



RECEIVED

By Karen Wilber, Town Clerk's Office at 9:23 am, Aug 10, 2021

TOWN OF NORTHBOROUGH PLANNING BOARD

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

Approved 06.15.2021

**Planning Board
Zoom Meeting Minutes
April 6, 2021**

Members (Remotely): Kerri Martinek, Chair; Amy Poretsky, Vice Chair; Anthony Ziton; Mille Milton; Michelle Gillespie

Members Absent: None

Others (Remotely): Kathy Joubert (Town Planner); Fred Litchfield (Town Engineer)

Chair Martinek called the Zoom meeting to order at 6:00 p.m. and made the announcement that pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 20A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, that the meeting of the Northborough Planning Board is being conducted via remote participation to the greatest extent possible. Public comment will be taken. The process was explained.

Member and Staff roll call was taken: Anthony Ziton, Mille Milton, Michelle Gillespie, Amy Poretsky, Kerri Martinek; Kathy Joubert (Town Planner), Fred Litchfield (Town Engineer)

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

Attorney Stephen Madaus, Rich Whitehouse, Mike Carelli, and Andrew Arsenault (VAI) were in attendance. Ms. Joubert said the peer reviewers would not be attending tonight. They are in process of reviewing the additional questions overlooked from the November 2019 memo; it is anticipated they will be ready for the next meeting. There are also several questions from the same memo for town counsel that the board wanted clarification on.

Attorney Madaus said responses were submitted to the peer review comments. Andrew Arsenault, Traffic Engineer (Vanasse & Associates) gave an overview. Environmental Partners was in general agreement with their study; they asked for minor clarifications which were addressed. Rich Whitehouse, Project Manager (VHB) briefly reviewed the March 22, 2021 VHB letter. Comments were similar in nature relative to traffic; there were general comments and suggestions which were addressed. There will be more discussions when the peer reviewers are part of the conversation. An Order of Conditions was issued in 2019. Mr. Whitehouse noted that a trash compactor and detail for the pad is shown on the plan (though not reflected in the comment letter). There were no questions or concerns from Mr. Litchfield, Ms. Joubert or board members. Ms. Martinek said it didn't look as though there was a lot of landscape

between the building and the residential area and asked if there was vegetation there. Mr. Whitehouse said there was existing vegetation there. Between the site there is the railroad and aqueduct parcel; there is a couple hundred feet of space between the site and residential uses in the neighborhood. The ZBA granted a variance in July 2019 that allows the building to sit within the 100-foot residential district setback that crosses through the building expansion on the west side. The closest portion of the building is approximately 23-feet from the property line. Some clearing will take place for the building additions and for access to maintain the stormwater basin behind the expansion. Access to the basin will be by small equipment for maintenance purposes. The majority of the expansion sits within the area that has no mature vegetation. Ms. Poretsky asked if there would be room for an excavator if trees were planted. Mr. Whitehouse said it would be tight but if the concern was for visual screening said the area off the property to the west is higher than the site; a fence would be useless, but he will review it with the applicant and discuss it at the next meeting. Ms. Gillespie suggested considering a 6-foot white vinyl fence to define the property. Mr. Carelli said it is standard protocol for Steris to provide some type of security fencing along the perimeter.

Ms. Martinek asked where on the plan would the concrete plant be; Mr. Whitehouse explained it. There were no further questions relating to the responses. Ms. Martinek asked the status of the noise study. Mr. Whitehouse said the data has been collected in the field by Tech Environmental. The team is analyzing with them some of the options for the sound mitigation measures. When a report is finalized it will be provided to the board.

