



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 5/14/13

Zoning Board of Appeals Meeting Minutes September 4, 2012

Members Present: Dick Kane, Jeff Cayer, Fran Bakstran, Mark Rutan, Dick Rand, Rob Berger

Others Present: Kathy Joubert, Town Planner; Bill Farnsworth, Inspector of Building/Zoning Enforcement Officer; Mark Donahue, Fletcher-Tilton; Patrick Maguire, Activitas; Rick Leif, Brion Konig, Cavanaugh Tocci Associates, Inc.; David Henry, Tom Racca, Shawn Kenny, Diane Burke, Robin & Kevin Lamy, Dhvani Badwaik, Andrew Pastor, Scott Rogers, Wendy Morrison, Patrick, Anne Marie & Jackie Weiler, Doris Bertram-Moring, Rick Colleran, Nitin Shah, Vasanti Shah, Dale Lathrop, Bob & Ann Basteri, Nancy O'Connell, Jan & Bob Bramley, Cheryl & Rich Zieba, Charlie Grocia, Scott & Amy Poretsky, Al Aldrich, Sally & John Baronian, Leigh Welch, David Lightner, Amy Hopfmann, Brian Racca, Wendy Lathrop, Catherine Kenney, Janice Colleran, Leslie Harrison, Hakan Zemhan, Yuri Krasnov, Bob & Evan Morrison, Christina Macaulay, Jim & Eva Polymeros, Mike Tascione, Laura Poulin, Rebecca Zieminski, Andrea Morton, Evan Morrison, Helen Sullivan, Chi Tai, Lawrence Thornton, Dean Briggs, Sarah Rothary, Kevin O'Connell, Ben Colon, Sathaya Koteeswaran, Tara Thornton, Burt & Judy Cradler, Joseph Zapetis, Thomas Daly, Brian Belfer, Edmund Uzar, Josh Patel, Jim Yang, Gary Tishue, Andrew Kim

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

To consider the petition of Yuri Krasnov for a Variance/Special Permit to allow the use of a restaurant serving alcoholic beverages on the property located at 4 West Main Street, #101, Map 63, Parcel 72

Chairman Rand read the legal notice for this public hearing and appointed Mr. Berger as a voting member for this hearing.

Applicant Yuri Krasnov and Hakan Zirh, co-owners of the Zem Han Restaurant in Unit #101 of the building located at 4 West Main Street, were present and Mr. Krasnov explained they are seeking a Special Permit to allow them to serve alcoholic beverages at their restaurant. He stated the restaurant has recently opened and they have noticed approximately 20% of the people who come to the restaurant leave because they do not serve liquor. Mr. Krasnov stated serving liquor to their adult guests will help them have a full restaurant and a successful business. He noted they are planning to have 5 or 6 tables outside in front of the building.

Mr. Farnsworth stated the applicants have met with him many times and he has gone through previous ZBA filings for the site. Currently they have a Certificate of Occupancy and are running the restaurant without the liquor license. In the Downtown Business zone the use of a restaurant serving alcohol is allowed by Special Permit. They also meet the parking requirements.

Mr. Krasnov stated the hours of operation are 10 am to 10 pm, and they will be serving food and liquor outside. They will be open 7 days a week.

Mr. Farnsworth stated the Applicants will be going before the Board of Selectmen for their liquor license, and they will deal with questions regarding the front layout. He stated there are pavers at the edge of property and beyond them is town-owned property, so they cannot block access to get to another business in that area. He noted the proposed front seating is up for discussion.

Mr. Rutan motioned to close the hearing, Ms. Bakstran seconded the motion and the vote was unanimously in favor of the motion.

Mr. Kane motioned to grant the Special Permit as it is an appropriate use for the site. Mr. Rutan seconded the motion and the vote was unanimously in favor of the motion.

Continued hearing to consider the petition of New England Baseball Enterprises, LLC for a Variance/Special Permit to change the existing non-conforming use of a public golf course to an outdoor 4-diamond baseball facility on the property located at 275 Turnpike Road, Westborough, MA and on property in Northborough, Massachusetts identified as GIS Maps 104 & 105, Parcels 51 & 52, respectively

Chairman Rand read the legal notice for this continued public hearing and appointed Mr. Berger as a voting member for this hearing.

Attorney Mark Donahue distributed letters to ZBA from Scott Patterson, Director of Operations at North East Baseball and Pete Feeley, New England Lighting.

Ms. Joubert distributed a memo from the Planning Board.

Mr. Donahue stated there were some inconsistencies between lighting and sound information presented by the abutters at the last meeting and they would like to address this. He noted that, because of the existing conditions of the property and the surrounding neighborhood area, with virtually no lighting and very little noise, any change could be perceived as detrimental to the neighborhood.

