



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 7/26/16

Zoning Board of Appeals Meeting Minutes May 24, 2016

Members Present: Fran Bakstran, Dick Rand, Jeffrey Leland, Brad Blanchette, Mark Rutan

Others Present: Kathy Joubert, Town Planner; Joe Atchue, Inspector of Building/Zoning Enforcement Officer; John Grenier, JM Grenier & Associates, Inc.; Lando Bates, Brett & Beth Boullianne, Steven Stone, Anne Beckstrom, Amy Poretsky, Xiangshu Zhang, Gang Yan, Jim Kane, Adrian & Melissa Eiben, Chris Graham, Joanna Nealon, Melinda & Michael Kement, William F. Ellsworth, Patricia Johnson, G. Ellsworth, Manouchohr Barheri, Roy Evarts

Chairman Bakstran opened the meeting at 7pm.

Continued consideration of the petition of Ian Gow for a Variance/Special Permit to allow the use of a proposed self-storage warehouse facility containing 6 buildings on the property located at 1 Lyman Street, in the Industrial District and Groundwater Protection Overlay District Area 1

The board received a request from the Applicant to continue the public hearing to their next meeting. The board voted unanimously in favor of continuing the public hearing to June 28, 2016.

To consider the petition of Raven Homes, Inc. for Variances/Special Permits to allow the use of two 2-family dwellings (duplexes), one to be located on the property at 223 South Street, Map 83, Parcel 144; and one to be located on the property at 227 South Street, Map 83, Parcel 145, in the Residential C District

Ms. Bakstran read the public hearing notice into the record.

John Grenier, J.M. Grenier and Associates, representing the Applicant, Raven Homes (John Mshooshian), presented the project. He stated the subject properties at 223 South Street and 227 South Street, are in the Residential C District and the Applicant is proposing to construct a two-family dwelling on each of the two lots. The project is before the board tonight for the use of the two-family dwellings which is allowed by special permit in the zoning district. Mr. Grenier noted the project will also be before the Planning Board for a common driveway special permit. He is here tonight to demonstrate the project is keeping with the character of the neighborhood and will not derogate from the intent of the residential zone in which it is in.

Mr. Grenier explained the minimum required area of a lot in the Residential C District is 20,000 square feet and the minimum required frontage in the Residential C District is 100 feet. The first lot has 100 feet of frontage and is 22,000 square feet; and the second lot has 100 feet of frontage and is 93,000 square feet in area. The lots are rather large and the dwellings will sit in the back of the properties, however their locations may change due to ledge on the sites. He stated the topography of the site, with the ledge and its location on a hazardous curb on South Street, makes it's safer to have one curb cut for one common driveway to service both lots. Mr. Grenier noted the two-family dwelling units will be more affordable than single-family dwellings and there are other duplexes on South Street in the vicinity.

Mr. Grenier stated they will be providing safe access to the proposed lots, but that will be discussed with the Planning Board during their public hearing on June 7, 2016. The Planning Board, Fire Chief, Police Chief and Town Engineer will submit input regarding the common driveway at that meeting.

Ms. Bakstran stated the Planning Board has the oversight of the common driveway and the project is before the Zoning Board of Appeals for a special permit for the use of the proposed duplexes. She noted there was originally a request for a variance for frontage, but that is not needed, per Mr. Grenier.

In response to questions from the board members, Mr. Grenier explained the two-family homes will consist of two 3-bedroom dwelling units that will have approximately 2,000 square feet of living area. They will be similar in nature to the duplexes across the street that were built by the same developer. The site is serviced by town water and sewer. There is a lot of ledge on the property and they are hoping not to have to blast. Information on drainage and the line of sight has been included in the application for the Planning Board. The plan the members have this evening has been updated after receiving input from the fire department regarding an increase in the radius of the common driveway for emergency vehicles. Mr. Grenier stated the location of the dwellings may change in order to avoid ledge. Before he starts pouring cement, he would have to see the building inspector and once the foundation is in, he will submit an as-built foundation plan to the building department.

Ms. Bakstran stated the site has challenges and she wants the abutters to know there are safeguards. She reminded those present that the board's purview is the use of the proposed duplexes.

Jim Kane, 89 Sunset Drive, stated this corner is one of the most dangerous areas in town. He is an avid runner and cyclist, and has almost been hit in this area. He questioned the line of sight.

