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# TOWN OF NORTHBOROUGH PLANNING BOARD

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Approved 04.20.2021

## Planning Board Zoom Meeting Minutes March 16, 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, 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 be taken. The process was explained.

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

### Public Hearing for 1 Lyman Street:

Applicant: Desheng Jiang, Cable Matters Inc.

Engineer: Connorstone Engineering

Date Filed: February 3, 2021

Decision Due: 90 days from close of hearing

Attorney Marshall Gould, Vito Colonna (Connorstone Engineering), Jeff Jiang (Owner/President of Cable Matters), Alok Dhanda (Building Architect), and David Vernon (Landscape Architect) were present. The public hearing notice was read into record. Information was received today that the board has not yet reviewed. The need for a special permit for light manufacturing was discussed; both warehouse and light manufacturing require special permits from the Planning Board. Ms. Martinek asked which use was approved by the ZBA; Attorney Gould said industrial use. The question is would they be considered light manufacturing. The only words that might apply are "packaging" and "hand labor"; everything that comes to the warehouse is already packaged. Shipping consists of placing the already packaged material into a box. If the board views that as packaging, they would need the second special permit. It also changes the amount of parking; they want to go with less parking because they don't believe it is packaging.

Ms. Martinek asked about the renderings. Ms. Joubert said Design Review is still going through the process. Ms. Poretsky asked if they could include the required items per the Planning Board Rules & Regulations for a site plan. Ms. Martinek asked about the demo permit. Ms. Joubert said it has not been applied for yet but was approved by the Northborough Historic District Commission a few years ago. Mr. Frederico did advise them to go back to the Historic District Commission to refresh them with the update plans for the site.

Mr. Jiang gave a PowerPoint presentation. They offer cable, adapters, and docking stations to networking products. There are eight employees including himself. As they expand in the future, the maximum number of employees will be 25-30. They do not package or manufacture anything. They have a kitchen area and conference room. The reason for the move is for more space for testing of their product. He said with regard to traffic, currently they have one delivery and pickup by the post office and one delivery and pick up by UPS daily. They have a trailer delivery once every two months. As the business grows it could be once a month. He said his business is 98% Amazon; only 2%-3% in the Southborough warehouse are customer sales.

They are meeting again with Design Review Committee on March 30<sup>th</sup>. Ms. Gillespie commented that regarding site plan approval, the Committee had no issues. The use does about a residential district which is located across the street. They are trying to make the transition, from an architectural standpoint, from residential to industrial. The applicant has come back with different recommendations which the board will try to implement at their next meeting. They have also done a great deal of work with landscaping to transition from residential to industrial. Ms. Martinek commented that there was a letter from abutters who had concerns. Ms. Gillespie said they received an email just before the meeting. Ms. Joubert was able to respond to one of them extensively. Ms. Gillespie wanted the board to understand that there is nothing they feel can't be worked out with Design Review; it is how do you make the transition from residential to industrial to appease the applicant and work with the residents; everyone has been working together and is cooperative. Ms. Joubert will work with Mr. Frederico to determine the final use. Mr. Colonna said they will have to go before Conservation.

Ms. Milton made a motion to continue the public hearing for 1 Lyman Street to April 20, 2021 at 6:00 p.m.; Ms. Gillespie seconded; roll call vote: Milton-aye; Ziton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

Continued Public Hearing Special Permit Common Driveway Application for 85 and 95 West Street, Map 57 Parcels 34 and 35, to construct a common driveway serving five lots:

Applicant: Brant Viner and Margaret Harling  
Engineer: WDA Design Group  
Date Filed: December 23, 2020  
Decision Due: 90 days from close of hearing

