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PAUL J. HAVERTY
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April 5, 2019

Via Email and First Class Mail

George X. Pucci, Esq.
KP Law
101 Arch Street
Boston, MA 02110

RE: Surfside Crossing 40B – Comprehensive Permit Application

Dear Attorney Pucci;

Please accept this correspondence as a response to your letter to me dated April 3, 2019. As you have requested, I have discussed with my clients Surfside Crossing, LLC (the “Applicant”) your request that they extend the time for the Nantucket Zoning Board of Appeals (the “Board”) to close its public hearing on the Surfside Crossing comprehensive permit application beyond the currently scheduled date of April 11, 2019. While the Applicant appreciates the concerns of the Board in requesting the extension of the time to close the public hearing, they do not believe that further extensions are necessary, consistent with their previous positions, or in their best interest.

As you are aware, the Applicant filed its initial comprehensive permit application on April 12, 2018. The initial public hearing was held on May 10, 2018. Pursuant to the requirements of 760 CMR 56.05(3), the original deadline for closing the public hearing was November 10, 2018. On July 24, 2018, relatively early in the hearing process, the Applicant granted the first extension of the 180-day deadline to close the public hearing, extending it to December 13, 2018. In September 2018, responding to concerns raised during the hearing process, the Applicant submitted a potential modification plan reducing the number of units from one hundred and fifty-six (156) to one hundred (100). While it is common for plan revisions to occur during the course of a comprehensive permit hearing, there is no requirement that such changes must be accompanied by an extension of the 180-day period for the Board to close the public hearing. However, on October 3, 2018 the Applicant provided the Board another extension, this time to January 15, 2018. On December 5, 2018, my clients provided yet another extension, this time to February 15, 2019.

At the urging of the Board in the January 23, 2019 hearing, my clients agreed to participate in a design review process to see if an alternative design could be developed

that would be mutually agreeable, since at that time, it appeared that the Board and the applicant were too far apart of the various plans submitted up until that time. Because the Applicant was concerned about limiting the time of this process, it proposed an extension of the time for the Board to act until March 15, 2019. When pressed to provide an even longer extension, until April 15, 2019, the Applicant indicated that if the design review process did not produce a mutually agreeable result, my clients would default to their original design or the 100 unit “potential modification” design and there would be no need for further extensions. Accordingly, the time for the Board to act was extended to March 15, 2019.

My clients participated in the design review sessions in good faith, and brought back to the Board a 92-unit concept plan developed from the workshop sessions, which was presented at the Board’s March 11, 2019 hearing. Although the Board indicated that it liked the 92-unit design better than the 100-unit design, it also indicated that it wanted to see further reduction of the Project. Given the failure to come to a mutually agreeable alternative design, the Applicant indicated that – as previously stated – it intended to move forward on a design previously submitted to the Board (and reviewed by the Board) rather than spend additional time and resources pursuing a concept plan that was not its preferred development option. The Applicant did provide still another extension at this hearing, extending the time to close the hearing to April 4, 2019.

The Board held another hearing on March 26, 2019. During this hearing the Applicant once again expressed their position that they did not intend to expend resources providing additional information for a design concept that was not their preferred design, and for which the Board had not indicated was acceptable to them. Because of the lack of consensus that the 92-unit design was acceptable, the Applicant did not grant another extension at this hearing.

The Board held another public hearing on March 29, 2019. At that hearing, my clients indicated that while their preference would be to move forward on the prior design, for which information had been submitted and reviewed that was fully compliant with the submittal requirements contained in 760 CMR 56.05(2), they were willing to submit additional information into the record at the Board’s request so that the Board had a better basis for issuing a decision on the 92-unit concept. We emphasized that such submittal was not the preference of my clients, and that it would be made to satisfy the concern of the Board that they had a sufficiently detailed record to allow them to base their decision on the 92-unit concept, if that was the Board’s inclination. While the list of additional information requested by the Board exceeds what is required for preliminary plans pursuant to 760 CMR 56.05(2), the Applicant agreed to provide this information for the express purpose of completing the record. The Applicant made it clear that this information was not being submitted for the purpose of conducting additional review or additional hearings of this concept plan, as it is not its preferred development concept. Notwithstanding the Applicant’s position regarding additional review, it agreed to another extension, to April 11, 2019, to allow for the submittal of this information into the record.

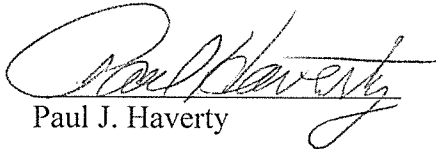
The extension to the April 11, 2019 hearing was done to allow the Board to receive the additional information on the 92-unit concept plan and discuss it at their regularly scheduled hearing that day. While we understand that the starting time of 1:00 may be inconvenient for some, this was the previously-scheduled starting time for this hearing, it is not a time chosen by the Applicant. We discussed a potential alternative date at the March 29, 2019 hearing, but were not able to identify a mutually agreeable alternative date. We strongly disagree with the contention that either the Board or the public will be ill-served by holding this hearing just after the additional information has been presented. There has been ample opportunity for both the Board and the public to discuss this application over the past eleven months. It was not the intention of the Applicant to engage in another review/hearing process on a concept-plan that was not considered to be acceptable to the Board.

It is clear that there are two significantly divergent perspectives on the state of this application/hearing process. The Board views the 92-unit concept plan as a step in the right direction, but one which requires additional review (and according to prior feedback, additional reduction). The Applicant views the 92-unit concept plan as a concept it would be willing to accept as a condition of approval (presuming that it is part of a decision which does not, in the aggregate, render the project uneconomic) but not one which it prefers as a development concept. While the Board believes that further review of the 92-unit concept would be mutually beneficial, the Applicant believes that there is no benefit in expending the time and resources reviewing a concept plan that was not as well-received as it had hoped, and which is not the design approach it prefers.

The Applicant strongly believes that it is time to close the local hearing process on this application. The applicant has agreed to six extensions totaling five months of additional time, resulting in a hearing process that is closing in on a full year. We believe that we have (or will have in advance of the April 11, 2019 hearing) submitted all of the information necessary pursuant to 760 CMR 56.05(2) for the Board to make a decision on any of the plans that have been submitted. The Applicant appreciates the efforts of the Board throughout this long, difficult hearing process, and is committed to working with the Board and the Town as we move forward to the next stage of the development process.

If you have any questions regarding this correspondence, please feel free to contact me.

Very Truly Yours,



Paul J. Haverty

Cc: Jamie Feeley
Josh Posner