



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved on 11.26.19

## Joint Meeting of the Planning Board & Zoning Board of Appeals Meeting Minutes October 1, 2019

**Planning Board Members in attendance:** Kerri Martinek, Chair; Amy Poretsky, Vice Chair; Michelle Gillespie; Anthony Ziton; Millie Milton

**ZBA Members in attendance:** Brad Blanchette, Chair; Mark Rutan, Clerk; Richard Rand; Fran Bakstran; Paul Tagliaferri; Leslie Harrison; Jeffrey Leland

Kerri Martinek called the meeting of the Planning Board to order at 7:00pm and noted that the first order of business is a joint meeting with the Zoning Board of Appeals.

Brad Blanchette called the meeting of the Zoning Board of Appeals (ZBA) to order at 7:00pm.

### Discussion RE: Present and Future Zoning Bylaws

- Potential zoning amendments for 2020
- Review of Trends from ZBA Decisions
- Review of Table of Uses
- Joint Training Opportunities
- General Discussion
- Future Joint Meeting Topics
  - o Master Plan Influence RE: Future Decisions and Bylaws

Ms. Martinek indicated that the Planning Board has been looking at bylaws and potential revisions to bring to Town Meeting and is seeking input from the ZBA about any issues or concerns that they may have about bylaws, how they are being applied, etc.

Mr. Blanchette stated that he was pleased to see the two boards get together and open the dialogue about potential changes to the bylaw. He also suggested that the varied backgrounds of the board members will be beneficial as we work through this process.

Ms. Martinek commented that both boards want to make good decisions, and everyone likely recalls past applications that may have presented challenges and raised concerns. She emphasized that the discussion should be general in nature and not about any specific application but should focus on those areas where there is a need for clearer definition or revisions to the bylaw.

Ms. Joubert explained that the Planning Board is seeking to propose a large scale solar bylaw and a hazardous waste bylaw at the upcoming Town Meeting. She noted that the board has

initiated work on these bylaws, with the help of the Central Massachusetts Regional Planning Commission (CMRPC). She advised that representatives from the CMRPC will be at the Planning Board's November 5<sup>th</sup> meeting, at which time she hopes they will be providing draft bylaws for discussion. Ms. Joubert also noted that a solar bylaw was brought to Town Meeting in 2014, and she will provide a copy of that proposed bylaw for review.

Ms. Bakstran discussed a desire to review the sign bylaw. She indicated that the sign bylaw was revised in 2015, but there were 12 applications for sign variances in 2018 so it is clear that the bylaw did not appropriately address what the needs are and should be looked at more closely. Mr. Tagliaferri recalled that many of the sign variances requested were for businesses in the area of Shops Way, and noted that the signs allowed there are quite different from what we might want to see in the downtown area. He suggested that the bylaw should allow for different signage and variances depending on the area where they are to be located.

Mr. Rutan mentioned that many of the variances were for properties located on a corner where there were concerns about adequate visibility. He stated that the current bylaw seems to be designed for commercial property along the roadway rather than on a corner where businesses will want to be visible from multiple directions.

Ms. Joubert confirmed that there were 12 sign variances requested in 2018, of which only 3 were for businesses at Shops Way. She offered to look more closely at what these sign variances were for (height, width, etc.) to see if there were any consistencies. She agreed to provide board members with details of what specific special permits and variances were granted in recent years.

Ms. Martinek explained that, when the Planning Board looked at the sign bylaw prior to Town Meeting 2019, the focus was primarily on electronic signs. In response to questions about sign variance requests, ZBA members recalled that most were dimensional or were cases of applicants seeking more signage than was allowed. Mr. Zitton expressed a desire to evaluate the specifics of each request.

Ms. Bakstran asked if there are any modifications to bylaws being considered, other than new bylaws for solar and hazardous waste. Ms. Poretsky discussed the area in the vicinity of Shops Way, where the underlying zoning is industrial. She explained that the board believes that the area should be rezoned commercial, given recent development. She noted that a typical industrial use (trucking, warehouse, fuel storage) would no longer fit there and would be detrimental to the commercial businesses that now exist.

