



# TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 11.14.18

## Planning Board Meeting Minutes October 16, 2018

**Members in attendance:** Theresa Capobianco, Chair; Michelle Gillespie; Amy Poretsky; Anthony Ziton; Kerri Martinek

**Others in attendance:** Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; George Pember; Vito Colonna; Henry Squillante, 72 Crestwood Drive; Julianne Hirsh, 19 Smith Road; Susan Stasaitis, 318 Green Street; Alex Moheban, 293 West Main Street; Darc Barreto, 31 Vale Street, Clinton; Lisa Maselli, 13 Maple Street; Sameer Jaiswal, 59 Smith Road

Chair Theresa Capobianco called the meeting to order shortly after 7:00PM.

### Master Plan Steering Committee Update and Review of Goals

George Pember provided the board with an update on the work of the Master Plan Steering Committee:

- Visions statement and goals were reviewed and critiqued at the October 4<sup>th</sup> public forum
- Attendance was not as robust as at the June public forum but all present actively participated
- Next meeting of the Master Plan Steering Committee will be November 1<sup>st</sup> at 7:00pm

Ms. Joubert explained that the second survey is still up and available on the town website, and will close on October 26th. She noted that participation in the second survey is considerably lower than the response to the first survey, and additional advertising will be done to encourage residents to respond to this and future surveys.

Ms. Gillespie suggested that it will be worthwhile for the board to take a look at the outcomes to determine if there is anything of concern that is not being addressed. Ms. Joubert noted that the Master Plan Steering Committee should be completing their goals and vision statement by November 1st. Ms. Gillespie requested that the Planning Board include this discussion on the agenda for their November meeting.

### Continued Public Hearing for 267-281 Southwest Cutoff Special Permit Site Plan Approval and Special Permit for Dental Office

**Applicant:** Dr. Alexander Moheban/ Northborough Family Dental

**Engineer:** Connorstone Engineering Inc.

**Date Filed:** August 17, 2018

**Decision Due:** 90 days from close of hearing 8:00pm

Ms. Joubert indicated that the board members had been provided with a revised landscaping plan, an internal building layout, and a summary put together by the project engineer to address the information that was discussed at the board's previous meeting. She also noted that the Conservation Commission

has issued an Order of Conditions and the Groundwater Advisory Committee (GAC) has made their recommendations, which Mr. Litchfield will address.

Mr. Litchfield stated that there was an outstanding issue with the GAC relative to chemicals to be used and stored onsite. He indicated that the applicant has provided a list of those chemicals and quantities, and the GAC recommended that they be stored in a containment cabinet sized for a 30 gallon capacity. He explained that the GAC and Dr. Moheban had discussed the location of the cabinet, which will be within either a sterilization area or a laboratory and will be either one tall cabinet or two shorter ones. In addition, Dr. Moheban has stipulated that the business will use digital x-rays that will not require the use of any fluids or chemicals, and this will be a condition of approval.

Mr. Litchfield noted that there was also additional discussion about the amalgam separator. He mentioned a conversation with another dental practice that raised the issue of maintenance contracts for the apparatus, but noted that Dr. Moheban does his own maintenance. He stated that Dr. Moheban described the process that appears to be rather simple, and involves forwarding the container to the manufacturer who then provides Dr. Moheban with a certificate confirming the disposal. Mr. Litchfield stated that the GAC has requested a condition in the decision requiring Dr. Moheban to provide the town with copies of those certificates.

Mr. Colonna noted that a landscaping plan and list of plantings has been provided, along with the provision of the additional light requested by the board. Ms. Joubert explained that the original lighting plan was provided to and approved by the Design Review Committee (DRC), and a light has been added near the driveway entrance as was requested by this board at their last meeting. In response to a question from Ms. Gillespie, Ms. Joubert indicated that the typical lamp post is about 20 feet high.

