



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

Zoning Board of Appeals Minutes of April 12, 2023 Meeting In-Person Meeting

Members present: Llewellyn Rogers (Chair), Andrea Rogers, Doug Pease, Leah Brown, and ZBA Administrators Robert Culbert and Jessica Downey, Joe Peznola (advisor/consultant to ZBA), with Jonathan Holter recused.

Others in Attendance: Ethan Genter, Alanna Jaworski (affiliation? AI?), Michael Laham (via Zoom, Horsley Witten Group), Mark Leonard, Craig Nicholson (Applicant, Affirmative Investments),

Chair Rogers opened the meeting at 5:02pm.

RE: Southern Tier LLC

40B Application

Craig Nicholson/Affirmative Investments

85 Edgartown-Vineyard Haven Road Map 50 Parcel 31

The Oak Bluffs Zoning Board of Appeals will hold a duly posted and continued In-Person Public Hearing on Wednesday, April 12, 2023 at 5:00 pm in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking:

A Comprehensive Permit under Chapter 40B of the General Laws of the Commonwealth of Massachusetts

Joe Peznola notes that a simple majority is needed to approve a Comprehensive Permit under Chapter 40B; since four members are sitting the Permit can be issued with a 3-1 vote in favor.

Lou Rogers notes that this continued hearing will be to review the answers to issues the Board raised at the first hearing (March 15), and the applicants have recently answered.

Lighting, Wastewater, and Number of Parking Spaces:

Lou Rogers notes that the applicant has agreed to not install the 20 foot tall light poles along the roadway, that the access road to parcels behind this one is not part of these plans but the space for the road is planned for and shown at the request of the Massachusetts Natural Heritage and Endangered Species Program (MNHESP), that the applicant can utilize either Option 1 (septic system and sewer) or Option 2 (only Town sewer) of the Martha's Vineyard Commission's approval for wastewater treatment, and that there will be 68 parking spaces in Phase 1 of this project while phase 2 will add 22 more spaces at the west and north end of the property (near the Ice Rink).



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Assigned Parking Spaces:

Craig Nicholson states that there will be stickers for the residents showing that their cars are allowed to park on the property and signs will clearly state that this is private property. The parking spaces will be surfaced with crushed stone so spray painting numbers would not work. There will not be assigned parking spaces because enforcement of that would be difficult (“Somebody is parked in my parking space...” so regulating it becomes a battle). Lou Rogers would like to see assigning parking as he feels that would reduce conflicts; everybody would know where they can park. Doug Pease points out that assigned spaces might be difficult since there will be 1.5 parking spaces per unit, so he does not favor them. And Leah Brown believes that assigned spaces provides order and accountability (since some tenants will inevitably sublet their units for the summer). Craig Nicholson replies that each space will be lined to show the edges of the parking spaces, that the ADA compliant spaces will be paved, as will some of the sidewalks near ADA compliant units and some of the parking places on slopes, and that he will look into providing one assigned space per unit. Lou Rogers requests that they consider designating some parking places for scooters, with three scooters per space.

6 EV parking and Charging Stations:

Lou Rogers asks how the charging stations will work, and the answer is that there will be signs saying that only EV vehicles can park in those spaces, that the charging will be paid for by the user, and the charging systems they utilize will include idle fees for when the charging is not in use, and the six EV spaces will be part of Phase 1. Craig Nicholson points out that the new stretch code requires 20% of the parking spaces (14 of 68) must be for EV charging, and that conduit will be laid to facilitate even more charging stations.

Designated visitor spots:

Craig Nicholson states that no parking places will be designated for visitors, they feel that the 1.5 spaces per unit will be sufficient to accommodate visitors and residents.

Parking at the YMCA

A question is whether parking spaces at the YMCA will be used if spaces are occupied? Craig Nicholson notes that this proposal cannot address other properties, but they will make sure that their parking spaces are only used by their residents. Island Housing Trust’s experience on the Island has shown that 1.5 spaces per unit is sufficient. Leah Brown asks if the parking spaces will be able to accommodate oversized vehicles, and the answer is that contractor’s trucks will be accommodated. Lou Rogers asks whether residents with commercial vehicles will be allowed to park there, and the answer is that the parking is for pickup trucks or company cars, but they must be owned by the resident or his business. They do not plan to allow business trucks carrying equipment to park there, and that management will have violators towed (they will not be fined).

Free WIFI

Craig Nicholson does not see free WIFI access as a problem for outside the Community House. The WIFI and the Community House are for residents only, and is not a public



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facility like a library. The free WIFI will only be in the Community House for residents that need it. Tenants will be able to contract for WIFI access in their units, and that access can be protected with a password. He also points out that there is a cell tower at the skating rink, which should provide sufficient cell phone coverage. Leah Brown asks about security for the WIFI to prevent others from seeing personal data, and the answer is that they could provide a password for the residents, which could be changed every couple of months. The Board expresses no interest in establishing hours for the Community House, and Crain Nicholson adds that the Community House building will close at 11:00PM for special events, will close earlier without special events, and that management will deal with any complaints about noise levels when there are outside activities. The management company (the same company that manages Morgan Woods) has a lot of experience managing affordable housing developments.

Tenants Association

There will not be a tenant's association.

Grills

Grills will be provided near the Community House and tenants will not be allowed to use their own grills.

Use of salt and nitrogen fertilizer

Lou Rogers asks about the use of salt to melt snow and ice, and the response is that the contractor hired to plow the roads and walkways will determine whether salt or other chemicals are needed for the safety of the residents. The other ZBA members concur that the contractor should have the option to use salt for public safety.

The only use of fertilizer will be to help the new plantings become established, and that should only be for the first year or year and a half only.

Pets

Only one pet will be allowed per unit.

Community House Restrictions

The plans go beyond the noise bylaw, which states that amplified sound cannot be plainly heard at a distance of 150 feet from the building structure, although this police bylaw is directed to the center of town. It is okay if this development meets that standard; Leah Brown states that it is problematic if noise from low income communities is more restrictive than elsewhere. The applicant will further require that events at the Community Center must stop at 11:00PM.

Public lottery to determine initial occupancy

Oak Bluffs would like to have Oak Bluffs residents occupy 70% of the units in this community, the maximum percentage the state allows, and will work with the applicants to petition the state to allow that. A town resident can be someone who either works in town,



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for the town, or have a child in school. Oak Bluffs residents can also apply to be part of the remaining 30%, which is open to anybody. This residency requirement only applies to the initial residents of the development. Leah Brown expresses concern about homeless people being disqualified to apply for a space there because they do not live or work in the Town. She also points out that any contractors would qualify because sometimes they work in Oak Bluffs. All applications to live there must be income qualified, have either a Social Security number or a temporary work permit including a green card, and they must pass a criminal background check; these criteria are for management agents to check during the application process.

Amenities

The amenities tenants have free access to include WIFI in the Community Center, coin operated washers and dryers in each building, use of common areas including grills and the Community Center, and parking. Costs for charging your EV are not included, but are available for a fee.

Landscaping

Fertilizer and irrigation will only be used until the plantings are established, probably for the first one or two summers. No permanent irrigation will be installed.

Sign dimensions

The size of the entrance sign is acceptable since certain language is required to be on the sign. All signs in the subdivision will be constructed with natural materials and aluminum, as required by the town bylaw.

Roof height

The Board has no problems with the applicants request for a maximum roofline height of 40 feet.

Setbacks

The setbacks are shown on page 5 of the presentation. They range from 86 feet to 165 feet to the property line, with a setback requirement of 50 feet.

Traffic

The road layout must be sufficient to accommodate traffic through this property to access the back lot. It must be able to accommodate a 50 foot box trailer. The answer is yes, although it is unlikely that such a truck will be there. The road layout is controlled by the Town.

Crosswalk across Vineyard Haven-Edgartown Road

The design and construction of the crosswalk will be done in conjunction with the Planning Board and the Town Highway Department. Joe Peznola states that the ZBA has no jurisdiction.



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Emergency generators

A small emergency generator for the Community Center is located on slide C11 (the utility plan) of the presentation and will utilize propane. Lou Rogers does not like the location facing the abutters, but Crain Nicholson says that the generator will be placed against a wall, so the sound from the generator will bounce off the wall, over a knoll and then will have to go through vegetation for the sound to escape to where it could be heard away from the Community House. While the generator will be tested regularly, such testing will not occur at nighttime.

