



## TOWN OF NORTON ZONING BOARD OF APPEALS

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### MINUTES

Meeting of April 2, 2012

#### I. Call to Order

The April 2, 2012 scheduled meeting of the Zoning Board of Appeals was called to order at 7:30 p.m. in the second floor meeting area in the Norton Municipal Center by Thomas Noel, Chairman, with the following members present: Thomas Rota, Nitin Choksi and Alternate Frank Reynolds. Also present at the public hearing were Ilana Quirk, Town Counsel, Peter Freeman of Freeman Law Group, Mark Daigle and Roberta Arista of Dakota Partners, Inc., the perspective buyers of the property, and engineers Dan Campbell and Nick Isandola of Level Design Group.

He noted that there was only one item on the agenda:

Review/discussion re: Request for a Modification/Project Change to the Comprehensive Permit for **Turtle Crossing 40B**.

Tom Noel briefly updated the board on the history of the ongoing project. He noted that the property had been foreclosed by the bank and is now under new ownership. He said that modification plans have been submitted along with a letter from Atty. Peter Freeman on behalf of the new owner.

He stated that a Comprehensive Permit had been recorded with the Town Clerk on January 11, 2008 and an extension had been granted in October, 2011 extending all deadlines within the permit until January of 2013. He said that the extension was deemed "non-substantial" at that time, and therefore no public hearing was required for the extension.

Tom Noel noted that the modification requests and extension request falls under the Mass Regulations Code 760. He said that when a permit holder under 40B requests a modification the board has 20 days to meet for a public hearing to decide whether the changes are **substantial** or **insubstantial**. He said if the changes are deemed **insubstantial**, the changes are automatically allowed, but if the changes are deemed **substantial**, the board has a time limit to hold a public hearing for discussion. He stated that at tonight's meeting, the board will decide if the changes are **substantial** or **insubstantial**.

Tom Noel asked Peter Freeman to update the board with the new owners and give a brief history of past events and describe the proposed changes.

Mr. Freeman stated that because of the bad economy, the property had been foreclosed on by the lender, FNBI Realty Company, Inc. He noted that there was a small error in the title. He said that a small triangular portion of the property on Newland Street had not been added to the mortgage and is now not part of the project. He said that the property consists of approximately 2,900 sq. ft. which affects the frontage of the property and this is one of the changes proposed.

Mr. Freeman stated that he is requesting the board allow the transfer of the property to the proposed new owners, Dakota Partners, Inc. as well as issuing an extension of the permit one year, to expire in January of 2014, with construction to begin by January 2016. He briefly described the proposed modifications as follows:

1. The number of units will remain at 176.
2. Two bedroom units are proposed to be a mix of 1 to 2 bedroom units, changing the number of bedrooms from 352 to 296.
3. The number of parking spaces will be 316, which is less than in the written description of the original decision of 356, but more than the amount listed on the original plans of 296.
4. The total footprints of the units will decrease by changing the units from 2-story buildings to 3-story buildings. The area will decrease from 220,652 sq. ft. to 204,000 sq. ft.
5. The currently proposed access road will decrease from (2) lanes to (1) 28-foot lane.
6. Modified plans showing the new access road.
7. Changes to conditions, B6.-Water main, Lighting, B8, B24 and B25 are explained on the modified site plans.

Mr. Freeman noted his client has already met with the Board of Selectmen, who are in support of the modifications.

Bob Kimball, Chairman of the Board of Selectmen stated that the Board of Selectmen have not taken any position as yet on the modifications.

Tom Rota asked who owns the 2,900 sq. ft. triangular piece of property at the front of the project and Mr. Freeman stated the original applicant, Mirrione owns the property. Tom Rota noted that this area is zoned R80 which allows a maximum building height of 35 feet. He said the only zone allowing a higher height is Industrial allowing a height of 50 feet. He stated that the Fire Department's input is necessary to make a decision on this modification.

Tom Rota asked how many one bedroom and how many two bedroom units will be designated as affordable housing units. Roberto Arista replied that the amounts will be equal. He said he would like to walk the board through the proposed changes with the help of Dan Campbell, engineer.

Ilana Quirk noted that with rental units, the number of bedrooms will be determined by percentages rather than numbers, as needed. Tom Noel asked Mr. Freeman what the required amount of affordable units is and Mr. Freeman replied it is 25%.

Mr. Arista pointed out on the new plan that the size of the project has been reduced in size. He noted that the project will consist of 122 (2) bedroom units and 56 (1) bedroom units. He pointed out the location of the proposed units and noted that there will be a community building as well as a pool and playground. He said that there will be property management of site 5 days a week, 8 hours a day.

