



Approved 11/26/13

**Zoning Board of Appeals
Meeting Minutes
October 22, 2013**

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

Members excused: Robert Berger; Jeffrey Cayer

Others in attendance: Elaine Rowe, Board Secretary; Fred Lonardo, Building Inspector; Fred Litchfield, Town Engineer; Steve Scott; Chuck Scott; Shawn Kenny, 113 Indian Meadow Drive; Vasanti Shah, 99 Indian Meadow Drive; Nitin Shah, 99 Indian Meadow Drive; Tom Racca, 121 Indian Meadow Drive; Amy Poretsky, 47 Indian Meadow; Ashley Davies, 168 South Street; Brian Schwartz, 5 East Main Street, Westborough; Christina Macauley, 79 Indian Meadow Drive; Leslie Harrison, 28 Moore Lane; Tara & Lawrence Thornton, 141 Indian Meadow; John & Sally Baronian, 130 Indian Meadow Drive; Sharon Sinerate, 15 Indian Meadow Drive; Burt Cradler, 78 Indian Meadow Drive; Dale & Wendy Lathrop, 125 Indian Meadow Drive; Kevin & Robin Lamy, 95 Indian Meadow Drive; Eva & James Polymeros, 35 Indian Meadow Drive; Michael Tascione, 19 Indian Meadow Drive; Attorney Brian Schwartz

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

Public hearing to consider the petition of Genzyme Corporation, a Sanofi Company, for a Variance/Special Permit to allow the use of an environmentally-friendly form of salt, containing ice melt, during winter months in Groundwater Protection Overlay District Area 3, on the property located at 11 Forbes Road

Chairperson Bakstran noted that the applicant has requested a continuance of the hearing.

Mark Rutan made a motion to continue the hearing to November 26, 2013 at 7:00PM. Richard Kane seconded, vote unanimous.

Public hearing to consider the petition of Steve Scott for a Variance/Special Permit to change the existing non-conforming use of a public golf course to the non-conforming use of a golf course and golf practice facilities (driving range) on the property located at 275 Turnpike Road, Westborough, Massachusetts and on property in Northborough, Massachusetts identified as GIS Maps 104 & 105, Parcels 51 & 52

Steve Scott discussed plans for a proposed driving range and golf academy on the Indian Meadows Golf Course property. He noted that the plan is to transform the existing course into a 9-hole, 3-par course with a driving range and practice area.

Steve Scott explained that he had read through the decision for the previously proposed baseball facility on the property in order to learn what the issues were, and those concerns have been addressed in the plans. He mentioned that an informal meeting with abutters was held on Saturday morning to address their concerns as well.

Chuck Scott from CFS Engineering explained that his firm has experience with this type of facility, and noted the location of three similar facilities in the area that they had designed. He explained that the proposed Indian Meadow project involves conversion of holes 1, 2, 7, and 9 within the existing course into a driving range and practice facility, with holes 3 through 6 being converted into a par 3, 9-hole course.

Fred Litchfield arrived.

Chuck Scott explained that they are seeking approval to allow an additional nonconforming use. He also noted that they have not yet filed with any other town boards pending the outcome of this hearing. He stated that the plans contain notations about modifications proposed based on their recent meeting with abutters. He also indicated that access for the overall property is from Route 9 in Westborough, with a secondary means of access onto Indian Meadow Drive that will not be utilized.

Chuck Scott noted that the wetland resource areas, direct abutters, and parking lot areas in Westborough are indicated on the plans. He stated that the proposal calls for providing 7 types of practice facilities, 6 of which will be located in Northborough. These facilities include two driving ranges, a practice green for chipping and pitching, short to mid-range iron, and concrete pad for hitting off of mats. The seventh facility will be attached to a new proposed building in Westborough and will house heated golf bays for winter use.

Chuck Scott explained that 90% of golfers are right-handed and a good percentage hit the ball to the right, so the plans were designed to locate the range to the right of any adjacent properties. Another design element involves making the tee box concave instead of long and straight so that stalls are pointed to the center of the driving range to ensure that golfers are hitting away from abutting houses. He voiced his opinion that the proposed use is not detrimental to the neighbors.

Chuck Scott discussed changes that were made based on concerns raised by the abutters, which include modifications to the driving range to pull back and rotate the tee box and move it away from the abutting property. In addition, the practice chipping area was pulled back and relocated into the middle of fairway #1 and the existing sand trap will be incorporated into the new chipping area. This area will be located 100 feet from the existing property boundary.

