



HISTORIC DISTRICT COMMISSION JOINT SELECT BOARD MEETING

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Raymond Pohl (Chair), Diane Coombs (Vice-chair), John McLaughlin, Abigail Camp, Vallorie Oliver,
Associate Commissioners: Stephen Welch, Terence Watterson, Jessie Dutra

~~ MINUTES ~~

Wednesday, April 10, 2019

Public Safety Facility, 4 Fairgrounds Road, Community Room – 6:00 p.m.

Called to order HDC Meeting at 6:40 p.m. by Mr. Pohl

Staff in attendance: John Hedden, HDC Compliance Coordinator
Attending HDC Members: Pohl, McLaughlin, Welch
Absent HDC Members: Coombs, Camp, Oliver, Watterson, Dutra
Attending SB Members: Dawn Hill Holdgate (Chair), Jeff Bridges, Rita Higgins, Matt Fee, Kristie Ferrantella
Town Counsel: George Pucci, K&P Law P.C.
Documentation: X-2 Historic District Commission Oversight of Town Sidewalk Improvement in the Old Historic District; Memorandum dated March 7, 2019 re: Follow up – Responses to street repair memo; GIS map of sidewalk reconstruction in the Old Historic District; HDC Appellant Submission re: 25 Westerwyck Way; HDC file material re: 25 Westerwyck Way; *Building with Nantucket In Mind*; Opinion from Anderson & Krieger, LLP; HDC enabling legislation

Agenda adopted by unanimous consent.

PUBLIC COMMENT

None

II. DISCUSSION WITH THE SELECT BOARD

1. Proposed Town Sidewalk Improvement in the Old Historic District (OHD)

Sitting Pohl, McLaughlin, Welch

Concerns (6:40) **Hill Holdgate** – Noted that this is not a public hearing.

Gibson – Reviewed packet containing background on downtown sidewalk improvement projects. Reviewed meeting to discuss with the Chair of HDC, Chair of the Select Board, and Chair of Commission on Disability the issue of historic preservation with walk arounds and public meetings; came up with the idea of establishing a work group comprised of a member each from the Planning Board, HDC, Commission on Disability, Select Board, Tree Advisory Committee, Pedestrian Advisory Committee, Nantucket Historic Association, and Nantucket Preservation Trust (NPT) to implement the Town Sidewalk Improvement Plan and provide criteria for the restoration; since it might not be feasible to treat areas outside of the OHD the same.

Bridges – Sidewalks and safety and bicycle safety and Americans with Disabilities Act (ADA) compliance are paramount; but he believes we can have safe sidewalks and preserve everything.

Kevin Kuester, 83 Main Street – There are legal opinions “out there” that state the HDC does have jurisdiction over Town roads and sidewalks. If HDC doesn’t have jurisdiction, he wants to know why.

Pohl – Reviewed the normal HDC application review process. What is missing here from that process is the oversight and final inspection and signoff. He feels there should be oversight throughout the process of a project as important as the road and sidewalk repair.

Higgins – She believes HDC has an important role in this and it is essential to have a preservationist for oversight; that benefits everyone.

Mary Bergman, NPT – The point about oversight and expertise is important with Nantucket being a National Historic Landmark; the Department of Interior have guidelines for restoration within historic areas to include preserving the materials, craftsmanship, and construction techniques. Another point is we are seeing two different treatments within one OHD. Urged documentation of the historic streets.

Tom Montgomery, 33 North Liberty Street – He feels the issue of having professional craftsmen to put the sidewalks and cobblestones back on Main Street.

Virginia Andrews, 1 Stone Alley – Referenced a letter she sent to the Select Board about what they learned from the Pacific Club about setting a goal of preservation and using the appropriate people. Asked the Select Board to set a goal of historic preservation.

Mary Ann Rayport, 89 Main Street – Thanked the Select Board for having this discussion. Asked for more discussion on the legal aspect: the letter of the law versus the spirit of the law. Read a statement from the 1967 HDC guidebook about HDC’s role in maintaining structures within their original settings and the era before 1846 as well as maintaining

the beauty, charm, and authenticity of Nantucket. We would not be having this discussion if the sidewalks were repaired using the material in place. The policy is about lifting everything up and put it back in Portland cement. We need a line that defines restoration versus reconstruction. The idea of the committee is a positive step. A good policy will save us all time. Submitted at the table Guidelines for the City of Baltimore for protection of historic landscapes. Having the HDC oversight is critical to document existing conditions, guidance is followed, the process is public and transparent, and there is a power of reversal and enforcement.

