



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 11/22/16

## Meeting Minutes Zoning Board of Appeals September 27, 2016

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

**Others in attendance:** Kathy Joubert, Town Planner; Lando & Samantha Bates, 313 Brigham Street; Attorney Marshall Gould; Jeff Vaine, AMERCO Real Estate; Randy Waterman, Waterman Design

**Chairman Richard Rand called the meeting to order at 7:05pm.**

Chairman Rand explained that Mr. Bates has asked for permission to record tonight's meeting and is being allowed to do so.

**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**

Attorney Marshall Gould appeared on behalf of the applicant and introduced Jeff Vaine from AMERCO Real Estate/U-Haul and Randy Waterman from Waterman Design. He noted that the applicant was before the board in September 2015 seeking multiple variances for the use of the property, all of which were granted by a unanimous vote. He explained that the decision was issued on September 29, 2015 and filed and recorded at the Worcester Registry of Deeds. Attorney Gould referenced the 5 variances that were granted as follows:

1. Variance to allow use of a self-storage facility
2. Variance to allow retail sales and leasing
3. Variance to allow equipment rental
4. Certain sign variances in the industrial zone to allow for a total area of signs to be no more than 400 square feet
5. Variance to allow freestanding signs in both the front and rear of the property, with the one at the rear of the property to include 20 square feet of changeable copy message

Attorney Gould noted that the applicant had been required to appear before the Conservation Commission and the Groundwater Advisory Committee (GAC), which he has now done, and come back to the ZBA with a site plan. He indicated that the project has been approved by the Conservation Commission, GAC and the Design Review Committee (DRC). He explained that there were some changes made to the plan based on requests from the DRC, and asked Mr. Vaine to review the plans.

Mr. Vaine discussed plans to renovate the existing 63,000 square foot building to install 943 self-storage units that will be accessible from the interior of the building. He also noted that the proposal includes installation of a 2500 square foot warehouse with loading dock in the back corner of the site to provide a staging area for their pod-type box product.

Mr. Vaine noted that parking will be in the rear of the building, with areas for display parking of rental trucks, customer parking, and an ADA compliant parking area up front. He indicated that the plans include a new curb cut in front of the property to allow access around the building and into the building for loading and unloading. He stated that a 20' x 40' canopy for receiving of trucks being returned is also proposed, along with a propane filling station for residential use.

In response to a question from Ms. Bakstran, Mr. Vaine explained that the propane filling station is a separate business from the self-storage business and is for filling of tanks for gas grills and other residential uses.

Chairman Rand noted that the plans show signage for the handicapped parking area but the proposed freestanding signs do not appear to be shown. He recalled that, as part of the original decision, the applicant was required to bring the signage details back to the board during the site plan approval process. Attorney Gould apologized for the oversight and agreed to continue the hearing if required to do so in order to provide the signage details. In response to questions from the board, Mr. Vaine discussed dimensions of the signage. Ms. Joubert reiterated that the changeable copy is limited to a maximum of 20 square feet. Attorney Gould indicated that the signage will be modified to comply with the conditions in the decision, with a total of 400 square feet of signage allowed on the property. He stated that the sign at the front of the parcel will be in compliance with the bylaw. Mr. Vaine noted that the sign at the rear of the parcel will be located in the back corner. Attorney Gould indicated that the signage specifics were developed after the site plan was drafted and have not yet been incorporated into the site plan. He agreed to demonstrate where the signage will be located or, if preferred, will come back to the board with the exact locations and dimensions shown on the site plan. He stated that an updated plan will be provided to town staff by Thursday, and Ms. Joubert requested a full size plan for review.

Attorney Gould noted that a great deal of time was spent discussing landscaping with the DRC, and the applicant has renderings of the proposed landscaping. Mr. Vaine discussed trees to be retained and areas where additional plantings will be done. He also noted that some dead trees will be removed and new plantings will be done with species approved by the DRC. He indicated that some conceptual drawings have been provided to illustrate the appearance of the building and the site. Ms. Bakstran recalled that, at the previous hearing, some of the neighbors

voiced concerns about what they will see from their properties, and she would like to see the applicant consider those concerns. Ms. Joubert reiterated that there were numerous revisions during the DRC process, including substantial additions of plantings, and the appearance of the site has changed dramatically from what was originally proposed. Ms. Bakstran commented that the DRC's objective is for the project to be more aesthetically pleasing, and reiterated her desire to address the concerns of the residents overlooking the Bearfoot Road side of the property.

