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# TOWN OF NORTHBOROUGH PLANNING BOARD

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**APPROVED 1/4/2022**

**Planning Board  
Zoom Meeting Minutes  
November 16, 2021**

**Members (Remotely):** Kerri Martinek, Chair; Amy Poretsky, Vice Chair; Anthony Ziton; Mille Milton

**Members Absent:** Michelle Gillespie

**Others (Remotely):** Kathy Joubert (Town Planner)

The Chair opened the remote meeting at 6:02 p.m. and made the announcement that the open meeting of the Northborough Planning Board 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 Planning Board are allowed and encouraged to participate remotely. This Order allows the Planning Board 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 may feature public comment. The process was explained. This meeting will include Executive Session.

Member and Staff roll call was taken: Millie Milton, Anthony Ziton, Amy Poretsky, Kerri Martinek, Bob Frederico (Building Inspector), Fred Litchfield (Town Engineer)

**Old/New Business:**

Annual Town Meeting Zoning Bylaws Discussion:

**Damon Amato RE: 75 Ridge Road:** Mr. Amato, Ben Legare (Business Partner) and Scott Cameron (Engineer) were present. They were last at the Planning Board on July 6, 2021. The property is under agreement; it is approximately a four-acre site needing considerable cleanup. Several concepts were discussed by the applicant based on the cost of the property, cleanup, what would make sense to have there, and what could be done by right; according to the applicant nothing was possible. They met with town officials and found that the town has an OSRD (Open Space Residential Development) bylaw. They believe it would be a fit for the site, but the site is in the RC District; the OSRD bylaw is only for RA and RB Districts. They are proposing is a new zoning amendment to add RC to the OSRD District. Mr. Amato said it would give the Planning Board more options to approve sites that otherwise wouldn't have the ability to be done. Calculations were done to figure out how it could work and what the density would be. With an OSRD they could get as many as eight single families on the site but reduced it to five for more yard area and to meet septic regulations.

Scott Cameron (Morin-Cameron Group) said they tried implementing the current zoning through different mechanisms and came up with six possible duplex units; they do not want to do that; five units would have three bedrooms. The Groundwater Protection Overlay District determines what can be done with a

property when it's on a septic system. Mr. Cameron shared the proposed zoning amendment he prepared and described the objective which was primarily adding the RC District to it.

Mr. Litchfield said the minimum lot size requirement in RA is 80,000 and RB is 40,000; by adding RC which is only 20,000 square feet, staff felt that was a significant reduction in lot size. The original bylaw was intended to capitalize on getting the maximum amount open space in the larger lot areas in the northern part of town where the terrain is a more difficult to build; something does need to be done to entice people to act, but not overdevelop. The calculation would need to be modified. Staff also talked about the possibility that some type of offsite mitigation within the same watershed of open space could be worked in the overall OSRD with this proposed project.

Ms. Martinek asked why staff recommended a 1.3 modifier instead of 1.5. Mr. Litchfield said staff felt that at 20,000 square foot lots, 1.1 seemed like the appropriate modifier for the RC; 1.3 was proposed for the middle range of the RB; it was a suggestion to balance it. Ms. Martinek asked Mr. Cameron why he went with 1.5. Mr. Cameron said he was cautious of taking away from a particular zoning district because it could result in people trying to protect those rights. Ms. Martinek asked why they are proposing only five houses when they could have had eight. Mr. Amato said the was site was tight and they needed to comply with groundwater. There will be four 3-bedroom houses, and one 4-bedroom house. They want to put in more "a" affordable houses and not more "A" affordable houses in keeping with the spirit of the Master Plan. Ms. Martinek commented that the calculation yielded eight houses, thought that was too many, and did not like the result. The bylaw would have to be applied to everyone. Mr. Amato said it allows for creative flexible neighborhood friendly projects. The board will discuss and review the proposal further and notify them if they want to pursue it further.

George Pember RE: Rezoning 37 South Street: Mr. Pember was before the board last year and was asked to postpone the matter until this year. The old assessors map shows that the zoning district line divided the property; part of the property is in the downtown area and part is in the residential area. The building has been used commercially for many years. When the town rezoned, the boundary line between the two districts was moved closer to the center town leaving this parcel in the residential zone vs commercial. Because it is zoned residential, new tenants had to go before the ZBA for a variance. Mr. Pember is asking if the zoning line can be moved to the southside edge of the property to include the property in the downtown area. They don't want to continue to go before the ZBA for every prospective tenant. Ms. Poretsky asked if he reached out to the neighbors to see if there was any opposition and was told no.

Ms. Martinek asked why it was carved out this way; Mr. Pember did not know. If a bylaw was proposed, he would work with Ms. Joubert on the language. Mr. Frederico said the property Mr. Pember is referring to is in GR (General Residential), not Residential C. He asked if they were to rearrange the zoning line to include this one a lot, how close is it to calling it spot zoning and having an issue with the Attorney General's Office? Mr. Pember said they could make an argument for spot zoning but thought what they are trying to do is correct an oversight from the past. Mr. Frederico told the board they are proposing going from General Residential to Downtown Business, and although the current use of the building is with attorneys and engineers, Downtown Business opens up another category of potential businesses that could go in there by right. There are residences around the area and the board should be aware of that. Mr. Litchfield said staff can work with Mr. Pember if the board is amenable to redescribe how the line transcribed between South Street and the railroad and indicate the metes and bounds of a map amendment. Ms. Milton asked if abutter notification would be required. Mr. Pember thought it would and will reach out to the Hunts. The board will review it further.

