



Approved 3.27.18

**Zoning Board of Appeals
Meeting Minutes
January 23, 2018**

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

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Robert Frederico, Building Inspector; James Chartier; Attorney William Bloom; Eliza Johnson; William Griffin; John Welch, Herb Chambers; Michael Andre, Graves Engineering; Mark Regent, Regent Associates Architects; David Berryman; Jackie Meschisen, Valerie Cashel, Eliza Johnson, Wayne Shumaker, Scott Haungs, James Chartier, Michael White, Samantha Coniglio, Patricia Griffin, Mary and Mike Fausek, John & Ruthellen Perry, Bill Griffin

Continued public hearing to consider the petition of Daniel Yarnie, dba Yarnie Property Management, LLC, for a Variance/ Special Permit/ Special Permit with Site Plan Approval/ Special Permit, Groundwater Protection Overlay District, to allow the use of a hair salon and 3 residential apartment units in the building located on the property at 89 West Main Street, Map 62, Parcel 64, in the Downtown Business District & Groundwater Protection Overlay District Area 3

Ms. Joubert explained that the applicant has requested a continuance of the hearing to the board's next meeting. She noted that the project is before the Design Review Committee and voiced her understanding that the proposal is for commercial space on the first floor with residential units above.

Brad Blanchette made a motion to continue the hearing to February 27, 2018. Fran Bakstran seconded; motion carries by unanimous vote.

Continued public hearing to consider the petition of Welington DePinho for a Variance/Special Permit/Special Permit with Site Plan Approval/Special Permit, Groundwater Protection Overlay District Area 1, to allow a landscaping business, located in a portion of an existing building, to expand into the entire building on the property located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial District and Groundwater Protection Overlay District Area 1

Ms. Joubert stated that the applicant has indicated that they are no longer operating in Northborough, so they no longer need to appear before this board.

Brad Blanchette made a motion to allow the applicant to withdraw the application without prejudice. Mark Rutan seconded; motion carries by unanimous vote.

Public Hearing to consider the petition of James Chartier for a Variance/Special Permit/Special Permit, Groundwater Protection Overlay District, to allow a proposed addition to the existing single-family home on the property located at 47 Meadow Road, Map 94, Parcel 192, in the Residential C District and Groundwater Protection Overlay District Area 2

James Chartier discussed plans to construct a 120 square foot addition on the corner of his home, which is located on a small, nonconforming lot in the Northgate neighborhood. He explained that the unusual placement of the home on the parcel results in a need to encroach within the 30-foot front setback. He noted that the addition will be 17.3 feet from the road.

Chairman Rand asked if the addition will be two stories. Mr. Chartier indicated that the top floor will not be a full story, and will be used for storage only. Mr. Rutan asked if the property was surveyed to ensure that the 17.3 foot setback is accurate. Mr. Chartier confirmed that it the 17.3 foot setback is accurate. In response to a question from Ms. Bakstran about the demolition plan, Mr. Chartier explained that the only demolition will be to two walls.

Mr. Litchfield indicated that the project was reviewed and approved by the Groundwater Advisory Committee (GAC). He stated that, though the lot does not meet the required 40,000 square feet in this zone, it does meet the impervious cover calculation even with the proposed addition.

Ms. Joubert noted that Mr. Chartier had spoken with his neighbors, who voiced support of his plans.

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

Public Hearing to consider the petition of Eliza Johnson for a Variance/Special Permit to allow the tenant of a single family home to conduct a massage therapy business on the property located at 21 Milk Porridge Circle, in the Residential C District and Groundwater Protection Overlay District Area 1

Eliza Johnson noted that she has been in the Massage Therapy business for 25 years, and would like to continue her practice in the home that she now rents on Milk Porridge Circle. She voiced her understanding that the bylaw requires that the home be owner-occupied, so she is seeking permission to operate as a tenant. She stated that she has the landlord's full permission to do so.

Ms. Johnson explained that the business will operate only during the day, and she will only see one client at a time so traffic impacts will be negligible. In response to questions from Chairman Rand, Ms. Johnson stated that hours of operation will be 9:30AM to 5:30PM and she anticipates only 3 or 4 clients a day. Mr. Rutan asked about treating multiple clients at a time. Ms. Johnson explained that the only time she would have multiple people would be when she has a session with a child. She also noted that the home has a large driveway, so there will be no issue with vehicles being parked on the roadway.

