



Nantucket Planning Board

Nantucket Planning Board APPROVED Minutes
Remote Participation via Zoom Webinar
February 9, 2023 @ 4:00 PM

Board Members: John Trudel, III (Chair), David Iverson (Vice-Chair), Nat Lowell, Barry Rector,
Joseph Topham

Alternates: Stephen Welch, Carl Borchert, Abby De Molina

Staff: Andrew Vorce (Planning Director)(Absent), Leslie Snell (Deputy Director of Planning), Meg Trudel
(Land Use Planner) and Catherine Ancero (PLUS Administrative Specialist)

PLANNING BOARD APPROVED MINUTES OF 02-09-2023

Webinar Registration Link:

https://us06web.zoom.us/webinar/register/WN_7o3ca7lZRXa7bX8FOzAV2Q

To View Meeting Only:

https://www.youtube.com/watch?v=PqrP3rpB_BI

I. Call to Order:

Chair Trudel called the meeting to order at 4:05PM.

Chair Trudel read a prepared statement in accordance with Governor Baker's March 21, 2020, order regarding open meeting law, which outlines how the meeting is conducted via remote participation and states the ground rules for any discussion.

Roll call of those participating:

Board members:

Vice- Chair Iverson *Aye*

Nat Lowell *Aye*

Barry Rector *Aye*

Joseph Topham *Aye*

Chair Trudel *Aye*

Alternates:

Carl Borchert *Absent*

Stephen Welch *Absent*

Abby De Molina *Aye*

Staff:

Meg Trudel *Aye*

Catherine Ancero *Aye*

Leslie Snell *Aye (arrived at 4:30PM)*

II. Approval of the Agenda:

Chair Trudel moved Article 66, draft 65 to front of agenda due to a Board member attending an upcoming meeting within the hour.

Mrs. Trudel stated that there was a request to continue Article 45 Appleton Road and Article 46 Nobska Way to allow scheduling for a citizen to meet with staff about how that may impact their property.

Mr. Rector moved to approve the agenda. The motion was duly seconded by Mr. Topham and the motion was carried unanimously.

Vote taken by Roll Call:

Barry Rector *Aye*

Joseph Topham *Aye*

Nat Lowell *Aye*

Vice- Chair Iverson *Aye*

Chair Trudel *Aye*

III. Zoning Articles for 2023 Annual Town Meeting:

- **Zoning Bylaw Amendment: Definitions -Time Sharing or Time-Interval-Ownership Dwelling Unit or Dwelling (Article 40)** – to amend Section 139-2A “Definitions” to include language for fractional ownership.
CONTINUE TO MARCH 9, 2023
- **Zoning Bylaw Amendment: Preexisting Nonconforming Uses, Structures, and Lots (Article 62, draft 61)** to amend the Zoning Bylaw (Section 139-33 “Pre-existing non-conforming uses and structures”) to delete language that provides preexisting nonconforming status for lots, and any structures thereon, created pursuant to MGL 41-81L (Molden).
CONTINUE TO MARCH 9, 2023
- **Zoning Bylaw Amendment: Preexisting Nonconforming Uses, Structures, and Lots (Article 63, draft 62)** amend the Zoning Bylaw (Section 139-33 “Pre-existing non-conforming uses and structures”) to add language that would require any new structure or expansion or increase in “volume, area, or height” of a structure on a lot that was approved under MGL 41-81L to require a Special Permit from the Zoning Board of Appeals (Molden)
CONTINUE TO MARCH 9, 2023
- **Zoning Map Amendment: RC-2 to R-20 and LUG-2 – 91 and 95 Miacomet Avenue (Article 48, draft 47)** – to place properties at 91 Miacomet Avenue and 95 Miacomet Avenue (portion of) currently in the RC-2 district in the R-20 district and to place property located at 95 Miacomet Avenue (portion of) currently located in the RC-2 district in the LUG-3 district. (Planning Board)
CONTINUE TO MARCH 9, 2023
- **Zoning Map Amendment: RC-2 to R-5 and/or CTEC – Appleton Road (Article 45, draft 44)** – to place properties at 20, 22, 24 Appleton Road currently in the RC-2 district in the R-5 and/or CTEC district. (Planning Board);
CONTINUE TO MARCH 9, 2023
- **Zoning Map Amendment: RC-2 to R-5 and/or CTEC – Nobska Way (Article 46, draft 45)** – to place properties at 3, 4, 5, 6, 8 Nobska Way currently in the RC-2 district in the R-5 and/or CTEC district. (Planning Board)
CONTINUE TO MARCH 9, 2023

