to leave the business name on the awning.

Mr. Ginsberg asked about the landscaping and islands that were supposed to have been part of the project. Mr. Kieler indicated that these items are still in process.

Chairman Rand voiced his understanding that there are some outstanding water bills for the property, and noted that the board cannot grant a variance until the water bills have been paid. Mr. Kieler confirmed that the issue of the water bills will be resolved. He explained that a partial payment was made earlier in the day and it was agreed that the balance will be paid before the end of June.

Kara Buzanoski arrived.

Mr. Farnsworth noted that Mr. Kieler needs to present details about the hardship necessitating the variance. Mr. Kieler explained that the restaurant sits far off the street, and is a commercial building located in a residential zone. He reiterated that, based on the way the building is located on the parcel, it is difficult to find the business without the additional signage.

Mark Rutan arrived.

Kara Buzanoski confirmed that an agreement was made for the balance of the past due bills to be paid by the end of June, and noted that a letter was submitted that adequately reflects the terms of the agreement. She stated that she was comfortable leaving it up to the board members to decide whether they wish to make a decision now or wait until the June payment has been made. Members of the board voiced their assumption that either would be acceptable. Mr. Farnsworth noted that the sign is already installed, and that it can certainly stay up until the June payment is made.

Mr. Kane voiced his opinion that this is a reasonable request, causes no harm to the community, and encourages business. Ms. Landau noted the absence of any abutters at tonight's hearing. Mr. Benson commented that the awning was tastefully done, and it seems reasonable to allow it.

Mr. Farnsworth commented that the new bylaw [sec 7-09-040D(3)] stipulates that there can be no sign on an awning. To cover all bases, he suggested that the decision needs to allow for signage for the second business, and provide specific dimensions and total square footage of the approved signage. Mr. Kieler stated that the sign along the side of the awning is 6" high by 42" long, while the front is 18" high by 42" long. Mr. Farnsworth noted that, based on the dimensions provided, the signage totals 5.25 square feet.

Gerry Benson made a motion to close the hearing. Richard Kane seconded, vote unanimous.

Gerry Benson made a motion to approve a variance to allow signage on the awning, up to a maximum of 7 square feet, as discussed due to the shape of the lot and the location of the building on the lot. Richard Kane seconded, vote unanimous.

Public Hearing to consider the petition of Dimitrios Voyiatzis for a 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, 7:21PM

Ms. Joubert explained that she had received a letter from the applicant via email requesting a continuance of this hearing. Chairman Rand read the letter into the record (copy attached).

Richard Kane made a motion to continue the hearing to June 23, 2009 at 7:00PM per the applicant's request. Mark Rutan seconded, vote unanimous.

Mr. Ginsberg asked if the new zoning bylaw is officially in effect. Ms. Joubert indicated that the new bylaw became effective immediately upon passage at Town Meeting, pending approval by the Attorney General. She explained that the application for the project at 73-85 West Main Street was submitted prior to the passage of the new bylaw, but since a hearing and a ruling had not yet taken place, it must now comply with the new bylaw.

Discussion with Ziad Ramadan regarding proposed changes to the Dunia Gardens project (Hudson Street), 7:26PM

Ms. Joubert informed members of the board that she had provided them with copies of the plans, a letter from Mr. Ramadan detailing his requests, and the bond letter from Fred Litchfield that was previously mailed to them.

Mr. Ramadan discussed proposed changes to his project as follows:

1. **Slopes** - Mr. Ramadan explained that he had purchased a sloping easement from his neighbors, and is seeking permission to install a 3-foot stone wall with a 2-to-1 slope to be planted with wildflowers. He explained that he was concerned about the safety of small children with a high wall. He also stated that he intends to put mesh on top of the seeding to give the seed mix time to germinate. Mr. Ginsberg asked about fencing. Mr. Ramadan indicated that there is already a fence in place. Mr. Kane asked if the board needs any input from the Earth Removal Board prior to proceeding. Ms. Joubert and Mr. Farnsworth both confirmed that they do not.

Ms. Joubert noted that the original plan included a series of terraced walls in the back, which Mr. Ramadan is now seeking to change. Mr. Farnsworth reminded the board that they must first rule whether the proposed change represents a substantial change, and then proceed accordingly. Chairman Rand agreed.