Mr. Arista noted there will be a few garages constructed. Tom Rota asked what the purpose of the construction of a few garages is and Mr. Arista replied that a lot of people want to protect their vehicles and will rent the garages. He noted that there will be storage areas in the garages. Tom Rota asked if the parking spaces will be reduced by constructing garages and Mr. Arista replied that there will be a few designated guest parking spaces. He noted that 316 parking spaces are proposed. Mr. Arista stated that the entire development will be professionally landscaped and that the units are farm-styled designed with alternate elevations.

Tom Noel asked if anyone had any questions. Ilana Quirk asked if the 72 garages were included in the 316 parking spaces and Mr. Arista stated they were. He stated there would be approximately 1.3 parking spaces per unit and Mark Daigle replied there would be approximately 1.8 parking spaces per unit. He noted the original decision required 296 parking spaces with room for up to 356 spaces as the plan noted only 296.

Tom Rota stated that changing units from 2 story to 3 story buildings, input would be needed from outside agencies, therefore making that a **substantial** change.

Ilana Quirk stated that the changes in the drainage design will have to be considered. Tom Noel asked who owns the back lot and Mr. Daigle replied it belongs with this property. Mr. Noel asked if there were any plans for the back lot and he replied there were no plans at this time. Tom Rota suggested conveying the back lot over to the Town for Open Space, never to be developed, to preserve the land. He said this would provide security to the neighborhood that nothing would be built on the property in the future. Tom Noel suggested to discuss the items on the agenda tonight and discuss the back lot at a future meeting.

Tom Rota stated that it was his opinion that changing the units from 2 stories to 3 stories and changing the traffic pattern, would be a substantial change to the Comprehensive

permit. He said that the Fire Chief would want to review the changes in regards to being able to access the buildings in case of a fire. Tom Noel asked Mr. Rota if he was referring to the access road being modified from a 2-lane road with an island in the center to a single 28-foot road. Mr. Rota replied that is what he was referring to. He noted that sometimes guests might decide to park on the access road making it difficult for fire apparatus to get by. Dan Campbell stated that he had a letter dated in 2007 from the Fire Chief stating that 28 feet would be sufficient in the event that cars were parked on the access road.

Ilana Quirk suggested reviewing revised drainage plans and Tom Noel asked Mr. Campbell if revised drainage plans and calculations were included with the modification application and Mr. Campbell replied that plans were included but not calculations. Tom Noel asked Mr. Campbell to briefly describe the drainage calculation modifications.

Mr. Campbell pointed out that on the original plans, the only grassed areas on the site were to be used for the bio-retention areas. He said that these areas could not be planted or used. He stated that the plans have been modified to show that infiltration systems were proposed around the site. He said there are 8 subsurface storm water systems proposed on the site. He noted that each one of the systems provides the same quantity of water that is required by state law to allow the water to flow in the same direction it went in the first place. He said they will be utilizing the green areas at the front of the property where the ground water is high.

Mr. Campbell noted that this method will comply with all current state regulations where as the previous plan would not. Tom Noel stated that even though the original plans would not comply with the current state regulations, the project could have moved forward because the permit was in effect.

Tom Noel asked Mr. Campbell if the changes had to be reviewed by the Conservation Commission and he replied that they would. He stated that even though the preliminary plans were submitted to the Conservation Commission, they have never seen the drainage requirements.

Tom Noel asked Ilana Quirk if the public was allowed to ask questions this evening and she replied it was up to the ZBA Chairman to allow this. Tom Noel replied he would like to have anyone ask questions if they so choose. Tom Rota requested to keep questions to the topic at hand.

Earl Willcott of 145 Newland Street, an abutter to the north side of the project addressed the board. He noted that originally, the entrance way to the project only had 38 feet of frontage and the owner, Mirrione, had to purchase a triangular piece of land in order to get the 50 feet of frontage needed. He asked how this project would go forward without this piece of land. Dan Campbell addressed this issue as follows:

He stated that in 1999 there was an A&R plan that provided a 38 ft. wide access. He stated that in early 2000, there was a second A& R plan that modified the access to 50 feet.

He stated there was a third A&R plan in the mid 2000s that had a few land swaps one of which was a small triangular piece of property which was designated to be part of the project. He noted that during the foreclosure, the small triangular piece of property was omitted from the whole parcel. He said this would make the access area still 50 feet in width.

Bob Kimball of 51 Pine Street and a member of the Board of Selectmen, addressed the board. He stated that, in his opinion, the changes with the number of buildings and the size of the buildings were major changes and should be deemed substantial changes.

Ilana Quirk noted that normally a deduction in the number of buildings would not be a substantial change, but if the change in the amount of bedrooms is more than 10% either way, the change would be deemed substantial. She also noted that if there are other changes as well, such as in the drainage, the changes would be deemed substantial.

