ZONING BOARD OF APPEALS

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

Commissioners: Ed Toole (Chair), Lisa Botticelli (Vice chair), Susan McCarthy (Clerk), Michael J. O'Mara, Kerim Koseatac
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, April 14, 2016

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

Called to order at 1:05 p.m.

Staff in attendance:	Eleanor Antonietti, Zoning Administrator; Robert Bates, Fire Department; T. Norton, Town Minutes Taker
Attending Members:	Toole, Botticelli, O'Mara, Koseatac, Poor, Thayer, Mondani
Absent:	McCarthy
Late Arrivals:	None
Early Departures:	None
Town Counsel:	Ilana Quirk, Kopelman & Paige, P.C.
ZBA Consultants:	Ed Marchant, 40B Advisor; Ed Pesce, Engineering Consultant

Agenda adopted by unanimous consent

I. APPROVAL OF MINUTES

1. March 10, 2016: **Motion to Approve. (made by: O'Mara) (seconded by: Koseatac)** Carried unanimously

II. OLD BUSINESS

1. 04-16 Donald J. Mackinnon, Trustee of Nantucket 106 Surfside Realty Trust – *a/k/a* SURFSIDE COMMONS 40B
106 Surfside Road Mackinnon/Schwartz

The Applicant is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B, as approved by Massachusetts Housing Partnership, in order to allow a multi-family project consisting of 56 rental apartments with fourteen (14) to be designated as affordable units. The apartments will be arranged in two 2½-story buildings with thirteen units each and two 3½-story buildings with fifteen (15) units each. There will be a total of two 1-bedroom units, forty two 2-bedroom units, and twelve 3-bedroom units. The project will also include a clubhouse and pool. If approved, the property will be permanently deed-restricted for the purpose of providing affordable year-round housing. The file with a copy of the complete and updated list of requested waivers is available at the Zoning Board of Appeals office at 2 Fairgrounds Road between the hours of 7:30a.m. and 4:30p.m., Monday through Friday or via link to posting of all document related to this project found on Town of Nantucket website: http://www.nantucket-ma.gov/708/Atlantic-Development---106-Surfside-Road. The Locus, situated at 106 Surfside Road, is shown on Assessor's Map 67 as Parcel 80. Locus is also shown as Block 22 on Plan File 3-D and as Parcels 7-11 (inclusive) on Plan No. 2014-52. Evidence of owner's title is recorded in Book 1410, Page 205 and Book 1488 Page 213, both on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General 2 (LUG-2) and Limited Use General 3 (LUG-3).

Voting	Toole, Botticelli, O'Mara, Koseatac, Poor
Alternates	Mondani
Recused	Thayer
Documentation	File with associated plans, photos and required documentation
Representing	Donald J. MacKinnon, Atlantic Development Steve Schwartz, Goulston and Storrs, counsel Joshua Swerling, Bohler Engineering Margaret Murphy, Atlantic Development Joe Sheridan, Goulston and Storrs, counsel Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Public	Joseph Guay, Brian & Linda Davis at 108 Surfside Road and Mary Beth Ferro, 104 Surfside Road Barbara Huggins, Huggins & Witten, LLC, for Nantucket Land Council Peter Fenn, Counsel for Nantucket Land Council Cormac Collier, Executive Director Nantucket Land Council (NLC)
Discussion	**MacKinnon** – Last hearing 1/14; 3/29 site visit; were asked to put together schematics of the proposal and details on waiver request and sewer information. PowerPoint® walkthrough. **Swerling** – Reviewed the site plan layout of four apartment buildings, clubhouse, and pool. Did on-site test pits and provided drainage reports; provided stormwater improvements that meet state standards to protect the water district.

