



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 8.22.17

Zoning Board of Appeals Meeting Minutes June 27, 2017

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

Others in attendance: Joe Atchue, Building Inspector; Elaine Rowe, Board Secretary; Nathaniel Kiger; Patrick & Jean Coyne, 1D Pond View Way; Alex Moheban, 293 West Main Street; George Kiritsy, Esq., for 107 Otis Street; Masoud Darvish, 107 Otis Street; George Connors, 10 SW Cutoff for 5 Bearfoot Road; Jose Garcia, 18 SW Cutoff; Tom & Deb Blasko, 18 Pond View Way; Janet Sandstrom, 1B Pond View Way; Richard McWilliams, 5B Pond View Way; William & Marie Donovan, 3B Pond View Way; Mary Bassett, 3A Pond View Way; Ziad Ramadan, 85 Newton Street; Howard Beale, 38 Bartlett Street; Mr. and Mrs. Jason Mard for 107 Otis Street

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

Public Hearing to consider the petition of Alexander Moheban for a Special Permit/Variance to allow a proposed free-standing, internally lit pylon sign to be more than 10 feet in height; and to allow the proposed message board on the subject sign to have more than 16 square feet of changeable copy message, on the property located at 293 West Main Street

Alex Moheban appeared before the board to discuss his plans. He also stated that he is dropping his request for a variance for changeable copy as it is no longer needed based on the new plan.

Mr. Moheban presented details of the project, noting that the location and elevation of his property result in his existing sign being dwarfed by other signage in the area. He explained that the bottom of the sign is at an elevation of 5 feet, and anything below 5 feet is not visible because of the vegetation on the abutting property so it is not feasible for him to have a message board on the bottom of his sign. He commented that the new plan complies with the code with the exception of the 12 foot height for which he needs a variance.

In response to a question from Mr. Blanchette, Mr. Moheban noted that the sign on the abutting property at 299 West Main Street is at a higher elevation. Mr. Leland inquired about the height of Mr. Moheban's existing sign. Mr. Moheban indicated that it is 10 feet high. Mr. Rutan asked about the total height of the proposed sign. Mr. Moheban noted that it will be 12 feet high, and reiterated that he is trying to ensure that his business is seen. Ms. Bakstran asked about the hours of illumination, which Mr. Moheban stated will be 6AM to midnight. Mr. Atchue confirmed that the sign complies with the bylaw with the exception of the 12 foot height. Mr. Rutan asked if the new sign will be installed at the same location as the existing sign. Mr. Moheban confirmed that it will be.

Jose Garcia, 18 to 26 SW Cutoff, voiced concerns about impacts to the tenants in the apartments nearby, especially with the moveable lights at night. He commented that 12 feet is very high, and voiced his opinion that illumination is not necessary at night. He also asked about the hardship to justify granting of a variance. Mr. Moheban explained that there are 10 dental offices in a community of 14,000 people, so increased visibility is important. Chairman Rand suggested that the shape and topography of the lot create a hardship. Mr. Garcia emphasized his opinion that it is not necessary for the message board to be running all night. Mr. Moheban explained that he no longer plans to include the moveable section on the sign. Mr. Garcia noted that the height of the sign is greater than others in the area.

Jason Mard, Root & Sprout, noted that this is a new business that is at a disadvantage due to the topography in the area.

Ms. Bakstran agreed that an illuminated sign is important, but emphasized that it must be lit according to code. She asked about hours of operation, which Mr. Moheban indicated are 8AM to 5PM, Monday through Friday. Mr. Rutan asked if the applicant would consider turning the sign off a bit earlier. Mr. Moheban indicated that he would be amenable to do so at 9PM or 10PM. He reiterated that the code does allow illumination until midnight. He also noted that, since the code allows for the inclusion of a message board, he could opt to rework his plan to make the message board work.