**Sober Homes:** Mr. Frederico has not received any information from Boston in relation to the Building Code or Zoning. Sober homes are a protected class under the Dover Amendment and federally protected as well. There is no control as to where they can go and are treated as single-family homes. All they can do through the Building Code is to ensure the safety of the residents as far as sprinkler systems, etc., but they do not have to meet AAB requirements, and there are no requirements for parking. Mr. Frederico suggested reaching out to CMRPC for information on other towns. Ms. Milton will not pursue it at this time but will contact CMRPC and continue to watch for regulations and keep the board informed. Withdrawn.

**Breweries:** Ms. Poretsky chose to wait until Ms. Joubert returns for further discussion.

**Signs:** Mr. Ziton was not prepared but does not intend to withdraw. He will be prepared for the next meeting.

**Home Occupation:** Regarding the number of trucks and vehicles allowed. Mr. Frederico said there is a regulation, but in terms of someone bringing home a company vehicle, is that allowed and how many plated vehicles will be allowed (which is not addressed in the Zoning Code); clarification is needed. It will move forward.

Mr. Frederico said they also are working on a change to the height of fences. Currently the town allows 6-feet; the Building Code allows 7-feet; he may propose a change to zoning to allow 7-feet. It will move forward.

Mr. Frederico and Mr. Litchfield are working on federally recommended flood language in the zoning code; it is required to be done. It will move forward.

**Moratorium:** Ms. Martinek said if the board moves forward with a bylaw, we need to define what problems or concerns we hope to solve by the moratorium; a list is needed as to what would be addressed in that time period. If the list is big/broad enough, the moratorium could be pursued. If not, the definitions can be looked at. Ms. Poretsky will forward the list of criteria on truck/traffic from the Town of Sutton. Ms. Martinek will email the board for the members to respond with any concerns and research on the moratorium.

**Residential District:** Ms. Poretsky will forward Harvard's link on Open Space Residential.

**Brigham Street:** Waiting for data from Ms. Joubert.

**Enforcement:** Ms. Poretsky stated, we currently have an Enforcement section of our Bylaw 7-03-080. There are 3 sections: A. General, B. Enforcement Request and C. Penalty for violation. She would like to update the enforcement and penalty section to include enforcing the conditions on special permits and variances (along with enforcing the bylaws), similar to other towns. Also, under enforcement the zoning enforcement officer (ZEO) needs to inform the owner of the property of the violation and not just the person who is requesting enforcement that they didn't find a violation. She would also like to allow the ZEO the capability to be able to take action without needing a written request from a resident. She would also like to add D. revoking permit. If the owner refuses to correct the violation there should be an option to revoke the permit. She found that other towns had this section.

Ms. Poretsky suggested replacing “B. Enforcement request” and talked about the changes. Mr. Frederico said that replacing it with what is proposed states the obvious in terms of what is required of a Building Inspector or Zoning Enforcement Officer. What is currently stated “B” is in Chapter 40A. Giving immediate notice in writing requires time; it should be changed to a reasonable amount of time, he mentioned 7 days. He said what is proposed is currently in play. Ms. Poretsky said this would spell it out in the bylaws so all everyone would understand what is allowed.

Ms. Poretsky added “each violation of these zoning bylaws constitutes a second offense” to “C. Penalty for violation”. Mr. Frederico said if there are multiple violations, each violation and each day is a new offense. Ms. Poretsky mentioned that when this was discussed before and there wasn’t a clear answer. Adding it to the bylaw makes it clear. “D” was also added which talks about revoking a building permit and making a complaint to the Superior Court. Mr. Frederico said there would be issues with the Building Code vs. Zoning if it went to court and would have Town Counsel handle it because by the time the situation gets to this point, they're not listening to him or the town. He thought it was a good idea to include it for clarification but would want input from Town Counsel before it would be put on the warrant.

**Use Variances:** Ms. Martinek will invite the ZBA to an upcoming meeting to discuss the bylaws.

**Overlays:** The merits of opening up additional uses in the industrial district, the merits of either extending a commercial development overlay district so that it would open up commercial uses or identifying users that may work well in the industrial district were talked about. The last action item was to figure out the financial impact of industrial versus commercial if the uses were changed. Ms. Milton asked what the pros and cons were of having an overlay district and commented that some towns are trying to move away from them. Ms. Martinek said this would be a commercial development overlay that would allow commercial uses in industrial. Ms. Poretsky mentioned supermarkets and not sure if they would be a high revenue use in industrial and would be less or more traffic. Ms. Martinek said we keep getting the same things in our industrial district and keep having issues with traffic, etc.; if we were to have more options, we could make better uses. Ms. Poretsky said other towns have different levels of industrial with low impact being closer to neighborhoods and higher impact further away. Ms. Martinek said there are economic development resources at CMRPC; they could attend a meeting for discussion with the board.

