



Approved 9/29/2015

**Zoning Board of Appeals
Meeting Minutes
August 25, 2015**

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

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Joseph Atchue; Building Inspector; Elaine Rowe, Board Secretary; Erik Vangsess, Waterman Design Associates; Mo Bayou; Joseph Rinaldi; Paula Thompson, Waterman Design Associates; John Grenier, JM Grenier Associates; Attorney Marshall Gould; Kevin Giblin, 920LLC; Bill Depietri, 920LLC; Mark Rhodes; Jeff Bickford; Kelly Barger

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

Ms. Bakstran introduced Joe Atchue, Northborough's new Building Inspector. Mr. Atchue provided the board with a brief background.

Review Meeting Minutes - Jeffrey Leland made a motion to accept the Minutes of the Meetings of June 23, 2015 and July 28, 2015 as submitted. Richard Rand seconded; motion carries by unanimous vote.

September meeting – Ms. Joubert reminded board members that the September meeting date was changed to September 29, 2015. She stated that she has no new applications to provide, but anticipates receiving one for a project on Summer Street.

Public Hearing to consider the petition of Joseph Rinaldi for a Variance/Special Permit with Site Plan Approval/Special Permit Groundwater Protection Overlay District, to allow the continued uses of child daycare; retail; and business office in the existing vertical mixed-use building on the property located at 261 Main Street, Lot 1-C, in Groundwater Protection Overlay District Area 2; and to allow the proposed use of a vertical mixed-use building for

retail and office uses on the property located at 261 Main Street, Lot 1-D, in Groundwater Protection Overlay District Area 2

Erik Vangsess from Waterman Design Associates appeared on behalf of AR Realty Trust to provide an overview of the design intent of the project and the process that they have been through with the town. He noted that the existing building houses a daycare center, The Computer Exchange, and office space on the upper level. He also indicated that there are wetlands onsite, with the rear of the site being mostly wooded and upland. Mr. Vangsess explained that the applicant intends to maintain the existing building, subdivide the parcel into two lots and permit a building footprint of 3500 square feet with 2 stories. He confirmed that the parcel has sufficient frontage for two lots. He also stated that there is an existing driveway in the middle of the lot that works well, so the applicant is hoping to keep the existing curb cut with minor modifications. He noted a desire to expand on the existing parking area to provide needed parking for the new building while maintaining the parking currently being used by the current tenants.

Mr. Vangsess explained that plans for the new building include a dumpster enclosure in the back, parking to the side and rear of the building, and green space and a small bio retention area in the front to accommodate increased drainage. He noted that the retention area will be designed to overflow to an infiltration trench between the building and a proposed retaining wall and eventually flow to a series of subsurface channels at the back of the site.

Mr. Vangsess explained that, where there will not be lawn areas, the applicant is proposing to plant with a native mix that will be natural and not maintained. He mentioned previous meetings with the Conservation Commission, Groundwater Advisory Committee (GAC), and Design Review Committee (DRC) and noted that the plans presented this evening seem to meet the desires of those groups.

Mr. Vangsess commented that the snow storage location is shown on the plan, and has been revised due to the location of an existing irrigation well. He explained that the one outstanding issue relates to the town's request for curbing along the entire north side of the site. He voiced his opinion that based on the existing grades, installation of curbing in that area will result in a ponding situation that will be extremely problematic during the winter months.

Mr. Vangsess requested a condition be placed on the project regarding curbing being installed as opposed to having to come back to the Board for another meeting. Another option, after today's meeting with staff members at the site, is that they can incorporate a bio retention swale which would catch runoff and provide some pretreatment before releasing into the

wetlands. He emphasized that this design results in a tremendous improvement in the quality of runoff and drainage by capturing a portion of the runoff and rerouting it to a treatment structure. Ms. Vangsess also stated that, regardless of what the town decides to do about the curb or swale, the applicant would be amenable to curbing.

