



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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## Zoning Board of Appeals Meeting Minutes August 26, 2014

**Members in attendance:** Richard Rand, Chairman; Mark Rutan, Clerk; Robert Berger; Brad Blanchette, Fran Bakstran

**Others in attendance:** Kathy Joubert, Town Planner; Nick Antanavica, Building Inspector; Elaine Rowe, Board Secretary; Kevin Kieler; Janet Sandstrom; Brian Beaton, Bowditch & Dewey; Robert Hummel, ATSE LLC; Allen Walpert

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

**Public Hearing to consider the petition of Kevin Kieler for a Variance/Special Permit to change the use of an existing duplex (2 units, 1 with in-law apartment) to multi-family use (3 units) on the property located at 31A Solomon Pond Road, GIS Map 30, Parcel 30**

Kevin Kieler explained that he came before the board two years ago seeking a variance to change the structure from a 2-family to a 3-family dwelling. He noted that the structure was previously a 2-family with in-law apartment that, due to changes in Fannie May regulations, is no longer legal and is preventing him from refinancing. He stated that the structure is currently functioning as a 3-family dwelling, so the change will be on paper only with no construction required. He also commented that, in reality, the structure was supposed to be a 3-family dwelling and cited a letter from the Building inspector in which he approved permits to turn the building into a 3-family dwelling unit. Unfortunately, that document was never recorded and Mr. Kieler was not concerned about it at the time because his parents were living in the unit.

Mr. Kieler explained that issues arose when he tried to refinance, which prompted him to come before this board for a variance two years ago. Mr. Kieler noted that, during that meeting, Fred Lonardo asked the board to include a stipulation in the decision requiring Mr. Kieler to bring the third unit into compliance with the 8<sup>th</sup> edition of the building code. Mr. Kieler admitted that he did not oppose it at the time, because he did not fully understand the magnitude of the changes that would be needed and the fact that it would apply to the entire building. He explained that he cannot comply as he does not own all of the units in the building and cannot require the neighbors to bring their unit up to the current code.

Mr. Kieler noted that, because Mr. Lonardo denied his building permit application, he opted to pursue the matter with the state and filed an appeal with the state Building Code Appeals Board. He stated that, during the hearing, it was clear that the Building Code Appeals Board believed that the structure was a 3-family from the beginning. The ruling of the Building Code Appeals Board was to overturn Mr. Lonardo's decision. Mr. Kieler explained that, during course

of his appeal, the variance on the property lapsed so he is back before the board with a new application.

Mr. Kieler emphasized his request that the board not require him to bring the unit up to the current building code, and noted that the state board indicated that it is not required to do so if the change is on paper only.

Chairman Rand asked Mr. Kieler if he has had a conversation with the owner of the other unit. Mr. Kieler indicated that the other owner is not interested in doing any construction. He also reiterated that the Building Code Appeals Board indicated that, since no building permit is needed for this proposed change, the building meets the code that was in affect when the structure was converted in the past. Chairman Rand asked if there are any other issues with creating the third unit. Mr. Kieler indicated that there are not, and noted that each owner takes care of their own unit, with the master deed delineating the responsibilities of each owner. Chairman Rand asked who would handle work on the roof if any issues arise. Mr. Kieler stated that there is a master insurance policy but if there is major work needed on the building, the owners work out the financials amongst themselves. Mr. Rutan asked if the in-law apartment has its own designated area. Mr. Kieler stated that it has its own entrance, gas meter, and alarm system.

Ms. Bakstran voiced her understanding that the Fire Chief would like the property to have a fire suppression system. Mr. Rutan asked if the wall between units A and B is a fire wall. Mr. Kieler confirmed that it is.

Ms. Joubert clarified that Mr. Kieler went to the Building Code Appeals Board to appeal the denial of a building permit and not this board's decision. She also suggested that, if Mr. Kieler had an issue with the condition in the decision, he should have appealed it within 21 days of the decision. Mr. Kieler commented that he was not aware until after the ZBA hearing that he would be required to get a building permit, which a state official has indicated is not correct.

Ms. Joubert voiced her understanding that this property has been coded as a three-family by the assessor's office for many years and the board legitimized it as a three-family in their previous decision. She indicated that she is not entirely sure what is being asked of the board tonight. Mr. Kieler noted that he was told that he would need a variance and a special permit to transfer ownership on paper for the third unit. Ms. Joubert stated that the 2012 application and subsequent decision was to classify the building as a multi-family dwelling, and noted that there is a variance on record at the Registry of Deeds confirming this. Mr. Kieler reiterated that the stipulation in the decision requiring him to bring the structure up to the specifications of the 8<sup>th</sup> edition of the building code prevented him from being able to separate the units into three separate condos.

