



ZONING BOARD OF APPEALS

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

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

~~ MINUTES ~~

Thursday, May 11, 2023

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

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

Called to order at 1:02 pm and announcements made by Ms. McCarthy

Staff in attendance: William Saad, Land Use Specialist; Leslie Snell, Deputy Director of Planning; Paul Murphy, Building Commissioner, Nicky Sheriff, Admin Specialist

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

Absent:

Agenda adopted by unanimous consent

Motion **Motion to Amend.** (made by: Mondani) (seconded)

Vote Not Carried unanimously

I. APPROVAL OF AGENDA

1. April 13, 2023, **McCarthy**-Read hybrid meeting script.

Mondani-I would like to make a motion to amend the agenda for today.

Mondani- I'd like to make a motion to amend it to include a discussion of special counsel related to Surfside Crossing and I'd like to make that agenda item first on our agenda because of the pending hearing today.

McCarthy- It does need a second, but I want to ask staff if we can add that to the agenda if it's not been noticed.

Snell- Well to add an agenda item that's not been posted 48 hours in advance it would have to be something that the chairwoman didn't anticipate, and it would need to be something emergency in nature and can't wait until your next meeting.

McCarthy-Town Council do you have an opinion on that?

Pucci- George Pucci from KP law, I have nothing further to add about it other than what Leslie said if it wasn't noticed within 48 hours or you had to not reasonably anticipate it and there also has to be some type of emergency reason to add it to the agenda because you always want to air on the side of having things properly noticed on the agenda.

McCarthy- Why didn't you bring this up earlier?

Mondani I think looking how this all has been addressed we haven't had the chance to meet we're not allowed to meet we've been in the dark on this except for that meeting and all I'm asking for is to participate in the litigation in which technically we are still a party to that's occurring at two o'clock today. I think that meets the emergency order of this.

McCarthy-I think that it might meet the emergency, but I don't understand why this wasn't brought to staff's attention to notice it earlier.

Mondani-I'm not sure, I have the same question about the executive session that should have been noticed correctly two weeks ago so the other part of this to view things within the context of open meeting in general is good but if we violate it and we're deemed to violate it we can ratify it there needs to be a complaint about it so just of if it's determined that there was a violation it doesn't mean we can't proceed that combined with the fact that this is an emergency this is something that is occurring today, and I feel like we need to appoint counsel to represent us.

McCarthy- We are under the town of Nantucket, the town of Nantucket has decided to not pursue litigation, so I don't see how we are still a party.

Mondani- This merely carries out the vote of this board which was unanimous at the last meeting which was to ask them to not file with the withdrawal, I think we were clear about that.

McCarthy-But they didn't have to, they don't answer to us.

Mondani- And we don't answer to them is my opinion and I think it's not just me but I think other members of the board might feel that way and it's it is being done under some questionable circumstances authority of the select board, questionable vote of the select board it does not appear that there was a majority based on the agenda or based on the minutes.

Pucci- I must clear up the misconception that there was anything improper about the Select Board's vote or notice of Executive Session, they duly notice they're meeting an executive session and the vote was three to two and there was no issue about the vote.

Botticelli-I know we're not discussing it, but can I make a public comment?

McCarthy- No

Mondani- There's a motion and it's been seconded.

McCarthy-it's up to me to decide or because there's a motion it's seconded, we go for it?

Mondani-I'd like to make the motion to approve Peter Finn as special counsel to represent this Board in connection with the hearing that's occurring today and going forward.

McCarthy- I do not believe that we have authority to directly hire Council, I don't know who is going to pay for that Council to go to that hearing and the select board is our appointing authority, they are the executive branch of government here in the Town of Nantucket and they have the authority to determine the process for the litigation.

