



ZONING BOARD OF APPEALS

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

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

~~ MINUTES ~~

Thursday, October 19, 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 1:09 pm and announcements made by Ms. McCarthy

Staff in attendance: Nicky Sheriff, Administrative Specialist; William Saad, Land Use Specialist; Leslie Snell, Director of Planning; Tucker Holland, Municipal Housing Director

Attending Members: Susan McCarthy, Elisa Allen, John Brescher, Joe Marcklinger, Michael O'Mara, Jim Mondani

Absent: Lisa Botticelli, Mark Poor

Late Arrivals: None

Early Departures: None

Town Counsel: Attorney Vicki Marsh, KP Law

Motion	Agenda adopted by unanimous consent
Vote	Motion to Approve. (made by: Brescher) (seconded by: Allen) Carried unanimously

I. APPROVAL OF MINUTES

May 23, 2023; July 13, 2023; August 10, 2023; September 14, 2023

Motion	Motion to Approve as drafted. (made by: Brescher) (seconded by: Allen)
Vote	Carried unanimously

II. OLD BUSINESS

1. 20-18	Surfside Crossing LLC	Surfside Crossing 40B	Haverty
Discussion and Acknowledgment of the Regulatory Agreement between the Massachusetts Housing Finance Agency and Surfside Crossing, LLC.			

Voting	McCarthy, Brescher, O'Mara, Allen, Mondani
Alternates	
Recused	None
Documentation	File with associated plans, photos, correspondence and required documentation
Representing	Attorney Paul Haverty, Blatman, Bobrowski, Haverty, and Silverstein, LLC
Discussion	

Marsh- I have reviewed the proposed Regulatory Agreement and attachments – Affordable Housing Restriction, Affordability Monitoring Service Agreement, Limited Dividend Monitoring Agreement, and also the Comprehensive Permit Decisions. I've found that they comply with the Comprehensive Permit, and I have no substantive changes to this document. Many of the documents are form documents provided by MHFA for comp permit projects not funded by a state entity. These are commonly used by MHFA. A few key points:

- Of the 156 units to be constructed, 39 would be deemed affordable. The eligible purchasers for these units would have AMI of less than 80%.
- All affordable units would be eligible to be on the town's subsidized housing inventory, approved by EOHL.
- There are requirements for the developer to not be able to sell the units for more than the maximum initial sales price determined by MHFA.
- Each individual initial purchaser will be required to execute an affordable housing restriction attached to the deed for the unit to remain affordable in perpetuity.

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- The affordable housing restriction is being held by the Town, the Monitoring Agent, and EOHLC. They would hold the rights in perpetuity and would have the ability to enforce them.
- These restrictions are deemed Affordable Housing Restrictions pursuant to MGL 184, sections 31 & 32.
- The developer is being asked to prepare an affirmative fair housing marketing plan. To be submitted for review and approval by the Monitoring agent and MHFA, in compliance with fair housing laws.
- In addition to the regulatory agreement, it contains a provision about the local preference that enables the municipality and developer to sell no more than 70% of what is deemed to be the local preference. There are four categories that EOHLC permits: municipal residents, municipal employees, and people with children in the Nantucket Schools. This requirement of 70% is in the guidelines and generally not exceeded.
- Although not in the Regulatory Agreement, the Town is making a request to MHFA for consideration to carve out an additional local preference for municipal employees. This will not increase the 70% number. Of the 27 units subject to a local preference, the Town has asked that a special local preference of 6 of those units go to municipal employees. The Town is additionally requesting this special local preference be extended in perpetuity so the unit can always be conveyed to a local Town Employee. MHFA will make the determination.
- The Limited Dividend Monitoring Service Agreement covers the amount of profits the developer is allowed to acquire through the development of the project and is overseen by MHFA.
- The Affordability Monitoring Service Agreement covers the monitoring agent to make sure the developer complies with the plans for the affordable housing units. Citizens Housing and Planning Association has been assigned by MHFA for this project.
- After reviewing all documents, I found that all documents comply with the comprehensive permit and therefore recommend that you may acknowledge and sign the acknowledgment form for the agreement.

McCarthy- Questioned the joint statement issued by the Town and SSX, specifically number four, under principles, it says “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.” How does this 75% line up with the local preference of 70% of the affordable housing units for local preference referenced in the agreement? Are those conflicting ideas?