MacKinnon – Market rate rent will be $2,000 – $3,000; affordable rent will be $1,200 and up based on income set by HUD. Up to 70% of apartments can be dedicated to residents with local ties as determined by the Board of Selectmen (BOS). Reviewed waiver details: sewer fee exemption, waiver from sign size restriction, waiver for roofline length restriction, waiver from Historic District Commission (HDC) architectural review, waiver from permit to raze the existing structure, waiver for alterations to streets and sidewalks, waiver from wetland/rare significant wildlife review, waiver from apartment building restriction, waiver from trailer use restriction for construction workers, waiver from public recharge district to exceed 15% requirement, waiver from LUG 2 requirements, waiver from LUG-3 groundcover and lot size restrictions, waiver from 30-foot height limitation, waiver from parking space size restriction, waiver from parking lot screening requirement, waiver from driveway access and site-plan review and occupancy signoff required by HDC, waiver from sewer and water commission district.
Quirk – Asked the applicant provide a statement in writing for the record specifying that the updated waiver list supersedes the previous waiver list, due to the withdrawal of some waivers. The ZBA record needs to be clear as to which waiver list they are currently using.
MacKinnon – They did keep in the waiver list requirements for special permits or approvals from other local boards in an effort to be all inclusive; he is not sure waivers are necessary for all those requirements; They will sit down with Town counsel to reach an agreement as to which waivers are actually required; this will probably not be the final waiver list. Received comments from the BOS, police, and fire; waiting to hear from Planning Board, HDC, and Conservation Commission. A comment from Town staff suggested looking at installing a bikepath & sidewalk running from the complex entrance to Fairgrounds Road bike path; there has been interest in pursuing that comment.
Toole – Would like to go through the separate comments currently received from boards and organizations. In regards to the sewer, he's not looking to make a judgment on that as he's not sure the ZBA has the jurisdiction to make such a decision and expressed his lack of expertise to make such a judgment.
Schwartz – Asked the board to consider a response as sewer is a threshold issue. That should be made before there would be discussion on appropriate design of the structures. If the ZBA approves this with the condition to go to Town Meeting, that says the project is subject to referendum to allow project to go forward. That would not leave them any room for compromise on other aspects.
Consensus – The board agrees they feel a lack of expertise in regards to making a decision on extending the sewer district.
Schwartz – A decision the ZBA will have to make is that the comprehensive permit acts as approval to extend the sewer district.
Guay – Extension of the sewer district is a special issue that needs to be decided upon; the viability of the project rides on it. The applicant's counsel says ZBA has authority; Town Counsel says ZBA does not have that authority. With that in mind, it would be "silly" to continue on before the issue is resolved. Suggested the board stay the proceeding and have a complaint filed by Town Counsel to the Nantucket Superior Court for a determination as to whether or not a legislative action is required relative to extending the sewer district before proceeding with the minutia of the project.
Huggins – Cited a recent decision by the Housing Appeals Committee upholding the Newton ZBA that they did not have the right to waive the deed restriction limiting the project site to non-residential use. There are a lot of similarities between that case and this case. Encouraged the board to heed its Town Counsel.
Quirk – As to Mr. Guay's suggestion to stay the proceeding, there is no such mechanism for the ZBA to stay this proceeding. In her opinion, the ZBA should go forward and render a decision. The applicant wants a threshold determination or some guidance in regards to the sewer issue from the ZBA; however in her view the ZBA needs to go forward, look to see what all the elements would be on the application for a Comprehensive Permit. The sewer aspect has two parts to it: authority and physical details. Unless the applicant is signaling that they will withdraw the application in the event the board states its belief it does not have authority without town meeting approval to grant the extension, the board should move forward and consider their response to the project in its entirety.
Schwartz – They have every intention of proceeding and responding to the board and presenting all technical data that might be requested. As a practical matter, on their side there would be less room to partake in give and take without a decision on the sewer extension.
Quirk – As the ZBA and developer and public go forward, look at total response and when there is a give and take the applicant can indicate what they can do under various circumstances.
Fenn – As he understands what is being said by the applicant, if ZBA doesn't make a decision, they won't engage in give and take. The ZBA should analyze this project as it normally would. Town Counsel's ruling is cogent; the sewer extension is a legislative act.
Marchant – The normal course of events when there are two legal opinions is for the board to agree with its Town Counsel and the applicant to agree with its counsel. Normally what happens is there is a negotiation which influences the outcome. Define the issues, go through them, and see what kind of flexibility the developer has to address those issues.
Toole – He would like to go through the points.
O'Mara – Asked if there is a Special Town Meeting in the fall, would the applicant be willing to wait for that meeting to render a vote on the sewer extension.
Schwartz – His client's response is not very positive; their stance is there is no need to wait.

Pesce – The drainage analysis is complete but other aspects are not complete. He would like to know when the revised and complete plans will be presented.

Swerling – They are trying to take a tally on all comments in order to do a comprehensive revision.

Toole – Doesn't think the ZBA is qualified to make peer reviews of technical aspects so the board will have to rely on expert peer reviews. The applicant will work with the engineers on those.

Marchant – Engineering is import, but other issues were raise and the ZBA should move forward addressing those.

