



**Zoning Board of Appeals
Meeting Minutes
September 24, 2013**

Members in attendance: Fran Bakstran, Chair; Mark Rutan, Clerk; Richard Rand; Richard Kane; Robert Berger; Brad Blanchette, Alternate

Members excused: Jeffrey Cayer, Alternate

Others in attendance: Kathy Joubert, Town Planner; Fred Lonardo, Building Inspector; Elaine Rowe, Board Secretary; Maurice Tougas

Chair Fran Bakstran called the meeting to order at 7:00PM.

Public Hearing to consider the petition of Maurice & Phyllis Tougas for a Variance/Special Permit to allow the minimum lot width to be .72 feet less than the required 200 feet on the property located at 246 Ball Street

Maurice Tougas explained that he is in the final stages of implementing the farm transition plan. He stated that his house sits on a 160,000 square foot lot with 200 feet of road frontage, with the house and septic system located on the front 2 acres while the back 2 acres contains farm maintenance buildings for materials and machinery storage. He discussed his plan to take 2 acres out of personal ownership and attach them to the entire farm parcel. In preparing to do so, the land was surveyed and it was discovered that the lot width is only 199 feet wide at the house. He indicated that, while he doubts anyone would ever notice such a small discrepancy, his lawyer advised him to seek a variance. Mr. Tougas also stated that he is not able to take additional land from what he owns because the rest of the property is under an Agricultural Preservation Restriction (APR) and doing so would require a 2/3 vote by the MA State Legislature.

Mr. Rand asked Mr. Tougas which parcel on the deed is the subject of his application. Mr. Tougas voiced his understanding that it is parcel B, 180,191 square feet, in the deed. Ms. Joubert commented that the applicant has sufficient frontage, but lacks sufficient lot width at the house. Mr. Rand questioned whether the lot is a conforming lot. Mr. Lonardo stated that, if Mr. Tougas were to leave the lot alone there would not be an issue. He also noted that the other lot is landlocked and will be blended into the farm.

Ms. Joubert stated that the ANR contains a note indicating that parcel A will be combined with Tougas Farm, so will not be a nonconforming lot. However, since the front lot will not meet the

minimum lot width requirement by .72 feet, it will be a nonconforming lot. Mr. Tougas reiterated that it is logical to clean up this issue now.

Mr. Rutan asked if the back portion of the lot will be put under agricultural restriction. Mr. Tougas stated that he will not be able to do that because building agricultural buildings on agricultural land is a very complicated process.

Mr. Lonardo questioned why the property was not originally set up with a 2 acre house lot. Mr. Tougas indicated that this was how Mr. Fawcett sold the property to him.

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

Scrivener's error, Case 13-06 (9 Monroe Street)

Ms. Joubert explained that, per her recent email, there was an incorrect statement in Findings of Facts #8 and Town Counsel has advised that the correction may be made with a vote of the ZBA stating that this is a scrivener's error. She stated that the decision will be revised by deleting the last sentence in #8 and re-filing with the Town Clerk. She also noted that the incorrect statement was causing a cloud on the title and could prohibit the applicant from obtaining financing.

Mark Rutan made a motion to amend the decision to remove the last sentence in Finding of Facts #8, which was included due to a scrivener's error. Richard Kane seconded, vote unanimous.

Minutes of the Meeting of July 23, 2013 – Ms. Joubert noted that the only comments received were from Mr. Berger. Robert Berger made a motion to approve the Minutes of the Meeting of July 23, 2013 as amended. Mark Rutan seconded, vote unanimous.

Minutes of the Meeting of August 27, 2013 – Mr. Rand referenced a comment in the first paragraph on page 2 that indicated that the applicant made a statement that water runs down Patriot Drive onto his property. He stated that he did not recall the applicant making such a statement. Mr. Lonardo commented that he is not aware of the applicant ever filing a complaint with the town. Ms. Bakstran asked if the decision specifically stipulates that there is an issue with runoff from Patriot Drive. Mr. Berger commented that this is simply the applicant's opinion, so there should be no issue with it. Mr. Rand suggested that the sentence be stricken from the minutes. He also stated that he had voiced an objection to Ms. Bakstran seconding a motion and he would like that added to the minutes as well.

