

ZBA MEETING PACKET

05/11/23



UPDATED MEETING POSTING

Original Posting Date 2023 May 08 PM 02:06
Original Posting Number T 427
TOWN OF NANTUCKET
Pursuant to MGL Chapter 30A, § 18-25
All meeting **notices and agenda** must be filed and time stamped with the
Town Clerk's Office and posted at least 48 hours prior to the meeting
(excluding Saturdays, Sundays and Holidays)

RECEIVED

2023 MAY 08 PM 02:38
NANTUCKET TOWN CLERK
Posting Number:T 429

Committee/Board/s	Zoning Board of Appeals
Day, Date, and Time	Thursday, May 11, 2023, at 12:00 PM
Location / Address	4 Fairgrounds Road, Nantucket, MA 02554 PSF COMMUNITY ROOM & REMOTE PARTICIPATION VIA ZOOM WEBINAR
Signature of Chair or Authorized Person	Leslie Woodson Snell, Deputy Director of Planning and Zoning Administrator

WARNING: IF THERE IS NOT A QUORUM OF MEMBERS OR IF THE MEETING POSTING IS NOT IN COMPLIANCE WITH THE OPEN MEETING LAW, NO DELIBERATIONS MAY TAKE PLACE-BUT THE MEMBERS MAY APPEAR AND ANNOUNCE A NEW SCHEDULE.

AGENDA

(Subject to Change)

The meeting will be recorded and archived at www.nantucket-ma.gov.

ZOOM WEBINAR REGISTRATION LINK:

https://us06web.zoom.us/webinar/register/WN_itZV7UjpTceQIFFTX5m6sA

To view the LIVE broadcast of the meeting, see YouTube Link at

<https://youtu.be/rGEwVm0-zDA>

BELOW ARE THE TOPICS THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING.

I. CALL TO ORDER:

II. APPROVAL OF THE AGENDA:

III. APPROVAL OF THE MINUTES:
04/13/23

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

V. OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN)

37-21 Kristina & Nicholas Amendolare

8 Bank Street

Williams

Draft decision review

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning Bylaw Sections 139-30 and 139-33A 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).

09-22 Harris on Weweeder, LLC

50 Weweeder Avenue

Brescher

Continued to June 08, 2023

Applicant is seeking Variance relief pursuant to Nantucket Zoning Bylaw Section 139-32 from the intensity regulations in Section 139-16A to site a proposed pool cabana in the side yard setback as close as 2.7 feet from the side yard lot line in a zoning district that requires a minimum of a ten (10) foot side yard setback and to increase the allowable groundcover ratio to 7.9% in a zoning district with a maximum groundcover ratio of 7%. Locus is situated at 50 Weweeder Avenue, shown on Assessor's Map 79 as Parcel 15 and upon Land Court Plan 42927-A. Evidence of owner's title is registered on Certificate of Title No. 27684 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust,

Cohen

Continued to June 08, 2023

Applicant is seeking Variance relief pursuant to Zoning Bylaw Section 139-32 for a waiver from the ground cover provision in Section 139-16 in order to construct an accessory structure of up to 780.25 SF. Locus is situated at 29 Monomoy Road, shown on Assessor's Map 54 as Parcel 209 and as Lots 10 and 11 on Land Court Plan 10937-C. Evidence of owner's title is registered on Certificate of Title No. 22883 at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

VI. NEW BUSINESS (INITIAL PUBLIC HEARINGS AND VOTES MAY BE TAKEN):

10-22 Paul P. Moran & Jean M. Moran

4 Washington Avenue

Santos

Continued to June 08, 2023

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-30 and 139-2 in order to install an in-ground swimming pool. Locus is situated at 4 Washington Avenue, shown on Assessor's Map 60.2.4 as Parcel 65 and upon Land Court Plan 14672-A. Evidence of owner's title is registered on Certificate of Title No. 27684 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

17-22 Nantucket Cottage Hospital

16 Vesper Lane

Erickson

Continued to June 08, 2023

Applicant is seeking Variance relief pursuant to Nantucket Zoning Bylaw Section 139-16 in order to divide an existing lot, which is nonconforming as to frontage, into two lots, both of which will not meet the required frontage of 50 feet in the CN district. Both lots will be accessed via an easement from Vesper Lane. Locus is situated at 16 Vesper Lane, shown on Assessor's Map 34 as Parcel 72 and shown as Lot 1 with the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 184 and Page 112 with the Nantucket County Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

06-23 NOB ACK, LLC

2 Nobadeer Way

Cohen

Applicant is seeking Variance relief pursuant to Zoning Bylaw Section 139-32(A) allow for a *temporary* fourth dwelling on a lot while a new dwelling is being built, and Special Permit relief under Section 139-33.A(1)(a) for the alteration or expansion of a preexisting nonconforming structure as close as 0.1 foot from the lot line in the rear yard setback. The locus is situated at 2 Nobadeer Way, shown as Assessor's Map 68, Parcel 113, which is shown as lot 12 on Land Court Plan 16514-F. Evidence of owner's title is registered on Certificate of Title No. 26263 at the Nantucket Registry District of the Land Court. The site is zoned Residential 10 (R10).

Continued to June 08, 2023

Applicant is appealing the Building Commissioner's March 31, 2023, determination pursuant to Zoning Bylaw Section 139-25 and 139-31. The locus is situated at 4 Harbor Square, shown as Assessor's Map 42.2.4, Parcel 1, which is shown as lot 11 on Land Court Plan 10222-E. Evidence of owner's title is registered on Certificate of Title No. 17791 at the Nantucket Registry District of the Land Court. The site is zoned Commercial Downtown (CDT).

VII. OTHER (VOTES MAY BE TAKEN)

VIII. ADJOURNMENT (VOTE WILL BE TAKEN)

MINUTES

04/13/23



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, April 13, 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 1:08 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

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

Absent: Poor

Agenda adopted by unanimous consent

Motion **Motion to Approve.** (made by: Brescher) (seconded)

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. February 9, 2023

Botticelli – On page 4, there is a comment where I say “biblical piles” and it should say “helical piles”. On page 5, there is another statement by me that says “when you go to the basement and add a bathroom” and it should read “add a bedroom”

Motion Motion to Approve as amended. (made by: O'Mara) (seconded)

Vote Carried unanimously

II. UPDATE

1. Surfside Crossing 40B

Discussion (6:36) **Snell** - Update for the board and the public relative to the Surfside Crossing 40b. They have chosen to proceed at their own risk while the HAC appeals are still pending. We received the final plan set in the office on March 22nd and I have distributed those to the applicable Town staff for review, and also the engineer for his final review and that will be scheduled for your May 11th ZBA meeting. It is a 90-day review period, which is outlined in the decision and in the HAC decision, so that's the window that you have to work with.

Botticelli – What is that 90-day date?

Snell – Not sure but it started on March 22nd.

Botticelli – Has anybody reviewed the plans? Can I ask questions?

McCarthy – We were just going to do an announcement today. Leslie, what do you think?

Snell – If the Board has questions, that's fine.

Botticelli – Questioning the letter from Dennis Murphy. Have the 25 items in the conditions been received?

Snell – Comments that we have already received and will receive will be distributed to you in your agenda packet for May 11th. Comments weren't distributed today because they were not a discussion item.

Botticelli – Okay, if you can just update us on the 90-day date as well

Mondani – The town is in a suit right?

Snell – Currently, yes.

Mondani – Is there anything the town is going to do with regard to a stay?

Snell – I can't really speak to that.

III. EXECUTIVE SESSION

1. 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 Motion to Enter into Executive Session for the reasons stated at 1:19 PM and to go back into open session upon completion. (made by: O'mara) (seconded by: Mondani)

Vote Carried unanimously: McCarthy – aye; Allen – aye; O'mara – aye; Mondani – aye

Motion Motion to Leave Executive Session at 1:42 PM. (made by: Allen) (seconded by: O'mara)

Vote Carried unanimously: McCarthy – aye; Allen – aye; O'mara – aye; Mondani – aye

IV. OLD BUSINESS

1. 09-22 Harris on Weweeder, LLC 50 Weweeder Avenue Brescher
CONTINUED to May 11, 2023
2. 20-22 Steve L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust, 29 Monomoy Road Cohen
CONTINUED to May 11, 2023
3. 37-21 Kristina & Nicholas Amendolare 8 Bank Street Williams
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. Locust 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
Jeff Blackwell, Blackwell & Associates
Wayne McArdle, engineer
Public: Attorney Jon Fitch, for the Gardners
Ann Ramsey Gardner, 9 Broadway
Attorney Sarah Alger for Wilhemina Austin 11 Broadway
Margret Van Deusen, 7 Front Street
Lisa Soeder 13 Broadway
Discussion
Attorney Michael Wilson - This is a request for a special permit involving a pre-existing non-conforming setback being about 12 square foot triangular portion of the roof plane. We've been discussing various aspects of how the construction will be implemented to mitigate or prevent any negative impacts in the neighborhood at previous meetings. My clients have engaged McArdle Associates and Mr. Wayne McArdle is here to address any additional questions or any follow-up that you may have.
Mondani - Clarification on this non-conformity. Can the roof be resolved without relief?
Wilson - Cutting the triangular portion of the building off would compromise what is already a very small structure with very little usable space.
Botticelli - Questioned ruling from the health department - staff recommendation that says that no basement bedroom can be added?
Wilson - Asked that the opinion letter not be part of the zoning board of appeals review. Has done some independent research with respect to applicable sewer districts, this property may benefit from sewer in the not-too-distant future.
Botticelli - Questioned if adding a bathroom in the basement would classify it as a bedroom, but noted that the septic system cannot be expanded beyond its approved capacity for one bedroom.
Wilson - Stated zoning relief requested is not for the number of bedrooms.
Allen - Questioned septic size
Wilson - Septic is a new title five. The variance in place was for the upgraded Title Five.
Botticelli - Questioned if the basement is feasible based on Health Department letter, and that is a big part of the discussion relative to the safety of the roads.
Wilson - The basement is not going to be a portion of the zoning relief that's currently requested.
Botticelli - But it affects the means and methods of construction.
Wilson - It does and the Board received information from the engineer on how they will shore up. It's possible to do this with the means and methods that Mr McArdle has presented without causing any compromise to the neighborhood.

McCarthy - The very small triangle is triggering the need for zoning relief but when zoning relief is triggered, we typically look at the project as a whole. The bigger concern for me in this Board of Health opinion was that they are saying any work to the house will affect the structural integrity of the septic tank

Allen - It's new construction and the new construction doesn't go with what was approved for the septic

McCarthy - Board of Health will deal with that portion. If the project was only doing something in that one little area then we would look at that area but this is a whole project involving more than the triangular portion.

Wilson - Agreed that Board of Health will review the septic.

Jeff Blackwell - There's going to be an article placed on the fall special town meeting to expand the Sewer District to include this property. The simple solution is to connect this property to the sewer that's on Front street directly above the property.

If voted through a town meeting it becomes a simple sewer connection design of a single dwelling.

Botticelli - Questioned if sewer would need to be expanded down Front street to site.

Blackwell - Sewer doesn't have to be expanded down Front Street, already a gravity sewer line at Front Street.

O'Mara - Everything that we've heard from Mr. Blackwell makes a lot of sense. If we Grant the permit, the town may decide not to expand sewer. If the town doesn't approve it, then they're going to be using that house as it currently sits.

Botticelli - The basement would require a new variance from the Board of Health.

Mondani - Concerned scope is going beyond "substantially more detrimental". The septic issue is for the Health Department to determine.

O'Mara - Not voting on whether the applicant can build it and wouldn't want to handicap that. As far as Zoning Board, I think they've given the information we've requested.

Botticelli - basement adds a lot more complexity to this project. Until sewer is an option, the septic is part of our discussion and part of the whole discussion.

McCarthy - If we're comfortable with the means and methods, and conditions to be added, I want to make sure the decision is clear and limited to our purview.

Allen - Doesn't want to deny and disable them from doing other things with the property.

McCarthy - This project will have to go through other boards for final approvals. Our scope is focused on the Triangular 12 square feet but also the means and methods. If we deny, approve, or continue, it needs to be based on the means and methods. The information we have about septic is informative but our decision can't be based on that.

Botticelli - Questioned if the retaining wall is staying in place, how will piles be installed.

Wayne McArdle - Existing CMU blockwall will stay in place. House will be removed from the site, the wall will be cut to drill the piles into place. It'll be shored with timberlagging and the west side will be reinforced with a new wall. The existing wall with a new wall that will be used as the outside form for the new foundation.

O'Mara - Questioned if house will be moved off-site

McArdle - the house is going to be removed off-site during construction.

Wilson - It has to be relocated in order to install the Shoring of the of the bank and the installation of the foundation. This will all have to go through Town of Nantucket permitting.

O'Mara - questioned discrepancy about materials and testimony regarding turning or moving the house.

Botticelli - Questioned if there are concerns of vibration from drilling.

McArdle - Almost little or no vibration, we're bracing it internally based on abutter's concern

Allen - Stated there will be vibration

Attorney Jon Fitch - Represents Jeffrey and Ann Gardner of nine Broadway LLC. The conclusion of the Health Department document is that there is simply not a safe setback of the tank and that is relevant to your determination about whether or not this project is detrimental to the neighborhood. Client filed a letter on 4/10 from their own geotechnical consultant. Their letter states that the applicant has not adequately responded to issues raised and supports that the neighborhood is at risk and there is a reasonable basis to conclude that the neighborhood would suffer a detrimental impact.

Ann Gardner - the construction risks remaining are implementation risk. There will be a difference of over 30 feet between the bottom of the excavation and Front Street. Pumping effluence up that high is unrealistic per our geotechnical engineer. If basement is added, there's no leaching cyst area under the house now it will go beyond the site. This project is a small vacation rental home for one family and would put a neighborhood and historic district at risk.

Margaret Van Deusen - Stated that her house does not have a foundation and the house is supported on the bank itself by concrete pillars of indeterminate age. The risk is that it will destabilize the bank and damage houses. Whether something could happen at town meeting down the road is highly speculative.

Blackwell - Indicated a variance from the Board of Health for new septic is no longer an option. We have to tie to town sewer, which are routinely expanded at Town Meetings. Nothing technically difficult about pumping sewage up a hill.

Attorney Sara Alger - Agree with gardeners, their counsel and appreciates and agrees with Mr Blackwell's comments on the septic system. If the Board is inclined to approve it then it should be conditional upon the property being brought into the Sewer District and a sewer connection being made.

McCarthy - Surprised there won't be a basement unless they can tie into sewer. Doesn't see point in approving this if it can only happen at some point down the road at town meeting.

Allen - Agrees but doesn't want to deny it and disable them from coming back for two years. Also don't want to approve without knowing if there will be sewer access.

Snell – The Board has veered outside of its jurisdiction, but all you need to make is a substantially more detrimental finding. Stick to your jurisdiction and the burden is on them to get additional relief as needed from the appropriate Board. Follow the Zoning Bylaw and apply appropriate conditions or decide that you don't think it's appropriate and deny it.

McCarthy - If we are going to entertain a motion today, we do have some conditions to talk about

Mondani – For clarification, you cannot build the basement without the septic approval?

Wilson – We would need a variance from the Board of Health to locate the foundation that's proposed within the proximity of the existing septic tank.

Lisa Soder - Stated her house is at the top of Middle Gully Road. The new information submitted today concerning the possibility of town sewer being available does not change anything. The pilings are 10 feet below the basement which is 10 feet below the plane and could jeopardize the bank.

McCarthy - Questioned if there is a list for standard conditions that for a project like this?

O'Mara - Thinks Board can make an approval subject to the approval of conditions that don't currently exist because we have to go back and review all documents submitted.

Snell – It's an option to vote to approve a project, close the public hearing, and draft a decision for just the board to review and comment on at the next meeting. Closing the public hearing closes down any new public comments and new information from being submitted.

Alger - do you know when your action deadline is?

McCarthy - June 22nd

Motion	Motion to close the public hearing. (made by: Botticelli) (seconded by Allen)
	Motion to have a draft Decision with conditions to review at May 11 meeting. (made by: Allen) (seconded by O'mara)
Vote	Carried unanimously

V. NEW BUSINESS

1. 10-22 Paul P. Moran & Jean M. Moran 4 Washington Avenue Santos
CONTINUED to May 11, 2023
 2. 17-22 Nantucket Cottage Hospital 16 Vesper Lane Erickson
CONTINUED to May 11, 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

1. None

VII. ADJOURNMENT

Motion	Motion to Adjourn at 3:05 pm. (made by: Mondani) (seconded Botticelli)
Vote	Carried unanimously

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

1. None

Submitted by:
Billy Saad

OLD BUSINESS

Harris on Weweeder LLC

File No. 09-22

50 Weweeder Ave

VARIANCE

Continued to June 08, 2023

STEVEN L. COHEN
&
CHRISTOPHER P. CHOMA
TRUST

File No. 20-22

29 MONOMOY ROAD

VARIANCE

Continued to June 08,2023

Kristina & Nicholas
AMENDOLARE

File No. 37-21

8 Bank St

SPECIAL PERMIT

Draft Decision Review

NEW BUSINESS

PAUL P. & JEAN M.
MORAN

File No. 10-22

4 Washington Ave

SPECIAL PERMIT

Continued to June 08,2023

NANTUCKET
COTTAGE
HOSPITAL

File No. 17-22

16 VESPER LANE

VARIANCE

Continued to June 08,2023

NOB ACK, LLC

File No. 06-23

2 NOBADEER WAY

VARIANCE



**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554**

APPLICATION

Fee: \$450.00

File No. _____

Owner's name(s): NOB ACK, LLC

Mailing address: c/o 34 Main Street 2nd Fl / PO Box 786, Nantucket MA 02554

Phone Number: 508-228-0337 E-Mail: steven@cohenlegal.net

Applicant's name(s): Same.

Mailing Address: Same.

Phone Number: Same. E-Mail: Same.

Locus Address: 2 Nobadeer Way Assessor's Map/Parcel: Map 68 / Parcel 113

Land Court Plan/Plan Book & Page/Plan File No.: LC Plan 16514-F - Lot 12

Deed Reference/Certificate of Title: Cert. No. 26263 Zoning District R-20 freeze, R-10 now

Uses on Lot- Commercial: None X Yes (describe) _____

Residential: Number of dwellings 2 Duplex _____ Apartments _____

Date of Structure(s): all pre-date 7/72 X or _____

Building Permit Numbers: _____

Previous Zoning Board Application Numbers: _____

State below or attach a separate addendum of specific special permits or variance relief applying for:

Please see attached Addendum.

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE: Steven Chen Owner*

SIGNATURE: Steven Chen Applicant/Attorney/Agent*

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on: __/__/__ By: _____ Complete: _____ Need Copies: _____
Filed with Town Clerk: __/__/__ Planning Board: __/__/__ Building Dept.: __/__/__ By: _____
Fee deposited with Town Treasurer: __/__/__ By: _____ Waiver requested: _____
Granted: __/__/__ Hearing notice posted with Town Clerk: __/__/__ Mailed: __/__/__
I&M: __/__/__ & __/__/__ Hearing(s) held on: __/__/__ Opened on: __/__/__
Continued to: __/__/__ Withdrawn: __/__/__ Decision Due By: __/__/__
Made: __/__/__ Filed w/Town Clerk: __/__/__ Mailed: __/__/__

Town of Nantucket
Zoning Board of Appeals

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER NOB ACK LLC
MAILING ADDRESS 1636 3rd Ave, Suite 314, New York, NY 10128
PROPERTY LOCATION 2 Nobadeer Way
ASSESSOR MAP/PARCEL 68 / 113
SUBMITTED BY Cohen and Cohen Law PC

SEE ATTACHED PAGES

I certify that the foregoing is a list of all persons who are owners of abutting property, owners of land directly opposite on any public or private street or way; and abutters of the abutters and all other land owners within 300 feet of the property line of owner's property, as they appear on the most recent applicable tax list (M.G.L. c. 40A, Section 11 and Zoning Code Chapter 40A, Section 139-29B (2)).

