



TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 02.02.2021

**Planning Board
Zoom Meeting Minutes
January 5, 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); Robert Frederico (Building Inspector); Fred Litchfield (Town Engineer)

Chair Martinek called the Zoom meeting to order at 6:30 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, S18, 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 not be taken. The process was explained.

Member and Staff roll call was taken: Anthony Ziton, Mille Milton, Amy Poretsky, Michelle Gillespie, Kerri Martinek, Kathy Joubert (Town Planner); Robert Frederico (Building Inspector); 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

The applicant requested a continuance to February 2, 2021 at 6:30 p.m.; Ms. Milton made a motion to continue the Continued Public Hearing for 425 Whitney Street Special Permit Site Plan Approval and Special Permit per Groundwater Protection Overlay District to February 2, 2021 at 6:30 p.m.; Ms. Poretsky seconded; roll call vote: Ziton-aye; Milton-aye; Poretsky-aye; Gillespie-aye; Martinek-aye; motion approved.

Discussion with Attorney George Pember RE: Rezoning of 37 South Street: Attorney Pember attended to give a brief overview tonight and would like to come back to the next meeting with specifics; the building principally houses law offices. When the current zoning was created and district dividing lines set, the line came just north of the property line and put the property in residential instead of downtown business (even though it has been used commercially for over forty years). When a new tenant comes in, they have to apply to the ZBA for a Special Permit. The owner is looking to relocate the boundary lines to include this property in Downtown Business zoning district so they don't have to go through the process of applying to the ZBA every time there is a new business in the building. Mr. Ziton said it looked as though it was

excluded intentionally. Ms. Gillespie said in 2009 as they were doing the rezoning, some of the downtown lots were split; the use was always commercial, they redrew the lines because half were in commercial and half in residential. Attorney Pember said the zoning subcommittee took a property that was used commercially for years and turned it into residential. He believes it was unintentional. Ms. Poretsky asked if there was proof that it was in the commercial district previously; Attorney Pember said there was. Ms. Martinek asked why do it this year. Attorney Pember said the owner came to him and said it is a cumbersome process every time he gets a new tenant. Ms. Joubert will look at the 2009 rezoning and Attorney Pember will work with the assessors. Ms. Martinek asked about spot zoning. Ms. Joubert said this particular parcel is adjacent to a commercial zone; she will check what it was previously zoned as, but given the fact that it abuts commercial and has been historically used a commercial parcel since the 1950s, this is not spot zoning. This lot would be easy to rezone. It would be one zoning bylaw sponsored by the board to rezone this particular property and make a map change, it would all be part of one article. Mr. Ziton again noted that it appears to be carved out of the business zone, and from a historical perspective questioned if there was a reason why it wasn't included. It will be discussed later this evening as part of the bylaw discussion and Attorney Pember will be informed of the decision.

Old/New Business:

Review of 0 Bartlett Street Special Permit and Site Plan Decision – The board reviewed Town Counsel's suggested revisions. Ms. Joubert talked about Town Counsel's comments and questions. A vote on the final edits of the decision based on the draft that was discussed at tonight's meeting is needed. Ms. Joubert will make the changes, send it Ms. Martinek, and Ms. Martinek will sign it.

Ms. Poretsky made a motion to approve the Decision as amended for the Special Permit and Site Plan approval for 0 Bartlett Street; Mr. Ziton seconded; roll call vote: Ziton-aye; Milton-aye; Poretsky-aye; Gillespie-aye; Martinek-aye; motion approved.

Consideration of Minutes (10.20.20,12.16.20) – Mr. Ziton made a motion to approve the 12/16/20 meeting minutes as amended; Ms. Poretsky seconded; roll call vote: Ziton-aye; Milton-aye; Poretsky-aye; Gillespie-aye; Martinek-aye; motion approved.

Ms. Milton made a motion to approve the 10/20/20 meeting minutes as amended; Ms. Gillespie seconded; roll call vote: Ziton-aye; Milton-aye; Gillespie-aye; Martinek-aye; motion approved.