Mark Rutan made a motion to accept the Minutes of the Meeting of August 27, 2013 as amended. Richard Kane seconded, vote unanimous.

DECISIONS:

246 Ball Street – Mr. Rutan voiced his opinion that there appeared to be every intention to make the parcel a conforming lot. He also stated that, since it is only through a surveyor’s error that it is not, he has no issues with granting a variance. Mr. Blanchette agreed.

Mark Rutan made a motion to grant a variance to allow the minimum lot width of 199 feet at the house. Richard Kane seconded.

Mr. Rand voiced disapproval of allowing the creation of 2 nonconforming lots. Mr. Rutan reiterated his opinion that there was every intention for it to be a conforming lot. Ms. Bakstran asked if it would be helpful to include language about the back portion being added to the farm parcel. Mr. Rutan commented that Mr. Tougas had indicated that he does not want it to become restricted under APR as he wants to maintain the flexibility to build farm buildings and/or modify the existing structures. Ms. Joubert explained that the land would have to go through rigorous soil testing to become APR land. She also commented that APR land is very specific and it is not easy to get that designation. Ms. Bakstran commented that, since the back portion of the parcel will be incorporated into the farm acreage, it will not result in the creation of a nonconforming lot so for our purposes only one nonconforming lot is being created.

Mr. Rutan made a motion to add language to the decision to stipulate that parcel A is to be combined according to the ANR (condition). Richard Kane seconded. In consideration of both motions, the vote was four in favor and one opposed (Dick Rand opposed).

Mr. Rutan asked Mr. Rand if he was concerned about setting a precedent. Mr. Rand reiterated that he is not in favor of allowing the creation of a nonconforming lot. Ms. Joubert commented that minimum lot width was not always part of the zoning bylaw, and she believes that this issue was simply due to a surveyor’s error. Mr. Lonardo also indicated that the interpretation of minimum lot width has changed over the years.

Other business

Medical Marijuana Dispensaries - Ms. Bakstran discussed the informational session about medical marijuana dispensaries that Ms. Joubert has scheduled for October 15th. She voiced her opinion that, while there have been no applications to locate one in Northborough, it is likely that it will come up for discussion at some point. Ms. Joubert noted that she has arranged for Town Counsel to present to members of the ZBA, Planning Board, Board of Selectmen, and Board of Health. She stated that several towns have adopted moratoriums, so she felt it would be beneficial for everyone to be better educated about the issue. She also noted that an option is to approve these facilities through the Board of Health and not through the Zoning bylaw.

Zoning Board – Ms. Bakstran discussed her recent election as chair, and some changes to the way the board meetings are being run. She also advised board members that the use of email for anything other than scheduling of meetings and confirming availability is a violation of the open meeting law. She stated that all comments on draft minutes should go back to Ms.

Joubert and any issues that need further discussion should be brought back to the meeting setting.

Ms. Bakstran noted that the former Chairman, Richard Rand, has expressed disapproval of Ms. Bakstran's participation in meetings by making and seconding motions. She stated that, per our town charter, the only 5 boards that specify that their meetings will be conducted in accordance with Robert's Rules of Order are the Board of Selectmen, Conservation Commission, Library Trustees, Human Services Council, and Youth Commission, and only one of those boards does not allow their chair to vote unless necessary to break a tie. Ms. Bakstran emphasized her belief that the Chair should have the same voting rights as other board members, especially with a small board, and noted that she did not give up those rights simply to have the ability to facilitate a meeting. She also commented that seconding a motion is not technically required for a small board.

