



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 06.09.20

Planning Board Meeting Minutes January 16, 2020

Members in attendance: Kerri Martinek, Chair; Amy Poretsky, Vice Chair; Michelle Gillespie; Anthony Ziton; Millie Milton

Others in attendance: Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Sarah Adams, Central Massachusetts Regional Planning Commission (CMRPC); Jason Perreault, 27 Treetop Circle; Lisa Wheeler, 292 South Street; Justin, Brad, and Lisa Wheeler, L.H. Wheeler Junior Excavation; Michael Sullivan, Connorstone Engineering; Ann Fidrych, 260 West Street; Jessica Fidrych; David Cooley; Attorney Marshall Gould; Attorney Brian Falk, Mirick O'Connell

Chair Kerri Martinek called the meeting to order at 6:00pm.

Continued Discussion with Sarah Adams, CMRPC RE: Zoning Bylaws for Solar Energy Systems and Hazardous Waste Facilities

Hazardous Waste Facilities – Ms. Adams voiced her understanding that Ms. Joubert has been meeting with staff about the impact and results of a bylaw imposing a large setback. Ms. Joubert presented maps showing outcomes of both a 1500-foot setback and a 1000-foot setback. In looking at residential districts, she noted that the only place this use could be located if the board were to impose these larger setbacks would be within the industrial district off of Bartlett Street on a piece of property owned by The Gutierrez Company. She explained that the parcel is inside the aqueduct but the remaining available portion is not large enough, so imposing either a 1000-foot or 1500-foot setback would result in a prohibition of such use.

Ms. Adams asked board members what might be a smaller setback that they would comfortable with. Mr. Ziton asked if there is a way to model the various options to see the results each for consideration. He suggested working down from 1000 square feet, in variables of 100 feet, to determine the maximum setback that would allow for the use. Ms. Joubert noted that this is a cumbersome process, and it would not be possible to do every 100-foot increment in time for the next meeting and the warrant deadline. She suggested that the board work to settle on the language for the proposed bylaw so that she can meet the deadline for the warrant, and she can add the setback information once that is determined.

Ms. Poretsky asked about the impact if the town were to reach build out. Mr. Ziton asked about redevelopment. Ms. Adams explained that, as long as zoning does not prevent siting of a facility, there should be no issues in the case of build out or lack of vacant land. Ms. Adams

noted that the parcel off of Bartlett Street that Ms. Joubert identified is relatively close to the High School. Ms. Joubert explained that there is quite a bit of wetland in the area.

Ms. Joubert reiterated that, if the setbacks are such that none of the land in the area meets the setback, there is no place for this use to go. She explained that there is land off of Bartlett Street that would not allow for a 1000-foot or 1500-foot setback, with a vacant parcel and a few developed lots where such a use could be located. Ms. Martinek asked about results if the board were to impose a 1500-foot setback. Ms. Joubert mentioned that the only land would be a developed parcel off of Bartlett Street.

Ms. Adams cautioned the board to be wary of the groundwater protection overlay district, as the bylaw contains language that restricts the use in such areas. Ms. Poretsky emphasized the need to prohibit the use in a groundwater overlay district.

Ms. Adams noted that she had used language from MGL Chapter 40A that provides exemption for hazardous waste facilities within industrial districts and questioned if the town is permitted to prohibit them in recharge areas, wetland resource areas, and in any area that contributes to an existing or potential public supply well.

Ms. Joubert noted that she determined that the available parcel is in an area where there are no groundwater overlay areas. Ms. Adams confirmed that, as long as there is a parcel that works that is not within a groundwater district and does not get excluded by the setbacks, there should not be any issues. Ms. Joubert reiterated that the area within the aqueduct is partially developed but there is some vacant land there. She also explained that the land does not need to be vacant. Members of the board agreed that they would like to impose a 1500-foot setback if at all possible.

Ms. Martinek asked if the exemption applies to solid waste facilities as well. Ms. Adams stated that the exemption is for hazardous waste facilities specifically but noted that there is an area that covers solid waste facilities and it is an exempt use. She also mentioned that she came across a couple of examples of case law of instances where towns were reprimanded for not allowing one of these facilities in an area presently zoned for an industrial use, though she is not sure if it applies in Northborough.

In response to a question from Ms. Poretsky about who will be the enforcing authority as referenced in the first definition, Ms. Adams explained that it could be the Board of Health or another entity of the board's choice. Ms. Poretsky noted that this stipulation is not included in the state's definition and asked if it needs to be specified in Northborough's bylaw. Ms. Adams explained that it gives the board a bit more authority to have flexibility if something is not captured under the state definition. Ms. Poretsky expressed a desire to specify who the enforcing authority is. She also commented that the hazardous waste facility definitions reference "new or substantially improved structure", which is also not included in the state regulation. Ms. Adams explained that this provides the town with the ability to reconsider existing facilities in the event of revisions. Ms. Gillespie voiced her support for inclusion.

Ms. Poretsky suggested expanding on the context of the statement “.....which will be used for production and storage”. Ms. Adams asked Ms. Poretsky to send her the proposed language to be incorporated into the draft.

Ms. Adams informed the board that next week’s meeting will be her last opportunity to attend, and emphasized the need to finalize the bylaw language. Ms. Martinek suggested that there may not be a need for Ms. Adams to attend if the board can wrap up discussions.

