



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 7-26-11

Zoning Board of Appeals Meeting Minutes May 24, 2011

Members present: Richard Rand, Chairman; Mark Rutan, Clerk; Richard Kane; Chan Byun; Craig Gugger (arrived at 7:15PM)

Others present: Kathy Joubert, Town Planner; Kay Doyle, Town Counsel; Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Eileen Ward, 47 Coolidge Circle; Joseph Kelly, 22 Coolidge Circle; Gina Babcock, 22 Coolidge Circle; Igor Achkinazi, 38 Coolidge Circle; Heather Baer, 6 Coolidge Circle; Jim Black, 14 Stone Drive; Penny Black, 14 Stone Drive; Linda Bohan, 14 Morse Circle; Lee Zawacki, 6 Coolidge Circle; Hannah Jussaime, 2 Coolidge Circle; Brian Harris, 416 Whitney Street; Don Hammon, 20 Morse Circle; Charles Foster, 59 Coolidge Circle; Joan Frank, 420 Whitney Street; Jonathan Gorham, 391 Whitney Street; Lisa Maselli, 13 Maple Street; Bonnie Lang, 21 Coolidge Circle; Scott Stocklin, 12 Patrick Drive; Helen Aldenberg, 399 Whitney Street; Jody Martinson, 50 Coolidge Circle; Kevin Jarvis; Santo Anza; Attorney Mark Lanza; Steve Osborn; Nancy Lepore, 388 Whitney Street

Chairman Rand called the meeting to order at 7:05PM.

Continued Public Hearing to consider the petition of United Bank for a Variance/Special Permit, Groundwater Protection Overlay District/Special Permit Site Plan Approval to allow the use of a bank with drive-through service in Groundwater Protection Overlay District Areas 2 and 3, on the property located at 6 Church Street

Chairman Rand explained that the board had received a letter from the applicant requesting that the hearing be continued to June 28, 2011.

Richard Kane made a motion to continue the hearing to June 28, 2011 at 7:00PM. Mark Rutan seconded, vote unanimous.

Public Hearing to consider the petition of Santo Anza, Trustee, Manager of S.A. Farm, LLC, for an Appeal of the Cease and Desist Order issued by the Zoning Enforcement Officer on March 2, 2011, for the importation of fill on the property located at 429 Whitney Street

Santo Anza explained that is appealing a Cease & Desist Order issued by this board, and introduced Kevin Jarvis to speak on his behalf about the fill operation on his property. Town Counsel Kay Doyle informed the board that an affirmative vote by four members is required in order overturn an administrative decision. As there are presently only four members present, she suggested that the board ask the applicant if he wishes to move forward or wait for the fifth member to arrive. The applicant voiced his desire to wait for all five members to be present.

Public Hearing to consider the petition of James H. Sommerville for a Variance/Special Permit to allow an addition which will exceed 80% of the gross floor area of the existing single-family home to which it will be added, on a non-conforming lot on the property located at 37 Woodland Road

Steve Osborn introduced himself as the applicant's brother-in-law, and explained that he will be presenting on Mr. Sommerville's behalf. He explained that the home at 37 Woodland Road is a small slab house of less than 900 square feet on a nonconforming lot of roughly 13,000 square feet, located roughly 30 feet from road. He stated that the 80% increase in gross floor area that is allowed in the bylaw would not be sufficient to bring this home in line with the others in the neighborhood. He also noted that the other homes in the vicinity have basements and/or already have additions, and that his brother-in-law is seeking a variance to exceed the 80% so that the house will be ample for his family with 3 small children. Chairman Rand asked Mr. Osborn to describe the proposed addition. Ms. Osborn explained that the applicant would like to construct a two-story addition on the right side of the existing home, with a garage under and living space above. He also noted that this home is one of the few ranch-style homes remaining in the neighborhood, and the proposed construction would give it the appearance of a colonial so that it will be more in line with the other homes in the area. He also confirmed that the setbacks will be more than sufficient.