Mr. Vangsess noted that a portion of the existing pavement is located on town property, and has been there for quite some time. He indicated that town staff has expressed a desire for that pavement to be removed (approximately 3300 square feet of impervious surface) and the applicant has agreed to do so. He stated that the area will be loamed and seeded with conservation mix.

Mr. Vangsess reiterated that, given the challenges, he is hopeful that the town might compromise and agree to the installation of the swale. He also noted that evergreen plantings are proposed to enhance the buffer. He explained that the location of trees was changed to accommodate a request from the DRC and voiced his opinion that that this is a good proposal and will be a beneficial project for the town.

Mr. Rutan asked if the two lots will be independent and under separate ownership. Mr. Vangsess confirmed that the plan is to permit the proposed project and the Applicant would then sell the vacant parcel. Mr. Rinaldi noted that he is trying to get the project through the ZBA process, after which he will decide which direction to go. Mr. Rutan expressed concern about the common driveway. Ms. Thompson stated that the driveway issue will be addressed as part of the ANR process.

In response to a question from Mr. Rand, Ms. Thompson confirmed the location of the septic system for the existing building. She noted that the existing system features leaching pits, but the proposed building will have a septic system at the back of the building. Mr. Rand asked about the reason for two separate applications. Mr. Vangsess noted that, since the properties were to involve two different uses for which permitting is a bit different, it seemed reasonable to separate them even though the applicant is asking that they be reviewed as a single project. Ms. Thompson noted that the application that includes site plan approval is for the proposed building (lot 1-D), while the one without is for lot 1-C.

Mr. Litchfield stated that he had met with the applicant and his engineers earlier to discuss the curbing issue and pending concerns. He indicated that when he reviewed the plan, it appeared that the water would flow, albeit slowly, and the Groundwater Advisory Committee has recommended that curbing be installed. He also noted that the grading work can be done when the second lot is developed and noted that, while the bio retention area was not

previously discussed, it is a viable option. Mr. Litchfield recommended staying with the existing plan, including the installation of curbing, and waiting to address the grading issue. He agreed that there will be improvements on the site, but reiterated his request for the curbing to be installed and grading work to be done.

Mr. Rutan asked about any concerns with larger storm events. Mr. Litchfield indicated that back-to-back small storms are more of a concern.

Ms. Bakstran asked if the applicant intends to keep the existing irrigation sprinklers. Mr. Rinaldi confirmed that he does. He explained that the existing building was always on a well, but is now served by town water so the well is being used for irrigation only.

Ms. Joubert noted that the applicant had been before the DRC, even though they do not yet have a building to review. She indicated that the DRC is supportive of the proposal, but would like for the decision to include a condition requiring the applicant to meet with the DRC for approval of more definitive plans prior to the issuance of a building permit for lot 1D. She reiterated that the ZBA approval is of the footprint only and not the actual building.

Jeffrey Leland made a motion to close the hearing. Richard Rand seconded; motion carries by unanimous vote.

Public Hearing to consider the petition of 240 Turnpike Inc. for Variances/Special Permits to allow a proposed 50-foot by 17-foot Pylon sign to be larger than the maximum allowed area of 100 square feet; to allow the proposed sign to be of a height greater than the maximum allowed height of 20 feet; and to allow the proposed sign to be located on 1C Belmont Street (Route 9) for the purpose of advertising businesses located at 370 Southwest Cutoff (Northborough Crossing)

Property owner, Mo Bayou, and John Grenier appeared before the board to discuss plans for a pylon sign on the property located just east of the off-ramp from Route 9 to Route 20. Mr. Grenier explained that, though this is a 3.5-acre parcel, only about 1 acre is developable due to the presence of wetland along the northern portion of Hop Brook and associated riverfront offsets along the edge of Route 9.

Mr. Grenier stated that the parcel was the former site of a miniature golf facility that was developed just prior to passage of the Rivers Protection Act, so has some developed areas within the site that are grandfathered. He explained that there is an existing septic system that is nonconforming because of its proximity to the wetlands and riverfront and, while it is

grandfathered, expansion is not possible under current regulations. Mr. Grenier explained that the septic system is sized for 1,000 gallons per day, which is not adequate for any type of large development on the site.