Mondani- We will get an engagement letter from him; the attorney is willing to deal with payment at a later date and I don't think that should hold up anything. George is not our lawyer, he's a town attorney but he cannot serve two masters and right now that's what he's doing. George represented us up until a week ago and now he's going against us on the basis that we're all one, which we normally are but we're two boards now in conflict of how this proceeds and we don't even need to talk about our position on that we voted on that we asked George to not file things until we had it was conditioned upon getting a list of conditions that we found acceptable.

McCarthy-I don't see a path to how that is viable.

Mondani- it's a purely procedural matter we need an attorney to go to court to represent our view we're in a pickle.

McCarthy- It was not appropriate for you to file or attempt to file anything on behalf of the board and it was inappropriate to speak to the reporter on behalf of the board as a board member when you do not speak for the board the board speaks as one voice so that was a big overstep and then trying to post a meeting was also a big overstep so again we can have a motion to hire this special counsel and to have this attorney appear but I just don't see that we have the authority to do so.

Botticelli-George sat here and said you guys should definitely file this appeal, you have good reason to and that's the last time as a board we ever talked about this and then to get that email when I was on vacation about this executive session with all these conditions that were made it just doesn't seem right so I don't think we've been treated as a board or heard of the board. So maybe we don't have any power, but I do want to go publicly on record, I think it was terribly mishandled. We were not given the opportunity to discuss any of the conditions, some of which I did completely disagree with and so I do feel like we need counsel.

McCarthy- I just have a question about the conditions and not being able to discuss them are you talking about in the lawsuit that HAC came out with or the conditions in the press release.

Botticelli-In the press release.

McCarthy- My understanding of those conditions is and again I don't agree with this, but they're malleable it's in process.

Botticelli- Right, but who negotiated those conditions why aren't we negotiating those conditions it was our suit to fight.

Mondani- Let me just make this point on that matter this is no statement about anything it's not a statement about affordable housing, it's not a statement about the developer it's not really a statement on anything that will happen we just need representation at this hearing to withdraw that lawsuit on the basis that we no longer have counsel, he no longer represents us and he has a serious conflict if he's going to represent us as a Board. It's not my personal mission here; you have fellow board members who totally agree with me, and I don't think you can use this process to push out the majority of these board members that just want the appeal to remain on the docket with us as the main appellant until we have an agreement. We are independent boards there is no hierarchy of boards there's no in our town Charter I do not see anything with a select board where it's specifically enumerated where the select Port can decide to override all of the boards otherwise why are we volunteering for these boards when we let other boards make a decision on our behalf.

Pucci- I immediately conveyed the Zoning Board's vote to the Select Board, and they declined to reconsider their decision. I set this all out in an email to Mr. Mondani last week and I'm asking for that to become a public record and part of this proceeding. I was very clear and very respectful of the position that the Board was not consulted before the Select Board voted to dismiss that lawsuit. I don't have a conflict, I'm Town Council I'm directed by the Select Board who is the executive authority over litigation to which it's the town or a town board is a party and the select board has not authorized continued litigation by the Zoning Board in this case you can take the vote on any motion that you want to but I'm just advising you as has been already advised to Mr. Mondani that the zoning board does not have the ability to vote its own Council and continue litigation that is not authorized by the select board as the executive Authority there is one exception in the town Charter where the town is the plaintiff and the Board is the defendant in that case the board has the right to vote his own Council and have that Council paid for out of the Town Council budget.

Botticelli- George, I want to just say I wasn't voicing my displeasure against you in terms of not hearing about this, I was just making the statement that the last time we did talk about this case you were here representing that the HAC decision had come through and I don't know why that is and I'm not saying it was necessarily your prerogative to bring it to us that these other discussions were going on but that is actually the last time I believed we were brought any information about Surfside Crossing.

Pucci- That was authorized because it was a 30-day deadline to file it right we wanted to make sure we communicated with Plus in fact we get before you so that you could vote right and I want to be clear I'm not telling you don't have a leg to stand on in the lawsuit I filed the lawsuit and I had to sign off on it as an attorney there was a good faith basis of a lawsuit and so there's no debate over the merits of the lawsuit but there's also no debate over the Executive authority of the select board and so that that's the only thing I'm just trying to make clear to the awards respectfully and you know again you can make the motion, you can make the vote but you know the law is pretty clear about the executive authority of the of the select board and there's also case law in Massachusetts that a town needs to speak with one voice in litigation and that has to come from the executive Authority which is typically the select board in a town.

