



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 3/27/12

## Zoning Board of Appeals Meeting Minutes January 24, 2012

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

**Others in attendance:** Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Buildings/Zoning Enforcement Officer; Elaine Rowe, Board Secretary; Jeff Amberson; Sean Durkin; Michael Sullivan, Connorstone Engineering; Tim Shay, Tim Shay, LLC; Nick Muskopf, Carol & Anthony Chione, Katee & Jarrett Craver; Tricia Foster; Robert Gersh; Laura & Chris Hovey; Gerald Hickman; Brian Smith; Amy & James White; Susan Ziegler; Ellen Picone; Deidre Merritt; Danielle Hanlon; Sarah Cutrona; Joan Maher; John & Margaret Lellman; William Clements; Karen Ares; Weliton & Didley Carvalho; Chris & Susan Galante; Heather & Jeff Cayer; Ethan Kelleher; Anna Munro; Chris Mason; Aaron Hutchins; Michelle Gillespie, Planning Board;

**Chairman Rand called the meeting to order at 7:25PM.**

**Public Hearing to consider the petition of Tim Shay, LLC for a Variance/Special Permit/Special Permit with Site Plan Approval to allow a Horizontal Mixed-Use development containing 12 residential dwelling units and 12,880 square feet of business uses on the property located at 130 Main Street, GIS Map 53, Parcel 152**

Michael Sullivan of Connorstone Engineering discussed the project proposed for the parcel at 130 Main Street. He noted there is an existing house, a couple of sheds and a garage on the property, which has its driveway off of Route 20. He indicated the topography is fairly gradual, and suggested this feature is important because of drainage on the site. Mr. Sullivan stated the site is zoned Business East (BE), which requires 150 feet of frontage and a lot size of 20,000 square feet. He noted this parcel is 80,000 square feet in size, with 199 feet of frontage on Route 20 and 267 feet along Brigham Street, and therefore is larger than what is required in the BE zone.

Mr. Sullivan explained the applicant proposes to demolish the existing structures and construct three buildings on the parcel. The front building will feature 2,080 square feet of retail space on the ground floor and two apartments on the second floor. The second (middle) building will be a two-story, 60' x 90' structure, with 5,400 square feet of office/retail on each floor, and the third (rear) building will be 40' x 1500' in size and will house 10 apartments.

Mr. Sullivan explained the zoning currently allows two apartments for the first 20,000 square feet of lot size, and requires 3500 square feet for each apartment beyond the first two. He indicated that the site exceeds the required lot size for the project as proposed.

Mr. Sullivan also stated 70 parking spaces are required and the project includes 72, 2 of which will be handicapped compliant. He also noted that, since there will be an increase in impervious surface, a stormwater analysis has been done and the proposal includes the addition of subsurface systems and roof drains to handle runoff, resulting in a decrease in the rate of runoff for all storm events evaluated.

Mr. Sullivan noted town water will be brought in from Route 20 using an 8" line, there will be 2 hydrants on the property, and sewer will be extended to the project. He confirmed there will be 600 feet of sight distance in both directions. In addition, sidewalks will be installed along the front of the property.

Mr. Sullivan explained the architect had met with the Design Review Committee on two separate occasions, and the plans were refined to meet their requests. He stated, in response to the Design Review Committee's requests, the landscaping plans include a 6-foot tall fence along the rear property line and plantings of trees and shrubbery along the front, with a variety of tree species located throughout the parking area. Mr. Shay stated he had built a similar building on the property near the Texas BBQ Restaurant.

Chairman Rand asked if there were any changes to the plans submitted to this board. Architect Daniel Wezniak stated revised plans were submitted yesterday based on comments from the Design Review Committee. Ms. Joubert confirmed the revised site plan and renderings were received yesterday and are now before the board. Mr. Sullivan also noted the Fire Chief had requested the 8" water main, which has now been incorporated into the plans, as well as data demonstrating the subsurface system can accommodate the load of his department's vehicles and equipment. Mr. Kane asked if the applicant has complied with all of the Fire Chief's requests. Mr. Sullivan confirmed he has.

