



**TOWN OF NORTON**  
**ZONING BOARD OF APPEALS**  
70 East Main Street  
Norton, Massachusetts 02766-2320  
Office: 508-285-0278  
Fax: 508-285-0277

## **MINUTES**

Meeting of September 13, 2010

### **I. Call to Order**

The September 13, 2010 scheduled meeting of the Zoning Board of Appeals was called to order at 7:30 p.m. in the First Floor, Board of Selectmen Meeting Area in the Norton Municipal Center by Chairman Thomas Noel, with the following members present: Thomas Rota and Nitin Choksi. (Frank Reynolds joined the public meeting at 7:55 pm.) Also present was Town Counsel, Ilana Quirk of Kopelman and Paige.

### **II. Matthew Nottingham, 4 Grove Lane, 011-003 (cont. from 8/2/10 mtg.)**

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**.
3. Engineered-plan entitled "**Proposed Deck, 4 Grove Lane, Norton, MA** dated **September 7, 2010**, prepared by **SITEC Engineering**, signed and stamped by **Steven D. Gioiosa**, scale of 1"=20'.

Tom Rota made a motion, seconded by Tom Noel, to begin discussion on project 011-003. Approved. Mr. Nottingham submitted an engineered-plan as requested at the previous meeting. Mr. Rota asked Mr. Nottingham if anything was different on the submitted plan from his hand-drawn plan and he replied nothing was changed.

Tom Noel stated there was an **automatic motion for approval of the project on the table to grant the variance from Section 6.2 or relief of side yard setback and Section VI to expand a structure on a non-conforming lot. Unanimously voted to approve.**

### **III. Peter F. Walsh, 11 Richmond Drive, 011-004**

Application is for a variance from Section 6.2 for relief of side and front yard setbacks.

#### **Document List:**

1. Variance application form.
2. Plan entitled **“Zoning Plan, 11 Richmond Drive, dated March 26, 2008 and revised on August 8, 2008, scale of 1”=20’**, prepared by **Hutchins-Trowbridge Associates, Inc.**, and signed and stamped by **Michael A. Trowbridge**.

Present at the public hearing was Peter Walsh. Tom Noel stated that this was a single-family dwelling and Mr. Walsh proposed to add a hallway and attached-garage with a room above. He stated that Mr. Walsh was looking for a variance for the frontage and side setbacks. Mr. Walsh confirmed this information.

Tom Rota stated this variance was approved on September 9, 2008 and showed a plan signed by Tom Noel on that date. Mr. Noel asked Mr. Walsh if this request for a variance was the same as the first request and Mr. Walsh stated it was because he did not have the funding to complete the project under the previous application which has since expired. Tom Noel asked Mr. Walsh if he was the owner of the property and asked if he lived there. Mr. Walsh replied that he is the owner and lives at this address.

Discussion ensued on the rules and regulations for extending the variance. Ilana Quirk, Town Counsel explained that under new regulations, any variance in effect between August 15, 2008 and August 15, 2010, can be extended for another two years. She explained that under these new regulations, the variance would expire another two years from the one year date it would originally have expired. It was agreed the variance was granted between these two dates and would now expire in September of 2011.

Tom Noel asked why the applicant has re-applied for a variance and Ms. Quirk stated that Mr. Walsh may not have been aware of the new regulations for extensions. Tom Noel stated that the board should act on the application before them now and that the original application/variance has been extended to September of 2011. He asked Mr. Walsh if there was anything new on the submitted plan from the original plans submitted in 2008 and he replied there was not.

Peter Walsh stated he had applied for a building permit on the original application and was advised by both the Building Dept. secretary and the Zoning Board secretary that his variance had expired and he needed to re-file. Mr. Walsh stated he had gone to the state for more information and they advised him to check back with the local Zoning Board of Appeals. Ilana Quirk asked Mr. Walsh when he had applied for a building permit and he replied it was this past Spring. She advised him that the new extension regulations were not in effect at that time.

Tom Noel asked if there were anymore questions regarding this variance. Mr. Walsh asked if he could be reimbursed his application fees for this application and Mr. Noel stated the board does not have the power to refund any fees. Tom Rota stated that Mr. Walsh could work under his original application which would now expire in 2011 rather than go through the expense of recording the present decision. Mr. Walsh asked what the time lines for starting his project under this decision was and Mr. Noel replied

approximately one year from the final decision date, but told Mr. Walsh to keep in mind he could still work under his original application from 2008.

Tom Noel asked if there was anyone present in support or in opposition of the application and there was not. He asked the board who was in favor of the application. All were in favor. Approved.

#### **IV. Robert Herrmann, 131 East Main Street, 011-005**

Application is for a Section 6 Finding to alter a pre-existing non-conforming structure.

##### **Document List**

1. Application for a Section 6 Finding.
2. Plan stating "Mortgage Lender Use Only", scale is **1/64** and signed and stamped by **John S. Lauretani**.

Present at the public hearing was Robert Herrmann. Tom Noel noted that the property is zoned R60 and consisted of a single-family house. He noted that a mortgage plan had been submitted and asked Mr. Herrmann if he had with him, or has already submitted, any other plans. Mr. Herrmann replied that none had been submitted. Mr. Noel advised Mr. Herrmann that up-to-date engineered, signed and stamped plans showing all property boundaries must accompany all applications to be considered a complete filing to be reviewed by the Zoning Board of Appeals. Mr. Herrmann stated that he was not proposing to go beyond existing footprint of original foundation. Mr. Noel stated the only way to show this is on a plan drawn by a professional engineer. Mr. Herrmann stated that engineered-drawn plans are very expensive and Mr. Noel stated that even if this is the case, the plans are necessary for review.

Tom Noel asked Mr. Herrmann if the building inspector denied his application for a building permit and Mr. Herrmann replied that the former building inspector, Brian Butler had given him permission to tear the existing house down and replace it with a two-story house. He said he went ahead and had all utilities removed from the house and went back to the building department on the former building inspector's last day on the job and the inspector gave him permission to tear the house down. Mr. Herrmann stated the former Building Inspector told him he could not go outside of the existing foundation.

Mr. Herrmann stated that the Building Inspector, Scott Barbados advised him that he would have to file for a Section 6 Finding for the second floor. He said he submitted a drawing to Mr. Barbados showing the removal of the existing house and rebuilding the first floor before he was going to file for a Section 6 Finding and he said that Mr. Barbados stated this would be ok. Mr. Herrmann stated that after he tore the house down, he received a CEASE & DESIST letter from the Building Inspector.

Tom Noel read a letter dated August 16, 2010 sent to Mr. Herrmann by the Building Inspector stating that he had given Mr. Herrmann a permit to remodel the interior of the house. The letter indicated that after driving by the property the Building Inspector noticed the house had been demolished without being permitted. Mr. Noel said the Building Inspector further stated that no other work would be performed without a Section 6 Finding from the Zoning Board of Appeals.

Tom Noel asked Mr. Herrmann if he had been advised that he would need an engineered-plan to file with the Zoning Board of Appeals with an application for a Section 6 Finding and he replied that he was so informed. Mr. Noel asked if he was planning on obtaining an engineered-plan and he replied he was not. Mr. Noel stated to Mr. Herrmann that the application would not be complete without one.

**Frank Reynolds joined the public hearing.**

Tom Noel asked Town Counsel, Ilana Quirk to explain the law regarding the demolition of a non-conforming structure. She stated the applicant would have to show where the perimeter of the existing building was and would have the right to rebuild on that perimeter.

**(TOM, while Ilana was speaking, there was a lot of noise from the Conservation Commission upstairs, and the recorder speaker was at the podium with the applicant and Ilana was across the room, therefore, I could not hear her.)**

Mr. Herrmann stated that he asked the Building Inspector if he should amend his building permit to show the demolition of the existing structure and the Building Inspector replied that he should not and that he would file the permit as amended. He said that he showed the Building Inspector a drawing of what he was proposing and the Building Inspector gave his approval. Ilana Quirk, Town Counsel, explained that under certain By-laws, demolition of the existing building and rebuilding in the same footprint not above roof level is permissible. Tom Noel requested that Mr. Herrmann submit engineered-plans.

Tom Rota explained to Mr. Herrmann that engineered-plans have to be submitted with each application to protect the town as well as the applicant against incorrect information. He also explained that a precedent cannot be set giving permission to submit an application without engineered-plans.

Tom Noel asked Mr. Herrmann if he wanted to continue the public hearing in order for him to obtain the correct plans. He explained that the Board has 100 days to make a decision on the project. He suggested he could ask the Building Inspector to attend the next meeting. Tom Noel made a motion, seconded by Nitin Choksi, to continue the public hearing until the next regular meeting of Monday, October 18, 2010 at 7:32 pm. All in favor. Approved.

Application is for A Section 6 Finding as to whether or not the alteration of a pre-existing non-conforming structure located at 9 Balsam Road is substantially more detrimental to the neighborhood than the existing non-conforming structure and relief from Section 6.2 of side yard setback.

**Document List:**

1. Variance application form.
2. Plan entitled “**Zoning Board Plan, 9 Balsam Road, Norton, dated August 18, 2010**, scale is 1”=20”, prepared by **hutchins-Trowbridge associates, inc. and signed and stamped by Michael A. Trowbridge.**

Present at the public hearing was Luther Grant.

Tom Noel noted the address of the property is 9 Balsam Road and asked Mr. Grant if he was the owner of the property. Mr. Grant stated he was in the process of purchasing the house and it was under agreement. He stated the owner on record, James Gleasure, was deceased and the Estate was being handled by the family. Tom Noel noted that the property was in an R60 Zoning District and was purchased in July of 1971 which was prior to zoning. He stated the house is a single-family house and the applicant intends on adding 6 feet to the left side and square-up the rear of the house with a walkout basement.

Tom Noel read from the application that the applicant intends to rebuild the existing non-conforming structure, thus reducing blight in the neighborhood as well as making the property more closely resemble those houses in the area.

Mr. Grant presented 2 large boards with pictures of neighboring homes and a picture of the house to be remodeled. He explained how he would remodel the house to make it fit in with the neighboring houses better. He noted that the house was inhabited by skunks and had not been lived in for five years.

He handed out plans to the members and explained what was existing and what was proposed. Mr. Grant stated the house was only large enough for a kitchen and one bedroom. He said he proposes to have a row of windows on the first floor rather than a high foundation. Mr. Noel had questions about the property being abandoned for five years and the regulations on abandonment and Ilana Quirk, Town Counsel, stated as long as the structure was standing, regulations would still apply.

Mr. Grant stated he would be leaving 9.3 feet on the west side of the property which would be enough area for an emergency vehicle to go through.

Tom Noel asked Mr. Grant what was on the boundary lines on each side of the house and he replied that there are 100-foot pine trees on each side.

Tom Noel stated this project comes under Section 1.5E-non-conforming use.

Tom Rota made a motion that this project would not substantially be more detrimental to the neighborhood under conditions of Section 1.5E. Nitin Choksi seconded the motion.

Robert O. Reagan, representative for the estate of James Gleasure, owner of the property, addressed the board. He stated the condition of the property was very poor and was in favor of Mr. Grant purchasing and improving the property.

Tom Noel asked Mr. Grant if neighboring homes consist of one or more lots and Mr. Grant replied they vary from having one to up to three lots combining the properties.

Tom Noel asked for a vote who was in favor of a motion that this project would not substantially be more detrimental to the neighborhood under conditions of Section 1.5E. All voted in favor. Approved.

Tom Rota made a motion to approve the variance of 9 Balsam Road per the plan dated August 18, 2010. All in favor. Approved.

Mr. Grant asked if this finding would allowed him to demolish the house and rebuild in its footprint.

Ilana Quirk, Town Counsel, stated he could demolish and rebuild because his intent is to rebuild and not abandon the property. She advised that the specific language be written into the decision that permission is granted to demolish and rebuild.

Tom Rota made a motion, seconded by Nitin Choksi, to **amend** the motion to allow the demolishing of the existing building and to rebuild it within the existing footprint per plans dated August 18, 2010. All in favor. Approved.

Tom Noel made a motion, seconded by Tom Rota, to accept the findings, as amended. All in favor. Approved.

The Board reviewed the continuation of Bay Road Heights, LLC for **Bay Road-** 40B Comprehensive Permit request change. No one from Bay Road Heights was present at the meeting. Ilana Quirk noted that at the previous meeting, it was agreed to send the amendments for a pier review, but not to continue the public hearing. She stated that a report would be given on the pier review and if the Zoning Board of Appeals had any questions or concerns, they would be brought up at tonight's meeting. Tom Noel suggested that maybe Mr. Cussin got confused and thought the public meeting was tomorrow night instead of tonight. He did say that in an email to Paul Cusson he made reference to tonight's meeting.

Tom Noel made reference to a letter dated August 12, 2010 from Bay Road Heights, LLC which none of the members had seen until tonight requesting that Lot 1, duplex building on Bay Road be able to be serviced by a well and septic system in accordance with Title V

requirements. Ilana Quirk, Town Counsel, advised the Board that since the letter was dated August 12<sup>th</sup>, the Board had 20 days to respond and they had not, the request is automatically granted. Mike Trowbridge of Hutchins-Trowbridge Associates, the Pier Review for the project, stated that this is not a significant change to the project and that, obviously, all permits will have to be obtained for the well and septic system. Tom Rota suggested that this could be a burden for the condominium association and Mr. Trowbridge stated that this type of septic would actually be less of a burden than the sophisticated system in the cul-de-sac.

Mike Trowbridge had concerns with installing a well and a septic system on a 40,000 sq. ft. lot, possibly in an ACEC area. He said he would check with the Board of Health on this issue.

Tom Noel stated that he has had no response at all from Bay Road Heights, LLC since the previous meeting. He said that he did make reference in his email to Paul Cusson that the Board would be meeting on Monday, September 13<sup>th</sup>. Tom Noel asked if the public hearing should be continued to the October 18<sup>th</sup> meeting and Ilana Quirk offered to send an email to Paul Cusson of Bay Road Heights, LLC asking him if wanted to respond to the report submitted by Mike Trowbridge and, if so, the next meeting of the Zoning Board of Appeals would be on October 18<sup>th</sup>.

Bob Manning, father to Brian Manning, who owns property across the street from the project addressed the Board. He asked the Board if the project was on going. He stated that three years ago his son signed an agreement with Bay Road Heights LLC regarding water runoff. He said that no extension has been signed as yet regarding a Right-of-Way pipe across the street with an underground swale. He said that his attorney, John Mitchelmore had spoken with a representative of Bay Road Heights LLC who suggested that the property might be sold. Tom Noel replied that obviously the applicant has decided to go forward with the project. Mr. Manning stated that an extension has been drawn up, but his son has not signed it yet. He said that his son may be selling the property and it may not be to his advantage to have this agreement attached to his property at this time. Tom Noel asked Mr. Manning to send a copy of the original agreement as well as the extension to the Planning/Zoning office.

The Board reviewed an invoice received from Mike Trowbridge of Hutchins-Trowbridge Associates in the amount of \$2,875.00 for the Pier Review for Bay Road Heights LLC. Ilana Quirk suggested to table the invoice to the next meeting after sending an email to Mr. Trowbridge for a final bill total.

Meeting scheduled for Monday, October 18, 2010.

**Tom Noel made a motion, seconded by Tom Rota, to adjourn the public meeting at 9:45 pm. Approved.**

Minutes Approved by Committee on: \_\_\_\_\_  
(Date)

Respectfully submitted,

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Tom Noel

Chairman, Norton Zoning Board of Appeals