McCarthy- We haven't heard from the board of selectmen, but they are willing to speak with us and have some kind of joint meeting.

Mondani- I think we can talk about all these things. I just think we need to get representation in this hearing and to keep the lawsuit intact until we talk about all these issues. This all could have been done two weeks ago and you're telling me they're willing to do it now. I can't see where there's any question that this board doesn't have and shouldn't have the ability to do this.

McCarthy- George can you just clarify that yes, we voted to appeal but that was because you were authorized, or we were authorized by the Select Board rather to have the option to appeal?

Pucci- You made the vote in executive session, and you voted to hold off until the Select Board had a chance to meet and authorize the appeal. Recognizing as you did, and I presume you still do that the Select Board has to authorize litigation. The Select Board did authorize litigation and that's why we filed it.

McCarthy- This was a huge project for all of us and a huge undertaking it does not feel great the way it went down but again I don't see a path to have this new attorney; what I see our job as and why I will vote against this motion is that we have we have these conditions that HAC issued before us and we have the opportunity to go through all the conditions compare them with what we did and make the best out of this project that we can for the Town.

Botticelli- Why wouldn't the select board be open to keeping the lawsuit open just until we were able to have a meeting with them?

McCarthy- I don't know, you can ask them if we have a meeting with them.

Snell- I think this was said already, but the select board has to vote to allow you to have your own Council it's not just a matter of them approving the funding they have to vote to allow you to use someone different so there's no way that's going to happen for a hearing today at two.

Pucci- The hearing today is a motion by the Land Council and the Tipping Point to introduce additional evidence in the HAC proceeding so you weren't a moving party in that anyway.

Mondani- That's even more reason for you not to file our removal so soon.

Pucci- You made a vote to tell the Select Board that you wanted to be part of the negotiation on the settlement agreement and then the second part of the vote was to ask them not to withdraw the lawsuit until you had met with them or until there was a settlement agreement and they declined your request.

Mondani- Let me just say George has done a great job representing us this is not personal. I just don't agree with his approach within the past three weeks. **Pucci-** I just want to be clear, I don't do things on my own, I don't appear for

hearings because I feel like it or because I want to represent the Board; I only can do something as the Town Council that's

authorized by the Select Board There's been a passage of time since they've known about this and there hasn't been a reconsideration.

McCarthy- I don't think anyone thinks that you would act on your own and either not file or file without directive from the municipality.

O'mara- I had the great Fortune of joining this Board 30 years ago and the first time we had a suit that went from HAC or the courts to the Selectmen I think everyone on the Board was surprised and was there at the pleasure of the selectmen. The fact of the matter is that this Is not unusual for the selectman to decide on litigation.

Brescher- Can we vote to hire anyone, or do we have to ask the select board to hire them? I was under the impression that even if we make the motion we can't hire him, procedurally we have to ask the select board to allow us to engage in outside counsel.

Pucci- That's correct, I'm not trying to obstruct you from making a vote but I did agree with Leslie that it wasn't a proper motion because it wasn't noticed on the agenda but now that you're into the discussion that's exactly right that's my opinion that you don't have the jurisdiction to hire your own special counsel in the Surfside Crossing litigation without select board authorization and you're free to accept or reject that opinion.

Botticelli- I understand that, but I still think it makes sense to vote on the motion because I think it shows the character.

McCarthy- Do you want to amend the motion that then to change the language to ask to request the ability to hire separate Council from the select board?

Mondani- Subsequent to our appointment in this meeting we will request, if it's required select board approval

McCarthy- Jim has made the motion to hire attorney yes hire attorney Finn to represent the Zoning Board of Appeals and accept its approval right okay subsequent to his representation because it's just not we all know it's not a practice it's not going to practically.

