



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 10/24/17

Zoning Board of Appeals Meeting Minutes August 22, 2017

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

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Elaine Rowe, Board Secretary; Jay Correia; Dan Lewis; Norman Hill; Attorney Robert Nislick; Tamara Potselueva, 14 Crawford Street; Danielle Redfern, 6 Crawford; Keith Lawless, 10 Crawford Street

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

Ms. Joubert introduced Robert Frederico, the new Building Inspector for the Town of Northborough. She explained that Bob most recently worked for the Town of Millbury and prior to that worked as a part-time local inspector for Northborough during the time when Fred Lonardo was our building inspector.

Public Hearing to consider the petition of Jay Correia for a Variance/Special Permit/Special Permit with Site Plan Approval/Special Permit, Groundwater Protection Overlay District, to allow the addition of a proposed office building on the property located at 442 West Main Street, in Groundwater Protection Overlay District Areas 2 and 3

Norman Hill, Jay Correia, and architect Dan Lewis all appeared to discuss the request for a special permit to allow the addition of a proposed office building on the lot. Mr. Hill explained that the application for the project was initially filed back in 1998, when Dave Favre was the developer. He noted that, at that time, the existing building, parking lot, septic system and drainage system for the parking lot were constructed and all have held up well. He explained that Mr. Favre did not build the proposed office building and Mr. Correia purchased the property with the understanding that he could do so in the future.

Mr. Hill indicated that the property is in the aquifer protection zones 2 & 3, which requires a special permit to build. He also noted that no runoff from the new building will end up causing erosion or any negative impacts for the neighbors.

In response to a question from Chairman Rand about the original special permit expiring in 1999, Mr. Correia explained that he had extended it twice but it did eventually lapse. He noted that, at the time, it was not feasible for him to develop the land.

Ms. Joubert stated that the application is for a special permit and site plan approval. Chairman Rand asked about the size of the existing building and the number of parking spaces. Mr. Correia noted that the existing one-story building is 1200 square feet and there are 19 parking spaces. Mr. Hill confirmed that the parking is in compliance with the regulations. Ms. Bakstran asked about the height of the proposed building, voiced her understanding that it will be a 2-story, 4600 square foot structure, and asked about the use. Mr. Correia explained that the new building will house office space.

Mr. Lewis explained that the new building does not include an elevator. Mr. Rutan asked if the building will be divided into bays and offices, and how many tenants are anticipated. Mr. Correia indicated that there will be one or two tenants in the space.

Mr. Hill explained that two new leaching pits will be installed between the building and the landscaped buffer. In response to a comment by Ms. Bakstran about one being shown in the buffer on the plan, Mr. Hill noted that the plan was revised to move it out of the buffer. Ms. Bakstran asked if this is the only revision to the plan. Mr. Correia indicated that the landscaping was also revised. He explained that there was some concern about the easement, so plantings were added to allow for extra privacy. Ms. Joubert requested copies of the revised plans. Mr. Blanchette asked Mr. Correia to highlight the revisions. Mr. Correia reiterated that the drywell was moved out of the easement. He also stated that the existing hemlocks are healthy, and bamboo was removed because it was harmful to the hemlocks. He stated that he has a letter from the Conservation Commission about the removal of the bamboo, and discussed plans to install arborvitae on the southerly side of the hemlocks. Mr. Rutan asked about the gap between the arborvitae and the building, which Mr. Hill stated will be 15 to 20 feet. Mr. Rutan asked for assurance that the plantings will not impede fire operations if ever needed.

Ms. Bakstran noted that the grading is fairly steep, and asked if plantings are at the lowest part of the grade. Mr. Correia indicated that the hemlocks are, have been there for 17 years, and are thriving. Ms. Bakstran suggested that, if trees are below the grade of the building that is to be two stories high, they will not provide privacy for the houses behind. She indicated that she would want to know the height of the proposed building and if it is possible to put the new plantings at the top of the grade. She also questioned the location of the fence, which Mr. Correia indicated is along the property line with another neighbor. Mr. Lewis noted that the building is to be about 28 feet high. Ms. Joubert commented that she has not yet seen the revised plans.

In response to a comment from Chairman Rand about the proposed 2,000 gallon tight tank, Mr. Correia indicated that the tank was installed years ago. Mr. Hill explained that the existing building houses a hair salon, so the chemicals used for that operation go to the tight tank that is pumped and disposed of properly. He also stated that the tight tank has nothing to do with the proposed building. Ms. Joubert expressed her assumption that the revised plan will show that no tight tank is proposed. Mr. Hill confirmed that it will, and reiterated that what is proposed this evening is the office building. He also confirmed that the existing parking and septic system are sized for the additional building.

