



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 June 4, 2012

I. Call to Order

The June 4, 2012 scheduled meeting of the Zoning Board of Appeals was called to order at 7:00 p.m. in the second floor meeting area in the Norton Municipal Center by Thomas Noel, Chairman, with the following members present: Thomas Rota, Alternate Frank Reynolds and Alternate Jason Brolsma.

The members reviewed a request for an extension of the Comprehensive Permit for Case No. 7000 for **K.G.M. Custom Homes, Inc./Strawberry Fields**.

Document List

1. Request letter dated May 22, 2012 from Peter L. Freeman, Atty. At Law, representing K.G.M. Custom Homes, Inc.
2. Mass Appeals Court 1:28 Decisions stating that the purchase of the property is still ongoing and under appeal dated March 6, 2012.
3. Draft Notice of Extension letter dated June 4, 2012.

Present at the public hearing was Peter L. Freeman, Atty. At Law and Mr. Greg Mills, owner of K.G.M. Custom Homes, Inc.

Tom Noel noted that this project has been extended twice because of the legal issues involved. He stated that this request falls under 760 CMR 56.05 (12) and a decision as to whether or not the request is "substantial" or "non-substantial" change would have to be made within 20 days of the request date.

Peter Freeman stated that the circumstances for the request are exactly the same as two years ago because the contract was under dispute which the applicant has since won. He said that the decision is still under appeal, but is expected to be resolved in the near future. He stated that this is why the applicant needs to extend the permit again. Mr. Freeman handed out copies of a draft Extension Letter exactly the same as the previous letter of two years ago, with the exception of updating the dates, requesting that the Board sign and issue the letter as written.

Tom Noel asked Ilana Quirk if the letter is sufficient to avoid the Phasing question. She replied that the board should be very specific under #4 of the letter which states "4) KGM

shall complete construction no later than June 30, 2016” and note in the extension letter that “Occupancy Permits shall be obtained for all the units by June 30, 2016.”

Discussion ensued regarding the court case and appeals for the property. Ilana Quirk noted that it would be taken into consideration as to whether or not the applicant could move forward on the project but has intentionally not done so. She said that in this case, the developer has shown good faith to date and has not been able to begin the project because it has been tied up in court. She stated that even though the case was won in March, that would not have been enough time for the applicant to have begun the work to date.

Tom Rota noted that there should not be another request for an extension after this one.

Tom Noel asked if anyone had any further questions. Frank Reynolds asked why the extension request is for two years instead of one year. Peter Freeman replied that the applicant financially, because of the state of the economy at this time, would not be able to begin the project in the near future.

Tom Noel stated, that for the record, because Nitin Choksi is not present this evening, he is appointing Frank Reynolds as the third voting member.

Tom Rota made a motion, seconded by Frank Reynolds, that the proposed change is insubstantial as set forth in the draft request for an extension letter set forth by Peter L. Freeman with the exception of revising #4 to read “to obtain all Occupancy Permits for all Units”. All in favor. Approved.

Tom Noel asked Ilana Quirk what the method of counting units was and she explained the process and stated she will keep count for the Town of Norton.

The board reviewed the Correction to decision for the **Red Mill Village project. 03-004 (June 4, 2003) – Thorndike Development Corporation. – White Street, East Main Street and Newland Street.**

Document List

1. Request for a variance correction.
2. The graphic from the original variance application clearly showing the intent of having the setback apply to East Main Street, White Street and Newland Street.
3. Copies of the meeting minutes from the two meetings where the variances were discussed.
4. The variance as originally granted.
5. A letter from Atty. Henry Souza written soon after the variances were granted.

Mr. David Eastridge of Thorndike Development Corporation was present at the public hearing.

Ilana Quirk noted that the ZBA has the power to correct an **inadvertent** error in a decision without holding a public hearing. She stated that the decision cannot be changed and the decision cannot be reversed.

Tom Noel asked if Thorndike Development Corporation was still the owner of the property and Mr. Eastridge replied the new name is now Thorndike Properties of Massachusetts, LLC.

David Eastridge stated he had sent an email stating that:

At present there is a five unit building with porches 47+/-ft. and the foundation 49.5+/-ft. from the Newland Street Right of Way. The typical setback is 50ft. We believe that the intent of the Board was to reduce the setback along Newland Street from 50ft. to 20ft as they did for White St. and East Main St. but the variance contained a scrivener's error. We received a temporary occupancy yesterday on Unit 5-5 allowing the Dunn's to move in while we work to address the situation with the Zoning Board of Appeals.

Tom Noel stated that by reviewing the site map submitted of the units in question, it appears that the intent was that "no unit shall be constructed any less than 20 feet from Newland Street as well as White and East Main Street".