Sandy Kendall, 8 Roberts Lane – His concern that a precedent is being set allowing the Department of Public Works (DPW) to make changes to our historic streets without making application to the HDC.

Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for 86 and 88 Main Street – We think the HDC has a big role in this and it is important they have a role in the committee. We believe the HDC does have jurisdiction and the Town needs to apply for a Certificate of Appropriateness for any work in connection with work on historic sidewalks and streets; these are structures. The HDC has been provided with a legal opinion from the Boston firm of Anderson and Krieger (A&K) that indicates the HDC does have jurisdiction; he can provide a copy of that if necessary. He has never seen the opinion from Town Counsel that the HDC does not have jurisdiction and would be interested in seeing it. The HDC is a Town board charged with this type of oversight and has the expertise and knowledge.

Pucci – Before anyone disagrees with his opinion, said it would help for him to render an opinion. He is not aware of having provided a written opinion to the Board about DPW work Town sidewalks and streets. Routinely over the years, there have been items that come up which he said the Town didn't need to apply to the HDC; but those opinions have nothing to do with the work before the Board tonight. He looked at the A&K opinion; he doesn't find it on point. Our advice or opinions are restricted to the parameters of the law and what options the Town has; they do not intrude on policy issues. The relevant issues regarding HDC jurisdiction: A&K cited the 2009 case of Martins Lane, a private project, decision that there is not HDC jurisdiction, reviewed the case and decision rendered by Judge Nickerson; the Superior Court finding that a public way is not under HDC jurisdiction if not a binding precedent; the HDC Act provides exemption under the language of the statute itself specifically §5.c about ordinary repair or maintenance that doesn't change the outward appearance and meeting the requirements for public safety.

Bridges – Mr. Pucci made some interesting points about public safety exemptions; however, if there is historic materials or craftsmanship, the question is oversight that allows it to be quickly repaired. He wants some kind of oversight and process.

Ferrantella – It goes back to this proposed group that could set the guidelines.

Fee – He thinks it should go to HDC; the Town should set the example. If it doesn't go to the HDC, the proper materials and methods might not be employed. He thinks what has happened is one person said one thing and that changed with the telling. The Island should be a leader in preservation to include materials. Referenced the document on conservation and ground services. We should direct that the work be done properly.

Hill Holdgate – Her concern is that the HDC process doesn't fully get at what we're looking for in terms of historic preservation; there is real concern with how these historic materials are handled in the core OHD. The HDC jurisdiction is to review exterior architectural features, not the process. Working with a team of true preservationists is the more appropriate action.

Higgins – Agrees with Mr. Fee about the Town taking a leadership position. She doesn't know where the HDC fits into the process, though they have a role. She feels what is missing is a commitment to using professionals and experts. Preservation is an element of HDC purview; maintenance, craftsmanship, and inclusivity are not.

Pohl – He realizes all sorts of people need to be involved in this: arborists, preservationists, the HDC in terms of oversight; we aren't suggesting we are the only people to review the work.

Welch – This is an incredibly important topic that speaks to our identity as a national resource regarding maritime heritage and preservation tourism. Within the Act, HDC is entrusted with the economic benefit that comes from preserving our heritage. He wants to support the concept of the workgroup with professional resources. He feels it is critically important to have the historians, preservations, and professionals involved to help the HDC formulate guidelines and definitions. This workgroup could take on an advisory role and be tasked with issuing advisories on the projects, that would be helpful to the HDC and making determinations. His concern is the efficiency of the process; we don't have the professional expertise on the HDC and personal proclivities get involved in the HDC discussion process. He agrees that the OHD is important and preservation and restoration of elements are important; however, there are areas within the community of the old core that aren't what we think; some are significant, others not so much – e.g. concrete curb along Washington Street. We all have a mental image of what the OHD is; the workgroup could decipher what gets done where and how.

