



ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Susan McCarthy (Chair), Lisa Botticelli (Vice chair), Ed Toole (Clerk), Michael J. O'Mara, Kerim Koseatac
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, February 11, 2021

This meeting was held via remote participation using ZOOM and YouTube,

Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law

Called to order at 1:00 p.m. and announcements made by Ms. McCarthy

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker
Attending Members: McCarthy, Botticelli, O'Mara, Poor, Thayer, Mondani
Absent: Toole, Koseatac

Agenda adopted by unanimous consent

Motion **Motion to Approve.** (made by: Botticelli) (seconded)
Roll-call vote Carried 5-0//McCarthy, Botticelli, O'Mara, Thayer, and Poor-aye

I. APPROVAL OF MINUTES

1. January 14, 2021
Motion **Motion to Approve as drafted.** (made by: Botticelli) (seconded)
Roll-call vote Carried 5-0//McCarthy, Botticelli, O'Mara, Thayer, and Poor-aye

II. OLD BUSINESS

1. 11-20 Peter J. Mackay & Alison Mackay and David P. Mackay & Anne M. Phaneuf, Tr., Mackay/Phaneuf Family Trust
21 & 25 Monohansett Road Alger

CONTINUED TO MAY 13, 2021

III. NEW BUSINESS

1. 02-21 ACK*NOW 14 Mill Street Pickering-Cook
Appellants bring an appeal, pursuant to M.G.L. c.40A, Sections 8 & 15 and Zoning By-law Sections 139-29.E and 139-31, of a determination by the Building Commissioner that the use of 14 New Mill Street exclusively as a short-term rental ("STR") business is not a commercial use prohibited in the residential zone in which it is located. Appellant requests that the Zoning Board of Appeals overturn the Commissioner's determination with respect to the property and further that zoning enforcement action be taken by issuing an order to the owner to cease and desist using the property as an STR. The Locus is situated at 14 New Mill Street, is shown on Assessor's Map 55.4.4 as Parcel 133, and as Lot A-1 on Plan Book 14, Page 17. Evidence of title to 14 New Mill Street, LLC is recorded in Book 1559, Page 133 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
Voting McCarthy, Botticelli, O'Mara, Thayer, Mondani
Alternates Poor
Recused None
Documentation File with associated plans, photos, required documentation, and correspondence.
Representing Nina Pickering-Cook, Anderson & Krieger LLP, for ACK*Now and neighbors
Julia Lindner, Executive Director ACK*NOW
Beverly Dammin, 12 New Mill Street
Public Paul Murphy, Building Commissioner
Alex Weisheit, K&P Law P.C., for ZBA
John Hofmann, Gilman, McLaughlin & Hanrahan, for 14 New Mill Street, LLC
Bob McLaughlin, Gilman, McLaughlin & Hanrahan LLP for 14 New Mill Street, LLC
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for 14 New Mill Street, LLC
Robert Miklos, 16 Mill Street
Discussion (1:10) **Pickering-Cook** – This is to appeal a December 1, 2020 decision by the Building Inspector, requesting the Board to overturn his ruling on 14 Mill Street, which is an investor-owned short-term rental (STR). This is not an attack on residents occasionally renting their homes for additional income. The issue is whether an investor-owned property, where no one lives, can be a legitimate use within a residential zone. Her clients contest that this is as a single-family home since no one claims it as a residence. Cited court cases in which it was ruled that STRs are a commercial use. The Nantucket Zoning bylaw has the concept of transient residential facility (TRF) and the definition for owner occupied, which requires the owner lives at least 3 months at the property. This is a TRF and they should acquire the appropriate license or shut down. Read into the record statements of opposition from her clients.

Dammin – We abut this property. 12 and 14 New Mill Street were in the Coffin family for many years until 12 New Mill Street was purchased by our family. Cited ways the neighborhood has been negatively impacted by the STR use at 14 New Mill Street versus 2-weeks (or more) rentals by owners on the street.

Lindner – ACK*NOW has been researching investor-owned STRs over the past few months and the impact on the Island; recapped their findings on housing and quality of life for year-round residents.

McCarthy – 14 New Mill Street was on the free market, but no one purchased it for year-round housing. Asked speakers to focus on the harm alleged against this property.

Pickering-Cook – There are examples around the Island on disruption, noise, traffic, anonymity, etc.

McCarthy – She understands that the neighborhood has changed; that happens. Traffic and noise increases for all of us in the high season; we have a larger year-round population, so traffic and noise have increased everywhere, and we have all lived next to rentals.

Pickering-Cook – Feels Ms. McCarthy is being dismissive of the neighbors' concerns. This property is 52 weeks of different rentals a year.

McCarthy – In her opinion, the neighbors' concerns don't rise to the level of harm.

Botticelli – In the definition of transient rentals, it mentions they don't have kitchens.

Pickering-Cook – Individual residents don't have their own kitchen and there is no commercial kitchen at the facility.

McCarthy – Looking at rooming, lodging, and guesthouse, it mentions those don't have commercial kitchens. Also, TRFs tend to have live-in managers.

McLaughlin – He represents 14 New Mill Street, LLC not the Copley Group; Copley Management Group manages the property. Zoning is the use and dimensions; this is a single-family home owned by a single entity. Reviewed the appellant's credentials to file this case. Standing is essential to this appeal. The Aggrieved must be evidenced as having established legal interest. Countered cases cited by Ms. Pickering-Cook. He expected police logs, traffic records, expert testimony, etc. to show how the neighborhood has been detrimentally impacted. We contest that the primary use for 14 New Mill Street is that of a single-family residence; it is not a rooming house or hotel. If this issue is a community-wide concern, it should be addressed at Town Meeting, not here.

McCarthy – This board is not in a position to decide standing.

Pickering-Cook – She is acting on behalf of not only ACK*NOW, but the neighbors as listed in her memorandum.

Weisheit – Standing is for a Land Court to decide; recommended the ZBA not address that.

Mondani – Asked Mr. Weisheit what standard to use in reviewing the Building Inspector's decision.

Weisheit – It's up to the Board to determine if what he did was reasonable based upon your understanding of the bylaw.

Murphy – The Board has his letter. Renting of homes is a permitted, primary, principal use regardless of who owns it. This should come through a Zoning Bylaw, not enforcement. This is not an accessory use; it doesn't matter who owns it or how long someone stays there.

McLaughlin – His issue is that the abutters appeal did not meet the 30-day appeal period. Ms. Pickering-Cook made the deadline for ACK*NOW but not the neighbors. Also, ACK*NOW does not prove agency.

Pickering-Cook – Countered Mr. McLaughlin's claim and read her letter of December 30, 2020 citing the neighbors.

Dammin – We know Nantucket has changed; her point is that the transient tenants are disrespectful due to the nature that they are anonymous.

McCarthy – The behavior of the tenant isn't determined by the owner.

Pickering-Cook – The frequency and anonymity of STRs for profit only are looked at by the court as commercial use. The owner isn't relevant, it's the use; in this case it is solely for profit.

McCarthy – She respectfully disagrees with Ms. Pickering-Cook's assertion how Nantucketers use their homes. This is a traditional, accepted, celebrated use, which includes being an additional revenue stream for an Islander. There are different ways that people rent their homes.

Botticelli – This is very different than the past normal practice of residents renting their house out for extra income. She thinks it is turning into a problem for Nantucket. People should be allowed to rent their house and do what they want with their property; but this is different. This is a deeper issue the Island has to grapple with.

McCarthy – There is a Zoning Warrant Article that addresses investor-owned STR. We need to look at the bylaw as currently written and make a ruling based on that.

Pickering-Cook – She is trying to address the particular harm caused by the use of this particular property on her clients and their neighborhood.

McCarthy – Asked, if ZBA rules this is transient, would they need a special permit to change their use as a TRF.

Weisheit – If the ZBA finds it to be transient, it would require a special permit.

Antonietti – TRFs are not allowed in the ROH; rooming, lodging or guest house are allowed by special permit; a Hotel is not allowed.

McLaughlin – We all know this is a single-family house.

Reade – The use chart is confusing. TRF is allowed by special permit in that portion of the ROH within ¼ mile of downtown; this is outside that limit, so doesn't require a special permit.

Miklos – He is a party of interest and been impacted by the activities at 14 New Mill Street. The change of ownership and use has significantly impacted the neighborhood. The critical issue is that the use changes the character of the houses on the street. This is one of 800 remaining pre-civil war houses that contribute to the authenticity and character of Nantucket;

it was originally a 3-bedroom house converted to a 5-bedroom house thus destroying the historical character of the structure; destroying that historic character ultimately destroys the character of the street and the value of the homes.

O'Mara – Both sides have made good points; however, he hasn't heard anything that would compel him to overturn the building inspector's decision.

Thayer – He feels if we overturn the Building Inspector's decision, we become a policy board.

Botticelli – Her earlier discussion wasn't indicative that she disagrees with Mr. Murphy. There is no zoning reason to overturn Mr. Murphy's decision. This is a huge issue for the Island and needs to be discussed.

Mondani – This has been a great discussion about the issue. His view is that Mr. Murphy made the right interpretation of the bylaw and there is no reason to overturn it. The appellant has a challenge with the issue of standing. He believes ACK*NOW is trying to make a policy decision through this Board; it's a way to shoehorn their policy decision through the ZBA; that's not the right way.

Pickering-Cook – Read comments of concern from Jim Riesenbach at 7 New Mill Street and Louisa Schaeffer at 5 New Mill Street.

Motion **Motion to Deny the appeal and uphold the Building Inspector's determination this is not a commercial use.**
(made by: Thayer) (seconded)

Roll-call vote Carried 5-0//McCarthy, Botticelli, O'Mara, Thayer, and Mondani-aye

2. 03-21 Damon S. Cartelli & Debra A. Cartelli 35 Washington Street Beaudette
- Applicant is requesting Modification of prior relief by Variance granted in File No. 73-94 (recorded at Book 463, Page 206) pursuant to Zoning By-law Section 139-32 in order to validate the premises' insufficient frontage and a westerly lot line setback intrusion brought about by an interior lot line reconfiguration with abutting property. Specifically, Applicant requests that a Condition prohibiting more than one dwelling be eliminated to allow the applicant to construct a secondary dwelling upon the premises. Neither nonconformity will be affected by the proposed modification. The Locus is situated at 35 Washington Street, is shown on Assessor's Map 42.3.2 as Parcel 142, and as Lot 4 on Plan File 46-U. Evidence of title is recorded in Book 1635, Page 1329 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).

Voting McCarthy, Botticelli, O'Mara, Thayer, Mondani

Alternates Poor

Recused None

Documentation File with associated plans, photos and required documentation

Representing Richard Beaudette, Vaughn, Dale, Hunter, Beaudette, and Swain P.C.

Public None

Discussion (2:53) **Beaudette** – There are two non-conformities on the property: 29-foot frontage and easterly and westerly setbacks. The 1994 variance validated this and 32 Union Street as separately marketable lots with conditions. Explained the request to remove Conditions A and B. In 1994 they should have probably done an 81L subdivision; there would have been no restrictions in that case. This is an oversized lot.

Mondani – If we were to grant the variance, asked how it would impact 32 Union Street.

Beaudette – If the conditions are changed, the other property would have the ability to request the same.

Antonietti – This is unique to this locus. The decision would not mention 32 Union Street; they cannot benefit from the relief unless they come to the ZBA.

McCarthy – Asked what the R1 to ROH change meant to the property.

Beaudette – That changed made 32 Union Street completely compliant and provided this site more groundcover with no setback.

McCarthy – Wonders why the Board would not now allow a second house on the lots. A second dwelling wouldn't overtax that lot and the frontage wouldn't be an issue.

Beaudette – His experience is that the ZBA typically wants to avoid non-conformity. If this came in as an empty lot today, a second dwelling would be allowed. Also, the property wasn't a subdivision but a lot-line change. He's seen this condition on another lot where a lot was limited to one dwelling; but the house took up the whole lot.

O'Mara – He has no opinion on this and will go along with the Board on this.

Botticelli – Asked if there would be any concern with parking.

Beaudette – He could see the Planning Board wanting them to extend the driveway past the house a bit; they have to meet Planning Board parking requirements.

McCarthy – Questions why they didn't go with an 81L. They might have gotten the variance because they chose the wrong venue to making two lots.

Discussion about access to the two lots.

Thayer – Asked where the second dwelling would be placed and generate sufficient parking.

Beaudette – The second dwelling would be in back of the main house; the lot is almost 10,000sf with a lot of room for parking in the front. They don't want to extend the driveway behind the front house.

Antonietti – They could do a hammerhead-type configuration; there's time to figure that out.

Botticelli – Her concern is that you're adding density and more cars. They are asking to undo a restriction placed there because of a variance and feels there was a reason for that restriction.

Antonietti – Many variances like this were issued; the Board did grant similar relief in an identical situation.

McCarthy – The Planning Board made an unfavorable recommendation under the Zoning Bylaw; the lots were created in 1983 and there were no grounds to grant the variance.

Discussion on why the variance was granted with conditions in 1994 versus going with an 81L subdivision.

O'Mara – The conditions could have been offered up in the presentation.

McCarthy – If we allow the restriction to come off, the Planning Board will look closely at access and parking. It would have been allowed with an 81L; she's okay with removing the restrictions.

Mondani – We don't know why this was created.

Poor – The Planning Board didn't uphold the request for a second dwelling due to access.

Motion

Motion to Approve the relief to eliminate the first 2 conditions as requested. (made by: Mondani) (seconded)

Roll-call vote

Carried 4-1//McCarthy, O'Mara, Thayer, and Mondani-aye; Botticelli-nay

IV. OTHER BUSINESS

1. None

V. ADJOURNMENT

Motion

Motion to Adjourn at 3:33 p.m. (made by: Botticelli) (seconded)

Roll-call vote

Carried 5-0//McCarthy, Botticelli, Thayer, O'Mara, and Mondani-aye

Sources used during the meeting not found in the files or on the Town website:

1. None

Submitted by:

Terry L. Norton