



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 10/26/10

ZBA Meeting Minutes August 24, 2010

Members Present: Dick Rand, Sandra Landau, Chan Byun, Gerry Benson, Mark Rutan, Dick Kane

Others Present: Kathy Joubert, Town Planner, John Grenier, J.M. Grenier Associates, Inc., Lawrence and Jackie Cotter, Patricia Kress, Barbara Smith

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

Continued hearing for consideration of the petition of 240 Turnpike Inc. for a Variance/Special Permit to allow construction of a 5,000 square-foot office and accessory automobile service facility to facilitate expanded used-vehicle sales on the property located at 1C Belmont Street in the Highway Business District

John Grenier, J.M. Grenier Associates, Inc. presented additional information on the project. He explained his client, Mo Bayou, 240 Turnpike Inc., had a difficult time deciding on the design of the proposed building before he presented his final choice to the Design Review Committee. After reviewing the plans, the Design Review Committee asked Mr. Bayou to make some alterations. Mr. Bayou made the changes based on the board's suggestions and the schematic drawings were sent to Kathy Joubert, Town Planner, by email on Friday. Mr. Grenier reviewed the drawings with the board and all others present. He explained the location of lights proposed were changed from one every 5 parking spaces to one every 10 spaces. Car storage is proposed along the rear of the property and a garage is proposed below the main floor for minor auto repairs. The Applicant has presented the plan to the Design Review Committee for their comments. They will finish up with all other boards before they file with the Conservation Commission.

Mr. Rand asked about the number of parking spaces. Mr. Grenier stated there are 135 spaces for display of vehicles and 17 spaces for employees and he anticipates all the spaces will be filled. He explained Mr. Bayou has an off-site storage area at his Westborough dealership and currently uses his Northborough site for additional storage. Mr. Bayou wants to eventually bring everything to the Northborough site.

Mr. Rutan asked about snow storage. Mr. Grenier pointed out the snow removal locations shown on the plan at both ends of the lot.

Mr. Rutan asked about the existing curb cut. Mr. Grenier stated they have a curb cut issued by MA Highway. They have rounded off the curb cut to make it easier to enter and exit the site, and will add granite curbing to it. The travel lane widens out as it approaches the site, so

vehicles are not turning into the site directly from the travel lane, and the road did not need to be widened.

Ms. Joubert reviewed the Design Review Committee's letter of August 24, 2010, stating the Design Review Committee thought the site was over-lit and the applicant has reduced the number of lights.

Ms. Joubert also reviewed the Fire Chief's letter dated April 27, 2010, which includes three comments relating to a storm chamber, fire apparatus turning maneuvers, and a notation that the site is not served by municipal water and the closest fire hydrant is located at the intersection of Lawrence Street and Belmont Street, some 1,200 plus feet from the proposed building. Mr. Grenier stated the building will be sprinkled and Mr. Bayou will install a well and a cistern.

Ms. Joubert asked Mr. Grenier if Mr. Bayou has applied for, and received, his license to sell cars from the Board of Selectmen. Mr. Grenier stated Mr. Bayou is in the process of applying for it.

Ms. Landau noted that, of the items in the Fire Chief's letter, only one is a recommendation. He doesn't elaborate on the items, or give the board any direction. She asked for more information on turning maneuvers. Mr. Grenier stated Mr. Bayou talked with the Fire Chief and in the end, the Fire Chief said it should be fine as shown on the plans.

Mr. Byun asked if there is a landscape plan. Mr. Grenier stated there is a plan showing landscaped areas, which he pointed out to the board. Planters are proposed along the front and screening of the ramp will be done with arborvitae. He noted the site is within the MA Highway Right of Way and there will be a lot of sand coming on the site from the sanding of Route 9 during the winter. Cars for sale will be in the front to advertise the dealership. He stated it is not an easy lot to landscape.

Mr. Rutan asked about signage. Mr. Grenier stated signage right now is planned on the front elevation of the building. No other signs are proposed.

There were no comments from the public.

