



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 7-26-11

Zoning Board of Appeals Meeting Minutes June 28, 2011

Members present: Richard Rand, Chairman; Mark Rutan, Clerk; Richard Kane; Chan Byun

Members excused: Craig Gugger

Others present: Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Edward M. Roach, 75 Main Street; Chris Wall, Berkshire Design Group; Lisa Gabriel, 75 Main Street; Joyce Longvall, 11 Pond View Way; Debi Dunn, 6 Church Street; Stephanie Leahy, 38 Venus Drive, Shrewsbury; Attorney Arthur Bergeron; John & Bonnie Goggin, 490 Main Street; Dee & Arthur Macarey, 490 Main Street; Ray & Mary Abbott, 490 Main Street; Shirley Clausen, 490 Main Street; David Geever, 490 Main Street; Sean Durkin, 20 Maple Street; Frank Eaton, Goodnow Development

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

Public Hearing to consider the petition of Goodnow Development, LLC for an Amendment to a Special Permit to allow the rental of dwelling units without owner-occupation. The Special Permit was granted by the Planning Board on October 21, 2003 for the Senior Residential Community known as Pheasant Hill, on the property located at 484-492 Main Street

Attorney Arthur Bergeron explained that he represents Frank Eaton, who developed and owns some of the units in this senior residential community. He noted that, at the time that the special permit was issued by the Planning Board, the town had an overlay district that allowed for senior residential developments. However, he noted that the overlay district has since been eliminated in the zoning bylaw so this project is now technically considered a prior nonconforming use. Attorney Bergeron explained that he and his client are before the board seeking an amendment under the provision of the zoning bylaw that allows this board to permit changes to a prior nonconforming use.

Attorney Bergeron stated that, when the special permit was granted, all units in the development were required to be owner-occupied. He noted that, while many units have been purchased and are owner-occupied, some have remained unsold. He noted that, given the current market conditions, Mr. Eaton is seeking permission to rent units under whatever conditions this board chooses to impose.

Mr. Eaton explained that he built the complex and still owns several of the units, and has owned them much longer than he anticipated doing so. He noted that the units were built 6 or

7 years ago, when the market was good, and that several of the units sold very quickly. Of the 48 units, 20 are currently sold and he shoulders the burden of carrying the 20 unsold units. He also indicated that he is trying to maintain the values in the project by not simply dumping what has become a financial burden for him, and explained that the ability to rent the units would enable him to support them until the market changes.

Mr. Kane asked for details about the units. Mr. Eaton noted that the units are between 1200 and 1800 square feet, with most being in the 1400 to 1600 square foot range, and original prices were high \$200K to over \$400k. He stated that they are currently priced around \$250K - \$310K, which puts the values below the cost of construction. He commented that rents would be approximately \$1800/month for a 2-bedroom unit. Chairman Rand asked about the target market, and Mr. Eaton indicated that he would maintain the over 55 restriction. Attorney Bergeron commented that, by maintaining the over 55 requirement, the owner can prohibit children from residing in the complex. Attorney Bergeron also noted that the board could condition their decision to include a requirement that the rentals be a rent with purchase option only, with a limit on the length of the rental, or could specify that all rentals must end at a specified period of time. Mr. Kane asked what the current requirement is if a surviving spouse is not yet 55. Attorney Bergeron voiced his understanding that there is a specified time period within which the occupant must have the unit sold. In the past, a one year period seemed to be a reasonable requirement, however, that is now not the case. He emphasized that many stipulations were put in place when market conditions were very different.

Mr. Eaton commented that his long term objective is not to be a landlord. Mr. Rutan asked if putting a term limit on rentals would help the market. Mr. Eaton voiced his opinion that it would. Mr. Rutan suggested that a 5 years limit would be reasonable. Mr. Kane asked Mr. Eaton if he would object to removing the restriction that the surviving spouse must be over 55 in order to remain in the unit. Attorney Bergeron suggested that the board could structure the decision to allow for as many as 20% of the units to be occupied by people under 55.

Chairman Rand asked if there is a tenant's association that manages the units, and Mr. Kane asked about the condo fees. Mr. Eaton voiced his understanding that the condo fees are around \$300 per month. John Goggin introduced himself as the Chairman of the Board of Trustees and confirmed that the condo fees are based on the size of the unit, with the fee for a 1640 square foot unit being \$329/month. Chairman Rand asked if the Board of Trustees had discussed Mr. Eaton's proposal. Mr. Goggin confirmed that they have, and that they agree with allowing owners to rent their units for a period of time. He stated that it had taken him 18 months to sell his house in Rutland, and the market has worsened since that time. Mr. Goggin confirmed that the Board of Trustees had voted unanimously to support Mr. Eaton's request.