Marsh- The 70% local preference referenced is for just the affordable units. Of the 156 units to be constructed, 39 will be affordable units. Of the 39, 27 of the units will be conveyed to parties under the local preference. The 75% year-round referenced in the joint statement is not limited to affordable units.

Holland- I agree completely with Attorney Marsh’s description. If MHFA grants the request, it would guarantee that 70% of those units go to locals. That doesn’t mean the other 30% will not go to locals but ensures 70% go to locals. With respect to the 75% referenced from the joint statement, that is the stated goal of the developer and the Town. We would like to see 75% of this project ultimately serve year-rounders.

McCarthy- There were discussions about deed restrictions for the year-round housing. How would that work? Can that be done on 1 of the 27 units under local preference? Typically, the local preference only applies to the initial sale. Would we be able to do a permanent deed restriction in perpetuity without permission from the monitoring agency?

Marsh- Presently, there is not a deed restriction in place. All proposals as far as deed restrictions have not been finalized. My understanding is that this is a proposal by the developer and the Town, but we don’t have final terms in place.

McCarthy- That’s my understanding as well. If the Town and the developer come to an agreement, any of the 25% affordable units would need approval from the state agency or monitoring agency to be able to put any kind of deed restriction for local preference in perpetuity.

Marsh- The 25% of the affordable units will be affordable regardless of a year-round restriction. Under the affordable unit restriction, these units must be the principal place of residence of the buyer. Any deed restriction will require further work with MHFA.

Haverty- The affordable units are always restricted to owner occupancy. It’s only the market-rate units that will be subject to a year-round restriction.

Brescher- In attorney Marsh’s experience, how likely is DHCD to grant a municipal preference? Have they ever approved of one?

Marsh- We’re currently working with DHCD to allow the additional carve out for local preference, but they have not approved one for any project. They do understand the unique circumstances a community like Nantucket faces.

Holland- The 80% AMI units will be more restrictive in terms of year-round occupancy than a year-round restriction on the market rate units. Recent statements from the administration indicate they are considering a seasonal communities designation in part of the recent major housing bond bill package that was introduced yesterday. One of the items under consideration is the difficulty seasonal communities have with housing municipal employees.

Mondani- Why was the only exception considered for municipal employees? Why not local business owners for employees or people whose children attend Nantucket Public Schools?

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Holland- There are 39 AMI units, and 70% is the maximum. Of the 70%, we're seeking 6 units to be for municipal employees. The remainder of the 70% will go to applicants who fit all categories of local applicants that qualify.

Mondani- It's always going to be locals, so I don't understand the local preference. I can't imagine someone who will qualify and work off-island every day. We're unique as it's always going to be 100% of the affordable units will be local.

Holland- The probability that 100% of the affordable units will go to locals is very high. If you look at Sachem's Path, it had approximately 200 applications for the restricted units. Of the 200 applications, one came from off-island for an ex-local trying to get back on the island. The advantage of local preference is that it guarantees a community a minimum percentage of units will indeed be local.

Mondani- My understanding of these preferences is that they relate to the lottery. You would have a separate lottery for the municipal employee preference. I don't understand why we're only requesting one exception with municipal employees. The other categories should be included. I think the Town is already building housing for municipal employees. I have nothing against municipal employees, but we should be trying to solve the problem with a wider net.

Mondani- Follow-up question for attorney Marsh, we have not seen a hard copy of the comprehensive permit and a lot of this agreement contemplates it being filed in the registry. I'm not sure this local preference is allowed unless it was previously stated in the comprehensive permit.

Marsh- I have not seen a final version that will be recorded for the Comprehensive Permit. There are two decisions I reviewed, and the local preference is in the original comprehensive permit decision. The regulatory agreement already provides for the 70% local preference, and it says specifically that it must be approved by EOHLC only after review of the materials filed by the Town. This is true in all regulatory agreements I've been working on for other affordable housing projects in Nantucket. This is not an unusual practice, but the issue is the document has not been recorded.

Mondani- The regulatory agreement contemplates that the Comprehensive Permit Decision must be filed. Until we see the final comprehensive permit has been filed, we're going to have an issue.

McCarthy- Is the 70% local preference request in the comp permit?