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

Public Hearing to consider the petition of Berlin Landing Realty Trust, Scott Goddard, Trustee, for the Variances/Special Permit/Variance, Groundwater Protection Overlay District, to allow the use of two proposed 2-family homes, one of each on the two proposed lots, in the Industrial District and Groundwater Protection Overlay District Area 2, on the property located at 5 Bearfoot Road

Mr. Atchue informed the board that Town Engineer, Fred Litchfield, has provided a comment letter from the Groundwater Advisory Committee (GAC). George Connors from Connorstone Engineering appeared on behalf of the applicant to discuss the proposed project for this 2-acre parcel located in the industrial zone on the corner of Bearfoot Road and Solomon Pond Road. He noted that the applicant is asking for a variance to treat the parcel as if it were residential. He explained that the required 100-foot offset from the Residential C property line and the Industrial zone in the back of the 2 acre parcel results in a limited area that is useable for any type of building. In addition, once setbacks are applied from both the roadway and existing wetland, there are only 2 small areas on the site that are not impacted by a prohibition on building.

Mr. Connors explained that the applicant is seeking a residential use on the property that is located in the Groundwater 2 district. He noted that the project had previously been before the GAC and the applicant demonstrated that the lots have the required 40,000 square foot area, with less than 15% impervious coverage and no more than 15% of a runoff contribution. He indicated that the applicant has opted to seek a variance first, after which he will go before the Conservation Commission and finalize with the GAC.

Mr. Connors discussed plans to separate the parcel into two lots and construct a duplex on each lot, one of which will have 2 driveways and one with a single driveway. He noted that the lot was created in 1978 when there were no wetland regulations in effect, and was buildable at that time. He indicated

that the adoption of the wetland regulations in 1980 resulted in there being only a tiny area on the parcel that can't hold a sizeable building, which creates a hardship for the landowner due to the irregular shape of the lot and the required setbacks from the wetland.

Mr. Connors noted that the topography is quite low in a few areas that has allowed for the accumulation of water but it is not a regulated resource. He voiced his opinion that a residential use is most appropriate for this property, since uses to the south are all residential including some multifamily homes. He also stated that the project does not derogate from the intention of the bylaw. He commented that the Master Plan and Open Space plan both include a desire for a mixture of homes, and the applicant is asking to be allowed to use the land as residential. In addition, he is seeking relaxation on the offset by applying setbacks as if the lot were in the Residential C zone as well as the allowance of a duplex use in the industrial zone.

Chairman Rand asked if the applicant is aware that the town currently has a moratorium on duplex developments. Mr. Connors commented that the moratorium stipulates that no special permits and no building permits can be granted for duplexes, and argued that the moratorium does not specifically affect this project.

Chairman Rand asked Mr. Connors to explain why the parcel cannot be used for industrial development. Mr. Connors reiterated that the application of the setback, the 100 foot buffer to a residential line, and required setback from the wetland results in only a 14' x 38' area that can be developed. He emphasized that, once parking lot requirements are considered, an industrial project would not be economically feasible.

Ms. Bakstran suggested that, if a building permit cannot be issued until after changes in zoning, it may result in this project being moot. She also commented that the hardship argument may have been viable if the owner had purchased the parcel prior to the adoption of the wetland regulations. She voiced her understanding that the applicant purchased this 2 acre parcel for \$10,000 in 2015, and commented that he cannot now come back and claim a hardship. Mr. Connors stated that it is possible to buy land and still avail oneself of the hardship law.

Mr. Atchue reiterated that no special permits or building permits may be granted under the moratorium. He explained that, when the moratorium is lifted, the applicant will have to comply with whatever is required for duplexes.

Bill Donovan, 3B Pondview Way, provided the board with photos that were taken over a 2 year period of views heading north onto Bearfoot Road and east onto Solomon Pond Road showing that the property is wet.

