



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
Alternates: Mark Poor, Jim Mondani

~~ MINUTES ~~

Thursday, July 8, 2021

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

Called to order at 1:08 pm and Announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Terry Norton, Town Minutes Taker

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

Adoption of agenda

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

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. June 10, 2021

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

Vote Carried unanimously

II. OLD BUSINESS

1. 06-21 Jayne C. DeBiasio & Brian F. DeBiasio 39 Meadow View Drive Reade
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).

CONTINUED

2. 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

Alternates Poor, Mondani

Discussion None

Motion **Motion to Accept the withdrawal without prejudice. (made by: O'Mara) (seconded)**

Vote Carried 4-0

III. NEW BUSINESS

1. 13-21 Gordon C. Russell 3 School Street Reade
- Applicant requests a special permit pursuant to Section 139-30 and 139-33A to alter a pre-existing nonconforming single-family dwelling that exceeds the current maximum height limitation. The Locus is situated at 3 School Street, is shown on Nantucket Tax Assessor's Map 42.3.2 as Parcel 124 and shown on Plan No. 2016-33 filed with the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 1599, Page 131 at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
- Voting McCarthy, Botticelli, Toole, O'Mara, Poor
- Alternates Mondani
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
- Gordon Russell, owner
- Rob Newman, Sandcastle Construction Inc.
- Public Katie Sullivan, Barnacle Inn
- Discussion (1:11) **Reade** – Proposing a new addition that changes the footprint on a historic 1860s structure that is pre-existing nonconforming as to height. The Historic District Commission (HDC) approved the design and it meets all standards for a special permit.
- Toole** – Asked why they don't reduce the height from grade to bring it into conformity.
- Reade** – The ridge height from grade calculation includes main mass ridge. The height "increase" is because of the slope in grade, not an increase in actual height. The main ridge will still appear to be the highest point. The zoning height formula was developed in the 1980s and is difficult for everyone to calculate and understand.
- Discussion about why it isn't possible to reduce the ridge height to become conforming.
- Continued discussion about what would be involved to bring the height into compliance.
- Sullivan** – Asked for a condition of no exterior construction since they are busy from Daffy weekend to October.
- Discussion about timeframe restricting exterior work.
- Motion **Motion to Grant the relief as requested with no exterior construction work between Memorial Day and Labor Day and no construction work on weekends after May 15th and from Labor Day to September 15th.** (made by: Toole) (seconded)
- Vote Carried 5-0
2. 14-21 Shannah Green 49 Fairgrounds Road Alger
- Applicant requests a modification to a previously granted special permit to allow permanent use of the seasonally covered outdoor deck for outdoor classes. The deck was previously approved for use only through the COVID 19 pandemic. 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 McCarthy, Botticelli, Toole, O'Mara, Mondani
- Alternates Poor
- Recused None
- Documentation File with associated plans, photos, correspondence, and required documentation
- Representing Sarah Alger, Sarah F. Alger P.C.
- Public Michael Horton, 6 Weatherly Place
- Bob Bates, 11 Brinda Lane
- Discussion (1:54) **Alger** – Her client is asking for permanent use of the outdoor deck for classes.
- McCarthy** – The neighbors indicated the music is louder, there are more people, and overflow parking is an issue. It seems use has intensified. The intent was to allow the business to survive COVID; it seems to have gone beyond the intent of the original permit. If it is allowed to continue, it must be in the spirit of maintaining the business as before.
- Mondani** – They are asking for an extension of what was granted. Other businesses have been allowed to do this.
- Toole** – Asked if the ZBA was specific about the type of music allowed on prior applications.
- Horton** – He opposes the deck being allowed to become permanent. Stated that he supported the neighbor during COVID, tolerated the deck, and was okay with it being allowed this summer. However, classes are going from 6 a.m. to dusk with amplified music for aerobic instruction. He's become self-conscious about mowing his lawn and making any noise.
- Bates** – He's heard music as early as 7 a.m. on Saturday and 8 a.m. on Sunday; he feels like he's not allowed to mow his lawn on Sunday. He's received antagonistic behavior from the customers and hears music and voices all day. COVID restrictions have been lifted; they should move their classes back indoors.
- Snell** – The motion from the May hearing was, "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." The minutes also reference a 2000 special permit regarding noise being heard beyond the lot line.
- Toole** – He feels there was an opportunity to make it work during COVID but there was an overstepping of the bounds. He's inclined to maintain the October 15th date set in May.

Botticelli – We had a discussion about loud sounds such as gongs and granted a permit, but with no outdoor music. Likes the suggestion by neighbors that the aerobic classes be held inside. It seems like there are new types of classes that weren't part of the original permit. One neighbor said she let Ms. Green know about their concerns on June 20th.

Bates – The neighbor did contact Ms. Green, who said okay, but nothing has changed.

Motion **Motion to Continue to August 12.** (made by: Botticelli) (seconded)
Vote Carried 5-0

3. 15-21 Lemberg Son & Daughter, LLC. 1 White Whale Lane LINK
Applicant requests a special permit pursuant to Section 139-30 and 139-18D to waive two (2) of the required off street parking spaces. The Locus is situated at 1 White Whale Lane, is shown on Tax Assessor's Map 66 as Parcel 18, and as Lot 11 on Plan No. 2011-20 on file at the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 1671, Page 280 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 10 (R-10).

Voting McCarthy, Botticelli, Toole, O'Mara,
Alternates Poor, Mondani
Recused None
Documentation File with associated plans, photos and required documentation
Representing Ed Lemberg, co-owner
Victoria Ewing, LINK

Public Barry Rector, for the Independent Order of Odd Fellows and 37 Bartlett Road

Discussion (2:23) **Lemberg** – This request is for a duplex that requires one parking spot per bedroom; they applied for a permit to add basement rooms, which are large enough to become bedrooms. Looking for relief from 2 parking spaces as required by additional bedrooms.

Botticelli – She's leery about allowing the relief.

Snell – Received an email with photos of the current parking situation.

McCarthy – There is an issue with parking in this area that can't be solved here.

Rector – Once construction is done, we have to have a pro-active response in place. He's a fan of reducing parking where it's possible but that leaves people looking for off-site parking. There should be no on-street parking along Cato and White Whale Lanes, including the right of way; vehicles on the sites shouldn't intrude into the established setbacks. He had also asked for a buffer between the two properties and want to ensure that is put in place.

Ewing – 1 White Whale has the same number of bedrooms as 74 Cato Lane though more square footage.

Botticelli – This area is becoming too dense; duplexes were never previously allowed. Parking is allowed in the setback.

Lemberg – We didn't apply for 8 parking spaces because we weren't sure we would finish the basement. Every new house has an exterior basement stair and window well; that doesn't mean it will be finished.

Poor – Pointed out that a bedroom has to be at least 7X10 with a window egress.

Toole – If they can find a way to get 8 parking spaces, they don't need to be here. He's not comfortable about the mis-informed planning that went into this.

Rector – In terms of parking spaces, it is an intrusion on the neighbor to park in the setback.

McCarthy – She doesn't know what the permitting for this subdivision was, but it seems parking wasn't thought through.

Snell – The bylaw was amended around 2005/2006 to increase parking requirements for duplexes in an effort to keep the vehicles on the lots and out of the right of way.

Motion **Motion to Approve the relief as requested.** (made by: O'Mara) (seconded)
Vote Not carried 0-5//All opposed

IV. OTHER BUSINESS

1. The Board noted the letter received regarding a property that is not before the ZBA at this time.

V. ADJOURNMENT

Motion **Motion to Approve at 2:48 pm.** (made by: Botticelli) (seconded)
Roll-call vote Carried unanimously

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

1. Email and pictures received from Jenn Decker regarding the 1 White Whale Lane application.

Submitted by:
Terry L. Norton