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**Town of Norton
Zoning Board of Appeals
Minutes of Meeting Held on September 15, 2021**

The September 15, 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 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.

CONTINUED PUBLIC HEARING-Section 6 Finding/ Variance

ZBA File No. 11116

Property Address: 269 West Main Street

Applicant: Carlos Silva

Owner: Wayne Leblanc Trustee

Carlos Silva acquired the dimensions requested in the last meeting and has sent in an updated plan. The plan is dated July 2, 2021 and the revision date is August 19, 2021. The plan shows setbacks at various positions. Also shown is the Decision from the Planning Board showing that they have issued a Special Permit permitting the building to become a Duplex from Business Use in a R40 zone. The property has 12075 square feet and duplexes would require 26000. Mr. Silva confirms the plan shown is the one he plans on constructing.

Ms. Amy Kwesell was asked by the Chair Mr. Noel if this needed a 175e finding since prior to a month before this meeting it wasn't residential. Mr. Noel explains that this building is on West Main Street, mixed use commercial property, an apartment on one side and a hair salon on the other, and to convert the hair salon into a one-bedroom apartment. Mr. Noel points out that the existing garage is 12 feet away from the rear property line when in Residential 40 it is required to have 20 feet. Due to being under the requirement a variance would be needed for the existing garage. However, because applicant is not altering the preexisting garage it is suggested that he doesn't have to file for a variance on the garage. The building has already been converted without relief. Mr. Paul DiGiuseppe states that it isn't physically changed prior to this meeting only allowed to be by the Planning Board. Ms. Kwesell states that this is a lot which is non-conforming and does not meet any of the requirements. What has to be determined is whether the duplex special permit will be more detrimental to the neighborhood as applicant is not making

changes except for the use of the building.

Mr. Wrenn moves to close the public hearing and Mr. Tenore seconds the motion. Roll call Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes. Motion for finding under 175e as approved by the Planning Board, Mr. Tenore motions the approval of this application and Mr. Wrenn seconds it. Roll Call Mr. Wrenn 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

Mr. Noel reviews information from previous meetings and a previous application from 2019. The proposed accessory garage will not be for commercial use. It was discussed whether this was considered an accessory use under the bylaws. Mr. Noel asks Ms. Kwesell the status of the court appeal of the previous 2019 decision, and about application of the 2-year rule.

Applicant is going to file a plan with a smaller accessory garage. Ms. Kwesell recommends that the applicant seek to withdraw without prejudice. The applicant agrees and requests a withdrawal without prejudice.

Mr. Wrenn moves to permit withdrawal of the currently filed application without prejudice and Mr. Tenore seconds the motion. Roll call Mr. Wrenn, Yes, Mr. Tenore Yes, and Mr. Noel Yes.

CONTINUED PUBLIC HEARING-Section 6 Finding/ Variance

ZBA File No. 7834

Property Address: 83 West Main Street

Applicant: Daniel Rich

Owner: Gary Brennan

An Enclosed Swimming Pool is situated over the property lines of two neighboring lots from thirty years prior to the application. The title was never clarified and the applicant is requesting a permit for the redrawing of the property lines which would necessitate variances. A variance would need to reduce side yard setbacks of three feet and five feet.

Mr. Daniel Rich is waiting to get the agreement from the other neighbors which includes a condo association of twelve owners. With the setbacks Mr. Rich is asking to have Mr. Brennan to convey 160 square feet and the council to give the triangle piece of land that is crossed over onto their property. Mr. Rich states that Mr. Brennan's lot is non-conforming pre-existing and Mr. Rich will take 160 square feet less non-component because the lot currently has 13961 and will be down to 12962. Mr. Noel inquires what the resulting side yard setback would be. Mr. Rich states there would be two measurements 3.1 feet at its closest point. Mr. Noel asks how a lot line would be redrawn by a sale like this. Ms. Kwesell states that the applicant would need to file an approval not required plan with the planning warrant.