A member of the audience asked which way the buildings will face. Mr. Shay stated the front building will face Route 20, the second building will face the courtyard with its rear facing Brigham Street, and the third building will face Main Street.

Chairman Rand asked if there will be any screenings placed between Building 2 and Brigham Street. Mr. Shay indicated there will be blue spruces placed along the back. Mr. Rutan asked if the existing stone wall will be removed. Mr. Shay stated a portion of it will need to be cleared for access to Brigham Street. Chairman Rand asked if Brigham Street is designated as a scenic road. Ms. Joubert confirmed it is. She noted the portion of the stone wall to be removed is located within the town's right-of-way, and the applicant will be required to file a scenic road application with the Planning Board.

Mr. Gugger asked about the design of the privacy fence in the back. Mr. Shay commented it will be a 6-foot tall wooden fence.

Ms. Joubert stated there are two memos and an email in the board's packet; a memo of support from the Planning Board, a memo from the Design Review Committee indicating they have reviewed the

modified plans and found them to be in compliance with their requests, and an email from the Town Engineer reiterating his standard requirements.

Ms. Joubert noted the light posts are not show on the plans. She explained the original plans called for standard fixtures, but the Design Review Committee had asked for something more residential in scale and design. Ms. Joubert noted the applicant had presented four options and all four met with the Design Review Committee's approval but, because the light post specifications are not included on the site plan, the Design Review Committee has asked the board to include the light post specifications as a condition of site plan approval.

Ms. Joubert asked if the property abuts residential land. Mr. Sullivan stated the zoning transitions from Business East to Residential. Ms. Joubert explained the site plan standards require a 25-foot landscape buffer between business and residential zones, so that will need to be incorporated into the plan. Mr. Sullivan confirmed there is ample space to do so, and questioned whether the existing landscaping is sufficient. Ms. Joubert stated if the existing area is left as a no cut zone, it should meet the requirement. If not, it will need to be replanted. Chairman Rand asked the distance from the building to the back property line. Mr. Sullivan stated the deck is 25 feet from the property line; the building is 33 feet away.

**Aaron Hutchins, 91 Brigham Street**, voiced concern about the impact of an additional 72 cars on an already clogged intersection (Brigham Street and Route 20), and questioned whether the increased traffic has any bearing on the board's decision. Chairman Rand commented it does not. Mr. Hutchins asked if the Police Chief has made any comment. Mr. Rand indicated he has not. Ms. Joubert explained the Police Chief receives a copy of all such applications that come before the board. Chairman Rand stated any comments or concerns from the Police Chief would be taken into consideration. Mr. Hutchins suggested it would be prudent to await feedback from the Police Chief. Chairman Rand voiced his opinion that 72 cars will not be a major impact. Mr. Hutchins reiterated his desire to hear the Police Chief's opinion before the board renders a decision, and suggested any increase in traffic flow will exacerbate an already bad situation.

Mr. Hutchins asked Chairman Rand to explain the purpose of tonight's hearing. Chairman Rand explained that, per zoning regulations, the plan proposed requires a special permit with site plan review, and the board can either approve the project as presented or make recommendations for changes.

Mr. Farnsworth explained that, under the zoning bylaw, uses can either be allowed by right, allowed by special permit, or not allowed at all. He noted the Zoning Board of Appeals (ZBA) is the Special Permit Granting Authority for this project. The Planning Board also has the opportunity to review the project and send their comments to the ZBA. Their comments may consist of conditions that can be included in the ZBA's decision, which will benefit the town and not just a specific location of the project.

Mr. Hutchins stated his office is across the street from this location, and he is having difficulty envisioning three buildings on that site. He also noted his primary concern is the apartment building.

Mr. Kane asked what issues Mr. Hutchins has with an apartment building on the site. Mr. Hutchins voiced his opinion that a mix of business and residential uses is not desirable. He also commented that apartment dwellers by nature are transitory, and he does not believe it is beneficial to mix them in next to long-established residences.

**Janet Robbins, 44 Brigham Street,** commented that all of the children from the apartments will likely attend Peaslee School, and the impacts to class size will be unfavorable. Chairman Rand stated that impacts to schools do not fall within the ZBA's purview. Mr. Rutan noted the apartments will be one and two-bedroom units, and families are typically in need of a larger apartment.

**Karen Ares, 31 Leland Drive,** commented that the overwhelming response tonight is over concerns with the traffic. She noted she typically leaves for work at 6:45 a.m., when there is a very small window of time where she is able to turn onto Route 20. She commented the proposed trees and landscaping will further block the view for oncoming traffic.

Ms. Ares also noted the current economy makes it more likely that families with children could occupy these apartments, and those extra children will be detrimental to an already overburdened school. She discussed the fact that there are no sidewalks on Brigham Street, and there are already safety concerns with children walking to and from school.

Ms. Ares questioned the impact to the stream located within 100 feet of the project, specifically from the runoff from the impervious surfaces. She voiced her opinion that a project of this size does not belong on this small parcel on a scenic country road.

Mr. Sullivan commented that the trees, which are required by the zoning bylaw, will be approximately 15 feet back from the public way, and therefore should not impair sight distance. He also noted Mr. Shay's proposal includes the installation of sidewalks.

Mr. Sullivan reiterated the proposed stormwater management improvements will result in a rate of runoff that is less than what currently exists. He also stated the stream is 500 to 600 feet away from the subject property.

**Carol Chione, 15 Brigham Street,** voiced concern about the proposed access onto Brigham Street, and cited a document in which the Planning Board indicated it is one of the two most dangerous intersections in town. She voiced her opinion that a traffic study should be required before this project is given any consideration.

Ms. Chione suggested the board look to mitigate this project's negative impacts on the community, including the increased demands on resources, traffic congestion, and added noise from the extra traffic. She noted that, personally, she is concerned the lights from vehicles utilizing the proposed roadway will shine directly into the bedrooms of her children. She also commented the one- and two-bedroom dwelling units, which she believes will likely be occupied primarily by non-family households, do not fit in with the neighborhood. She requested the board require an environmental impact study.

Ms. Chione also expressed concern about the scenic road bylaw, and noted that when the Open Space Recreation Plan was drafted, 98% of the town's residents preferred open space to development. She urged the board to carefully consider their decision and to make every effort to minimize the negative impacts to the neighbors.

Ms. Chione also inquired about traffic studies. Mr. Sullivan reiterated that a traffic study was not done, and noted the Planning Board had submitted a letter supporting this project. Chairman Rand asked about the volume of traffic travelling out onto Brigham Street versus that flowing onto Route 20. Mr. Sullivan suggested it would likely be a 50-50 split between both roadways. Mr. Kane asked if the applicant would be willing to do a traffic study.

Mr. Rutan asked about access by Fire Department apparatus. Mr. Sullivan stated the Fire Chief wanted through traffic so he would have adequate maneuverability. Mr. Shay stated he would agree to do a traffic study.

**Tricia Foster**, who stated she has family living on Brigham Street, asked if the traffic study would be done through manual or automotive recording. Mr. Sullivan stated it will be done manually.

**Brian Smith, 97 Main Street**, questioned the board about tearing down a house on the historic asset list. Ms. Joubert noted the Historic Commission did receive copies of this application, but they have not yet responded. Mr. Smith commented these types of projects tend to destroy historic properties. He noted a developer for a project on Hudson Street did a nice job of taking an existing historic home and incorporating it into the development, and wondered if Mr. Shay gave any thought to doing the same. Mr. Farnsworth noted that, with the historic bylaw in effect, it would trigger a notification to the Historic Commission when the developer applies for a Demolition Permit. He noted no demolition permit has been submitted, but the Historic Commission has been made aware of this proposal and has provided no comments to date.

**Sarah Cutrona, 54 Maple Street**, commented that Maple Street will also be affected by the proposed development, and that increased traffic from this site will intensify the challenge for both Brigham Street and Maple Street residents. She requested the traffic study include impacts to Maple Street.

**Corey Roy, 24 Brigham Street**, explained he has two children, and his family and his property will be negatively impacted by this development. He voiced his opinion that Mr. Shay is pushing the envelope, and voiced concerned about his property values being diminished by this project.

**Jarrett Craver, 19 Brigham Street**, noted the Carvalho residence is located on the parcel behind building #3, and his own property is directly across the street. He noted concerns about the close proximity of the project to three residential properties, and voiced his opposition and concerns as follow:

- Mr. Craver expressed concern about the safety of his two children, who play in the yard in close proximity to the project. He reiterated the traffic is already overwhelming, and the additional burden will exacerbate the situation.

- Mr. Craver noted building 3 faces south, so the neighboring yards will be in perfect view from the rear windows and decks. He stated he had planned to raise his family in a safe neighborhood, not in proximity to an apartment development housing 30+ people within 300 feet of his home. He reiterated this is a neighborhood of single family homes and is not an apartment community.
- Mr. Craver voiced his opinion that this project will have negative impacts on property values. He indicated realtors have stated this development will be detrimental to the values of homes nearby. There are concerns about a 30-foot tall building towering over a single family home located within 25 feet of the lot line. He also noted the apartment dwellers will easily be able to peer over the privacy fence from their decks located 10 feet off the ground. He asked the board to deny the second floor decks on Building 3.
- Mr. Craver also noted that headlight glare will impact some of the nearby homes. He requested the board deny the project or at least eliminate the proposed Brigham Street entrance/exit.
- Mr. Craver also asked the board to limit work hours for construction to Monday through Friday, 7 a.m. to 7 p.m., with no extensions allowed at any time. He requested the construction entrance be moved to Route 20 to prevent noise disturbance to the neighbors. If that is not possible, he would at least like to see a limit to trucking hours and a condition that idling is not allowed. In addition, he requested the board require a performance bond or cash guarantee, as well as requiring the applicant to file an affidavit confirming his understanding and agreement to comply at all times.
- Mr. Craver asked the board to include a condition limiting signage affixed to the buildings and prohibiting any illuminated signs. He also suggested that, if the board will not eliminate the Brigham Street access, he would like a condition in the decision requiring the applicant to work with property owners to determine visual screening requirements to limit headlight glare. If plantings are to be used, the decision should also include a clause requiring replanting at the applicant's expense.
- Mr. Craver requested the board include a condition limiting any outdoor maintenance or landscaping work to the hours of Monday through Friday, 7 a.m. to 7 p.m. He would also like the hours of operation for the retail/office space to have the same limitations. He reiterated he is strongly opposed to this project, and encouraged the board members to think long and hard about the negative impacts to the neighborhood.

**Mr. Carvalho, 20 Brigham Street**, explained he has three children ages 7, 10, and 12. He voiced concern about apartment dwellers on the decks observing his children. He commented that, when he bought his home, he never imagined the town would allow such a project on this site. He also voiced concern about the impacts of increased traffic.

**Amy White, 23 Brigham Street**, agreed with the sentiments and concerns expressed by others, and suggested the town look to the applicant for a different proposal and/or adjustments to the buildings. She stated she would like to see the apartment building repositioned and reduced in size, and suggested shifting it closer to the structure that houses Northboro Septic, since there is nobody there at night. Ms. White asked about the height of the peak of the building. Mr. Wezniak stated it will be 33 or 34 feet, which is allowed under the zoning bylaw. Ms. White reiterated that this results in a lot of the building looking down on small, single family homes. She also asked about runoff from the rear of the building and the location of the proposed fence and suggested that 6 feet is not high enough. Mr. Sullivan explained runoff from the back part of the building will flow to the subsurface system, with infiltration at the rear of the property. He noted the fence will be 8 feet from the property line, which will allow some of the existing trees to be left in place. Ms. White commented the trees will not stop the noise from encroaching on the neighbors. She also asked about the height and locations of the light posts. Mr. Sullivan discussed the three locations proposed for the light posts, and noted there are no lights proposed on Brigham Street. Mr. Shay stated the posts are 16 feet high. Ms. White asked about the size and location for the trash container. Mr. Sullivan noted the proposed location for the dumpster. Ms. White voiced concern about the smell from the dumpster during warm weather.

Chairman Rand asked if any consideration was given to shifting the building. Mr. Sullivan commented he could look into the feasibility of doing so, but noted the grades will not work as well as the current proposal.