Craig Gugger arrived.

Mr. Farnsworth explained that the lot is less than required and is therefore nonconforming, making the structure on the lot also nonconforming. Per the zoning bylaw, an increase of up to 80% of the existing floor area, or a maximum of 700 square feet, is permitted. He noted that the proposed addition is 1400 square feet and therefore requires a variance.

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

Public Hearing to consider the petition of Dawn Winsor-Hines for a Variance/Special Permit to allow a detached two-car garage to be erected within the front and side setbacks on the property located at 2 Pond View Way

Robert Gentile, builder representing the homeowner, explained that when he originally began construction of the garage, it was his understanding that the front of the house is 65 feet from the road, and the rear of the house is 75 feet from the fence. However, when the as-builts were done, it was discovered that the property line actually cuts through the front yard, and the newly-constructed garage is actually 25.3 feet from the front setback and 14.9 feet from the side lot line. Chairman Rand asked if a survey was done before construction. Mr. Gentile indicated that there was not.

Mr. Farnsworth explained that the building permit application indicated that all setbacks would be met; however, when the as-built was done it became clear that the property lines were not where they were believed to be, resulting in the garage being closer to the property line than is allowed. Mr. Farnsworth stated that the applicant is seeking a special permit to allow for the garage to remain.

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

429 Whitney Street, appeal of Cease & Desist Order - Kevin Jarvis explained that his primary business is the relocation of fill, and that he has been responsible for the movement of over one million cubic yards of material over the past several years. He noted that the MWRA, Harvard University, and the Museum

of Science are among some of his customers, who all trust him to find a suitable home for fill removed from their projects. He also stated that he deals strictly with materials that are deemed to be no threat.

Mr. Jarvis explained that there are soil re-use facilities that take these materials, and that a re-use facility is entirely different from a landfill operation, which is where contaminated materials are typically brought and is heavily regulated as to how those materials are to be handled. Mr. Jarvis emphasized that the material that was brought onto the SA Farms property on Whitney Street was unregulated material that matched those already present on the site, as is required under the Massachusetts anti-degradation policy. He explained that, because of the Big Dig project, Massachusetts has the most comprehensive anti-degradation policies in the country.

Mr. Jarvis indicated that, because of his experience with fill relocation and this project in particular, Mr. Anza had asked him to address the board. He explained that he works with Rick Stromberg, a Licensed Soil Professional (LSP) who also represents 3 out of the 4 operating soil re-use facilities in the state. Mr. Jarvis noted that Mr. Stromberg reviews and approves materials for these sites, and is trusted by the generators and their LSPs. He explained that when a generator contacts him to move material, the material is reviewed by the generator's LSP, their legal team, then by Mr. Jarvis's LSP. Once the material is approved by all of these parties, it can then be moved to the destination site.

Mr. Jarvis emphasized that the material moved onto the SA Farms property was done within the guidelines of the state. He also stated that when he was hired by Mr. Anza in the summer of 2009, it was clear that Mr. Anza wanted to build a farm on the site and needed to place some fill in order to do so.

Mr. Jarvis discussed the February 2011 meeting of the Zoning Board of Appeals at which he was present. He noted that Mr. Benson had introduced himself as an LSP but did not represent himself as an employee of a direct competitor of Mr. Anza's for the viable use of these soils. He voiced his understanding that Quarry Hills is represented by CDM, who employs Mr. Benson. He also voiced his opinion that Mr. Benson would be knowledgeable about the difference between unregulated soils and contaminated and regulated soils. Mr. Jarvis suggested that Mr. Benson should have recused himself from the hearing.

Mr. Jarvis stated that the economic viability of a farm is beyond his judgment, and reiterated that he had simply provided the material he was asked to provide. He also stated that his primary responsibility is to his customers, or the generators of the material, while the property owner's responsibility is to ensure that he is in compliance with local bylaws, (Conservation Commission, Erosion control regulations, etc.) and that the site is ready to accept the fill when he gets it there.