Ms. Kwesell states that Mr. Rich will need a variance to have the required plan endorsed. Mr. Rich states the frontage will remain the same and the lot size will be reduced and it was not conforming and it will be reduced by 160 square feet because they have to convey where the pool sits on the property and the side yard setback to the garage is being reduced to 3.1 feet. Ms. Kwesell states that you cannot take land from a pre-existing non-conforming use to make it more non-conforming. Ms. Kwesell says this appears to be a self-inflicted hardship and therefore nothing the board can resolve. Ms. Kwesell says regardless of how long ago the encroachment was put in place the pool house should be removed. Mr. Rich says the ZBA granted a variance in 1980 to build the pool. Mr. Noel states that the information about the exact placing of the pool is uncertain. Mr. Wasiak states that the pool may have been constructed first and then the building surrounding it afterwards. Ms. Kwesell states that because of the fact that the property is already non-conforming that the only solution with the current guidelines would be to remove the entire structure. Ms. Kwesell brings up an earlier SJC case which is similar. Ms. Kwesell says that since the lot is already non-conforming and that the things that the ZBA look at in a lot aren't present in the current information and a variance to move the property line. Mr. Tenore inquires if there is any evidence to suggest that the neighbors have maintained the property to is also on their land. Ms. Kwesell states that no, the structure was built thirty years ago over the property line which became a private matter. Since the applicant is asking to reduce the property of a lot that already is non-conforming, they require a variance so they can reduce the size of another property. Mr. Rich is stating that this is not a self-inflicted hardship that the owner died and left the property to a relative through a will and the current owner has inherited the problem. Ms. Kwesell is stating the hardship is deprived from the soil shape or a topography of the lot especially when the hardship was created by the landowner and the Whaling case stated that a variance cannot be granted to the property owner of the landmark that created the hardship. So, because the hardship was made by the neighbor it has become a private matter between the two. Mr. Rich states that the ZBA had granted a decision similar to this in the past on Burt Street. Mr. Noel states the board is not bound to past decisions regarding other properties.

Mr. Jonathan O'Reilly, the current owner of the encroaching building living at 16 Barrows Street asks what if 79 West Main Street applied for adverse possession and then took over the land since they've been there for forty years. It had been permitted under General Law Chapter 48 Section 7 no action criminal civil effect to which compelled the removal, alteration, or relocation of any structure by reason of any alleged violation of the provisions of 40a where any ordinance shall be maintained unless such action to the perceived commencement thereof reported in their registered deeds within 10 years after the commencement of the alleged violation. Mr. O'Reilly states that this rule should apply to this situation. Ms. Kwesell states that the rule would be applied if it was on the border of the property however it is proven to be over the property line and because of it this rule isn't applicable. Chair Mr. Noel asks the applicant if they would like to continue. Mr. Rich would like to continue and inquires if he can look over the information Ms. Kwesell had given the board. Mr. Noel state that is material that is privileged info and she spoke about her stance and opinions of the property publicly. Mr. Wrenn asks to confirm the situation being an issue of a non-conforming lot and selling a portion of the lot to another owner would make it even more non-conforming which can't be done. Ms. Kwesell confirms that is the issue and the only way to amend it is to make a variance and to prove that the applicant is not at fault

for the hardship. Mr. Noel states this would be bylaw 1.5e first because we'd have to consider whether this makes it substantially more non-conforming which can be done but then the applicant would need a variance of the side lot setbacks to 3.1 feet then the hardship was just created by the first person. Mr. Noel suggests the applicant go to court to claim adverse possession. Mr. Noel informs the applicant that the October 13th meeting will be the last meeting before the 100 day an extension in writing from Mr. Rich will be needed.

Mr. Wrenn makes motion to continue this Hearing until October 13, 2021 at 7:05 and Mr. Tenore seconds the motion. Roll Call Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes.

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

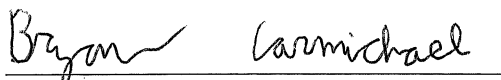
Consultant Judi Barrett had recommended that the board waive the preference. Mr. DiGiuseppe noted a study that showed local preference requirements have had adverse impacts on minority groups. Mr. Noel notes that local preference would require a lot of procedures including an analysis of the population that would most likely lead to hiring another consultant. Mr. Wrenn concerned that people already living in town may not be able to afford it. Mr. Noel suggests Mr. DiGiuseppe ask Ms. Barrett to attend next meeting to explain the local preference option.

Adjournment

Motion to adjourn at 8:10 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: Bryan Carmichael, Administrative Secretary for the Planning and Zoning Board of Appeals.

Respectfully Submitted,



Bryan Carmichael,
Administrative Secretary, Norton Zoning Board of Appeals

Approved by Committee on: February 9, 2022