Chuck Scott also noted that the iron area was shortened up considerably. He stated that they had initially planned to use the first green, but now plan to relocate that green to where the second tee box is so that it is oriented away from all of the abutters. By doing so, that green will now be 130 to 150 feet from the abutters at its closest point. Chuck Scott also discussed plans to make improvements to the existing fence along the property lines, which has not been maintained in quite some time. He reiterated his opinion that this particular use will not be a detriment to the neighbors because of the efforts put into the design.

Mr. Rutan asked about hours of operation. Chuck Scott stated that they are listed on the plan and are consistent with those of the existing golf course (morning to dusk). He commented that operations will extend 2 hours beyond sunset. Mr. Rutan asked about outdoor lighting. Chuck Scott explained that there are two lighting proposals with various alternatives available. He stated that the existing lighting plan has not yet been updated to the current design, and that new photometrics have been requested and will be provided to the board.

Chuck Scott explained that the plan is to place the light poles on the side of the tee box and pointed away from the abutters. He stated that they will handle their lighting needs and eliminate impacts to the abutters by installing ground level lighting in a trench and with mounds behind it so that the light does not shine into the windows of neighboring homes.

Ms. Bakstran noted that not all practice facilities indicate lighting. Chuck Scott stated that only one driving range is to be lit. Mr. Rutan asked if the applicant anticipates a large number of school-aged children participating in classes at the proposed facility. Steve Scott confirmed that clinics for young students will be offered. Mr. Blanchette asked when classes will be offered. Steve Scott indicated that there will be a mixture of clinics offered when the weather is appropriate, including spring vacation and summer months.

Ms. Bakstran questioned the practice facility in the back near the 1st green, and asked if it is possible to modify it so that golfers are not hitting directly into the Robins property. She also asked how many bays are proposed. Chuck Scott suggested that 7 to 10 bays could fit in this area. Ms. Bakstran noted that golfers in all bays will be hitting in the same direction. Steve Scott noted that this area will be restricted to members only and not open to the general public. Mr. Blanchette asked which bays will be heated. Chuck Scott noted the area where a new clubhouse is proposed, and indicated that the heated bays will be located to the rear of that within the Westborough portion of the property. Ms. Bakstran asked if practice facilities 6 and 7 will be operated alternately. Chuck Scott confirmed that facility 7 is heated, so would be in operation during the cold weather months.

Tom Racca, 121 Indian Meadow Drive, asked for clarification about the hitting direction for each of the 9 holes. Chuck Scott explained how each fairway will be oriented. Mr. Racca asked about the hitting direction from the heated bays. Chuck Scott reiterated that the heated bays will not be utilized when the course is open, so they will not conflict with one another. Mr. Racca noted the presence of a wet area, and asked if the course will utilize retrieving carts to pick up the golf balls. Chuck Scott stated hand retrieval will be necessary in the wet areas. Mr. Racca asked about lighting. Chuck Scott explained that there will be lights off of the back of the

building, but they will not be on any later than 6PM. Mr. Racca voiced his understanding that lights on other portions of the property would be in use as late at 10PM during some months of the year. He noted that the applicant had indicated that lighting would be within a berm and asked how golfers will see the ball in the air. Chuck Scott noted that the light will reflect off of the ball. Mr. Racca asked if there is another facility where this type of lighting can be seen in use. Chuck Scott agreed to provide photos to demonstrate the lighting in use.

Mr. Racca voiced concern about the ambient light and glow that the neighborhood will see. Chuck Scott commented that there will be zero foot candles located approximately 300 to 400 feet away. Steve Scott noted that the original issue raised was because the previous applicant was proposing 50 foot light poles, but this project will have poles only half that height. Ms. Bakstran asked for clarification about the hours of operation. Steve Scott indicated that the hours will depend on the time of year. Mr. Racca asked about operation early on Sunday mornings, and questioned whether the retrieval carts will be in use at 7AM. Steve Scott stated that lawnmowers are currently being used at 7AM, so the impact from the proposed facility will not be any worse. Ms. Bakstran asked about the hours of operation for the golf course portion of the planned facility. Steve Scott stated that they will be from sun up to sun down.

Mr. Racca stated that the property is zoned residential, and voiced his understanding that any changes were supposed to result in the use reverting back to residential. He asked if the driving range constitutes a commercial use that is not appropriate for a residential area and would therefore provide a valid reason for denying the request. Ms. Bakstran noted that it is up to the board to determine whether the proposed use is so similar to the existing use that approval would be reasonable. Mr. Lonardo explained that the operation of a golf course is a preexisting nonconforming use. Mr. Racca reiterated his understanding that the original approval stipulated that use would revert back to residential, and suggested that the board should uphold that condition. He also noted that the bylaw stipulates that operation of a driving range is not appropriate in a residential area. Given that the bylaw specifically calls out the driving range use as inappropriate, he suggested that this would be an entirely different nonconforming use.