Mr. Rector moved to continue the list of continued warrant articles listed above to the March 9th meeting. The motion was duly seconded by Mr. Topham and the motion was carried unanimously.

Vote taken by Roll Call:

Barry Rector *Aye*
Joseph Topham *Aye*
Nat Lowell *Aye*
Vice- Chair Iverson *Aye*
Chair Trudel *Aye*

- **Zoning Map Amendment (Article 66, draft 65)** to place properties located at 105 and 107 Old South Road, 3 Miller Lane, portion of 17 Airport Road and Old South Road/Little Isle Lane (Map 68 Parcels 174 and 208) currently located in the Residential-20 (“R-20”) district in the Commercial Neighborhood (“CN”) district (Williams).

Voting: (Chair) John Trudel, (Vice-Chair) David Iverson, Nat Lowell, Barry Rector and Joseph Topham

Representing: Linda Williams proponent of this article

Discussion: Staff met with proponent and affected property owners and discussed some limitations to the use in the CN district. All agreed that 3 Miller Lane would be removed. Ms. Williams asked that the Board give it a positive recommendation. Chair Trudel stated that this is for the Annual Town Meeting that will require a 50% quantum of vote. Mrs. Trudel stated that the article proponent will be responsible for drafting a legal document to provide to Planning staff and Town Council for review and to hold in escrow until Town meeting. If the Article is adopted at Town Meeting the restriction will be on record at the Registry of Deeds and if the Article is not adopted at Town Meeting Town Council will return the document to the proponent of this article. Chair Trudel opened the floor to the public. Anne Dewez stated that she was not sure where on Old South Road these properties are and whether they are contiguous to other commercial properties. It borders CTEC, CN and R-20 districts. Emily Molden from Nantucket Land Council asked what the reasoning behind CN rather than CTEC. Ms. Williams stated that was an agreement settled with Andrew over several months of discussion since last year’s Town Meeting that CTEC has uses that may not be compatible to a Commercial Neighborhood as opposed to a Commercial Tech.

Motion/Vote: Mr. Rector moved to close the public hearing. The motion was duly seconded by Mr. Lowell

Vote taken by Roll Call:

Barry Rector *Aye*
Nat Lowell *Aye*
Vice-Chair Iverson *Aye*
Joseph Topham *Aye*
Chair John Trudel *Aye*

Motion/Vote: Mr. Rector moved to adopt with the restrictions and the 50% quantum of vote. The motion was duly seconded by Mr. Lowell and

Vote taken by Roll Call:

Barry Rector *Aye*
Nat Lowell *Aye*
Vice-Chair Iverson *Aye*
Joseph Topham *Aye*
Chair John Trudel *Aye*

- **Zoning Map Amendment and County Overlay District Change: 69 Hummock Pond Road (Article 52, draft 51)** – to place property at 69 Hummock Pond Road currently in the LUG-2 district and County Overlay District into the R-20 district and the Town Overlay District. (Planning Board)

Voting: (Chair) John Trudel, (Vice-Chair) David Iverson, Nat Lowell, Barry Rector
and Joseph Topham

Representing: Attorney David Buckley

Discussion: Chair Trudel stated that this Article will be tied to the next and Meg will explain the difference. Mrs. Trudel stated that the key difference between these two articles is that the Planning Board sponsored article includes the change in the Overlay District which is an important component of this. The Board members will need to vote on both articles separately. The staff recommendation was a motion to not adopt Article 69 because it's duplicative in nature and it doesn't include the Overlay District change. Mrs. Trudel stated that she emailed Board members earlier in the day stating that there has been an update to the staff recommendation to not change the zoning to R-20 however change to R-40 instead. Mrs. Trudel stated that this will address the Boards concerns for possible buildability and addresses some of the Land Council's concerns they hold the Conservation Restriction for this property which eliminates any subdivision potential. The property owners are satisfied with and staff is in support of moving that to R-40 instead of R-20. Mrs. Trudel confirmed with Mr. Vorce that the change can be handled through a motion. R-40 is less more restrictive than R-20 therefore allows it to be within the scope of the article and keep the Overlay district change from County to Town. Vice-Chair Iverson asked what the increase buildable square foot to from what it was. Mrs. Trudel stated that right now it is LUG-2 so 4% roughly increase it to 4000 square feet for an R-40 zoning change, the R-20 zoning change would have brought to 5000 square feet. Chair Trudel opened the floor to the public. Attorney David Buckley stated that the homeowner was originally pursuing the R-20 which would allow a 5000 square foot ground cover, allowed when the Conservation Restriction was originally put on the property however after hearing from several parties and listening to their concerns about the building of the property they compromised with R-40. Emily Molden from Land Council stated that they are comfortable with the change.

Motion/Vote: Mr. Rector moved to close the public hearing for Article 52, *draft 51*. The motion was duly seconded by Vice-Chair Iverson and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Barry Rector *Aye*
Vice-Chair Iverson *Aye*
Nat Lowell *Aye*
Joseph Topham *Aye*
Chair John Trudel *Aye*

Motion/Vote: Mr. Rector moved to adopt with the quantum vote of two-thirds with the zoning changes to R-40 and any other additional verbiage from staff. The motion was duly seconded by Mr. Topham and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Barry Rector *Aye*
Joseph Topham *Aye*
Nat Lowell *Aye*
Vice-Chair Iverson *Aye*
Chair John Trudel *Aye*

- **Zoning Map Amendment (Article 69, draft 68)** to place property located at 69 Hummock Pond Road currently in the Limited Use General-2 ("LUG-2") district in the Residential-20 ("R-20") district (Iller).

Voting: (Chair) John Trudel, (Vice-Chair) David Iverson, Nat Lowell, Barry Rector and Joseph Topham

Representing: None

Discussion: No discussions amongst the Board. Chair Trudel opened the floor to the public. No comments were made.

Motion/Vote: Mr. Lowell moved to close the public hearing. The motion was duly seconded by Mr. Topham and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Nat Lowell *Aye*
Joseph Topham *Aye*
Barry Rector *Aye*
Vice-Chair Iverson *Aye*
Chair John Trudel *Aye*

Motion/Vote: Mr. Rector moved not to adopt with the quantum vote of two-thirds seconded by Vice-Chair Iverson and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Barry Rector *Aye*
Vice-Chair Iverson *Aye*
Nat Lowell *Aye*
Joseph Topham *Aye*
Chair John Trudel *Aye*

- **Zoning Bylaw Amendment: Swimming Pool Residential (Article 55)** to amend the definition of “Swimming Pool” as defined in the Zoning Bylaw (Section 139-2 “Definitions”) to include the language, “In R-10, R-10L, SR-10, R-20, and R-40 Districts only, the following criteria must be met: (1) the lot must meet or exceed the minimum lot size for the district, and (2) side and rear yard setbacks of 20 feet shall apply to the residential swimming pool and all associated mechanical equipment” (Sutton).

Voting: (Chair) John Trudel, (Vice-Chair) David Iverson, Nat Lowell, Barry Rector and Joseph Topham

Representing: None

Discussion: Mrs. Trudel stated that she does not see the proponent for this article. Staff’s recommendation is not to adopt. The districts are located within the Town Overlay where oversized lots are not widespread. No discussion amongst the Board. Chair opened the floor to the public. Leslie Snell arrived at 4:30PM. No public comment was made.

Motion/Vote: Mr. Rector moved to close the public hearing. The motion was duly seconded by Vice-Chair Iverson and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Barry Rector *Aye*
Vice-Chair Iverson *Aye*
Joseph Topham *Aye*
Nat Lowell *Aye*
Chair John Trudel *Aye*

Motion/Vote: Mr. Rector moved to not adopt with a quantum vote of two-thirds. The motion was duly seconded by Mr. Topham and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Barry Rector *Aye*

Joseph Topham *Aye*

Vice-Chair Iverson *Aye*

Nat Lowell *Aye*

Chair John Trudel *Aye*

- **Zoning Bylaw Amendment: Swimming Pool-Residential (Article 39)**– to amend Section 139-2A “Definitions” to change “Swimming Pool” to “Recreational Outdoor Water Feature” and to define three types: “Hot tub/spa”, “Small swimming pool”, and “Large swimming pool”. The existing definition of “Hot tub/spa” is proposed to be deleted. Section 139-7A is proposed to be updated to insert the new terms, delete the existing “Hot tub/Spa” row, and to allow a “Recreational outdoor water feature” consistent with current bylaw provisions. (Planning Board)

Voting: (Chair) John Trudel, (Vice-Chair) David Iverson, Nat Lowell, Barry Rector and Joseph Topham

Representing: None

Discussion: Chair opened the floor to the public. Hillary Hedges Rayport would like more information about the definitional change that is being proposed. Ms. Rayport would like the Board or staff explain why the definitions are necessary. Ms. Rayport mentioned Judy Barrett who worked on the Housing Productive Plan. Anne Dewez stated that she echos Ms. Rayport’s comments. Ms. Dewez stated that last time she asked she was slapped down and was told there wasn’t going to be an answer about that there is a need for a new category of small swimming pool, what circumstances, what context is it and desirable needed etc. Ms. Dewez stated that when citizens bring warrant article proposals to the Planning Board, the Board grill the petitioners and ask for data, and you opine on them however when the Planning Board proposes warrant articles it seems the shoe is on the other foot. Ms. Dewez stated that we would like to be edified illuminated and better understand what is being proposed. Ms. Dewez asked for a depth limitation and said that she has provided a lot of data as to why it’s appropriate and her last concern is that there is an inconsistent definition in the zoning code related to commercial swimming pools and residential swimming pools. Chair Trudel stated that it simplifies it and it helps clarify for the Building Commissioner. Mrs. Snell stated that she wanted to respond to Ms. Dewez’s comments about being slapped down at the last meeting. Mrs. Snell stated that she was not at the meeting and Mr. Vorce who is not here tonight, from her understanding that Ms. Dewez did receive a response, the information wasn’t provided in advance to maybe receive the level of detail that she was wishing for. Mrs. Snell stated that this article is clarify what is currently allowed and not allowed, the continent of the article is consistent with the prior votes of Town Meeting last year. Ms. Rayport stated that this is more complicated and the explanation that she was hoping to get was not a simple explanation based on a need and that it’s also clear that the Boards minds are made up to move forward with this. Ms. Dewez asked if she will get an answer to her question about small pool and the definition of commercial pool. Mrs. Snell stated that she did answer her question about why it’s drafted the way it is. Staff felt that the commercial pool did not needed to be included and it’s outside of the scope and can not be added at this point. Vice-Chair Iverson stated that the Board and staff are being questioned by people who are in active litigation against pools in general and the Town and that puts the Board in an awkward situation. Ms. Dewez questioned if the Planning Board is rejecting any consideration of a depth limit that is well outside, the depth of virtually all the commercial hot tubs on the market. Chair Trudel stated that the Board responded that they are trying to clarify for the Building Commissioner and that the Board is under current litigation and are not at liberty to comment and discuss to do that. Leslie Forbes stated that she is not in any litigation with the Town or the Planning Board and had asked if the hot tubs in the current definition already have a gallon edge limit and if so it’s not included in Article 39. Mrs. Snell stated that the current definition which is printed in Article 39 and shown in strikethrough does not have a gallonage for hot tub or spa. Ms. Forbes questioned the new language about the small swimming pool having

benches, jets, can be heated and it can be up to 150 square feet which sounds like a spa, a hot tub splash spot. Mrs. Snell stated that a small swimming pool has options available for design. Ms. Forbes stated that she was astounded that swimming pool residential is being changes to in a residential outdoor recreational water feature and swimming pool commercial was not. Ms. Forbes feels that swimming pool commercial should be changed as well and be put on the docket for the next Special Town Meeting. Ms. Rayport wanted to clarify that she is not in any litigation with the Town over any matter and that she is just promoting a simple zoning code that people can understand that's consistent with. Mr. Rector stated that he's bit confused with Ms. Rayport stating that she's not in active litigation at this point however she did say earlier that she was actively corroborating with Leslie Forbes and Ms. Dewez on this particular thing. Chair Trudel is comfortable with leaving it as it is. Vice- Chair Iverson will hold his motion to close the public hearing. Ms. Dewez point of clarification to Mr. Rector's comment about collaboration what Ms. Rayport was referring to explicitly was helping me last year with Article 54 and getting that out to the public, speaking on behalf of it at public meeting and it has nothing to do with the litigation that is currently pending. Chair Trudel stated that for the record Mr. Rector thanked for the clarification. Ms. Rayport stated that she wanted to clarify that she is not involved in any litigation with the Town and her assistance with this article was doing research about the history and conducting a public survey which was a benefit to the public and was conducted at the request of the Planning Board at no cost to the Planning Board. Ms. Forbes stated that the Madaket Conservation Association who are the homeowners group for Madaket had it's Board meeting yesterday and reviewed many articles coming up for Town Meeting and President Bill Grieder sent two letters regarding outdoor lighting and on pools. Ms. Forbes read letter from Mr. Grieder.

Motion/Vote: Vice-Chair Iverson moved to close the public hearing. The motion was duly seconded by Mr. Topham and the motion carried 4-1.

Vote taken by Roll Call:

Vice-Chair Iverson *Aye*

Joseph Topham *Aye*

Barry Rector *Nay*

Nat Lowell *Aye*

Chair John Trudel *Aye*

Mr. Rector stated that the Madaket Board may have occurred when he was not a Board member. Chair Trudel stated that Mr. Rector was on the Planning Board when the Madaket Board came and had discussions about the VR, Madaket, pools and setbacks.

Motion/Vote: Mr. Lowell moved to adopt with a quantum vote of two-thirds. The motion was duly seconded by Mr. Topham and the motion carried unanimously 5-0.

Vote taken by Roll Call:

Nat Lowell *Aye*

Joseph Topham *Aye*

Vice-Chair Iverson *Aye*

Barry Rector *Aye*

Chair John Trudel *Aye*

IV. Other Business

• **Upcoming meetings:**

- **Monday, February 13, 2023 via Zoom (Regular Monthly Meeting)**
- **Planning Board regular meeting – Monday, March 13, 2023, at 4pm via Zoom**
- **Planning Board joint meeting with Select Board and Fin Com – March 20, 2023, at 4pm via Zoom**

Mrs. Trudel stated that the Planning Board can end meeting now and technically the public may be there when the Planning Board opens the Executive Session and make the announcement that we will not be reconvening back in Open Session. The Executive Session will be a separate Zoom link.

V. Adjournment

Motion/Vote: Mr. Rector moved to adjourn the meeting at 5:18PM. The motion was duly seconded by Mr. Lowell and the motion carried unanimously 4-0 in favor.

Vote taken by Roll Call:

Barry Rector *Aye*

Nat Lowell *Aye*

Joseph Topham *Aye*

Vice-Chair Iverson *Aye*

Chair Trudel *Aye*

VI. Executive Session: Reason #3: To discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares (Edward J. Bartlett, Trustee, et al v. Town of Nantucket, Mass Appeals Court Case No. 2023-P-0090)

Executive Session Zoom Link: <https://us06web.zoom.us/j/82437105450>