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August 28, 2024

**VIA ELECTRONIC MAIL**

Susan McCarthy, Chair  
Zoning Board of Appeals  
2 Fairgrounds Road  
Nantucket, MA 02554

***RE: Surfside Crossing, LLC – Hearing on Remand***

Dear Chair McCarthy,

We represent the interests of Nantucket residents including the owners and occupants of four properties (“Residents”)<sup>1</sup> which directly abut the site of the above-noted proposed 156-unit residential development (“project”) by Surfside Crossing, LLC (“Applicant”). The Residents’ standing to challenge the project has been judicially established by Nantucket Superior Court.

As the Board of Appeals should be aware, we presented to Superior Court detailed information, testimony and argument concerning not only errors and improper procedures of the HAC in mandating the issuance of a comprehensive permit for this project but also several major substantive defects and adverse impacts of the modified project proposal. In deciding to remand the modified project to this Board, the Court did not act one way or the other on the substantive impacts of the project, but left those to address another day as needed. Because of those substantive defects and hazards, the Residents ask that the Board of Appeals deny a further comprehensive permit to this failed project and render moot the need for further litigation.

Pursuant to the July 16, 2024 Remand Order issued by the Housing Appeals Committee (“HAC”), we submit the following information and enclosed documents in connection with the Applicant’s Notice of Project Change and proposed modified project, in response to the letter

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<sup>1</sup> Christopher & Linda Meredith, 1 Wherowhero Lane; Jacques Zimicki & Joan Stockman, 13 Wherowhero Lane; Sean C. Perry, 14 South Shore Road; Jack Weinhold & Marybeth Splaine, 11 South Shore Road; Meghan Perry Glowacki, 2 Wayland Road; Bruce W. Perry, 261 High Street, Perkinsville, VT 05151.

Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 2

and materials submitted to this Board by counsel for the Applicant on August 21<sup>st</sup>, and in advance of this Board's September 5, 2024 hearing on remand.

This Board was deprived of the opportunity – its statutory prerogative and obligation - to review the current project proposal when HAC improperly ruled “insubstantial” the Applicant’s proposed wholesale modification of its project in the midst of the Applicant’s administrative appeal from this Board’s 2019 decision, such that HAC did not refer the modification to this Board.

In January 2024, the Nantucket Superior Court (Gildea, J.) ruled that HAC’s finding that the project modification was “insubstantial” was legally and factually improper. The Court therefore directed HAC to remand the project proceedings to this Board. In its Memorandum of Decision and Order (attached here as Exhibit A), the Court expressly found that:

- “The number, location, and size of all of the buildings on the site have changed in the altered proposal as a result of the complete elimination of the single-family building type . . . This altered configuration results in changes to roadways and traffic circulation, a reduction in total open space area with a reallocation of the majority of open space from private to community use, conversion of the majority of parking from a distributed pattern throughout the site in the semi-pervious driveways of single-family homes to a collected pattern in twelve impervious parking lots largely located on the periphery of the development, and other site plan changes.”
- Those changes in the type, number, size, height and location of buildings, together with changes in parking space numbers and configuration, open space design changes, and changes in roadways and traffic circulation within the site, “cumulatively” amount to a totally new or different proposal.”
- HAC “unreasonably disregarded” its own regulations (760 C.M.R. 56.07(4)(b)) in concluding that the modification of the project was not substantial.
- HAC dodged review by this Board when it improperly asserted that the Board already had a chance to consider the multi-family building type when it considered the Applicant’s original project proposal (which the Court specifically noted had consisted of 90% single-family homes and only 10% multi-family buildings).
- The altered proposal in effect “amount[s] to a wholly new project’ requiring remand for the board to consider, in public hearings, the impact of the number and location of the multi-family buildings on legitimate matters of local concern.”

As the Board is aware, the resulting HAC Remand Order requires this Board to consider at hearing all “issues related to” the several proposed project changes noted above (including for the building changes, both architectural style and occupant tenure), as well as “other matters within the scope of the remand (that is, matters affected by the proposed modifications) that are

Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 3

currently unanticipated.” The Board thus is mandated to give due consideration to the impacts of the project changes on local needs as defined by Chapter 40B, §§ 20- 23.

Before the Board therefore are the impacts of the proposed modified project on the full panoply of relevant local concerns, including traffic congestion, fire hazards and public safety, sewer connection and groundwater protection, noise and light impacts, and Historic District Act compliance. The Residents submitted to HAC written testimony from themselves and from three expert witnesses concerning these matters. (HAC’s written decision failed to even acknowledge, much less discuss, most of that expert and other testimony, omissions which the Residents raised with the Superior Court.)<sup>2</sup>

As noted above, where the Superior Court so far has sent the project modification back to HAC and to this Board for a detailed and appropriate review, it has not yet reached the arguments concerning substantive impacts of the altered proposal on those “legitimate” local needs. The Court is poised to do so, however, if that need arises.

The Residents therefore call upon this Board to conduct the kind of appropriate and thorough review of these matters of legitimate local concern that is explicitly called for by Chapter 40B and that was previously foreclosed.

