



TOWN OF NORTHBOROUGH Zoning Board of Appeals

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5040 x7 • 508-393-6996 Fax

Northborough Zoning Board of Appeals

Zoom Meeting Minutes

February 22, 2022

Approved March 22, 2022

In accordance with the provisions of MGL Chapter 40A, Section 9, the Northborough Zoning Board of Appeals will hold a public hearing on Tuesday, January 25, 2022 at 6:00pm to consider the following applications. Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021, this meeting of the Northborough Board of Appeals will be conducted via remote participation. No in-person attendance by members of the public will be permitted. Please click this URL to join: <https://town-northborough-ma-us.zoom.us/j/84075375325> Passcode: 311390 Or join by phone: 1 646 876 9923 Webinar ID: 840 7537 5325 Passcode: 311390

Members (Remotely): Richard Rand, Chair; Fran Bakstran, Mark Rutan, Paul Tagliaferri, Brad Blanchette; Alternates Jeff Leland and Suzy Cieslica.

Others (Remotely): Fred Litchfield, Town Engineer; Robert Frederico, Building Inspector and Zoning Enforcement Officer; George Connors.

The meeting opened at 6:00pm.

HEARING

Continuation of the consideration of the petition of Propertunities LLC for a Special Permit to extend use by 50 feet into a more restricted zone at 40 & 44 Lawrence Street, Map 105, Parcels 3 & 4, located in the Residential C Zoning District and Groundwater Protection Overlay District Areas 2 & 3.

Mr. Connors said he had authored a letter on February 15, 2022 in response to the input received at the last ZBA hearing when it was suggested to that he pursue a waiver or variance. He received a response from the Building Inspector prior to this evening's meeting.

Mr. Connors' letter said that the Petitioner seeks a Special Permit to construct a new house and septic system, replace a septic system currently in the Groundwater 2 zone with one in the Groundwater 3 zone and install a new septic for the proposed house in the Groundwater 3 zone. The new house will replace an existing house. There are impervious structures on the lot that have greater square footage in the more restrictive zone than the proposed house by 1056' existing vs 900' that would be in the groundwater 2 zone for the house. As a result, there is a decrease of impervious surface. Secondly, both buildings on the lot do not infiltrate groundwater as they have no infiltration whatsoever. One of the buildings has a system that is more or less a cesspool in the backyard, well into groundwater 2. Both will have septic systems needing Title 5 in the front of the lot in groundwater 3.

Mr. Connors asked, by special permit, to take availability of the requirement allowing them to move 50' based on the fact that the groundwater district in the more restrictive is allowed per the zoning bylaws for groundwater protection.

Mr. Connors said the bylaw says you can build in the underlying district for groundwater 3 which requires 20,000 sf, but groundwater 3 itself does not have a specific square footage requirement as opposed to groundwater 1 and groundwater 2. The provisions later in the bylaw allow for two family structures on 40,000 sf lots. The totality of these two lots is roughly 49,000 sf but with an existing house. In groundwater 3, you can have a two family for 20,000 sf. It appears clear that the underlying district allows for the construction of a new house on the lot and the use of the existing lot.

Mr. Connors said the Building Inspector's letter referred to the submitted ANR. Mr. Connors said the ANR was signed by the Planning Board but there has been no transfer of any lots and until those lots are transferred, the ANR is just a plan required as part of the zoning application, there is no legal basis beyond that.

Mr. Connors thought there was a base disagreement on the words *underlying* and *overlay* and he believed this application met the requirements in zone 2; he added that even if you disagree with that, there are provisions to use 40,000 sf for duplex housing. Duplex housing is two units on the land and in this case there will be two individual houses, which he felt was unjust to require. He said they are requesting consideration under the bylaw and the provisions, even though he disagreed with the interpretation of overlay versus underlay.

Chair Rand asked board members if there were any questions.

Mr. Rutan asked if two lots are being created here. Mr. Connors said no, two lots are being redivided into what he believed to be buildable lots under the underlying zoning.

Mr. Rutan asked for the address and area size of each lot. Mr. Connors said lot 1 is on 40 Lawrence Street with approximately 29,000 sf; that is the lot with existing house. Lot 2 is on 44 Lawrence Street with 20,000 sf.

Mr. Rutan asked for the area in each of groundwater 3 and groundwater 2. Mr. Connors said about 1/3 sits in groundwater 3 and 2/3 in groundwater 2.

Mr. Rutan asked what was being proposed to be built. Mr. Connors said they are proposing a house that is 900 sf in groundwater 2, which will straddle the line but will mostly be in groundwater 3.