Ms. Joubert said there were the two memos that the planning board sent to Steris; Steris provided responses to both of those memos (one was in November 2019; the other one was in March of 2020). Specifically in the November memo, the Planning Board called out six questions for the peer reviewer (the questions that they did not specifically address in their peer review). They are working on them now with the subcontractor, CN. Ms. Martinek said the issue is how is she to know in these responses what she's reading because she's not a radiation expert. Ms. Joubert explained that at their first meeting, CN responded to their portion of the peer review which was the technical information about what was going on inside the building; Environmental Partners (EP) reviewed the site plan and provided the board with that information which was in one memo. There was also the traffic memo from their in-house traffic group, and a third memo from CN. At the March 2, 2021 Planning Board meeting it was her understanding as well as Scott Turner's (Environmental Partners) understanding, that the board wanted the six questions from the November 2019 memo answered.

Ms. Martinek said that Mr. Turner seemed unaware of a March 10th memo at the last meeting. Ms. Milton agreed that was her understanding as well, that they were not clear that they were supposed to look at the other questions that were addressed to Steris specifically and that they were not prepared to discuss them. Ms. Joubert said they will have a zoom call with them. Ms. Martinek said they did receive information back from Town Counsel; the members did review it. Clarification is needed from Town Counsel. Ms. Joubert said as in the past, if there are questions the board has for Town Counsel, they should be discussed at a meeting and then she will send them to him so he can respond; if the board wants him to attend the meeting, she will check to see if he is available. Ms. Poretsky would like clarified if the hours of operation of the concrete plant could be added to the special permit. Ms. Joubert thought that was originally discussed and that they would follow the bylaw. Ms. Milton asked can if the board could set a time frame as a condition to work for a duration. Attorney Madaus reminded the board that the temporary construction plant operator was already before the board; his business interest is to get the work done quickly and move on to the next job site. He also said the trucks will not be on the road.

Ms. Martinek went back to the application and wanted to make sure that it had the correct permits on in it; Attorney Madaus said it absolutely did. Ms. Martinek said it is a site plan with special permit approval. Attorney Madaus said it is a site plan and a groundwater special permit; it is an allowed use in the industrial zone. She said in the bylaws, a special permit kicks off site plan with special permit review. Attorney Madaus explained that is a convenience for an applicant that has a use that's allowed by special permit that they can have both reviewed concurrently; this use is allowed by right and he has objected every time they discussed the use. There was lengthy discussion about the application process and the need for it to be consistent for all applicants. She wants to know from Town Counsel why we would apply different rules to different applicants with the same exact scenario. Ms. Joubert said Town Counsel sent the board two memos regarding special permit with site plan approval and explained how in the past the board has interpreted it two different ways; one was in some instances to apply the special permit criteria and then in other instances different boards didn't apply the special permit criteria. Town Counsel's conclusion was that you don't apply the special permit criteria to the site plan approval. Attorney Madaus commented that they spent a lot of time before filing to make sure they were filing for the appropriate relief measures. Ms. Martinek wants clarified why the board had 0 Bartlett Street go back and reapply with a new application for the same issue that seems to no longer apply.

Possible questions for Town Counsel were discussed. What will be forwarded to Town Counsel are: regarding the concrete plant, can the hours of operation be different than what is in the zoning bylaw; can the Planning Board put a time limit on how long the construction plant can be up and operating; if it is part of the special permit approval, what is the best path to evaluate and place conditions. Ms. Martinek would like clarified what town counsel means by saying the concrete operation it is part of the special permit approval.

Mike Carelli commented that the concrete plant will not run continuously; it will run only as needed. In terms of the length of time, the company will move it in and out as quickly as possible to go to another site.

Ms. Martinek asked for public comment; there was none. Ms. Milton made a motion to submit Steris related questions to Town Counsel; Ms. Poretsky seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved. Ms. Poretsky made a motion to continue the public hearing for 425 Whitney Street Special Permit Site Plan Approval and Special Permit per Groundwater Protection Overlay District to April 20, 2021 at 6:00 p.m.; Ms. Milton seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

Public Hearing for 399 Hudson Street Special Permit and Site Plan Approval:

Applicant: Quality Framing Contractor, Inc.
Engineer: Engineer Design Consultants, Inc.
Date Filed: February 26, 2021
Decision Due: 90 days from close of hearing

On behalf of the applicant, Peter Bemis (Engineer Design Consultants, Inc.) requested a continuance to April 20, 2021 in order to allow them to meet with the Groundwater Advisory Committee to review a petition on April 13, 2021. Ms. Poretsky made a motion to continue the public hearing for 399 Hudson Street Special Permit and Site Plan Approval to April 20, 2021 at 6:00 p.m.; Ms. Gillespie seconded; roll call vote: roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

Public Hearing to Consider Proposed Zoning Amendments for 2021 Annual Town Meeting: The hearing notice was read into record – The public hearing notice was read into record.