Mary Bassett, 3A Pondview Way, provided the board with a comment letter (copy attached) and strenuously expressed her objection to all of the requests made by the applicant. She voiced her opinion that the proposed project substantially derogates from the intent and purpose of the zoning bylaw and the issuance of a variance is in opposition to both.

Ms. Bassett read her letter into the record, emphasizing that there is no sound reason or legal basis to grant a variance to allow the site to be used as residential. She commented that Bearfoot Road is clearly an industrial area and the proposed project is out of character with the uses in the area. She also noted that the area is extremely wet and voiced her opinion that wetland regulations are in place and should

not be waived to allow a developer to build on a non-buildable lot. She mentioned that the deed clearly states that the property is not residential, and suggested that the applicant is trying to coerce the board into approving his project with no regard for the town or nearby residents. She stated that a financial hardship to the owner is not a substantial hardship for the board's consideration.

Ms. Bassett reiterated her opinion that the applicant has not met the criteria of a substantial hardship. She noted that the lot is listed as undevelopable as it is mostly wetland. She stated that the lot with an appraised value of \$15,000 was purchased for \$10,000 as a real estate speculation, and a hardship does not apply to this new owner as the criteria had not been met. She suggested that, though the bylaws may frustrate the applicant's ability to do what he wants, it is not a hardship. She emphasized that the parcel is not suitable for the proposed use.

Ms. Bassett commented that the board should not be granting variances just so more land can be developed, and the task of the board is not to maximize a property owner's profit. She respectfully requested that the board deny this application.

Tom Blasko, 18 Pondview Way, asked for clarification about the wetland location. Mr. Connors provided details. Mr. Blasko suggested that the wetland is not adequately portrayed and voiced strong opposition to the project.

Dawn Winsor-Hines, 2 Pondview Way, voiced opposition to the project. She noted that the wetland, clearly present and regulated at the time of purchase, is not a hardship but rather an accepted risk. She indicated that there is no bylaw that stipulates that all lots can be developed. She commented that it is possible to locate a small, two-story industrial building on the property, and such a use is more appropriate. She cited safety concerns for nearby residents and local business employees with the installation of three driveways proposed within 300 feet of a major intersection. She emphasized that the project will be a detriment to the neighborhood as well as wildlife habitat impacted by the loss of trees, and urged the board to affirm the town's commitment to attract industry. She reiterated that the applicant had purchased the land with full knowledge of the risks and limitations.

Chairman Rand explained that the board has received a letter from the Groundwater Advisory Committee with suggested conditions should the project be approved.

Richard McWilliams, 5B Pondview Way, voiced opposition to the project, noting that the parcel is completely unsuitable for this use.

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

Public Hearing to consider the petition of Root and Sprout, LLC, for a Variance/Special Permit/Special Permit with Site Plan Approval, to allow the use of commercial indoor recreation in the building located at 107 Otis Street

Attorney George Kiritsy appeared on behalf of the applicant and owner to discuss the request to allow the use of commercial indoor recreation on the site, located in the Business South zone. He noted that the site is already developed, and all of the improvements contemplated in site plan approval have already been addressed.

Mr. Kiritsy explained that the applicant, Root & Sprout LLC, is primarily a for-profit education center with a recreational component being part of the business. He noted that the business is a facility that caters to and services expectant and new mothers by providing a fitness/wellness center for those clients.

In response to a question from Chairman Rand about the size of the building and the space, Mr. Kiritsy explained that there is a total of 21,000 square feet that is divided into 4 quarters with common areas. He noted that the applicant will utilize roughly half of the building.

Mr. Rutan asked about other businesses in the building. Mr. Kiritsy noted that there is a temple and a medical/wellness facility. Mr. Rutan asked if young children will use the facility. Ms. Mard of Root & Sprout noted that there will be infants and young children that will be accompanied by a parent.

Mr. Blanchette asked about hours of operation. Ms. Mard indicated that the facility will operate from 7AM to 8PM, Monday through Friday, and 8AM to noon on Saturday.