Attorney Gould explained that the doors on the side of the building that are seen are not functioning doors but are more a means of reflecting the self-storage use on the property. In response to concerns about the orange color, Attorney Gould indicated that the orange color is part of the U-Haul branding.

Mr. Leland asked about noise, and voiced his impression that sound will be directed toward the back of the facility. He also asked about the gravel parking area to the left of the driveway. Mr. Vaine indicated that the gravel area will be loamed and seeded with wildflowers since he would like to reserve the ability to go back and pave it over in the future if needed. He also stated that this area was included in the impervious coverage calculations.

Mr. Rutan asked about the storage units. Mr. Vaine reiterated that there are 943 climate-controlled units planned on 2 floors, with the second floor to be added within the existing space. In response to a question from Ms. Bakstran about hours of operation, Mr. Vaine indicated that the facility will have 24/7 accessibility. Attorney Gould noted that having the access doors at the rear of the building will limit impacts to the neighbors. Mr. Blanchette inquired about hours when the facility will be staffed. Mr. Vaine indicated that there will be staff onsite from 7AM to 7PM Monday through Saturday and 9AM-5PM on Sunday.

Ms. Bakstran asked about lighting along Bearfoot Road. Mr. Vaine noted that, in response to requests from the DRC, there will be 2 additional lampposts installed in the parking area in the front and a few wallpacs. Mr. Rand asked if the revised plans include the lighting details. Mr. Vaine indicated that the revised lighting details were provided to Ms. Joubert earlier in the day.

Ms. Joubert voiced her understanding that the outstanding issue is the location of the signage and the reduction of the changeable signage dimension, and asked the board if they prefer to condition the decision or continue the hearing so that the applicant can come back with a revised plan.

In response to a question from Ms. Bakstran, Attorney Gould noted that the sign at the rear of the parcel will not be within the required setback of a rear yard but the sign in the front will be in compliance with the bylaw.

Attorney Gould asked if it might be possible for the board to render a decision to allow the applicant to start the project before the onset of the winter season. He reiterated that the signage details can be provided to Ms. Joubert by Thursday to allow the decision to be signed.

He also suggested that the decision can include a condition prohibiting the issuance of any building permit until the signs are approved. Board members expressed support for the proposal. Attorney Gould stated that the specifics of the signs and new lampposts can be addressed as a non-substantial change under the current application. Mr. Bakstran emphasized that the only thing that should come back in the revised plan is the addition of these subtle details and it should not include any other changes or nuances that were not anticipated or discussed.

Mr. Vaine indicated a need to obtain input from the Building Inspector about sign locations. Chairman Rand stated that the board must have all information before voting on this application. Ms. Joubert voiced her opinion that the board can condition the decision to stipulate that no building permits for signs and no occupancy permits can be issued until the sign matters are addressed with the board.

Ms. Joubert indicated that the GAC has asked the board to incorporate the requirement for an Operations & Maintenance Plan referenced in the decision, along with the standard conditions that they request for all projects. She also noted that the Conservation Commission has voted to approve the project, but the Order of Conditions has not yet been issued.

Jeffrey Leland made a motion to close the hearing. 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 the applicant has requested a continuance to allow him time to decide about whether to install town sewer or an onsite septic system for the project.

Fran Bakstran made a motion to continue the hearing to October 25, 2016 at 7:00PM. Jeffrey Leland 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**

Lando Bates introduced his wife, Samantha Bates, and family friend and professional engineer, Nick Leoleis. He explained that Mr. Leoleis has provided a blown-up, colorized version of the plans. Mr. Bates indicated that he had been before the Groundwater Advisory Committee (GAC) and they voted unanimously to recommend approval of the project. Mr. Bates discussed

his plans to subdivide the 3-acre parcel, resulting in one conforming lot and one non-conforming lot. He noted that his proposal is to relocate the onsite septic system on the non-conforming lot to move it away from the protected well head zone 1 and into a non-protected zone 2. In addition, the existing house will be removed and replaced with new construction.