Mr. Litchfield stated that he was in favor of eliminating the series of walls through the use of the sloping easement, and voiced his opinion that this is an improvement over the original plan. Mr. Ginsberg asked if the easement is recorded with the Registry of Deeds. Mr. Ramadan confirmed that it is.

2. **Recreation Court** - Mr. Ramadan explained that the initial plan included a handball court and a half basketball court. He noted that the cost and value of the handball court is not economical, so he is proposing to increase the size of the court to allow for tennis and eliminate the handball usage. Mr. Ginsberg asked if there will be a fence around the court. Mr. Ramadan confirmed that there will be.

Chairman Rand asked if the court will be illuminated. Members of the board agreed that it should not be. Mr. Ginsberg suggested that Mr. Ramadan confirm that the base material to be used will support the tennis use.

Mr. Ramadan suggested that the fence around the court should be 8 feet high, and questioned whether a fence over 6 feet high will require a variance. Mr. Farnsworth confirmed that it will. Mr. Farnsworth noted that the side setback is 15 feet, and the rear setback is 25 feet. He explained that Mr. Ramadan already has a variance for the buildings to encroach in those setbacks. Mr. Ramadan stated that he can either seek a variance or slide the court over so that it is in compliance.

Mr. Litchfield explained that one of the things that had made it difficult to prepare the bond letter is the lack of detail that has been provided. He stated that he had to research many facets of the project on his own because there was no detail by the applicant. He voiced support of the changes to the recreational court, but stated that he is still not pleased with the way that the process is evolving.

- 3. Retaining Wall** - Mr. Ramadan noted that the initial plan called for an 8-foot wall, which required a variance because it was very close to the neighbor's property. He explained that he had reached an agreement with the neighbor to repair an existing water problem, fix their driveway, and landscape a portion of their property such that only a small section of 4-foot wall is now needed. Ms. Landau voiced her opinion that this is better than the original plan. Mr. Rutan agreed. Ms. Joubert noted that the walls along the front of the project are quite nice, but the wall along the neighbor's property looks more like a pile of rubble. Mr. Ramadan stated that the wall will be improved and, while it will not look identical to those at the front, it will be better than what is there.

Mr. Litchfield stated that he has no documentation or confirmation that the neighbor is in agreement. Mr. Ramadan agreed to provide documentation. Mr. Litchfield also indicated that he is displeased with the way the wall in the front transitions to the wall along the neighbor's property.

Mr. Ginsberg voiced concern about Mr. Litchfield's displeasure with the process. Mr. Farnsworth also noted a lack of detail. Mr. Rand asked Mr. Ramadan how soon he could provide Mr. Litchfield with the requested documentation. Mr. Ramadan agreed to provide it immediately. Ms. Landau suggested that Mr. Ramadan speak with Mr. Litchfield and Ms. Joubert before moving forward with any further changes. Mr. Litchfield reiterated that Mr. Ramadan must come to the ZBA when he wishes to make any changes to the plans for a comprehensive permit. He explained that town staff is quite restricted to what they can approve without board approval.

- 4. Sloping to Hudson Street** - Mr. Ramadan explained that the original plans showed no wall along front of the project, but he has since determined that the sloping to Hudson Street is too steep and presents a safety concern for families with small children. He stated that, due to safety, aesthetics, and maintenance concerns, he felt it was better to install a wall with a fence along the top to keep children and their toys contained. Mr. Ginsberg asked how the houses will look with a wall with green fencing along the top. Mr. Ramadan voiced his opinion that it will look nice, especially when the trees grow in. Ms. Joubert reiterated that the stone wall that Mr. Ramadan is seeking permission for this evening has already been installed.

Mr. Benson voiced concern about the location of the leach field, and questioned if it will now leach properly. Mr. Ramadan confirmed that it will. Mr. Benson commented that the wall creates an impoundment for water if the area does not leach. Mr. Ramadan explained that the runoff was designed to flow to the river, and that there will be no problem with water backing up inside the confines of the wall.