Mr. Farnsworth explained that it had come to his attention that there were units being offered for lease. Since condition #4 of the special permit stipulates that each unit must be owner-occupied, he contacted the condo association, realtor, Mr. Eaton, and his attorney to discuss the issue. Mr. Farnsworth noted that a modification to the special permit is required to allow for the rental of units, and that town staff recommends that the number of rental units be

restricted. He also noted that town staff does not recommend any changes to the age restrictions that are conditioned in the special permit.

Mr. Rutan reiterated that there are currently 20 units unsold, and suggested that limiting rentals to 25% would not be sufficient to ease the burden on Mr. Eaton. Mr. Rutan also voiced concern that imposing too strict a limit will create a hostile environment with owner's racing to get their units rented. Attorney Bergeron noted that the applicant understands that the town has concerns, so is willing to accept the 25% restriction. He also stated that the applicant will work with the condo association to develop a reasonable way to manage the rental process.

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

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

Chris Wall, Berkshire Design Group, discussed plans to demolish the existing building on the parcel and build a new building with parking and two drive-up lanes for the bank. He explained that the project has been before the Design Review Committee (DRC), who originally questioned whether the existing building could be maintained. Mr. Wall explained that doing so would be cost prohibitive and would not meet the bank's business plan. He indicated that the final design was accepted by the DRC, that they are happy with both the colors and style of the proposed building, and agree that it is a suitable replacement for the existing building.

Mr. Wall also stated that the project has been before the Conservation Commission because a corner of the property is located within the 200-foot riverfront buffer. He noted that the Conservation Commission has indicated that they are comfortable with the project.

Mr. Wall also confirmed that the project has been before the Groundwater Advisory Committee (GAC). He explained that the boundary between the GW2 and GW3 areas splits the lot, with GW2 being more restrictive. Mr. Wall explained that, with a special permit from this board, if the applicant confines construction to be entirely within the 50-foot offset from the boundary lines, it is permissible to do whatever uses are allowed in the less restricted area. Since all proposed construction will be entirely within the 50-foot offset, the GAC had no opposition to the project as proposed.

Mr. Wall indicated that the Fire Chief had originally provided several comments, and that he has worked to address the majority of those concerns. He noted that the sight distance up Church Street was greater than 200 feet but, by removing some of the proposed trees from the plan, he was able to improve the sight line to approximately 300 feet. He explained that the Fire Chief was also very concerned that people exiting the new site might not be as attentive to emergency vehicles. To remedy the situation, it was agreed that there will be a sign placed strategically on the site to caution drivers about the presence of fire apparatus.

Mr. Wall stated that the Fire Chief also had some concern about increased traffic at the site. He has provided the Fire Chief with details about the anticipated increase, which he calculated as 68 additional cars during peak times, but has not yet heard back from him.

Mr. Rutan questioned the traffic flow from the site. Mr. Byun noted that the DRC has included some suggested conditions, and questioned whether the GAC was aware of those conditions. Mr. Farnsworth noted that there was a comment letter from the Town Engineer dated June 22nd that addresses the GAC conditions and a letter from the DRC dated June 24th indicating their proposed conditions. Mr. Wall confirmed that the applicant has no issues with the proposed conditions.

Mr. Wall also discussed the stormwater management for the site. He explained that the Town Engineer has requested a permeability test in the area of the proposed subsurface infiltration trench and a test of the existing storm line to confirm its carrying capacity. In addition, the proposal included a catch basin to catch basin connection, but the Town Engineer requested that everything tie to a manhole, so that was added to the plan.

Chairman Rand asked about when the construction will begin, and how long it will take to complete. Mr. Wall voiced his understanding that the applicant hopes to begin construction in the fall and finish in the spring, but the exact timing will depend on the weather.

Mr. Farnsworth discussed condition #5 in the Town Engineer's letter, and questioned whether it will be possible to conduct the permeability test prior to the issuance of the building permit. Mr. Wall confirmed that this test should be done before issuance of the building permit because, if it is found to be inadequate, it would need to be addressed prior to construction.

