

ZONING BOARD OF APPEALS

Minutes of the Meeting of May 23, 2023. The meeting took place via remote participation using Zoom. Members of the Board present were Susan McCarthy, Lisa Botticelli, Jim Mondani, John Brescher and Michael O'Mara. Staff members present were Town Manager C. Elizabeth Gibson, Housing Director Tucker Holland, Town Administration Operations Administrator Erika Mooney, PLUS Administrative staff members Nickesha Sheriff and William Saad, and Attorney George Pucci of Town Counsel's office.

I. CALL TO ORDER

Vice Chair Holdgate called the Select Board meeting to order at 4:01 PM and explained the rules of this remote meeting.

Zoning Board of Appeals (ZBA) Chair Susan McCarthy called the ZBA to order at 4:03 PM.

II. JOINT MEETING WITH SELECT BOARD AND ZONING BOARD OF APPEALS REGARDING DECISION TO WITHDRAW APPEAL OF HOUSING APPEALS COMMITTEE DECISION FOR SURFSIDE CROSSING 40B.

Ms. Holdgate apologized to the Zoning Board of Appeals (ZBA) members for not having informed them in advance of the Board's decision to withdraw the appeal and thanked the ZBA for the tremendous amount of time it spent on the Surfside Crossing (SSX) application. Ms. Mohr concurred and acknowledged that while there was a lapse in communication and appreciates the frustration it caused the ZBA, her decision would not have changed. ZBA member Lisa Botticelli spoke on the ZBA's frustration and said more support from the Select Board would have been appreciated. She asked where funds would come from for a percentage of the units at SSX to be year-round. She expressed concern about parking and other issues that she believes should be addressed. Discussion followed as to the timeframe of the ZBA's review of the SSX pending permit. Ms. Mohr said there may be some misunderstanding about the application under review by the ZBA and whether or not the Town had negotiating ability based on the SSX developer's decision to proceed "at risk". She stated that her belief is that the Town had no negotiating leverage. Ms. Botticelli spoke on the lack of information given to the ZBA about the appeal. Ms. Holdgate commented that the year-round housing percentage is still being refined and that any funds expended for a "buy down" will have to be determined, including whether such funds are private or public. Mr. Fee said he agrees the ZBA should have been consulted and that he does not necessarily share the opinion expressed by Ms. Mohr. ZBA Alternate Member Jim Mondani expressed concern about the overall process. He said the ZBA "needs to know" what the Select Board discussed in executive session when it made the decision to withdraw the appeal. He asked why the Select Board did not choose to negotiate a non-40B project with the developer. Ms. McCarthy agreed that the lack of informing the ZBA of the Select Board's decision was disappointing and frustrating; however, noted that during the current review process, the ZBA can work with the developer on issues of concern. She said she appreciates recognition expressed by the Select Board members that the process should have been different. Dr. MacNab said he is not sure the outcome would have been the same if the ZBA had been involved in the decision to withdraw the appeal. Ms. Botticelli said she hopes the developer will be cooperative with the current review by the ZBA, noting it is a complex project and a lot of thought needs to go into it. Mr. Fee asked which staff are responsible for review, enforcement and monitoring of the permit conditions. Mr. Pucci explained the process and who typically reviews what, with 40B permits, as well as the timeframe. Ms. Mohr asked if there are any other resources the ZBA might want in order to conduct its review work. Ms. McCarthy said she does not believe so, at this point. She spoke about upcoming ZBA meetings for the permit review. Ms. Mohr commented that Mr. Mondani's comment about the Select Board negotiating a non-40B project, after the 40B process had commenced, would have required the developer's concurrence. Mr. Pucci concurred. Mr. Mondani said he

believes the ZBA needs special counsel. Ms. Holdgate said that it is the subject of the next agenda item. Ms. Botticelli asked again about “buydown” funds. Mr. Holland said the Affordable Housing Trust has been contemplating the use of funds for “buydown” purposes for home ownership. He noted this is tied to a Select Board Strategic Plan housing goal. He said such a program could be used for any number of projects and situations. He explained what would be required in exchange for such buydown funds. Ms. Botticelli spoke on what “year round residency” is, saying that it is “gray” in the Zoning bylaw. She suggested a ZBA member be included in any discussions with the SSX developer. Ms. Holdgate said that Ms. McCarthy has been included in at least one meeting with the developer, so far. Some discussion followed as to involvement of other ZBA member(s). Mr. Holland said that the AHT is assembling a work group to advise on the allocation of any potential public funds for this development, with a “buydown” program, with restrictions. Some discussion followed on this.

a) DISCUSSION OF BOARD OF APPEALS ASSOCIATE MEMBER’S REQUEST FOR SPECIAL COUNSEL.

Ms. Botticelli said the ZBA feels that it needs its own Counsel, separate from that of the Select Board. Mr. Mondani said he was supportive of the request for “therapeutic reasons”. He said the ZBA needs to “know things were done correctly and how to proceed forward”. He added that he doesn’t want to get “in depth” with the request but there is “a lot tension and misinformation and lack of information” as to the ZBA’s standing. Mr. Fee asked about the scope of a special counsel. Mr. Mondani said there is some concern that the ZBA should have the authority to make the call on the permit. He said there are unanswered questions about the permit. Dr. MacNab commented that the request is seemingly “therapeutic” rather than legal. Ms. Botticelli said “it would be nice” for the ZBA to have an advocate for its concerns. Ms. Holdgate noted special counsel would not be an opportunity to re-open the appeal. She added there is no conflict between the Boards as to the permit review or conditions. ZBA member Michael O’Mara, noting that he has sat on numerous 40B applications as a long-term member of the ZBA, concurred with the frustration as to the lack of communication, but believes everything else has been done properly, adding that he does not support the need for special counsel. Mr. Mondani said “underlying issues have caused problems”. Some discussion followed. Ms. McCarthy said she does not support special counsel. Dr. MacNab said the Board has apologized, and he does not see the need for special counsel. Ms. Mohr concurred. Mr. Fee said while he thinks Mr. Pucci is undeniably qualified, he can see how the ZBA would want special counsel. Mr. Mondani spoke in favor of special counsel. Some discussion followed. Ms. Holdgate asked Mr. Pucci if he saw any conflict between the Select Board and ZBA with respect to the plan review. Mr. Pucci said “no”. Ms. Holdgate thanked the ZBA for its time.

III. ADJOURNMENT

Ms. Botticelli moved adjournment at 5:15 PM; seconded by Mr. O’Mara; by roll call vote: Ms. McCarthy – Yes; Ms. Botticelli – Yes; Mr. O’Mara- Yes; Ms. Allen – Yes; Mr. Brescher – Yes. So voted.

The Select Board also unanimously adjourned at 5:14 PM.

Adopted on October 19, 2023

**ZONING BOARD OF APPEALS
MAY 23, 2023 – 4:00 PM
REMOTE PARTICIPATION VIA ZOOM
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- II. Joint Statement from Select Board and Surfside Crossing LLC dated 4/18/23