Ilana Quirk stated that, in her opinion, this was not a scrivener's error, just an inadvertent mistake.

Tom Rota made a motion, seconded by Frank Reynolds, to recognize that there was an inadvertent error in Case 03-004 dated June 4, 2003 and that item 1 should read "from Section 6.1.a. (Table 6.2) to allow a front yard of 20 feet from the Right of Way sideline of White Street and East Main Street and Newland Street." All in favor. Approved.

Ilana Quirk recommended that the motion be amended to state that the unit has been built even further away than allowed and has already been constructed with a valid building permit.

Tom Rota asked Mr. Eastridge if he had any objections to the amendment and he stated he did not but wanted a full disclosure that the Building Inspector had granted a 90-day Certificate of Occupancy for the first unit in this building because of unique circumstances.

Tom Noel asked if all were in favor of the motion, as amended. Tom Rota made a motion, seconded by Frank Reynolds to amend the original motion as suggested. All in favor. Approved.

Tom Noel re-opened the public hearing for the Request for a Modification/Project Change to the Comprehensive Permit for **Turtle Crossing 40B**. (07-003) Newland Street (cont. from the April 30, 2012 & May 21, 2012 mtgs.

The requested modifications were as follows:

1. reduction number of buildings from 15 to 7
2. increase the height of the buildings from 2 stories to 3 stories
3. decrease the number of bedrooms from 352 to 296
4. delete a portion of the property which would change the access entrance to one lane from two lanes.
5. decrease the parking spaces
6. altering the configuration of the development
7. modify the storm water drainage infrastructure
8. modify the water and sewer infrastructure
9. modify the lighting infrastructure
10. modify the plans
11. extend the deadlines to exercise the permit and complete construction
12. transfer the permit to Dakota Partners, Inc.

Document List

1. A request letter dated March 19, 2012 from Peter L. Freeman, Atty. At Law of the Freeman Law Group, LLC addressed to Thomas R. Noel, Chairman, Zoning Board of Appeals.

2. Copy of original decision for the 40B Comprehensive Permit for Turtle Crossing project.

3. Plans dated March 16, 2012 entitled Turtle Crossing Comprehensive Permit Application, Local Initiative Program, Newland Street, Norton, Massachusetts. (Sheets C-1.0 – C-6.4, A1.01A – A1.01D, A1.02D, A4.01A. Prepared by Level Design Group, LLC and signed and stamped by Nicola Facendola.

4. Stormwater Report for Turtle Crossing Comprehensive Permit Application, Local Initiative Program, Newland Street, Norton, MA. Prepared by Level Design Group, LLC and signed and stamped by Nicola Facendola.

5. A letter/report dated May 16, 2012 from the Peer Review, Jeff Walsh of Graves Engineering, Inc. addressed to Norton Zoning Board of Appeals, a copy of which was sent to Daniel Campbell of the Level Design Group for comments.

6. A response letter dated May 17, 2012 addressed to Norton Zoning Board of Appeals addressing the comments in the May 16, 2012 letter from Graves Engineering, Inc.

7. Several aerial photos of the site.

8. Revised sheets of the originally submitted plans submitted on May 21, 2012.

9. Revised Stormwater Report for Turtle Crossing Comprehensive Permit Application, Local Initiative Program, Newland Street, Norton, MA. Prepared by Level Design Group, LLC and signed and stamped by Nicola Facendola.

10. A response letter dated May 31, 2012 addressed to Norton Zoning Board of Appeals addressing the comments in the May 17, 2012 letter from Level Design Group for comments.

11. A response letter dated June 1, 2012 addressed to Norton Zoning Board of Appeals addressing the comments in the May 31, 2012 letter from Graves Engineering, Inc.

12. Draft decision submitted by Peter L. Freeman, Atty. At Law.

13. Email from David Brunelle, abutter to the project, dated Thursday, May 10, 2012.

14. Letter from Duane Knapp, Water/Sewer Superintendent, dated March 5, 2012.

15. Letter from Paul J. Schleicher, Fire Chief, dated April 30, 2012.

16. Memo from Jennifer Carlino, Conservation Agent, dated May 2, 2012.

17. "Exhibit A" Notice of Project Change dated March 19, 2012 from Peter L. Freeman, Esq.

18. Revised Plans dated June 1, 2012 entitled Turtle Crossing Comprehensive Permit Application, Local Initiative Program, Newland Street, Norton, Massachusetts. (Sheets C-1.0 – C-6.4, A1.01A – A1.01D, A1.02D, A4.01A. Prepared by Level Design Group, LLC and signed and stamped by Nicola Facendola.

