



**TOWN OF NORTON
ZONING BOARD OF APPEALS**

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MINUTES

Meeting of December 10, 2012

I. Call to Order

The December 10, 2012 scheduled meeting of the Zoning Board of Appeals was called to order at 7:15 p.m. in the first floor, Selectmen's meeting area in the Norton Municipal Center by Tom Rota, with the following members present: Nitin Choksi, Frank Reynolds, and Jason Brolsma, Alternate Member.

Nitin Choksi made a motion, seconded by Frank Reynolds to adjourn the meeting at 7:25 pm and reconvene at the Norton Public Library at 7:30 pm. All in favor. Approved.

Tom Noel, Chairman and Ilana Quirk, Town Counsel, were present at the public meeting held at the Norton Public Library.

Tom Noel noted the first item for discussion would be;

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. (Continued from the November 26, 2012 meeting.)

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.

Nitin Choksi made a motion, seconded by Frank Reynolds, to remove the project from the table for discussion. All in favor. Approved.

Tom Noel read a letter received from Chris Yarworth of Yarworth Engineering Company, Inc. requesting to withdraw the application without prejudice. Nitin Choksi made a

motion, seconded by Frank Reynolds, to allow the application to be withdrawn without prejudice. All in favor. Approved.

Tom Noel noted the second item on the agenda is the review of File:

013-005 – Campanelli Thorndike Norton, LLC, Parcels 61 & 76, Assessor's Map 11, 274 East Main Street

Comprehensive Permit 40B application – 230 apartments.

Document List:

1. Application for a Comprehensive Permit
2. Plans entitled Norton Apartments, 274 East Main Street, Norton, MA, Campanelli Thorndike Norton LLC October 24, 2012, Preliminary Architectural Drawings, CLUB HOUSE, 274 East Main Street, Norton, Massachusetts for Thorndike Construction Corp., signed and stamped by Candice L. Reynolds. (Sheets T1.0, A1.0, A1.1, A3.1, A3.2 & A4.1)
3. Plans entitled Norton Apartments, 274 East Main Street, Norton, MA, Campanelli Thorndike Norton LLC October 24, 2012, Preliminary Architectural Drawings, Typical 30 Unit Apartment Bldg., 274 East Main Street, Norton, Massachusetts for Thorndike Construction Corp., signed and stamped by Candice L. Reynolds. (Sheets T1.0, A1.0, A1.1, A3.0 & A3.1)
4. Plans to Accompany Comprehensive Permit Application for Norton Apartments, 274 East Main Street, Norton, MA October 24, 2012 for Thorndike Development Corp. by Kelly Engineering Group, Inc., signed and stamped by David Noel Kelly. (Sheets 1-4)

Present for the public hearing were Lloyd Geisinger of Thorndike Development, Steve Murphy, Senior partner with Campanelli, Russell Dion from Campanelli, Gordon Burns from Campanelli, David Eastridge of Thorndike Development, Ben Geisinger of Thorndike Development and Candice Reynolds, Architect for Thorndike Development and Ben Geisinger of Thorndike Development, David Kelly, Kelly Engineering Group, David Mackwell, Kelly Engineering Group, Robert Michaud, Traffic Engineer, MDM Transportation Consultant.

Tom Noel noted that there will be many more public hearings and that this is a just the preliminary hearing. He proceeded to read the Notice of Hearing aloud. He explained to the public what a 40B Comprehensive Permit is and asked Ilana Quirk, Town Counsel, to explain what the word “affordable” means. She replied that in this case, affordable would be 80% of the median housing costs in this area.

Ilana Quirk noted that the Zoning Board has three choices for this application as follows:

1. deny the project
2. approve the project
3. approve the project with conditions

She did note that conditions cannot make the project too costly for the applicant and must be within reason.

Tom Noel asked the applicant, Lloyd Geisinger, to make a brief presentation for the project. Lloyd Geisinger noted that the attorney for the project, Peter Freeman, was not present this evening. He proceeded to give a slide presentation for the project. He noted that a website for this project would soon be available to the public. Tom Noel asked if the slides could be delivered on paper and Frank Reynolds requested a PDF file for the submitted plans and slides. Mr. Geisinger replied he would send the requested information to the Zoning Board members.

Tom Noel noted that the Zoning Board of Appeals would be hiring a Peer Review to review the project and Mr. Geisinger replied that as soon as all the departments have responded and commented on the project, he would have the plans revised to accommodate the requests and comments and then be ready to submit payment for a Peer Review.