Ms. Bakstran asked for clarification about the use category. Mr. Frederico explained that this use falls under Home Personal Services by a resident owner or family, but the bylaw contains no mention of a tenant use.

Resident asked if this approval would carry over to a future tenant if Ms. Johnson were to move out of the home. Ms. Bakstran explained that the board can condition the decision to allow the use for this business/tenant only.

Ms. Perry from 42 Milk Porridge Circle, noted that the neighborhood is unique because there is only one way in and out, which allows children to play safely and freely. She voiced concern that bringing strangers into the area will negatively impact the safety and alter the character of the neighborhood.

Samantha Coniglio, 360 Brigham Street, echoed the sentiments of Ms. Perry about the safety of the neighborhood and concerns about strangers being brought into the area. She noted that there are several rental properties on the street and voiced concern that an approval could result in more businesses being brought in. She stated that she has nothing against the applicant, but she simply wants to retain the character of the neighborhood.

William Griffin, 22 Milk Porridge Circle, asked about additional staff and signage for the business. Ms. Johnson explained that she employs no additional staff and does not intend to have any signage. She noted that she has a closed practice and does not take new clients. She also noted that she is typically in Arizona for 6 months of the year. In response to a question from Mr. Griffin about plans to sublease the home while she is away, Ms. Johnson indicated that she has no plans to do so. She also commented that having to secure office space elsewhere will be a hardship and she would likely not be able to continue operating her practice.

Mr. Griffin also voiced concerns about changing the character of the neighborhood, and the potential for an infiltration of other businesses. Chairman Rand explained that any other business entity would be required to go through the same approval process as this applicant. Mr. Griffin emphasized that introducing this business into the neighborhood could be the start of a rolling stone that we will not be able to stop.

Ms. Bakstran asked if an owner-occupant would be able to do this by right. Mr. Frederico explained that a special permit would still be required.

Resident commented that, while she has nothing against the applicant, she is a renter with no vested interest in retaining the character of the neighborhood. She voiced her opinion that an approval will open a can of worms.

Ms. Joubert explained that the zoning bylaw allows certain home occupations by right, including home professional offices and home business workshops (i.e.: painter, electrician, carpenter, or similar), that would not require any kind of permit from any town board.

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

Public Hearing to consider the petition of Herb Chambers 350 Turnpike Road, LLC, for a Variance/Special Permit/ Special Permit with Site Plan Approval/Special Permit, Groundwater Protection Overlay District, to amend a Special Permit with Site Plan Review, ZBA Case No. 03-24, to allow the addition of two drive-thru bays for customer drop-offs, with associated landscaping, parking and signage, on the property located at 36 Belmont Street, in the Highway Business District and Groundwater Protection Overlay District Area

Attorney William Bloom appeared on behalf of the applicant seeking an amendment to the special permit previously granted by the board as well as a variance from the sign bylaws. He introduced John Welch, Vice President of Facilities and Construction for Herb Chambers, Michael Andre from Graves Engineering, Mark Regent from Regent Associates Architects, and David Berryman.

Attorney Bloom explained that the original special permit was granted in 2003 for the construction of a car dealership operated by Ragsdale Honda. He noted that, at the time the address was listed as 30 Belmont Street but town records now show it as 36 Belmont Street (Route 9). He indicated that a sign package was presented to this board and a variance was granted in 2004. Attorney Bloom noted that the property and dealership were purchased by Herb Chambers in 2006.

Attorney Bloom discussed the applicant's request to amend the special permit to add a two-bay service entranceway adjacent to the present service area as well as obtaining approval for a new sign package to update signage to the current Honda standards and for directional purposes for traffic flow for the proposed addition.

Michael Graves discussed the work to be done on the parcel. He noted that the applicant is proposing to construct two additional service lanes on the westerly side on the building and, in order to accommodate the addition, utilities (water, sewer, drains, gas) will need to be rerouted. He mentioned that some of the parking will be affected in order to maintain two-way traffic and emergency vehicle access. He noted that the overall result is a loss of 26 inventory spaces, with no loss in customer spaces. He explained that there is also some work needed at the front of the building to add one more handicapped-accessible parking space.

