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GAC Minutes
APPROVED
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Town of Northborough

Office of the Town Engineer

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Groundwater Advisory Committee

September 14, 2021

Remote Zoom Meeting

6:00 p.m.

Present (Remotely): Jason Perreault (Board of Selectmen), Anthony Ziton (Planning Board), Theresa Capobianco (Board of Health), Diane Guldner (Conservation Commission), Bryant Firmin (Water and Sewer Commission), Fred Litchfield (Town Engineer)

Members Absent: None

Attendees (Remotely):

Mr. Perreault opened the remote meeting at 6:02 p.m. and the announcement that the open meeting of the Northborough Groundwater Advisory Board (GAC) is being conducted remotely consistent with Governor Baker's Executive Order of June 16, 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency. All members of the GAC are allowed and encouraged to participate remotely. This Order allows the GAC to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along the deliberations of the meeting. The public is encouraged to follow along using the posted agenda unless the Chair notes otherwise. Members of the public who wish to view the live stream of this meeting can do so by going to Northborough remote meetings on YouTube via the link listed on the agenda. Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will not feature public comment. The process was explained.

Member and Staff roll call was taken: Jason Perreault (Chair); Anthony Ziton; Theresa Capobianco; Diane Guldner; Bryant Firmin; Fred Litchfield (Town Engineer)

Anthony Ziton was welcomed as the Planning Board representative to the Committee.

To consider the petition of David and Christina Mofford for a Variance for installation of an in-ground pool on the property located at 313 Brigham Street, Map 93, Parcel 29, in the Residential C Zoning District and Groundwater Overlay District Area 1.

Applicant: Christina and David Mofford

Representative: Same as above

Ms. Capobianco recused herself from the matter. The application is going before the ZBA requesting a variance to allow for the installation of an inground pool. Mr. Litchfield explained that 313 Brigham Street was granted a variance to allow for a lot less than the required 80,000 square feet in Area 1 to be created. One of the conditions put on the property was that 100% impervious cover on the site be recharged; you cannot recharge a pool. The applicants are looking to see if this board would consider recommending approval so they could get another variance to install a pool and add some impervious cover that could not be recharged.

Mr. Perreault said the Groundwater Advisory Committee (GAC) is just that, an Advisory Committee. The GAC is not the permit granting authority. The Committee reviews the aspects of the proposal that pertain to groundwater protection and make a recommendation to the permit granting authority to recommend conditions that might have to be applied in order to ensure the satisfaction of the protection of the groundwater pursuant to the bylaw. Whether the permitting granting authority chooses to approve the request or not, is entirely up to that authority; they will have our recommendation, but there may be other aspects of the bylaws for the variance they are seeking.

The lot is approximately 56,367 square feet; the minimum required lot size in the Groundwater Area 1 is 80,000 square feet; a variance was previously approved by ZBA. Mr. Litchfield provided a comment letter dated September 13, 2021. The parcel was originally denied a variance to subdivide the larger lot into two smaller lots in ZBA Case No. 16-08, as the lot did not exist prior to the adoption of the Groundwater portion of the Zoning Bylaw. The owner of the property split it into two lots (one of which did not meet the 80,000 square feet). The owner asked for a variance and was denied. Based on a state statute that allowed a lot to be created if there was a structure that was 100 years old, they were entitled to create a lot even if it did not meet zoning because of the length of the time the structure had been there. The applicant put the two lots back together, created one conforming lot and one non-conforming lot (313 Brigham Street) and was granted a variance.

The current applicant is proposing a pool with a patio, accessory structure and pavilion. Without installing some type of roof over the area, there is no way to recharge the area directly above the pool. They are proposing that if a variance is granted, they would be willing to recharge the surface area around the pool, but it would require a variance or amendment to the existing variance. Mr. Litchfield's memo indicated that in the event this second variance request is recommended for approval by this Committee, he would recommend (1) as a minimum that all impervious cover beyond the pool be recharged and a plan for the recharge be prepared by a registered professional engineer and submitted for review and approval prior to the issuance of any permits; (2) an as-built plan be submitted for review and approval prior to the issuance of an occupancy permit in order to verify all construction was installed as approved; and (3) the condition for all impervious cover on this lot to be recharged remain in effect going forward.