Mr. Grenier noted that Mr. Bayou had purchased the property with the intention of relocating his automotive sales business there. He indicated that Mr. Bayou has permits for a 5,000 square foot building footprint and signage for his used car sales business. He stated that the costs associated with redevelopment are not economically feasible, so Mr. Bayou sought to find a buyer for the property. He noted that, given the limited area that can be developed, lack of town water and sewer, and the topography, finding a buyer has proven to be quite difficult. He indicated that, in trying to find some type of use that would make the site valuable, Mr. Bayou began exploring the possibility of installing a pylon sign on the site. In doing so, he approached some of the smaller stores within the Northborough Crossing development who currently have no signage, and they have shown an interest in the proposal.

Mr. Grenier provided the board members with renderings of the type of pylon sign to be installed, which is very similar to the existing sign further west on Route 9. He noted that a variance is needed to allow a pylon sign of this size (50' x 17') and to allow signage to be located on a parcel other than that which houses the shops being advertised. He reiterated that the benefit in doing so is that it will provide signage for tenants that do not have any and will minimize confusion for customers looking for the shops.

Mr. Grenier reiterated that costs of development, inability to bring water and sewer to the site, topography and wetlands issues limit the scale of any type of project on this parcel and creates a hardship for Mr. Bayou. He voiced his understanding that the placement of the pylon sign will make it economically feasible to develop a smaller project on the site, which has been vacant for over 8 years.

Ms. Bakstran asked if the proposed sign will be similar in size to those within the Northborough Crossing development. Ms. Joubert indicated that the proposed 50' x 17' sign will be larger than any of the signs within the development. Mr. Grenier commented that the measurement is from ground elevation to the top of the sign. Mr. Rutan asked about the dimensions of the existing sign, and whether the calculation includes just the sign itself or was it measured from the ground level up. Mr. Grenier commented that the existing sign and the proposed sign are quite similar in size.

Mr. Blanchette asked about lighting for the sign. Mr. Bayou stated that it will be identical to what currently exists. Mr. Blanchette asked if there will be any further improvements on the

lot. Mr. Bayou indicated that he will clear and level it to make it more visually appealing. Ms. Joubert asked Mr. Bayou when he last sold a car from this site. Mr. Bayou stated that he had met a customer there approximately 6 months ago. Ms. Joubert asked Mr. Bayou if he plans to use the property just for the pylon sign. Mr. Bayou expressed his intentions to move forward with the car dealership. Mr. Grenier stated that having the sign as a secondary use provides revenue to help cover costs of development.

Ms. Joubert reiterated that Mr. Bayou owns the property located at 1C Belmont Street, but the variance is associated with signage for the shopping plaza at 370 Southwest Cutoff. She noted that, when questioned, Mr. Bayou indicated that the owners of the Northborough Crossing Development (Equity One) are not involved with this application and, at that point, he had not had any conversations with them. Ms. Bakstran asked how the placement of the pylon sign will impact the parking and conditions of the original decision granted to Mr. Bayou. Ms. Joubert stated that, if the sign is to be placed where some of the approved parking was to be located, the applicant will be required to come back to the ZBA with an amended site plan for his original project. She also noted that the original decision is valid for approximately one more year. Mr. Grenier commented that there will be a loss of approximately 4 to 5 display spaces, but the project will still meet the parking requirements. In response to a question from Ms. Bakstran, Mr. Grenier clarified the location of the proposed sign.

Mr. Rutan asked if there are any restrictions as to what the pylon sign can be used to advertise. Ms. Joubert explained that this is a primary concern, but noted that the board does have the authority to impose conditions. A woman who identified herself as the manager of the Carter's store stated that her business would benefit from the ability to advertise on the pylon sign. She noted that she often has customers tell her that they were not aware that the store was in the shopping center.