Mr. Rand commented that the board has followed Robert's Rules in the past, and under the old rules the Chair does not make or second a motion. Ms. Bakstran reiterated that there has been no formal adoption of the Robert's Rules of Order by this board. She also noted that, while still Chairman, Mr. Rand had seconded the motion to nominate Mark Rutan as Clerk and nobody had questioned his ability to do so. Ms. Bakstran stated that the board had previously operated under Robert's Rule by choice, and she is now operating differently by choice. She also apologized if anyone felt that she had pressured them into doing something that they did not want to do.

Mr. Berger voiced agreement with Ms. Bakstran's comments, and stated that he had never seen any documents requiring this board to follow Robert's Rules of Order. He also commented that he would never serve as Chair if it meant that he would be unable to participate in the voting process.

Mr. Kane voiced his understanding that the Chair is not allowed to make or second a motion. Ms. Bakstran commented that according to Robert's Rules of Order, this restriction does not apply to a small board (12 members or less).

Mr. Berger asked how the size of a board is determined. Ms. Joubert explained that state statute establishes a minimum requirement for the town, and each town can make their own determination beyond the minimum.

Ms. Bakstran stated that Mr. Rand's comments and concerns will be reflected in the minutes, but reiterated that the Chair is not legally restricted from participating. Mr. Rand commented that he operated the board based on his understanding of the rules, and he believes that most other town boards work under those same rules. Ms. Bakstran suggested that, other than at Town Meeting where the Moderator needs to control an assembly, the Robert's Rules are used as a guideline.

Mr. Rand stated that the rest of town is operating under the same rules and that Ms. Bakstran is changing the rules to meet her own agenda. Ms. Bakstran stated that she did not believe

that she would be required to give anything up by becoming Chair. Mr. Rutan stated that he was not aware that there were any restrictions on the Chair's participation. Mr. Rand noted that the Board of Selectmen had previously brought in Town Clerk Andy Dowd to run a meeting so that the Chair could vote. Ms. Bakstran recognized that Mr. Rand takes issue with it, but indicated that she does not intend to change how she runs the board for the remainder of her term.

Mr. Rutan commented that both parties have made their respective points, and suggested that the options are to either make a motion to remove Ms. Bakstran as Chair or to let it stand until her term expires. Mr. Blanchette agreed the point has been made and the meeting should continue this evening.

Mr. Rand asked about the decision for 15 Patriot Drive, and questioned who decides what conditions are included in the decisions. Ms. Joubert explained that she referenced the Minutes when drafting the decision. Ms. Bakstran suggested that if Ms. Joubert gets conflicting comments from Board members when they are reviewing a decision and the edit would result in a substantive change, then the questions should come back to the board in a meeting setting. Ms. Bakstran asked the board members for their opinions of how to handle a situation if four board members are in agreement but one member questions a draft decision. Mr. Rutan voiced his opinion that it would need to be discussed, and asked if doing so would cause issues with deadlines. Ms. Joubert explained that the guideline is for the decision to be written and filed within 14 days of the vote, and suggested that if the board would prefer to meet more often, we could attempt to improve the process. She noted that it is very rare that an issue does not get resolved, but the board would have to address it further if it becomes more of a problem. Ms. Bakstran agreed that the board will have to revisit the issue if it becomes an issue.

Next Meeting – Ms. Joubert informed the board members that there are two applications for consideration at the next meeting. She explained that she will not be at the meeting, but noted that Mr. Lonardo should be here to help facilitate the discussion.

61 – 65 West Main Street – Ms. Joubert indicated that she had received comments from three board members on the decision for 61-65 West Main Street and asked if there are any others. Mr. Rand questioned the conditions which included the comments from the groundwater advisory committee and the fire chief and why were they included in the decision. Ms. Joubert stated that the Minutes indicated that conditions from the comment letters were to be included. Mr. Rutan suggested that the board review the comment letters and requested conditions. Mr. Rand stated that the Fire Chief had made comments that the developer already incorporated into the revised plans, so they do not need to be stipulated in the decision.