Mr. Rutan asked if anything has changed since the approval. Mr. Litchfield confirmed that there have been no changes. He also voiced his understanding that there have been no records of pumping of the tight tank provided to the town, as was required. Mr. Hill stated that the tank is pumped every three months. Mr. Litchfield explained that the pumping company is required to submit record of the pumping to the town, and noted that if pumping is done more than three times per year it needs to be reported to the Board of Health as it is a sign of failure.

Chairman Rand asked about the dumpster location and whether there will be fencing installed around it. Mr. Correia noted the location of the dumpster in the corner of the parking lot and agreed to put fencing around it if the board so desires. Chairman Rand asked if the dumpster size will increase with the additional building. Mr. Correia indicated it will not.

Chairman Rand referred to a letter from the Groundwater Advisory Committee (GAC) dated August 21, 2017. Mr. Litchfield explained that the GAC had addressed this application at their August 8, 2017 meeting, where they reviewed the special permit application, existing conditions plan dated Feb 1, 2017 and landscape plan dated June 23, 2017. He noted that Mr. Correia was aware that there were some concerns raised by the GAC so he had started making revisions to the plans, though the revised plans have not yet been reviewed by town staff. Ms. Bakstran asked if it is possible that some portions of the GAC decision may no longer apply. Mr. Litchfield stated he did not believe this to be the case, and noted that the GAC had voted to approve the project with conditions.

Mr. Litchfield voiced his understanding that there are to be no toxic chemicals used or stored onsite, and requested that the decision stipulate such. He noted that the GAC was confused by some things that were labeled on the plans as proposed but they actually exist already at the site. He also noted that the GAC has requested that the decision include the conditions stipulated in their review letter dated August 21, 2017.

Mr. Litchfield noted that the previous plan had shown a retaining wall that is now not shown, and the omission should be explained. He also stated that the DPW would like the plans to include callouts and trench details for the new water service, and any work in West Main Street will require an access permit from Massachusetts Department of Transportation (Mass DOT).

Mr. Rutan asked for clarification of where the retaining wall was to have been located. Mr. Correia stated that it was to be in the back corner, but the revisions to the parking area resulted in it no longer being needed. Mr. Rutan asked if the retaining wall is from the original 1998 proposal. Mr. Litchfield confirmed that it is, and noted that it appears that the parking area has been reconfigured so that a retaining wall is not needed and he confirmed that this is in compliance with zoning. In response to a question from Ms. Bakstran, Mr. Correia clarified the location of the dumpster.

Mr. Leland asked if 19 parking spaces are sufficient for both buildings. Mr. Frederico confirmed that they are. Ms. Bakstran asked if the board should wait to see the revised plans before rendering a decision. Mr. Litchfield expressed a preference to do so. Chairman Rand agreed.

Ms. Bakstran expressed concern about the location of the lighting and noted that the Design Review Committee (DRC) had requested that lighting be moved to the front of the building. Ms. Joubert noted that the applicant had been before the DRC several times, and the project was approved at the DRC's last meeting and a comment letter was provided to this board. She commented that the DRC had suggested wall pack units on the front of the buildings instead of light poles, but emphasized that it was merely a suggestion and not a condition. In response to questions from Mr. Rutan about the light poles in the front of the building and other poles closer to the street, Ms. Joubert indicated that an appropriate lighting plan is included in the application packet.

Ms. Joubert noted that the Fire Chief also provided a comment letter indicating that he has no issues with the proposed site plan. She also mentioned that the board received a letter earlier today from Attorney Robert Nislick, who is representing the abutters at 6 Crawford Street.

Ms. Bakstran noted that there is no reference to signage on the plan and asked if there is any proposed for the businesses in the new building. Mr. Correia indicated that signage cannot be addressed until he knows who the tenants will be. Chairman Rand stated that signs will be addressed by the Building Inspector. Ms. Joubert agreed, and noted that if a tenant wants to do anything other than what is allowed, the applicant will be required to come back to the ZBA for approval.

In response to a question from Ms. Bakstran, Mr. Lewis explained that it is expected that one of the first floor tenants will also lease the second floor for ancillary purposes, with the first floor to be used for services to the public.

Attorney Robert Nislick introduced Danielle Redfern, abutter to the property. He noted that she has lived in the home since 2004, with both sons attending Northborough Public Schools and involved in youth baseball and basketball. He also noted that Mr. Redfern has served as a coach for these teams, and both Mr. and Mrs. Redfern have been active in the PTA and Lincoln Street School Council.