Ms. Poretsky recalled that the board had previously discussed decommissioning of these facilities and asked if there is a paragraph covering it. Ms. Adams explained that she did not include anything as it is heavily regulated under the state permit. Ms. Poretsky indicated that she will provide language that she had found in another bylaw for consideration. Ms. Joubert noted that some of the things being suggested by Ms. Poretsky may already be covered elsewhere in the zoning bylaw so it is not necessary to reiterate them specifically within this bylaw. Ms. Adams explained that the hazardous facilities language is not intended to be its own stand-alone bylaw, and the town already has appropriate language elsewhere in the bylaw. Ms. Martinek suggested that Ms. Poretsky provide Ms. Joubert and Ms. Adams with the desired language so that they can ensure that it is already covered somewhere in the bylaw.

In response to a question from Ms. Gillespie about who the enforcing authority should be, Ms. Adams explained that the permitting process, which would start at the state level, would typically involve the Board of Health. Ms. Joubert suggested that it would either be the Board of Health or the Zoning Enforcement Officer and noted that the Planning Board does not have any enforcement Authority in any other bylaw. Ms. Martinek suggested removing the reference to enforcement authority entirely. Ms. Poretsky voiced her opinion that the Town Engineer should be the Zoning Enforcement Officer for this matter. Ms. Martinek suggested leaving the language as written and the board can address it if ever needed.

Solar Bylaw – Ms. Martinek recalled that the board had planned to address the size thresholds for small and large scale facilities and whether to also include a medium-size level. Ms. Joubert advised that she had given board members details of what the various sized systems would look like to provide a visual of what Ms. Adams had sent. Ms. Adams noted that the draft incorporates many of the edits previously discussed but many cannot be updated until the size thresholds get solidified. She also voiced her opinion that it makes the most sense to only have small and large scale systems as this would make it easier to introduce the bylaw since introducing a medium-scale as well will make it more complicated. She also recommended deciding what size system the board would be comfortable with on a residential lot, with anything above that being categorized as large-scale.

Ms. Adams stated that a 250kw system would occupy an area of 25,000 square feet and is larger than the average 6,000 square feet that a typical residential system would be. She suggested that the board could impose a smaller limit than 250kw, with a threshold somewhere in the area of 1,000, 5,000, or 10,000 square feet. She voiced her assumption that the board would want to ensure that the definition for small-scale allows homeowners the ability to install a small ground-mounted system (at least 1,000 square feet) if they wish, and noted that a 10,000kw system would cover approximately 600 square feet.

Ms. Martinek asked about some of the concerns that were voiced at the board's previous meeting. Ms. Adams recalled that there were concerns about a property owner with a large parcel using their entire yard to install what would essentially be a commercial solar system. Ms. Gillespie voiced her opinion that 1,000 square feet is reasonable. In response to a question from Ms. Joubert about whether the size threshold should be stated in kilowatts or area, Ms. Adams mentioned that square footage is better as it will remain constant while changes in technology could allow for a larger system on a smaller parcel of land.

Ms. Martinek asked about allowing for systems in parking lots, business rooftops, and carports. Ms. Gillespie mentioned a solar application on a school roof in the Town of Wayland, which Sarah explained would fall under the category of an accessory use unless the board thinks it should be a different permitting process. In response to a question from Ms. Gillespie about the size of the system at National Grid, Mr. Litchfield stated that it is a couple thousand square feet and is considered an accessory use.

Ms. Joubert recalled a discussion at the board's last meeting about where the various sized systems should be allowed and noted that the board discussed small systems as being up to 10,000 square feet with anything above that falling under large scale. Ms. Adams explained that a carport installation was not included in the current draft but there is an accessory use section where a canopy installation could be added. Ms. Joubert mentioned that there is no maximum limit on the system size so long as the use remains an accessory use and doesn't become so large that it becomes the primary use. In response to a question from Ms. Gillespie about whether there is a maximum percentage for an accessory use, Ms. Joubert indicated that there is no maximum as long as it remains an accessory use, which is up to the discretion of the Building Inspector. Mr. Litchfield recommended that the board not impose a square footage limit on an accessory use, as long as the primary use of the building is permitted and the solar installation is an accessory use.

Members of the board agreed to a maximum threshold of 1,000 square feet for small-scale systems, with everything over that being large-scale as long as they do not exceed the maximum allowable coverage.

Ms. Martinek asked if the plantings mandated would be required to be maintained in perpetuity. Ms. Adams noted that she had included language about that in the Operations & Maintenance (O&M) Plan but will add it to the Design Standards section as well. Ms. Milton asked if panels are to be confined within a fence and suggested that they should be secure. Ms. Adams confirmed that there is a section requiring sight-impervious fencing. Ms. Poretsky noted that, under applicability, there appears to be language missing to prohibit clear cutting of trees. Ms. Adams explained that she had removed it but can add it under "purpose". Ms. Gillespie questioned how the board can prohibit clear cutting since anyone is permitted to cut trees on their property without town approval. Mr. Litchfield suggested that the board could prioritize the use like was done for wireless communications facilities. Ms. Joubert suggested adding a sentence under purpose about protecting natural resources. Ms. Adams agreed to do so.

Ms. Martinek asked about adding a footnote about use variance as previously discussed. Ms. Adams confirmed that it is included. Ms. Martinek asked if an applicant is required to come

back to the Planning Board for another site approval if they wish to add batteries to the project. Ms. Adams stated that, though not specifically called out as batteries, it is captured under “modification”. Members of the board agreed that they would like it called out specifically in the bylaw.

Ms. Poretsky referenced the placement of a semi-colon in the sentence about modification and removal of installation under “purpose” to be sure the meaning is clear. Ms. Adams suggested changing it into two separate sentences.

In response to a question from Ms. Martinek, members of the board agreed that they can review the revised document before their next meeting, if available, and can determine if they need Ms. Adams to return. Ms. Adams agreed to update the document and provide in advance of the next meeting.