Mr. Litchfield further noted that variances are not given lightly and do set a precedence. The Committee will need to consider the information carefully before making a recommendation; the ZBA is the permit granting authority that will be making the decision.

In support of their request, Ms. Mofford read a prepared statement that included information previously discussed by Mr. Litchfield (she will provide a copy to the Committee). The home was purchased in 2019; it is located in the RC District as well as Area 1 of the Groundwater Protection Overlay District. The lot was created in 2016 through a ZBA variance which was needed because it did not meet standards of the bylaw. It was granted with the requirements that any impervious surfaces would need to be recharged 100%. In Area 1 they identified 45 properties that have swimming pools; 41 are less than ¾-acre; 21 of those are less than ½-acre; their property is 1.3 acres. Before purchasing the property there was no disclosure to them regarding its location in the Groundwater Overlay District. They did inquire if a pool could be installed; they were told they could as long as the setbacks relating to the septic system and property line were met. In speaking with the Building Department, they were advised of the

Groundwater Protection Overlay District and the need for a second variance through the ZBA, which they thought was only a formality until they were told a second variance would unlikely be granted. They have spent a substantial amount of money on the project. The hardship they are claiming is the location of their home in Area 1 of the Groundwater Protection Overlay District. The associated restrictions prevent them from being able to install an inground pool due to the lot being only 56,000 square feet. According to the bylaws, in conjunction with the prior variance which was approved by ZBA in 2016, they are unable to install or build any impervious surfaces which cannot be 100% recharged. They have explored retractable surface covers which are very expensive. They were told that if the variance is not granted, the only other option would be to purchase a new property which would be a financial hardship. Ms. Mofford said if the purpose of the Groundwater Protection Overlay District is to prevent any increase in impervious surface beyond that which existed prior to 1986, that even with their swimming pool, the resulting impervious surface is a much lower square footage than what was possible before the 2016 ZBA variance when the original lot was divided. They are requesting relief that will benefit their family and home life. Letters of support were received from three neighbors.

Mr. Perreault wanted to clarify that the original lot before being subdivided exceeded 100,000 square feet and as a percentage proportion was entitled to certain amount of impervious coverage, and subsequent to being subdivided, the 80,000 square foot lot retained some of that opportunity, but specifically their lot was prohibited. Ms. Mofford explained that for the original 136,000 square foot lot, the impervious would be 15% (approximately 20,000 square feet). The builder divided it into an 80,000 square foot conforming lot (the neighbors). The Mofford's lot needed a variance and needs 100% recharge. Mr. Perreault asked if the 700 square feet was only the pool basin; Ms. Mofford confirmed that it would be only for the water; the total additional impervious is 2,500-3,000 square feet.

Mr. Litchfield confirmed what Ms. Mofford said. The lot was 136,000 square feet, the builder created one conforming lot which was 80,000 square feet, and that lot is required to have 15% recharge or recharge anything over that. He believes the 100% recharge was recommended as a condition of the approval of the initial variance because the lot was created at roughly 30% less than the 80,000 square feet required. Mr. Litchfield said it is confusing and require guidance on the calculation on the impervious cover for lots that were created prior to 1986. Any impervious cover that was existing prior to the adoption of the bylaw is "grandfathered" and exempt from the calculation. Mr. Litchfield commented that it was unfortunate that neither the builder nor the realtor explained to them what created their lot, but it is noted in the deed that it is subject to the conditions of a variance granted by the ZBA. Variances are not a formality; the Groundwater Advisory Committee and the ZBA takes requests for variances very seriously because they do set a precedence for others that follow.