Andrew Lowell, 4 New Lane – The temperature that is out there is the proliferation of razor-sharp granite curbing used out of Town and is now being introduced in Town. That sharp-edged curbing is damaging expensive equipment and narrows the street. The old curbing was rounded by craftsmen and it is available; rounding can be done to the sharp curbing installed.

Fee – His bread trucks lose a tire or two each summer to the sharp-edged granite curbing.

Holly Backus, 320 Polpis Road – She holds a preservationist degree. Suggested the workgroup look to other jurisdictions; we aren't the only historic district in the country or Massachusetts.

Unidentified – She would like clarity on the concept of “complete streets” regarding the integrity of downtown. A concern of hers is the use of new materials that rescales everything and superimposing a suburban/urban initiative on 200+ year-old streets.

Kuester – Asked if the board would put a pause on further work at the Pacific Club until issues can be worked out.

Bridges – the Pacific Club area isn’t in the cue for this year; he thinks the plan is for 2020 and this process will be in place before that.

Hill Holdgate – Closed the public discussion. Asked how the Board wants to move forward.

Select Board Consensus – There is a need professionals and experts; the HDC has a role if the Board is unsure what that is; bring this back for further discussion within a month.

Gibson – Asked if Town Administration staff needs to prepare anything for that further discussion.

Hill Holdgate – Staff should have further internal discussion about other ideas for this process. The recommendation doesn’t fully cover the issues.

Gibson – Comments have included, professional resources, specific process, how to apply preservation techniques, how guidelines can be used to preserve craftsmanship. There is a project to repair the Washington Street sidewalk to Salem Street; we’ve been approached by the American Legion to extend that repair to 21 Washington Street and increase ADA accessibility into the building. The thought is to extend that repair work from Salem Street to include the Nantucket Regional Transit Authority bus station.

Rob McNeil, Director DPW – The idea would be to remove any pre-cast concrete curbing and replace with granite. The work in front of the American Legion would be similar minus the widening; there are no encroachments along that stretch. We do have a sample granite curb with chiseled top and will have a sample with a relief edge. The issue with ADA accessibility at the American Legion is the ramp was not properly installed. The intent is to complete the current project by Daffodil Weekend; the next stretch would be completed by Memorial Day. This would be a remove and reset with not-precast concrete.

V.Andrews – At the Artist Association at 19 Washington Street, water comes in the building every time it rains. We didn’t know this was going on; it brings up issues with abutter notification that has been going on. The first floor is at grade.

Gibson – This just came up; there has been no opportunity to bring it up with abutters. That issue could be fixed with the workgroup.

Michelle Elzay, 55 Union Street & 42 Pine Street and Board of NPT – The Legion is an historic structure and NPT holds a preservation easement; a standard should be set before sidewalk repairs are made in front of another historic building.

Bridges – Right now it’s all broken concrete. The American Legion reached out to us.

Hill Holdgate – She thinks the current condition needs to be documented; it could be as simple as photos of what is being replaced. This is a change and we have no process in place. She thinks the HDC could review it and could be a test case. This would be an improvement of material in this case.

Fee – If we had a preservation specialist advisor, they could recommend how to proceed.

Bridges – There is no widening or modernization and it is a truck route; he’d be okay with it being a process test case.

Pucci – If you go the HDC route, there is also a finding of non-applicability provided for in the statute.

A.Reade – The HDC has a consent agenda; this could be easily be handled that way.

Higgins – She supports making it accessible and safe; she’s not in favor of moving this forward without a process in place.

M.Rayport – There is a budget in place for sidewalk; why isn’t preview part of that budget. We’d like to have a historic materials survey completed; much has been done by Preservation Institute of Nantucket (PIN).

Bridges – In the spirit of disclosure, he does own and run a coffee shop within this area; he doesn’t own the building.

Motion made by Ms. Higgins to do the improvements when we have a process in place so this lasts the next 100 years.

Seconded by Mr. Fee.

Bridges – The motion is good but vague and not doing anything for years because there is no process in place.

Hill Holdgate – She’d be more comfortable with a plan to get the work done and letting HDC review it in the absence of a process.

Gibson – Suggested moving forward with this and trying to get it onto the HDC consent agenda; if we wait for a process to be in place, the work won’t get done before Summer.