Article 29: Section 7-03-080 Enforcement C. Penalty for violation. – Ms. Joubert said there have been issues in the past how the courts have looked at how the town has assessed the penalties. The language needed to be altered to be more defined. The fines were made clearer and the words “and penalties” were added. Lisa Maselli did not think the violation fees were clear. She also commented that we know what the fines are, but asked if the penalties should be listed as well. Ms. Joubert said this is only one portion of the bylaw and can ask Mr. Frederico or possibly have him attend the next meeting. The board said they are clear on it.

Article 30: Section 7-05-010 General Provisions G. Prohibited uses. – Instead of prohibiting use variances, Ms. Poretsky thought prohibiting uses that could be offensive to neighbors and not beneficial to the town would be the better way. She took into consideration recent emails from residents. Ms. Joubert did note that some things in an original bylaw should stay grouped. The prohibited list was reviewed and discussed in depth. Scott Rogers (26 Tomahawk Drive) asked if it would be worthwhile to add some sort of scale to indicate when something might be below the threshold of being a hazard or a nuisance. Would it restrict the Zoning Officer’s interpretation that he can make or would it give him some flexibility? Fran Backstran (76 Cedar Hill Road) agreed with the list letter “m” change but commented that there’s such an art of repurposing used building materials, e.g., the Purple Rose, and would hate to think that they would not be able to store and sell them as used building materials. She thought salvage did make more sense and asked them to think about the words “used building materials”; she did not believe that was the original intent of the letter “m”. The board agreed with all changes and had no further comments.

Article 31: Section 7-05-020 Classification of Uses I.(6)(c) Contractor’s yard. – This bylaw was also discussed in depth. Ms. Poretsky updated the bylaw and explained the changes and her reasoning for them. Ms. Milton liked the idea of having salvage materials allowed. Ms. Gillespie did not agree on taking out the word “disturbing” because she believes it is intended for all the elements; Mr. Frederico will be consulted. She also commented that plantings in perpetuity should be consistent throughout all the bylaws. Michael Creamer (1 Buckhill Road) asked if the addition of outside storage trucks being screened from view would become retroactive or only be moving forward. Ms. Joubert explained any use automatically becomes pre-existing non-conforming for anyone that is currently existing under the current bylaw. Scott Rogers (26 Tomahawk Drive) wanted clarity on the sales aspect for anyone that did want to perform sales. He also asked the process for an accessory use. Ms. Poretsky said the bylaw definition says any use permitted as a principle use shall also be permitted as an accessory use provided such use is incidental to the main or principle building. At this time, there is no process. Ms. Joubert said there is Non-Residential Accessory Uses in the Use Table, and in a different section of the bylaw it talks about Accessory Uses. She will ask Mr. Frederico if someone had a contractor’s yard how could they do sales as an accessory use when it is specifically not allowing wholesale or retail sales. It is being taken out of the bylaw which means it’s a prohibited.

Marshall Gould (41 West Street) felt it was a mistake to take out “at sale or wholesale or retail of materials”. There are contractor’s yards both in this town and other towns where they do sell either at wholesale or retail material and asked why she wanted to limit the sale at wholesale or retail of products that contractors may make there. Ms. Poretsky said she could not find any other town that had wholesale or resale of materials in their contractor yard definition. Ms. Gillespie suggested holding off submitting it this year and work on it for next year. Ms. Martinek said we need to find a pathway so that it doesn’t exclude the people we don’t mean to exclude, but not grandfathered into it just because sales is included there. Ms. Joubert will check with Mr. Frederico on that as well as the “disturbing dust”.

