



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 9/27/16

## Zoning Board of Appeals Meeting Minutes August 23, 2016

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

**Others in attendance:** Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Joe Atchue, Building Inspector; Elaine Rowe, Board Secretary; Joseph Sullivan; Mark Mayo; Lando & Samantha Bates; Susan Swedis, 9 Balcom Drive

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

**Continued consideration of 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**

Chairman Rand explained that the applicant has requested a continuance of their hearing. Ms. Joubert noted that the applicant's engineer has met with town staff and needs to appear before the Conservation Commission and Design Review Committee, so is in need of a continuance until they are able to do so.

Jeffrey Leland made a motion to continue the hearing to September 27, 2016 at 7:00PM. Mark Rutan seconded; motion carries by unanimous vote.

**Continued consideration of the petition of ZHS Realty Trust for Variances/Special Permits to allow two proposed principle buildings on one lot; and to allow the proposed use of 16 multi-family dwelling units (8 dwelling units per building) on a proposed lot to be created by combining the properties located at 39 & 43 King Street, in the Business West District and Groundwater Protection Overlay District Area 3**

Ms. Joubert explained that this applicant has also requested a continuance to the September meeting.

Mark Rutan made a motion to continue the hearing to September 27, 2016 at 7:00PM. Fran Bakstran seconded; motion carries by unanimous vote.

**Continued consideration of the petition of Lando and Samantha Bates for a Variance/Special Permit to allow a proposed single-family dwelling on a lot of at least 80,000 square feet; and to allow a proposed single-family dwelling on a lot of 56,000 square feet, with both lots to be created by the division of the property located at 313 Brigham Street, in the Residential C District and Groundwater Protection Overlay District Area 1**

Chairman Rand noted that the applicant has not yet arrived, so suggested moving on to the next hearing.

**Public hearing to consider the petition of Joseph Sullivan for a Variance/Special Permit to allow the change of a use from a single family home to a two-family home on the property located at , 173 West Main Street Map 75, Parcel 72**

Mr. Sullivan discussed his desire to obtain approval to convert the existing dwelling into a two-family home. He noted that, when he purchased it, it was already functioning as a two-family dwelling. He stated that the home is on town water and private septic system, and noted that town sewer is not available at the site. In response to a question from Ms. Bakstran, Mr. Sullivan confirmed that work will be limited to the interior and there will be no change to the existing footprint. Mr. Blanchette asked if the property is zoned for a two-family dwelling. Mr. Sullivan noted that there are currently two units, with two bedrooms and 1 bathroom each. Ms. Bakstran asked if there is a requirement for owner occupancy. Ms. Joubert indicated there is not. In response to a question from Mr. Rutan, Mr. Sullivan stated that there a 6 parking spaces provided.

Ms. Bakstran questioned how this home could have historically been functioning as a two-family. Mr. Atchue stated that, at some point, it had been converted to a two-family without the town's knowledge. Mr. Rutan noted that there are two-family homes to the east and Ms. Joubert noted that there are two residential units in the pet store building next door. Chairman Rand asked if there are plans to update the septic system. Mr. Sullivan indicated that there are not, and stated that the property passed a Title 5 inspection for 4 bedrooms. Mr. Litchfield stated that the Groundwater Advisory Committee has recommended approval but would like to include a condition that the structure be limited to a maximum of 4 bedrooms. He also indicated that he has some questions about the parking spaces and is not sure if the applicant has confirmed these details with the Building Inspector. He expressed a desire to ensure that there is sufficient parking onsite and noted that this can be included as a condition in the decision if necessary. Mr. Rutan asked for clarification about the 6 parking spaces. Mr. Sullivan explained that there is an existing gravel parking area with parking for six cars. Mr. Atchue indicated that he is comfortable with the 6 existing parking spaces.

**Mark Mayo, 175 West Main Street**, voiced concerns about the parking situation and noted that, in the past, many vehicles from the applicant's property have encroached into his lot and the shared driveway. He indicated that he has no issue with having a two-family next door but would like to be sure that, should he have issues with residents taking up his customer's parking spaces, he will be able to have it addressed. He explained that the area in question is the only entrance that does not require climbing stairs to get into his store.

In response to a question from Chairman Rand, Mr. Sullivan indicated that he has no plans to pave the parking area. Mr. Rutan expressed concern about the gravel staying in place when the lot is plowed, and Mr. Mayo stated that there have not been any issues in the past. Ms. Bakstran asked about a requirement that the parking area be paved. Ms. Joubert indicated that there is nothing in the bylaw requiring that a residential lot be paved. Mr. Rutan asked if the structure will be inspected to ensure that it meets the building code. Mr. Atchue confirmed that it will.

In response to a question from Mr. Rutan, Mr. Sullivan stated that the shed on the property is used to store garden tools.

Brad Blanchette made a motion to close the hearing. Jeff Leland seconded; motion carries by unanimous vote.

### **Consideration of the petition for 313 Brigham Street**

Citing a conflict of interest, Mr. Leland recused himself.

