



ZONING BOARD OF APPEALS

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

Commissioners: Susan McCarthy (Chair), Lisa Botticelli (Vice Chair), Elisa Allen, John Brescher, Michael O'Mara,
Alternates: Mark Poor, Jim Mondani

~~ MINUTES ~~

Wednesday, April 19, 2023

This meeting was held via remote participation using ZOOM and YouTube.

I. CALL TO ORDER

Called to order at 4:05 pm and Announcements made by Ms. McCarthy

Attending Members: McCarthy, Allen, Botticelli, Brescher, O'Mara, Mondani

Staff in attendance: William Saad, Land Use Specialist, Nickesha Sheriff, Administrative Specialist

Absent: Botticelli, Poor

Late Arrivals: O'Mara @ 4:08

Early Departures: -

II. APPROVAL OF AGENDA

Motion: Motion to Approve the agenda, as drafted. (made by: Brescher) (seconded by: Allen)

Vote: Carried 4-1 McCarthy, Allen, Brescher, O'Mara(Aye); Mondani (Nay)

III. UPDATE

1.

Litigation update regarding Surfside Crossing 40B.

Discussion:	Attorney George Pucci - Clarified that the Select Board, as the Town's executive authority, controls litigation involving the Town. - Explained that the ZBA is a named party in ongoing litigation regarding the Housing Appeals Committee (HAC) decision, currently under appeal at both the HAC and Superior Court. - Stated that on April 13, 2023, the Select Board voted in executive session to dismiss the litigation. Due to Open Meeting Law (OML) restrictions, the ZBA could not participate in this decision. - Noted this was the first ZBA meeting with a quorum to discuss the matter but, due to attorney-client privilege, he could not disclose the Select Board's executive session discussion. The Board - Noted that the Town and developer issued a joint statement, but Board members were not provided a copy and learned of it through the local newspaper. - Requested Staff to read the statement. Joint statement was read by Erika Mooney.
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The Board

- Asked if there is a firm agreement in exchange for withdrawing the agreement.
- Expressed frustration over undergoing a comprehensive permit review but not being included in the executive session discussing the lawsuit dismissal.
- Inquired about the enforcement of the joint statement.
- Asked who will have jurisdiction over the Special Permit.
- Suggested the Town rezone the property instead of having the ZBA grant a Special Permit.

Pucci

- Clarified and confirmed, the ZBA will continue to hold jurisdiction over the Special Permit, which must now be constructed in compliance with the Comprehensive Permit Approval as amended by the Housing Appeals Committee

The Board

- Questioned if the ZBA can obtain independent Counsel

Pucci

- Provided an opinion based on the Town Charter, confirming that the Select Board retains authority over litigation.

The Board

- Asked who is representing the ZBA. If Town Counsel is serving in this role for both the Select Board and ZBA, how can attorney-client privilege be invoked with the Board?
- Expressed the belief that independent counsel is needed in this matter.
- Agreed that an executive session is necessary to discuss legal strategy.

Pucci

- Provided an opinion that the Board would not have grounds to hold an executive session once litigation is no longer pending.

The Board

- Asked whether the items mentioned in the press release would necessitate a modification to the Special Permit.
- Expressed willingness to serve as the enforcement authority for the provisions outlined in the joint statement.

D Anne Atherton

- Raised a procedural question, acknowledging that the Select Board voted to dismiss the lawsuit but inquiring whether the dismissal has been formally filed.
- Asked if, in the absence of a formal filing, the ZBA has the option to request a delay.

Pucci

- Noted that the dismissal has not yet been formally filed.
- Clarified that the Board has the ability to submit any request to the Select Board.

Joan Stockman

- Asked for clarification on whether Town Counsel was present during the joint agreement between the Select Board and the developer.

Bruce Perry

- Expressed the opinion that the ZBA should vote to object to the Select Board's litigation.
- Questioned whether the Select Board has the authority to overrule the decision of any Board with which they disagree.

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	Pucci - Clarified that the Select Board does not have the authority to overrule a Board's decision, but they retain control over litigation. Meghan Perry - Expressed sympathy with the Board's position. - Verified that the Board received the questions she had emailed. - Questioned whether there is a conflict for the Town to enter into negotiations with the developer. The Board - Asked who will be responsible for reviewing the Board's final approval in comparison to the HAC's amended approval. Saad - Noted that the final plans were received on March 21st and have been forwarded to the relevant Town departments and the Board's peer review engineer, John Chessia. Emily Molden - Expressed gratitude for the Board's efforts. - Agreed with Bruce Perry, stating that the Board should object to the dismissal of the lawsuit.
Motion:	Motion to draft a letter to the Select Board in response to the joint statement with Surfside Crossing, expressing the Zoning Board of Appeals' desire to be involved in clarifying and enforcing the bullet points. The letter will also request a delay in withdrawing litigation until a satisfactory agreement is reached, including the ZBA's involvement. (Made by: O'Mara) (Seconded and amended by: Mondani)
Vote:	Carried 5-0// O'Mara, Mondani, McCarthy, Allen, Brescher (Aye)

IV. Executive Session

The Board may entertain a motion to go into executive session under G.L.c.30A, §21(a)(3) for the purpose of discussing strategy with respect to litigation regarding Appeal of Special Permit by Guy Maddalone (ZBA No. 17-21), where the Chair has determined that an Open Session Meeting may have a detrimental effect on the litigating position of the Board.

Motion:	
Vote:	
Other	The Board discussed this matter in a previous executive session and this item is no longer needed.

VI. ADJOURNMENT

Motion:	Motion to adjourn.
Vote:	Carried 5-0// McCarthy, Allen, Mondani, Brescher, O'Mara

Submitted by: William Saad

YouTube Link: <https://www.youtube.com/watch?v=vv9N4ka2sYY>