



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 4/5/16

Zoning Board of Appeals Meeting Minutes January 26, 2016

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

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Joe Atchue, Building Inspector; Attorney Marshall Gould; William Depietri; Bob Depietri; Brendon Giblin, Brendon Properties; Paula Thompson, Waterman Design; Donald Lavin

Chair Fran Bakstran called the meeting to order at 7:03PM.

Discussion regarding 370 SW Cutoff – Attorney Marshall Gould and his clients appeared before the board to address concerns expressed in an email received from Mr. Donald Lavin, an abutter to the property. Attorney Gould explained that Kevin Giblin is currently out of town but did prepare a letter of response (copy attached) and requested that it be read into the record. Attorney Gould noted that the letter from Mr. Giblin is an attempt to set the record straight on some of the factual inaccuracies in an email received from Mr. Lavin.

Attorney Gould noted that Mr. Lavin mentions serious problems at the property including a 35-foot wall that was only permitted for 16-feet, boulders placed on the property line, and the removal of some trees. He explained that 920LLC was granted a variance to allow retaining walls in excess of 4-feet in height to be located within the setback areas. He also noted that the original application included a generic plan because the tenants were not known at the time. However, once the tenants for the development were secured, more than a dozen modifications were made to accommodate the needs of those tenants and requirements of the Fire Department. Ms. Thompson explained that the Fire Department had asked the applicant to run some turning templates using a single unit bus, which has a wide turning radius. She noted that this resulted in the need to bow out to a 34-foot interior radius in order to get the vehicle around the corner of the building.

Attorney Gould noted that ZBA case 14-12 was for use and dimensional variances and special permits for use. He stated that, once granted, the applicant could then work to secure tenants. Attorney Gould indicated that the applicant had subsequently come back to the board (ZBA case 14-14) with a plan that was further modified once the tenant mix started to finalize. He explained that some major changes

were necessary once the tenants were known and the Fire Department voiced their requirements, including an increase in parking by about 20% that required moving some of the walls, and these modifications were presented during ZBA case 15-11.

Ms. Bakstran explained that the revised plans (dated April 3, 2015) were first seen by the board on June 23, 2015. Attorney Gould emphasized that the applicant had done everything correctly, filing new plans as changes were made. He noted that the changes needed resulted in taller walls, but also resulted in those walls being moved further away from Mr. Lavin's property. He commented that claims made in Mr. Lavin's emails about fieldstone walls being removed, boulders being placed along the property line, and the removal of trees are all untrue. He also voiced his opinion that Mr. Lavin's issues with contract offers made over 7 years ago are not worthy of any further discussion.

Attorney Gould voiced his understanding that the height of the wall is not a subject of a variance. He explained that the variance is only needed to approve the location of a wall, 4 feet or higher, within a setback. He noted that Mr. Lavin had previously expressed concerns about the wall, and emphasized that a plot plan or a tape survey is not a legal instrument survey. He indicated that an instrument survey is the only way to confirm where the property lines are, and also noted that there were some errors in the tape survey presented by Mr. Lavin. He explained that the full instrument surveys done by Waterman Design confirmed that the fieldstone wall is one foot inside the 920LLC property line and not on Mr. Lavin's property as he has claimed. He also noted that the boulders are on the 920LLC property as well.

Attorney Gould stated that the wall was originally to be located 4 to 5 feet from Mr. Lavin's property line but, other than at one small location, it is now approximately 20 feet away. He also indicated that no trees were removed from Mr. Lavin's property.

Attorney Gould commented that the issues that the applicant focused on during their most recent appearance before the board were the addition of 3,000 square feet of space and changing the proposed stop sign at the 4-way intersection to a traffic signalization that is to be coordinated with the signalization at Route 20. He noted that, while they focused on the two single biggest changes during the hearing, everything else was included on the site plan presented.

Ms. Thompson explained that the site plan changes made between October 28, 2014 and April 3, 2015 are as follows:

1. Each of the building sizes changed slightly. When the applicant originally came before the board, the application requested 65,000 square feet of retail/restaurant space to accommodate the needs of the tenants, though the original site plan only showed 60,000 square feet.
2. Addition of parking spaces throughout.
3. Addition of retaining wall at the front corner with the addition of parking.
4. Removal of drive-through on Building R5.
5. Reconfiguration of entry location to exit only.