Ms. Martinek asked about the existing system on the corner of Rice Avenue and Colburn Street. Ms. Joubert noted that the Building Inspector has confirmed that it is a residential system that the homeowner chose to install in that way instead of on his roof. Mr. Litchfield mentioned that the system includes trackers, which are not appropriate for a rooftop installation. Mr. Poretsky asked if the proposed bylaw includes anything about trackers and/or if it should. Ms. Adams voiced her opinion that there is no need to specifically address trackers.

Members of the board expressed their appreciation to Ms. Adams for all of her efforts.

Public Hearing for 260 West Street Special Permit Common Driveway

Applicant: Ann Fidrych

Engineer: Connorstone Engineering

Date Filed: November 26, 2019

Decision Due: 90 days from close of hearing

Mr. Sullivan introduced the applicant, Ann Fidrych, along with her daughter Jessica and David Colley, who are requesting approval of a special permit for a common driveway on a 65-acre parcel at the end of West Street near the Shrewsbury line. He explained that they are proposing to cut out a 10-acre parcel to allow Jessica and Dave to construct their dwelling, to be served by a common driveway off of the existing driveway in conformance with the regulation. He noted that the entrance is at a grade of 3.7%, well below the 10% allowed, and will transition up to 11-14% for which some consideration will be needed. He confirmed that there will be no issue maneuvering up the driveway and noted that there are many driveways in town over the 14%. He mentioned that subsurface testing has been done and a septic system design is finalized and has been approved by the Board of Health. He also discussed details for an alternative plan for a separate driveway in the event the board is not in favor of the common driveway. He mentioned that the alternate design will involve an extensive amount of earthwork, an additional 13,000 square feet of impervious surface, and removal of a substantial amount of trees, and strongly encouraged the board to consider the common driveway.

Mr. Sullivan discussed the Fire Chief's comment letter dated December 5, 2019 (copy attached), and addressed the issue as follows:

- Angle of approach – Mr. Sullivan stated that this has been sufficiently addressed.
- Turnaround – Mr. Sullivan explained that the existing turnaround will be expanded to accommodate emergency apparatus. He noted that Mr. Litchfield's comment letter also addresses this issue, and he will further discuss it during his review comments.
- Preference for the common driveway to be named – Mr. Sullivan stated that the applicant has selected "Freedom Way."

Mr. Sullivan indicated that the applicant has no issues with the requests included in Mr. Litchfield's review memo dated January 16, 2020 (copy attached) and provided additional comments as follows:

- The applicant would prefer to use the existing single family driveway for the construction of the common driveway.
- Mr. Litchfield requested that the emergency turnaround be relocated, and the applicant has no objection. The plan will be revised to comply and submitted to Mr. Litchfield for approval.
- Request to exceed the 10% grade was previously discussed.
- The driveway entrance does comply with the Fire Department's criteria as required.
- The project will require filing of an ANR Plan, which will be submitted once board approval is granted.

Mr. Sullivan reiterated that the applicant has no issue with satisfying Mr. Litchfield's recommendations.

Ann Fidrych expressed appreciation to the board for their consideration of the proposal.

Mr. Litchfield voiced his preference for the use of a single driveway, but noted that he has advised Mr. Sullivan that, should the applicant opt for two, a land clearing permit may be required since clearing will exceed the maximum 20,000 square feet allowed in the bylaw.

Ms. Joubert advised the board that two abutter's have submitted letters voicing their support for the project.

Ms. Martinek referenced the requested waiver and commented that 14% does not appear to be much different than the 10% allowed. Mr. Litchfield agreed and suggested that it should not be a problem.

A gentleman in the audience, who indicated that he is also an abutter, also expressed support for the proposed project.

Michelle Gillespie made a motion to approve a waiver of the maximum allowable grade of 10% to allow for a total of up to 14% for the proposed project at 260 West Street. Amy Poretsky seconded, motion carries by unanimous vote.

Michelle Gillespie made a motion to grant a special permit for a common driveway at 260 West Street. Amy Poretsky seconded; motion carries by unanimous vote.

Continued Public Hearing for 5 Goddard Road Special Permit and Special Permit Site Plan Approval

Applicant: L.H. Wheeler Jr. Excavation, Inc.

Engineer: Connorstone Engineering

Date Filed: November 19, 2019

Decision Due: 90 days from close of hearing

Ms. Martinek explained that the hearing was previously continued to allow the board time to review some additional requested materials. She mentioned that letters from Mr. Litchfield and Mirick O'Connell were received earlier today. Mr. Litchfield discussed his comment letter. He noted that, at the board's last hearing, the applicant's engineer submitted revised plans that he had not had the opportunity to review prior to the hearing but has now done so and everything appears to have been addressed. He noted that his review memo outlines materials that were received and all comments provided by both him and the DPW. He voiced satisfaction that the applicant has met all of the outstanding issues from the Groundwater Advisory Committee (GAC) and offered additional details as follows:

1. Mr. Litchfield explained that, at the time the applicant presented plans to the GAC and Planning Board, the proposal included the use of recycled asphalt in the parking area behind the building with a 10 millimeter polymer barrier to be installed beneath that area. He noted that, after further research, he understands that the 10 mm barrier is more generally used for lining the backside of a retaining wall for septic system breakout where there is no vertical pressure on the barrier. He stated that there is a thicker barrier (40 mm) that he would recommend that could withstand the pressure of trucks driving over the area. He noted that the engineer had planned to speak with his client about changing the plan to do a typical parking lot with standard drainage, in which case the O&M plan needs to be revised accordingly.
2. Mr. Litchfield advised that he has offered comments/conditions for the board to incorporate into the decision to address the requests in the various review letters (GAC comments and the Site Plan review letter with comments from the DPW).