Chairman Rand asked Mr. Jarvis if his company was responsible for the entire 65,000 cubic yards of material that were brought onto Mr. Anza's property. Mr. Jarvis confirmed that it was. Chairman Rand referenced comments that were made at the previous meeting about arsenic being present in the fill that was received from the UMass site, and questioned whether that material should be covered with an impervious surface. Mr. Jarvis confirmed that that particular material would be used as a road base.

Mr. Bill Mason, attorney for Santo Anza, presented the board members with a copy of a letter of complaint that was filed with the State Ethics Board with regards to Mr. Benson's conduct in this matter.

Mr. Anza explained that he had gone to the Planning Board voluntarily based on advice from town staff, not because he was required to under the agricultural exemption. He noted that the Planning Board's

opinion was that his use on the property met the bylaws, and that his timetable, management plan, hours of operation, proposed grades, survey of the property prior to doing any work, and an as-built on completion were all acceptable and were all met. He voiced his opinion that the ZBA's only role was to determine if his use is an agricultural one, which it clearly is. However, if this board felt that the fill on the property was not necessary, he believes that they should have referred the matter to the Planning Board.

Chairman Rand explained that the ZBA's role was to determine if the fill was accessory to a primary agricultural use. Mr. Anza reiterated that, if the ZBA had determined that the fill operation was not incidental, the remedy should have been to send him to the Planning Board. He emphasized that his use on the parcel does not require a variance or special permit from this board, but merely a ruling as to whether his use is agricultural and, if so, if the fill is incidental to that use. If the board determines that his use is not agricultural, then it is the Planning Board's purview to regulate the filling on the property.

Chairman Rand asked Mr. Jarvis to discuss the economics of the project, but Mr. Jarvis refused to do so.

Ms. Joubert reiterated that the only issue before this board this evening is whether or not the primary use is agricultural and, based on that, if the fill operation was incidental to that use. She stated that each town board has its own processes and jurisdictions, and that this board does not refer an applicant to another board. She explained that the purpose of tonight's hearing is to reconsider the board's decision to direct the Building Inspector to issue a Cease & Desist Order. She voiced her opinion that the applicant has still failed to provide proof that the substantial amount of fill brought onto the property was necessary. She reiterated that the issue at hand is whether the Cease & Desist Order still stands and not the matter of what the fill material contained.

Mr. Anza explained that he is currently only using about 2/3 of the area proposed on the plan that he submitted to the town. Because of the Cease & Desist order, the town is effectively not allowing him to use over 1/3 of his property because he is unable to establish the grades required. He noted that he is simply asking this board to lift the Cease & Desist order to allow him to finish the project per the plans that he submitted. If he is not allowed to do so, the result will be an unfinished, nonfunctional project with no stabilization, no as-builts, and no winners.

Chairman Rand asked if the project is nearing completion. Mr. Anza stated that he has approximately 20% left to finish. Mr. Jarvis commented that his clients will not permit him to bring any of their material to a site that cannot or will not accept it, and once Mr. Anza gets to the grades that were previously accepted by the town, he will stop bringing fill to the site.

Mr. Kane asked Town Counsel about her comment letter in which she opined that the amount of fill was not in line with the agricultural use. Attorney Doyle confirmed that that was her opinion.

Nancy Lepore, 388 Whitney Street, asked Mr. Jarvis if he accepts clients from out of state and what kind of compliance criteria those clients are required to meet. Mr. Jarvis stated that those clients must meet the standards set by the Commonwealth of Massachusetts. Ms. Lepore asked Mr. Anza if he would be willing to admit how much money per load he earned for accepting the fill. Mr. Anza stated that he would not.

Penny Black, 14 Stone Drive, asked Mr. Jarvis if he was responsible for sending the Sullivan Tire truck to the site. Mr. Jarvis stated that he has no knowledge of the Sullivan Tire truck. Ms. Black commented that she and several other neighbors had witnessed a truck heaped with tires entering the site.