Jeff Bickford, 3 Belmont Street, voiced concern about light pollution from the sign and asked about hours of illumination. He noted that there are two residences nearby that are at a lower elevation. Mr. Bayou indicated that the sign will be internally lit. Mr. Grenier suggested that the sign could be dimmed after business hours. Mr. Bayou agreed to do so.

Kelly Barger, Manager of the EMS Store, noted that she also gets comments from people stating that they had no knowledge that the store was part of the development, and she believes the pylon sign will be very beneficial. An audience member representing Dress Barn agreed.

A woman representing SuperCuts noted challenges with their corner location, and commented that the lack of signage makes it even more problematic. She indicated that there are flags on the poles lining the roadways, but they are removed during the winter months.

Mr. Bayou stated that Equity One did reach out to him, and appeared to have no issue with the pylon sign.

Attorney Marshall Gould, representing 920 LLC and the Northborough Crossing 2 project, explained that he had done the original permitting for the development on Shops Way. He stated that the fact that the proposed pylon signs looks like it is part of Shops Way is of extreme concern to his clients, since it will be the first impression that shoppers get of Northborough Crossing development. He wondered what that impression would be, given that the proposed sign will be located in the middle of a used car lot.

Attorney Gould indicated that it would have been beneficial for the applicant to have met with the owners of Northborough Crossing. He stated that, while the proposed sign looks exactly like the existing signs, there is no way to know if it will be maintained to the same degree. He reiterated concerns about potential for damage to the image his clients have worked hard to establish.

Kevin Giblin, 920 LLC, stated that, while he is in favor of anything that helps bring people into the shopping center, he would be interested in seeing a landscaping plan to ensure that the appropriate image will be maintained. He also noted that, given the huge investment that he made in the development, he does not want to have his product associated with anything that would not be maintained to the same standards. He also voiced his opinion that the reference to Shops Way on the sign should be removed.

Mr. Giblin questioned what businesses will be allowed on the sign and expressed concerns about where this could lead. Ms. Bakstran agreed that the decision would need to be heavily conditioned. Mr. Grenier expressed a desire to help all of the businesses in the development succeed, and credited the applicant with envisioning a way to do so. He indicated that the applicant would like this to be done correctly, and would be agreeable to conditioning the decision to ensure that this will be the case. Mr. Bayou stated that he has even reached out to the vendor who built the existing signage.

Ms. Bakstran asked Ms. Joubert about landscaping conditions. Ms. Joubert explained that the board could have the applicant come back with a landscaping plan and/or require him to meet

with Equity One and 920 LLC to reach an agreement that the sign will advertise only those businesses in Northborough Crossing, which could then be incorporated into the decision.

Ms. Joubert noted that additional information is needed. Mr. Rutan suggested that the hearing be continued to allow the applicant the opportunity to speak with the other parties as requested. Ms. Bakstran noted that the entire parcel is unkempt and simply mowing around the sign might be helpful. Mr. Grenier asked if it would be possible for the board to render a decision with a condition requiring the applicant to meet with the appropriate entities and provide a plan that is acceptable to all parties. Mr. Rutan stated that he would feel more comfortable once all parties have reached an understanding. Mr. Rand suggested that the applicant speak to Mass Highway to get details about what he is allowed to do on the site, given that a portion of the parcel is state land.

Mr. Bickford asked where the sign for the car sales business will be located, assuming Mr. Bayou is successful in developing it on this site. Mr. Bayou noted that he has an existing sign on state property that is grandfathered, so he will use that. Ms. Joubert commented that Wegman's would likely have an interest in locating on the proposed pylon sign, and questioned how the applicant will decide which stores to feature. She stated that, if the intent is to provide signage for stores that do not have signage elsewhere, she would like some guarantee that the intent is carried out. Mr. Bayou indicated that, if he is unable to fill the sign with those stores that do not already have signage, he would like the ability to reach out to stores who may be interested in additional signage. Ms. Bakstran commented that it should not be the board's job to dictate what businesses are on the sign, as long as it is limited to those within the Northborough Crossing development. Mr. Rutan noted that the benefit of this sign is to ease traffic flow, and agreed that he would not like to see it used to advertise businesses further down Route 9.

