



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

Meeting of February 28, 2011

I. Call to Order

The February 28, 2011 scheduled meeting of the Zoning Board of Appeals was called to order at 7:30 p.m. in the first floor, Board of Selectmens' meeting area in the Norton Municipal Center by Chairman Thomas Noel, with the following members present: Thomas Rota, Nitin Choksi and Frank Reynolds. Also present was Town Counsel, Ilana Quirk.

II. Christina Cavanaugh- 35 Power Street, 011-010

Application is for a variance for relief of the sideline setback.

Document List:

1. Variance application form.
2. Plan entitled "Plot Plan Showing Additions for Christina Cavanaugh at Power Street in Norton, MA. Scale 1"=20'., December 4, 2010 prepared and signed and stamped by John F. Vance, Jr.

Present at the public hearing were Christina and John Cavanaugh. Tom Noel stated that by the submitted plan, it appeared that a kitchen and living room addition were proposed. He noted that on the submitted engineered-plan, there were no setback figures or distances of the existing structure from the street. He did state that the building inspector had seen the plan and determined a variance was needed for the side yard setback.

Tom Rota stated that the board cannot make any decisions without exact distances noted on submitted plans by the engineer.

Ms. Cavanaugh stated she had applied for and received a wetland permit and has filed with the Zoning Board of Appeals because her house is only 21 feet from the sideline and the Zoning Bylaws state the house should be 25 feet. Scott Barbato, Building Inspector, stated the house is already non-conforming and the ZBA needs to determine if the additions will make the house any more non-conforming. Tom Noel stated that the board needs to know the distances of all the side and front lines to the street before they can

make their decision. He asked Mr. Barbato if there was another plan to review and he replied there was not.

Tom Rota stated that the structure would not be more non-conforming than it is at the present time but it is still not conforming as it is under the 25-foot requirement. Mr. Cavanaugh asked what his next step would be and Tom Rota replied that he needs to have Mr. Vance note the distances of the structure and the distances of the proposed additions, from the front and side lines on the submitted plans.

Tom Noel asked the board if they should adopt a policy that “if there are no distances noted on the submitted plans, but clearly noted by the Building Inspector that the applicant needs to file for a variance or finding with the Zoning Board of Appeals, should the board accept the plans as submitted.” Tom Rota asked Ilana Quirk, Town Counsel, to comment on this issue. Ilana Quirk stated that this would be considered a policy decision and there would be no problem to make a new policy decision. She said that, as always, the plan or plans should be referenced in the decision. She stated that if a plan has not specific setbacks noted, in words, specifically detail the decision as to what is granted and the distances and dimension details granted.

Tom Noel asked what the dimensions of the proposed additions were and Mr. Cavanaugh replied that the kitchen was proposed at 10’ x 10’ and the living room was proposed at 16’ x 22’. Tom Rota stated this would be written into the decision. Tom Noel stated that the drawn-in picture of the additions had no dimensions written on them. He suggested to Mr. & Mrs. Cavanaugh to bring the plan back to the engineer and have him note the dimensions and distances on the plan. Tom Rota made a motion, seconded by Nitin Choksi, to continue the hearing until the next regular meeting of Monday, March 14, 2011 at 7:30 pm to allow receipt of a revised plan showing all structure and property distance dimensions. All in favor. Approved.

III. Timothy & Oanh Russell – 4 & 6 Bay Road, 011-011

Application is for a Section 6.2 finding of the Norton Zoning Bylaws for relief of the lot size, setbacks.

Document List:

1. Section 6 Finding Application Form.
2. Plan entitled “Plan of #4, 6 & 10 Bay Road, Norton, MA Prepared for Timothy & Oanh Russell, Scale: 1”=40’, January 6, 2011, by Yarworth Engineering Company, Inc. and signed and stamped by Christopher D. Yarworth.
3. Memo dated February 23, 2011 to ZBA from Jennifer Carlino, Conservation Agent.

IV. Timothy Russell – 10 Bay Road, 011-012

Application is for a Variance of Section 6.2 of the Norton Zoning Bylaws for relief of the lot size, setbacks.

Document List:

1. Variance Application Form.
2. Plan entitled "Plan of #4, 6 & 10 Bay Road, Norton, MA Prepared for Timothy & Oanh Russell, Scale: 1"=40', January 6, 2011, by Yarworth Engineering Company, Inc. and signed and stamped by Christopher D. Yarworth.