Joe Kelly, 22 Coolidge Circle, asked how Mr. Jarvis would justify dumping concrete blocks on the parcel for an agricultural use. Both Mr. Jarvis and Mr. Anza indicated that no such dumping occurred.

Jim Casella, 70 Coolidge Circle, reiterated questions about the economical benefit for accepting the fill. Mr. Anza again refused to discuss the matter, but stated that it is ridiculous to think that he would buy this property for the amount he paid for it simply for that purpose.

Eileen Ward, 47 Coolidge Circle, asked if it is standard operation for this board to consider an appeal of their decision and questioned whether the matter should have been appealed to the land court instead. Chairman Rand stated that the applicant has the right to appeal to this board and, depending on the outcome, his next right to appeal would be to land court.

Attorney Mark Lanza explained that he represents a number of the abutters to this property, who have all been adversely impacted by Mr. Anza's operations. He reiterated his understanding that the question before the board is whether or not it should reverse its own decision about whether or not the earth moving operations should cease. He voiced his opinion that the applicant and his representatives have provided nothing substantially different or persuasive to reverse that ruling. He also noted that this board could have issued the Cease & Desist order itself, but since the decision directed the Zoning Enforcement Officer to do so, it gave Mr. Anza the opportunity to appeal the order. He reiterated that there has been no valid reason given to substantiate reversing the prior decision, and commented that the matter will ultimately be settled in the courts.

Attorney Lanza also questioned how Mr. Jarvis can be positive that he was responsible for all of the fill brought onto Mr. Anza's property. He reiterated that many of the neighbors witnessed trucks carrying materials other than just clean fill.

Attorney Lanza also commented that Mr. Jarvis spent a lot of time discussing an alleged conflict of interest, including a complaint filed with a state agency. He noted that this board should not have heard any of that information as that matter is not within this board's jurisdiction and should have no bearing. He commented that, even if Mr. Benson were to be disqualified, the vote by this board was a unanimous one so discarding Mr. Benson's vote would still result if four affirmative votes for the issuance of the Cease & Desist Order.

Attorney Lanza noted that Mr. Anza has argued that the Planning Board's decision permits him to complete the fill activity on his property, but the Planning Board's position is that they do not have authority on the use. He commented that, while the Zoning Board found that the operation is agricultural, the primary use to date has not been commercial agriculture. He noted that the site plan review process is an adjunct process and, in and of itself, the Planning Board site plan review process does not permit or authorize a use. He voiced his understanding that the Planning Board did not permit or approve the fill operation. In addition, his clients have also appealed the Planning Board decision, so it is not yet final.

Attorney Lanza also noted that Mr. Anza has indicated that unless the board allows him to finish the fill operation on his property, the site will remain unstabilized. However, it is his understanding that one of the requirements of the ZBA decision is that the grading be done and an as-built plan be filed with the town.

Attorney Lanza reiterated his position that the board has heard nothing to support a reversal of their original decision.

Scott Stocklin, 12 Patrick Drive, commented that the neighbors have heard for almost two years that the eventual use for this property is to be agricultural. Given Mr. Anza's comments of earlier tonight indicating that he is not going to finish the work on the site, Mr. Stocklin questioned how the animals already present on the site are going to survive and what they are doing there. He voiced his impression that the animals are only present on the site as a cover and that the actual use is that of a fill operation. Mr. Stocklin also recalled a statement Mr. Anza made at a Planning Board meeting in which he maintained that the soil conditions and rockiness of the site would not support a building structure, however, he has recently stated otherwise. Mr. Stocklin voiced concern about the many inconsistencies in statements made by Mr. Anza.

