



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

Meeting of November 26, 2012

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

The November 26, 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 Tom Noel, Chairman with the following members present: Nitin Choksi, Frank Reynolds, and Jason Brolsma, Alternate Member. Also present was Town Counsel, Ilana Quirk.

Tom Noel called the meeting to order at 7:30 pm noting that there were two items on the agenda tonight.

#### **013-004 – Gerald F. Mahoney, Jr., 12 Azalea Road, Parcels 47, 48, 49, 56, 57 & 58, Assessor's Map 3**

Request for a Section 6.2 Finding to determine that the existing non-conforming use of the property, which includes a house and two apartments, will remain as is for legal purposes.

#### **Document List**

1. Application for a Request for a Section 6 Finding.
2. ZBA Plan of #12 Azalea Road, Norton, MA , Owner Gerald F. Mahoney, Jr. prepared by Yarworth Engineering Co., Inc., Scale of 1"=20', signed and stamped by Christopher D. Yarworth and dated 10/18/12.

Tom Noel read the Notice of Hearing which was requesting that the status of the property remain as is, which includes a home and 2 one-bedroom apartments. The applicant is requesting a letter be written by the Zoning Board of Appeals stating that the property will remain as is.

Chris Yarworth addressed the board and explained what the applicant was requesting. He noted that the applicant lives in one of the apartments on the property and the house pre-dates zoning. He said that a building permit was obtained in 2003 to turn the garage into an apartment.

He said that a single-family house existing on the property before 1958 and in 2000 an apartment was added on. He said that in 2003 a building permit was issued to turn the garage into an apartment.

Mr. Yarworth stated that the homeowner is trying to re-finance the property, but Zoning rules and regulations do not permit 3 apartments on the property. He said the owner needs a letter from the Zoning Board of Appeals stating that the property will always be able to house three occupants. Mr. Yarworth stated the owner has been paying the taxes for a multi-family property.

Mr. Yarworth said the owner had gone to the Building Inspector who advised him to apply to the Zoning Board of Appeals for a letter of clarification.

Mr. Yarworth stated the owner is trying to get a permit to add a second door to the first floor apartment in the garage.

Tom Noel noted that the submitted plans show the owner owning six parcels of property. Chris Yarworth stated that the deed notes the house and one parcel only. Tom Noel asked why the apartments and house are considered one dwelling and Chris Yarworth stated that this is the way the property has been listed since 1958. The members were also confused why the plan showed six separate parcels of property, yet the house and apartments are listed as one parcel. Chris Yarworth stated the lots listed on the application were conveyed to the owner.

Tom Noel asked Ilana Quirk to explain what Mr. Yarworth was saying. She replied by saying that the deed is a judicial document and the deeds were merged for Zoning purposes at one time. She stated that under MGL 40A, Section 7, that if a building permit was issued improperly, the town has only six years to take any enforcement action. She stated that after six years the town cannot force the removal of the structure but because it is a non-conforming use of the property, it would not have protection under Zoning Bylaws for 40A, Section 6.

Ilana Quirk suggested the owner seek private council for any zoning issues on the property.

Chris Yarworth asked if the Zoning Board could grant a Section 6 finding that the non-conforming use of the property can remain in use forever even though a building permit was issued in 2003 improperly to construct a third apartment. He said that the applicant is not changing anything except requesting a building permit to add a second door to the first floor apartment in the garage.

Tom Noel stated that no changes to the property are being requested, therefore a Section 6 Finding cannot be granted.

Ilana Quirk stated that the applicant is requesting confirmation by the ZBA that the situation is a lawfully pre-existing non-conforming situation and shall be allowed to continue. She stated that the problem is that, under 40A, Section 6, in order to be a lawfully non-conforming use it would have to be a lawfully pre-existing non-conforming use that pre-dates the Zoning that made it non-conforming, and if it came in afterwards, it would not be considered a lawfully non-conforming use.

Tom Noel asked if the current use of the property would be conveyed to new owners in the event the property was sold. Ilana Quirk replied that if a valid building permit had been issued, the use could continue as deemed by the Building Inspector.

