



ZONING BOARD OF APPEALS

Public Meeting

2 Fairgrounds Road

Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Commissioners: Ed Toole (Chair), Lisa Botticelli (Vice chair), Susan McCarthy (Clerk), Michael J. O'Mara, Kerim Koseatac
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Friday, May 10, 2019

4 Fairgrounds Road, Public Safety Facility Community Room – 2:00 p.m.

Called to order at 2:10 p.m. and announcements made.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; Terry Norton, Town Minutes Taker
Attending Members: Toole, Botticelli, McCarthy, Koseatac, Thayer, Mondani
Absent: O'Mara, Poor
Town Representative: Ed Marchant, 40B Advisor; George Pucci, K&P Law, P.C.

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. April 19, 2019: **Motion to Approve.** (made by: Koseatac) (seconded by: Thayer) Carried unanimously

II. OLD BUSINESS - DELIBERATIONS

20-18 Surfside Crossing, LLC Surfside Crossing 40B Hanley

The Board will have deliberations regarding the application for a Comprehensive Permit in accordance with M.G.L. Chapter 40B. The Locus is situated at 3, 5, 7 and 9 South Shore Road and is shown on Assessor's Map 67 as Parcels 336, 336.9, 336.8, and 336.7 and is shown as Lots 4, 3, 2, and 1 on Plan Book 25, Page 50 as recorded at the Nantucket Registry of Deeds. The total lot area of the combined parcels is approximately 13.5 acres. Evidence of owner's title is recorded in Book 1612, Page 62 at the Nantucket Registry of Deeds. The property is located in a Limited Use General 2 (LUG-2) and within the Public Wellhead Recharge District.

Voting Toole, Botticelli, McCarthy, Koseatac, Mondani

Alternates Thayer

Discussion **Toole** – We hadn't addressed traffic. We all agreed to take a look at various materials and discuss traffic.

Koseatac – He has concerns about traffic because we have an intersection rated D; it will end up rated F. It's not a silver bullet but it needs to be conditioned.

Botticelli – Some of the proposed road improvements, which might have mitigated the issues with the intersections, were shot down at the ballot. We also talked about the single entrance/exit for this area.

Toole – David Iverson gave us the stats indicating the percentage increase was dramatic. Within reason, we could ask for mitigation. Asked if the ZBA could slash units.

Marchant – You have peer reviews that seem to support the 100-unit project; that report talked about mitigation, which apparently won't happen in a reasonable time. You could say traffic would be helped by a reduction in units; you are looking at the 92-unit plan. The reduction in bedrooms between the 100-unit plan and the 92-unit plan was modest at best. It is one factor the ZBA takes into consideration.

Botticelli – Tetra Tech did their study on June 28. Asked if the Board received a follow up on elements brought up in the reports.

Toole – He doesn't think so; we didn't get any updated data. It's fair to say the traffic would increase quite a bit. We have to be careful about picking which consultants we want to listen to.

Antonietti – Referred to a study she believes was carried out in early August.

Toole – Any other conditions we impose that might reduce the number of bedrooms would help on traffic, but we want to state part of the thought process is traffic and health and safety of the neighborhood.

Mondani – We can make the same statement regarding groundwater and sewer and pollutants going into the ground. The studies don't support the idea that traffic will become a "silver-bullet" issue.

Thayer – He'd rather see a reduction in units. The Town is not making traffic an issue regarding developments.

Mondani – The more he digs into this, the more he feels we should not approve the condos for a lot of reasons; that would be a big reduction in bedrooms. If this were all single-family units (SFU), it would still be consistent with local needs; the cost per condo unit is staggering with the smallest being \$1200 per square foot versus \$600 per square foot with the SFUs.

Toole – The applicant has repeated the condos would be for year-round residents; some of the SFUs will be owned by summer residents. Versus saying we don't "like/want" condos, it would be reasonable to build a condo per "x" number of SFUs.

