



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, June 10, 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 1:02 pm and announcements made by Ms. McCarthy

Staff in attendance: Eleanor Antonietti, Zoning Administrator; T. Norton, Town Minutes Taker

Attending Members: McCarthy, Botticelli, Toole, O'Mara, Koseatac, Mondani

Absent: Poor, Thayer

Adoption of agenda

Motion **Motion to Approve.** (made by: Botticelli) (seconded)

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

I. APPROVAL OF MINUTES

1. April 8, 2021

Motion **Motion to Approve as drafted.** (made by: Botticelli) (seconded)

Roll-call vote Carried 5-0//McCarthy, Botticelli, Toole, Koseatac, and Mondani-aye

2. May 13, 2021

Motion **Motion to Approve.** (made by: Botticelli) (seconded)

Roll-call vote Carried 4-0//Botticelli, O'Mara, Mondani, and Toole-aye

II. OLD BUSINESS

1. 30-19 Habitat for Humanity Nantucket, Inc. Benjamin Drive project Holland

CONFIRMATION of Modification of prior Comprehensive Permits – Miacomet Village 40B

The Applicant requests confirmation of the 2019 approval to modify prior Comprehensive Permits, granted in accordance with Massachusetts General Laws ("M.G.L.") Chapter 40B, pursuant to 760 CMR 56.05. Although the subject property is permanently deed-restricted for the purpose of providing affordable year-round housing, the Applicant seeks to have the approved units contribute to the required 10% Subsidized Housing Inventory ("SHI") for the Town. The Department of Housing and Community Development ("DHCD") has determined that a Local Initiative Program is the proper method to include the units on the SHI list. After conducting a site visit, DHCD issued a Project Eligibility Letter ("PEL") on May 7, 2021. With a complete hearing process consisting of proper abutter notification and public comment having taken place in 2019, and with the issuance of the PEL, the Applicant is requesting the Board confirm and reissue the Decision in File No. 30-19, recorded at Book 1737, Page 20, on file at the Nantucket County Registry of Deeds, with a current date in order to establish both the bonafide permit and date of eligibility for inclusion on the SHI and toward certification, per DHCD guidance. With this, it is anticipated that the units will contribute to Nantucket's next period of Safe Harbor relative to M.G.L. Chapter 40B. The property is situated within the Miacomet Village, a 40B subdivision approved and modified in Comprehensive Permit Decisions numbered 025-86, 050-86, 030-94, 110-93, and 17-97. Locus is shown as Lots 17B & 17C on Plan No. 2020-13. Evidence of owner's title is in Book 1823, Page 230. The site is zoned Limited Use General 2 (LUG-2).

Voting McCarthy, Botticelli, Toole, O'Mara, Koseatac

Alternates Mondani

Recused None

Documentation File with associated plans, photos and required documentation

Representing Tucker Holland, Housing Specialist

Gerry Keneally, President Habitat for Humanity (H4H)

Public None

Discussion (1:12) **Holland** – This is to confirm the date of eligibility for the 3 H4H houses to be included on the SHI list; once these are included, all H4H houses will be accredited toward SHI.

Antonietti – This is housekeeping and benefits the Town.

O'Mara – Confirmed that the part of the motion will include the Chair authorizing this by her signature.

Motion **Motion to Grant the request and authorize the Chair to sign the decision documenting the proceedings and approval.** (made by: Botticelli) (seconded)

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

2. 06-21 Jayne C. Debiasio & Brian F. Debiasio 39 Meadow View Dr. Reade

CONTINUED TO JULY 8, 2021

Applicants are seeking to further modify prior relief by Special Permit (Decision File No. 030-11 as modified by File No. 25-19). The 2011 decision permitted a reduction of the sideline setback from 10 feet to 5 feet in order to construct a garage/studio within the northerly side yard setback and was subject to certain conditions. Specifically, Applicants request elimination of condition 'a.' that the "studio shall not be for human habitation". Applicants have obtained Planning Board approval to convert the structure into a secondary dwelling. Locus is situated at 39 Meadow View Drive, shown on Assessor's Map 56 as Parcel 133, and as Lot 50 upon Land Court Plan 14830-O. Evidence of owner's title is registered on Certificate of Title No. 23121 with the Nantucket County District of the Land Court. The site is zoned Residential Twenty (R-20).