Mr. Graves stated that the town line runs diagonally across the 20+ acre parcel, with only 2.5 acres and 400 of the 2300 square foot addition located in the Town of Northborough.

Chairman Rand asked about the relocation of the utilities and the disposition of the easement on the property. Mr. Graves noted that the easement will remain and the utilities will remain in the easement with proper spacing. Attorney Bloom indicated that the easement issue is under the jurisdiction of the Town of Westborough as it is for the benefit of users to the rear of the parcel in a section known as Boston Hill. He explained that the applicant had appeared before the Westborough Planning Board who expressed concern about whether the easement will be encroached on too much. He also noted that, in anticipation of the issue, they had presented an independent legal opinion that indicated that encroachments under Massachusetts law are permitted as long as they do not in general defeat the original purpose of the easement. He stated that the easement area that will remain will be sufficient to provide access and space for utilities. He also noted that the Westborough Planning Board is seeking an opinion from their Town Counsel. He explained that Westborough is not concerned about the access issues for emergency vehicles and is only concerned about utilities for Boston Hill and whether the remaining area will be sufficient.

Mr. Litchfield stated that the application was reviewed by the Groundwater Advisory Committee (GAC) last week. He noted that, since the addition is being done on existing impervious cover, the GAC has no concerns about drainage. However, he emphasized that they were quite concerned about the fact that the original decision required annual reports to be submitted to the town verifying that the stormwater system had been operated properly and maintained and, at the time, Mr. Andrade was unable to confirm that this had been done and it appears that no such records were ever submitted to the town. He explained that the GAC felt strongly enough to send a letter to the ZBA recommending that the project not be approved until the reports are submitted and the project is brought into compliance with the original approval. Attorney Bloom noted that, when that condition was imposed in 2003, Herb Chambers had no involvement with the property, but he agreed that ignorance of the law and the condition is no excuse. He stated that Mr. Andrade and Mr. Welch have located a firm that serviced this property for a 5 year period and have obtained a letter from that contractor. In addition, he noted that the contractor has been retained to provide ongoing service to ensure compliance. He explained that nothing can be done to fix the past, but agreed that the company should have been aware and complied with the condition. He emphasized that the proposed addition is solely for the convenience of customers, and assured the board that the applicant will adhere to the condition moving forward.

In response to a question from Chairman Rand about the sign variance request, Mr. Berryman presented a plan showing what the site will look like when completed, and noted that the existing Herb Chambers sign, Honda logo, one existing service reception and a delivery center sign will be replaced in kind and two new service reception ovals and a new service center sign will be installed. He noted that all other signs will remain. Ms. Bakstran noted that the Groundwater Advisory Committee (GAC) has made recommendations for additional conditions relative to chemicals to be stored onsite and asked if the issue has been addressed. Attorney Bloom indicated that all concerns with the exception of the Operations and Maintenance Plan

have been addressed. Ms. Bakstran asked if the applicant is updating the signs because Honda has asked them to do so. Attorney Bloom confirmed that to be the case.

Mr. Litchfield noted that the Police Chief has requested a permanent marking of the town line, and that it also be shown on the site plan and the as-built plan when completed. He suggested that such marking may have previously been in place, but is no longer visible. Mr. Litchfield also requested that the applicant provide an inventory of vehicles located within Northborough to verify that it is in compliance with the approval granted by the Board of Selectmen.