Mr. Colonna noted that the snow storage location had been discussed and revised, and the site plan will be modified to show the revised locations. Ms. Capobianco recalled that there were an excessive number of parking spaces beyond what is required in the bylaw that could be used for snow storage if necessary. Ms. Poretsky asked Mr. Litchfield if he looked at the snow removal area and if it is sufficient since the board does not have a plan showing it. Mr. Litchfield indicated that he had discussed the matter with Mr. Colonna and would request a condition requiring the final plan to be reviewed and approved prior to the issuance of a building permit, to allow the Engineering Dept. and the DPW to ensure that all utilities are as required. He indicated that the snow storage area can also be addressed during that review. In response to a question from Ms. Poretsky, Ms. Joubert indicated that any excess snow will be trucked offsite. Ms. Gillespie asked for assurance that the snow will not be placed in the area where the new trees and landscaping will be installed. Mr. Colonna confirmed that it will not.

Mr. Ziton asked if there is any mechanism to ensure that the amalgam separator is being appropriately maintained. Dr. Moheban provided a sample of the container to be used and explained the process for collection and disposal, and noted that paperwork will be provided by the company to whom the product is returned to certify compliance with the process.

Ms. Martinek asked if the town has been provided with a list of chemicals to be used and stored onsite and if it can be shared with the board. Ms. Joubert noted that the list was provided to the Groundwater Advisory Committee and Ms. Capobianco indicated that it is available at the Town Engineer's office. In response to a question from Ms. Martinek about whether there is anything relative to disposal of these chemicals that is of concern, Mr. Litchfield explained that there is a cabinet required for the day to day storage, and any disposal requires that they be taken offsite.

A member of the audience voiced concern about electronic message boards in town and asked if the sign at the applicant's existing location will be removed. Ms. Capobianco voiced her understanding that it will be removed and relocated to the new address. In response to an additional question about what would happen to the sign if the town opts to prohibit electronic message boards in the future, Ms. Capobianco noted that the applicant's sign would be grandfathered.

**Henry Squillante, 72 Crestwood Drive**, asked about the traffic pattern and if there will be any issues with getting out of the driveway onto the roadway. Mr. Colonna indicated that this will not be a problem.

Ms. Gillespie asked if the decision will stipulate that the sign at the applicant's existing location is to be removed and relocated to the new location as discussed. Ms. Capobianco confirmed that the board can make this a condition of approval.

Kerri Martinek made a motion to approve the application for a Special Permit Site Plan Approval and Special Permit for a dental office with the conditions as requested by the Groundwater Advisory Committee and Town Engineer (per the attached comment letters) with an additional condition that the sign at the applicant's current location is to be moved to the new location. Dr. Moheban clarified that the sign will be slightly different than the current sign and will be modified to add another 4 square feet. Amy Poretsky seconded the motion; motion carries by a unanimous vote.

### **Consideration of Minutes**

**Minutes of August 21, 2018** were deferred to board's next meeting.

Mr. Litchfield left the meeting.

**Minutes of the Meeting of September 18, 2018** – Michelle Gillespie made a motion to approve the Minutes of the Meeting of September 18, 2018 as submitted. Anthony Ziton seconded; motion carries by a unanimous vote.

**Transcription app** – In response to a question from Ms. Gillespie about the transcription app that was previously discussed, Ms. Joubert indicated that she has asked the administrative staff in her office to investigate.

**2019 Town Meeting** - Ms. Poretsky discussed the three following issues that she would like the Board to consider to bring to Town Meeting:

**Hazardous Waste Facilities** – Ms. Poretsky expressed a desire for hazardous waste facilities to be sited in the Industrial zone and for the bylaw to include language similar to that used by Shrewsbury and Hudson. She noted that, in Northborough's bylaw, if a use is not specifically permitted then it is supposed to be prohibited, but according to the state, hazardous waste facilities are exempted. She mentioned that the town is required to allow a hazardous waste facility that has a site assignment, but the statute does allow for reasonable conditions to be imposed on construction and operation of such facilities. Ms. Poretsky voiced concern about an absence of conditions on these types of facilities. She provided board members with brochures and information about the governing of such facilities. Ms. Capobianco suggested that members of the board review the information and be prepared to discuss the matter at the next meeting.

Ms. Joubert stated that regulating the operation of these facilities typically falls under the purview of the Board of Health. She mentioned that, should this be something that the board would like to pursue, she will circulate the information among town staff and the Board of Health to obtain input. Input and guidance from the MA DEP should also be sought if a bylaw is to be created in Northborough. Ms. Poretsky reiterated her concerns and noted that, once a facility has obtained a site assignment it is too late to go back and change zoning. She expressed a desire to be sure we have adequate measures in place to protect the town.

