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TOWN OF NORTHBOROUGH PLANNING BOARD

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

Approved 08.17.2021

**Planning Board
Zoom Meeting Minutes
June 15, 2021**

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

Members Absent: None

Others Present: Kathy Joubert (Town Planner); Attorney Mark Donahue

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: Extension granted to July 7, 2021

Attorney Donahue was present. Ms. Martinek asked if he had anything new for the board since the last time we met. Attorney Donahue stated he wanted a re-cap: He said they (Gutierrez) completed the review with the board concerning the technical components of the subdivision in February. The February 16, 2021 minutes reflect that the board received a report from the Town Engineer that the plan met the subdivision rules and regulations. There were no further comments from him or the DPW. An issue arose later in February with regard to the requirement of whether the MWRA, is as the owner of the aqueduct, had to sign the application. The applicant was requested by the board to see if they could have the MWRA execute Form C and/or some letter that would indicate their consent. The applicant has tried to get that and has been unsuccessful. The applicant was advised as a matter of policy, the MWRA does not involve itself in local permitting, leaving local officials to do that. It has its own permitting through the 8M process that the applicant has talked about before. The applicant does not have the Form C in that fashion.

Attorney Donahue did not think that should lead to the denial of the plan for the following reasons: he feels the plan does comply with the subdivision rules and regulations and, in his opinion, that is the purpose of the board's review. In his opinion. The applicant has demonstrated to the board that there is no question of the legal right to cross the aqueduct. He stated the board was provided a copy of the right of easement and the plan of easement by letter of February 11, 2021. The applicant has indicated to the board that the previously issued 8M permit for the driveway, that was part of the denied site plan approval and given a March 10, 2021 letter, explains why the case law that talks about the need for ownership is in cases in which there is a dispute on ownership. The applicant has demonstrated that the relationship between the 8M permit issue shown for the driveway shown on the site plan is essentially the same as the subdivision roadway that was in the letter of March 11, 2021 in which Allen & Major did an overlay to show the board the areas involved; they are essentially the same but for the requirements of sidewalks which is mandated in the subdivision requirements. The applicant has proposed a condition of approval so there is no risk that they could start construction without the consent of the MWRA; they drafted a

specific condition that construction pursuant to the subdivision could not commence until they provided the board and they had an opportunity to review an 8M permit that made specific reference to the subdivision. Attorney Donahue said if the board approves the project with that condition, he does not see it as a risk in any fashion that the technical owner of the land (technically it is not the MWRA; technically it is the Commonwealth of Massachusetts) hasn't signed because they will have signed and indicated their approval to the board before construction starts. He thought that was a better result than a denial based upon the highly technical issue on a plan that he feels meets the subdivision rules and regulations which will lead to inevitable further litigation with a cost to the applicant and a cost to the town which is undue need in this particular case.

Ms. Milton said the letter received today is an acknowledgement that they issued a permit previously in July 2020. Attorney Donahue said as a matter of policy, the agency does not weigh in on applications pending. They will report on permits previously issued. Ms. Martinek said the letter is for the 8M for the warehouse that the board previously denied. She wanted to acknowledge letters that were received today. Rachel Armstrong (10 Hemlock Drive) had issues not knowing a few things on the application itself, affic studies, significant safety concerns, and requested the board deny it until they have all the necessary information. John Wixted (2 Stirrup Brook Lane) commented on the regulations and that the applicants must be the owner of all the land included in the proposed subdivision. He had concerns with public safety and truck traffic and a concern for a subdivision on the area of groundwater overlay district.

