



**TOWN OF NORTON**  
**ZONING BOARD OF APPEALS**  
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## **MINUTES**

Meeting of November 15, 2010

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

The November 15, 2010 scheduled meeting of the Zoning Board of Appeals was called to order at 7:30 p.m. in the Second Floor Conference Room in the Norton Municipal Center by Chairman Thomas Noel, with the following members present: Thomas Rota and Frank Reynolds. Also present was Town Counsel, Ilana Quirk of Kopelman & Paige.

### **II. Michelle Fitzgerald, 64 South Washington Street, 011-007**

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

#### **Document List**

1. Application for a Variance for relief from Section 6.2 of side and front yard setbacks.
2. Plan entitled Sanitary Disposal Repair for John & Ruth Schepis at 64 South Washington Street in Norton, MA

Present at the public hearing were Michelle and Eric Fitzgerald.

Tom Rota made a motion, seconded by Frank Reynolds, to remove the application from the table for discussion. All in favor. Approved.

Tom Noel asked Ms. Fitzgerald if she had revised plans which would be drawn, signed and stamped by an engineer. She replied she did and gave each member a copy of the plan entitled "Plot Plan Showing Proposed Porch Addition for Eric and Michelle Fitzgerald at 64 South Washington Street in Norton, MA.", dated October 21, 2010, with a scale of 1"=30' and signed and stamped by John F. Vance, Jr.

Tom Noel noted that the front yard setback was different on the revised plan than that on the previously submitted plans and Ms. Fitzgerald noted that she had measured from the street and Mr. Vance had measured from the property line.

Tom Noel asked if any of the board members had questions and they did not. He asked if anyone present was in favor of, or opposed to, the project and no one addressed the board.

Tom Noel stated there is an automatic motion to approve the project as submitted. All in favor. Ilana Quirk, Town Counsel, advised to list the name of the approved plan on the decision.

**IV. Bay Road Heights, LLC, Bay Road - Modification**  
**(cont. from the August 2, 2010, September 13, 2010 & October 18, 2010 mtgs.)**

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.

Tom Rota made a motion, seconded by Frank Reynolds, to remove the application from the table for discussion. All in favor. Approved.

Present at the public hearing were Paul Cusson of Delphic Associates and Nick Adams of Bay Road Heights LLC. Mr. Cusson stated that, as the board already knew, a Comprehensive Permit had already been issued for this project. He said that one of the conditions was that the applicant submit a full set of engineering drawings. He stated that the applicant had submitted revised plans which the ZBA Board had required that a peer review be done by Mike Trowbridge of Hutchins-Trowbridge Associates, Inc. He said that Mr. Trowbridge had issued a report in which there were a few issues to be addressed. He said that all of the issues have been addressed and Mr. Trowbridge agreed this had been done. Mr. Cusson stated he would like the ZBA Board to sign off of the Engineering portion of the project stating it is satisfactory. He stated the next step would be to develop plans, whether they be one or two different plans because there are single-family houses and condominiums included in the same project, that will have to be recorded at the Registry of Deeds.

Mr. Cusson stated that the project is unusual because it consists of both condominiums and single-family homes. He stated that plans to be recorded at the Registry of Deeds normally consist of one or the other, not a combination of the two. Tom Noel asked him to clarify that statement. Mr. Cusson stated that in a normal subdivision, a plan is registered with the Registry of Deeds showing all the individual house lots that may be sold to prospective buyers. He said that in a condominium situation, the plan is not recorded until a master deed has been created and after the first unit has been sold. He said with this project, both are involved.

Mr. Cusson stated he would like to have the opinion of Town Counsel, Ilana Quirk, this evening in regards to how many plans should be drawn, one or two. Ilana Quirk stated that this is an unusual project in that there are single-family houses and condominiums on the same set of plans sharing an entrance.

Tom Noel asked Mr. Trowbridge to update the board on any engineering changes that have been made over the past few months. Mr. Trowbridge stated he had submitted a report dated September 8, 2010 and the applicant had responded to this report. Mr. Trowbridge stated he had sent a letter on November 2, 2010 confirming the applicant's receipt of their report. Tom Noel asked Mr. Trowbridge to update the board on any changes that were made. Mr. Trowbridge stated that there was clarification on the drainage and not any real changes. Mr. Cusson stated there was a change previously approved by the board allowing a single-family house and duplex to switch locations, but the drainage had not been changed. Mike Trowbridge stated all issues were clarified.

Tom Noel asked Ilana Quirk, Town Counsel, what the next step would be and she replied that she had spoken with a representative for the developer on how he wanted to proceed and he was not sure as to how many plans he would be using because of the unusual circumstances involved. She stated that there are legal issues involved because single-family houses and condominiums would be sharing an entrance.