April 19, 2023

DATE

Mary L.
Haley

ASSESSOR'S OFFICE
TOWN OF NANTUCKET

Digitally signed by Mary
L. Haley
Date: 2023.04.19 13:56:04
-04'00'

Abutters Listing

MBLU	Lot	Lot	Name Line 1	Name Line 2	Address Line 1	City	State	Zip	Location
68	1	9	NANTUCKET TOWN OF	NANTUCKET AIRPORT	14 AIRPORT RD	NANTUCKET	MA	02554	12 AIRPORT RD
68	48		1 AIRPORT ROAD LLC		3 HASKELL ST	WESTBOROUGH	MA	01581	1 AIRPORT RD
68	49		7 AIRPORT ROAD LLC		2 WAYDALE RD	NANTUCKET	MA	02554	7 AIRPORT RD
68	50		ZADROGA GERALD J & REBECCA		12 NOBADEER WAY	NANTUCKET	MA	02554	1 NOBADEER WY
68	51		ZADROGA GERALD JR & REBECCA		12 NOBADEER WAY	NANTUCKET	MA	02554	12 NOBADEER WY
68	111		FAIR CITY LLC		61 OLD SOUTH RD STE128	NANTUCKET	MA	02554	117 OLD SOUTH RD
68	112		FAIR CITY LLC		61 OLD SOUTH RD STE 128	NANTUCKET	MA	02554	115 OLD SOUTH RD
68	114		BALLING DANIEL B		66 FAIRGROUNDS RD	NANTUCKET	MA	02554	11 NOBADEER WY
68	115		KNISKERN MELISSA A ETAL		10 NOBADEER WY	NANTUCKET	MA	02554	10 NOBADEER WY
68	116		ROCKETT JOHN F		9 NOBADEER WY	NANTUCKET	MA	02554	9 NOBADEER WY
68	117		ESCOBAR MAYRA E ETAL		8 NOBADEER WY	NANTUCKET	MA	02554	8 NOBADEER WY
68	167		BUNTING HEIDI		750 ETHAN ALLEN HGWY	RIDGEFIELD	CT	05877	111 OLD SOUTH RD
68	168		EGAN CYNTHIA ETAL		PO BOX 3012	NANTUCKET	MA	02584	113 OLD SOUTH RD
68	169		LEMUS RODIL		3 NOBADEER WAY	NANTUCKET	MA	02554	3 NOBADEER WY
68	170		MEDINA ANN M		4 NOBADEER WAY	NANTUCKET	MA	02554	4 NOBADEER WY
68	171		GULLEY LISA J & JOHN		5 NOBADEER WY	NANTUCKET	MA	02554	5 NOBADEER WY
68	172		DALY JOHN J		PO BOX 2076	NANTUCKET	MA	02584	6 NOBADEER WY
68	249		NANTUCKET TOWN OF		16 BROAD ST	NANTUCKET	MA	02554	123 OLD SOUTH RD
68	310		NANTUCKET AIRPORT	C/O AIRPORT GAS STATION INC	PO BOX 1400	NANTUCKET	MA	02554	10 AIRPORT RD
68	800		VTT NANTUCKET INN LLC	C/O NANTUCKET INN	1 MILLER LN	NANTUCKET	MA	02554	100 NANTUCKET INN
78	1		NANTUCKET TOWN OF	NANTUCKET AIRPORT	16 BROAD ST	NANTUCKET	MA	02554	14 AIRPORT RD
Count:	21								

NANTUCKET TOWN OF
 NANTUCKET AIRPORT
 14 AIRPORT RD
 NANTUCKET, MA 02554

1 AIRPORT ROAD LLC
 3 HASKELL ST
 WESTBOROUGH, MA 01581

7 AIRPORT ROAD LLC
 2 WAYDALE RD
 NANTUCKET, MA 02554

ZADROGA GERALD J & REBECCA H
 12 NOBADEER WAY
 NANTUCKET, MA 02554

ZADROGA GERALD JR & REBECCA
 12 NOBADEER WAY
 NANTUCKET, MA 02554

FAIR CITY LLC
 61 OLD SOUTH RD STE128
 NANTUCKET, MA 02554

FAIR CITY LLC
 61 OLD SOUTH RD STE 128
 NANTUCKET, MA 02554

BALLING DANIEL B
 66 FAIRGROUNDS RD
 NANTUCKET, MA 02554

KNISKERN MELISSA A ETAL
 10 NOBADEER WY
 NANTUCKET, MA 02554

ROCKETT JOHN F
 9 NOBADEER WY
 NANTUCKET, MA 02554

ESCOBAR MAYRA E ETAL
 8 NOBADEER WY
 NANTUCKET, MA 02554

BUNTING HEIDI
 750 ETHAN ALLEN HGWY
 RIDGEFIELD, CT 05877

EGAN CYNTHIA ETAL
 PO BOX 3012
 NANTUCKET, MA 02584

LEMUS RODIL
 3 NOBADEER WAY
 NANTUCKET, MA 02554

MEDINA ANN M
 4 NOBADEER WAY
 NANTUCKET, MA 02554

GULLEY LISA J & JOHN
 5 NOBADEER WY
 NANTUCKET, MA 02554

DALY JOHN J
 PO BOX 2076
 NANTUCKET, MA 02584

NANTUCKET TOWN OF
 16 BROAD ST
 NANTUCKET, MA 02554

NANTUCKET AIRPORT
 C/O AIRPORT GAS STATION INC
 PO BOX 1400
 NANTUCKET, MA 02554

VTT NANTUCKET INN LLC
 C/O NANTUCKET INN
 1 MILLER LN
 NANTUCKET, MA 02554

NANTUCKET TOWN OF
 NANTUCKET AIRPORT
 16 BROAD ST
 NANTUCKET, MA 02554



Town of Nantucket

♦♦♦♦♦

OFFICE OF THE TOWN & COUNTY CLERK

16 Broad Street
NANTUCKET, MASSACHUSETTS 02554-3590

Nancy L. Holmes
Town & County Clerk
(508) 228-7216
FAX (508) 325-5313

townclerk@nantucket-ma.gov
nholmes@nantucket-ma.gov

May 2, 2022 ANNUAL TOWN MEETING – Nantucket High School

The following is a summary of the articles called and discussed, and the vote taken by the 2022 Annual Town Meeting held at Nantucket High School on Monday, May 2, 2022 and May 3, 2022.

Monday, May 2, 2022 - Meeting called to order at 5:00 p.m. Of 9,376 Registered Voters, 1050 were present for a 11 % voter turnout. Nantucket's Annual Town Meeting does not have a quorum requirement.

The Girl Scouts and Boy Scouts presented the colors and Bell Ringer, Bobby Planzer, led the Pledge of Allegiance and the National Anthem.

Channel 18 livestreamed the proceedings. Option Technology's electronic check-in services and hand-held voting devices were distributed and utilized throughout the course of this meeting.

After the reading of the Return of the Warrant, a voice vote was held to accept the utilization of "Town Meeting Traditions and Procedures", in addition to "Town Meeting Time". The vote was unanimous.

Next, a sample "practice" vote was held so that voters could familiarize themselves with the Option Technology devices.

The Moderator reviewed technical amendments for the following articles: 2, 4, 8, 21, 23, 54.

The following articles were called: 7, 10, 11, 13, 14, 15, 16, 20, 37, 39, 42, 43, 44, 45, 50, 54, 55, 57, 58, 62, 63, 69, 71, 76, 78, 79, 80, 81, 82, 91, 101.

The following "Pot of Uncalled Articles" was voted by 4/5ths Vote: Yes - 739; No - 39 in accordance with the motions recommended by the Finance Committee, or, in the absence of a Finance Committee Motion, then in accordance with the motions as recommended by the Planning Board, as printed in the Finance Committee Report, with technical amendments brought forward during the course of the meeting:

1, 2, 3, 4, 5, 6, 8, 9, 12, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 40, 41, 46, 47, 48, 49, 51, 52, 53, 56, 59, 60, 61, 64, 65, 66, 67, 68, 70, 72, 73, 74, 75, 77, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107.

Unless otherwise specified, the motion adopted is the motion of the Finance Committee or the Planning Board as set forth in the Warrant Booklet and the Technical Amendments made.

Article 1: Receipt of Reports (Not Called) - Adopted by four-fifths Vote. Yes: 739 No: 39

Article 2: Appropriation: Unpaid Bills (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 3: Appropriation: Prior Year Articles (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 4: Revolving Accounts: Spending Limits for FY 2023 (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 5: Appropriation: Reserve Fund (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 6: Fiscal Year 2022 General Fund Budget Transfers (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 7: Personnel Compensation Plans for Fiscal Year 2023 (Called) – The motion as amended was Adopted. Yes: 779 No: 36

Article 8: Appropriation: Fiscal Year 2023 General Fund Operating Budget (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 9: Appropriation: Health and Human Services (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 10: Appropriation: General Fund Capital Expenditures (Called) – Adopted by two-thirds Vote (required votes = 583). Yes: 757 No: 118

Article 11: Appropriation: Design of New Our Island Home Facility (Called) – Adopted by two-thirds Vote (required votes = 591). Yes: 757 No: 130

Article 12: Supplemental Appropriation: Replacement Harbormaster Building (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 13: Appropriation: Pleasant Street and Sidewalk Repaving/Reconstruction (Called) – Adopted by two-thirds vote (required votes= 583). Yes: 722 No: 153

Article 14: Appropriation: LORAN Barracks Repairs (Called) – Adopted by two-thirds vote (required votes= 578). Yes: 714 No: 153

Article 15: Appropriation: School Department – Athletic Facilities (Called) – Adopted by two-thirds vote (required votes = 585). Yes: 681 No: 197

Article 16: Appropriation: Design of Central Municipal Facility (Called; Call Withdrawn) – NOT Adopted by required two-thirds vote (required votes = 562). Yes: 535 No: 309

Article 17: Appropriation: Construction of Town Employee Housing (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 18: Appropriation: PFAS Soil Investigation (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 19: Real Estate Acquisition/Appropriation: 10-12 Washington Street (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 20: Appropriation: Affordable Housing Capital Expenditures (Called) - Adopted by two-thirds vote (required votes = 575). Yes: 663 No: 200

Article 21: Appropriation: Fiscal Year 2023 Enterprise Funds Operations (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 22: Appropriation: Enterprise Funds Capital Expenditures (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 23: Enterprise Funds: Fiscal Year 2022 Budget Transfers (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 24: Appropriation: Waterways Improvement Fund (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 25: Appropriation: Ambulance Reserve Fund (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 26: Appropriation: Ferry Embarkation Fee (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 27: Appropriation: County Assessment (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 28: Appropriation: Finalizing Fiscal Year 2023 County Budget (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 29: Rescind Unused Borrowing Authority (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 30: Appropriation: Other Post-Employment Benefits Trust Fund (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 31: Appropriation: Fiscal Year 2023 Senior Work-off Program (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 32: Marijuana Cultivation Host Community Payments – Special Purpose Stabilization Fund for Substance Abuse Efforts (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 33: Appropriation for Special Purpose Stabilization Fund for Airport Employee Accrued Liabilities (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 34: Appropriation for Special Purpose Stabilization Fund for Town Employee Accrued Liabilities (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 35: Appropriation: Fiscal Year 2023 Community Preservation Committee (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 36: Community Preservation Committee: Fiscal Year 2022 Budget Transfers (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 37: Appropriation: Community Preservation Trust for Affordable Housing Trust Fund (Called) - Adopted by two-thirds vote (required votes= 613). Yes: 768 No: 152

Article 38: Appropriation: Shredder for Solid Waste (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 39: Bylaw: Short-term Rental Regulations (Called) – Adopted by majority vote. Yes: 610 No: 302

Article 40: Bylaw Amendment: Finances/Creation of New Revolving Account – Short-Term Rental Registration Program (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 41: Short-term Rental Revolving Account: Spending Limits for FY 2023 (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 42: Zoning Bylaw Amendment: Short-Term Rentals (Called) Planning Board motion to refer the Article to the Select Board to constitute a work group for further study. Delano motion to amend the Planning Board motion to add Article 43 to the motion. Holdgate motion to refer Article 42 to the Select Board, Finance Committee and Planning Board to constitute a work group for further study. Holdgate motion adopted Yes: 546, No: 219. Delano motion adopted Yes: 527 No: 301. Main motion to refer Articles Motion to refer Articles 42 and 43 to the Select Board, Finance Committee and Planning Board to constitute a work group for further study adopted Yes: 422 No: 414

Article 43: Zoning Bylaw Amendment: Protective Rights to Short-Term Rentals. (Called)_Motion to refer Articles 42 and 43 to the Select Board, Finance Committee and Planning Board to constitute a work group for further study; Adopted Yes: 422 No: 414

Article 44: Zoning Map Change: R-1 to R-5L – Red Mill Lane, Old Farm Road, Old Mill Court, Mill Hill Lane, Cato Lane, and Vesper Lane (Called; call withdrawn) - Adopted by two-thirds vote (required votes= 260). Yes: 371 No: 19

Article 45: Zoning Map Change: RC to CN – Washington Street (Called; call withdrawn) - Adopted by two-thirds vote (required votes= 260). Yes: 371 No: 19

Article 46: Zoning Map Change: RC-2 and LUG-2 to R-5L, R-5, R-10, or R-10L – Bartlett Farm Road and Mioxes Way (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 47: Zoning Map Change: RC-2 to R-5L, R-10 or CTEC – Clara Drive and Raceway Drive (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 48: Zoning Map Change: RC-2 to CTEC – 26 Bartlett Road and 1 Perry Lane (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 49: Zoning Map Change: RC-2 to CN – Nobadeer and Sun Island Roads (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 50: Zoning Bylaw Amendment: Tertiary Dwelling (Called) – Sutton motion to amend the Article Section 2A, 2B, 2C to 650 sq ft. in R5 and R10 zoning districts. Two-thirds vote required. Amendment NOT Adopted. Yes: 147 No: 343. Motion as printed in warrant, two-thirds vote required. Motion as printed Adopted by two-thirds vote. Yes: 400 No: 108

Article 51: Zoning Bylaw Amendment: Tertiary Lot (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 52: Zoning Bylaw Amendment: Workforce Homeownership Housing (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 53: Zoning Bylaw Amendment and Zoning Map Amendment: Technical Amendments (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 54: Zoning Bylaw Amendment: Swimming Pool Use Chart – Residential and Hot Tub/Spa (Called) Lepore positive motion. Adopted by two-thirds vote (required votes - 375). Yes: 376 No: 186

Article 55: Zoning Bylaw Amendment: Swimming Pool Definition – Residential and Hot Tub/Spa (Called; call withdrawn) – Adopted motion as printed in warrant by majority vote. Yes: 520 No: 24

Article 56: Zoning Bylaw Amendment: Swimming Pool – Residential (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 57: Zoning Bylaw Amendment: Swimming Pool – Residential (Called; call withdrawn) – Adopted motion as printed in the warrant by majority vote. Yes: 525 No: 14

Article 58: Zoning Bylaw Amendment: Definitions and Word Usage (Called) – Adopted by majority vote under Housing Choice Act. Yes: 325 No: 222

Article 59: Zoning Bylaw Amendment: Storage Container by Special Permit in CMI (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 60: Zoning Map Change: R-20 to R-10L – Nobadeer Way (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 61: Zoning Map Change: R-20 to CTEC and/or CN – Old South Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 62: Zoning Map Change: R-20 to CTEC and/or CN – Old South Road (Called; call withdrawn). Adopted by two-thirds vote (required votes = 260). Yes: 371 No: 19

Article 63: Zoning Map Change: LUG-2 to R-5 or CN – 44 Skyline Drive (Called; call withdrawn). Adopted by two-thirds vote (required votes = 260). Yes: 371 No: 19

Article 64: Bylaw Amendment: Animals (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 65: Bylaw Amendment: Committees/Agricultural Commission (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 66: Nantucket Historical Commission: Membership (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 67: Bylaw Amendment: Streets and Sidewalks (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 68: Cemetery Regulations (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 69: Bylaw Amendment: Single-Use Plastics - Alcoholic Beverages of Less Than or Equal to 100 Milliliters. (Called) Molden positive motion. Bob DeCosta amended Molden positive motion. DeCosta amendment Adopted. Yes: 490 No: 67. Vote on main motion as amended by Molden and DeCosta. Adopted by majority. Yes: 496 No: 73

Article 70: Bylaw Amendment: Single-Use Plastics – Single-Use Plastic Fiber Tobacco Filter Products (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 71: Bylaw Amendment: Gender Equality on Beaches (Called) Adopted by majority. Yes: 327 No: 242

Article 72: Amend Town Wharf and Waterways Prohibited Activities (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 73: Bylaw Amendment: Board of Sewer Commissioners/Sewer District Map Changes (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 74: Bylaw Amendment: Board of Sewer Commissioners/Town Sewer District Map Change: 44 Skyline Drive (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 75: Bylaw Amendment: Board of Sewer Commissioners/Town Sewer District Map Change – 15 Milestone Crossing (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 76: Home Rule Petition: Community Housing Bank Real Estate Transfer Fee (Called) Adopted by majority. Yes: 405 No: 99

Article 77: Home Rule Petition: An Act Amending the Nantucket Sewer Act (Chapter 396 of the Acts of 2008) (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 78: Home Rule Petition: An Act Amending the Charter of the Town of Nantucket to Implement Certain Recommendations of the Town Government Study Committee (Called) Sutton motion to amend (25 signatures for citizen articles). Amendment NOT ADOPTED. Yes: 202 No: 252. Vote on main motion Adopted. Yes: 360 No: 91

Article 79: Home Rule Petition: An Act Prohibiting the Application of Fertilizer in the Town of Nantucket (Called) DeCosta motion to amend. Dutra motion to amend. Vote on Dutra amendment not adopted. Yes: 194 No: 274. DeCosta amendment Adopted. Yes: 337 No: 132. Vote on main motion with DeCosta amendment Adopted. Yes: 374 No: 105

Article 80: Home Rule Petition: Historic District Commission – Solar (Called) Welch motion to refer to committee. Vote on Welch motion to refer Adopted. Yes: 328 No: 81.

Article 81: Home Rule Petition: Amend the Nantucket Planning and Economic Development Commission Special Act (Called) Rayport positive motion with amendments. Joanna Roche motion to refer to the NPEDC for further study. Vote on Roche motion Adopted. Yes: 188 No: 172

Article 82: Ombudsman Establishment – Complaints (Called) Positive motion by T. Williams. Vote on T. Williams motion Adopted. Yes: 206 No: 126

Article 83: Scheduling of Annual Town Meeting and Annual Town Election (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 84: Rescind Article 77 of the 2018 Annual Town Meeting (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 85: Real Estate Acquisition: Coastal Access - Eel Point Ways (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 86: Real Estate Conveyance: Coastal Access - Eel Point Ways (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 87: Real Estate Acquisition: Paper Streets – Red Barn and Sheep Pond Roads Area (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 88: Real Estate Conveyance: Paper Streets – Red Barn and Sheep Pond Roads Area (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 89: Real Estate Acquisition: Parcel of Land off Surfside Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 90: Real Estate Conveyance: Parcel of Land off Surfside Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 91: Real Estate Acquisition: 31 Easy Street (Called). Motion NOT ADOPTED by two-thirds vote (required votes= 223). Yes: 106 No: 229

Article 92: Real Estate Conveyance: 31 Easy Street (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 93: Real Estate Conveyance: 50 Altar Rock Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 94: Home Rule Petition: Real Estate Conveyance – 50 Altar Rock Road to Nantucket Conservation Foundation, Inc. (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 95: Home Rule Petition: Real Estate Conveyance – A Portion of Ames Avenue (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 96: Real Estate Acquisition: Tom Nevers Coastal Access - Dorset Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 97: Real Estate Conveyance: Tom Nevers Coastal Access - Dorset Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 98: Real Estate Acquisition: West Chester Street (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 99: Real Estate Conveyance: West Chester Street and Weweeder Avenue (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 100: Real Estate Disposition: Utility Easement/Shadbush Road (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 101: Real Estate Disposition: Long-term Lease Authorization/Shooting Range Facility (Called)
Kohler motion to amend (indoor only). Vote on Kohler Amendment NOT ADOPTED. Yes: 40 No: 299.
Vote on main motion as made by Finance Committee ADOPTED. Yes: 307 No: 32

Article 102: Real Estate Acquisition: Proprietors Road – Off Tripp Drive/South Shore Road (Not Called) -
Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 103: Real Estate Conveyance: Proprietors Road – Off Tripp Drive/South Shore Road (Not Called) -
Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 104: Real Estate Acquisition: Two (2) 12-foot Wide Ways – Nobadeer Way (Not Called) - Adopted
by 4/5ths Vote. Yes: 739 No: 39

Article 105: Real Estate Conveyance: Two (2) 12-foot Wide Ways – Nobadeer Way (Not Called) -
Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 106: Appropriation: Stabilization Fund (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

Article 107: Appropriation: Free Cash (Not Called) - Adopted by 4/5ths Vote. Yes: 739 No: 39

At 10:53 p.m. at the May 3, 2022 adjourned session Moderator Alger recognized Jason Bridges, Chair of the Select Board, who moved to dissolve the 2022 Annual Town Meeting. The motion was seconded and Adopted by Unanimous Voice Vote.

2 Nobadeer Way, FILE NO. 23-_____

Applicant seeks Variance relief pursuant to Zoning Bylaw Section 139-32(A) allow for a *temporary* fourth dwelling on a lot while a new dwelling is being built, and Special Permit relief under Section 139-33.A(1)(a) for the alteration or expansion of a preexisting nonconforming structure as close as 0.1 foot from the lot line in the rear yard setback. The property is located at 2 Nobadeer Way, shown as Assessor's Map 68, Parcel 113, which is shown as lot 12 on Land Court Plan 16514-F. Evidence of owner's title is registered on Certificate of Title No. 26263 at the Nantucket Registry District of the Land Court.

Addendum

The locus, 2 Nobadeer Way, is in the Residential10 Limited (R-10L) Zoning District and is an oversized lot of 15,000 square feet, containing 100 feet of frontage, where 10,000 square feet of lot area and 75 feet of frontage is required. The property is improved with a 3-bedroom single family dwelling of about 1,120 SF of ground cover and a 1-bedroom cottage of about 768 SF, and which together total about 1,888.00 square feet of ground cover. This a ground cover ratio of about 12.59% where 25% is allowed. The cottage has a preexisting nonconforming setback encroachment, as it is as close as 0.1 feet of the rear lot line where a 10 foot rear setback is required. These improvements predate the adoption of the Nantucket Zoning Bylaw, both of which were built in 1960, and each of which has its own pre-existing non-conforming driveway and parking, on opposite ends of the property, as shown in the Town's 1998 GIS photos. There are several small sheds on the property that are in the setback that will be relocated outside of the setback. The property is otherwise dimensionally conforming.

Of note, the lot is subject to a use freeze based on the R-20 zoning district, pursuant to a perimeter plan by Paul Santos of Nantucket Surveyors LLC, dated March 28, 2022, endorsed by the Planning Board on April 11, 2022, as shown in File PLSUB-2022-04-02263. Even without calculating for any statutory extensions, this zoning freeze is valid for three years, through April 11, 2025. Tertiary dwellings are not allows in the R-10L district, but are allowed by right in the R-20 district. Therefore, under the use freeze, the Applicant can have a tertiary dwelling without relief.

The Applicant intends to construct a new 5-bedroom structure that would be a 3-bedroom single family dwelling with an attached 2-bedroom tertiary dwelling. While this is a single structure with two dwellings, it is not a duplex under the bylaw. The tertiary dwelling portion of the structure will conform to the requirements of the definition in Section 139-2 that require a recorded year-round residency restriction, that limit the ground cover of the tertiary section to 900 SF of ground cover and that limit the gross living area of the tertiary section to 900 SF of GLA, as defined in the bylaw. Applicant intends to demolish the existing 3-bedroom single-family dwelling and to retain the existing 1-bedroom cottage. If the Planning Board allows for additional bedrooms in its tertiary permit (either 7 or 8 bedrooms total on the lot, instead of 6 total on the lot), the cottage will get an addition and renovation to accommodate this additional living space. Some of the renovation may be onto the portion of the cottage now in the setback, but will not be closer to the lot line than now exists.