6. Pavement edge was moved closer to the property line.
7. Addition of another trash area and transformers are now shown on the plans.
8. Removal of outdoor seating and pavement.
9. Increase in the size of the infiltration basin.
10. Addition of catch basins due to additional impervious area.
11. Applicant went to the Conservation Commission because some work encroaches a bit more within the buffer zone.
12. Addition of dumpster areas to accommodate multiple tenants.
13. Reconfiguration of the radius to meet city bus turning radius as requested by the Fire Dept.
14. Based on discussions with a structural engineer, the wall was moved to the top of the slope and closer to the pavement edge and further away from property line, which did create a point where the wall is now 23 feet high instead of the original 16 feet.
15. Other retaining wall was also moved closer to the road.

Attorney Gould emphasized that nowhere in any of the decisions was there a requirement that the retaining wall be no more than 16 feet high. He noted that when the Fire Department required the wider turning radius, the applicant modified the plans to accommodate that request while not moving the wall closer to Mr. Lavin's property line. Bill Depietri stated that there is one point where the wall is 25 feet high, but agreed to add material at the base to bring it back to 23 feet.

Ms. Bakstran explained that the reason the board had asked the applicant to appear tonight is more about intent, and cited the concerns and emphasis that the board had placed on the height of the wall at the second hearing. Mr. Rutan asked if the surface of the roadway around the curve has been raised or lowered from one plan to the other. Ms. Thompson indicated it had not; it has just been pushed out. She explained that the structural engineer had suggested bringing the wall up to the same height as the parking area to alleviate stress on the wall. Attorney Gould commented that there was no intent to mislead the board or try to get something by. He reiterated that the change would not have been needed had the Fire Department not required the wider turning radius.

In response to questions from Mr. Rutan, Ms. Thompson stated that fencing is planned at the top of the wall, with the lip of the wall outside the fence to be 10 to 12 inches.

Ms. Bakstran asked if a 4-foot fence is sufficient to ensure safety, given the new height of the wall. Mr. Depietri indicated that the fence can be increased to 6 feet if needed. Mr. Atchue expressed his preference for a 6-foot fence, but noted that anything over 6 feet will require another variance.

Mr. Rand recalled that, at a previous meeting, the board had asked if the wall would exceed 16 feet in height and were told that it would not. He noted that the applicant had never mentioned that it would be 20 to 25 feet high, and specifically remembered that the board did not want it to be any taller than 16 feet. Attorney Gould commented that nobody recalled that question being asked, and the height of the wall was shown on the revised plans that were submitted. Mr. Rand asked if the applicant had informed the board about the increase in the height of the wall during the hearing. Attorney Gould

noted that they had spent most of their time talking about the signalization. Ms. Bakstran stated that the increase in the height of the wall is a significant change for the board, specifically since it was the focus of the discussion for case 14-14, and voiced displeasure that it was not something that was included as part of the conversation. Attorney Gould noted that there have been numerous meetings for this project, which involves a lot of engineering details, and the applicant assumes that questions and concerns will be raised. He apologized if there was a disconnect, and reiterated that there was no intent to try to hide anything.

Ms. Bakstran noted that, at the wall's highest point, a good portion of it will be blocked by a building. She reiterated that the board had spent a good deal of time talking about the wall both from an aesthetic and safety standpoint. Bill Depietri agreed to come back to the board with a new landscaping plan.

Mr. Lavin insisted that the wall is 26 feet high. Mr. Atchue stated that he had measured the wall at 25 feet and 3 inches at its highest point. Mr. Depietri reiterated his offer to add more ground materials. Ms. Bakstran asked about the boulders. Bill Depietri indicated that the boulders are meant to remain and reiterated that they are all on his property. In response to a question from Mr. Atchue, Bill Depietri indicated that Waterman Design has not yet done an as-built plan for the wall. Mr. Lavin reiterated concerns about the unsightly boulders and the pre-existing fieldstone wall. Ms. Bakstran noted that the boulders are part of the landscaping design. Mr. Lavin asked about easements, and noted that Town Faire Tire is interested in building on his property.

Next Meeting – February 23, 2016.

Jeffrey Leland made a motion to adjourn. Mark Rutan seconded; motion carries by unanimous vote.

Respectfully submitted,

Elaine Rowe
Board Secretary