

Town of Norwell
BOARD OF APPEALS
PUBLIC HEARING of June 5, 2013
Meeting Minutes



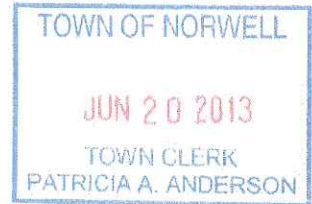
MEETING DATE: June 5, 2013
TIME SCHEDULED: 7:30 P.M.
MEETING LOCATION: Norwell Town Hall, Gym

MEMBERS PRESENT: Lois S. Barbour, Chair
Ralph J. Rivkind
Patrick J. Haraden

OTHERS PRESENT: R. W. Galvin, Town Counsel
on behalf of the Board: John C. Chessia, P.E., Chessia Consulting Services, LLC,

DEVELOPER'S TEAM: Warren F. Baker; Baker, Braverman & Barbadoro
John J. Sullivan, Manager; Simon Hill LLC
Brian Murphy; Unicorn Realty

PURPOSE: Continued Public Hearing on amended 40B Application
APPLICANT: **SIMON HILL LLC**
PROPERTY LOCATION: **Off Prospect Street**



The Chair called the public hearing to order at approximately 7:40 p.m. with reading of the public notice.

Note was made of submissions to the Board since the last meeting on 5/15/13:

1. 5/29/13 Letter from McKenzie Engineering Group responding to Town comments, Chessia Consulting Services responses, and public and board member comments made at the 5/15/13 meeting
2. Notice of Project Change Plan Set (8 sheets)
3. Orthographic Overlay Plan
4. Architecturals, dated 5/23/13, received 5/30/13

Member Barbour indicated she had met with Mr. Chessia and Mr. Galvin on Thursday, 5/16/13, to discuss possible conditions relating to the prior decision and the HAC, and recent Superior Court decision. Draft conditions as a result of that meeting were subsequently prepared by Mr. Galvin with some initial comments by the Chair included as tracked changes, sent to the applicant on 6/3/13.

Member Barbour noted that minutes for the 3/28, 4/17, and 4/24 meetings have now been approved and filed with the Town Clerk and are available to the public.

The evening's agenda will include discussion of Town board and department comments and concerns relating to possible conditions, as well as Mr. Galvin's draft conditions.

Fire Chief: The Norwell Fire Chief appeared before the Board at the public hearing on 4/24/13 to address certain public safety concerns, identified in those minutes.

Water Department: The Water Department Superintendent commented in his letter of 4/22/13, identifying the following concerns:

1. Looping of water mains: Although not allowed by the previous HAC decision, there are state regulations for which Mr. McInnis has provided a reference; he is currently attempting to track down a federal reference relating to looping of water mains.
2. Proposed separation of utilities and whether the project "works," as proposed.
3. Significant increase in the water demand by adding 126 units that will result in a 2.5% increase in the Town's water consumption to be reported to the DEP

Mr. Baker indicated that engineering concerns can be addressed when Mr. McKenzie is available on 6/19.

Member Barbour indicated the project must comply with state and federal regulations.

Mr. Baker maintained the need for affordable housing supersedes regulations, while Mr. Sullivan stated the project will comply with state and federal regulations.

Planning Board: In its letter of 3/27/13, the Planning Board identified the following concerns:

1. Project population and corresponding impacts
2. Sustainable development issues
3. Internal roadway, secondary access to the site
4. Sight distance; parking; project proximity to and impact on abutters
5. Recommends no waivers to be granted under the Aquifer Protection District (APD) section of the Norwell Zoning Bylaw
6. Looping of water main
7. Regulation of construction activity
8. Executive Order 193 relating to Agricultural Resources Land Mitigation Policy
9. 61A: Town Counsel and the Town Administrator are examining that issue.
10. Stated interest in connecting walking trails to the Town's Pathways system
11. Bicycle racks
12. Energy efficiency, including NSTAR requirements



Member Rivkind indicated he is concerned about the dead-end parking lot and the backing of vehicles that could be required by residents and other drivers. Further, he has concerns about the dumpster location and that it could create a potentially dangerous backing requirement.

Mr. Sullivan stated when the applicant met with the Fire Chief "last week" that the chief did not share those concerns. The Board requested documentation to that effect.

Member Rivkind questioned the distance references on submitted plans, stating no legend defines the numbers on the plans and that the numbers shown do not make sense.