Mondani- The circumstances are too unique here to follow the procedure we've been jammed up on this and I think we should proceed with this and deal with all these other questions after the fact.

Snell- Madam chair just to clarify you have five full members present none of them have identified a conflict you entertained a motion by alternate member Mondani, who are your voting members when you take this vote ?

Mondani- I would suggest you get the vote of the regular board members if that's your concern.

Brescher-Can we have a discussion on the motion? I'm not inclined to vote in favor of this motion for a very simple reason that I think procedurally we do have to ask for the select board I think what Jim had called for originally as sort of painful as this may have been for delaying this for an hour I think it was good I think we need to air these grievances, I think it's a wise idea to have the select board because at the end of the day I think this has been a poor process on their part and I don't think that we should continue with a poor process and so I would be in favor of voting to send to request the select board that we hire outside Counsel but not just hiring him.

McCarthy- Are you willing to amend the motion Jim?

Mondani- No

Motion	Motion to Approve as amended. (made by: Mondani) (seconded)
Vote	Not Carried unanimously

II. APPROVAL OF MINUTES

April 13, 2023

III. SURFSIDE CROSSING FINAL SITE PLAN/ENGINEERING REVIEW AND REVIEW OF CONDITIONS

1. 1 Surfside Crossing 40B

Discussion (56.13) **Chessia-** Obviously we know this is a complicated project and it was complicated going through the HAC decision compiling all the information into one sort of document with comments and then as you know it's an extremely long document, so I did do a summary.

It is still a long document compared to a typical review project for me but many of the many of the conditions really don't require a lot of comment and I think the best way to do it is to sort of go through those I have my summary and I'm I have the full letter in the computer and I got all the decisions here but if that pleases the board would that make sense to sort of start with the summary and sort of list the condition numbers and if you can follow along and if they're quick didn't change was slight modification we go there I did try to highlight in the summary sheet that I did the ones that may require or the board may want to discuss or talk more about but does that make sense to the board? The first uh part is eligibility the HAC modified condition number one slightly and the other two had no change I don't think there's much to discuss there the next 12 conditions are the general conditions and the only changes from HAC there was a modification to allow the permit to be transferred with they changed the condition slightly and I actually couldn't even see where they changed it but they claimed they did and it looked like it read the same to me but anyway and then condition 10 the reference would go to what was called exhibit three in the HAC case which was the uh plans that are dated February 28, 2020.

That's the plans that the HAC used in their decision subsequent to that what was submitted to me was a set of plans that are last revised March 30th 2023 and some of those changes are highlighted as I go through this letter if anybody has a question in the meanwhile just you know so the dates were the HAC reviewed plans that were revised February 28 2020

I'm looking I'm looking at them on my floor I've got stuff spread out all over here um so the permitting set was originally dated February 15 2018 and it was revised through February 28, 2020 that's what's called exhibit three in the HAC decision and that was the set of plans that they based their decision upon.

Botticelli- Can somebody tell me what the total bedroom count is? I didn't see that listed and what the total number of parking spaces are. If we can get that information that would be great because in here it does reference what we had approved the numbers and I can't remember what they were but I was there was no comparison to what actually the new plan and then the number of Max minimum Lots square footage of 38 139 square feet which one is that architectural design subject to final review and approval by the board priority issuance a building permit. So are we reviewing these buildings as the HDC.

McCarthy- yes

Botticelli- Do you know the pool size?

Chessia- 22 by 52 the pool did not change between the two, exhibit three and the current plan.

McCarthy- Jim, did you get a chance to look at the landscape plans?

Mondani- There's a list put out by Massachusetts that describes Native plants, It's easy to just reference that.

Chessia- Originally, I think there was a desire to make it so that it was sort of uniform for the single families and the Condominiums there's walkways that are adjacent to the roads which have a certain finish. There were originally brick there's no brick ones proposed now and then there's some other P stone with a chip seal that sort of go to the units and then where I believe this may be a doorway that would serve a single unit or possibly two then it's just pea stone and they're all on the Landscaping plans.