- Pucci** – You will have a lot findings in your decision about existing traffic problems and other site review challenges; you will use those findings to support the site-design review conditions imposed on the project.
- Toole** – One could make the argument for 5,000 square feet (SF) as the smallest lot size. The 5-bedroom lots would go to 6,250 SF; the duplexes go to 7,500 SF; the 4-plexes go to 8,750 SF. Another way to look at it is having about 855 SF of open space per bedroom; that would result in the 4-plex lots being about 9,300 SF.
- Marchant** – Address it on the site-design issues; that’s a better way. The per-square-foot price numbers on condos, the smallest studio is \$872 per square foot; 1-bedroom is \$781 per square foot; 2-bedroom is \$706; 3-bedroom is \$588. As they increase the size, the cost per square foot comes down.
- Toole** – We want a metric that we think is reasonable for site plan review. As buildings get larger, they need more space, so the lots get larger. They had one lot that was a pork-chop.
- Pucci** – If you require that all lots have 50 feet of frontage, it might or might not be a substantial change.
- Toole** – If we get to a certain number of criteria that don’t fit this plan, a new plan will be devised.
- Pucci** – It would be good to work with the plan to come up with site-design revisions; it would be better to work with this plan (92-unit) to the extent possible.
- Botticelli** – Doesn’t think we should state a minimum of 50-foot frontage except for Lot 41. Not sure about Lot 16. Four undersized lots should be increased to 50-foot frontage.
- Toole** – The duplexes are all on small lots; that line of four should become three with the fourth tucked toward the rear. 1250 SF per bedroom is a reasonable average.
- Mondani** – They are asking for groundcover waiver, but we’re giving them bedrooms.
- Toole** – Instead of a waiver, we state the groundcover allowed. The footprint can’t be different than as shown on the plan. 30% groundcover is reasonable.
- Marchant** – What is tricky, the footprint on the engineering plan doesn’t match the building plan; we need to check to ensure the footprint matches. If they are different, you have to state which set of plans takes precedence.
- Botticelli** – She could have someone in her office scale a large set of plans. We’ll come up with a chart of the maximum allowable groundcover.
- Pucci** – Once he has a consensus if this will be a denial or an approval with conditions, he will prepare a draft decision for discussion at the next deliberation. The decision would list the findings and factual background, then get into the site-design conditions and waivers being granted followed by conditions related to sewer and infrastructure.
- Mondani** – Asked if there was talk about increasing the buffer.
- Botticelli** – The buffer is 50 feet in the front and 25 on the sides and must remain in a natural vegetated state. We said no spas on any lots. Every lot is 1,250 SF per bedroom. All parking is on the lot. Minimum lot frontage is 50 feet except for Lot 41; minimum lot size is 5,000 SF. 6,250 SF minimum and minimum of 3 parking spaces for 5-bedroom SFUs; 5,000 SF for 4-bedroom units; 7,500 SF with 2 parking spaces per unit for duplexes. Maximum multi-family unit is the 4-plex on lots no less than 8,750 SF.
- Marchant** – He is having trouble fitting eight 4-plexes into the space currently occupied by the condos and two 4-plexes. The condos have a total of 40 bedrooms. Seven 4-plexes fit; that is 28 units.
- Toole** – We can suggest where the fourth duplex would go. There will be a modification in the number of SFUs if they insist on keeping 5-bedroom units because we are dictating the minimum size for lots. If they want 15 6,250 SF lots, they will lose some smaller lots; we can cap the number of SFUs.
- Marchant** – Suggested not limiting the SFUs but to limit the 4-plex, multi-family units (MFU).
- Toole** – We’re saying no more than seven 4-plexes and four duplexes; the rest are SFUs.
- Mondani** – Asked if this would allow them to redesign the roadway.
- Pucci** – The wording would be “subject to modifications otherwise approved.”
- Toole** – Lot 16 is a corner lot, so the frontage doesn’t have to be 50 feet. Pointed out the 5,000 SF lots are not compatible to this area; but it’s the minimum allowable lot size on Nantucket. The lot size is exclusive of roads and ancillary parking.
- Botticelli** – We have a maximum square footage for the recreation building of 1,500 SF.
- Pucci** – The recreation building you said is 1,500 SF on the ground with a total of 4,000 SF; the lot stays the same, so the space given up becomes open space.
- Marchant** – Asked if a minimum frontage was established for the duplex lots. Another metric to consider is the minimum distance between closest points of adjacent buildings.
- Toole** – Duplex lots should have a minimum frontage of 70 feet; the lot size should include the parking. The 4-plexes should have larger setbacks and 75-foot frontage.
- Discussion about how much space and setback the 4-plexes should have versus what the Fire Department requires between structures.
- Toole** – Minimum distance between 4-plexes will be 30 feet. On SFUs, the setback will be 5 feet on one side and 10 on the other. There will be a split-rail fence delineating the entirety of the buffer zone and no disturbance of the buffer zone.
- Thayer** – The developer said parts of the buffer would be augmented. He feels they should enhance it.
- Botticelli** – If the buffer is not disturbed, there should be no need to augment it; that was added when they were going to do work in the buffers.