Mr. Litchfield commented that the work on the front walls is excellent. He stated that the original plan showed no wall to the south side of the driveway, so he had originally requested a berm to keep the water from sheeting. Mr. Litchfield explained that the way that Mr. Ramadan built the wall involved placing some fill within the right of way, but since some fill and grading within the right of way was called for in the original decision they have agreed to work with it. Mr. Farnsworth stated that he has asked Mr. Ramadan to provide a certified as-built plan for the walls, including elevations, so that the town can ensure that the wall doesn't start popping out over the years.

Mr. Ramadan stated that the wall is 4 feet within his property, and he does not want to have an as-built done until all work is completed. Mr. Farnsworth stated that he had asked for a pin last fall so that he could be sure that there was no movement in the wall over the winter. Chairman Rand asked Mr. Ramadan if the as-built can be completed before winter. Mr. Ramadan confirmed that it will be. Ms. Joubert asked if fencing will be installed on both low and high walls. Mr. Ramadan confirmed that it will be.

5. **Hudson Street** - Mr. Ramadan explained that the initial plan called for widening Hudson Street by about 6 feet. He noted that, at the time of the approval, he had asked who would pay for the relocation of the utility pole. He stated that Ms. Buzanoski indicated that the electric company should be responsible because their pole is within the town's right of way. However, after having the electric company do the work, he received a bill from them.

Mr. Ramadan voiced concern because he will now need to move 6 poles, at a cost of \$100,000. He stated that both he and his engineers agree that there is sufficient line of site (850 and 1200 feet) so that widening the road should not be necessary. Mr. Litchfield disagreed. Mr. Ramadan requested permission to widen Hudson Street by only 2 feet, which can be done without relocating the poles. Mr. Benson asked if the poles are currently in the right of way and if they will continue to be after being moved back by 6 feet. Mr. Ramadan confirmed that they are and they will. Mr. Benson suggested that the town could request that the utility move their poles. Ms. Buzanoski stated that the town will be charged for the costs to move the poles, but suggested meeting with the phone company to try to work out a mutually agreeable arrangement.

Mr. Rutan asked if moving the poles creates an additional hardship for the utility. Ms. Buzanoski voiced her understanding that the largest expense is splicing into the fiber optic lines.

Mr. Benson asked if this might be an opportunity to bury the utilities along that section of the road. Mr. Litchfield stated that there would be no cost savings and the location is too close to the sub station, so the utility would likely not be receptive to the idea. Mr. Litchfield also commented that the decision stipulates that the applicant would widen the road and that Mr. Ramadan had agreed to it. He also noted that the volume and speed of traffic is a concern, and he feels strongly that Mr. Ramadan should adhere to the decision and widen the road. He noted that widening the road allows for a deceleration lane for entering into this project. Mr. Litchfield reiterated his opinion that widening the road is important enough that it should remain in the decision.

Ms. Landau voiced her opinion that it is premature for the board to make a decision until negotiations with the utilities are finalized. Members of the board shared a sense that they would still like the road to be widened. Mr. Ramadan stated a willingness to pay for some of the work, but feels that \$100,000 is exorbitant.

Mr. Kane reiterated that the original plans called for Hudson Street to be widened and the board still feels that needs to be done. Mr. Benson voiced his opinion that this request would represent a substantial change. Members of the board suggested that Mr. Ramadan work with town staff to negotiate a better price with the utility. Mr. Ramadan reiterated that he would not have agreed to this condition in the decision if he understood that it would cost him \$100,000. Mr. Ginsberg suggested that Mr. Ramadan should have done his own due diligence on the matter. Mr. Ramadan also voiced frustration that he is unable to get any power to his site until the issue with the pole is resolved.

Ms. Joubert noted that the lottery for the affordable units in this project has not yet been done, and reminded Mr. Ramadan that the decision stipulates that no units may be sold until the lottery is held. Mr. Ramadan explained that he has submitted paperwork to Mass. Housing for pricing. Ms. Joubert also noted that the decision stipulates that the fourth building permit must be for an affordable unit and the same holds true for the Certificates of Occupancy. She explained that the lottery is a 6 to 9 month process, and reiterated that it should be well underway given the fact that the units are under construction.

Ms. Buzanoski suggested that no decision be rendered on the pole request until the applicant and town have an opportunity to do some further negotiating with the utilities and bring back more concrete details to the board. Members of the board agreed.

