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Joel B. Bard
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BY EMAIL AND FIRST CLASS MAIL

Honorable Kathleen Wright and
Members of the Selectboard
Northfield Town Hall
69 Main Street
Northfield MA 01360

Re: Zoning Board of Appeals

Dear Members of the Selectboard:

Over the course of the last several months, the Selectboard has asked numerous questions concerning the Town's Zoning Board of Appeals (ZBA) and its members based on questions, allegations, demands and the like from residents of the Town. Many of those entreaties have focused on the ZBA chairman and many have related to recent proceedings before the ZBA concerning an application for 90 East Street. I will try to address the key points, beginning with 90 East Street. And I will begin that with a brief update on the related litigation, Cornwell v. Town of Northfield, Northfield ZBA, et al.

The ZBA recently issued its decision approving the renewal of a special permit for an auto repair shop at 90 East Street. That decision was appealed in an action filed in Franklin Superior Court by Daryl and Dianne Cornwell. They named as defendants the Town of Northfield, the Northfield ZBA, Bill Willey and Timothy and Beth Ives. On Friday, August 31, I filed an "Appearance" in Superior Court. The Appearance informs the court and the other parties that this firm will be representing the Town and the ZBA in this action. Under the unique provisions of the state Zoning Act, G.L. c. 40A, s.17, the Town and ZBA are not required to file anything in response to a zoning complaint of this nature, but we filed the Appearance to inform the court and the parties of our representation of the municipal parties. From this point forward, all of the parties in the litigation must send us copies of any communication they send to the court. Any communication about the litigation directed to the Town must be sent to us. There is no further action required of the Town at this stage of the litigation.

As to the ZBA's handling of this application, I reviewed many complaints and criticisms. In my opinion, some were justified, others not. For example, I reviewed a lengthy list of alleged violations at the subject property which the writer stated must be addressed by the ZBA. In fact, many involved subjects that were well outside of the ZBA's jurisdiction (such as enforcement of EPA standards) and it was unreasonable to expect the ZBA to investigate those matters and to require that each be fixed (to the extent that they required fixing). However, as to those items which were directly related to the operation of the auto repair facility, it would have been reasonable for the ZBA to ask the applicants to address any legitimate complaint or evidence of a clear violation of law. On an application for renewal of a special permit, a ZBA should, in my opinion, ask an

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applicant to respond to complaints or reports of improper practices and unreasonable or avoidable disturbances to neighbors. Should a zoning board decide to grant an application to renew a special permit, the board has the ability to impose reasonable conditions which could mitigate the concerns of neighbors.

I have reviewed what appear to be two versions of the Board's decision for 90 East Street. Clearly, this is not a good practice. From what I understand, the ZBA's practice for arriving at a final decision is not well defined and is largely left in the hands of the chairman. If this is accurate, it is my opinion that this is not a good practice. Board members should not abdicate their responsibilities to the chair. Board members should not sign "blank" decisions. They should only sign decisions after they have read them. And, of course, all the members should sign the same decision.

Issues of this nature lead to the question of whether the Selectboard should remove the chairman, or all of the members, of the ZBA. This is, of course, a decision for the Selectboard. There is no automatic right to remove members of Town boards, but the Zoning Act expressly allows for the removal of ZBA members "for cause", after a public hearing. G.L. c.40A, s.12. I have reviewed the complaints against the chair and the members. In my opinion, the ZBA's practices are very lax and unorthodox. For example, the issue of the grandfathered status of the business at 90 East Street was raised. I advised that the burden of establishing a continuous nonconforming use is on the applicant. However, rather than require the applicant to meet this burden, a member of the ZBA prepared a partial report on the subject. Perhaps this was an effort to be "business-friendly", but it is not the way an important factual issue should be addressed by the board. Applicants should present their application and then the board – the entire board – should determine if the applicant established the necessary facts to the satisfaction of the members of the board.

Despite these and other shortcomings, the most important fact relating to possible removal of the chairman, in my opinion, is that the Selectboard re-appointed him less than one year ago. As the complainants have made abundantly clear, the behaviors of which they complain date back many years. It is not a situation where someone was re-appointed and then began to behave in a manner completely different than before. The same is true for the entire ZBA. In light of these facts, it is my opinion that it would be difficult to remove the chairman or other members of the ZBA.

My recommendation is that the Selectboard make clear that future appointments to the ZBA (or any other Town board) will be based on an applicant's interest in the subject, particular background related to the board's jurisdiction, and their willingness to conduct Town business professionally, to treat applicants and residents with courtesy, to study and apply the relevant Town bylaws and regulations related to their board, to attend professional trainings, to follow the advice of counsel or other experts hired by the Town (unless the Board provides a clear explanation for why it is pursuing a different course) and generally to follow what are recognized to be "best practices" for boards. Current members seeking re-appointment should show evidence of professional development, such as by a record of participating in training to improve their understanding of the State and local laws and regulations related to their board.

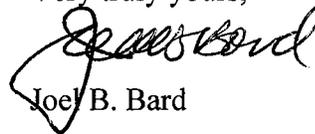
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On that last point, I have volunteered to the Citizen Planning Training Collaborative (CTPC) to lead to a two-part workshop on Roles and Responsibilities of Zoning Boards and Planning Boards. The workshops will be held in Greenfield, from 6-8 PM, on Wednesday, October 17, and Thursday, November 8, 2012.

Finally, I understand that there is some on-going pressure on the Selectboard to take action with respect to complaints received regarding a member of the ZBA. The Selectboard has held an executive session to review those complaints. If the Board feels that no further action is needed in that regard, the Board may simply close the matter (in executive session), if it has not already. There is no need to take any formal action if the Selectboard feels that none is required.

Please let me know if I have overlooked some of the issues which have been raised.

Very truly yours,



Joel B. Bard

JBB/ckb