Discussion RE: Traffic Concerns – At the February 16th Planning Board meeting Sujatha Krishnan, Transportation Program Manager, Central Massachusetts Regional Planning Commission (CMRPC) will attend to discuss the regional transportation issues involving warehouse development and specifically talk about conditions in decisions from other communities that have been successful that the board may or may not want to consider. An email will be sent to the BOS/DPW/Police/Fire/ZBA inviting them to attend; the meeting will start at 6:00 p.m. Ms. Gillespie asked if CMRPC knew of any future transportation information such as autonomous vehicles, drone technology, etc. Ms. Joubert had not discussed that with her since the board's focus was on traffic and traffic mitigation. Mr. Ziton said the public would want to comment; how could it be productive to all? Ms. Joubert commented that only Ms. Krishnan would be in attendance and was not made aware that there would be an open-ended dialogue with the residents. Ms. Krishnan is specifically attending to speak to the board in general terms related

to warehouse traffic issues; she is not aware of local road issues nor specific Northborough issues. The DPW Director/Town Engineer/Police Chief are working daily on traffic issues. The Planning Board has a very limited scope and authority about placing conditions on Special Permits; some of the traffic issues they are contemplating are much larger issues and not necessarily with the Planning Board. Ms. Gillespie did not have an issue with limited resident comments. Ms. Martinek will speak with Ms. Krishnan at the next CMRPC meeting.

Ms. Milton asked if the noise study for 330 & 350 Bartlett Street had been received yet. Mr. Frederico was told he would receive it soon; he is hoping for this week and reminded the Board it is a baseline sound study to establish noise levels pre-occupation of the tenants.

Town Meeting/Zoning Bylaw Amendments – The Board members agreed signs and duplexes, as well as sober houses will not move forward this year.

Contractor's yard was discussed extensively. Ms. Poretzky added "Landscaping Yard and Storage Yard" and updated the definition; it pulls out sales aspect; there are other definitions in the bylaw that include sales. She also added "Commercial Condo". Ms. Joubert commented that Condo is a form of ownership and doesn't pertain to zoning. She wanted to clarify with Ms. Poretzky that her goal is that a contractor's yard can only store equipment and not run their business out of it. Ms. Poretzky is trying to separate a contractor's yard, which according to other towns, is a premise to store the materials they use to do a job. Ms. Joubert said if something is wholesale, it is not retail. In order to formulate a better bylaw, staff needs to know what it is they are trying to fix with the present definition, which Ms. Joubert has not yet heard anyone identify. Ms. Poretzky wants a more specific definition so it is not a catch-all for everything; it is too vague and needs to be more black and white. Ms. Joubert asked if her problem was with contractor's yard or grandfathering in MA because they are two completely different concepts. Pre-existing non-conforming is through state law. She reiterated Ms. Poretzky has an issue with how staff defines certain businesses in town. If it is the definition of a contractor's yard that needs to be changed, that is an easy fix.

Ms. Martinek commented that she liked the idea of different levels with Commercial Condos. Ms. Gillespie said the contractor's condo would be more of how a building is used inside; it could also be in a commercial area as well as in an industrial area, they would not have the open space. Ms. Milton asked what are we eliminating and what problems are we creating tightening up the definition. Mr. Frederico asked what they are trying to fix, the contractor's yard or is the argument for tightening up the pre-existing non-conforming language; Ms. Poretzky said she was trying to do both. Ms. Gillespie's concern was where to put the small contractors. Mr. Ziton asked do we want to continue to build metal shell buildings and have lots that are filled with many trucks in the business district or do we want to filter those types of businesses in an industrial setting; he thought they should go in an industrial setting; it needs to be defined better. Ms. Joubert said if they are specifically talking about Southwest Cutoff or West Main Street and don't want a certain use there, the Use Table needs to be amended. If the contractor's yard is the problem and want it to be for storage only, that can be fixed as well. If they are trying to make a contractor's yard into something different by expanding it, that's broadening what it is. Ms. Joubert was still unsure of the direction the board wants to take. It appears that the board wants a new definition of a contractor's yard, wants it to be more limited to only storage of equipment, and to keep it in the industrial district. Ms. Gillespie thought it would be worthwhile to discuss it with the ZBA. Mr. Frederico did not have a problem with it being a Contractor's Yard/Landscaping Yard/Storage Yard but said by tightening it, what are you

alienating down the road. Ms. Martinek said to consider anything we would be alienating by changing the language.

Craft Brewery – Ms. Joubert is awaiting input from other staff members regarding water usage, liquor licenses, and potential Board of Health regulations for serving of food. She put a call into the ABCC; the state issues licenses for breweries, not the towns. When she receives the information, she will email the board.