Attorney Gould noted that, while he is in favor of granting some relief to the smaller businesses, if placement on the sign is allowed to go to the highest bidder, then those smaller businesses will be shut out. He suggested that the smaller tenants have a meeting with Mr. Bayou and the owners of Northborough Crossing to come to an agreement. Mr. Bayou stated that, thus far, he has only reached out to the smaller stores and currently four of them have committed to placement on the sign.

Mr. Grenier noted that the board would like the applicant to come back with a landscaping plan, and asked if there is any additional information that the board will need in order to render a decision. Mr. Rutan indicated that he would like to know what restrictions the applicant will

be willing to comply with. Ms. Bakstran requested that the applicant meet with Equity One to reach an agreement about the proposal.

Mark Rutan made a motion to continue the hearing to September 29, 2015 at 7:00PM. Jeffrey Leland seconded; motion carries by unanimous vote.

Bond for Church Street Village – Mark Rhodes discussed his request for return of the bond being held for this project. He noted that some work was done prior to the board's last meeting, and the as-built plan submitted three years ago has been updated and resubmitted.

Mr. Litchfield referenced his letter dated June 22, 2015 (copy attached) in which he reviewed the June 2, 2015 as-built plan. He noted that, while some items have been resolved, items 3, 4, 5 and 6 in his comment letter still need to be addressed. Mr. Litchfield stated that the primary concern is the certification of the drainage system, which has not yet been provided.

Ms. Joubert stated that she had checked the original decision at Mr. Rand's request, and found that it contained language with regards to the certification of the drainage.

Mr. Rhodes explained that the original engineer has passed away and it is virtually impossible to get an engineer to certify another engineer's work. He noted that the drainage has been fully functioning for nearly 10 years, and he is seeking relief from the board. Mr. Rand asked about the mylar plan requirement. Mr. Litchfield indicated that the board does not need to require the mylar plan, but certification of the drainage and a final as-built are clearly required in the decision. He also commented that it will set a dangerous precedent if the board requires something in a decision and later waives that requirement. Ms. Bakstran suggested that the board look at each situation individually and not at the issue of setting precedence. Mr. Rand and Mr. Rutan agreed with Mr. Litchfield's position. Mr. Rutan voiced a preference to retain the bond until the project is complete. Mr. Rand commented that the board has a responsibility to homeowners in that area. In response to a question from Mr. Rhodes, Mr. Litchfield confirmed that the only remaining issue is the certification of the drainage.

Mark Rutan made a motion to deny the applicant's request for reduction/return of the bond being held. Mr. Rhodes asked the board to provide written confirmation that certification of the drainage is the only remaining issue.

Jeffrey Leland seconded Mr. Rutan's motion. Motion carries by unanimous vote.

370 Southwest Cutoff - Attorney Gould appeared before the board to discuss minor changes to the site plan for the development. He noted that the last plan showed building R-2 as a 6500 square foot structure, which is now to be the site of Margarita's restaurant. He explained that Margarita's has recently changed their prototype, which results in an increase of 543 square feet, for a revised total square footage of 69,050. He reminded the board that the applicant has been honest about the fact that there may be some slight fluctuations once tenants were secured, and requested that the board incorporate the following language into paragraph 1B on page 6 of the decision:

The overall total square footage may vary by two percent (2%) as long as the project is substantially in conformance with the site plan.

Ms. Bakstran commented that such a small increase would not affect parking or access roads. Attorney Gould confirmed that parking and traffic flow will not be a problem.

Ms. Joubert noted that the language about traffic signals needs to be finalized. Ms. Bakstran stated that the decision is still pending, and noted that one of the recommended conditions, having to do with a traffic signal, was not elaborated on in an open meeting. Mr. Rand recalled that the engineer had stated that the lines turning into the plaza are only 475 feet long, and he voiced his opinion that this would be like trying to put a quart of milk into a pint jar. He suggested that, unless the lights are interconnected and working jointly, we will end up with gridlock. He emphasized that the matter was discussed in open meeting. Ms. Bakstran voiced a desire to be sure that all issues are covered in the decision. Mr. Rand reiterated the importance of having the lights interconnected, and emphasized the need for it to be reflected in the decision to ensure compliance and enforcement in the future, and to prevent a bottleneck in that entire section of town.