Mr. Rutan asked about any exterior construction and was advised that there will not be any. Ms. Bakstran asked if the existing parking is adequate. Mr. Atchue indicated that this will need to be calculated. Mr. Kiritsy explained that there has been some discussion about a potential expansion of the parking area, and noted that the applicant will come back before the board if additional parking is needed.

Mr. Rutan asked if the building previously housed a daycare, and was advised that there was one there in the 1980's. Ms. Bakstran explained that the parking requirement is based on use, not the size of the building, and was told that not all of the building is currently leased. Mr. Kiritsy indicated that there are currently 78 parking spaces with room for additional spaces if needed.

Stacey Paradise, 10 Lincoln Street, stated that she is a mother of two, and there is a void for prenatal and postnatal care and services for parents of infants and toddlers that will be filled by Root and Sprout.

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

Public Hearing to consider the petition of 318 Post Road Corporation for a Variance/Special Permit to allow the use of a children's educational and/or daycare facility in the building located at 318 Main Street

Attorney Marshall Gould introduced applicants Mark Fitzgerald and Olga Holly, who are seeking approval of children's educational and/or daycare facility on the property. He explained that the business is proposed for the westerly side of the building. Attorney Gould noted that the nearly 7 acre parcel houses a two-story, 33,000 – 34,000 square foot building, with Ms. Holly's business located in 2300 – 2400 square feet on the first floor that is completely handicapped accessible. He indicated that the front of the building gets a fair amount of traffic, with the sides and rear getting much less.

Attorney Gould explained that Ms. Holly previously operated a business in Framingham but, since she now lives in Hudson, she is looking for something closer to home. He noted that the business was originally planned to be for art instruction but the applicant is now hoping to utilize her language skills and teaching certification to incorporate a preschool to supplement her art teaching practice.

Attorney Gould stated that it was during the licensing process that Ms. Holly learned that a variance is needed to operate a for-profit school in the Business East district.

Attorney Gould commented that the building meets the requirements for the business. He noted that this is a unique use, and the applicant is excited to be bringing it to Northborough.

Attorney Gould explained that there is a playground area in the rear of the property and a sidewalk for traversing the children to the play area. He also noted that, if this were a school being proposed by a nonprofit organization it would be allowed by right.

Attorney Gould expressed the applicant's desire to be offering this program by the start of the school year, and is hopeful that the board can render a decision to allow her to meet that timeline.

In response to a question from Ms. Bakstran, Attorney Gould explained that the playground is already in place because of Ms. Holly's business. Ms. Bakstran asked about the proposed after-school program. Ms. Holly noted that childcare and preschool businesses are required to be licensed by the state, and she is currently limited to no more than 6 days, 4 hours each, which does not provide for sufficient income.

In response to a question from Mr. Blanchette, Ms. Holly indicated that her childcare business services children ages 2.9 through kindergarten and the language, drama, and art classes are for children up to 10 – 12 years old. Mr. Leland asked if daycare is an allowed use. Mr. Atchue noted that a daycare use is allowed anywhere in town.

Mark Rutan made a motion to close the hearing. Jeffrey Leland seconded. Attorney Gould asked if there is any reason that the board is not adequately satisfied or anything of concern. Members of the board voiced none.

The motion made by Mr. Rutan carried by unanimous vote.

Bond reduction, Dunia Gardens - Mr. Ramadan explained that all units in the development have been sold and he is trying to wrap up his project. He noted that the as-built plan has been submitted to the Town Engineer for approval.

Mr. Ramadan indicated that he is before the board seeking partial release of his bond, and Mr. Litchfield wants to withhold more than is needed to finish the remaining work that will be completed in the next few months. He noted that there is an additional \$20,000 being held by the town for earthwork that he would also like to have released. Mr. Atchue commented that he is not clear about the \$20,000 being held for earthwork.

