



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved January 24, 2012

## Meeting Minutes Zoning Board of Appeals September 21, 2011

**Members in attendance:** Richard Rand, Chairman; Mark Rutan, Clerk; Chan Byun; Craig Gugger; Richard Kane

**Others in attendance:** Kathy Joubert, Town Planner; Kay Doyle, Town Counsel; Attorney Marshall Gould; Kevin Giblin; Paul Cincotta, New England Development; Jim Almonte, Waterman Design Assoc.

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

**Board discussion and vote on ZBA Case No. 11-18 regarding 429 Whitney Street Appeal of Cease & Desist Order Issued on July 15, 2011 by Building Inspector; Public hearing was opened and closed on August 23, 2011** – Members of the board discussed the draft copy of the decision that was provided by Town Counsel. Chairman Rand indicated that he would like to include language about the severity of the odor and extent of the garbage, especially given that Mr. Stone had mentioned that the smell was evident at the Shell gas station over a half mile from the site. Town Counsel Kay Doyle reminded the members that the language in the decision must be confined to what was discussed at the public hearing. Mr. Rutan voiced his opinion that the draft decision as written is sufficient.

Mr. Rutan asked about the effective date of the decision. Attorney Doyle noted that the decision goes into effect immediately upon delivery to the landowner, who will then have 20 days to appeal it.

Mr. Kane asked if there are any fines that can be imposed. Attorney Doyle explained that the Building Inspector has the option to issue tickets and impose fines on a daily basis, but noted that she does not believe he has done so to date.

Mark Rutan made a motion to sign the decision as drafted. Richard Kane seconded, vote unanimous.

Eileen Ward asked Ms. Joubert to email a copy of the decision to both her and Attorney Mark Lanza. Ms. Joubert agreed to do so.

Town Counsel Kay Doyle left.

**Bond reduction for Church Street Village** – Ms. Joubert discussed the developer's request for a bond reduction for the Church Street Village project. She explained that the town is currently holding a bond in the amount of \$359,000, which Town Engineer Fred Litchfield has stated can be reduced to \$182,000. Ms. Joubert noted that the project has progressed slowly but there have been no major issues. Chairman Rand asked how many units have been completed. Ms. Joubert stated that 40 units have been completed and she believes there are only two duplexes remaining to be built.

Mark Rutan made a motion to approve a bond reduction from \$359,000 to \$182,000 for the project at Church Street Village. Richard Kane seconded, vote unanimous.

**Review Minutes of the Meeting of July 26, 2011** – Richard Kane made a motion to approve the Minutes of the Meeting of the Meeting of July 26, 2011 as submitted. Mark Rutan seconded, vote unanimous.

**Discussion with Attorney Marshall Gould and Paul Cincotta (New England Development) regarding modification of Northborough Crossing Site Plan**

Attorney Gould explained that, given the current economic climate, the developer has had some difficulty enticing restaurants to locate on the site. He discussed a letter he submitted summarizing the background of the project for which a decision was issued in 2006. He noted that, in that decision, there were conditions that require the developer to discuss any changes to the project with the Town Planner and Building Inspector and, if requested, come back to the ZBA for their approval.

Attorney Gould voiced his opinion that the project to date has been developed as originally proposed. However, the recent economic downturn has impacted the developer's plans for restaurants on the site. He stated that everything in the project has been rented with the exception of the three restaurant sites, and they are now proposing to build a Dick's Sporting Goods Store instead. In analyzing the change, Attorney Gould discussed the issues that were of major concern during the original hearing process. Those issues are as follows:

**Traffic** – Attorney Gould noted that substantial upgrades were done in conjunction with Mass DOT and Mass Highway and that all of the necessary infrastructure is in place. He explained that the applicant has already reviewed the proposed change with Mass DOT, and they have indicated that the improvements that were made to the roadways and infrastructure are adequate and that no additional improvements are needed. Attorney Gould stated that the change proposed will modify from two buildings of approximately 14,000 square feet to one building of approximately 55,000 square feet. He also commented that restaurants would result in more traffic during peak hours than a retail store.

**Parking** – Attorney Gould stated that a thorough analysis of the parking was done by Waterman Design and they have confirmed that the proposed change meets the parking requirements of the current bylaw.

**Drainage and stormwater management** – Attorney Gould stated that the propose change does not result in any changes to the drainage or stormwater management, and there are no additional impacts to the wetlands.

**Water consumption** – Attorney Gould explained that two restaurants would have used considerably more water and produced more wastewater than the proposed retail store.

Attorney Gould commented that the change from 14,000 square feet of restaurant space to 55,000 square feet of retail space will result in additional tax revenue of approximately \$80,000 to \$82,000 per year. He voiced his opinion that the proposed change should prove more beneficial to the town and to other restaurants in the area. He reiterated that there will be no negative impact, and noted that there will still be one restaurant site in the development that they are hopeful will be filled.

Attorney Gould reiterated that the proposed changes are not substantially different from what was originally approved by this board. Mr. Kane agreed.

Mr. Rutan stated that it was always his expectation that there could be some changes in use and tenants as the project developed. Chairman Rand and Mr. Kane agreed.

Ms. Joubert asked if MEPA has issued a decision. Attorney Gould noted that the applicant anticipates receiving the MEPA certificate this week or next.

Chairman Rand asked if Route 20 will be repaved before winter. Mr. Giblin explained that the paving of Route 20 is the state's responsibility, and voiced his understanding that it was delayed so that it could be done in conjunction with some additional road improvements planned in Shrewsbury. He commented that it is unfortunate that it was not done in conjunction with the rest of the road work in the project as the site itself is in very good condition.

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

Mr. Rutan and Mr. Kane both voiced opinions that this is not a substantial change. Mr. Byun stated that there has been a lot of positive buzz about this project and he is anxious to see the development completed.

Mark Rutan made a motion that the board affirm that the proposed modification is not a substantial change. Richard Kane seconded, vote unanimous.

Mr. Giblin voiced appreciation to the board for their consideration and cooperation throughout the process.

Adjourned 8:30pm

Respectfully submitted,

Elaine Rowe  
Board Secretary