Botticelli- What are the ones around the roadways?

Chessia- It's the dark gray chip seal finish.

Botticelli I think we just let's just vote so I had 18 highlighted from the associated drainage calculations should be updated to reflect the proposed condition proposed conditions if this is an acceptable increase in impervious **Chessia** From the exhibit three plan to the current plan there is a bigger and more uniform non-disturbed buffer around the perimeter of the project in the exhibit three plan it was more of a wavering line roughly about 25 feet but not perfect everywhere because there were a couple of spots I think where there's some grading into there that they would re-establish and then along South Shore Road it's deeper so the perimeters changed that reduces the usable open space it increases the unusable open space and there is an increase in impervious area impervious semi-pervious of about 25 000 little over 25 000 square feet 25 683 according to the plans so that's the difference between the plan so this is something I think that you have to talk about and make decisions regarding that.

Brescher- With these, I mean clearly there's a difference of you know 25 000 square feet at least, what do we do? Say you go back to this number or that number or are we just reviewing to see if they're in compliance.

Pucci- I think that and Leslie can correct me the way you would normally do your plan review I think it would go to the building inspector if he's hearing from you if you've confirmed compliance with the final plans with the conditions then he's either going to base a building permit on that approval or not so that's why I'm saying to keep note of the issues that you find not in compliance notify the developer and then it will definitely come up at the building permit stage.

Snell- I think during your review you have the authority to grant approval for them to exceed what was shown on the HAC plans if you choose to do that and there may be a valid reason and that's when we'll hear from the developer like why did this change because the why may be really important and it may sway your decision or not to allow a deviation.

Poor- I think the implication is by virtue of the information here it's the drainage calculations, storm water runoff that's being handled at the early surface is increasing. The plans are so different I don't know how we compare them.

Mondani- I'm just going to clarify that's what the litigation was about, whether it has to come back for approval.

Poor- We're not going to be able to compare the plans and make that kind of calculation.

Snell- Madam chair we're talking about the HAC plans and the final plans that you have and those are fairly close.

Brescher- Are we going to anticipate revised drainage calculations, or do we say to them there's a discrepancy here you need to provide new drainage calculations?

Snell- Mr. Chessia has reviewed what they've submitted for the engineering plans, but the drainage calculations if you approve an increase in impervious surface from what the HAC plans showed would obviously have to accommodate that.

Botticelli- I just want to make sure in lieu of town meeting with the new dark skies regulations that all that should be designed with the new bylaw in mind.

Botticelli- I just don't understand why they struck not having a split rail fence.

Snell- It's my understanding and the applicants' representatives are here and can correct me if this is wrong, but I believe the fence that's up now, is part of their NHESP permit not anything to do with the comp permit per say.

Bracken - I can confirm we laid out the fence that's there which was based on Natural Heritage approved open Space Plan.

Allen- Is that shown on the plan?

Bracken- It is shown in the records with the NHESP approved plan that's recorded at the registry of deeds, and we will show it on the final landscape architectural plan.

Botticelli- 28 references the Nantucket Historic District Commission again so it says any future proposed changes to the exterior architectural feature shall be subject to the jurisdiction of the Nantucket historic district commission, so I assume that'll come to us?

Snell- I think this may be similar to the conditions in Beach Plum Village that you all served as the HDC, you approved plans then once the units were conveyed out any future changes actually went to the HDC they didn't continue coming back to you.

Brescher- Similar to planning, will zoning be reviewing legal documents such as homeowners' association declaration of trust? I think a lot of these conditions are applicable to that as well.

Snell- I'd have to look at the exact language but if this was not a 40B and it was a subdivision they would be submitted to staff review and board approval so that's to be determined.

Botticelli- How was trash being handled on the site?