Mr. Rand stated that he would prefer to use "synchronize" in place of "coordinate". Mr. Rutan agreed. After much discussion, members of the board agreed to the following language:

The Applicant shall be responsible for the installation of traffic and pedestrian signals at the intersection of Shops Way, the driveway for Starbucks/Burger King/BJs Gas and the proposed driveway subject of this decision. The signals shall be installed in accordance with MassDOT standards and shall be synchronized with the existing signals at Route 20/Shops Way. The signals shall be installed and operable once the project has reached fifty percent (50%) occupancy. No additional Certificates of Occupancy shall be issued until the signals are installed and operable.

Ms. Joubert agreed to revise the draft decision and distribute it to the board members for final approval.

DECISION:

261 Main Street – Ms. Bakstran voiced her opinion that the proposed project is a good use of the property. Mr. Rutan voiced his opinion that, if the applicant will be tearing up pavement on town property and making other improvements to the parking area, he could easily install the curbing that the Town Engineer has requested. He stated that he would have no issue with waiting until the project on lot 1-D is built for this work to be done. Mr. Leland agreed.

Mark Rutan made a motion to grant a special permit with site plan review for the project at 261 Main Street with the following conditions:

- Applicant shall be required to install curbing along the northerly side of the parking lot for 1-C prior to the issuance of an occupancy permit for the building to be constructed on lot 1-D.
- Applicant shall be required to meet with the Design Review Committee for the proposed project prior to the issuance of a building permit for the project on lot 1-D.
- The parking lot on both lots shall be equipped with berm along the perimeter to insure all stormwater is captured by the storm drainage system prior to the issuance of an occupancy permit.

Members of the board agreed that the conditions requested by the Groundwater Advisory Committee should also be incorporated into the decision. Those conditions are as follows:

- The Applicant shall submit all items as required in Section 7-07-010 D4) (a) [1-5] which are required with an application for a Special Permit or Variance.
- No use of the building which includes storage which involves as accessory uses the manufacture, storage, application, transportation and/or disposal of toxic or hazardous materials will be allowed unless a Special Permit is granted in accordance with section 7-07-010 D (3) (b) [6].
- A permeability test shall be performed within the naturally occurring material beneath the proposed infiltration system. The permeability test must not be performed within any areas of fill. The results of the permeability test shall be submitted prior to the issuance of a building permit.
- A curb cut permit shall be obtained from the Massachusetts Department of Transportation prior to the application for a building permit for Lot 1-D.
- Snow Storage should not be allowed in the area where the existing irrigation well is located.

- An earthwork permit shall be filed with the Earthwork Board after the two separate lots are approved by the Planning Board and prior to any earthwork on either site.
- The Stormwater Operations and Maintenance Plan for lot 1-C and 1-D included in the Stormwater Management Report dated June 1, 2015 shall be made part of any approval with annual reports submitted to the Town Engineer including a record of all activities performed within the previous twelve months. The Town Engineer and the Groundwater Advisory Committee shall be provided copies of the contract, all inspection reports and invoices for the work performed. All material removed from the drainage system shall be disposed of offsite. The Operation and Maintenance plan should be made part or be referenced in the final decision by the Zoning Board of Appeals if approved, so that it will be recorded at the Worcester Registry of Deeds and become a permanent part of the chain of title.
- Separate as-built site plans for each lot shall be submitted to the Town Engineer for review and approval prior to the issuance of a 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).

Jeffrey Leland seconded the motion made by Mark Rutan; motion carries by unanimous vote.

Richard Rand made a motion to adjourn. Jeffrey Leland seconded; motion carries by unanimous vote.

Meeting adjourned at 9:25PM.

Respectfully submitted,
Elaine Rowe
Board Secretary