After discussion, members of the board agreed to include the following conditions in the decision:

1. Special Permit with Site Plan Approval in accordance with Section 7-03-050A(2), including the installation of a 415'+/- concrete sidewalk, in the right-of-way, with granite curbing on the southerly side of West Main Street from the end of the existing sidewalk

at 65 West Main Street, Map 63 Parcel 10 to the westerly end of 79 West Main Street Map 63 Parcel 11. Sidewalk shall be completed in accordance with the MassDOT standards and shall be completed prior to the issuance of the final Certificate of Occupancy issued for the final portion of the Project.

2. Special Permit in accordance with Section 7-05-030 Table of Uses Table 1. Part B. Commercial and Industrial Districts to allow for a horizontal mixed-use development;
3. Special Permit in accordance with Section 7-05-030 Table of Uses Table 1. Part B. Commercial and Industrial Districts, Footnote 10 to allow the maximum gross floor area of one retail establishment to be up to 15,000 square feet in each building;
4. Special Permit in accordance with Section 7-07-010D(3)(c)[3] of the Groundwater Protection Overlay District for commercial development; and
5. Special Permit in accordance with Section 7-07-010D(3)(c)[6] of the Groundwater Protection Overlay District for multifamily development.

With the following conditions:

From Fire Chief David Durgin

1. The interior parking lot radius shall conform to the AASHTO Standard Turning Template for an SU-Truck.
2. The rear turning "T" shall accommodate and facilitate the turning radius of the AASHTO Template for SU-Trucks.
3. The weight rating of all ground structures shall be capable of withstanding and supporting a minimum of forty-two (42) tons during any operation.
4. One ten-inch (10") water main is shown on the submitted plan. Each building shall have a minimum of an eight-inch (8") water main to supply the fire suppression sprinkler system.
5. A fire hydrant shall be located within one hundred feet (100') of each of the fire department fire sprinkler connections. Fire suppression sprinkler systems are required in both proposed structures.

From the Groundwater Advisory Committee

1. At this time the application does not include any information regarding any use involving the manufacturing, storage, application, transportation and/or disposal of toxic or hazardous materials and therefore this special permit is not required.
2. At least one permeability test should be performed within the area of the proposed subsurface infiltration system to verify the rates of infiltration.
3. An Operation and Maintenance Plan shall be included in any approval and a report shall be provided to the Town Engineer and Groundwater Advisory Committee annually.
4. An as-built site plan shall be submitted to the Town Engineer for approval prior to the issuance of the final Certificate of Occupancy. The as-built plan shall include, at a minimum, and as applicable to the Project, a permanent benchmark, 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).

From the Department of Public Works and the Engineering Department

1. The applicant shall be required to install a concrete sidewalk with granite curbing on the southerly side of West Main Street from the end of the existing sidewalk recently installed by Mass DOT as part of the downtown traffic improvements approximately 415 feet to the west.
2. The proposed impervious cover is changing and should be verified within the standard form generally used by the Building Department at the time the building permit application is submitted. The application shall document all impervious cover installed both before and after 1986 as well as the limit of impervious cover to be recharged through infiltration.
3. The most recent groundwater test results from the former gas station on this site shall be filed with the Town prior to the issuance of the building permit along with any correspondence from the Massachusetts Department of Environmental Protection regarding any contamination. The plans shall show the location of the existing monitoring wells and describe the use of these wells in the future.

Ms. Bakstran indicated that she, Mark Rutan, Robert Berger, and Richard Kane will vote on this matter.

Mark Rutan made a motion to modify the conditions in the decision as noted, and that this not be considered a substantial change to the decision. Richard Kane seconded, vote unanimous.

The meeting adjourned at 8:40PM.

Respectfully submitted,

Elaine Rowe
Board Secretary