There will be one condenser on each of the 3-unit buildings and 2-4 condensers for the 12 unit building, 24 in total. Each unit is well insulated to reduce the need for heating or air conditioning. These compressors will face in different directions and will not face any abutting units.

Booster pumps

The Building Inspector, Fire Department, and the Water Department met today and sent a letter to the ZBA requesting that the applicants install a booster pump to insure adequate water pressure within the development. Craig Nicholson talked to Michael Sylvia, Superintendent of the Oak Bluffs Water District, and the applicant will hire a consultant to do an analysis determining the appropriate size and number of the booster pumps.

Septic system or sewer

The applicants would like to be able to connect to the sewer system immediately, but we do not know when the treatment plant updates will be completed. They will construct their own septic system if the sewer hookup is not available when construction of phase 1 is complete. As the proposed septic system is expensive, they plan on using the system for its entire useful life. Phase 2 will be built after the sewer hookup is available.

Garbage disposals

No garbage disposals will be installed, but there will be dumpsters provided for trash and containers for recycling. There will be no fees for these amenities.

General contractor

The applicants have not yet hired a general contractor to oversee building the subdivision. The general contractor will be responsible for hiring any and all subcontractors.

Joe Peznola's report

Joe Peznola says that the applicant has provided a draft decision, as is usually the case. The draft decision includes only the MVC conditions. He will add the special conditions that were discussed tonight for the ZBA to review at a later date. Being silent about the sewer hookup means that the applicant will be able to choose which option for sewage disposal is best. There is no mandate from the sewer commission to require sewer hookup.



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He continues to say that the ZBA could close the hearing tonight if they choose to, at which point they would have 40 days to issue the decision, during which time the ZBA could only request points of clarification and could not bring up new issues with the applicants or add additional conditions to the decision. All deliberations must be at a properly posted public meeting. The Town will get Safe Harbor designation by requesting it when the decision is filed with the Town Clerk. This means that the Town could turn down any 40B projects for a year or two.

The ZBA could also act tonight if you choose to.

Craig Nicholson says that the conditions as presented by Joe Peznola are acceptable to the applicant, and he feels that the hearings have been thorough and reasonable.

Correspondence

An April 10 letter from Police Chief Nelson Wirtz, Water Superintendent Michael Sylvia, and Building Inspector Matt Rossi states that they met to discuss this and other developments in the area, and they were concerned that water pressure along this stretch of the Vineyard Haven-Edgartown Road occasionally drops below the threshold necessary for domestic water service as well as extinguishment. We have found that the water pressure sometimes briefly drops below the levels needed for sprinkler activation, which could delay lifesaving actions of the sprinkler system resulting in injury, death, or property damage. Every development along this road will need to be required to install booster pumps off the 12 inch water main to ensure adequate pressure for domestic service and public safety. These booster pumps will be owned by the development and they will be required to have annual maintenance inspections and testing at their own cost.

A letter from Building Inspector Matt Rossi dated April 12 reiterates that the ZBA should add a special condition to the Comprehensive Permit requiring the applicant to install and maintain the necessary booster pumps.

There was no public comment from those attending the hearing.

Conclusion

After some discussion about the options with Joe Peznola, the ZBA decided to continue the hearing to review the draft decision that Joe prepared, since there may be additional conditions that need to be imposed.

Upon looking at our calendars we decided that we could discuss this before our next meeting on April 19. Joe points out that he would have to participate remotely, as he has another meeting at 7:00 on that day.

Andrea Rogers moved to continue the public hearing to April 19 at 5:00PM. Doug Pease seconded the motion. All (Lou Rogers, Andrea Rogers, Leah Brown, and Doug Pease) vote in favor, so the vote is unanimous (4-0).



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Minutes

Leah Brown moves to approve the minutes of March 15 as presented. Doug Pease seconds the motion. All (Lou Rogers, Andrea Rogers, Leah Brown, and Doug Pease) vote in favor, so the vote is unanimous (4-0).

Adjournment.

At 6:58PM, Doug Pease made a motion to adjourn the meeting, seconded by Leah Brown. All (Andrea Rogers, Lou Rogers, Leah Brown, Doug Pease) vote in favor, so the motion passed unanimously (4-0).

Respectfully Submitted,

Robert Culbert

ZBA Administrator

Approved April 19, 2023