



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 8/25/09

## Zoning Board of Appeals Meeting Minutes July 28, 2009

**Members Present:** Dick Rand, Sandra Landau, Mark Rutan, Gerry Benson

**Others Present:** Kathy Joubert, Town Planner; Bill Farnsworth, Zoning Enforcement Officer/Inspector of Buildings; Maurice Tougas, Andre Tougas, Melissa Tougas, Blaise Scioli, David Hassett, Edward Davidian, Lisa Hassett, Cindy Fawcett, Ron Aspero

Chairman Rand opened the meeting at 7:00 pm.

Mr. Rand announced this is the board's first meeting as a five-member board since Town Meeting in April. Mr. Benson was appointed a member of the board at the Board of Selectmen's meeting on Monday, July 27<sup>th</sup>. For tonight's meeting, Mr. Rand appointed Sandra Landau as a voting alternate.

**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**

Mr. Rand read a letter from Lakeview Engineering, representing the Applicant, requesting a continuance of the hearing to the August 25, 2009 ZBA meeting. Mr. Benson moved to grant the continuance; Ms. Landau seconded the motion and the vote was unanimously in favor.

**To consider the petition of Phyllis and Maurice Tougas, Managers, Ball Hill Realty Trust, LLC, for a Variance/Special Permit to allow the property line of a proposed lot to be closer than the required distance from the existing structure on the property located at 114 Ball Street**

Mr. Rand read the legal notice for this hearing into the record.

Mr. Tougas presented his project, stating he has created three lots from the 35-acre parcel at 114 Ball Street. Twenty-three (23) acres of the parcel are subject to an agricultural preservation restriction and therefore are unbuildable. A 170,000 square-foot lot has been created from the remaining 12 acres and is shown as Parcel 1 on the proposed plan identified as Plan A. Mr. Tougas stated his son will build a home for himself and his wife on Parcel 1. The 12-acre parcel has 150 feet of frontage on Ball Street. On Plan A, the property line for Parcel 1 is twenty-four (24) feet from the closest point of the existing house on Parcel 2. Mr. Tougas stated he needs a Variance to allow the property line of the proposed Parcel 1 on Plan A to be closer than the required 30-foot distance from the existing structure on Parcel 2 of Plan A. Access to the lot will be from an existing driveway that has been used for over 50 years. An easement for the driveway would be provided and deeded to Parcel 1. The plan proposed would allow other structures that may be built on the lot to be located in an area of the parcel a good distance away from the neighbors. Plan A keeps Parcels 1 and 2 adjacent to the 23-acres of unbuildable land per the agricultural preservation restriction and keeps

them contiguous to the farm, which means they would retain all rights and privileges of the farm and farm owner.

Mr. Tougas explained an optional plan, entitled Plan B, would require taking land, removing an existing building and would result in a lot that would not conform to zoning regulations. In addition, the two lots would be separated from the farm, which would result in the loss of rights and privileges for those parcels. Mr. Tougas stated Plan A was the only feasible plan.

Mr. Rutan stated the construction of a driveway would be very difficult as the land is very steep and there's no reason for it because there's already an existing access.

Mr. Rand asked if the driveway will access Parcel 1. Mr. Tougas stated it would, and it will also be an access to the farm.

Ms. Joubert stated a special permit from the Planning Board will be required for a common driveway.

Mr. Tougas stated he will either have to widen the driveway there now, have two driveways or get a special permit for a common driveway.

Mr. Farnsworth explained with a 170,000 square-foot lot, the frontage requirement is reduced to 50 feet, but the setbacks from property lines are 30 feet all around.

Mr. Rand asked if all this land is going to be deeded agricultural.

Mr. Tougas stated only 23 acres will be subject to the agricultural preservation restriction.

Mr. Farnsworth stated he reviewed the plan and application with Mr. Tougas and has no questions.

Ms. Joubert clarified that three lots were created through the Approval Not Required (ANR) process. Mr. Tougas will build a house on Parcel 1 and there is a house now on Parcel 2, as shown on Plan A. The third parcel is the remaining restricted land. She had no questions of the applicant.