Mr. Sullivan explained that he received Mr. Litchfield's letter earlier today and has revised the plan to show elimination of the barrier and inclusion of bituminous concrete in the area in the rear. He stated that he initially did not think the use of recycled concrete was a bad idea but it seemed to be recurring issue with town boards so the Wheeler's decided to make the change. He noted that Mr. Litchfield has also asked for a revised O&M Plan, which he has submitted as well. He voiced his opinion that the revisions to the Site Plan and O&M Plan were slight

(removal of recycled asphalt and addition bituminous concrete), and the new plan is relatively the same as the previous plan.

Attorney Gould discussed the list of equipment that includes one track excavator and advised that there is also a second excavator with rubber tracks to be stored onsite.

In response to a question from Ms. Poretsky about whether the project will have oil/water separators in the parking area, which is a concern expressed by the Conservation Commission, Mr. Litchfield explained that his letter stipulates that if the area at the rear of the building is to be paved, a berm is required around the limits of it as well as catch basins that flow through water quality structures to capture the oil.

In response to a request from Mr. Ziton to clarify the details of equipment storage, Mr. Sullivan stated that there is a 22 square foot area of parking for such and emphasized that the entire site will not be concrete. Mr. Ziton asked questions about what will be stored in that area and any other equipment beyond excavators and trailers that will be onsite. Justin Wheeler noted that it will be a turnaround and parking for 7 flatbed trailers used for moving equipment and that all equipment is detailed in the list provided to the Town Engineer (copy attached) Mr. Ziton asked about the potential to accommodate any future expansion, if needed. Justin Wheeler expressed his belief that the project as designed will be sufficient for their needs. Mr. Ziton recalled that the business operation involves snow plowing in the winter and excavation and hauling in the summer. Attorney Gould indicated that the applicant could potentially be conducting some excavation and hauling in the off season if there is a need to repair a broken pipe.

Ms. Milton asked about the number of employees. Justin Wheeler noted that there will be a total of 4, 3 of which will be CDL drivers. Ms. Milton commented that the small number of employees should not generate a large amount of traffic.

Ms. Poretsky asked if changes to the O&M Plan require the applicant to go back to the GAC and wondered if the board should continue this hearing until that can be done. Mr. Litchfield voiced his opinion that this would not be necessary since the only issue is the elimination of the polymer barrier and testing of the gravel, while the rest of the O&M Plan remains the same so there is really no significant change. He also noted that the GAC serves in an advisory capacity and the system without the barrier is actually less of a hazard and therefore would not require the applicant to reappear. He indicated that he has a preference for the concrete. Ms. Poretsky recalled that the Conservation Commission had asked about snow removal and requested that the location be identified on the plans. Justin Wheeler expressed his expectation that snow storage would be at the area to the rear of the building.

Mr. Litchfield recalled that there had been some discussion about testing of the forebays. Mr. Sullivan explained that the Conservation Commission noted that there was no DEP file number for the project so the hearing could not be closed. He noted that there had been discussion about lab analysis and coordinating to ensure that everyone is on the same page and he believes that there are no further concerns other than the need for a DEP file number. Mr. Litchfield advised that the Conservation Commission is not able to issue an Order of Conditions without a DEP file number.

Mr. Ziton asked if there is any level of conditioning that the board can impose on the quantity or size of the trucks and vehicles onsite. Mr. Litchfield indicated that he is not aware of any and stated that there is an overriding condition that limits the project with regard to the amount of toxic and hazardous chemicals approved to be onsite, which is included in his comment letter. Ms. Joubert mentioned that the only ability to limit the number of vehicles is when it pertains to licensing of vehicles as in the instance of a car lot, which would not apply in this case. She confirmed that there is not a mechanism in the bylaw to limit the number of trucks a business can have. Ms. Poretsky noted that the Groundwater Advisory Committee bylaw has a limit for spills. Ms. Joubert noted that the basin that must be built to accommodate any spills would dictate the number of trucks that can be stored. Mr. Litchfield noted that this use is a bit different from what is typical since there will only be four drivers and not all equipment is used daily.

Mr. Litchfield noted that the cabinet is for the storage of chemicals and the drain, connected to the sewer is to capture runoff from the washing of vehicles so that it will not infiltrate the groundwater. In response to a question from Ms. Poretsky about any potential spill, Mr. Litchfield explained that any spill will be cleaned up according to the protocol, with anything that might spill into the drain flowing to the sewer system.

Ms. Poretsky asked about the location of the dumpster, which Mr. Sullivan indicated will be behind the building and will be more than 100 feet from the property line with a tree buffer to minimize visibility.

Ms. Martinek confirmed that all comments contained in Mr. Litchfield's comment letters have been addressed and any conditions he believes to be critical have been provided and will be incorporated into any decision should the project be approved. She also asked about fuel storage. Ms. Litchfield explained that there will be no bulk storage of fuel, salt, or de-icing chemicals and his letter stipulates that they are not allowed. He noted that the only fuel onsite will be that which is in the vehicles themselves.

Attorney Brian Falk, Mirick O'Connell, appeared on behalf of St. Gobain to readdress the letter of opposition that he previously submitted on behalf of his client (copy attached). He emphasized that the proposed project is not appropriate for the area and voiced concerns about long term impacts of trucks on the site as well as pedestrian safety and urged the board to deny the application. If not inclined to do so, his letter provided earlier this week (copy attached) contains a list that he believes will help make the use more palatable and urged the board to consider imposing those conditions.