Mr. Litchfield explained that a bond needs to be in place in order for any of the buildings to be occupied. Mr. Ramadan noted that Mr. Litchfield had provided some estimates for the bond and the only figure he has an issue with is the \$39,000 for the Hudson Street work. Mr. Litchfield explained that one of the items does involve completion of the work in Hudson Street. He stated that he is comfortable with whatever Ms. Buzanoski feels she needs with regards to this work, and he calculated the bond based on the worst case scenario. He also noted that if the DPW has a specific figure that they feel is adequate, he is amenable to it. Ms. Buzanoski stated that she had agreed to let the

contractor mill and overlay the surface, and she is still agreeable to that as long as it is done so that the town can do its paving. Mr. Litchfield indicated that his figure of \$39,000 was based on widening the road.

Mr. Ramadan reiterated his frustration that he is unable to sell any units until he gets electricity, and he is unable to get electricity until the issue of widening the road is resolved. He asked if it would be possible to get a conditional bond amount so that he can work out financing with his bank. He suggested that the money brought in from the home sales could be put up against the bond. He also noted that the ZBA had previously ruled that he did not have to post the bond until a unit sold.

Ms. Joubert voiced her opinion that a conditional bond will not be acceptable to Town Counsel, and that the bond needs to be in place before a unit is sold to provide protection for the town. She noted that the board had granted permission for the applicant to build up to three units for marketing the project, but that there then needs to be a bond in place. She noted that the town needs the surety of a bond under Mass. General Laws, and stated that the only leeway the town has is in the form of surety, which can be either cash, a bond issued through an insurance company, or a tri-party agreement.

Ms. Joubert reiterated that the question is whether to include the \$39,000 for the work in Hudson Street. Ms. Buzanoski suggested using half of that figure based on the agreement that the contractor will take care of the issue with the road. This brings the bond amount to \$230,000 assuming that the board is comfortable with the proposed changes to the play area.

Chairman Rand explained that the purpose of the bond is to ensure that the homeowners are protected. Ms. Joubert stated that she will need to ask Town Counsel the question about the bond, and noted that the town has enough issues with bonds so she does not deviate from Town Counsel's advice. Ms. Joubert asked Mr. Ramadan to submit a letter to Town Counsel detailing what it is that he is requesting. She also noted that the economy and the developer's financial situation should have no bearing on the board's decision.

Mark Rutan made a motion to set the bond amount at \$230,000. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to approve changes as discussed regarding the grading on left side of the parcel, the grading at the rear of the site, and the left front wall with the condition that the rubble along the abutters property be cleaned up and the wall be continued around or the appropriate amount of rip rap be placed in the area in question. In addition, Mr. Ramadan is to provide written approval from the neighbor. Mr. Rutan voiced support of approval since these are actually improvements to the original proposal and pose no detriment to the neighborhood. Richard Kane seconded, vote unanimous.

With regard to replacing the handball court with a 50'x100' multi-purpose court, Mr. Rutan suggested that the applicant may want to save himself the trouble of installing an 8-foot fence. He stated that he would much rather see a basketball court with open sides. Mr. Litchfield suggested that some degree of fencing is necessary to keep the balls from leaving the playing surface. Mr. Rutan suggested abandoning the idea of the tennis court in favor of a 50'x100' recreational area with one regulation basketball hoop.

Mark Rutan made a motion to approve the change from a handball court to a 50'x100' recreational area with one regulation basketball hoop. Richard Kane seconded, vote unanimous.

Members of the board agreed that the issue of widening Hudson Street will be addressed at a future date. Mr. Ginsberg reiterated that the board appears to feel that the condition should stand as is.

Review Minutes of the Joint Meetings with the Planning Board of January 20, 2009; March 3, 2009; and March 17, 2009 - Richard Kane made a motion to approve the Minutes of the Joint Meetings of January 20, 2009; March 3, 2009 and March 17, 2009 as submitted. Mark Rutan seconded, vote unanimous.

Review Minutes of the Meeting of March 24, 2009 – Mark Rutan made a motion to approve the Minutes of the Meeting of March 24, 2009 as submitted. Richard Kane seconded, vote unanimous.

Adjourned at 8:51PM.

Respectfully submitted,

Elaine Rowe
Board Secretary