**Nonconforming uses** – Ms. Poretsky referenced section 7 08 02 in the bylaw that addresses nonconforming uses, and noted that all towns have differing definitions. Ms. Capobianco asked if Ms. Poretsky is seeking to amend the Zoning Board of Appeals (ZBA) procedure and, if so, is the ZBA aware. Ms. Poretsky indicated that they are not, but agreed to discuss it with them. She mentioned that usually if a use is changing, towns seek to return it to conforming or at least another less detrimental nonconforming use, but our bylaw simply reads “change from one nonconforming use to another nonconforming use”, which in her opinion leaves it wide open to interpretation. She believes that our bylaw is too vague and suggested amending it to include the following language:

“The Board of Appeals shall encourage extensions, alterations, and changes, to nonconforming structures and uses towards a greater if not complete conformance with the zoning bylaw and to reduce the degree of nonconformity.” Ms. Joubert reminded the members of the board about adherence to the special permit criteria that is required of both the Planning Board and Zoning Board of Appeals. Ms. Poretsky noted that some towns go even further to define “substantially more detrimental”. She discussed the recent commercial baseball facility proposed for the Indian Meadow Golf Course property, which would never have been able to be brought to the table if the town was seeking to get the property back into conformance.

Ms. Capobianco expressed a desire to hear from the members of the ZBA before moving forward with any discussion, since this falls under their purview. Ms. Poretsky commented that, as a town resident, she wants to clarify the bylaw to provide better protection for the town. MS. Capobianco reiterated that she would first like for the ZBA to weigh in, after which she will be happy to discuss it further.

Ms. Gillespie mentioned that Ms. Poretsky had provided information from a good selection of communities but expressed a desire to know what Marlborough, Shrewsbury, and Westborough have in their bylaws. She also suggested holding a joint meeting with the ZBA to discuss the matter. In response to a process question from Ms. Martinek, Ms. Joubert indicated that she would first want to know that the board is behind what it is being asked to consider. Ms. Poretsky commented that she could approach the ZBA as a resident. Ms. Joubert explained that the ZBA does not typically have open discussion during their meetings but she agreed to ask the Chair if it is possible to do so. Ms. Capobianco emphasized that she does not wish to accidentally give the impression that this board does not feel that the ZBA is making the right decisions, and stressed the importance of making sure that the ZBA is on board with considering the proposal.

Ms. Joubert indicated that the information presented by Ms. Poretsky could be shared with the members of the ZBA. Ms. Capobianco mentioned that she would be comfortable with it going to them under a cover letter from the Planning Board to obtain their input. Ms. Poretsky

explained that the issue has been of concern to her since she joined this board, and she felt that this was a good time to bring it up again. Members of the board agreed with Ms. Capobianco's suggestion to send a letter to the ZBA.

**Electronic signs** – Ms. Poretsky discussed her proposal to change the bylaw to prohibit EMS electronic changeable copy signs on Main Street (Downtown, Business East, and Business West districts). She noted that there is currently only one such sign in that area and she would like to keep them from spreading and altering the character of our downtown. Ms. Joubert asked if the board wishes to impose an outright ban town wide or allow them in some districts. Opinions voiced by the members of the board were as follows:

- Ms. Martinek indicated a desire to ban them, with the exception of the Highway Business District (Route 9).
- Mr. Ziton stated that he would allow them only along Route 9 and in the Industrial zones. He also expressed a desire to ban backlit signs as well, as the towns of Weston and Southborough do.
- Ms. Gillespie spoke in favor of allowing them where they are currently allowed, with a bit of fine tuning. She also mentioned the overlay that was approved for the Shops Way project and suggested that the board should think about how to handle further overlays that may be requested in the Industrial zone. Ms. Joubert commented that the Master Plan Steering Committee will likely address the matter.
- Ms. Poretsky indicated that she would agree with allowing them in the Highway Business and Industrial zones, but reiterated her desire to limit them on Main Street.

Ms. Gillespie raised the issue of gas stations, who are required to change their signage. Ms. Joubert noted that gas stations have many exemptions and agreed to speak with the Building Inspector to clarify.