Mr. Rutan moved to close the hearing, Mr. Byun seconded the motion and the vote was unanimously in favor.

To consider the petition of Susanne Durant and Barbara Smith for a Variance/Special Permit to allow the use of a canine hydrotherapy and rehabilitation center in the Business West district on the property located at 367 West Main Street

Applicants Susanne Durant and Barbara Smith were present. Ms. Durant explained they want to move the location of their canine rehabilitation facility from the Clipper Barn, where they have been for two years, to 367 West Main Street, between U-Save Sports and a dental office. They need to expand their practice and have outgrown the small center. They are proposing to add a swimming pool for the dogs, in addition to the underwater treadmill they already have. Ms. Durant said they see about twenty-eight cases a week that are at the level of needing the

treadmill and pool. They will be building a concrete slab which works well for the pool and the underwater treadmill. There will be a separate room for patient assessments. They see a lot of post-surgical patients that need to be hospitalized for one-two weeks because their owners can't get them around. There will also be offered the services of a specially trained groomer who will groom the post surgical dogs. Ms. Durant explained they would like to offer her services one more day. Mostly all the patients are on an appointment basis. Their clients come from different parts of Massachusetts and Connecticut, and their services are an asset to Northborough because their clients visit local businesses when they come to their facility.

Ms. Joubert explained the use falls under the definition of a veterinary clinic, which requires a special permit.

Ms. Durant explained they have patients that stay at their center because they have been referred by a veterinarian to stay for a recovery period. There is always a staff member overnight because the dogs cannot be sedentary for over four hours at a time.

Ms. Joubert stated the board may want to consider granting another special permit for a kennel and limit it to their patients/clients only.

Mr. Byun asked if the dogs go outside. Ms. Durant stated they are always indoors, but there is an elimination area for them to use, with a trash receptacle for the bags.

Mr. Rutan asked for clarification of the pool and treadmill. Ms. Durant explained the treadmill is in a holding tank and they use that now for a pool. The proposed pool would become the holding tank for the treadmill and water would be pumped from the pool into the treadmill. The water temperature is 90 degrees and the water is currently changed weekly, but with the pool it will be monthly.

Patty Kress, 60 Old Colonial Road, stated she has concerns about dogs going outside. Ms. Durant stated there is no kennel and the dogs are always with an adult because they can't be left alone. Most patients come with their owner and the owner stays with them through the whole appointment. No dog goes off-leash outside.

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

To consider the petition of 277 Main Street Realty Trust for a Variance/Special Permit/Special Permit with Site Plan Approval to allow the conversion of an existing, non-conforming single-family residential use to the commercial use of an ice cream and sandwich shop in the Business East district and in Groundwater Protection Overlay District Areas 2 and 3 on the property located at 277 Main Street

Michael Sullivan, representing the Applicant, 277 Main Street Realty Trust, as well as Charlie Trombetta, Tony Trombetta and Laura Barsamian, were present. Mr. Sullivan stated the Applicant is proposing to convert the existing non-conforming residential use of a single-family home on the site, to the commercial use of an ice cream, sandwich and seasonal plant shop, on

a lot in the Business East district and in Groundwater Protection Overlay District Areas 2 and 3. Existing accessory structures on the lot will be removed. Necessary parking facilities, exterior lighting and landscaping will be provided. The existing septic system on the lot will be replaced. A circular driveway will provide a one-way entrance/exit from two separate curb cuts off Main Street. The required number of parking spaces will be provided, as will public utility services from Main Street. Drainage and infiltration systems have been proposed to handle stormwater runoff. Mr. Sullivan reviewed the Existing Conditions sheet of the plans submitted and entitled "Runoff Area Maps – Sheet 1 of 2, "Existing Conditions Plan of 277 Main Street in Northborough, MA.", dated July 16, 2010, and Sheet 2 of 2, "Proposed Conditions Plan of 277 Main Street in Northborough, MA.", dated July 16, 2010.