Brion Konig, Cavanaugh Tocci Associates, Inc., stated the current plan before the board shows lighting is located on Field 1 and the only time sound will be produced is between 8 am and 10 pm from Field 1. He stated the big concern for the neighborhood was sound levels in the evening during the last game. Referring to their slide identified as Table 1, Mr. Konig reviewed the projected maximum sound levels for each scenario for each field. He stated it is highly unlikely home runs would occur simultaneously on all four fields. Mr. Konig's data indicated the lowest maximum sound level associated with baseball activities projected to the neighborhood from Field 1 is 36 decibels and the highest sound levels that could occur on any field is 64 decibels.

Mr. Konig pointed out parts of the acoustical analysis presented at the last meeting by Kevin O'Connell on behalf of the neighborhood that he believed were incorrect. He stated that, although Mr. O'Connell did a great job as a non-professional in the field of acoustics, his presentation was flawed and it's important the board is well informed.

Mr. Konig referred to a slide, explaining it shows an excerpt from the paper, taken from the EPA, written in the 1970s, showing a time history of 10 minutes. He explained the blue line on the slide is the sound level that occurred over time. It is a graphic level record. At the beginning of the segment, sound is 30 decibels to 50 decibels, which is the sound of an aircraft or sports car, family car, distant car, a dog barking, etc. In Mr. O'Connell's presentation, he has taken a snapshot of time in a quiet suburban street. Mr. Konig stated he took what Mr. O'Connell presented and input the measured projected range of baseball activities so they are shown in perspective (in red on the slide). It's simply a graphic demonstration showing suburban activities compared to baseball activities.

Referring to night noise, Detrimental Effect #2, Mr. Konig explained Mr. O'Connell had drawn a red line to lead one to believe those are the projected sound levels. Mr. Konig stated it will sound that way for five seconds at a time. The goal for the new sounds of concern to the abutters is for all increased noise to be within 10 decibels of the ambient sound, which will meet the town's requirements.

Mr. Konig showed a slide which represented the correct range of daytime noise from 8 am – 8 pm. He stated Mr. O'Connell's presentation shows sound level comparisons between golf and baseball. Mr. Konig stated Mr. O'Connell's entire analysis compares all noise to one single measurement, one voice. Single voice noise and crowd noise decibels differ. Mr. Konig stated their fundamental conclusion is that the future projected sound levels will fall within the acceptable range and will just be a different sound than what the neighbors experience currently.

Mr. Donahue stated he would like to focus on the Planning Board's memo, with which he is very upset. He presented slides showing games being played and stated they demonstrate that people do not attend these games. As the players get older, parental involvement decreases. He showed slides from their world series games in Georgia and South Bend, and tournaments at Clemson University and Bridgewater State College, all of which show very low spectator attendance. Mr. Donahue submitted letters from three separate comparable organizations that are familiar with these facilities and tournaments, and the number of spectators included in the letters is consistent with what he has presented.

Mr. Donahue stated the Planning Board memo suggests conditions of approval, including removal of lights from Field 2, which would leave only Field 1 with lights. Referring to a slide with a bar graph showing use of the fields, he stated the reality is the setting sun has an impact on the games as well as falling temperatures. In June, July and August, games can be played until 8 pm. During school months, it is too dark to play at night. From May – August, weekend games would run to 10 pm. Those are the peak times.

Mr. Donahue stated the key to this hearing is how the board determines whether this is a substantial detriment. When looked at as a whole, New England Baseball Enterprise's proposal does not have any impact at all. There will be no vehicular access in Northborough, screening and fencing have been proposed, the closest building to the abutting neighborhood is a small snack shack, a segregated parking lot, and there will be no hazards to pedestrians. There will be

no difference to groundwater from the use of a golf course to the use of a baseball facility, and the golf course use includes pesticides. There will be no impact on stormwater management due to the very little amount of impervious cover on the property.

Mr. Donahue stated the use of a baseball facility is essentially the same as the use of a golf course. Per zoning, lighting for the site has to be angled so as to fall within the development site and have no detrimental impact to the surrounding properties.

Mr. Donahue stated sound is the only issue that could be substantial. The applicant's analysis shows the sound level of children playing baseball during the day is consistent with the sounds of the neighborhood and the sound of a baseball complex is not more detrimental. The focus has to be on regularly occurring sound. The vast majority of the time the sound heard from the site will be the sound of silence, and will fall between levels of what is currently existing. However, he stated he cannot say that no noise increase will occur. Mr. Donahue stated the applicant is willing to pay for a sound analysis peer review for the proposed project.