Ilana Quirk stated that, as stated in the decision, a Homeowners Association would have to be in place for the single-family houses and presented to the board before the first house is constructed. She said that Mr. Cusson had insinuated that he would be constructing the single-family houses before the condominiums. She said that Mr. Cusson would have to decide on one or two plans. Mr. Cusson replied that he would like to develop one plan showing the 12 single-family houses and the area for the proposed condominiums as one lot at this time. He stated that at the time of the construction of the first condominium the lot would be labeled "lot 1 on Parcel". Ilana Quirk stated that the Condominium Association would need an easement from the Homeowners Association to use the entrance until a driveway is constructed. Mr. Cusson replied this would be done at the time the proper papers are presented to the Homeowners Association.

Tom Noel stated that normally 40 B projects are not done in stages, but all at once. Ilana Quirk stated that if there is any lag time between construction of the single-family houses and the condominiums, the applicant should provide a modification to the project and submit a plan showing the order in which the various stages of the drainage will occur. Tom Noel asked what assurance does the Town have that once one phase of the project is finished, that the second phase will be finished. Nick Adams, owner, stated that it was never his intention to phase this project, but to construct the single-family houses and condominiums simultaneously. He stated that delays might occur because of the legalities of recording plans for the two types of homes proposed, condominiums and single-family houses.

Paul Cusson stated that there is presently no timetable in place for the project. He said there is an extension in place expiring on March 7, 2011. He stated it is his intention to begin construction before that date and does not know how long the project will take to complete and he said it would benefit everyone to complete the project as quickly as possible. Tom Noel noted that there is a limit in the decision. Ilana Quirk confirmed that, in Paragraph 57, it states that the project was approved in October, 2007. She said there was an appeal by an abutter, which was quickly dismissed in April of 2008. She stated at that time, the project would expire two years from that date, April of 2010, but the applicant requested an extension in February of 2008 and the project was extended to March of 2011.

Ilana Quirk stated that Paragraph 57 clearly notes the timetable for the different phases of the project and requires the applicant to update the board regularly on the progress of the project. She stated that if the applicant is going to phase the project because of the market, the board should insist on pier review of the phases to ensure that the water, sewer tie-ins, drainage, etc will work properly. Again, Ilana Quirk advised the board to request a pier review of the project if phasing is proposed by the applicant.

Tom Noel asked if there was any regulation in place as to when the affordable houses were to be constructed and Ilana Quirk responded that when the applicant goes to their subsidizing agency for final approval, this will be agreed upon. Paul Cusson stated the percentage of affordable houses is shown on the submitted plans. He stated that the percentage for the affordable houses is 25% which would be 3 out of the 12 single-family houses. Tom Rota had concerns with the order in which the affordable houses were to be constructed and Ilana Quirk responded that, in Paragraph 56 of the decision, it states that construction of the affordable houses shall be distributed evenly throughout the construction process which would mean that every fourth house would be an affordable house.

Tom Rota had concerns with single-family homeowners being inconvenienced throughout the condominium construction phase. He also had concerns with the assurance of condominiums being constructed after the single-family houses are built and not more single-family houses. Ilana Quirk stated that the applicant would have to get approval from the Zoning Board of Appeals for any modifications of the decision. Ilana Quirk stated that Paragraph 57 of the decision it states that building permits must be obtained for all units within 2 years of final approval and construction must be completed within 4 years. She said obviously this is not going to happen and therefore, the applicant has to apply to the Zoning Board of Appeals for an extension of the project.

Ilana Quirk stated that, until the road is accepted at Town Meeting, it will be the Homeowners Association's responsibility to maintain the road. The condominium units will be constructed on a driveway that will be maintained by the Condominium Association.

Tom Noel asked Paul Cusson what his main objective was at this meeting tonight and he stated that he would like to have the Board, along with Mike Trowbridge, approve and accept the proposed engineering of the project. Mr. Cusson stated that Nick Adams will have to work out a few issues with the Land Court and the Registry of Deeds and create plans to record as well as create a Homeowners Association to be reviewed by the board. Ilana Quirk recommended the information be submitted to her in advance for review for any corrections or modifications.

Paul Cusson stated that in the original decision it was required that the water line be extended throughout the entire site before construction could begin. He said a letter was since submitted to the Zoning Board of Appeals requesting that lot 1 have the option of having its own water system as it was now going to be a duplex rather than a single-family house. He stated the request was granted and construction will begin on that lot soon.

Nick Adams stated that, regarding the storm water drainage easement that would run across the street, Mr. Manning, the abutter, had signed an extension of the agreement which would expire in July of 2012.

Tom Rota made a motion, seconded by Frank Reynolds, to approve all the information submitted by the applicant and the information submitted by Mike Trowbridge, the Pier Review Consulting Engineer's information subject to all other requirements of the decision being satisfied before building permits are obtained. All in favor. Approved.