Mr. Rutan asked why there has been discussion regarding a duplex. Mr. Connors said it is an alternative provided for in the bylaw that he thought would make sense, but there is no proposal to construct a duplex.

Ms. Bakstran asked if the actual two lots have more than 20,000 sf in them and if the argument is that the use is to extend the development into the more restrictive groundwater, but that the lot itself is more than 20,000 sf? She said the underlying square footage of the lot meets the 20,000 sf but a large portion of it is in a more restrictive groundwater zone. She said that it was about placement of the house, if it were to be moved forward, we would be looking at the entire lot as 20,000 and 29,000 sf and approve building the house because it is being built on the front of the lot.

Mr. Connors said the lot is a little more than 20,000 sf. He said Ms. Bakstran's comment was an interesting one, perhaps the house could be changed so that very little of it is within the groundwater 3 zone, if that were to satisfy the board.

Ms. Bakstran asked if the lot itself meets the underlying criteria of more than 20,000 sf.

Mr. Litchfield said that the Building Inspector's letter indicated that because the petitioner doesn't have all 20,000 sf of land on the lot without encroaching into groundwater 2, he doesn't meet the minimum lot size. If he had 20,000 sf without going into groundwater 2, he would then have a buildable lot.

Mr. Connors said he disagreed with that, in RC, the underlying zoning requirement is 20,000.

Mr. Litchfield added: but not in the groundwater 2 area.

Mr. Tagliaferri said the petitioner doesn't have 20,000 sf free and clear in groundwater 3 land to build on. It's not buildable because 1/3 of it is in groundwater 3; 13,000 sf is needed to get to that.

Mr. Frederico was asked to explain his letter.

Mr. Frederico said his first page was background where he discussed the requirements for a single family home in groundwater districts 2 and 3. He made a comment about ANR's, saying that when a lot line is redrawn, whatever preexisting conditions were there before are now gone. Once an ANR is signed by the Planning Board, it comes to fruition; an endorsed ANR is by no means an endorsement that whatever has been drawn is compliant with current zoning requirements. He added that the letter is essentially addressing the proposed four bedroom home, not the existing one.

Mr. Frederico said the letter also addresses the 50' movement of the groundwater boundary line, which mentions the special permit requirement, which is for the use but nothing to do with the reconfiguring of the required lot area in terms of square footage. In order for this particular lot to be considered buildable, 20,000 sf is needed in groundwater 3. You can't borrow square footage from a more restrictive lot to satisfy the requirements of the least restrictive lot.

Mr. Tagliaferri asked, in order for this to be a buildable lot, given the plans are dated December 9, 2020, they would both need relief to build into the groundwater 2 area by the 50' extension provision 7-07-010 C and to be granted relief from the requirement of the groundwater 3 minimum lot size. He asked, as this application is currently worded, if it is not going to get them where they need to be.

Mr. Frederico said probably not. He understands that there is a difference in how he and Mr. Connors looks at underlying versus overlying districts. Mr. Frederico thought he would need a variance.

Mr. Connors asked why is there the word 'underlying' and what does it mean when you have a groundwater map and a bylaw that say overlay?

Mr. Frederico said that the overlay district overlays all other districts, it overwrites the rules when you have an underlying district or underlying requirement. The overlay district speaks to an underlying requirement, it reverts back to the base zoning code. There is an overlay requirement if it is in groundwater 2 or groundwater 1, but in this case, with the groundwater 3, it says allowed as underlying requirements. Whatever overlay restrictions there are, in this case, RC district, groundwater 3, reverts to original base requirements which is 20,000 sf.

Mr. Connors said the only requirements beyond that is that it has the percentage and impervious calculation proving it doesn't have an impact. The underlying is the 20,000 sf. You have 40,000 sf for groundwater area 2 and 80,000 for groundwater area 2, but for groundwater area 3, it refers to the underlying district. Mr. Frederico said that the underlying area is 20,000 sf. Mr. Connors answered that they have that. Mr. Frederico said that it is needed in groundwater 3; Mr. Connors said it doesn't say that.

Chair Rand asked Mr. Litchfield to weigh in.