Ms. Martinek confirmed that the board did receive the recent letter. Mr. Ziton asked if the special permit will run with the property or the owner. Ms. Martinek noted that the board can condition it to run with this applicant. Members of the board agreed that they would like to do so.

Attorney Gould stated that, because of the change from recycled asphalt to bituminous concrete in the rear, items #5, 6, and 7 in Mr. Falk's letter are no longer applicable. Ms. Martinek

questioned item # 5, which requires annual groundwater testing. Mr. Falk explained that this condition applies to the use in general and was not intended to be specific to just that portion of the project. Mr. Litchfield noted that the board does not require that type of testing for any other project with a standard drainage system. Mr. Sullivan stated that groundwater testing would require installation of a well on the site that would be on the downgradient part of the property and could be impacted by neighboring wells that could flow through the property and contaminate it. He explained that, unless there are multiple wells upgradient from everyone else's property to get a baseline reading of the water quality, he does not feel it would be fair because any impacts could be at no fault of the applicant. He addressed additional concerns expressed in Mr. Falk's letter as follows:

#1, The applicant shall provide continuous screening, including evergreen plantings and fencing, along the entirety of the property line shared with 9 Goddard Road, to screen the use from the abutting property - Mr. Sullivan noted that this issue was address by the Design Review Committee (DRC). He mentioned that St. Gobain has a black chain-link fence all along the property line and there are existing mature trees that are on the Wheeler side of the fence. He stated that the only reason those trees will be removed is if the need to be for installation of the parking area. In addition, he noted that the plans include planting of 8 white pines that will grow fairly large and will block views from the rear of the parcel to the St. Gobain property and voiced his opinion that this will be all of the protection that will be needed. Ms. Gillespie explained that the DRC found the landscaping plan to be adequate and the landscape architect on the Committee felt it provided a substantial amount of buffering.

#2, All vehicles, equipment, and construction materials shall be stored indoors and shall only be outdoors during business hours - Attorney Gould voiced his opinion that this is impractical. He noted that the applicant has been forthcoming about is intent to store most but not all equipment inside for security reasons but does not want to be required to guarantee that everything will be. He also emphasized that there is no other contractor's yard in town that is required to do so and reiterated that imposing a firm requirement is unreasonable.

#3, The applicant shall install warning beacons at the site's entrance to alert pedestrians using the sidewalk along Goddard Road when vehicles are exiting or entering the site – Attorney Gould stated that this condition is also extremely unreasonable, given that there will be only be 3 drivers at the site while there are 400-500 cars and employees in the St. Gobain parking lot and more Federal Express and other delivery trucks going to and from the St. Gobain site than will be generated from this project. He also noted that all drivers are owners of the business and will certainly exercise caution to protect their own property

#4, There shall be no fuel stored or transferred at the site– Attorney Gould reiterated that the only fuel will be what is in the vehicles, with an additional maximum of 66 gallons of hazardous materials in the storage cabinets within the building.

#5, 6, and 7 – Attorney Gould reiterated that these have already been addressed and are no longer applicable as previously stated.

8, The applicant shall complete construction authorized by this special permit within 18 months following the date of this decision – Attorney Gould stated that the town has its own bylaw relative to termination and how long a special permit is valid, and indicated that the applicant is willing to abide by that bylaw. He noted that, at the time of application, they had made it clear that they do not yet own the property and purchase is contingent on approval of all necessary permits. He mentioned that, once permitting is satisfactorily completed, the applicant will go back to the bank to get financing and start construction, which will take 18 months to complete after all appeal periods have expired. He also commented that the applicants would prefer not to have a condition about the special permit running with them but will not object.

#9, The use authorized by this special permit shall run with the applicant.

Ms. Gillespie expressed agreement with much of Attorney Gould's feedback, especially with regards to equipment during business hours. She noted that the business is unique and may be on the roads plowing at 2:00am. She also agreed that St. Gobain is a large campus and likely has their own equipment, so she does not understand the requests and feels that requiring a warning beacon with only four employees onsite is excessive. She asked if the board might want to require the applicant to return if the business grows to a certain size. She also noted that the issue of screening has already been addressed by the DRC. Mr. Zitton agreed, and reiterated the importance of conditioning the special permit to run with the applicant.

In response to a question from Ms. Poretsky about requiring the applicant to come back if they are going to store fuel onsite, Mr. Litchfield agreed that it would be appropriate to impose a condition stipulating that no storage of fuel is allowed onsite with the exception of that which is in the vehicles. Ms. Poretsky expressed her desire to do so. Attorney Gould discussed a conversation he had with Justin Wheeler in which he mentioned the use of an acetylene torch for welding that utilizes compressed oxygen and compressed acetylene (one tank of each). He noted that there is nothing liquid in the tanks and they will be locked to prevent them from tipping over.

Ms. Poretsky agreed that installation of a beacon may not be necessary but questioned if using a large mirror to assist with visibility is warranted. Mr. Sullivan noted that the site is clear with excellent sight distance.

Ms. Martinek recalled that her original primary concerns were with the use of recycled asphalt and she is pleased to hear that this is no longer planned. She agreed with other board members about imposing conditions about the permit running with the applicant and fuel storage. She also voiced her opinion that beacons would become a noise nuisance but indicated that she would be in favor of requiring a mirror and asked if the board can include it as a condition. Mr. Litchfield confirmed that doing so is within the board's purview as long as it is located within the property and not on Goddard Rd. Ms. Joubert noted that a mirror is typically used in a blind spot and Mr. Sullivan voiced uncertainty about where to place it.