Jeff Leland reminded the board that he had recused himself from this hearing, citing a conflict of interest, but he reserved the right to comment as a town resident.

Ms. Bakstran asked the applicant if he understands and is willing to comply with the conditions included in the Groundwater Advisory Committee's letter. Mr. Lando confirmed that he should be able to do so. Ms. Bakstran asked if the calculations are all identical to what was originally submitted. Mr. Lando indicated that they are, and agreed not to exceed what is allowable. In response to additional questions from Ms. Bakstran, Mr. Lando stated that the project will have town water and onsite septic.

Ms. Joubert explained that the town does not go by the DEP zone 1 & 2 criteria and has its own Groundwater Protection District. She also wanted to confirm that the board members understand that there are already two lots in existence, created when the applicant previously submitted an ANR plan to create the two lots. She explained that, under state statute, when a landowner has two structures on a property that pre-date zoning, the landowner is allowed to subdivide and put each one of those structures on its own parcel. She reiterated that this applicant had already done that in the past, and the ANR plan is on file at the Registry of Deeds. She further explained that the issue, which the applicant has not sought to remedy yet, is that a variance would need to be sought in order for the existing house to be torn down and a new house built on the lot. She emphasized that a building permit cannot be issued for the lots without the landowner applying for a variance as previously described. She stated that, if the applicant leaves the two structures as they are, they are considered pre-existing, non-conforming, but if he wishes to build two new houses, he will need to apply for a variance. Ms. Joubert also discussed the legal concept of "infectious invalidity", and explained that, because the smaller lot "infects" the larger lot, the infectious invalidity must be remedied before a building permit can be sought for either lot.

Ms. Bakstran asked for clarification of what the board is voting on. Ms. Joubert noted that the applicant is now proposing to reconfigure the lots. She stated that the larger lot will conform to the zoning requirements but the smaller lot, though larger than what exists now, still does not meet the zoning. She explained that the board is deciding whether or not a lot that does not meet zoning should be created.

Jeff Leland, 23 Pleasant Street, voiced his opinion as a town resident that if the intent of the groundwater protection overlay is to protect the wells, moving the house and septic system further away from the well head does meet that intent. He stated that, for that reason, he believes the proposal is better than what currently exists.

Mark Rutan made a motion to close the hearing. Fran Bakstran seconded; motion carries by a unanimous vote of the four voting members (Jeffrey Leland recusal).

## **DECISIONS:**

**40 Bearfoot Road** – Ms. Bakstran stated that she has no objections to the proposal but wishes ensure that the issues of the placement and size of the signs and the lighting plans are appropriately addressed. Mr. Leland asked if the applicant runs into any issues if it has been over a year since the variance was granted. Ms. Joubert explained that the applicant has one year from the date the decision was recorded with the town clerk to act, but does have the right to request a 6 month extension.

Chairman Rand voiced his opinion that the site plan is good. Members of the board agreed. Ms. Joubert reiterated that the decision should include the conditions requested by the Groundwater Advisory Committee as well as the condition stipulating that no building permit or occupancy permit can be issued until the applicant submits revised dimensions and locations of the signs and the locations of the lamp posts, with no other changes to the plans.

Mark Rutan made a motion to approve a special permit with site plan approval for the property at 40 Bearfoot Road per the plan dated August 29, 2016 and the revised landscaping plan dated September 27, 2016 with the following conditions:

- The revised Operation and Maintenance Plan has been amended to include a copy of the Manufacturer's maintenance manual for the Stormwater Treatment Units and annual notification shall be provided to the Town Engineer before any work is performed and the Town Engineer shall be afforded the opportunity to inspect the work.
- An as-built site plan 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).
- Applicant is required to submit plans detailing the sizes and locations for all signage and the locations for additional lampposts proposed on the property. No building permits or occupancy permits can be issued until such details are provided and approved.