To help the Board engage in that full review, we enclose with this letter the following additional materials showing that the Project as modified should be denied:

- A. The pre-filed testimony of Residents Weinhold, Meredith, Zimicki, and Perry, and Experts Fronzuto and Coombs, numbered as follows:
1. Pre-Filed Testimony of Jack Weinhold dated January 14, 2022;
  2. Pre-Filed Testimony of Christopher Meredith dated January 14, 2022;
  3. Pre-Filed Testimony of Jacques Zimicki with Exhibit 1, dated January 14, 2022;
  4. Pre-Filed Testimony of Bruce Perry dated December 16, 2020 and Supplemental Pre-Filed Testimony of Bruce Perry dated January 14, 2022, with attachment;
  5. Pre-Filed Testimony of David Fronzuto dated January 19, 2022, with attachment; and
  6. Pre-Filed Testimony of Diane Coombs dated January 14, 2022, with attachments.

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<sup>2</sup> For this reason, the assertion in Applicant’s letter to this Board that “the project as modified has already undergone a full review by the Committee [HAC]” is patently untrue. Residents’ memorandum to the Superior Court (copy enclosed here as Exhibit B) makes clear how the HAC failed to meaningfully review Residents’ positions.

Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 4

- B. Memorandum of Plaintiffs Meredith et al. in Support of Motion for Judgment on the Pleadings (as filed by the Residents in Superior Court), which – at pages 15-23 - explains in detail how the information and expert opinions contained in the above affidavits demonstrate the adverse effects of the modified project on traffic congestion, fire hazards and public safety, sewer connection and groundwater protection, noise and light impacts, and Historic District Act compliance.
- C. The January 4, 2024 Order of Building Commissioner Paul Murphy to the Applicant, revoking building permits for the project in light of the Superior Court’s decision vacating project approval, thereby “rendering the site in violation of the Nantucket Zoning Code.”

The Applicant’s letter to you dated August 21<sup>st</sup> makes much of the submittal to this Board of “Final Plans” in May 2023. That 2023 submittal, and review of it as a predicate to the building permit process, does not render unnecessary your review of the substantive local impacts that are before you now and should have been before you as early as 2020. The May 2023 process did not invite or require you to evaluate local impacts as Chapter 40B requires. Moreover, as noted above, in January of this year the Building Commissioner revoked building permits for the project in light of the Superior Court’s decision vacating project approval by HAC and specifically remanded the modifications to HAC and to this Board for thorough review at public hearing.

The enclosed pre-filed testimony (originally submitted to HAC) and Memorandum (originally submitted to the Court) are now available to you and part of the record in your remand hearing. They spell out the salient features of the modified project, relevant facts and technical matters, and the many egregious impacts which the modified project would have on the Surfside Road community at large, the properties and health of the long-time Residents whose homes and drinking water wells directly abut the project site, and Nantucket’s natural environment.<sup>3</sup> We therefore do not address those impacts at length in this letter, but rather alert you to the existence of substantial evidence demonstrating that this is a failed project, at the wrong location, and is unsafe for the public, occupants of the proposed complex, and the surrounding community.

The short addendum to this letter spells out highlights of each of the affidavits (pre-filed testimony as referenced above and enclosed). We also highlight here essential defects of the project proposal:

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<sup>3</sup> We plan to submit additional testimony and exhibits during the upcoming hearing.

Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 5

- The project as modified concentrates the units – and associated activities and noise of the project – exclusively into large apartment blocks, several of which would be extremely close to the Residents’ properties and homes and loom over them.
- The project as modified would concentrate parking spaces directly behind the Residents’ homes and, with new “U”-shaped driveways facing them would cast headlights into their homes at all hours. (Although it did not further address the matter of light and noise impacts, HAC’s deficient decision noted that that concentration of parking areas along the periphery of the site was problematic. And the Applicant seeks a waiver from all requirements for vegetative screening.)
- The project as modified would exacerbate inadequate on-site access to portions of the apartment blocks by Nantucket firefighters and, by concentrating the buildings along the site’s periphery in a notoriously windy environment, would increase the risk that any fire at the large complex would spread off site. This increased hazard is extremely troubling where all traffic to and from the 283-bedroom complex, and inevitable related service and vendor vehicles, would enter from and dump into Surfside Road just south of the Fairgrounds intersection. It thus lies at the chokepoint of regular, summer-season, and emergency access and egress for the entire neighborhood. Where that stretch of Surfside Road already is grossly congested, the modified project thus would further impede emergency services access and egress by the elderly Residents and others in the event of a fire or other emergency.
- The project as modified would not protect vulnerable and already compromised subsurface sewer force mains at the site from static and active loading during and after construction of the large apartment complex.
- The project as modified would concentrate runoff from parking areas and driveways in areas close to the site’s periphery and the Residents’ drinking water wells. This is especially problematic given the permeability of the sandy soils at this location and the prevailing flow of groundwater from north (the project site) to south (the adjacent Residences).
- The project as modified would violate the Historic District Act and do harm to the largely rural character of the neighborhood. The Applicant now would mass 283 residential units entirely in large buildings whose large size, unusual concentration, and suburban appearance are entirely out of character with the surrounding neighborhood.



Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 6

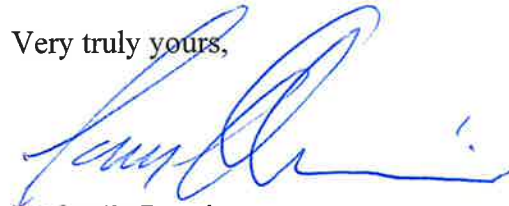
Affordable housing projects should work both for the community and the future project occupants. Public safety should be paramount, rather than dismissed or pursued only to some minimum that a developer can legally accommodate. This project fails on both counts, and it disserves both the community and future occupants.

We request that the Board conduct the full and careful review of the proposed project modifications and the evidence of their impacts on legitimate local needs, as mandated by Chapter 40B and the Superior Court, and then issue a denial of the project as modified.

The addendum of excerpts immediately follows on the next page.

Please contact us if you have any questions concerning this correspondence.

Very truly yours,



Paul R DeRensis

Daniel R. Deutsch

cc: Leslie Snell

Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 7

## ADDENDUM

Please note the following excerpts from the pre-filed and other testimony enclosed with this letter:

- A. Developer Jamie Feeley testified at the Housing Appeals Committee on cross examination that there would be 500 individuals occupying the proposed development, and that the Board of Appeals has never considered a project with only one entrance access.
- B. Testimony of Diane Coombs (Exhibit A6): “I comment here concerning the non-compliance of the current version of the proposed Surfside Crossing development project . . . with the Historic District Commission Act... and with Nantucket’s Historic District Commission Bylaw ... and the projects harmful impact on its residential neighbors and abutters. The non-compliance cannot be resolved without significant alterations to the size, density and configuration of the proposed project (page 1, Paragraph 2).
- C. Testimony of David Fronzuto (Exhibit A5): “It is my professional opinion that the proposed Surfside Crossing project as currently configured and presented by the developer presents very substantial emergency response – and therefore public safety – risks to the residents of the South Shore Road neighborhood . . .” page 2, para 6... In my professional opinion in the field of emergency management, a residential project of the size, density and configuration of that proposed should not be constructed at the location proposed...” Page 6, paragraph 17.
- D. Testimony of Weinhold (Exhibit A1): “Because our property directly abuts and our well lies just feet from the Project Site, and due to the groundwater flow and permeability of the sandy soils, any contamination on or released from the Project Site or into its groundwater would flow into our property and contaminate our well (page 12, para 14). “Because we are a direct abutter to the Project Site and our house is just 21 feet from its property line, our property would be especially jeopardized by any fire at the proposed development”, page 3, para 22. “From the [Nantucket] Fire Chief’s testimony I understand that due to its size and design, the Project presents very serious firefighting access problems for his department and that, because of that and Nantucket’s windy conditions and the neighborhood flammable vegetation, ... the proposed Project “creates a serious public safety concern.”

Susan McCarthy, Chair  
Zoning Board of Appeals  
August 28, 2024  
Page 8

- E. Testimony of Zimicki (Exhibit A3): Even in ordinary conditions, the Project would greatly exacerbate traffic congestion for us. During the summer months, cars routinely back up along South Shore Road from the intersection with Surfside Road, and along Surfside and Fairgrounds Road, ... That congestion would be multiplied by the addition of the contemplated 291 Project resident vehicles – as well as other visitor, delivery and service vehicles all entering and existing the Project Site through a single driveway just south of the South Shore Road – Surfside Road intersection” Page 3, paragraph 28.
  
- F. Testimony of Chris Meridith (Exhibit A2): “Because of the proximity of several of the large condominium building structures to our property line and the location of the roadway and parking on the project site near our property line, my wife and I will suffer adverse noise and light impacts emanating from the project site” Page 3, paragraph 27.
  
- G. Testimony of Perry (Exhibit A4): “[Nantucket] Fire Chief Murphy has concluded that “It is the position of the Fire Department that the proposed design and size of the buildings in relation to the size of the lot and location of the site provide inadequate fire access, creating a serious public safety concern”... page 9, para 22 “I am very familiar with the vegetation at and in the immediate area of the applicant’s proposed project and with the implications of such vegetation for fighting fires ... this vegetation is some of the most combustible and volatile vegetation in New England ... (page 9, para 23), ... “ the predominance of such vegetation in the immediately surrounding area, including on parts of the immediately abutting residential properties to its south, the density of the proposed development, the close proximity of the abutters’ homes, and the strong prevailing winds present a very substantial risk of fire spread to those abutting properties in part by means of sparking “ Page 10, para 24...”it is my professional opinion that the presence of the Project would foreseeably prevent Nantucket authorities from successfully fighting a significant fire at or near the Site...”, page 10 para 26.