



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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## Northborough Zoning Board of Appeals

### Zoom Meeting Minutes

January 25, 2022

Approved February 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

**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 presented on behalf of Propertunities LLC. There is an existing house on a lot and an existing structure or garage and outbuilding on an adjacent parcel. Both lots were merged in an ANR. The septic system will be replaced on the existing house on the left; on the right, the existing garage and outbuilding are about 100 sf and will be replaced with a house which is more into the Groundwater 3 when previously it was mostly in Groundwater 2 at 900 sf; and in front in Groundwater 3 we have the proposed septic system. The existing conditions had no infiltration including the garage. The house will have infiltration relative to the various criteria for Groundwater protection and recharge and will provide more than what was previously there. The petition is to allow the use of the Groundwater 3 to extend 50' into Groundwater 2, or the placement of that house is in the area with the existing garage is. He disagreed with the discussion that 20,000 sf is needed in Groundwater 3.

Mr. Connors said, in his mind, there is a clear distinction between the base zoning district and the overlaying zoning district. In this application, they are seeking to invoke the provision which requires the special permit to extend the Groundwater 3 uses into Groundwater 2 uses by 50'. In Groundwater 3, residential development of single-family dwelling units is allowed in the underlying Residential C district, and that district requires 20,000 sf. He said that an overlay district does not preclude using land within

the zone 2 because the underlying zone has been met. He said now there is an increase in infiltration, there is a better use of the land, it was a pre-existing lot, it needed maneuvering for width. He believes that in all instances where one would read a bylaw and know what's reasonably expected in the Groundwater 3 zone there is no particular dimensional requirement.

Chair Rand asked Mr. Litchfield to address Mr. Connor's comments.

Mr. Litchfield said the Groundwater Committee met and sought opinion from Town Counsel. The Groundwater Advisory Committee stipulated that the items discussed by Mr. Connors are true and accurate; that the impervious cover of 15' is met, infiltration is provided where none was before, there is no increase beyond the 15% volume in the runoff associated with either of those lots, both have septic systems that are improvements over what was there before.

In his January 21, 2022 letter to the ZBA on behalf of the Groundwater Advisory Committee, Mr. Litchfield noted that the committee was uncomfortable rendering a recommendation on the special permit because it was more of a legal aspect that it was a Groundwater quality issue and decided to put it in the ZBA's hands. He believes the Zoning Enforcement Officer's argument is that you can't use the land area in a more restrictive zone to meet the lot area requirement in a less restrictive zone. The line is between Groundwater 3 and Groundwater 2. Town Counsel agreed with the Building Inspector's previous determination that it wouldn't be a building lot with or without the special permit being granted.

Mr. Frederico said that these lots were ANR'd recently. The previous lots may have enjoyed more pre-existing, non-conforming uses, but since the ANR has been done, any kind of 'grandfathering' is now gone and everything must conform. Using one groundwater district against the other has been problematic, so he believed the applicant should seek a variance. As of now, Mr. Frederico can't deem it a buildable lot.

Mr. Connors quoted from the bylaw 7-07-010C(3):

*Where a Groundwater Protection District boundary line divides a lot in single or common ownership at the time such district is established, a use authorized on the less restricted portion of such lot may be extended into the more restricted portion but in no case for more than fifty (50) feet over the established line; a special permit from the special permit granting authority for said extension shall be required in accordance with subsection (D)(4) of this section.*

Mr. Connors said he has no idea what that means if it doesn't allow you to use Groundwater 2 for the use in Groundwater 3. He said it doesn't make sense; they have the ability to go into a less restrictive zone by 50' to make the lot usable. He disagrees with the determination that the pre-existing, non-conforming aspect changed because the underlying zoning is 20,000 sf and an ANR is simply a recording statute, it allows you to record the plan but has no validity until such time that the lot is transferred. He said that there is no area requirement contrasted with Groundwater 2 that has 40,000 sf and the one that has 80,000 sf.

Chair Rand asked if the ANR was signed and if so, when. Mr. Litchfield it is, and is dated April 7, 2021.

Chair Rand asked if board members had any questions.