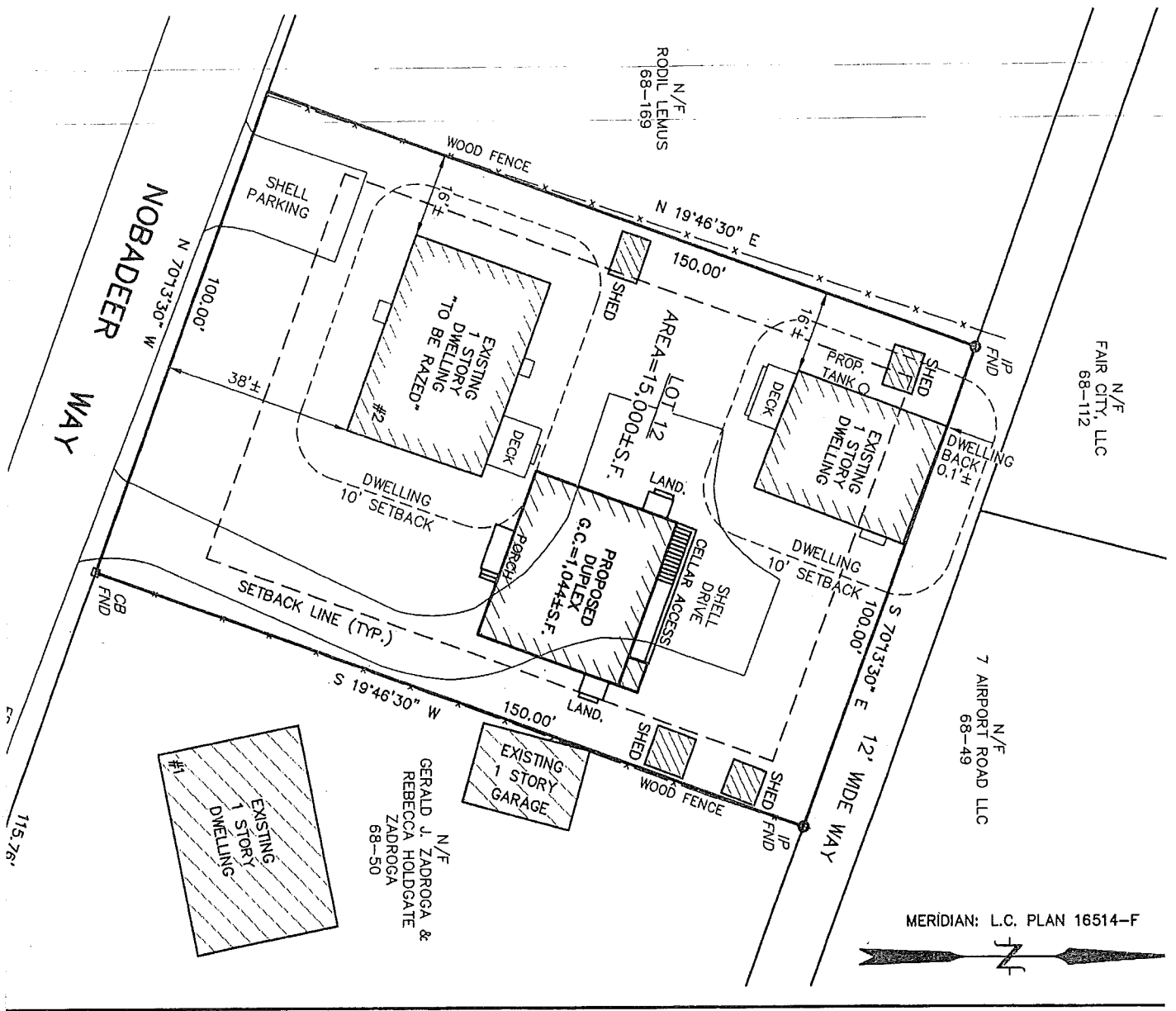
Both of the existing single-family dwelling and the cottage are currently leased to year-round tenants. Technically, the Bylaw require that one of these dwellings be demolished or altered to a non-habitation use before a building permit could be issued for a two-dwelling structure, since that permit would provide for four dwellings on the lot. Therefore, the Applicant requests a variance under § 139-32(A) to **temporarily** exceed the number of dwellings allowed on the lot.

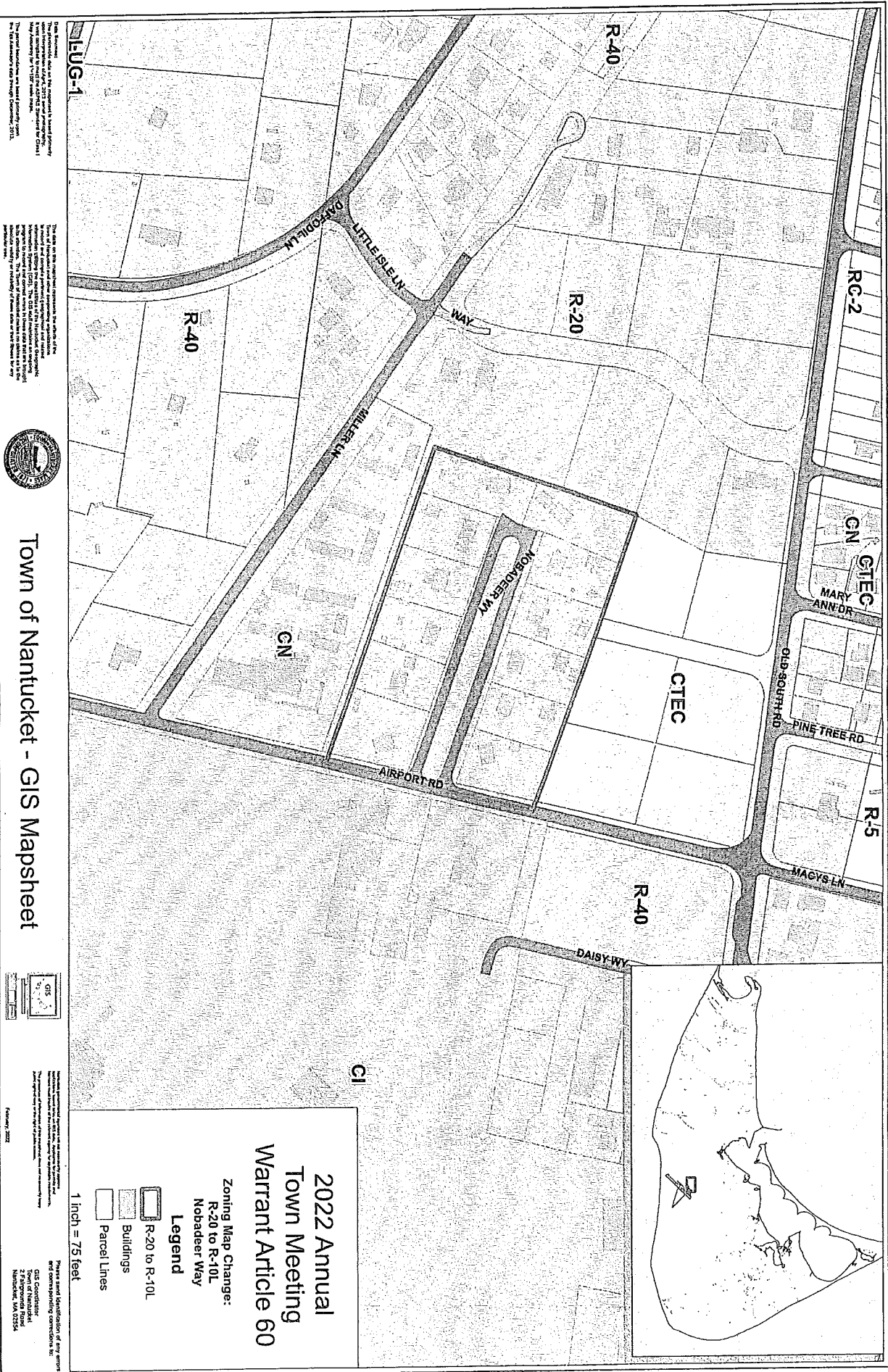
The Applicant seeks a temporary waiver to permit and build the structure with a dwelling and attached tertiary dwelling before demolishing the existing 3-bedroom dwelling. The purpose of this relief is to allow the year-round tenants to remain in their home during construction of the new structure. At no time would more than three structures be occupied, and as soon as the new structure is habitable, the tenant would be relocated to it and the designated structure would be

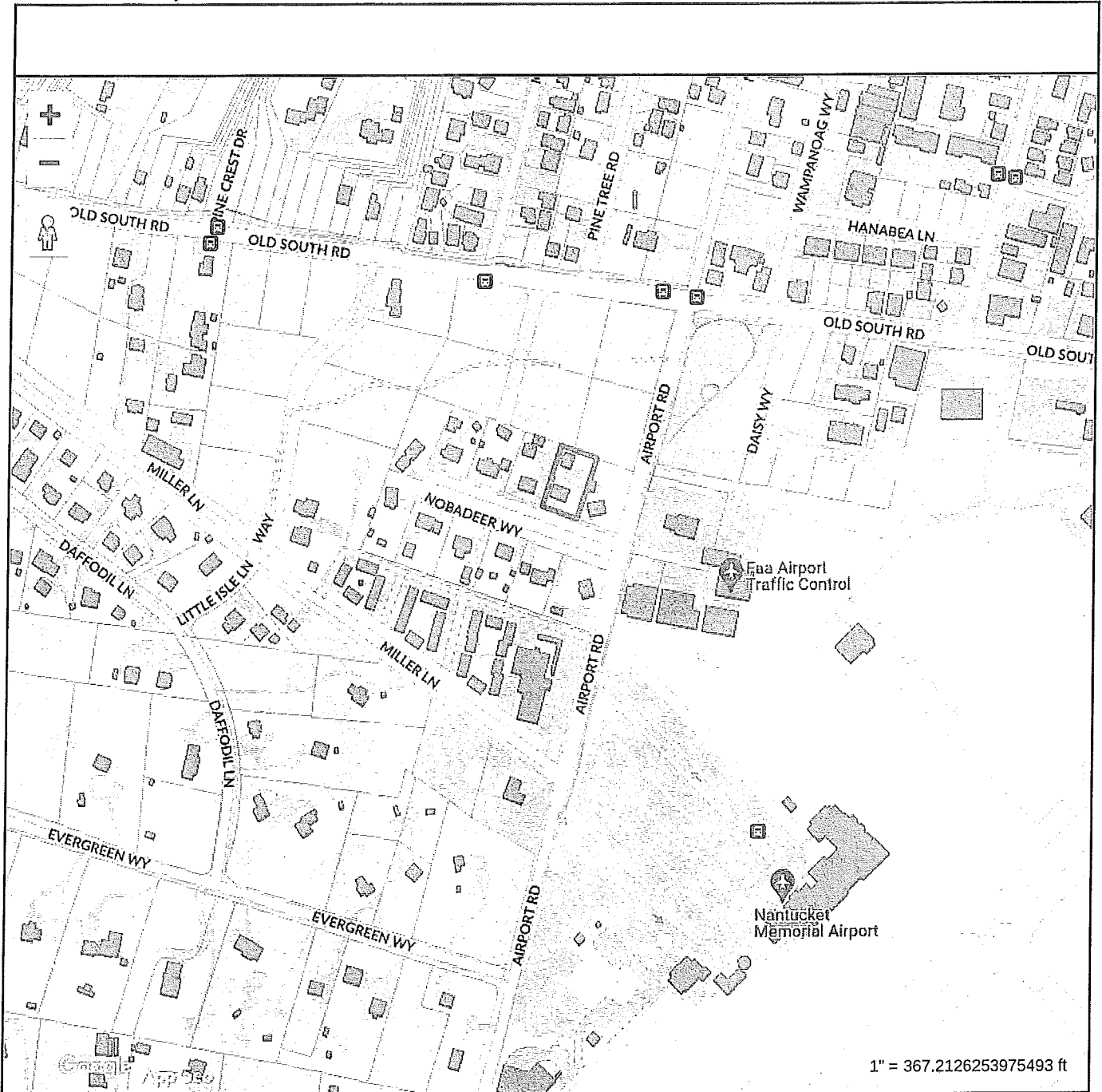
demolished or removed from the lot. Given the housing crisis on Nantucket, the displacement of this family for a year should be avoided.

Under § 139-32(A) the Board of Appeals has the power to grant a variance upon a finding that the literal enforcement of Chapter 139 would involve substantial hardship, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw. Here, literal enforcement of the dwelling limitation would require the Applicant to demolish a housing unit that is occupied by a year-round tenant in order to proceed with the planned development. This would deprive them of a year or more of secure housing. The relief would allow the tenant to retain their housing during construction of the replacement unit. The requested relief does not pose a substantial detriment to the public good or nullify or substantially derogate the intent or purpose of the bylaw.

Further, due to the existing rear setback encroachment of the Applicant also seeks Special Permit relief under Section 139-33.A(1)(a) for the alteration or expansion of a preexisting nonconforming structure where the change will not increase the distance of the encroachment or be substantially more detrimental to the neighborhood than the existing nonconformity.







1" = 367.2126253975493 ft

Property Information

Property ID 68 113
 Location 2 NOBADEER WY
 Owner NOB ACK LLC



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 11/14/2022
 Data updated Jan. 2021

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.



COVERTURE BY MATTHEW T. STINEBAUGH 116

NANTUCKET REGISTRY OF DEEDS

Date _____

Time _____

Plan BK. _____ Pg. _____

Plan No. _____

Attest: _____ Registrar _____

RESERVED FOR REGISTRY USE ONLY

N-11444

**CHARLES B. JOHNSON
AS TRUSTEE OF
SHADOW NOMINEE
TRUST**

File No. 07-23

4 HARBOR SQUARE

APPEAL

Continued to June 08,2023

SURESIDE CROSSING LETTERS

Nickesha Sheriff

From: Leslie Snell
Sent: Wednesday, May 3, 2023 11:15 AM
To: Nickesha Sheriff
Cc: William Saad
Subject: FW: Surfside Crossing Final Plan Review

For packet.

Leslie Woodson Snell, AICP, LEED AP BD+C Deputy Director of Planning

Nantucket Planning & Economic Development Commission Planning & Land Use Services (PLUS) Department
2 Fairgrounds Road
Nantucket, MA 02554

Telephone: 508-325-5385

-----Original Message-----

From: Michael Cranson <mcranson@fire.nantucket-ma.gov>
Sent: Wednesday, May 3, 2023 10:33 AM
To: Paul Murphy <pmurphy@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>; Roberto Santamaria <rsantamaria@nantucket-ma.gov>; Leslie Snell <LSnell@nantucket-ma.gov>; Mark Willett <mwillett@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>
Cc: Katie Cabral <kcabral@nantucket-ma.gov>; Town Manager <townmanager@nantucket-ma.gov>; Joseph Townsend <jtownsend@fire.nantucket-ma.gov>
Subject: RE: Surfside Crossing Final Plan Review

Hi Leslie,
Captain Townsend has the plans and is in the process of reviewing them.

Michael Cranson, MPA
Chief of Department
Nantucket Fire Department
4 Fairgrounds Road
Nantucket, MA 02554
Tel: (508) 228-2323 ext.3110
Fax: (508) 325-7500

-----Original Message-----

From: Paul Murphy <pmurphy@nantucket-ma.gov>
Sent: Tuesday, May 2, 2023 9:19 AM
To: Libby Gibson <LGibson@nantucket-ma.gov>; Michael Cranson <mcranson@fire.nantucket-ma.gov>; Roberto Santamaria <rsantamaria@nantucket-ma.gov>; Mark Willett <mwillett@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>

Cc: Leslie Snell <LSnell@nantucket-ma.gov>; Katie Cabral <kcabral@nantucket-ma.gov>; Town Manager <townmanager@nantucket-ma.gov>
Subject: RE: Surfside Crossing Final Plan Review

Hi Leslie,

I have reviewed the plans and I have no concerns at this time.

Thanks,

Paul

-----Original Message-----

From: Libby Gibson <LGibson@nantucket-ma.gov>
Sent: Sunday, April 30, 2023 8:58 AM
To: Michael Cranson <mcranson@fire.nantucket-ma.gov>; Roberto Santamaria <rsantamaria@nantucket-ma.gov>; Mark Willett <mwillett@nantucket-ma.gov>; Paul Murphy <pmurphy@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>
Cc: Leslie Snell <LSnell@nantucket-ma.gov>; Katie Cabral <kcabral@nantucket-ma.gov>
Subject: FW: Surfside Crossing Final Plan Review

If anyone sends additional comments to Leslie, as requested below, please cc townmanager@nantucket-ma.gov Thank you

C. Elizabeth Gibson, ICMA-CM
Town Manager
Town of Nantucket
(508) 228-7255

This electronic message and any attached files contain information from the Town of Nantucket that may be privileged and/or confidential. The information is intended for the recipient named above, and use by any other person is not authorized. If you are not the intended recipient, any disclosure, distribution, copying, or use of this information is strictly prohibited. If you have received this message in error, please notify the sender by e-mail immediately. Also, please be advised that the Secretary of State's office has determined that most e-mails sent to and from municipal officials are considered to be public records and consequently may be subject to public disclosure.

-----Original Message-----

From: Leslie Snell <LSnell@nantucket-ma.gov>
Sent: Monday, April 24, 2023 7:03 PM
To: Michael Cranson <mcranson@fire.nantucket-ma.gov>; Joseph Townsend <jtownsend@fire.nantucket-ma.gov>; Mark Willett <mwillett@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>; Roberto Santamaria <rsantamaria@nantucket-ma.gov>; Paul Murphy <pmurphy@nantucket-ma.gov>; jchessia@chessia.com
Cc: Libby Gibson <LGibson@nantucket-ma.gov>; Town Manager <townmanager@nantucket-ma.gov>; George Pucci <GPucci@k-plaw.com>; Andrew Vorce <AVorce@nantucket-ma.gov>; Susan McCarthy <sem@sgriffinlaw.com>
Subject: Surfside Crossing Final Plan Review

Good Evening -

Just a reminder that the Surfside Crossing final plan review has a maximum time frame of 90 days and I expect that the ZBA will need to take action at their June 8th meeting. The first discussion about the plans will take place at the May 11 ZBA meeting. It would be helpful to receive written comments in advance of that meeting (by May 4), if possible.

DAVID GRAY - I received an initial comment from you and I think the applicant addressed your comment in the slightly revised plan set that I received and that is posted on the website. Please confirm.

Thanks,
Leslie

Sent from my iPad

This email was scanned by Bitdefender

Nickesha Sheriff

From: Leslie Snell
Sent: Tuesday, May 2, 2023 5:11 PM
To: Nickesha Sheriff; William Saad
Subject: FW: Surfside Crossing Final Plan Review

-----Original Message-----

From: Paul Murphy <pmurphy@nantucket-ma.gov>
Sent: Tuesday, May 2, 2023 9:19 AM
To: Libby Gibson <LGibson@nantucket-ma.gov>; Michael Cranson <mcranson@fire.nantucket-ma.gov>; Roberto Santamaria <rsantamaria@nantucket-ma.gov>; Mark Willett <mwillett@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>
Cc: Leslie Snell <LSnell@nantucket-ma.gov>; Katie Cabral <kcabral@nantucket-ma.gov>; Town Manager <townmanager@nantucket-ma.gov>
Subject: RE: Surfside Crossing Final Plan Review

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Cc: Leslie Snell <LSnell@nantucket-ma.gov>; Katie Cabral <kcabral@nantucket-ma.gov>
Subject: FW: Surfside Crossing Final Plan Review

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C. Elizabeth Gibson, ICMA-CM
Town Manager
Town of Nantucket
(508) 228-7255

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From: Leslie Snell <LSnell@nantucket-ma.gov>

Sent: Monday, April 24, 2023 7:03 PM

To: Michael Cranson <mcranson@fire.nantucket-ma.gov>; Joseph Townsend <jtownsend@fire.nantucket-ma.gov>; Mark Willett <mwillett@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>; Roberto Santamaria <rsantamaria@nantucket-ma.gov>; Paul Murphy <pmurphy@nantucket-ma.gov>; jchessia@chessia.com

Cc: Libby Gibson <LGibson@nantucket-ma.gov>; Town Manager <townmanager@nantucket-ma.gov>; George Pucci <GPucci@k-plaw.com>; Andrew Vorce <AVorce@nantucket-ma.gov>; Susan McCarthy <sem@sgriffinlaw.com>

Subject: Surfside Crossing Final Plan Review

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DAVID GRAY - I received an initial comment from you and I think the applicant addressed your comment in the slightly revised plan set that I received and that is posted on the website. Please confirm.

Thanks,
Leslie

Sent from my iPad

Nickesha Sheriff

From: jz <2what2@comcast.net>
Sent: Friday, March 31, 2023 2:06 PM
To: Nickesha Sheriff
Subject: Surfside Crossing April 13th meeting

Hi Nickesha,

I was wondering why the stormwater management system was not included in the submitted package to ZBA. In the Nantucket building/zoning code there are specific requirements for developments in the public wellhead Zone 2, which need to be complied to.

Thank you,

Jacques zimicki

Sent from [Mail](#) for Windows



Virus-free. www.avast.com

This email was scanned by Bitdefender

Nickesha Sheriff

From: Leslie Snell
Sent: Friday, March 31, 2023 10:16 AM
To: Nickesha Sheriff; William Saad
Cc: Edward Pesce
Subject: Fwd: Surfside Crossing

Nicky -

This is the first comment that we have received about SSX final plans. Please create a file to keep all comments together so that we can make sure they are addressed (or not) in the final plan set. I already forwarded this to Jaime Feeley, but we definitely need to make sure that he receives whatever we receive.

Ed -

I think this comment has already been addressed and will be clarified through a note on the plan. I haven't confirmed with David yet, but Jamie and I (completely separate from David's comment) discussed how the sewer connection is shown on the plan set. The issue is whether or not the Town sewer work will be completed on schedule with the SSX project, meaning will they be able to connect via gravity or will they need to install a pump station. The final plan set shows a gravity connection, but his engineer is going to add a note saying that if the gravity connection isn't possible, they will update the plan set to show a design including a pump station.

Leslie
Sent from my iPad

Begin forwarded message:

From: Leslie Snell <LSnell@nantucket-ma.gov>
Date: March 31, 2023 at 10:08:18 AM EDT
To: jamie@cottageandcastleinc.com
Subject: Fwd: Surfside Crossing

Sent from my iPad

Begin forwarded message:

From: David Gray <dgray@nantucket-ma.gov>
Date: March 27, 2023 at 4:45:39 PM EDT
To: Leslie Snell <LSnell@nantucket-ma.gov>
Subject: RE: Surfside Crossing

The utility plan that shows sewer is not correct and doesn't reflect any of the new sewers installed

David C Gray Sr.
Director
Nantucket Sewer Department

81 S.Shore Rd
Nantucket, MA 02554
Telephone 508.228-7200 EXT 7801
Cell 401-413-8370
dgray@nantucket-ma.gov

-----Original Message-----

From: Leslie Snell <LSnell@nantucket-ma.gov>
Sent: Monday, March 27, 2023 4:40 PM
To: David Gray <dgray@nantucket-ma.gov>
Subject: FW: Surfside Crossing

Hi David -

Here's the link to the plans and other documents.

https://www.nantucket-ma.gov/AgendaCenter/ViewFile/Agenda/_04132023-12433?html=true

I received the final plans on Tuesday, March 21 and as of now, am operating with the understanding that the submission triggered the 90 review period for the ZBA. If you have final comments please sent them to me directly.

Leslie

Leslie Woodson Snell, AICP, LEED AP BD+C Deputy Director of Planning

Nantucket Planning & Economic Development Commission Planning & Land Use
Services (PLUS) Department
2 Fairgrounds Road
Nantucket, MA 02554

Telephone: 508-325-5385

Nickesha Sheriff

From: Megan Trudel
Sent: Friday, April 7, 2023 9:54 AM
To: Nickesha Sheriff
Subject: Fwd: Public Comment for 4/13/23 Hearing re: Surfside Crossing
Attachments: NLC_ZBA re Surfside Crossing 4.7.23.pdf

Megan Trudel, AICP
Land Use Specialist

PLUS-Town of Nantucket
2 Fairgrounds Road
Nantucket, MA 02554

mtrudel@nantucket-ma.gov

Begin forwarded message:

From: Emily Molden <emily@nantucketlandcouncil.org>
Subject: Public Comment for 4/13/23 Hearing re: Surfside Crossing
Date: April 7, 2023 at 9:48:07 AM EDT
To: plus@nantucket-ma.gov, Leslie Snell <LSnell@nantucket-ma.gov>, Megan Trudel <mtrudel@nantucket-ma.gov>, Susan McCarthy <sem@sgriffinlaw.com>, lisa@botticelliandpohl.com
Cc: Dennis Murphy <dgusmurphy@gmail.com>, Daniel C Hill <dhill@danhilllaw.com>

Dear Leslie and ZBA,

I am writing to submit a comment letter from the Nantucket Land Council's attorney, Dennis Murphy, to the members of the ZBA regarding the scheduled hearing on Surfside Crossing for April 13, 2023.

We plan to be in attendance at the meeting to discuss these matters further.

Thank you very much,
Emily

--
Emily Molden
Executive Director
Nantucket Land Council
planning - protecting - preserving
6 Ash Lane
(508) 228-2818
emily@nantucketlandcouncil.org



Dennis A. Murphy
dgusmurphy@gmail.com
781-588-7881

April 7, 2023

VIA EMAIL: plus@nantucket-ma.gov

Nantucket Zoning Board of Appeals
2 Fairgrounds Rd.
Nantucket, MA 02554

Re: Surfside Crossing agenda item for April 13, 2023 public hearing

Dear Members of the Board:

I represent Nantucket Land Council, Inc., who along with the Tipping Point abutters and the ZBA – your Board – have appealed the September 16, 2022 Decision of the Housing Appeals Committee to Superior Court, which just scheduled a hearing for next month. See Meredith, et al. v. HAC, et al., No. 2275CV00025 (Nantucket Super. Ct.) The Land Council, Tipping Point and ZBA are all co-plaintiffs on the same side in that case.

Despite the Court's upcoming judicial review scheduled to commence next month, Applicant has asked the Board to approve final plans as if the Court has already ruled. This request is premature while the antecedent permits necessary for building permit plan approvals are not final and still on appeal. I urge the Board not to take any action that would undermine its position in the pending case. You don't need to take my word for it, but you should consult with Town Counsel as this Board is a party in pending litigation about this matter.

As an initial matter, it is a wonder that this matter is even on the Board's agenda for April 13 when the submission deadline for that hearing was March 13, but nothing was submitted until after that deadline on March 17, and some of the plans are dated even later (e.g., pool set 3.22.23) Moreover, your own rules require plans and submissions of this level of complexity to be reviewed by an outside consultant, yet nothing on the website indicates such review has taken place. (3/15/18 Am. Comp. Permit Rules and Regs, § 4.01) Before proceeding further, the Board should have the plan submissions reviewed by its peer review consulting engineer, particularly since they have changed radically since the initial review in 2019-21.

Applicant's submission is premature and incomplete, either of which provides reason enough not to proceed with the review or approval of final plans. Applicant's request is premature because there is no comprehensive permit currently in place and hence no basis to review final plans for consistency with the comprehensive permit. The ZBA's comprehensive permit issued on June 14, 2019 was vacated by the HAC, and the Board was directed to issue an amended permit:

“The decision of the Board is vacated, and the Board is directed to issue an amended comprehensive permit as provided in the text of this decision and the conditions below.” (9/16/22 HAC Decision, p. 41)

But instead of issuing an amended comprehensive permit, this Board elected to appeal the HAC’s determination to Superior Court. The HAC Decision is not a permit, which is why it directed the ZBA to issue an amended permit. Because there is no operative comprehensive permit, there is no way for the Board to assess consistency of the final plans with the comprehensive permit. For these reasons, the Board’s determination about final plans must await judicial review by the Superior Court, and then based on that, the issuance of an amended comprehensive permit can be considered. Once the comprehensive permit or an amended comprehensive permit has become final, only then will final plans be ripe for review and approval.

In addition to being premature, the Applicant’s submission is also incomplete because there are at least two dozen filings required by the comprehensive permit for the final plan review for which no plan or document has been submitted. Here’s a list of what’s required by your own permit, unaltered by the HAC Decision, but still missing:

1. soil testing for stormwater — p. 18, condition 40
2. final construction plans w/ data required by local subdivision regs — p. 18, condition 41
3. final construction plan and calcs in compliance with DEP Stormwater Handbook — p. 19, condition 45
4. funding for review of final plans — p. 18, condition 42
5. SWPPP plan — p. 19, conditions 43 & 46
6. O&M plan for stormwater system operation — p. 19, condition 47
7. Fire Dept access plan hydraulic study — p. 20, conditions 51& 53
8. Sewer Dept review/approval of final design plans — p. 20, condition 57
9. sewer drawings provided in AutoCAD — p. 21, condition 60
10. O&M plan for sewer pump station — p. 21, condition 61
11. HOA docs for common infrastructure — p. 21, condition 62
12. copies of approvals from state/federal agencies — p. 23, condition 78; p. 29, condition 97x (including Final Approval by MassHousing)
13. indemnification agreement with the Town — p. 24, condition 90 (only condition 97l was struck by HAC)
14. review of final plans includes building code review — p. 26, condition 97a & c
15. monitoring and regulatory agreements — p. 26, condition 97 d & e; p. 30, condition 100
16. NPDES permit — p. 27, condition 97f
17. construction schedule — p. 28, condition 97k
18. easement for sewer and water — p. 28, condition 97m
19. Fire Dept approval of roadway and parking — p. 28, condition 97q
20. Fire Dept and Water Dept approval of hydrant locations — p. 29, condition 97v
21. recording subdivision / lotting plan at Registry — p. 29, condition 99
22. HOA declaration, budget, covenants, easements, restrictions and condo docs — p. 30, condition 101

23. engineered easement plan w/ narrative — p. 31, condition 102
24. Form J with request for building permit, site layout plans, utility plans and architectural drawings — p. 31-32, condition 103
25. payment of traffic mitigation \$200,000 “shall be made in full upon issuance of initial building permit” — p. 39, condition 147

Just to be clear, this list includes the items required by the comprehensive permit for final plan review that the HAC decision left unaltered. How can the Board even begin to assess or evaluate final plans if two dozen of the required submissions are missing? All of those plans and documents are interrelated and cannot be properly evaluated in a vacuum. Because the final plan submissions are incomplete, the Board should defer consideration until after the missing documents have been submitted, and after the comprehensive permit process is complete.

We look forward to addressing these issues with the Board next week.

Very truly yours,

/s/ Dennis A. Murphy

Dennis A. Murphy

cc: George Pucci, Esq.
Paul Haverty, Esq.
Paul Derensis, Esq.

Issued by: Town of Nantucket Select Board and Surfside Crossing LLC
Embargo date: Tuesday, April 18, 2023 2 p.m.

Joint Statement

While much work has been done in recent years, the Select Board, on behalf of the Town of Nantucket, and the developers of Surfside Crossing recognize the acute shortage of year-round housing on the Island — particularly ownership opportunities.

The situation has only worsened in recent years and is now challenged by greatly increased construction costs and an elevated interest rate environment.

Meanwhile, thinking by the Select Board, and the developers — and perhaps the community overall — has collectively evolved during this time to a point where the desire is to jointly embrace opportunities to assure that a significant majority of the units in the Surfside Crossing development are reserved for year-rounders.

Accordingly, the Select Board, on behalf of the Town, and the developers have agreed on a set of principles that allow them to shift away from the appeal of the Housing Appeals Committee (“HAC”) decision and move forward in good faith collaboratively. The Select Board and developers acknowledge that there are two separate appeals outside of the Town’s control. The Select Board does not support these other appeals.

These principles are:

1. The Select Board and the developers agree that the best version of the project allows for 75% of the project to directly serve year-round housing needs.
2. To that end, all parties are committed to working together to achieve the 75% year-round objective through, wherever viable, long-term deed restrictions at a variety of income levels (e.g., AMI’s from 100-240% -- above and beyond the 40B requirement that 25% of the project be restricted at 80% AMI or less) up to and including simply a “year-round” restriction without any income element.
3. In all cases, if law or practicality does not permit a permanent restriction, the minimum restriction length would be 30 years — potentially with an option to renew. Permanent restrictions are desirable.
4. For the units that are to be year-round (e.g., the 75%), there would be a requirement that they are owned either by year-rounders, or by local businesses or local not-for-profits for the exclusive use of their local employees.
5. It is important to ensure equal if not greater opportunity for individual ownership, alongside any local business and/or non-profit ownership.
6. All parties recognize that this is a private project, and that commitments from other parties (e.g., local businesses, non-profits, philanthropists, Town/AHTF) are needed in a timely manner prior to a planned summer construction start in order to define the potential restrictions, and to have them vetted and ready for implementation by the time the developer begins any pre-sales.

7. All parties recognize that the municipality and its affiliates, such as the Affordable Housing Trust Fund, need to be provided adequate time to implement restriction programs (e.g., 6 months).
8. All parties acknowledge it is important not to impede the project's forward progress and understand that work with interested stakeholders to affect year-round restrictions is commencing now.
9. All parties recognize that under the 40B law the financial structure of the development is designed to enable a return of up to 20% of development costs and that the economic feasibility of the project requires preserving a realistic projection of earning this profit. Therefore, in order to earn the target profit, restrictions that reduce the value of unrestricted market-rate units will need to be offset with public or philanthropic grants or subsidies. Generally, the size of the subsidy or "buy-down" needed for restrictions on a unit-by-unit basis will be based on the difference between the unrestricted market price of a unit, had the majority of these market rate units not been restricted, and the price a year-round buyer is willing to pay with the restriction in place.

In summary, the Select Board and Town of Nantucket are actively engaged with the developers of Surfside Crossing, and others, with an aim of reserving up to 75% of the homes in the development for year-round Nantucket residents.

While there are details to work out and, importantly, other potential collaborators to involve, the Select Board on behalf of the Town has, at the request of the developers, elected at its April 13th, 2023, Executive Session to drop the appeal of the HAC's issuance of the comprehensive permit as part of beginning this collaborative process.

The Select Board has determined that at this point, given the urgent need for affordable and attainable housing, the interests of the Island are best served by all parties working collaboratively on this set of shared principles for assuring that this development serves year-rounders to a very great extent.

If these project goals are achieved, and 75% of the project can serve the year-round community over the long haul, this could be a model for how 40B could work in other seasonal communities.

Chessia Consulting Services LLC



May 3, 2023

Leslie Woodson Snell
Deputy Director of Planning
2 Fairgrounds Road
Nantucket, MA 02554

RE: Engineering Review
HAC Decision dated September 16, 2022
Comprehensive Permit
Surfside Crossing
Nantucket, MA

Dear Ms. Snell:

Chessia Consulting Services, LLC has reviewed the submittal data provided to us regarding the above referenced project. The project was submitted under Chapter 40B as a Comprehensive Permit application and was approved by the Zoning Board of Appeals (ZBA) on June 13, 2019 with numerous conditions. The Applicant appealed the Board's Decision and the Housing Appeals Committee (HAC) issued a Decision on September 16, 2022 that struck several conditions, modified other conditions and added some additional conditions.

The following documents were provided for review:

Plan Sets Entitled:

- "Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts Permitting Set February 15, 2018 Revised Through: February 28, 2020" prepared by Bracken Engineering, Inc. The set consists of 9 sheets. This set of plans was the basis for the HAC Decision and is listed in the Decision as Exhibit 3. (Exhibit 3)
- "Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts Permitting Set February 15, 2018 Revised: February 28, 2020 Revised March 30, 2023" prepared by Bracken Engineering, Inc. The set consists of 10 sheets. (Site Plans)
- "Water & Sewer Utility Easement Plan Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts", marked DRAFT dated March 30, 2023" prepared by Bracken Engineering, Inc. (Easement Plan)
- "Operation & Maintenance Plan Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts" dated March 30, 2023" prepared by Bracken Engineering, Inc. (O&M Plan)
- "SCN 3, 5, 7 & 9 South Shore Road Nantucket MA 02554" Comprehensive Permit

Set prepared by Ahern , LLC Landscape Design Studio consisting of 15 sheets (Landscape Plans)

Supporting Documents and Reports

- Commonwealth of Massachusetts Housing Appeals Committee Surfside Crossing, LLC v. Nantucket Zoning Board of Appeals No. 2019-07 Decision September 16, 2022. (HAC Decision)
- Town of Nantucket, Massachusetts Zoning Board of Appeals File NO. 20-18 Decision on Application for Comprehensive Permit Applicant: Surfside Crossing, LLC Decision Date: June 13, 2019/ (ZBA Decision)
- “Stormwater Report Prepared for Surfside Crossing for Surfside Crossing, LLC Map 67 Parcels 336, 336.7, 336.8 & 336.9” prepared by Bracken Engineering, Inc. and dated February 15, 2018 revised February 28, 2020. (Report)
- “Stormwater Report For Phased Construction Prepared for Surfside Crossing for Surfside Crossing, LLC Map 67 Parcels 336, 336.7, 336.8 & 336.9” prepared by Bracken Engineering, Inc. and dated March 30, 2023.
- Stormwater Pollution Prevention Plan (SWPPP) for Construction Activities At 3-9 South Shore Road Nantucket, MA 02554 SWPPP Prepared For CC Construction, Inc. 15 Diamonds Path South Dennis, MA 02660 SWPPP Prepared By Bracken Engineering, Inc. Donald F. Bracken, Jr. P.E. 49 Herring Pond Road Buzzards Bay, MA 02532 SWPPP Preparation Date 03/30/2023. (SWPPP)
- Memorandum from MDM Transportation Consultants, Inc. dated March 11, 2020 with attached Exhibits 1-3 indicating Fire Truck swept path analysis.

This review includes a review of the ZBA and HAC Decisions and provides a template for the ZBA to use for determining whether the final plans submitted by the developer comply with the conditions of approval as struck, modified or added by the HAC. There are sections in the review of the Decisions that identify where additional work is required. Some of this may ultimately be included in the Final Construction Plans (also called Final Construction Drawings in the HAC Decision). Some of the data provided could be incorporated into the Final Construction Plans but the material provided would not all be considered Final Construction Plans. In addition, I have reviewed previous filing data and the current filing and have provided separate comments to address issues with the data provided relative primarily to the stormwater design calculations and other supporting documents for construction.

This effort includes the following tasks:

1. A review of both the HAC Decision and ZBA Decision to determine what is required. I have included the ZBA Decision with sections that have been struck marked in ~~strikeout text~~. Where a condition was modified that section was also ~~struck~~ with the replacement section inserted and noted as part of the HAC Decision. Additional conditions added through the HAC Decision are included at the end of the ZBA Decision section. The text of the ZBA Decision and the modified, replaced or added Conditions from the HAC Decision are listed below in *italic text*. I have added my comments below the Decision to address whether additional data or input from the Board or Counsel is required.
2. Review of the plans, calculations and supporting data submitted to this office for compliance with the Decisions as listed above. Data regarding Conditions 23, 36, 40, 45,

117 & 126 are discussed in Appendix A. In addition, I have deferred review of the SWPPP and Construction Phasing Report as at this time it would be appropriate to address data under Task 1 first. In addition, these aspects should be reviewed with the Final Construction Drawings. It is also unclear if the Board will require a detailed review of the SWPPP. This could be provided but as noted would be more appropriate post the submission of the Final Construction Drawings.

I previously reviewed the project for the ZBA and issued letters dated August 20, 2018 & April 10, 2019 in addition I submitted a memo dated 1-14-2018 regarding a proposed stormwater treatment system and a summary of Issues list for use at the public hearing August 28, 2018. I visited the site on August 14, 2018 to observe current conditions with Eleanor Antonietti and Ryan Maxwell of Bracken Engineering, Inc.

Following is the ZBA Decision with comments on the status of various conditions that still apply. In some cases, no engineering comment is required and this is noted below the Condition. As noted, Conditions are in *italic type* with noted conditions struck or modified by the HAC Decision. I have only commented where appropriate as many conditions do not require engineering comment.

ZBA Decision Conditions:

ELIGIBILITY

1. *760 CMR 56.04(1)(a) requires that the Applicant “shall be” a “Limited Dividend Organization.” Accordingly, the Board requires as a condition of this Decision that the Applicant execute the Regulatory Agreement required by this Decision prior to issuance of a building permit.*

Modified by the HAC to be limited to subject to the requirements of the subsidizing agency.
No engineering comment required.

2. *The Applicant has provided a Project Eligibility Letter from MassHousing dated April 12, 2018.*

3. *With respect to compliance with the site control requirements of 760 CMR 56.04(1)(c), this Decision relies upon the findings and representations upon which the Project Eligibility Letter is based.*

GENERAL CONDITIONS

4. *The comprehensive permit application was based on a Project Eligibility Letter issued to the Applicant on April 12, 2018 by MassHousing. This Permit is conditioned upon receipt of Final Approval from MassHousing, including the grant of subsidy funding through the New England Fund or MassHousing program of MassHousing funding programs. Evidence of Final Approval is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.*

5. *The terms, provisions and conditions of this Permit shall burden and benefit the authorized successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referenced.*

6. *This Permit is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b), except to an Applicant-controlled affiliate.*

Modified by the HAC Decision to allow transfer of the Permit as provided in the Regulations upon Notice to the Board.

7. *Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Project and the use of the land does not strictly and fully conform to the requirements of the Nantucket Zoning Bylaw; and reference to this Comprehensive Permit Decision shall be incorporated in every deed conveying all or a portion of the Property.*

8. *The Applicant and MassHousing shall execute a Regulatory Agreement prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.*

9. *The Decision is based on, and this Permit is issued based on, the real property identified on the Comprehensive Permit Plans, described below ("Locus" or "Site").*

10. *Except as otherwise specified in this Decision, the Project must substantially conform to the Comprehensive Permit Plans referenced in Section I, as conditioned by the Board. To the extent any details in the Comprehensive Permit Plans are inconsistent with the terms and conditions of this Permit or Appendix C, this Permit and Appendix C shall supersede the inconsistency.*

This reference would change to the current plans submitted in response to the HAC Decision listed as Exhibit 3 in the HAC documentation.

11. *If, between the date that this Decision is filed with the Office of the Town Clerk and the completion of the Project, the Applicant desires to change any details of the Project (as set forth in the Comprehensive Permit Plans, or as required by the terms of this Decision), the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.05(11).*

12. *Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents to the Board, the Board or its designee shall review and provide a written response as to whether such plans or other documents are consistent with this Decision within ninety (90) days of the Board's receipt of such plans or other documents.*

SITE SPECIFIC CONDITIONS

13. *SINGLE FAMILY BUILDING REQUIREMENTS –*

As the revised plans do not include any single family building lots this entire section is no longer applicable. The HAC Decision did strike the sections as identified by ~~strike through~~ below. This section should be modified to reflect the current project if possible.

- A. *Minimum Lot Size = 5,000 square feet for 3 and 4 Bedroom Units;*
- B. *Minimum Lot Size = 6,250 square feet for 5 Bedroom Units;*
- C. *Minimum Frontage = 50 feet for all Single Family Dwelling Lots, Except for Lot 41;*
- D. *Setbacks = 10 feet in front yard, 5 feet on one side yard and 10 feet on the other side yard, and 5 feet in rear yard;*
- E. *Parking = minimum of 2 on-lot spaces for 3-4 Bedroom Lots and minimum of 3 on-lot spaces for 5 Bedroom Lots;*
- F. ~~*No spas or pools on any lots:—*~~
 - ~~*i. —the proposed spas impermissibly distinguished market rate from affordable units, since spas were proposed for only the market rate units;*~~
 - ~~*ii. —the proposed spas would create a noise and privacy issue between units given the limited depth of the setbacks and limited lot area sizes.*~~
- G. ~~*No AC or Mechanical Units may be located on street/front elevation or visible from the street;*~~
- H. *All Single-Family Dwellings shall have exterior stairway basement access;*
- I. *Maximum Number of Single Family Dwellings = Forty (40);*
- J. ~~*Maximum Number of Five (5) Bedroom Units shall be four (4), including at least one affordable unit; and*~~
- K. *Height/Exterior Architectural Design shall be as conditioned on the Board's notes on the architectural plans contained within the Comprehensive Permit Plans, Appendix A.*

~~14. —MULTI-FAMILY UNITS BUILDING REQUIREMENTS—~~

This entire section was struck in the HAC Decision.

~~—A. —No Eight Plex Buildings Permitted;~~

~~—B. —Duplex Buildings~~

- ~~i. Minimum Lot Size = 7,500 square feet;~~
- ~~ii. Minimum Frontage = 70 feet;~~
- ~~iii. Setbacks = 10 feet front yard, 10 feet side yard and 10 feet rear yard;~~
- ~~iv. Parking = 6 on-lot spaces per duplex building lot;~~
- ~~v. No living space in basements;~~
- ~~vi. No AC or Mechanical Units located on street/front elevation or visible from the street; and~~
- ~~vii. Maximum number of duplex buildings = Six (6) (total of 12 units).~~

~~C. Fourplex Buildings~~

- ~~i. Minimum Lot Size = 10,000 square feet, with each building on its own lot;~~
- ~~ii. Minimum Lot Frontage = 100 feet;~~
- ~~iii. Setbacks = 10 feet front yard, 20 feet side yard, 20 feet rear yard;~~
- ~~iv. Parking = 7 on-lot spaces on each Fourplex lot;~~
- ~~v. No units located entirely in basements (lower level);~~
- ~~vi. No AC or Mechanical Units located on street/front elevation or visible from street; and~~
- ~~vii. Maximum number of Fourplex buildings = Two (2).~~

~~D. Height/Exterior Architectural Design as conditioned on the Board's notes on the architectural plans contained within the Comprehensive Permit Plans, Appendix A.~~

15. RECREATIONAL BUILDING REQUIREMENTS–

A. Maximum Ground Coverage = 1,000 square feet;

This was not struck by the HAC Decision. The Exhibit 3 Plans indicate a footprint of 3,912 square feet and the current Site Plan has a footprint of 3,975 square feet. This appears to be an issue remaining to be addressed on the plans.

B. Maximum Interior Space = 2,800 square feet: 1,000 on ground and basement levels, and up to 800 feet more allowed on second floor to reach maximum 2,800 square feet; the additional land area resulting from the reduction in the footprint of the Recreation Building shall be devoted to green space or outdoor passive recreation;

See above.

C. No commercial kitchen/catering facilities;

D. For exclusive use of residents and guests, no outside rentals;

E. 8 parking spaces;

Both Exhibit 3 and the current plans have 10 parking spaces.

F. *Minimum Lot Square Footage of 38,196 square feet; Height/Exterior Architectural Design subject to final review and approval by the Board prior to issuance of a building permit; and*

Not applicable as there are no separate lots, the entire site would be one condominium lot.

G. *Height/Exterior Architectural Design subject to final review and approval by the Board prior to issuance of a building permit.*

To be addressed with the Final Construction Plans.

16. *POOL REQUIREMENTS—*

A. *No spa permitted;*

~~B. *Dimensions No greater than 20 feet by 48 feet as proposed by Applicant;*~~

The HAC Decision required that the pool be the same dimensions as indicated on Exhibit 3. The Site Plans satisfy this requirement.

C. *Hours of Operation = 8 a.m. to dusk;*

D. *For exclusive use of residents and guests; and*

E. *Homeowners' Association and Condominium Association, as applicable, to handle internal governance issues not otherwise covered in this Permit.*

17. *LANDSCAPING/HARDSCAPING REQUIREMENTS*

A. *143 Street Trees as proposed by Applicant and shown on Landscape Plan L-1 in the Comprehensive Permit Plans;*

Based on my review this would be met by the Landscape Plans as there are 150 trees proposed, 7 of these are in the vicinity of the common area, the remainder (143) would be near an access drive or parking area.

F. *Must comply with Zoning Bylaw as to required tree caliper size;*

Proposed Street Trees are listed as 3" caliper. I have not been able to confirm the size complies with the Zoning Bylaw but the size is commonly specified for Street Trees.

F. *Native/Non-invasive plants only, per list compiled on "Landscaping with Native Plants on Nantucket" by the Nantucket Biodiversity Initiative and Nantucket Conservation Foundation;*

This aspect should be addressed by a Landscape professional.

F. *Walkways for Multi-Family and Single-Family Dwelling Units must match; ~~all walkways shall consist of bluestone;~~*

Not applicable as the entire site would consist of condominium units.

- E. ~~Driveways must be native stone (gravel), must comply with Zoning Bylaw section 139-20.1(B)(2)(b), and aprons shall be same surface as roadway;~~
- F. *Roadway, Sidewalks, and Curbing – either native stone chip seal finish on both sidewalk and roadway or asphalt roadway and brick sidewalk. ~~All curbing to be vertical granite curbing.~~*
 The proposed roadways would be asphalt with sidewalks adjacent to the roadway having a dark gray chip seal finish. There are no brick walkways proposed. There are several areas with peastone chip seal walkways primarily internal walkways from sidewalks to units or to a pervious peastone walkway that would connect to specific doorways. Exhibit 3 plans included paved sidewalks and peastone internal walkways. This aspect will need to be clarified.

18. OPEN SPACE REQUIREMENTS –

Limited to private exclusive use of residents and guests. The amount of green space as shown on the Comprehensive Permit Plans, as further conditioned in this Permit, shall not be reduced.

Based on the HAC Decision, this was not struck. Since Exhibit 3 is the reference plan for the HAC Decision I note the following changes based on the plans:

Summary of Areas		
	Exhibit 3	Current Plans
Impervious-Semi Pervious	282,241 square feet	307,924 square feet
Unusable Open Space (perimeter buffer)	56,151 square feet	86,380 square feet
Usable Open Space	252,215 square feet	196,303 square feet
Total Vegetated Areas	308,366 square feet	282,683 square feet

Based on the above there are changes to the plans that would not be consistent with the Decisions as there is an increase in overall Impervious-Semi Pervious of 25,683 square feet. The associated drainage calculations should be updated to reflect the proposed conditions, if this is an acceptable increase in impervious area consistent with the HAC Decision.

19. LIGHTING REQUIREMENTS –

- A. *Street Poles prohibited; pathway lighting and bollards are an allowed alternative;*

No street poles are proposed, there are low pathway lights proposed and some hardscape lights. The Landscape Plans Sheet L.04 includes a lighting plan with light types and locations. This requirement has been met.

- B. *Must comply with Town Code Chapter 102 – Dark Skies.*

I defer review of this aspect to the appropriate Town Official or Consultant.

20. BUFFER ZONES REQUIREMENTS –

- ~~A. No disturbance buffer of 25 feet along site perimeter and expanded to 50 feet along South Shore Road, augmented as necessary per list of approved plantings;~~
- ~~B. Split rail fence to delineate entirety of all buffer zones prior to commencement of construction.~~
- ~~C. Applicant shall exercise care not to impact the intent of the “no disturb” buffer area’s purpose of protecting adjacent residences from visual and noise impacts by excessively trimming trees or trampling low-lying shrubs and brush. The Board reserves the right to require additional screening, including but not limited to the planting of new trees and/or shrubs if presented with evidence the above conditions have been violated.~~
- ~~D. The “no-disturb” buffer area lots shall be considered permanently protected open space consistent with G.L. c. 40A, §9.~~

The above conditions have been replaced by the HAC Decision as follows:

“No- disturbance buffers shall be retained along the site perimeter. They shall be as shown on Exhibit 3 (Site Development Plans), sheets 3 and 4, that is, of a width of approximately ten to twenty- five feet, and greater along South Shore Road.”

The Site Plans indicate a minimum perimeter buffer of 25 feet with a buffer of 40-50 feet along South Shore Road, except at proposed access and emergency access openings. This requirement has been met by the plans.

- E. *Based upon the information presented, the Board determines that an adequate buffer standard should be at least one (1) tree per ten (10) linear feet of the “no disturb” buffer area perimeter, said trees being a minimum height of five (5) feet and minimum caliper of three (3) inches. Planting should occur within or at the edges of the “no disturb” buffer areas as directed by the Board or its designee. Trees shall be planted in a natural pattern, shall be offset where appropriate and are meant to supplement existing, mature vegetation. This condition shall be incorporated into the final landscaping plan required by this Decision. The Board reserves the right to alter any aspect of this standard and vary tree sizes and locations based upon a review of the detailed final landscape plan.*

Minimal work is proposed in the buffer, which exceeds the dimensions required in the HAC Decision. I recommend that the Landscape Plans also note/list proposed plantings in the portions of the perimeter buffer to be restored or revegetated as indicated on the Site Plans.

- F. *The Applicant shall stake the proposed locations for these required trees for review with the goal being to maximize the screening between the Site*

and abutting properties. The final landscaping plan and a schedule for the planting of all required trees submitted for review by the Board shall identify species of conifers that would meet the above goal and be suitable for planting in the “no disturb” buffer areas to the satisfaction of the Board or its designee. The Board reserves the right to alter any aspect of this procedure and specify alternative tree types and species based upon a review of the detailed final landscape plan.

No new trees are indicated on the Landscape Plans in the perimeter buffer area.

G. The Applicant shall be responsible for maintaining the health of these trees until the sale of the 44th lot. Thereafter, the Homeowner’s Association shall maintain the trees of the “no disturb” buffer area, including the replacement of unhealthy, diseased or dead trees. This condition shall be included in the Homeowner’s Association documents.

No new trees are indicated on the Landscape Plans in the perimeter buffer area.

H. The Board reserves the right to require additional planting in the event that care in preserving existing vegetation of the “no disturb” buffer area is not undertaken by the Applicant until the completion of the project.

No comment required.

21. PARKING/ROADWAY ACCESS REQUIREMENTS –

~~*Minimum of one (1) additional on-street parking space per dwelling unit;*~~

22. MAINTENANCE BUILDING REQUIREMENTS

Approved as to height/exterior architectural design on the conditions noted on the architectural plans within the Comprehensive Permit Plans, Appendix A.

Not applicable the maintenance building is no longer proposed.

23. All units must have gutters, which must be maintained in accordance with an approved maintenance plan, and all roof water drainage must be directed to subsurface drainage systems independent of the roadway system as proposed and agreed to by the Applicant.

Architectural Plans have not been provided to determine if gutters are proposed. The plans indicate a conceptual roof infiltration system for the building roofs independent of the roadway drainage system as required. I note that some of these systems are closer to the proposed buildings than allowed under the DEP Handbook, see Condition 36 below and Appendix A review comments.

24. There shall be no additional parking or expansion of parking areas beyond parking areas shown on the Comprehensive Permit Plans as conditioned herein. Notice of this restriction must be included in the Homeowners Association Documents and Condominium documents.

No engineering comment required.

~~25. No conversions of non-livable space, e.g., attics, to livable space after completion of construction of units as approved herein. No expansion of building envelope.~~
This condition was struck except as applicable to all homes in Nantucket.

~~26. No customary home occupations shall be allowed in light of the overburdening issues already posed by the density of this Project in relation to existing traffic congestion.~~

~~27. There shall be no parking of campers, trailers, boats, storage trailers or storage units, temporary garage structures or shelters, panel trucks, recreational vehicles, commercial vehicles (unless the commercial vehicle is the unit owner's personal vehicle), or unregistered vehicles on Project property.~~
This condition was struck except as applicable to all homes in Nantucket.

28. *No changes in the Homeowners' Association and/or Condominium Trust rules which affect conditions of the Permit shall be permitted. Any future proposed changes to exterior architectural features shall be subject to the jurisdiction of the Nantucket Historic District Commission.*
No engineering comment required.

29. *Snow removal provisions shall be subject to review and approval by the Nantucket Fire Department. No dumping in buffer zones. In the event designated snow storage areas are inadequate for a particular storm event or events, excess snow must be removed from the Property.*
No engineering comment required. I note that the O&M Plan includes snow storage locations as required under DEP Stormwater Regulations.

30. *Trash barrels must be stored out of view. No exterior air conditioning units or other mechanical equipment shall be located within lot setbacks areas.*
No engineering comment required.

31. *All affordable units must have central air conditioning if market rate units have central air conditioning. Applicant has stated on the record that all units will have central air conditioning.*
No engineering comment required.

32. *Ground coverage for each lot shall not change from that depicted on the Comprehensive Permit Plans as revised per the conditions set forth herein.*
No individual lots are proposed the project would be all on one lot. The Site Plans indicate an increase in ground coverage compared to the Exhibit 3 Plans. See Conditions 18. above. As noted associated work with this change should be incorporated in the drainage calculations.

33. *All local requirements concerning roadway construction shall apply.*

It is unclear if this section is applicable as there is no subdivision roadway. This requirement has been assumed to mean construction of the gravel and pavement cross section. The cross section exceeds requirements as 4 inches of bituminous pavement and 8 inches of gravel are proposed.

34. *The lighting plan for the Project must meet local requirements for exterior lighting.*

Refer to comment under Condition 19.

35. *Roadway right of ways shall be a minimum of 40 feet wide. Suitable access for emergency access vehicles, snow storage, landscaping without impacting clear sight lines and on street parking as applicable must be provided. Final plans must be submitted by a Transportation Engineer for compliance with Institute of Transportation Engineers (ITE) standards for circulation within the site and at access/egress locations.*

As noted no roadway right of ways are proposed in the current plan. The submittal data included a Memorandum from MDM Transportation Consultants Inc. dated March 11, 2020. This submittal also included Exhibits 1-3 indicating Fire Truck swept paths through the project site. I defer this issue to the Board's Transportation Engineer. The HAC Decision includes a discussion of issues that were raised regarding Fire Department access relative to Exhibit 3 that "...this is not a public safety concern sufficient to outweigh the regional need for affordable housing" (see page 34 of the HAC Decision) Comparing the two plans (Exhibit 3 and the current Site Plans) the access drive and parking layout are the same. There are changes to other aspects including pathways, buildings, etc. that should not impact the submitted Memorandum and Exhibits.

36. *All stormwater management plans and calculations shall conform to the requirements of the Massachusetts Department of Environmental Protection (MassDEP) Stormwater Management Regulations, including the requirements specifically applicable to the Zone II areas.*

This aspect will require additional updated data to fully review and comment. At this time the Stormwater Report is based on the Exhibit 3 plans. There are changes in impervious area, buffer areas, etc. and the Report will need to be updated to reflect all of the changes. It is likely that a compliant plan can be developed but there are other design components such as the building plans and roof system designs that have not been submitted at this time. There are also calculation aspects that will also need to be addressed. Although it is anticipated that soils are likely suitable for the proposed systems the Regulations require testing at the specific location of each system. Refer to Appendix A for a list of comments on this and other associated Conditions regarding Stormwater.

37. *All utilities must be installed underground.*

This Condition is satisfied on the plans.

38. *No impervious areas except those indicated on the Comprehensive Permit Plans, as further conditioned in this Permit, are allowed on the lots.*
As noted there is an increase in impervious area proposed compared to Exhibit 3. The Board will need to address this change.
39. *No construction or site disturbance is allowed prior to the receipt of any approvals required by applicable Massachusetts Environmental Policy Act (MEPA) regulations.*
Based on my review of the HAC Decision, the Applicant has filed with MEPA and an EIR is not required.
40. *Soil testing, consistent with MassDEP Stormwater Handbook requirements, at all proposed stormwater infiltration systems, shall be completed and submitted for review and approval by the Board or its designee.*
This remains to be completed, also refer to Appendix A.
41. *Final Construction Plans shall be provided for review and approval by the Board or its designee providing all data required under the Town's local Subdivision Regulations.*
There are no longer any proposed subdivision roadways. As noted, Final Construction Plans remain to be submitted.
42. *Applicant shall allow and provide necessary funding for inspection of construction consistent with Subdivision Regulations and other Town requirements not waived in this Decision.*
No engineering comment required.
43. *Applicant shall complete for the review and approval by the Board or its designee a comprehensive Sediment and Erosion Control plan consistent with EPA SWPPP requirements and the DEP Stormwater Handbook.*
A SWPPP has been submitted. If desired this will be reviewed under separate cover prior to construction.
44. *Applicant shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) and the regulations of the Massachusetts Architectural Access Board (AAB).*
The appropriate party should assess this requirement at the appropriate time.
45. *Final Construction Plans and supporting calculations must be provided for final review and approval by the Board or its designee. The final design shall comply with MassDEP Stormwater Management Regulations as described in the MassDEP Stormwater Regulations and associated Stormwater Handbook.*
The Site Plans are not Final Construction Plans as they note that final location of roof infiltration systems will be coordinated with Final Building plans. The collection systems for roof runoff are not included on the plans. The Stormwater Report is for the Exhibit 3 Plans not the current Site Plans and should be updated.

Refer to Appendix A for comments regarding this condition and the Stormwater Design.

46. *The EPA SWPPP template shall be used to demonstrate compliance with MassDEP requirements with respect to erosion/sedimentation control during all phased construction activities in order to protect abutters and the Town roadway. Tracking pads shall be a minimum of 50 feet long. Sizing data for temporary basins, etc. must all be provided.*

A SWPPP has been submitted. If desired this will be reviewed under separate cover.

47. *An Operations & Maintenance ("O&M") Plan shall be provided for review and approval by the Board or its designee prior to the start of any construction activities or related site disturbance, including an O&M Plan for the individual lot systems and a final stand-alone O&M plan including a plan with the location of all BMP's, manufacturer's requirements, etc.*

The submittal includes an O&M Plan and the Report includes an O&M description. I note the that following should be changed in the O&M:

- Catch basin inspections should be **required** quarterly not just recommended.
- Oil/Grit Separator inspections are listed as quarterly in the Report and both quarterly and monthly on the Plan. DEP requires monthly inspections.
- Subsurface systems should include the manufacturer's maintenance manual.
- I recommend that the times for maintenance as listed in the O&M Inspection form be adjusted as it is uncommon to clean structures in the winter, the January and February time may be more appropriate in April and May or move one of the inspections/cleaning to November after most all of the leaves have fallen, i.e., two inspections in the spring and two in the fall although quarterly implies every three months.

48. *A signed illicit discharge statement shall be submitted to the Board prior to any occupancy permits.*

An unsigned statement is included, this should be submitted prior to any occupancy permits.

ADDITIONAL CONDITIONS CONCERNING FIRE PROTECTION AND RELATED SAFETY CONCERNS

Some of the Conditions below would not apply to the current design.

49. *Access roads must be 20 feet in width not including any areas designated for parking (527 CMR18.2.3.4.1.1),*

It is assumed that this Condition specifies a minimum width as typically required for fire access. This would be satisfied as all proposed access roadways are 24 feet wide.

- a. *No on street parking allowed shall be allowed if such parking would narrow the roadway width to less than 20 feet on two way sections;*
Not applicable as all roadway widths are 24 feet.
 - b. *No on street parking on one-way sections where the roadway width will be reduced below 13 feet;*
Not applicable as all roadway widths are 24 feet and there are no one-way roadways.
 - c. *For roadways on the Comprehensive Permit Plans showing widths of 20 feet for one-way sections, parking on one side of the roadway will be allowed with posted and enforced No Parking signs in these sections;*
Not applicable as all roadway widths are 24 feet.
 - d. *A section of roadway that is two-way and 22 feet and must be posted and enforced with No Parking signs;*
Not applicable as all roadway widths are 24 feet.
 - e. *Modeling must be submitted for the Fire Chief's review and approval to assure the fire departments apparatus can access development;*
Turning analysis plans have been provided. The Fire Chief should review these plans.
 - f. *Two of the roads have no provisions for turning around. (527 CMR 18.2.3.4.4) "Dead-end access roads in excess of 150 feet in length shall be provided with approved provisions for fire apparatus to turn around."*
It is unclear if this requirement would apply as the HAC Decision on the revised roadway layout did not require further revisions to address Fire Department access other than potentially minor modifications. (See page 33) As noted above the Fire Department may require revisions that do not involve the Board.
50. *Trees and vegetation must be maintained and not allowed to grow to block access for emergency vehicles. This would include vertical growth of tree. (527 CMR 18.2.3.4.1.2)*
This is a maintenance issue that should be included in the Condominium Documents. I defer this issue to the Board and Town Counsel.
- a. *All roadways shall have a vertical clearance of not less than 13 feet 6 inches;*
No barriers are proposed relative to height. Tree growth may impact access and should be a maintenance issue included in the Condominium Documents. I defer this issue to the Board and Town Counsel.
 - b. *Vegetation must not reduce the road width below the dimensions required in above section.*
Tree growth may impact access and should be a maintenance issue included in the Condominium Documents. I defer this issue to the Board and Town Counsel.
51. *Final Fire Department access plans must be submitted to the department for review and approval (527 CMR 18.1.3.1).*
No comment required, refer also to comments under Condition 49. f.
52. *Hydrant lay out needs to be reviewed and approved by the Fire Chief and installed before construction of any dwelling units; plans for fire protection must*

also be reviewed and approved by the Fire Chief for the time period between any initial site disturbance and completion of construction. Any proposed phasing of hydrant installation is subject to approval by the Fire Chief.

No engineering comment required.

53. *Applicant must complete a hydraulic study for review and approval by the Fire Chief addressing impact of Project on water capacity necessary for fire protection on other critical infrastructure located on the same water main.*
I have no further data on this requirement. This study should be performed if not yet completed.

ADDITIONAL CONDITIONS CONCERNING PUBLIC SEWER

54. ~~*The wastewater collection system for the proposed development shall not be connected to the Town's existing force mains.*~~
55. ~~*The wastewater collection system for the proposed development shall include the Town's preferred option of a new gravity sewer along South Shore Road, from the proposed development to the Surfside WWTF. This option shall relocate the proposed wastewater pump station from the proposed development to the Surfside WWTF.*~~
56. *The deficiencies in the revised plans discussed in Section IV.A. above, shall be addressed to the satisfaction of the Nantucket Sewer Department.*
This aspect remains to be addressed by others. Data on the proposed sewer system is conceptual at this time. Final Construction Plans for the sewer system have not been completed at this time.
57. *The wastewater collection system for the proposed development shall be constructed in accordance with the Nantucket Sewer Department Design Standards and Specifications in place at the time of construction. The final design plans shall be submitted to the Nantucket Sewer Department for review and approval to ensure conformance with the Design Standards and Specifications.*
This aspect remains to be addressed by others. Data on the proposed sewer system is conceptual at this time. Final Construction Plans for the sewer system have not been completed at this time.
58. *Given that the 2014 CWMP identified the sewer needs areas in Town, that these flows were used to determine the capacity of the Surfside WWTF, which is currently being upgraded, and that while the proposed development properties are part of the service area to the WWTF, the density of the proposed development creates much higher wastewater flows than the current zoning would allow, and given that the additional flow from the proposed development would be taking up planned capacity at the WWTF, the Board denies waivers of sewer related fees and requires that all properties in the proposed development be subject to the appropriate sewer fees outlined in the Nantucket Sewer Department Rules and Regulations in place at the*

time of construction. These fees include, but are not limited to, sewer connection fees, sewer user fees and sewer capacity fees. All local rules and regulations concerning sewer connection fees, permit fees, sewer privilege fees or charges, sewer extension fees, and service fees shall apply to the project permitted by this Decision.

No Engineering comment required as this Condition addresses fees.

59. *The Applicant must also comply with the Sewer Application and Permit requirements of the Nantucket Sewer Department and the Nantucket Sewer Permit Checklist and Sewer As-Built Checklist, subject to review and approval by the Sewer Director.*
This Condition should be addressed with the Sewer Application.
60. *The Applicant shall submit stamped record drawings of the wastewater collection system. Record drawings shall also be provided in the latest version of AutoCad.*
This is a post-construction requirement and the appropriate data should be submitted as required.
61. *The Applicant shall submit copies of the Operations & Maintenance Manual for the pump station, as well as an electronic copy on a CD or portable drive.*
This is a post-construction requirement and the appropriate data should be submitted as required.
62. *The Applicant shall establish and provide a copy of the legal entity's (e.g. Homeowner's Association and Condominium Trust) documents to ensure proper operation and maintenance of the proposed wastewater collection system and other common infrastructure on private property.*
This information should be submitted for review and approval prior to occupancy permits, if not earlier.
63. *The sewer infrastructure shall be constructed by the Applicant in accordance with the preferred option presented by Weston and Sampson, with the Town to contribute an agreed allocated cost of construction proportionate to the degree to which the infrastructure confers a public benefit independent of servicing the project approved by this Decision.*
This may be an applicable condition subject to comments in the HAC Decision regarding the costs if a gravity system is ultimately proposed.
64. *The sewer system must be submitted for inspection, review and approval by the Sewer Director pre and post-construction, and will be conveyed to the Town following payment of the agreed allocated cost of construction as conditioned above.*
No comment required.

ADDITIONAL CONDITIONS CONCERNING PUBLIC WATER CONNECTION

65. *Subject to the additional conditions below, the Board approves the proposed connection to Town water conditioned upon the Applicant's compliance with all*

rules, regulations and requirements of the Nantucket Board of Water Commissioners, and the Wannacomet Water Company and Director, including but not limited to review and approval of the design and construction of the proposed water mains and final inspection, testing, and chlorination of the water mains prior to public water being turned on to service the development and prior to water being turned on to service residential units.

No engineering comment required.

66. *All local fees and charges for the initial construction and connection of the water mains, and any initial or continuing service or other fees or charges once the system has come on-line, shall apply to the Applicant and the development approved by this Decision.*

No engineering comment required.

67. *The water connection is also conditioned upon and subject to MassDEP approval of the Wannacomet Water Company's requested increase in the capacity of the Town's Water Withdrawal Permit to an initial increase to 1.9 million gallons per day.*

No engineering comment required.

68. *Applicant shall provide water conserving appliances (dishwasher, washing machines, toilet, shower heads, etc.) for all appliances to be included in the residential housing units offered at the project, as well as appliances serving any other amenities offered at the development (facilities offered at pool or in recreational building, etc.), subject to review and approval by the Wannacomet Water Director.*

No engineering comment required.

69. *Applicant shall implement Low Impact Development Design concepts for managing stormwater and shall fund an independent Environmental Monitor during construction phases to document activities and ensure the protection of groundwater quality and private and public drinking water supplies located in the project area.*

- ~~70. Applicant shall construct a stormwater system to provide treatment and dispersed infiltration from roadways, and which shall capture and retain the first inch of stormwater and parking areas and use vegetated swales and bioretention basins with overflows to the maximum extent possible, rather than use of a stormceptor-type design with direct infiltration.~~

71. *Applicant shall provide a Site Maintenance and Integrated Pest Management Plan for review and approval by the Board or its designee and shall ensure that the Homeowners' Association and Condominium Trust documents for the development require the use of organic and/or non-toxic fertilizers and pesticides, as well as use of certified applicators. The Homeowners' Association and Condominium Trust documents must also require regular maintenance of storm*

drains, including filing a maintenance plan and actual maintenance with the town annually.

No engineering comment required.

72. *Applicant has stated, and the Board imposes a condition, that landscape irrigation shall be provided by private well and not the public water supply. Applicant shall take all necessary steps to protect against adverse effects upon the capacity of other private drinking water wells in the area.*
No engineering comment required.

COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

73. *Development of the Project shall comply in all respects with the conditions contained in the Project Eligibility Letter approval for the project issued by MassHousing on April 12, 2018.*
No engineering comment required.
74. *The Project, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.*
No engineering comment required.
75. *The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G.L. c.131, §23, 321 CMR 10.00. No site disturbance shall be permitted pursuant to this Decision until the Nantucket Land Council's currently pending administrative appeal of the NHESP determination for the Site is fully and finally resolved, including exhaustion of court appeals.*
No engineering comment required.
76. *The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Department of Environmental Protection with respect to stormwater disposal, resource protection, water supply and low impact development management practices.*
Refer to comments under Conditions 36, 43 and 45-48.
77. *The Project shall comply with the rules and regulations of, filing and permit requirements and certifications required by the regulations governing the Massachusetts Historical Commission.*
No engineering comment required.
78. *Copies of all approvals from state and federal agencies shall be submitted to the Board prior to recording of final plans.*

No engineering comment required.

LOCAL REQUIREMENTS

79. *Except as expressly waived by this Decision, the development of this Project, including the construction of all dwelling units, utilities, roads, drainage structures and other appurtenances, shall comply with all local requirements and regulations as defined in 760 CMR 56.02, including any and all related fees and charges.*

No engineering comment required.

80. *Except as specifically waived by this Decision, the Project shall comply, in all respects, with any and all rules, regulations, filing and permit requirements of the Nantucket Sewer Commission and Wannacomet Water Department concerning public sewer and water servicing the Project, including any and all related fees and charges. No fees shall be waived.*

No engineering comment required.

81. *The Applicant shall also comply with any and all filing requirements for issuance of a building permit, including any and all related fees or charges. No fees shall be waived.*

No engineering comment required.

82. *To the extent the Project requires the conveyance of any interest in Town-owned land, the Board notes that it lacks jurisdiction to grant such an interest. To the extent Town Meeting approval is required for any aspect of the Project, the Town's right to require Town Meeting approval as a prerequisite to such aspect of the Project is expressly reserved. Nothing in this Decision shall be construed as a grant of approval of any interest in property owned or held by the Town or County of Nantucket.*

No engineering comment required.

- ~~83. The total number of dwelling units permitted for this Project shall not exceed sixty (60) units and the total number of bedrooms shall not exceed two hundred and six (206) bedrooms.~~

AFFORDABLE UNITS

This entire section does not require Engineering comment or review but has been modified to comply with the HAC Decision.

- ~~84. The affordable units shall be evenly distributed within the Locus and shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from market rate units. If interior finishes differ between market and affordable units, the quality of the interior finishes of the affordable units must be of reasonable quality. As part of the Building Permit application, the Applicant must provide for review and approval by the Board or its designee~~

~~specifications/information on any proposed finishes and equipment (including but not limited to floor treatments, cabinets/vanities, countertops, lighting, kitchen appliances, and bathroom fixtures) in the affordable units that differ from finishes and equipment proposed for the market units. There shall also be a proportionate share of housing types (single family, duplex, and fourplex) allocated between affordable and market rate units; 25% of each unit type offered shall be affordable, e.g., if five bedroom units are offered, 25% of the total number of five bedroom units shall be affordable units.~~

- ~~85. An affordable housing restriction, enforceable by the Town of Nantucket, requiring that the affordable units remain affordable in perpetuity or for as long as the project does not comply with local requirements, whichever is longer, and in a form approved by the Board, shall be recorded senior to any liens on the Project Locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. All affordable units shall be subject to the Universal Deed Rider as required by MassHousing. The sale and re-sale of all affordable units shall comply with all MassHousing and Chapter 40B requirements, including, if applicable, any income, asset, and first time homebuyer requirements.~~

~~The condition is modified to read simply,~~

~~“The affordable units shall remain affordable in perpetuity or for as long as the housing is not in compliance with local zoning requirements.”~~

86. Upon the sale of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the buyer that the premises are subject to an affordable housing restriction and subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.
87. The deeds to the Affordable Units shall include the standard MassHousing Affordable Housing Restriction/Deed Rider in which the affordability restrictions described herein survive foreclosure.
88. For every three (3) Market Rate units for which a Certificate of Occupancy is issued, there shall be at least one (1) Affordable Unit for which a Certificate of Occupancy is issued. The Applicant has the right but not the obligation to accelerate the rate of construction of the Affordable Units.

MANAGEMENT DOCUMENTS

This entire section does not require Engineering comment or review.

89. The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.

90. *The management documents shall provide that the Town or County of Nantucket shall not have any legal or financial responsibility for, operation or maintenance of, roadways, driveways, parking areas, stormwater management systems, snowplowing, landscaping, trash disposal or pickup, street lighting or other illumination, or other roadway infrastructure within the Project or the Locus.*

PROFITABILITY

This entire section does not require Engineering comment or review, but has been modified to comply with the HAC Decision.

91. *The Project shall be limited to the profit allowed under the Regulatory Agreement ("Allowable Profit").*
92. ~~*Any profit that is above the Allowable Profit pursuant to the Regulatory Agreement shall be returned to the Town of Nantucket for use by the Town for the purpose of efforts toward affordable housing. The profit limitation may be enforced by the Town or its agencies, boards or commissions at any time.*~~
93. *The Applicant shall provide the Board with a copy of all financial documentation, including Cost Certification submissions, required by the Regulatory Agreement.*

MARKETING/LOCAL PREFERENCE

This entire section does not require Engineering comment or review, but has been modified to comply with the HAC Decision.

94. *There shall be a local preference plan established for the sale of the affordable units.*
95. ~~*Insofar as allowed under G.L. c. 40B and any other applicable laws and by the Subsidizing Agency, with respect to at least 70% of the Affordable Units, the Applicant shall provide a preference category in the Lottery for the Affordable Units for current Nantucket residents, Nantucket municipal employees, employees of local Nantucket businesses, and households with children attending Nantucket schools. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preferences and obtain approval of the categories of persons qualifying for the same, in accordance with Chapter 40B requirements. In no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within thirty (30) days of a written request by the Applicant, its Lottery Agent, or the Subsidizing Agency, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.*~~

96. ~~MassHousing shall approve the Lottery Packet and the Applicant's Affirmative Fair Housing Marketing Plan (AFHMP) as part of its Final Approval review. A copy of the proposed Lottery Plan and AFHMP shall be submitted to the Board simultaneously with its submission to MassHousing. The Applicant shall also submit to the Board the assumptions and calculations upon which the pricing of the Affordable Units is based. All costs associated with the lottery and marketing plans, including the advertising and processing for the Affordable Units, shall be borne by the Applicant. Buyers of Affordable Units must satisfy all applicable Chapter 40B requirements, including all applicable income, asset, and First Time Homebuyer requirements.~~

CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT

97. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until:

a. Final Review – Prior to commencement of any construction and granting of any permits for the Project, the Applicant has submitted detailed construction drawings to the Board to ensure that said drawings are consistent with this Permit, with local requirements not waived in the permit, and with state and federal codes and requirements of state and federal agencies and their respective decisions. Copies of the detailed, approved construction drawings ("Final Plans") shall also be filed in hard copy (twenty full-scale sets) and in digital format with the Board and the Building Department for recordkeeping purposes. The Applicant must secure Board approval prior to construction and allow the Board ninety (90) days to review the detailed construction drawings. The final plans shall include a building code review.

As noted there are several aspects related to the plans submitted that are not at the Final Construction Plan stage.

b. ~~The Applicant has posted with the Town Clerk a bond or surety in the amount needed to complete the ways, utilities, drainage, shade trees in the right of way, and as-built plans for the Project as approved, plus a 50% margin of error plus an appropriate rate of inflation over a 5-year period. The performance bond or surety shall contain the following provision: "If the principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein as specified in all the covenants, agreements, terms and provisions as set forth in the decision of the Board in this matter, as attached hereto, then this obligation shall be void, otherwise it shall remain in full force and effect, and, in the absence of completion of the above work, the aforesaid sum shall be paid to the Town of Nantucket in order to complete the construction in accordance with the plans and specifications."~~

c. The Final Plans, including phasing plans, way and underground utilities plans (water system, stormwater system, gas, telephone, electric and cable

systems), entrance/intersection street lights and signs have been reviewed and have received approval consistent with this Decision by the Board, and consistent with their respective jurisdictions by any and all relevant federal and state agencies, departments, boards, or commissions for matters not otherwise approved or waived by this Decision.

As noted there are several aspects related to the plans submitted that are not at the Final Construction Plan stage. Construction Phasing plans have been submitted. These will be reviewed if requested but have not been reviewed at this time as they should be reviewed with the Final Construction Plans.

~~d. — The Applicant and MassHousing have executed a Monitoring Agreement, similar in form to the Monitoring Agreement published by MassHousing but revised in content as required for consistency with this Decision.~~

e. A Regulatory Agreement, similar in form to that published by MassHousing, has been executed by the Applicant and MassHousing and has been recorded with this Decision. The Regulatory Agreement shall contain, at a minimum, the following terms: 1) 25% of the units shall remain affordable in perpetuity or for as long as the project does not comply with local requirements, whichever is longer. Such units shall be sold to households whose annual income, adjusted for household size, does not exceed 80% of the applicable Area Median Income for Nantucket as defined by HUD. 2) pricing of the affordable units shall be in accordance with MassHousing and Chapter 40B requirements; 3) Affordable units shall be sold in accordance with the MassHousing approved Affirmative Fair Housing Marketing Plan (“AFMP”); and 4) Identification of the location of all Affordable Units shall be included.

No engineering comment required.

f. A NPDES Stormwater Pollution Prevention Plan, Erosion Control Plan and Stormwater Management Systems Operations and Maintenance Plan has been approved in accordance with applicable state and federal regulations. A SWPPP has been submitted. If desired by the Board this aspect will be reviewed under separate cover prior to the start of construction.

~~g. Final and detailed landscape improvements and plans prepared by a Landscape Architect registered in the Commonwealth of Massachusetts to the detail required for use as on-site construction and planting drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed, have been submitted to the Board and all other relevant public agencies for review and approval, including acknowledgement of consistency with this Decision. Such plans shall include shade trees along roadways, and shall specify the types, number, size and location of all proposed landscape plans, trees and shrubs at the time of planting, the location and type of fence or other screening materials, plans and profiles of all planting and screening materials and details of any and all other proposed landscape materials. Such plans indicate the specific types of active/passive recreational~~

~~equipment to be installed within the open space and recreational areas located on the approved plans. Such plans shall also indicate the location of mailboxes, dumpsters and other appurtenant structures to be located within or integral to, the project.~~

~~h. Identification of all areas of the site proposed for vegetative clearing.~~

~~i. A detailed plan showing landscape improvements, open area, limit of construction activity, edge of clearing, sedimentation and erosion controls, a soil stockpiling area, and construction staging, refueling and storage area(s), for verification that such plan conforms with this Decision. Tree protection measures shall be stated with details for tree wells around existing trees to be protected included in the plan set. The removal of trees, shrubs, and natural groundcover on the site shall be minimized to preserve the natural environment to the highest degree possible. All trees over 8 inches in caliper within the limits of work shall be flagged prior to tree clearing. A representative or agent of the Board shall have the opportunity to identify trees that need to be protected and preserved during construction.~~

Replaced with the following from the HAC Decision:

“[...no... construction... shall commence until: ...]

g. Final and detailed landscape plans prepared by a landscape architect registered in the Commonwealth of Massachusetts to the detail required for use as on-site construction and planting drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed, have been submitted to the appropriate Nantucket agencies for review and approval, including acknowledgement of consistency with the comprehensive permit decision. Such plans shall include shade trees along roadways, and shall specify the types, number, size and location of all trees and shrubs at the time of planting, the location and type of fence or other screening materials, plans and profiles of all planting and screening materials and details of any and all other proposed landscape materials. Such plans shall indicate the specific types of active/passive recreational equipment to be installed within the open space and recreational areas located on the approved plans. Such plans shall also indicate the location of mailboxes, dumpsters and other appurtenant structures to be located within or integral to, the project. Such plans shall identify all areas of the site proposed for vegetative clearing, and shall show the limit of construction activity, edge of clearing, sedimentation and erosion controls, a soil stockpiling area, and construction staging, refueling and storage areas. The removal of trees, shrubs, and natural groundcover shall be minimized to the extent practical. Trees, particularly those over 8 inches in caliper, that, in the judgment of the landscape architect, can be preserved shall be flagged prior to

tree clearing. The plans shall state tree protection measures with details for tree wells around existing trees that can be preserved. During construction, a representative or agent of the Board shall have the opportunity to monitor trees that have been flagged for protection.”

Landscape Plans have been submitted and include the required data excepting:

- Only partial data on active/passive recreation equipment.
- No mailboxes are indicated on the plans.
- Dumpsters are not indicated.
- No data on construction phase work including limit of work, clearing, sedimentation/erosion controls, etc. are on the Landscape Plans. There are other plans that indicate this information and a separate Stormwater Report for Phased Construction. These can be reviewed if requested by the Board.

j. *An infrastructure operations and maintenance plan has been submitted for review and approval by the Board, with any updates as required. The plan shall include, at a minimum, maintenance during and post construction as well as perpetual maintenance and monitoring of the roadway, roadway infrastructure and drainage systems (routine and seasonal). The operations and maintenance plan shall bind the Applicant. The stormwater operation and maintenance plan include specific tasks and timelines associated with inspection and maintenance of all proposed stormwater management structural and non-structural measures, a repair and replacement plan for the system with estimated costs as well as identify the owner and party responsible for inspection, operation, maintenance, repair, and replacement including certification of acceptance of legal responsibility for the aforementioned.*

Partially addressed, there is a plan for stormwater system O&M but it does not include the estimated costs. There would also be general landscape maintenance, other infrastructure including paving, walks, building exteriors and roofs. The data provided did not include any legal aspects, which should be part of the Condominium Association Documents when filed.

k. *A construction schedule identifying the sequence and approximate dates of all key stages of construction has been submitted to and approved by the Board or its designee. This submission also will include: (i) identification of all contractors, field engineers, construction managers, surveyors, wetland and biology specialists, and other professionals that will be involved in the implementation of the project; (ii) staking driveways, dwelling foundations, parking areas, drainage basins and other drainage structures, and well locations; (iii) placement of sediment and erosion controls and limit of construction fencing; (iv) identification and approval of significant trees to be cut on the site; (v) removal of vegetation and topsoil; (vi) drainage system construction; (vii) major stages of roadway construction; (viii) excavating dates for building foundations; (ix) sewer and water line installation; and (x) inspection dates.*

The Construction Schedule has not been submitted at this time and should be included with the Final Construction Plans. There is a Construction Phasing Plan developed to address erosion and sedimentation during construction. As noted this aspect can be reviewed if requested by the Board.

l. ~~The Applicant has provided to the Town of Nantucket, in form and substance approved by Town Counsel, Applicant's agreement that the Town of Nantucket shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees who have relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the Town, its employees and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project, and proof of insurance adequate to cover all risks reasonably foreseeable in relation to the construction of the Project, which must be maintained until completion of all phases of construction.~~

m. The Applicant has granted to the Town easements giving the Town the right to enter the Locus to repair and maintain water and sewer lines, as applicable and as necessary to ensure the health and safety of the residents therein. The easements shall be shown on a site plan provided to the Board and shall be recorded by the Applicant.

A Draft Water & Sewer Utility Easement Plan has been provided. I defer comments on this plan to Counsel and the respective Utility Purveyors. As noted this is a Draft and not a Final Construction Plan.

n. Cuts and fills have been designed to preserve the existing land elevations to the extent reasonably possible based on the final plans as approved, and the use of retaining walls is optimized to preserve existing vegetation wherever practicable.

It does not appear that any comments are required for this Condition.

o. The final plan has addressed constructability with regard to infrastructure drainage due to settlement in substantial fill areas.

It does not appear that any comments are required for this Condition.

p. All zoning lines have been identified on the final plan for reference purposes.

The zoning district and setbacks are indicated in a table on Sheet 4. Setback lines associated with the District are not on the plans.

q. The interior roadway layout and parking areas have been approved by the Fire Chief, to facilitate emergency access and increase fire safety.

The Fire Chief should review the plans. Comments from the Fire Chief, consistent with the HAC Decision, should be addressed on the plans although these do not have to go before the Board according to the HAC Decision.

r. *Easements have been provided on the final plan to facilitate utility installation and slope maintenance outside the rights of way.*
This Condition appears to reflect roadway right of ways and easements for access to maintain the right of ways. As no subdivision roadways are proposed it is unclear that this Condition would apply.

s. *The final plans indicate that roadway construction materials and thicknesses conform to a 2 ½" binder and 1 ½" surface course.*
This Condition would be satisfied by the Site Plans.

t. *The final plans shall include limitations on lawn areas.*
It is unclear what limitations would be required here as the plans indicate the limits of various surfaces and non-disturb areas. This Condition could be addressed through the Condominium Documents.

u. *The final site plan submission shall include an acceptable snow management plan.*
The O&M Plan indicates proposed snow storage areas and the Report includes a section on snow removal.

v. *The final plans have been reviewed and accepted by the Fire Chief and the Wannacomet Water Department for hydrant and valve locations; hydrant locations shall provide a 10-foot minimum separation from storm drains or other approved means of protecting the water supply from the storm drains.*
The appropriate officials should review the plans. Hydrants are 10 feet from storm drains based on scaling the plans. The hydrant at the southwest corner of Condo #2 is just 10 feet depending on where the final location is set during construction.

w. *The Applicant has obtained all necessary private utility permits and final designs including but not limited to gas pipeline, electric, telephone and cable service required by the respective utilities prior to the commencement of construction. Documentation of all permits/approvals issued by private utilities pertaining to the development of the project shall be provided to the Board prior to any construction or Site disturbance.*
This is required to be provided prior to construction.

x. *The Applicant has submitted to the Board and all other relevant public agencies for review and final acknowledgment of consistency with this Decision, all requests for approval, and upon receipt of all approvals, has provided to the Board copies of all necessary approvals from all local, state and federal agencies, departments and commissions pertaining to this Project.*
This is required to be provided prior to construction.

y. *The final plans shall include the location and design, including materials to be used, of all retaining walls to be used within the Project.*

The Landscape Plans indicate the location of retaining walls and a detail but the detail does not indicate the reinforcing, although called a reinforced concrete wall.

z. *The final plans shall identify the location of all street lighting fixtures in accordance with the condition requiring compliance with the Town's code provisions concerning outdoor lighting.*

Satisfied, lighting is indicated on the Landscape Plans.

CONDITIONS PRECEDENT TO MAKING APPLICATION FOR BUILDING PERMIT(S)

98. *All conditions precedent to commencement of Project have been fulfilled as per this Decision and to the satisfaction of the Board.*

At this time, it does not appear that all conditions have been fulfilled as some comments should be addressed.

99. *The Applicant shall provide proof that the subdivision and lotting plans, as approved by the Board, have been recorded at the Nantucket County Registry of Deeds and three (3) copies of the final plan, exactly as it is recorded, shall be provided to the Board.*

No longer applies as no lots will be created.