Tom Noel asked why there were two separate applications instead of one. Christopher Yarworth of Yarworth Engineering Co., Inc. explained to the board why. He stated that on the Assessors' Maps parcels 94 & 94-02 are labeled and are owned by Timothy Russell. He pointed out that a small crescent-shaped parcel in front, not labeled, is also owned by Mr. Russell and is actually parcel 94-01. He said there are issues to be resolved for both sides of the property which are the house, 10 Bay Road on one side and a restaurant/apartment, 4 & 6 Bay Road on the other side.

Mr. Yarworth stated that the restaurant/apartment was built in 1950 and is grandfathered. He stated that originally the road curved around and when it was straightened out, Mr. Russell obtained the crescent parcel, parcel 94-01 from the town. He said that at that point, the house no longer had frontage on Bay Road. Mr. Yarworth stated the applicant proposes to divide parcel 94-01 in order to give the house, 10 Bay Road parcel frontage on Bay Road and also give adequate frontage to 4 & 6 Bay Road. He said the Building Inspector suggested applying to the Zoning Board of Appeals (ZBA) for a Section 6.2 Finding for the restaurant/apartment building and for a variance for the use and area setbacks for the house. He said it is the applicant's intent to make both lots as complying as possible. He said the lots will be less "non-conforming" after receipt of the proper variances and decisions by the ZBA.

Tom Rota asked Mr. Yarworth if the Planning Board would have to approve any lot size changes and he replied they would, but he wanted to get the area variances first in order to put notes on the plans submitted to the Planning Board explaining that variances were granted by the ZBA.

Discussion ensued which issue should be resolved first, variances or Form-A's with the Planning Board. Chris Yarworth's argued that he does not want to record a parcel of property with the Board of Assessors with the possibility that variances will **not** be granted by the ZBA. Tom Rota argued that the board does not like to issue variances or decisions on parcels of property that do **not** exist at this time. Tom Noel agreed with Tom Rota and stated he would prefer the applicant apply to the Planning Board first. Ilana Quirk, Town Counsel, stated she has seen both situations and either would be ok. Tom Noel asked Ms. Quirk which way would be more preferable by the ZBA and she stated that as long as the board has an engineered plan, it would be ok to grant variances and decisions before the applicant has gone before the Planning Board. Chris Yarworth stated that the plan submitted to the ZBA is the exact plan that will be presented to the Planning Board only with ZBA notes attached.

Ilana Quirk suggested that the ZBA note in their decisions exact plan titles and dates. Tom Rota asked Mr. Yarworth if the plans before the ZBA this evening for review are the exact plans that will be presented to the Planning Board and he replied that they are with the exception of the ZBA notes to be added.

Tom Noel asked Ilana Quirk at what point does the applicant record a plan such as this, without having the A & R approval, at the Registry of Deeds and she replied that the decision will state that the variance does not go into effect until the property has A & R approval and after the approval, the variance and A & R can be recorded together.

Ilana Quirk asked if the two properties would be changing in size and Chris Yarworth explained that one lot that presently has not frontage, will change from 9,000 sq. ft to 14,000 sq. ft. and the other lot with the restaurant on it will still meet Zoning requirements. Ilana Quirk stated that since the use is changing, a variance should be applied for rather than a Section 6 Finding on the lot with the restaurant and apartment. Tom Noel asked Mr. Yarworth if there were any additions proposed to the existing buildings and he replied that there were not.

Chris Yarworth stated there were parking issues with 4 & 6 Bay Road since the parking spaces in front of the restaurant are actually part of Bay Road. He stated that the use of the existing restaurant and one apartment is changing to a nail salon/commercial retail building and two apartments. He said by changing the use from a restaurant, this will reduce the amount of parking spaces needed. He said by changing the lot lines between the two lots, some parking spaces will be lost. Tom Noel asked if there would be enough parking spaces and Chris Yarworth replied there would be but some of them would be on Bay Road.

Ilana Quirk stated a variance would be required for changing the use and also for the parking spaces. She offered to write the decision for this application. It was Tom Rota's opinion that the changes to the both lots would be an improvement. Nick Adams of Bay Road Heights, LLC commented that, in his opinion, these changes would be better for the neighborhood. Carol Lees, 1 Bay Road, commented that it would be an improvement not to have to walk on Bay Road to get by the building when the rope fenced is moved, but Tom Noel stated the fence is not going to be moved.

