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**Town of Norton
Zoning Board of Appeals
Minutes of Meeting Held on February 17, 2021**

Pursuant to the State of Emergency declared in the Commonwealth of Massachusetts on March 10, 2020 due to the Coronavirus Covid-19 pandemic, the subsequent Orders of Governor Charles D. Baker, and pursuant to the Declaration of Emergency in the Town of Norton dated March 16, 2020 and the directives of the Board of Selectpersons, the February 17, 2021 meeting of the Zoning Board of Appeals was held by Remote Means, telephonically and *via* electronic visual means, with reasonable access provided for interested parties and members of the public as noticed.

The meeting was called to order at 7:02 p.m. by Tom Noel, Chair. Members participating remotely: Mr. James Tenore, Mr. Allen Bouley, Mr. David Wrenn. Also in attendance remotely was Paul DiGiuseppe, Director of Planning and Economic Development. Absent members: Mr. Lukasz Wasiak.

Mr. Noel reviews the Governor's Order regarding public meeting remote participation. The meeting will be recorded and available to the public on the Norton Media Center YouTube page.

PUBLIC HEARING-Variance

ZBA File No. 7923

Property Address: 0 Knollwood Street

Applicant/Owner: Phillip Ibrahim/Ibrahim Deborah A Trustee

Application must be continued to the March meeting due to noticing issues.

Motion to continue to the March 24th meeting at 7:00 pm made by Mr. Wrenn, Second Mr. Tenore. Roll call vote: Mr. Wrenn, Yes; Mr. Tenore, Yes; Mr. Noel, yes.

PUBLIC HEARING-Variance

ZBA File No. 7988

Property Address: 139 Newland Street

Applicant/Owner: Anthony Tasselari/ Jacobs Carl E-The Estate Of

Application must be continued to the March meeting due to noticing issues.

Motion to continue to the March 24th meeting at 7:05pm made by Mr. Wrenn, Second Mr. Tenore. Roll call vote: Mr. Wrenn, Yes; Mr. Tenore, Yes; Mr. Noel, yes.

REMAND MATTER – 242 Mansfield Avenue – Steven Bankert

The Board placed this item on the agenda for its Meeting of February 17, 2021 on the advice of Town Counsel, following an Order from Bristol County Superior Court in the matter of *Steven Bankert v. Town of Norton Zoning Board of Appeals*, CA No. 1973 CV 00255, Civil Action No. 1973 CV 00255, an appeal of the Board's Decision in ZBA Case No. 18-12. The case is an appeal of the Board's February 6, 2019 dismissal of Applicant's Appeal of the Building Commissioner's revocation of a special events parking permit in 2018. The Court in November 2019 ordered remand back to the Board. Mr. Noel called the matter at 7:08 p.m., and briefly summarized its history.

The matter arises from an appeal of the Building Commissioner's revocation of a commercial parking permit in 2018. Applicant/Appellant Steven Bankert was the lessee of the parcel at 242 Mansfield Avenue, on which he operated Norton Mini Golf. A parking permit was issued in May 2018 for Applicant to allow a certain number of cars to park on the parcel on concert days at the Tweeter Center concert venue located a few hundred feet North on Mansfield Avenue. Applicant would charge concert-goers a fee for parking their vehicles on the parcel, which provided them with easy access to and egress from Tweeter Center concerts.

File documents indicate the Building Commissioner revoked the parking permit on June 6, 2018, after a number of warnings and communications between Mr. Bankert and various Town officials concerning conditions and activities allegedly occurring on the property on concert nights. Mr. Bankert filed an appeal of the Building Commissioner's revocation to this Board on July 6, 2018.

The records assembled at the time indicated Mr. Bankert faced criminal charges relating to alleged activity involving patrons at the parcel during concerts that Summer. Mr. Bankert and his counsel indicated he would decline to answer questions from the Board relating to activity on the parcel concerning allegations leading up to his arrest based on his 5th Amendment right against self-incrimination. After several continuances based on the Board's inability to ask questions it deemed relevant, the Board on February 6, 2019 voted to deny the Appeal as moot, as the Parking Permit had expired by its own terms in September 2018 at the end of that Summer's concert season.

Mr. Bankert appealed the Board's Decision to the Superior Court, resulting eventually in an Order on November 6, 2019 to schedule a hearing "after the resolution of the criminal matter pending against Plaintiff and Plaintiff is to notify town counsel within thirty (30) days of the resolution of the pending criminal matter." The criminal matter was apparently resolved at some point during 2020. Mr. Bankert subsequently claimed constructive approval, but communications between Mr. Bankert and staff resulted in the scheduling of the matter for hearing this evening.

Mr. Bankert, however, refused to order a certified abutters' list or to provide funds for newspaper publication of notice or postage for the mailing of notices to abutters. Town counsel advised that the Board therefore was not able to provide proper and legal notice of a public hearing as required under M.G.L. Chapter 40A, Section 6 and the Norton Zoning Bylaw, nor was the Board

able to provide proper notice to persons and parties required by statute to receive notice.