Ilana Quirk stated that it is important to create the Homeowners Association and the Condominium Association as soon as possible and Mr. Cusson replied that the Homeowner's Association will not take long to create but the Condominium Association will take longer because it is not needed at this time. He said he would try to get the papers for the Homeowner's Association to the board within the next three weeks. Tom Rota had concerns with the contents of the Homeowner's Association and Ilana Quirk stated the conditions and requirements are listed in the decision. Mr. Cusson asked the members if they had any specific concerns with the contents of the Homeowner's Association and the board responded that the conditions are very standard and are listed in the decision.

### **III. Thomas J. Hubbard, 34 Patten Road, 011-008**

Application is for a Section 6 Finding to alter the pre-existing, non-conforming structure and a variance for relief of side and front yard setbacks.

#### **Document List**

1. Application for a Variance for relief from the 25-foot minimum side-yard and front-yard setbacks and a Section 6 Finding to alter a pre-existing, non-conforming structure.

2. Plan entitled "Plan of Proposed House #34 Patten Road, Norton, Massachusetts, Thomas & Renee Hubbard, dated October 14, 2010, Prepared by Yarworth Engineering Co., Inc., signed and stamped by Christopher D. Yarworth and with a scale of 1"=10'.

Present at the public hearing were Thomas and Renee Hubbard.

Tom Noel asked Mr. Hubbard if he owned the property and Mr. Hubbard replied that he just purchased the property. He asked Mr. Hubbard if he intended to tear down the existing building and then rebuild and Mr. Hubbard replied that is correct.

Chris Yarworth of Yarworth Engineering Co., Inc. described the project to the board members and submitted plans and pictures of the existing structure. He stated that the applicant proposes to construct a larger house than is there now in order to consider it a house rather than a small apartment. He said the property size is 40' x 100' and does not have the 5,000 minimum sq. footage and that the applicant would like to construct a 24' x 32' house with a deck on the back of the house. Mr. Yarworth stated the applicant is requesting a variance for the side-yard setbacks from 25' to 8 ½ ' and for the front-yard setbacks from 40' to 13'. He stated there would be a 4-foot wall and no cellar and no grading. He said there is sewer, water, gas and two entrances.

Tom Noel asked if the house is presently occupied and Chris Yarworth stated the house is being gutted at the present time. Mr. Hubbard stated the property has been vandalized and the copper plumbing has been stolen.

Tom Rota asked if the house will be built in the same footprint and if it would be a one-story house and Mr. Hubbard replied it would be a two-story house.

Tom Noel asked if there was anyone in favor of, or in opposition of, the project and no one replied. He said there was an automatic motion open for discussion.

Tom Rota made a motion, seconded by Frank Reynolds, that under Section 1.5E, that the proposed construction, as shown on the plans, as modified by the written side-yard and front-yard setbacks, will not be more substantially detrimental to the neighborhood and would improve the neighborhood. All in favor.

Discussion ensued regarding the time line to rebuild after the demolition of the existing structure. Tom Noel stated reconstruction will be required to begin within 12 months of demolition. Tom Rota made a motion, seconded by Frank Reynolds, that reconstruction will begin within 12 months of demolition. All in favor.

Scott Barbados, Building Inspector, had concerns with the condition of the property after demolishing the building. He wanted to ensure that the property will be cleaned up and graded immediately. He stated that occasionally he receives complaints from neighboring property owners about lots that have been left unsafe and ungraded, covered with debris,

and would like to make sure that future projects that include demolition have conditions to prevent situations like this from happening. Tom Noel stated that the Building Inspector can put this condition in the Building Permit also.

Tom Noel made a motion, seconded by Frank Reynolds, to grant the variance as shown on the submitted entitled "Plan of Proposed House #34 Patten Road, Norton, Massachusetts, Thomas & Renee Hubbard, dated October 14, 2010, Prepared by Yarworth Engineering Co., Inc., signed and stamped by Christopher D. Yarworth and with a scale of 1"=10' with side-yard setbacks on the front side setback be no less than 13', no less than 8.5' on the east side and 6.9' on the west side. All in favor.

The board reviewed the Bills Payable Sheet for the Invoice #2994 for hutchins-Trowbridge Association, Inc. in the amount of \$843.75. Tom Rota made a motion, seconded by Frank Reynolds to pay the bill. All in favor. Approved.

The board reviewed the Bills Payable Sheet for the Invoice #3028 for hutchins-Trowbridge Association, Inc. in the amount of \$375.00. Tom Rota made a motion, seconded by Frank Reynolds to pay the bill. All in favor. Approved.

The members agreed to set the date for the next regular meeting for Monday, January 10, 2011 unless any applications or letters require a public hearing before that date.

Tom Noel made a motion, seconded by Tom Rota, to adjourn the public meeting at 9:15 pm. Approved.

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

Respectfully submitted,

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Tom Noel

Chairman, Norton Zoning Board of Appeals