Attorney Nislick explained that, when this property was developed by Mr. Favre, he appeared to be genuinely concerned about the wellbeing of residents on lots abutting this project. He indicated that, in 1998, Mr. Favre agreed to a number of conditions to protect the privacy of the abutting lots. In particular, he noted the privacy easement that has not always been honored as scrupulously as it should have been. Attorney Nislick voiced his understanding that the hemlocks in existence today are on Mrs. Redfern's property and that vegetation on Mr. Correia's lot has been significantly cut back. He commented that, essentially, growth has been cut and thinned out and sprayed with weed killer on a regular basis, and emphasized that this work is being done within the 100 foot wetland buffer. Attorney Nislick commented that, given the history, the Redfern's do not have a good degree of confidence that their rights of privacy and rights as abutters will be honored.

Attorney Nislick noted that this lot already has one principal building and the applicant is seeking to add another. He also stated that adding a second principal building on a lot that abuts a residential property and a wetland would not be reasonable and would encourage intensification of use of land, is harmful to the privacy of abutters and would place an environmentally sensitive area at further risk. He voiced his opinion that the proposed use is not in harmony with the intent of the Groundwater Overlay Protection bylaw, and there is nothing in the application that seeks to demonstrate compliance with the requirements of those bylaws. Attorney Nislick indicated that the petition fails to demonstrate that the impervious coverage has increased by no more than 40% or that runoff would not violate the groundwater bylaw. In addition, he noted that section 7-03-040 C. contains a list of procedures for the issuance of a special permit and he believes that the proposed office use does not necessarily apply and the request should therefore be denied. He requested that, should the board choose to grant a special permit, he would respectfully request conditions to require that mature hemlocks be planted prior to construction. He also noted that the abutters have the following concerns/request:

- Lighting extending beyond the lot line.
- Given the elevation of the proposed 2-story building, the abutters would also request that the applicant be required to install a fence along the rear property line
- Applicant should be prohibited from placing a dumpster between the proposed building and the Redfern's property due to concerns about rodents, smell, and appearance.
- Aside from emergency use only, no egress should be allowed through the rear of the building.
- No service entrance should be allowed on the rear of the building.
- Windows on the back of the building will impact the privacy of the abutters.
- No vehicular traffic should be allowed in the rear of the building.
- Smoking should be prohibited in the rear of the building.
- The abutters have serious concerns about the tight tank and are requesting that it be placed on West Main Street side of the property and that it be inspected and cleaned annually.

Attorney Nislick noted that the Board of Health has no record of compliance with regulations in the past, and the absence of a stormwater report is cause for concern about runoff impacting the Redfern's lot.

Danielle Redfern, 6 Crawford Street, explained that she had driven back from the New Jersey shore where she is vacationing with family in order to attend this evening's meeting. She discussed the location of her home, directly adjacent to Mr. Correia's property, and noted that there is an existing fence on her property that was installed for privacy. She explained that she shares a driveway with Keith Lawless (10 Crawford Street), with whom she and her husband have always enjoyed an amicable relationship.

Ms. Redfern discussed the privacy easement with Mr. Correia, and noted that there is a significant elevation difference between his lot and her yard. She stated that the lights from his

property now shine directly into her first floor because he has removed vegetation from the easement. She noted that there are hemlocks in place on her property, and there had also been some nice greenery in place that provided decent screening, both visually and auditory.

Ms. Redfern noted that Mr. Correia had cleared the easement area years ago, at which time she tried to contact him several times and never got a response. She explained that she had sent him a certified letter asking that the easement not be cleared, and still received no response. In response to a question from Mr. Rutan, Ms. Redfern confirmed that the hemlocks are on her property.

Ms. Redfern indicated that the vegetated easement was being maintained for years, until additional clearing began in 2016. She stated that work was done using a backhoe, and the area was also sprayed. She explained that she has a privacy easement on her deed but it also benefits her neighbor, Keith Lawless. She noted that she had tried again in 2016 to resolve the issue with Mr. Correia, and that is when she engaged her attorney. She commented that, when this application came about, she asked her attorney to review it.

Ms. Redfern expressed concern about the fact that no pumping records have been submitted to the Board of Health for over 17 years, so there is no way to know the condition of the tight tank. She voiced her understanding that the Conservation Commission had approached Mr. Correa about removing trees that he had dumped into the pond, which illustrates further noncompliance and lack of respect for what is deeded to her. She asked the board to deny the special permit at this time.

Ms. Redfern suggested that construction will be difficult, and she is asking for a fence to be installed at the top of the easement to maximize privacy. She also requested some type of review as to whether a retaining wall is needed. In addition, she noted serious concerns about runoff.