Mr. Donahue stated the benefits of the proposed baseball facility include tax revenue of \$60,000, preservation of the land, sewer access, elimination of possible residential use and promotion of regional economic development. In addition, the fields could be made available for town use.

Ms. Bakstran asked if the site is actually sewer-ready. She noted Thayer Street and part of Davis Street have sewer.

Mr. Donahue stated Northborough Crossing sewer (Southwest Cutoff) is closer.

Tom Racca, 121 Indian Meadow Drive, stated the neighborhood has packets to submit to the board if the members feel it is appropriate. Mr. Rand told Mr. Racca he could submit the packages.

Mr. Racca stated they have revised their presentation. Referring to detrimental impacts and change in character as per the zoning bylaw, Mr. Racca stated the point is that any one significant detrimental impact should be enough to deny the application and the change of character is that detrimental impact. Lighting has been reduced to only one field. However, from a distance, the neighborhood can see glare. On the second floor on a deck, glare is easy to see. He presented a slide showing lighting 700 feet away from the neighborhood. He noted the lighting is much higher than the trees. He noted the first thing people look for when they're trying to find a field at night is the glare from the lighting.

Mr. Racca acknowledged he and the neighborhood residents are not sound experts, however he said they tried to measure real baseball games and not simulations. He stated for the applicant to say the sound levels of a golf course and baseball game are the same is unbelievable to him. He stated it is not realistic to think there will be, at most, only 30 people making noise at a game. Regardless of the results of the acoustical study from the experts, which they are not disputing, they believe the change and detriment will be substantial.

Regarding the hours of operation, Mr. Racca stated the locations of other facilities they have shown are not in residential areas. There are many other places they could locate this facility that are not near residential neighborhoods.

Regarding the change in non-conforming uses, Mr. Racca stated they believe there will be a significant hourly attendance increase, with 20 players plus coaches per team as compared to

individuals golfing. He stated the proposed changes in sound, light and use intensity are substantial and detrimental.

Dave Henry, 134 Indian Meadow Drive, stated the applicant said they have been working on this project for about 5 years. If 5 teams play 40 games, there would have been plenty of games available at which the sound expert could have measured noise from a Ruffnecks game. Regarding lighting, Mr. Henry stated the applicant's presentation showed actual baseball fields using lights, but nowhere in those pictures are residential areas. The applicant stated he was going to do a balloon test to demonstrate the height of the proposed lighting, but did not. Mr. Henry stated nowhere in data presented did the applicant validate data against a measured model. Regarding noise from games, there is an intensity level by parents who strive to get their children into college. They have a vested interest and the games are very intense.

Mr. Henry referred to a slide indicating other impacts and concerns, one of which showed the existing natural buffer on the site. He stated some of those buffers will be removed and the neighborhood will have a completely clear view of the site. With these natural buffers gone, there will be significant impacts to wind, weather and sound. He stated that currently they can hear weddings at Indian Meadows from their backyards with the natural buffers, and weddings, unlike baseball games, are not something that will be going on day in and day out, morning and night. Mr. Racca reiterated he finds it unbelievable that sound is not an impact.

Mr. Henry presented a slide showing the use of a golf course is allowed in the Residential A and Residential B districts by special permit. He stated the defined uses in the Northborough Zoning Bylaw calls out the baseball use as different in character from a golf course use. He stated it was also pointed out in 2 previous ZBA decisions, that the site would either be used as a golf course or for residential use if the golf course failed.

Mr. Henry stated, in conclusion, that it is clear the change in use will be detrimental and different in character.

Mr. Racca stated the neighborhood is very quiet. They can go out in the evening and all is very quiet. Residents of the neighborhood know each other more through their pets. If this project goes forward, they will not be able to gather in the evenings. There are young children who go to bed at 7 pm who live in homes that directly about a field. The parents will have to close the windows and shades and hope the transient sound does not wake up the child. He stated the proposed change in sound will be absolutely substantial. He explained the residents can look at the stars now, but will not be able to do so after 10 pm. Mr. Racca stated it will be a change in their way of life and in their neighborhood, and the character of their neighborhood is why they stay there. He stated they are the ones who are going to have to live with the decision of what is a substantial detriment. He stated it is not about sound or lights, it is about their way of life, and what the bylaw states is black and white.

Burt Cradler, 78 Indian Meadow Drive, questioned the \$60,000 revenue the town will received if the proposed project is approved.

Diane Tishue, 23 Indian Meadow Drive, stated the sound study did not address tournaments.

Mr. Konig replied he measured games that had cheering people. They may or may not have been tournament games.

Mr. Collins stated it has been their experience that there is no difference in the number of people who attend tournaments as opposed to single games. It's still an average of approximately 30 spectators.