~~100. *The Applicant shall enter into the standard MassHousing Limited Dividend Monitoring Agreement with MassHousing prior to receiving the initial building permit for the project. Compliance with the limited dividend requirements under G.L. c. 40B shall be determined by the Subsidizing Agency in accordance with the rules of the applicable housing subsidy program. All revenue and expenses attributable to upgrades and/or options purchased by home buyers must be included in the cost certification documents. Any rebates for materials/equipment/appliances must be included in the Cost Certification. The Board shall receive copies of any and all materials submitted to the Subsidizing Agency related to Cost Certification and Limited Dividend restriction monitoring and reviews.*~~

101. *No later than the submission of the initial building permit application, the Applicant shall submit, as applicable for the proposed project, for review and approval by the Board or its designated representative a copy of the proposed Homeowners Association Declaration of Trust, Homeowners Association Budget, and Declaration of Covenants, Restrictions and Easements as well as all Condominium Association documents, including but not limited to the Declaration of Trust, Master Deed, Rules and Regulations, and Condominium Budget. Said documents shall reference this Decision and the affordability requirements upon which the Comprehensive Permit is conditioned and state that the Project is subject to this Decision. The Homeowners Association and Condominium documents shall provide that the Homeowners Association and*

Condominium Trust are responsible for maintaining the roadways and sidewalks, storm water management system, common landscaping including all buffer areas, and fencing therein, all infrastructure and other common facilities including the Recreation and Maintenance Buildings, and shall also be responsible for snowplowing and trash removal. The Board acknowledges that the Subsidizing Agency has final approval authority in regard to the Homeowners Association and Condominium documents, including the respective budgets. These documents must include an explanation of how common costs (including the operation of the Recreation area) to be shared between the Homeowners Association and the Condominium Association shall be allocated between the two entities. Any applicable Homeowners Association or Condominium Fees shall be allocated to the Affordable Homes based upon a percentage of Fair Market Value. In determining the Chapter 40B allowable sales prices for the Affordable Units, a realistic Homeowners Association or Condominium fee must be used. If Affordable Unit owners will be responsible for the payment of any applicable sewer permitting fees, any such fees must be taken into consideration in determining the allowable sales prices for Affordable Units. Upon its formation, the Homeowners' Association and the Condominium Trust, as applicable, shall be initially endowed by the Applicant in the amount of Four Hundred Dollars (\$400) per unit.

Some of this Condition would not apply as it would be one condominium development. The HAC Decision removes any aspects that would relate to how the sale price of affordable units is calculated.

There shall be no change in the By-laws of the Homeowners' Association or the Condominium Trust, as applicable, without the approval of 75% (as rounded below) of each of the two (2) income levels of the homeowners, as applicable and as illustrated below:

No engineering comment required, as noted there would only be one condominium association.

Single Family Units

*Market Rate Units: 30 units*75% = 22.50 (Rounded to 22)*

*Affordable Units: 10 units*75% = 7.50 (Rounded to 8)*

Duplex Units

*Market Rate Units: 9 units*75% = 6.75 (Rounded to 7)*

*Affordable Units: 3 units*75% = 2.25 (Rounded to 2)*

Multifamily Units (Fourplex Units)

*Market Rate Units: 6 units*75% = 4.50 (Rounded to 4)*

*Affordable Units: 2 units*75% = 1.50 (Rounded to 2)*

Owners may not vote changes inconsistent with the Comprehensive Permit and any conditions thereto, the approved Regulatory Agreement, and/or the Deed Rider.

The Applicant shall be responsible for completion and maintenance of all infrastructure and compliance with this Decision until all of the units in the development are constructed and sold. Thereafter, the Homeowners' Association and/or the Condominium Trust shall bear such responsibility. The Applicant may collect fees from homeowners, as appropriate and as required in the Homeowners' Association and/or the Condominium Trust documents, for the maintenance of the infrastructure and other customary Homeowners' Association and/or the Condominium Trust fees.

102. *No later than the submission of the initial building permit application, the Applicant must also submit an engineered easement plan showing all easements along with a narrative explaining how all Units will be served by such easements. It is unclear if any easements will be required for the units. Utility purveyors typically would be provided easements to access their respective utilities and a Draft plan for Water & Sewer has been provided. The Final Plan should be approved by the appropriate utility purveyors.*

103. *Not later than the date on which the first request for a building permit is filed, and before any building permit is issued, the Applicant shall file with the Board and all other relevant public agencies for review and for consistency with this Decision:*

It is unknown if a Building Permit has been requested at this time. No Architectural Plans were included in the data provided.

A. *A copy of the request for a building permit, along with the required Form J under the local subdivision regulations. The building permit application must include a complete set of engineering drawings, plans and specifications ("Complete Plans") for use by contractors, inspectors, permit compliance officers and purchasers of the proposed dwelling units. These drawings, plans and specifications shall be stamped by a registered architect or professional engineer, as appropriate, licensed in the Commonwealth of Massachusetts. The Board shall review the complete plans for conformance with this Decision. The Building Department shall not issue a building permit until receipt of the Board's report that the Complete Plans conform to this Decision. The Applicant must also submit prior to initiation of each proposed construction phase a Resident Safety Plan that documents the safety measures that the Applicant will undertake to protect the safety of residents occupying units prior to the completion of all construction. The Resident Safety Plan shall be reviewed and approved by the Board and must be updated as needed and as requested by the Board.*

This review is a partial response to this Condition. As noted the plans provided are not Final Construction Plans at this time based on some of the notes and other data.

- B. *A copy of site layout plans and profiles shown at scales considered adequate for review purposes, of all private roads and parking areas. The Board shall review the layouts and profiles for conformance with this Decision. The Building Department shall not issue a building permit until receipt of the Board's report that there is conformance with this Decision. Roadway layouts shall include properly labeled horizontal and vertical curves and stationing. The location of these facilities shall be as identified in the above-noted layout plans.*
I note that neither plan layout with stationing and curve data nor profiles have been included in the Site Plans provided. There is a profile for the on-site gravity sewer system. This Condition should be addressed in the Final Construction Plans.
- C. *A copy of site layout plans, and final and detailed architectural drawings (including plans and elevations) shown at scales considered adequate for review purposes, of all structures containing dwelling units as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed ("Structure Plans"). The Board shall review the Structure Plans for conformance with this Decision and so notify the Building Department. The Building Department shall not issue a building permit until receipt of an affirmative report from the Board. Housing plans for dwelling units shall also be submitted to the Building Department in accordance with the State Building Code.*
Not provided, this should be addressed in the Final Construction Plans..
- C. *The final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities including electric, gas, water supply lines, wastewater disposal connections and appurtenances and dwelling unit connections thereto indicating that all utilities servicing this project shall be underground within the Locus of the Project and to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.*
Partially provided, there are sewer system profiles for the on-site gravity system only. Utilities are proposed to be underground. This should be addressed in the Final Construction Plans.
- E. *Submit to the Board plans and elevations of all proposed signs, including the entranceway sign, sufficient to determine their compliance with applicable Town Code provisions, and the design, size and location of any entrance or roadway intersection lighting. No sign waivers shall be granted.*
Not provided. This should be addressed in the Final Construction Plans.

CONDITIONS PRECEDENT TO BUILDING CONSTRUCTION

104. *During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust and the blocking of any roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area, and shall take all necessary steps to prevent damage to or contamination of private wells during the course of construction and to prevent damage to any sewer infrastructure located within the Site. For this condition, construction activities shall include, but not be limited to: start-up of construction vehicles, equipment or machinery; fueling of construction vehicles, equipment or machinery; storage of construction vehicles, equipment or machinery on Site; delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and erection of new structures. The Applicant shall submit to the Board on a phase-by-phase basis as-built plans showing the buildings, roadways, sidewalks, driveway aprons, edge of pavement, and utilities. Said as-built plans shall be submitted in a format satisfactory to the Building Inspector and be stamped by a licensed Massachusetts Professional Engineer. The Applicant shall also submit to the Zoning Board of Appeals digital copies of said as-built plans in a format acceptable to the Building Inspector. This is a construction phase Condition no comment required at this time.*
105. *Appropriate measures shall be taken during construction to prevent the tracking of material onto any public way. Any material tracked onto a public way shall be swept up and removed by the Applicant as necessary and as required by the Building Inspector. This is a construction phase Condition no comment required.*
106. *The Applicant shall repair in a timely manner any damage to public roads adjacent to the Project that results from the construction and/or maintenance of the Project. This is a construction phase Condition no comment required.*
- ~~107. *Parking for construction workers must be on site and not on public ways. No construction vehicle parking shall be allowed on South Shore Road.*~~
108. *The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation MassDEP's Dust regulations at 310 CMR 7.09, as amended, as directed by the Building Inspector. Methods of controlling dust shall meet all applicable air pollutant standards as set forth by Federal and State regulatory agencies. This is a construction phase Condition no comment required.*
109. *For each phase of the Project, prior to the start of construction of any building, roads to and within that phase of the Project which will have at least the first course of pavement, all hydrants in that phase of the Project will be operational, street signs will be in place and dwelling unit numbers will be provided at the*

building site to avoid conflict with building and lot numbers. Street names, house numbers, and building numbers for any fourplexes, shall be approved by the Nantucket Fire Department.

This is a construction phase Condition no comment required.

110. *Prior to the commencement of any work at the Site, a split rail fence shall be installed to delineate the buffer zones and limit of work. An erosion control barrier, hay bales stacked end to end and siltation fence firmly anchored with six inches of soil, shall also be installed on the project side of the split rail fence. The erosion control barrier shall be inspected by the Board or its representative prior to work commencing on the site and shall be maintained until all disturbed areas have been stabilized to the satisfaction of the Board or its representative.*

This is a construction phase Condition no comment required.

111. *Limit of work construction fencing shall be installed in accordance with the final plan locations for the particular building lot.*

This is a construction phase Condition no comment required.

CONDITIONS RELATING TO CONSTRUCTION

112. *All dwelling units shall be built by the Applicant, and its agents or contractors over which it will exercise supervision and control and the acts of which it will be responsible, in accordance with this Permit and the Regulatory Agreement. No lots shall be sold to third-party builders. No vacant lots or lots containing partially completed buildings may be sold. No sales shall occur before issuance of certificate of occupancy. During construction, the name and mobile telephone number of the site manager or clerk of works employed by the Applicant shall be filed with the Building Department, the Board, and the Nantucket Police Department, and such name and mobile telephone number shall be kept current. No engineering comment required. Portions of this condition would not apply to the current project.*

113. *At least forty-eight (48) hours prior to any initial site work, a pre-construction meeting shall be held with the Applicant, Applicant's contractor, a representative of the Board, its consulting engineer, and representatives of Town departments having a review interest in the plan. Said meeting shall be for the purpose of familiarization with the Project, the conditions of approval, and the Project's construction sequence and timetable.*

No engineering comment required.

114. *Prior to commencement of construction of each applicable phase, the Applicant shall provide the Board: A) The name, address, email and business telephone number of the individual(s) responsible for all activities on site; B) A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the site have been paid; C) Proof that all required federal, state and local licenses and permits have been obtained.*

No engineering comment required.

115. *During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of Town or County roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction hours shall be limited Monday-Friday, 7:30 a.m. to 7:00 p.m.; Saturdays, 7:30 a.m. – 1:00 p.m. No construction or related activities on Sundays or legal holidays.*

No engineering comment required.

116. *The Applicant shall submit to the Board, the Building Department and the Fire Chief, for review and final acknowledgment of consistency with this Decision, final and detailed scaled architectural drawings for all structures as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.*

Not provided to this office.

117. *Stormwater management systems shall meet the design and performance requirements of the MassDEP's Stormwater Management Policy and Handbook, as revised, including requirements concerning Zone II areas.*

There are some aspects that require revision and the Stormwater Report was for a prior revision. Refer to Appendix A.

118. *Roadway design plans and construction details (inclusive with the final plans) with respect to interior ways shall be provided for approval by the Board. Except as otherwise provided by this Decision, roadway design and construction standards shall conform to the requirements of the Nantucket Planning Board subdivision rules and regulations. All proposed roadway and utility construction, grading and appurtenant work shall be described in complete detail to readily enable peer review and construction. A note shall be placed on each pertinent sheet of the plans stating that the Project is the subject of a comprehensive permit under G.L. c.40B, §§22-23, that the roads and ways within the Project in some cases may and in other cases may not, conform to the standards and requirements of the Nantucket subdivision rules and regulations. Sidewalks shall be provided as per approved plans and shall conform to the requirements of the subdivision rules and regulations. Complete development roadway profiles shall be provided for existing centerline and sideline grades, and proposed centerline grade. On street parking shall be prohibited, except in those areas shown on the Comprehensive Permit Plans. Signage prohibiting parking shall be installed and maintained as required by the Town.*

Partially addressed, full profile data has not been provided and it is not clear that the plans meet standards without this data. I note that there are no roadways that would be considered "subdivision roadways" as no lots are to be created.

119. *All utilities shall be underground, and shall conform to the private utility company's requirements.*
Utilities are underground the status of compliance with private utility company requirements is not known.
120. *Proposed underground utilities shall be shown in cross-section on the way, utilities plan and construction details shall be provided.*
Satisfied.
121. *Normal water service pressure within the Project shall be a minimum thirty-five (35) psi under all conditions except fire flow. Available service pressure under peak water demand and fire flow conditions, including existing demands on the service pressure, shall be demonstrated to the Board's satisfaction by hydraulic modeling as required by the Fire Chief.*
It is not known if hydraulic modeling of the water system has been performed.
122. *Water system design and construction shall meet the requirements, standards and regulations of the Wannacomet Water Department and the Massachusetts Department of Environmental Protection's guidelines and policies for public water supplies. Water system design is also subject to the aforementioned conditions concerning water service.*
No comment required.
- a. *All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the Locus. No stumps or other debris shall be buried or burned on the Locus.*
No comment required.
123. *A written submission shall be submitted to the Board describing all easements and covenants affecting the use of the subject site, referring to such covenants and location of such easements on a site plan. The Applicant shall also submit to the Board any written or recorded instruments granting or agreeing to such easements and covenants.*
If applicable, legal counsel should review the easements.
124. *To ensure compliance with the terms and conditions of this Decision and any approval or order by any federal or state agency, the Applicant shall, no less than thirty (30) days prior to the request for a certificate of occupancies for any of the structures approved by this Decision, submit to the Board complete and detailed "As-Built Plans" of the roadway and associated infrastructure, as set forth in the Nantucket Planning Board subdivision rules and regulations and approved by the Board's consulting engineer together with a certification from a professional engineer or architect registered in the Commonwealth of Massachusetts that the Project's "As-Built Plan" complies in all substantive respects with this Decision and any other approval or order by any federal, state or local agency. Progress*

as-built plans may be submitted for the extent of roadway and associated infrastructure serving those dwellings for which certificates of occupancy are sought.

No comment required.

125. *Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, street signs and house numbers are in place and all required inspections have been completed by the Fire Department.*

No comment required.

126. *Applicant must comply with all Zone II water protection requirements under the Town's Zoning Bylaw in addition to MassDEP regulations and requirements. The Zoning Bylaws include the following requirement:*

"All land uses, buildings, and accessory structures, that result in rendering impervious more than 15% or 2,500 square feet of any lot, whichever is greater, unless a system for artificial recharge of 95% of annual precipitation is provided that will not result in the degradation of groundwater quality. The Planning Board may require that an applicant provide evidence of groundwater protection which may include a demonstrated history of treatment effectiveness of the proposed design/treatment technology, and it may require monitoring of on-site, pre- and post-development groundwater quality for potential pollutants."

The intention of the project would meet this requirement as there are proposed recharge systems for all impervious areas. Refer to Appendix A as there are some issues to be addressed in the design, and additional data is required to demonstrate compliance with the DEP Stormwater Regulations. MassDEP water supply regulations have similar requirements for recharge in the Zone II of a water supply well.

ADMINISTRATIVE

127. *Within fourteen (14) days of receipt of a statement of costs incurred by the Town prior to the date of this Decision in connection with reviewing the application for a permit, the Applicant shall submit a certified check made payable to the Town of Nantucket in an amount to compensate the Town for such costs.*

No comment required.

128. *The Applicant shall pay the expenses incurred by the Board and Town in evaluating the plans required by this Decision and in monitoring and evaluating construction for this Project. These expenses shall be deducted from the special account established by the Town Treasurer for the Applicant. Prior to any clearing, grading or construction, the Applicant must pay to the Town, by certified check, \$30,000 as an advance deposit to cover at least a portion of these*

expenses. The Applicant will pay any additional costs to the Town as required. If at any time the amount of the advance deposit is reduced below \$5,000, Applicant, upon request, shall within five (5) business days pay to the Town an amount sufficient to increase the amount of the deposit to \$5,000, and if the Applicant fails to pay such amount within such period, all work on the Project shall cease until such amount has been paid. Any excess remaining at the completion of the Project will be returned to the Applicant.

No comment required. The HAC Decision appears to discuss this Condition relative to the discussion on Conditions 129 and 137, which have been struck.

~~129. *Inspections and testing during the construction of ways and installation of utilities and the stormwater management system shall be conducted at the expense of the Applicant. The Board may appoint an agent to conduct such inspections.*~~

130. *The Applicant must post a performance guarantee for each phase of work to be undertaken, satisfactory and reviewed by the Board to be noted on the plan to ensure that any construction related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board. This performance guarantee is to be received by the Board prior to the commencement of any of the improvements approved in the plan and will be required until the Board decides that the Applicant has completed all of the improvements approved in the plan. The form of the performance guarantee, adequacy and/or amount may be varied from time to time by the Applicant subject to an agreement satisfactory to the Board and reviewed by the Board's counsel.*
No comment required.

132. *Recorded copies of all required legal documents (Homeowners Association documents, Statement of Conditions, Grant of Right of Enforcement, Grant of Easements for Utilities, Drainage, and Covenant) shall be presented to the Board prior to the release of the second lot from the Covenant and within six (6) months from the date of this decision (June 13, 2019).*
No comment required.

133. *The following aspects of the Project shall remain private and the Town and County of Nantucket shall not have any legal or financial responsibility for operation or maintenance of:*
No comment required on this or sub listings a-g.

- a. *Roadways, driveways or parking areas;*
- b. *Stormwater management systems and appurtenances;*
- c. *Snow plowing or removal;*
- d. *Landscaping;*

- e. *Trash disposal or pickup;*
 - f. *Street lighting or other illumination;*
 - g. *Maintenance requirements of easements, access and appurtenances associated with any of the above.*
134. *The water system shall be constructed by the Applicant and granted to the Town of Nantucket upon the Town's acceptance of the installed water main and appurtenances and all required testing results. Such acceptance shall not serve to constitute acceptance of the infrastructure contained in the preceding paragraph.*
No comment required.
135. *The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the Project, of all infrastructure and compliance with this Comprehensive Permit decision until all of the units in the development are constructed and sold. Thereafter, the Homeowners' Association and/or the Condominium Trust shall bear such responsibility. The Applicant may collect fees from homeowners, as appropriate and as defined in the Homeowners' Association and/or Condominium Trust documents for the maintenance of the infrastructure...*
No comment required.
136. *The Applicant shall complete construction within three (3) years from the date this Permit becomes final, unless such time shall be extended in writing by the Board for cause, not to be unreasonably withheld.*
No comment required.
- ~~137. *The fees for the engineering reviews and the Town's construction oversight shall be the obligation of the Applicant. Prior to the commencement of work by a particular consultant, the Applicant shall pay the estimated fees for the required work. No site disturbance or clearing shall commence until all past and estimated future fees are paid, including all fees owed the Board and the Town of Nantucket for peer review services completed pursuant to G.L. c.44, §53G.*~~
138. *The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.*
No comment required.
139. *Construction, once commenced, shall progress through to completion as continuously and expeditiously as possible and in accordance with the construction sequence and timetable approved. No clear cutting of this Site is*

permitted. Only such clearing as necessary to construct upon a particular lot, or section of Project infrastructure within the bounds thereof, is permitted, to occur contemporaneously with the construction. All other natural areas shall be maintained. A construction fence, restricting access to the Site from South Shore Road, shall be maintained at all times during the initial phase of construction. Once the first residential unit(s) are constructed and occupied, fencing shall be relocated as necessary to restrict access to areas subject to ongoing or future phases of construction.

The Phase 1 plan essentially requires clearing the entire site except for the perimeter buffer and an area within the common open space.

140. *Construction equipment shall not be parked or stored within one hundred (100) feet of any drainage channel, drainage inlet, or related area. Maintenance of construction equipment involving transfer of fluids and fuels shall be conducted in areas away from these areas. Contractor's on-site personnel shall immediately notify the Town of any hazardous material spill, regardless of size. Earth material stockpiles shall not be allowed adjacent to perimeter siltation barriers or drainage inlets or related areas. Long-term stockpiles over thirty (30) days shall be shaped, stabilized and circled by siltation fence and hay bales and shall be stabilized by temporary seeding, sheeting or netting.*

Portions of the construction parking area are within 100 feet of proposed catch basin inlets. This should be an easy adjustment to the plans.

141. *Prior to beginning construction on any phase of the Project, the Applicant will submit to the Board for its approval a plan showing the location of all construction storage and stockpiling areas for that phase, together with details of the planned use of such areas.*

The Phasing plans indicate the required locations.

142. *All areas to be protected from encroachment from construction shall be marked on the ground as shown on the approved construction plans and these barriers shall be maintained by the Applicant throughout the construction phase of the Project. Prior to the initiation of each construction phase, Applicant shall provide for review and approval by the Building Inspector a proposed Safety Plan that documents how residents occupying units will be protected during the construction of future phases.*

No comment required.

143. *Excavation dewatering shall be in a workmanlike manner and such water shall be free of suspended solids before being discharged into a stormwater drainage system. This condition applies to all forms of dewatering including pumping and trenching.*

No comment required.

CONDITIONS PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY

The following Conditions (144-148) do not require comment at this time.

144. *The Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the systems, dwelling unit, ways and improvements in the Project consistent with that required by the subsidizing agency.*
145. *No building shall be occupied until the improvements specified in this Decision and set forth on the plans of records are constructed and installed so as to adequately serve said building or adequate security has been provided, acceptable to the Board, to ensure such completion. Any such performance guarantee shall be approved as to the amount and form by the Board.*
146. *The Applicant shall submit final architectural plans to the HDC Administrator, as the Board's designee, for review and approval whether the plans conform with the requirements of the Board's conditions concerning exterior architectural features and design.*
147. *Based upon the recommendations of the traffic consulting engineers during the course of the public hearing, concerning calculation of proportional traffic mitigation funds based upon the Project impact, the Applicant shall pay traffic mitigation funds to the Town in the amount of Two Hundred Thousand Dollars (\$200,000.00). Payment shall be made in full upon the issuance of the initial building permit.*
148. *The Applicant shall enter into the standard MassHousing Affordability Monitoring Agreement with MassHousing or with a monitoring agent approved by MassHousing prior to receiving the initial occupancy permit.*

PERFORMANCE GUARANTEES

149. *Prior to full surety release, satisfactory as-built plans shall be provided to the Board as required under the Nantucket Planning Board regulations.*
No comment required.
- ~~150. *All sureties shall contain the following provision: "The principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, conditions, agreements, terms and provisions set forth in the Decision of the Nantucket Zoning Board of Appeals dated June 13, 2019."*~~
151. *No building shall be occupied until the building utilities specified in this Decision and set forth on the plans of record are constructed and installed and available so as to adequately serve said building or surety provided by the Applicant, in the amount and form approved by the Board.*
No comment required.