Bracken- There are some dumpsters I believe on the on the plan, but I don't have an exact answer for that we'll have to get that answer for you.

Botticelli- Do we have a plan that denotes where the other mechanical equipment is going to be located?

Bracken- We do have a landscape plan for each individual building I believe they're shown on that, but I would have to double check on that one.

McCarthy- Can you talk about condition 32 where it says no individual lots a proposed.

Chessia- Condition said ground coverage for each lot shall not change from that depicted on the comprehensive permit plans obviously we know that those plans had both multi-family units single-family Lots now it's all one condominium so there would not be any individual Lots per say there's no roadway right of way there's just one project.

Bracken- The 25 000 square feet is pretty much spread out throughout the whole site and the reason why that increase it was primarily the walkways that we had to add to go to each building when we first designed the plans we were told we only needed one handicap access entrance per building and then after the HAC decision and final landscape architectural plans were done it was determined we needed multiple handicap access points to each bedroom and so the increase in the impervious area is primarily the pathways that are required on the radiate compliance to get to each door that's now indicated on the site plans. The increase in the size of the community building that's the way it was submitted to HAC so that's what we've kept on the plan.

Botticelli- In addition to getting us the number of parking units and the number of bedrooms could you also give us a comparison of the ground coverage?

Bracken- The number of bedrooms and parking is shown on sheet four that you already have in the lower left-hand corner.

Chessia- Parking summary 283 bedrooms proposed, 299 spaces provided 10 of which are by the community building and then there's 20 total accessible spaces, six are van accessible.

Botticelli- So in terms of parking is there a waiver needed for this?

Snell- I'll have to get those numbers for you if I don't have those handy, they may be in the report somewhere.

McCarthy- Can you explain 33, why it wouldn't be applicable about the local requirements?

Chessia- It was originally a proposal to do subdivision roadways and now it's a condominium project so there isn't a subdivision roadway that could ultimately be submitted for acceptance to the town. I also did compare the cross section to the subdivision regulations, and it would meet or exceed subdivision regulations for the cross-section anyway okay so it didn't seem to be one it was questionable if it applied secondly if it did apply it would be okay anyway.

Botticelli- 36 needs follow-up too; it's about stormwater management.

Chessia- I did also provide a separate appendix that sort of listed all of the storm water standards under the DEP reference to the stormwater regulations.

Brescher- I have a question on what David Grace submitted that we have in our packet. David mentions that in the HAC decision that HAC established one section of a contribution of at least one million to the sanitary sewer and David is suggesting that perhaps something in the order of 1.5 million would be more appropriate. What are the mechanisms for that?

Pucci- It will have to be a matter of agreement, the HAC conceded in their decision that it made sense what the town's position was but hopefully it's not unfortunate because ultimately, they will connect to gravity but it's left sort of up in the air.

Botticelli- Condition 75 reads no such disturbance shall be permitted pursuant to the decision into the medical land council's current administrative appeal to the NH ESP determination for the site is fully and finally resolved including exhaustion of court appeals so obviously that was just thrown out the window because they disturbed the site.

McCarthy- I think that's what they're fighting about with the Land Council.

Pucci- The developer's position was the tree cutting was under the final permit that they got from natural heritage and from a zoning perspective there wasn't any zoning bylaw that prevented them from doing that site work so from the town's perspective they didn't have the ability to go and issue a cease and desist it was under the state permit that they acted when they did that and I'm not making a comment on that one way or another but that's their position.

Allen- What percentage of the questions and the issues that we're talking about are out of our purview like this situation with the tree cutting.

Pucci- You're in the context of reviewing the final plans for conformance with what's approved and that is presumably going to be something that the Building Commissioner then relies on when he is asked to issue a building permit. If the ZBA has not confirmed compliance of the final plans the building inspector will presumably not issue a building permit until we get that result.

Allen- It says here in 97A that the applicant must secure Board approval prior to construction and allow the board 90 days to review. Is that this Board?

Botticelli- Yes if we don't have final plans how come the 90 days has started?

Snell- These are the final plans subject to the revisions that you require.

Botticelli- When did the 90 days start?

Snell- March 21st.

Mondani- I don't know why we didn't discuss this in April, and it was on the agenda.

Snell- I talked it over with the Chairwoman and it is a complicated set of plans and you all needed time to review them.

Mondani- The Select Board was meeting, and you guys knew that they were meeting and decided if we need to get this information we will. Why wasn't this discussed in April?

McCarthy- I think because the engineers and everyone were still reviewing, and it was premature and would have been a complete waste of time for us to sit and try to do this prior to the engineer's review.

Mondani- I asked a specific question because there was confusion about that- are we pursuing a stay and Leslie said no comment. Why did you have no comment? Because people knew when we were sitting in this meeting about what was going on and that's why we did not discuss it.

Snell- I strongly object to the characterizations being made by Jim Mondani right now that I would work against this Board.

Mondani- I'm not suggesting that I am saying why wasn't this brought up in our April meeting and why this is important is we have 90 days to review it and now we're jammed up.

Snell- I did communicate with the Board through your chairwoman that's the proper channel, she sets the agenda. I don't set the agenda, the board doesn't set the agenda, the chairman sets the agenda. I made an announcement that we received the plans, and no one raised an objection and you're mischaracterizing it.

Pucci- Can I just make a suggestion because I agree but I don't think Lisa that you've lost the time I think you've met publicly on a noticed meeting; you started this review you've gotten the recommendations from the engineer working for the Board and the applicants engineer has specifically represented he intends to respond to Mr Chessia's comments and provide updated final plans. I would just make the suggestion immediately following this meeting that we just confirm with the developer when those final plans will be produced to the Board. If they don't comply, then schedule a meeting and issue a document that notes all the deficiencies and the unanswered questions and that will be your final review.

McCarthy- Chessia is saying he needs about two weeks and we're just trying to do the time I'm hoping that you guys would be open to a discussion of an extension of the 90 days for review to give us a chance to review what comes back from your submissions.

Haverty- You've got another meeting that's scheduled before the expiration of the 90-day period, I will consult with my clients to try to get brought up to date as to what has occurred so far and we can certainly provide you with a response at that meeting.

IV. OLD BUSINESS

1. 09-22 Harris on Weweeder, LLC 50 Weweeder Avenue Brescher
CONTINUED to June 08, 2023

2. 20-22 Steve L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust, 29 Monomoy Road Cohen
CONTINUED to June 08, 2023

3. 37-21 Kristina & Nicholas Amendolare 8 Bank Street Williams
DRAFT DECISION REVIEW

Applicants are seeking a Special Permit pursuant to Nantucket Zoning Bylaw Sections 139-30 and 139-33A in order to make renovations, including an addition, to a single-family dwelling that is pre-existing non-conforming to the setbacks. Locus is situated at 8 Bank Street, shown on Assessor's Map 73 and Parcel 69. Evidence of owner's title is recorded in Book 1770, Page 216 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).

Voting: McCarthy, Botticelli, O'Mara, Allen, Mondani
Alternates: None
Recused: None
Representing: Attorney Michael Wilson
Linda Williams

Public:

Discussion
(3:51:31)

McCarthy- Have you seen the latest one with the red line changes?

Wilson- I received it yesterday and I reviewed it with my clients, and I'd ask you to adopt it.

Botticelli- I had one change, just in three the statement "the health department submitted an opinion that a second bedroom would not be possible due to the site restrictions and a full foundation within the purchase prescribed this into a septic tank would be a violation"- I think that should read basement. My recollection is that the information that was submitted was at the basement doing the finished basement was not possible given the location of the septic tank and I still concur that that will trip needing to upgrade the septic system which is not a viable alternative.

Wilson- You could make it very clear by just incorporating the letter verbatim and that way you're not rewriting the opinion of the Health Department and we're not trying to come up with language that the Health Department already came up with addressing the septic tank.