Marsh- There is not a final permit, only two decisions. I have not been provided with a final document to be recorded.

McCarthy- You said there are two decisions?

Marsh- There is the Decision issued by the ZBA and the Decision issued by HAC.

McCarthy- Don't we have a final comp permit?

Snell- We have a comprehensive permit that the ZBA issued, and it was appealed. Then there is the HAC Decision that amended the ZBA comprehensive permit.

McCarthy- Do both decisions get recorded?

Snell- I believe so.

Haverty- Condition 95 of your original decision addresses local preference and requires up to 70%. There will be no need to modify that presently.

Mondani- It would be good to have the comprehensive permit, and it should be filed with the registry. The agreement document contemplates the comp permit being filed with the registry. It's a notice requirement.

McCarthy- Why isn't it filed?

Haverty- For clarification, the HAC Decision does not get filed with the Town Clerk. There's no legal requirement that it be filed with the Town Clerk. We will be filing with the Registry of Deeds within the next couple of days.

Mondani- Then we will know. We don't know what this final document looks like right now.

Allen- Of the 39 affordable units, 27 will get local preference, and 6 for municipal worker preference. Are all of these affordable unit preferences carried over to the 2nd, 3rd, or 4th sale?

McCarthy- Only the affordability is. They are asking for the local and municipal preference to be allowed in perpetuity. This will be decided at the state level.

Allen- We're voting without knowing what the state will allow.

O'Mara- They either approve it or they don't.

Allen- We're approving something today based on not knowing if the state will approve it. Does this only apply to the local preference?

Marsh- The local preference is only for the initial purchase currently and does not go on in perpetuity. That is written in the EOHLC guidelines for these types of projects. We are asking for 6 municipal employee units and requesting that they grant those units to be in perpetuity.

Mondani- The acknowledgment of the ZBA on this regulatory agreement does state that the Comp Permit shall be implemented only in the initial sale of the unit, so we would need that determination. The acknowledgment contemplates the document included as attachments being fully executed. We have not received these yet.

Marsh- The documents that are attached to the regulatory agreement are form documents from MHFA. I reviewed them for the specific terms that apply to this project to make sure they comply with the decisions and I did find that they comply. The terms are standard forms that MHFA uses. They are not complete and are not signed. The Comprehensive Permit has not been recorded. I can't speak to when Mr. Haverty can have the documents completed, but I can say they're not in further negotiation.

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Mondani- The affordable housing restriction contemplates up to a 2.5% fee that can be charged against a seller and paid to the monitoring agent. Do we typically make an affordable unit owner pay that fee?

Marsh- Those fees are assessed by MHFA. They have control over the payment of those fees. The monitoring agent makes sure these units are sold to an eligible purchaser when they are resold. This enables the Town and MHFA to make sure the affordable units are always maintained as affordable.

Mondani- All of these comments are related to the Regulatory Agreement, and I would like to make sure our Ts are crossed prior to the ZBA signing the acknowledgment. Is there a reason the Select Board is not signing these documents when they have done so in the past?

Haverty- I presume on other regulatory agreements that have been executed, that the Town was the signatory because they were a party either because they were local action units or because it was a LIP development, those require the sign off from the Select Board. This is not that type of project, so it does not require it. It requests that the Board sign the acknowledgment that the regulatory agreement is consistent with the Comprehensive Permit Decision.

Mondani- I know on Beach Plum, they did. On the restriction, the Town almost has a right of refusal on a resale of the 25% if there is no one else who qualifies, and they have the right to enforce it.

Marsh- I agree with Mr. Haverty about the reason the Select Board is not executing the regulatory agreement and yes, the Town has the right to enforce the restriction.

Motion **Motion that the proposed Regulatory Agreement complies with the Comprehensive Permit with the understanding that the sitting Board will not sign the Regulatory Agreement until the Comprehensive Permit is recorded at the Registry of Deeds and all Exhibits are finalized and executed by the developer for the Regulatory Agreement.** (made by: Brescher) (seconded by: O'Mara)

Vote Carried unanimously

2. 09-22 **Harris on Weweeder, LLC** **50 Weweeder Avenue** **Brescher**

CONTINUED to November 9, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Marcklinger

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: O'Mara) (seconded by: Allen)

Vote Carried unanimously

3. 20-22 **Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust** **Cohen**

CONTINUED to November 9, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Marcklinger

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: O'Mara) (seconded by: Allen)

Vote Carried unanimously

III. NEW BUSINESS

1. 13-23 Surfside Drive, LLC **5 Surfside Drive** **Beaudette**

CONTINUED to November 9, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Marcklinger

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: Brescher) (seconded by: O'Mara)

Vote Carried unanimously

2. 14-23 Benjamin and Jacqueline DeRuyter **12 Academy Lane** **Beaudette**

CONTINUED to November 9, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Marcklinger

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: Brescher) (seconded by: O'Mara)

Vote Carried unanimously

3. 15-23 Allan and Darina McKelvie

6 Candle House Lane

Williams

CONTINUED to November 9, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Marcklinger
Discussion Not opened at this time.
Motion **Motion to Allow Continuance.** (made by: Brescher) (seconded by: O'Mara)
Vote Carried unanimously

4. 16-23 Lee and Priscilla Saperstein

20 New Street

Williams

CONTINUED to November 9, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Marcklinger
Discussion Not opened at this time.
Motion **Motion to Allow Continuance.** (made by: Brescher) (seconded by: O'Mara)
Vote Carried unanimously

IV. OTHER BUSINESS

1. ELECTION OF OFFICERS – (Chairman, Vice Chairman, and Clerk Positions)

- a. Chair: Ms. McCarthy volunteered as Chair

Motion **Motion to Approve Susan McCarthy as Chair.** (made by: Brescher) (seconded O'Mara)
Vote Carried unanimously

- b. Vice Chair: John Brescher nominated as Vice Chair

Motion **Motion to Approve John Brescher as Vice Chair.** (made by: Marcklinger) (seconded O'Mara)
Vote Carried unanimously

- c. Clerk: Allen volunteered to be Clerk

Motion **Motion to Approve the slate of officers.** (made by: Brescher) (seconded Mondani)
Vote Carried unanimously

2. ATM 2024 POTENTIAL CONCEPTS - Special Permit granting authority for MMD

Discussion

Snell- It's that time of year for the Planning Board to start considering article concepts for Town Meeting. There is one that is of interest to the ZBA – To shift the permit granting authority for projects in the MMD from the Planning Board to ZBA. The applications seem to be more in line with what the ZBA would consider as they deal with direct-to-neighbor issues.

Mondani- What is the MMD

Snell- The Moorlands Management District which basically covers a lot of areas in Cisco to Madaket, is an area with very specific environmental issues.

Brescher- It's in West Miacomet. 6-acre zoning?

Snell- 10 acres with half a percent ground cover. There are a lot of restrictions on the size of structures and features such as pools. It's a very restrictive area and applications are infrequent. When they do come up, they're usually rather complicated.

Mondani- Are the special permit standards what we are familiar with?

Snell- This particular area has its own performance standards, but some of the same findings you will make with a special permit.

Brescher- About how many do you see?

Snell- Not very many. There's been an influx recently involving swimming pools and changes to structures. Again, they are not frequent applications.

O'Mara- At one time, the ZBA was the Special Permit Granting Authority. At some point, it went to the Planning Board. Correct? If this were approved at ATM, would ongoing applications have to stop? Would we only get fresh applications.

Snell- I would have to look into that.

O'Mara- How many are there today?

Snell- Over the past two years, maybe 5. We could certainly mitigate and try to have applicants hold off on submitting prior to ATM.

Mondani- If you have concerns, they could be addressed by saying only applications filed after the date of adoption.

O'Mara- That would need to be included in the Warrant.

McCarthy- Are you looking for us to endorse this?

Snell- Just some feedback. I didn't want to pursue something if I was hearing a lot of opposition.

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McCarthy- I think this makes sense based on what you said regarding direct-to-neighbor issues versus general planning concerns.

Mondani- I'm okay with it, but asked the question about the standards. The pools in Madaket have our hands tied as the standards are specific.

Snell- This one will have specific standards spelled out in the Bylaw.

V. ADJOURNMENT

Motion **Motion to Adjourn at 2:25 p.m.** (made by: Brescher) (seconded by: Allen)

Vote Carried unanimously

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

1. None

Submitted by:

William Saad