**Katee Craver, 19 Brigham Street**, asked if the number of units can be reduced. Mr. Sullivan stated they could be, though the project may then not be economically viable. He reiterated the project as proposed is well within what is allowable under the zoning bylaw.

**Deidre Merritt, 16 Wesson Terrace**, asked if the lighting from the decks will shine onto the Carvalho's property. Mr. Shay confirmed it will. Ms. Merritt voiced her opinion that this project is excessive for this site, and encouraged the board and applicant to take a closer look.

**Chris Galante, 11 Brigham Street**, asked if the traffic study will be done during a time when it will take into consideration the golf course traffic. She explained drivers pull into her driveway in an effort to find a cut-through to Leland Street or Maple Street. Chairman Rand stated the traffic study is likely to be done within the next 30 days, as the board has time limits for rendering a decision. Several residents commented a traffic study done during the winter months will not provide an accurate picture. Mr. Kane stated most traffic experts can provide an estimate of those conditions.

Ms. Joubert explained a traffic study is based on projected traffic from the proposed development and the impact of the project on the intersections. She noted the town continually gets denied for a traffic light at this intersection because it does not meet the traffic warrants for a signal.

**Joan Maher, 48 Collins Road**, also voiced concern about the impact of increased traffic at the site, and suggested the study should be done during the busiest commuting hours. She also requested the Fire Chief take another look at whether the access from Brigham Street is necessary. If so, she asked if it could be limited to one-way traffic entering the complex. Ms. Maher asked if there are restrictions on

the type of retail businesses allowed in the project. Mr. Kane explained the board cannot legislate against any business. Mr. Rutan commented a liquor store would require approval by the Board of Selectmen. Ms. Maher asked if the hours of operation can be limited and expressed concern about restaurants or 24-hour convenience stores operating on the site. Mr. Farnsworth noted a restaurant would require a special permit.

**Jeff Cayer, 10 Gristmill Lane**, commented that, while he does not live in the immediate neighborhood, he is concerned about the impacts to the dynamics of the community and how much more sprawl he can expect as a resident of Northborough. He asked how many acres fall under the mixed-use zoning. Chairman Rand explained the mixed-use developments were encouraged under zoning changes adopted two years ago. Mr. Cayer asked how the residents could go about changing the zoning. Chairman Rand explained any changes would need to go to Town Meeting

**Ellen Picone, 64 Brigham Street**, stated recent construction on Route 135 exacerbated the traffic problems on Brigham Street as more drivers learned to use it to detour around road work. She noted she walks her dog around the neighborhood and has nearly been struck by cars twice in recent months. She reiterated the traffic is heavy and travels too fast, and expressed concerns for the safety of the numerous children in the neighborhood. She voiced her opinion that the town needs to either start changing some of the rules or exercising some common sense.

**Robert Gersh, 19 Brigham Street**, voiced his understanding that the board can only approve this request if it determines the project will not have an adverse effect on the neighborhood.

**Sue Galante, 11 Brigham Street**, noted all of the lights will shine into her house and her children's bedrooms. She explained she moved to the neighborhood for the residential nature, and has serious concerns about apartments being located at the end of her driveway.

**Paul Maher, 48 Collins Road**, suggested 12 apartments could bring in approximately 24 children and questioned whether there is any designated play area for them. Mr. Shay indicated there is not. Mr. Maher commented the parking lot would become the playground, posing serious safety issues.

**Anthony Chione, 15 Brigham Street**, noted he is a lifelong resident of the town and those who have already spoken have touched on his concerns. He reiterated concerns about his children's safety with the entrance and exit to the project being located directly across from his house. Mr. Chione also questioned snow removal. Mr. Sullivan noted the green areas on the plan will be used for snow storage, and large storm events will result in snow being trucked offsite.

**Amy White, 23 Brigham Street**, noted the neighboring homes are primarily served by septic systems that could be compromised. Chairman Rand commented the rain and snow accumulation is the same with or without the development.

Ms. Maher asked why the board is even considering this project when there is an excess of available office space in town. Chairman Rand stated landowners have the right to develop their land within the confines of the bylaw. Ms. Maher reiterated her understanding that the board can deny the project if



it considers it a detriment to the neighborhood. Mr. Farnsworth commented that this board is charged with upholding the bylaw, as voted by the town's residents.