Ilana Quirk suggested continuing the public hearing until the next regular meeting of Monday, March 14, 2011 at which time she will submit a draft decision. Tom Rota made a motion, seconded by Nitin Choksi, to continue the public hearing until the next regular meeting of Monday, March 14, 2011 at 7:35 pm at which time a decision would be reviewed and voted on. He stated the decision will be for both applications, 4 & 6 and 10 Bay Road. All in favor. Approved.

Tom Noel stated that a letter has been received from Jennifer Carlino, Conservation Agent, dated February 23, 2011, advising the ZBA that any activities on 4 & 6 Bay Road may require a wetland permit.

V. Modification (continued)

Bay Road Heights, LLC, Bay Road – 40B Comprehensive Permit Request Modification. (cont. from the January 24, 2011 & February 7, 2011 mtgs.)

Document List

1. Letter dated November 17, 2010 from Paul E. Cusson, Managing Member, Delphic Associates, LLC to Tom Noel, Chairman, Zoning Board of Appeals, requesting the project be constructed in Phases.
2. Letter dated December 1, 2010 from Tom R. Noel, Chairman, Zoning Board of Appeals to Paul E. Cusson, Managing Member, Delphic Associates, LLC stating that the request to construct the project in Phases is a substantial modification and will require a public hearing and notification to abutters.
3. Letter dated February 9, 2011 from Delphic Associates requesting an Extension for the project to expire on March 15, 2012.
4. Letter dated February 28, 2011 to the ZBA from Duane Knapp, Water Superintendent.

Tom Rota made a motion, seconded by Nitin Choksi, to remove the request from the table for discussion. All in favor. Approved.

Paul Cusson of Delphic Associates, LLC addressed the board. He said there were two issues at hand this evening. He said the first issue is that the ZBA had approved submitted subdivision plans which were submitted on November 2, 2010. He said the plans had shown the water lines on it and also noted the construction was going to be done in three phases. He stated it was brought to his attention that the board had never approved the project being done in three phases. He said that there were questions about the drainage and phasing and that the pier review engineer, Mike Trowbridge, thought it would work. Mr. Cusson stated that a formal request had been submitted for the phasing of the project. He noted that another issue before the board was the water lines and looping of the water lines and how that would be accomplished.

Mr. Cusson stated plans showing the phases and water looping in detail were submitted. He said the plans were dated February 7, 2011 and an amended plan dated February 23, 2011. He said the plans meet all the Water Department requirements. He said the only revision was the re-location of one hydrant and valves.

Mr. Cusson outlined the three proposed phases of the project as follows:

1. Phase I. – Duplex house on Bay Road and one house on Lincoln Street. These houses will remain on private wells for water.
2. Phase II. - Construction of the single-family house which require the water lines to extend into the subdivision up Spice Lane looping over to the condominiums.

Mr. Cusson stated that at the completion of Phase II, a full water looping system would be in place.

3. Phase III. - The condominium side which the water looping would continue around the cul-de-sac.

Mr. Cusson stated that as part of Phase II, Detention Basin #1 will be at the front of Bay Road and Detention Basin #3 will be at the end of the cul-de-sac on Spice Lane. He stated that as part of Phase III, when the water looping continues to the end of the cul-de-sac, Detention Basin #2 will be located there.

Mr. Cusson stated that he has not received an approval letter, or decision, for the plans revised on October 14, 2010 and submitted at the November 2, 2010 meeting. He said he would like a copy of this approval.

Tom Rota noted that at a previous meeting, Fire Chief Richard Gomes had stated that he would like all the water lines in place and working before any building permits are issued and any construction begins. Duane Knapp stated that the Water Department does not sign building permits until water lines are in place, tested, treated and ready to use. Tom Rota stated obviously equipment for digging can be brought onto the property, but no building materials may be onsite until water lines are working. Paul Cusson agreed to this.

Ilana Quirk stated that the State Building Code states that no construction can begin onsite until there is running water on the site.

Tom Noel asked Mr. Cusson what the time line of the three Phases are. Mr. Cusson replied as follows:

Phase 1 being Lot #1, it is hopeful to start construction no later than June 15, 2011. However, no later than March 15, 2012, subject to the length of time necessary to receive Final Approval and execution of the Regulatory Agreement by MassHousing. Mr. Cusson stated that MassHousing has been known to have taken from 2 months to a year to send out a Final Approval which could delay Phase 2.