Arthur Morin, 117 Indian Meadow Drive, the applicant keeps saying no one comes to the ball games, but their talking about building a baseball complex.

Wendy Morrison, 1 Mashpee Circle, stated she met a parent of a 15-year old Ruffneck player who told her attendance at the 13 – 15 year-old games is extremely high. Parents and other family members go. Ms. Morrison questioned the sound travel and direction of the wind and stated sound could change day to day depending on the position of the wind. She asked if there were any other controls in place to protect the residents from the applicants coming back to say they need more lights.

Dhavani Kortua, 30 Indian Meadow Drive, stated she recently traveled across the country by plane and she could see the glare from every ball field from the plane. She stated she refuses to believe she will not see any light from her house.

Mr. Donahue stated he has put together suggested conditions of approval and conditions are as binding as the permit itself. He stated it is not likely the applicant will give up lighting on fields 2, 3 and 4.

Mr. Donahue noted it is not true that Mr. Konig did not measure sound at Ruffneck games. He also stated a balloon test was not done because the closest light pole is over 1000 feet away facing the infield after field 2 lighting was removed.

Mr. Donahue stated the Zoning Bylaw gives a land owner the ability to change a non-conforming use to another non-conforming use. Therefore, the land owner of the golf course would have the right to change the use to another non-conforming use.

Mr. Donahue stated he never suggested the change in use is not significant. He explained the residents found out about the project because the applicant invited them to a meeting at which he explained the project. He stated they have never said the sound would not be different. There are other sounds the residents hear in the neighborhood. Mr. Racca said the character should not change, but change does happen.

Richard Colleran, 90 Indian Meadow Drive, stated when he and the majority of his neighbors purchased their homes with the understanding that if the golf course was sold or abandoned, the site would be only residential. The applicant has demonstrated that this complex does incur substantial detrimental effects to the neighborhood.

Laura Poulin, 98 Indian Meadow Drive, stated she got a letter in the middle of June and that was all.

Mr. Rutan motioned to close the hearing, Mr. Kane seconded the motion and the vote was unanimously in favor of closing the hearing.

Mr. Rutan stated old decisions were made and they are looking at a new proposal. If the applicant comes back for a change, they cannot bind a future board to what they decide tonight.

Ms. Bakstran stated it could be argued that this is a substantial residential use. The golf and baseball uses have sticks and balls that are hit, but the sounds are different enough to say the

proposed use would be detrimental. Forgetting sound and lights, baseball is very different from golf.

Mr. Berger stated that, as parents have mentioned, it's true that parents get excited at every pitch. He explained he is familiar with the neighborhood community where this is proposed and feels this will change the neighborhood.

Mr. Cayer stated the town has been consistent as to what the use of land should be.

Ms. Bakstran stated currently from the golf course there is no evening sound or light from the existing use. The activity of golf does not have an impact on that area.

Mr. Cayer stated if it does become residential, the access for the new homes will impact the neighborhood.

Mr. Rutan stated there will be noise, and he is not sure it will have a significant impact on the neighborhood and how people conduct their livelihood. He explained he lives near a school and there is noise, but it doesn't have an impact on his life. However, in this case, the lights are a difference. The area has development along Route 9, and he knows people can see the lights of the apartment complex down there. Even a light angled to the ground will reflect up into the sky. This neighborhood doesn't have any lights. The proposal would substantially change the night character of the neighborhood and, he believes the light poles will give the site an industrial look in the winter when leaves are off the trees. Even with the existing restaurant nearby, there are no 90-foot light poles stick up into the skyline.

Ms. Bakstran stated the natural buffer will be taken away and the fields will be open.

Mr. Rutan stated he is worried that, if the lights from field 4 were removed, there could be an economic detriment and once land has been developed for a certain use, it could be abandoned. It is not up to the board to determine if it's a viable economic situation, however if the project were approved and it wasn't successful, it will be even more detrimental to the neighborhood.

Mr. Kane motioned to deny the special permit to allow a change from the existing non-conforming use of the public golf course to an outdoor 4-diamond baseball facility at 275 Turnpike Road, Westborough, MA, due to their finding that the proposed use will be substantially more detrimental than the existing nonconforming use and substantially different in character from the existing non-conforming use and thereby resulting in a negative effect on the neighborhood. Ms. Bakstran seconded the motion and the vote was unanimously in favor of denying the special permit.

Mr. Rutan motioned to adjourn the meeting, Ms. Bakstran seconded the motion and the vote was unanimously in favor of adjourning.

The meeting adjourned at 10 pm.

Respectfully Submitted,

Debbie Grampietro
ZBA Administrative Assistant