**James White, 23 Brigham Street**, asked why everyone is here if the board does not have the ability to deny the project, and questioned who would have that authority. Mr. Rutan explained the board holds a hearing where the applicant presents their proposal, after which town staff, board members, and concerned parties have an opportunity to raise questions and make comments. He also noted the board's ruling can be referred to land court if either party disagrees with the decision. He emphasized the town has to have the ability to defend its decision, and cited the recent case with Stop & Shop where the town spent many tens of thousands of dollars defending a decision that was ultimately overturned because there was no basis for that decision. Mr. Rutan stated he would rather see the town's money spent wisely than defending a questionable decision. Ms. White asked if the board can take into consideration alternate sites for this project. Mr. Gugger explained the applicant has the right to develop this project and the board has no authority to force him to go someplace else.

An audience member voiced his opinion that, given the current bylaw, there is likely no opportunity to stop this particular project, but suggested that requests for changes to the bylaw could be brought to Town Meeting. Ms. Joubert noted warrant articles for this year's Town Meeting are due by February 1, but explained any subsequent changes would not affect this project.

**Planning Board member, Michelle Gillespie**, reiterated the applicant has the right to build on this site, but also noted the residents have the right to bring concerns and conditions forward for the board to consider. She stated that, while the board can likely not deny this project, it can certainly impose conditions to address some of the concerns raised here tonight. She also encouraged residents to send letters to town staff and boards requesting changes to the bylaw to better limit projects of this nature.

**Rebecca Hickman, 76 Brigham Street**, asked if the applicant has considered townhouses, condominiums, or single level apartments. Mr. Shay stated the current bylaw does not allow it. Ms. Joubert commented that the bylaw cannot dictate ownership requirements for the units. She also explained this district does not allow for single family attached housing but does allow for multi-family units by special permit.

An unidentified resident asked if a limit on height can be imposed. Mr. Farnsworth stated the project as proposed is in compliance with height limit in the bylaw.

Ms. Joubert suggested a continuance of the hearing to allow the applicant to do a traffic study and consider options for shifting building #3. Mr. Rutan also asked the applicant to look into a hard surface breakaway gate for the access from Brigham Street. Chairman Rand asked Ms. Joubert to solicit comments from the Fire Chief, Police Chief, and Historical Commission.

**Chris Mason, 36 Juniper Brook**, stated the streets within the School Street- Summer Street-Brigham Street-Maple Street area are maxed out during peak hours, and questioned whether the town will do an independent traffic study or simply rely entirely on the engineer being paid by the applicant.

Mr. Chione encouraged members of the board to personally visit the neighborhood and physically see what the impact will be from a project of this magnitude.

Richard Kane made a motion to continue the hearing to February 28, 2012. Craig Gugger seconded, and the vote was unanimously in favor of continuing the hearing.

**2012 Board Schedule** – Ms. Joubert noted she had emailed the proposed 2012 Board schedule to all of the members and asked if there was any input. Members of the board all voiced agreement with the schedule as drafted.

**Church Street Village** – Ms. Joubert noted this project is nearing completion, and the developer is now struggling to get through the “laundry list” of things to do. She noted she had provided board members with a copy of the financial report, which is required as a condition of the Comprehensive Permit.

**Review Minutes of the Meeting of August 23, 2011** – Richard Kane made a motion to approve the Minutes of the Meeting of August 23, 2011 as submitted. Mark Rutan seconded, and the vote was unanimously in favor of approval.

**Review Minutes of the Meeting of November 17, 2011** – Richard Kane made a motion to approve the Minutes of the Meeting of August 23, 2011 as submitted. Mark Rutan seconded, and the vote was unanimously in favor of approval.

**Review Minutes of the Meeting of September 21, 2011** - Richard Kane made a motion to approve the Minutes of the Meeting of August 23, 2011 as submitted. Mark Rutan seconded, and the vote was unanimously in favor of approval.

The meeting adjourned at 9:20 pm.

Respectfully submitted,

Elaine Rowe  
Board Secretary