Marchant – Regarding buffer zone enhancement, suggested adding, “as determined by the building inspector.”

Toole – Let’s define “enhancing” rather than designing the planting plan. The tree sizes don’t meet the Town requirements and no waiver was requested for that; this planting plan can’t be accepted. There are 143 street trees shown on the L-1 drawing and they should meet the Town caliper requirements.

Mondani – Doesn’t think Japanese Black Pine should be allowed because it is considered invasive. There is a comprehensive list of what is invasive, and it should be referenced.

Marchant – Reference ‘non-invasive’ as noted by the Nantucket Conservation Commission.

Thayer – He feels they should be allowed to augment the trees in the buffer zone; they are proposing 119 trees in the buffer. If Black Pine is a concern, we can replace it.

Mondani – He will provide the invasive species list.

Toole – He doesn’t count the buffer trees in his count of 143 trees. He will find the bylaw on the minimum caliper of tree; he doesn’t believe their proposal is adequate.

Mondani – Asked if there will be a groundcover ratio.

Botticelli – She will come up with the groundcover for each lot and building. We talked about 10-foot side and rear setbacks and front setback 5 feet.

Discussion about the setbacks.

Mondani – Back to the trees and the waiver, it was a catchall “to the extent possible” options.

Pucci – That is a little confusing; there is a distinction between waiving going to another board and waiving the substantive requirements. When issuing a waiver, you waive the requirement to go to that Board but not the substantive standards. For the trees, you would indicate no waiver is being granted.

Botticelli – She wants to discuss the pool.

Toole – The pool dimensions are 20X48; he has no concerns with that pool size. No spa in the pool.

Antonietti – Asked if they want to stipulate Americans with Disabilities Act (ADA) access to the pool.

Marchant – All common-use areas have to satisfy ADA requirements, including the pool.

Botticelli – Hours of operation: 8 a.m. to dusk.

McCarthy – Asked about age usage and parental accompaniment.

Marchant – That is covered by the homeowners’ association (HOA).

Toole – There was a question as to whether open space is public or private; they want private.

Marchant – That is normal if it belongs to the people who live there; since the roads are private roads, the open space should be private.

Pucci – There is another concern from the standpoint of a subdivision, the Board ascertains whether or not public space is required.

Antonietti – Beach Plum Village allowed use of their public space by some people who lived outside the subdivision but within a certain distance of the pool.

Toole – A reasonable condition is no outside membership; use is limited to residents and their guests.

Pucci – On other projects, you’ve addressed public access. The recreation building has the condition of no commercial use.

Toole – Asked if a maintenance building on its own lot requires a waiver.

Pucci – That depends on the bylaw at the time of the application. If they didn’t ask for a waiver, don’t grant one.