Mr. Sullivan stated the lot size is 34,534 square feet in size and is uniquely shaped. It is bisected by Groundwater Protection Overlay District Areas 2 and 3, and the majority of the proposed site improvements are within the Area 3 portion of the lot, which is less restrictive than Groundwater Protection Overlay District Area 2. The stormwater management system has been designed to direct stormwater runoff from the paved driveway, roof and parking area to the drainage system. Runoff will then be discharged to three proposed subsurface infiltration systems, designed to infiltrate runoff up to a 100-year storm event.

Mr. Sullivan explained the current septic system on the site is antiquated and will be replaced. A new septic system is proposed to handle sewage flow for the commercial use of 220 gallons per day per 10,000 square feet of lot area. In Groundwater Protection Overlay District Area 2, on lots of at least 40,000 square feet where sewage disposal is on-site, sewage flow of less than or equal to 110 gallons per day per 10,000 square feet of lot area is allowed by special permit. The Applicant is anticipating a flow of 365 gallons per day, and the proposed septic system has been designed for sewage flow of 500 gallons per day as a buffer. The Applicant is seeking a variance for the proposed increased sewage flow in Groundwater Protection Overlay District Area 2.

Mr. Sullivan reviewed the landscape and photometric plan for lighting on the site, showing four 20-foot high light poles, which will be directed towards the building and parking area for safety. There will be no impact on neighboring properties. In terms of plantings, the Trombetta family will try to use existing vegetation and complimentary plantings. Trees to remain are shown on the plan. Along the front will be a boxwood hedge, with a 3-foot rot iron fence, planting bed and trees. Mr. Sullivan explained the Fire Chief, David Durgin, was not clear about the placement of the wrought iron fence. Mr. Sullivan met with him and resolved all the items in the Fire Chief's letter dated July 26, 2010, including the installation of a 6-foot gate for the fire trucks to get into the site. Snow storage is planned all along the back and sides of the property. There is a 25-foot distance in the rear of the lot to the abutting property line.

Mr. Rand asked if the business will be seasonal. Charlie Trombetta stated it would be seasonal, from Easter through Christmas. Hours of operation in the spring will be 8 am to 10 pm.

Ms. Landau had comments on several parts of the application, including the following:

1. The front page of the application does not include the signature of the property owner.

2. On Existing Conditions plan sheet there needs to be clarification of what “two residential-type buildings” means.
3. Under hardship criteria, size is not a legal criteria for a variance.
4. Regarding obtaining a special permit, elaborate on nuisance, etc., and type of use as being similar to abutting uses and those across the street.
5. The information listed under “adequate and appropriate facilities” section has nothing to do with and is not what the board is asking for.
6. Under #7, there is no copy attached of the site plan, as requested on the application.

Ms. Virginia Patton, the owner of the property, was present at the meeting and said she will sign the application.

Regarding Ms. Landau’s item #4, Mr. Sullivan replied they stated on the application that the area is similar in use to what they are proposing and there would be nothing more hazardous than what is currently there. They cannot do residential zoning in the area, so they can’t do anything with the property the way it is now.

Mr. Sullivan stated he will submit the information requested by Ms. Landau to the Planning Department.

Mr. Byun asked if the existing structure was going to be demolished. Ms. Sullivan replied they will be removing some of it and adding to it.

Mr. Byun noted the letter from the Design Review Committee requests renderings of the building before the issuance of a building permit.

Ms. Joubert stated the Applicant did not submit actual drawings to the Design Review Committee. Basically they are going to be keeping the house and redoing the roof. They submitted a couple of examples of what they want to do, but they are not specific to the site. She suggested that, if the Applicant agreed, the board could stipulate the Design Review Committee items as conditions of approval and the Application could not get a building permit until they met those conditions and the Design Review Committee agreed with the plans.

Ms. Joubert noted the renovated building will have ice cream windows up front and a pergola with seating on the side. There will be plants for sale on the other side of the building.

Mr. Byun asked for a description of the business.

Charlie Trombetta stated that in the spring they will sell annuals and perennials, fall pumpkins, and decorations, and will finish up the year with Christmas wreaths, etc.