III. NEW BUSINESS

1. 10-21 Brian Rice and Robert Goldrich 41 Crooked Lane Cohen
- Applicant requests relief by Variance pursuant to Section 139-32 for a waiver from the front yard setback provisions in Section 139-16. The applicant proposes to construct a 384 SF detached garage in the existing driveway as close as 18' from the front yard lot line where 30' setback distance is required. The proposed encroachment is further back than the pre-existing nonconforming main dwelling which is sited as close as 3.6 feet from the front yard lot line. The Locus is constrained by wetlands such that there is no location for the garage that is outside both the 50' buffer and the front yard setback. The Locus is situated at 41 Crooked Lane, is shown on Nantucket Tax Assessor's Map 41 as Parcel 202, and as Lot 2 on Land Court Plan 32312-B and Lot 6 on LCP 32313-C. Evidence of owner's title is registered as Certificate of Title No. 20897 in the Nantucket County District of the Land Court. The site is zoned Residential – 20 (R-20).
- Voting McCarthy, Botticelli, Toole, O'Mara, Mondani
 Alternates Koseatac
 Recused None
 Documentation File with associated plans, required documentation, and Conservation Commission plans.
 Representing Steven Cohen, Cohen & Cohen Law P.C.
 Art Gasbarro, Nantucket Engineering & Survey
 Public None
- Discussion (1:22) **Cohen** – Lot is under 7,000 SF with 3,000 SF for the building envelope. The plan is to eliminate the garage to allow for an addition to the house and a new small structure within the driveway layout.
McCarthy – The prior decision was for the same owner.
Toole – Asked about the Conservation Commission (ConCom) decision denying the waiver to build within the 50' buffer. The location of the new proposed structure doesn't meet zoning.
Gasbarro – Read the minutes from the December 3, 2020 ConCom meeting; removing the existing garage wasn't seen as sufficient justification for new construction encroaching into the 50' buffer.
McCarthy – She would be interested in seeing the Historic District Commissions (HDC) final approval.
Botticelli – Suggested reducing the new garage to 1 car to reduce its encroachment into the setback.
Toole – Would like to see that additional information.
O'Mara – Likes the idea of changing the garage to a 1-car and making the encroachment less.
Mondani – It seems like the ConCom decision was a broad-brush against any construction within the 50' buffer. He doesn't see a hardship if the variance is not granted.
McCarthy – She agrees with Mr. Mondani; the addition would enlarge the house by 1/3rd.
Cohen – Luke Thornewill, the architect, emailed him saying it is a 1-story garage with no residence and they are willing to pull it more out of the setback. The only way to eliminate encroachment is to slide the garage south.
Gasbarro – Reviewed the wetland permitting process and ConCom concerns against allowing structures within the 50' buffer. The reduction in width doesn't change the encroachment of the length into the setback.
Botticelli – A garage doesn't need to be 24' long; 16X20 would be sufficient for a pick-up truck. To Mr. Mondani's comment, she doesn't see a hardship either.
McCarthy – Suggested a continuance to allow time to "massage" the plans, submit the HDC approval, and provide photos of existing conditions.
- Motion **Motion to Continue to the July 8th meeting at 1:00 pm.** (made by: Botticelli) (seconded)
 Roll-call vote Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, and Mondani-aye

2. 11-21 Gregory Siemon Swart and Ann Cameron Kalb Swart, Tr. of Swart 2004 Trust

94 Quidnet Road Cohen

Applicant requests relief by Special Permit pursuant to Zoning By-law Section 139-33.A(2) to allow the alteration and expansion of a pre-existing nonconforming dwelling on an undersized lot. Specifically, applicant proposes to construct a roughly 142 SF single story addition to the main dwelling, resulting in an increase of the pre-existing nonconforming ground cover from 1,597 SF to 1,739 SF, increasing the ground cover ratio from 21.7% to 23.6% where maximum allowed is 12.5% or 1,500 SF pursuant to Section 139-33.E. The Locus is situated at 94 Quidnet Road, is shown on Tax Assessor's Map 21 as Parcel 107, and as Lot 1 on Land Court Plan 8606-A and Lot 31 on LCP 8606-B and as unregistered land on Plan Book 20, Page 19. Evidence of owner's title is registered as Certificate of Title No. 26749 in the Nantucket County District of the Land Court and recorded in Book 1628, Page 272 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 20 (R-20) and Limited Use General 3 (LUG-3).

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

Alternates Koseatac

Recused None

Documentation File with associated plans, photos, and required documentation

Representing Steven Cohen, Cohen & Cohen Law P.C.

Ann Cameron Kalb Swart, co-applicant

Public None

Discussion (1:58) **Cohen** – The lot is undersized with a small 922-sf house with 800-sf garage and 142 SF addition would use about 23.6% groundcover where 12.5% is allowed. There is a yard sale going through the Land Court; transfer of that land would increase the lot to about 2500 SF and bring the groundcover into conformance. Existing structure pre-dates zoning.

Swart – The basement is only under the addition and is only a crawl space.

Toole – Asked if there is evidence of the Land Court process; he'd almost prefer to wait until that process is complete.

Cohen – There is a large back-log of yard sales the Town is working on and this one is well down the list. It's a slow process and it's not unusual to take 4 to 5 years. This is a Special Permit request and the standard is whether or not it is more detrimental to the neighborhood, which it isn't.

Botticelli – She has no issues; it's a modest, 1-story addition. It would be different if this were 2 stories and encroached further.

Toole – Asked if the neighbor upon whom the encroachment intrudes has an issue.

Cohen – When we went through the HDC process, there was no objection. The encroachment, which is 1/2', is the bathroom and the HDC would be reluctant to see it removed.

Swart – She showed the plans to the neighbor and they did not express any concerns.

O'Mara – He has no serious issues. They own the land across the paper road.

Mondani – Considering they own the property on the other side of the yard-sale land, he has no issues.