Mr. Perreault said that for the purpose of the board's discussion, representation by the builder and the real estate agent are not relevant to this Committee, there is no representation that staff may have made and would take into consideration, and the legacy aspect would not be material consideration for this Committee; the ZBA may entertain it when making their decision. He also said this Committee chooses to focus on the technical aspects of the proposal and groundwater protection and that our consideration will be confined to those elements for this specific proposal. Mr. Ziton was sorry the Moffords were misled but agreed with Mr. Perreault that it is a technical review; variances need to be looked at extremely closely; they are strict. He further said we need to keep an eye on our groundwater and protect it for future use. Mr. Firmin reviewed all the material and the Town Engineer's review and had nothing further to add. Ms. Guldner asked if the driveway was impervious or were they doing something different, e.g., stone, leaving it natural; would that count if they had done something like that, and would it matter if the pool size matter was reduced. Mr. Litchfield said the condition in the ZBA decision required 100% impervious cover to be recharge; the driveway is already being recharged. He did not think it would not make a difference if the pool size was reduced; it has to be recharged and a pool cannot be recharged.

Ms. Mofford asked for feedback on the point that the allowable impervious surface is less than what it was in 2016. Mr. Perreault said the point she makes is understood, but it's a difficult situation in this particular case because the subdivision of the lots specifically imposed this condition on their lot. Without any documentation to the contrary, the assumption that has to be made is that the GAC, ZBA or Conservation (whoever was involved), was aware that would be the case and chose to impose that condition in the interest of being conservative and more protective of the groundwater in that area in consideration of the subdivision that was being proposed. We don't have documentation supporting or undermining it. It is assumed that the parties involved in the first variance understood that imposing that restriction was reducing the impervious area that would otherwise have applied to the existing lot had it not been subdivided. Mr. Firmin commented that within the context of the regulations did not think the Committee should make a recommendation because there is already an existing variance; the restriction was put there for a reason and did not think we should recommend ways of getting around it; it's the purview of the ZBA. Mr. Litchfield said there is no engineering way to recharge the pool.

Ms. Mofford mentioned the application process and whether it would cause a substantial impact to groundwater and asked who would determine that. Mr. Perreault explained that the Committee reviews the impact to groundwater. The applicant typically proposes mitigation that accomplishes the requirements of the bylaw to provide the appropriate recharge or protection. It would be the responsibility of the permit granting authority to make the exception.

Mr. Ziton made a motion to not recommend approval for the applicant's request for a variance at 313 Brigham Street; Mr. Firmin seconded; roll call vote: Guldner-yes; Firmin-yes; Ziton-yes; Perreault-yes; motion approved.

Ms. Capobianco rejoined the Committee after the conclusion of the matter.

To consider the petition of R.J. Devereaux Corp. for a Variance for an industrial use on the property located at 200 Bartlett Street, Map 66, Parcel 7, in the Industrial Zoning District and Groundwater Overlay District Areas 1 and 3.

Applicant: R.J. Devereaux Corp.

Representative: Dario DiMare

Paula Devereaux, Dario DiMare (Architect) and Rick Gates (Project Manager) were present. Ms. Devereaux stated that the applicant is a family business and she is representing them as an independent lawyer.

The applicant wants to purchase the property at 200 Bartlett Street and continue the use for industrial uses, one being an accessory use for automotive repair. The applicant is a contractor that does a great deal of work for gas companies in the streets. It is in Groundwater Overlay Districts 1 & 2. Lamys Automotive in the rear has received a variance for the automotive use and a special permit to be located in the Groundwater Protection Overlay District.

Mr. Perreault said the Groundwater Advisory Committee is just that, an Advisory Committee. We are not the permit granting authority; we make recommendations to the permit granting authority. The Committee predominantly reviews the technical aspects of groundwater protection and less on the broader aspects of the applicable bylaws which will come under the purview of the permit granting authorities.

