



**TOWN OF NORTON**  
**ZONING BOARD OF APPEALS**  
70 East Main Street  
Norton, Massachusetts 02766-2320  
(508) 285-0278 · Fax: 508-285-0277

**Meeting Minutes**  
**May 2, 2016**

The May 2, 2016, meeting of the Norton Zoning Board of Appeals was convened in the first floor Selectmen's Conference Room of the Norton Town Hall and was called to order at 7:04 P.M. by Tom Noel, Chairman. Members Present: Tom Noel, Frank Reynolds and Nitin Choksi. Also in attendance, Beth A. Wierling, Director of Planning & Economic Development. Lukasz Wasiak, Alternate Member was absent.

**Call to Order/General Business**

**Bills and Warrants:** There were no bills or warrants submitted

**Discussion - Peer Review Services:** ZBA members discussed the need for peer review of the proposed surety at 274 East Main Street. Ms. Wierling presented Board members with qualifications of BETA Group, Inc. and Beals & Thomas who would be able to provide these services.

Members discussed the qualifications of both firms, opting to utilize BETA Group, Inc., noting BETA has been providing peer review services for the Planning Board.

Motion made by Frank Reynolds and seconded by Nitin Choksi to authorize BETA Group, Inc. to provide a contract for peer review services for landscape surety review at 274 East Main Street. **All in favor. (3-0)**

Ms. Wierling indicated, she will contact BETA to request a contract. Upon receipt of the contract, Ms. Wierling will forward to Town Council for review.

**PUBLIC HEARING**

*Adv.:* April 15, 2016 & April 25, 2016

**Section 6 Finding**

*Abut.:* April 11, 2016

40 Freeman Street

Assessor's Map 16, Lot 82

**Owner/ Applicant:** Paul & Dorothy Gallant

*To construct a 14' x 18' addition on a pre-existing, non-conforming structure on a pre-existing non-conforming lot in the Residential 40 Zoning District.*

**Incorporated as part of the record are the following:**

1. Application for a Section 6 Finding, received by ZBA on April 6, 2016;
2. Notice of Public Hearing;
3. Certified Abutters list, dated March 14, 2016;

4. *Plan entitled "A Site Plan in Norton, MA for Paul & Dorothy Gallant", dated March, 30, 2016 prepared by Senna Fitzgerald Gilbert Associates (SFG Associates, Inc.); and*
5. *Letters to Tom Noel and ZBA members dated April 26, 2016 and May 2, 2016 from Jennifer Carlino, Conservation Agent.*

Thomas Noel, Chairman, opened the public hearing at 7:15 pm and made a motion to waive the reading of the public hearing notice, for the application of Paul & Dorothy Gallant, 40 Freeman Street, seconded by Frank Reynolds. All in Favor (3-0).

#### **PUBLIC HEARING PRESENTATION**

Attending the public hearing was Paul Gallant, property owner and Rick Lima, B & D Contracting. Mr. Gallant reviewed the project, indicating he would like to construct a 14' x 18' family room addition to the rear of his pre-existing, non-conforming structure. Mr. Gallant indicated the structure has not been altered since his purchase, except modifications to the driveway which received proper approvals.

Members discussed the request, indicating they did not feel the proposed 14' x 18' structure would further impact the property or neighborhood.

Mr. Noel asked if there were any members of the audience who wished to comment on the proposal. Seeing there were no comments from the audience, Tom Noel asked if there were any further comments from the Board members. There were none.

#### **DECISION**

Motion made by Frank Reynolds and seconded by Nitin Choksi, that in accordance with M.G.L Chapter 40A, Section 6 and Article 1, Section 1.5.e of the Norton Zoning Bylaw, that the 14' x 18' addition, as shown on the Plan entitled "A Site Plan in Norton, MA for Paul & Dorothy Gallant", dated March, 30, 2016, prepared by Senna Fitzgerald Gilbert Associates (SFG Associates, Inc.), does not make the pre-existing non-conforming structure and pre-existing non-conforming lot, substantially more non-conforming. ***Approved. All in Favor (3-0).***

**PUBLIC HEARING** - *Initial*  
*Variance*

***Adv.:*** April 15, 2016 & April 25, 2016  
***Abut.:*** April 11, 2016

23 North Washington Street, Assessor's Map 10, Lot 495  
25 North Washington Street, Assessor's Map 10, Lot 495-01

**Owner/Applicant:** Molly Jones Supplemental Needs Trust, Robert Koditek, Trustee

**23 North Washington Street:** A variance to make the Lot legally non-conforming as to frontage (120' where 150' is required).

**25 North Washington Street:** A variance to make the Lot legally non-conforming as to lot size (25,857 s.f. where 60,000 s.f. is required).

#### **Incorporated as part of the record are the following:**

1. *Application for a Variance – 23 North Washington Street received by the ZBA on April 11, 2016;*
2. *Memorandum in Support of Zoning Application, RE: 23 North Washington Street and 25 North Washington Street prepared by Attorney Costa;*
3. *Property Assessment Records – 1972;*
4. *Certified Abutters list, dated March 15, 2016;*

5. *Public Hearing Notice; and*
6. *Plan entitled "Land Owned by The Molly Jones Supplemental Needs Trust in Norton, Massachusetts", dated December 13, 2015, prepared by, E. Otis Dyer, R.P.L.S.*

### ***PUBLIC HEARING PRESENTATION***

Thomas Noel, Chairman, opened the public hearing at 7:25 pm and made a motion to waive the reading of the public hearing notice, for the application of The Molly Jones Supplemental Needs Trust, Robert Koditek Trustee, 23 North Washington Street and 25 North Washington Street, seconded by Frank Reynolds. **All in Favor (3-0).**

Attorney Patrick K. Sullivan was in attendance at the May 2, 2016 public hearing on behalf of his client, Robert Koditek, Trustee, The Molly Jones Supplemental Needs Trust. Attorney Sullivan reviewed the history of the property, indicating the plan provided to the ZBA shows both 23 and 25 North Washington Street, indicating an application for a variance was also submitted for 23 North Washington under separate cover, however both properties are closely related.

25 North Washington Street is non-conforming as to lot size (25,857 s.f. exists, where 60,000 s.f. is required) and 23 North Washington Street is non-conforming as to Lot Frontage (120' exists, where 150' is required). Attorney Sullivan stated both lot are in common ownership by The Molloy Jones Supplemental Needs Trust. The applicant wishes to sell 23 North Washington Street, but before this can be completed, the lots need to be granted a variance as legally non-conforming.

Attorney Sullivan indicated that at one point in time the land was in common ownership, but in July of 1972, the property owner conveyed 25 North Washington Street to a new owner without proper recording of a Form A Plan, then in December of 1972, the balance of the land was conveyed to a different owner. Attorney Sullivan indicated it was believed at the time of conveyance, the lands met the Zoning Requirements of that time, however without a formal Form A plan, they are not subject to grandfather protection and must seek relief of the ZBA.

In 1974, when the Town of Norton adopted Zoning, 23 North Washington became non-conforming as to frontage and 25 North Washington Street became non-conforming as to lot size.

Subsequently, the individual lots were further conveyed with the Molly Jones Supplemental Needs Trust now owning both properties. Due to the lack of Form A endorsement, the applicant is requesting a lot size variance for 25 North Washington Street and a frontage variance for 23 North Washington Street, to make the lots legally non-conforming, without this variance, the lots cannot be sold separately.

Mr. Noel asked the applicant if the properties are currently occupied. Mr. Koditek indicated, 25 North Washington hasn't been occupied, within the last 3 months, while 23 North Washington is being occupied by the future property owner. Attorney Sullivan indicated Mr. Koditek has a purchase and sale agreement to sell 23 North Washington Street to the current property's residents.

Mr. Reynolds indicated for clarification, that all the ZBA is doing is issuing a variance to recognize that the lots were pre-existing, non-conforming. Attorney Sullivan agreed.

Mr. Noel asked if there was anyone in the audience who wished to speak about this request.

The current resident of 23 North Washington Street indicated she was the perspective buyer for the property, indicating she had sold her house last September in anticipation of buying 23 North Washington Street, however, the issues regarding the lot conformance have significantly delayed their ability to make improvements to the lot and wishes the ZBA would move the application forward as soon as possible so they can purchase the house as expected.

The ZBA noted that the plan was not stamped by an engineer and appeared not to have an updated revision date accurately reflected. Members discussed having issues in the past with receiving revised plans after the issuance of a decision and voted (3-0) to continue the hearing until May 10, 2016 at 7:00 p.m. to allow the applicant to provide a revised, stamped plan. Attorney Sullivan indicated they would be updating a typo on Mr. Koditek's middle initial and will provide the Plans to the Planning/Zoning Office by the end of the week.

**PUBLIC HEARING** – Initial

*Adv.:* April 15, 2016 & April 25, 2016

**Section 6 Finding / Variance**

*Abut.:* April 11, 2016

95 Plain Street

Assessor's Map 18, Lot 87

**Owner/ Applicant:** William Humphry

**Incorporated as part of the record are the following:**

1. *Application for a Variance and Section 6 Finding, received by ZBA on April 8, 2016;*
2. *Certified Abutters list, dated March 14, 2016;*
3. *Grounds for Granting Section 6 Finding and Variance (provided by the applicant);*
4. *Plan titled "Existing Conditions Plan" prepared by Yarworth Engineering Company, Inc. and dated April 6, 2016;*
5. *Plan titled "Proposed Conditions" prepared by Yarworth Engineering Company, Inc. and dated April 6, 2016;*
6. *GIS Map, showing Property location dated April 7, 2016;*
7. *Existing conditions photographs*
8. *Proposed dwelling elevations dated April 6, 2016;*
9. *Certified Abutters List, Dated March 31, 2016;*
10. *Draft Purchase and Sales Agreement, dated March 29, 2016;*
11. *Letter to Tom Noel and members of the ZBA dated April 26, 2016 from Jennifer Carlino, Conservation Agent; and*
12. *Notice of Public Hearing*

Thomas Noel, Chairman, opened the public hearing at 7:50 pm and made a motion to waive the reading of the public hearing notice, for the application of William Humphry, for the property at 95 Plain Street seconded by Frank Reynolds. **All in Favor (3-0).**

Attending the public hearing was William Humphrey, Applicant, Larry Cherner, Property Owner and Ed Tartufo, Jack Conway Relators.

William Humphry, Applicant, indicated to ZBA members that he intended to purchase the property from Mr. Cherner, with the intent of demolishing the existing single-family home and shed in its entirety and building a new, two-story, single-family home. Mr. Humphrey indicated the lot is pre-existing, non-conforming, as is the existing single-family home. Mr. Humphrey

discussed the state of the existing single-family house, noting it is extremely dilapidated and construction of a new house will be an improvement at the site.

Mr. Noel asked if there was anyone in the audience who wished to speak regarding the proposed project. Abutter Elizabeth Kelly, 93 Plain Street asked about the setbacks of the proposed building.

Mr. Humphry explained the proposed single-family house will broaden the left side yard setback, right side yard setback and front yard setback, noting that the lot will still be pre-existing, non-conforming.

Ms. Kelly also inquired about the construction timeline. Mr. Humphrey stated it was his intent to complete demolition of the existing single-family house in one-day and clear required trees in approximately two-days. Mr. Humphrey also indicated that he would need Conservation Commission approvals as the proposed construction is within the 100-foot buffer zone and contains wetlands.

Mr. Noel asked the property owner if the house is currently occupied. Mr. Cherner indicated that he currently receives his mail at 95 Plain Street.

Members discussed whether they should consider the property abandoned. Mr. Tartufo noted that Mr. Cherner currently receives his mail at the location, has the power on and claims the property as his primary residence. Mr. Cherner indicated he is in and out of the property regularly. Mr. Noel indicated he would like Town Counsel's opinion on whether the house is considered occupied or abandoned.

Both Frank Reynolds and Nitin Choksi indicted, in their opinion, since the electricity is on and foundation appears to be in decent condition, that someone could live in the house, and therefore, they don't consider the property abandoned. Mr. Noel agreed.

Ms. Wierling indicated to the Board members that the applicant requested a Variance in addition to a Section 6 Finding, considering the applicant intends to demolish the existing structure, including the foundation in its entirety. Members agreed this was a Section 6 Finding and a Variance was not needed.

Seeing there were no comments from the audience, Chairman Noel asked if there were any further comments from the Board or audience; there were none. Members moved to vote on the Section 6 Finding.

### **DECISION**

Motion made by Frank Reynolds and seconded by Nitin Choksi, that in accordance with M.G.L Chapter 40A, Section 6 and Article 1, Section 1.5.e of the Norton Zoning Bylaw, that the proposal to demolish the pre-existing, non-conforming, single-family house on a pre-existing, non-conforming lot, and construct a new two-story, single-family house per the plan titled "Existing Conditions Plan" prepared by Yarworth Engineering Company, Inc. and dated April 6, 2016 and the plan titled "Proposed Conditions" prepared by Yarworth Engineering Company, Inc. and dated April 6, 2016, do not make the pre-existing non-conforming lot any more non-conforming upon construction of a new single-family house than already exists and would be an improvement to the neighborhood, not a detriment. ***Approved. All in Favor (3-0).***

**ADJOURN:**

Frank Reynolds made a motion to adjourn the public meeting at 8:30 pm, seconded by Tom Noel. All in favor. Approved.

Minutes Approved by Committee on: October 11, 2016.

Respectfully Submitted,



Thomas R. Noel  
Chair, Norton Zoning Board of Appeals