Mr. Rand asked Charlie Trombetta if it was possible to continue the hearing until they meet with the Design Review Committee. William Brewin, attorney for the Trombetta family, stated they have been in negotiations regarding the land purchase since May with the property

owner's attorney. The issue is the Purchase & Sale agreement is set to expire this coming Friday, but they received an extension to September 17th. From the sellers' perspective, they are two sisters who inherited the property and are trying to make plans for themselves and move things forward.

Ms. Patton stated she and her sister were under the impression they were zoned for business according to the taxes they have paid. Her brother-in-law changed it to a residential use. She explained they had a deposit on another house which they lost because the perspective buyers did not want to wait.

Ms. Byun stated he finds the proposed business very appropriate for the area and a good change. The application process was unique, but he supports their request.

Jacqueline Cotter, 164 East Main Street, stated she and her husband are direct abutters to the property. They have seen the drawings and have met with the Trombetta family, who explained the landscaping and lighting. She stated they are satisfied and want the project to go forward. They want to be sure, though, that the lights don't shine into their house anymore. As long as the lighting is going to be aimed away and caps are on the lights, they are fine with it. She noted the arborvitae will be very helpful to keep people from thinking there is a direct access to their property from 277 Main Street. People have wandered onto their property in the past.

Mr. Rand asked if there was going to be a fence along the back property line. Mr. Sullivan stated they will be planting arborvitae amongst the existing plantings, which are dense with lilacs and forsythia. They are not proposing a fence at this point.

Ms. Joubert noted the review letter from the Groundwater Advisory Committee dated August 11, 2010, stated they were in agreement with approval of the requested variances and special permit. In addition, the Fire Chief and Mr. Sullivan are in agreement with what has been proposed, and Ms. Patton has signed the original application.

Mr. Sullivan noted he has no argument with what Ms. Landau pointed out regarding the application. He will be happy to be more definitive with their responses. He explained they have gone through the permitting process with all necessary boards and staff to gain support for the plan, and he hopes the application is not the determining factor.

Mr. Rutan moved to close the hearing, Mr. Byun seconded the motion and the vote was unanimously in favor.

Old/New Business

AvalonBay Regulatory Agreement

Dave Gillespie, AvalonBay Communities, was present. Ms. Joubert explained that, based on changes that the Department of Housing and Community Development has made on what they now require in regulatory agreements, changes had to be made to the draft regulatory

agreement for AvalonBay. Town staff has reviewed it and it has been forwarded to Town Counsel for review. The intent was to have the board discuss it tonight. It requires the Board of Selectmen's signatures. The Board of Selectmen will be made aware of the situation, and the Zoning Board of Appeals will review it and send their recommendation to the Board of Selectmen for their next meeting. The project started in 2005 and is almost done. Just about every unit is occupied but DHCD won't list it until the regulatory agreement has been signed. Mr. Gillespie noted there are only about 20 apartments left.

Mr. Rand asked if there is a change in the profitability.

Mr. Gillespie stated he came to the town about a year ago to get the application approved and the regulatory agreement in place. DHCD wanted to change the agreement to be updated with the current regulations and more in line with other forms. One change is the way the local preference works. DHCD has taken that away from town. The Affordable Fair Marketing Plan must address these things. It's coming about a little after the fact because it took DHCD a long time to get the forms. Another change to the DHCD form is the provision that if there's a windfall, the cash is distributed to the municipality and DHCD will keep it in an escrow account.

Ms. Landau stated she will go along with whatever Town Counsel recommends. Mr. Rand stated he doesn't feel comfortable signing something he hasn't read. Mr. Rutan agreed with Mr. Rand.

Ms. Joubert noted she did not get Town Counsel's review letter. It went to the Town Administrator, who is on vacation. Mr. Gillespie stated he will send it to her.

Ms. Joubert noted the Regulatory Agreement needs five signatures.

AvalonBay's Grand Opening invitations were distributed to the board members.

Ms. Joubert will forward Town Counsel's review letter to the board, and have the form in the office to be signed when the members are ready.

