

Town of Norwell
BOARD OF APPEALS
PUBLIC HEARING of July 9, 2013
Meeting Minutes

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MEETING DATE: July 9, 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

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.

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

- Review of applicant's letter of 7/8/13 in response to Board's letter of 7/1/13 regarding open items
- Continuing review of Waivers/Conditions/Draft Decision
- Vote on Comprehensive Permit

Although Mr. Galvin sent a revised draft just prior to the beginning of the evening's meeting, the Board will continue its review using the 6/26/13 draft.

DISCUSSION of OPEN ITEMS¹: In response to the Board's letter of 7/1/13, the applicant provided information in its response letter, dated 7/8/13. There was discussion of each item as follows:

1. **Comparable Projects:** Mr. Sullivan identified Avalon Cohasset, located off Route 3A, and Lenox Farms, adjacent to Route 3, as comparable projects. Member Barbour noted Google™ maps, available on-line, show significant buffering of those developments from residential areas and asked how the proposed project might address transportation and shopping accessibility. Further, massing and scale of the proposed project do not appear to be in keeping with the neighborhood.

¹ NOTE: All condition numbers referenced herein are to the 6/26/13 draft prepared by R. W. Galvin and distributed via email on that date or at the continued public hearing on 6/26/13.

2. **Building Tabulations:** Mr. Baker stated as designers, the applicant looks to “see numbers and similar projects, the number of people, and density.” In order “to be made economic, the project needs to be more than 2-2 ½ stories high”; he further asserted that design guidelines had been met and were “consistent”. A discussion ensued about “consistency” with Mr. Baker stating the proposed project is consistent with 40B and within the local area. Member Rivkind said Mr. Baker’s explanation was unclear. Member Barbour pointed to that section in the Board’s letter and asked how much clearer it could be about the proposed units’ sizes fitting into the space allotted by the building footprints identified on the proposed project plans to address concerns about whether what is described can fit. Mr. Baker claimed that space could be found to accommodate the shortfall in unit numbers and/or sizes.

While Member Barbour said a 2-story style development similar to 239 Washington Street would go a long way toward meeting resident concerns, Mr. Sullivan pointed out the previous development proposal was for townhouses.

Mr. Baker again indicated the overall design in the preliminary plan addresses the look and feel of the building, which provides consistency. “We know it doesn’t fit.” If it does not fit, the developer determines consistency by looking at increasing setbacks, losing parking, and invading protected areas. What has been proposed in the preliminary plan can work, although it needs work.

3. **Condition 14, Building Locations:** The applicant agreed to meet the 75’ building setbacks from property lines.
4. **Condition 38, Stormwater Management:** The applicant’s letter provides the requested comparison of the impervious area created by development in the so-called “lower portion” of the parcel under the active application to the development area authorized by the existing Comprehensive Permit. The existing CP, according to the applicant’s letter, indicates an impervious area of 3.0 acres, while the current application is 4.3 acres, a 43% increase. However, Mr. Baker thought the 28 units the applicant had previously indicated could be built under the earlier application might be in doubt.
5. **Condition 37, Watermain Looping:** The applicant indicated the cost to loop the watermain either to Simon Hill Road or internally on the project site would be the same at about \$50,000.
6. **Condition 43, Building Height:** The applicant indicated the buildings as proposed would be 41-43’ in height to grade, while a flat roof would result in a building approximately 40’ in height. Member Rivkind indicated with the 6-10 of fill represented by Mr. McKenzie during public testimony, the peak of the roof to where the land is now would result in 50’ over the current grade, which Member Rivkind did not like. Member Haraden asked what gain could be made by a flat-roofed building to which Mr. Sullivan indicated would be 3’ lower. Member Rivkind indicated the “typical plan” submitted shows the elevator 6’ above the roofline.
7. **Condition 58, Landscape Buffer:** The applicant’s letter provides a landscape buffer narrative and allows for special conditions for three abutting neighbors, as requested.
8. **Additional Questions:**

