



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, June 7, 2019

4 Fairgrounds Road, Public Safety Facility Community Room –12:00 p.m.

Called to order at 12:26 p.m. and Announcements made.

Staff in attendance: Eleanor Antonietti, Zoning Administrator; Terry Norton, Town Minutes Taker; Tucker Holland, Housing Specialist
Attending Members: Toole, Botticelli, McCarthy, Koseatac, Thayer, Mondani
Late arrival: Koseatac 2:00 p.m.
Absent: O'Mara, Poor
Early departure: Thayer, 3:37 p.m.
Town Representative: George Pucci, K&P Law, P.C.

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. None

II. OLD BUSINESS

20-18 Surfside Crossing, LLC Surfside Crossing 40B Haverly/Reade
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, Thayer, Mondani
Alternates Koseatac
Discussion **Toole** – We didn't get the working draft until today. Page 35 Item 122, there is no dollar amount for traffic mitigation.
Pucci – He didn't know if the formula changes for the dollar amount if the unit number changes.
Toole – It seems ridiculously low, but it was based upon a formula; the last iteration was for the 100-unit plan. We can pro-rate it for the reduced number of units.
Botticelli – It is a small amount of money; it shouldn't change.
Thayer – The Town has bigger traffic problems, which this developer can't fix; he thinks it's reasonable to pro-rate the recommended mitigation amount.
Holland – The original was a *pro rata* based upon a percentage of the potential impact.
Pucci – Your condition must be related to the impact from this development; it's a way of quantifying it. Since he was last here for deliberations, the conversation turned to what the board wanted to do with the project; following that meeting, he asked for a deadline to be extend to a week from today, June 13. Deliberations have to be completed on Monday, June 10.
At the last meeting, the consensus the Board reached was there were no grounds to deny a water permit but there was concern about the State increasing the flow capacity. You reached consensus on accepting the Weston & Sampson option for the sewer. He added language about the Town's efforts on affordable housing, facts about the information received at the hearings, findings, and recommendations from Mr. Chessia. Recommend deliberating whether they want to deny or approve with conditions. If you vote to approve with conditions, you need to vote the number of units and the form of those units. Also recommends the Board authorize the chair to work with counsel to finalize the terms of the conditions; it would then go to Ms. Antonietti who would then file the decision with the Town Clerk.
Toole – As much as possible, he would prefer there is unanimous agreement on the items mentioned by Mr. Pucci. He thought the Board also offered the notion of an alternative sewer being the on-site force main. Either way you have to hook into the manifold at the other end. The Town preferred option is a gravity system.
Pucci – There was an issue about how and where to connect the new force main.
Toole – The gravity feed is below the head water; it needs to be pumped to the manifold. The manifold will need to be modified.
Pucci – If you can condition the project so it is feasible for them to get what they need without fixing the Town's problem, that would be defensible as written now. The Weston & Sampson recommendations were very clear to the

Board; what the Town would prefer is not in keeping with what Weston & Sampson recommends: read the consultant's recommendation. If you want that in, he will add it to the final draft.

Thayer – That is reasonable. The Town has always allowed properties to install a force main on their property and pump to the treatment plant; if Surfside Crossing can do that, they should be allowed to. There is only one pump at the Surfside Wastewater Treatment Plant (SWTP).

McCarthy – The language as proposed would be treating this project the same as a 40A project.

Toole – We are all good on their not being allowed to tie into the existing force main. They should be allowed to put in their own force main. Mr. Gray said he was willing to be part of the process and funding for a gravity line; if we leave it as is, the developer wouldn't have to foot the bill, just pay their fair share.

Pucci – That was said but there is no written affirmation. We could add language that this would be subject to the Town paying a share.

Thayer – It is unreasonable for the developer to install the gravity line to the treatment plant and not get some remuneration from the Town; once in anyone along South Shore Road would be able to tie into that line.

Pucci – We can put in the Town's preferred option and what it would be subject to; he can do that by Monday. The question is do you still want to allow the Weston and Sampson option.

Toole – There is a timing issue; to get anything done by the Town would take years. The developer would install the infrastructure, give it to the Town, and get recompense.

