MINUTES
January 11, 2022

6:00 p.m.
Sand Hill School Community Center, 16 Dewey Avenue

Present: Erik Van Buskirk, Chair; James Killion, Vice-Chair; Robert Jensen; Christopher Neeven; Chase Terrio; and Gerry Nye
Also Present: Ralph Vitacco, Director of Planning & Economic Development; Leanne Drake, Town Planner; and Brendan Brides, Building Commissioner
Absent: Maureen McCabe, Sr. Administrative Assistant

Mr. Van Buskirk opens the meeting with the Pledge of Allegiance and the reading of the Opening Statement.

Approval of Minutes

Mr. Jensen motions to approve the minutes of the meeting held December 14, 2021, as written. Mr. Neeven seconds. The vote is unanimous.

Old Business

There is no Old Business to discuss.

New Business

- #21-32: 95 North Shore Boulevard, Map #70 Parcel #93 – Special Permit – Forbes

  Mr. Van Buskirk reads the Public Hearing Notice into the record. Mr. Killion motions to open application #21-32. Mr. Neeven seconds. The vote is unanimous. Mr. Van Buskirk reads the following comment memos into the record:

  ➢ Memo to Erik Van Buskirk, Chair from Sam Jensen, Assistant Town Engineer re: Petition 21-32, Application for Special Permit, 95 North Shore Boulevard, Assessor’s Parcels 70-093-, dated January 6, 2022
  ➢ Email to Maureen McCabe from Sean Miller re: Request for Comment: #21-32: 95 No. Shore Boulevard Map 70 Parcel 93, dated December 6, 2021
  ➢ Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #21-32: 95 No. Shore Boulevard Map 70 Parcel 93, dated December 3, 2021
  ➢ Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConato, Director, Department of Natural Resources re: Conservation Commission
comments on special Permit #21-32, 95 North Shore Boulevard, Sandwich, MA, dated January 3, 2022

Kevin Kirrane, Esq. introduces himself to the Board. He explains that the lot is less than 13,000 square feet thereby making it a non-conforming lot. The building itself conforms to setback criteria but because it is on a nonconforming lot it is being treated as a nonconforming condition. As depicted in the plans the building has been moved forward away from its current location. The reason for this is to try to get it out of the danger zone. It is also on a barrier beach and in a flood plain and on a coastal dune which makes it another nonconforming condition. Attorney Kirrane references the new Flood Plain By-Law explains and how it applies to the owners of this property. He says that this proposed building conforms to all the requirements of the Building Code and construction within a flood plain and on a flood zone. Attorney Kirrane describes the design of the building which is constructed on piers; the first floor elevation is entirely above the flood plain elevation. The piers will support the proposed first and second floors. He goes on to say that the project is not substantially detrimental bit it is, in effect, an improvement over existing conditions. It is on a dune and there is no way the building can be moved without remaining on the dune. It is a relatively modest structure; the footprint of the building will not be increased by a significant amount. Fill will be brought in consistent with the Conservation Commission’s requirements. Mr. Jensen asks Attorney Kirrane to talk about the setbacks. He replies they are more than eleven feet on one side and eight feet on the other. The height of the building is within the requirements of the By-Law. The building design is consistent with other development that is taking place along North Shore Boulevard and Salt Marsh Road. There are no further questions from the Board. Mr. Van Buskirk opens the matter up to the public for comment. There is none. Mr. Van Buskirk and Mr. Brides discuss the driveway apron. The driveway permit is obtained through the Engineering office prior to getting a permit from the Building Department.

The following member of the public addressed the board:

- **89 North Shore Boulevard (name not provided)**

  Can the applicant build any further forward than where the structure sits now? Board members explain that that is not what is being proposed. Ms. Anne Michniewicz states that Conservation does not allow construction closer to the water.

Board members and Attorney Kirrane discuss the location of the septic system. Mr. Jensen motions to close Public Hearing #21-32 and take the matter under advisement. Mr. Killion seconds. The vote is unanimous.

- **#21-33: 112 Salt Marsh Road, Map #85 Parcel #03 – Special Permit – Sandwich House, LLC**

  Mr. Van Buskirk reads the Public Hearing Notice into the record. Mr. Killion motions to open application #21-33. Mr. Neeven seconds. The vote is unanimous. Mr. Van Buskirk reads the following comment memos into the record:
Email to Maureen McCabe from Sam Jensen, Assistant Town Engineer re: Request for Comment: #21-33: 112 Salt Marsh Road Map 83 Parcel 03, dated January 6, 2022

Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission comments on special Permit #31-33, 112 Salt Marsh Road, Sandwich, MA, dated January 3, 2022

Email to Maureen McCabe from Sean Miller re: Request for Comment: #21-33: 112 Salt Marsh Road Map 83 Parcel 03, dated December 6, 2021

Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #21-33: 112 Salt Marsh Road Map 83 Parcel 03, dated December 3, 2021

Kevin Kirrane, Esq., introduces himself to the Board. He explains that there is nothing on site anymore. Attorney Kirrane says the single story residential structure that had been there was destroyed in a storm in February 2021. The proposed new structure is located entirely on a barrier beach and coastal dune. A substantial portion of the lot is actually on the other side of the road and runs into the marsh. He explains that the road was never completed and the last three properties, 112, 114, and 116 Salt Marsh Road, access their property through a shared driveway. The proposed structure is being constructed on piles or piers which is consistent with current construction and code criteria in the flood plain and on dunes and barrier beaches. The foundation hole has already been filled and the foundation removed. The first floor elevation and the entire building is being lifted above the flood plain elevation. Because of the way it is being constructed and the newly adopted construction on piers it is not substantially more detrimental; it is an improvement over what was there even though there is nothing there at the present time. Mr. Jensen asks Attorney Kirrane to discuss the setbacks. Attorney Kirrane says they are well above what the requirement is in this particular zoning district. A discussion ensues regarding the amount of frontage and the shared driveway use.

Mr. Terrio asks if the proposed structure is identical to what was there overall. Ms. Michniewicz says that it is not and provides an explanation as to why. Attorney Kirrane adds that lot coverage has not increased significantly. There are no further questions from the Board. Mr. Van Buskirk opens the matter up to the public for comment. There is none. Mr. Jensen motions to close Public Hearing 21-33 and take the matter under advisement. Mr. Killion seconds. The vote is unanimous.

- #21-34: 114 Salt Marsh Road, Map #85 Parcel #02 – Special Permit – Wang

Mr. Van Buskirk reads the Public Hearing Notice into the record. Mr. Killion motions to open application #21-34. Mr. Jensen seconds. The vote is unanimous. Mr. Van Buskirk reads the following comment memos into the record:

- Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission comments on special Permit #21-34, 114 Salt Marsh Road, Sandwich, MA, dated January 3, 2022
- Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #21-34: 114 Salt Marsh Road Map 85 Parcel 2, dated December 6, 2021
- Email to Maureen McCabe from Sean Miller re: Request for Comment: #21-34: 114 Salt Marsh Road Map 85 Parcel 2, dated December 6, 2021
Kevin Kirrane, Esq., introduces himself to the Board. He explains that a significant portion of the building was washed into the Bay, fell off the side of the dune and subsequently had to be demolished because it was no longer a livable structure. It is being moved forward closer to the driveway that is used to access those three properties. Attorney Kirrane states what the setbacks are. The building is on piers and has slabs that run along the bottom which allow for the free movement of water and sand beneath the building so as to avoid any significant storm damage. The entire first elevation is set about the flood zone. Attorney Kirrane goes on to state why the design is substantially better than what was there before. It is entirely on a barrier beach in the dune so that is another nonconforming condition. In response to Mr. Jensen, Attorney Kirrane says it is his understanding that it conforms to the height criteria. Ms. Michniewicz says the height is under 34 feet. Ms. Vitacco reminds the Board that height is determined from base flood elevation; pilings are not included in the height. Mr. Brides elaborates further. There are no further questions from the Board. Mr. Van Buskirk opens the matter up to the public. The following person spoke:

- **Tom Zdanowski (no address provided)**

  Tom asks if the Town accepts any liability by approving this plan for a house. Board members respond by saying the Town does not.

Mr. Jensen motions to close application #21-34 and take the matter under advisement. Mr. Neeven seconds. The vote is unanimous.

**Board Discussion**

- **Temporary Return to Virtual Meetings**

  Mr. Vitacco explains that we are receiving requests from other Boards to return to virtual meetings for a short time. The Governor has extended virtual meetings to April 1, 2022. Because we are in the middle of the Omicron surge and out of an abundance of caution Dave Mason and Fire Chief John Burke have suggested avoiding contact, if possible. Board members discuss the option and agree to ZOOM meetings for the month of February.

**Deliberations**

- **#21-32: 95 North Shore Boulevard – Special Permit – Forbes**

  The Board reviews and discusses the application and materials submitted for Special Permit #21-32. Board members unanimously approve the Special Permit with conditions. The Decision, Findings and Conditions are on file in the Planning & Development office.

- **#21-33: 112 Salt Marsh Road, Map #85 Parcel #03 – Special Permit – Sandwich House, LLC**

  The Board reviews and discusses the application and materials submitted for Special Permit #21-33. Board members unanimously approve the Special Permit with conditions. The Decision, Findings and Conditions are on file in the Planning & Development office.
• #21-34: 114 Salt Marsh Road – Special Permit – Wang

The Board reviews and discusses the application and materials submitted for Special Permit #21-34. Board members unanimously approve the Special Permit with conditions. The Decision, Findings and Conditions are on file in the Planning & Development office.

Other Matters Not Reasonably Anticipated

• Mr. Vitacco talks about the new Flood Plain By-Law.
• Mr. Vitacco advises the Board that the two 14 Beach Way decisions have been appealed. There is a short discussion as it relates to this matter.
• Mr. Terrio asks how lot creation is determined. Mr. Vitacco explains. Board members recall having a quick reference sheet regarding zoning by-law changes by date.
• Mr. Vitacco says there is nothing new to report on Autumnwood. There is a brief discussion as it relates to this project.
• There is a short discussion as it relates to the tax structure on Forestdale Village.

Adjournment

Mr. Jensen motions to adjourn. Mr. Neeven seconds. The vote is unanimous. The meeting adjourns at 7:02 p.m.

Respectfully Submitted,

Maureen McCabe

Supporting Documents:

1. Draft Minutes dated December 14, 2021 (7 pages)
2. 95 North Shore Boulevard Public Hearing Notice (1 page)
3. 95 North Shore Boulevard Special Permit application materials (17 pages)
4. Memo to Erik Van Buskirk, Chair from Sam Jensen, Assistant Town Engineer re: Petition 21-32, Application for Special Permit, 95 North Shore Boulevard, Assessor’s Parcels 70-093-, dated January 6, 2022 (1 page)
5. Email to Maureen McCabe from Sean Miller re: Request for Comment: #21-32: 95 No. Shore Boulevard Map 70 Parcel 93, dated December 6, 2021 (1 page)
7. Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConto, Director, Department of Natural Resources re: Conservation Commission comments on special Permit #21-32, 95 North Shore Boulevard, Sandwich, MA, dated January 3, 2022 (28 pages)
8. 95 North Shore Boulevard, Kevin Kirrane Esq., written presentation (23 pages)
9. 112 Salt Marsh Road Public Hearing Notice (1 page)
10. 112 Salt Marsh Road Special Permit application materials (16 pages)
11. Email to Maureen McCabe from Sam Jensen, Assistant Town Engineer re: Request for Comment: #21-33: 112 Salt Marsh Road Map 83 Parcel 03, dated January 6, 2022 (1 page)
12. Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConeto, Director, Department of Natural Resources re: Conservation Commission comments on special Permit #21-33, 112 Salt Marsh Road, Sandwich, MA, dated January 3, 2022 (1 page)
13. Email to Maureen McCabe from Sean Miller re: Request for Comment: #21-33: 112 Salt Marsh Road Map 83 Parcel 03, dated December 6, 2021 (1 page)
14. Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #21-33: 112 Salt Marsh Road Map 83 Parcel 03, dated December 3, 2021 (1 page)
15. 112 Salt Marsh Road, Kevin Kirrane Esq., written presentation (30 pages)
16. 112 Salt Marsh Road site plan dated December 15, 2021 (2 pages)
17. 114 Salt Marsh Road Public Hearing Notice (1 page)
18. 114 Salt Marsh Road Special Permit application materials (16 pages)
19. Memo to Erik Van Buskirk, Chairman Board of Appeals from David J. DeConeto, Director, Department of Natural Resources re: Conservation Commission comments on special Permit #21-34, 114 Salt Marsh Road, Sandwich, MA, dated January 3, 2022 (1 page)
20. Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: #21-34: 114 Salt Marsh Road Map 85 Parcel 2, dated December 6, 2021 (1 page)
21. Email to Maureen McCabe from Sean Miller re: Request for Comment: #21-34: 114 Salt Marsh Road Map 85 Parcel 2, dated December 6, 2021 (1 page)
22. 114 Salt Marsh Road, Kevin Kirrane, Esq., written presentation (29 pages)
23. 114 Salt Marsh Road site plan dated December 15, 2021 (2 pages)
24. Town of Sandwich May 2021 Protective Zoning By-Law (94 pages)