Gina Babcock, 22 Coolidge Circle, voiced her understanding that the DEP has been trying to get onto the site for over three weeks, and that Mr. Anza has not allowed them access. She also noted that the Board of Health has been denied access, even though Mr. Anza had publicly issued an open invitation to them. She cited the stench on the parcel, flies, and truckloads of garbage as proof that this is not a farm but in actuality a landfill operation occurring in her backyard. She also commented that Mr. Anza does not have a permit to compost, but is still doing it. She noted that while Mr. Anza insists that he needs the truckloads of garbage to feed his animals, those animals are on the opposite site of the property. Ms. Babcock also noted that Mr. Anza has been kicked out of other communities for not complying with local regulations. She emphasized that the entire neighborhood is suffering from this operation, and it should not be allowed to continue.

Ms. Stone, 2 Coolidge Circle, stated that, in August of 2009, she was behind two trucks carrying asphalt/old road materials onto the site. She asked Mr. Jarvis if he was personally able to witness every single truckload of material that came onto the site. She also questioned how tons of hot-top could be dumped on an agricultural parcel. Ms. Stone noted that the town is now being asked by Mr. Anza to let him finish, but that two years ago he moved ahead with such speed that town inspectors could not catch up to see what he was doing. Ms. Stone voiced her opinion that someone with that kind of record should not be permitted to complete the work, and asked the board to stand by their original decision. She reiterated that the materials dumped on this parcel were clearly not suitable for agricultural purposes.

Craig Gugger made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

Public Hearing to consider the petition of Whitney Street Realty Trust, Santo Anza, Trustee, for an Appeal of Use Determination letters issued by the Zoning Enforcement Officer on March 18, 2011 and April 12, 2011, for the property located at 429 Whitney Street

Public Hearing to consider the petition of Whitney Street Realty Trust, Santo Anza, Trustee for an Appeal of Use Determination letters issued by the Zoning Enforcement Officer on March 18, 2011 and April 12, 2011, for the property located at 432 Whitney Street

Mr. Anza agreed to combine the two hearings as they address the same issue. He explained that he had questions regarding certain allowed uses in the industrial zone and had sent a letter to Mr. Farnsworth asking for clarification on what is allowable under the uses of fabrication, sub assemblies, and contractor's yards that are referenced in the bylaw. He noted that his first letter was somewhat misleading and incorrectly worded, and Mr. Farnsworth's response was that processing of construction

materials is not allowed. Mr. Anza noted that he had sent a subsequent letter asking for an explanation of why fabrication of wood (making firewood) does not fit into the bylaw since fabrication and sub-assembly in an open air contractor's yard are allowed. Since he was told that making of firewood would not be allowed, he questioned what fabrication is allowed under the bylaw.

Town Counsel Kay Doyle explained that it is up to the Zoning Board to review the issue and determine whether a use is allowable, and it is not appropriate to interrogate the Building Inspector. She stated that the petitioner is required to explain why he believes that the Building Inspector is wrong and the board will make a ruling.

Mr. Anza reiterated that a contractor's yard is an allowed use in the industrial zone, but the disagreement was over the application of the terms "fabrication" and "subassembly". Mr. Anza commented that to fabricate something is to make something, whether it be to make up a product or a story. He cited an example where a lumberyard would take a log and make it into a 2x4, and felt that in the same way his making of firewood should be considered fabrication and therefore should be allowed. He also questioned if the making of mulch would be an accepted use under the bylaw, and voiced his opinion that it should be.

Mr. Kane asked Mr. Anza to clarify the issue at hand. Mr. Anza reiterated that he is asking the Building Inspector to clarify what is an allowed use in the industrial zone, given that Mr. Farnsworth has stated that making firewood is not. Mr. Rutan asked Mr. Anza if he plans to bring in logs to cut into firewood. Mr. Anza stated that this is his intention.

Mr. Kane asked for input from the Building Inspector. Mr. Farnsworth explained that he had received a letter from Mr. Anza dated March 3, 2011 requesting a written determination if a contractor's yard is an allowable use. He noted that, in a response letter back to Mr. Anza, he confirmed that a contractor's yard is an allowed use and provided the definition for a contractor's yard as written in the bylaw.

