



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, May 13, 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 1:04 p.m. and announcements made by Ms. Botticelli

Staff in attendance: Eleanor Antonietti, Zoning Administrator; Terry Norton, Town Minutes Taker
Attending Members: Botticelli, Toole, O'Mara, Poor, Thayer, Mondani
Absent: McCarthy, Koseatac
Late Arrivals: Toole, 1:44 p.m.
Early Departures: Botticelli, 1:44 p.m.

I. APPROVAL OF MINUTES

1. February 11, 2021
2. March 11, 2021
Motion **Motion to Approve.** (made by: O'Mara) (seconded)
Roll-call vote Carried unanimously//O'Mara, Mondani, Thayer, Poor, and Botticelli-aye
3. April 8, 2021
Motion **Tabled to June 10th meeting.**
Roll-call vote N/A

II. OLD BUSINESS

1. 11-20 Peter J. Mackay & Alison Mackay and David P. Mackay & Anne M. Phaneuf, Tr., Mackay/Phaneuf Family Trust
Request to WITHDRAW WITHOUT PREJUDICE 21 & 25 Monohansett Road Alger
Voting Botticelli, O'Mara, Poor, Thayer, Mondani
Alternates None
Recused None
Documentation File with associated plans, photos and required documentation
Representing Sarah Alger, Sarah F. Alger P.C.
Public None
Discussion None
Motion **Motion to Accept the Withdrawal without Prejudice.** (made by: O'Mara) (seconded)
Roll-call vote Carried unanimously//O'Mara, Mondani, Thayer, Poor, and Botticelli-aye
2. 06-21 Jayne C. Debiasio & Brian F. Debiasio 39 Meadow View Drive Reade
Request to CONTINUE TO JULY 8, 2021
Voting Botticelli, Poor, Thayer, Mondani
Alternates None
Recused None
Documentation File with associated plans, photos and required documentation
Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Public None
Discussion None
Motion **Motion to Continue to July 8, 2021.** (made by: Mondani) (seconded)
Roll-call vote Carried 4-0//Mondani, Thayer, Poor, and Botticelli-aye

4. 08-21 EBWC, LLC 4 Lincoln Avenue Beaudette
- Applicant is requesting relief by Special Permit pursuant to Zoning By-law Section 139-33.A to allow for the extension, alteration, and change of a dwelling which is pre-existing nonconforming as to height. In the alternative and to the extent necessary, Applicant requests relief by Variance pursuant to Section 139-32. Specifically, Applicant proposes to construct an addition to the dwelling with a ridge height extending from the pre-existing nonconforming ridge height. As a result of the project as proposed, the height nonconformity will decrease slightly. The Locus is situated at 4 Lincoln Avenue, is shown on Assessor's Map 30 as Parcel 151, as Lot 1 upon Land Court Plan 33167-B. Evidence of owner's title is registered on Certificate of Title No. 27906 with the Nantucket County District of the Land Court. The site is zoned Residential One (R-1).
- Voting Toole (acting chair), Poor, Thayer, Mondani
- Alternates None
- Recused Botticelli, O'Mara
- Documentation File with associated plans, photos and required documentation
- Representing Richard Beaudette, Vaughn, Dale, Hunter, Beaudette, and Swain P.C.,
- Public None
- Discussion (1:46) **Beaudette** – This was held so we could get the Historic District Commission (HDC) approval; that has been submitted into the packet. Reviewed the request.
- Antonietti** – The HDC approval is in the packet on pages 29-36.
- Mondani** – Regarding the site plan, asked that the distance of the rear studio from the lot line be shown on the plan.
- Beaudette** – It is a future structure, but the distance can be added to the plan.
- Antonietti** – This isn't a complete demolition of the structure.
- Toole** – Occasionally, the project will creep up in height. There should be certification that the height will be no different than as noted on the HDC approval.
- Antonietti** – It can be conditioned that to get the Certificate of Occupancy, the height must be certified.
- Beaudette** – A little fill will be added to level out where the grade drops resulting in a 32'3.75" ridge height from grade.
- Antonietti** – On pages 31 & 32, the elevations show the existing grade and proposed grade.
- Thayer** – The ridge height must stay the same as approved by the HDC.
- Antonietti** – A neighbor sent an email after the last hearing; she responded and has not heard back. Asked if there would be a construction moratorium on this; you would normally do that in R1.
- Motion **Motion to Approve the relief as requested with no exterior construction between Memorial Day and Labor Day and with the provision that before issuance of the Certificate of Occupancy, the ridge height be certified as no higher than as approved by the HDC.** (made by: Thayer) (seconded)
- Roll-call vote Carried 4-0//Thayer, Mondani, Poor, and Toole-aye