Nitin Shah, 99 Indian Meadow Drive asked about membership options that will be offered, in an effort to understand what that will equate to in terms of people coming up to hit the ball. Steve Scott voiced his understanding that a membership option will be offered, with access to those facilities adjacent to the neighboring properties being restricted to members only. Ms. Bakstran commented that, regardless of the membership component, there is still the potential for more people to be hitting in that area than what currently exists. Chuck Scott agreed, but reiterated that the driving range facilities were designed to prevent detrimental impact to the abutters. He noted that currently there is a strong likelihood that a ball could be hit into the abutting properties but the redesign has eliminated that potential resulting in an improvement over existing conditions. Ms. Bakstran suggested that the only use that would be quieter than a gold course would be a cemetery, but a driving range is somewhat different since there are more golfers hitting balls simultaneously. Chuck Scott suggested that a foursome playing golf would generate more noise.

Tara Thornton, 141 Indian Meadow Drive, suggested that the type of golfer playing a 9 hole, par 3 course is different than the typical golfer, is usually noisier and tends to play in larger groups. She also questioned whether corporate outings will be offered. Steve Scott confirmed that they will be. Chuck Scott suggested that the golf play would be the same, with a foursome going out every 7 to 10 minutes. Steve Scott explained that this par 3 course is designed for the golfer who is working on improving their game. He also stated that the facility is not designed for a “Kimball Farms” type of clientele, and that this golf academy is considerably different than a fun facility like Kimball Farms.

Leslie Harrison, 28 Moore Lane, asked about miniature golf. Chuck Scott stated that the miniature golf operation will be located within the Westborough property and is allowed per their zoning bylaw.

Mr. Racca asked about trees to be removed, and noted that they provide a significant sound barrier for the neighborhood. He also asked about any other “fun center” components that will be part of the operation and what the impacts might be.

Chuck Scott indicated that the existing trees along the side of the property will not be touched, and the only tree to be removed in that area is a pine tree to allow for the desirable orientation of the tee box to green. In addition, there is one tree and low lying shrubbery to be removed. Steve Scott reiterated that there are a minimal number of trees to be removed, so the neighbors will not be detrimentally impacted. Mr. Racca asked if the tree in the middle of the driving range will remain. Steve Scott confirmed that it will, as it is important for a golfer to learn how to hit around and over obstacles. Mr. Racca questioned other activities proposed for the facility. Steve Scott stated that there will be miniature golf and batting cages.

Ms. Bakstran noted that the activities within Westborough are not under this board’s jurisdiction, but asked if the applicants have met with any of those town boards to address hours of operation within their town. Chuck Scott confirmed that they have reviewed the plan with Westborough town staff, and they are only required to file a site plan with the Board of Selectmen and obtain an Order of Conditions because of work to be done within 100 feet of the buffer zone. Ms. Bakstran voiced her desire for any conditions imposed by this board to be no less restrictive than what will be required in Westborough.

Christina Macauley, 79 Indian Meadow Drive, voiced her understanding that the town has the right of first refusal on this parcel, and asked if the town retains that right if this project is approved. Mr. Litchfield voiced his opinion that, under 61B, when the current owner wants to sell the property, the town has the right of first refusal on a bonafide Purchase and Sale Agreement. Ms. Bakstran asked if the parcel comes out of 61B and the applicant changes the use slightly, do they then have the ability to put the land back under 61B for their purposes. Mr. Litchfield voiced his opinion that, if the town does not exercise their right of first refusal when Indian Meadows sells the parcel, once the new landowner puts it back in 61B, the town would then be entitled to another opportunity in conjunction with any future sale. Ms. Bakstran suggested that, when the applicant goes before the Board of Selectmen to enter into

an agreement, these questions will be addressed. She also noted that nothing this board does will have a bearing on that.

Dick Rand asked if the applicant plans to put the land under a 61B restriction. Steve Scott voiced his understanding that they do.

Scott Poretsky, 47 Indian Meadow, questioned what happens to the prior requirement that the property revert back to residential use if the golf course use is terminated. Ms. Bakstran voiced her opinion that this issue would not impact the board's ability to move forward and nothing this board does will then allow the applicant to move forward if there is a prohibition from another board. Mr. Poretsky noted that it was a ZBA decision that imposed the condition that the land revert back to residential use. Ms. Bakstran agreed that, while she would like the board to be able to move forward, she does not want to compromise anything by doing so. Mr. Lonardo suggested that a continuance be requested to enable the board to have these questions addressed by legal counsel. Members of the board agreed.