Ms. Martinek requested that the board impose a requirement for the screening buffer to be maintained in perpetuity. Mr. Litchfield stated that this will apply only to anything the applicant plants and not any existing plantings.

Ms. Martinek noted that the letter from St. Gobain mentioned that “uses approved within the Groundwater Protection Overlay District should not require a high level of conditioning, engineering, and annual testing. The Planning Board should be confident that a proposed use is safe for the Groundwater Protection Overlay District in and of itself rather than being safe only if the operator or future operators run a model facility”, which made her think about enforcement. She questioned how to ensure that continuous monitoring for compliance is always done. Mr. Litchfield confirmed that this is an issue as the town does not have sufficient staff to police it but can put the onus on the applicant and include a recommendation in the decision requiring it to be recorded at the registry so that any future owner is aware of the condition. He reiterated that there are no guarantees that the monitoring is always done and the town does need to get better at doing so. He explained that stormwater is a more prominent aspect of environmental protection and most businesses are operating in that vein. He also suggested requiring the engineer to submit one actual report of the maintenance when he submits the as built plan and provide the owner with a copy of the report so that he knows what is needed going forward.

Ms. Martinek reiterated her request to require that plantings be maintained in perpetuity, that the permit runs with the applicant, and that there is to be no fuel storage onsite other than what is in the vehicles. Members of the board agreed.

Members of the board agreed that the proposed project meets all of the criteria for approval of a special permit as follows:

- The proposal is in substantial harmony with the Master Plan and other plans approved or amended from time to time by the Planning Board as it is an allowed use in the Industrial area.
- The proposed site is an appropriate location for such use.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- The proposed use will conform to any special requirements of the special permit granting authority as stated in its written decision.
- The proposal could not reasonably be altered to reduce adverse impacts on the natural environment, to be compatible with historic development patterns of the town, or to preserve historically significant buildings.

Ms. Poretsky noted that the applicant had altered the project by eliminating the use of recycled asphalt.

In response to a question from Ms. Poretsky about whether including all of the conditions in Mr. Litchfield’s review member will cover all comments from the Groundwater Advisory Committee and the Planning Board. Mr. Litchfield confirmed that it will. He also explained that he and the DPW Director have started adding a stipulation to their letters that if any condition of a decision

requires any changes to the plans, a revised set of dated plans is to be submitted for review before a Building Permit is issued.

In response to a question from Ms. Martinek about whether comments have been provided by the Fire Chief, Ms. Joubert noted that a reference to all review letters will be included in the body of the decision and the Building Permit will not be issued without compliance with all of the Fire Chief's requests. Ms. Martinek asked if the decision needs to include details about the elimination of the recycled asphalt. Ms. Joubert explained that the site plan and revised site plan will be referenced in the decision, which should suffice.

Michelle Gillespie made a motion to grant waivers of the Planning Board Rules and Regulations. Amy Poretsky seconded; motion carries by unanimous vote.

Michelle Gillespie made a motion to approve a Special Permit with Site Plan Approval with the conditions as stipulated in the Town Engineers review letter and the additional conditions about maintaining plantings in perpetuity, fuel storage, and that the permit is to run with the applicant. Millie Milton seconded; motion carries by unanimous vote.

Michelle Gillespie made a motion to close the hearing. Millie Milton seconded; motion carries by unanimous vote.

Continued Public Hearing for 425 Whitney Street Special Permit Site Plan Approval and Special Permit per Groundwater Protection Overlay District

Applicant: Steris A.S.T.

Engineer: VHB

Date Filed: September 17, 2019

Decision Due: 90 days from close of hearing

Ms. Martinek explained that the applicant has requested a continuation of the hearing to the Planning Board's meeting of January 21, 2020 but she suggested continuing to February 4, 2020 given the amount of work needed for the proposed bylaw changes prior to the warrant deadline. Members of the board agreed. Ms. Joubert explained that she has spoken to the applicant who has agreed to do so.

0 Bartlett Street - Ms. Joubert explained that the project proposed for 0 Bartlett Street has been advertised for the Jan 21, 2020 meeting but the applicant has recently requested a continuance to the February 18, 2020 meeting. She advised that the board cannot vote on the request until their next meeting (Jan. 21). She mentioned that the meeting on January 21, 2020 will not have any public hearings other than the discussion about changes to the zoning bylaw. She also noted that there are no new hearings planned for either of the February meetings (Feb. 4 and Feb. 18).

Anthony Ziton made a motion to continue the hearing for 0 Bartlett Street to February 4, 2020 at 7:00PM. Michelle Gillespie seconded; motion carries by unanimous vote.

Consideration of Minutes

Minutes of the Meeting of November 19, 2019 – Millie Milton made a motion to accept the Minutes of the Meeting of November 19, 2019 as submitted. Anthony Ziton seconded; motion carries by unanimous vote with Michelle Gillespie abstaining.

Minutes of the Meeting of November 5, 2019 – Amy Poretsky made a motion to defer consideration of the Minutes of the Meeting of November 5, 2019 to the next meeting. Anthony Ziton seconded; motion carries by unanimous vote.

Ms. Joubert explained that draft minutes for the December meetings are not yet available for consideration.

Bonds

Release of bond for 301 Bartlett Street Bond – Ms. Joubert explained that The Gutierrez Company has requested release of their bond, totaling \$119,000, for the project that Mr. Litchfield had recommended releasing. However, it was noted that there was some confusion about the matter as only \$53,000 was posted through the Planning Board with the remainder being posted through the Earthworks Board. Mr. Litchfield confirmed that the project is complete to his satisfaction and recommended releasing the bond in the amount of \$66,000 plus interest.