Mr. Litchfield said the Town has interpreted it as groundwater area 3 doesn't have a lot size requirement, it refers to the underlying zone which is 20,000 sf but you can't use the more restrictive groundwater 2 area to satisfy the groundwater 3 or the underlining zoning to meet that 20,000 sf, because that has a different requirement. This is how it has been interpreted in the past and this is what he has been saying since October, and this is why the case was referred to Town Council. Town Council rendered an opinion that he was in agreement with the way the Building Inspector interpreted it. In Mr. Litchfield's opinion, these two lots are not buildable separately. If they were to be combined as one, he believed there would be enough land area in groundwater 3, or in groundwater 2 they would have more than the 40,000 sf. Furthermore, at the time the bylaw was adopted, there was one house and one garage on the other lot, even though there were two lots. The applicant bought the land at a foreclosure and is trying to get two lots where there was originally one house and one garage. He thought it was appropriate to allow him to have one house, one septic system, one lot.

There was no public comment.

Mr. Connors said they were in disagreement over the base language. He said he could petition for a duplex, it is manifestly unjust not to grant relief here. He disagreed with the Building Inspector's comments relative to the ANR, it has changed nothing as a legal matter and that the existing lots that were there prior are still valid under the statute.

Mr. Rutan made a motion to close the hearing. Mr. Tagliferri seconded. Roll call vote followed, all were in favor.

DECISION

Mr. Rutan said he disagreed with Ms. Bakstran. He believed that the overlay districts were created because the operation of a household on a property impacts the groundwater, therefore the requirement in these districts for a certain square footage. In groundwater 3, we want 20,000 sf of groundwater 3 area and if a part of that is groundwater 2, then we want 40,000 sf so as not to impact that. Moving the house into groundwater 3, with regard to operation of the house, you have runoff, traffic, which still impacts the groundwater 2 area and possibility damage it. He agreed with staff's interpretation of the groundwater districts, he thought the logic was to protect the groundwater because we need this extra area so as not to impact them, and to steal from a more sensitive area to satisfy a least sensitive area is just wrong.

Ms. Bakstran thought Mr. Rutan made a valid argument about why it is important to have the 20,000 sf in groundwater 3 though she disagreed with what the overall intent is. She said that it is to protect the groundwater and the lines of the two parcels are just lines on a piece of paper. Those lines could be changed and have more than 20,000 sf on groundwater 3 on the front of the property and just disregard the back part of the property which is groundwater 2. The groundwater will be protected better with the

development of these two lots than if it is left as it is. Why was the line drawn the way it was? She thought it was reasonable to give relief but thought it was equally valid not to, she couldn't see a clear right or wrong.

Mr. Tagliaferri said he agreed with Mr. Frederico's letter which states the two main points. First, he needs a special permit for the 50' extension if he wants to build the house, which straddles groundwater districts 2 and 3. Secondly, even if the board grants that, he still needs the secondary step, to have relief granted for the additional 13,000 sf to get that minimum lot size to be 20,000 sf. Even if the board grants that relief, it still does not get him a buildable lot. Mr. Tagliaferri said he doesn't see what they need to ask for being asked for. He didn't think he could approve this request.

Chair Rand said he agreed with staff and Mr. Rutan, this is being handled in the wrong manner, they don't have the right application for what they are trying to accomplish.

Ms. Cieslica agreed that she can see what they want but that they need to go about it in the right way.

Mr. Leland said he understood where Ms. Bakstran is coming from but he wasn't sure the lines could be moved to give the applicant that much, given that there is already an existing house with a septic system. Maybe if there wasn't already a house there you could take land from one but he wasn't sure that there is enough underlying land to give them the two lots in the less restrictive zone.

Ms. Bakstran said she didn't disagree, Mr. Tagliaferri worded it better than she did, and Ms. Cieslica built on that. She thought there is a way in which they can get what they want, but the way it's been presented to the board doesn't seem to be the right way.

Mr. Rutan made a motion grant a special permit to allow 50' of relief into groundwater 2 from groundwater 3 for the construction of a dwelling on the property at 44 Lawrence Street. Ms. Bakstran seconded. Roll call vote was as follows:

Mr. Rutan	"nay"
Ms. Bakstran	"nay"
Mr. Tagliaferri	"nay"
Mr. Blanchette	"nay"
Chair Rand	"nay"

The application was denied.

Old/New Business

- Consideration of minutes from January 18, 2022-Ms. Bakstran made a motion to approve the minutes as submitted, Mr. Rutan submitted, all in favor.
- Consideration of minutes from January 25, 2022- Ms. Bakstran made a motion to approve the minutes as submitted, Mr. Blanchette submitted, all in favor.
- Next ZBA Meeting—The next ZBA meeting is scheduled for March 22, 2022

Mr. Rutan made a motion to adjourn. Mr. Blanchette seconded. All were in favor.

Meeting adjourned at 6:46pm.

Respectfully Submitted by

Michelle Cilley, ZBA Board Secretary