

Town of Norwell
BOARD OF APPEALS
PUBLIC HEARING of June 26, 2013
Meeting Minutes

TOWN OF NORWELL
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MEETING DATE: June 26, 2013
TIME SCHEDULED: 7:00 P.M.
MEETING LOCATION: Norwell Town Hall, Gym

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

OTHERS PRESENT on behalf of the Board: R. W. Galvin, Town Counsel
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
Bradley McKenzie, McKenzie Engineering Group

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 7:10 p.m. with reading of the public notice.

The evening's agenda is proposed to include discussion of the following:

- Update on Work Session – 6/25/13
- Abutters Concerns
- Review of Waivers/Conditions/Draft Decision
- Vote on Comprehensive Permit

Upon a motion duly made and seconded, members **VOTED** to approve the meeting minutes for the 6/19/13 continued public with reading of the minutes waived.

Member Barbour, who participated in the 6/25/13 work session, reported on that 2 ½ hour discussion at which Mr. Galvin and Mr. Chessia were present on behalf of the Board. Nancy Hemingway, Norwell's Conservation Agent, also attended the session. The applicant was represented by Warren Baker, Jack Sullivan, Brian Murphy, and Brad McKenzie. Jim Boudreau, the Town Administrator, and Ellen Allen, Chair of the Board of Selectmen, observed, as did Marie Molla, a member of the public. The media was represented by WATD.

Member Barbour identified all public comments received in writing via email or letter to the Board and summarized those concerns, which include traffic, building height, density, visual impact, stormwater, wastewater, and environmental and wetland impacts and mirror oral testimony in the record received from members of the public during the Public Hearing process.

REPORT ON 6/25/13 WORK SESSION: At the invitation of Member Barbour, Jack McInnis, Superintendent of the Norwell Water Department, was present to discuss looping of the water main and potential impact of the project on the Town's water withdrawal permit from the DEP. The 126 units would represent a 2.5% increase in annual water usage compare to the current 15 new water connection permits per year and the pre-2008 number of up to 35 connections. There will need to be coordination between the Town's Fire Chief and Water Commissioners, as to placement of certain features such as fire hydrants, as each has a different perspective with the Fire Department concerned with public safety and the Water Department concerned about engineering. Mr. McInnis stated he is comfortable with DEP standards but may wish to add some local conditions. He will get back to the ZBA as soon as possible.

It appears six conditions were resolved during the work session or are close to resolution, while seven remain open for discussion at the evening's meeting. The open conditions identified are the 6/25/13 Galvin draft Nos. 4, 15, 17, 38, 39a, 42, and 63.

Certain requirements detailed in the January 2011 *Handbook: Approach to Chapter 40B Design Reviews*, prepared by the Cecil Group for DHCD, MassDevelopment, Mass Housing, and Massachusetts Housing Partnership were raised relating to massing and integration of the proposed project into the abutting neighborhoods, which Mr. Chessia indicated in a prior session were not reflected in the project proposal.

There were questions about certain line items in the recently submitted pro forma, including line items 1, 11, 14, 36, 39, and questions relating to rental income. The Board wanted definitions for some categories to clarify impressions about possible redundancy.

A new condition was suggested to connect site sidewalks and walkways to the Town's pathways project toward which the applicant expressed interest.

There was concern expressed about groundwater mounding resulting from interplay between groundwater, stormwater, and wastewater. Mr. Galvin noted that the HAC decision provided for a hydrogeological study that could address that matter.

CONTINUED PUBLIC HEARING DISCUSSION

Member Barbour indicated in arriving at a decision the Board must consider abutter concerns, procedures, applicable rules and regulations, and information gleaned from the two work sessions and throughout the public hearing process.

Other questions about individual conditions were discussed over the course of the evening's meeting, as itemized below.

Attorney Baker indicated he wants to ensure the Board has all the information needed to make a decision.

DISCUSSION of PRO FORMA: In response to questions about certain line items in the pro forma, Mr. Sullivan explained, as follows:

- #11 **General Conditions:** The general contractor and the developer are players. They may be the same; could send out to bid and get better price; includes costs to administer work (wages and benefits for project managers, field office, trailers, storage, vehicles on site, temporary utilities; costs not directly for building construction

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- #14 **OH and GC fees:** negotiated as a percentage of the project cost they are managing (5-15%); the bigger the project, the smaller the number—currently figuring 5%
- #36 **Marketing costs:** could be in-house or hire brokers (\$2,000 per unit figured during the work session)
- #39 **Developer O/H:** Mr. Sullivan is the developer in the project today, whose role is permitting, designing, and putting team together, including contractors, marketing architect, etc.; The state allows 8%.