Mr. Farnsworth questioned whether condition #6 should be met prior to the issuance of the building permit as well. Mr. Wall voiced hesitation about agreeing to this point. He noted that, since the new construction will involve less impervious coverage and less runoff from the sight, there is no reason to believe that a system that is working currently would not work after the project is completed. Mr. Farnsworth questioned whether the storm line's capacity could be verified prior to the issuance of the building permit. Mr. Wall voiced his opinion that, if the permeability test does not prove successful, then the entire project will need to be redesigned. Mr. Farnsworth stated that, if the design capacity is approved by the Town Engineer, he would be satisfied. Mr. Rutan asked about the carrying capacity of the storm line, and questioned who would be responsible to fix it should it prove insufficient. Mr. Farnsworth indicated that this would likely be handled by the Town Engineer and DPW.

Chairman Rand voiced his opinion that the permeability test cannot be done until the existing structure is demolished. Mr. Wall stated that it may be possible to do so at one end of the line as long as they can obtain permission from the owner and current residents and tenants.

Chairman Rand asked if any soil testing has been done yet. Mr. Wall confirmed that borings have been done, and the site was found to contain 5 feet of generic fill, with sandy soils below that. Given these results, he would expect the infiltration will work.

Jeff Amberson noted that the plan includes a great deal of work coming up Church Street, and asked if the plan reflects the way the street is now or the way it is planned to be. He suggested that it would be prudent to have an overlay of how the road is going to be after the anticipated modifications. Mr. Farnsworth stated that the Town Engineer and DPW have already reviewed the plans with regard to the proposed changes to the road, and it is his opinion that whatever is on the plan will not be affected by the changes. Mr. Amberson reiterated his concerns, and also asked whether the issues with the line of sight that were raised by the Fire Chief will change at all. Mr. Farnsworth indicated they will not.

Mr. Farnsworth discussed the comment letters from the Design Review Committee and the Groundwater Advisory Committee (copies attached) and the recommended conditions from each.

Mr. Farnsworth stated that the applicant has submitted an application to his office for the demolition of the existing building, which he is required to forward to the Historical Commission. He noted that this is not a condition for this board, but indicated that nothing will happen to the existing building unless it is approved by the Historical Commission.

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

Public Hearing to consider the petition of Edward M. Roach for a Variance/Special Permit to allow the use of a dwelling unit within an existing accessory structure (barn) used currently for a retail business on the property located at 75 Main Street

Ed Roach stated that he had recently purchased the property, which has an antique house, barn, and one office on it. He explained that he is seeking a variance to build a residence on the second and third floors and part of the first floor of one of the buildings. Mr. Roach noted that the building currently houses “Elegant Antiques”, who is planning to downsize. Chairman Rand asked how large the residential unit will be. Mr. Roach stated that it will be within the existing layout, with the exception of the addition of a wall to build a closet. He explained that the first floor will be converted to a bedroom, with additional bedrooms and living areas on the upper floors. Chairman Rand asked about the total number of bedrooms planned. Mr. Roach indicated that the residence will have a total of three bedrooms and one bath, with an additional half-bath for use by “Elegant Antiques”. He voiced his opinion that modifying the structure to include the residential unit will not involve much work, other than what the building department requires for it to meet residential code. Mr. Farnsworth commented that the applicant is, in essence, seeking approval for a mixed use building.

Mr. Farnsworth stated that this is an application for a variance for use. He noted that, currently, there is a single family detached dwelling on the property, so this proposal seeks to add a second single family dwelling, which is not allowed by right. He also noted that the property is located in the Main Street Residential zone, created in 2009, and a variance requires the existence of a hardship based on soil, shape, or topography.

Chairman Rand asked Mr. Roach if he would agree to a condition that the unit be owner-occupied. Mr. Roach voiced his intention to live in the unit himself, and noted that there are other properties in the area whose owners appear to be planning similar changes.

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

Public Hearing to consider the petition of 168 East Main Realty Trust, Tim Shay, Trustee, for an Amendment to a Special Permit to allow the proposed garage to be located 9.25 feet from the rear property line instead of 10 feet from the rear property line, as granted per ZBA Case No. 10-06, on the property located at 168 East Main Street

Sean Durkin discussed the project at 168 East Main Street, which involved demolition of an existing structure and the construction of a new, mixed use (office/residential) building. He explained that a garage was built on the corner of the lot, but was mistakenly placed 9.65 feet from property line instead of 10 feet as was previously approved by the board.

