



**TOWN OF NORTON**  
**ZONING BOARD OF APPEALS**  
70 East Main Street  
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## **MINUTES**

Meeting of April 11, 2016

The April 11, 2016 scheduled meeting of the Zoning Board of Appeals was called to order at 7:03 pm in the first floor Selectmen's area, Town Hall, by Tom Noel, Chairman with the following members present, Frank Reynolds and Lukas Wasiak, Alternate Member. Also present was Ilana Quirk, Town Counsel. Nitin Choksi was absent.

The members reviewed an invoice for Topaz Engineering Supply, Inc. in the amount of \$220.98. Motion by Frank Reynolds to approve and pay the bill, seconded by Lukasz Wasiak. Approved.

### **PUBLIC HEARING**

**Section 6 Finding - 16-05** - "Proposed Addition Plan" In Norton, MA for Deborah A. DiVittorio, 28 Dean Street, Assessor's Map 31, Lot 34 (cont. from March 21, 2016).

At 7:05 motion was made by Frank Reynolds to review the project at 28 Dean Street, seconded by Lukasz Wasiak. All in favor. Approved.

### **Document List**

1. Application for a Section 6, 1.5e Finding
2. Plan entitled "Proposed Addition Plan" In Norton, MA for Deborah A. DiVittorio. Prepared by Charette Land Surveying, signed and stamped by Christopher L. Charette, Scale 1"=30' and dated October 21, 2015.

Attending the public hearing was Deborah DiVittorio who described the project to the members. She commented that her house is small and she is proposing to add on a 20' x 28' family room with a full basement.

The lot is a pre-existing non-conforming lot in an R60 Zone. The side line setback will change from 34.4 feet to 34 feet and the closest point in the front on Dean Street will be 41.9 feet.

Tom Noel asked if there was any one present to oppose or support this project; no response.

Motion by Frank Reynolds to find that under Section 6, 1.5e of the Zoning By-laws, that the project will not be substantially more detrimental to the neighboring properties and approves the project as submitted, seconded by Lukasz Wasiak. All in favor. Approved.

**Discussion: 274 East Main Street - Project Update - Thorndike Campanelli**

David Eastridge, Thorndike Development, commented that the request this evening is for the Zoning Board to approve the amount of the surety bond in the amount of \$432,429.00 to be posted for the unfinished landscaping at this site. He proceeded to read the condition from the approved Comprehensive Permit requiring the surety bond.

Mr. Eastridge noted:

- that the amount of the surety bond greatly exceeds the amount needed to be posted at this time.
- he is submitting the surety bond to cover the entire site rather than a portion of the site.
- that a Certificate Occupancy will be requested for Building #3 on May 1, 2016.
- Three bids were received for the landscaping project.

Tom Noel asked Mr. Eastridge if he had any idea when the landscaping project would be completed and Mr. Eastridge replied that he thought 90% of the landscaping would be completed by the end of the planting season this year.

Frank Reynolds noted that according to the breakdown of the surety bond, \$50,000 was to be allocated for the sidewalk. He asked Mr. Eastridge to point out the areas where the sidewalk will be installed. Tom Noel commented that the amount of \$50,000 seemed low. Mr. Eastridge commented that the amount of the surety bond for the topcoat for the sidewalk will be determined by Keith Silver, Highway Superintendent. He commented that the \$50,000 was for off-site projects. He said a surety bond will be posted for on-site projects.

Lukasz Wasiak asked if the concrete curbing has been completed in the front of the site and Mr. Eastridge replied it has been completed.

Ilana Quirk asked Mr. Eastridge if the proposed surety bond was for anything other than the landscaping and Mr. Eastridge replied it is for the landscaping only per a condition of the Comprehensive Permit.

Mr. Eastridge noted he had met with Keith Silver who gave him suggestions on the installation of the paving.

Ilana Quirk advised the Board that:

1. in many other towns, a Town Engineer would inspect the unfinished work and set

the amount for the surety bond and the cost to the town would be less and more for the developer. She said in this case the ZBA can make this decision if they feel they are qualified or they could have a peer review of the work covered by the surety bond.

2. the ZBA may review a draft of the surety bond if available which she noted has not been submitted at this time.

Tom Noel commented that the applicant is posting a much higher bond than what was apparently needed.

Mr. Eastridge noted that, for Red Mill Village project, surety bonds were posted in phases for each area and the surety bond was revised 16 times with the Planning Board. He said they are trying to avoid this with this project and this is why they are proposing to post a very high surety bond. Mr. Eastridge did not yet have a draft bond for consideration. Mr. Eastridge suggested that the ZBA confer with Planning Director Ms. Wierling to coordinate.

Ilana Quirk commented that the Board may approve the amount of the proposed surety bond in order to allow an Occupancy Permit to be issued for Building #3 subject to the ZBA's consultant confirmation that the amount of the bond is sufficient.

David Eastridge said he plans to submit a draft "As-Built" plan shortly. He commented that after completion of building #2, they will be crossing the 25% threshold requiring an As-Built Plan to be submitted.

Ms. Quirk advised that the Board may, if it so chooses, approve the amount of the surety bond for \$432,429.00 to allow occupancy for building #3 subject to confirmation by a consultant as to the sufficiency of the amount, and limit the issuance of any further Occupancy Permits pending that review.

Mr. Eastridge noted that Graves Engineering is not available at this time and landscaping is not their expertise.

Frank Reynolds commented that, in his opinion, the amount of the surety bond proposed should be sufficient.

Ann Coulter, Unit 17, 283 East Main Street, asked if there was curbing on the sidewalk. Mr. Eastridge noted that the owners of property on certain areas will not allow curbing at the front of the property. He said there will be curbing at the area where the stream is located.

Motion by Frank Reynolds to approve the amount of the proposed surety bond in the amount of \$432,429.00 to allow landscaping and sidewalk work, as required by the Comprehensive Permit, and allowing the issuance of an Occupancy Permit for building #3

only, subject to review by a qualified landscaping consultant to be funded by the developer, to confirm the sufficiency of the amount of the surety bond before any other Occupancy Permits are issued and review of the Surety Bond instrument provided to the board by Town Counsel, and also to return before the ZBA for any other Occupancy Permits, seconded by Lukasz Wasiak. All in favor. Approved.

Ilana Quirk suggested working with the Planning Director in choosing a Consultant. Tom Noel commented he would like to review the qualifications of more than one consultant. Frank Reynolds agreed to check into other consultants.

Tom Noel asked that the balance in the revolving peer review fund be made available.

Ilana Quirk suggested adding the discussion for reviewing a consultant to the next Zoning Board of Appeals agenda.

Mr. Eastridge said he would submit a draft "As-Built Plan" to be reviewed by Graves Engineering. He asked if a draft of acceptable language was available and Ilana Quirk replied the language can be very standard.

A letter noting the Board's decision will be submitted to the Town Clerk.

At 7:50 pm the next agenda item is:

**Substantiality Determination – Turtle Crossing, LLC Comprehensive Permit** dated January 10, 2008 issued pursuant to M.G.L. Chapter 40B, Sections 20 to 23, as modified by the June 18, 2012 Modification to Comprehensive Permit, by the May 19, 2014 Second Modification to Comprehensive Permit and finally by the January 29, 2015 Modification to the Decision extending the Comprehensive Permit to January 10, 2017.

Request for a Substantiality Determination: to allow the elimination of a building; movement of clubhouse and pool; elimination of gang-garages; reduction in exterior surface parking to be replaced with 235 underground parking spaces for a total increase of parking from 315 parking spaces to 331 parking spaces; to combine buildings into three larger buildings; and modification to walkways, landscaping, grading, and associated drainage patterns to fit with new layout scheme.

#### Document List

1. Letter dated March 20, 2016 to Tom Noel, Chairman, Zoning Board of Appeals from Peter Freeman, Freeman Law Group LLC – Notice of Project Change And Transfer
2. Plans entitled "Turtle Crossing" Comprehensive Permit Application Local Initiative Program, Newland Street, Norton, Massachusetts, prepared by Level Design Group and dated March 5, 2016, latest revisions.

Attending the public hearing was Steve Kominski, Dakota Partners, Nick Facendola, Level Design Group and Brady Sullivan, Brady Sullivan Properties LLC.

Nick Facendola proceeded to describe the proposed modifications and point out the areas on a plan to the board as follows:

- Building #1 will be eliminated.
- The clubhouse and pool will be moved to building #1's original location.
- Exterior surface parking will be reduced by 155 spaces to be replaced with 235 underground parking spaces.
- Buildings 2 and 3, buildings 4 and 5 and buildings 6 and 7 have been combined into three larger buildings.
- Various site walkways, landscaping, grading and associated drainage has been modified for the new layout scheme.

Frank Reynolds asked if the foundations were going deeper and Mr. Facendola replied about 4-5 feet and some dewatering will be needed. He asked about exhaust and Mr. Facendola replied these issues will be decided with the Building Inspector.

Mr. Facendola noted the buildings will not be any higher.

Lukasz Wasiak commented that there will be increased digging and maybe higher buildings and, in his opinion, the project is very substantial.

Ilana Quirk suggested hiring a consultant to review the proposed modifications.

Tom Noel commented that the underground parking will be a first for Norton and there are no set regulations at this time. He suggested that the modifications to the project are substantial enough to require a new application for a modification to the Comprehensive Permit.

Ilana Quirk suggested hiring a consultant to do a peer review of the modifications.

Motion by Frank Reynolds that the modifications are substantial changes to the Zoning By-Laws Rules and Regulations, seconded by Lukasz Wasiak. All in favor. Approved.

The board agreed to continue the public hearing to Monday, May 2, 2016 and also schedule a meeting for Tuesday, May 10, 2016.

Tom Noel commented an Extension letter has been received to extend the time for deciding on whether or not the modifications are substantial until April 15, 2016 after such time another Extension letter may have to be sent.

Tom Noel suggested finding out what funds may be available for Peer Review.

Motion by Frank Reynolds that the transfer of the Comprehensive Permit from Dakota Partners to Brady Sullivan Properties LLC is not a substantial change subject to written confirmation by the subsidizing agency's (DHCD) approval under Section 760 CMR 5607 and also that the modified project should be presented to the Board of Selectmen to obtain a Local Initiative Program (LIP) Agreement by the present and proposed applicants, seconded by Lukasz Wasiak. All in favor. Approved.

Motion by Frank Reynolds to submit the revised plans to Graves Engineering for review

to come up with an estimate of what this revised scope of work will cost and also the timeline for the work to be completed, seconded by Lukasz Wasiak. All in favor. Approved.

Tom Noel asked Mr. Facendola that electronic plans be sent to the Planning Director, Beth Wierling, and the members.

Motion by Frank Reynolds to continue the public hearing to Tuesday, May 10, 2016 at 7:00 pm, seconded by Lukasz Wasiak. All in favor. Approved.

**Island Brook 40B Comprehensive Permit - Island Brook LLC v. ZBA, HAC (No. 2014-08) - Executive Session and Possible Open Session (continued from March 21, 2016).** Scheduled review and discussion of strategy relating to pending litigation regarding Island Brook, LLC's appeal of the 2014 comprehensive permit granted with conditions, including a possible discussion of litigation strategy by the Board in executive session, to review terms of settlement proposed by Island Brook LLC, and a possible discussion in open session of the settlement terms.

Ilana Quirk reported that attorney Peter Freeman had sent a letter requesting an extension. Tom Noel stated that he nor the members have reviewed the letter.


It was agreed to continue the Island Brook 40B Comprehensive Permit discussion to a meeting on Tuesday, May 10, 2016.

The members agreed to continue discussion on the Chapter 40B Rules and Regulations.

Frank Reynolds made a motion to adjourn the public meeting at 8:34 pm, seconded by Nitin Choksi. All in favor. Approved.

Minutes Approved by Committee on: August 23, 2016.

Respectfully Submitted,

  
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Thomas R. Noel  
Chair, Norton Zoning Board of Appeals