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- a. **Site Acquisition:** The applicant provided a subdivision plan as the highest and best use allowed by zoning, showing 11 lots from a 2009 MassHousing appraisal.
- b. **Fill:** The applicant indicated 48,000 cubic yards of fill are anticipated, which would result in 1,400 truckloads, based upon 26-30 yards/truckload. According to Mr. Sullivan, if the fill were brought in all at once, trucks operating 6-days per week would take about a month to bring in the required fill. [Ed. Note: Over the course of a month, the number of truckloads based on a 26-day month would be 54/day.] However, Mr. Sullivan indicated it is more likely it would be brought in over 2-3 phases. Member Rivkind inquired whether the fill would be coming from off-site to which Mr. Sullivan responded yes, except for a likely small amount available on-site from excavation. The upland parcel has not been considered for earth removal.
- c. **Existing Water Table:** Mr. Sullivan's letter indicates that prior soil testing (25 test pits) show the water table at an average depth of 3.2 feet. The 4-7 feet indicated by Mr. McKenzie in a prior session related specifically to the Soil Absorption System area and not the site in general. Member Barbour indicated what was represented appears to be inconsistent with that from the prior application process when 18-24" was the described depth. An open question remains regarding whether a higher water table closer to the surface would make any difference in the amount of fill required.

9. **APPLICANT COMMENT – 15-foot setbacks for retaining walls:** In the 7/8/13 letter, the applicant stated the 15' retaining wall setback allowed by the Board at the last meeting would result in loss of parking but agreed to a 10' setback. Mr. Sullivan handed out a schedule with a map showing the six proposed retaining walls, which he indicated would be 3' above grade. None of the retaining walls faces an abutter. He will correct the reference shown in the "Face of Wall" column of the tabulation to indicate all walls face "wetlands" and not "property". Further, Mr. Sullivan indicated he would place an identifying mark, such as "A", on the plan to locate the "BVW west B1", which is not clearly identified on the plan. He stated such revisions will be provided electronically and sent to the Chair for distribution, in addition to the Board's administrative assistant, who is currently on an extended vacation.

PRO FORMA: Member Rivkind questioned Line 39, Developer Overhead listed at 8% for a total of \$2,073,000, as shown on the 6/19/13 pro forma submitted by the applicant. He asked for clarification of why the DHCD Guidelines state those projects with between 101 and 150 units allow developers an amount of \$266,000. Mr. Sullivan explained that the numbers cited by Member Rivkind are for homeownership units but do not apply to rental projects, which the Board indicated it would verify.

RECESS: Upon a motion duly made and seconded, the Board VOTED a short recess at 8:45 P.M. and returned to open session at 8:55 P.M.

CONDITION 94: Mr. Baker would like additional time to review the enforcement wording proposed by Mr. Galvin that came from a 2003 Dover decision of which a hard copy was contributed by Member Rivkind to the applicant. Mr. Baker will respond in writing, but emphasized he wants the project to be built on an economic basis.

OLD CONDITION 82 (strike-through): Mr. Baker and Mr. Sullivan both indicated they would like to reinstate the old Condition "82", as beneficial to the applicant, which Mr. Galvin had stricken from the current draft. Such being the case, Mr. Galvin wanted to make it clear that Mr. Baker requested this security requirement be reinstated, despite the applicant's claim that many other conditions make the project uneconomic. Mr. Galvin stated the "Certificates of Occupancy" conditions as proposed do not

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limit the building inspector's discretion. After a very lengthy discussion, the applicant agreed the "temporary certificate of occupancy" section should be deleted as originally shown.

DRAFT REVISION of 7/8/13: Mr. Galvin continued with discussion of the review changes incorporated in the draft revision, dated 7/8/13, received too late for printing and distribution at this meeting.

CONDITION 4: As voted by the Board on 6/26/13.

CONDITION 14: The applicant agreed to amendment of the building distance from the property line to 75'. Mr. Galvin included additional wording to keep the buildings in substantially the same locations as shown on the project plans.

CONDITION 16A: As mutually agreed on 6/26/13.

CONDITION 17: As voted by the Board on 6/26/13.

CONDITION 27A, SIGHT DISTANCE TRIANGLE: After a discussion with Mr. Chessia prior to this meeting, Mr. Galvin added draft wording relating to sight distance triangles to be shown on the project plans. Mr. Baker objected to the revised wording and claimed the entrance roadway had already been approved by the HAC. However, in prior testimony before the Board, Mr. McKenzie stated the roadway had been repositioned in a southerly direction some 15', which would change the sight distance parameters. Mr. Rivkind stated sight distance is a public safety issue. Mr. Chessia says it is a very simple matter to show that the sight distance on the plan meets requirements as represented by the applicant's traffic consultant. If the traffic consultant was in error, we will then know. Member Rivkind indicated there are enough problems on Prospect Street without adding sight-distance issues from the proposed development entrance. Mr. Chessia stated the sight distance triangle would show existing trees and any other impediments. Mr. Baker stated if sight distance were not available, it would have a negative impact on project development.

Christine White (45 Simon Hill Road) questioned whether the requested sight distance plan would be peer reviewed to which the Board responded in the affirmative.

CONDITION 34, Three Valve Connections: Member Barbour will check with the Water Department regarding Mr. Galvin's question about 3-valve versus 5-valve connections.

CONDITION 37, Water Main Looping: Mr. Sullivan indicated the length of additional pipe required for internal looping would be 500-700', while Mr. Chessia examined the plan and determined the additional length is somewhat less than 600 feet. According to the 7/8/13 letter from the applicant, the additional cost for looping internally or to Simon Hill Road, if an easement could be obtained, would be \$50,000. Member Rivkind noted the applicant should be able to find \$50,000 in a \$28 million dollar project in order to loop the watermain. Upon a motion duly made and seconded, members **VOTED** unanimously to require looping of the watermain, as recommended by the Norwell Water Department.

CONDITION 38, Stormwater Management Compliance, and CONDITION 39, Stormwater Management Design: Mr. Chessia again explained 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 Cornell Curves standard takes into account a higher rainfall for extreme storm events and was adopted due to failed Norwell subdivisions that were developed using the TP-40 standard currently in use by the DEP. The applicant requested exemption from

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compliance with “Bylaws and Rules and Regulations of the Town of Norwell including without limitation Section ‘7C, Drainage Design’ of the Norwell Planning Board’s ‘Rules and Regulations Governing the Subdivision of Land,’ and section 3159 of the Zoning Bylaw” as currently written. Based on current development plans, there may be certain sections to waiver, such as the subsurface stormwater features not currently allowed. Mr. Sullivan indicated a willingness to examine Conditions 38 and 39 with Mr. McKenzie when he returns from vacation to determine what areas could create potential problems and to identify more clearly any requested waivers. This remains an open item.

CONDITIONS 39A and 41 Mounding Limitations – Stormwater Management Standards, and 41, Mounding Limitations – Wastewater Standards: Mr. Galvin added the building code wording approved by the Board on 6/26/13.

Tom Graefe (69 Simon Hill Road) asked about the Witten language relating to trespass at the property line. He questioned the seasonal high groundwater level, which he noted the applicant has now provided in the recent letter. Mr. Galvin indicated the wording in the current draft strikes a balance between competing interests.

Mr. Chessia described how groundwater levels can be determined by test pits and soils evaluations. Staining of soils can show the seasonal high groundwater levels. He noted that DEP monitoring wells will be in place for the Soil Absorption System. During the DEP evaluation testing for the Groundwater Permit, testing should reveal whether breakout will occur and whether the proposed location is feasible.

Member Barbour indicated groundwater level determination is not an exact science and there is normal variation in seasonal groundwater levels. Mr. Galvin stated the Town is not in a position to determine whether or not a trespass has/will occur but has incorporated the building code wording discussed at the last meeting, as agreed by the Board.

Susan Humberd (52 Simon Hill Road) expressed interest in an insurance plan similar to that provided for the Tiffany Road project. Mr. Galvin explained the unusual circumstances surrounding that proposed development that are significantly different from the current application. Member Barbour expressed concern that an insurance policy could restrict the abutters’ rights in an unintended way and that legal advice likely should be sought by individuals with such concerns.

CONDITION 58, Landscape Buffer: At the last meeting, the Board requested the applicant prepare a narrative detailing the conceptual thoughts discussed at that meeting, including special conditions for Ms. Molla (88 Prospect Street) and Mr. McGloin (58 Prospect Street) to address particular concerns raised. Mr. Sullivan agreed to work with them, as well as Mr. McMackin, the abutter on the northerly side of the project entrance

Mr. Galvin will revise the condition to meet previous agreements, as well as the recent narrative provided by the applicant that details the proposed landscaping.

CONDITION 63, Sustainable Development: Deleted as mutually agreed on 6/26/13.

CONDITION 16, Easement: Mr. Galvin added easement language from the Dover CP.

CONDITION 48, Community Building and Pool: Member Barbour will resend language to Mr. Galvin from a Board of Health email that should be included, citing specific state regulations.

Marie Molla (88 Prospect Street) explained her concerns about any change in the culvert size for Road A at the wetland crossing. There are already significant flooding conditions during storm events, and she does not want it to get worse. The Board indicated the Conservation Commission would likely address that issue more thoroughly when the applicant files with that authority,

David de Ghetto (303 River Street) expressed concern about archaeological issues to which Mr. Galvin stated a condition exists that the applicant must comply with state regulations in that regard.

CONDITION 43, Building Height: Mr. Rivkind stated this condition needs to reference identifiable plans and to be more specific. Namely, this condition should state the building widths and lengths are to be consistent with the plan entitled, *Preliminary Site Layout Plan*, dated 10/29/2012, with revisions through 6/19/13, as prepared by McKenzie Engineering Group. There are four buildings shown on that plan with three showing footprints of 71' x 170'. The larger building is 71' x 208'. The footprints of the buildings should be consistent with the preliminary plan, which would be a total of 36,210 square feet (71' x 170' x 3) for Buildings 1-3 plus 14,768 square feet (71' x 170') for Building 4.

Member Haraden said the height of the buildings is one issue, but the depth of the fill is another and asked Mr. Chessia how these could be identified. Mr. Chessia explained the elevations can be tied to datum shown on the plans. The latest drainage plan (PC-3, rev. 5/23/13) shows the building elevations with Buildings 2, 3, and 4 all at 133.7' and Building 1 at 134.6'.

Member Barbour expressed continuing concern about the building massing and height. Clearly, there is not enough wiggle room in the proposal to allow any modifications according to the developer. She stated the project should comply with the 34' zoning bylaw residential height restriction, measured from the proposed grade (existing plus required fill).

In response to a member question, Mr. Galvin explained the burden of proof on appeal to the HAC shifts to the Town, if there is a 5% or more reduction in the number of units imposed by the Board.

Member Rivkind agreed with Member Barbour's analysis of the visual impact and suggested that a flat roof would be acceptable to reduce building height. He stated he is willing to allow 44' above the existing grade only.

Member Barbour stated she is not prepared to disregard the expressed concerns of the public relating to massing, lack of the project's conformity to the residential character of the neighborhood, or to ignore the state guidelines relating to project design.

Member Haraden noted the flat roof design would result in a building height of 40'.

Mr., Chessia indicated the amount of fill proposed is around 6'.

Member Haraden stated he is trying to be realistic—knowing what the Town would be up against at the HAC, as he spent the weekend reading prior decisions from the HAC. He is well aware the Town has not met affordable housing standards.

Upon a motion duly made and seconded, Member Rivkind and Member Haraden **VOTED** to approve building heights not to exceed 44' above the existing grade. Member Barbour was opposed.

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Mr. Sullivan stated Mr. McKenzie is on vacation for this week, but Mr. Baker indicated all information can be provided by Wednesday, July 17, 2013, and that he wants to respond in writing.

Rebecca Allen (153 Bowker Street) submitted a letter for the public record, relating to the number of units, type of development, and its impact to abutters.

Upon a motion duly made and seconded, members **VOTED** to continue the public hearing to Wednesday, July 24, 2013, at 7:30 P.M.

Upon a motion duly made and seconded, members **VOTED** to require that submission of additional information requested during the meeting be provided no later than the end of the business day on Wednesday, July 17, 2013. Further, a revised draft will be provided to all interested parties no later than Monday, July 22, 2013.

It is anticipated the Board will vote on waivers and remaining conditions at the Board's next scheduled meeting on July 24, 2013.

Mr. Baker indicated the agreed upon deadline to close the hearing is August 13, 2013, with which the Board concurs.

The meeting was adjourned at approximately 10:50 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 7/24/13, in accordance with M.G.L. c. 40A, Section 11, and the Massachusetts Open Meeting Law.

Signed: _____ Date: 7/24/13
As Clerk/Assistant Clerk
PATRICK J. HARAEN

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