Phase 2 being the single family home section, it is anticipated that the infrastructure of Phase 2 will begin no later than 6 months after the sale of the homes in Phase 1 which as you know is subject to market conditions. We anticipate start of construction to be in the Fall 2011. It is anticipated that the absorptions/construction schedule would be one (1) house per month and anticipate the construction to be completed in the Fall 2012. Mr. Cusson stated that there are 10 houses proposed for construction. He said that no one knows exactly how long it is going to take to build and sell 10 houses. He stated that the

applicant is hoping to start construction on the single-family houses in the subdivision no later than 6 months from the date the houses are sold from Phase I.

Phase 3 being the condominium section, it is anticipated that the construction of the infrastructure for the condominiums would begin in the Summer of 2012 and construction completed Summer of 2014. Mr. Cusson stated that Phase III would probably not begin until at least 70% of the single-family houses are sold in Phase II.

Tom Rota stated that he would like a completion date for the project. Mr. Cusson stated it is impossible to state an end date given the present economy. Tom Rota suggested giving a completion date to the project and the applicant may file for extensions when needed.

Tom Noel asked is it correct to assume that if a certain number of “affordable homes” are not constructed within a certain time frame, would the project lose its affordability status.

Ilana Quirk replied that so many things can change over time with subdivisions. She suggested that what the ZBA has done traditionally over the last few years was to give relatively short deadlines for certain projects with the expectation and with the language to say that the applicant may come back for an extension permit if necessary. She said this is a good way for the board to keep updated on the project as well.

Mr. Cusson stated that in answer to Tom Noel’s question regarding “affordability” he stated there are two ways to handle the construction of the affordable houses.

1. When the ZBA issues a 40B permit, the affordable units can be added immediately to the subsidized housing inventory. He stated, however, that if the building permit has not been granted within one year, they cannot be added. Instead, they can be added as the building permits are issued, with one out of every four units being affordable. He said that if the “occupancy” permit is issued within one year, the project will not lose its “affordability” status.

Tom Noel stated that this project has dragged out long enough and needs to be decided on. Paul Cusson suggested a decision with the condition that one out of every four houses has to be an affordable house.

Tom Noel asked Duane Knapp if the Water Department is satisfied with the proposed water looping system and plans as presented at this time and he replied that they were.

Mike Trowbridge stated that he too is satisfied with the drainage proposal and the revision of the re-locating of the one fire hydrant. Tom Noel asked if it was acceptable that Detention Basin #2 would not be installed until Phase III because of the tree clearing and Mr. Trowbridge said this would be acceptable. Paul Cusson stated there would be no

reason to install Detention Basin #2 in advance because the water would be coming from the single-family houses in Phase II.

Ilana Quirk stated that an expiration date was indeed noted in the original decision in Paragraph 57 with a notation at the end of the decision that extension permits may be granted from time to time as needed. She said this could be noted for each Phase separately as needed.

Tom Rota read the expected deadlines for the three Phases from an email sent out to the ZBA from Paul Cusson. He expressed the fact that he wants completion dates for each Phase and not have them left open ended in order to allow the ZBA to keep control over the project. Tom Noel asked Nick Adams, applicant, if he agreed with having deadlines and Mr. Adams replied that he did agree with this. He stated the deadlines would be one year for Phase I and two years for Phases II and III. Mr. Adams agreed to the suggested deadlines.

David Henry, Chairman, Conservation Commission, informed the board that Conservation permits expire after three years.

Tom Noel read a letter addressed to him dated today's date, February 28, 2011 submitted by Duane Knapp as follows:

Dear Board Members,

I have had numerous meetings with Nicholas Adams owner of the proposed project "Bay Road Heights". The requirements for the water main installation have been discussed and agreed to. As a matter of record I would like the Board to acknowledge and include the following in its Order of Conditions.

- * At the developers expense the existing water main on Bay Road (at Buttermilk Way) will be extended with ten inch ductile iron to Spice Lane. An eight inch ductile iron water main will then be installed within the development and looped as outlined on the attached sheet *Exhibit A*.

