



**TOWN OF NORTON
ZONING BOARD OF APPEALS**

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MINUTES

Meeting of December 17, 2012

I. Call to Order

The December 17, 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.

Tom Rota noted that because of the large number of people attending the meeting tonight, the meeting would be moved to the Norton Public Library.

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

Tom Rota called to order the Zoning Board of Appeals meeting that re-convened at the Norton Public Library at 7:30 pm. Frank Reynolds made a motion, seconded by Nitin Choksi to re-open the Zoning Board of Appeals Meeting. All in favor. Approved.

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

Tom Noel called to order the Zoning Board of Appeals meeting at the Norton Public Library at 7:30 pm.

Tom Noel called for a moment of silence for the victims of the school incident that happened in Connecticut.

Tom Noel noted the only item for discussion would be;

013-005 – Campanelli Thorndike Norton, LLC, Parcels 61 & 76, Assessor's Map 11, 274 East Main Street. (Continued from December 10, 2012 meeting.) Comprehensive Permit Chapter 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 that the meeting tonight is being held in order to resolve an issue that came up at the previous meeting. He said he received an email from Ilana Quirk, Town Counsel and he stated that the Board of Selectmen held a meeting last Thursday evening.

Tom Rota made a motion, seconded by Nitin Choksi, to remove from the table for discussion the application for Campanelli Thorndike Norton LLC. All in favor. Approved.

Tom Noel stated that the ZBA can deny a 40B project if the applicant fails to meet any of five criteria at the opening of the first public hearing on the project. If one of the criteria has not been met, the matter has to be resolved within 15 days or the project can be denied. He noted that tonight's meeting was scheduled in order to meet within the the 15-day time limit of the first meeting. He said the one criteria that might warrant a denial is what is called the "2% Safe Harbor" Rule, which would mean that the number of affordable units for the Town had been met prior to the filing of the application.

Tom Noel stated that issue in question pertains to the Turtle Crossing 40B project. He noted that the project was approved, sold and modified. He stated that the ZBA had deemed the modification substantial enough to hold a public hearing on, but not substantial enough to call it a **new** project. He said that the DHCD deemed it a modification and not a **new** project. He noted that if the project is deemed a **new** project,

the total number of units will have been added twice for that site going over the limit allowed (2%).

Tom Noel asked Bob Kimball, Selectman, to update the board on this particular issue. Mr. Kimball stated that one other issue to deem the Turtle Crossing project was that it changed ownership. He asked Ilana Quirk to update the board on the Selectmen's opinion on this matter.

Ilana Quirk stated that the Board of Selectmen discussion this matter in an Executive Session last Thursday evening and asked her to announce their decision, after taking a vote, tonight not to pursue the litigation for the 2% rule for the Turtle Crossing 40B project.

Tom Noel suggested making the email sent to the board available to the public. Tom Rota asked Ilana Quirk if this was ok and she replied she had no objections.

Tom Rota suggested reading a portion of the email from Deborah Goddard (General Counsel to DHCD) to Ilana Quirk to give the public a better understanding of the situation. Tom Noel stated it was the initial decision made by DHCD noting that units on a particular site cannot be added in twice to the Subsidize Housing Inventory.

Tom Noel again explained what the process was when a modification was requested for the Turtle Crossing 40B project. All board members agreed that this matter has been resolved and should be closed. Tom Noel stated that this is a closed matter at this time.

Bob Kimball noted that the Board of Selectmen are going to file with the Legislature to try and pass a policy to allow the units of a 40B project that have been approved by ZBA to remain on the books for a much longer period of time to allow the applicant enough time to construct the units.

Tom Noel stated that too many extensions are being allowed for each project. He said that just the passage of time is not enough to deny a project. Ilana Quirk noted that it is a state rule that an applicant may apply for an extension before the permit expires and cannot be denied.

Jason Brolsma wondered whether Deborah Goddard of the DHCD had been given enough information as to the changes made to the Turtle Crossing project. Peter Freeman, Attorney for Campanelli/Thorndike, stated that the information given to Ms. Goddard was outlined, in detail, in an email to her from him. Ilana Quirk read Peter Freeman's email to the board and agreed that he had supplied enough information to Ms. Goddard.

Leland Goldberg of 9 Danforth Lane asked that if all the other 40B projects were built, would the limit of units be exceeded. Bob Kimball stated if all the 40Bs that have been approved were built, the total number of units would be 310 exceeding the 10%

threshold.