Mr. Benson stated that, based on the letter from Town Counsel, the board members agree in principle, however they will review the document when they receive it and if it is consistent with what they have seen and been told, they will sign it. All members agreed.

DECISIONS

1C Belmont Street

Mr. Rutan moved to approve the Special Permit with Site Plan Approval for 1C Belmont Street, per the plans submitted and dated April 7, 2010. Mr. Benson seconded the motion and the vote was unanimously in favor of approval.

Mr. Rutan moved to grant the Special Permit to allow the accessory use of an auto repair facility for vehicles associated with the second-hand car sales use on the property located at 1C

Belmont Street. Richard Kane seconded the motion and the vote was unanimously in favor of approval.

367 W. Main Street

Mr. Rutan moved to grant a Special Permit to allow the use of a veterinary clinic (Canine Hydrotherapy and Rehabilitation Center) on the property located at 367 West Main Street. Mr. Kane seconded the motion and the vote was unanimously in favor of approval.

Mr. Rutan moved to grant a Special Permit to allow limited boarding of canine patients of the Canine Hydrotherapy and Rehabilitation Center only, on the property located at 367 West Main Street. Mr. Kane seconded the motion and the vote was unanimously in favor.

277 Main Street

Mr. Rutan moved to grant a Special Permit to allow the conversion of a single-family residential use to a commercial use in the Business East district on the property located at 277 Main Street. Mr. Kane seconded the motion and the vote was unanimously in favor of approval.

Mr. Rutan moved to grant a Special Permit to allow a commercial use in Groundwater Protection Overlay District Areas 2 and 3, on the property located at 277 Main Street.

Mr. Rutan moved to grant a Special Permit with Site Plan Approval for the proposed use of an ice cream and sandwich shop on the property located at 277 Main Street, per the plans submitted and dated July 16, 2010.

Mr. Rutan moved to grant a Variance to allow a septic system for a commercial use on a lot with 34,534 square feet in Groundwater Protection Overlay District Areas 2 and 3, due to the shape of the lot, on the property located at 277 Main Street. Mr. Kane seconded the motion and the vote was unanimously in favor of approval.

Mr. Rutan moved to grant a Variance to allow not more than 500 gallons per day per 10,000 square feet of sewage flow for a commercial use on a lot with less than the required 40,000 square feet in area due to the shape of the lot, on the property located at 277 Main Street.

The Board granted the Special Permits and Variances list above for 277 Main Street with the following conditions:

1. The Applicant shall provide color architectural renderings to the Design Review Committee for final approval prior to applying for a building permit. The color architectural renderings shall include building light, pergola design and planting areas.
2. The new septic system shall be designed for a maximum capacity of 500 gallons per day.
3. A curb cut permit shall be obtained from the Massachusetts Department of Transportation.
4. The applicant should explore a connection to natural gas for heating purposes.

5. An as-built site plan shall be submitted to the Town Engineer for approval prior to the issuance of a certificate of occupancy. The as-built plan shall include, at a minimum, and as applicable to the project, elevation of all pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures; limits of clearing, grading and fill; all structures, pavement; contours; and all dates of fieldwork. Upon approval by the Town Engineer one (1) mylar and three (3) paper copies of the as-built plan shall be submitted in addition to an electronic copy compatible with the Town's GIS system and the Town's vertical datum.
6. The Operation and Maintenance plan should be amended to include notification to the Town Engineer before the work is performed and shall be afforded the opportunity to inspect the work. The Town Engineer and the Groundwater Advisory Committee shall be provided copies of the contract and invoices for the work performed. All material removed from the drainage system shall be properly disposed of off site.
7. A minimum rating of thirty-six (36) tons shall be used in the design of all structures and leach fields in order to support the prolonged standing operation of fire apparatus.

Approval of Minutes

Mr. Byun moved to approve the minutes of July 27, 2010 with amendments. Mr. Kane seconded the motion and the vote was unanimous.

The meeting adjourned at 9:15 pm.

Respectfully submitted,

Debbie Grampietro
ZBA Administrative Assistant