Mr. DiMare said some of the impervious area near the road is being removed. They are at 48% impervious; the maximum was 50%. More paving is being added which will be detained, filtered and not allowed to enter the wetlands.

Mr. Litchfield's September 13, 2021 letter was reviewed. With regard to #2) a new drainage system will be put in place. #3) they have the specs on the cabinets and will provide a list that shows chemicals, what containers they are stored and the quantities; MSDS sheets will be provided for each material. #6) the building will be heated with gas. #7) the site will be regraded and repaved to include a berm around the entire limits of the paved surfaces; it will be included on the topo. #8) the construction materials stored on site will be covered; the roofs will capture runoff and will be shown on the plan. #9) & #10) the applicant will comply with following procedures and requirements for a special permit and conditions.

Mr. Litchfield commented that Mr. DiMare said they would provide a list with the chemicals and containment structures for each but was unclear on whether it will come to the Committee to review and send a recommendation to the ZBA, or do they plan to present it directly to the ZBA and ask the Committee to make a recommendation without seeing it. Mr. DiMare said the Committee will see it first. Mr. Litchfield had a concern that chemicals contained on the list that were not gases were limited to oil. He thought there would be other chemicals such as brake cleaners, brake fluids, anti-freeze, etc., because they are doing maintenance; they need to be listed as well. He asked if there would be another list with chemicals that might be stored and part of the overall list. Mr. DiMare thought there would be.

Mr. Gates said they would be servicing small engines; any repair to vehicles will be brakes, oil changes and tire changes; it is not going to be an extensive list of chemicals or solvents. They will have anti-freeze and parts cleaner, but it will be limited; it is not a massive fleet that will be maintained. The building is for the equipment in the field (weed wackers, generators, compactors); 70% of the maintenance will be on trailers; the storage container will probably hold all the chemicals needed in the building. Mr. Perreault said the board would prefer to see a comprehensive list of all chemicals they will use or propose to use and the associated containment and storage for them.

Mr. Gates confirmed that only maintenance is being done in the maintenance building and the office building is for hands-on training and administrative work (no chemicals). Mr. Litchfield said when you have a construction company and talk about training, it is important to distinguish between classroom training and how they operate and will there be any pieces of automotive equipment in that building, because there is a ramp at the entrance of the building and dock entrance in the back, and not sure why there are there for an administrative building. Mr. Gates said it will be hands-on computer training of new hires. The back of the building will contain stock for distributing to the crew out in the field. The ramp and doors are for the electric forklift to remove pallets of different materials they supply the crews with (from water to couplings, etc.). Mr. Litchfield asked if the fittings were mechanical or chemical fittings and was told mechanical. Mr. Gates explained the process; many are melted together or a coupling and an electrofusion machine are attached to it with the generator; everything has to be clean; no solvents. Anything mechanical would be compression style fitting. Mr. Litchfield said the Committee should consider (if there is a recommendation of approval to the ZBZ), a complete list of chemicals so the variance specifically limits the amount of chemicals in the building that is in the Groundwater 3 area. Mr. Litchfield commented that they had recommended a variance in Groundwater 1 at One Lyman Street. When the variance was granted, it allowed the applicant to go directly to the Planning Board. The Committee should determine if they want the applicant to come back for a review or not.

Ms. Guldner had no questions. Mr. Firmin asked what will be used for snow/ice treatment and was told they will be using sand only. Mr. Litchfield commented that because the application is for a variance, the Committee has to be comfortable with the use and the impact on the groundwater specifically in order to recommend approving. He will have many more comments/ questions and will make them during the Site Plan Review process if the variance is granted. Ms. Devereaux said they would welcome coming back to the Committee before going to the Planning Board for Site Plan Review and Special Permit.

Ms. Capobianco thought it was an overall improvement to groundwater and asked if there was an O&M proposed for the infiltration systems that will result in the water going into the groundwater. Mr.