Use Variance – There was discussion about narrowing down the list of prohibited uses that Ms. Poretsky would like to insert back into the zoning bylaw. Ms. Joubert discussed the way zoning is written now, if the Use is not in the Use Table, it is prohibited. Ms. Poretsky stated it doesn't work that way because the ZEO can find a section to fit it under. If you now create a list of prohibited uses and a use(s) was unintentionally not included, does that mean that use is allowed or prohibited? Use variances are allowed in Northborough. If the Use Table is changed to now have prohibited uses, what happens with the uses not on the table? Do they then become allowed by omission or do we add language if we think of something? It has to be addressed if the board chooses to move forward.

Non-Conforming Use – Ms. Poretsky wanted to add the intent and purpose to ensure that nonconforming uses will ultimately comply with the use requirements of the Zoning By-Law. She also considered updating the bylaw so if it changes or expands it triggers the non-conforming use bylaw, or consider not allowing changes or expansions. Per MA Law, local governments can “freeze” structures and uses. At 50 Southwest Cutoff, the buildings were demolished and it was expanded. Why didn't the expansion trigger the Non-Conforming Bylaw Section 7.08? She wanted to ask Town Counsel why and how the bylaw could be better written so it would. Ms. Milton said we could start there before rewriting a non-conforming bylaw. Mr. Ziton thought it was worth pursuing.

Ms. Martinek asked Ms. Joubert if it was clear what the board was trying to do? Ms. Joubert said she needs to have identified what the problem is they are trying to fix in order for her to write bylaw language. The Attorney General's Office approved changes in 2018 to Northborough's nonconforming language. Is this the language that you would like to change this year? Ms. Martinek said we want to know how to trigger a non-conforming special permit so there is no expansion problem. Ms. Joubert said if that is the question, the Building Inspector/Zoning Enforcement Officer asked and answered the questions when raised about 50 Southwest Cutoff. He made the determination that it was going from one non-conforming use to another non-conforming use and did not see it as more detrimental to the neighborhood. The ZBA stood by his interpretation; the question was asked by the ZBA to Town Counsel was his interpretation correct, to which Town Counsel responded yes. She understood Ms. Martinek to say when any new non-conforming use is replacing an existing non-conforming use, wants it to go to the ZBA. If correct, a bylaw can be written to say that. Ms. Poretsky commented that the MA State Regulations say the extent that the non-conforming structure or use may be extended, altered or changed is left to discretion of the local legislative body and wondered why Mr. Frederico was in charge to go through the Powers Test and not the ZBA. Mr. Frederico said (1) as the Zoning Enforcement Officer, he gave it the Powers Test; the attorney for the town confirmed it; (2) the ZBA could have voted the other way; (3) he understands the concerns of the neighbors, but both West Main Street and Southwest Cutoff were in existence and operating before any of the other houses came into town; and (4) if Ms. Poretsky is really upset about the 50 Southwest Cutoff Decision, why doesn't she appeal it in court. She said she was just trying to figure out why our bylaw didn't trigger it.

Ms. Joubert said in order to write a bylaw, she needs to know what is the problem and where do we want to go with it. Is the problem that the board no longer wants non-conforming uses to continue in town? A possible remedy is that every time someone looks at a grandfathered site, they need to go to the ZBA. She did not know if that was legal. Ms. Poretsky wants to ask Town Counsel if he didn't think it triggered going to the ZBA, then what would cause a trigger. The board needs to find out answers for their options.

Ms. Poretsky had some questions for town counsel and will provide copies to the Board and staff. Once staff receives the questions, it will be forwarded to town counsel. Ms. Poretsky had also modified her previous draft language and will send that to staff also.

Regarding accessory dwelling units, Ms. Martinek would like to change ADU from a special permit to an allowed use in RA and RB in the Accessory Use Table.

She added "two-family dwelling applications" to the other areas where they are the Special Permit Granting Authority, taking away the need to go before two boards.

Regarding the Groundwater Special Permit, she added language that the adverse effects don't outweigh the beneficial impact. She will forward her proposed language to staff to share with the Board.

Ms. Martinek asked Mr. Litchfield what the minimum lot size is for duplexes if it contradicts the lot size for Groundwater 3. Mr. Litchfield said there is no minimum lot size in Groundwater 3; it is based on septic load.

Concerning Attorney Pember's earlier discussion about rezoning at 37 South Street, the board did not feel they could accommodate request at this time because of time constraints and wanted time to research the history, take a look at past and present zoning maps, and wanted to look at the long-term picture for that area of town.

The next Planning Board Meeting is scheduled for January 19, 2021; the next ZBA Meeting is scheduled for January 26, 2021.

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

The meeting was adjourned at 9:57 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary