



RECEIVED
NORTON TOWN CLERK

**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 September 12, 2013

The September 12, 2013 scheduled meeting of the Zoning Board of Appeals was called to order at 7:37 pm at the Norton Public Library by Tom Noel, Chairman, with the following members present; Tom Rota, Nitin Choksi, Frank Reynolds (Alternate member) and Jason Brotsma (Alternate member). Also present was Ilana Quirk, Esq., Kopelman & Paige.

Tom Noel noted that there is only one item on the agenda this evening,

Tom Rota made a motion, seconded by Frank Reynolds, to remove from the table for discussion the project for: Campanelli Thorndike Norton LLC 40b. All in favor. Approved.

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

Comprehensive Permit 40B application – 230 apartments.
(continued from the August 29, 2013 meeting)

1. Expanded Study Area Traffic Assessment dated March 28, 2013.
2. Comprehensive Permit Application – Supplement No. 2. Response to Comments.
3. Comprehensive Permit Application – Supplement No. 3. – Revised Architecture.
4. Plans entitled "Norton Apartments, 274 East Main Street, Norton, MA, Campanelli Thorndike Norton LLC, March 1, 2013. Pages T1 & A1 – A12. Preliminary Architectural Drawings, Typical 30 Unit Apartment Bldg., 274 East Main Street, Norton, Massachusetts, signed and stamped by Candice L. Reynolds.
5. Plans entitled "Plans to Accompany Comprehensive Permit Application for Norton Apartments, 274 East Main Street, Norton, MA, January 31, 2013, prepared by Kelly Engineering Group, Inc. and signed and stamped by David Noel Kelly. (Sheets 1-16).
6. List of Waivers requested from the Zoning Board of Appeals.

7. A letter dated May 7, 2013 addressed to the ZBA in response to Graves Engineering, Inc. letter dated April 26, 2013.
8. Letter dated May 13, 2010 to ZBA from Oren N. Sigal.
9. Letter dated May 24, 2013 from MDM Transportation Consultants, Inc.
10. First Amendment to the Purchase and Sales Agreement.
11. Letter dated June 6, 2013 from Brona Simon, Mass Historical Commission
12. Letter dated June 5, 2013 from Mass Housing Partnership
13. Letter dated June 3, 2013 from Oren N. Sigal, Atty.
14. Letter dated June 3, 2013 from Oren N. Sigal, Atty. requesting to do a presentation.
15. Draft Comprehensive Permit dated June 2, 2013
16. Letter dated June 11, 2013 from Michael Yunits, Town Manager
17. Graves Engineering, Inc. Report dated June 21, 2013
18. Memorandum dated June 23, 2013 from Conley Associates
19. Letter dated June 24, 2013 from Oren N. Sigal, Atty.
20. Letter dated June 24, 2013 from residents of Red Mill Village
21. Letter dated June 24, 2013 from Mass Housing Partnership
22. Traffic Consultants letter dated July 19, 2013
23. Graves Contract Change Order #3
24. Graves Contract Change Order #3R
25. Abutters' Additional Supplemental Material dated 7/22/13
26. Draft Comprehensive Permit for 274 East Main Street
27. Memorandum of Agreement
28. Supplement No. 7
29. Abutters' Response to Supplement No. 7 dated 8/5/13
30. Letter from SRPEDD dated August 6, 2013
31. Extension letter from Freeman Law Group, LLC to ZBA dated August 7, 2013
32. Letter to ZBA from the Board of Selectmen dated August 9, 2013
33. Contract Change Order #3R from Graves Engineering, Inc. dated August 6, 2013
34. Town Counsel's draft Decision dated August 23, 2013
35. Letter from David T. Gay of Gay & Gay, Attorneys for the Kingsbury Hill Condominiums, to the ZBA dated August 23, 2013.
36. Town Counsel's draft Decision (with Developer's Revisions) dated August 23, 2013
37. Letter to ZBA from the Red Mill Village Condominium Trust dated August 29, 2013
38. Report from Kelly Engineering Group, Inc. dated August 26, 2013 to the Norton Conservation Commission responding to Chessia Consulting Services LLC report dated July 26, 2013
39. Letter from Kelly Engineering Group, Inc. to Jennifer Carlino dated August 26, 2013 in response to her letter dated July 15, 2013.
40. Letter to Thomas Noel, Chairman, Zoning Board of Appeals from the Red Mill Condominium Trust dated August 29, 2013.
41. Contract Change Order #4 from Graves Engineering, Inc. dated August 29, 2014
42. Letter from William D. Myles, Deputy Fire Chief, to the ZBA dated September 11, 2013.
43. Draft decision from Town Counsel dated September 11, 2013.
44. Updated 274 East Main Street Phasing Plan