Mr. Sullivan indicated a willingness to look at the distances for abutting property residences from the property lines and those residences to the proposed buildings.

Member Haraden questioned whether natural gas will be brought to the project from Main Street and where those utility lines would be located to which Mr. Sullivan responded under the sidewalk on the project site and that natural gas was contemplated.

Mr. Baker interjected that the jurisdictional questions are already resolved and that the Board should not be looking at these. Further the project complies with five of the ten Sustainable Principles.

Mr. Chessia noted that he has not seen anything relating to Sustainable Principles.

Mr. Baker again stated that it was a part of the application and project eligibility letter. He will submit the section, but claims that the Board is getting into issues that have already been decided.

Member Barbour noted that the current development proposal is very different from the previous homeownership project and that the standards for 40B rental projects are very different.

Mr. Baker claimed rental units are preferred and again stated the applicant does "satisfy the requirements" to which Member Rivkind responded that Mr. Chessia can review with Mr. McKenzie or another designated technical person. If Mr. Chessia is not in agreement, we will still have something to talk about.

Member Barbour stated the Board does have the right to look at this new plan in a different way, that the change from ownership to rental and increase in density changes everything.

Mr. Baker stated there is an existing permit decision, reflecting legitimate local concerns. Now the burden of proof is on the Town. If a local concern does not imperil public safety, it is off-limits for discussion. Only discussions of differences from the earlier project are permitted. Mr. Baker acknowledged the notice of project change only uses the 17 acres, fondly known as the lower portion of the parcel. Because the HAC and the Superior Court upheld that the road could not go through the neck and the upper portion of the parcel will not be available and is not intended for use in the 40B and further will not be used by the residents.

Member Rivkind responded that, "If we condition this project to do what was just said, then you would have not objection? If it's not part of the project, then it's a new project."

Mr. Baker so agreed.

Member Rivkind stated there are a lot of ramifications to the property contemplated for 40B development, including the purchase price relating to the project.

DISCUSSION OF TOWN BOARD AND DEPARTMENT COMMENTS:

Penny Wilson (120 Prospect Street) asked whether the project definitely will bring natural gas from Main Street to which Mr. Sullivan responded that they have had preliminary discussions with the gas company. Further, the gas company is in the business of selling gas, but there is not contract at this time.

Member Barbour asked about an alternative energy source, if natural gas is not used, but Mr. Sullivan indicated they have not considered another source but are presuming natural gas will be used.

Ms. Wilson then asked about stormwater management to which Member Barbour responded that the DEP requires stormwater management. Drainage calculations must be provided and demonstrate that all stormwater must be maintained on-site. State and federal regulations must be complied with. There are legal remedies but the Board of Appeals is responsible for ensuring the best information available is used in reaching its decision.

Lorenda Layne (138 Lincoln Street) asked about traffic to which Member Barbour responded that issue had been extensively discussed at the last meeting and was exhausted. Ms. Layne did not attend that meeting.

Marie Molla (88 Prospect Street) asked about fire lane requirements and the change in the type of buildings and heights.



Mr. Chessia indicated that fire lanes are not shown on the plans. Member Haraden pointed out that fire lanes are already included in the draft conditions (#23).

Christine White (45 Simon Hill Road) again raised the cost of special education for students whose parents recognize the quality of education in Norwell to which Member Barbour responded that the Board generally has no authority to restrict the project based upon impact of a proposed development on local schools or Town infrastructure.

Paul McGloin (58 Prospect Street) is concerned about the condition of Prospect Street during construction, which was indicated to be a highway department issue.

Unidentified resident (29 Jacobs Lane) asked about a traffic study to which Member Barbour responded that issue was extensively discussed at the last meeting. Members have not received the Town of Norwell 2010-2012 accident data from the Norwell Police Department, requested and received by the applicant's traffic consultant, Vanasse & Associates. The Board's traffic consultant responded to this data at the last meeting on 5/15/13. In response to a direct question, Member Barbour noted no response has been received by members from the Norwell Police Department regarding the proposed development.

Marian Reed (79 Prospect Street) inquired again about traffic on Prospect Street, stating it is not a safe street to which Member Barbour responded that traffic issues have been discussed and members are aware of those issues.

Tom Graefe (69 Simon Hill Road) asked when we are going to see evidence of the building context, the scale of the buildings and principles of design to which Member Barbour responded that she is very interested in the 34' building height restriction imposed in residential neighborhoods by the Norwell Zoning Bylaw.