Tom Noel stated that the board frequently uses Graves Engineering for Peer Reviews and asked Mr. Geisinger if he had any issues or previous relations with Graves Engineering and Mr. Geisinger replied he had not. Tom Rota asked if a different Consultant should be used for the Peer Review as Graves Engineering was already contacted for another 40B project. Jason Brolsma suggested using a different Consultant to prevent any delays in the review of the project.

Ilana Quirk suggested using the same consultant as the two separate Comprehensive Permit applications may be heard at the same meeting. She noted that typically all Peer Review issues are decided upon at the first meeting of the application.

Tom Noel stated that the applicant is typically required to give a deposit to be deposited into an escrow account to pay for the Peer Review. Lloyd Geisinger noted that he would need more time to revise the plans before contacting a Peer Review. He noted that the changes will not be substantial and that they would only be fine tuning the submitted plans.

Tom Noel suggested to move forward contacting the Peer Review. Tom Rota explained to the residents what the process of the Peer Review is.

Jason Brolsma wondered if one Peer Review could handle both projects.

Tom Noel requested that Ilana Quirk contact Graves Engineering to submit a "not to exceed" contract and she replied that she would.

Tom Noel proceeded to read a comment letter submitted by the Fire Department dated November 28, 2012.

David Myles, Deputy Fire Chief, stated that he had issues with parking in the rear in order to have room for fire apparatus to turn around if necessary during a fire call.

Leland Goldberg of 9 Danforth Lane asked David Myles, Deputy Fire Chief, if he thought there might be a problem with the large ladder truck getting around to the rear of the buildings to the highest floor of the buildings. David Myles replied that he intends on addressing this issue at future meetings. He said that the ladder on his trucks are long enough, but with cars being parked at the rear of the building he wants to make sure that his trucks can turn around easily and safely.

Tom Noel noted that these apartments are rental units and the property is not owned by the renters. He asked who would be in charge of the parking areas. Tom Rota noted that there will be a management company in charge. Lloyd Geisinger stated that a management company will be in charge of the parking spaces but he was not sure if someone would be on site 24/7.

Dr. Maureen Sroczynski, #15, 283 East Main Street noted that she was speaking on behalf of the residents at Kingsbury Hill Estates across from the proposed project. She said they had many questions for the applicant. Tom Noel said they would be able to speak later on during the public hearing.

Ralph Stefanelli of 12 James Street suggested that the Fire Department might need added equipment for the new project. Tom Noel asked David Myles if they were planning on getting any new equipment and Deputy Chief Myles stated that a request for more equipment was already in place before this application was filed. Ralph Stefanelli asked Deputy Chief Myles if the Fire Department would be inspecting all storage areas for flammable materials and he replied they would.

James Conway of 283 East Main Street asked Deputy Fire Chief Myles if more equipment was being requested for this side of town because the population on the north side of Route 495 has grown immensely. David Myles said he could not speculate on that at this time and has not heard anything to this effect. Mr. Conway stated that a right turn only was planned for the first entrance into the complex and asked David Myles how the Fire trucks would get to a fire on that end of the complex in a hurry. Lloyd Geisinger stated that the entrance would certainly be wide enough for any fire trucks to enter if needed.

Town counsel Ilana Quirk explained the process for a 40B Comprehensive Permit application. She noted that the Zoning Board of Appeals (ZBA) has to hold the first meeting by a certain number of days and they have done so. She said the ZBA has to keep the public hearing open at least 180 days. She stated that the "cooling off" period referred to by Mr. Conlin has to do with the State Regulations for a 40B application Section 60, CMR 56.03 which are the five criteria that would have to be reviewed at the first public hearing in order to proceed with the project. She stated that if any one of the five criteria were met by the applicant the board could deny the project or continue the

project with conditions without regard for the economic aspect of the project. She listed the five criteria as follows:

1. has the statutory 10% minimum subsidizing housing inventory been satisfied in the town yet? She stated it has not and is at about 6% at the present time.
2. applicant is within compliance with the housing plan projection with the Town of Norton. She stated there is no certification at this time.
3. approval of recent progress within the past 12 months for this property. She stated there was none.
4. if the project is large. She stated the number of units in the town is 6700 with 250 being a large project. She noted that this is a small project.
5. if there is a related application for a project with this property within the past 12 months. Lloyd Geisinger noted there has not been any activity on this site after 2007.

Duane Knapp stated water permits had been given for this site for a single-family home project in past years. Tom Rota stated the project had never moved forward. Lloyd Geisinger stated the permits were given in 2007.