Antonietti – She will research the bylaw regarding the maintenance building and the recreation building being on their own lots.

Thayer – The condo buildings don’t show the gutters draining to their own on-site drainage systems.

Pucci – That was addressed: all buildings must be guttered and have their own on-site drainage systems.

Toole – There is a bylaw that talks about driveways being a certain distance from intersections. They didn’t ask to waive that.

Pucci – In your decision, you specify which waivers are granted and that all other bylaws and requirements apply. You will have a provision specifying you are not granting certain waivers as may be reflected on the plans. To the extent the plan may show inconsistencies, the list supersedes.

Marchant – Suggested wording, “in addition to action taken on waivers requested by applicants the Board realizes the following waivers apply and will grant them.”

Toole – What about materials for the curb and sidewalk; they suggested asphalt. He’d prefer to see granite curb and brick sidewalks as in Beach Plum Village; Sachem’s Path was all asphalt with Cape Cod berm.

Botticelli – We didn’t want the lots to look like Woodbury Lane; the sidewalks along the MFUs should match the SFUs, which is shown as bluestone.

Koseatac – Historic District Commission has come down on the type of bricks used and how they are laid. Thinks we should go with their requirements, if we go with brick.

Thayer – Brick pavers might be too formal in there. Asphalt looks nice if done right. Suggested concrete curbs, and native chip-seal finish on sidewalks and roadway or conventional asphalt with granite curbing and bluestone on all walkways. Driveways are noted as gravel but must have aprons per code.

- Marchant** – You can give them the option regarding material. Often there is a condition that you can't increase the number of parking spaces, especially with these small lots.
- Thayer** – Asked if the unit count changes, how do we deal with the change in the number of parking spaces.
- Botticelli** – They are providing 230 parking spaces, which is more than required.
- Toole** – He feels the parking bylaw is inadequate; questions if additional parking should be required.
- Mondani** – We should leave the parking as is.
- Pucci** – If you're concerned about increasing traffic, the question is why increase parking.
- Toole** – We are relying on Fire Chief Steve Murphy to get back to us regarding fire equipment access.
- Toole** – Asked if 4-plexes should have sheds for bike storage and such.
- Discussion about use of basement space for bedrooms but no dwelling units below grade.
- Toole** – We aren't going to get into the owner-ship governance. They did mention renting those units for up to 30 days; asked if that could be restricted.
- Marchant** – Tucker Holland, Housing Specialist, noted that on the revised edition of the year-round residency program, the 30-day rental was deleted. You can restrict the affordable homes but not the market homes. If a year-round resident is defined as living here for at least 6 months, they can rent their homes for six months. He expects a lot of those will become Airbnb.
- Toole** – There was public concern that the lighting plan needs to meet local regulations protecting the night sky. Asked if street lights should be allowed.
- Discussion about restricting the types and where to permit light poles and bollard lighting along pathways.
- Botticelli** – She's concerned about safety in the multi-family housing area.
- Pucci** – Suggested referencing that local regulations for the lighting must be met; there should be enough ambient lighting from the housing since this is a dense area.
- Antonietti** – Read Nantucket Code 102-3 regarding lighting.
- Mondani** – Regarding water, what we heard from the public, water is almost a silver-bullet issue. We could make them wait until Wannacomet Water Company gets the Massachusetts Department of Environmental Protection (MaDEP) to issue the permit.
- Pucci** – That would get challenged. The Town is operating under an expired permit but MaDEP gave them requirements to meet and has yet to issue any permits for increased water flow to any Town in the Commonwealth. The Town is waiting for the action.
- Koseatac** – It should be stated; in this case, this doesn't meet the standard.
- Marchant** – You have to treat this 40B the same as any other development.
- Pucci** – The Water Company thinks there is capacity to meet the needs of this subdivision; you could condition it subject to MaDEP approval of the increased capacity. This is a legitimate issue; it is frustrating on the Town's part that the State is behind and operating under outdated conditions.
- Mondani** – They can still drill their own well; we might require them to do that.
- Marchant** – If you drill a well that serves more than 24 bedrooms, it is considered a public water supply. There will be a disparate treatment argument raised against that; and you will lose.
- Pucci** – He will put water conditions into the draft decision and then the Board can talk about it.
- Toole** – We never got data about the infrastructure regarding pressure or fire suppression. We would have to condition that the plans are vetted by Chief Murphy, who was going to weigh in on that, and the Town Engineer.
- Marchant** – Once the Comprehensive Permit is granted, the applicant must submit a final set of plans to the issuing agency and a set of building plans to the Building Department.
- Thayer** – We didn't talk about staging or construction. The Beach Plum Village site was clear cut and looked awful for 6 to 7 years. This should be seeded at a minimum when construction is done.
- Toole** – We could require all the preliminary roads and infrastructure be in place before the lots are cleared and the lots are cleared only when they are to be constructed. We did that for Sachem's Path and it worked.
- Marchant** – That is not unusual to detail what conditions must be satisfied prior to construction. They can't get a building permit until the phasing plan is reviewed and approved. The approving agent can be stated.
- Koseatac** – He thinks it should be the Town Engineer who reviews and approves the plan.
- Antonietti** – Explained how Ed Pesce, Pesce Engineering, ensured Sachem's Path met the requirement to have the roads and infrastructure in place before any construction.
- Marchant** – The Board was very concerned about protecting the safety of residents while construction was on-going.
- Toole** – We will wait to see the phasing plan.
- Pucci** – He will put in conditions; the decision should specifically mention maintaining the safety of the residents living on site.
- Mondani** – He has concerns about the HOA and its structure; he wants to ensure the developer is responsible for all other expenses while this is being developed. If the market crashes and buildings don't sell, they need to pay the expenses of the people already living there.
- Marchant** – You want to ensure you are dealing with the applicant, not the homeowners.