Ms. Bakstran asked for the size of the second lot. Mr. Connors said it is 20,761 sf. She asked if it is just over the underlying district's requirement for a buildable lot, Mr. Connors said that was correct. Ms. Bakstran asked how much of that 20,000 sf is in the more restrictive zone that would require 40,000 sf to be buildable? Mr. Connors estimated that it was about two-thirds. Ms. Bakstran asked if the proposed structure is going to be built on the third that is less restrictive but will encroach into the more restrictive by less than 50'? Mr. Connors said that was correct. Ms. Bakstran said that the Zoning Enforcement Officer said that you have to look at the entire lot as though it were in Groundwater 2, the more restrictive one, therefore it is not buildable because it does not have 40,000 sf, neither of them do.

Mr. Frederico believed that using one restrictive area versus another is contrary to the intent of the bylaw, although it has been used in this particular circumstance before. If the board wants to allow this, maybe a variance is the way to go; it comes down to a dimensional requirement where one more restrictive use in size of the lot is being asked to cover for the other. Unless the board thought otherwise, he didn't see this as buildable.

Ms. Bakstran said only one of those lots is at issue here because it doesn't actually already have a house on it. The one with the existing house is similar with parts in zone 2 and zone 3, but that's not what is in question, it's the lot with the existing garage.

Mr. Tagliaferri wanted to confirm that it is only the one lot that are looking for relief from; Mr. Frederico's determination is that they need a minimum of 40,000 sf because it is split between Groundwater 2 and Groundwater 3.

Mr. Litchfield said the issue is the special permit requested is to allow the use to extend into the more restrictive zone, it doesn't necessarily translate to dimensional requirements, just the use. He thought if the applicant had 20,000 sf outside of the Groundwater 2 area, then he would have a lot, or he'd have to have 40,000 sf located within Groundwater 2 and Groundwater 3 combined. The intent of the special permit to allow the applicant to move the groundwater line into the more restrictive area was not intended to allow two lots to be built where only one could have been before. He had one house and one garage before on these two lots and that is where Mr. Litchfield believed what he should remain with. He said they have used the theory that you can't use the area within a more restrictive groundwater area to satisfy the lot area requirements of the less restrictive one, and that is what Town Counsel has weighed in as being consistent and agreed to with what has been determined in the past.

Chair Rand felt a dimensional variance would be needed to do this. Mr. Connors said he would have to discuss that with his client and asked to continue this hearing so he could have time to evaluate that.

Mr. Frederico said what he is standing on is what they've done in the past. It is essentially a dimensional requirement.

Ms. Bakstran said the lot was divided and made into two buildable lots. Town Counsel's opinion is that without the restrictive area of area 2, you need to have 20,000 sf; that's two different legal opinions.

Mr. Connors said that the Town's attorney said 20,000 sf was required. He added that it was a poorly worded bylaw. With respect to the ANR, that simply widened the lot and again, there has been no transfer. He requested a continuance.

Mr. Litchfield said that a signed ANR doesn't necessarily indicate approval of two buildable lots. He believed the Building Inspector's interpretation is that they are not buildable lots because there isn't either the 20,000 sf within Groundwater 3 or 40,000 sf within the Groundwater 2 area. They had one lot before with one house and one garage, and they still would have one lot, not two. If the board were to grant a variance on the dimensional requirements, you'd effectively be allowing him to make it into two.

Mr. Blanchette made a motion to continue the hearing for 40-44 Lawrence Street to the ZBA's next meeting on February 22, 2022. Mr. Rutan seconded. All were in favor.

#### **Old/New Business**

- Consideration of minutes from November 23, 2021—Ms. Bakstran made a motion to accept the minutes from November 23, 2021, Mr. Rutan seconded, all in favor with the exception of Mr. Blanchette, who abstained since he was not present at that meeting.
- Open Meeting Law Complaint, Response from Attorney General—Mr. Rand mentioned that since their last meeting in November, they'd had a response from the Attorney General's office with regard to the Open Meeting Law complaint filed against the ZBA by Amy Poretsky and another resident. The AG's office ruled that the board did not violate open meeting law, they were given the opportunity to speak at the meeting and it was up to the Chair (which was Ms. Bakstran at that time) to allow them to speak at other times during that meeting; the Chair was correct in her decisions that night during the hearing.
- Next ZBA Meeting—The next ZBA meeting is scheduled for February 22, 2022

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

Meeting adjourned at 6:37pm.

Respectfully Submitted by  
Michelle Cilley, ZBA Board Secretary