- * All water main installation will be completed, inspected, pressure tested, chlorinated and tested to the satisfaction of the water department prior to any building permit application signature request.

- * Each individual unit will require its own water permit. Permit Fees will be paid in full at the time of application.

- * Affordable housing units will be defined prior to construction. Permit Fees for these units will be reduced by 25%.

- * Inspection fees and materials are due and payable upon receipt.

*Any future development described as PHASE-3 units 4 through 18 on *Exhibit A*, is not included in these conditions and will need to be addressed at the appropriate time.

Respectfully,

Duane Knapp
Superintendent

Tom Noel asked Mr. Knapp to clarify what “upon receipt” meant and Mr. Knapp replied that when a water meter is picked up it has to be paid for immediately. He said the Water Department does not sign any building permits until the meter is paid for.

Tom Noel asked Mr. Knapp what he meant by the last paragraph of his letter and he replied that only up to Phase II is approved by the Water Department at this time. Tom Rota asked Mr. Knapp that, if Phase I and II were completed, would this be a problem as far as water is concerned, and he stated it would not be a problem. Tom Noel asked Mr. Knapp why Phase III was not approved as shown on the revised plans and Mr. Knapp stated he has not received plans showing the water looping for Phase III. Mr. Cusson stated all the details for Phase III are on the revised plans. Tom Noel suggested that the ZBA will have to approve the revised plans which covers the entire water system.

Ilana Quirk stated that the Zoning Board may approve the water design for Phases I and II and have the applicant agree to come back before the Water Department for their approval of the Phase III water looping. At that time, the applicant will file for approval from the Zoning Board of Appeals for the Phase III water looping. Paul Cusson asked Mr. Knapp if he had ever reviewed the proposed water looping for the entire project and Mr. Knapp stated he had never received copies of the plans showing the entire project proposed water looping. Mr. Cusson stated he had submitted enough copies to give out to the various departments and asked why Mr. Knapp has not seen these. He agreed to have Mr. Knapp review the water looping for Phase III after which time, he will come back to the ZBA for their approval.

The attorney for an abutter, Shirley Giroux, of Bay Road, addressed the board. He stated that at the previous meeting, Fire Chief Gomes had stated that he did not want any construction begun before the entire water looping system was installed and working.

Paul Cusson stated that this decision had already been decided on at the meeting in November, 2010. He said that in a letter it was requested that Phase I not be included in the water looping system because Phase I is only the renovating of two existing structures.

Attorney for Ms. Giroux stated the board had already agreed that all water systems be in place and working before any construction has begun. Tom Noel stated that was for the project before a modification of constructing the project in three phases. He said that Phase I is only for the renovation of two existing buildings and each lot has its own water supply.

Ms. Shirley Giroux stated that at the previous meeting Fire Chief Gomes stated that he did not want any construction begun before the water looping was completed and working. Tom Noel replied that Chief Gomes did request that water be working before

any wood has been delivered to any building sites and before construction on any new buildings has begun. He said that in Phase I, no new construction will take place.

Tom Rota stated that Phase I involves existing houses and if there were no proposed project, and the owners decided to add on or remodel, building permits would be issued. He asked Mike Trowbridge if the house on Lincoln Street which is part of Phase I, would benefit by the water looping and Mr. Trowbridge stated it would not. He stated that it was opinion that Chief Gome was concerned with construction sites after trees were cleared and building materials were brought to the site.

The attorney for Ms. Giroux asked if someone could contact Fire Chif Gomes to clarify what he is requesting for the project for the water looping. Tom Rota stated that, since Phase I is not going to begin until approximately March of 2012, there would be adequate time to contact and receive a letter back from Chief Gomes. Tom Noel stated that his reply may not have any bearing on the boards' decision.

Tom Rota made the statement that there are houses under renovation all the time which do not require any further water supplies to be required for fire protection.

Nick Adams addressed the board and stated that he has complied with all requests made by the fire department and would like the board to go forward by closing the hearing and with making a decision.

Tom Noel asked Mr. Knapp if he had any comments for the board and he replied that there are many houses in Norton that have no town water and are unprotected at the present time and additions and renovations go on daily. He stated that he cannot require that a water main be installed for Phase I renovations, but the water looping proposed for Phases II and III will definitely benefit the house on Bay Road and any neighboring houses. He said that water permit fees have been waived for the main extension and for the main construction sites because the water looping system will benefit the town greatly.