Ms. Martinek said the board had requested she share some of the references she made from her meeting with Town Counsel and to document it for the board. She read the notes that will be submitted as part of the record. Attorney Donahue did not disagree with Town Counsel's indication that it is fair to get the signature from the Commonwealth of Massachusetts and indicates there are two ways to do that: one is in advance; the other is conditional. He claimed that the applicant has proposed conditionally in light of the policy of the MWRA that they will get it prior to any activity on the subdivision; in his opinion, that is consistent with the subdivision control law which would indicate that the board does not have the authority to require the applicant to get another adjoining permit before approving a subdivision. He further claimed that the board can condition it, but not require it. There was discussion with Conservation in that regard. He stated that the Applicant is agreeing that if and when the subdivision is going to be constructed, they will first have to get overt approval from the MWRA of the specific plan that the board would adopt as part of the approval. As Town Counsel indicates, it is fair for the board to ask for it, and Mr. Donahue added that it would be fairer for the board to ask for it as a condition rather than to treat it as grounds for denial. Ms. Martinek clarified that Town Counsel did not position it as a condition, but rather written proof to the Board that the state was aware of the subdivision and that the Applicant may proceed with the plan as shown.

Ms. Gillespie requested that along with Ms. Martinek's minutes from the conversation with Town Counsel, Ms. Joubert's and Town Counsel's be included as well because she believes there is a misinterpretation. She believes Ms. Martinek's recap with Town Counsel is different than Ms. Joubert's. Ms. Martinek asked Ms. Joubert if she disagrees with her notes. Ms. Joubert's recollection was that the deed is proof that the MWRA owns the property and has owned it for multiple years. Ms. Gillespie said if Ms. Martinek's interpretation is going to be part of the decision, so shouldn't Town Counsels and Ms. Joubert's. Ms. Martinek clarified that the document she provided to the board included Town Counsel's exact statements, not her interpretation. Ms. Martinek said the hearing needs to be closed tonight. Ms. Gillespie did not want the hearing delayed but felt it was a meeting of three people and the only thing being included as part of the public record was Ms. Martinek's interpretation of the minutes. Ms. Martinek again said it was not an interpretation, it was written statement.

Ms. Martinek asked for public comment. Henry Squillante (72 Crestwood Drive) asked for a point of clarification as to whether Ms. Martinek received anything written from Town Counsel. Ms. Martinek said she did not. As the chair she can seek Town Counsel advice, which she did, and reported back to the board on the advice given to her.

Ms. Milton made a motion to close the public hearing for the Definitive Subdivision Application for O Bartlett Street; Ms. Poretsky seconded; all voted in favor; motion approved.

Section 10-28-010 “Action by Planning Board” states the criteria for the board's determination shall be the following: (1) Completeness and technical accuracy of all submissions. (2) Determination that development at this location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible natural disasters, traffic hazard or other environmental degradation. (3) Conformity with the design and construction standards of these regulations. (4) Determination, based upon the environmental analysis (where submitted), that the subdivision as designed will not cause substantial and irreversible damage to the environment, which damage could be avoided or ameliorated through an alternative development plan. The applicant did not have to submit an environmental analysis because there were four lots. (5) Conformity with all applicable zoning lot area requirements. (6) Consistency with the purposes of the Subdivision Control Law.

Ms. Martinek said there was substantial discussion about ownership. **Section 10-04-030 “Definitions”** state that the applicant must be the owner of all land included in the proposed subdivision. The definition is the owner of record shown by the Registry of Deeds. Ms. Milton thought getting the consent or the awareness from the owner is a critical piece proceeding with a subdivision plan. Mr. Ziton and Ms. Poretsky agreed. Ms. Martinek’s concern goes back to the preliminary. The 8M permit has always been a source of contention for the board. It was asked for since July 8, 2020. Part of the reason for denial of the preliminary included the 8M permit and lack of information pertaining to the roadway. The definitive was issued 12/17/2020. On January 19, 2021 the applicant confirmed that the MWRA had not seen the subdivision plan and they did not plan to obtain the permit; that theme was part of every hearing since then. The letter doesn’t make it clear that they know they are part of a subdivision application. It is significantly different than what this permit is for. Ms. Martinek felt there was ample opportunity to come back with the permit. Ms. Milton heard the MWRA doesn’t want to meddle in our local regulations, but one of our local regulations is that we need permission from the MWRA to do it and felt it is not wholeheartedly approached as a plan. Ms. Gillespie said the applicant has been working with the state, and the state’s purview is to make the 8M permit a condition as part of ownership. She thought the argument the board was putting forward was weak because the state is saying that their preferred method is to make it a condition as part of the decision.