Michelle Gillespie recused herself from the public hearing. Brian Waterman (WDA) was present. Information was received today which the board has not reviewed yet. Attorney Kablack drafted the covenant, easements and maintenance agreement which were recently reviewed by Town Counsel; changes were instituted by Attorney Kablack and agreed to by both attorneys. Mr. Waterman said they met with Mr. Litchfield and Ms. McDonald to review the comment letters; their final response went out today with the revised plans, updated hydro cad and stormwater management report and Operation & Maintenance Plan. Concerns from the board were managing stormwater, the water line, and hydrants; they were all addressed with the DPW and Fire Department. The water line will be extended past the common drive and terminate with a hydrant at the Cherry Street intersection. They wanted water booster stations for each home; it has been added to the plan. Additional soil testing was done for the underground stormwater system. The abutter's peer reviewer had raised questions on clarity issues as far as what was the existing ground elevation where they tested? Attorney Kablack joined the meeting at this point. There was clarity on how they determined the depth to groundwater and if they were meeting the DEP 2-foot separation to groundwater. The testing locations were field staked, and they were able to

update it with actual ground elevations; the plans were updated to show they are meeting the DEP 2-foot offset to stormwater. They are confident they addressed all the major questions for both the Planning Board and Conservation Commission. As far as Conservation, Mr. Waterman said only the first 400-feet of the common drive, some of the lower end of stormwater and the single-family driveway on Lot 1B are within jurisdictional areas of the buffer zone. The covenant and easement will be recorded and included in every deed. Ms. Poretsky said a condition mentioned at the Conservation Meeting that could be in the covenant is that the common drive be constructed 100% before a Certificate of Occupancy is issued for any of the houses and asked if it was in any of the documents. Attorney Kablack said that standard it is not in the covenant. They would prefer to address issues relating to the Conservation Commission and stability of stormwater structures and the driveway itself, that they get to a level of base course improvements with functioning stormwater systems. They would not want to complete final pavement on a roadway where they are still constructing lots within the development; it destroys it. If they could come up with a standard short of full completion to some level of base level standard, that would be acceptable. Ms. Joubert said they will work out some suggested language for the board to include in their decision. She also said if the board closes the hearing while Conservation is still reviewing and the applicant is required to revise the plan, it is all part of the process; they would have to come back before the board. Attorney Kablack said they should have an understanding when they come back as to whether they need to continue.

Mr. Ziton made a motion to continue the Public Hearing Special Permit Common Driveway Application for 85 and 95 West Street to April 20, 2021 at 6:00 p.m.; Ms. Milton seconded; roll call vote: Milton-aye; Ziton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

Michelle Gillespie rejoined the board at 7:04 p.m.

Continued Public Hearing Definitive Subdivision Application for 0 Bartlett Street, Map 51 Parcel 3 and Map 66 Parcel 16, to construct a four-lot subdivision:

Applicant: The Gutierrez Company  
Engineer: Allen & Major Associates, Inc.  
Date Filed: December 17, 2020  
Decision Due: April 7, 2021

Attorney Donahue, David Robinson and Scott Weiss were in attendance. Ms. Martinek recapped what had transpired and acknowledged all documents/correspondence received since the last meeting. She attended a meeting along with Ms. Joubert and Mr. Litchfield with Town Counsel about the rules and regulations making sure the board is acting within their rights. One area discussed was the Conservation Regulations. Ms. Martinek said they also looked at the ownership component. The definition of an applicant and an owner in our rules and regulations say the applicant is defined as an owner of all land included and an owner is defined as the owner of record as shown by the records in the Worcester County Registry of Deeds. She said Attorney Doneski felt it would not be in excess of the board's authority to ask the applicant to provide something that acknowledges that there is consent that the MWRA's property is in the subdivision plan.

With regard to a resident concern about a possible conflict of interest with Attorney Donahue, it is not in the board's purview to investigate; it has been directed to the Town Administrator.