In response to a question from Ms. Capobianco, Ms. Gillespie stated that she would be agreeable to allowing them only in the Highway Business and Industrial area, if that is what the majority of the board prefers.

Ms. Capobianco indicated that she would ban electronic message boards entirely.

Ms. Gillespie mentioned that she would be opposed to not allowing backlit signs. Ms. Poretsky stated that she would consider a prohibition of backlit signs if the other board members are in favor.

Ms. Martinek expressed concern about the fact that there is a lack of compliance with the existing sign bylaw, and suggested that changes will be ineffective if there is no enforcement.

Ms. Capobianco asked Ms. Joubert to obtain clarification from the Building Inspector about the difference between electronic changeable copy signs and flashing/moving/animated signs. Ms. Joubert stated that she has been discussing the issue with Mr. Frederico, in hopes of providing a

better definition and language in the bylaw. She agreed to draft proposed language for discussion at the November meeting.

With regards to backlit signs, Mr. Ziton indicated that he would like to prohibit them completely in the Business East zone, but has no issues with them in the Industrial or Highway Business zones and suggested that the language in the bylaws of Weston and Southborough would be appropriate. Ms. Gillespie asked members to consider the small businesses in town, who would lose visibility with such a prohibition. Mr. Ziton suggested that the signage in place that is illuminated using exterior spotlights is much more attractive. Ms. Gillespie commented that this type of signage would not work for strip malls where multiple businesses are vying for exposure. She emphasized that she would not want to hurt the small business owner, which she believes will be the result with a prohibition of backlit signs. Ms. Poretsky expressed an interest in focusing on the electronic signs for now, but agreed to drive down Main Street to observe for herself. Ms. Capobianco suggested that the board can continue the discussion about signage, to include backlit signs.

**Design Review** - Ms. Martinek expressed a desire to evaluate the structure of the Design Review Committee (DRC). She noted that the bylaw does not currently impose term limits on the members and indicated that she would like to consider doing so. In response to a question from Ms. Capobianco about whether other boards have term limits, Ms. Joubert stated that she will need to investigate.

Mr. Ziton noted that the Earthworks Board is very limited in what they can do except follow the rules, but there are some boards like the ZBA that make decisions on the structure of town and zoning so he thinks that it would be beneficial for its members to be refreshed regularly. Ms. Capobianco referenced the qualifications required to sit on the DRC, and the benefits. Ms. Martinek commented that the citizen representative currently on the DRC is actually a developer who stands to make money from the decision made by the board, which presents a conflict. She suggested that having term limits would provide the ability to re-evaluate and also to accommodate other residents who may be interested in serving on the board. Ms. Capobianco asked Ms. Martinek if she believes that Mr. Abu sitting on the DRC gives him an advantage when he appears before the Planning Board. Ms. Martinek commented that she did not want to speak specifically or in an accusatory manner but she does believe that if someone stands to profit from a decision of this board, she needs to be able to take the recommendations made by the DRC and have confidence that they were made by an unbiased board. Ms. Capobianco mentioned that Mr. Abu is a town resident. Ms. Martinek reiterated that there may be others in the community with an interest in serving on the DRC.

Ms. Capobianco voiced a desire to better understand Ms. Martinek's concerns about conflict of interest and ensure that all board members are on the same page. She also expressed her opinion that the five Planning Board members are capable of making decisions irrespective of who stands before the board.

Ms. Joubert discussed a specific statute that the town has adopted about "special municipal employee status" that recognizes board members may appear before another town board in their professional capacity as an attorney, engineer, financial consultant etc. and that it does not constitute a conflict of interest. Ms. Martinek suggested that, when the landscape architect and the building architect work together and/or at some point are paid by another member of the board and they are all voting together, it seems quite different than what Ms. Joubert is explaining. Ms. Joubert commented that it is not uncommon for board members to recuse themselves when it is appropriate to do so. She also agreed to investigate term limits on other boards and look into imposing them for the DRC. Ms. Capobianco indicated that she would not be opposed to term limits and asked Ms. Martinek if instituting

