



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 2.26.19

## Zoning Board of Appeals Meeting Minutes January 22, 2019

**Members in attendance:** Brad Blanchette, Chairman; Fran Bakstran, Dick Rand, Mark Rutan, Paul Tagliaferri and Leslie Harrison

**Others in attendance:** Kathy Joubert, Town Planner; Fred Litchfield, Town Engineer; Robert Frederico, Inspector of Building/Zoning Enforcement Officer; Attorney Marshall Gould; Michael Scott, Waterman Design Group; David Patterson, Pesticide Applicator; Patricia Kress, Kerri Martinek, Paul Krause, Anthony Ziton, Han Chang, Fenni Fu, Amy Poretsky, Erik Hansen, Kailash Viswanathan, Jason Marchese, Susan Stasaitis, Juliane Hirsh, Greg Caldicott, Karena Hansen, and Laura Ziton

Chairman Blanchette opened the meeting at 7:00pm and noted that resident Laura Ziton, 17 Franklin Circle, will be videoing the meeting.

**To consider the petition of Kevin Labadini, Kevin Labadini Corporation, for a Variance/Special Permit/Special Permit, Groundwater Protection Overlay District, to allow the change of a pre-existing, nonconforming use (Industrial Waste Management and Disposal) to another non-conforming use (Landscaping Company/Contractor's Yard), and construct a paved outdoor storage area, on the property located at 329-333 West Main Street, Map 81, Parcels 13, 14 and 15, in the Business West District and Groundwater Protection Overlay District Area 3**

Present at the public hearing were Applicant Kevin Labadini, Kevin Labadini Corporation; Attorney Paul Cranston, representing the Applicant; Attorney Marshall Gould, representing AllState Power-Vac Inc.; Mike Scott, Waterman Design Associates; and David Patterson, Pesticide Applicator.

Mr. Gould explained the site is located in Groundwater Protection Overlay District Area 3, and therefore, the proposed project will need to go before the Groundwater Advisory Committee per Fred Litchfield, Town Engineer. Therefore, the Applicant will be requesting to continue the public hearing to the ZBA meeting on February 26, 2019.

Mr. Gould stated he has reviewed the history of the site as best that can be determined from the purchase by Zecco in the 1970s. He noted the past uses on the site included a transmission business; welding; a contractor's yard, office space and a dance studio.

Mr. Gould stated the Zoning Board of Appeals granted a Special Permit to Zecco, Inc., Case #87-16, to allow the construction, operation and maintenance of offices, garages and a contractor's yard on the property located at 329 West Main Street on July 17, 1987. The existing building and house on the site were torn down and a new building was erected.

Mr. Gould explained the Applicant needs the following Special Permits from the Zoning Board of Appeals:

- A Special Permit per Section 7-08-020A of the Northborough Zoning Bylaw to change a non-conforming use to another non-conforming use provided that such change shall not be substantially more detrimental to the neighborhood than the existing non-conforming use;
- A Groundwater Protection Overlay District Special Permit for uses involving storage and transportation of toxic or hazardous materials with adequate controlled/contained drainage facilities in areas of potential spillage or release and adequate contingency plans in case of spillage or release as provided in Section 7-07-010D(3)(c)[5] of the Northborough Zoning Bylaw;
- A Special Permit with Site Plan Approval per Section 7-03-050A(1)(c) of the Northborough Zoning Bylaw for any use requiring a Special Permit.

Michael Scott, PE, Waterman Design Group, stated the Applicant is proposing to allow the use of a Contractor's Yard to be located on the property identified as 329-333 West Main Street, Map 81, Parcels 13, 14, and 15. He explained the site includes three parcels and is three acres in size. A building with two structures is located on a two-acre parcel; and there are no buildings on the one-acre parcel. The existing building was built in 1984, a garage was added in 1987; and there are two existing driveway openings.

Mr. Scott stated the site is in the Business West District and Groundwater Protection Overlay District Area 3. The site is serviced by Town water; and the existing septic system will be replaced with a new septic system that was approved by the Board of Health in the fall of 2018.

Mr. Scott explained the proposed site plan will rectify parking issues. There will be no changes to the east-side pavement. The west-side pavement will have an additional paved area for vehicle parking and storage of mulch/stock materials. Vehicles and lawn chemicals will be stored inside; and the floor drain will be connected to the holding tank.

Mr. Gould noted a welding business, Heritage Welding, has been in the building since at least 1973 and will remain to be located in one bay. AllState Power-Vac, currently on the site, will be vacating the building; and there are two bays in the smaller building. Office space is presently rented and the tenants will remain. In total, there are seven bays in the large building; and there is no waste or chemicals on-site presently.

Applicant Kevin Labadini stated there will be 20 trucks and 10 trailers on the site, and half of them will be parked on-site overnight. He noted his office is in Marlborough and his equipment is presently located in Shrewsbury.

Mr. Gould stated the tree company stores trees on site until they have enough of them to bring to a dump site.