Blaise Scioli, 102 Ball Street, read from Mr. Tougas' application that states he's asking for a variance because it is an unwieldy lot that bisects the farm. Mr. Scioli stated Mr. Tougas is asking the board to grant a variance for his own convenience. He stated his concern as an abutter is whether or not all alternatives have been considered to give Mr. Tougas the lots and the 50 feet of frontage. It's already a legal lot and he stated he doesn't believe the abutters have a vehicle by which a variance can be given but a driveway restricted. He stated he agrees the topography is not good for a driveway. He questioned if all options had been explored. He stated a variance for six feet may seem like a small request but it is twenty-five percent of the whole thirty (30) foot setback required. The neighbors could end up with two driveways divided by a piece of land less than 25 feet wide. If Parcel 1 is sold, new owners he won't know may cut down trees and make a driveway. Mr. Scioli submitted photographs to Mr. Rand for the members to review. He stated there has not been enough information presented to know Plan A is the only feasible option and no evidence presented that proves the property line in Plan B would go through an existing structure, as Mr. Tougas stated. He said there could be another way to access the lot without using commercial space. He stated he and others may be willing to give him some access to save his son some money and preserve the natural buffer.

Ms. Landau explained the board can only consider the application before them which is limited to a request for a variance for the location of the property line of Parcel 1.

Mr. Tougas reiterated he and his engineer looked at all the possible options.

Mr. Rutan stated Mr. Tougas does not want to create a lot that's nonconforming. He wants to keep the frontage and lot size conforming. Whether he wants to throw away a restriction on his lot by using the 50-foot corridor as access is Mr. Tougas' decision. It seems Mr. Tougas needs 50 feet of access on the right or left side of the existing house and the logical possibility is taking the right side. To suggest he go for an access on someone else's lot is outside the scope of this hearing.

Mr. Davidian stated if he wants to keep it, Mr. Tougas could move the house 6 more feet away.

Mr. Scioli stated the house has already been permitted to be built, construction has started and there's an egress for utilities and the driveway.

Mr. Rand stated the board cannot issue a decision that restricts a driveway in the 50-foot strip of land.

Mr. Scioli asked if there is a setback for a driveway.

Mr. Farnsworth stated there is no setback for an individual driveway.

David Hassett, 106 Ball Street, confirmed Plan B had the property line going through the barn to the left of the existing yellow house.

Mr. Scioli suggested they give Mr. Tougas a variance for the barn which would have to be removed if Plan B were used for the project.

Mr. Rand reminded Mr. Scioli the board's only job is to decide the plan before them.

Mr. Farnsworth noted he and Mr. Tougas looked at that option and they don't want to put the property line through the barn.

Mr. Scioli stated they have no data on that.

Andre Tougas stated it makes more sense not to go through the barn.

Mr. Tougas stated it is his intention to keep the farm as contiguous as possible. He has no intention of putting a driveway there. He told Mr. Scioli that what Mr. Scioli is suggesting will not accomplish what Mr. Scioli is looking for.

Mr. Hassett stated they have been talking to Mr. Tougas and his son, Andy, during the last few weeks. He hasn't seen what Mr. Tougas is presenting. He is not sure he knows intelligently what Mr. Tougas is doing. He's not sure he knows what it means. He stated his intent is to establish more information about the request, as to how it will impact his lot. He requested the board consider continuing the hearing to the next meeting so they could have time to assess how this will impact their property.

Mr. Tougas stated he filed his application on June 23<sup>rd</sup> and the Planning office sent notices to all abutters at the end of June.

Mr. Hassett stated the lot was staked out only a few weeks ago.

Mr. Rand stated Mr. Tougas is asking for a variance for the 6 feet and the board is there to hear the abutters' opinions.

Mr. Scioli asked if the 6 feet was measured from the deck of the house.

Mr. Farnsworth stated the plan presented shows the existing house and where the new lot line would be. The setback is measured from the closest point of the building to the property line.

Mr. Farnsworth stated if the board was to grant the variance they would be changing the requirement so the building would be no closer than a certain distance from the property line.