Attorney Donohue asked about the response from the Conservation Commission. Ms. Martinek said a memo was received dated March 11, 2021 from the Conservation Commission Chair, Greg Young. She

asked if this application had been before the Commission. Attorney Donahue explained that the Commission issued an Order of Conditions for essentially the same work that's included in the definitive subdivision, plus the 150,000 square foot building, plus the parking and access road, and have provided such. Ms. Martinek said the Commission never discussed the memo the chairman sent to the Planning Board and she was trying to clarify the memo. Attorney Donahue again clarified that the land, which is cited in the memorandum, is subject to an approved Order of Conditions for work as they have described previously; work far exceeds the work proposed in the buffer zone from this definitive subdivision plan; they have seen the land and the type of work to be done. It is also the strong preference of both the Commission and DEP that there be only one open Order of Conditions with regard to property for any development at any one time. Ms. Joubert commented that it is the process that the Commission goes through in accordance with Mass DEP. Ms. Martinek had concerns about the Phase 1 study that confirmed that are still RECs on the site and didn't know if the Commission had a chance to look at it. Attorney Donahue corrected for the record that the report provided by Sanborn Head did not refer to RECs on the property, it referred to RECs in the area of the property on other property of other owners where they had been a release and there was a responsible party undertaking the clean-up. Mr. Litchfield explained that what the Chairman and Conservation Agent were saying was that if the applicant was to submit the subdivision in order to get an Order of Conditions for that, they would have to get a Certificate of Compliance and close out the previous Order (DEP#247-1176) or amend it, which the applicant does not want to do at this time. The Commission is relaying their policy to not have two Orders on one piece of property open at the same time which is consistent with the DEP policy. Ms. Martinek asked if the Commission was aware of the Phase 1 study and was told the study is not before the Commission.

Attorney Donahue talked about the ownership which was more complex because the MWRA is not the actual owner of the property. Pursuant to the governing statute, rather than title conveying to the property when the MWRA was created in 1984, only care, custody and control of the property and management of the property was conveyed; it is still owned by the Commonwealth of Massachusetts. For reasons set forth, they thought a strict requirement of being the owner under the board's regulations, which is a different definition than the statutory definition of an applicant, would be unreasonable and unnecessary. To make sure that the parties who own the property, or in this case have care, custody and control of it, know about the submittal is covered in two different ways; one is the fact that they have submitted the 8M permit for the driveway which is essentially the same as the subdivision roadway as far as impacts upon the aqueduct with the only significant difference being the addition of the sidewalks on both sides as required by this board; there is evidence that they know of the process and have agreed to activity for vehicular crossing of the aqueduct. They further proposed to the board a specific condition of approval that the applicant will produce a new 8M permit at the time or prior to construction of the subdivision. It is the applicant's hope and intent for this site to build the driveway as shown on the site plan, not the subdivision roadway which is why they appealed the board's denial of that decision and asked for an expedited briefing schedule with the land court. They have, with the Conservation Commission Order of Conditions and the 8M permit as issued, the approvals necessary to do the project that is the desire of the applicant which is that driveway in some manner.

Ms. Gillespie commented on the conversation Ms. Martinek and Ms. Joubert had with legal counsel and asked Ms. Martinek if she would put that conversation in writing to the board members so they could better understand it; how it happened, and the Chair's take-aways; she felt it was worthwhile for them review it. She also wanted to understand the conversation about case law and the different interpretations. In all fairness as a resident of the community and as a Planning Board member wanted to hear from Town Counsel. Ms. Martinek clarified the point of the conversation was not to argue case law; it was about what was within the board's authority and it was made very clear that it was fair for the

board to request some proof or acknowledgment that the MWRA is aware that their land is shown on the subdivision application.

Ms. Gillespie recommended that if the board continues the hearing that legal counsel participate to advise them; the Planning Board has done that many times in the past. Lengthy discussions continued over providing the 8M permit as well as ownership of the property and obtaining a signature on Form C of the application.

Ms. Poretsky asked if they could build the accessible drive without a subdivision by giving themselves an easement over Parcel B. Attorney Donahue said what they could do is not the subject matter of this continued hearing; it is the application that a property owner is entitled to bring to subdivide their property.