Section 10-12-060 “Impact Reports” Ms. Martinek said there was continuous requests to help the board navigate the impact statements; some talked about the preliminary plan and some about the subdivision. Ms. Milton didn’t think it was ever cleared up. Mr. Ziton felt nothing has progressed since the last time they met and would have felt more comfortable understanding the impact of what could go there up front. Ms. Martinek said there was no evidence to help understand whether they were talking about the warehouse or the subdivision road.

Conservation Commission information was missing per **Section 10-20-070 “Conservation Commission Review”**.

Ms. Milton commented that Town Counsel said the board needed something that the MWRA is aware of this subdivision plan. Not receiving the requested information for ownership, Ms. Martinek felt the subdivision plan was fatally deficient.

10-28-020B(2) Ms. Poretsky said there was technical information for Parcel H, but there was also Parcel B that could be developed ~~on~~, but no information was received on the impact that would cause. Ms. Martinek said the numbers in the traffic report did not make sense and didn't seem realistic. (3) If looking at the road only, construction standards were met. (4) An environmental analysis is not applicable because there are only four lots. (5) Ms. Poretsky said by making the subdivision, they would be creating one non-buildable lot and one non-conforming lot. **Section 10-04-020 "Purpose"** Ms. Poretsky said we don't know what was going to be on the subdivision, so how can we know that it meets the purpose other than it is a road to nowhere. Ms. Martinek said if there is an issue of ownership and they haven't shown full authority to execute on the plan as presented, the purpose can't be met.

Section 10-04-050 "Waiver of Compliance". Ms. Martinek read in part the March 15, 2021 memo from Attorney Donahue requesting "...without prejudice and without in any manner waiving the position enunciated by the applicant from the previous memo... requested the board waive any requirement that the Commonwealth of Mass, the owner of the portion of land shown on the submitted subdivision plan as the right-of-way easement across the aqueduct. It went on to say that "in further support for the request for a waiver, I would note that the waiver would be in the public interest so as not to deprive the private landowner of the ability to subdivide his land without that signature and such waiver would not be inconsistent with the intent and purpose of subdivision control law". The board had previously discussed they were not interested in a waiver because it was not consistent with the intent and purpose of the subdivision control law.

With no further comments, Ms. Poretsky made a motion to deny the Definitive Subdivision Application for 0 Bartlett Street, Map 51 Parcel 3 and Map 66 Parcel 16, to construct a four-lot subdivision for being a fatally deficient subdivision application without adequately showing ownership and for not meeting the following criteria: (1) Completeness and technical accuracy of all submissions. (2) Determination that development at this location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible natural disasters, traffic hazard or other environmental degradation. (5) Conformity with all applicable zoning lot area requirements. (6) Consistency with the purposes of the Subdivision Control Law; in context with the discussions the board members had as part of the deliberation. Mr. Ziton seconded; roll call vote: Poretsky-aye; Ziton-aye; Gillespie-nay; Milton-aye; Martinek-aye; motion approved.

1 Lyman Street Decision Deliberation

Applicant: Desheng Jiang, Cable Matters Inc.
Engineer: Connorstone Engineering
Date Filed: February 3, 2021
Decision Due: August 30, 2021

The board deliberated the 1 Lyman Street application. Ms. Poretsky felt the applicant worked very hard with the Design Review Committee and stated the use was previously approved by the ZBA. The board's purview was to review the site plan. The applicant reduced truck bays from 2 to 1 and included significant landscaping. The lighting plan was not stamped by an engineer. If approved, a condition should be added to include the engineer's stamped signature and also show ~~on~~ that there is no spillover before the building permit is allowed. Ms. Joubert said that as part of the submittal there is a lighting plan which goes through

the Design Review. Lighting plans are not stamped by engineers because they are not involved with them; a designer usually does that. She also said there is zero spillover along the entire border.