Mr. Farnsworth also noted that Mr. Anza's letter questioned whether processing of materials would be permitted, and his response was based on the exact wording in the town's bylaw and not on his own definitions. He voiced his opinion that, since the activity of "processing of materials" is not clearly stated as an allowable use, he must conclude that it is not.

Mr. Farnsworth explained that Mr. Anza had submitted another letter asking for reconsideration. He noted that he had responded back to Mr. Anza that taking a single item and splitting it up into multiple items is not the same as "fabrication of sub assemblies" as noted in the zoning bylaw. Mr. Anza voiced disagreement with Mr. Farnsworth's interpretation. He reiterated that he simply wishes to know what is an allowed use on the property, which is located in an industrial zone. He also would like clarification of what is allowed under a subassembly. Mr. Farnsworth stated that, in his letter dated April 12th, he cited the definitions for the terminology used in the bylaw. He also commented that he was offended by the wording of Mr. Anza's appeal.

Mr. Farnsworth explained that "fabrication of subassemblies" is the taking of several different items to make another item, and voiced his opinion that taking a log and making it into smaller logs is not the same. Mr. Anza questioned whether processing of mulch would qualify as such a fabrication.

Mr. Byun commented that the activities allowed for in the bylaw are permitted provided that all operating is confined to the premises. He voiced his assumption that an activity resulting in dust and noise impacts to the neighbors would not be in compliance with the provisions of the bylaw. Mr.

Farnsworth stated that, in his letter, he had cited the entire paragraph from the bylaw, and noted that if the site is to be used as a contractor's yard then the entire verbiage will apply.

Helene Aldenberg, 399 Whitney Street, voiced her opinion that there is a disconnect between Mr. Anza's agricultural business and his contracting business. She questioned why there is so much discussion when we don't even know if he will be able to move forward. She commented that, since SA Farm moved in, the neighbors have been subjected to odor pollution, noise pollution, and there is still a great deal of concern about toxic pollution. Not only is she concerned about work continuing on the parcel at 429 Whitney Street, she is also worried about him operating on a second parcel in the neighborhood. She reiterated that this is a very tiring and bothersome situation for the entire neighborhood, and noted that the smell is so bad that residents cannot be outside of their homes for any length of time. As if it is not bad enough already, Mr. Anza is now suggesting a contractor's yard on the parcel, leaving her to wonder about further impacts from that activity. She voiced her opinion that Mr. Anza needs to comply with the town, clearly state his intentions for his agricultural business and clearly state what he wants to do with his contracting business before any decision can be made.

Mr. Farnsworth explained that Mr. Anza's appeal concerns the subject of the allowable uses for a contractor's yard. He confirmed that such a use is allowed provided the applicant meets all of the requirements and safeguards. He also commented that this appeal has nothing to do with the matter of the agricultural business.

Mr. Lanza commented that it is ridiculous to think that every word in the English language would have a clear and single meaning. He noted when things are not clearly defined in the bylaw, the board has the duty to determine if the Zoning Enforcement Officer's determination is correct. Mr. Lanza voiced his opinion that what Mr. Anza is proposing is a milling and cutting operation with some type of grinding operation to generate fuel chips and mulch. He also stated that he does not believe that the making of mulch, firewood and/or fuel chips is in any way a fabrication of subassemblies, and reiterated that the board's decision should be to uphold the Building Inspector's decision.

Chairman Rand asked Mr. Anza to explain his proposed operation. Mr. Anza reiterated that he is simply asking for clarification of the bylaw and the allowable uses on the property, and once he has a clear understanding, he will indicate what he will do on the property. He noted that he is also trying to figure out possible alternative uses for his parcel at 432 Whitney Street, and a contractor's yard is something he is very familiar with.

Mr. Rutan asked Mr. Farnsworth if an allowed industrial use would also be subject to regulations regarding hours of operation, noise impacts, etc. Mr. Farnsworth confirmed that it would.

Ms. Joubert informed the members of the board that Mr. Farnsworth had met with her, Town Counsel, and the Town Administrator and everyone mutually agreed with Mr. Farnsworth's findings noted in both of his letters to Mr. Anza.