45. List of waivers submitted by the applicant
46. Letter from Oren N. Sigal, Atty. at Law to the ZBA dated September 12, 2013.
47. Letter from Oren N. Sigal, Atty at Lay to the ZBA with corrections to his letter dated September 12, 2013 dated September 16, 2013.
48. Extension of Purchase and Sale Agreement submitted on September 12, 2013

Present at the public hearing were Lloyd Geisinger of Thorndike Development, David Eastridge of Thorndike Development, Peter Freeman, Attorney for the applicant and David Kelly, Engineer.

Ilana Quirk noted that the Purchase and Sales Agreement has been extended to January 23, 2014.

Discussions resumed on the draft decision using the latest draft decision updated by Ilana Quirk dated 9-11-14 and the latest draft decision updated by Peter Freeman dated 9-7-13. Tom Noel noted that the last review ended on paragraph 42.

The board reviewed the Dimensional Requirements. Ilana Quirk suggested that he Dimensional Requirements be sent to Jeff Walsh, Peer Review if any changes are made.

Discussion ensued regarding the proposed number of parking spaces in relation to the number of bedrooms in the community. Oren Sigal was suggesting that dens and lofts might be used for bedrooms. Ilana Quirk suggested leaving the calculation for the number of bedrooms to be calculated by the Peer Review.

Tom Noel stated that the next item refers to the height of the buildings (1, 2 & 6 & 7) to be constructed on Route 123, East Main Street and whether they would tower over Red Mill Village or not and whether or not this would be deemed a local concern. Ilana Quirk replied that the dimensions have to be reviewed by the Peer Review as well as the requested waivers by the applicant before a decision can be made. David Eastridge noted there are three parts to the decision; 1. building height in relation to Red Mill Village, 2. building height in relation to East Main Street and 3. suggested waiver.

Mr. Sigal suggested that Mr. Geisinger stated the project would be financially economical if the top floors were omitted. Tom Noel asked Mr. Geisinger if he remembered making that statement. Mr. Geisinger replied he had noted at one time that omitting the top floors, which were proposed lofts and dens, would be unfair to residents renting the third floor apartments. He said that having a loft or den would be kind of a tradeoff, or bonus, for willing to walk up to the third floor.

Ilana Quirk replied that the local by-law has to be considered which asks the question: "Are there any local concerns or needs with constructing or not constructing the top floor, lofts and dens?" "Will they be consistent with the present surrounding community?" She stressed the fact that it is the ZBA's duty and jurisdiction to make sure that all the local concerns and needs of the community are met by this project.

Ilana Quirk stated that if the board finds a concern or an issue with keeping with the local needs of the community they may request a modification to the project. She said that it is at that time that the applicant may state that the project will be financially unfeasible and the board can request the pro-forma.

Tom Rota had concerns with the height waiver and asked the question that "should the board be considering a waiver from a height of 35 feet for residential or 45 feet from commercial. Ilana Quirk responded that it was in her opinion from the start that the neighboring community is zoned residential and that the height of the buildings should be kept in consistency with the neighboring community. She said that the applicant has disagreed with this issue from the beginning.

Tom Noel replied that whether or not the height allowance is 35 feet or 45 feet, the questioned that is proposed is "does the height cause a local concern?" He noted that, in his opinion, it does not.

Maureen Sroczynski suggested that the ZBA Board is disregarding the bylaw which states that residential buildings will be built at a height of no more than 35 feet.

Tom Noel asked the members to vote as to whether the proposed structures, buildings 1, 2 6 & 7, will be cause for a local concern because they mass or tower over the surrounding community.

Tom Noel voted **no**

Tom Rota voted **no**

Frank Reynolds voted **no**

Bob Kimball, Selectmen, commented that if the board allows a structure to be built at a height of over 35 feet, this will set a precedent for future developers and turn Norton into a city. He further stated that it has been stated that the Water/Sewer Department is going to waive all connection fees in the future for sewers of the neighboring houses. He stated that there is a by-law in place presently which states that if a sewer line is installed by a house, the owner will have 5 years to tie into that sewer line. Mr. Kimball noted that Turtle Crossing 40B is moving forward and if both communities are constructed, taxes will go up tremendously.

Ilana Quirk replied that the Water/Sewer Department would never enter into an agreement which would violate the Norton Zoning Bylaws.

She stated that the largest portion of the sewer line will be located on the project's property.

Mr. Kimball suggested that the ZBA read aloud all letters received by the different departments.

Frank Reynolds asked Mr. Geisinger if he was willing to remove the lofts from buildings

1, 2, 6 & 7 to lower the buildings. Mr. Geisinger replied that removing the lofts would not decrease the height of the buildings. Mr. Reynolds then asked Mr. Geisinger if he would be willing to remove the top floor of buildings 1, 2, 6 & 7 in order to reduce the building height.

Mr. Geisinger replied that changing the details of the buildings could affect the quality of the project. He said by removing the top floor from buildings 1, 2, 6 & 7 would require an entirely new submittal including new plans. He stated that he would not consider removing the top floor from buildings 1, 2, 6 & 7.

Ilana Quirk stated that if the board insists on having the applicant remove the top floor of buildings 1, 2, 6 & 7, and if the applicant refuses to do so, the board may require the applicant to produce the pro-forma document. The board would have to decide if the reduced number of units presents a local concern, and this local concern would have to outweigh the need for affordable housing. Ilana Quirk noted that if the board requests a pro-forma of the applicant, the deadline for the public hearing process will have to be extended.

Discussion ensued regarding how the proposed buildings will look and Tom Rota and Tom Noel commented that they did not think the buildings would look out of place for Norton. Ilana Quirk stated that the board has to consider "local concerns" vs. "community needs". Bob Kimball replied that Turtle Crossing project will be set back and down from the road whereas this project will tower over Route 123 and look out of place for Norton.

Oren Sigal commented that the square footage of the units shown on the latest submitted plans has increased from the plans that were originally submitted to DCH.

Tom Noel asked the board members if they feel comfortable asking the applicant for a pro-forma after commenting that they did not think that the buildings on Route 123, East Main Street would "tower" over the road or Red Mill Village. Ilana Quirk reminded the board that they cannot request a pro-forma in order to conclude that the project will or not be financially feasible if the applicant reduces the project in anyway. She continued to say that the pro-forma can only be requested if the board considers certain aspects of the project to be a "local concern" outweighing the need for "affordable housing". If they do this, the applicant can make the modification or produce the pro-forma to prove that if they do make the requested modification to the project, then the project will **not** be financially feasible.

Tom Noel asked Mr. Peter Freeman that if the board requests that the applicant submit a pro-former specifically related to the request by the board that the applicant reduce the height of the buildings of 1, 2, 6 & 7 by removing the top floor from buildings 1, 2, 6 & 7, would he produce the pro-former in a timely fashion? Ilana Quirk noted that an extension of the public hearing would have to be requested.

At 9:55 pm there was a short recess to allow the applicant and his attorney to discuss this issue. The public hearing resumed at 10:03 pm.

Peter Freeman stated that if the board does not feel that a local concern is present, they should not ask that a pro-forma be submitted by the applicant.

Tom Noel asked the board members if they think that any aspect of this project, such as the height, density or setbacks, will be a local concern and, if so, does the concern warrant the request for the applicant to remove the top floor of building 1, 2, 6 & 7 and shall a pro-forma be requested of the applicant. He stated that if this is the case, time would be needed to have a peer review of the pro-forma and an extension would have to be requested by the applicant.

Frank Reynolds suggested that the applicant be required to install a stone wall at the front of the buildings on Route 123, East Main Street and to him, this is a local safety concern. He said this is his only local safety concern.

Tom Rota stated that after hearing from the residents, abutters and Town Departments it is his opinion that the height of the proposed project should be reduced.

Tom Noel made the statement to the applicant that the ZBA members have come to the conclusion that the combination of height, density and setbacks are a **local concern** and a condition shall be imposed that the top floor of buildings 1, 2, 6 & 7 should be removed.

Lloyd Geisinger replied that he cannot give the board an answer this evening.

Tom Rota made a motion, seconded by Frank Reynolds, to continue the public hearing until Thursday, September 19, 2013 to be held at 7:30 pm at the Norton Middle School auditorium. All in favor. Approved.

Tom Rota made a motion, seconded by Frank Reynolds to adjourn the public meeting at 10:27 pm. All in favor. Approved.

Minutes Approved by Committee on: September 8, 2014

Respectfully submitted,



Thomas R. Noel, Chairman
Norton Zoning Board of Appeals