



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 8/6/12

## Zoning Board of Appeals Meeting Minutes June 26, 2012

**Members in attendance:** Richard Rand, Chairman; Mark Rutan, Clerk; Richard Kane; Craig Gugger; Fran Bakstran; Robert Berger, alternate

**Members Excused:** Jeffrey Cayer, alternate

**Others in attendance:** Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary; David Skinner; David Woodbury, Tom & Jan Racca, Nitin Shah, Wendy & Rob Morrison, Helen Sullivan

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

### **ELECTION OF OFFICERS**

Fran Bakstran asked Richard Rand if he would be willing to serve as Chairman for another term. Chairman Rand agreed to do so.

Fran Bakstran made a motion to elect Richard Rand as Chairman. Mark Rutan seconded, vote unanimous.

Richard Rand made a motion to elect Mark Rutan as Clerk. Craig Gugger seconded, vote unanimous.

**Public Hearing to consider the petition of David Skinner for a Variance/Special Permit to allow a deck on the existing home to be expanded so as to be located less than the required distance from the rear property line, on a non-conforming structure located at 11 Patriot Drive, GIS Map 63, Parcel 27**

David Skinner discussed his plans to expand the deck on the back of his home as indicated in the rough sketch included with his application. He noted that his house is located at the end of a cul-de-sac, and the abutters to the rear are the Water Department and park land down below. Mr. Skinner explained that the existing deck was built in compliance with the 25-foot setback and is therefore small in size. He is proposing to construct a 24x14-foot deck and noted that none of the neighbors will be able to see it. He explained that the proposed deck will encroach in the setback by 4 feet in one direction and 8 feet in the other.

Chairman Rand asked how high off the ground the proposed deck will be. Mr. Skinner stated that it will be 12-feet off the ground, as is the existing deck, and there is a walk-out basement underneath. Ms. Bakstran asked if the deck is higher at the back end. Mr. Skinner stated that it is not, and noted that the property is fairly level with very little pitch.

Ms. Joubert explained that the house is currently nonconforming because it does not have the minimum required lot width, but confirmed that the lot area is in compliance with the requirements.

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

**Public Hearing to consider the petition of Saint-Gobain R&D Center for a Variance/Special Permit to allow a proposed 8-foot high security fence that will enclose the subject parcel to be located less than the required distance from the property lines on the property located at 9 Goddard Road, GIS Map 17, Parcel 11**

David Woodbury provided a brief background of the North American R&D center, noting that the Master Plan for the site was approved by the town in December 2007. He explained that St. Gobain is the world's largest manufacturer of flat glass and construction products like gypsum, insulation, and siding. He stated that the company operates in every continent with the exception of Antarctica and Greenland, and employs 190,000 people worldwide. He also explained that, in Europe, the company operates a business that is similar to Home Depot and Lowes.

Mr. Woodbury explained that there were a total of 5 buildings proposed in the Master Plan, only one of which has been built to date, but the company hopes to build a second building within the next year or so. He discussed the site's close proximity to the interstate highway and the tremendous risk associated with that especially given that there is currently no fence in place. Mr. Woodbury explained that a fence is needed to both secure the property and protect the company's intellectual property. He noted that Saint Gobain has implemented a program requiring all facilities worldwide to be secured with an 8-foot high fence. However, the bylaw in Northborough stipulates that anything above a height of 6 feet is considered a structure and must comply with those setbacks, so they are proposing to install a 6-foot fence. Mr. Woodbury stated that the portion of the property that lies in Marlborough already has an 8-foot fence. He also noted that they are seeking to install the fence in a location that will not require that it be moved with future expansions.

Mr. Woodbury explained that they have already had conversations with the Fire Chief regarding access to the site. He also noted that the proposal includes the installation of two motorized gates and one manual gate.

Mr. Berger asked if there will be security staff manning any of the gates. Mr. Woodbury stated that there will not be, but that there are guards stationed inside the building. He explained that the gates will have badge access, with trip plates in the asphalt so the gate will close. Mr. Rutan asked if there is any residential property to the west of the site. Mr. Woodbury stated that the

surrounding property is primarily wooded, with portions owned by New England Telephone, Town of Northborough and City of Marlborough, and any residential properties are far removed.

Ms. Bakstran asked if the board has any written comments from the Fire Chief. Ms. Joubert stated that she has not received any comments on this application. Mr. Woodbury noted that the Fire Chief had requested Knox boxes on the gate operators, with key codes to be provided to dispatchers. Ms. Joubert explained that the Fire Chief always signs off on a building permit as a matter of practice, so any issues he might have will be addressed prior to him doing so.

Mr. Rutan questioned the type of fencing to be used. Mr. Woodbury stated that the plan is to install a chain link fence to a point at Goddard Road, with the remainder to be ornamental fence so that the property will not have the appearance of a prison. Mr. Rutan asked if there will be barbed wire along the top of the chain link fence. Mr. Woodbury indicated there will not be.

An audience member asked about the location of Solomon Pond Road in relation to the site. Mr. Woodbury noted that it is a considerable distance, and that nothing on the property will be visible from Solomon Pond Road.

Craig Gugger made a motion to close the hearing. Fran Bakstran seconded, vote unanimous.

## **DECISIONS**

**9 Goddard Road** – Mr. Rutan commented that this is a legitimate request, won't impact any neighbors, and will keep everyone much safer on both sides of the fence. Ms. Bakstran noted that town land abuts a portion of this site, so it is in our best interest as well. Ms. Joubert explained that the setbacks in an industrial zone are 40 feet in the front, 20 feet on the side, and 25 in the rear. She noted that the fence is, in most places, two feet off the property line but it is not consistent. Mr. Rutan indicated that he would allow the fencing to be up to a foot from the property line.