The board went back to an email from Ashley Davies where she submitted questions regarding the proposed zoning for the board to take into consideration. She will be asked to clarify some of her changes for the next meeting.

Article 32: Section 7-05-030 Table of Uses, Table 1, Table of Uses, Part A. Residential Districts, Accessory dwelling unit. – Accessory dwelling units proposed to be allowed by-right in RA & RB Districts (which were previously Special Permits).

Article 33: Section 7-05-030 Table of Uses, Table 1, Table of Uses, Part B. Commercial and Industrial Districts, Wholesale trade. – Wholesale Trade is being prohibited in Business West. Members agreed to leave it by right in Industrial and Highway Business. Motion will need to be amended.

Article 34: Section 7-05-030 Table of Uses, Table 1, Table of Uses, Part b. Commercial and Industrial Districts, Commercial storage facility. – Commercial Storage Facility proposed to be prohibited in Business West. Scott Rogers (26 Tomahawk Drive) asked once the use is determined for the property is it recorded or some way to track it. Ms. Joubert said there is not one specific source to go to, but it can be checked through title searches or with the Zoning Interpretation form from the Building Inspector. It can be categorized differently, not incorrectly, in the Zoning Bylaw Use Table because the assessors use different criteria and different state statutes. Mr. Scott said it exposes a gap in that we make a change to a use table and can't determine the impact that it would have to existing businesses. Establishing some method to keep track of what uses are in play at each property would be a very important index to have.

Article 35: Section 7-07-010 Groundwater Protection Overlay C. Establishment and delineation (5). – “Two-family dwelling units” was added so that anyone coming for a special permit will come to the same board. “Prior to the public hearing” was added to be in line with the process, rather than “following the public hearing”.

Article 36: Section 7-07-010 Groundwater Protection Overlay D. Use regulations (3)(c)(4)(b) and (e). – Special permit criteria language was moved out of the section on how to file with the town clerk. Ms. Martinek said there are two different paths for a special permit in the bylaw, whether seeking groundwater separately or with the site plan, which causes a disconnect in what criteria applies. The change is an attempt to bring it into line with all the general special permit criteria.

Article 37: Section 7-08-010 Applicability A. – Section 7-08-020 Special permit required A. – Ms. Poretsky explained the changes to this section pertaining to nonconforming uses and structures. She questioned if “less nonconforming” should instead be “detrimental use” and asked for clarification from town counsel. Ms. Joubert will confirm with Town Counsel. Ms. Milton stated the wording for the less non-conforming was clear to her what the intent was for the use and the structure.

Ms. Poretsky made a motion to continue the public hearing for the proposed zoning amendments to April 20, 2021 at 6:00 p.m.; Mr. Ziton seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

Old/New Business:

ANRs – Ms. Joubert explained that the proposal is that the underlying zone is being met by the division of land, but the dimensions of the overlay district are not being met. Originally on the 40 Lawrence Street ANR, she indicated to the board that it needed to be corrected because the

overlay district was not being met. Herself, Bob Frederico and Fred Litchfield review all ANRs together. In Town Counsel's review there was question about case law and the fact that ANRs only need to meet a minimum of frontage and a minimum of square footage. The creation of lots on the ANR does not mean that they conform to zoning bylaws and does not mean that they are buildable lots. The board's endorsement does not mean they are buildable lots that meet zoning. The board's endorsement is required because of the case law that stipulated that only the minimum has to be met. Both lots meet the minimum. Both ANRs are within the groundwater overlay district.

40 Lawrence Street is an existing one lot, creating two lots. – Ms. Poretsky made a motion to endorse the ANR plan for 40 Lawrence Street; Ms. Gillespie seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

18 Alcott Drive has two lots; they are moving part of the shared lot line. Ms. Milton made a motion to endorse the ANR plan for 18 Alcott Drive; Ms. Gillespie seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

Ms. Martinek will arrange to sign the plans.