Mr. Labadini explained they use bins to store five to twenty-five yards of material which is then removed from the site and trucked to a licensed facility. Ten to twenty yards may be stored on-site. He explained the typical business model is to bring mulch directly to businesses. No salt is stored on the site; and pesticides are stored inside the building. The trucks will be washed at a car wash site he owns across the

street from Linguine's Italian Eatery in Marlborough. He added that, in the winter, he does commercial snow removal.

Mr. Labadini noted his hours of operation will be 6am – 6pm, 6 days per week; and 6am-3pm on Saturday there will be a small crew.

Ms. Bakstran asked questions regarding the non-conforming change of use, and Mr. Gould stated no industrial waste will be on the site and the use of the proposed landscaping company will be less detrimental than the industrial waste previously stored on-site since Zecco, Inc. owned it.

Robert Frederico, Inspector of Building/Zoning Enforcement Officer, stated it is considered pre-existing and non-conforming.

Fred Litchfield, Town Engineer, confirmed the Groundwater Advisory Committee will meet in February.

**Comments from the audience were as follows:**

Paul Krouse, 10 Buckhill Road, read the conditions from the Zoning Board of Appeals decision for Case #87-16, Finding #2, that states "The petitioner certifies that no chemicals, pesticides, fuels, or other potentially hazardous or toxic materials are to be used or stored on the premises in quantities greater than those associated with normal household use, except for residual chemicals inside tank trucks which have been elsewhere drained, and fuel in vehicle fuel tanks". He also stated #3 in the Decision section of the decision states " No truck shall enter onto this parcel unless it shall have been elsewhere emptied of all chemicals, pesticides, fuels, or other potentially hazardous or toxic materials, except for that small amount which may remain in a tank truck after normal draining; and except for fuels in vehicle tanks". He stated the trucks should not have had anything in them, and the Town said it should not have happened. He noted that Allstate went before the Board of Selectmen in 2000 for a permit to expand his business and the permit was denied.

Greg Caldicott, 23 Buckhill Road, stated he does not believe hazardous waste has been stored at the site in the past.

Eric Hansen, 6 Buckhill Road, confirmed with the Applicant that the construction vehicles will be stored at the Shrewsbury site; and Mr. Labadini explained those vehicles presently on site, stored outside, belong to the current property owner.

Mr. Hansen explained he is worried about the way the Business West district may be evolving and doesn't want these kinds of Industrial non-conforming uses to spread to the surrounding neighborhoods. He referenced the court case "Charles A. Powers & Others vs. Building Inspector of Barnstable; 363 Mass 648. October 6, 1972 – May 17, 1973; and talked about "three prong tests". He also cited other cases, regarding the change of a non-conforming use to another non-conforming use, that were denied.

Amy Poretsky, 47 Indian Meadow Drive, stated she prepared a letter to the Zoning Board of Appeals dated 1.22.19; and believes the original use was only for 329 West Main Street, not for the other two vacant lots. She stated she believes the proposed use is more detrimental to the neighborhood.

Han-Chieh Chang , 2 Buckhill Road, stated it seems the use did not conform to the Zoning Board of Appeals decision; and asked if any permits were issued by the Fire Department.

Ms. Joubert stated she will check with the Fire Chief re: three hazardous materials storage permits issued in 2000 versus the Fire Chief's letter dated 1.14.19.

Kailash Viswanathan, 14 Buckhill Road, asked about pesticides: when they are mixed; how often; and the procedure for clean-up.

David Patterson, Pesticide Applicator, explained the process; noting it is used only as needed; and one-two gallons are stored on the site. He stated mini-booms with soap and water are used if a spill occurs; and dry pesticide spills are swept up.

Mr. Rutan noted the previous permit was issued to operate in the past and no applicant in the past has broken any rules.

Mr. Krouse asked who is going to monitor the site.

Ms. Poretzky asked how the site became an industrial waste site in the past. Mr. Hansen stated it was a contractor's yard, then waste management, and now a proposed landscape contractor.

Ms. Bakstran confirmed with the Applicant that year-end inventory will be stored on-site and inside.

Kerri Martinek, 16 Hemlock Drive, stated the neighborhood has changed and new houses have been built and that needs to be a consideration.

Mr. Caldicott stated private wells are a concern.

Mr. Litchfield stated the jurisdiction of the Groundwater Advisory Committee is to look at the volumes of chemical storage; no outside storage containment; and control. He noted the quality and production of wells are covered by the Board of Health.

Ms. Joubert stated she will check with Casey Millen, Health Director, to see if there have been any comments from the Board of Health for this Application.

Mr. Gould explained three generations of Labadinis have been in business for more than fifty years. In 1980, the building inspector requested the Contractor's Yard owner to obtain a Special Permit to expand the use to include hazardous waste. A 21E test performed (phase II) recently reported the site is clean. Over 40 years as an industrial waste hauler at 329 and 345 West Main Street, there has been no spills or contamination; and a licensed commercial pesticide staff member is located on-site.

