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**Town of Norton
Zoning Board of Appeals
Minutes of Meeting Held on May 25, 2022**

The May 25, 2022 meeting of the Zoning Board of Appeals was held in person at the Norton Media Center and remotely via the ZOOM platform, 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 were Mr. David Wrenn and Mr. James Tenore. Mr. Lukas Wasiak the alternative member was not present. Also, in attendance is Administrative Assistant, Bryan Carmichael.

The meeting was recorded and made available to the public on the Norton Media Center YouTube page.

Continued Public Hearing – Section 6 Finding

ZBA File No. 12025

Property Address: 9 Newbury Street

Applicant: Matthew J. Costa, Gay & Gay, P.C.

Owner: Messias C. Vaconcelos

Mr. Tom Gay is filling in for Mr. Matthew Costa, the applicant. Mr. Noel reads the application that the current use is manufacturing business and it is in a R-40 zone. It is a pre-existing non-conforming business use in a residential zone described as manufacturing. The application is for the modification of the pre-existing non-conforming as a plumbing and HVAC contractor business and the applicant has asked for a new determination under 175-1.5e.

Mr. Gay states the property had been used for many years for stamping tools and sharpening blades as a manufacturing type use. The proposed use is a HVAC contractor and the owner will be doing some light manufacturing in the building specifically duct work, sheet metal, and things to fabricate for personal use. Mr. Noel asks when the building was last used for the old business. Mr. Gay states the building has been used constantly the knife and tool sharpening is about ten plus years if not more and the HVAC use is new in the sense the last year or so. Mr. Noel asks if HVAC is already at the building. Mr. Gay confirms that HVAC is already there so Burke plumbing and heating is a tenant on the property. They're looking to purchase the property and the application is part of the purchase making sure that this is done. Mr. Noel asks if it has been used in the non-residential sense. Mr. Gay confirms it has for a significant period of time. Mr. Gay continues that when it was used for tool sharpening it had heavy machinery in there stamping out equipment. With the new use there will also be some office staff doing some light

fabrication and manufacturing there. Most of the supplies are going to be in the supply house. The traffic that will be coming in and out will be those employees who work for the small family business. There are a total of six employees, two are in the office with the four others working as fabricators that go in and out.

Mr. Noel states that the property is non-conforming as shown by the side yard setbacks that are shown to be eight feet on both sides. The front yard set back is 25.6 feet. Mr. Gay states the rear setback is 16.3 feet. This amounts to 131.35 feet of frontage, with the lot being a little over 13,000 square feet. Mr. Noel states that it is undersized, frontage deficientness, and the building is big on the parcel but according to the records it is a pre-existing non-conforming use in residential. Mr. Noel asks how the applicant came to the Zoning Board, if it was because of the purchase and a mortgage that is going to be taken out. Mr. Gay states that there were no violations from the building inspector and was a part of due diligence of the tenant and potential new owner to make sure they had everything they needed in mind to move forward. Mr. Noel notes that the Building Inspector was not the person who had sent them to the ZBA and asks what the change to the property. Mr. Noel states that use variances cannot be given out by the ZBA and is unsure if anything is needed.

Mr. Tenore asks if the current renter is seeking the change in use. Mr. Gay states that it is an alteration or extension of the non-conforming so the property has gone from one non-conforming use and owner and now is substituting the owner and use that is still light manufacturing like the previous owner. However, it is a different processor tenant and they wanted to make sure they have everything.

Mr. Noel asks if there is no change to the footprint. Mr. Gay states that there will not be structural changes to the building. Mr. Tenore asks if a tenant can request that. Mr. Noel states that they can as the building owner could speak up and say no you can't have that use. Mr. Gay states the application was submitted by the current owner for the benefit of the tenant. Mr. Noel states they are still permitted as the bank may need a variance done after a property changes ownership.

Mr. Noel asks if a finding is needed and is the property being changed from industrial to something that is not allowed in a R-40 zone. As the table is full of ends in a R-40 zone and the ZBA cannot override that. Mr. Noel states he cannot find what it should be categorized as. Mr. Gay states that under 175-1.5e it is a non-conforming use change, extended, or altered only upon a finding by a special permit granting that the change or alteration is not going to be more detrimental. The intent of this subsection that such change reduced being permitted by the Board of Appeals whenever the proposed use is of the same general class as the existing non-conforming use will not significantly increase traffic, noise, bright lights, and other undesirable impacts on the surrounding environment. Mr. Gay states that they are not deviating from non-conforming and that the current non-conformer, the prior non-conforming use is a detriment of the surrounding area and the fact that they are not going to be creating less noise due to the new use and because the lot is pre-existing non-conforming use does allow to change or alter as long

as the use fits in the boxes. Which would be done by Mr. Gay on the type of building and the type of businesses. Mr. Noel states that normally the Zoning Board sees this type of application if the physical footprint is being altered or a change to a different type of business not an addition to the use. Mr. Noel states he has no problem with the applicant asking for a determination that states it is not more detrimental. Mr. Gay states that on the Accessor's records it has a classification of a factory which doesn't fit in the use tables and predates the zoning bylaws. With the zoning now in place the use would fall into manufacturing placement for plate processing, fabrication for factories and manufacturing firms.

Mr. Dennis Precourt, 7 Newbury Street states his concern may have already been answered that the lot will not be turning into a retail or wholesale office couldn't happen. Mr. Noel states that retail is a different operation and what is being described sound like what is there now which is pre-existing non-conforming use. They can continue as long as they have continued, they can keep that going. In the future if it turns into retail or something else it would be up to the neighbors to alert the town either Zoning or Building departments and say they're not working within the non-conformity.

Mr. Noel asks what the hours of operation are. Mr. Gay states that they would probably hold contractor hours and because they are not there Mr. Gay is unable to confirm the hours. Mr. Tenore asks if MR. Gay would think the hours would change significantly. Mr. Gay states that he doesn't suspect the business will turn into an around the clock type of operation. It appears as a small plumbing HVAC and they're running their business by working contractor hours. Mr. Noel states it sounds like quiet preparation work for materials rather than an around the clock operation.

Mr. Wrenn makes the motion for a Finding under 175-1.5e that alteration of the business use has been described and is determined by the Zoning Board of Appeals that it won't be more substantially more detrimental to the surrounding area than the pre-existing non-conforming use and is seconded by Mr. Tenore. Roll Call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes.

CONTINUED PUBLIC HEARING – Variance

ZBA File No. 12873

Property Address: 182 South Washington Street

Owner/Applicant: McDonough Family Limited Partnership

Mr. Noel reads the application and states it is for a wireless communication tower. Mr. Henry Sousa is present to speak on the application. Mr. Noel asks to confirm if a new plan submission was made. Mr. Sousa states that there was. Mr. Sousa continues stating that the issue from the previous meeting was that the tower was too close to residential structures. Mr. Sousa explains that the property is a residential use and will be terminated once the tower is approved. Mr. Sousa recalls that Mr. Nicholas Iafrate, the Building Commissioner had indicated to the Zoning Board that the owners of 184 South Washington Street had applied for a demolition permit for

the residential structure at the front of the property and replace it with a commercial/industrial building. Which only leaves the house at 180 South Washington Street as the last residential structure on the plot plan. When the tower was moved there was no way the tower would comply with the requirements that it has to be the height of the tower plus twenty-five feet. So, the height was reduced to try and meet the requirements of height in the Norton by-law. The lattice tower will now be a 140-foot-tall tower. A variance is still being asked for the construction of the lattice tower and one is for still exceeding the 125 feet maximum written in the by-law by 15 feet. There is 166 feet between the closest part of the tower and the residence at 180 South Washington Street. The request for the 190-foot height was to improve the town's communication system. With it being now 140 feet, the coverage of the communication system will not be as powerful but will still improve communications. The applicant is still willing to provide all the equipment previously discussed so Norton can locate on the power and use it for transmissions. Also proposing to build the tower such that at the future date the rest of the 190 feet originally planned for the tower can be built. Mr. Sousa states he talked with Deputy Chief Robbins and Chief Clark about if the tower gets built and if there are still problems trying to get coverage in the area to let the applicant know so the equipment could be raised. This way the tower still remains within the safety zone from the tower.

Mr. Noel states that there is an updated plan submitted May 9th, 2022. The update is on page CO2 has distances but does not have the fall zone lines the previous plan had provided. Mr. Sousa states that the engineer had drawn a line from the tower to the house to show the actual distance. Mr. Noel states that the CO1 from both plans are different and asks why that is. Mr. Sousa explains that the engineer had moved the tower on the lot further away from the residence. Mr. Noel states the difference is of about 16 feet. Mr. Sousa states that the movement was within the required setbacks of the zoning by-laws while being as far as possible from the residence at 180 South Washington Street. Mr. Noel asks to confirm that 180 South Washington Street is on the left side of the plot plan. Mr. Sousa does confirm that it is. Mr. Sousa goes on to explain that the distance and height were changed to stay within the safety zone of the residence. Mr. Noel states that the bylaw 175-17.4 states that a pre-standing WCF from a residential structure or property line of the lot on which the structure it is located shall be at least equal to the height of the structure plus twenty feet. Mr. Noel states that it works for the residential structure but doesn't when referring to the property line of the lot that the residential building sits. Mr. Noel states by looking at the plan the lot is about 140 feet away from the lot line of 180 South Washington Street which might make it so the tower cannot be on this lot based on the by-law. Which the by-law reads that it cannot touch the residence or property line and must be a distance of the height of the tower plus twenty feet. The measurement to the property line would be the closest point of the property line to the tip of the tower which is not depicted on the plot plan. Mr. Sousa states that the discussion from last meeting that Mr. Sousa had read the by-law as a residential zone lot line which this property is in an Industrial zone as opposed to a lot line where a residential structure sits. Mr. Noel disagrees stating that he sees it as a residential structure has residential lot lines and that Town Counsel has agreed with Mr. Noel. Mr. Noel explains that he views it as a safeguard for residential structures and residential uses on the lot.

Mr. Wrenn states that he finds it interesting that it says residential structure and residential lot line. Mr. Sousa states that he disagrees with Town Counsel's opinion and states that the last sentence on the fall distance says the setback of any such facility shall be a minimum of 300 feet from a residential lot line. So, if the setback is going to be the height plus twenty feet used for a residential structure why is 300 feet needed. Mr. Sousa explains that the 300 feet is there because if the intent of the height plus twenty feet sentence is to be applied to any lot line there already is protection built there.

Mr. Tenore asks the type of zoning this lot is on. Mr. Noel states that it is Industrial. Mr. Tenore continues that he sees Mr. Sousa's argument of it being a residential lot line because it is in an Industrial zone with a residential lot which wouldn't make it a residential lot line, it would be an industrial lot line. Mr. Wrenn asks if the last sentence is for if there is a residential zone within 300 feet saying the tower has to be 300 feet away from the residential zone. Mr. Noel states that Counsel advised the ZBA to read the bylaw as described by Mr. Tenore.

Mr. Sousa states the if the lot at 180 South Washington Street was very large with five acres and the house being one thousand feet from the proposed tower. The tower still couldn't be built even if it is zoned industrial and the house 1000 feet away and the only reason it couldn't be built is because of how close it is to the lot line with a residential structure. Mr. Noel states that in that situation that it still couldn't be built. Mr. Sousa states that he believes the ambiguity of the bylaw should fall in favor of the applicant. Mr. Sousa states he respects Mr. Noel's stance and hopes that Mr. Noel can find it appropriate in this instance to see that the language in the zoning bylaw is not specific enough. Mr. Wrenn asks if the Board has to worry about the lot line being 300 feet from a residential zone lot as this is Industrial zoned. Mr. Noel states that is correct. Mr. Noel states that the lot is treated as a residential and it is going to be the height of the tower plus twenty feet to any point on that lot because the ZBA want to apply the rule as written. Mr. Noel and Counsel agree that the bylaw is poorly written. Mr. Noel understands Mr. Sousa's argument and wants to advise with Town Counsel to ask her if a wireless communications facility and the telecommunications act is federal law. Which says as part of its findings when local bylaws prevent the sighting of a wireless communications facility when there is a need for coverage whether it be substantial need or better coverage the local board can overlook the local bylaw. Mr. Noel is unsure if that would take effect in this situation.

Mr. Verzosa from McDonough Family Limited Partnership states that the property was at one time all residential and is now industrial. There are three structures that are still residential one on 182 South Washington which will be demolished upon completion of the project and the two neighboring lots each also have a residential structure which may eventually not be there. Mr. Verzosa asks how does a non-conforming use change the zoning district. Mr. Noel states that the he and Town Counsel is reading the bylaw as a residence on a lot whether or not it is conforming means the lot which is located. Mr. Noel continues that it is a lot line not a residential lot line but a parcel in which a residence is located. Mr. Verzosa states that it is an Industrial lot line to which Mr. Noel agrees. Mr. Verzosa states that across the street is a trench box company is industrial and that the residential lot on 182 South Washington is not affecting the company. Mr.

Noel states that is the ruling because the communication tower fall zone is height plus twenty feet which would touch the neighboring lots. Mr. Noel notes that if the plan does get approved that a stipulation that the residential structures should be decommissioned prior to the building permit gets filed. Mr. Sousa states that stipulation is something he expects to have on the decision. Mr. Noel states before being able to make a decision however the ZBA have to look into when the Telecommunications Act takes precedence over the local bylaw. The issue also includes the difference between a lattice tower and a monopole tower which is not addressed in the bylaw or by Town Counsel as the bylaw only addresses monopole towers which makes Mr. Noel ask if the Telecommunications Act also decides that. Mr. Noel states that the ZBA can't grant a use variance and is unsure if the application is a use variance.

Mr. Sousa states that the issue of monopole and lattice was discussed at the first meeting. The lattice tower was explained to be designed for microwave communications which require greater stability than monopole communications. With regards to the Telecommunications Act there is a need in the community for the microwave communications which would benefit public service communications equipment. There is also a need for the municipality and as much as that specific requirement of distancing from the lot line. Mr. Sousa states that is a setback requirement which can be approved for a variance by the ZBA. Mr. Noel argues that the type of tower is a different issue and wishes to get Counsel's opinion on the topic before proceeding. Mr. Noel states that in the Telecommunications Act applicant is to provide information that there is no other location that the tower could be at. Mr. Tenore states the concern was addressed in the first meeting in terms of coverage. Mr. Sousa states that the tower is on high land compared to the surrounding area having it in an area that is higher is very meaningful. Mr. Noel explains to Mr. Tenore that he doesn't think the ZBA should continue further with the conversation without speaking to Town Counsel first. Mr. Tenore agrees and states that he personally would feel more comfortable with a tower with three legs than on one. Mr. Noel asks if the engineer on the project has an engineering report on the stability of the lattice tower. Mr. Verzosa states that would be something during the Building Permit stage. Mr. Noel states that the question is more to do with what legal power does the ZBA have. Mr. Noel restates that he wants to confirm with Town Counsel when is the point for when the Telecommunications Act comes into play as well as how it affects the lot line and distance from the residential property. Mr. Noel states he doesn't want to grant a variance if he doesn't have to grant a variance and if there is a variance needed where is it going to. Mr. Sousa states that there are no variance requests with regards to the residential structure itself and that the argument could go either way for the variance based on the wording of the bylaw. Mr. Noel states that the bylaw is poorly worded and reads the bylaw aloud and ask the applicant to show the exact distance the tower will be from the nearest point of the neighboring lot line so if needed the ZBA can grant a variance for the distance from the property line. Mr. Wrenn thought that the word "or" in the bylaw was more leeway initially and would be either. Mr. Noel states that it is rational to be the more restrictive since it is a safety regulation. Mr. Noel adds that the distance from the lot line and guidance from Town Counsel are needed for the next meeting.

Mr. Wrenn asks Mr. Sousa if he would still have to go to Planning Board if the application gets

approved. Mr. Sousa states he will. Mr. Wrenn asks what he would have to go for. Mr. Sousa states that they would have to go to the Planning Board for a special permit. Mr. Sousa explains that he came to the ZBA first to grant the variance for a lattice tower and a tower exceeding 125 feet. Mr. Tenore states he would like to help the project so the emergency service groups in Norton have communications in Town. Mr. Sousa states that as a former Police Officer he knows what it is like to need radio communications in an emergency situation and not be able to reach the station.

Mr. Wrenn motions to continue the public hearing to June 8, 2022 at 7:10 and is seconded by Mr. Tenore. Roll Call; Mr. Wrenn Yes, Mr. Tenore Yes, and Mr. Noel Yes.

CONTINUED PUBLIC HEARING – Section 6 Finding

ZBA File No. 14244

Property Address: 34 Kensington Road

Applicant/Owner: Sara and Shane Azevedo

Mr. Noel reads the application stating that the proposed addition that would need setbacks on a non-conforming lot that has frontage below the minimum requirement and square footage of the property. Mr. Wrenn states it is 21000 square feet in a R-80 zone. Mr. Noel states that the applicant is asking for a determination in 175e and by the plan a variance will also be needed for side yard setback.

Mr. Noel asks who are the neighbors are on the property. Mr. Shane Azevedo states that David & Dawn Schepis live to the right of the house. Mr. Noel asks how far their house is from the property line. Mr. Azevedo states that the house is about 35 feet away. Mr. Noel states that the addition doesn't look like it can go on the other side. Mr. Wrenn asks when the house was built.

Mr. Wrenn motions to grant a variance for the side yard setbacks; 25.7 feet for the closest side toward the road, 23.2 feet from the middle of the addition and 24.9 feet from the furthest side from the road as shown on the plan of record and is seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

Mr. Wrenn motions to grant a finding under 175e that the proposed use as shown on the plan of record will not be more substantially more detrimental to the area in terms of the factors of the bylaw and is seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

CONTINUED PUBLIC HEARING – Variance

ZBA File No. 14102

Property Address: 34 South Worcester Street

Applicant: Honglei Dai

Owner: Peter A. & Rhiannon G. Fernandes

Mr. Noel states to the ZBA that this property was the Chartley Country Store. Ms. Honglei Dai states she had finished the purchase of the property. Mr. Noel asks if the store is on the lower right of the plan. Ms. Dai states it is and the store was on the first floor. Mr. Noel asks if the ZBA is looking only at the parcel on the right as the plot plan makes it look like there are two parcels. Ms. Denise Higgins, the real estate agent with Ms. Dai states that it is one parcel. Mr. Noel asks what the lines on the plan mean. Ms. Higgins states at one time the parcel was probably two parcels. Mr. Carmichael confirms on the Accessor's map that the parcels are on one piece of property. Mr. Noel asks if the building in the back is a residence. Ms. Dai states that it is. Mr. Noel asks to confirm that the country store was a commercial property on the first floor and a residential use on the second. Ms. Dai confirms that it is. Mr. Noel asks why the applicant is here as the property was a pre-existing non-conforming mixed use. Mr. Noel continues stating that it sounds like a duplex because it would be two residential units in the front building and then the residential building in the back of the property. Mr. Noel states that the building may lose its non-conforming use because of the change in use after two years after that it loses its ability to be non-conforming. Mr. Noel suggests having a finding under 175e and asks if Ms. Dai is changing the footprint of the building. Ms. Dai states that there are no plans to reconstruct the footprint of the building.

Mr. Noel reads the bylaw that duplex requires a special permit in any of the residential zones and multi-family dwellings in R-40 zone are special permit. Mr. Carmichael states that the application had gone to the Planning Board the previous night and had gotten approval for multi-family and it just requires ZBA approval. Mr. Noel states he disagrees with the finding that it was multi-family and feels it would be more appropriate to have it called a duplex and a single family on the lot. Mr. Noel decides that the application requires a 175e Finding because of the change in use within the parcel. Mr. Noel asks the Board if they think it requires a variance. Mr. Wrenn states that he agrees with Mr. Noel's logic. Ms. Higgins states that the variance was recommended by Mr. DiGiuseppe when they applied for the special permit. Mr. Tenore asks since there is a difference of definition of multi-family if that reflects anything that the Planning Board did. Mr. Noel asks if the decision was written. Mr. Carmichael states that the decision is still in draft. Mr. Noel states that it could be written that the ZBA find it as a duplex but are mindful of the fact that the Planning Board had identified it as a multi-family and that the Zoning Board sees no distinction without a difference. Mr. Tenore states that he likes the language presented and states that he agrees with Mr. Noel's logic. Mr. Noel states that he doesn't want the decision to seem like there is ambiguity.

Motion for a Finding under 175e that the proposed use as described will not be substantially more detrimental to the area in terms of light, noise, and other factors of the bylaw is made by Mr. Wrenn and seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

CONTINUED PUBLIC HEARING – Variance

ZBA File No. 14414

Property Address: 184 South Washington Street

Applicant: Dave Pateuk
Owner: Chico, LLC

Mr. Bob Crowell, the engineer on the project is present to speak on the application. Mr. Noel states that this is the property next to the proposed telecommunications tower. Mr. Noel asks Mr. Crowell if he or the applicant was aware of the telecommunications tower being built on 183 South Washington Street. Mr. Crowell states that in the front there is a house which is used as an office and in the back is some container buildings. The back stores all the shoring equipment that Chico LLC uses. Mr. Noel what shoring is. Mr. Crowell states that shoring is when they dig trenches in the showing the side walls protect the side from the water and they can stack them up 20 or 30 feet. They are returned and sometimes not in the best shape which are taken out to the back warehouse where they are fixed and welded to make them better again. Mr. Noel states that these are the big metal sheets pipes. Mr. Crowell states that Chico LLC is proposing to convert the house into an office the first forty feet and the rest of the house can be space for the equipment to be stored during the winter so the workers don't have to be outside working. Mr. Crowell states that Chico LLC has been working there and want to comply with the Zoning Bylaws as they lack the frontage required for an Industrial Zone.

Mr. Noel asks if the business will be changed. Mr. Crowell states that Chico LLC is not looking to change the type of business. Mr. Noel asks what is in the back of the property. Mr. Crowell states it is a propane business in the back of the property. Mr. Crowell adds it is a separate business that is leased out. Mr. Noel states that the only change is a change of use. Mr. Crowell states the house is going to be 36 feet back and slide over 14 feet to meet the zoning dimension table. Mr. Noel states that the change in use of the house will just require a Finding under 175e.

Motion for a Finding under 175e that the proposed use will not be more substantially more detrimental to the area in which the parcel is located in terms of the factors set out in the bylaw is made by Mr. Wrenn and seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

General Business

Mr. Carmichael states he will not be at the next meeting and either Mr. Nick Iafrate, the Building Commissioner or Mr. Paul DiGiuseppe, the Planning & Zoning Director will be in his place. Mr. Wrenn states that he will be leaving after the next meeting as his term on the ZBA is up and doesn't want to be reappointed. Mr. Noel states that if there are insufficient members on the ZBA that he could do something but wants to double check with Town Counsel to confirm that.

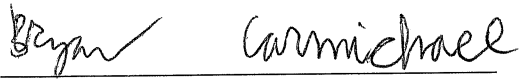
For future dates it is decided that July 13 and August 10.

Adjournment

Motion to adjourn at 8:42 by Mr. Wrenn and seconded by Mr. Tenore. Roll Call; Mr. Tenore Yes, Mr. Wrenn Yes, and Mr. Noel Yes.

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