Motion **Motion to Grant the relief as requested given the site conditions, the modest size of the addition, and groundcover is in keeping with the surrounding neighborhood; the HDC plans are to become part of the permit; and the applicant is to diligently pursue the yard sale.** (made by: Botticelli) (seconded)

Roll-call vote Carried 4-1//Botticelli, Toole, O'Mara, and Mondani-aye; McCarthy-nay

3. 12-21 Wisentaner, Inc.

25 & 27 Young's Way Wisentaner

Applicant requests amendment of prior Special Permit relief granted in Zoning Board of Appeals File No. 037-12. Specifically, Applicant seeks to modify the relief and certain conditions therein to 1) eliminate the requirement for a lease and the related conditions as the lots are in common ownership; 2) convert a portion of the existing parking lot to an outdoor turf fitness area to allow for appropriate social distancing during the pandemic; 3) request waivers, to the extent necessary, from parking requirements in Section 139-18 and open area requirements in Section 139-16.E; and 4) substitute an updated Site Plan as new "Exhibit A." The Locus is situated at 25 and 27 Young's Way, is shown on Tax Assessor's Map 67 as Parcels 688 and 689, and as Lots 24 and 23 on Plan No. 2003-10. Evidence of owner's title is recorded in Book 1323, Page 115 and Book 1607, Page 179 on file at the Nantucket County Registry of Deeds. The site is zoned Commercial Trade, Entrepreneurship and Craft (CTEC).

Voting McCarthy, Botticelli, Toole, O'Mara, Koseatac

Alternates Mondani

Recused None

Documentation File with associated plans, photos, and required documentation

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

Lisa Wisentaner, owner

Public None

Discussion (2:24) **Beaudette** – Amendment request is for a 30X60 artificial turf area for outdoor classes; also, seeking for this to become a permanent fixture. Asking to eliminate the need for a loading zone, given that this business isn't serviced by a lot of deliveries, and the requirement to lease 13 parking spaces on the road.

Wisentaner – Explained the reasons for the outdoor exercise area; there would be no equipment or music used in this area. Her intent is for this to be used seasonally.

McCarthy – We can condition no loud voices or music.

Mondani – Asked if the lots have merged.

Beaudette – They have merged for the purpose of usage; however, current conditions are relative to the lots being separate, and she can't operate without both lots.

McCarthy – We could craft the decision so that it is attached to the existence of the primary lot. Without that lot, she doesn't have sufficient parking.

Toole – He'd like to see the two lots merged into one.

McCarthy – They are separate buildable lots; she doesn't want to mess with that.

Discussion about current operations as related to current requirements and conditions and how this request would impact those requirements, and should any additional conditions be attached to this decision.

McCarthy – We can tie this approval to Wisentaner, Inc., remove Condition a, change Condition b adding the turf area to the hours of operation, remove Condition c requiring windows and doors to be closed; eliminate Condition d. Asked if the loading zone and parking needs to be addressed in the decision.

Antonietti – You can condition to require it to be in substantial compliance with site plan submitted with the application, on Page 228 of the packet.

Wisentaner – We are looking at hours of operation from 8:30 to 11:30 for the turf area.

Botticelli – Happy with adding 8:00 to 11:30 am for the hours of operation for the turf area.

Toole – If the lots remain in separate ownership, technically you need to have a lease agreement.

Beaudette – If they were in different ownership, they'd need a lease, but these lots are owned by Wisentaner, Inc. They have to provide parking on the site for the business and they own that lot so don't need the off-site parking.

Mondani – Down the road, this is separate lots and hypothetically, one could be sold and the reasons for the special permit are gone.

Beaudette – The Special Permit essentially merges the lots; they can't run the business without both lots. Each lot is a compliant lot.

McCarthy – We can tie this to Ms Wisentaner or Wisentaner, Inc., or keep Condition d requiring a lease for the other lot. If the use changes, they have to come back to the ZBA. She's okay with referring to the site plan and tying it to the owner or the business. Reviewed modifications to the Conditions for the purpose of this decision.

Toole – Requiring the windows and doors being closed is a COVID-driven decision. Questions the necessity for that Condition when they keep the windows and doors closed anyway.

Wisentaner – We do not operate with open windows or doors. The concern with open doors is noise travelling through the neighborhood.

Botticelli – Suggested modifying that the windows and barn doors are kept closed but they are allowed to open the smaller doors.

McCarthy – Suggested the windows and barn doors will be closed during hours of operation.

Motion

Motion to Grant the relief as requested with Conditions a & d eliminated; Condition b changed to add 8:00 am to 11:30 am for use of the turf area; change Condition c to read, "barn doors and windows shall be closed while exercise classes are in session"; and add a new Condition d will require it be in substantial conformance with the attached site plan. (made by: Toole) (seconded)

Roll-call vote

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

IV. OTHER BUSINESS

1. Thank you and good bye to Kerim Koseatac and Eleanor Antonietti.

V. ADJOURNMENT

Motion **Motion to Adjourn at 3:24 pm.** (made by: Koseatac) (seconded)

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

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

1. Draft minutes April 8, 2021 and May 11, 2021

Submitted by:

Terry L. Norton