

Town of Norwell
Board of Appeals TOWN OF NORWELL
Continued Public Hearing of Simon Hill LLC
Meeting Minutes of September 10, 2013
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MEETING DATE: September 10, 2013
TIME SCHEDULED: 7:30 P.M.
MEETING LOCATION: Norwell Town Hall, Osborne Room

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

The continued public hearing was called to order at approximately 7:30 p.m. with reading of the public notice.

Member Barbour indicated the evening's proposed agenda will include discussion of the following items:

- Status updates
- Work session(s)
- New correspondence/information
- Design revision(s)
- Decision status
- Application timeline

STATUS UPDATES and 8/15/13 WORK SESSION: Member Barbour, who attended the 8/15/13 work session, read her email of even date, summarizing the work session discussion. That discussion centered on the new concept plan that purports to respond to suggestions and concerns of the Planning Board, panel members, and the public, specifically:

- consolidation of 126 units into three buildings instead of four previously proposed, remaining at 3-stories in height at 48' above filled grade
- approximate footprint of each building is now 80' wide x 225' long x 48' high with 42 units in each
- provides increased open space adjacent to properties at 84 Prospect Street and 88 Prospect Street that could be used for open space and recreation
- removal of club house and pool to northerly section of project, site of Building #1 on previous plans
- all travel aisles/roadways show at 24' in width except the pool and wastewater treatment plant travel aisles at 18' in width
- parking spaces remain at 18' in length with numbers as previously proposed

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building facades facing the Simon Hill neighbors reduced from 550' in length to 300', a 45% reduction, according to the developer

buildings remain a minimum of 75' from abutting property lines to the rear of Simon Hill Road neighbors and 20' from wetlands line

parking areas are 15' from wetlands at the closest points

previous Building #1 footprint removed with those units now divided among the remaining three buildings

- southerly building #3 (previously #4) has been rotated approximately 90 degrees
- two northerly buildings (previously #2 and #3) remain approximately parallel with Simon Hill Road with one sited behind the other
- landscaping best practices discussion, including installation of more mature trees versus the 8-10' height that the developer prefers for long term growth potential and vigor
- developer remains unresponsive to request by Member Barbour to reduce the number of units, the primary concern of abutters and Board members throughout the public hearing process

Member Barbour had developed a list of open items for the evening's discussion in addition to the new concept plan, copies of which were given to the Applicant's attorney, including the following:

Condition	Description
16	Building Location Restrictions: notes "proposed Site Plans dated _____"
17	Retaining Wall Location Restrictions
26	On-Site Drive ("Road") Width
28	Fire Lanes
36	Retaining Walls
39	Three-Valve Connections: Jack McInnis email of 7/20/13 to LSB. "A three way valve connection to the arterial main on Prospect Street is appropriate for a looped installation (with Simon Hill Road) or a dead ended installation. A five way gate valve connection would be appropriate if the BOWC required that the water main serving Simon Hill Village have a return main back to Prospect Street (in other words a hydraulic loop within Simon Hill Village itself)."
42	Water Main Looping
44	Computational Standards: Cornell Curves
49	Building number and heights
50	Architectural plan compliance with #49 per board requirement
65	Landscape Buffer: This needs work.
67	Landscape irrigation
84	Surety
102	Agreed to delete
	Upper parcel - restriction?

At this point, a sign-in sheet was passed around for members of the public to sign, and the floor was turned over to the Applicant's attorney.

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CONCEPT PLAN:

Mr. Baker suggested that the developer describe the new concept plan presented at the 8/15/13 work session. Mr. Sullivan stated Member Barbour's email summary was comprehensive and that he did not have much to add. He restated that the originally proposed four (4) buildings have now been reduced to three (3).

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The Board offered ½-size plans for comparison of the earlier layout with the new concept plan in order for members of the public, who had not seen the emailed pdf copies forwarded to abutters, to review.

Mr. Sullivan mentioned the letter from the Norwell Planning Board that had been presented at the previous meeting with suggestions on how to modify the project. He indicated the facades toward Simon Hill Road have been reduced by 46% in accordance with the suggestion.

Mr. Baker stated the developer had tried to look at alternatives but wanted to emphasize the 8/5/13 plan is a concept plan, and engineering has not been done with some further calculations required.

Member Rivkind asked to clarify some confusion about the building height. He said previously he understood buildings would be 43' but now the building height stated at the working session is 48' with Mr. Sullivan stating the building height on the architectural plan is 44'. As these numbers are inconsistent with what he had previously been led to believe, he stated, "This is important!"