Tom Noel asked Mr. Mahoney what the first floor of the garage was before 2003 when the upstairs had been an apartment. He replied that it was used as a garage. Mr. Mahoney stated that people have been living in the first floor of the garage since 2003.

Jason Brolsma noted that the garage should not have been renovated into an apartment in 2003. Chris Yarworth replied this was correct, but it was, and the owner is trying to refinance and cannot do so without clarification or a letter from the Building Inspector or the Zoning Board of Appeals.

Ilana Quirk noted that the existing building is not a "legally" existing non-conforming building. Tom Noel stated he did not want to approved something that has never been reviewed by the Board to date. He said that the ZBA does not have the power to grant a variance or finding on an illegally-built project. Ilana Quirk noted that the applicant may continue to live in the dwelling without Town enforcement, but the ZBA does not have the power to make a finding on this project as requested.

Frank Reynolds asked if the Building Inspector would allow the addition of a second door to the first floor of the garage. Chris Yarworth replied that the Building Inspector will not issue a building permit until a finding is submitted by the Zoning Board of Appeals.

Ilana Quirk stated that, under Section 1.5, there is no evidence that the structure was a lawfully, existing non-conforming structure.

Tom Noel suggested having a title search done to show that no enforcement action has ever been taken since the issuing of the building permit in November of 2003; therefore the structure can remain as is and be used as it is being used presently.

Chris Yarworth stated that the applicant needs a letter from the Town for the bank.

Tom Noel asked Mr. Yarworth if the applicant wanted to withdraw the application or continue the public hearing and he replied that at this time, the applicant is requesting to continue public hearing.

Nitin Choksi made a motion, seconded by Frank Reynolds, to continue the public hearing until the next regular meeting of Monday, December 10, 2012 at 7:32 pm at the Norton Public Library. All in favor. Approved.

**013-003 – Island Brook, LLC – East Main Street, Parcels 57, 238, 239 240, 241, 242, 243, 244 & 245 (Assessor's Map 17) - Application for a Comprehensive Permit und MGL Chapter 40B for construction of 100 single-family houses, including 25 affordable houses on 43.35 acres in R60 & VC Zoning Districts. (cont. from the November 5, 2012 meeting)**

Document List

1. Comprehensive Permit Application dated October 18, 2012.
2. Plans entitled Preliminary Subdivision Plan to accompany application for Comprehensive Permit for a Planned Unit Residential Development to be known as "Island Brook" being a resubdivision of Lot 57; and Lots 238 thru 245 as depicted on Assessor Map 17, signed and stamped by Robert A. Junior and dated August 7, 2012. (Sheets 1-6)
3. draft Contract for Services by Graves Engineering.

Nitin Choksi made a motion, seconded by Frank Reynolds, to re-open the public hearing for the Island Brook project. All in favor. Approved.

Ilana Quirk stated that she had contacted Graves Engineering regarding a Peer Review to be done with the Scope of Work and a "Not to Exceed" contract. She said a draft contract has been submitted for review by the Zoning Board. She said that an amount of \$5,100 was suggested by Graves Engineering to review the plans as submitted. She said that this amount would be deposited into a revolving account to be used for payments to Graves Engineering for the Peer Review. Ilana Quirk noted that Graves Engineering had stated that a lot of important information was missing from the submitted plans but they could point out the major issues for concern at this time.

Bob Engler noted that he would rather wait for the Peer Review until revisions are made to the plans taking into consideration the comments submitted by the various departments. He asked permission to speak directly with Graves Engineering.

Tom Noel noted that it is normal procedure for the applicant to communicate with the Peer Review.

Ilana Quirk suggested to advise Graves Engineering as to when the revised plans will be done and when the funds will be submitted.

Mr. Engler asked how long after reviewing the revised plans Graves Engineering could attend a meeting.

Frank Westgate noted that revised plans could be submitted in about six weeks.

Nitin Choksi asked Mr. Westgate at what level of design the revised plans would be at the next submission and Mr. Westgate replied finish grades and drainage calcs would be included on the revised plans.