Mr. Gould noted there have been no issues at the Shrewsbury, MA site; the Marlborough, MA site; or their previous site in Berlin, MA. The Zecco, Inc. industrial and hazardous waste facility (AllState Industrial/ ACV Enviro) has been properly permitted in the past.

Ms. Bakstran motioned to continue the public hearing to February 26, 2019, at 7:15pm; Mr. Rutan seconded the motion and the vote was unanimously in favor of the motion.

### **Old/New Business**

**Master Plan Update:** Ms. Bakstran noted the next meeting of the Master Plan Steering Committee will be held on January 24<sup>th</sup> in the Northborough Free Library; and another Public Forum will be held on February 13<sup>th</sup>, at the Zeh School, Howard Street, at 7pm. She explained they are working on action steps and recommendations that will be in draft form for the public to see and on which they can comment.

**Approval of Minutes:** Ms. Bakstran motioned to approve the minutes of September 25, 2018; October 23, 2018 and November 27, 2018. Mr. Rutan seconded the motion and the vote was unanimous in favor of the motion.

## Zoning Amendments for 2019 Annual Town Meeting:

Ms. Joubert explained the Planning Board would like to get responses from the Zoning Board of Appeals to two proposed zoning articles, as follows:

- **Article - Section 07-03-040:** Regarding Special Permits, the word “shall” will be changed to “may”. Mr. Rutan stated he believes the word “may” communicates better to the Applicant. Ms. Joubert noted Ms. Poretsky suggested this change. Mr. Blanchette and Mr. Rutan were in favor of this change, as they felt it will give the Board more room if they want to deny an application; and also lets the Applicant know the Board has the option to deny it. Ms. Joubert noted Town Counsel said that, as Special Permits are discretionary in nature, there is not a lot of difference between “shall” and “may”. She also noted this proposed change is not due to issues in the past or now. All members agreed with Mr. Rutan and Mr. Blanchette.
- **Article - Section 7-03-060: Design Review, E.** Appointment of the Design Review Commission by amending composition of the Design Review Commission and adding three-year terms. Ms. Joubert noted there are two architects on the board at this time and it is working very well. The idea going forward is to have two architects and others with related backgrounds.
- **Article – Section 7-05-020: Classification of Uses, G. Business Uses,(1)Trade,** by adding definition for “temporary outdoor sales of holiday horticultural products”. Ms. Joubert stated this is a Planning Board amendment and Mr. Frederico would regulate it.
- **Article - Section 07-08-020, Special Permit Required, A. Nonconforming Use:** Ms. Poretsky presented a document regarding this article that she had distributed at the January 15<sup>th</sup> Planning Board meeting. She read her version of the amendment to this bylaw, as follows:

*The Zoning Board of Appeals may grant a special permit to change a nonconforming use to another, similar, less dense, or more restrictive nonconforming use in accordance with this section only if it determines that such change or extension shall not be ~~substantially~~ more detrimental than the existing non-conforming use to the neighborhood and town and in making such determination the Zoning Board of Appeals shall consider whether the proposed use is different in character or in its effect on the neighborhood or on property in the vicinity.*

~~*The Zoning Board of Appeals may consider the following types of changes to nonconforming uses:*~~

~~*(1) Change or substantial extension of the use;*~~

~~*(2) Change from one (1) nonconforming use to another nonconforming use.*~~

Ms. Bakstran said she was not sure “restrictive” works; Mr. Frederico suggest using “is less detrimental” instead; Mr. Rutan suggested using “is similar or less detrimental”; Mr. Blanchette felt “restrictive” was too drastic, but agreed to modify the language; and all members agreed A(1) & A2 should be deleted.

Ms. Poretsky read a CPTC recommendation document for possible clarification of the definition for “substantial”, as follows:

*“The purposes of this Section, determination of “substantially more detrimental to the neighborhood” shall include consideration of, and impacts to, the general and*

*immediate neighborhood from the resulting height, building coverage, impervious coverage, and width of the altered, reconstructed, extended or structurally changed structure. Additionally, a determination where an altered, reconstructed, extended or structurally changed structure will be “substantially more detrimental to the neighborhood” shall include the resulting impacts to views and vistas from abutting properties and public and private ways, increase in traffic, noise, lighting, surface water runoff and related site planning issues.*

Ms. Bakstran motioned to change the word “shall” to the word “may”, in **Section 07-03-040** of the Northborough Zoning Bylaw; Mr. Rand seconded the motion, and the vote was unanimously in favor of the motion.

Ms. Bakstran motioned to add the wording “is similar or less detrimental” and to delete A(1) & (2), in **Section 07-08-020**, of the Northborough Zoning Bylaw; Mr. Rand seconded the motion, and the vote was unanimously in favor of the motion.

The meeting adjourned at 9:30pm.

Respectfully Submitted by,

Debbie Grampietro  
ZBA Administrative Assistant