Ms. Joubert stated she understands the concern of the abutters. The only thing under consideration is the proposed lot line and the existing house, not whether they should build a house, create lots, have a common driveway, or a host of other concerns. The only thing at stake is the lot line relationship to the existing house. The Planning office sent out notices to abutters and only the abutter at 102 Ball Street came in to look at the plans and that was today. Anybody can cut trees and plant trees. If someone is taking away screening on their own property the town has nothing to do with it unless it's in or near wetlands. The town has no authority over private driveways. A common driveway would have to come before the Planning Board for a special permit. The proposed lot meets zoning regulations and the one already approved meets zoning. They have the required frontage (50 feet) and the square footage (170,000 square feet).

Mr. Scioli stated he is a licensed building in the state of Massachusetts. He asked if this could be done without a variance. He suggested he and others ask the engineer to look at the dimensions. He stated he doesn't know if it goes through the barn or not. He suggested he and others may be able to accomplish this by moving the yellow strip and giving Mr. Tougas an ANR lot so he will not need a variance. Right now, people are saying just give him a variance and he'll create the lot. Mr. Scioli stated there is not enough information to know if this is the only option.

Mr. Hassett requested the board give them more time to assess the impact on their property.

Edward Davidian, 150 Ball Street, stated he was disappointed with neighbors. He stated that what the farmers on the hill have done for these people with the agricultural restriction has increased their house values by ten-fold. Mr. Tougas and his son are going to build a house. They own the trees and if they want to cut them down that's what they'll do.

Mr. Rutan stated the abutters should understand that Plan B needs no variance. It can be done. He could lay house plan B as it is, then he could decide he is going to have his son give him a right of passage over the 50-foot strip in order to allow the rights of the interior house to get to the farm. Then he could give his son the 50-foot strip on the right side of the property and his son could build a driveway on that property. They could in effect just write a few more things on a piece of paper to give them what they need. In the end, it will lower the property value and they could do it.

Mr. Farnsworth stated he has had several conversations with Mr. Tougas and Ron Aspero, his builder, as to different configurations that could be done. All the other options that are in any way feasible have been discussed. This is what the engineer came up with as the best options. It's not up to the board or others present to determine the best options. This is what the applicant has presented. It's not for town staff to review and tell them what's best for them. The only glitch in the plan is the line is 6 feet too close to the building. It meets all other standards.

At the request of Mr. Rand, Mr. Tougas showed Plan B and how the line would go through the barn.

Referring to Plan A, Mr. Tougas stated they originally located the house 51 feet from Mr. Hassett's property line, but adjusted the lot line angles and reconfigured the house to be 102 feet away, which is twice as far from the property line. If they use Plan A, all structures on the lot will be further away from Mr. Hassett's property than if they use Plan B. Mr. Tougas stated he has spent months working on this plan.

Mr. Farnsworth stated there are no other possible solutions because he can't have two houses on one lot. The applicant is working within parameters.

Mr. Hassett asked the board if they could defer their decision while he and Mr. Scioli explore more options with Mr. Tougas.

Mr. Rutan reminded them the board's only issue is the 24-foot setback of the property line from the house.

Ms. Landau asked if there were any other abutters present who would like to speak on the project.

Philip Gaudette, 105 Ball Street, stated lives directly across the street and he would be happy to see the variance granted. Mr. Tougas has three lots and three children. The 6 feet is not bothering him because legally he could take the house down and put up a new house.

Cynthia Fawcett, 121 Ball Street, stated she was in support of the proposed plan.

Mr. Tougas stated he does not want to continue the hearing.

Ms. Landau moved to close the hearing, Mr. Benson seconded the motion and the vote was unanimously in favor.

Mr. Rutan moved to grant the variance to allow a setback of no less than 22 feet from the property line of Parcel 1 to the closest point of the existing building on Parcel 2. Ms. Landau seconded the motion. Mr. Rand noted Mr. Tougas owns both lots and it is his property. Mr. Benson stated it's the only feasible way. All members voted in favor of granting the variance.

#### **Next Meeting**

Ms. Joubert stated the project at 73-85 West Main Street was continued to the August 25<sup>th</sup> meeting and the board should discuss at that meeting if the applicant should withdraw without prejudice. An application for a special permit for a duplex at 168 South Street will also be heard at that meeting.

The meeting adjourned at 8:00 pm.

Respectfully submitted,

Debbie Grampietro  
Board Secretary