Bob Engler stated the applicant will submit whatever is required for the 40B application in a timely fashion. Mr. Westgate stated more detailed plans were not submitted because he wanted to get more input from the different departments first.

Tom Noel expressed the fact that he was hoping to have the submitted contract approved. Ilana Quirk noted that there were two ways to proceed at this time; 1. signing the contract with the understanding that the amount may increase upon the submission of revised plans but this will enable the Peer Review to begin or 2. submit the revised plans, after which the Peer Review may begin, adjusting the amount for review.

Bob Junior suggested waiting approximately six weeks at which time the revised plans will be submitted and then sign the contract with the Peer Review. Ilana stated the applicant could sign the contract as is with the amendment that added funds may be needed to review newly revised plans or wait to hire the Peer Review until after the next public hearing when the revised plans are submitted, which will take longer.

Mr. Engler suggested signing the contract with Graves Engineering but requesting that they do not start the review until after communicating with the applicant's engineer. Bob Junior suggested waiting until the revised plans are submitted to Graves Engineering.

Nitin Choksi made a motion, seconded by Frank Reynolds to have the applicant submit a check for \$5,100 to be deposited into a Peer Review fund for review by Graves Engineering, submit revised plans and to have an amended contract signed by the Board of Selectmen that states that the amount of \$5,100 may not be sufficient for further review of revised plans. All in favor. Approved.

Bob Junior requested a meeting date be set for the next meeting. The applicant replied that revised plans will be submitted in six weeks.

Tom Noel read aloud a comment letter received by Jennifer Carlino, Conservation Agent dated November 5, 2012.

Bob Engler requested that he receive copies of all letters received regarding this project. Tom Noel said he would email any letters received to him.

Shawn Harris of 122 East Main Street asked what plans Graves Engineering will be reviewing. Tom Noel replied that they would be reviewing the submitted plans at first and then the revised plans. He noted that it is better to start the reviewing process now instead of waiting for the revised plans to be submitted. Mr. Harris asked if there would

be a conflict of interest using Graves Engineering for the Peer Review. Tom Noel stated there was no conflict of interest.

Mr. Harris asked when the board would hear back from Graves Engineering and Tom Noel replied that Graves Engineering would be submitting a report after their review is finished which will be public record. Mr. Harris asked if a traffic report would be submitted by Graves Engineering and Tom Noel replied that it is not the Peer Review's responsibility to submit a traffic report. He pointed out that if a traffic study is necessary because of safety issues, it could be requested of the applicant. He noted that this meeting is just a preliminary meeting and that all these issues will be brought up at a later time and everyone interested will have a chance to speak. Mr. Harris stated that a stream runs through his property and is not shown on the submitted plans. Tom Noel noted that the plans submitted are preliminary plans and eventually the final plans will show any wetlands on or near the property.

Robert Adams of 20 Willis Drive addressed the board. He had concerns with overcrowded schools and asked if the school board has commented on the project yet. Tom Noel replied they have not.

Ilana Quirk stated that in the past applicants have done studies regarding any school issues that might be generated by specific type of projects.

Mr. Harris asked Tom Noel to comment on the issues raised. Tom Noel replied he could not because the project was still in the preliminary stages of the overall hearing process.

Nitin Choksi made a motion, seconded by Frank Reynolds, to continue the public hearing until Monday, February 4, 2013 at 7:30 pm. All in favor. Approved.

The members reviewed a Bills Payable for Allegra Print and Imaging. Nitin Choksi made a motion, seconded by Frank Reynolds, to pay the bill. All in favor. Approved.

The members reviewed a Bills Payable for Pleasant Printing. Nitin Choksi made a motion, seconded by Frank Reynolds, to pay the bill. All in favor. Approved.

Nitin Choksi made a motion, seconded by Frank Reynolds, to adjourn the public meeting at 9:14 pm. All in favor. Approved.

#### **Minutes Approved by Committee on November 4, 2013**

Respectfully submitted,



Thomas R. Noel  
Chairman, Norton Zoning Board of Appeals