Ms. Bakstran asked for clarification of the petition. Mr. Bates explained that his application is for a single variance. He noted that he had been before the board in May seeking multiple variances, and is now proposing to recombine the entire 3.1 acre property and create one conforming lot and one lot of 56,000 square feet for which he will need a variance. He indicated that the property has been in the family since 1863, and he purchased it from his grandparents in 2012.

At the request of Ms. Bakstran, Mr. Bates clarified the location details of the existing house, well, septic system, and the proposed new lot lines. He discussed plans to move the existing house and septic system further back on the lot. He explained that the conforming lot has 100 feet of frontage and the smaller lot will have 292 feet of frontage.

Chairman Rand asked about the groundwater area shown on the plans. Mr. Bates explained that he had met with the Groundwater Advisory Committee (GAC) in July. He noted that, at the time, he had requested a continuance of his GAC hearing, but after further review of the groundwater bylaw he believes that variances are not addressed through that board. In response to a question from Chairman Rand, Mr. Bates confirmed that he had not continued with the GAC and noted he believes there is no bylaw that requires him to do so. Ms. Bakstran

explained it has been a common practice for the ZBA to have applicants appear before the GAC to get their input and concerns about a project's impact to the groundwater. Mr. Bates voiced his opinion that, during the GAC meeting, the staff liaison was directing the GAC as to the vote. He stated that, since he believed the staff liaison was pushing the GAC to make a determination inappropriately, he opted not to move forward with that process. He reiterated his belief that this matter falls under the purview of the ZBA and not the GAC.

Mr. Rutan explained that Mr. Litchfield had provided a comment letter and asked Mr. Bates if he is aware of it. Mr. Bates confirmed that he is. Mrs. Bates commented that there was very little discussion of the groundwater during the GAC meeting. She noted that the discussion was centered on variances and hardships, and she found the entire situation disheartening.

Ms. Bakstran commended the applicant for coming back to the board with an alternate plan, and reiterated the board's desire to get recommendations from the GAC. She expressed a desire to know what the GAC's concerns may have been relative to groundwater and suggested that, in the absence of that, there is not enough information to be able to render a decision on the proposal. Chairman Rand and Mr. Rutan agreed. Mrs. Bates commented that the letter was from only one person. Mr. Bates voiced a desire to put some guidelines in place as to what the GAC's focus should be. Chairman Rand stated that it is not the ZBA's role to direct other boards about how to do their job. Mr. Bates reiterated that there are no rules and regulations in place for the GAC process. Ms. Bakstran reiterated that the ZBA needs input from the GAC in order to make a good decision. Chairman Rand emphasized the need to get input from the members of the GAC as this is their area of expertise. Ms. Bakstran suggested that Mr. Bates get back in front of the GAC to get their opinion about groundwater issues on the site. Mr. Bates reiterated his request that the GAC be asked to hone in on the groundwater issue and not other matter that do not fall under their purview. Mr. Rutan explained that the GAC typically provides a recommendation to the ZBA which generally will deal with the protection of the groundwater. Mr. Bates noted that his proposal for this 3 acre lot is not detrimental to the groundwater. He commented that the lot has the capacity for up to 13 bedrooms in a single house.

Mr. Bates noted that precedents were included in the application (7 Wynn Terrace and 71 Pleasant Street) where the board's decision indicated that soil conditions on the site created a hardship. Chairman Rand advised Mr. Bates that both of those projects went before the GAC and that ZBA decisions do not set precedent as each application is considered and reviewed on its own merits.

Chairman Rand informed Mr. Bates that he has the following two options for how to proceed

1. Continue with tonight's hearing and ask the ZBA to make a decision, or
2. Request a continuance and go back to the Groundwater Advisory Committee.

Mr. Bates expressed a desire to request a continuance and return to the GAC.

Fran Bakstran made a motion to continue the hearing to September 27, 2016 at 7:00PM. Mark Rutan seconded; motion carries by unanimous vote.

**DECISIONS:**

**173 West Main Street** – Ms. Bakstran commented that, given that the two-family use has historically existed, this appears to be an issue of cleaning up the paperwork. She also discussed the issues of the common driveway and parking concerns, but noted that Mr. Sullivan does own the right of way so she would not condition the decision. Mr. Leland suggested that there needs to be some type of agreement between the two property owners. Mr. Leland asked if the board needs to confirm that the septic system is approved for 4 bedrooms. Mr. Litchfield explained that Title 5 is merely an inspection of the septic tank and does not verify anything about the size of the system or number of bedrooms it can serve. He suggested that the decision include a condition limiting the number of bedrooms to four until such time as an approved septic plan is on file with the Board of Health.

Mark Rutan made a motion to grant a special permit to allow the use of a two-family residential dwelling, with the condition that it be limited to a maximum of 4 bedrooms total. Jeff Leland seconded; motion carries by unanimous vote.

Adjourned at 7:41PM.

Respectfully submitted,

Elaine Rowe  
Board Secretary