Pohl – Explained the consent agenda process. With this project, we could review the issue under other business and not vote; we would get the temperature of the HDC.

Pucci – For a test case before the policy is established, recommend doing it as Mr. Pohl suggested, which reserves the right on exempt projects.

Hedden – Explained why documentation is important. He’d like to see a process for the Town regarding roads and sidewalks for the OHD. Any way we document the materials and work would be helpful.

Bridges – Offered a friendly amendment that the section of sidewalk repair from Lobster Trap to the NRTA station go to HDC for discussion under other business.

Amendment not accepted.

Ms. Higgins motion not carried unanimously.

Motion made by Ms. Higgins that work proceed on Washington Street from Coffin Street to Salem Street after review and recommendations by the HDC as a test model for a future process. Seconded by Mr. Bridges. Motion carried unanimously

2. Appeal of COA 71644 for a Pool at 25 Westerwyck Way, M-P 82-120.

Sitting

Pohl, McLaughlin, Welch

Concerns (8:22)

Hill Holdgate – Opened the public hearing at 8:21 p.m.

Joseph Squicciarino, 23 Westerwyck Way, appellant – We are abutters to 25 Westerwyck Way. Cisco is a beach community characterized by small lots with upside-down houses and natural landscape. Reviewed the impacts the neighboring homeowners focused on: natural landscape, permanent displacement of groundwater, sense of place, and neighbors. Reviewed concerns about the deficiencies in the HDC process and governance as it pertains specifically to this project: conflict of interest of Mr. Jesse Dutra, no discussion on why the location was not appropriate as stated by the general contractor, integrity of the approval process resulting in a breakdown of checks and balances, personal impact of the approved location, and final vote was 3-2 in favor. The real issue is the Select Board has to consider the arbitrary nature of the decision.

Pohl – We had a similar discussion for a similar application in the same neighborhood. The HDC feels for the neighbors who have to look down on a pool, especially from upside-down house 2nd-floor decks; however, we are empowered to vote on the architectural features visible from a publicly travelled way; we have no jurisdiction over private views. Regarding the arbitrary and capricious aspect, the Select Board is charged with deciding if HDC acted in an arbitrary and capricious manner, whether or not HDC deliberated in a manner consistent with other similar applications; recently, this application was viewed five times by the HDC, which is unusually often; this went through a rigorous review process. We were satisfied at the end of the day that the pool would not be visible from any public way. He submitted a rebuttal to the appeal.

Hedden – Through his position with the Town, he takes a neutral point. To Mr. Squicciarino's point about what's on the COA versus the stamped plans, it is not unusual since the COA reflects the initial submission and don't require an updated application; the dimensions on the stamp plan are what was reviewed.

J.Squicciarino – What was approved was a pool 38X18; the COA shows 20X45. Asked what purpose is served by the COA and what is the legal recourse. Mr. Pohl didn't address the conflict of interest concern and that the general contractor for the applicant stated it was not an appropriate location for the pool; no one asked one question toward that.

Hill Holdgate – Mr. Dutra isn't listed as a voting member on 25 Westerwyck Way.

J.Squicciarino – He wasn't a voting member but did provide input. He voted on my pool and Mr. Gagliano's pool.

Jay Maroney, Cohen & Cohen Law P.C., for the landowner – Mr. Dutra was not a voting member, he is allowed to speak to the application as is anyone. The heart of the matter is the standard of review and whether or not it was arbitrary and capricious.

Joseph Gagliano, 10 Westerwyck Way – He supports Mr. Squicciarino's position. We feel integration of pools is not part of what Cisco is with flat land, natural growth, and upside-down houses. This pool intrudes upon the privacy of the Squicciarinos; it is an invasion of noise, light, and privacy.

J.Squicciarino – Mr. Dutra wasn't a voting member on this project, but he was on Mr. Gagliano's pool project. There either is or is not a conflict of interest. For a board member to go out to a building association meeting after my pool or Mr. Gagliano's pool and passionately campaign to defeat a citizen warrant is not appropriate behavior for a board member. Reiterated that no HDC member asked the project general contractor why the proposed location for the pool was inappropriate.