Ms. Gillespie noted that there is currently an overlay for commercial in that area and suggested that it might be beneficial to rezone as commercial with an industrial overlay district to allow for an industrial use that might be appropriate. Ms. Poretsky reiterated that she does not believe any industrial use would be suitable in the area and noted that Route 9 has its own highway Business District. Ms. Bakstran mentioned that doing so might ease the need for special permits and variances and any exceptions would only be required for an industrial use. In response to a question from Ms. Bakstran, Ms. Joubert explained that the commercial overlay applies to the area in the vicinity of the Southwest Cutoff and the bylaw was purposely loosely

worded to allow the ZBA to approve a commercial use. She noted that the intent of the overlay was for the area containing Shops Way and the baseball facility, in the area between Tomblin Hill Road and Route 9, and the bylaw does allow for a bit of leeway. Ms. Joubert also stated that bringing water and sewer to a site increases the value of the land exponentially, so we are likely not going to attract an industrial use because it does not make sense economically.

Ms. Bakstran voiced her understanding that, currently, a restaurant would require a special permit and she would like to see the use allowed by right and have an industrial use require one. Ms. Gillespie discussed the residentially zoned land area behind Bigelow's Nursery. She stated that she believes someone will eventually figure out a way to gain access to it and voiced her opinion that it would lend itself nicely to housing. Ms. Joubert confirmed that the land is all zoned residential, and noted that approximately half of it is controlled by the state as flood storage. She also mentioned that there is a sizable business parcel behind Romaine's that has access and frontage on West Main Street that could allow for additional commercial development. She stated that the Bigelow and Zecco properties are zoned residential, and there is a residential overlay district for that area of town that includes density bonuses for extra open space.

Mr. Zitton stated that there could potentially be a developer who will combine the Bigelow and Borgatti properties, resulting in a large parcel, and he suggested that this is something that should be on the board's radar.

Ms. Martinek referenced the criteria for special permits and asked if this is an area where the boards see challenges. She noted that she had attended classes where it was emphasized that the criteria for special permits should be reviewed frequently to ensure that it supports the town's vision. She noted that, in the case of any mitigation that may be requested, the town would be in a better position if the special permit criteria supports it. Mr. Tagliaferri voiced his opinion that this issue can be addressed through the Master Plan, which includes goals related to public safety and bike lanes. Board members discussed the issue of sidewalks. Ms. Joubert explained that, in recent years, the Mass DOT has imposed policies requiring towns to take responsibility for sidewalks that are done on a lot-by-lot approach, and the town is not in favor of doing that so the Planning Board cannot require sidewalks along Route 20. In response to a question from Ms. Gillespie, Ms. Joubert explained that the sidewalks along Route 9 were done as part of a Transportation Improvement Plan (TIP), similar to the traffic light and sidewalk work that was done in Northborough's downtown. Ms. Gillespie asked if the Town of Westborough was required to take responsibility for those sidewalks. Ms. Joubert indicated that they were not, and she assumes that was because it involved miles of sidewalks that the state will maintain.

Ms. Gillespie noted that the previous Master Plan included sidewalks and the town still ran into challenges so we need to find a way to work around it to be able to get sidewalks. Ms. Joubert explained that, between Mass DOT and the town's auditors, it was suggested that the town's process of collecting funds from developers for sidewalks was not something we could do as a municipality. In lieu of that, sidewalk work could now be included as a capital item every 5 years.

Ms. Poretsky asked if the town could impose the same responsibility for sidewalks on developers as the state seeks to impose on the town. Ms. Joubert indicated that we tried to do so and were not successful. Ms. Martinek asked about criteria based on a project's impacts on municipal services. She noted that, in the past, she has noticed that this can be a gray area because many are quite subjective. Mr. Blanchette recalled a change in wording in the bylaw from "shall" to "may" and asked if board members had any suggestions for additional changes. In response to a question from Ms. Bakstran about whether the recent bylaw changes are still under review by the state, Ms. Joubert explained that the Attorney General has asked for an extension and voiced her understanding that it is related to the nonconforming use bylaw.

Ms. Bakstran suggested that the bylaws are purposely loose to allow for balance between what the town wants and landowner's rights, and she is not sure how to modify it. Mr. Tagliaferri mentioned that the bylaw stipulates that a project must be in substantial harmony with the Master Plan, and suggested that the decision should reference the pertinent section of the Master Plan. He noted that this will allow the boards to approve or reject, based on the town's wishes as reflected in the Master Plan.

Ms. Bakstran stated that the special permit criteria stipulates "use as developed will not adversely affect the neighborhood" and indicated that this is one of the most challenging since it is difficult to weigh what neighbors want in their area of town and what is a reasonable interpretation of the criteria. She emphasized that the ZBA must look at it in a more neutral way, and reiterated that this is a source of much conversation. Ms. Martinek asked how we meet the criteria if the burden of proof is on the applicant. Ms. Bakstran suggested requiring applicants to cite the regulation and indicate how their project meets the requirement to be in substantial harmony with the Master Plan.

Ms. Gillespie suggested that the applicant be required to show proof of how a project doesn't negatively impact the neighborhood (noise, traffic, lighting, etc.) as this would illustrate to neighbors that many concerns have already been addressed.

Mr. Blanchette discussed setbacks and buffers. He recalled that the ZBA had some recent applications where a residential district abutted a business district. He stated that he does not expect residents to fully understand the issue until there is an application that affects them directly, but he would like to find a way to help increase business in town while also making sure residents are happy and content. He also suggested that it would likely be easier on everyone involved if there were more of a buffer zone between these districts. Ms. Gillespie noted that there have been discussions over the years about creating natural buffer zones through a 100 or 200 foot no cut zone, but landscaping conditions are only valid for one year. She recalled that many of the plantings that were required for the Wal-Mart project died off after a year and the town had no way of requiring them to be replanted. She suggested that the board consider increasing the timeline for landscaping to a minimum of 10 years as well as requiring trees of a certain circumference to be planted so that neighbors feel more protected. For the benefit of all board members, Ms. Joubert noted that site design standards for commercial and Industrial uses start on page 82 and requirements for landscape buffers are on pages 83 and 84. Ms. Joubert mentioned that the board should consider setbacks and impervious cover. She noted that increasing the buffer could result in reducing the building envelope such that the lot would

be undevelopable and that is not allowed. She emphasized that any regulation that is added needs to be evaluated for the impact and the number of lots that will be affected.

Mr. Rand mentioned the business lots on Route 20 that abut residential zones to the rear, and noted that there would not be sufficient area if the buffer was increased. Mr. Blanchette agreed. Ms. Gillespie suggested that it might be possible to reduce the parking and allow for less impervious coverage and more green space on lots closer to the downtown, where it is more walkable.

**Open Space** – Ms. Poretsky noted that the green space requirement in the industrial zone is only 25% but Westborough requires between 40% to 60%. She mentioned that some of the lots in town end up with virtually no trees.

In response to a question from Ms. Poretsky about maximum lot coverage, Ms. Joubert explained that lot coverage includes anything that water cannot infiltrate, such as the building, parking, sidewalks, driveways, etc. Mr. Tagliaferri noted that the minimum lot size in the industrial zone is 60,000 square feet with a maximum coverage of 50% and minimum green space of 25%. Ms. Poretsky mentioned that some of the industrial projects that come before the Planning Board are mostly building and parking lot with very little green space. Ms. Joubert noted that actually many industrial sites are not even close to the 50% lot coverage that is allowed in the bylaw. Ms. Poretsky mentioned a project on Lyman Street that seemed to be covered entirely. She noted that she had started looking at other towns who require a much greater percentage of open space. She also stated that it does not appear that parking, driveways, and walkways are included in the lot coverage calculation and we often end up with only a narrow 10-foot strip of landscaping around the parking area. She expressed a desire to look into it further. Mr. Tagliaferri agreed. Ms. Joubert stated that, for the groundwater areas, lot coverage does incorporate driveways, parking, etc.