The Board then adjourned for a five-minute recess at 8:45 P.M. and returned to open session at 8:50 P.M.

In a continuing discussion about Town board and department comments, the Highway Department letter of 3/6/13 was read, indicating interest in traffic calming for Prospect Street.

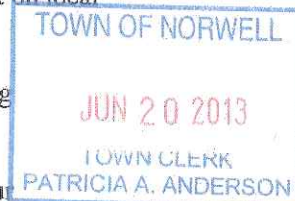
DISCUSSION OF PRELIMINARY CONDITIONS, drafted by Town Counsel R. W. Galvin:

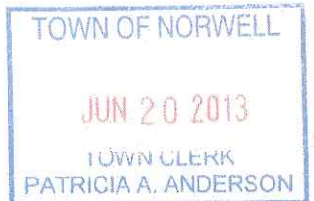
There are several general conditions and various categories of additional conditions currently drafted, including standards for design, resource protection, on-site drive ("road"), parking, grading and retaining wall, water system and fire protection, stormwater management, wastewater, architectural unit and building, bedroom limitation, site lighting, landscape, sustainable design, and construction. Additional draft conditions relate to submission of plans, final architectural plans, peer review escrow, prior to construction, during construction, issuance of building and foundation permits, certificates of occupancy, final "as built" plans and guarantees, waivers, decision filing, appeals, and recording.

It was noted the roadway width for the rental project is 24' versus 22' width for the homeownership project.

Member Barbour suggested the draft condition relating to a sidewalk feasibility study proposed from the project entrance along Prospect Street to Main Street should be extended to the entrance of the high school to address concerns about walkers. Member Rivkind indicated he would reserve comment at this time and Member Haraden offered no comment on this issue.

Mr. Galvin equated the retaining wall to foundations relating to the 20' buffer for that condition.





Member Barbour again stressed the current conditions are a moving target and do not incorporate Town board and department comments or suggested conditions, especially those of the Planning Board whose chair indicated interest in providing further comments.

Penny Wilson (120 Prospect Street) made an impassioned speech stating the 40B law is greatly flawed and must be changed at the state level. However, barring such change, the Town must create .05% of the housing inventory as affordable housing, which would allow the ZBA to reject 40B applications. She stated the ZBA does an incredible job trying to keep projects in scale but must follow the 40B law. She indicated, "We do no good railing against developers who are doing what they are allowed to do under the current law. The Town should build affordable housing." There was a short round of applause by members of the public.

Marie Molla (88 Prospect Street) stated she is checking on Norwell's SHI for current affordable housing numbers. However, Member Barbour noted there is no turning back on the current application, as it is already before the ZBA.

Mr. Galvin noted many of the proposed draft conditions have already been upheld by the HAC and the Superior Court.

Mr. Galvin indicated Member Rivkind's dead-end prohibition could be inserted in the roadway section and should effectively state that the driveway should go around Building 2 and not be dead-ended as currently shown.

ADA compliance for sidewalks is recommended to be 5' in width.

There was a short discussion about the length of the parking spaces which depends upon whether granite curbing/stops are utilized (20') or berms (18').

It was noted that 225 parking spaces, including handicapped, are shown on the latest project plans submitted to the Board.

Mr. Galvin will add looping of the water mains to the proposed conditions. However, he asked for references, which Member Barbour indicated she could provide for the state but was awaiting federal references from Mr. McInnis, the Water Department Superintendent.

It was noted the local standard for stormwater utilized by the Planning Board is based on the Cornell Curve, which Mr. Chessia indicated were not used for the project.

Mr. Sullivan noted that septic disposal is proposed to be a Groundwater Discharge Permit (GWD), which is a state permit. Member Rivkind indicated he has odor and noise concerns. Mr. Sullivan indicated both types are now in use in town. The one located at 239 Washington Street has no noise or odor. Member Rivkind indicated he could hear noise from Route 53 to which Mr. Sullivan objected.

Tom Graefe (69 Simon Hill Road) indicated that it is already in the public record via a filed affidavit during the hearings at the HAC that breakout will occur from the leaching fields.

Member Barbour indicated there is an opportunity for public comment on a GWD permit, which Mr. Chessia stated was for 30 days on the draft permit. There is concern about notification to the public and whether this could be a possible condition. There was a short discussion about whether this information might be available on line. (Ed. Note: See <http://www.env.state.ma.us/mepa/emonitor.aspx>)

A discussion of the 34' building height allowed under the current bylaw ensued. Member Barbour has no interest in permitting buildings that exceed that height. Member Rivkind stated a tendency to agree, while Member Haraden preferred to wait to hear what Brad McKenzie says about elevations and heights.

Tom Graefe (69 Simon Hill Road) reiterated his concern about building height and visual impacts to abutters.

Mr. Galvin asked about the building materials. Member Barbour noted Mr. Sullivan has previously provided such information, which Mr. Sullivan acknowledged. She reiterated that Mr. Sullivan had indicated he would look at relocating the dumpster.

Mr. Galvin stated many of these smaller issues can be resolved by the engineers to which Member Barbour indicated the snow storage area can be handled by Mr. Chessia.

A question was asked about air conditioning placement, which Mr. Sullivan indicated are typically located within each unit, likely on the deck. If units are to be centrally located, they should be screened.

The issue of grills on decks was raised with Mr. Galvin indicating he believed those not on the ground level would be a fire code issue.

Mr. Galvin indicated there is a condition that no lighting spillover should occur on abutting properties.

Member Rivkind stated concerns about planting buffers to provide visual shielding for abutting properties. He suggested planting should occur as soon as practicable and not wait until the project is completed so that trees can be planted and start to grow to provide needed screening.

A condition is included that relates to the Conservation Restriction, which would effectively be held in escrow until the project is completed.

Member Rivkind suggested moving the fencing proposed at the property line to the edge of pavement in the parking lots, which could improve buffering (Condition #49).

Mr. Galvin indicated an EIR filing must be made to determine whether such would be required or not.

The applicant must document the sight distance at the access/egress at Prospect Street.

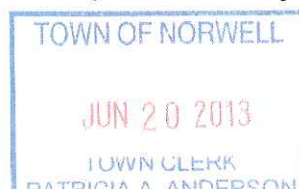
Mr. Galvin indicated most of the draft conditions were previously upheld or not object to.

It was suggested that determination of proper maintenance of Prospect Street by the applicant during construction (sweeping, etc.) fall to the Highway Department to determine.

Waivers will need to be discussed at the next meeting.

Member Rivkind stated a condition should be imposed so that stormwater does not flow onto abutting properties. Further, he had a question about where affordable units are to be placed, which Mr. Galvin indicated must be in accordance with MassHousing guidelines. Mr. Galvin indicated the Town has enforcement rights or could go to the HAC, if needed. Member Rivkind wanted confirmation that the burden would not be on the ZBA panel, which Mr. Galvin confirmed.

Mr. Galvin requested of Mr. Baker that if the applicant anticipates any objections to the Board's proposed conditions that it would appreciate receiving a pro forma in order to proceed more expediently.



Mr. Baker requested a work session on conditions. Mr. Galvin would be in attendance and Mr. Haraden volunteered to participate. Mr. Chessia will also attend. The Work Session was set for Friday, 6/14/13, at 9:00 A.M. in the Osborne Room and will include Mr. Baker, Mr. Sullivan, and Mr. McKenzie. The public is invited to observe; however, no input from the public will be allowed, except in writing and should be received prior to the 6/19 scheduled meeting.

Mr. Galvin suggested an additional meeting date to discuss the decision, which was agreed to by the applicant for Wednesday, 6/26/13, at 7:00 P.M. with a business meeting beginning at 6:30 or 6:45.

INVITATION TO SUBMIT DRAFT CONDITIONS: Member Barbour urged members of the public to submit draft conditions to address specific concerns they might have.

Brian Koch (14 Simon Hill Road) wanted to know when the conditions will be available to which Member Rivkind responded the current draft conditions are already a matter of public record, but further revisions will not be available until after the work session and the next meeting on 6/19.

Upon a motion duly made and seconded, members **VOTED** to continue the public hearing to Wednesday, June 19, 2013, at 7:30 P.M.

The meeting was adjourned at approximately 10:00 P.M.

These minutes have been approved with reading of the minutes waived by unanimous vote of the Board of Appeals at a meeting duly held on 6-19-13, in accordance with M.G.L. c. 40A, Section 11, and the Massachusetts Open Meeting Law.

Signed: _____

As Clerk/Assistant Clerk

Date: _____

6/19/13

Copy filed with: Office of the Town Clerk