Litchfield said that would be reviewed at the Site Plan Review but did not want the Committee to recommend approval until knowing how many chemicals, the volume they will be storing and how they will be storing them, and the risk hazard for the chemicals being spilled in the parking lot during delivery or operation of the site; that's what the Committee needs to be comfortable with, what will be present in the Groundwater 1 area. Ms. Capobianco asked if the intent of the applicant was to drive the trucks into the garage when getting deliveries of chemical and oils, or will they do deliveries in the parking lot. Mr. Gates said it would be from the parking lot. Waste oil will be picked up outside. Mr. Litchfield said the used oil has to be delineated on how it is handled and stored within the building; there are containment requirements. The containment for each of the chemicals or each cabinet would be 150% of the total amount of material that's stored within the cabinet. If there are sprinklers and chemicals in the building, then some containment for the sprinkler water that could mix with any of the high hazard material would need to be contained so it could not get into the parking lot and into the drainage system.

Mr. Ziton asked about what "spoil 75 yards" was. Mr. Gates said it is gravel in the field they cannot use when installing a gas line. Mr. Ziton asked about the water filtration systems; Mr. Litchfield said that will be discussed during the Site Plan Review. Mr. Ziton would like to see the amount of pavement reduced; Mr. DiMare will look into it. Mr. Ziton asked what the vacuum trucks are used for and was told they are used to draw up gravel without having to use a backhoe or shovel and damage utilities.

Mr. Perreault said the applicant is going before the ZBA to request a use variance. The use variance is for the accessory use of engine repair and maintenance. The applicant is proposing to construct the maintenance building in Groundwater 3 and conduct all the accessory use activities inside that building; however, some of the vehicles that will be repaired will be temporarily parked in the Groundwater 1 area or will transit across the Groundwater 1 area in and out of the maintenance building. It is that concern that requires the use variance from the ZBA. The purpose of proposing this organization on the site is because the maintenance activity is permitted in Groundwater 3; it's the incidental incursion into Groundwater 1 by the vehicles that will be serviced that is the concern that will require the use variance. Mr. Perreault asked if we make that consideration and recommendation to the ZBA with respect to that aspect, can we still meet with this applicant for the broader site plan and other considerations that have been raised by some of the board members. Mr. Litchfield said yes; in his opinion, the Committee would have to include the requirement for them to come back to review the site plan as if a special permit was required or require them to get the special permit and would want to put some controls on the amount of chemicals and the fact that they are only stored in the maintenance building and not in the administrative building. Mr. Perreault commented that there is a lot going on and a lot of different considerations such as impervious area coverage, proximity to the infiltration basin of other vehicles and containers being positioned, the location of the snow removal and where it is being deposited. He didn't think with the information he has right now that he is prepared to make any decision or comprehensive review. He asked are we able to narrow the scope of consideration and make a decision with respect to that in order to make a recommendation to the ZBA with respect to the use variance and still have an opportunity at a later time review the other considerations for the overall site. Mr. Litchfield said at a minimum, the Committee would want to quantify the exact amount/volume of chemicals stored on site and how they are stored before finalizing the recommendation.

Mr. Litchfield commented that the narrative says there is existing contamination from prior tenants, owners or industrial uses and asked exactly what type of contamination they are referring to. Ms. Devereaux said there is contamination that came out of where the administrative building is. The property was previously used for electric circuit manufacturing; there was an environmental spill years ago and is under Remedy Operation Status under the Mass Contingency Plan and subject to attenuation to clean it up. It is within the Groundwater 1 District; Devereaux Corp will be undertaking all the testing and reporting obligations going forward. Mr. Litchfield asked if they were under an Administrative Consent Order and was told there is no current Administrative Consent Order. If they move forward, they will have to go to the DEP in order to either get an Administrative Consent Order or Remedy Operation