Ralph Stefanelli of 12 James Street noted that the applicant is labeling this project "Smart Growth" which refers to a 40R. He said that the applicant during his presentation referred to the words "Smart Growth" many times. His question to Mr. Noel was can the applicant change his project "mid-stream" from a "Smart Growth" project to a "40B" project? He asked for clarification from the applicant.

Tom Noel asked the applicant if he originally proposed a "Smart Growth" project and changed it to a "40B" project. Peter Freeman replied that 40B and Smart Growth go hand in hand as the applicant is expected to make the project as favorable as possible. He said that neither is that much different than the other.

Ralph Stefanelli stated that the applicant should not, in his opinion, present the project as a favorable project, such as Smart Growth, when it is indeed a 40B project. He said the applicant is just "sugar coating" the project.

Tom Rota asked the applicant if he was referring to his proposed project as a "Smart Growth" project because he would be making improvements to the area and Mr. Geisinger replied that was correct.

Dr. Maureen Sroczyński, #15, 283 East Main Street asked Ilana Quirk to explain what a 40R application is. Ilana Quirk replied that a 40R application requires a by-law to be written and voted on at a Town Meeting with a 2/3 vote to pass. She noted that all characteristics will be noted in the application such as height, density, setbacks, etc. Ms. Sroczyński wanted it noted that this project is indeed an application for a 40B Comprehensive permit and not an application for a 40R. Tom Noel stated the application is for a 40B Comprehensive Permit.

Leo Conlin of 79 Coddling Road asked Tom Noel if all the approved 40B projects obtained their building permits tomorrow, could this project go forward. Tom Noel replied it could.

Tom Rota stated that if all the building permits were obtained for the approved 40B projects before the first public hearing for this application, the ZBA could deny this project.

Gail Thalheimer of 23 Owen Road expressed the fact that there are many problems arising in her community (Red Mill Village) because of this application. She said that when she purchased her house in Red Mill Village, the seller told her that the site for this proposed 40B was more than likely going to be an "Over 55" Community such as Red Mill Village. She accused Mr. Lloyd Geisinger of a "bait and switch" scheme to lure the residents at Red Mill Village into buying his houses. She stated that right now at the Red Mill Village community large vehicles are having problems going in and out of Coddling Road because of an Island that was built in the center of the road.

Ralph Stefanelli stated that, in his opinion, and it has been his experience, that whenever a 40B is reviewed by the Zoning Board of Appeals, Zoning rules and regulations are disregarded.

Kathleen Zawasky of 205 Plain Street stated that she understood that 10 acres of this site is zoned Commercial and did he realize that. Mr. Noel said he has not yet reviewed the zoning for the site as yet. She then asked Mr. Noel, that, if indeed this was the case, how could 10 acres of Commercial property be used as residential property. Mr. Noel stated he would check into this.

Bob Kimball stated that even though a portion of this property is zoned Commercial, it can be used for the 40B project.

Ilana Quirk explained that this project would go through the Peer Review Process and they would check into all the requirements of the Town for the project and indicate to the board any ways that the applicant does not comply with the Zoning rules and regulations, and, at that time, the board would look into any waivers that the applicant is seeking under 40B.

Tom Rota stated that a 40B project is a "give and take" project. He stated that if the ZBA denies a 40B project, the applicant may very well appeal through the state. He noted that if this happens, the project may be allowed by the state with the town receiving nothing in return. He said it is better to bargain with the developer and get as many benefits as possible and allow the project to go forward which would benefit everyone.

Tom Noel reminded the residents that the ZBA would certainly make decisions that were in the town's best interests.

Tom Rota made a motion to move the question regarding the project moving forward not having met any of the five criteria for denial. Tom Noel noted that there are three voting members and two alternate members. He stated that a majority vote is needed to approve this motion. Nitin Choksi seconded the motion. All three members voted to approved this motion. Approved.

Tom Rota noted that the next issue is whether or not Graves Engineering is interested in doing the Peer Review for this project.

Ilana Quirk stated she had communicated with Graves Engineering and stated that the applicant is requesting to hold off on the Peer Review until revised plans are submitted. She said that Graves Engineering was interested in doing the Peer Review but could not negotiate a contract without first reviewing the final revised plans.

Tom Noel asked Peter Freeman when revised plans would be submitted by the applicant. Peter Freeman replied that the revised plans will have minor changes. He advised giving

the existing plans to Graves Engineering. Ilana Quirk replied that it is difficult for the Peer Review to give a Scope of Services with a estimated quote unless he has the final revised plans to avoid doing a second review.

Tom Noel asked Lloyd Geisinger if there will be any significant changes to the existing plans. Mr. Geisinger replied that the "scope" of the existing plans will not be changing. He noted he would certainly be willing to pay for any further reviewing. He stated that he is trying to be responsive to any concerns that the Town or abutters have.

Peter Freeman stated that he would rather hold off for final plans.

Ilana Quirk noted that the "Scope" of the project is not the issue for the Peer Review, but it is the ability to give a "Not to Exceed" cost at this time without seeing the final plans. She advised the applicant to send a PDF file of the existing plans to Graves Engineering, but with the understanding that if a "Not to Exceed" quote is given, it is subject to change per any further revised plans.

Tom Noel suggested that the applicant send PDF files of the submitted plans to Graves Engineering and to all persons involved.

Oren Sigal of 28 Coddling Road stated the under ZBA Guidelines, the board may deny a project if it is incomplete. He noted that the storm water/drainage and landscaping plan are missing. He said that the plans submitted to the ZBA are totaling different than the ones given to the residents of Red Mill Village.

Tom Noel replied that the application submitted for this project is substantially complete and is more complete than most applications and will move forward with the project.

Ilana Quirk noted that according to Zoning Rules and Regulations, a project cannot be denied on missing information. She stated that a Peer Review will indicate missing information that will need to be submitted.

A concerned abutter noted that a house located on the property, which may be deemed historical and protected, is not shown on the submitted plans. She stated this may be a substantial change to the submitted plans. Tom Rota replied that if there are substantial changes to the plans, the applicant will be financially responsible to the Peer Review for those changes to be reviewed.

Mr. Oren Sigal had concerns with the Peer Review favoring the applicants requests. Tom Noel assured that the Peer Review is working for the ZBA and being paid for by the applicant.

Ilana Quirk explained that the Peer Review only reviews the materials given to him by the applicant and cannot use the applicant's funds to create or purchase new studies.

Angelo Renna of 26 Coddling Road had concerns with proposed left turns onto East Main Street. He asked if the Peer Review will review this ongoing problem.

Ilana Quirk replied that the Peer Review cannot do a new traffic study but can only review what has been presented to him by the applicant. She said he can look at previous studies that have been done in Norton.

Christine Roessel of 93 Coddling Road stated that the plans that were given to the residents of Red Mill Village last summer and the slide show given to them last summer are not the same as the plans and slide show submitted at tonight's meeting. She said that in the original proposal they were told that the highest building proposed was 45 feet with no three-bedroom units or lofts. She said that the proposal before the board this evening shows the highest buildings at 60 feet. She asked why the plans were revised to show 4-story buildings instead of 3-story buildings and what purposes do the lofts serve. Ms. Roessel stated that Lloyd Geisinger was not honest with her or the other residents at Red Mill Village.

Bob Kimball stated that Norton does have a by-law limiting the height of a building for residential and commercial properties to 35 feet and that the applicant is exceeding that limit.

Tom Rota stated that in the numerous meeting ahead, the Fire Chief will have an input as to the height of the buildings.

Dr. Maureen Sroczynski, #15, 283 East Main Street asked that if the traffic report is not sufficient, who may suggest a revised traffic report to be done. Tom Noel replied it would be up to the ZBA to require a new or revised traffic report to be done at the suggestion of the Peer Review.

Gail Thalheimer of 23 Owen Road asked how a project can be approved without intense studies being performed first.

Tom Rota assured that everyone will have a chance to speak at all future meetings and that this is just a preliminary meeting tonight.

Lloyd Geisinger stated that he had revised the submitted plans in order to be eligible to apply for a 40B Comprehensive Permit. He stated he has asked the concerned residents to submit their concerns in writing. He noted that the plans before the ZBA this evening are the same plans that were shown to the residents at Red Mill Village this past summer.

He said that the height issue will be discussed at a future meeting and the loft areas are not extra bedrooms, only storage areas or den area. Mr. Geisinger requested to have the next meeting early in January.

It was agreed by all interested parties to have the next regular meeting on Monday,