Amy Poretsky made a motion to return the bond for 301 Bartlett in the amount of \$66,000 plus interest. Anthony Ziton seconded; motion carries by unanimous vote.

Bylaws – Ms. Martinek explained that she had made some edits and provided a copy of the revised document that includes results of the straw poll and those things that the board had decided to move forward and removed those things that the board voted to defer. She discussed the results of the straw poll in which the board voted to defer the matter of commercial greenhouses and warehouses in the commercial districts and move forward with funeral homes, kennels, commercial indoor recreation use, light manufacturing definitions in the industrial district, home occupation use, and waivers.

Members of the board discussed the remaining matters as follows:

Funeral Homes – Ms. Poretsky voiced her opinion that there is no need to allow funeral homes in the Residential C (RC) zone but noted that there is an existing operation on Main Street so the use could be allowed in the Main Street Residential (MSR) district. Members of the board agreed that funeral homes will not be allowed in Residential C (RC), General Residential (GR), and Downtown Neighborhood (DN) and will be allowed by special permit from the Zoning Board of Appeals (ZBA) in Main Street Residential (MSR), Downtown Business (DB), Business East (BE) and Business West (BW).

Kennels – In response to a question from Ms. Martinek about whether the board heard back about the definition, Ms. Joubert mentioned that she had spoken with both the Board of Health Agent and Animal Control Officer and they asked for clarification about what exactly a domestic

non-farm animal is. Ms. Poretsky noted that the term is in the original bylaw, as well as Westborough's bylaw. Ms. Joubert noted that they had also asked about the term "veterinary kennel". Ms. Poretsky voiced her opinion that a change is not needed. Ms. Joubert discussed the third question raised about the reasoning behind changing the kennel definition in general as they both believe the current definition has always worked in the past. Ms. Joubert stated that she had explained that the root of the matter was about a dog walking business, for which she suggested adding a definition and leaving the kennel definition as is. She also noted that dog walking has been viewed as a general personal service, and recommended that the board might want to consider adding commercial dog walking to the bylaw. Ms. Martinek recalled that a business is considered to be a kennel if it involves 3 or more dogs, and asked what type of licensing is needed for a dog walking business for the same number of dogs. Ms. Joubert commented that, if it occurs on state land, the Fisheries and Wildlife Division only allows dogs on their property if they are being used for hunting while other state property, like DCR land, requires a license from the state. She voiced her opinion that most people do not obtain a license.

In response to a question from Ms. Martinek about whether a license for a kennel is issued by the state or town, Ms. Joubert stated that she was not certain but she does know that it is not issued by the Board of Selectmen. Ms. Poretsky explained that the main concern is with boarding and dog daycare, as it could be a disturbance for the neighbors. She also noted that dog walking and pet sitting both typically occur within the dog owner's home and the recent use that came before the board involved a party who was planning to walk dogs on his own property and she does not believe the current bylaw covers that type of operation. She also stated that she would like the definition for kennels to include dog daycare. She emphasized the need for it to be obvious by the definition that kennels and boarding does not only involve nighttime operations.

Ms. Martinek recalled that the earlier case before the ZBA involved discussion that suggested that kennels were nighttime operations and it only mattered how many dogs were being kept overnight. She stated that she would be in favor of ensuring that daytime hours are part of it as well. Ms. Poretsky reiterated that the bylaw should include a definition for commercial dog walking since people try to skirt around the issue by claiming that they are a dog walking business and not a kennel and expressed concern about the number of dogs being brought into people's homes. Ms. Milton suggested that the bylaw stipulate any commercial pet services. Ms. Joubert indicated that it would need to be defined but it could be added with pet sitting and holding (daycare). Ms. Poretsky referenced the state definition for a commercial dog service. Mr. Ziton was in favor of using the definition. Ms. Joubert noted that the board can impose restrictions for whatever number of dogs they wish. She also discussed the importance of determining what it is that we are trying to regulate, as people that breed dogs in their homes may not react favorably if it would limit their doing so. Ms. Martinek asked if holding and daycare are the only activities that the board does not believe are currently covered under kennels. Ms. Poretsky suggested stipulating that the number of dogs are those that are not the property of the owner in order to protect breeders, etc. She also voiced a desire to define pet sitting to limit the ability for people to find loopholes around the regulations. Members of the board discussed various uses that belong within the commercial dog services category and decided on language for commercial dog services per the December 12, 2019 memo.

Ms. Joubert agreed to replace the existing kennel definition with the above, and noted that grooming will likely fall under commercial personal services.

Ms. Martinek requested that the use be added in the industrial district and removed from residential districts. Ms. Joubert suggested that it be an allowed use in the industrial districts. Members of the board agreed.

Ms. Joubert noted that the only place that kennel use is currently allowed is in the Business West district by special permit and Ms. Gillespie asked why it would not also be allowed in Business South and Highway Business.

It was agreed that the Use Table would be updated to allow by right in the Industrial district and keep it as a special permit in the Business West district.

Commercial recreation, indoor in the Industrial District – Members of the board agreed to add the use and that it would be allowed by right.

Industrial uses including light manufacturing – Ms. Martinek explained that she had added language in the definition for the board's consideration and recalled that the board had previously discussed changing some things from an allowed use to allowed by special permit. She also added a sentence that aligns with R& D to stipulate that it needs to be entirely within the building in order to clarify any confusion.