Welch – He did not sit on this application. Silence on an issue does not constitute approval. On the issue of conflict of interest, Mr. Dutra will recuse if he has financial interest on any matter that would make him not impartial; that is the standard. There is a difference between providing input at the request of other members on a matter that requires expertise and speaking against something that impacts your livelihood; the latter is not a conflict of interest under the Conflict of Interest Law.

Higgins – Asked about the process regarding public comment and who and who does not vote. Vallorie Oliver was recused throughout the process but commented during public comments.

Pohl – Ms. Oliver recused because she had done work for the owner previously. Regarding Mr. Dutra, you might not be voting on a project, but he encourages everyone to make comments. We state with clarity who the voting members are. Before he was on the HDC, that was the normal course of events – non-voting members can speak as members of the public.

Higgins – Asked why Mr. McLaughlin was voting then recused at the last hearing.

- Pohl** – Mr. McLaughlin has been prone to do that; he can't explain why. You don't need to express the reason you are recusing.
- Higgins** – Asked why Diane Coombs had been a voting member then ended up participating in public comments.
- Pohl** – Applications that go on for weeks, people miss meetings causing attrition of sitting members. He's guessing Ms. Coombs missed one or two meetings and didn't Mullen back on.
- Hill Holdgate** – It looks like Ms. Coombs vote was to hold the application without opening.
- Rob Lowell** – There are three steps in the HDC process: the application; the approval; the actual size.
- Hedden** – This went to five meetings and was reduced in size to 38X18 from 45X10 as noted on initial application. The reviewed and approved pool plan is stamped; the COA was issued with a number and recorded at the Town Clerk's office.
- R.Lowell** – Feels not updating the application to reflect the final approval is asking for trouble.
- Pucci** – About the COA, the HDC uses as the application the COA form; once the vote is recorded on the form, it becomes a COA. Where the vote is indicated, there is a place to refer to the plans.
- Hill Holdgate** – During the HDC process, the plans change; when the COA is final, each individual page of the plan is stamped with the number; they are not using the practice of revising the application information.
- Pucci** – It would be sufficient to identify the plan.
- Maroney** – It is the stamped plan that goes forward to the building department, the builder, and the inspector.
- J.Squicciarino** – Hearing that confirms for him that the process is flawed. The COA should reflect the appropriateness of the plan and final approval. Questions its validity if it has erroneous information. At the minimum the process is sloppy. The Conflict of Interest is a bigger issue.
- Pucci** – You have to have specificity about what is being included in the approval. The issue about incorporating a plan that was approved was covered. There is a difference between a non-voting member and a recused member; recusing members walk away from the table. It is appropriate to have a non-voting member to sit at the table and provide comments. If a member is recused, that member should not be sitting at the table participating in the discussion.
- Higgins** – There was a member who had recused and made comments as a citizen.
- Pucci** – They should not have been at the table.
- Pohl** – Ms. Oliver recused but she had things to say, so spoke as a private citizen.
- Pucci** – If a member is recused, it is lawful for them to speak as a private citizen as an interested person.
- Welch** – What's not reflected in the record is that Ms. Oliver moved to the area where members of the public speak on the matter; she did not remain in her chair.
- Hill Holdgate** – Closed the public hearing at 8:49 p.m. Asked what the actual decision-making process is.
- Pucci** – We go under the 1977 Gumley versus the Board of Selectmen of Nantucket case; that court clarified the burden of proof to be applied in these cases. The HDC ruling should not be overturned unless the Select Board finds it was based upon legally untenable grounds or is unreasonable, whimsical, capricious, or arbitrary. If you think they got it wrong for aesthetic reasons, it would be improper to overturn their decision. Based upon the chair's recitation of the decision, whatever the reason, the statute only talks about the exterior portion of the building or structure that is open to public view; view from an abutting private residence is not reason to overturn an HDC decision. Context is also something the HDC considers; when talking about that, it must be visible from a publicly accessible area.
- Fee** – He thinks over the years, standards of the HDC have changes; 20 years ago, the HDC did not allow bushes to hide something because they can die or be removed. That seems to no long be the case.
- Pucci** – He would have to say that if the board has a condition that shrubs be maintained, that is within their jurisdiction. That creates enforcement issues down the line.
- Fee** – If you follow the current trend to its logical conclusion, you could build a big berm around your structure. What Ms. Oliver was talking about was are berms and privet appropriate in Cisco, he would argue that it is not appropriate.
- Pucci** – If HDC is applying the standard consistently, that is not arbitrary and capricious. Their ability and jurisdiction to look at surroundings is relevant to that.
- Pohl** – The HDC has no jurisdiction over them creating a 4-foot berm around their property.
- Fee** – It might be; the HDC can dictate landscape. Say they create the berm then show up at the HDC with an appropriate structure, which has the berm all the way around; the HDC has the ability to say the berm is not appropriate with the design of the house. That would completely change the nature of the neighborhood.
- Pucci** – The HDC can't prevent landscaping with plants, trees, and shrubs; they can say a structure is inappropriate and screening it with plants, trees, and shrubs is inappropriate for a setting.
- Higgins** – The relationship of a berm or plants is considered as it relates to the surrounding context. We don't have a standard or process about how use of landscape is applied to screening.
- Pucci** – Berming is different from plantings. In terms of consistency and process, if they are allowing things to be screened by landscaping, they are creating a potential enforcement issue; the landscaping needs to be maintained in perpetuity.
- Fee** – To move the pool away from a public way, it moved closer to the neighbor. He thinks common sense should have been employed.