Dave Henry, Chairman, Conservation Commission addressed the board and asked if there was going to be any stockpiling of materials on site for Phases II and III. Paul Cusson stated that a Notice of Intent is going to be filed and these issues will be addressed at that time. He stated that one or two Notices of Intent will be filed.

An abutter, Denise Lewis of 127 Bay Road stated that when she purchased her home in 2006 she was given a copy of the Comprehensive Permit and was assured that her property would not change. She referred to page 14, Section 38 of the original Comprehensive Permit issued in October of 2007. Tom Noel responded by stating that the modification is allowing the project to be constructed in three phases.

Iilana Quirk stated the board could close the public hearing at this time if so chosen to do so, and would have 40 days to issue a decision. She said she could draft a decision for the board if they would like and submit it for review by the applicant, as well as the board, before the meeting of Monday, March 14th. She stated it would benefit the applicant to not have the public hearing closed tonight in case they want to make any further comments after reading the draft decision. She said the public hearing can be

closed at the next meeting and a decision may be voted on the same night. Ilana Quirk stated she could not be at the March 14th meeting but could attend the meeting after that. Tom Noel stated he would prefer Ilana Quirk be present when the board votes on the decision and suggested closing the public hearing on March 14th and voting on the decision on March 28th. He, again, reminded the applicant that it would be to his benefit to keep the hearing opened in case changes needed to be made to the draft decision. Mr. Cusson agreed to continue the public hearing until the regular meeting of Monday, March 14, 2011.

Tom Rota made a motion to continue the public hearing until 7:40 pm on Monday, March 14, 2010 in order to have Town Counsel draw up a draft decision to be commented through emails, by Mr. Cusson as well as the Zoning Board to be voted on at the meeting. Nitin Choksi seconded the motion. All in favor. Approved. Ilana Quirk stated she would need any comments by the applicant on or before March 8th. Mr. Cusson agreed to that.

Mr. Cusson stated he did not receive a copy of the decision made by the Zoning Board at the November 2, 2010 meeting. Mr. Noel said he would check into this.

Tom Noel proceeded to read a letter dated February 9, 2011 requesting an extension by the applicant as follows:

Dear Mr. Noel,

On behalf of our client Bay Road Heights LLC, pursuant to 760 CMR 56.05(12)(c) and 760 CMR 56.07(4) we are hereby requesting an extension of the Comprehensive Permit for the development know as Bay Road Heights.

On February 17, 2010, a decision was filed with the Town of Norton Town Clerk to extend the expiration date for the permit from March 7, 2010 to March 7, 2011 as an insubstantial change, provided that building permits were obtained by the same date.

Regulation 760 CMR 56.05(c) states in part that the time period shall be tolled for the time on any approval require for the Project. As the board is aware on November 2, 2010 the board approved the final engineered plans. Since that time our client has requested approval of the phasing plan. The engineers and our client have had meetings with the Superintendent of Sewer and Water regarding the phasing of the water looping system. We are hopeful to have this issued resolved within a few days with the Superintendent and present the final phasing plan for the board's approval. In addition the engineers have been working on the notice of intent for submission to the Conservation Commission. It is hopeful to have a Notice of Intent filed within the next 30 days.

Therefore, we are hereby requesting an extension to the expiration date for the permit to March 15, 2012 of the comprehensive permit and the tolling of 4 years from the extension date for the project to be completed as originally contemplated in condition #57 in the October 23, 2007 decision. We believe this change to be insubstantial.

Sincerely,

Paul E. Cusson

Delphic Associates, LLC

cc: Shaun Kelley
Nick Adams

Tom Rota made a motion that the request for an extension of the project is an insubstantial modification to the permit. Nitin Choksi seconded the motion. All in favor. Approved. The Extension Permit was granted.

Tom Rota made a motion, seconded by Nitin Choksi, to continue the public hearing until the next regular meeting of Monday, March 14, 2011 at 7:40 pm. All in favor. Approved.

Ilana Quirk stated she would send an email to Mr. Cusson stating the extension was granted as an insubstantial modification to the permit.

II. Karen Goodburn, 253 Mansfield Avenue, 011-013

Application is for a variance of the Norton Zoning Bylaws for relief of the “Non-Residential Parking and Loading Requirements”, Article 7.6.