Adrian Eiben, 6 Jethro Peters Lane, stated he checked with the police department and there have been 16 traffic accidents at this site. His property is across the street from the site and he hears cars and brakes screeching all the time. There is a crosswalk for an elementary school there, as well. With this project, there will be vehicles from 8 more families entering and exiting onto one of the most dangerous corners on South Street and in town. The lot across the street has \$1 million dollars-worth of homes that are not affordable and the Applicant is trying to get as many dwellings as possible on the proposed site. Mr. Eiben stated the Applicant has not been easy to work with regarding drainage issues. He summed up by saying the housing is not affordable, there are massive safety concerns, the proposal does nothing for the town, the owner of the property has not been easy to work with, and their properties will be devalued.

Chris Graham, 10 Jethro Peters Lane, stated he doesn't feel this project is within the character of the neighborhood. Very few people observe the speed limit in this area. The project will generate dust, delays and debris, and with the other duplexes across the street, there was no drainage plan during construction. This area was all single-family homes before the duplexes were built across the street by the same developer.

Brett Boullianne, 215 South Street, stated his main concern is that when they bought the house, it was a single-family area. Now this will be the second development with multiple families coming into the neighborhood, and it will devalue his property. He explained they are on their own well water and septic, so any blasting would be a problem for their infrastructure, with possible cracks in the walls and floors. There is mostly stone in the back of the subject lot. The safety issues were well noted, including

screaming tires, and more cars coming in and out of the property onto South Street. He stated he spoke with an arborist who told him removing trees could change the wind pattern and may cause some of the pine trees to fall. The trees are very tall in his yard and it could cause a safety concern if they toppled over. The addition of the duplexes will increase the cost of water and sewer, even though he doesn't use town water, and there could be another increase in fees. Mr. Boullianne stated he is strongly opposed to the project and will be getting hit financially in every regard.

Joanna Nealon, 235 South Street, stated she was affected by stormwater runoff years ago when she had small children and it was very upsetting. She said she was treated poorly by the Town and the developer. She asked what assurance there will be that there won't be another drainage issue from this project. She noted there could be a school bus that would stop at the site, it gets very icy in that area, and could be dangerous for the children. She agrees with the concerns of the other abutters who have spoken tonight. She also asked if there has been an inspection of the site across the street.

Mr. Eiben explained he got signatures from 26 people who are opposed to the project and it is available via his email, but he does not have a hard copy of the document to submit tonight.

Mr. Rand noted the plan the board has is dated April 20, 2016, but Mr. Grenier's plan is updated. Mr. Grenier responded the updated plan shows a revised common driveway and will be reviewed by the Fire Chief and the Town Engineer prior to presenting it to the Planning Board. The lots were created in 2007 and the special permit for the duplexes is what is before the ZBA.

Ms. Bakstran confirmed with Mr. Atchue and Ms. Joubert that if the developer decided to build a single-family home on each lot, he would not be required to come before any board. Ms. Joubert confirmed that and stated the developer could also have individual driveways off South Street for both duplexes with no review process.

Mr. Grenier stated if the developer was proposing single-family homes, there would be more impervious area and the developer wouldn't have to deal with drainage because everything would be by right. The special permit process for the common driveway will address the dangerous line of sight in this area, and drainage will be better. This is a very problematic area of South Street and what they are proposing is the best design to address safety and drainage.

Mr. Grenier stated the developer was not required to address drainage when building the duplexes across the street because it wasn't required. He also noted putting the detention basin in the road by the common driveway will require removal of trees, which will help with sight distance. In addition, an outcropping of ledge will need to be trimmed so sight distance looking north will be better.

An unidentified resident stated he believes, from what he's heard tonight, that the developer is going to go forward with plans that would not require permitting if he doesn't get approval for the these plans.

Ms. Bakstran responded, stating she did not interpret what's been said that way and the board's role is to address the use of the proposed duplexes. Everything else to do with the project will be addressed by the Planning Board through the common driveway process.

Mr. Leland, speaking as a resident, stated if the use of the proposed 2 duplexes is not approved, and the Applicant decides to build single-family homes or two-family homes with individual driveways, the board

would not have the ability to condition the project. With this special permit application, there will be one driveway and drainage will be addressed.

In response to a question from Amy Poretsky, Planning Board member, Mr. Grenier stated there is a benefit in providing housing, especially if the structures are well built. It will increase the tax base. By having a common driveway, they believe they will be providing a safer area.

Roy Evarts, 106 South Street, asked if anyone looks at these busy streets and determines there can't be any more curb cuts. Ms. Bakstran replied the state gives permission for curb cuts on state roads, but there are no regulations for individual driveways on town roads. Mr. Leland stated a person has the constitutional right to develop their property and have access to it.

Mr. Grenier stated the project meets all dimensional requirements of the zoning district and there is plenty of development area on the sites.

Ms. Poretsky asked if there are plans to develop the back of the property. Mr. Grenier responded there is not enough frontage and there would be ledge issues and land disturbance.