Ms. Gillespie again recommended that if the board continues the hearing that legal counsel participate to advise them because she feels they are in a stalled position. Ms. Poretsky did not feel she was in a stalled position. Attorney Donahue would agree to continue the hearing as well as continue the Decision date in order for the board to benefit from legal counsel's feedback. Ms. Martinek was not convinced that they would be getting anything different; they have asked for proof of ownership many times and have not received it. Ms. Joubert's take-away from the meeting with Town Counsel was that it was reasonable to put in as a condition that the applicant must receive the 8M permit before receiving any building permits, occupancy permits, etc.; it wasn't that the 8M permit had to be issued ahead of time. Ms. Martinek suggested the 8M permit could serve as the proof if they did not get a letter or cosigner; Town Counsel said the owner of record should be able to issue an acknowledgment letter. Ms. Joubert commented that they received notification of the subdivision through the public hearing process.

Ms. Martinek asked the board how they felt about continuing. Mr. Ziton felt it is the responsibility of the Planning Board to have everything answered according to the rules and regulations for subdivisions. Ms. Martinek asked if there were further comments on the impact statement. The board had expressed concern that in some cases they were looking at reports about the warehouse and in some cases looking at the Parcel H-Way; the reports are very different. She asked if they are to consider it Parcel H-Way only or should they consider a warehouse is involved and asked for clarification. Attorney Donahue said the only application for approval is for the way itself. Any use of the land fronting on the way would be subject to further review and approval by this board or other boards when that happens. It is difficult, particularly where the use is not as clear, for example, as would have existed for a single-family residential subdivision, to try to understand what the impact statement relates to; a road itself doesn't do anything. Ms. Martinek said the traffic report and Phase 1 refer to the warehouse, but the application is for the roadway, and asked how they are to interpret it. Attorney Donahue said the regulations look for a traffic impact analysis for an approval that's limited to a roadway and asked what type of data does the board expect one to use to be able to extrapolate that analysis? Ms. Poretsky said if they are asking for a subdivision of four lots, suggested providing a worst-case scenario on four lots. The rules and regulations call for impact statements for traffic, hazards, and environmental hazards which is hard to do when there is only a road. Ms. Martinek said it sounded like they were only applying for the subdivision because of the denial of the previous plan, which makes it hard for them to present the application and hard for the board to interpret the impact. Mr. Ziton commented that the traffic situation on Bartlett Street is changing as the buildings are filling up and not sure if that was considered in impact report. Ms. Milton asked if there would be opportunities to further subdivide some of the lots or would it only be four lots and can it be conditioned to be limited to four lots.

Public Comment: Attorney Tymann spoke for John Wixted (2 Stirrup Brook Lane). He sent letter about the rules of subdivision requirements that require all owners to be applicants. The board has the discretion to not allow the applicant to have a range of options but rather to require them to meet what is a very straightforward application. Kristen Wixted said Mr. Donahue says it's the same information and the same plan, but if so would already have the thumbs up from the MWRA; to her it seems they are trying to get away with something. Michael Bernzweig (4 Jenkins Drive) said a valid application needs to be submitted and this application is not appropriate .

The waiver request that the owner does not have to be identified as the applicant on Form C or sign it was discussed. The board can waive strict compliance with the subdivision rules and regulations where such action is in public interest and not inconsistent with the intended purpose of subdivision control law. The applicant expressed that the reason it is in the public interest is so as not to deprive the private land owner of the ability to subdivide its land due to the absence of the signature. Attorney Donahue said at least one member earlier had suggested a continuation so they can have direct discussion with Town Counsel. It was also suggested that some form of other written documentation might help the board in reference to a letter from the MWRA that they were aware of the subdivision filing with no objection. If the board believes that would be helpful in deciding either the waiver or final disposition, they will endeavor to see if that is a possibility from different state agencies. If such a letter were to exist, it would give an opportunity for board members to give it fair, impartial thought prior to voting on the technicality of a waiver. Ms. Martinek asked the board if they were willing to waive the requirement of ownership (the applicant is willing to attempt to obtain a letter or signature on Form C). The majority allowed for the applicant to get a signature. Ms. Milton also asked if they could get a copy of the original 8M permit application; Attorney Donahue will check with his client.