Ms. Poretsky mentioned possible conditions that the board discussed:

- Hours of operation, including “lights out”, where the light poles turn off and only safety wall packs are on. 9 pm was discussed by the board.
- Remove the striping from 10 of the parking spaces closest to Lyman Street and paint “no parking” on the asphalt
- Landscaping to include the standard language
- No outside storage of goods around the loading dock area
- The fire chief shall approve the location of the fire hydrant prior to the issuance of a building permit
- The conditions from Fred Litchfield memo dated 3/16/2021
- If there is an opportunity to connect to sewer the applicant would do so
- The applicant should submit a statement in accordance with Section 7-07- 010 D. (4)(a)5, which requires an analysis by a technically qualified expert certifying that the quality and supply of the underlying groundwater resources will not be degraded to the point whereby a hazard to the public or ecological damage results

There was a letter from Fred Litchfield dated 3/16/2021 with conditions. She would like to incorporate his conditions into a decision and include if there was an opportunity to connect to sewer the applicant would. She possibly wants included that an applicant should submit a statement in accordance with Section 707 010D4a5 which requires an analysis by a technically qualified expert certifying that the quality and supply of the underlying groundwater resources will not be degraded to the point whereby a hazard to the public or ecological damage results.

Mr. Litchfield was not in attendance and will be contacted on the outstanding groundwater conditions as to whether they apply or were intended to be left in/out. Commercial drivers will be instructed to turn right towards Simarano Drive; there will be a “do not enter” sign and “do not exit sign” in that area. Ms. Joubert said the applicant agreed that the Lyman Street driveway would be exit only. Bartlett Street would be entrance and exit; tractor trailers can only exit via Lyman Street.

Ms. Martinek agreed that the applicant worked very well with the town because of the area and was appreciative. Because there is a variance, she would like it noted as part of the conditions the appeal must be settled. Because they presented a plan that works for that area and because they have to wait for the variance to be settled or ownership could change hands, Ms. Martinek was concerned and wants language added that is not overly restricted to the applicant, but also protects the town and the neighbors that if anything was to change, they would have to come back before the board. Town Counsel provided language that the board could include a condition that approval is for the project as presented in the application and supporting documents provided to the board with specific references to plans, statements and related materials, so that a change from the application approved would require modification of the special permit, adding that they would have to come back before the Planning Board for modification of the special permit. Ms. Poretsky suggested adding 3 additional crab trees to the middle of the 10-foot strip of grass that is currently between the two industrial parcels since she said there is supposed to be a 20-foot buffer. Ms. Joubert confirmed that the site design standards state that for any business or industrial use abutting another business or industrial use, an open space area “of up to 20-feet may be required”. Ms. Gillespie felt it was designed appropriately; Ms. Milton was fine with it; ~~Ms.~~ Mr. Zitton felt they did enough as far as landscaping.

Ms. Joubert asked if the board agreed that if Mr. Litchfield wanted to add the groundwater questions from Ms. Poretsky if they were omitted unintentionally, they will be added as conditions; the board agreed. Delivery hours will be conditioned from 9AM-8PM Monday-Friday.

Section 7-03-040 Special Permit “Criteria” was reviewed based on the conditions discussed. Having no issues with the criteria, the board felt the application meets the criteria for the special permit.