Present at the public hearing were Ilana Quirk, Town Counsel, Peter Freeman of Freeman Law Group, Mark Daigle and Roberto Arista of Dakota Partners, Inc., the prospective buyer of the property, engineer Dan Campbell of Level Design Group and Jeff Walsh of Graves Engineering, Inc.

Jeff Walsh of Graves Engineering, Inc, said that, in referring to his letter dated May 31, 2012, there were a few minor storm water management and hydrology comments to be addressed. He noted that he has not had a chance to review the letter dated June 1, 2012 and revised plans that he received just today from Level Design Group.

He said that he compared the figures for parking spaces from #20 of the original permit in 2007 with the proposed number of spaces. He said that in 2007 there were 1.01 per bedroom and the current plans show 1.06 per bedroom. He noted that there are 15 more parking spaces proposed. He said this is an improvement. He stated that the Zoning By-Law requires 1.75 parking spaces for 1-bedroom units and 2 parking spaces for 2-bedroom units which should now total 338 parking spaces. He said that 315 parking spaces are proposed. He said that he has not seen the original decision from 2007 to see if there were any waivers, but this proposal seems to be a slight improvement.

Jeff Walsh noted that the next issue is the garages, which is #14. He said he visited a couple of other projects similar to this one and noted the location of the garages. He said they were set back approximately 2 to 4 feet. Mr. Walsh stated that, in his opinion, the garages should be set back a little for three reasons; 1. because the roof line hangs out over onto the road, 2. people need a little room to walk after stepping out of the garage and 3. for heavy snow removal. He stated that he recommends setting the garages back at least 4 feet. Frank Reynolds noted that on the latest submitted plans, the garages are shown to be moved back 2 feet.

Jeff Walsh suggested that speed limits be posted at 10 or 15 miles per hour within the community. He pointed out in #17 that the actual height of the units will be 50.2 feet to

51 feet. Mr. Walsh noted that in #18 he suggested that snow be removed rather than just plowed to the side on the sidewalks.

Frank Reynolds asked Mr. Walsh if he had any preferences to what type of materials were used for the pipes and he said he did not.

Peter Freeman suggested that Dan Campbell briefly go through his response letter dated June 1, 2012.

Dan Campbell went through his comments in his letter dated June 1, 2012 as follows:

Comments:

#1 – already addressed, #2 – already addressed, #3 – already addressed
#4 – modified elevation typo, #5 – already addressed, #6 – already addressed, #7 – already addressed, #8 – already addressed, #9a – revision to storm water report already addressed, #9b – made modifications as requested, #9c, #9d, #9e, #9f, #9g – made modifications to the calculations as requested, #9h – already addressed, #10a – drainage label modified as requested, #10b, #10c, #10d, #10e – modifications to computations – already addressed, #10f – already addressed, #10g – modifications were made to the ponds as requested, #11 – already addressed, #12 – already addressed, #13 – already addressed, #14 – the garages – already addressed and set back 2 feet, #15 – already addressed, #16 – already addressed, #17 – already addressed, #18 – already addressed, #19 – already addressed, #20 – already addressed for FYI purposes, #21 – already addressed and #22 – already addressed.

Tom Noel asked if they would review the lighting before the plans are endorsed and Mr Campbell replied the lighting will be reviewed prior to the issuance of a building permit. Tom Rota asked if all utilities would be underground and Mr. Campbell replied they were.

Frank Reynolds asked what type of berms were to be used and Mr. Campbell replied the curbs around the main roadway were modified Cape Cod berms. Tom Rota asked if speed bumps were going to be used in the community and Mr. Campbell replied they were not proposed. Jeff Walsh stated that, in his opinion, enforced speed limits would be safer.

Jason Brolsma asked if a waiting area shed for kids was proposed and Mr. Campbell replied there was one proposed. He noted that it was not shown on the plans yet because he wants to talk with the school bus company on the details on the size first. He said it is not determined as to what side of the street it will be on as yet.

Tom Noel asked if the school buses were going to enter the complex or not and Mr. Campbell replied they would not. Tom Rota noted the buses will not enter the complex because it is a private way.

Ilana Quirk asked that the kiosk be added to the plans before they are endorsed and Mr. Campbell replied that it would be.

Jason Brolsma asked Mr. Campbell if he was in agreement with Mr. Walsh as to the height of the units and he replied that he was.