Bates – There are access issues, his department brought up to the developer, that have not been addressed. Reviewed the Fire Department concerns: location of propane tanks, single-access driveway off Surfside Road, curves in the drive among the buildings, the length of parking spaces hinder apparatus maneuverability, shade trees in landscaping plan impede access, the initial water supply showed only one hydrant, there is no Fire Department access to the clubhouse, the left unit has access to only two sides, the right unit access to only two sides, there is limited access to the two back buildings.

Schwartz – They will meet with the Fire Department to discuss refinement of the site plan to address concerns.

Toole – Without a more final plan and addressing of safety issues, it is difficult to get into the details and render a decision.

O'Mara – The busiest corner is the corner with the playground; if there were an accident, a vehicle could end up in the playground. It would be nice to see the dimensions on that road and ways to improve the safety there.

Toole – The design and size of the project as it relates to the architectural intensity, what Nantucket as a community tries to accomplish, and sensitivity to the Island. A lot of local concerns relate back to that. The police department had concerns about the project size and the health and safety of the residents. Also, he would like to discuss the architectural aspects of the project.

MacKinnon – They are waiting for comments from the HDC and will have the architect present at the May ZBA meeting to explain the process used to come up with the proposed design. They will look at overall massing and placement to facilitate access of safety vehicles.

Antonietti – She will get the HDC and Planning Board comments to the applicant as soon as they are available.

Botticelli – Sees no point in talking about architecture until the Fire Department vehicle access and police concerns are addressed. She would rather talk about the site plan. There are concerns with the height and length of the structures but safety is a primary concern.

Koseatac – Agrees with Ms Botticelli.

Swerling – He doesn't envision a need to change the site plan extensively; the trees can be adjusted as well as the turn radii. They will ask for exact dimensions of a fire vehicle and run it through the site to make sure it fits and will address a second means of egress.

Toole – The board will wait for the revised site plan. Police express concerns about the recreation space being inadequate for that number of people and having a pool, which would only be used for maybe 3 months. Suggested some thought be given to getting rid of the pool. Suggested the applicant prepare some alternatives.

MacKinnon – Asked about whether or not a bike path should be considered.

Toole – The path to another path and the crosswalk would be required. Stated he "doesn't buy into" the notion that the buffer along Surfside Road is adequate as it isn't under the applicant's control; that is Town property.

Botticelli – The site plan shows a lot of the buffer which is in fact on the abutting properties. There needs to be more vegetation interior to this site's property lines.

Toole – There is not enough buffer, not enough parking spaces, there are safety concerns.

Collier – In regards to stormwater runoff, the waivers they are asking puts up red flags; NLC will provide consultant and engineer review comments.

Discussion about time and date for next meeting.

Toole – Another matter that disturbed him at the site visit is the manipulation of the grade. At the next meeting, he would like a detailed explanation of the reasoning for such manipulation.

Motion **Motion to Continued to May 11 at 11 a.m. (made by: Botticelli) (seconded by: O'Mara)**
(Vote Carried unanimously

2. 05-16 William J. Stone, II 8 Atlantic Avenue Jensen/Cohen

Applicant is requesting Special Permit relief pursuant Zoning Bylaw Section 139-16.C(2) to validate unintentional front and rear yard setback intrusions, both of which relate to the siting of stoops and stairs required by Building Code. In the alternative and to the extent necessary, the applicant seeks modification of prior Variance relief to validate the site of the dwelling. The Locus, an undersized lot of record created pursuant to M.G.L. Chapter 41 Section 81L, is situated at 8 Atlantic Avenue, is shown on Assessor's Map 55 Parcel 18, and as Lot 62 on Plan No. 2011-5. Evidence of owner's title is recorded at Book 1234, Page 237 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 1 (R-1).

Voting Toole, Koseatac, O'Mara, Poor, Thayer
Alternates Mondani
Recused Botticelli
Documentation File with associated plans, photos and required documentation

Representing **Paul Jensen** – A variance allowed for the lot to be subdivided; part of the existing house was moved to one of the new lots created. When the house was moved, they thought they could use steps as it originally had; building commissioner told them they had to have stoops. Reviewed options: variance for intrusion or variance to change the lot line. Stated that the Building Commissioner can pull back on a signed permit for up to seven years. The Zoning Enforcement Officer (ZEO) saw that the stoop was in the setback. All plans showed a step.

Public None

Discussion (2:39) **Toole** – The owner's initial application did not show the stoop; the house could have been positioned to allow for a stoop out of the setback.

Poor – He looked at the building department file; there was no stipulation for a stoop and the permit was signed off. When this was approved, the code required a landing outside the door. When the ZEO reviewed the site plan, he noted the encroachment. Stated that he had been opposed to the 81L subdivision and now it has caused a problem.

Toole – Usually there is a notation on the card about building a stoop. Noted an alternative is a door out the rear and the front door to be non-operable.

Koseatac – He doesn't like setting bad precedent but repairing it could be a substantial cost to the owner. If reference is made to a bad 81L, he would motion to approve the variance.

Discussion about changing the lot line to bring the side stoop into compliance.

Motion **Motion to Grant with the modification of the variance. (made by: Koseatac) (seconded by: Thayer)**

Vote Carried unanimously

3. 06-16 1620 Capital, LLC 25 Broadway Brescher/Theroux

Applicant is requesting Special Permit relief to allow the alteration of a pre-existing nonconforming structure by lifting the structure to install a new foundation, adding new second floor dormers, and extending the existing one-story entry to two stories. While the height will increase from 20 feet to 21 feet, the footprint will not change. The property and pre-existing nonconforming duplex thereon are nonconforming with respect to lot area, setbacks, ground cover ratio, and use. The proposed alterations will not increase the pre-existing nonconformities. The Locus, an undersized lot of record, is situated at 25 Broadway, and is zoned Sconset Old Historic (SOH).

Voting Toole, Botticelli, O'Mara, Koseatac, Mondani

Alternates Poor, Thayer

Recused None

Documentation File with associated plans, photos and required documentation

Representing **John Brescher**, Glidden & Glidden (called in) – Reviewed a letter sent addressing concerns of the board. He has contacted abutters about being notified when the boring work begins. The noise bylaw covers 10 p.m. to 7:30 a.m. and is enforced by the police; no exterior power tool operation before 10 a.m. on Sunday. He would like to be held to those times in regards to hours of operation.

Steve Theroux, Nantucket Architecture Group Ltd

Public Sarah Alger, Sarah F. Alger P.C., for George & Virginia Hill at 24 Broadway

Discussion (3:01) **O'Mara** – There is no question the house is in jeopardy; the back section shingle course looks to be 18" below grade. Raising it only 12 inches leaves a shingle course still in the ground.

Theroux – They would install a drainage system to facilitate not raising it more than 1 foot as approved by the HDC.

O'Mara – Sections of Front Street would be shut down; asked what provisions would be made to allow residents to call for help from the general contractor.

Theroux – Reviewed provisions for notification of neighbors and means to contact the general contractor.

Toole – His concern is the start date; 'Sconset is busy into the fall. He would prefer to see October 1 as the start date for heavy equipment and exterior construction; there are a lot of people there into to September.

Thayer – Agrees that 'Sconset is much busier in the Fall than in the Spring.

Alger – The applicant's representatives have been responsive. Concurred that 'Sconset is busy into the fall so a late start date is good. Said there are no steps on the plan or air-conditioning units (A/C); there is little room on the site plan for exterior placement of A/C. Doesn't think a full basement is necessary; digging down is what is causing the greatest issues. There is concern about use of the basement and the plans aren't clear if any of the basement rooms will be bedrooms; she would like a bedroom count to ascertain the increase to intensity.

Theroux – The procedures for excavation are the same whether digging down 4 feet or 8 feet. The basement is for mechanicals and storage only; there will be no bedrooms. Will do a 9-foot dig with an 8-foot floor.

Botticelli – Noted there are no windows proposed on the basement. The A/C is a good question; asked about egress steps. The floor plan shows a stoop on Marion Street, that doesn't show on the site plan. Looks like the 1st floor is about 1 foot out of the ground; that would require a step.

Theroux – Wants to explore the water table before deciding whether or not to go geothermal. He will double check on the stoop.

Botticelli – The surveyed site plan doesn't show the step/stoop; need that to attach to the file and grant the relief. Discussion about raising the house 7.5 inches rather than a foot so that steps/stoops aren't necessary.

Alger – Asked this approval be conditioned on no increase in bedrooms.

Brescher – Assessors record indicates there are five total bedrooms.

Toole – The plan shows four bedrooms; thinks it should be held to four per the plans.

Koseatac – Believes the bedrooms should be set at 5.

Toole – Conditions of the permit: the assessors record should be provided before the permit is signed; no living space in the basement; no A/C in the setback, structure raised only 7.5 inches, exterior construction moratorium between June 15 to October 1, point-of-contact phone number to be provided to neighbors, to meet with the Town Engineer, revised site plan with no steps, approval tied to Marklinger plan with structure not moving.

Motion **Motion to Grant with stated conditions. (made by: Botticelli) (seconded by: O'Mara)**

Vote Carried unanimously

4. 10-16 MHD Partners Real Estate, LLC 4 Goose Cove Lane Brescher/Osgood

Applicant is requesting Variance relief pursuant to Zoning By-law Section 139-32 from the intensity regulations in the Village Height Overlay District (VHOD). Specifically, applicant intends to relocate an existing cottage from another property onto the subject premises, a vacant oversized lot. In 2009, the VHOD was adopted and the structure, which is 25.5 feet above average mean grade, was rendered pre-existing nonconforming. The maximum allowable height in the VHOD is 25 feet pursuant to Section 139-12.K(1). The structure, upon being relocated, will continue to be nonconforming with respect to height but will conform to all other intensity regulations of the Village Residential zoning district. The Locus is situated at 4 Goose Cove Lane, is shown on Assessor's Map 59.4 as Parcel 30, and as Lot 894 upon Land Court Plan No. 3092-119. Evidence of owner's title is registered at Certificate of Title 25954 on file at the Nantucket County District of the Land Court. The site is zoned Village Residential (VR) and is sited within the VHOD.

Voting Toole, Botticelli, O'Mara, Koseatac, Thayer

Alternates Poor, Mondani

Recused None

Documentation File with associated plans, photos and required documentation

Representing **John Brescher**, Glidden and Glidden (called in) – This is for relief for the relocation of pre-existing, nonconforming structure as to height in excess of 25 feet. The structure will continue to be 25.5 feet high. There is a 20-foot view easement for the neighbor to the east.

Ward Osgood, owner – The lot had a deep hole for the tennis courts; that hole was filled in before he purchased the property.

Public None

Discussion (3:45) **Toole** – Asked if there is any manipulation of grade; it looks like it is going in at an elevated grade. Plan shows existing elevation at 6 with 6 feet of grade coming in to level the property.

Discussion about the grade fill versus the natural grade. Original natural grade would be prior to construction of the tennis court and possibly Tristram's Landing.

Botticelli – Asked what the height of other buildings are along Goose Cove. Sometimes overlay district height restrictions are put on areas that already have tall buildings.

Toole – He doesn't have a problem moving this building with this height; his problem is with filling with six feet first.

O'Mara – Suggested that the front portion where the drainage is probably reflects the original grade; the area was excavated to set the tennis courts down out of the wind. Now what is being done is leveling the lot off at the original grade.

Osgood – Noted that the fill brings the lot up to be comparable with the neighbors.

Toole – Doesn't feel there is justification for filling in a ravine to be level with the abutters; that was not the intent of the bylaw.

Botticelli – Concerned this would set a precedent; relief has to be made specific to the situation.

Toole – Would like to see the evidence via a topographical map showing that a hole was dug and then filled back in.

Poor – Wants to see HDC approval of manipulation of grade.

Further discussion about the manipulation of the grade.

Brescher – Clarified what the board is looking for: historical topography prior to the tennis court and HDC approval.

Motion **Motion to Continue to for more information. (made by: O'Mara) (seconded by: Koseatac)**

Vote Carried unanimously

III. NEW BUSINESS

1. 11-16 John N. Sullivan and Marie T. Sullivan 5 Appleton Road Sullivan

CONTINUED TO MAY 11

Applicant is seeking relief by Special Permit pursuant to Zoning By-law Section 139-16.C (1) to reduce the side-yard setback from ten (10) to five (5) feet in order to site a proposed 400-square-foot garage within the ten (10) foot northerly side-yard setback. The Locus is situated at 5 Appleton Road, is shown on Assessor's Map 66 as Parcel 390, and as Lot 19 upon Land Court Plan 13554-D. Evidence of owner's title is registered on Certificate of Title No. 22449 at the Nantucket County District of the Land Court. The site is zoned Residential 10 (R-10).

IV. OTHER BUSINESS

1. Discussion of time limit established for Board members to review and comment on Zoning Administrator decisions issued pursuant to Section 139-29.C.
   a. At the August 13, 2015 meeting, the Board discussed protocol and determined that 48 hours would be sufficient to allow ample time to read and review ZA decisions. The Board may want to extend/revise that time limit.
   b. **Decision is to readjust the time limit to 72 hours.**
2. Discussion of appropriate circumstances which could warrant scheduling of Special Meetings. Consensus feels no circumstances warrant a Special Meeting.
3. Regular monthly meeting time changed, per request of two Board members: **Changed to May 11, 2016 from 11a.m.–4p.m.**

V. ADJOURNMENT

Motion to Adjourn: 4:19 p.m.

Submitted by:
Terry L. Norton