III. NEW BUSINESS

1. 09-21 Shannah Green 49 Fairgrounds Road Alger
- Applicant requests amendment of previously granted Special Permit relief, recently amended by the Planning Board to permit creation of a secondary residential lot, to allow use of a seasonally covered deck for outdoor classes. Specifically, Applicant seeks to modify the relief and its conditions to: 1) permit classes to be conducted outside to allow for appropriate social distancing during the pandemic; and 2) substitute an updated Site Plan as new "Exhibit A." The Locus is situated at 49 Fairgrounds Road, is shown on Tax Assessor's Map 67 as Parcel 306, and Lots 56 and 57 upon Land Court Plans 34507-H and 34507-I. Evidence of owner's title is registered as Certificate of Title No. 16996 in the Nantucket County District of the Land Court. The site is zoned Residential 10 (R-10).
- Voting Botticelli, O'Mara, Poor, Thayer, Mondani
- Alternates None
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing Sarah Alger, Sarah F. Alger P.C.
- Public Shannah Green, applicant
- Robert Bates, abutter
- Discussion (1:13) **Alger** – Explained the reasons for the request for a seasonally covered deck. Ms. Green is adhering to all the COVID restrictions for her Yoga classes. One abutter has a concern; she thinks most of those can be addressed. Doesn't believe anything planned will be any more of a nuisance to the neighborhood than mowers or conversations. The recently approved secondary lot will not impact this request. She is currently allowed to have indoor classes only.
- O'Mara** – Noticed the "seasonal"; asked the proposed dates.
- Green** – She will open about June 20th and will close around Columbus Day or before.
- Thayer** – Asked if the classes would be moved to inside when it is allowed.
- Green** – Over the winter, classes will go back inside. She'd love to keep the deck but if that is problematic, she will remove it once COVID restrictions are lifted; right now, it's the only way she can run her business.
- Thayer** – Asked if she has a building permit for the deck.
- Green** – Last March, she was told by someone in the Building Department that a building permit wasn't necessary since it is a temporary structure.

Thayer – If it is a temporary structure and there is no building permit, once you can go back to full interior occupancy, you have to move back inside. To continue using the deck, you would have to get another permit.

Alger – That would be the next step.

Botticelli – Regarding the parking, asked if interior and deck would be used simultaneously.

Alger – No, they are limited to 15 students at a time by the Special Permit. We aren't asking for any change on that.

Mondani – Asked for confirmation that this amendment is not impacted by the Planning Board A&R decision.

Alger – No; the Planning Board has jurisdiction over the secondary lot. The underlying special permit allowing the secondary lot is something ZBA has jurisdiction over. This request is to allow classes to be held outside on the deck instead of inside.

Botticelli – The original 2000 Special Permit is on Page 55 of the packet; it specifies 15 students.

Antonietti – Also, there is an assumption that no recreational and exercise activities would be taking place exterior to a structure dedicated to that purpose.

Discussion about how this request differs from indoor/outdoor dining for a restaurant.

Alger – With a neighbor having a concern, it seems prudent to get the outdoor classes permitted rather than Ms. Green getting a zoning violation.

Bates – He and his neighbors' concern is the advertising pushing healing arts, which includes "sound baths" on the deck; sound baths include percussion and voice sounds. Last summer, he could hear the music. We don't know if the deck was built for commercial use; there is no safety plan; and he doesn't think the deck is large enough to allow social distancing.

Botticelli – Where is the noise addressed in the prior permit.

Alger – It's in the 2000 original permit, "No music will be played that can be heard beyond the lot line of the premises." The music is not amplified.

Green – The sound bath might be a one-time event. The music for the yoga class is meditative and much less impactful than grilling, lawn mowers, parties, and children. Feels the noise concern is ludicrous.

Thayer – He would allow this until we go back to full occupancy; then the operation should move back inside.

Mondani – Agrees. Noted that the permit says, "music coming from inside the studio." Noise is noise, and everyone has a different tolerance. He's willing to allow it until restrictions are lifted.

Antonietti – Could re-review it after COVID restrictions are lifted. The Planning Board will often revisit a Special Permit a year after it is issued to ensure compliance and that abutters have no concerns about the impact of what is permitted.

Green – The other two neighbors, the Hortons and St. Peters and are her closest neighbors, are supportive of using the deck this season and for the long term with the placement of screening. She will take the approval for this season then seek permanent approval later. She has a tarp for the purpose of shading and rain.

Discussion on the motion

Thayer – If COVID restrictions go beyond October 15, 2021, he would like to see them come back with a more permanent plan

Motion

Motion to Approve the request until such time as COVID restrictions require the owner to move the operation inside or October 15th, whichever is earlier. (made by: Mondani) (seconded)

Roll-call vote

Carried unanimously // Mondani, Thayer, O'Mara, Poor, and Botticelli-aye

IV. OTHER BUSINESS

1. Antonietti – Announced she is leaving this position on June 11th.

V. ADJOURNMENT

Motion **Motion to Approve. 1:58 p.m. (made by: Mondani) (seconded)**

Roll-call vote Carried unanimously // Thayer, Toole, O'Mara, Mondani, and Poor-aye

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

1. Draft minutes February 11, March 11, and April 8, 2021

Submitted by:

Terry L. Norton