



TOWN OF NORTON
ZONING BOARD OF APPEALS
70 East Main Street
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MINUTES
Meeting of March 14, 2011

I. Call to Order

The March 14, 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.

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

Application is for a variance for relief of the sideline setback.
(cont. from the February 28, 2011 meeting)

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 and revised on March 10, 2011 prepared and signed and stamped by John F. Vance, Jr.

Tom Rota made a motion, seconded by Nitin Choksi, to remove the application of Christina Cavanaugh from the table for discussion.

Present at the public hearing were Christina and John Cavanaugh who submitted revised plans showing the necessary distances and dimensions of all property lines and setbacks.

Tom Rota made a motion, seconded by Nitin Choksi, to approve the application for a variance and plans dated March 10, 2011. 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.
(cont. from the February 28, 2011 meeting)

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.

(cont. from the February 28, 2011 meeting.)

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 stated that Ilana Quirk, Town Counsel, had emailed a draft decision for review combining the two applications for 4 & 6 Bay Road and 10 Bay Road.

Chris Yarworth stated he had made a few changes to the draft decision. Frank Reynolds noted that Nitin Choksi’s name should be added to the decision.

Tom Rota made a motion, seconded by Nitin Choksi, to approved the draft decision, as amended, to include all conditions as drafted by Town Counsel. All in favor. Approved.

V. Modification (continued)

Bay Road Heights, LLC, Bay Road – 40B Comprehensive Permit Request Modification. (cont. from the January 24, 2011, February 7, 2011 & February 28, 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 modification request from the table for discussion. All in favor. Approved.

Tom Cusson was present at the public hearing. Tom Noel stated to Mr. Cusson that a draft decision had been emailed by Town Counsel and the public hearing could possibly close this evening. Mr. Cusson stated he had made a few changes and additions to the draft decision regarding the history and documents provided as follows:

1. The date of the decision for the Comprehensive Permit was revised to October 16, 2007.

Added to the decision were the following paragraphs;

- a. On January 27, 2010, in a letter from Delphic Associates LLC, the Applicant's consultant requested an extension to the life of the Comprehensive Permit.

- b. On February 2, 2010, at its regularly scheduled meeting, the Board approve to extend the expiration date for the permit from march 7, 2010 to March 7, 2011 as an insubstantial change under 760 CMR 56.05(12)(c) and 760 CMR 56.07(4).

- c. On August 12, 2010, in a letter from Delphic Associate LLC, the Applicant's consultant requesting a modification to the Comprehensive Permittto change the lot on Bay Road from a single family home to a duplex home and that lot 1 be allowed to be serviced by well and septic system in accordance with Title V.

- d. On or about August 30, 2010 the change requested in the August 12, 2011 letter was approved as insubstantial change.

- e. On November 02, 2010 the Zoning Board approved the plans titled "Bay Road Heights in Norton, Massachusetts dated January 9, 2001 and latest revision October 14, 2010, and the "Drainage Report: Bay Road Heights, Norton, Massachusetts dated October 14, 2010.

Tom Noel stated the additions to the decision will be verified before a vote is taken to accept the drafted decision as amended.

Tom Noel asked if there were any questions or comments from the board members or other boards and there were not.

Edward Roster, Attorney for the abutter, Ms. Shirley Giroux addressed the board. He stated that the developer has stated that there will be no water lines installed for Phase I and that in the original decision, it was stated all water lines will be in place before any construction has begun. He stated that he had contacted Fire Chief Gomes and, according to Mr. Roster, Fire Chief Gomes said he had already stated that he did not want any construction begun without water lines in place and working on the construction site.

Tom Cusson stated that there is septic and well water already on the two sites for Phase I. He said that the only construction will be remodeling on two houses, one on Bay Road to be changed into a duplex and one on Lincoln Street to be remodeled. He stated that there are no roads going in or infrastructure for Phase I and he said there is a working well on the site.

Tom Rota noted that the house to be remodeled into a duplex is existing and, even if this project was not before the board at present, a building permit would be issued for the work to be done without adding any other water source to the property. He said this property has to be treated the same as any other existing house in Norton. Frank Reynolds noted that the remodeling of the house on Lincoln Street would be issued a building permit as well without further water being brought onto the property. He stated these two properties are the Phase I project. Frank Reynolds asked if he was correct in saying that Phase II will begin within 6 months after Phase I is completed and Mr. Cusson agreed this was correct. He stated the water system would be in place and working before Phase II begins.

Tom Rota ask the question that if Phase I was completed and Phase II and Phase III were never started, would the town be any worse off. He stated that it would not be any worse off.

An abutter's son, Mike Giroux, addressed the board. He asked that when Phase II is completed, will the entire water looping system be in place. Mr. Cusson replied that before the actual construction of houses begins for Phase II, the water has to be in place and working for that area. He stated that before the additional water loop for Phase III is in place, the applicant has to go before the ZBA again for specific technical issues.

