



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, Elisa Allen
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, September 9, 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 pm and Announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Nicky Sherif, Administrative Specialist
Attending Members: McCarthy, Toole, O'Mara, Allen, Poor, Thayer, Mondani
Absent: Botticelli
Early departure: O'Mara and Toole, 2:33 pm

Adoption of Agenda

Motion **Motion to Approve as drafted.** (made) (seconded)

Roll-call Vote Carried 5-0//McCarthy, O'Mara, Toole, Allen, and Poor--aye

I. APPROVAL OF MINUTES

1. August 12, 2021

Motion **Motion to Hold for next month's meeting.** (made by: Toole) (seconded)

Roll-call Vote Carried 5-0//McCarthy, O'Mara, Toole, Mondani, and Allen-aye

II. OLD BUSINESS

1. 18-21 ACK SMART as Applicant for 21 Woodbine, LLC 21 Woodbine Street Beaudette
Continued to October 14, 2021

2. 19-21 ACK SMART as Applicant for Timothy and Lauren Miner 12 S. Valley Road Beaudette
Continued to October 14, 2021

3. 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).

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

Alternates Poor, Thayer

Recused None

Documentation File with associated plans, photos and required documentation

Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Brian Debiasio, owner

Public None

Discussion (1:04) **Reade** – This was last heard in April; reviewed the reason for the request. The Planning Board provided a special permit for relief between the dwelling and studio. There is a shed within the area of Conservation Commission (ConCom) jurisdiction that hadn't appeared on prior plans and came into existence without permit; received an Order of Conditions to remove the shed, which hasn't yet been removed. The move-on approval for the shed is in process with the Historic District Commission (HDC). Asking for the modification to the Special Permit issued under File No. 030-11.

Toole – Asked if this is within the setback line.

Reade – We received the Special Permit to allow this within 5 feet rather than 10 feet from the line.

Toole – The change to a full-on second dwelling doesn't have a huge impact, but he's not too happy with it.

Allen – If this structure were applied for today, asked if it would be approved with the setback and square footage; would it be legal today.

Reade – It has the Special Permit from the Planning Board for separation from the main dwelling.

McCarthy – The question is if this were a new application, would the ZBA grant the variance for side-yard setback; we did grant that for a studio-garage with the condition that it wouldn't become a secondary dwelling.

Snell – ZBA granted the relief with that stipulation. There were abutters notifications for the Planning Board hearing regarding the change of use and separation from the main dwelling; none of those notified abutters are here today.

Allen – Asked how allowing this to become a second dwelling impacts further development of the property.

Snell – Tertiary dwellings are allowed in R-20.

Reade – Most of the lot is affected by wetland restrictions; because of that, there is no room for another dwelling. There could be additions to the main house and this, with further relief from the board. We would agree to a condition that there will be no tertiary dwelling on the property.

O'Mara – It's important to note that in the R-20, you can change from 10' to 5' with a Special Permit, which they did. He's comfortable with this.

Mondani – He agrees with Mr. Toole on this; the only change is the septic and that wasn't part of the decision barring this from becoming a residence.

Poor – The use of the structure by zoning purposes is available for change. With the advent of the sewer connection, they have the right to ask for the change.

McCarthy – Thanked the applicant for the letter addressing concerns about the shed.

Toole – Asked if the conversion has already taken place. Jeff Blackwell's, Blackwell & Assoc., site plan states there is a bedroom in the structure.

Debiasio – No, the upstairs is used as an office and storage. He pointed out the error regarding the bedroom to Mr. Blackwell and the site plan was corrected.

Reade – There is a tenant in the main house who uses the upstairs studio space as an office.

Toole – Asked when the shed will be removed.

Debiasio – He's donated the shed to a couple, who has applied to the HDC to move it to their property. It's ready to go once approval is received; he wants it out of there between now and next month.

Toole – Wants the shed removed before the ZBA grants this relief.

Reade – Suggested a condition that before a Certificate of Occupancy (CO) is issued for the second dwelling, the shed is removed.

Discussion about removing the unpermitted shed before granting relief.

Allen – She likes Mr. Reade's suggestion of not issuing a CO before confirmation of the shed's removal. However, rules weren't followed, and now we're giving the okay to continue not following the process. She wants to have a move-off permit before granting relief.

Toole – It isn't a heavy burden to wait for removal of the shed; the building is already up.

Debiasio – The only change for a dwelling is to provide a 2nd-floor egress and add a kitchen.

Reade – Requested continuing this case to October to allow time for the shed to be removed.

