



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, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, August 12, 2021

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

Called to order at 1:04 pm and announcements made by Ms. McCarthy

Staff in attendance: Megan Trudel, Land Use Specialist

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

Late Arrivals: Mondani, 1:07 p.m.

Early departure: Toole, 2:41 p.m.

Agenda adopted by unanimous consent

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

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. May 9, 2021

Item 14-21: correct quote misattributed to Ms. McCarthy

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

Vote Carried unanimously

II. OLD BUSINESS

1. 061-21 Jayne C. Debiasio & Brian F. Debiasio 39 Meadow View Drive Reade

Continued to September 9, 2021

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 Bob Bates, 11 Brinda Lane

Discussion (1:07) **Alger** – This is for permission to keep the outdoor deck until October or the end of pandemic restrictions. Ms. Green had made obligations based upon the restrictions being in effect into the fall. Recently the Board of Health (BOH) imposed mask requirements, which the Building Commissioner agrees constitutes COVID restrictions. Asking to allow Ms. Green to operate with the deck through Labor Day then remove it by September 30th. If the BOH lifts the mask restriction, we are back in the same position. No music will be played in the Yoga studio that would be heard beyond the property line; Ms. Green has tried to do the right thing by the neighbors.

McCarthy – Referenced a letter of concerns from Mr. Bob Bates.

Bates – His concern is that the mask restriction doesn't limit occupancy, so Ms. Green is able to go back to all operations indoors. There is a constant drone of noise starting at 7 am. The BOH just now has not limited occupancy. Pointed out that they did not come to ZBA to get approval to use the deck; it was installed and used without a permit.

McCarthy – Ms. Green is focused on Labor Day. Our original permit gave her until October 15th; should we allow her to use the deck until Labor Day or until the mask mandate is lifted.

Discussion about allowing the deck to be used through Labor Day and when the deck should be removed.

Mondani – As long as the deck is in place, he's concerned the problems for the neighbors will continue.

Motion **Motion to Grant the request to use the deck through September 6th; within 10 days, the deck and debris is to be removed and the property restored to original condition.** (made by: O'Mara) (seconded)

Vote Carried 4-1//Mondani-nay

III. NEW BUSINESS

1. 16-21 Eugene H. Clapp, III, Trustee of the 42 Cliff Road Nominee Trust 42 Cliff Road Reade
 Applicant requests a special permit pursuant to Section 139-30 and 139-33A to alter and extend a pre-existing nonconforming single-family dwelling. The Locus is situated at 42 Cliff Road, is shown on Nantucket Tax Assessor's Map 42.4.4 as Parcel 40, and shown as Lot 2 in Plan Book 19, Page 88 and as Lot B on Plan No. 2014-49 filed with the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 341, Page 141 and Book 1831, Page 307 at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
 Voting McCarthy, Botticelli, Toole, O'Mara, Poor
 Discussion (1:06) **Trudel** – This was withdrawn and that needs to be adopted.
 Motion **Motion to Approve the withdrawal without prejudice.** (made by: O'Mara) (seconded)
 Vote Carried unanimously
2. 17-21 Guy and Diane Maddalone 6 Western Avenue Bailey
 Applicant is appealing the decision of the Building Commissioner to deny their request to revoke Building Permit 2021-05-1732 with respect to the property at 16 Western Avenue. The Locus is situated at 16 Western Avenue and shown on Nantucket Tax Assessor's Map 87 as Parcel 72 and shown as Lot 3 on Land Court Plan 8256-F filed with the Nantucket County Registry District of the Land Court. Evidence of owner's title is recorded as Certificate No. 2282 on file at the Nantucket County Registry District of the Land Court. The site is zoned Residential 20 (R-20) and Limited Use General 2 (LUG-2).
 Voting McCarthy, Toole, O'Mara, Poor, Mondani
 Alternates None
 Recused Botticelli,
 Documentation File with associated plans, photos, correspondence, and required documentation
 Representing Joel Quick, Pierce Atwood, LLP, for the Maddalones
 Public Steven Cohen, Cohen & Cohen Law P.C. for Michael Metz, 16 Western Avenue
 Discussion (1:32) **Quick** – Representation was made no construction would take place between Memorial Day and Labor Day; asserted construction took place to harass and annoy his clients, the Maddalones. Asked for a preliminary injunction to stop construction, which is still taking place, until Labor Day. Asked if the Board would have issued the permit if the property owner had said they were going to do construction through the summer.
McCarthy – She recalls the applicant saying neighbors would have a contact phone number and she said she would take the applicant at their word to be a good neighbor. We don't usually put conditions on construction in this neighborhood.
Toole – This situation casts into doubt the ability to take, at face value, the assertion by the applicant to be a good neighbor.
Cohen – The question is if the Building Commissioner made a reasonable decision based upon the information in front of him or if his decision was arbitrary and capricious. Asked the Board to find the Building Commissioner made a reasonable decision and deny the request to overturn the decision.
Poor – There's nothing wrong with the project; without restrictions, the property owner has a legal right to do construction on his property.
 Motion **Motion to Approve the relief as requested to overturn the Building Commissioner's decision.** (made by: O'Mara) (seconded)
 Vote Not Carried 0-5
3. 18-21 ACK Smart as Applicant for 21 Woodbine, LLC 21 Woodbine Street Beaudette
 Applicant requests variance relief to validate the location of a solar ground array within the side and rear yard setbacks. The Locus is situated at 21 Woodbine Street, is shown on Nantucket Tax Assessor's Map 80 as Parcel 321 and shown as Lot 4 on Plan No. 54W on file with the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 1342, Page 75 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General 1 (LUG-1).
 Voting McCarthy, Botticelli, O'Mara, Poor, Toole
 Alternates None
 Recused Mondani
 Documentation File with associated plans, photos, correspondence, and required documentation
 Representing Richard Beaudette, Vaughn, Dale, Hunter, Beaudette, and Swain P.C.
 Zach Dusseau, ACK Smart
 Public Christine Petrella, 16 Pequot Street
 Scott Carpenter, 14 Pequot Street
 Larry Carpenter, 14 Pequot Street
 Discussion (1:46) **Beaudette** – Referenced correspondence between ACK Smart and the Zoning Enforcement Officer (ZEO) which led ACK Smart to assume it was okay to install solar within the setback. It was when they submitted the request for 12 South Valley Road that they were told it was not okay to put an array in the setback. Read an exception to 40.A, which the Building Commissioner and ZEO interpreted differently. It would cause the client a severe hardship to remove the array from the setback.
Botticelli – It's right on the property line; asked if neighbors have submitted concerns (yes).
Beaudette – There is enough room between the array and property line to place screening.