Consensus is to leave out the alternative.

Botticelli – She made some architectural changes to the fourplexes that were agreed upon in past deliberations. She wishes the fourplexes had a better sense of entry. Based upon the last deliberation, we were limiting the fourplexes to four. For each building type, she filled out the Historic District Commission (HDC) application.

Toole – From the HDC standpoint, we are comfortable we did a reasonable job. They ultimately have to come back with revised plans that we have 90 days to review; their revisions have to be within the parameters we set. Asked if anyone read the draft.

Botticelli – Page 11, she came up with 72 units with a maximum of 256 bedrooms. She based that on 40 single-family units (SFU), a maximum of 8 duplexes and a maximum of 4 fourplexes.

Toole – Asked for a consensus regarding 5-bedroom units.

McCarthy – She thought we came up with 16 5-bedrooms with 4 to be affordable. Asked about 3-bedroom units.

Botticelli – Had 24 3-bedroom units; that's 6 affordable. Asked if there's language indicating that the affordable units within the fourplexes can't all be in one building.

Pucci – You keep backing into the number of units. Asked how the Board members feel they might vote.

Discussion about how members currently stand regarding voting to deny or approve with conditions: denial – Mondani; approve with conditions – Botticelli, McCarthy.

Pucci – You need to have a rational basis for your decision and be able to support it. In the case of a denial, the issue before Housing Appeals Committee (HAC) is if the decision was consistent with local needs. With approval with conditions, the issue is whether or not the conditions render the project uneconomic and are those conditions consistent with local needs. You have a better chance of prevailing in an appeal of an approval with conditions since the burden of proof is on the applicant. In the end, you have to have a rational basis for your decision.

Mondani – He is swayed by Mr. Pucci's point of burden of proof.

Botticelli – If we do reduce the unit count, the bedroom count goes down.

Toole – He's willing to reduce the number further. Asked about the notion of *de facto* denial.

Pucci – The *de facto* denial was raised by Ed Marchant, whose concern was that if you reduce the units, the HAC could consider that a *de facto* denial and apply the burden of proof to the ZBA. In his opinion, the HAC has no jurisdiction to make such a ruling; he would argue that. Nantucket real estate is valuable, so it is a different environment where it would be hard to argue any project as uneconomic; he feels it would be hard for the developer to make that argument against the reduction of units in the economic environment of Nantucket. His concerns with eliminating the fourplexes are: give the developer flexibility to show you are being reasonable.

McCarthy – She doesn't find 5-bedrooms as offensive as the fourplexes; she would prefer to see those eliminated.

Toole – He thinks with the reduction of units the developer could still meet the 15% profit. On this site, the developer could fit 54 SFU on 1,000 square-foot lots with green space.

Botticelli – If you stay at 40 SFU, with 4 5-bedrooms, 28 4-bedrooms, and 8 3-bedrooms, that's a 240-bedroom count if you keep the fourplexes. We should state that each fourplex and duplex have to be on their own individual lots with parking on the lot; that would eliminate the big parking area. Her biggest concern is bringing down the number of bedrooms.

Toole – The 5-bedrooms have always been his issue; it is a direct intensity issue. Asked if the members are willing to eliminate the 5-bedroom SFUs.

Botticelli – That would bring the bedrooms down; could go with 4 5-bedrooms with one to be affordable, 28 4-bedrooms, 8 3-bedrooms, 8 duplexes with 6 bedrooms per building, and 4 fourplexes with 7 bedrooms per building.

Consensus agrees with that calculation and approving with conditions.

Botticelli – According to the HDC, the utilities can't be visible from the street; they can be on the side but need to be screened. We want to say no utilities on the front and not visible from the street. If the utilities are on the side and can be seen from the street, they have to be screened.

Toole – Page 11 VI, 72 units with a total of 232 bedrooms. Page 12, Item 10 Site Specifics Conditions, we want to note that all parking is on the lot. The maximum number of SFUs is 40 with the maximum of 4 5-bedrooms SFUs one of which must be affordable. Item K should be added listing the maximum number of all types.

Botticelli – Page 21, Item 71, should include, "interior finished materials" after "exterior finished materials".