Mr. Rutan asked Mr. Grenier if the developer could build more houses if a street was proposed where the common driveway is proposed now. Mr. Grenier replied they could probably get 3-4 houses, but would have to conform to all the regulations for a new town street.

Ms. Joubert explained the ZBA denied special permits for duplexes proposed on the property at 231 South Street in 2007. The Applicant appealed the decision and the project was remanded back to the ZBA because the court determined the board did not have the right to deny the use of two-family homes as it is allowed in the zoning district by special permit with conditions.

Mr. Rand noted the ZBA had all the same arguments for that project as they do with this one.

Mr. Rutan motioned to close the hearing, Mr. Rand seconded the motion and the vote was unanimously in favor.

To consider the petition of Lando and Samantha Bates for Variances/Special Permits to allow the use of two single-family homes to be located on two proposed lots with less than the required minimum lot area; to allow one lot to have less than the required frontage; and both lots to have less than the required lot widths, on the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C District and Groundwater Protection Overlay District Area 1

Board member Jeffrey Leland recused himself for this public hearing.

Applicant Lando Bates presented the project and read from his narrative. Regarding a letter sent to the ZBA from the Groundwater Advisory Committee (GAC) recommending denial of the project, Mr. Bates stated GAC members Bill Pantazis and Diane Guldner were opposed to the project due to possible groundwater contamination and the location of the well head. GAC member George Pember recused himself from discussion and member Bryant Firmin was not present. He also noted a variance was granted for reduced lot area in a groundwater protection district for the property at 7 Winn Terrace in 2008 and variances were granted for reduced lot width, frontage and lot area in a groundwater protection district for the property at 71 Pleasant Street in 2004. He submitted this information to the board.

Mr. Bates explained he and his wife own the property at 313 Brigham Street, which is 106,367 square feet in area with 192 feet of frontage. There is a house and a barn on the site that have been there since 1956 and the barn will be removed. He noted he recently received Planning Board approval to subdivide 313 Brigham Street into two lots with one lot containing the house and one lot containing the barn.

Mr. Bates stated he wants to further subdivide the lot with the barn into two separate lots identified on the plan he submitted as Lot 1 and Lot 2, and construct a 4-bedroom single-family dwelling on each lot. Both lots will have a septic system and will be serviced by well water. The property is in a groundwater protection overlay district which requires lots of at least 80,000 square feet in area and neither of the two proposed lots will meet that requirement. In addition, Lot 1 will not meet the required 100 feet of frontage, and neither lot will meet the required lot width of the Residential C District in which the property is located. Mr. Bates stated he is requesting a variance for lot area in a groundwater district and variances for lot width and frontage in the Residential C District. He stated the proposed use of two 4-bedroom, single-family homes will meet groundwater requirements for impervious surface post construction, and the two lots would each meet and exceed front, side and rear setback requirements of the zoning district.

Mr. Bates noted the subject property contains more than 80,000 square feet in area and the zoning district allows the use of a 2-family dwelling by special permit.

Ms. Bakstran confirmed this was originally one lot owned by the family. There is a barn that is far enough away that could justify splitting the lot into 2 lots and then it was divided into 2 lots. Both lots do not have enough area to meet the minimum lot size requirement in a groundwater district. The original lot is conforming containing 106,000 sq feet. The Applicant's house is located at 313 Brigham Street (the 3rd lot), is 30,000 square feet in area and is nonconforming because the Applicant split it the original lot. The Applicant created the nonconforming lots.

Ms. Joubert stated the lot on which the existing house is located will need a variance in the future for nonconformity, and is not part of this application before the board.

Ms. Bakstran confirmed a variance is requested for frontage on Lot 1; variances are requested for lot widths on both Lot 1 (50 feet) and Lot 2 (75 feet); and a variance is requested for frontage on Lot 1 (92 feet). She noted this property is in Groundwater Protection Overlay District Area 1 which has the most impact.

Mr. Rutan stated basically the Applicant wants to split this property into two lots when the groundwater protection overlay district says it should be only one buildable lot. Mr. Bates responded, stating he wanted to keep in the character of the surrounding area, but could have a house with 10 rooms on the lot. Each of the two houses he is proposing now will have 4 bedrooms and he and his family will be living in the existing house.

Jim Kane, 89 Sunset Drive, asked Mr. Grenier if the dwellings will be rented or sold, and stated he is concerned with the existing vacant houses on Sunset Drive. He questioned why the Applicant should be allowed to build two homes when one is allowed. He stated there are 12 houses on his street, 4 are vacant, 3 are rentals and 1 has an illegal apartment. The proposed house that is angled will look into his back yard. He stated lower-income houses are killing their neighborhood.

