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**Town of Norton
Zoning Board of Appeals
Minutes of Meeting Held on August 18, 2021**

The August 18, 2021 meeting of the Zoning Board of Appeals was held by Hybrid Means, in person and through ZOOM, with access provided for interested parties and members of the public as noticed. The in-person meeting is being held at the Norton Media Center.

The meeting was called to order at 7:00 p.m. by Tom Noel, Chair. Members participating Mr. James Tenore, Mr. Lukasz Wasiak, and Mr. David Wrenn. Also in attendance is the Director of Planning and Zoning Mr. Paul DiGiuseppe and Nicholas Iafrate, the Building Commissioner.

The meeting will be recorded and available to the public on the Norton Media Center YouTube page.

PUBLIC HEARING-Section 6 Finding/ Variance

ZBA File No. 11116

Property Address: 269 West Main Street

Applicant: Carlos Silva

Owner: Wayne Leblanc Trustee

Applicant is asking for a finding under 175-1.5e and Variance relief to allow for two residential units within an existing building.

Carlos Silva, the applicant came to present the hearing for 296 West Main Street. Mr. Silva wants to convert a residential building/ hair salon into a duplex building that is fully residential. The application has been approved by the Planning Board in July 2021 and is looking to just convert the existing building into a duplex. Mr. DiGiuseppe states that this is Residential 40 and would require a special permit for a duplex. Mr. Noel looks for frontage of the property which is 74.5 feet and the frontage for Residential 40 is 150 feet. The front yard setback is forty feet for Residential 40 and the setback of the property is 28.3 feet. The building is a pre-existing non-conforming lot. The side yard on the right side of the property is 27 feet and on the left side it is 19.2 feet. Mr. Noel notices that there is a ramp on the map which is considered a structure and that the ZBA should have the distance from the ramp to the property line. Mr. Noel also states that the right side of the property line should go up to the deck part of the building for the distance measurement. Mr. Silva states he doesn't plan on keeping the ramp and will replace the deck with a staircase. Mr. Noel requests that the applicant draw the staircase onto the plan and any other outside structures that will be a part of the duplex structure. Mr. Wrenn and Mr. Tenore asks if there is a second map that was shown to the Planning Board that could help show the setbacks. Mr. DiGiuseppe states that the map is the same. Mr. Silva asks what type of

dimensions the board is looking for. Mr. Noel informs Mr. Silva that the dimensions will be based on any fixed structure that will be put in place should be on the map.

Mrs. Patricia Silva states that she was informed in the beginning of the plan that when it was being made only the pre-existing building dimensions were needed and asks if the plan can be approved if it is set to pre-existing rather than have a future plan of the stairs put on now. Mr. Noel states that it cannot be approved yet as the structure to the property lines are not measured yet and the Engineer on the project will need to write down the dimensions to the property line from the structure. Building Inspector Nicholas Iafrate confirms a deck and the ramp are part of the structure that must be recorded.

Motion to Continue the Hearing to September 15, 2021 at 7pm was motioned by Mr. Wrenn and seconded by Mr. Tenore. Roll call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes. The Motion passes.

CONTINUED-PUBLIC HEARING-Variance

ZBA File No. 8009

Property Address: 0 Tipping Place

Applicant/Owner: Peter T Clark/Howard James F Trustee

Applicant is asking for Frontage relief from 150' to 40'.

Mr. Peter Clark brought in a redrawing of the plan which shows the dimensions of the driveway with the turnaround. Mr. Clark showed a 35 foot no cut buffer with the abutter to the north. If the variance is approved during the appeal period, then a mylar plan could be done. Mr. Noel states that for the mylar plan Mr. Clark would just have to have the map be signed. Mr. DiGiuseppe states the map is in PDF form and can be printed out for signatures if needed. Mr. Wasiak notes on the map that the location of the house has changed. Mr. Clark informs the board that the change was made as the house was considered was too close to 14 Tipping Place's backyard and moved further from them. Mr. Wasiak inquires where the front of the building is. Mr. Clark points out the front is by the garage of the building. Mr. Noel notes that due to the movement of the house that a previous concern regarding the turn. Mr. Clark states that they still put in a back out area and driveway is about 80 feet. Mr. Wasiak notes that the plan now has the house facing a different direction. Mr. Clark states that the interested buyer would like to have the house facing the south for solar purposes.

Mr. Tenore starts the motion to accept the variance to reduce the frontage from 150 feet to 40 feet and Mr. Wasiak seconds the motion. Roll Call Mr. Wasiak Yes, Mr. Tenore Yes, and Mr. Noel Yes.

CONTINUED-PUBLIC HEARING-Section 6 Finding/Variance

ZBA File No. 11165

Property Address: 34 Elm Street

Applicant: Edward Levine

Owner: Farid Mohammad

Applicant is asking for a finding under 175-1.5e and Variance relief to build a 3,000 sf accessory building for storage of vehicles.

Edward Levine is present during the meeting. Mr. Noel starts by noting that the board can't issue relief to an application that was turned down within two years. Mr. Noel asks if the appeal for the denial that was sent to superior court on this case was decided upon. Mr. Levine states that due to Covid the case was not heard. This is a however a smaller building at 17 feet tall instead of 31. This building will be 17 feet off the property line. The dimensions and the position of the building has changed since the other application. The dimension of the width and length are the same except for a bump that brought it 12 feet off the property line. Mr. Noel points out on the plan that the garage is 17 feet from the roof to the ground but it doesn't include the raised roof portion in the middle and would like to see that on the plan.

Mr. Farid Mohammad is also present. Mr. Noel asks because of the opposing abutters. Mr. Mohammad states the neighbor had disliked the height of the building. Mr. Noel states that previously the property is a pre-existing non-conforming building as there are two residential structures existing there a carriage house that was converted to an apartment. Mr. Mohammad believes the structure was constructed in 1935 and was used as a separate residence when the zoning bylaws came in.

Mr. DiGiuseppe states that the height of the structure has decreased and asks how many cars are expected to go into the structure. Mr. Mohammad states about thirteen cars should be able to fit. Mr. Noel states that there was a condition saying that there that the garage was not meant for selling and buying cars but was to store the existing cars collected by the owner and to see the titles attached to the cars claiming ownership and a listing what cars would be going in. Mr. Noel asks Mr. DiGiuseppe of the ruling that states an application has been denied less than two years prior. Mr. DiGiuseppe brings up the article Repetitive petitions Bylaw 175 - 10.13. Mr. Noel reads it and tells the board that they could grant relief to the applicant as long as the board specify the changed conditions. Mr. Tenore states that the board should review the last decision that was placed on the applicant. Mr. Noel states he is unaware of how the court case for appealing the decision this application has is going. Mr. Noel lists the concerns that the ZBA had previously had; the number of cars, the screening, the square footage, and the height of the structure. Mr. Noel suggests that ZBA should speak with counsel and ask if there are any special considerations that could be applied and if the court appeal impacts the ZBA meetings. Mr. Noel suggests giving this hearing a continuance until the next meeting so the ZBA can have time to speak with counsel and review comments made by counsel. Mr. Wrenn and Mr. Tenore agree that they should look over the information before making a decision. Mr. Tenore asks if the square footage is smaller than the previous structure. Mr. Mohammad states it is a little bit less going from 3162 to 3000. Mr. Tenore notes that Mr. Wrenn had concerns regarding the special permit as to whether or not the building was seen as a residential accessory and recalls counsel giving an opinion on the subject. Mr. Levine states that the conclusion was seen as being detrimental to the

neighbor because of the size of the building. Mr. Mohammad states the neighbors concern was the height of the garage and if it could be 25 feet or under it would be fine. Mr. Tenore suggests having the neighbor confirm the information so the board knows the neighbor is now not against the application. Mr. Mohammad states that the neighbor will most likely not come in due to personal reasons.

Mr. Noel invites the public to speak on the application. Mohammad Carlos, Mr. Mohammad's brother came to speak for the garage and states it will be used for residential use. Steve Banks from 29 Elm Street asks what would happen if Mr. Mohammad later on wants to use the garage as a business space and if the house were to be sold with the garage would that affect the buyer. Mr. Noel states a decision would travel with the property and the new owner would have the decision with them applied to the property and the decision to have it be a residential accessory would prevent the garage to be commercial use. Mr. Noel is thinking of continuing the hearing to September 15, 2021 so the ZBA will have time to speak to counsel. Mr. Noel recalls getting a decision on whether this is taken as an accessory use for a residential building. Mr. Wrenn states he is more comfortable with the changes made to the garage. Mr. Tenore states he will ask town counsel if the footage of the building not changing much is considered a big enough change to be applied to the repetitive petition bylaw. Mr. Wasiak at what point does it stop being an accessory structure if it is 30000 feet on the property. Mr. Noel will consult with counsel as to whether or not the use will factor in with the decision on whether or not the garage will be classified as an accessory or if it will be seen as commercial use. Mr. Wasiak wants to ask counsel what is the line from accessory to commercial. Paul Makedon asks if the building is within the guidelines. Mr. Noel states that this isn't and requires the meetings as to whether or not the structure could be allowed. Mr. Noel states that he will contact counsel and will review any comments they may have on the matter.

Mr. Wrenn motions to continue the hearing to September 15, 2021 at 7:05pm and Mr. Tenore seconds the motion. Roll call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes. The Motion passes.

PUBLIC HEARING-Section 6 Finding/ Variance

ZBA File No. 7834

Property Address: 83 West Main Street

Applicant: Daniel Rich

Owner: Gary Brennan

Applicant is asking for a finding under 175-1.5e and Variance relief for a side yard setback and lot size. Applicant seeks to convey land to neighbor as neighbor's building encroaches on to applicant's property.

Mr. Daniel Rich is present to speak on behalf of the owner. Mr. Noel states the applicant has a bit of the neighbor's property encroaching on his and another neighbor's property. The encroaching structure is an indoor swimming pool. The applicant is trying to get the neighbor to buy the encroaching property as well as the other neighbor, The Condo Association. At the

present meeting Mr. Rich has not been able to get the paper signatures from the Condo Association which would enable them to purchase the land that is over their property. However, the Condo Association is requiring an upland variance as they would not have enough upland for such a move. Mr. Rich is asking for a variance to make a pre-existing non-conforming line more non-conforming and the side yard set back will be moved. Mr. Noel notes he couldn't see the distance on the plan and is able to see a 3.1. Mr. Rich states that the garage if the variance is passed will need to have a second variance as now the garage is too close to the lot line. Mr. Rich states that after the land purchase the distance to the property line with the garage would be 3.1 feet. Mr. Tenore notes the wedge that is the current property line would become a trapezoid. Mr. Rich states that this came up because the original owner had died and now Mr. Johnathan O'Reilly of 16 Barrows Street has inherited it and wishes to sell the house. Mr. Noel states that Miss. Kwsell, the counselor wanted to review the application. Mr. Wasiak asks if a continuance is needed for a line shift. Mr. Noel states the reason for it is because they are making the property more non-conforming that they need counsel's opinion. Mr. Rich brings up an old case where the ZBA had voted on the land change of a non-conforming property making it more non-conforming referencing Edwin Whitcomb of 19 Oak street's land variance giving some of his land to a neighbor unknowingly making his house non-conforming which Mr. Noel states he will review. Mr. Iafrate states that due to the side yard set backs the property lines might have to be moved all at once rather than parcel by parcel. Mr. Wasiak asks why the ZBA would have to approve on 79 West Main Street as the property is increasing frontage from -2 to 3 feet. Mr. Iafrate asks if the building needs to be pre-zoning to be considered pre-existing non-conforming. Mr. Rich states the house was built in 1950 and the pool in 1980. Mr. Noel states the structure would be considered to be pre-existing non-conforming which the pool is not but the lots are. Mr. Wasiak believes the structure date goes back to the 1980 decision but the home owner built it in the wrong location and requires the opinion of the building inspector, Mr. Iafrate. Mr. Rich states he will run the question of whether or not lot 3 needs a variance to the title insurance company and see if they would insure over it and if they don't, they'll apply for a variance. Mr. Noel asks the applicants to bring in a decision copy of the 1980 pool house and would also like to have the applicant establish when the lot lines were drawn. Mr. Iafrate states that the previous Building commissioner Chris Carmichael had made a time line showing the pool was approved by the ZBA in 1980 and the enclosure was made in 1981. Mr. Iafrate states that there was a building permit made for the enclosure. Mr. Iafrate states that within the pool house there is no longer a pool and so the dimensions of the pool itself can't be measured without looking at plans compared to the dimensions of the structure. Mr. Noel suggest to Mr. Rich that doing all the variances at once might be a better option.

Mr. Wrenn motions to continue the hearing to September 15, 2021 at 7:10 pm and Mr. Tenore seconds the motion. Roll call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes. The Motion passes.

DISCUSSION-Determine if Town should seek local preference for 195 Mansfield Avenue 40B

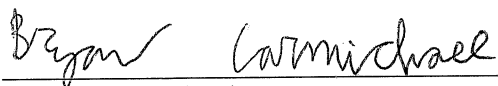
Mr. Tenore asks to confirm that Mrs. Judi Barret said that Local Preference was not in the ZBA's purview. Mr. DiGiuseppe states that yes it wasn't a requirement because it was put in as a requirement and Mrs. Barret said it wasn't. A Local Preference would have it so housing when opened up would be given to individuals who work or currently already live in the town. Mr. DiGiuseppe states that the preference has an adverse effect on minorities stating that because Norton is a mostly white community this would limit any minorities who would want to enter into Norton. Mr. Wasiak asks if the Local Preference would be given a time frame as to when it would happen. Mr. DiGiuseppe states he is unsure if it would have a length. Mr. Noel inquires as to what the decision says about ZBA's desire to pursue this preference. Mr. Tenore states he recalls the local preference went on for a one- or two-year window. Mr. Noel asks if the ZBA can waive this. Mr. DiGiuseppe states 40b can be waived. Mr. Wasiak is suggesting to modify the ruling to about 25% local preference for six months that way there isn't a hold up with the developer having to fill in housing units for the preference over a long period of time. Mr. Noel is wondering if Miss. Kwesell should be talked with on the matter as to whether or not the ZBA can overturn a decision that has already been granted. Mr. Noel wonders if the preference would be worthwhile in a small town like Norton. Mr. Wasiak says it is since we only have the one project in town.

Adjournment

Motion to adjourn at 9:06 pm was made by Mr. Noel, the motion was voted unanimously by the Board.

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

Edited and Respectfully Submitted,



Bryan Carmichael

Administrative Secretary, Norton Zoning Board of Appeals

Approved by Committee on: September 14, 2022