Pucci – Asked if there were any thoughts on the facts as noted in the draft decision.

Discussion about whether or not it is necessary to mention the January 2018 force main failure; consensus agrees it isn't necessary.

Toole – Page 5, under 100-unit plan, should mention there was a lack of meaningful open space.

Mondani – He thinks it is relative to mention there is a 40B unit next door that is 100% affordable; this would cluster four 40Bs in South Shore Road area.

McCarthy – Miacomet Village is also 100% affordable. Rugged Scott is also not far away.

Toole – These are within a mile of each other; they are essentially contiguous.

Pucci – Asked how these fit into Town planning; are they being clustered in the country overlay district and are there other areas to diversify development.

Mondani – This concentration of 40Bs is an item of local concerns.

Botticelli – On Page 13, 11.B. would like to see a line – new iii – establishing the setback for the duplex lots: 10, 10, 10, & 10.

Under 11.B.i. should add only duplex per lot after the lot size.

Under 11.C Fourplexes, asked about i. "if on the same lot," we have each duplex on its own lot; these should as well; think vii should be integrated with i since they both talk about lot size.

Thayer – Suggested not stating a lot size for a fourplex but identifying the setbacks.

Toole – He prefers using 10,000 square foot lots for each duplex; the idea was to create space. Restrict the number of fourplexes, the basic lot size, and put parking on the lot.

Botticelli – Each fourplex should be on individual lot. with a setback minimum of 20 on the side and rear and 10 in the front; that should be C.iii. C.iv. is a minimum 7 parking space on each lot. The fourplexes have basement bedrooms we were okay with so C.v. should be stricken. We don't need C.vii. about the minimum square footage for the lot.

McCarthy – Thinks C.v. should say living unit in the basement.

Pucci – C.viii becomes C.vii limiting fourplexes to 4.

Botticelli – Asked if fourplexes should be removed from D. Duplexes have their own entrance so don't have to say it. When we were talking about the multi-unit buildings before, we wanted each unit to have its own access and outdoor space; but that complicates the architecture.

Pucci – They could request a modification on that if there is a compelling reason. He will delete D on page 14.

Toole – The pool dimensions were presented by the applicant; it isn't a condition we're imposing.

Under landscaping the 143 street trees were presented by the applicant: Item B asked to insert "tree" and the zoning by law section.

Under open space, we've never seen a calculation of the amount of green space shown on the plan, but it can't be any less.

McCarthy – There is no playground anywhere on this plan.

Pucci – About the pool, asked if you wanted to say, "no pools on individual lots."

Toole – Add "no pools or spas on individual dwelling lots." Add it under each section for the dwelling types.

Asked about the basketball court, should it be eliminated or not.

Botticelli – Suggested a subsection F under the Recreation building allowing a playground or green space in lieu of a smaller recreation building.

Antonietti – The recreation building is on a lot which is 38,196 square feet as shown on the plan.

Toole – Reiterated that there can be no less green space than the amount shown on the plan, but it can't be any less.

Item 17 Buffer Zone, you can disturb it for routine maintenance like surveying.

Item 18 Parking/Roadway Access, the 188 off-street parking spaces "as shown on the plan."

Botticelli – Suggested a minimum of one additional on-street parking space per dwelling unit.

Toole – Page 18 42 add "... as required by law."

Page 18 47.e. "Modeling is not given in drawings..." that doesn't sound like a condition; suggested "modeling must be submitted and approved to ensure..."

Page 19 Under 5

0, the hydrants are part of the infrastructure which must be in place before construction of dwelling units begins.

Thayer – Hydrants are installed as part of the water infrastructure; when that goes in, so do the hydrants. At least a portion of them should be operational before construction begins.

Pucci – Public Sewer needs more conditions to be added per the Sewer Department's usual conditions; he's adding that in for Mr. Gray. Same thing for water; the conditions noted during the hearing, Wannacomet Water Company has

conditions they impose; those will be added. Compliance with State and Federal requirements, we reference the endangered species act; but we have to reference the on-going appeal that needs to be resolved before they move forward.