Use Table – Ms. Joubert recalled discussion about changing light manufacturing, R&D, and warehouse use to allowed by special permit and asked why the board would not want them to be allowed by right in the industrial district. She questioned whether there are things that the board would like to tighten up within other areas of the bylaw instead. Ms. Poretsky commented that requiring a special permit allows the board to look at whether a use fits with the area as there are some uses that might not belong next to another. Ms. Joubert emphasized that the board will never be able to have an industrial use that is compatible with a residential use. Ms. Martinek explained that, for her, this provides more of an interim solution until the board can work to develop different tiers in the industrial districts as was discussed in the past. Ms. Poretsky stated that she is thinking specifically about Northborough Crossing, which is in an industrial district where trucking and warehouses are allowed and suggested that we would not want to see these uses near a restaurant or other similar businesses.

Members of the board discussed accessory uses in the industrial district. Ms. Joubert indicated that an accessory use for industrial is defined by location and voiced her opinion that none of them are problematic. Ms. Martinek expressed her belief that a special permit is not needed for an accessory use.

Ms. Milton indicated that she was not clear about the restrictions on R&D uses and she feels that some level of oversight is warranted.

Ms. Martinek suggested that R&D and accessory uses be allowed in the Industrial District, with warehouses, trucking, and contractor's yards requiring a special permit.

Ms. Martinek asked about any tightening up of light manufacturing uses that the board might like to see. Ms. Joubert stated that changing the definition to require that all accessory operations and storage of materials or finished goods must be located entirely within an enclosed building is fairly significant for an industrial use and asked if that is the board's intent.

Ms. Martinek noted that her suggestion would make it the same as R&D facilities. Ms. Joubert emphasized that R&D is different. Mr. Litchfield agreed and noted that R&D would involve small quantities of raw materials whereas light manufacturing would have large quantities. Mr. Ziton referenced a business on Whitney Street where a lot of materials are stored outside and voiced his opinion that it is necessary to allow it. Ms. Martinek stated that there is much confusion and she would like to clarify that it has to be free from neighborhood disturbing agents so all operations should be inside. Ms. Milton suggested that the statement "free from neighborhood disturbing agents" serves as a qualifier and covers any concerns. Ms. Martinek emphasized that all operations should be inside and she wants to ensure that it is clear. Ms. Joubert noted that the bylaw has been written that way for many years and has always been interpreted to mean that all of that activity has to be inside the building. Ms. Martinek commented that the wording leaves it open to interpretation and the punctuation matters, and she would like to be sure that it does not result in an interpretation that will result in unwanted consequences. In the interest of time, members of the board agreed to defer the matter to the next meeting.

Home Occupation – Ms. Poretsky explained that she did not find "home personal service" in any other town's bylaw. In response to a request from Ms. Gillespie for clarification of the definition, Ms. Poretsky noted that a "home professional office" is typically a licensed practitioner and is for the practice of a profession such as dental and medical care, law, architecture, or engineering whereas a "home personal service" applies to activities like insurance brokers, real estate agents, dressmakers or tailors, notary publics, home bakers, or caterers. She suggested that it should be fine to leave it as is for now but expressed a desire to update the conditions as follows:

- No more than one non-resident shall be employed on the premises – remove the stipulation "except by special permit"
- No more than 25% of the existing floor area or 400 square feet of the dwelling shall be devoted to the home occupation - remove "except by special permit". Ms. Poretsky indicated that she did not find this allowance in any other town's bylaw.

Ms. Poretsky commented that, once the operation is larger and/or has more employees, it becomes a commercial personal service that adds an entirely new component. She emphasized that home occupation is intended to be a small operation and not a big business so should be limited to no more than one non-resident employee.

Ms. Gillespie asked Ms. Poretsky her reasoning for choosing a limit of 400 square feet. Ms. Poretsky explained that she found it in bylaws of several other towns, but stated that it could be

omitted and the bylaw could simply stipulate the 25% of floor area. She noted that, when home occupation first began, the expectation was that people would use one room in their homes. Ms. Joubert explained that, when the bylaw was rewritten in 2009, it was very comprehensive process that took a subcommittee nearly 2 years and many meetings to do what this board is trying to do in just a few hours. She emphasized that the justification should not be because we found another town that did it that way and this is not how we should be approaching zoning. She noted that the board should be identifying what the problem is, if there is one, and looking at existing zoning to see what changes can be made to address the problem. She stated that she is not aware of anything that we had an issue with pertaining to home occupation that would warrant these significant changes. Ms. Martinek suggested that zoning comes about because of a realization that there are loopholes and work to close them. She noted that, for her, the issue came to light with the recent application for a dog walking business where the applicant was able to find enough loopholes to squeeze the business into a neighborhood. She indicated that she did not like it and does not believe it was the intent of the bylaw. Ms. Joubert agreed that home occupation is truly meant to be just that, but the loophole is what needs to be fixed and the approach should not be to completely change the entire bylaw and affect everyone else. She emphasized that, if the issue is dog walking, then the board should seek to define it and either give it a home or prohibit it. Ms. Martinek noted that the problem was not necessarily the dog walking business, but was more about the fact that special permits can be contorted to allow what is essentially a commercial business and that concerns her. Ms. Gillespie noted the late hour and suggested that the board continue the discussion at their next meeting. She did, however, suggest that a limit of 400 square feet is not reasonable, especially given that many of the homes in town are quite large. She voiced her opinion that using the variable of 25% of floor area is more appropriate.

Ms. Joubert explained that the next meeting has been advertised with a 6:00PM start time, which can be modified since Sarah Adams will not be attending.

Taping ended at approximately 9:30pm and the meeting continued.

Meeting adjourned at 10:00pm.

Respectfully submitted,

Elaine Rowe
Board Secretary