Chuck Scott voiced his opinion that the applicant has met the 7 criteria required for a special permit. He noted that the abutters have voiced a desire for the land to revert back to residential use and suggested that if preserving the green space is of interest, the town should seriously consider the possibilities for residential development on the parcel.

Kevin Lamy, 95 Indian Meadow Drive, asked what type of business would be permitted to operate on the parcel in the future, should the golf academy not prove successful. Mr. Rand noted that the new owner would be required to come back to the board. Mr. Racca voiced concern about "creep". He also commented that, based on what we have seen and heard there are only two possible outcomes; deny the project for the same reason as the last denial or continue the hearing to allow for a more in-depth discussion about alternatives that would not violate prior zoning board rulings. Chuck Scott stated that he had reviewed the previous decision and lighting and noise appeared to be the reasons that the baseball facility's application was denied. He believes he has demonstrated that those issues have been addressed and will not pose a detriment to the neighborhood, so the board should not deny on those facts. Ms. Bakstran explained that the proposed use cannot be substantially more detrimental than the existing, nonconforming use. Mr. Rutan stated that the board is not bound by the 1977 agreement, but he would prefer to get a legal opinion regarding the commercial use as a driving range. He suggested that the hearing be continued to allow the board to get a legal opinion. Mr. Rand agreed. After discussion, the applicant agreed to request a continuance.

Chuck Scott asked Mr. Racca to communicate any questions and concerns to allow the applicant the opportunity to appropriately address them at the next meeting. Mr. Racca agreed to do so. Ms. Bakstran requested that the abutters designate one individual to act as point person to help facilitate the communication effectively and efficiently.

Mark Rutan made a motion to continue the hearing to November 26, 2013 at 7:00PM. Brad Blanchette seconded, vote unanimous.

Case 12-10 request for extension of variance. Ms. Bakstran explained that the project is moving forward, but the applicant appears to need more time to complete the work so has requested an extension. Attorney Brian Schwartz explained that the use variance is due to expire prior to the applicant completing the grading of a 300 foot section of driveway. He noted that, while plans changed slightly for the overall project in Westborough, there have been no changes to the driveway. Ms. Bakstran voiced her understanding that a public hearing is not required since the applicant is requesting an extension prior to the expiration of the original variance. Mr. Rutan suggested granting a one year extension.

Richard Rand made a motion to grant a one year extension. Mark Rutan seconded, vote unanimous.

Review Minutes of the Meeting of September 24, 2013 – Mr. Rand requested the following revisions to the minutes:

- Page 1, second paragraph – include the size of the parcel (180,191 square feet) being discussed.
- Page 7, bottom section of the page – remove the references to the variances and waivers, as this was not part of discussion.

It was agreed that the revised minutes would be redistributed to the board for review and further comment and/or approval at the next meeting.

Special Town Meeting – Ms. Bakstran stated that the warrant for the Special Town Meeting contains the following two articles:

- Article 1 – request to amend the Zoning Bylaw to impose a temporary moratorium on Large-Scale Ground-Mounted Solar Photovoltaic Systems,
- Article 2 – request to amend the Zoning Bylaw to prohibit the issuance of use variances.

Ms. Bakstran noted that the Planning Board will meet tomorrow evening to discuss these proposed zoning amendments. She also noted that Ms. Joubert has provided information about variances, including a spreadsheet detailing use variances previously brought before the board and the results. Ms. Bakstran voiced her understanding that several people plan to attend Town Meeting to voice support of use variances.

Ms. Bakstran expressed a desire to present the Planning Board with the board's opinion about the proposed change to use variances. Mr. Rutan commented that the board's entire bylaw is written with restricted use so that the ZBA, at their discretion, can then grant a use variance. He stated that, should the article pass, the entire bylaw will need to be rewritten to stipulate all allowed uses in each zone. Ms. Bakstran noted that Northborough Crossing was the largest use variance granted in the state. She agreed to work with Ms. Joubert to get concrete details

about when use variances have proven beneficial. Mr. Lonardo stated that the majority of the use variances in the past 11 years have been for commercial uses in industrial zones.

Mark Rutan made a motion that the board recommend against passage of the warrant article. Richard Kane seconded, vote unanimous.

Ms. Bakstran emphasized the importance of attending the Special Town Meeting on October 28, 2013.

Medicinal Marijuana – Ms. Bakstran voiced her understanding that there is one party interested in cultivating a dispensary in town.

Mr. Lonardo agreed to follow up with Town Counsel regarding the questions about 61B restrictions on the Indian Meadows property.

Adjourned at 8:34PM.

Respectfully submitted,

Elaine Rowe
Board Secretary