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

DECISIONS:

Mr. Farnsworth reminded the board that a unanimous vote is required by the four members of the five member board present this evening.

6 Church Street – Mr. Rutan stated that he sees no issues with the project as proposed, and voiced his opinion that this is an appropriate commercial use for the site. He also noted that the applicant has complied with the Fire Chief's requests and he sees no detriment to the public safety. Chairman Rand agreed. Mr. Byun commented about traffic concerns, but noted that any project that is done in such close proximity to the fire station will raise similar concerns. He also voiced his opinion that this type of use should not increase the traffic to the point where it becomes a critical concern.

Chan Byun made a motion to grant a special permit to allow the use by a bank with drive through services, and to allow commercial development in a groundwater 3 area with the following conditions:

- No internally lit signs shall be utilized onsite.
- An on-going landscape maintenance program needs to be established to ensure maintenance and replacement of trees and shrubs.
- The proposed building is to be connected to the natural gas line in Church Street
- The drainage system should utilize a catch basin to manhole configuration and cleanouts or manholes should be provided where the roof drains connect to the drainage system.

- Prior to the issuance of a building permit, a permeability test is to be performed in the area of the proposed subsurface infiltration trench to verify the proposed design. Results of the permeability test are to be approved/verified by the Town Engineer.
- Prior to the issuance of a Building Permit, the carrying capacity of the existing drainage system must be verified and the results approved by the Town Engineer. The system should also be cleaned.
- The Operation and Maintenance Plan shown in the Stormwater Drainage Report should be incorporated into any approval and should be submitted to and approved by the Town Engineer. The Town Engineer shall be notified before the work is performed and shall be afforded the opportunity to inspect the work. The Town Engineer and 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 disposed of offsite. The Operation and Maintenance Plan should be part of the decision by the Zoning Board of Appeals so that it will be recorded at the Worcester Registry of Deeds and become a permanent part of the chain of title.
- 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 (U.S.G.S. Datum of 1988).

Mark Rutan seconded the motion, vote unanimous.

Chan Byun made a motion to grant a special permit with site plan approval to extend the use allowed in groundwater area 3 by 50 feet into groundwater area 2. Mark Rutan seconded, vote unanimous.

75 Main Street – Mr. Rutan voiced his opinion that the proposal may result in a betterment to the neighborhood. Mr. Byun noted that the board had previously considered a similar situation and had concerns about “creeping”. He wondered whether that is not also the case here, and questioned whether it is possible to condition the decision to prevent that. Members of the board agreed that there are several properties in the area that are actually multi-dwelling residential units, so the consensus was that this project will not substantially change the nature of the neighborhood.

Mark Rutan made a motion to grant a variance to allow for a change of use to allow a residential unit to be established in a detached mixed-use building. Richard Kane seconded, vote unanimous.

484-492 Main Street – Mark Rutan made a motion to approve an amendment to modify condition #4 to allow a maximum of 12 units to be rented. Richard Kane seconded, vote unanimous.

168 East Main street – Chan Byun made a motion to amend the decision to reduce the rear setback to allow the structure to be no closer than 9 feet from the rear property line. Richard Kane seconded, vote unanimous.

Review Minutes of the Meeting of March 22, 2011 - Mark Rutan made a motion to accept the Minutes of the Meeting of March 22, 2011 as submitted. Richard Kane seconded, vote unanimous.

Election of Officers – Richard Kane made a motion to retain the existing officers for another term (Richard Rand, Chairman and Mark Rutan, Clerk). Chan Byun seconded, vote unanimous.

429 Whitney Street – Mr. Farnsworth explained that he had received permission from the property owner to visit the property, and he did so immediately on June 15 and was accompanied by Officer Jim Bruce. He indicated that he had taken several pictures of the property and, other than the composting operation that is allowed under state regulations, there are no obvious changes to the site and no obvious violations to the cease and desist order issued by the town. Mr. Kane asked about any odors on the site. Mr. Farnsworth noted that there was a slight odor near the compost pile, but nothing noticeable anyplace else. He also noted that flies were only present in one area near the compost pile. He reiterated that the composting operation does not fall under the jurisdiction of this board.

Adjourned at 8:37 PM.

Respectfully submitted,

Elaine Rowe
Board Secretary