Tom Noel asked what the next step is in the review process and Mr. Walsh replied that he will review the June 1, 2012 response letter and revised plans. Tom Noel asked if there were sufficient funds in place for payment of his review and Mr. Walsh stated he had stayed under the original budget amount of \$5,000. Ilana Quirk asked Mr. Walsh to submit his invoices as soon as possible to determine how much more money is needed to be deposited into the Peer Review Account by the applicant. She asked the board if he would have to attend another meeting or if a letter or report would be sufficient after his final review. Tom Rota suggested that a letter or report would be sufficient. Ilana Quirk suggested to Mr. Walsh to advise the ZBA of his estimate for his final review would be in order to request that amount to be deposited into the Peer Review Account by the applicant. He replied he would get this information to the ZBA as soon as possible.

Tom Rota asked if the language for the Open Space land had been determined yet. Peter Freeman noted that he received an email from David Brunelle of 127 Newland Street who indicated in his email that he has accepted a proposal for the landscaping on or abutting his property which Mr. Freeman stated was incorporated into the draft decision. He said that Earl Willcott can speak for himself as he is present tonight. Mr. Willcott stated that he would like the buffer between his property and the project to be left as is.

Peter Freeman submitted a letter from Duane Knapp, Water/Sewer Superintendent, noting the sewer permit fees and stating that the water permit fees will be waived in lieu of off-site upgrades to be done by the applicant. He also submitted "Exhibit A" as requested listing submitted plans and documents to date and stated that a couple more items will be added to the list the Zoning Board secretary.

Ilana Quirk stated to Mr. Freeman that he needs to obtain an updated memo or letter from the Fire Chief and Water/Sewer Dept. stating that they have reviewed the updated plans. She said there was language referring signage regarding speed that was to be reviewed and approved by the Building Inspector. She stated that details regarding the 25-no touch wetland buffer zone reviewed and approved by the Conservation Commission should be submitted to ensure that they did review the final revised plans. Dan Campbell stated that no comments were made at the Conservation Commission meeting of Monday, May 21, 2012 regarding the location of the 25-no touch wetland buffer zone.

He noted that he had transferred any waivers from the original decision to the revised decision, but does not see one for the parking and was quite sure the original decision included a waiver for the parking.

Peter Freeman had a copy of a section of the draft decision from Section B. General Conditions, #27 which refers to the Open Space property which he had revised and passed out a copy to all the members. He said that the section referred to "Lot A" as the lot containing the project and "Lot B" as permanently restricted open space or for alternative energy uses. The section stated that the uses are for exclusive use by the applicant and will state that no further housing units may be developed on "Lot B".

Discussion ensued regarding the restrictive covenant and a permanent restriction that will be recorded at the Registry of Deeds before the issuance of the first Certificate of Occupancy. Ilana Quirk noted that many towns are not accepting property with restrictions. Earl Willcott noted that the Norton Conservation might want this property because it is next to a river.

Debra Fillion, 125 Newland Street, had concerns with what type of energy would be developed on Lot B if the Town does not accept the property for open space land. She stated that she would like to see something in writing before a decision was filed. Tom Rota stated any further use for the property would have to be approved by the Zoning Board of Appeals.

Ilana Quirk noted that under Chapter 48, Section 3, a solar panel use for the property may be allowed as of right if it was not too large.

Dan Campbell noted that whatever is proposed on the rear property of Lot B, will have to be approved by the Conservation Commission as well as MEPA.

Peter Freeman noted that Ilana Quirk will work on the language for this section of the revised decision referring to "Lot A" and "Lot B".

The board asked Jeff Walsh if he could review the final plans and comment letter dated June 1, 2012 and submit any comments before the next public hearing.

Peter Freeman asked if the board could meet a week from tonight, but most members could not meet on Monday, June 11th. It was decided to continue the public hearing until Monday, June 18, 2012.

Jeff Walsh said he could have any final comments by June 18th and would call the Zoning Board office tomorrow with his invoice amount and advise if more funds would have to be deposited in the Peer Review Fee account.

Tom Rota asked Mr. Freeman if there were any important issues he would like to go over this evening and clear up before the next meeting. He brought up the issue regarding Phasing and Ilana Quirk noted that the applicant decided to withdraw any plans to include phasing at the previous hearing.


Ilana Quirk stated she would like to see the lighting and Kiosk added to the plans and Dan Campbell stated he would rather wait and change the entire plan at the time the Kiosk is added to the plans.

Tom Rota made a motion, seconded by Frank Reynolds, to continue the public hearing to Monday, June 18, 2012 at 7:30 pm. All in favor. Approved.

Tom Rota made a motion, seconded by Frank Reynolds, to adjourn the public meeting at 9:12 pm. All in favor. Approved.

Minutes Approved by Committee on: September 17, 2012.

Respectfully submitted,



Thomas R. Noel, Chairman
Norton Zoning Board of Appeals