Status. Mr. Litchfield will want to know the level of cleanup before any new use is to go forward. Ms. Devereaux said the applicant would be responsible for any cleanup since it is always the owner or operator who is responsible when they take title. There was a cleanup over 10 years ago; there has been some product found in the wells. Mr. Litchfield was not sure how to advise the Committee on what they would want to have for confirmation that the cleanup is done before the site is renovated into something new. Ms. Devereaux said there was treatment that was done when there was a spill. What happens going forward is they think with the passage of time that the level of the chemicals naturally dissipates in the groundwater; there has been no evidence of any spread, but it is not 100% cleaned up. Mr. Litchfield will do more research. It could be a significant improvement and that should be considered. Mr. Litchfield recommended the Committee continue the discussion to the next meeting and get specifics on the quantities and containment of the chemicals and some information on the cleanup (he will contact DEP).

What is needed is a comprehensive list of chemicals and anticipated chemicals that could be used and the way each of them will be stored and contained, additional information about the current condition in the area of the administrative building to understand the issue of contamination and the past history. Mr. Perreault said there are two levels of review; one is the more narrowly scoped use variance relating to the maintenance operation, the accessory use; and the second is the broader site plan level of review.

Mr. DiMare asked if the Committee could make a recommendation in favor to the ZBA with contingencies. Mr. Firmin felt comfortable if they were willing to accept the responsibility for the cleanup, Mr. Litchfield's confidence about the storage of chemicals stored on site, and a request to the ZBA that they come back to the Committee during the site plan process. Ms. Capobianco agreed with Mr. Firmin and said we do need the information regarding the additional chemicals and related information and would look to Mr. Litchfield for guidance and information on the 21E issue as well. She said the project improves the groundwater overall. Ms. Guldner would be comfortable with a contingent recommendation. Mr. Ziton was not comfortable with incremental approvals. Mr. Perreault was comfortable with the isolated consideration of the maintenance area in Groundwater 3, subject to the clarification of hazardous materials and storage. He is concerned about other aspects on the site, but for the purpose of the ZBA, their consideration is more narrowly confined to the accessory use aspect and would be comfortable with giving an approval of the accessory use proposal contingent upon the complete and comprehensive documentation of chemicals and storage, and a condition/recommendation that the applicant comes back before the Committee as part of the continuing process to review the broader aspects of the overall site and the areas of the site that are of concern.

Ms. Capobianco made a motion to recommend approval of the proposed use variance contingent upon the following conditions: [1] complete list of all chemicals and the methodology for appropriate containment; [2] all chemical storage be within the maintenance building which is located outside Groundwater 1 area as shown on the plan submitted; [3] return to the Groundwater Committee and adhere to the process required by a special permit under Groundwater Section 7-07-010 D.(3)(c)(3)&(5); [4] a status report submitted by an LSP for the 21E; [5] the variance applies to this applicant only, not to the site. Ms. Guldner seconded; roll call vote: Guldner-yes; Firmin-yes; Ziton-no; Capobianco-yes; Perreault-yes; motion approved.

Old/New Business:

Review and Approve Minutes of May 12, 2021 – Ms. Capobianco made a motion to approve the May 12, 2021 Meeting Minutes; Mr. Firmin seconded; roll call vote: Guldner-yes; Firmin-yes; Ziton-abstained; Capobianco-yes; Perreault-yes; motion approved.

Review and Approve Minutes of April 13, 2021 – Mr. Firmin made a motion to approve the May 12, 2021 Meeting Minutes; Ms. Guldner seconded; roll call vote: Guldner-yes; Firmin-yes; Ziton-abstained; Capobianco-abstained; Perreault-yes; motion approved.

The next meeting was tentatively scheduled for October 12, 2021.

Ms. Capobianco made a motion to adjourn; Ms. Guldner seconded; roll call vote: Guldner-yes; Firmin-yes; Ziton-yes; Capobianco-yes; Perreault-yes; motion approved.

The meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Melanie Rich
Committee Secretary