Frank Reynolds showed Mr. Giroux the proposed water looping system on the submitted plans. Tom Noel asked if there were any more questions. Attorney Roster stated that the original permit stated all water systems would have to be in place and working before any construction was started. He said now that the project is going to be completed in three Phases, that has changed and, in his opinion, the change is a substantial change.

Mr. Cusson stated that this issue has already been decided at a previous meeting and would like to go forward with the decision at hand. He stated that any fires that happened would be fought as any other single-family home in Norton is fought.

Mr. Roster said he wanted clarity from Fire Chief Gomes as to what he has requested regarding the water system for Phase I. He stated that if a fire broke out at one of the Phase I project remodeling jobs, the fire department would not be able to fight the fire adequately because of the lack of water. He said that in the past, a property in the neighborhood had caught fire and the Fire Department had a difficult time putting the fire out because of the lack of water. Tom Noel noted that there has been a few instances, as in all other towns, where there has been difficulty putting out a fire. He said the

neighborhood is going to benefit from this project because of the installation of an additional fire hydrant to the neighborhood.

Tom Noel stated that legally the burden of the cost for the town's water needs cannot be put on a 40B developer.

Mike Giroux argued the point that the original 40B Comprehensive permit stated that the entire water looping system would be installed and working before any construction had begun on the project. He said now the developer is requesting to do the project in three Phases with water looping beginning with Phase II and he would like the board to enforce the original decision for the water looping. Mr. Noel stated this would be unfairly costly to the developer for Phase I. He said he could see no problem allowing the remodeling of a house into a duplex without an additional water source. He stated the pier review engineer, the Water Department and the Fire Department do not seem to have a problem with Phase I as proposed without an additional water source.

Tom Cusson stated that any other changes to the water looping system or the project itself would have to go before the Zoning Board. Tom Noel agreed that any major changes would come before the board and he noted that this modification request has taken longer to decide than expected.

Nick Adams stated that he has accommodated the Giroux family by proposing to move some of the proposed houses further from the property line as well as installing a fence along the entire property line.

Tom Rota stated it would benefit all parties involved to get clarification from Fire Chief Gomes on Phase I regarding any additional water supplies before closing the public hearing. Nitin Choksi stated that, in his opinion, he understood that Fire Chief Gomes was referring to the construction of the proposed houses when he stated that he wanted the water system up and running and not the remodeling of the two houses for Phase I.

Frank Reynolds stated that, in his opinion also, he understood that Fire Chief Gomes was referring to the construction of the proposed houses when he stated that he wanted the water system up and running and not the remodeling of the two houses for Phase I.

Tom Noel stated that even if Fire Chief Gomes expressed his opinion that he did want the water system in place before Phase I began, it would not be fair to require that the developer spend the money to install a water system for Phase I which would be the remodeling of two houses.

Tom Cusson expressed a desire to close the public hearing this evening.

Tom Noel suggested keeping the public hearing open, get clarification from the Fire Chief, either by letter or attendance at the meeting, and at the next public meeting close the hearing and vote on the decision. Frank Reynolds agreed with this to protect all

parties involved. Tom Rota suggested continuing the public hearing until the next regular meeting of Monday, March 28, 2011.

Nick Adams stated that he has accommodated the Fire Department in everyway at all previous hearings.

Tom Rota suggested to leave the public hearing opened and get clarification from the Fire Chief for Phase I and at the next meeting close and vote on the decision. Frank Reynolds agreed in order to hear back from Fire Chief Gomes. Nitin Choksi stated that since the board's opinion will not change even after hearing from Fire Chief Gomes, it is his suggestion to close the public hearing tonight.

Tom Noel suggested not closing the public hearing tonight and stated he would call Fire Chief Gomes and get clarification on his requests for Phase I. Tom Rota said there is no harm in keeping the hearing opened for a couple more weeks.

Tom Cusson stated he does not want any additional delays for this project and urged the board to close the public hearing tonight. He stated that he understands the board's desire to get clarification from Chief Gomes and he agreed that if the public hearing can be closed and voted on at the next meeting, this would be ok. Tom Rota stated that the developer has been fair throughout the permit process and Mr. Cusson stated he thought the board has been fair as well.

Tom Rota made a motion, seconded by Nitin Choksi, to continue the public hearing until Monday, March 28, 2011 at 7:30 pm. All in favor. Approved.

The members reviewed the draft minutes of August 2, 2010, September 13, 2010 and October 18, 2010. Tom Rota made a motion, seconded by Nitin Choksi, to accept the minutes as written. All in favor. Approved.

Tom Rota made a motion, seconded by Tom Noel, to adjourn the public meeting at 8:42 pm. All in favor. Approved.

Respectfully submitted,

PHYLLIS M. BERNARD
Zoning Board of Appeals Secretary

Minutes Approved by Committee on: December 12, 2011

Thomas R. Noel, Chairman
Norton Zoning Board of Appeals