McCarthy – It says it could be constructed within the setback under certain conditions. They decided on their own to put this in the setback; they should have sought another opinion on whether or not it would be allowed in that location.

Beaudette – The ZEO told the applicant that the array could go into the setback it just had to be kept off the property line. We are asking ZBA for a variance; we are not appealing the Building Commissioner's decision.

McCarthy – She looks at this as an unintentional setback intrusion.

Petrella – They did not know about the array until they arrived for the summer. Read the HDC approval; they expressed concern about it being in the setback and the approval was conditioned that it not be in the setback. The as-built plan indicates it's larger than applied for; there is a second smaller array. All the brush hiding this is on my property.

S.Carpenter – Most of his points were made. We found the array when we arrived in April. It's overly large for personal use. There's no landscape screening. It cuts off a public easement footpath.

Beaudette – His client said that the HDC told him they couldn't enforce setbacks.

Botticelli – The approved HDC plan shows it outside the setback. She'd like to see the HDC approval conditions.

Petrella – Read the HDC comments and approval conditions.

Dusseau – Explained how the array was constructed.

Discussion about ways to correct the situation, what caused it, and the size of the array.

L.Carpenter – Challenges the idea it would be hard to mitigate the array.

McCarthy – This is not much different from a house construction when something causes a change, and you seek to amend it. We need HDC to approve it as built.

Motion **Motion to continue to the regularly scheduled October meeting.** (made by: Botticelli) (seconded)

Vote Carried unanimously

4. 19-21 ACK Smart as Applicant for Timothy and Lauren Miner 12 South Valley Road Beaudette
- Applicant requests variance relief to validate the location of a solar ground array within the front and side yard setbacks. The Locus is situated at 12 S. Valley Road, is shown on Nantucket Tax Assessor's Map 43 as Parcel 139 and shown as Lot 76 on Land Court Plan 11461-J and as Lot 21 on Land Court Plan 11641-H on file with the Nantucket County Registry District of the Land Court. Evidence of owner's title is recorded as Certificate of Title No. 24316 on file at the Nantucket County Registry District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

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

Alternates None

Recused Toole

Documentation File with associated plans, photos and required documentation

Representing Beaudette

Zach Dusseau, ACK Smart

Public None

Discussion (1:41) **Beaudette** – Explained how it ended up the setback; this represents a substantial hardship. We have HDC approval for the change. In this area, several Certificates of Occupancy (CO) have been issued with setback intrusions.

McCarthy – Asked how many COs were issued with setback intrusions.

Beaudette – He can find out; off-hand he knows of one.

Botticelli – Wants to wait to see what happens to 21 Woodbine before making a decision on this one.

Beaudette – Since the two applications were taken separately, he'd like to get his off the table. 18-21 has abutter concerns and no HDC approval of the change; we do not have those exacerbating factors here. The set-back intrusion has *di minimis* impact on the neighborhood.

Discussion about whether or not to continue this.

Motion **Motion to Continue to September 9th.** (made by: O'Mara) (seconded)

Vote Carried unanimously

IV. OTHER BUSINESS

1. None

V. ADJOURNMENT

Motion **Motion to adjourn at 2:58 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. Photos of construction at 16 Western Avenue
2. Draft minutes as listed

Submitted by:

Terry L. Norton