Mr. Sullivan responded that an architect has not looked at the concept plan.

Member Rivkind then asked whether anything has changed [from the previous plans to the new concept plan] regarding height of the buildings.

Mr. Sullivan then acknowledged there "might have been an error".

Member Rivkind noted at the present concept level, there would be no reason to increase the building height by 4-5'. He stated, "Because the buildings have been moved south, what is the fill requirement? Will that change?"

Mr. Sullivan responded that the footprints will be located in the same general area with Building 1 now missing. That building required "the biggest retaining wall by far."

To further clarify his understanding, Mr. Rivkind asked whether the amount of fill further south would or would not be greater. Mr. Sullivan agreed no additional fill should be required due to shifting of units.

Mr. Sullivan indicated the retaining wall in the area of the former Building 1 was 8-10' in height.

Member Haraden expressed a concern about the new plan, asking whether the two parking lots in the vicinity of the new Building 1 closest to street could be connected so there are not two dead ends, suggesting that a building might be moved closer to the pool.

Mr. Sullivan indicated that wetlands locations restrict the developer's ability to make changes in that area.

PUBLIC COMMENTS:

The hearing was then opened to public comments with Member Barbour asking individuals to keep comments brief and stating the Board is mindful of previously stated concerns. The public was again invited to look at the plans, if they have not already viewed them, indicating the table on which the plans were placed.

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Marie Molla (88 Prospect Street) offered her thanks for removal of the old Building 1 adjacent to her brother Frank's and her properties. However, she also expressed concern about the parking lot in relationship to the pool location with potential danger of someone driving into pool. She noted there are now at least four (4) dead-end parking lots. Ms. Molla restated abutter concerns about the visual impact of 60' of fill plus buildings above current grade, which would be only 10' less than the Hornstra silos further up Prospect Street. Finally, she stated that the project is unsafe for reasons well known to the Board.

Rebecca Allen (153 Bowker Street) asked where the Applicant is in the permitting process.

Member Barbour stated the previously permitted and litigated 28-unit homeownership plan is currently available to the developer to build. However, the Notice of Project Change project which is now before the Board is in the public hearing process. As she does not expect to hear anything during this session of the public hearing, she would like to close the public hearing in order to reach a decision.

Member Haraden continued to explain that the ZBA acts in place of all town boards. Once the Board's decision is filed with the Town Clerk, the Applicant and/or abutters could appeal that decision, as occurred after the last decision was filed.

Member Rivkind offered that if no appeal is filed, other state level permits would still be required. Essentially, the Board is "rewriting" the Town's zoning bylaw because 40B, as a statute, allows an Applicant to override those regulations, leaving the Board to try to find a middle ground.

Member Barbour read a letter from **Ronald and Annemarie Russo (63 Simon Hill Road)** requesting that Condition 65 be altered to require a guardrail to protect the project fencing. She indicated the Board could require a condition for replacement of any damaged fencing.

Mr. Chessia said guardrails are required for the safety of vehicles, while the fence provides for aesthetics. He did note there are asphalt or concrete berms at the limits of the parking lots.

Bob McMackin (Prospect Street) asked about Condition 44, Cornell Curves, and the existing culverts in that area. He stated concern about Condition 48 and that any noise from the wastewater treatment plant be kept to a minimum. He also asked for clarification about bio-retention cells.

Mr. Chessia said the previous plan had a bio-retention basin at the front of the roadway to handle run-off, although no plan has yet been fully designed. Such basins are typically constructed with certain soils and plants to remove pollution from stormwater run-off.

Member Barbour noted the Applicant is not required to have final construction plans (Definitive Construction Plans) at this stage of the application process.

Member Haraden stated to Mr. Sullivan that he thought that had already been agreed to.

Mr. Chessia was asked to explain the Cornell Curve standard, which has replaced the older TP-40 standard in Norwell and that it is more logical to use the updated basis for determining stormwater impacts.

Member Barbour noted the Cornell Curve standard was adopted by the Norwell Planning Board in 2004/2006 and is required for all other commercial projects in the Town. Currently, both the Planning Board and the Conservation Commission have recommended the Board of Appeals require that standard to be used for this project.

Mr. Sullivan disagreed, stating that it would be a state permit and the developer will abide by state requirements.

Kevin O'Leary (163 Prospect Street) asked about traffic and wanted to know if the Town will widen the road to accommodate anticipated project traffic.

Member Barbour advised there was extensive discussion of traffic at earlier public hearing sessions, including pedestrian traffic, intersections, sight distance at the proposed project access and egress, and accident rates. The developer's traffic consultant's report was peer reviewed for the Board.

Member Haraden stated the standard the Board must meet is very high. If its decision were appealed, only published traffic data would be considered; anecdotal information would not be.

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In any event, Member Barbour indicated road widening would be outside of the ZBA's scope of authority.

Mary Beth McGillicuddy (110 Prospect Street) had recently seen tape along the project property in the access /egress area and wanted to know what it was for. She expressed concern about the sight-distance triangle.

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Mr. Chessia indicated the sight distance should be indicated on the final plan.

Mr. Sullivan indicated he does not have an "official" plan but has been told there is "no issue" with sight distance.

Member Barbour indicated the final plans will be peer-reviewed.

Attorney Galvin asked whether there would be any change in the pro forma as a result of the new 8/5/13 concept plan to which Mr. Sullivan responded it would essentially be the same: "No change—It won't make a lot of difference."

Attorney Galvin asked whether the Applicant would allow post-permitting review or would the Board be required to wait until the final plans. Further, he asked whether the new elevations in the 3-building plan are consistent with the earlier 4-building plan.

Mr. Sullivan indicated the architectural plans show "typical features" and would be no different at this stage than for the previous plans.

Attorney Galvin then asked whether there would be a reduction in project construction costs by reducing the building number from four to three. He also inquired what would be done in terms of landscaping.

Mr. Sullivan responded that the building footprints would need to be pinned down before a landscaping plan could be completed.

Mr. Baker interjected that the project cost is figured on a per unit factor, which should result in no appreciable change.

Member Barbour then asked whether less fill would be required, as Building 1 would be removed and presumably, that retaining wall.

Mr. Sullivan then stated he would not be willing to go to an interim review.

Julie Fontaine (22 Prospect Street) asked about the anticipated timeframe for construction to which Member Haraden responded that would depend upon what appeals are made and what the developer's plans might be.

Mr. Sullivan offered to talk directly with abutters/neighbors regarding individual landscaping concerns. He then stated the project would require certain state permits, including a DEP Groundwater Discharge Permit (GWDP) and Conservation Commission Order of Conditions (OOC) among others, which would likely take several months. If everything works, he stated construction could start a year from now.

Member Barbour noted the DEP GWDP process takes about a year and includes a 30-day publicly noticed comment period, confirmed by Mr. Chessia.

Directing his comment to Mr. Sullivan, Member Rivkind stated, "I heard you loud and clear that this is a concept plan. Once you do the engineering and this doesn't work, what happens?"

Mr. Sullivan claimed although the plans are certainly preliminary, "lots of drainage work has been done, including the area for wastewater treatment . . . shouldn't be a lot of changes—shouldn't be anything substantial that changes".

Member Rivkind asked how the Board ensures its decision is something the developer can live with to which Mr. Sullivan responded that would be a legal question.

A discussion ensued about the legal process with Mr. Baker, Member Rivkind, and Mr. Sullivan.

Penny Wilson (120 Prospect Street) asked what evidence the applicant would have to show to prove the project uneconomic.

Mr. Baker stated the regulations make it complex. The first place is the Housing Appeals Committee (HAC), if the Board's conditions do not allow for a fair return on investment. The burden of proof is on the Town to prove that local concerns outweigh the need for affordable housing and must rise to the level of "imperiling" public safety.

Member Rivkind elaborated that if the Board imposes a condition which makes the project uneconomic, the Applicant must show it makes project uneconomic. If there is any excess profit, although not expected, it would go back to the Town. There is an auditing process under the direction of the State.

Carmel O'Leary (163 Prospect Street) questioned whether the 40B process is like that of Planning Board subdivisions to which the Board responded it is not.

Brian Koch (14 Simon Hill Road) asked what would happen if the project were not built according to the approved plan to which Attorney Galvin responded the Town could go to court and obtain the assistance of the HAC.

Attorney Galvin explained the permitting and construction process at Washington Woods.

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Penny Wilson (120 Prospect Street) asked whether profits have been returned on that project, which at this point have not been.

Marie Molla (88 Prospect Street) asked about the energy source for the project for heat and whether it would be natural gas, propane, or other to which Mr. Sullivan responded he has been talking with the gas company.

Member Barbour indicated if natural gas were not available, a condition could be imposed requiring a return to the public hearing.

Kim Lemman (75 Simon Hill Road) asked about the time to construct the project to which Mr. Sullivan responded he anticipated an 18-month build-out, unless another economic recession hit.

Bob Monahan (82 Jacobs Lane) asked whether there is any chance of reduction in the number of proposed units, which is 126.

Member Barbour stated the burden of proof falls on the Town if the Board imposes a reduction of more than 5% in the number of units. The project would then automatically be presumed uneconomic by the HAC.

Member Rivkind stated that would only amount to a 6-7 unit reduction.

Julie Fontaine (22 Prospect Street) expressed concern about wetlands and groundwater level issues due to construction of the proposed project.

Mr. Chessia advised once again that the submitted plans are preliminary and not fully designed. The project would have to comply in its final design.

Anne Green (81 Jacobs Lane) wanted to know what would happen if the permit were sold to “a big company such as Corcoran or A.W. Perry” and whether others would be required to abide by the Board’s conditions to which Attorney Galvin responded that successors and assigns must adhere to conditions or go through a public hearing if changes were requested.

Mary Beth McGillicuddy (110 Prospect Street) understood the previous decision contained 120 conditions and the HAC threw out all but eight to which Attorney Galvin responded that was inaccurate. Many of the conditions contained in the current draft decision have already been negotiated and ruled on by the HAC and the Superior Court.

Member Haraden called **David Seoane (20 Joshua Lane)**, owner of Seoane Landscape Design, Inc., located in Abington, to look at the project plan. He asked Mr. Seoane what size trees might be appropriate to provide screening to abutters.

Mr. Seoane indicated deciduous trees are measured by caliper with evergreens sized by height. He stated typical landscaping would be 10-12’ trees to as much as 20-22’ (est.

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\$1000-1200 per tree—not planted). He indicated spruce would likely be better than firs because of the soil conditions and that Norway spruce is the fastest growing for the quickest coverage.

There was a short discussion about the relative merits of using mixed species/varieties.

In response to Member Haraden’s direct question, Mr. Seoane indicated spacing should be 10-15’ for 10-12’ trees to which Member Barbour observed that the recommended spacing appears to be roughly the equivalent of the tree height.

Mr. Sullivan indicated he prefers 10-12’ plant material and has had the best experience long-term with that size.

Member Haraden indicated there is still an unfinished condition for landscaping.

Lauren Monahan (82 Jacobs Lane) asked who can get the Applicant to reduce the size of project or build something like the Washington Street project.

Member Barbour stated the reality of 40B is that Washington Street is a homeownership project. Currently, there is no subsidy money available for this type of project; subsidies are only available for rental projects and are a 40B requirement.

Member Rivkind clarified that the developer is not allowed unlimited profit. The Town must prove to a state regulatory authority that what the Board permits is economic. If the Town loses on appeal, the developer gets whatever he wants. In the last decision, the Board conditioned the project and avoided a 3,000’ road, which the HAC upheld. The Town must deal with the burden of proof requirement. He suggested that members of the public talk to their state legislators. The current 40B law is what we have to deal with. In response to another question, Member Rivkind pointed out that if the developer loses money after the permit is issued, that is his problem.

Mr. Baker added the Town cannot design the project and the State (Department of Housing and Community Development) approves the economics beforehand [when it issues the project eligibility letter].

Member Barbour added there is an auditing process that occurs after a permit is issued and appeals have been exhausted, if any.

Member Rivkind stated the purpose of the 40B statute is to build the maximum number of affordable units possible. Once the Town meets the required 10% affordable housing stock, then these applications can go away. The developer has an incentive to maximize affordable development, which is what the state statute is designed to do. “Is this fair Simon Hill or Prospect Street? I agree with you, it is not. We are trying to minimize as much as we can. Your frustration is well-founded and we share it.”

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Member Barbour stated it appears members have surreptitiously resolved the landscaping condition and now must move on to the building height question.

Member Rivkind stated he wanted to deal with the building elevations from the existing grade, as the fill required is indefinite. A 6/18/13 plan shows the existing grades. The 10' of fill shown in areas on the northerly side are no longer necessary, due to removal of the old Building 1. He stated Buildings 2 and 3 should not be higher than 48' above existing grade and that Building 1 could be a little higher at 49' above existing grade.

Mr. Sullivan stated the developer did not choose the grade, but fill is necessary to accommodate required drainage. A 5:12 roof pitch also requires buildings to be a little higher. He stated flat roofs are not appropriate for the Town, but he can live with 44'.

Member Rivkind said that the 10-12' trees Mr. Sullivan wants to use will not provide adequate vegetative buffering "in our lifetimes". The proposed buildings are bigger [taller] than any industrial or commercial building in Norwell. Another 40B project located at Jacobs Pond is restricted to 34' and has three stories.

Mr. Sullivan stated the Applicant has tried to accommodate the Town in every way it can. The Applicant needs to have a product in which it can be confident of success.

Member Rivkind stated people moving into an apartment building do not care about the slope of the roof and cited his own apartment experience with others agreeing.

Member Barbour questioned how much "accommodating" the Applicant has actually done. The project started with 126 units and the Town is still faced with a 126 unit project. Part of a good faith effort is listening to what abutters and panel members have consistently stated as a concern. "What is good faith? You pulled in buildings from the edge of property lines, but have not listened to our primary concern about building height. That is a real problem."

Mr. Sullivan claimed the Applicant has "spent a lot of time and money working on this".

Member Rivkind noted the buildings are bigger in width to which Mr. Sullivan responded they are wider because the buildings have more units.

Member Rivkind wondered why the concept plan buildings need to be wider.

Upon a motion duly made and seconded, the Board **VOTED** a short recess at 9:45 P.M. and returned to open session at 9:55 P.M.

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Member Rivkind stated he would allow Buildings 2 and 3 to be 80' wide x 225' long x 47' in height from existing grade with Building 1 no higher than 49'. The Board is forced to state parameters as it must be definitive because the project has not been engineered.

Member Haraden agreed with Mr. Rivkind relative to building heights.

Member Rivkind stated the Applicant could reduce the width in order to further reduce the building height.

Member Barbour asked how this changed from what Member Rivkind had previously indicated at earlier meetings.

Member Rivkind responded previously he had been in favor of building height at 43' above existing grade and is now granting the approximate 4' of fill represented by applicant's engineer in the public hearing.

Member Barbour noted that 4-6' of fill along the property line backing onto Simon Hill plus 34' allowed by zoning would result in height from existing grade of 38-40' and that Member Rivkind allows 7' more.

Member Rivkind acknowledged that the Board is faced with a Hobson's choice.

Member Barbour indicated this is the most depressing application she has ever had to deal with as a Board member and remains very concerned about the project's impact on the abutters and neighborhood.

Member Rivkind stated the Board can cite the 8/5/13 concept plan, which includes a scale.

A further discussion among member about landscaping ensued with general agreement that a condition should mention the need to maximize natural fencing. The Board should provide some guidance for the landscape architect, as no concept landscaping plan has been provided. The condition should include the recommended height of 10-12' Norway spruce or equivalent plus a mix of other conifers and deciduous trees.

Member Rivkind stated the Applicant's wording is relevant, in particular for properties along Simon Hill Road, in order to screen those single-family homes.

Mr. Baker had a question about Condition 67 and wants the wording to condition irrigation only if the Applicant decides to provide it.

Member Rivkind noted Condition 66 and the agreement to screen the McGloin property. Mr. McGloin does not want a "fence" but prefers natural screening (plant material).

Mr. Sullivan indicated he is willing to work with the four abutters, as he did with an abutter on Teaberry Lane for the 239 Washington Street project.

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Member Rivkind wants a procedure if there is a disagreement with the abutters.

Mr. Baker requested that the last condition be consistent with 56.05 (12c).

Mr. Sullivan asked the Board to check Condition 17 for the distance of the retaining wall face to the wetlands.

Member Rivkind stated Condition 39 wording about looping should be per Jack McInnis's 7/20/13 email.

In response to a discussion about closing the public hearing, Mr. Baker asked that the written record be kept open for two weeks (deadline 9/25) with an additional week (deadline 10/2) for rebuttal comments to which the Board agreed.

Mr. Baker requested a copy of the current Waiver recommendations and conditions, which he will need to comment. These were originally part of an engineering discussion on Tuesday, June 18, 2013, following the first work session with Member Haraden on Friday, June 14, 2013.

Attorney Galvin asked if any specific condition might make the project uneconomic.

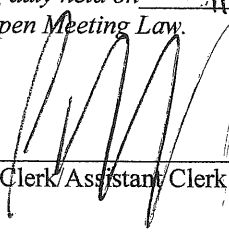
Mr. Baker objected to the sidewalk study condition.

Member Rivkind withdrew his motion relative to building height.

Upon a motion duly made and seconded, members **VOTED** that the written record be kept open for two weeks (deadline 9/25) with an additional week (deadline 10/2) for rebuttal comments and to reconvene on Wednesday, 10/16/13, at 7:30 P.M. for final deliberation.

The meeting was adjourned at 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 10/16/13 in accordance with M.G.L. c. 40A, Section 11, and the Massachusetts Open Meeting Law.

Signed: 
As Clerk/Assistant Clerk

Date: 10/16/13

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