Mondani- We discussed where you're going to locate the house while you're lifting it. That needs to be addressed.

Wilson- That will be addressed in Zoning Compliance.

Wilson- Are there additional conditions that the Board would like to see?

Botticelli- My concern is solely the construction of the basement and I know you'll say that's not part of this board it's only the 11 square feet that you're voting on, but I think any time that you come to the Board it opens up the discussion about other aspects of it and I'm not comfortable with putting a basement under this building given the site conditions.

Wilson- If you're concerned, which seems to keep going back to a basement is it the construction methodology or is it which would be the conditions that we've spent a fair amount of time over the last month working on?

McCarthy- We have a hard stop now, we have to continue to next month.

Motion **Motion to continue draft Decision with conditions.** (made by: McCarthy) (seconded by Mondani)
Vote Carried unanimously.

V. NEW BUSINESS

1. 10-22 Paul P. Moran & Jean M. Moran 4 Washington Avenue Santos
CONTINUED to June 08, 2023

2. 17-22 Nantucket Cottage Hospital 16 Vesper Lane Erickson
CONTINUED to June 08, 2023

Voting	McCarthy, Botticelli, O'Mara, Allen, Mondani
Discussion	Not opened at this time.
Motion	Motion to continue 09-22, 20-22, 10-22, 17-22. (made by: Mondani) (seconded by: O'mara)
Vote	Carried unanimously

VI. OTHER BUSINESS

REMAND PUBLIC MEETING

Decision for Special Permit Application ZBA File No. 17-21 Guy & Diane Maddalone

Discussion (3:38:52)

Weisheit- This matter relates back to a special permit that the board had issued I believe it was back in 2020 or 2021 for an extension alteration of a pre-existing non-conforming single-family dwelling on the property owned by Mr Metz located at 14 Western Avenue. Following a land court trial before Judge may, the court ordered unlimited remand back to the board to consider a particular question and interpretation of certain terminology in the zoning bylaw in particular a question for us to discuss and consider today as the time that the applicant Mr Metz applied for a special permit for the renovations to the dwelling had the existing dwelling been in a condition for three or more years after November 2nd of 2016 such that it could not be used as a dwelling unit. The zoning bylaw defines a dwelling unit as a room or enclosed floor space used or to be used as a habitable unit for one family or household with facilities for sleeping, cooking and sanitation and I believe as we had discussed last time the Board's interpretation of the definition of dwelling unit does not necessarily require actual habitation of the structure in order for the structure to maintain its pre-existing non-conforming status but rather that the structure at least with regard to a single family dwelling. I think the question is with regard to the Metz property at the time that did the structure on the property have bedrooms, bathrooms and kitchen and were efforts being made such that the Board could determine that through permitting efforts which he was undertaking at the time that the dwelling could be used after permitting as a habitable unit.

McCarthy- I follow you and agree however, I'm concerned about use and add any language that says making efforts or through the permitting process because the Zoning District's residential use is allowed by right, whether it's a vacant lot or not.

Murphy- This is a conforming use in a Residential Zone it's a single-family dwelling and it doesn't matter that it's dimensionally non-conforming but it's an allowed use in a residential Zone it doesn't lose its use whether it's occupied or unoccupied because it's permitted and that's my position on this.

Weisheit- Judge May ordered that the Board issue a new Special Permit decision that includes this interpretation of a dwelling unit. I would recommend first that the Board reach an agreement on the interpretation that Mr. Murphy has provided, I'm happy to put that in a decision for the Board to sign off on.

Motion	Motion to issue a Special Permit for all the conditions and language in the initial Special Permit that was issued, including the interpretation of a dwelling unit and allow on Susan McCarthy will sign on behalf of entire Board. (made by: O'Mara) (seconded by Mondani)
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Vote Carried Unanimously

VII ADJOURNMENT

Sources used during the meeting not found in the files or on the Town website:

1. None

Submitted by: Nicky Sheriff