Ms. Bakstran noted that the applicant has proposed planting in the easement, and questioned whether he has the right to do so. Attorney Nislick stated that the property owner retains the right to make reasonable improvements, and the removal of the vegetation from the easement area constitutes a material interference with the easement.

Mr. Correia commented that the bamboo that he removed is an invasive species and, if left untouched, it will take over the entire yard. He stated that the bamboo was not only growing in the easement area but was also encroaching on his property. He also stated that the hemlocks are actually doing better since the bamboo was removed. He mentioned that he had gone to the Conservation Commission, who provided him with a letter suggesting that he get rid of the invasive species if he is able. Ms. Bakstran asked Mr. Correia if he had explained to the Conservation Agent that the bamboo was being used in a privacy easement. Mr. Correia reiterated that what was removed was choking the hemlocks. He indicated that he was not trying to take away Ms. Redfern's privacy and was willing to work with her. He also noted that he was mainly cleaning the area on his part of the property. Ms. Bakstran suggested installing a

fence between the easement and Mr. Correia's property to delineate between the two. Mr. Correia commented that the proposed building will actually act as a buffer.

In response to a question from Ms. Bakstran, Mr. Correia estimated the distance between the existing building and the closest point on the proposed building to be about 30 feet.

Mr. Rutan noted that Ms. Redfern has testified that Mr. Correia is not communicating with her and Mr. Correia has testified that he has. Ms. Redfern indicated that she had put together a timeline of these communications, and noted that there was a long period of time when no communication was necessary. She explained that she had approached Mr. Correia in the yard asking him not to clear the vegetation and he was dismissive.

Tamara Potselueva, 14 Crawford Street, stated that the Redfern's have always been honest and caring neighbors who are simply asking for adequate privacy and protection of the environment. She voiced concerns about the possible environmental and ecological effects of the proposed project.

Keith Lawless, 10 Crawford Street, discussed the original plan that Mr. Favre had put together and suggested that any plan moving forward should take the history into account.

Chairman Rand discussed the need for a finalized set of plans. Mr. Rutan requested that a landscaping plan be included, and encouraged Mr. Correia to work with the abutter to find a solution. Ms. Bakstran agreed, and asked that the lighting locations be including on the new plan as well.

Ms. Joubert explained that egress at the rear is required, as are windows. In response to a question from Mr. Rutan about the dumpster location, Ms. Redfern indicated that the location is fine but she would like it to have some type of screening. Mr. Lawless agreed.

Ms. Bakstran asked about the retaining wall. Mr. Litchfield indicated that information about the wall was included in his review letter, along with drainage calculations and other reports. He indicated that the appropriate documentation has been provided and the criteria have been met.

Mr. Rutan asked if there are downed trees in the pond, Ms. Redfern indicated that there are. Mr. Correia stated that he has a letter from the Conservation Agent who viewed and approved the cleanup. Ms. Joubert noted that the Conservation Agent in question is no longer working for the town. Ms. Redfern indicated that she has pictures of the workers using chainsaws to cut the trees. Mr. Litchfield and Ms. Joubert agreed to conduct a site visit. In response to a question from Mr. Rutan, Mr. Litchfield stated that the pond does not significantly grow and shrink with rainfall.

Jeffrey Leland made a motion to continue the hearing to September 26, 2017 at 7:00PM. Fran Bakstran seconded; motion carries by unanimous vote.

Chairman Rand asked the applicant to provide the board with the revised plans at least a week before the meeting. Ms. Joubert advised the board that she will be on vacation the week of September 25, 2017.

Next Meeting – In addition to this continued hearing, Ms. Joubert noted that the agenda for the September 26, 2017 meeting will include applications for the following:

- **137 West Main Street** – Ms. Joubert explained that the property owner had started to expand their parking area, and was issued a cease and desist order. They have stopped work and will be before the board in September.
- **Anytime Fitness** – Ms. Joubert discussed this request for a variance to allow a sign on the back of the building to advertise this new business the new portion of Northborough Crossing.

Consideration of Minutes – Fran Bakstran made a motion to accept the Minutes of the Meetings of January 24, 2017 and June 27, 2017 as submitted. Jeffrey Leland seconded; motion carries by unanimous vote.

King Street – Ms. Joubert stated that she has nothing new to report on this case.

ZBA Process – Chairman Rand discussed the issue of providing copies of draft decisions to the applicant prior to them being reviewed by the board. Ms. Joubert noted that this is not standard practice and agreed that it will not be done in the future.

Meeting adjourned at 8:39PM.

Respectfully submitted,

Elaine Rowe
Board Secretary