Mr. Rutan asked if obtaining an appropriate inspection of the stormwater system can be required prior to the issuance of a Certificate of Occupancy. Mr. Litchfield commented that the GAC was concerned that the condition in the original decision was ignored in the past and the town does not have the resources to chase such things nor do we have any leverage against the applicant if they do not comply, so they wanted the board to be aware of their concerns. He noted that a letter was submitted indicating that services were provided on an on-call basis between 2009 and 2014, but he indicated that inspections of the stormwater system should be done a couple of times each year with reports filed annually. He stated that the decision should include the same condition as was imposed in the original approval. He also noted that a stormwater Operation & Maintenance (O&M) Plan was submitted earlier in the day and, though he has not yet had the opportunity to fully review it, he anticipates it will be sufficient. He reiterated that the GAC was quite concerned about the applicant's failure to comply and had ignored the condition for the past 14 years. Mr. Rutan asked about measures to ensure future compliance. Mr. Litchfield explained that the O&M Plan typically requires inspections in the spring and fall, with records kept and annual reports submitted to the town indicating what was found, what was recorded, and where it went. Ms. Bakstran noted that the dealership was owned by the original applicant, Ragsdale Honda, from 2003 to 2006 when it was acquired by Herb Chambers and asked if Herb Chambers would have been made aware of the condition. Mr. Litchfield noted that the condition was listed in the decision that was recorded at the Registry of Deeds. He suggested that, if due diligence was done by whoever was representing Herb Chambers at the time, they should have been aware of the condition. He reiterated his understanding that some of the required maintenance appears to have been done between 2009 and 2014 but no records were submitted to the town. He noted that the letter provided indicates that there have been no serious infractions and he believes that the system must have been maintained to some degree. Mr. Rutan asked if reports have been submitted to the Town of Westborough. Attorney Bloom did not believe so, and noted that no such requirement was imposed by them.

Ms. Joubert explained that the Design Review Committee (DRC) has requested that the applicant put some directional markings on the pavement to show where the service area is. Attorney Bloom explained that the applicant was not quite prepared for the comment and therefore did not properly address it with the DRC. He noted that, at the time, they did not fully understand how the traffic would flow in and out of the service areas but now that it is clear, there should be no need for the pavement markings. He suggested that the signs on the buildings and lights near the doors should be sufficient.

Ms. Joubert stated that she did not see any narrative in the application indicating the section of the sign bylaw from which the variance is needed. Attorney Bloom agreed to provide the information.

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

DECISIONS

47 Meadow Road – Mr. Rutan stated that he had no issues with the proposal. Members of the board agreed.

Mark Rutan made a motion to grant a variance to allow construction of an addition to within 17 feet of the front lot line. Jeffrey Leland seconded; motion carries by unanimous vote.

21 Milk Porridge Circle – Ms. Bakstran voiced her opinion that the proposed use is no different than if it was a profession such as medical, dentistry, architecture or engineering, which are all allowed by right. Mr. Blanchette commented that there is no signage proposed and the applicant has indicated that she operates a closed business. Mr. Leland noted that there is a day care in the neighborhood. Mr. Rutan stated that, while he understands the neighbors' concerns that this is a quiet neighborhood where the children feel safe playing in the street, he recognizes that 3 or 4 cars a day travelling to an unmarked house is not excessive and could occur for other reasons. Ms. Bakstran suggested that an approval should include a condition limiting it to this applicant and this business only and also prohibit signage. Mr. Federico noted that there are conditions in the bylaw for home businesses that address the number of cars and the number of employees and they tend to be self-policing unless there is a complaint.

Mark Rutan made a motion to grant a variance and special permit to allow the use of an in-home massage therapy practice with the following conditions:

- Approval is specific to the applicant, Eliza Johnson, and the proposed massage therapy business
- Hours are to be limited 9:00AM – 6:00PM, Monday through Saturday
- No signage is to be allowed
- No additional employees are to be allowed
- Applicant is required to adhere to the home occupation bylaws as written

Jeffrey Leland seconded; motion carries by unanimous vote.

Ms. Joubert informed the applicant that the decision will be prepared and filed, after which there is a 20-day appeal period that must lapse before she will effectively be able to operate.

36 Belmont Street (Herb Chambers) – Mr. Rutan commented that the addition of the service bays should have no real impact on the neighborhood and he believes that the easement is

sufficient. Mr. Leland noted that the easement issue will be addressed by the Town of Westborough. Chairman Rand suggested that the board ask the applicant to conduct the stormwater inspection now. Mr. Rutan noted that there were concerns that they may not do inspections regularly and he would like to start that trend. He also commented that, had there not been some maintenance of the system, it would not be working. Mr. Litchfield stated that the board could ask the applicant to have an initial assessment done by an engineer to evaluate current conditions and to verify that it is working correctly and then do ongoing maintenance going forward.