Document List

1. Application for a Variance from Article 7.6 “Non-Residential Parking & Loading Requirements”.
2. Narrative dated 2/7/2011 by Christopher D. Yarworth of Yarworth Engineering Company, Inc.
3. Assessor’s map
4. Assessor’s Detail Sheet
5. Pictures of the parking area

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

Present at the public hearing were Mr. & Mrs. Goodburn and their engineer, Chris Yarworth of Yarworth Engineering Co., Inc. who described the project to the members. He stated the property is zoned Commercial/Recreational and the applicant is planning on using the building for a childrens’ gym and recreational area and because of the use change, a variance was necessary. He stated that a typical recreational space is approximately 100 sq. feet and a typical business space is approximately 200 sq. feet. Mr. Yarworth stated that the new use requires 140 parking spaces and the present use requires 118 parking spaces. He said at present, there are only 92 parking spaces and, because of the types of businesses on this property at the present time, this would be adequate. He submitted pictures of the parking areas, but said it was hard to see the spaces with all the snow still on the ground.

Chris Yarworth stated that, under grandfathered zoning, an additional use would allow a 25% increase in parking and this project is adding only 18% additional use. Tom Noel

asked Mr. Yarworth what other businesses were on this property and he replied 1. a reupholstering business, 2. a silk screen business, 3. a catering business. He said previously there was an office supply store there. Mr. Noel stated that a zoning decision should apply for the entire building, but this decision will be for one space. Chris Yarworth stated that the existing businesses are operating with less parking spaces that would normally be permitted. He stated that, even so, there has never been a problem with finding a parking space.

Chris Yarworth stated that the types of businesses that are present on the property at this time are non-conforming in regards to the amount of parking spaces available for each business and that this variance would make this business even more non-conforming. He said that the use proposed is allowed but more parking spaces are required under Article 7.6 of the Norton Zoning Bylaws. Tom Noel suggested that since the present use is Commercial and the proposed use is going to be Commercial-Recreation, a more dense parking area is required. Mr. Yarworth agreed this was correct.

Tom Noel asked Mr. Yarworth if there would be a problem with parking if another business zoned Commercial Recreational were to open on this same property. Mr. Yarworth explained that he had submitted figures on each space and allowed for the maximum parking for each unit. He said that, obviously, if a restaurant were to be proposed on this property, they would need a variance for more parking spaces.

Tom Rota re-capped by saying there are 92 existing spaces available at the present time, but, according to zoning requirements, 118 would be required. Chris Yarworth agreed this was correct. Tom Noel asked the applicant how long her lease was and she replied 2-5 years. Tom Noel suggested that granting this variance might present a problem for future businesses and Tom Rota suggested that this granted variance would be specific to this application only and future businesses would have to come before the ZBA for their specific variance.

Tom Rota stated that this area was used for parking cars of people attending the Comcast Center functions and Ms. Goodburn stated that function parking is no longer permitted on this site.

An abutter, Nancy Peach, 257 Mansfield Avenue asked if added parking spaces were proposed and Mr. Yarworth stated they were not and the only proposal was the addition of a children's gym and recreation area to be created inside the building. She stated that the area at the back of the building has never been divided into separate parking spaces even though people to park there.

Nitin Choksi asked that if ever there was an overflow for parking, would the cars be parking on the street and the applicant stated there is now parking allowed on the street.

Tom Rota suggested that a condition be added to the decision stating that the variance granted is for this decision/case only and will be null and void when and if another applicant applies for a variance for this property and the use is changed.

Tom Rota made a motion that a variance be granted for Article 7.6 of the Zoning Bylaws to allow the number of parking spaces to be allowed for the proposed use of the property for a commercial/recreational use as a children's gymnasium with the condition that if the use changes, the variance will be null and voids. Nitin Choksi seconded the motion. All in favor. Approved.

Chris Yarworth addressed the Board and requested that the application for 10 Bay Road be voted on separately. Tom Noel stated that the application for 4 & 6 Bay Road and for 10 Bay Road were discussed as one earlier. Mr. Yarworth requested that two separate decisions be made for the these two applications. Ilana Quirk stated this would be noted in the minutes of tonight's meeting.

Discussion: Red Mill Village Variance Clarification.

Document List

1. Letter dated February 14, 2011 to ZBA from David Eastridge of Thorndike Development requesting to be placed on the February 28, 2011 ZBA meeting agenda for a clarification of language in the decision for the project.
2. Several pictures of completed houses at Red Mill Village.