Mr. Bates responded he plans to sell the houses.

Gang Yan, 98 Sunset Drive, stated he has concerns about impervious cover and septic loading.

Roy K. Evarts, 106 Sunset Drive, (on the corner of Sunset Drive and Brigham Street) submitted a letter to the board with his concerns. He noted his rear lot line abuts the Bates property. He stated he is concerned about the Brigham Street well, along with increases in congestion, traffic, pedestrian safety issues; and dense zoning. In addition, he was told by the Applicant's engineer that his rear lot line needs to be surveyed because Mr. Bates placed a concrete marker in the wrong place years ago, and now he, not Mr. Bates, will have to pay for the survey. He noted he doesn't want anything to happen with the project before he gets his land surveyed. He also reminded the board that the Groundwater Advisory Committee recommended the denial of the project.

Michael Kement, 305 Brigham Street, stated the Applicant is requesting significant relief, since each new lot needs 80,000 square feet and only one lot meets that regulation. In addition, he is concerned about the appearance of the 300-foot driveway and how utilities will be brought to the site. He asked if he will be looking at utility poles from his house.

Ms. Joubert offered to get more information on the decisions Mr. Bates referenced for 7 Winn Terrace and 71 Pleasant Street. Ms. Bakstran stated the board is fine without additional information on those other projects.

Mr. Rutan motioned to close the hearing, Mr. Rand seconded the motion and the vote was unanimously in favor.

Continued consideration the petition of AMERCO Real Estate/U-Haul Construction Department for a Variance/Special Permit, Special Permit, Groundwater Protection Overlay District/Site Plan Approval to change the use of an existing industrial building to a commercial self-storage facility and to construct a new warehouse building on the property located at 40 Bearfoot Road in the Industrial District and Groundwater Protection Overlay District Area 2

The board received a request from the Applicant to continue the public hearing to their next meeting. The board voted unanimously in favor of continuing the public hearing to June 28, 2016.

DECISIONS

313 Brigham Street

Mr. Rutan stated the Applicant has a conforming lot that he'd like to make into 2 nonconforming lots and there's nothing more to it than that. There are reasons for having these restrictions in the zoning bylaw. Ms. Bakstran stated the 80,000 square-foot lot requirement in the groundwater district is there for a reason. A 300-foot driveway would be considered impervious surface as well as the houses. The hardship is based on the land and there is ample amount of land to meet the zoning bylaw if the lots are not divided. It is only due to the division of the land that the lots are nonconforming and that the project requires variances. The nonconformity is self-imposed.

Mr. Rand stated there is no hardship.

Mr. Leland stated the board could condition the project if the dwellings were duplexes.

Mr. Rutan motioned to deny all the requested variances associated with the project at 313 Brigham Street. Mr. Rand seconded the motion and the vote was all 4 members in favor.

223 & 227 South Street

Ms. Bakstran stated it is not reasonable to say no, but painful to say yes. The reality is the Planning Board will deal with all issues related to the common driveway. She stated she is glad there will be one driveway there. Hammering and blasting will be upsetting, but it could make that corner safer by improving sight distance. She stated she is not opposed to the duplexes because they will be in the backs of the lots. The bylaw says a special permit "shall" be granted.

Mr. Rutan stated having once been slapped down after denying a similar project and being informed that the board has to approve it and could condition it, he is not aware of any way they can deny it.

Ms. Bakstran asked if they could include a condition that if the common driveway is denied by the Planning Board, they can deny the duplexes. Ms. Joubert stated they cannot make a decision based on another board's decision. Ms. Bakstran asked if they could include a condition that approval is contingent on the drainage and runoff. Mr. Atchue said they cannot, as it is not in the board's scope.

Mr. Atchue noted if the Applicant decided not to build duplexes, he could build two single-family homes, each with their own driveway off South Street.

Ms. Bakstran stated there is no valid reason not to approve it. The houses will not be visible from the street. The Planning Board will address impact, runoff, the driveway, the line of sight and the height of the dwellings.

Ms. Joubert noted conditions in the 2008 decision included no increase in stormwater and glare not to be cast upon the abutting property. Ms. Bakstran stated there is nothing for them to condition, as the conditions will be determined by the Planning Board at the common driveway hearing.

Mr. Rand motioned to grant the Special Permit for the use of a two-family dwelling on the property at 223 South Street and a two-family dwelling on the property at 227 South Street. Mr. Rutan seconded the motion and the vote was all 4 members in favor.

Adjournment: Mr. Rutan motioned to adjourn the meeting. Mr. Leland seconded the motion and the vote was unanimous to adjourn.

Respectfully submitted,

Debbie Grampietro
ZBA Administrative Assistant