Consideration of Minutes (02.02.21, 02.16.21, 03.16.21) – Tabled to the next meeting.

Ms. Martinek had some concerns about a recent ZBA meeting where they discussed the zoning amendments for town meeting. Ms. Gillespie asked for clarification saying that the moderator at every meeting asks the municipal bylaw code enforcement group as well as the ZBA for each article if they approve and do they have feedback and asked Ms. Martinek if that was what she was referring to; Ms. Poretsky disagreed and said they do not ask the ZBA. Ms. Gillespie said after meeting with the ZBA, discussing all the zoning, and asking for their feedback, why would we now say they can't give input at town meeting. Ms. Martinek stated the role of the Planning Board is to create bylaws and the role of the ZBA is to enforce bylaws. The board is authorized by Mass General Law to create zoning proposals and public hearings and come to town meeting with our recommendations based on the elected board authorized to do so. Any member of the ZBA as an individual can comment at town meeting as they've always done and have the right to, but as the board in charge of enforcement is sending a mixed signal to people who expect to have a fair hearing if they were to appeal a bylaw if the ZBA has been on town floor and does not agree with that bylaw. She thought the board had open communication with having the ZBA feedback. She was surprised that it would be an additional component because it didn't seem be in the purview of the ZBA.

Ms. Milton had some confusion about having a member of the ZBA be someone to give guidance and information on the bylaws that the board is trying to put forth; she didn't think it was their role. Ms. Martinek said after soliciting public input, it is the role of the Planning Board to make the recommendations at town meeting and doesn't think the enforcement board should be part of that because it creates blurred lines and was concerned about setting a precedent.

Ms. Gillespie would like to discuss it at next meeting after watching the video; she did not understand what Ms. Martinek's concern was. Ms. Joubert clarified that the ZBA does not enforce bylaws. The zoning bylaws are enforced by the Zoning Officer of the town, which in Northborough is the Building Inspector. Ms. Martinek understands the ZBA is not in charge of enforcement, but still has concerns. More discussion will take place at the next meeting.

Ms. Joubert let the members know that the town received a \$10,000 grant to use CMRPC's time to assist with the some of the suggestions/recommendations that were made at the traffic discussion; the town was fully funded. We will be working with Sujatha Krishnan putting together the neighborhood walk audit; it will be done this spring and has to be completed by the end of December 2021. Part of it will include the post-occupancy monitoring report that CMRPC will do which Amazon has funded. Information will be also be taken from traffic counts in the Bartlett Street area and information on accidents and incidences from police and fire; the neighborhood walk audit with stakeholders will be done, and a report prepared about medium and long-term recommendations that the town can review to enact to improve traffic issues in that area.

Ms. Gillespie asked if the board could meet from 5:00-5:30 p.m. to go into executive session with the Design Review Committee to discuss the letters that were sent to them this week. Ms. Martinek said they were about committee appointments to Design Review. She wants to make sure the board has a plan in place to talk about it in advance together and decide from there if we want to go into executive session from that meeting. Ms. Gillespie asked what she meant by "plan". Ms. Martinek said we can put it on the agenda to deliberate what we want to do for a plan and as part of that, at the next meeting go into executive session if we are able to for that topic. Ms. Gillespie asked if we could ask Town Counsel. Ms. Martinek said we need to find out from Town Counsel what conditions we can go into executive session for. Ms. Gillespie asked Ms. Joubert to ask Town Counsel and also ask if the Design Review Committee can join the executive session. Ms. Martinek thought the board should talk about it first. Ms. Gillespie wanted to clarify that the board received three letters from three Design Review Committee members to address. Ms. Gillespie, as both the Chair of the Design Review Committee and a member of the Planning Board, would like it addressed, if not at this meeting, at the next. Ms. Martinek said it is important to be addressed and we need to be mindful of our actions and the steps we take. It can be put on the next agenda to talk about it as a board. The April 20th meeting will start at 5:00 p.m.

Ms. Milton made a motion to adjourn; Ms. Gillespie seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

The meeting was adjourned at 10:17 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary