



TOWN OF NORTON
ZONING BOARD OF APPEALS
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MINUTES

Meeting of August 2, 2010

I. Call to Order

The August 2, 2010 scheduled meeting of the Zoning Board of Appeals was called to order at 7:30 p.m. in the second floor meeting room in the Norton Municipal Center by Chairman Thomas Noel, with the following members present: Thomas Rota, Alternates Nitin Choksi and Francis Reynolds. David Sharpe, member was not present so Nitin Choksi sat in as a member. Also present was Town Counsel, Ilana Quirk of Kopelman and Paige.

II. David Arsenault, Patten Road, 010-015

Application is for a request for a variance from Section 6.2 or relief from the 40-foot minimum front yard setback. Mr. Arsenault proposes to construct a porch on the front of the dwelling which will change the front yard setback from 40' to 30' in an R60 zone.

Document List:

1. Variance application form.
2. Plan entitled "Plan of Proposed House With Porch, Patten Road, Norton, Massachusetts, David & Rae Arsenault, dated June 9, 2009 prepared by Yarworth Engineering, Inc. and signed and stamped by Christopher D. Yarworth".

Present at the hearing were David and Rae Arsenault and their engineer, Chris Yarworth of Yarworth Engineering Co., Inc.

Tom Noel noted that the property size is approximately 7,949 sq.ft. He had questions regarding ownership. Chris Yarworth stated that Mr. Arsenault had purchased the property on July 1, 2010. Chris Yarworth stated that a variance had been given a year ago on this property allowing the construction of a house. He said the location of the house is not changing but the applicant would like to construct a six-foot porch with steps on the front of the house making it closer to the street rather than moving the house back in order to construct the porch.

Tom Noel asked if Mr. Arsenault had gone before the Planning Board for this addition and Mr. Yarworth stated it was not necessary as a permit to construct a house on this

property had been obtained by the first owner. Mr. Noel noted that an application for a Form A plan had been submitted to the Planning Board. Mr. Yarworth stated he was confident at this time that it was approved.

An abutter, Robin Grant, 31 Mayflower Road had concerns with water runoff as more fill was to be brought onto the property. She stated she was present at the previous hearing when the two lots were combined into one and was under the impression that the owner was going to build his own house on the property. She asked if variances were transferable from one owner to another and Mr. Noel stated they go with the property. Ilana Quirk, Town Counsel confirmed this. She stated until this past Friday, variances had to be exercised within one year. She said legislature has changed the policy and now all variances will be in effect for another two years. She asked Mr. Noel when the previous variance was granted and he replied April 21, 2009 which is now extended through October of 2010.

Ms. Grant asked if the Zoning Board of Appeals has received any emails or letters regarding tonight's hearing and he replied that he nor the secretary has received any correspondence from any neighbors. Ms. Grant asked how much the grade of the property was going to change and where water runoff was going to go if the house is built according to the approved "specs" She asked what recourse neighbors would have if their property is flooded as a result of the house being built according to the approved "specs".

Mr. Noel stated there were no "specs" before the board. Mr. Rota stated the board was not reviewing drainage or grading tonight, only the request to go 10 feet closer to the front lot line with the construction of a porch.

Ms. Grant asked again where neighbors would go if problems with flooding occurs. Mr. Noel asked Ms. Grant to present any evidence showing future problems. Ms. Grant stated that her concerns are always disregarded at Zoning or Planning Board meetings and Mr. Noel stated all concerns and evidence are always taken into consideration at every meeting.

Mr. Noel asked the applicant to explain any proposed changes in grading. Mr. Arsenault stated the footings will be 2 feet into the ground and 4 feet of coverage is needed. He said the grading will be approximately 1 ½ feet below the street. Mr. Noel asked if the entire lot is going to be filled and Mr. Arsenault replied that it is. He asked Ms. Grant if water collects on this lot at present and she replied it does. He asked Ms. Grant if she had any evidence to present confirming her concerns with flooding and she replied she did not and asked why this should be the burden of the abutting property owners.

Richard Plum of 9 Mayflower Road had questions regarding the original merging of the two lots that were combined to make up this one lot. He stated he was under the impression that in order to combine two existing non-conforming lots (as stated under sections 6.3.3 of the Zoning By-Laws) , each lot would have to have been owned by the same owner for over 10 years. Mr. Noel stated this is only when the applicant is applying

under the “small lot” exemption which cannot be granted. He said the board advised the applicant to go before the Planning Board to for a Form A to combine the two lots. Ilana Quirk, Town Counsel, stated that there were many undersized lots that had not been protected but the Planning Board had granted variances to combine the lots to form a conforming lot. (Form As). Ms. Quirk asked if there were any setback conditions at the time the lots were combined and Mr. Noel stated there were not and this is why Mr. Arsenault has filed an application with the Zoning Board of Appeals at this time.

Ms. Quirk stated that it advisable for Zoning Boards to clarify all dimensions and setbacks when issuing variances to avoid any future problems.

Mr. Rota stated that if the applicant had not applied for this variance, he could have gotten a building permit and constructed the house as originally planned and the house would be closer to the existing houses behind him which would be more of a concern than the way the applicant wants to construct the house with this variance.

Mr. Richard Plum again asked the board how the these two lots were combined under Section 6.3.3. Mr. Noel again explained that by applying to the Planning Board to Form A the two lots, Section 6.3.3 is not taken into consideration. Mr. Plum stated, in his opinion, too many buildable lots were being approved in a crowded section of town. Chris Yarworth stated that constructing the house adding a porch as proposed with a variance to allow the structure 10 feet closer to the front lot line would be less detrimental environmentally than having it closer to the neighboring houses.

Robin Grant stated too much strain is being put on the neighborhood and she says that many people let small non-conforming lots get taken by the town for non-payment of taxes because they were under the assumption that they were non-buildable lots.

Ilana Quirk stated that any decision by Planning Board or Zoning Board of Appeals may be appealed immediately after the hearing by anyone.

Mr. Noel stated that the decision this evening is for the addition of a porch to be constructed 10 feet closer to the front lot line and not for the construction of a house which was decided at a previous hearing.

Janet Plum of 9 Mayflower Road suggested the house be moved back to allow the construction of a porch. She said the addition of a porch closer to the front lot line would not improve the look of the neighborhood. She asked what type of plans are required with a variance request and Mr. Noel stated that engineered-stamped and drawn plans are required and have been submitted. He also stated that, according to Mr. Yarworth, drainage issues would be improved rather than be worsened.

Tom Rota stated that, after hearing Mr. Yarworths comments regarding drainage, it was his opinion that allowing the variance would be better for the environment and drainage of the area.

Frank Reynolds stated that, in his opinion, by moving the house forward, the grading issues would not be as substantial as moving the house back.

Mr. Noel asked Mr. Yarworth to explain the grading differences between moving the house back or leaving it as proposed. Mr. Yarworth explained that the foundation is higher than usual and by leaving the house as is and adding the porch would require less fill and the grade would be lower. He said the applicant could have a walk-out basement because the foundation will be higher without the added fill with a 24-foot back yard which would also create more of a buffer between the house and the neighbors house. He stated that moving the house back would require more fill to make it look right as well as having to lengthen the driveway and bringing in more fill. He said that all around it would make more sense to leave the house where it is proposed and allow the front porch to be built closer to the front lot line.

Tom Noel asked if either of the side neighbors were present this evening and Ms. Grant stated they were not because they had to work but she said they did submit letters to the board. Mr. Noel stated an email from May has been received. He said a letter dated, May 31st from Heather Romans had been sent to Bob Kimball, Selectman. Chris Yarworth stated that this was before this application was filed with the Zoning Board. Mr. Noel stated that in her letter Ms. Roman stated she had attended the previous Zoning Board meeting a year ago where all her evidence and pictures were ignored. She further stated that the property had been sold without her knowledge and was again for sale. Ms. Roman said that the owner and his lawyer had mislead the town. Mr. Noel asked Ms. Grant how she thought the town was mislead. Ms. Grant stated that the original owner had stated he was going to build his own house on the property, and as soon as he was granted the variance, and he sold the property. Mr. Noel stated he had the right to sell the property.

Mr. Richard Plum asked if there would be any guidelines for drainage. Mr. Noel stated calculations for drainage are not required for this variance. Ilana Quirk explained that there are building codes that govern drainage issues.

Tom Rota explained that there is a 20-day appeal for a variance period which does not require an attorney. He stated at a public hearing all evidence may be presented by the persons appealing the decision and by the applicant. He said a higher authority will decide that; 1. the Zoning Board's decision will be upheld or 2. the Zoning Board's decision will be overturned not granting the variance.

Tom Noel asked the board if they wanted to condition the variance. Frank Reynolds asked how much of a burden would be imposed on the applicant to have drainage calculations done by Mr. Yarworth. Mr. Yarworth stated that if conditions are included with the variance which will cause a burden to the applicant, he will probably construct the house as originally planned without a variance. Robin Grant asked what recourse neighbors would have if any problems arose as a result of the house being constructed

with a variance. Ilana Quirk stated she could not comment on this issue. Mr. Arsenault stated he was already working very favorably with the neighbors.

Ilana Quirk reminded the Board that as Town Counsel, they would be represented if there was an appeal to their decision.

Tom Noel stated there was an **automatic motion for approval on the table to grant the variance as presented in the plans dated June 9, 2009. Ilana Quirk suggested the variance be tied specifically to the submitted plans, as drawn, dated June 9, 2009 showing only the addition of a front porch seconded by Tom Rota. All in favor. Approved.**

III. Paul Muscatiello, 33 Young Avenue, 011-002

Application is for a request for a variance from Section 6.2 or relief from the 25-foot minimum side-yard setback to expand a structure on a non-conforming lot. Mr. Muscatiello proposes to construct a 6'x9' mudroom and stairway leading to ground level on the side of the dwelling which will change the side yard setback from 25' to 11.9' in an R40 zone.

Document List:

1. Variance application form.
2. Plan entitled "Proposed Addition, 33 Young Avenue, Notice of Intent Plan In Norton, Mass. Dated January 12, 2010 prepared by Landmark Engineering of New England, Inc. and signed and stamped by Paul N. Cutler".

The property is located at 33 Young Avenue with frontage of 153' and side yard of 110'.

Present at the public hearing were Mr. & Mrs. Paul Muscatiello. He explained that he would like to construct a mudroom on the side of his property which will improve the property. He said he already has a permit to construct an addition on the other side of the house which is already under construction. He pointed out on the submitted plan that the side yard leads to a right-of-way which he and two other residents use to access their properties. Mr. Muscatiello explained that he has tried to find out who owns the right-of-way and has traced it back to 1950 when the houses were built, but cannot find out who owns the right-of-way. He stated it is his future intentions to build a driveway from Young Avenue to his property instead of using the right-of-way which is barely large enough for two cars to pass.

Mr. Muscatiello explained that his house, which is 22.6' wide is already within the setback area and that any work proposed would need a variance. He said that, at present, the existing stairs are 15' 6" from the side yard and the added 4' 6" would bring the stairs to 11.9' to the side yard. Mr. Noel asked when the stairs were built and Mr. Muscatiello replied they were there when he purchased the house in 2003. Mr. Noel asked where the

right-of-way extends to and Mr. Muscatiello replied it goes by his house and turns into the driveway of the resident behind him. He stated no-one knows who owns the right-of-way and said the town is not required to maintain it. He said the right-of-way is paved.

Tom Noel noted that this is an unusual request because of the size of the property and the variance size requested. He did note that, in his opinion, the proposed addition would not be impacting any of the neighbors.

Tom Rota asked Ilana Quirk, Town Counsel, for her opinion on the unusual circumstances with this request. He stated that usually the board does not grant variances which would decrease the size of the setback under 50% and he hasn't seen a situation where the street is actually an un-owned easement rather than a street. Mr. Rota asked Ms. Quirk for her opinion on whether or not it would be advisable to set a precedent.

Ms. Quirk replied that it is always a good idea for the board to be consistent in their decisions, but in different cases such as this, it would be advisable to list the particulars in the variance to compare with future applications that will help in their decision to grant or deny a request for a variance. She advised the board to consider the possibility that maybe some day the easement may turn into an actively-used road. Paul Muscatiello stated that the right-of-way is too small to be used and it leads right into the Norton Reservoir. Ms. Quirk advised the board to keep in mind that maybe sometime in the future, someone, perhaps the Town, could use this right-of-way as a public way to access the reservoir. She suggested to research ownership of the right-of-way. Tom Noel suggested it could possibly be owned by the adjoining neighbors.

Frank Reynolds asked Mr. Muscatiello if there was any buffer between his house and the paved right-of-way and Mr. Muscatiello replied there was approximately 3 feet.

Automatic motion for approval.

Tom Rota asked if any of the member had any further comments. Nitin Choksi stated that, in his opinion, this was a very unusual situation but he did not think the granting of the variance would have an unfavorable impact to any of the neighboring homes.

Mr. Muscatiello noted that the width of the stairs was incorrectly noted on the submitted plans as 14.1' and are actually only 6.9' wide. Tom Rota noted that going smaller is permissible by not going larger.

Tom Rota made a motion to approve the plans submitted by Paul and Leslie Muscatiello entitled Proposed Addition, 33 Yound Avenue, Notice of Intent Plan in Norton, MA dated January 12, 2010, with revisions on 2/24/10 and 5/12/10 with final revisions on 7/14/10 and to grant a variance to no less than 11' 9" maximum as drawn on the plans with a width of 14.1' for a porch addition with no further impact to the side yard. Niti Choksi seconded the motion. All in favor. Approved.

IV. Matthew Nottingham, 4 Grove Lane, 011-003

Application is for a request for a variance from Section 6.2 or relief of side yard setback and Section VI to expand Structure on non-conforming lot.

Document List:

1. Variance application form.
2. Mortgage Inspection Plan for 4 Grove Lane dated June 16, 2004.

Present at the public hearing were the applicant and his contractor Greg Lefleur.

Tom Noel noted that the property was purchased by Mr. Nottingham in 2004. He stated the size of the existing building is 20' x 20' and Mr. Nottingham proposed to construct a 12'x 20' addition, deck. He said the applicant is proposing an addition to a non-conforming lot with a Section 6 finding of an alteration to a non-conforming structure and a side yard setback within an R60 zoning district.

Mr. Nottingham stated he would like to construct a deck at the rear of the house facing Norton Reservoir. He said he had removed the stairs because they were deteriorated and were falling apart.

Mr. Rota stated the work would not be substantially detrimental to the neighborhood. Mr. Noel stated the side yard setback at present is 10 feet and the addition with the stairs would extend it another 12 feet. Mr. Nottingham stated the property and structure have not been remodeled since his living there.

Since there was no one in opposition nor in favor of the project, a motion for an automatic approval was made by Tom Noel. Mr. Noel had concerns with the validity of the submitted plans which were dated June 16, 2004. He asked Mr. Lefleur where the steps to the deck were to be placed and Mr. Lefleur pointed out that the steps would be 5 feet wide and extend out to 15 feet from the rear yard setback. Mr. Noel noted the stairs were not drawn on the submitted plans and asked the board members if the plans were sufficient per application guidelines.

Tom Noel made a motion requiring that the applicant submit revised plans, stamped by an engineer and showing the proposed stairs. Tom Rota seconded the motion. Approved. The next meeting was scheduled for Monday, September 13th.

V. Bay Road Heights, LLC, Bay Road - Modification

Application is for a modification to a 40B Comprehensive Permit.

Document List:

1. Plans entitled "Bay Road Heights, A Residential Development Located In Norton, Massachusetts/Sheets 1 – 10. Latest Revisions: June 23, 2010. Prepared by Outback

- Engineering, Inc. and signed and stamped by Rene L. Gagnon.
2. Drainage Report, Bay Road Heights, Norton, Massachusetts, A Proposed Housing Development In The Town of Norton., June 24, 2010.

Present at the public hearing were Tim Cussin from Bay Road Heights LLC, Jim Plavic and Randy Gagnon of Outback Engineering, Inc.

Tom Noel stated a permit was granted on October 16, 2007 permitting 36 units with a total of 108 bedrooms. He stated that it would have to be determined whether or not the modification would be a “substantial” or “insubstantial” change under the 40B regulations. He said if the change is deemed “insubstantial”, the applicant may proceed with the revised plans and if the change is deemed “substantial”, the applicant would have to file for a variance.

Tom Noel noted that the applicant had granted permission to extend the date for a public hearing five days because of the date the request was submitted.

Ilana Quirk, Town Counsel advised the board that they have two paragraphs to consider under the previous decision, 1. paragraph 6, Configuration of the units and 2. paragraph 19 which is the drainage which was to be reviewed further. She said that the board was to check into whether or not there were sufficient funds at this time to cover additional costs. Tom Noel noted that there are sufficient funds available per Town Accountant. He said an amount of \$4,250 was available.

Tim Cussin stated his applicant was submitting revised plans this evening reflecting changes to the drainage as well as a change to the configuration of the units. Jim Plavic stated that because of the required modification to the drainage system for the project, a change would have to be made to the configuration of the housing units. He said originally the plans were to construct 10 single-family houses and 24 condominiums coming off of Bay Road to Lincoln Street. He stated a permit was issued in 2007 and in January of 2008, the Department of Environmental had revised the Storm Water Management Regulations with stricter requirements for Water Quality Treatment. He said that because of these stricter regulations he had to re-configure the roadway around the septic system area which was originally oval shaped, and he had to remove one of the condominiums.

Tim Cussin stated that it is the applicant’s proposal to remove one of the condominiums at the cul-de-sac to allow more room for drainage and construct a duplex instead of a single-family house on Bay Road. He stated that the footprint of the building will not change and the two units would consist of 2 bedrooms each, not increasing the bedrooms of the original plan which was a 4-bedroom house. Mr. Cussin stated that the only other alternative would have been to push the condominiums back and he did not want to encroach any further to the existing houses. Mr. Rota asked if any of the sidelines were changed and Mr. Cussin replied they were not.

Tom Noel stated the changes will be submitted for pier review and Mr. Cussin agreed this would be acceptable. He asked Ilana Quirk, Town Counsel, if the changes would be substantial and she stated that under Paragraph 19 of the original decision, it was written that the final design for the storm water system would be subjected to pier review.

Abutters, Brian Cody of 138 Bay Road and Shirley Gereaux of 137 Bay Road had questions regarding the number of duplexes and what percentage would be investment owned and privately owned. Mr. Cussin stated the number of duplexes have not changed since the original approved plans in 2007. Ilana Quirk, Town Counsel, stated that there were two original conditions in place; 21. Single-family structures and expenses would be dealt with by a Homeowners Association and 21A. Condominium structures and expenses would be dealt with by a Condominium Association.

Mr. Cussin stated that any duplexes would be governed by the Condominium Association. Tom Rota suggested a special permit would be needed to allow a duplex on a lot smaller than 80,000 sq. ft. He also stated that this duplex would not fall under the Homeowners nor the Condominium Association. Mr. Cussin agreed that the proposed duplex to be located on Bay Road would fall under the Homeowners Association. Ilana Quirk stated that any restrictions put on duplexes can be permanently recorded on the deed to avoid any future problems. Randy Gagnon stated that the proposed duplex on Bay Road will have its own well and drainage. Ilana Quirk stated that the change for this project can be deemed “insubstantial” as long as the proposed duplex on Bay Road will be governed by one of the two Associations. She said this should be stated in the decision. Tim Cussin replied that the duplex would be governed by the Homeowners Association.

An abutter, Tammy Cody, asked the board why this project was under discussion tonight when in fact there is a “For Sale” sign on the property at the present time. Randy Gagnon stated that the property was for sale but the applicant has decided to develop the property.

Tom Noel asked if a public hearing would be necessary to review the final pier review and Ilana Quirk replied that it would not be necessary as stated in paragraph 19 of the final decision for this project. Tom Noel asked what a pier review normally would cost. Mr. Cussin read a letter which would require the applicant to comply with all rules and regulations for storm water management and best management practices to be reviewed and approved by the Town’s engineer at the applicant’s cost. Mr. Cussin asked that the cost not to exceed \$2,500 if possible.

The board members agreed that the proposed changes would not be substantial. Ilana Quirk suggested making a motion that the changes would not be substantial provided that the newly proposed duplex on Bay Road will be governed by the Homeowners Association. Tom Rota made the motion as suggested by Ilana Quirk, seconded by Nittin Choksi. Ilana Quirk suggested a vote be taken requesting that the Chairman, Tom Noel, negotiate a “Not-to-Exceed” contract for the pier review of the drainage calculations not to exceed \$4,000. Tom Rota made the motion as suggested, seconded by Nitin Choksi.

Ilana Quirk stated that the project would not have to be continued unless there is a problem after reviewing the pier review report. Mr. Cussin asked that his applicant have a chance to revise their plans according to pier review comments and Mr. Noel stated that the applicant would receive a copy of the report as well. It was agreed the latest plans would be sent to the engineer doing the pier review.

Meeting scheduled for September 13, 2010.

Tom Noel made a motion, seconded by Tom Rota, to adjourn the public meeting at 10:10 pm. Approved.

Minutes Approved by Committee on: _____
(Date)

Respectfully submitted,

Tom Noel

Chairman, Norton Zoning Board of Appeals