Mr. Antanavica also questioned the reasoning for the applicant being back before the board. Mr. Rutan asked if there is an issue because the property was not brought into compliance with the 8<sup>th</sup> edition of the building code and therefore did not satisfy the condition in the decision. Mr. Antanavica stated that the applicant's appeal to the Building Code Appeals Board, and their

subsequent ruling, satisfies the condition. Mr. Rand suggested that the zoning board modify the 2012 decision to remove the condition. Mr. Rutan suggested issuing a new decision. Ms. Joubert voiced her opinion that there is no further action needed by this board and agreed with Mr. Antanavica's position that Mr. Kieler has met the criteria of the decision of the board. Mr. Berger agreed, but suggested that the board vote on it. Chairman Rand questioned the state's right to overturn the original decision. Ms. Bakstran noted that the board's decision was not appealed to the state, only the requirement for a building permit was. Mr. Antanavica explained that, when the original decision was made, the structure met the requirements of the building code in effect at that time. He noted that the 8<sup>th</sup> edition of the building code now requires fire suppression systems in multi-family dwellings. Mr. Antanavica also explained that the state had ruled in the applicant's favor because no physical work was being done on the building. Mr. Rutan expressed his preference to reissue the decision to make it clear. Ms. Bakstran disagreed and voiced her preference to leave things as they stand and let the state's decision satisfy the condition. She commented that, since she is still in favor of sprinklers, she would rather not reverse that position.

Mr. Kieler explained that he needs to rewrite the deeds and the bank will not allow him to do so until this matter is resolved. Mr. Antanavica agreed to provide Mr. Kieler with a letter to clarify the paper trail in order to satisfy the bank.

Mr. Kieler asked to withdraw his application without prejudice, and provided the board with a letter confirming his request.

Mark Rutan made a motion to allow Mr. Kieler to withdraw his application without prejudice. Brad Blanchette seconded, vote unanimous.

Fran Bakstran made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

**Public Hearing to consider the petition of ATSE, LLC for a Variance/Special Permit to allow the light manufacturing use of the assembly, production and testing of electrical and electromagnetic components and equipment; the design and development of software; and the ancillary office and warehouse use in Units 21-22 of the building located at 104 Otis Street, Map 105 Parcel 215**

Brian Beaton from Bowditch & Dewey appeared on behalf of the applicant. He explained that the applicant is entering into a lease agreement for 9200 square feet in the building located at 104 Otis Street and is seeking a special permit to allow the light manufacturing use of the assembly, production and testing of electrical and electromagnetic components and equipment; the design and development of software; and the ancillary office and warehouse use in Units 21-22. He noted that all work will be confined within the existing building with no modifications to the outside area, parking, or access to the site.

In response to a question from Chairman Rand, Mr. Beaton explained that the proposed use will involve electric motors and generators and power electronics. Ms. Bakstran asked if there are any specific concerns about the electro-magnetic components. Mr. Hummel indicated that

there should be no issues. Mr. Rutan asked if there are any hazardous materials involved. Mr. Hummel indicated that there are not, with the exception of very small quantities of acetone and household chemicals. Mr. Berger asked about quantities of epoxy resins. Mr. Hummel indicated that the largest volume that would ever be onsite would be about 50 gallons. Mr. Rutan asked if there is any need for ventilation. Mr. Hummel commented that in most cases there is not, but there may be an occasional need for a fume hood in the future.

Ms. Joubert asked if the applicant is occupying space that is currently vacant. Mr. Beaton explained that his client will be taking the space currently occupied by Renewal by Anderson, who is moving elsewhere in town.

**Lisa Sharp, 12 Laurence Street**, voiced concerns about noise. Mr. Hummel indicated that all operations will be confined to the interior of the building so noise should not be an issue. In response to another question by Ms. Sharp, Mr. Hummel stated that the hours of operation will be 9:00AM to 5:00PM. Ms. Sharp asked about truck traffic, and commented that the neighborhood is not designed for semi-trailers. Mr. Hummel stated that trucks to the business will mostly be UPS delivery trucks or those of similar size. Ms. Bakstran asked about the number of employees. Mr. Hummel indicated that there are currently 5 employees, but that number will likely grow to between 10 and 20. Mr. Berger asked if the board should request a list of hazardous materials being stored onsite. Ms. Joubert explained that this information is typically only requested when the property falls within a groundwater district. Mr. Antanavica noted that the hazmat information will not be considered under zoning but will be requested during the building permit process.

Brad Blanchette made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

#### **DECISIONS:**

**104 Otis Street** – Mr. Rutan voiced no issues with the proposal. Ms. Bakstran expressed her opinion that this is a good use of the space.

Mark Rutan made a motion to grant a special permit to allow the light manufacturing use of the assembly, production and testing of electrical and electromagnetic components and equipment; the design and development of software; and the ancillary office and warehouse use in Units 21-22 of the building located at 104 Otis Street. Fran Bakstran seconded, vote unanimous.

**Review Minutes of the Meeting of May 27, 2014** – Mark Rutan made a motion to approve the Minutes of the Meeting of May 27, 2014 as submitted. Robert Berger seconded, vote unanimous.

**Review Minutes of the Meeting of July 22, 2014** – Mark Rutan made a motion to approve the Minutes of the Meeting of July 22, 2014 as submitted. Robert Berger seconded, vote unanimous.

**Next Meeting** – Ms. Joubert advised the board members that there are currently two applications for the September meeting, and reminded them that the date of the meeting was changed to September 30.

**Adjourned at 7:50PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary