Town of Norfolk
Zoning Board of Appeals
One Liberty Lane
Norfolk, MA 02056

Meeting of February 24, 2016

Zoning Board Members	**Others**
Michael Kulesza –Chairman ----- present	Amy Brady ---------- Administrative Assistant
Robert Luciano –Vice Chairman---present	
Mr. Christopher Wider – Clerk ----------present	
Joseph Sebastiano –Full Member - present at 7:50	
Jeffrey Chalmers – Associate Member- absent	
Donald Hanssen – Full Member – present	

The duly posted meeting of the Zoning Board of Appeals convened at 7:05 p.m. in room 124 at the Norfolk Town Hall.

Mr. Kulesza announced that this meeting was being audio and videotaped.

Approve Minutes:

a) ***Mr. Wider made a motion*** *to accept the minutes for January 20, 2016, with amendments:* ***Mr. Hanssen seconded; the vote on the motion was unanimous.***

b) *The Board did not vote to accept the minutes for January 2~~8~~6, 2016; they will be reviewed and resubmitted for acceptance.*

c) ***Mr. Wider made a motion*** *to accept the minutes for February 4, 2016, as amended;* ***Mr. Hanssen seconded; the vote on the motion was unanimous.***

APPLICATIONS:

NEW BUSINESS: ZBA Consultant Discussion: Mr. Kulesza stated that he has asked the Town Planner, Ray Goff, to contact the Chairman of the Planning Board to request that a representative from the Planning Board attend ZBA meetings, when future 40Bs come before the ZBA. The members of the Board agreed that it would be beneficial to have such a representative, and will leave selection up to the Planning Board.

PUBLIC HEARINGS:

<u>7:16 - 117 Seekonk St -Special Permit & Variance to allow a commercial kennel</u> (cont'd from 1/28/16) Present were Henry Kanter, applicant; Edward Cannon, attorney for the applicant; Cindy Tayman, 117 Seekonk St., and Debra Gursha, 143 Seekonk St.

Mr. Cannon noted that one ZBA member had not as yet arrived, and asked to delay the public hearing until a full five member board was present. It was agreed to wait until after the 7:30 hearing.

7:30 - 10 Old Populatic Road – Special Permit - Present were Ryan Dulac, applicant; Peter Lavoie, Civil Engineer, Guerriere & Halnon

Mr. Wider read the Public Notice into the Record. Mr. Lavoie presented an overview of the project, noting that the distance from existing home to the edge of the lot is currently 11.1' on one side 12.1' on the other. Mr. Lavoie also noted that the existing structure does not meet current code; the applicant would like to raze the house and put in a new foundation in same location, including where there is currently a screened porch; will still be still 11.2'and 12.1' from bordering lots; will use existing water and sewer services. Also proposed is a 24'x24' garage, to be built across the gravel driveway, and conforming to the Zoning regulation for accessory buildings; it will be constructed with a retaining wall (138-150 slope) dug into side of hill, where there is a slope from 138 to 150.

Mr. Kulesza opened the hearing for questions from the Board. Mr. Hanssen inquired as to clarification with regard to the current screened porch area; it was noted that there is a "jog" in the new foundation, ensuring that it will meet the current non-conforming setbacks. Mr. Wider asked questions regarding the garage roof, and confirmed that both the existing outhouse and shed will be taken out. Mr. Luciano clarified that the water and sewer services come from Franklin's system. Upon being questioned by Mr. Wider regarding the new foundation line, Mr. Lyons stated that it remains in the floodplain, and they will be presenting to the Conservation Commission next. After all of the Boards questions were answered, Mr. Kulesza stated that the Board will deliberate tonight if time allows, but go ahead and schedule with Concomm. ***Mr. Wider made a motion*** *to close the public hearing for 10 Old Populatic Road, for Ryan Dulac, for a non-conforming structure alteration and enlargement, Section F.4.a. from the Norfolk Zoning Bylaws;* ***Mr. Hanssen seconded; the vote on the motion was unanimous.***

7:51- the Public Hearing for 117 Seekonk Street resumed. Mr. Cannon took the floor, and presented a letter from 123 Seekonk, Mike Brogan, in support of the applicant, with the caveat that if a Special Permit were granted, it would apply to the current owner only, and not carry on. Mr. Canter asked the Board to allow Mr. Kanter to amend his application to request an alternative form of relief, under Section D.2.c.3., Home Occupation, of the Norfolk Zoning Bylaws, delineating how he believes Mr. Kanter's business meets the Definition for a Home Occupation (Definition). Mr. Kulesza opened the meeting for questions from the Board. Mr. Wider asked for clarification on the gross area in which the business operates, including the barn and the area in which the dogs run; the applicant stated that they do not know; Mr. Wider stated that it can't be greater than 1,262 s.f. , or 25% of the gross floor area of the dwelling, as per the Definition (b), and noted that the area appears to be greater than that. Mr. Cannon, in response to Mr. Wider's question, stated that his home occupation space calculation he did not include the area of play, because he interpreted the word "occupy" in the bylaw Definition (b), to mean the inside the building. Mr. Wider stated his opinion that the dogs are material/equipment on exterior storage/display, in conflict with the Definition (c). Mr. Cannon responded that his opinion is the dogs are not being stored, are not on display. Mr. Luciano asked for confirmation regarding depression of the land, making it hard to see driving by. Mr. Wider cited section (g) of the Definition, which regards noise. Mr. Cannon stated that the noises created are not detectable to normal senses off the lot. Mr. Wider cited the Mass Department of Agricultural Resources says that if a person running a business that holds animals for people while they are at work during the day, this is the type of business the Legislature sought to ensure is inspected and licensed by the town. He further stated that Mr. Kanter hold animals during the day while people are at work; the Animal Control Officer (ACO) of the town inspected it as a kennel; the Zoning Officer stated that the property is a kennel, and must meet the requirements of a kennel. Mr. Wider expressed concerns as to what would happen if dogs escaped, causing an accident; this might cause someone to find that it was licensed only as a Home Occupation, and therefore not licensed and inspected as a kennel, and file suit against the town. Mr. Wider expressed his concerns with setting precedence by calling this a Home Occupation. Mr. Kulesza stated that he had spoken to Town Counsel about this possibility, and was told that under MGL, Chapter 258, the town has limited exposure, and Town Counsel's opinion is that such a suit would likely be unsuccessful. Mr. Kanter stated that even if the ACO and the Zoning Officer think it may be a kennel, that is ultimately up to the ZBA; and restated his belief that this situation fits the Definition of a Home Occupation better than a kennel. After more discussion among the Board, and questions to the applicant regarding insurance, Mr. Cannon stated that the applicant would be open to holding the meeting open; Mr. Wider asked if the applicant had considered trying to change the town bylaw. It was suggested that the meeting be kept open, Mr. Cannon will email a request for extension. Mr. Kulesza stated that he will talk to various parties involved, and will recommend developing a two (2) year covenant between the Town and Mr. Kanter, allowing him to run his business, while pursuing an avenue for bylaw relief. All five (5) members of the Board are in favor of this suggestion.

Mr. Wider made a motion *at 8:50 P.M. to continue the Public Hearing for 117 Seekonk Street for a Public Hearing for a doggie daycare/kennel to March 30, 2016, at 7:15 P.M.;* ***Mr. Sebastiano seconded; the vote on the motion was unanimous.***

Mr. Wider made a motion *to close the Zoning Board of Appeals meeting of 2/24/16 at 8:50 P.M.;* ***Mr. Sebastiano seconded; the vote on the motion was unanimous.***

Mr. Kulesza reopened *the Public Hearing of the Zoning Board of Appeals on February 24, 2016, to deliberate on 10 Old Populatic Road for Special Permit for a non-conforming structure alteration/enlargement in accordance with MGL Chapter 40, Section 9, and Section F.4.a. of the Norfolk Zoning Bylaws.*

Mr. Kulesza entered the plan into evidence; plan is entitled "Special Permit Plan of Land, 10 Old Populatic Road, Norfolk, Massachusetts, Prepared by Guerriere & Halnon, Inc.," Dated January 10, 2016.

FINDINGS OF FACT:
Structure will not violate setbacks any more than they already do; house is being razed; there will be a new foundation; house is currently on piers; applicant agreed to remove shed and outhouse; existing sewer and water connections are through the town of Franklin; new home will be a two (2) story structure, not exceeding current bylaw; living area will be cantilevered over the previously screened in porch area; existing screen porch has a roof on it; 36.2' x 6' existing screen porch will become part of the living space; there will be a 24'x24' garage across Old Populatic Road with a height not to exceed 18'; garage will have electricity and possibly water; applicant will be adding 42 s.f. of living space in front left corner; all existing utility services will remain; the new structure will be brought up to current code and made safer to live in; applicant will contact the Conservation Commission

CONDITIONS:
Dumpsters must be gone within 30 days of completion; external lighting will not impact neighbors; proper building permits will be obtained.

Mr. Wider made a motion *at 9:03 P.M. on February 24, 2016, for a Special Permit in accordance with MGL Chapter 40, Section 9, and Section F.4.a. of the Norfolk Zoning Bylaws for a non-conforming structure alteration and enlargement in the R2 Zoning District;* ***Mr. Luciano seconded. The vote was:***

Mr. Hanssen ---------- yes to grant
Mr. Luciano ---------- yes to grant
Mr. Kulesza ---------- yes to grant
Mr. Wider ---------- yes to grant

Mr. Wider made a motion *to adjourn the Zoning Board of Appeals meeting at 9:04 on February 24, 2016;* ***Mr. Luciano seconded; the vote on the motion was unanimous.***

Meeting adjourned at 9:05 pm

Mr. Christopher Wider, Clerk

In accordance with the requirements of G.L. 30 § 22, approval of these minutes by the Board constitutes its certification of the date, time and place of the meeting, the members present and absent, the matters discussed, and the action taken by the Board with regard to those matters (if any). Any other information contained in these minutes is included for context only. Notes memorializing deliberation or discussion of any matter are in the summary form and may include inaccuracies or omissions. Where proof of the content of a statement is required, a tape recording or transcript should be consulted, if available.