**37 South Street:** More information on about abutters is needed as well as a current a map.

**Groundwater:** Ms. Poretsky has a concern with the Groundwater Advisory Committee (GAC) voting on the same special permit criteria as the Special Permit Granting Authority (SPGA) and said the GAC should only be making recommendations. She suggested they have a checklist and state that if the SPGA grants the special permit the GAC recommends the following conditions. She said Mr. Perreault did change how the memo was stated; it is on the GAC agenda for discussion; she felt the board should have input. Mr. Ziton said the GAC reviews the guidelines and set conditions for the application; the language could be “should the SPGA grant approval to this application, these are the conditions that we recommend applying”.

Mr. Litchfield said the Chair of the GAC asked for clarification. Mr. Perreault has made it quite clear to each of the applicants in the last 3-4 months that the GAC is just that, advisory, and that they do not vote to approve or disapprove a project, they vote to recommend approval to the SPGA who has the ultimate decision. He is trying to make sure that the wording that goes forward to the SPGA, whether it's the Planning Board or the ZBA, that it is clear. What Mr. Perreault had asked for was “should the SPGA decide to grant the application for special permit or variance, these following comments are recommended as

conditions” to be sure it meets the bylaws. Mr. Litchfield said this was always what it was intended to be; it was never his intention to send a letter to the SPGA telling them that the Committee voted to approve. If that was relayed by an applicant, it was clearly a mistake on their part; it was never the intention of the GAC or himself. The proposed draft is to make sure the GAC is saying what they intended to say. If the SPGA implements these comments as conditions, then the GAC feels as though it meets the bylaw.

Ms. Martinek said what's happening with the use of the letter is that there are unintended consequences with the wording that could bring possible liability to the board. Mr. Frederico commented that the Design Review Committee takes a vote on the design parameters of the building and asked if this would apply to the Design Review Committee as well. Ms. Poretsky would like it to. Mr. Frederico commented that the Advisory Committee only votes to send it to the SPGA, not grant a special permit. It is up to the SPGA to either use the advisory committees or not. An advisory committee has no legal standing in court with an appeal.

Ms. Martinek said the letter is being used in a way that nobody intended and asked how we avoid that from happening as the end result. Ms. Milton said they are getting caught between what it means when the advisory committee accepts application and votes to move it to the planning board stage; it's being used as an approval in more legal instances, and it becomes hard to differentiate what they're actually approving. The draft the board is referring to has not yet been reviewed by the GAC. The GAC should decide how they want the letter to go. The GAC is not approving anything; they never intended to approve anything; nor has Mr. Litchfield ever intended that the letter indicate that they've been intending to approve anything; They are advisory; they're very clear about that every time they meet.

Consideration of Minutes (10.05.21 & 10.19.21) – Ms. Poretsky made a motion to approve the October 5, 2021 Minutes; Ms. Milton seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Martinek-aye; motion approved.

Ms. Poretsky made a motion to approve the October 19, 2021 Minutes as amended; Ms. Milton seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Martinek-aye; motion approved.

The Chair took public comment regarding the bylaws. Lisa Maselli (13 Maple Street) commented on the Ridge Road property and the cleanup the developer spoke about. Oil was mentioned and asked if DEP had a report and should the Building Inspector visit the site. She also asked if it is the responsibility of the owner to clean it up. Mr. Litchfield was not aware of an oil spill. He believes the developer was referring to an old oil tank that may have been left there. If there was a spill, DEP would have been notified as well as the Fire Department and Mr. Frederico. He will confirm with the developer if he was referring to an oil spill or an abandoned oil tank. Ms. Martinek asked who is responsible, the owner or the developer. Mr. Frederico said it could be either one. He further said he was not made aware of any spill. If he was, he would have contacted the Fire Department, Health Department, and the DEP.

Ms. Milton made a motion to go into Executive Session pursuant to M.G.L., Chapter 30A, Section 21, Subsection 3 (litigation) regarding pending land use litigation: The Guttierrez Company v. Northborough Planning Board, Land Court Case No. 21 MISC 000046; The Guttierrez Company v. Northborough Planning Board, Land Court Case No. 21 MISC 000380; Isomedix Operations, Inc. d/b/a Steris A.S.T. v. Northborough Planning Board, Land Court Case No. 21 MISC 000436; and Abu Construction, Inc. and Ka Realty, Inc. v. Town of Northborough and Northborough Planning Board, Worcester Superior Court Civil Action No. 1985CV00178, due to the Chair’s determination that an open meeting may have a detrimental effect on

the litigating position of the Planning Board and/or the Town. Ms. Poretsky seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Martinek-aye; motion approved.

Ms. Milton made a motion to adjourn the regular meeting and enter Executive Session; Ms. Poretsky seconded; roll call vote: Poretsky-aye; Ziton-aye; Milton-aye; Martinek-aye; motion approved.

The meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Melanie Rich  
Board Secretary