term limits would eliminate the issue of conflict of interest. Ms. Martinek indicated it would not, but it would at least provide the ability to re-evaluate the composition of the board. She emphasized that, unless a DRC board member steps down, we are stuck with what we have. Ms. Capobianco stated that if one of the DRC members acted in an inappropriate way or outside of scope, or ignored a conflict of interest situation, she would expect that it would be reported and action would be taken. Ms. Martinek reiterated that she is not making accusations but is simply wondering about the optics of it. In response to a question from Ms. Capobianco about whether she had concerns about any other appointee, Ms. Martinek indicated that she is concerned about the citizen representative. Ms. Gillespie suggested that, if the board does opt to impose term limits, it should apply to all sitting members. She also agreed that rotating board members is beneficial but it is also important to have some historical knowledge, and reiterated that she would support a 3 or 5-year term limit. Ms. Gillespie commented that, just because the DRC approves a project, it does not require the ZBA or Planning Board to do so. Ms. Poretsky suggested that terms should be longer, perhaps 5 or 6 years. Ms. Martinek commented that a re-evaluation may be all that is needed without imposing hard and fast term limits. Ms. Capobianco voiced concern about impacts and asked Ms. Joubert to investigate.

Ms. Martinek discussed the duplex waiver in the bylaw. She noted that, at the DRC meeting, consultant Judi Barrett seemed surprised by the existence of the waiver in the bylaw pertaining to duplexes and strongly recommended against it. She also stated that Ms. Barrett suggested that the Planning Board be straightforward if the intent is not to grant waivers, so as not to unnecessarily inconvenience applicants. She requested that the matter be further discussed following conclusion of the duplex hearing currently before the board.

Ms. Gillespie noted that she and Tom Reardon were the only DRC members in attendance at the board's recent meeting. She confirmed that Ms. Barrett was surprised when she learned of the duplex waiver and had discussed why she thought it should not be in the bylaw. Ms. Poretsky voiced her opinion that the board should further discuss it once the hearing on the proposed duplex project has concluded. Mr. Ziton agreed that the board should revisit the matter once the open hearings have been completed.

Ms. Martinek noted that the marijuana bylaw includes a footnote that no use variances are allowed and questioned why we would not do so with duplexes as she believes there is confusion and inconsistency with some projects going to the ZBA and others appearing before this board. In response to a question from Ms. Capobianco, Ms. Joubert noted that an applicant would go before the ZBA if they are looking to construct a duplex in residential zones where they are not allowed (RA & RB) or in the business or industrial areas where a use variance would be required. Otherwise, the project would appear before the Planning Board for a special permit. Ms. Martinek reiterated her concerns about a use variance being granted for residential areas where duplexes are not allowed. Ms. Capobianco recalled that a few years ago there was an effort to try to eliminate use variances in town and it did not pass.

Ms. Martinek questioned whether it would make sense to not allow use variances so that duplexes would only be addressed by the Planning Board in the interest of consistency. Ms. Capobianco noted that the ZBA must adhere to the same guidelines as the Planning Board. She also explained that an elimination of a use variance would mean that duplexes would never be allowed in those areas, so if we want to allow duplexes in appropriate locations in the RA & RB districts, it must be allowed as a permitted use with a special permit. She mentioned that there had been lengthy discussions and reviews and, as a board, it was ultimately decided that in those two districts where there are only a limited number of unique properties where a duplex might be appropriate, it made sense to have a use variance as opposed to a special permit that could be allowed for almost anyone. She also noted that, once an applicant overcomes the hurdle of a use variance, they are still required to conform to all of the

other duplex bylaws. After further consideration, members of the board agreed that it makes sense to leave the bylaw as it stands, however Ms. Martinek expressed desire to revisit the issue of the waiver once the open hearing is concluded.

Ms. Martinek questioned whether an additional meeting in November should be scheduled, given the timeline for submission of articles for the warrant. Ms. Capobianco stated that nothing that the board is contemplating is a dramatic revision, and suggested further consideration of the additional meeting at the November 14 meeting. Ms. Gillespie recommended that the board consider holding a second meeting in December.

Ms. Poretsky reiterated that the issue of hazardous waste facilities is important to her. She stated that, if other towns are siting these facilities with conditions, she does not see why we would not do so as well.