Scott Barbato, Building Inspector, stated that he was not looking to change anything on the permit for Red Mill Village, but was looking for clarification. He stated that there was some difference of opinion between him and David Eastridge of Thorndike Development as to the distance between structures and if this included decks and stairs. He said that the structures cannot be closer than 12 feet apart and some of the measurements between stairs, decks and buildings are closer than 12 feet.

Tom Noel stated it was a while ago and he does not remember the exact terms of the decision regarding whether the dimensions were to be measured from the foundation or from the bottom stair or from a deck.

David Eastridge addressed the board and explained that when the project had begun, stairs and landings were not subject to any setbacks. David Eastridge stated that according to the Norton Zoning Book, some structures are not included in the setbacks. He said that the former building inspector, Joe Clancy, had agreed that stairs and landings did not have to be included in setback measurements.

David Eastridge presented pictures of several units that had stairs or decks that were slightly less than 12 feet from another unit. He said that in order to have a nice looking

neighborhood of houses, it is sometimes necessary to add or subtract a stair or two to have the buildings line up properly.

Tom Rota stated that any attachment to the house or structure is included in the variance. David Eastridge stated that it was his impression that any structure not covered would be not be included in the setback dimensions. He showed the board members one of the approved plans which showed the dimension between buildings at 20 feet. At that time there were no stairs or decks on the plans. He said he did not show any structure that was not covered. Mr. Eastridge stated that many of the decks and stairs in the backyard are different and the buildings cannot be moved to keep the stairs all at the same distance from other buildings. Tom Noel asked if any of the stairs are encroaching into the 12-foot setback and David Eastridge said there were only two sets of stairs encroaching the 12-foot setback and five that are encroaching the 20-foot setback. He said that these are the buildings on Route 123 and the stairs are not all the same in order to keep the main buildings all at the same distance from the road.

Tom Noel stated that he would have preferred that the Zoning Board had specified more clearly regarding decks, landings and stairs and would make sure of this for future projects. He stated that in reading the decision the board was approving distances between houses and did not specify regarding stairs or decks.

David Eastridge stated that the stairs that are closer to houses than the 12 feet are in the owners own back yard and only taken up their space and not their neighbor's space. He also noted that where the stairs lead out toward the neighboring house is towards a blank wall under a window that is located high above the ground.

Tom Rota stated that the verbage used in their decision was not clear enough. He stated that the decision stated that houses should average 15 feet apart and be no closer than 12 feet apart. Tom Noel stated no setbacks were noted. Tom Rota asked Mr. Eastridge if the project was nearly finished and he replied that it was 80% finished. Tom Rota asked if the remainder of the project could be more in compliance with the way that the building inspector interpreted the setbacks and Mr. Eastridge stated it was too late to change the locations of the buildings. Tom Rota was concerned with the possibility of fire and emergency vehicles getting between the houses and David Eastridge stated there were alleys in the back of most of the units.

Tom Noel stated that in this case the distance between structures only included the buildings. He asked the building inspector, Scott Barbato, if he wanted this clarification in writing and Mr. Barbato replied that the board clarifying the verbage in the decision tonight would be sufficient. Scott Barbato asked Mr. Eastridge if it would present a hardship to construct the stairs, decks and landings further away from each other and other buildings and Mr. Eastridge stated it would at this point. David Eastridge suggested the ZBA sending a letter allowing stairs, decks and landings to encroach within setbacks no closer than 10 feet. Scott Barbato requested that the board be more specific in the decisions as to the distance between buildings.

Tom Rota made the clarification that the verbage in the decision was meant to state that buildings be no closer that 12 feet, excluding stairs, landings, decks and unroofed structures. He said this decision is for this project only.

The members reviewed the invoice for \$687.50 for Hutchins-Trowbridge Associates, Inc. for the report for Bay Road Heights, LLC Comprehensive permit. Nitin Choksi made a motion, seconded by Tom Rota, to pay the bill. All in favor. Approved.

Tom Rota made a motion, seconded by Tom Noel, to adjourn the public meeting at 11:00 pm. All in favor. Approved.

Minutes Approved by Committee on: _____
(Date)

Respectfully submitted,

Tom Noel

Chairman, Norton Zoning Board of Appeals