Jeffrey Leland seconded the motion; motion carries by unanimous vote.

**Brigham Street** – Mr. Rutan stated that the ZBA had asked the applicant to appear before the Groundwater Advisory Committee, and they have now done so and obtained GAC approval. He voiced his opinion that the project will result in improved conditions on the site.

Mark Rutan made a motion to grant a variance to allow the creation of a lot, in groundwater area 1, containing insufficient area on the property located at 313 Brigham Street, lot 1. Brad Blanchette seconded; motion carries by a unanimous vote of the four voting members (Jeffrey Leland recusal).

**Consideration of Minutes** – Fran Bakstran made a motion to approve the Minutes of the Meeting of August 23, 2016 as submitted. Brad Blanchette seconded; motion carries by unanimous vote.

**Extension of Case No. 15-14, 1C Belmont Street Sign Variance** – Ms. Joubert stated that one of the applications for the October meeting is for an amendment to the freestanding sign previously approved at 1C Belmont Street. She noted that, for tonight's meeting, the applicant is seeking a 6-month extension of the sign variance he was previously granted. She explained that, since the sign on the property will face a state highway and is advertising businesses on another parcel, the applicant is required to obtain approval from the State Office of Outdoor Advertising.

Ms. Joubert also indicated that the dimensions of the sign have changed in order to comply with the state requirements (sign cannot exceed a height of 50 feet or a total of 800 square feet and is also required to be a specific width that is much wider than what the town approved). She noted that both she and the Building Inspector believe that the sign changes are more substantial than what should be allowed so have requested that the landowner come back to the ZBA to address the matter.

In response to a question from Mr. Leland, Ms. Joubert indicated that the zoning bylaw does not allow billboards in town. She also indicated that the proposed sign is not the size of an actual billboard. Ms. Bakstran commented that the changes to the sign are not in line with the original intent, which was for this sign to be similar to those at Northborough Crossing.

Ms. Joubert agreed to provide the board members with details of what will be required by the state. She voiced her understanding that the height of the sign portion cannot exceed 25 feet, so the applicant was forced to make it wider. She also stated that the signs at Northborough Crossing did not require state approval because those signs are on the same property as the businesses that they are advertising, whereas this one is not.

Mark Rutan made a motion to grant a 6 month extension for the variance issued for the property at 1C Belmont Street (Case No. 15-14). Fran Bakstran seconded; motion carries by unanimous vote.

Mr. Leland asked about the new signal that was to be installed at Northborough Crossing when 50% of the new project is occupied. Ms. Joubert indicated that the project is nowhere near 50% occupied, but the Building Inspector has agreed to do the calculation to confirm. She also voiced her understanding that the developer is waiting for final approval from Mass DOT and is ready to proceed sooner rather than later. Mr. Leland stated that he would like to see it installed before the holidays. Chairman Rand asked about interconnecting the new lights with those at the Route 20 intersection. Ms. Joubert noted that Mr. Litchfield is looking into the matter.

Mr. Rutan asked about the updated lights at Bartlett Street and Route 20, and noted that it seems to be taking an incredibly long time to complete. Ms. Joubert agreed to check on the situation and provide a status update.

**Extension of Case No. 05-34, 239 Hudson Street (Dunia Gardens Comprehensive Permit)**

Ms. Joubert stated that the project is nearing completion and the applicant is seeking another 6 month extension of his Comprehensive Permit to allow him time to wrap things up. She advised the board that they are not limited to 6 months and can allow an extension of up to one year. She explained that all of the units are sold, and Mr. Litchfield is in the process of getting an as-built plan for the project. Mr. Rutan voiced his opinion that the developer has done a reasonable job on the project and suggested granting a one-year extension.

Mr. Rutan made a motion to grant a one-year extension, to September 26, 2017, of the Comprehensive Permit for the project at 239 Hudson Street (Case No. 05-34). Mr. Blanchette seconded; motion carries by unanimous vote.

Meeting adjourned at 9:30pm.

Respectfully submitted,

Elaine Rowe  
Board Secretary