**ZBA Meeting on October 23, 2018** – Ms. Joubert discussed the following hearings on the agenda for the October meeting of the ZBA:

- 205 Brewer Street – application for a variance/special permit site plan approval for a dog walking business. The homeowner seeks approval to operate a dog walking business out of his home with the ability to board dogs occasionally.
- 386 West Main Street – application for a sign variance at Pendleton Square (adjacent to Carney Park) to allow a free standing sign with more than the maximum allowable individual signs (11 businesses).
- 9012 Shops Way – application for a sign variance for an Old Navy Store.

Ms. Poretsky noted that page 7-17 of the zoning bylaw refers to a development review team conducting a technical review and providing comments and recommendations to the special permit granting authority. She explained that it also stipulates that, in the event the ZBA is the special permit granting authority, the Planning Board shall also conduct a technical review and submit written comments and recommendations. She asked if the Planning Board could provide comments to the ZBA for the upcoming hearing for a special permit with site plan approval for the proposed dog walking business, and suggested that the board request a condition limiting the business to no more than three dogs, given that the property is located in a residential district. Ms. Joubert noted that more than 3 dogs would result in the business being considered a kennel, which is not an allowed use in that zoning district. Ms. Poretsky indicated that she would still be in favor of including this as a condition in the decision. Ms. Capobianco commented that the neighbors will know if the applicant exceeds the 3 dog limit and can contact the Zoning Enforcement Officer who can shut the business down for noncompliance.

Ms. Poretsky also voiced her desire to include a condition stipulating that the special permit runs with the owner and not the land. Ms. Joubert explained that this would need to be in the zoning bylaw in order to change how the special permit runs, per Town Counsel. Ms. Capobianco asked Ms. Joubert to provide copies of Town Counsel's opinion on this issue. Ms. Poretsky indicated a desire to possibly add this to the 2019 Town Meeting warrant. Ms. Capobianco cautioned that the board cannot single out one particular type of business, and this would have to apply to all or none. She commented that such a

regulation would not make sense for other types of businesses and would impede an owner's ability to sell a business.

Mr. Ziton asked about the dental office that has a sign variance for the existing location and asked if a future property owner would benefit from that variance. Ms. Joubert agreed to check into the matter with Mr. Frederico. Ms. Poretsky asked Ms. Joubert to confirm Town Counsel's guidance, since the information provided by the Central Massachusetts Regional Planning Commission seems to imply that a decision can include a condition stipulating that a special permit would run with the owner and not the land. She suggested that, if we determine that it can be included as a condition, the board should include it in a comment letter to the ZBA regarding the dog walking business. Ms. Capobianco stated that she is not sure she could support the singling out of a specific business or industry. Ms. Gillespie supported the proposal to provide a comment letter requesting a condition to limit the business to no more than three dogs. Ms. Capobianco stated that doing so would be superfluous since exceeding three dogs would result in the business being classified as a kennel and would require compliance with an entirely different set of rules.

An audience member asked if the three dog limit would include the homeowner's own dogs. Ms. Capobianco noted that this would be a question for the ZBA, since this matter falls under their purview.

Ms. Poretsky indicated that she would like to include a condition limiting the business to no more than three dogs at a time. Mr. Ziton asked if there are regulations limiting the total number of dogs onsite at any time. Ms. Joubert stated that the Board of Health has regulations about animals and pets, but she is not certain about any limits on the applicant's own dogs. Ms. Martinek agreed that a condition may be warranted.

After further discussion, Ms. Poretsky indicated that she would be agreeable to not including a condition on the number of dogs but she would like to see if it is possible to impose a condition stipulating that the special permit runs with the current owner. Ms. Capobianco voiced her belief that the law prohibits the board from singling out industries with respect to whether a special permit runs with the owner or the land. Members of the board expressed a desire to review the issue.

Ms. Martinek questioned what would happen if the applicant exceeds the limit of three dogs. Ms. Joubert explained that the Zoning Enforcement Officer would investigate. Ms. Capobianco suggested that, whether there is a condition in the decision or not, if the applicant intends to have more dogs, he will simply do so until there is a complaint.

Ms. Poretsky agreed that a comment letter about limiting the number of dogs is not necessary. Ms. Gillespie suggested that the board re-evaluate the issue at the next meeting.

**Following a motion by Michelle Gillespie, seconded by Kerri Martinek, the meeting was adjourned at 9:15PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary