

## SELECT BOARD

Minutes of the Meeting of March 8, 2023. The hybrid meeting took place in person at the Public Safety Facility Community Room at 4 Fairgrounds Road; and, via remote participation using Zoom Webinar. Members of the Board present were Jason Bridges, Matt Fee, Dawn Holdgate, Dr. Malcolm MacNab and Brooke Mohr.

### I. CALL TO ORDER

Chair Bridges called the meeting to order at 5:30 PM following the Pledge of Allegiance.

### II. SELECT BOARD ACCEPTANCE OF AGENDA

The agenda was accepted as posted.

### III. ANNOUNCEMENTS

Assistant Town Manager Gregg Tivnan reviewed the following announcements.

#### 1. The Select Board Meeting is Being Audio/Video Recorded.

2. Select Board Announcements/Comments. Ms. Mohr said she has heard of trash blowing out of construction sites and dumpsters and “wreaking havoc” around the Island, and asked contractors to do their best to keep the construction sites and surrounding areas free of debris.

### IV. FOLLOW-UP ON COMMENTS FROM PRIOR SELECT BOARD MEETINGS

There were no follow-up comments.

### V. PUBLIC COMMENT

Megan Perry spoke on comments she made at recent prior meetings, which she said have gone “unanswered”, relating to an “action plan” she believes is needed with respect to the Town’s receipt of state permits, such as a recent state permit relating to the Surfside Crossing 40B development.

### VI. NEW BUSINESS

There was no new business.

### VII. APPROVAL OF MINUTES AND WARRANTS

Mr. Fee moved approval of items VII 1 - 3; seconded by Ms. Holdgate; all in favor, so voted.

#### 1. Approval of Minutes of February 22, 2023 at 5:30 PM.

#### 2. Approval of Payroll Warrants for March 5, 2023

#### 3. Approval of Treasury Warrants for March 1, 2023; March 8, 2023.

4. Approval of Pending Contracts for March 8, 2023 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference. Operations Administrator Erika Mooney noted the DPW contract with T&T Roofing has been taken off. Dr. MacNab questioned the funding source for the Natural Resources Department with Arcadis. Natural Resources Director Jeff Carlson said it was listed under Town Administration in the Warrant article, not Natural Resources. Mr. Fee asked why the T&T

Roofing contract was removed. Ms. Mooney said it is due to procurement issues. Mr. Fee spoke in favor of the Arcadis contract, saying the sediment study is very important for the entire island. Chair Bridges stated that he will need to recuse from the Our Island Home contract with Fairwinds. Mr. Fee moved approval of pending contracts with the exception of T&T Roofing and Fairwinds; seconded by Ms. Holdgate; all in favor, so voted. Ms. Holdgate moved approval of the Fairwinds contract; seconded by Ms. Mohr; so voted 4 – 0 with Chair Bridges recusing.

#### VIII. CONSENT ITEMS

1. Gift Acceptances: Human Services; Planning and Land Use Services. Ms. Mohr read the list of gifts to be accepted as contained in the Board's agenda packet and moved to accept all gifts for their designated purposes, with thanks to the donors; seconded by Ms. Holdgate; all in favor, so voted.

#### IX. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS

1. Robert B. Our Co., Inc.: Request for Waiver of Town Noise Bylaw for Third Sewer Force Main Project on Surfside Road from April 24, 2023 to June 2, 2023, 4:00 PM to 3:00 AM, Monday through Thursday Nights. Sewer Director David Gray reviewed the request and some aspects of the ongoing sewer infrastructure project. Ms. Mooney asked residents to please be patient with traffic delays and take detours if possible. Ms. Mohr moved approval of the request as presented; seconded by Mr. Fee; all in favor, so voted.

#### X. SELECT BOARD'S REPORTS/COMMENT

1. Committee Reports. Chairman Bridges noted this is the fastest that the Board has ever gotten to Select Board reports or an HDC appeal.

#### XI. HDC APPEAL

1. Public Hearing to Consider the Appeal of Virginia F. Andrews of Historic District Commission Approval of Certificate of Appropriateness No. HDC2021-11-5272 for an Addition and Alterations to a Dwelling Located at 2 Stone Alley, Map 42.3.1, Parcel 102. Chair Bridges opened the public hearing and reviewed the HDC Appeals Procedure. He asked the appellant to review her case for the appeal. Linda Williams, for appellant Ginger Andrews, "set the table" and introduced the members of the appeal, including attorney Arthur Reade, Ms. Andrews, Nantucket Preservation Trust executive director Mary Bergman and Preservation Planner Holly Backus. Mr. Reade reviewed the appeal, noting the existing dwelling is listed as individually significant due in part to former owner Eliza Codd, an architect whose sunroom is a classic design feature. He said the large addition approved by the HDC dwarfs the existing dwelling and removes any historic significance from the structure, leaving it no longer historic. He added that because of the topography of the lot, the structure will loom up and be highly visible from Union Street. Preservation Planner Holly Backus stated that she has been consistent with her comments throughout the HDC hearings and said any addition should be subordinate and sensitive with appropriate additive massing to the existing structure, in guidance with the HDC's guideline book, *Building with Nantucket in Mind* (BWNIM) and the Secretary of the Interior's Standards of Rehabilitation. Ms. Backus said in her professional opinion, there would be nothing left of the building's historic integrity if the alteration as designed is constructed. Ms. Williams noted that she put together the historical documentation found in the Board's agenda packet and said that the appellant had repeatedly asked that the addition go to the south rather than the east. She said the HDC repeatedly ignored the Preservation Planner's repeated comments and those of the Historic Structures Advisory Board (HSAB) and was unresponsive to these. Ms. Williams went on to say that she feels the HDC's approval of the addition is arbitrary and capricious and the design eliminates the trademark designs of Eliza Codd. Ms. Andrews, who resides directly across from the subject property, said that Ms. Williams' history of 2 Stone Alley was submitted to the HDC and they realized the HDC's historic survey of the property was incorrect.

Ms. Andrews noted how Eliza Codd's house was a converted barn and the evolution, which can clearly be seen from barn to house, it is worth preserving. Ms. Bergman noted that the Secretary of the Interior standards allow that a building can be significant because of its associations with historic events, persons or historic trends or patterns. Knowing that the building was owned, designed and lived in by Eliza Codd is historic. She stated that preservation doesn't mean nothing can ever change again, but that character defining features should come with the change, such as the sun porch. Ms. Bergman said the HDC did not give the historic structure its due in that they did not consider if it was historic, significant and what should be preserved. She urged the Board to uphold the appeal. Greg Nosiglia of 3 Stone Alley said he feels the area is dense and increasing the building's density could create fire hazards.

Chair Bridges asked the HDC to define its position. Esmeralda Martinez, HDC Compliance Coordinator, reviewed the HDC's position regarding the appeal, a copy of which is in the Board's agenda packet. She stated that the HDC's decision to approve was thoroughly considered, based on the length of the hearings and the duly considered extensive opposition, and is therefore not arbitrary and capricious. HDC member Abby Camp said she feels the HDC was very sensitive to the Codd structure being reincorporated in the new design, noting the main mass was left "pretty much" untouched. She added that the HDC feels the architect did a good job with the plans for the addition.

Chair Bridges allowed rebuttals for both sides. Ms. Williams said the process to approval was like "death by a thousand cuts" and that the new design completely obliterates the existing structure. She gave her definition of arbitrary and capricious. Ms. Andrews said that architect Matt McEachern was more sympathetic to her concerns than a previous architect but feels the design on paper will not look the same when it is built.

Chair Bridges opening the hearing to public comment. Mr. McEachern said he was aware the structure was historic and he feels the existing structure is not being compromised with the additive massing. He said designing the addition to the south would have been counter to design standards, adding that the structure will be retained, not lifted, and will stay intact. Mr. McEachern added that the addition was designed to work with the topography towards Stone Alley. Karen Mehra of 10 Orange Street spoke in favor of the appeal, noting that Stone Alley is a public footpath between Orange Street and Union Street, and said the owner is trying to make it into a private driveway. Attorney Steven Cohen, representing the owner of 2 Stone Alley, noted that when Mr. McEachern and he first came to work for the owners, they told them that they wouldn't get what they wanted. He said that Mr. McEachern made design changes to the project until the HDC felt it was appropriate. Mr. Cohen disagreed with Ms. Williams' definition of arbitrary and capricious and gave his own definition. He said that he feels the HDC was within its jurisdiction to approve the addition and although some may not like the decision, the HDC made a reasonable and rational decision. He added that the Eliza Codd history is not relevant. Nina King of 14 Orange Street said part of the HDC's job is to maintain the historic character of an historic streetscape and historic structures. She said the new design doubles the mass of the existing structure and that it doesn't maintain the historic streetscape of Stone Alley. Donna Martino said Nantucket needs the HDC to preserve and protect the historical integrity of historic structures and said "it is incredulous" that the structure will double in size. Mr. Reade asked the Board to not allow the loss of this historic fabric. Ms. Williams said that more than half of the fabric of the existing structure will be demolished. She added that the basis for which the HDC decision is arbitrary and capricious is the substantial minutes showing the comments by the HDC members themselves, who spoke against every design concept until it was approved. She said this is an historic structure on an historic bank. Diane Coombs spoke in favor of remanding the matter to the HDC. Ms. Backus said the Department of the Interior standards state that additive massing of an individually significant building should be smaller

than existing and this is not the case with this approval. Ms. Holdgate stated there is a difference between an individually significant structure and a contributing structure and that the “real missing piece” is that she doesn’t see a determination by the HDC on this matter. Ms. Williams explained that the Historic American Buildings Survey (HABS) at the Library of Congress for this building is incorrect, as is the HDC survey form in the PLUS office; they both have the building listed as the George Upton house. She added that through research, they now have dated the house and correctly identified it and the structure pre-dates all information currently on record. Ms. Williams said the HDC in its review bypassed the correct history of the structure even when it was noted by the Preservation Planner. Mr. McEachern said he feels the HDC viewed the structure as individually significant. Mr. Cohen stated Ms. Holdgate makes a good point and his client has said the HDC survey form states the structure is not individually significant and couldn’t understand the “high level” of review which took place to preserve the structure. Ms. Holdgate restated that she feels there is a missing determination by the HDC that the structure was being treated as individually significant and her reading of the packet seems to indicate the building was treated as contributing. Ms. Backus said that the structure is individually significant and the HDC did not make that determination as part of its review. She added that she felt the HDC was more interested in the architecture proposed than the history of the building. Ms. Holdgate said she feels the HDC should have made a determination of an individually significant structure and what parts of the house needed to be preserved and this is missing from the record. She added that this was a high level of significance and proper review should have taken place. Ms. Bergman agreed that is missing. Ms. Mohr asked if the structure designation makes a difference to the Department of the Interior in what is allowed vs. the scale of an addition. Ms. Backus stated that the applicant is adding 1,051 square feet to an existing structure of 550 square feet, and the Department of the Interior Standards state the addition should be smaller than the existing structure. Ms. McEachern said that the 1,051 square feet includes a basement under the first-floor deck and as an applicant, he can only work with the information he has and the surveys stated the structure was contributing, although he said Ms. Backus consistently stated during meetings that the structure was individually significant. Mr. Cohen said he feels a distraction is occurring and that the HDC is not required to make a determination whether a structure is historically significant or contributing or if it meets the Department of the Interior standards. He added that he feels the HDC followed the proper process. Ms. Williams stated that she and Ms. Backus stated that the structure was individually significant at every meeting but it is not in the record because the HDC never discussed the structure’s historic aspect. Mr. Reade stated that the HDC’s approval of an addition to an individually significant dwelling makes the case for the decision to be considered arbitrary and capricious. He asked the Board to grant the appeal and remand the matter to the HDC to be properly discussed and to document the status of the dwelling. Mr. Fee stated he is leaning towards remand but is finding it hard to consider the decision arbitrary and capricious because of the amount of time the hearings took. He questioned reuse of existing windows and whether the exterior walls will be demolished. Mr. McEachern answered. Mr. Fee says he feels the changes being made are substantial. Ms. Mohr moved to close the public hearing; seconded by Dr. MacNab. All in favor, so voted.

Ms. Holdgate asked if would be appropriate for the Board to remand the matter to the HDC to consider the status of the house as individually significant, the features that should be preserved and the scale and to make a determination to that effect. Attorney George Pucci from Town Counsel’s office answered affirmatively, if the Board feels the record is lacking as to a determination on the structure. He added that a definition of arbitrary and capricious is to find there is an absence of information or evidence in the record that a reasonable mind would deem reasonable to support the decision and if the Board feels that is lacking it is a reason to find the HDC’s decision arbitrary and capricious. Ms. Mohr voiced concern that while information finding the structure individually significant was presented to the HDC multiple times, there is no record that the HDC formally acknowledged that the building surveys on file were incorrect. Ms. Holdgate

agreed with Ms. Mohr. Dr. MacNab said he feels the HDC didn't follow guidelines for individually significant structures in granting approval of the addition. Mr. Fee asked what the goal of remand is and what would happen if the HDC says the structure is individually significant but still approved the changes proposed. Ms. Mohr replied that the goal of remand would be for the HDC to make a finding to clarify the structure status as either individually significant or contributing and to confirm the procedure and guidelines were followed with that determination for the decision and so moved to that effect; seconded by Mr. Fee. Ms. Holdgate asked to add language to the motion that the HDC can review for features important to preserve based on the structure's individually significant status. Ms. Mohr accepted that addition to her motion. Mr. Pucci said that is an appropriate motion. He answered questions from Board members. Mr. Pucci suggested the Board move to affirm the appeal and remand the matter to the HDC for a determination on the issue of the building being an individually significant structure and if it is found so, that the HDC apply the performance standards for individually significant structures to the review. Ms. Mohr said that is the intent of her motion. Mr. Fee said it is difficult for him to find the HDC's decision arbitrary and capricious. Dr. MacNab said that if the structure is individually significant and no determination was made to that effect and guidelines were not followed, on that basis then he feels the HDC's decision was arbitrary based on a lack of information and lack of following the guidelines; he said he supports the present motion. Chair Bridges asked Mr. Pucci if by affirming the appeal and remanding is the Board stating that the HDC decision was arbitrary and capricious. Mr. Pucci said for something to be considered arbitrary and capricious, either the HDC acted contrary to law or there is an absence of evidence in the record that a reasonable person would find adequate to support the decision. He noted that Ms. Mohr's motion falls under the latter. Mr. Bridges said he doesn't feel the HDC's decision was arbitrary and capricious at all and it was said tonight that the structure was presented as individually significant; he asked if he can consider that or only go with what is on record. Mr. Pucci said it is the record. He added that the ability to protect historically significant structures and settings is at the heart of the enabling legislation of the HDC and it compels the protection of historically significant buildings and settings. Chair Bridges asked what happens if the motion fails. Mr. Pucci answered that if the motion fails then the appeal fails. Some discussion followed on arbitrary and capricious and individually significant structures. On Ms. Mohr's motion, so voted 4-1. Chair Bridges was opposed.

## XII. ADJOURNMENT

Ms. Holdgate moved adjournment at 7:43 PM; seconded by Mr. Fee; all in favor, so voted.

Approved the 22<sup>nd</sup> day of March 2023.

**SELECT BOARD  
MARCH 8, 2023 – 5:30 PM  
PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD  
AND REMOTE PARTICIPATION VIA ZOOM WEBINAR  
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- VII. 1. Draft minutes of 2/22/2023
- VII. 4. Pending Contracts spreadsheet
- VIII. 1. Gift summary and recommended motion; Sandbar gift (Human Services); Saltmarsh Senior Center gift (Human Services); PLUS gift
- IX. 1. AIS re: RBO request for Noise Bylaw waiver; RBO request
- XI. 1. HDC appeal of 2 Stone Alley; HDC Appeals Procedure; Submitted appeal; HDC memo re: appeal of 2 Stone Alley approval; HDC View Pack; Memo from Preservation Planner dated 3/6/2023; letter from Emeritus re: HDC process