Mark Rutan made a motion to reduce the bond to \$100,000 and release the remainder as well as the earthwork bond currently being held by the town. Chairman Rand voiced a preference to address the earthwork bond at the board's next meeting. Mr. Rutan voiced his opinion that there is enough being retained to more than cover the work yet to be completed.

Jeffrey Leland seconded the motion made by Mr. Rutan; motion carries by unanimous vote.

DECISIONS

293 West Main Street – Mr. Rutan agreed that the topography of the site creates a hardship. Mr. Leland voiced support for the proposal. Ms. Bakstran agreed, but expressed a desire to impose a condition on the hours of illumination for the sign. She suggested that illumination be allowed from 6AM – 8PM. Other members of the board agreed that 6AM – 9PM was appropriate. Mr. Blanchette asked if the board has the ability to stipulate that there can be no animation on the sign. Mr. Atchue explained that this is already stipulated in the bylaw.

Fran Bakstran made a motion to grant a variance due to the topography of the site to allow a sign to be no greater than 12 feet in height with the condition that it can only be illuminated between the hours of 6AM – 9PM. Jeffrey Leland seconded; motion carries by unanimous vote.

5 Bearfoot Road – Members of the board stated that they were not in favor of the proposal. Mr. Rutan commented that the land was kept as industrial not to provide for development but to keep it from being residential. He also noted that residents bought in the Pond View project with the understanding that this property was zoned industrial and has specific setbacks, and he does not believe that residential use should be allowed. Other members of the board agreed. Mr. Rutan also reiterated that the parcel is listed as non-buildable.

Mark Rutan made a motion to grant a variance to allow construction of two duplex dwellings. Fran Bakstran seconded; motion failed by unanimous vote (all opposed).

Mark Rutan made a motion to grant a variance to allow residential setbacks in the industrial zone. Fran Bakstran seconded; motion failed by unanimous vote (all opposed).

Mark Rutan made a motion to grant a variance to allow area and frontage to match that of the Residential C zone. Fran Bakstran seconded; motion failed by unanimous vote (all opposed).

Mark Rutan made a motion to grant a variance to allow duplex housing in the industrial zone. Fran Bakstran seconded; motion failed by unanimous vote (all opposed).

107 Otis Street – Ms. Bakstran voiced her understanding that site plan approval is not needed because the building already exists and the external structure is not changing. Mr. Leland expressed support for the use. Ms. Bakstran agreed.

Fran Bakstran made a motion to grant a special permit to allow the use of commercial indoor recreation on the property at 107 Otis Street. Jeffrey Leland seconded; motion carries by unanimous vote.

318 Main Street – Mr. Rutan commented that he was quite impressed by the fact that Ms. Holly seemed to know the regulations. Mr. Leland voiced his understanding that the daycare operation is already an allowable use, and his concerns are no greater than what is permitted. Mr. Blanchette stated that he has no objections if the state is comfortable with the way that they traverse the parking lot to the playground.

Brad Blanchette made a motion to grant a special permit to allow a children’s educational and/or daycare facility. Jeffrey Leland seconded; motion carries by unanimous vote.

Consideration of Minutes

Mark Rutan made a motion to accept the Minutes of the Meeting of May 23, 2017 as submitted. Jeffrey Leland seconded; motion carries by unanimous vote.

Fran Bakstran made a motion to accept the Minutes of the Meeting of February 28, 2017 as submitted. Jeffrey Leland seconded; motion carries by unanimous vote.

Election of Officers – Jeffrey Leland nominated Richard Rand as Chairman. Ms. Bakstran expressed her desire that the role of Chair should be rotated among the members of the board. She seconded the motion made by Mr. Leland. Motion carries by unanimous vote.

Fran Bakstran nominated Mark Rutan as Clerk. Jeffrey Leland seconded; motion carries by unanimous vote.

Meeting adjourned at 9:07PM.

Respectfully submitted,

Elaine Rowe
Board Secretary