Toole – Asked about language for the Homeowners Association (HOA). The make-up needs to be a percentage of residents so one group of owners can't gang up against another group.

Pucci – Mr. Marchant is working on that.

Asked again if the Board is at the point of voting the project; we're at the point of refining language of the conditions. You've reached consensus on the conditions to be included. The main conditions are already included; the other conditions are protecting ZBA concerns. You would vote on the project, not the document. You would authorize the chair to finalize the permit in accordance with the vote.

Discussion about whether or not to vote today. Consensus wants to wait.

Toole – Asked why the deliberations can't be extended to Thursday, June 13 and vote on the final document then.

Pucci – Suggested taking a break to allow the developer's counsel to contact the principals to ask for an extension.

- Break 3:39 to 3:55 p.m. -

Pucci – Counsel couldn't contact a principal; she'll get back to Mr. Pucci Monday about whether or not the deliberation extension is granted.

Wanted to get in this draft Chessia's overall conditions.

Toole – Page 29 87, asked to add "may occur" or some verb between sales and before. Asked if there is anything about construction fencing; it might make sense while infrastructure is going in, also they should fence off construction area from occupied dwellings. He would think the developer would want that. It should be clearly stated that no construction vehicles may be staged on South Shore Road; they must all be within the development. People should not have unfettered access to the site; at least access to the construction site should be blocked when they aren't there.

Discussion about where to include the blocking of access to the construction site.

Toole – Mr. Marchant sent some additional conditions, some of which were covered; suggested Mr. Pucci review it for anything that might need to be included. He addresses snow removal and what should happen if space is inadequate. Read a condition from Page 7 of the Rugged Scott decision. There's also good language in that decision about the buffer situation, surveying, endangered species studies. There's language about the units being owner occupied and no more than 2 adult persons per bedroom.

McCarthy – There is also good wording about the equality of voting.

Pucci – He will review Mr. Marchant's comments and the Rugged Scott decision for wording and inclusion into this decision. He and Mr. Marchant have reviewed the affordability restrictions to ensure we aren't over reaching and the 40B units remain 40B units. He will run the provision about capping the administrative at \$250,000 past Mr. Marchant.

Botticelli – At one point we talked about the duplexes not being identical or set to mirror one another. The same holds true for the fourplexes.

Toole – He doesn't see why the developer would want to have a cluster of cookie-cutter structures. We talked about flipping the duplexes or mirroring each other.

Pucci – That would typically be an HDC issue. If you want to add that to your decision, you should do it. You're attaching your mark up as conditions; you can make a note on that.

Toole – "No unit shall be occupied as dormitory or like housing and no more than 5 individuals unrelated by marriage may reside in a dwelling"; he thinks that should be added.

Pucci – You don't need to add something covered by zoning for which there is no waiver request.

Toole – Other than setting up when the HOA takes over from the developer, there's not much to do with the homeowners. We should include a dollar amount to set up the HOA account.

Pucci – Mr. Marchant said he is looking for HOA provisions.

Stated he's still unsatisfied about the traffic mitigation at the entries into the development; you haven't had discussions about that.

Toole – Referred to the Rugged Scott decision regarding traffic coming out of the development.

Antonietti – There was discussion about the multi-use paths and crosswalks at South Shore Road.

Toole – He thinks a bike path from the development up to the Surfside Road intersection would be a good idea. The plan shows crosswalks at both entrances but not a certified path. If Mr. Pucci isn't comfortable with just a plan, we can make a reference in the decision. There isn't enough room to continue the bike path from the top entrance to the intersection.

Pucci – Option A is a possible extension to Thursday to vote; he'll get a final draft to the Board by Tuesday. Option B is the deliberations end and the Board votes on the project Monday; Monday you would want to authorize the chair to work with counsel on the final decision to go to the Town Clerk.

Continued to Monday, June 10 at 1 p.m. in the Training Room by unanimous consent.

N/A

Motion
Vote

III. OTHER BUSINESS

1. None

IV. ADJOURNMENT

Motion to Adjourn at 4:45 p.m. (made by: Botticelli) (seconded by: Koseatac) Carried unanimously

Submitted by:
Terry L. Norton