Rentals: 75% market with 25% affordable units

- Affordable Unit proposed rents are \$1100/ month to \$1500/month, depending upon unit size, and are based on 80% of median income
- Market Rate proposed rents are \$1425/ month to \$2200/ month, depending upon unit size

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Town Counsel indicated if contingency percentages are exceeded, funds come back to the Town. Mr. Baker stated the contingency is figured annually.

BUILDING and UNIT SIZES: Member Rivkind wanted to know about the sizes of the apartment units, which Mr. Sullivan indicated would be:

800 sq. ft.	1-bedroom
950 sq. ft.	1-bedroom with den
1,125 sq. ft.	2-bedroom
1,350 sq. ft.	3-bedroom (also described as 2-bedroom with den)

In response to Member Rivkind’s question about common areas, Mr. Sullivan indicated such are generally figured as 15-18% for elevator/hallway styles as proposed. However, Mr. Sullivan indicated the buildings will not be designed until the permit is resolved.

Member Rivkind expressed concern about the numbers provided by Mr. Sullivan. By his calculations, there is no room for 3-bedroom units, which do not fit within the building footprints of approximately 12,000 square feet indicated on the site layout plans. Further, the application cannot be considered complete, as no 3-bedroom apartments are shown.

Member Barbour suggested that Mr. Sullivan provide a building tabulation and run the math since he is not in agreement with Mr. Rivkind’s calculations. Mr. Sullivan agreed to provide that information.

SITE ACQUISITION COSTS: Member Haraden returned the discussion to site acquisition costs. Mr. Sullivan responded that the buildable portion of the parcel is 17 acres and the acquisition cost is estimated based upon the highest and best use for the section which is accessible. The applicant has “arbitrarily” based the value of the front parcel on 85% of the total shown in the P&S. Mr. Baker indicated there are two parcels—one portion of which can be built upon and the other which cannot. He restated the site acquisition cost shown on Line 1 of the pro forma is \$2,125,000 or 85% of the total.

CONDITION #4, Building Permit Fee: The applicant has requested building permit fees for the affordable units be waived, which Member Barbour indicated the Board has never done for any other 40B permitted project. After a short discussion, members **VOTED** unanimously to require building permit fees be charged unless those fees make the project uneconomic.

CONDITION #1, Definitive Project Plans: Mr. Baker agreed to the added wording from Mr. Witten’s proposed conditions, included by Mr. Galvin.

CONDITION #15, Retaining Wall Location Restrictions: A lengthy discussion ensued relating to setbacks of the new retaining walls to support parking areas, as shown in the Notice of Project Change plans (NoPC) but not in the previously permitted project. Mr. McKenzie indicated the wall is closer than 20’ at the wetland crossing, where it is about 10’. However, moving the wetland crossing would create more wetland disturbance. That retaining wall height is determined by the height of the roadway, necessary to accommodate stormwater management features so the system design will work. The height of the retaining wall is highest at the crossing but tapers over a distance to no height beyond the crossing. Member Rivkind asked, as a compromise between the 10’ proposed by the applicant and 20’ proposed by the Board, whether a condition of 15’ would make the project uneconomic. Mr. Sullivan indicated it was tight at the point coming around Building # 2, which is why that road is dead ended. Mr. McKenzie indicated 15’ is doable. Members **VOTED** to restrict the finished edge of the retaining wall location to no closer than 15’ from the Conservation Commission approved wetland lines, except in the area of the crossing, where 10’ will be allowed.

CONDITION 16A, Pathways Project (new): Mr. Baker requested that the word “area” be amended to “agreeable” to which members assented. The condition was adopted.

CONDITION 17, Existing Resource Areas: At Mr. Haraden’s request, Mr. Chessia explained the issue of vernal pools. Mr. Galvin indicated that the question before the Board is whether it would require the applicant to identify vernal pools.