Ms. Milton made a motion to approve the special permit application for 1 Lyman Street with the following additional conditions to Fred Litchfield’s memo with conditions dated 3/16/2021 based on the grounds that it meets all seven Special Permit Criteria and for the reasons discussed as part of deliberations:

1. the light poles will shut down at 9PM, but the wall packs will stay lit;
2. landscaping be maintained in perpetuity;
3. no outside storage of goods ~~will be held outside~~, specifically around the loading dock area;
4. the fire chief approves the location of the fire hydrant prior to the issuance of a building permit;
5. if Mr. Litchfield intended to include the three groundwater conditions discussed, he would have the ability to add them, but if he intended to exclude them, they will be left out;
6. instructions to commercial drivers to turn right towards Simarano Drive at Lyman Street will be given, the flow will be exit only on Lyman Street, there will be an “exit only” sign at the Lyman Street exit as well as a “do not enter” sign;
7. the project not move forward until the variance appeal is decided in court;
8. approval is for the project as presented in the application and supporting documents provided to the board with specific references to plans, statements and related materials, so that a change from the application approved would require coming back to the Planning Board for modification of the special permit; and
9. hours of delivery will be 9AM-8PM Monday-Friday;
10. they will remove the lines from the first 10 parking spaces on the back side of the lot and put “no parking” on the pavement in that area.

Mr. Ziton seconded; roll call vote: Poretsky-aye; Ziton-aye; Gillespie-aye; Milton-aye; Martinek-aye; motion approved.

Section 7-03-050C(2) “Site Plan” Decision Criteria was reviewed. Having no issues, Ms. Milton made a motion to approve the site plan for 1 Lyman Street on the grounds that it meets all of the decision criteria; Ms. Poretsky seconded; roll call vote: Poretsky-aye; Ziton-aye; Gillespie-nay; Milton-aye; Martinek-aye; motion approved.

Board Discussion RE: Design Review Committee member Lisa Maselli – Due to Town Counsel recommendation that Ms. Maselli receive a formal letter about the matter to be discussed the discussion was tabled to July 6th. Letter will be sent to Ms. Maselli inviting her to the July 6, 2021 meeting.

Old/New Business:

Consideration of Minutes (04.06.21, 04.20.21, 05.04.21) – Mr. Ziton made a motion to approve the April 6, 2021 minutes as amended; Ms. Milton seconded; all voted in favor; motion approved. Ms. Milton made a motion to approve the April 20, 2021 minutes as amended; Ms. Poretsky seconded; all voted in favor; motion approved. Ms. Milton made a motion to approve the May 4, 2021 minutes as amended; Mr. Ziton seconded; all voted in favor; motion approved.

Chapter 61A P&S 121 Ball Street – Ms. Joubert explained it's the process a landowner goes through if they are enrolled in Chapter 61, 61A or 61B; it is a program through the assessors and the state. When the property is being sold, the town is given first right of refusal to consider whether the town wants to purchase it. The property is 4.25 acres; surrounded by private property. Mr. Ziton said it was discussed at Open Space and determined it was not a desirable property per Open Space standards. The board does not have an interest in purchasing the property. Ms. Joubert will inform the Board of Selectmen.

The next PB meeting is July 6th. Ms. Joubert does not know at this point if a virtual meeting will be held. Ms. Martinek commented that the KP Law memo said the Board of Selectmen have to vote to allow members to participate remotely. She asked if the Planning Board need something in place pending that decision that they would like to allow members to participate remotely assuming a quorum of board members are available in person. Ms. Martinek will email the Board of Selectmen and express their option for flexibility. Ms. Milton made a motion, assuming the Board of Selectmen votes to allow remote participation, that the Planning Board also authorizes remote participation of board members with a quorum of board members in person; Mr. Ziton seconded; all voted in favor; motion approved.

Planning Board Rules and Regs Updates – Ms. Martinek would like to make an amendment to the rules and regulations about receiving materials a certain amount of time before a meeting. Ms. Joubert will check with surrounding towns for language.

Master Plan Implementation – Jean Cahill, member of the MP Implementation Committee, asked the status with the Committee. Ms. Joubert said they are working on the contract with the consultant and hoping to meet in July.

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

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Melanie Rich
Board Secretary