Nancy Lepore, 388 Whitney Street, asked Mr. Anza if he has a railroad spur on the property at 432 Whitney Street and, if so, if he has rights to use it. Mr. Anza confirmed that he does, though it is not active at this time.

Jim Casella, 70 Coolidge Circle, asked for clarification of the matter before the board. Chairman Rand explained that Mr. Anza is appealing Mr. Farnsworth's decision regarding the allowable uses for the properties at 429 and 432 Whitney Street.

Jody Martinson, 50 Coolidge Circle, noted that, earlier this evening, Mr. Anza used the word “selling” and she asked if he is allowed to sell out of the yards. Mr. Joubert confirmed that both wholesale and retail sales are allowed uses in a contractor’s yard.

Ms. Joubert noted that there had been a lot of information passed out for the three hearings this evening, and requested that the applicant submit a copy to her office of everything that was distributed.

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

Public Hearing to consider the petition of Christopher and Bonnie Dennis for a Variance/Special Permit to allow the expansion of a sunroom which will exceed 80% of the gross floor area of the existing non-conforming single-family home to which it is attached, on a lot with less than the required lot width, located at 139 Washburn Street

Craig Gugger disclosed to the applicant that he lives on the corner of Washburn and Whitney Streets, and is concerned about any perceived conflict of interest. Mr. Dennis indicated that he would not have an issue with Mr. Gugger hearing the case.

Mr. Dennis discussed his plans to expand an existing single story room from its current 8’x10’ footprint to a 16’x20’ footprint. He explained that, while the addition is only 224 square feet, because a previous owner had already expanded the home up to the maximum 80% increase in gross floor space, a variance is required for the 224 square feet that Mr. Dennis is now seeking to add. Mr. Dennis also noted that his abutters have all provided signatures in support of his proposal.

Mr. Rutan asked if all required setbacks will be met. Mr. Dennis confirmed that they will be.

Mr. Farnsworth noted that the existing house is located less than the required 30 feet from the front property line, therefore it is a nonconforming structure. According to the zoning bylaw, the gross floor area of the original structure can only be increased by 80% and, as previously stated, that was done by a former owner in 1995. Mr. Farnsworth commented that the applicant had applied for a separate permit for interior renovations, which has already been issued.

Mr. Rutan asked if the proposed addition would keep the house in line with others in the neighborhood. Mr. Dennis stated that his house will still be smaller than most of the houses in the area.

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

Public Hearing to consider the petition of Lisa Maselli for a Variance/Special Permit to allow reconstruction of a pre-existing, non-conforming detached two-car garage, which includes the addition of a second story and an increase to the footprint of the subject structure, on the property located at 13 Maple Street

Lisa Maselli discussed replacement of an existing 2-car garage that was compromised by the heavy snow and is near collapse. She stated that garages are an allowed use on the parcel, and explained that she intends to reconstruct the garage in the same location as a pre-existing nonconforming structure. She voiced her understanding that the 2-family structure and 2-car garage are grandfathered as a preexisting nonconforming use. She also noted that the existing garage is approximately 600 square feet and is used by the owner and a tenant. Ms. Maselli confirmed that the garage use is not changing, and there is

no increase in nonconformity and no new nonconformity being created. In addition, the project will comply with all required setbacks, height restrictions, and number of stories allowed.

Mr. Farnsworth noted that Ms. Maselli has referenced the dimensional regulations for a residential zone, but that this property is located in the Business East zone. Ms. Maselli explained that her property was located in a residential zone prior to a 2009 zoning change, and voiced her opinion that she should not be required to conform to the regulations for both. She also noted that she has obtained signatures from neighbors confirming support of her proposal.

Chairman Rand asked about the second floor of the proposed garage. Ms. Maselli stated that it is to be used for storage.