Clyde Beatty of 143 Newland Street addressed the board. He asked why there was so much discussion regarding the **original** permit instead of discussing the changes where as there will be a **new** owner and a **new** contractor and a totally different project in many ways. Tom Noel replied that since this was a modification to the **original** permit, the changes would have to be compared with the original plans and designs.

Duane Knapp, Water and Sewer Superintendent, addressed the board. He noted that at the last Water and Sewer meeting, a tentative agreement had been made between his board and the proposed new owner of the Turtle Crossing project regarding the water and sewer for this project as well as some off site work.

Tim Giblin of 6 Anna Way, and a member of the Board of Selectmen, addressed the board. He stated that, in his opinion, the change of the buildings from 2 stories to 3 stories and the change in the access road and the need to have input by the Fire Chief, are very substantial changes.

Nitin Choksi asked if a Peer Review would be required if the modifications were deemed substantial. Tom Rota replied a review may or may not be required and would be determined at a public hearing.

Earl Willcott addressed the board and stated that the proposed project this time is far better than the original proposed project. He said that, even though he does not want anything to be built on this site, he knows that something will be built inevitably and this seems to be the better solution. It was Mr. Willcott's opinion, that the design alone was a lot nicer.

Mr. Peter Freeman stated that he thought the board had presented their comments in a fair and professional manner and he respected that.

Tom Rota stated to the applicant and his representative that it is not the intention of the ZBA to delay this project any longer than necessary. Tom Rota made a motion, that, after giving careful thought to the modifications described at tonight's hearing, it is his opinion that the changes are **substantial** and would require a public hearing. Nitin Choksi seconded the motion. All in favor. Approved.

Ilana Quirk suggested tonight's decision reflect that the reason for the decision was based on changes to: parking, plans, building size, access road size, drainage and Open Space issues. The members agreed.

Tom Rota noted that the only issues to be discussed at the public hearing will be the changes and modifications requested at tonight's discussion.

Peter Freeman asked when the public hearing will take place and the board agreed on Monday, April 30<sup>th</sup>. Peter Freeman asked if a Peer Review would be required. He noted that the Conservation Commission would be reviewing the drainage at a public hearing and suggested not requiring a Peer Review. Tom Noel noted that the members will decide on that issue. Mr. Freeman asked who did the original Peer Review and Ilana Quirk replied that it was Graves Engineering.

After a brief break in the public hearing the public hearing resumed. The ZBA members stated they would like a Peer Review of the modifications to the project. Peter Freeman asked the board that the review be limited to drainage issues. He suggested that he would speak to the Fire Chief himself. He noted that there are no water issues. Mr. Freeman asked if it would be possible to use the same engineer that the Conservation Commission would be using.

Tom Noel stated that he did not see the need in limited the Peer Review as the original Peer Review was not that extensive. Ilana Quirk suggested having the site distances reviewed since the entrance is proposed to be modified. She suggested sending the entire plan to the Peer Review. Peter Freeman suggested that only the modifications be reviewed.

Ilana Quirk noted that a contract would be necessary for the Peer Review and stated she would find the old contract and see if a revised contract could be used. She said she would notify Graves Engineering. She suggested to the applicant that they give a deposit check of \$5,000 to the ZBA for payment of the Peer Review.

Tom Rota made a motion to have Ilana Quirk contact Mr. Graves and also find and modify the original contract for the Peer Review and to have the applicant deposit a

check for \$5,000 in the Peer Review account as soon as possible. Nitin Choksi seconded the motion. All in favor. Approved.

It was agreed that the meeting would take place on Monday, April 30, 2012 at 7:32 pm. Ilana Quirk advised that the applicant send a PDF of the plans to be reviewed to Graves Engineering as soon as possible.

Tom Noel introduced the newest Alternate member to the ZBA, Jason Broolsma. Discussion ensued on the members and alternate members.

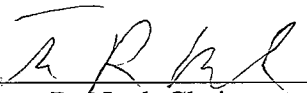
Tom Rota asked if any discussions were necessary on the correspondence for the Pheeny's Island in Norton. Ilana Quirk stated that nothing has been formally submitted to the ZBA at this time and no replies or meetings are necessary at this time.

The members agreed that the next regular meeting would be scheduled for Monday, April 30, 2012.

Tom Rota made a motion, seconded by Nitin Choksi, to adjourn the meeting at 9:00 pm. All in favor. Approved.

Minutes Approved by Committee on: September 17, 2012.

Respectfully submitted,

  
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Thomas R. Noel, Chairman  
Norton Zoning Board of Appeals