



TOWN OF NORTON
ZONING BOARD OF APPEALS
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MINUTES

Meeting of January 27, 2014

The January 27, 2014 scheduled meeting of the Zoning Board of Appeals was called to order at 7:31 pm at the Norton Town Hall by Tom Noel, Chairman, with the following members present, Nitin Choksi, Frank Reynolds (Associate Member) and Jason Brolsma (Associate Member). Also present was Ilana Quirk, Town Counsel.

Frank Reynolds made a motion, seconded by Nitin Choksi, to remove from the table for discussion the project for James E. Nahill, 123 Dean Street. All in favor. Approved.

014-007 - James E. Nahill – 123 Dean Street – Parcel 86 (Assessor's Map 35)

Application for a Section 6 Finding 1.5(e) to alter a non-conforming structure and lot. Remove the existing dwelling and construct a new dwelling.

Document List

1. Application for a Section 6, 1.5(e) Finding
2. Plan entitled "Subsurface Sewage Disposal System Plan", Jim Nahill, for the site at 123 Dean Street, Norton, MA 02766, Scale: 1"=20', Assessor's Map 35, Parcel 86, prepared by Yarworth Engineering Company, Inc., signed and stamped by Christopher D. Yarworth and dated November 19, 2013

Present for the public hearing was the owner and applicant, James F. Nahill and his representative, Christopher D. Yarworth of Yarworth Engineering, Inc.

Chris Yarworth noted that the lot is undersized and this why the applicant is seeking a Section 6 Finding.

Discussion ensued on the length of time that the dwelling was abandoned. Town Counsel explained the rules and regulations governing the abandonment of a non-conforming house and lot. Tom Noel stated to the applicant that if he agrees that the house has not been used within the past 24 months, this application can be treated as a request for a variance.

Chris Yarworth stated side yard setbacks are not needed, only a Finding for the front yard setback and lot size variance. He noted that the house is consistent with all neighboring houses.

Tom Noel commented that he proposed building would be within the same footprint as the existing dwelling. Frank Reynolds noted it might be slightly smaller.

Tom Noel asked if anyone had an objection to the finding that the house has been abandoned for at least 24 months and that the application can be treated as a variance. No one objected. Frank Reynolds made a motion, seconded by Nitin Choksi, to accept the application as a variance as the dwelling has been abandoned for over 24 months. All in favor. Approved.

Tom Noel asked if there was anyone present tonight to speak in favor of, or opposition of, this project. No one responded.

Jason Broolsma asked if there were any accessory buildings on the property and Chris Yarworth replied there are none but might be built in the future.

Frank Reynolds made a motion to approve the variance as proposed with the frontage and area size as proposed on the submitted plan dated November 19, 2013, seconded by Nitin Choksi. All in favor. Approved.

Frank Reynolds made a motion, seconded by Nitin Choksi, to remove from the table the project of RMC Construction, Rob Costa, 5 Harbor Road. All in favor. Approved.

014-008 – RMC Construction, Rob Costa – 5 Harbor Road – Parcel 25 (Assessor's Map 10)

Application for a Section 6 Finding 1.5(e) to alter a non-conforming structure and lot and for relief of the front yard setback requirement to construct an addition.

Document List

1. Application for a Section 6 Finding 1.5(e).
2. Plan entitled "Zoning Plan" 5 Harbor Road, Scale 1"=30', prepared by hutchins-Trowbridge associates, inc., signed and stamped by Michael A. Trowbridge and dated October 29, 2013.

Present at the public hearing were Rob Costa, representative, and the owner, Ann Anderson.

Mr. Costa explained that the owner is proposing to construct an addition which will meet side yard and back yard setbacks but will not meet front yard setbacks as does not the existing dwelling. He said the proposed addition will not be any closer to the lot line than the existing dwelling which is a non-conforming building.

Tom Noel asked if anyone present was in favor of, or opposed to, this project and no one replied.

Nitin Choksi made a motion, seconded by Frank Reynolds, that the proposed addition will not be any more detrimental than the existing dwelling and to approve the project as shown on the plans dated October 29, 2013. All in favor. Approved.

Turtle Crossing 40B Comprehensive Permit.

Modification to Comprehensive Permit by altering and clarifying the areas to be disturbed by construction and structures within close proximity to wetlands and to alter the location of one building and to alter the nature of a portion of the storm water drainage infrastructure.

Frank Reynolds made a motion, seconded by Nitin Choksi, to open the public hearing to discuss the modification to the Turtle Crossing 40B Comprehensive Permit. All in favor. Approved.

Ilana Quirk noted an email was received by the applicant's attorney requesting a continuance of the public hearing until after the Conservation Commission's meeting of February 10, 2014.

Tom Noel asked Jennifer Carlino, Conservation Agent, the status with the Turtle Crossing project. She replied they are continued to February 10, 2014 in order to present the latest revised plans. She said that the Peer Review came in to the office today, but there are a few last details to clear up.

Tom Noel asked Bernie Marshall/Water/Sewer Superintendent if he would be available for the March 3, 2014 meeting and he replied he had not had any communication regarding this project since the previous owner.

Frank Reynolds made a motion, seconded by Nitin Choksi, to continue the public hearing to Monday, March 3, 2014 at 7:35 pm to be held in the 2nd floor conference room. All in favor. Approved.

Nitin Choksi made a motion, seconded by Frank Reynolds, to remove from the table for discussion, the Island Brook, LLC 40B project. 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 and 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 January 6, 2014 mtg.)**

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. Report from Jeffrey Walsh of Graves Engineering Inc. dated March 8, 2013.
4. Response letter from Frank Westgate to Jeffrey Walsh's (Graves Engineering, Inc.) report of March 8, 2013 dated March 14, 2013.
5. Jeff Walsh (Graves Engineering, Inc.) response letter dated July 26, 2013.
6. Memo from Bob Engler, SEB, dated July 30, 2013.
7. Letter from Board of Selectmen to ZBA dated August 9, 2013.
8. Letter from Frank Westgate of Westgate Associates to Graves Engineering, Inc. dated August 20, 2013 in response to Graves Review Report dated June 26, 2013.
9. Report from Jeffrey Walsh of Graves Engineering, Inc. dated September 20, 2013.
10. Email sent September 24, 2013 from Bob Engler confirming the granting of an extension of the public hearing to December 1, 2013.
11. Graves Engineering, Inc. Contract Change Order #4 dated October 9, 2013.
12. Revised plans entitled "Revised Preliminary Plan to accompany application for a Comprehensive Permit for construction of a Residential Condominium Complex known as "Island Brook", East Main Street, Norton, MA, Comprising Lot 57 and Lots 238-245 on Assessor's Map 17, Scale 1"=80', Prepared by Gallagher Engineering, signed and stamped by Frank J. Gallagher and dated May 15, 2013. (Sheets 1-8). **Latest revisions on October 28, 2013**
13. Abutters Sketch **"Island Brook", Scale 1"=200', October 23, 2013.**
14. Gallagher Engineering comment letter dated November 8, 2013.
15. Report from Jeffrey Walsh of Graves Engineering, Inc. dated November 21, 2013.
16. Waiver List, Island Brook, East Main Street, Norton, MA
17. Revised Stormwater Management Report dated October 28, 2013.
18. Soils reports submitted on November 12, 2013.
19. Norton Conservation comment letter dated November 26, 2013.
20. Revised plans entitled "Revised Preliminary Plan to accompany application for a Comprehensive Permit for construction of a Residential Condominium Complex known as "Island Brook" East Main Street, Norton MA, Scale 1"=80', signed and stamped by Frank Joseph Gallagher and dated May 15, 2013 with latest revisions on December 4, 2013. (Sheets 1-8).
21. Form 11 – Soil Suitability Assessment for On-Site Sewage Disposal.
22. Graves Engineering, Inc. (Jeffrey Walsh) letter dated December 6, 2013.
23. Email received from Francis Westgate of Westgate Associates on December 9, 2013.
24. Draft decision dated December 31, 2013.
25. Letter dated January 20, 2014 from Shell Pipeline Company LP to Muhammad M. Itani.
26. Several drawings of different styles of houses.

27. Revised Sheet 2 of the Preliminary Site Plans showing 56 single family dwellings with phasing.

Present at the public hearing were Bob Engler of SEB and Frank Gallagher, Engineer.

Bob Engler noted that Robert Junior is no longer the developer of the property and the new developer is Muhammad M. Itani.

He stated that the amount of houses proposed have been reduced to 56 with the number of bedrooms remaining the same.

He noted that they have met with Shell Oil and he has submitted a letter from Shell Oil.

He noted that they are communicating with the Water/Sewer Department and will be meeting with them on February 4th.

The board took a short recess at 8:16 pm.

The open meeting resumed at 8:19 pm.

Mr. Engler submitted a letter dated January 27, 2014 requesting an extension of the public hearing to April 30, 2014. Nitin Choksi made a motion, seconded by Frank Reynolds, to accept the extension request letter from Mr. Engler extending the public hearing to April 30, 2014. All in favor. Approved.

Discussion ensued regarding phasing. Frank Gallagher noted that revised plans will show all revisions.

Frank Reynolds requested to have all the 25-ft. no-disturbances shown on the revised plans.

Sean Harris, 122 East Main street had concerns with his property flooding as a result of the construction of this project. Tom Noel replied that the town hires a Peer Review for all 40B projects and they submit reports to the ZBA to show that there will be no increase in water runoff from the property onto other properties.

Frank Reynolds made a motion, seconded by Nitin Choksi, to continue the public hearing to Monday, March 3, 2014 to be held at 7:40 pm in the 2nd floor conference room, Town Hall. All in favor. Approved.

Tom Noel commented that he asked the Conservation Agent, Jennifer Carlino, to attend the meeting tonight to clear up the issue regarding the "25-ft. no-disturbance zone".

Tom Noel noted that Conservation Commission has a 25-ft. no-disturbance zone policy. He said he was advised by Town Counsel that for a policy to be enforced, it would have

to have been voted at a Town Meeting. He said he wants all Town Departments to work together in agreement.

Jennifer Carlino noted that when enforcing the Wetlands Protection Act, there are many important Wetland Resource areas to consider. She noted there are 8 different reasons why they are important listed in the Wetland Protection Act.

1. Buffer Zone to the bordering vegetated wetlands and the bank – 100 feet. She said any work within this buffer zone requires a wetland permit.
2. Any activity within 200 ft. of a perennial river requires a wetland permit.

She said that the Commission has implemented a 25 ft. no-disturbance zone so all applicants will know when filing that the limit of the project is 25 feet from the wetlands. She commented that, with or without a policy, according to 310 CMR 10.53, Section 1, the Conservation Commission has the right to request a vegetated buffer to prevent any disturbance to the wetlands.

Tom Noel asked how this is implemented within a Comprehensive 40B filing. Ilana Quirk replied that all wetland issues would be reviewed by the Conservation Commission under the state Wetlands Protection Act. She continued to say that the Conservation may, under the STATE ACT, impose the 25-ft. no-disturbance policy rather than a **local** policy.

Jennifer Carlino read a paragraph from the Wetland Protection Act which allows the Conservation Commission to request a vegetated buffer to protect the wetlands from any disturbance.

Ilana Quirk commented that with a 40B filing, the applicant may request a waiver from any wetland requirements. She said if there were a local Wetland By-Law in place, the board would have to abide by the bylaw. She replied that the ZBA board may require the applicant to abide by the 25-ft. limit of work policy. She noted that the developer may not have delineated the wetland correctly and this would be reviewed by the Conservation Director.

Jennifer Carlino stated she reviews the Grading Sheet rather than the Layout Plan. Tom Noel asked Jennifer Carlino what the difference was between the Grading Sheet and the Layout Plan and she replied that the Layout Plan shows the layout of the project including the location of houses, etc. and the Grading Sheet shows the actual grades for the project.

Frank Reynolds commented that the 25-ft. limit should be emphasized on submitted plans so that the members can clearly locate it.

Tom Noel suggested notifying the Conservation Commission if a wetland issue arises.

Frank Gallagher said he would submit revised plans to distribute to all departments.

Nitin Choksi made a motion, seconded by Frank Reynolds, to continue the public hearing until Monday, March 3, 2014. All in favor. Approved.

Nitin Choksi made a motion, seconded by Frank Reynolds, to adjourn the meeting at 9:08 pm. All in favor. Approved.

Minutes Approved by Committee on: March 2, 2015

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'T. R. Noel', is written over a horizontal line.

Thomas R. Noel, Chairman
Norton Zoning Board of Appeals