



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 July 28, 2015

The July 28, 2015 scheduled meeting of the Zoning Board of Appeals was called to order at 7:00 pm in the first floor employee meeting area, Norton Town Hall, by Tom Noel, Chairman, with member Frank Reynolds present.

The only item on the agenda was:

North Edgewater Nominee Trust, Peter M. LaChance, Trustee, Case No: 16-01.

16 Maplewood Ave. – Parcel 46, Assessor's Map 19 - Application for Section 6 § 1.5(e) finding permitting a change, extension, or alteration of use on a pre-existing non-conforming lot. Continued from July 23, 2015 Meeting.

Also present: Peter LaChance, Trustee, and Chris Yarworth, Engineer.

Mr. Noel called the meeting to order, and reviewed the facts of the pending matter, Mr. Reynolds, Mr. Noel, Mr. Yarworth, and Mr. and Ms. LaChance present. Board votes to further consider application of North Edgewater Nominee Trust regarding 16 Maplewood Ave., Norton.

Mr. Noel noted for the record that, after requesting the Board's Clerk to retrieve the 2014 file, he had inspected all file documents and had sent photocopies to Mr. Reynolds. Mr. Noel recited the facts and travel of the matter.

The 2014 Decision file contained not only the 2014 Decision and the 5/14/2014 Plan Revision, the two documents that had apparently been recorded, but also a different plan for the same locus bearing later revision dates of 5/30/2014 and 6/14/2014 (the "5/30/2014 - 6/14/2014 Plan Revision"). The 5/30/2014 - 6/14/2014 Plan Revision showed the same 29.5 foot distance from front property line to the Northwestern-most corner of the proposed front porch, but it also showed proposed stairs leading from the front of the front porch toward Maple Ave. The distance from the front of the stairs to the front property line was listed as 22.2 feet. Neither the 5/14/2014 Plan Revision nor the 5/30/2014 - 6/14/2014 Plan Revision was physically appended (stapled) to the 2014 Decision. Neither the 5/14/2014 Plan Revision nor the 5/30/2014 - 6/14/2014 Plan Revision was stamped with the date received into the Zoning Board's file. Though the 2014 Decision itself referred to the "Proposed House Plan

... dated April 24, 2014,” there was no plan sheet in the file for the 2014 Decision dated April 24, 2014 *without* a further revision date.

The Hearings leading up to the 2014 Decision were held on June 9 and June 24, 2014. The 5/14/2014 Plan Revision therefore predated both Hearing dates; the 5/30/2014 - 6/14/2014 Plan Revision necessarily came *after* the first, June 9 Hearing date, but *before* the continued-hearing date of June 24, 2014 at which the decision was rendered. Mr. Noel reported that he had consulted and listened to the audio file of both 2014 hearing dates; at no time was *any* plan revision date mentioned orally at either hearing date as recorded in the recorded audio of the meetings.

However, the 2014 Decision file contained a letter from attorney David C. Manoogian, Esq., attorney for the applicant, dated June 19, 2014 and stamped “received” by the Zoning Board on June 23, 2014, the day before the final June 24, 2014 meeting at which the 2014 Decision was decided. In the letter, Mr. Manoogian referenced an alternative request for variance relief at the time - “to establish a minimum front yard [setback] in feet for the principal building of *not less than 22 feet*.”

Discussion ensued. Mr. Noel and Mr. Reynolds expressed their concern over the discrepancies between the present As-Built Plan and what the Board had apparently voted in the 2014 Decision as recorded at the Bristol County Registry of Deeds. Mr. Yarworth and Mr. LaChance each assured the Board that there had been no intent to overstep any boundaries that the Board had imposed in the 2014 Decision. Mr. Yarworth stated that the line drawn on both the 5/14/2014 Plan Revision nor the 5/30/2014 - 6/14/2014 Plan Revision indicating a distance of 29.5 feet to the front property line was intended to have been drawn to the front corner of the foundation, not the porch, and that scaling of the drawing on both plan sets verified this mistake. Mr. Yarworth also stated that Town building inspectors at various times had taken differing positions as to whether a set of access stairs was to be considered part of the “structure” within the meaning of the bylaw.

The Board discussed the discrepancies in the construction but also the discrepancies in the Board’s file for the 2014 Decision, the failure to identify or account for the discrepancies at the time, and the imprecision of the 2014 Decision itself in not noting the various plan sheets by revision date or even when the plan revisions were introduced to the file for the Board’s consideration. The Board noted the appearance of the building as constructed and that the construction and placement did not materially differ from other improvements in the immediate neighborhood.

Mr. Noel and Mr. Reynolds both expressed their frustration that the construction had further encroached any of the setbacks referenced on the 2014 plan sheets but also noted that the 2014 Decision did not specifically reference *which* plan sheet the Board was viewing when it rendered its decision and that the final submission prior to its earlier decision, the Manoogian letter, did in fact reference a 22-foot front yard setback shown on the 5/30/2014 - 6/14/2014 Plan Revision. Mr. Noel and Mr. Reynolds therefore felt that denying the applicant’s present application for a Section 1.5(e) determination would not be sustainable if challenged.

Motion made by Mr. Reynolds and seconded by Mr. Noel for a determination under Article I § 1.5(e) that:

The current structure on the locus as represented to the Board, including by the Construction As-Built Plan dated 7/1/2015, the Foundation As Built Plan dated January 5, 2015 "(rev. 1/7/2015)," and the photograph of the existing structure submitted, does not make the existing non-conformity substantially more detrimental in terms of noise, bright lights, and other undesirable impacts on the surrounding neighborhood as stated in Article I §1.5(e) of the Town Bylaws, as compared to either what the Board had voted previously in its 2014 Decision or to what had existed at the locus prior to demolition and reconstruction, insofar as the following details are as represented and are accurate:

- that the structure including the covered porch indicated is and shall be no closer than 25.2 feet \pm from the front property line as indicated on the Building As-Built Plan dated 7/1/15, except that the stair structure extending from the front of the covered porch toward Maple Avenue shall be no closer than 20.8 feet \pm as indicated on the same plan; and
- that the overhanging roof on the northwesterly and southeasterly sides of the structure, including the covered porch section, is and shall be no closer than 15.7 feet \pm on the southeasterly side and no closer than 13.7 feet \pm on the northwesterly side to each corresponding side yard boundary, as indicated on the Building As-Built Plan dated 7/1/15.

All in favor; motion approved.

Frank Reynolds made a motion, seconded by Mr. Noel, to adjourn the meeting at approximately 8:20 pm. Approved.

Respectfully submitted,



Thomas R. Noel,
Chairman, Norton Zoning Board of Appeals