~~152. In determining the amount of any surety, the Board shall be guided by the following formula in setting the sum of the security:~~

~~— A. An estimate of the cost to complete the work that is satisfactory to the Board; plus~~

~~— B. A 50% margin of error; plus an appropriate rate of inflation over a 5-year period.~~

153. This Decision shall not substitute for compliance with the Subdivision Control Law, G.L. c.41, §81-L (et seq.), regarding the division of land into two or more lots.
No longer applicable.

154. The Board shall maintain jurisdiction to ensure compliance with all state and local rules and regulations applicable to subdivisions and related construction, bonding/surety, and recording requirements.
No comment required.

Following are specific conditions added by the HAC Decision:

The decision of the Board is vacated, and Board is directed to issue an amended comprehensive permit as provided in the text of this decision and the conditions below.

1. Any specific reference made to the “Board’s Decision,” “this Decision” or “this comprehensive permit” shall mean the comprehensive permit as modified by the Committee’s decision. Any references to the submission of materials to the Board, the building commissioner, or other municipal officials or offices for their review or approval shall mean submission to the appropriate municipal official with relevant expertise to determine whether the submission is consistent with the final comprehensive permit, such determination not to be unreasonably withheld. Such official may consult with other officials or offices with relevant expertise as they deem necessary or appropriate. In addition, such review shall be made in a reasonably expeditious manner, consistent with the timing for review of comparable submissions for unsubsidized projects. See 760 CMR 56.07(6).

No Engineering comment required.

2. The amended comprehensive permit issued by the Board shall conform to the application submitted to the Board, the Board’s original decision, and the modified proposal that was the subject of the hearing before this Committee, all as modified in this decision. This review letter addresses this condition.

3. The development, consisting of 156 total units, including 39 affordable units, shall be constructed substantially as shown on plans entitled “Surfside Crossing a Proposed 40B Development in Nantucket, Massachusetts,” dated February 15, 2018, with revisions through February 28, 2020, prepared by Bracken Engineering, Inc. (Exhibit 3), and shall be subject to those conditions and requirements imposed in the Board’s decision filed with the

Nantucket Town Clerk on June 14, 2019 (Exhibit 2), as modified by this decision.
This review letter addresses this condition.

4. The Board shall not include new, additional conditions.
The Board should abide by this requirement.

5. The developer is required to comply with all applicable non-waived local requirements in effect on the date of its submission of its comprehensive permit application to the Board, consistent with this decision.
I defer this aspect to the appropriate Town agency for comment.

6. The developer shall submit final construction plans for all buildings, roadways, stormwater management system, and other infrastructure to Nantucket town entities, staff or officials for final comprehensive permit review and approval pursuant to 760 CMR 56.05(10)(b).
Not provided at this time. Landscaping Plans appear to generally meet this requirement but other plans are not Final Construction Plans.

7. All Nantucket town staff, officials, and boards shall promptly take whatever steps are necessary to permit construction of the proposed housing in conformity with the standard permitting practices. Submission of plans and materials to the Town for review or approval shall be to the appropriate municipal official with relevant expertise to determine whether the submission is consistent with the final comprehensive permit, such determination shall be made in an expeditious manner, consistent with the timing for review of comparable submissions for unsubsidized projects, and approval shall not to be unreasonably withheld.
No Engineering comment required.

8. Should the Board fail to carry out this order within thirty days, then, pursuant to G.L. c. 40B, § 23 and 760 CMR 56.07(6)(a), this decision shall for all purposes be deemed the action of the Board.
This review summarizes the applicable conditions as modified by the HAC decision.

9. Because the Housing Appeals Committee has resolved only those issues placed before it by the parties, the comprehensive permit shall be subject to the following further conditions:
(a) Construction in all particulars shall be in accordance with all applicable local zoning and other by-laws in effect on the date of the submission of the developer's application to the Board, except those waived by this decision or in prior proceedings in this case.
I defer this aspect to the appropriate Town agency for comment.

(b) The subsidizing agency or project administrator may impose additional requirements for site and building design so long as they do not result in less protection of local concerns than provided in the original design or by conditions imposed by this decision.

No Engineering comment required.

(c) If anything in this decision should seem to permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.
No Engineering comment required.

(d) Construction and marketing in all particulars shall be in accordance with all presently applicable state and federal requirements, including, without limitation, fair housing requirements.
No Engineering comment required.

(e) No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.
As noted Final Construction Drawings have not been provided at this time.

(f) The Board and all other Nantucket town staff, officials, and boards shall promptly take whatever steps are necessary to ensure that building permits and other permits are issued to the applicant, without undue delay and in conformity with the standard permitting practices applied to unsubsidized housing in Nantucket, upon presentation of construction plans, pursuant to 760 CMR 56.05(10)(b), that conform to the comprehensive permit and the Massachusetts Uniform Building Code.
No Engineering comment required.

(h) This comprehensive permit is subject to the cost certification requirements of 760 CMR 56.00 and DHCD Guidelines issued pursuant thereto.
No Engineering comment required.

I appreciate the opportunity to assist the Zoning Board of Appeals on this project and hope that this information is sufficient for your needs. This report is for the Nantucket Board of Appeals only and provides no engineering, planning or other advice that may be relied upon by any party or agency other than the Nantucket Board of Appeals. I would be pleased to meet with the Board or the design engineer to discuss the project at your convenience. If you have any questions, please do not hesitate to contact us.

Very truly yours,
Chessia Consulting Services, LLC

John C. Chessia, P.E.

Nickesha Sheriff

From: William Saad
Sent: Monday, May 8, 2023 10:52 AM
To: Nickesha Sheriff
Subject: FW: Thank you

-----Original Message-----

From: Meghan Perry <mpeventing@me.com>
Sent: Tuesday, April 25, 2023 11:07 AM
To: Leslie Snell <LSnell@nantucket-ma.gov>; William Saad <wsaad@nantucket-ma.gov>; Planning and Land Use Services <plus@nantucket-ma.gov>
Cc: Meghan Perry <mpeventing@me.com>
Subject: Thank you

Dear Lesli and Billy,

Please forward the below email to all members of the ZBA. Can you please confirm that you have received this email and also forwarded it on to all members of the ZBA.
Thank you in advance for your assistance.

Dear Members of the ZBA,

I am writing to thank you! To thank you for doing what is best for our community. To thank you for doing what the Selectboard failed at doing- looking out for our entire community! To thank you for all the time, effort, and energy that you give to our entire community.

The Selectboard themselves wrote a letter dated February 14, 2018 to MassHousing stating "The Board of Selectmen voted 5-0 to strongly urged MassHousing to deny the Project Eligibility Letter (PEL) (for Surfside Crossing) because (1) the design presents significant fire safety issues; (2) the Property is too culturally important; (3) the Property is located in an extremely environmentally sensitive area; (4) the parcel is too small to support the proposed 12 unit per acre density, which would overwhelm the Property and the neighborhood and where there is a special concern over traffic generation; (5) the Project would generate 43,000 gallons of sewer flow per day that would require a new one-mile long sewer main to the wastewater treatment facility as existing sewer mains cannot handle additional flow; and (6) the Town has insufficient water capacity to serve the project.

This project will not just affect one street or one neighborhood, it will affect the entire community's infrastructure, health, safety and environment.

I am not sure what changed as none of these issues and risks have been answered or removed from the project, no concessions were made by the developer, and nothing in the form of an agreement was put in writing- just "good faith" between parties who have been illusive in their past "good faith" agreements.

I'm not sure why the town relied on the chair of the affordable housing trust (also a real estate agent/office owner), the Housing Director, and the Planning Director to negotiate this deal directly with the developers. Three non-elected people making behind closed door deals for the entire community with no concessions made by the developers, no guarantees,

nothing in writing and no advice from town counsel. What I am sure of is that these three individuals have written contracts for their jobs why no written contract when it affects the entire community?

I'm not sure why the ZBA was not involved when you are the sole enforcement and regulatory board for projects such as this. The ZBA as stated in its mission through zoning by-laws shall "promote the health, safety, convenience, morals and general welfare of Nantucket's inhabitants, to lessen the danger from fire and congestion and to improve the town..."

I'm not sure why the planning Director and Deputy Director who is your staff administrator did not involve your board. I'm not sure why town counsel felt he could represent both boards without a conflict. I am not sure why it was appropriate for the developer's attorney to write and sign the dismissal for town counsel on your behalf.

I'm not sure where ethics and morals stopped and pushing forward with housing and development at all cost started.

What I am sure of is that three members of the Selectboard, Jason Bridges, Brooke Mohr and Dawn Holdgate, failed in supporting you and the community.

Please know the community stands by you and with you in your decision to help protect our island from risky high density over development such as Surfside Crossing. You may feel usurped and blindsided by the Selectboard's actions, but please know we all see you, we all hear you and we all support you.

Rest assured Nantucket Tipping Point will continue our appeal and continue to be the watchdog for what the Town is not doing to protect our entire community.

Sincerely,

Meghan Perry

Sent from my iPhone please excuse any mistakes.

This email was scanned by Bitdefender

Nickesha Sheriff

From: Leslie Snell
Sent: Monday, May 8, 2023 11:34 AM
To: William Saad; Nickesha Sheriff
Subject: FW: April ZBA Meeting and Review
Attachments: 050123 Summary to ZBA.pdf; Untitled attachment 00008.htm

Email and attachments for packet.

Leslie Woodson Snell, AICP, LEED AP BD+C
Deputy Director of Planning

Nantucket Planning & Economic Development Commission
Planning & Land Use Services (PLUS) Department
2 Fairgrounds Road
Nantucket, MA 02554

Telephone: 508-325-5385



From: BRUCE PERRY <andiamogo@me.com>
Sent: Monday, May 1, 2023 9:18 PM
To: Leslie Snell <LSnell@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>; Andrew Vorce <AVorce@nantucket-ma.gov>
Subject: Re: April ZBA Meeting and Review

Hi Leslie - Happy May. Below is an email that I sent to you on April 13. To date I have not received any response to my questions contained in the email. Could please find some time to answer the questions?

Since I sent the April 13 email, I have had some time to review the Comprehensive Permit issued by the ZBA as revised by HAC. In the attached document titled "050123 Summary to ZBA", is a more detailed review of the Developers violations of the Permit along with a review of the submitted plans and documents submitted to the ZBA for review. I ask that the attachment be forwarded to the Zoning Board members for their review prior to their next ZBA meeting.

Thank you.

Bruce
BRUCE PERRY
andiamogo@me.com
(508) 332-9722

Summary of Surfside Crossing violations and plan review

Submitted by: Bruce Perry

Date May 1, 2023

This document is broken down into two major topics – a summary of the permit conditions and current violations of them by the developer and a review of the submitted documents. Any emphasis added by using bold type face has been added by me to help in the highlighting of individual issues.

I. Violation Summary

The ZBA's permit was revised and superseded by the Comprehensive Permit decision issued by HAC. While it replaced some of the conditions in the ZBA permit, not all were replaced and remain in effect in the HAC permit. The list below is some but not necessarily all of the conditions of the Permit that the Developer is in violation.

- a. **Section IV condition (9)(e)** on page 43 of the HAC permit requires that:

“(e) No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.”

Clearly the developer is in violation of the HAC permit as work has started with the cutting of trees and clearing for installation of a fence.

- b. The HAC permit further amends the ZBA permit **Condition 97** which states in part:

“97. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until:”

And then proceeds to list a number of conditions (a. – z.) that are required to be met prior to any disturbance. Since work has commenced by land clearing and tree removal and most, if not all of these conditions have not been met, the developer is in violation of the HAC Permit. While the developer has tried to cure some of these violations through the after the fact submittal of some of the required plans, they still remain under review and have not received approval from the Board. The developer has waited months to attempt to cure these violations after publicly insisting that there were none.

- c. More specifically the developer is in violation of **Condition 97 (a)** which states in part:

“Final Review – Prior to commencement of any construction and granting of any permits for the Project, the Applicant has submitted detailed construction drawings to the Board to ensure that said drawings are consistent with this Permit, with local requirements not waived in the permit, and with state and federal codes and requirements of state and federal agencies and their respective decisions. Copies of the detailed, approved construction drawings (“Final Plans”) shall also be filed in hard copy (twenty full-scale sets) and in digital format with the Board and the Building Department for recordkeeping purposes. The Applicant must secure Board approval prior to construction and allow the Board ninety (90) days to review the detailed construction drawings. The final plans shall include a building code review.”

It is unclear if the developer has complied with this requirement. In addition to being in violation of the Permit, the 90-day time period cannot commence until they have complied.

- d. **Condition 97(e)** states in part:

“and 4) Identification of the location of all Affordable Units shall be included.”

My review of the submitted plans do not show compliance with this condition. Therefore, the review time period cannot commence and they remain in violation of the Permit.

- e. **Condition 97(m)** states:

“m. The Applicant has granted to the Town easements giving the Town the right to enter the Locus to repair and maintain water and sewer lines, as applicable and as necessary to ensure the health and safety of the residents therein. The easements shall be shown on a site plan provided to the Board and shall be recorded by the Applicant.”

While the developer has belatedly submitted plans titled “DRAFT WATER & SEWER UTILITY EASEMENT PLAN” dated March 30, 2023 in the submittals to the Board, no proof of recording has been submitted. Therefore, the review time period cannot commence and they remain in violation of the Permit.

- f. **Condition 97 (q.) and (v.)** pertain to review and approval of the project site plans by the Fire Chief and Wannacoment Water Company. Since no approval has been submitted by the developer, the review time period

cannot commence and they remain in violation of the Permit.

II. Review of submitted plans

The detail plans for all building types show an option of roofing materials of either asphalt or vertical seam metal. The Board, which still has jurisdiction on building design, should prohibit the use of metal roofing on all the buildings. First, it is an inappropriate material for these buildings on Nantucket and secondly, the noise impacts on the residents both in the development and in neighboring lots. The noise generated by precipitation falling on metal roofs of the excessive large building proposed in this development would be noticeable both on and off the property.

Condition 23 on page 18 of the Permit states:

"All units must have gutters, which must be maintained in accordance with an approved maintenance plan, and all roof water drainage must be directed to subsurface drainage systems independent of the roadway system as proposed and agreed to by the Applicant."

My review of the submitted plans do not show compliance with this condition. The plans are therefore incomplete and the 90-day review timeline cannot commence until they are brought into compliance.

III. Stipulation of Settlement Agreement

Section IV (A.) on page 9 of the HAC decision states in part:

"... The comprehensive permit regulations provide that, for the purposes of determining whether the Board's conditions render an ownership development project uneconomic, a reasonable return for a limited dividend organization is a minimum of 15% of total development costs."

However, the recent press release from the Select Board and the Developer states in point # 10:

"All parties recognize that under the 40B law the financial structure of the development is designed to enable a return of up to 20% of development costs and that the economic feasibility of the project requires preserving a realistic projection of earning this profit."

So the Select Board and the Developer in entering into this agreement are in violation of the HAC Permit which states that a 15% return on total cost (ROTC) is sufficient to ensure that this project is economic under the 40B law.

Nickesha Sheriff

From: Leslie Snell
Sent: Monday, May 8, 2023 11:35 AM
To: William Saad; Nickesha Sheriff
Subject: FW: April ZBA Meeting and Review

For packet.

From: Leslie Snell
Sent: Tuesday, May 2, 2023 2:03 PM
To: BRUCE PERRY <andiamogo@me.com>; Libby Gibson <LGibson@nantucket-ma.gov>; Andrew Vorce <AVorce@nantucket-ma.gov>
Subject: RE: April ZBA Meeting and Review

Hi Bruce –

I thought that I responded to your email while I was away on vacation we week of the 17th, but apparently I did not.

We did receive guidance from Town Counsel about the ability of the project to move forward at this time. I do not have anything in writing that I can provide to you.

If violations are found to exist, they will be enforced through the typical ways that permit violations are handled.

I will include your email in the packet for the Board's May 11 meeting.

Leslie

Leslie Woodson Snell, AICP, LEED AP BD+C
Deputy Director of Planning

Nantucket Planning & Economic Development Commission
Planning & Land Use Services (PLUS) Department
2 Fairgrounds Road
Nantucket, MA 02554

Telephone: 508-325-5385



From: BRUCE PERRY <andiamogo@me.com>

Sent: Monday, May 1, 2023 9:18 PM

To: Leslie Snell <LSnell@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>; Andrew Vorce <AVorce@nantucket-ma.gov>

Subject: Re: April ZBA Meeting and Review

Hi Leslie - Happy May. Below is an email that I sent to you on April 13. To date I have not received any response to my questions contained in the email. Could please find some time to answer the questions?

Since I sent the April 13 email, I have had some time to review the Comprehensive Permit issued by the ZBA as revised by HAC. In the attached document titled "050123 Summary to ZBA", is a more detailed review of the Developers violations of the Permit along with a review of the submitted plans and documents submitted to the ZBA for review. I ask that the attachment be forwarded to the Zoning Board members for their review prior to their next ZBA meeting.

Thank you.

Bruce
BRUCE PERRY
andiamogo@me.com
(508) 332-9722

On Apr 13, 2023, at 10:35 AM, BRUCE PERRY <andiamogo@mac.com> wrote:

Hi Leslie - Thank you for your response and I have a couple questions.

1. Did you request guidance from Town Counsel on whether or not the Town can issue permits for the project?
2. If you did, can I get a copy of it?

On another part of your response comments on Condition # 97 of the Comprehensive Permit (a portion of which is quoted below).

"CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT

97. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until: “

A quick review of Condition #97 shows that the applicant and the project are in violation of this condition. Not only are they in violation of the first sentence of the Condition quoted above but in my quick reading of the Condition finds they are in violation of at least sub sections i. , k. , l. , m. , and q..

The violations of this Condition would be the clearing for and the installation of the post and rail fence. Secondly, the cutting of the trees on the property that was seen by many and had the approval of the project's proponents.

How does your department and/or the ZBA plan to enforce this permit? At least, cease and desist order should be issued until the project comes into compliance.

Finally, as the administrative representative for the ZBA, I ask that you bring these violations to the attention to the entire ZBA board as soon as possible so enforcement actions can commence.

Thank you for your attention to this matter and I await your response.

Bruce
BRUCE PERRY
andiamogo@me.com
(508) 332-9722

On Apr 12, 2023, at 3:31 PM, Leslie Snell <LSnell@nantucket-ma.gov> wrote:

Bruce –

My response to your daughter didn't misrepresent anything about the process. The applicant may move forward with permitting at their own risk while the appeal is pending. Accordingly, a final plan set has been prepared by their team for final review by the ZBA in accordance with Condition #97 of the Comprehensive Permit, as amended by the HAC decision. Changes to their plan set may or may

not be required as a result of the ZBA review, and the outcome of the appeal could have further impacts, or not.

Relative to your request to not issue permits, we will follow the legal direction provided to us by Town Counsel.

I'm not making any assumptions about "the appropriate departments and Boards" to which your email may be of interest and will leave that to you to determine and distribute.

Leslie Snell

Leslie Woodson Snell, AICP, LEED AP BD+C
Deputy Director of Planning

Nantucket Planning & Economic Development Commission
Planning & Land Use Services (PLUS) Department
2 Fairgrounds Road
Nantucket, MA 02554

Telephone: 508-325-5385

<image001.png>

From: BRUCE PERRY <andiamogo@mac.com>
Sent: Monday, April 10, 2023 8:29 AM
To: Leslie Snell <LSnell@nantucket-ma.gov>
Cc: Libby Gibson <LGibson@nantucket-ma.gov>; Andrew Vorce <AVorce@nantucket-ma.gov>
Subject: April ZBA Meeting and Review

Hi Leslie - I received the forwarded email below about the Surfside Crossing project and had a few questions about the representations in the email.

I am concerned about the "review period of the final plans has commenced". To my knowledge, the Surfside Crossing project is still in litigation with the Town, ZBA, Nantucket Land Council and abutters. There is not a final permit issued by local or state agency that has survived all these appeals that would allow this project to go forward. Usually boards and agencies when they issue permits that require the applicant to go to another board or agency will require that they come back to the issuing board for review and final approval of the plans in case changes were made during the process.

To state that the "review period for the final plans" is underway is a misrepresentation. At best the plans being reviewed could be considered "draft". These plans that are before the staff may or may not survive the appeal process.

The "review period for the final plans has commenced." Is there a regulatory review period that requires an action by the planning staff or other Town agencies? Is there any criteria on whether or

not applicants have to have their project reviewed? Again, stating the review of the "final plans" has commenced is misrepresenting the review.

Is it appropriate for the Town to spend its resources and funds on a project that is not final and may receive significant changes prior to it being adjudicated and final? Do staff time and resources usually review draft projects?

In your position as Deputy Director of Planning, I ask that you direct the departments under your control NOT to issue any permits under these draft plans. Any representations by the owner/applicants that these are final plans is a misrepresentation as delineated above.

Any representations by the owner/applicant that the project is soon to be underway is incorrect until all appeals have completed and/or fully litigated.

I look forward to your answers to my questions.

I also ask that you forward my concerns to the appropriate departments and Boards.

Thank you for your time in this matter.

BRUCE PERRY
andiamogo@me.com
(508) 332-9722

Begin forwarded message:

From: Leslie Snell <LSnell@nantucket-ma.gov>
Subject: RE: April 13, 2023 ZBA meeting
Date: April 6, 2023 at 12:20:14 PM EDT
To: "mpeventing@me.com" <mpeventing@me.com>
Cc: Libby Gibson <LGibson@nantucket-ma.gov>, Andrew Vorce <AVorce@nantucket-ma.gov>

Meghan -

The Surfside Crossing materials were posted on the website for informational purposes for the Board and the public. The review period for the final plans has commenced and the agenda item for April 13 is nothing more than an update from staff. A future agenda item will be scheduled for the Board to actually discuss the content of the plans.

Leslie

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Nantucket, MA 02554

Telephone: 508-325-5385

This email was scanned by Bitdefender

Nickesha Sheriff

From: Leslie Snell
Sent: Monday, May 8, 2023 12:45 PM
To: William Saad; Nickesha Sheriff
Subject: FW: April ZBA Meeting and Review

For packet.

From: BRUCE PERRY <andiamogo@mac.com>
Sent: Thursday, April 13, 2023 10:36 AM
To: Leslie Snell <LSnell@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>; Andrew Vorce <AVorce@nantucket-ma.gov>
Subject: April ZBA Meeting and Review

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1. Did you request guidance from Town Counsel on whether or not the Town can issue permits for the project?
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End of Packet