Mark Rutan made a motion to allow the construction of a fence within no less than one foot of the property line, subject to a maximum fence height of 9 feet. Richard Kane seconded, vote unanimous.

**11 Patriot Drive** – Board members saw no issues with granting the request.

Mark Rutan made a motion to grant a special permit to allow the construction of a deck within 15 feet of the rear setback. Richard Kane seconded, vote unanimous.

## **OTHER BUSINESS**

**Laurence Place** – Ms. Joubert explained that the developer was considering asking the board for feedback about allowing some of the units to be 3-bedroom units instead of 2-bedrooms as

conditioned in the decision. However, they have recently engaged a new real estate agent to market the property, so are now allowing them the opportunity to try to sell them as 2-bedroom units. If they are not successful, she anticipates that they will come back to the board in the fall.

Ms. Joubert also voiced her understanding that, since the day following this board's decision, the developer has been advertising the project as 3-bedroom units despite the fact that there is a deed restriction limiting them to 2 bedrooms. She noted that the model units were set up as 2-bedroom units with the 3<sup>rd</sup> bedroom being presented as a den or library. Ms. Joubert explained that she had spoken to the developer about the issue of false advertising, and the fact that it is not in the spirit of what the board granted. She noted that the developer is aware of the issue, but has always maintained that potential buyers do not search for 2-bedroom units.

Mr. Gugger asked if the project is on town sewer, and if the assessment is based on the number of bedrooms. If so, he questioned whether the developer should be paying more of an impact fee if the units have a third bedroom. Ms. Joubert suggested that, if the developer does come back to discuss the situation, it deserves a good deal of scrutiny.

Chairman Rand suggested that Ms. Joubert send the developer a letter requesting that they file an application for a hearing with the board.

Ms. Bakstran recalled that this applicant had been before the board previously for relief of the over 55 restriction, which the board granted. She noted that one of the justifications for removing the over 55 restriction was the fact that they would not build any more 3-bedroom units. Ms. Bakstran also noted that there are two other 2-bedroom condo villages being marketed in town, but those units are selling at \$100,000 less than those in this project.

Ms. Bakstran questioned at what point the tax assessor would do an inside inspection and wage a deed violation. Ms. Joubert stated that she was not aware of how often that might happen but agreed to follow up and keep the board members informed about the situation. Chairman Rand reiterated that the applicant was willing to give up the 3-bedroom units in order to get relief on the over 55 restriction and suggested that they should be held to that. Ms. Joubert suggested that, if there is going to be any discussion about altering the decision, it should include conversation about altering the mitigation. Chairman Rand reiterated his request for this applicant to file for a formal hearing so that the neighbors will be aware and can also be heard.

**130 Main Street** – Ms. Joubert informed the members of the board that the abutters to the project have appealed the board's decision, but there have not yet been any hearings or discovery motions scheduled. Mr. Rutan asked if Tim Shay has made any modification to the plans. Ms. Joubert indicated that he has not.

**Review Minutes of the Meeting of March 27, 2012** – Fran Bakstran made a motion to approve the Minutes of the Meeting of March 27, 2012 as submitted. Richard Kane seconded, vote unanimous.

**Review Minutes of the Meeting of May 22, 2012** –Fran Bakstran made a motion to accept the Minutes of the Meeting of May 22, 2012 as submitted. Richard Kane seconded, vote unanimous with Craig Gugger abstaining.

**Next Meeting** – Ms. Joubert noted that the only application received so far is for the proposed baseball field project. Given that there are over 120 abutters, she is expecting a large audience and there is no room at the Town Hall that can accommodate the anticipated crowd. She explained that there are no rooms available elsewhere in town on the board’s regular meeting night (July 24<sup>th</sup>), so she has asked the board members about the possibility of holding the meeting on August 6<sup>th</sup>. Craig Gugger and Elaine Rowe indicated that they are not available on August 6<sup>th</sup>.

Ms. Bakstran recognized the importance of accommodating the public hearing but questioned whether pushing the meeting back to August 6<sup>th</sup> will cause undue stress on the board. Ms. Joubert explained that the hearing must be held within 65 days of the filing. Board members, with the exception of Craig Gugger, agreed to meet on August 6<sup>th</sup> at 7:00PM.

Ms. Joubert stated that she has received questions from some of the abutters as to why the applicant has filed this application, and voiced her understanding that the Board of Selectmen has been notified about deficiencies in the Purchase & Sale Agreement. Ms. Joubert indicated that she does not have all of the details, but since the applicant has filed the board is required to hold a hearing. Ms. Joubert noted that the applicant is requesting a special permit because the existing use (golf course in the Residential C zone) is a pre-existing, nonconforming use. She explained that, under our zoning bylaw, the applicant has the ability to change from one nonconformity to another but must prove that the change is not substantial and is not detrimental to the neighborhood,.

Ms. Joubert voiced her understanding that there are claims made in the ZBA application that may not be accurate, and suggested that it might be prudent to seek an opinion from Town Counsel. She also questioned whether the application is complete, and whether it is valid to hold a hearing on the application as submitted.

Ms. Joubert informed the board members that she expects to have at least one additional application for the August 6<sup>th</sup> meeting.

Mark Rutan made a motion to adjourn. Richard Kane seconded, vote unanimous.

**Adjourned at 7:51PM.**

Respectfully submitted,  
Elaine Rowe, Board Secretary