Toole – When this is 75% complete and the homeowners want something but the developer doesn't. We want the developer in there until completion.

Marchant – He's concerned about how costs will be allocated so that the affordable house will be reasonable. Given that condo fees could be based upon beneficial interest based on the market, those numbers need to be realistic.

Toole – You get a building permit for a market rate only as you build an affordable. The unit numbers have to be *pro rata*; the bedrooms have to be *pro rata*; and square footage of units have to be *pro rata*. Dust control during construction will have to be part of the construction management plan, as well as noise control: 7:30 a.m.-7 p.m. Monday through Friday and 7:30 a.m.-1 p.m. on Saturday; no construction on Sunday or holidays. Looking at Mr. Chessia's report, he says 2.5" road binder according to code; that falls under the auspices of the Town Engineer. A comprehensive sediment-erosion control plan is required; we never got one to review.

Marchant – You can add a condition that the applicant is responsible for further peer review for anything the Town doesn't do.

Toole – He wants to review Chessia's report.

Pucci – All those conditions will go into his draft for ZBA review. There are other recommended conditions elsewhere that will be included in the decision.

Toole – The only thing he thinks is outstanding is the Historic District Commission review. He's happy to postpone that.

Pucci – For the waivers, he intends to go through those and put in the list of granted waivers and rationale in the draft decision.

Discussion about the next meeting dates: Monday, May 20 at 12:00; Friday, May 31 at 2:00; & Friday, June 7 at 2 p.m.

Toole – Suggested Ms. Antonietti send the Board members the conditions for Sachem's Path and Rugged Scott.

Motion

Motion to Continue to May 20 at 12:00 p.m. in the 4 Fairgrounds Road Community Room. (made by: Botticelli)
(seconded by: Mondani)

Vote

Carried unanimously

III. ADJOURNMENT

Motion to Adjourn at 5:38 p.m. (made by: Koseatac) (seconded by: Thayer) Carried unanimously

Submitted by:
Terry L. Norton