Mr. Farnsworth noted that, as a result of the 2009 zoning change, this property went from being located in a residential zone to a business zone, and under the new zoning a 2-family home is not allowed by right. As this is now a pre-existing, nonconforming structure, a special permit is required from this board for the reconstruction of the garage. Mr. Farnsworth also noted that residential garages in any of the residential zones are limited to a single story, while the proposed accessory building will be two stories.

Mr. Farnsworth asked Ms. Maselli why the new garage needs to be so large. Ms. Maselli indicated that she needs the storage space for her personal items. Ms. Joubert voiced concern about the second story being used as habitable space and suggested that the decision include a condition prohibiting this.

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

DECISIONS:

2 Pond View Way – Chairman Rand commented that it seems like an honest mistake was made. Mr. Rutan agreed, and added that since nobody came forward in opposition he does not believe it to be a detriment to the neighborhood. He also does not see any benefit to having the structure torn down.

Mark Rutan made a motion to grant a special permit to allow the continued existence of the garage at 2 Pondview Way. Richard Kane seconded, vote unanimous.

37 Woodland Road – Mr. Rutan voiced his opinion that, if the house had been built large enough initially, there would be no need for the homeowner to come before the board. He also noted that the proposed project will be built in compliance with all required setbacks, so he sees no reason not to allow it. Mr. Byun agreed.

Mark Rutan made a motion to grant a variance to allow the expansion of the home by an additional 1500 square feet based on the shape of the lot. Richard Kane seconded, vote unanimous.

139 Washburn Street – Mr. Byun stated that he sees no reason not to allow the proposed expansion. Mr. Rutan agreed that it will be an improvement to the neighborhood.

Mark Rutan made a motion to grant a variance to allow for the expansion of the home up to a total of 2200 square feet (including the addition from 1995 and the proposed 2011 project) based on the shape of lot. Richard Kane seconded, vote unanimous.

13 Maple Street – Mr. Rutan stated that he is in favor of removing an endangerment to the neighborhood and allowing for the construction of a more attractive structure that will better complement the home.

Mark Rutan made a motion to grant a special permit to allow for the expansion of the footprint of the garage and the addition of a second floor generally as shown on the plan submitted with the application packet. Richard Kane seconded, vote unanimous.

429 Whitney Street (Cease & Desist Order) - Mr. Kane voiced his opinion that the board's original ruling should be upheld. Mr. Gugger agreed, and commented that he did not hear any evidence that would support overturning the decision. Mr. Rutan stated that his decision was not made based on anything that was brought up by Mr. Benson and aspersions of the witness. Mr. Gugger noted that he never considered the contamination issue when reaching his decision, and reiterated that there was nothing presented this evening that would convince him to reverse his ruling. Mr. Byun agreed.

Craig Gugger made a motion to uphold the board's original decision and deny the appeal. Richard Kane seconded, vote unanimous.

Town Counsel Kay Doyle reminded the board that the applicant had indicated a desire to have the hearings for the appeal of the use determination letters issued by the Zoning Enforcement Officer for the properties located at 429 Whitney Street and 432 Whitney Street considered together.

Mark Rutan made a motion to consolidate the two hearings. Richard Kane seconded, vote unanimous.

Mr. Byun voiced his support of the Zoning Enforcement Officer's decision. He also reiterated the need to consider the dust, noise, odor, and other impacts as well as the methods under which products will be made. He voiced his opinion that the manufacturing process to be defined would result in the use of heavy machinery. Chairman Rand agreed.

Mark Rutan made a motion to uphold the decision of the Zoning Enforcement Officer with relation to the definitions and determinations. Richard Kane seconded, vote unanimous.

Review of Minutes: Ms. Joubert stated that Mr. Byun had reviewed the February 22, 2011 minutes and provides some minor edits.

Mark Rutan made a motion to approve the Minutes of the Meeting of February 22, 2011 as amended. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to accept the Minutes of the Meeting of April 26, 2011 as submitted. Richard Kane seconded, vote unanimous.

Adjourned at 9:34PM.

Respectfully submitted,
Elaine Rowe, Board Secretary