Paul McGloin (58 Prospect Street) stated there are hydric soils located between the two wetlands involved in his appeal to the DEP for a superseding order of conditions (SOC). The SOC was granted after a site visit by representatives from the DEP. Mr. McGloin indicated the DEP was surprised by the amount of hydric soils found in the field. An extensive discussion of retaining wall construction and footings ensued. Footings would be required to support retaining walls. A structural engineer would be required to design any retaining wall 4’ or higher and any hydric soils would need to be removed to place footings on a solid base with which Mr. McKenzie concurred.

After discussion, members **VOTED** to require identification of vernal pools (Condition 17), which will provide the Conservation Commission with some leeway during their further review process that is required of the applicant.

Tom Graefe (69 Simon Hill Road) expressed concern about the setback requirement relating to Condition 14, which Mr. Witten had proposed as 100’ “no disturb” from abutter property lines. A discussion of that matter ensued.

CONDITION 14, Building Location Restrictions: Mr. Sullivan stated Building 1 is 70’ from the property line. Member Barbour asked the difference in footprint size between the NoPC plans and the permitted plans to which Mr. Sullivan responded the buildings are approximately the same length but the current version is 15’ deeper. Member Rivkind asked whether any building footprint is closer than 70’ to the property line. Significant discussion ensued about flipping the building footprint in order to increase the distance of Building 1 and Building 4 to a minimum of 75’ from the property line. The applicant agreed to take a look at the project design to determine whether the requested modification can be made.

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RECESS: Upon a motion duly made and seconded, the Board VOTED a short recess at 8:59 P.M. and returned to open session at 9:07 P.M.

CONDITION 38, Stormwater Management Compliance, and CONDITION 39, Stormwater Management Design: In response to Mr. Haraden’s request, Mr. Chessia explained that the Planning Board had adopted the Cornell (University) Curves standard for drainage calculations and stormwater management when it revised its Subdivision Rules and Regulations in 2006. The change in drainage calculations and certain other design requirements from the TP-40 standard currently in use by the DEP was a response to documented local conditions and historic data that identified stormwater management failure in previously approved subdivisions that had been developed, based on the TP-40 standard. The Cornell Curves standard also has requirements relating to depth of water, side slopes, maintenance and how to design stormwater systems. Prior to final adoption of the Cornell Curves standard, Mr. Chessia noted a number of subdivision applications came into the Planning Board under the old rules. However, Wildcat, a 40-unit open space residential design (OSRD) subdivision, and Cowings Cove, a 3-unit subdivision are two Town subdivisions approved since 2006 that relied on the newer Cornell Curves standard. (N.B. This list may not be complete.)

Although Mr. Baker claimed the Cornell standard requirement was struck under the prior HAC decision and that issue is determined, Member Barbour asked whether the impervious surface on this part of the proposed development is the same as that under the approved project. Despite Mr. McKenzie’s claim that the two projects are “similar” in that area, he stated he did not know the prior impervious surface coverage area.

As the applicant was unable to provide requested impervious surface information, the Board was unable to decide this condition. The applicant agreed to provide the information requested.

CONDITION 37a, Individual Unit Meters: The applicant indicated this requirement should be struck as the apartment building owners are required to provide water to tenants, and it is not customary to individually meter units. Mr. Galvin concurred and members **VOTED** to strike Condition 37a.

CONDITION 37, Watermain Looping: Mr. Galvin indicated during the work session on 6/25/13, looping within the project was discussed. Although Mr. McInnis stated the preferred looping would be to connect with Simon Hill Road, an easement over private property would be necessary. Mr. Galvin offered that although looping offsite could not be a condition of the Board’s decision, it could be suggested as an acceptable alternative to internal looping within the project, if such an easement could be obtained. Mr. Sullivan stated his opposition to internal looping but stated looping to Simon Hill Road would benefit those residents, as well. Mr. Galvin stated during the work session discussion, Mr. McInnis indicated internal looping is preferable to no looping, despite Mr. Sullivan’s claim that Mr. McInnis opposed looping on-site. Work session participants did not benefit from a conversation Mr. Sullivan claimed had occurred between Mr. McInnis and Mr. McKenzie wherein Mr. McInnis allegedly stated internal looping is a “waste of money.” During the work session discussion, Mr. McInnis did state that looping to Simon Hill Road would be less expensive than looping on site, but could be done. He cited as an example the neighboring town of Hanover, which requires a 3-foot separation for on-site looping. As the applicant was unable to provide information about additional costs for internal looping of the water main, Member Barbour requested that information should be developed by the applicant and provided to the Board.

CONDITION 39b, Testing: Mr. McKenzie indicated he felt the word “permeability” could create some confusion. After a short discussion the applicant concurred with Mr. Galvin’s suggestion to add the phrase “if applicable”, which members so **VOTED**.

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CONDITION 39c, Fencing: At the request of the applicant and based on the photograph Mr. Sullivan had previously provided of a similar stormwater basin at the Wildcat subdivision and the Conservation Agent's concurrence at the work session, members **VOTED** to delete the condition requiring fencing for the similar type of stormwater basin proposed for the NoPC project.

CONDITIONS 39A Mounding Limitations – Stormwater Management Standards, and 41, Mounding Limitations – Wastewater Standards: Mr. Galvin indicated the HAC decision upheld the requirement for a hydrogeological study, which would provide needed information relating to mounding concerns. However, Member Barbour expressed the worry whether the proposed conditions would be sufficiently broad to cover concerns about the interplay or combined effects of stormwater and wastewater relating to groundwater mounding. Mr. Chessia indicated one cannot be reasonably considered without the other. Further discussion ensued.

Robert McMackin (22 Cedar Point Road) stated the project should utilize the more current stormwater management data found in the Cornell (University) Curves standard. Mr. Chessia reiterated the Town had adopted the newer standards over the TP-40 that utilizes data from 1910-1960 over the United States. The Cornell utilizes data from the eastern United States that is more recent and reflective of climate change conditions.

Tom Graefe (69 Simon Hill Road) would like specific language around the wastewater disposal. He later stated that a hydrogeological study would identify existing conditions prior to development.

GROUNDWATER IMPACT DISCUSSION: Member Barbour raised the 2010 State Building Code (Edition 8), which may address Mr. Graefe's concerns with requirements in Chapter 18 relating to Soils and Foundations, stating in part:

1805.5 Impacts on Groundwater Levels: Below-grade structures, their appurtenances and foundation drains shall be designed and constructed so as not to cause changes to the temporary or permanent groundwater level if such changes could adversely impact nearby structures or facilities including deterioration of timber piles, settlement, flooding or other impacts.

Although Mr. Witten's proposed conditions call for no impact from the development of groundwater at the property line, Member Rivkind asked whether some amount such as 6" at the property line would be a problem, if there was no impact to Mr. Graefe's property; i.e., his Title 5 septic system. Member Rivkind stated he is concerned about writing a condition that can be upheld, if appealed.

Mr. Chessia explained that a hydrological survey establishes groundwater monitoring wells; water levels are measured over a period of time to determine the slope and elevation of groundwater and where the water table increases across the property. Mr. Galvin cited the Building Code does not allow adverse impacts to existing structures or leaching systems or wells on abutting properties, although Attorney Witten's condition requires no groundwater elevation at the property line. Mr. McKenzie indicated there is no state regulation requiring "no" groundwater elevation at the property line, Mr. Baker indicated the applicant would comply with state law and meet 780 CMR 1805.5 of the Building Code.

Paul McGloin (58 Prospect Street) expressed concern about flooding due to structures for wastewater to be located near his property.

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CONDITION 42, Sound and Odor Limitations: A discussion of the wording of Condition 42 ensued with Mr. Baker expressing concern about the word “features”. Members **VOTED** to delete the wording “features which” to be replaced by “components necessary to”, which Mr. Baker had indicated would be acceptable to the applicant.

CONDITION 43, Building Height: It was immediately agreed the wording relating to building materials, which Mr. Sullivan already provided to the Board, should be moved to a separate condition, identified as 43A in the 6/25/13 draft revision prepared by Mr. Galvin.

BUILDING HEIGHT DISCUSSION: A discussion ensued regarding proposed building heights and the existing ground elevations that will increase due to the amount of fill proposed to be brought to the project site. In response to Member Rivkind’s question, Mr. McKenzie indicated the existing ground elevations along the rear of the Simon Hill Road properties range from 126’ to 128’, while the proposed parking lots will be at elevations ranging from 132’ to 135’. The slabs for the proposed Buildings 3 and 4 are shown at elevations of 132’ to 137’ on the current development plans with fill depths increasing away from the northeasterly limit of the property toward the southeasterly limits. Mr. Sullivan admitted the proposed rooflines at a 5:12 pitch are high and he would try to bring the height down. He did claim the current rooflines break up the visual impact of the massing of the project and help blend the buildings into the surrounding area.

Member Barbour asked Mr. Sullivan to look at a 34’ height limit for Buildings 1, 3, and 4. Mr. Sullivan stated he would not look at reducing the number of stories and anticipates constructing 3-story buildings and claimed to do otherwise would be uneconomic.

Member Haraden asked whether it might be feasible to drop the buildings somewhat below the surface. However, Mr. McKenzie indicated that would not be possible due to placement of the stormwater management features, which would not work based upon that scenario. Mr. McKenzie indicated the groundwater varies from 5-7 feet below the existing grade and the proposed fill would add 5-6’ above that grade. Member Barbour again express concern about any mounding that must be taken into consideration.

Mr. Sullivan again conceded the roof heights are “tall” but they have done “everything they can to reduce the height of the buildings”.

Member Barbour requested additional information regarding Mr. Sullivan’s offer to look at building heights.

CONDITION 63, Sustainable Development Principles: As there has been some discussion about sustainable development principles with continuing concern expressed by the Planning Board, Member Barbour read from the 2/1/06 MassHousing Smart Growth Criteria Scorecard submitted to MassHousing by the applicant. Mr. Baker explained the applicant’s qualification under Method 2, which requires 5 of the 10 guidelines to be met. The Board understood and agreed the following principles appear to be met. (1) Concentrate Development, (3) Be Fair, (4) Conserve Resources, and (5) Expand Housing Opportunities. However, it questioned the project’s qualification under (7) Increase Job Opportunities. Mr. Baker then explained the development would provide employment opportunities on-site. It was determined this condition should be considered a finding and not remain as a condition.

CONDITION 58, Landscape Buffer: Mr. Galvin had placed all three proposed landscaping buffer options in the draft for consideration—specifically, those prepared by the Board, the developer, and the abutters.

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The applicant stated they liked the abutters' wording and were willing to adopt it with some changes. Mr. Baker specifically noted the word "consistency", which Mr. Chessia also questioned. At this time there is no proposed landscaping plan prepared by a Registered Landscape Architect, submitted for the Board's consideration. Therefore, there is none that can be referenced. Member Rivkind indicated some objective standard needs to be identified.

Mr. Sullivan objected to the spacing requirements referenced in the Board's draft version and also wanted the condition to reference the proposed fencing types he recently submitted. However, Mr. Rivkind was adamant that plant buffering should be adequate to protect neighbors. Further, if plant materials die, such needs to be replaced, which Mr. Galvin indicated would need to be added to the condition wording.

Member Barbour mentioned the Conservation Commission's approved native plant materials, which Mr. Sullivan is willing to utilize in lieu of types such as arbor vitae.

Tom Graefe (69 Simon Hill Road) asked about peer review of the landscaping plan by the Board, which Mr. Baker indicated would not be a problem and can be done when project plans are finalized.

Marie Molla (88 Prospect Street) and **Paul McGloin (58 Prospect Street)** expressed concern about specific screening for their properties. Ms. Molla would like fencing to provide screening at the northeasterly corner and Mr. McGloin expressed concern about screening of his property from headlights of vehicles entering the development from the north.

Member Barbour suggested specific conditions to address Ms. Molla and Mr. McGloin's concerns to incorporate fencing and/or substantial screening into the project plans to which Mr. Sullivan agreed.

Member Rivkind requested that the applicant prepare a narrative detailing specifics of the buffering discussed during the evening's meeting.

Upon a motion duly made and seconded, members **VOTED** to continue the public hearing to Tuesday, July 9, 2013, at 7:30 P.M.

The meeting was adjourned at approximately 10:30 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 7/9/13, in accordance with M.G.L. c. 40A, Section 11, and the Massachusetts Open Meeting Law.

Signed: _____ Date: 7/9/13
As Clerk/Assistant Clerk

Copy filed with: Office of the Town Clerk

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