Mr. Noel suggested that the Board give Mr. Bankert the option of continuing the matter to the next meeting date if he would agree pay the notice and publication fees for that later date. Neither Mr. Bankert nor his counsel were in attendance, however, as the record of participants reflects. The Board reviewed recent communications between Mr. Bankert, Town Counsel, and Mr. DiGiuseppe and determined that the Town had clearly communicated to Mr. Bankert the legal necessity of ordering a current abutters' list, providing notification to abutters, and newspaper publication, and had clearly stated that the Board would move forward with the matter at its February 17, 2021 meeting and had placed the matter on the agenda. Mr. Bankert declined to order an abutters' list or provide funding to provide notice, and neither he nor his counsel were in attendance to agree to any further continuance to a properly noticed meeting.

The Board felt that the Court's Order contemplated further hearing after disposition of the criminal matter so the Board could inquire about issues applicant previously declined to discuss. Because of Mr. Bankert's refusal to fund proper notification and his failure to appear, the Board had no opportunity to ask applicant about conditions at the locus or the events leading up to the permit revocation. The Board also noted the absence of evidence that Mr. Bankert had any continuing relationship with the locus or the owner of the property. The Board concluded that it had no choice but to deny the Appeal a second time due to its inability to hold a public hearing and gather further evidence from Mr. Bankert.

Motion by Mr. Wrenn, second by Mr. Tenore, to deny the appeal of the Building Commissioner's revocation of the 2018 Special Events Parking Permit to Steven Bankert for the property at 242 Mansfield Avenue, due to Applicant' refusal to order a current abutters' list and to take steps to provide notice and publication of the Remand Hearing.

Roll call vote: Mr. Wrenn, yes, Mr. Tenore, yes, Mr. Noel, yes. The Application/Appeal is denied.

PUBLIC HEARING-Variance

ZBA File No. 21-08

Property Address: 253 Mansfield Avenue

Applicant/Owner: 253 Reservoir, LLC /Ruscito Brothers

Applicant seeks to rebuild a sign that was knocked down by a driver cited for OUI. Attorney Edward Valanzola, present on behalf of the applicant, presents the application, which seeks to replace the destroyed sign with an upgraded sign with appearance, size, and location indicated on the plans. Board discusses that the parcel owner has a Chapter 40B application pending for the same location, but that the sign is necessary for the businesses still located in the building in the meantime pending disposition of the 40B application. Board notes that the hardship was created by a motorist striking down the sign.

Motion to close the public hearing made by Mr. Wrenn. Second Mr. Tenore. Roll call vote: Mr. Wrenn, Yes; Mr. Tenore, Yes; Mr. Noel, yes.

Motion to grant variance from the size and height requirements of 175-8.4 by Mr. Wrenn, Second Mr. Tenore. Roll call vote: Mr. Wrenn, Yes; Mr. Tenore, Yes; Mr. Noel, yes.

CONTINUED-PUBLIC HEARING-40B Comprehensive Permit

ZBA File No. 20-14

Property Address: 253 Mansfield Avenue

Applicant/Owner: 253 Reservoir, LLC

Applicant seeks to construct a 60-unit rental apartment building including 15 affordable housing units. Applicant representatives review updates to application plans.

Topics reviewed include:

- Traffic and Parking – no leasing of parking spaces during concerts, single access point, amount of impervious surface, proper number of spaces, number located beneath building
- Traffic Peer Review for Town agrees project should not add significant traffic. The volume will not increase, but timing and flow may be impacted.
- Fire Dept. Comments/concerns: left hand turn out of the site for residents, traffic during concerts obstructing residents, cones run down the middle lane during concerts may impact left turns.
- Traffic Consultant, Mr. Gillian, discusses position that left turn lane is not warranted.
- Jeffery Dirk, Vanessa & Associates, discusses possible crosswalk and sidewalk on the opposite side of the street; crosswalk would be an unexpected stop for drivers; he believes MASSDOT would not approve; flashing beacon would be necessary;
- Mr. Tenore asks for information about pedestrian accidents with those crossing from the nearby apartments to Cumberland Farms
- Applicant notes it will do structural engineering study to determine feasibility of using existing foundation;
- Building Commissioner, Nicholas Iafrate, also suggests a peer review for the structural analysis;

Chairman, Mr. Noel, asks for comments or questions from any interested member of the public; no response indicated.

Motion to continue to the March 14th meeting made by Mr. Wrenn, Second Mr. Tenore. Roll call vote: Mr. Wrenn, Yes; Mr. Tenore, Yes; Mr. Noel, yes.

Bills

Motion to approve payment of Peer Review Fee made by Mr. Wrenn. Second Mr. Tenore. Roll call vote: Mr. Wrenn, Yes; Mr. Tenore, Yes; Mr. Noel, yes.

Minutes

Moved to next meeting.

Adjournment

Motion to adjourn at 9:36 pm made by Mr. Wrenn, second by Mr. Tenore. ROLL CALL

VOTE: Mr. Tenore Yes, Mr. Wrenn Yes, Mr. Noel Yes.

Minutes contemporaneously typed by: Nicole Salvo, Administrative Secretary for the Planning and Zoning Board of Appeals.

Edited and Respectfully Submitted,



Thomas R. Noel
Chair, Norton Zoning Board of Appeals

Approved by Committee on: April 14, 2021