Jason Brolsma noted a letter dated September 17, 2012 written by the Town Manager addressed to Ms. Nancy McCafferty of the Massachusetts Housing Partnership has been received. He noted the letter had stated concern with the request by the Town asking if the 2% threshold of the Town of Norton's housing units had been met after the recent modification for the Turtle Crossing project. Tom Noel asked Ilana Quirk to clarify this letter. She stated that if the modification for the Turtle Crossing was deemed a new project, that would put the percentage over the limit, but it was determined that the modification for Turtle Crossing was not substantial enough to deem it as a new project, therefore, not adding to the percentage of affordable units allowed. Ilana Quirk explained the process to the residents.

Tom Noel stated his concern with 40B projects being approved by the ZBA and not started after one year, therefore, units being removed from the SHI inventory and allowing more 40B projects to be reviewed by the board.

Tom Rota made a motion, seconded by Nitin Choksi, that none of the five criteria has been met by the applicant and the project can go forward for further review. All in favor. Approved.

Oren Sigal of 28 Coddling Road noted that the decision by DHCD stating that the modification for the Turtle Crossing project was not substantial enough to deem it as a new project could be appealed.

Ilana Quirk noted that the board this evening could make the motion that the 2% threshold has been met by the modification of Turtle Crossing. She further noted that DHCD has already made their decision and she has never seen them change their

decision over a minor modification to a project. She said if the board wanted to check further into this matter, it would have to be done quickly.

Bob Kimball, Selectman, stated that it was the Selectmen's point of view that the modification for Turtle Crossing should be deemed a new project.

Tom Rota stated that if the board decided to go to court and the applicant appeals the decision, the town would be spending a lot of money. He noted that Ilana Quirk, Town Counsel, has always given good advice and he values her input. He suggested not going this route at this time and upholding the ZBA's decision for the Turtle Crossing modification project.

Tim Giblin, Selectman, stated that it was his opinion that just the changing of ownership of the Turtle Crossing project would justify it being deemed a new project. He suggested that the ZBA pursue this matter. Tom Noel asked why the Selectmen did not pursue this matter themselves when the matter was presented before them. He asked Mr. Giblin if a vote was taken to appeal ZBA's decision and Mr. Giblin replied there was not.

Bob Kimball noted that the state 40B regulations have to be changed eventually to allow an applicant to have more time to proceed with their projects after receiving a decision.

Tom Noel observed that the Board of Selectmen is a political body but the ZBA is not a political body. He commented that the Board of Selectmen seemed to be asking the ZBA to do something that the Board of Selectmen should have done previously. Tom Noel stated he is not comfortable taking a stand or going to court with a matter that would cost the town a lot of money and, that, according to Town Counsel, the ZBA would likely not win.

Tom Noel asked Ilana Quirk if there was any immediate hurry to take care of this matter and she replied there was.

Ilana Quirk stated that according to the State 40B regulations, new ownership does not substantiate grounds to deem the project as a new project. She noted that the modification for Turtle Crossing was less substantial than the original project.

Tom Rota stated that the ZBA has to follow all guidelines or the applicant will receive a decision by right.

Ilana Quirk noted that the ZBA has to make a decision on this matter within 15 days. Tom Noel asked how quickly the Board of Selectmen can proceed on this matter.

Tim Giblin stated he would try and get a response from DHCD as soon as possible and get a response to the ZBA by this Friday.

Tom Noel asked the members what they wanted to do about this matter. Tom Rota suggested not going forward with the appeal of the decision believing this is not a winnable case.

Tom Rota, made a motion that none of the five criteria have been met by the applicant.

Tom Noel asked Ilana Quirk if the Turtle Crossing modification was deemed to be a new project by SHI, would this put the town over the limit of 10% of affordable houses and she replied it probably would.

Lloyd Geisinger stated that even if the ZBA postpones this project six months, he would re-apply next June.

Jason Brolsma noted that, by taking into consideration Town Counsel's information, not to pursue this matter

Tom Rota requested to remove his motion from the table that the applicant has not met any of the five criteria for the 40B rules and regulations for this project. All in favor. Approved.

Tom Noel suggested continuing this discussion to next Monday evening, December 17th after such time, the Board of Selectmen can give any added information received from the DHCD.

Tom Rota made a motion, seconded by Nitin Choksi, to continue the public hearing until next Monday, December 17, 2012, at 7:15 pm to be held at the Norton Town Hall, first floor Selectmen's area and then to re-convene, if necessary, to the Norton Public Library at 7:30 pm in order to made a decision as to whether or not the applicant has met any of the five criteria for the 40B rules and regulations for this project. All in favor. Approved.

Tom Rota made a motion, seconded by Nitin Choksi, to adjourn the public meeting at 9:30 pm. All in favor. Approved.

Minutes Approved by Committee on: October 23, 2013

Respectfully submitted,



Thomas R. Noel, Chairman
Norton Zoning Board of Appeals