Ms. Bakstran recalled previous discussions about eliminating one of the groundwater districts because it was not really necessary since the state already has more restrictive regulations. Ms. Joubert explained that it was believed that we could do so when the town came off of our municipal wells but since we can never take our wells completely offline, we must continue to protect our groundwater as if the wells were still online.

Mr. Blanchette suggested that the boards consider updating the Table of Uses to include sufficient detail to make it easier for the Zoning Enforcement Officer to do his job. He welcomed input from other members but cautioned not to get into specifics on any application. Ms. Gillespie expressed a desire to have better definition and detail.

The joint meeting of the Planning Board and Zoning Board of Appeals concluded at 8:30pm, at which time the Planning Board went into session.

Ms. Martinek noted that the board has voted to seek additional information from Town Counsel related to a couple of applications in terms of use and an appeal process in general. Ms. Joubert indicated that she had shared Town Counsel's input with the board.

Ms. Martinek recalled that the board had originally asked about the ability to appeal a use determination. Ms. Poretsky voiced frustration about the 30-day appeal period. Ms. Joubert explained that state statute does not provide the ability to appeal a zoning interpretation by the Zoning Enforcement Officer. She clarified that the 30-day appeal period applies to an individual who has an ability to obtain a permit or enforcement action, and provides anyone who is denied a building permit the ability to appeal to the ZBA. She indicated that, in the case of an individual who has requested some type of enforcement action, they would have the ability to appeal to the ZBA after 30 days of no action being taken. She reiterated that there is no ability for a board or person to appeal a zoning interpretation by the Building Inspector. Ms. Poretsky questioned this, since she has found some cases through her online research.

Mr. Ziton noted that Town Counsel's input stipulates "Interpretation is for informational purposes only; does not give permission to construct, alter, demolish or change the use of a property" and asked for clarification. Ms. Joubert reiterated that there is nothing in the state statute that allows for an appeal of a zoning interpretation. She noted that an applicant fills out a zoning interpretation form, after which the Building Inspector reviews the bylaws to determine if a project is allowed and what approvals are needed.

In response to a question from Ms. Martinek, Ms. Joubert explained that the Zoning Interpretation Form lays out a roadmap for the development and what is needed. She noted that, after an applicant receives the interpretation, they then decide whether or not they want to proceed and, if so, appear before the applicable town board(s) for approval. She mentioned that the state statute allows for a 20-day appeal period for anyone aggrieved by the resulting decision. She reiterated that the 30 day appeal period applies to someone who is aggrieved by a decision of the Building Inspector or if someone requested enforcement action that was not acted on. She also noted that the Zoning Interpretation Form is not a decision, but is for informational purposes only.

Board members agreed that there are some things in the zoning bylaw that allow the Building Inspector to render an interpretation and suggested that perhaps the zoning needs to be more clearly defined and more descriptive. Members agreed that the zoning bylaw may be too vague and is perhaps something to discuss further with the ZBA.

Ms. Poretsky stated that the bylaw clearly states that if a use is not listed as permitted, it is prohibited but it seems that there have been ways found to get uses through. She voiced her opinion that the bylaw is not specific enough, which makes it difficult for the Building Inspector to do his job. Ms. Martinek asked if it might be helpful if the board could be notified when zoning interpretations are made to allow time for more thorough consideration. Ms. Gillespie suggested that this might not be feasible, given the number of zoning interpretations that the Building Inspector does on a daily, weekly and monthly basis. Ms. Martinek suggested that the board could be informed when a zoning interpretation is made on a project that may be coming before the board in the future. Ms. Poretsky commented that the current Building Inspector was not here when the zoning changes were made in 2009, so he may not have a thorough understanding of what the residents were hoping to achieve and the true intent of the changes. She agreed that she would like to make the bylaw more defined and less gray.