Ms. Bakstran asked if the large “H” is considered a sign. Mr. Federico noted that, if they are simply taking it down, replacing the background, and putting it back up, he has no issues. Ms. Bakstran noted that part of the application was related to changes to the signage and asked if the board should leave it to the Building Inspector to ensure that they are in compliance. Mr. Federico suggested that the board render a decision based on the sign package so he knows what he needs to inspect and enforce. Ms. Joubert indicated that the signs will need to comply with the plan that was submitted.

In response to questions from the board, Ms. Joubert explained that the approval is to amend the special permit site plan approval Case #03-24, and should include conditions per the Town Engineer’s review letters dated January 18th and January 23rd, ensure that the signed plan is included in the as-built, and approval of the sign variances. Mr. Litchfield also noted that he would like the applicants to submit a letter confirming that they are not adding any chemicals, and provide an as-built plan showing the inventory of cars located in Northborough and Westborough to confirm that they are in conformance with the Board of Selectmen approval. In addition, he noted that a permanent delineation of the town line is required. Mr. Litchfield also discussed the request for an evaluation of the stormwater system as it is today to confirm that it is working as designed.

Ms. Joubert asked whether the permits are to be issued by Northborough or Westborough, and noted that if they are not being issued by Northborough the board will have nothing to attach the conditions to. Mr. Federico agreed to speak with the Building Inspector in Westborough about how this will be handled. He suggested that, if Northborough will be permitting the signs, the drainage work can be tied to sign approval as a condition.

Mark Rutan made a motion to approve a Variance/Special Permit/ Special Permit with Site Plan Approval/Special Permit, Groundwater Protection Overlay District, to amend a Special Permit with Site Plan Review, ZBA Case No. 03-24, to allow the addition of two drive-thru bays at the property located at 36 Belmont Street with the following conditions:

- Sign details to be indicated on the as-built plan to confirm they are in accordance with the sign package submitted
- As-built plan to include vehicle inventory in both Northborough and Westborough
- Permanent delineation of the town line to be marked on the pavement and shown on the plan

- Evaluation of drainage system is to be completed prior to the issuance of the sign permit

Jeffrey Leland seconded; motion carries by unanimous vote.

Zoning Changes - Ms. Joubert explained that Judi Barrett is currently working with the Planning Board for proposed changes to the bylaws for duplexes. She noted that Ms. Barrett has done two surveys with the Planning Board members that will be discussed at an upcoming meeting on January 30th. Ms. Joubert indicated that Ms. Barrett has provided a memo in which she summarizes a bit of the history about how the town has allowed duplexes and addresses what she believes the majority of the Planning Board is seeking. Ms. Joubert explained that there has been some discussion and agreement that the required lot size should be increased, and there are some members in favor of allowing duplexes only as a conversion of an existing house.

Ms. Joubert discussed concerns that recent duplexes were too big for the site, which can be addressed by either imposing a size limit and/or increasing the required lot size and/or setbacks and/or add Design Review to the process. She noted that some members of the Planning Board feel that duplexes are changing the character of the town and, if that is the real issue, it needs to be addressed in the Master Plan. If the issue is more about the size of recent projects, then there is a way to address it in the bylaw. In response to a question from Mr. Leland about the timeline, Ms. Joubert explained that warrant articles are due February 5th. She also noted that the moratorium is due to expire and, though the town can request an extension, it is her understanding that the Attorney General does not typically allow for a moratorium to be longer than 12 months. Ms. Joubert reiterated that the Planning Board will discuss the issue at their January 30th meeting, and she agreed to keep the ZBA informed.

Next meeting – Ms. Joubert explained that Rashid Shaikh will be back before the board to discuss a proposed assisted living facility for the property on King Street. She noted that the DRC and Fire Department have already been involved in review and discussions. Mr. Frederico voiced his understanding that there are concerns about parking and fire apparatus access to the back of the buildings, but that can apparently be resolved if we employ the use of areas of refuge in the building design plans, which is acceptable to the Fire Chief. In response to a question from Mr. Leland about a lawsuit from the previous denial, Ms. Joubert indicated that there has been no action as yet. Ms. Bakstran commented that an assisted living facility requires the provision of services.

Other business - Ms. Joubert informed the board that a site plan has been submitted to the Planning Board for a proposed contractor condominium development at 186 Bearfoot Road.

Meeting adjourned at 8:45PM.

Respectfully submitted,

Elaine Rowe
Board Secretary