Town Of Sandwich
THE OLDEST TOWN ON CAPE COD

BOARD OF APPEALS
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April 12, 2016 Minutes

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7:00pm
Upper Meeting Room
270 Quaker Meetinghouse Road

Present: James Killion, Chair, Robert Jensen, Vice Chair, Christopher Neeven, Erik VanBuskirk and David Schrader
Also Present: Blair Haney, Director of Planning & Development, Josh Peters, Asst. Town Planner, Paul Spiro, Building Inspector and Sam Jensen, Asst. Town Engineer

Approval of Minutes
Mr. Neeven moved to accept the minutes of the meeting held March 8, 2016 as written. Mr. Schrader seconded. The vote was unanimous.

Appeal the Decision of the Building Inspector #16-02 - Continued
10 Captain Paine Road
Trautner Realty Trust
Atty. Christopher McAuliffe was present for the applicant. Mr. Killion commented on the letter from Jonathan Silverstein, Town Counsel. Atty. Silverstein wrote that while Capt. Paine Road qualifies as a public street to serve as legal frontage under the Zoning By-laws, the Board may properly require that the road be improved to certain standards. Atty. McAuliffe believes that there is adequate access and pointed out at the end of the discussion that there are presently fifteen houses already on Captain Paine Road.

Mr. Spiro began by saying that this is a frontage issue. He agreed that Captain Paine is actually a public way by definition. However, even though the lot has sufficient frontage, the road does not meet current minimum access standards. Typically, road maintenance falls to the homeowners in a subdivision. Mr. Schrader commented that the purpose of the legislation was to provide adequate access for safety vehicles and quoted the third sentence in Atty. Silverstein's letter: "However, in my further opinion, you may properly require that the road be improved to comply with the lesser of the current Planning Board Subdivision Rules and Regulations, or the Subdivision Rules and Regulations in effect at the time the subdivision in which the subject property is located was originally approved." He asked if it would be appropriate for the Building Inspector to require the road be brought up to the 1956 standards. Mr. Sam Jensen commented that the minimum was 18' wide with good gravel. Mr. Killion opened the meeting for public comment. There was none.

Mr. Jensen moved to close the Public Hearing #16-02 for 10 Captain Paine Road. Mr. Neeven seconded. The vote was unanimous.

Special Permit #16-04
0 & 1 Route 6A
NRG Renew Canal 1 LLC

Mr. Killion read the Public Hearing Notice into the record. He also read the following comment letters into the record:

- Planning & Development Office, Blair Haney, Director, memo dated April 7, 2016
- J. J. Burke, Deputy Fire Chief, Sandwich Fire Department, letter dated April 7, 2016
- David J. DeConto, Asst. Director of Natural Resources, letter dated March 23, 2016

Atty. Michael Ford, Richard Tabaczynski, PE, Thomas Atkins, NRG, and Brian McCabe were present for the hearing. Atty. Ford presented the application to the Board and gave an overview of the history of the project – it has been in the works for about a year. The zoning has been amended through Town Meeting to approve the Ground Mounted Solar Overlay District. This installation would be by-right in this overlay district. The Cape Cod Commission reviewed the project and issued a Limited Development of Regional Impact Decision in favor of the project. The project is now before the Board of Appeals under Sections 1330 and 4340 for the stormwater facility. Mr. Tabaczynski explained that the northern portion of the property is located in the AE-14 flood zone. He assured the Board that the DEP Stormwater standards are to be met. There will be a berm on the back end; the entire site drains towards wetlands and railroad tracks providing a natural spot for catch basins. There is no danger to health or safety and, in his opinion, the application meets the conditions of Section 4350. In answer to a question by Mr. Killion, he explained that the stormwater will be cleansed before it reaches the wetlands. The lot elevation goes from 40'+/- near the front to 10+/- in the back. The actual solar panel installation is about 2' at its base to 8' at the top so there is no real impervious surface. With minimal grading the two swales at the lower ends will channel the water into catch basins. This is explained in the stormwater management plan filed with the Cape Cod Commission. Mr. Schrader asked if NRG is committed to preserving the historic stone wall on the site to which Mr. Ford responded that NG would be mindful of the historic stone wall. A chain link fence is proposed to enclose the site. Atty. Ford reminded the Board that NRG is on a tight timeline because of available tax credits. Mr. Killion asked if there was any public comment. There was none.

Mr. Jensen motioned to close the Public Hearing for Special Permit #16-04. Mr. Neeven seconded. The vote was unanimous.

Forestdale Village Modification Request

Attorney Thomas Recupero presented the modification request to the Board. Mr. Haney provided background information regarding the proposed changes to the Comprehensive Permit #09-03 issued in 2010 for the Forestdale Village project. This permit includes the lots currently proposed for the Cape Crossing commercial subdivision. Town Counsel, Atty. Recupero, representing Cape Crossing, and adjacent property owner Debra Carr-Kirk discussed and came to a consensus on the legal process going forward. The Board will be asked to determine if the proposed modification is substantial or insubstantial, and if the Board will grant the requested modification. Basically, the proposed modification reads that Route 130 LD and Ms. Carr-Kirk
both relinquish any rights in the Comprehensive Permit and withdraw their respective lands from use in connection with Comprehensive Permit #09-03.

The Planning Board has approved the definitive subdivision plan for Cape Crossing at their meeting of April 5, 2015 with the caveat that this decision would be held in escrow until the modification has been approved by the Board of Appeals. Atty. Recupero explained to the Board that because no single entity owns or controls all the land, there really isn't any enforceable permit. Also, none of the three criteria for DHCD approval in the original eligibility letter are being met. The Town wants to have a recordable paper trail of what action has been taken and why. Mr. Haney said that the Board has little precedent to draw from at this point. Mr. Jensen said that a change of ownership would be a major modification. Mr. VanBuskirk wondered about dissolving the entire subdivision. Atty. Recupero provided a certificate of vote for the Board consideration. Mr. Killion opened the meeting for public comment. There was none.

Mr. Jensen motioned to close the Forestdale Village Modification Request. Mr. Neeven seconded. The vote was unanimous.

Board Discussion
Prospective New Member
Gerald Nye
Mr. Killion introduced Mr. Nye to the Board. He has been a Sandwich resident for 20yrs currently serving as Constable for the Town. His background is in civil engineering. He has experience working with Planning Boards in other towns in his engineering capacity. He looks forward to serving on the Board of Appeals if the Board recommends him to the Board of Selectmen.

Preliminary Plan Application for Planning Board
311 Cotuit Road
Aubuchon Realty
After a brief discussion, the Board had no comment for the Planning Board on this application.

Deliberation
Special Permit #16-04
0 & 1 Route 6A
NRG
The Board reviewed and discussed the application, materials submitted, and public comment for 0 & 1 Route 6A, Special Permit #16-04 The Board voted to grant the Special Permit. The decision, findings, and conditions are on file in the Planning and Development office.

Appeal Decision of the Building Inspector #16-02
10 Captain Paine Road
Trautner Realty Trust
The Board reviewed and discussed the application, materials submitted, and public comment for 10 Captain Paine Road, ADBI #16-+02. The Board voted to uphold the decision of the Building Inspector, and, therefore, deny the appeal. The decision and findings are on file in the Planning and Development office.

Forestdale Village Modification Request
CP #09-03
After a brief discussion, the Board voted unanimously to sign the Certificate of Vote. A copy of this certificate is on file in the Planning and Development office.

Alternate Member
Gerald Nye
Mr. Killion requested office staff to send a letter to the Board of Selectmen requesting them to appoint Mr. Nye as an alternate member of the Zoning Board of Appeals.

There will be no meeting for the Zoning Board of Appeals on April 26, 2016 due to a lack of quorum.

Mr. Jensen moved to adjourn the meeting. Mr. Schrader seconded. The vote was unanimous. The meeting adjourned at 8:20pm.

Respectfully submitted,

Marilyn K. Bassett