Pucci – The inappropriateness of a neighbor having the see a pool isn't protected by the HDC statute. There are other jurisdictions that have to be complied with.

Higgins – Asked the difference between berms and vegetated screening.

Pucci – If the argument is that something is visible because of a berm, HDC has to look at the appropriateness of the berm within the neighborhood setting.

Bridges – He understands the abutter's feeling of injustice. He does not think there was any conflict of interest; the decision was not arbitrary, it was not whimsical in his opinion. He feels the HDC acted within their jurisdiction. If there is no standard or process, they didn't do anything wrong.

Higgins – Feels when there is no process, the decision was arbitrary. She feels part of the definition of arbitrary is that there is no process.

Hill Holdgate – When she was on the HDC it was common process to manipulate grade and landscape for pools, sports courts, even fire pits to screen them; that was tied to the approval. We talked about the standard of screening and where types of plantings were appropriate. Looking at the record, the HDC went through that process.

Higgins – Cisco's natural state doesn't allow for a lot of the plants. Her concern with lack of process regarding vegetation, it seems the proposed vegetation doesn't respond to the natural landscape; it's not indigenous. There seems to be no way for the HDC to vegetate in Cisco without a process.

Hill Holdgate – There always has been a process on how to landscape out for screening as well as using a structure. She feels HDC went through the process.

Fee – He's concerned about the direction vegetative screening is taking us. We are trying to encourage natural landscaping. The elephant in the room is the impact of the pool on the neighbor, neighborhood, and environment; the pressure is increasing against the Island to add these to tourist homes.

Ferrantella – Not liking the landscaping, asked if that is arbitrary or if the Board is putting its own judgement on it.

Pucci – Yes, that would be substituting your judgement for the HDC's. Read Mr. Pohl's letter to the Select Board that required indigenous and evergreen plantings to screen the pool. It is within HDC jurisdiction to make that finding.

Higgins – It appears the HDC has jurisdiction of landscaping and how vegetation and structures fit into the natural environment of an area. Her concern is that there is not a process standard on how to do that. About the conflict of interest, on many boards we rely on the professionalism of members; he is concerned about the recused member coming back into the conversation.

Motion made by Mr. Bridges to uphold the HDC decision. Seconded by Ms. Ferrantella. Carried 3-2//Higgins and Fee opposed.

Hill Holdgate – She's a little concerned about best practices; the applicant should correct the application when they submit revisions. Also, recused members shouldn't participate unless there is a very compelling reason to participate.

Pucci – Recused members should be away from the table and not participate; if they do, they need to make it clear in what role they are giving comment. Another concern is the recusing process is a member who participates fully in the discussion then recuses from the vote; if that member has a reason to recuse, they should not participate in the discussion; if that member doesn't want to vote, they can abstain.

III. ADJOURN

Adjourned at 9:44 p.m. by unanimous consent

Submitted by:

Terry L. Norton