Ownership is the outstanding component. Town Counsel will be asked to be present to provide guidance. The majority of the board did not have an issue with the Conservation Commission component.

Mr. Zitton asked for clarification on the two unbuildable lots. He was also concerned that the 8M permit may be revoked at any time. Lastly, he thought the impact report is out of touch with reality in terms of what's going on in that area today. Ms. Joubert addressed his unbuildable lots concern and said Town Counsel was asked and his response was that you can create an unbuildable lot as long as it's labeled as an unbuildable lot. Ms. Martinek asked if that was found on a past subdivision plan. Ms. Gillespie will provide her that information. Ms. Poretsky asked if a staff memo was needed concerning the environmental impact. Ms. Joubert the town is not responsible for any of the spills; the follow up on those spills is between the property owner and DEP; they determine if a phase two is needed; there is no action the town needs take.

Ms. Poretsky commented that it is a subdivision road and there are a couple of lots; they talked about traffic; they're only talking about the road with no application. To fully look at the traffic like it's mentioned, thought they would need a report that shows the impact if lots H1, B2 and B1 were developed. Ms. Martinek didn't think the traffic plan properly reflected what is actually there, but not sure how to solve that because this is not the application of the desired outcome; it is an application in lieu of the desired outcome. There is a general issue with understanding the impact; a continued struggle noted since the preliminary. Ms. Milton asked if the development of this lot whether it suits the qualifications for an industrial campus development and was told it is something the applicant would choose to do.

John Wixted commented on the request for waiver saying the application is full of holes; the bylaws clearly state that ownership is ownership; allowing them to have a waiver this late in the process is not consistent with the zoning bylaw or the application process.

The majority of the board is not willing to waive the ownership requirements as outlined in the rules and regulations, but is willing to give the applicant the chance to get the co-owner signature on Form C.

Ms. Poretsky made a motion to continue the Public Hearing Definitive Subdivision Application for 0 Bartlett Street to May 4, 2021 at 6:00 p.m.; Ms. Gillespie seconded; roll call vote: Milton-aye; Ziton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved. Ms. Poretsky made a motion to accept the Decision due date extension to May 19, 2021; Mr. Ziton second; roll call vote: Milton-aye; Ziton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

### **Old/New Business**

Consideration of Minutes (01.19.21, 02.02.21) – Mr. Ziton made a motion to approve the January 19, 2021 as amended; Ms. Poretsky seconded; roll call vote: Milton-aye; Ziton-aye; Gillespie-aye; Poretsky-aye; Martinek-aye; motion approved.

The February 2, 2021 minutes were tabled to the next meeting.

Discussion RE: DLTA (District Local Technical Assistance) – Ms. Joubert and Ms. Martinek had discussed the District Local Technical Assistance (DLTA) hours that the Planning Commission helps the communities with; they have to be applied for. One of the suggestions from Central Mass after the traffic presentation they made was to conduct a neighborhood audit; they could assist the board with that. An application would need to be submitted by March 24<sup>th</sup>. The board agreed to move forward with filling out the application to assist with the audit.

Upcoming Planning Board Meetings – April 6, 2021: Public Hearing Proposed Zoning Amendments, Public Hearing for Revised 399 Hudson Street Application, Continued Public Hearing for 425 Whitney Street. **April 20, 2021:** Continued Public Hearing Proposed Zoning Amendments.

The 2021 Annual Town Meeting May 1, 2021 @ 9:00 a.m.

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

The meeting was adjourned at 9:51 p.m.

Respectfully submitted,

Melanie Rich  
Board Secretary