Ms. Martinek asked if there was anything in the 2009 revision that did not work out as well as the committee had envisioned. Ms. Gillespie discussed the changes for the Main Street area where the goal was to pull the buildings forward and closer to the street and have the parking in back. She noted that the one time that it was done it did not work out well. She also mentioned that many of the lots do not allow for it and developers prefer to have their parking in front of the buildings.

Ms. Gillespie suggested that the board consider looking at uses again. Ms. Martinek voiced concerns that some uses can actually result in providing applicants with the ability to circumvent regulations and expressed a desire to eliminate that possibility. Ms. Joubert commented that the 2009 bylaw revisions had started out as an update to the bylaws but, after a couple of months, the committee and consultant realized that it was a much more extensive effort that resulted in a complete re-write of the bylaw. She also suggested that, when the Master Plan is completed, there is a potential that we may want to go through the process again. She noted that things are always evolving so zoning should be continually evaluated and updated.

Ms. Martinek questioned where and when the board has the ability to question a zoning interpretation if the Zoning Interpretation Request Form is only informational. Mr. Ziton commented that the use can be questioned during the public hearing when the application is before the board. Ms. Poretsky agreed that the ZBA could question a use during their public hearing. Ms. Joubert explained that applicants meet often with town staff before proceeding with their project in order to evaluate the use and understand the board's process. She noted that, often, applicants will file a preliminary plan for review and, once through the staff review process, they will file their application and the public hearing process begins. Ms. Poretsky commented that this seems like quite a bit of work to go through with the possibility of a denial.

Ms. Gillespie asked at what point along the way is the Planning Board able to raise questions prior to the public hearing as she feels that would be beneficial for both applicants and residents. Mr. Ziton asked about the possibility of town staff suggesting that certain applicants present their project scope to address any preliminary concerns before going through the trouble and expense of the public hearing process. Ms. Martinek recalled that the Planning Board had recently had such a preliminary discussion for a project.

**425 Whitney Street** – Ms. Martinek questioned the interpretation of light manufacturing use. Ms. Poretsky mentioned that her concerns are much too specific for the board to be able to address tonight. Ms. Martinek voiced her opinion that the project may not meet the performance use criteria. Ms. Joubert cautioned board members about discussing specifics of a case that is before the board at an upcoming meeting.

**125 Rice Avenue** - Ms. Milton noted that the board's comment letter addresses reasons the board does not feel it fits the criteria. She suggested that the applicant be asked to justify why he believes it does. Ms. Joubert agreed to provide the applicant with a copy of the memo so that he can address the board's concerns. Ms. Gillespie noted that the application seems to mention standards such as light, noise, permits, neighborhood, and environment but does not include any specifics for his project in the application.

Ms. Joubert agreed to ask the applicant to explain how the proposed project fits the criteria of a home occupation use. She also agreed to provide the ZBA with a copy of the Planning Board's comment letter.

**Consideration of Minutes of the Meeting of September 5, 2019** – Michelle Gillespie made a motion to approve the Minutes of the Meeting of September 5, 2019 as submitted. Amy Poretsky seconded; motion carries by unanimous vote with Anthony Ziton abstaining.

**Next Meeting Dates** – Board members discussed upcoming meeting dates as follows:

- October 17th at the Library
- November 5th & 19<sup>th</sup> – In response to a question from Ms. Martinek about the ability to hold a meeting on election day, Ms. Joubert confirmed that it can since there is no town election scheduled.
- December 3rd & 17th – Ms. Joubert explained that the board typically meets only once in December. Members of the board agreed to wait to make that decision as a second meeting may be necessary.

Meeting adjourned at 9:20pm.

Respectfully submitted,

Elaine Rowe  
Board Secretary