Motion to Continue to October 14th meeting. (made by: O'Mara) (seconded)

Motion

Roll-call Vote

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

III. NEW BUSINESS

1. 20-21 Nantucket Island School of Design and the Arts, Inc. 23&25 Wauwinet Road Hanley
Applicant is seeking a determination that an increase in the pre-existing nonconforming groundcover ratio and an encroachment into the rear yard setback resulting from the relocation of a structure onto the property is reasonable and that pursuant to MGL Chapter 40A Section 3, no relief is required. In the alternative, Applicant requests that Condition (c) in the Variance/Special Permit relief issued in File No. 028-98 be modified to allow for the structure to be relocated as proposed, or that additional Variance and/or Special Permit relief be granted as applicable. Locus is situated at 23 and 25 Wauwinet Road, shown on Assessor's Map 20 as Parcels 36 and 80, and as Lot 103 upon Land Court Plan 6283-12 and as Lot 105 on Plan 6283. Evidence of owner's title is registered on Certificate of Title Nos. 10132 and 18379 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

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

Alternates Poor, Thayer

Recused None

Documentation File with associated plans, photos and required documentation

Representing Marianne Hanley, Reade, Gullicksen, Hanley, & Gifford LLP

Kathy Kelm, Director Nantucket Island School of Design and the Arts, Inc. (NISDA) and Founder

Public None

Discussion **Hanley** – Explained the application. The lot is impacted by wetland restrictions and location of the septic. There is a historic preservation restriction on the barn as well. It will be used for classrooms and studios. The move will take place probably next Fall. Currently, the barn is on 19 Wauwinet Road; it was moved there in 1976. Part of the old foundation is still in the barn's original historical location; the 1973 land court map shows its original location.

(1:35)

Toole – The structure will have to be 5' away; pointed out extraordinary steps would have to be taken to ensure it complies with the Fire Code.

O'Mara – Asked how many parking places are proposed. Asked the proposed function of this barn once it's moved.

Hanley – No changes are proposed to the parking; we have 51 parking spaces when we’re required to have only 19. It will be for classrooms, studio space, and office space; if possible in the future, the 2nd floor would be modified to be a residence.

McCarthy – Asked if NISDA would have to apply for a change of use when they are ready to put an apartment in it.

Hanley – We’d have to apply for a building permit, but it would still fall within the exemption. Don Bracken, Bracken Engineering, has been at the site frequently. If we were to pull it forward, we would have to deal with the existing historic preservation restriction; we also would have to deal with the existing silo, which can’t be moved.

Toole – Suggested tweaking it diagonally about 6”.

Kelm – Getting this barn is serendipitous. The rear property line is along Nantucket Islands Land Bank property.

McCarthy – Asked if members want to modify the variance conditions or follow Massachusetts General Law for an educational use.

Toole – He was wondering how they determined where the building is going to go; it doesn’t look like it’s going close to the original location.

Hanley – We can put in the decision that everything was discussed.

Allen – Asked when they move the structure, if will it be reconnected to the silo. Noted that the connector might not be as long as it was originally; that could pull the barn off the property line.

Hanley – That’s up to the Preservation Institute, which hold the preservation restriction; also, the integrity of the silo needs to be considered. You can make a Finding that MGL 40A §3 is applicable and no further relief is required.

O’Mara – He’s not willing to put that finding in a motion; there’s way too much occurring on this property: not confident about the number of parking spots, don’t have information on the leach field, and there’s wetlands all round this. If they come back with a plan that shows more parking spaces or delineates all the parking spaces, he might consider it. He also doesn’t know the last time this property was surveyed. he disagrees with the idea that this doesn’t impact the general welfare of the public.

Hanley – Mr. Bracken has surveyed this property extensively; he did the septic plan.

McCarthy – They would have to deal with septic if and when they have permits to outfit the building; we’re looking at the relocation.

Mondani – He’s willing to pass it as is; this is what the law is for and it fits the way the property is set up.

Toole – It would be nice to have the information Mr. O’Mara is asking for, but if we go the route of MGL, that becomes an issue for someone else.

Thayer – He’s okay with this; he understands Mr. O’Mara’s concerns, but a building permit won’t be issued without septic and parking.

Hanley – The septic was installed 2 years ago, and we have a certificate of compliance. We’re not asking for relief for parking; the prior relief required 19 spots; also parking falls under MGL 40A.

McCarthy – She hasn’t been looking at parking because it isn’t part of this application. When they go to get the building permit or the CO, parking will need to be sussed out. Her concern is if the setback and groundcover are reasonable. Cited all the reasons that make it okay for it to be approved under the MGL exemption. If we don’t think this falls under MGL, then we would get into the parking and septic and require a more detailed plan.

Continued discussion about whether or not there is adequate parking.

Motion

Motion to find that the proposal to move the barn back to its original location is reasonable and falls under Educational Exemption MGL 40A §3 and that no relief is necessary to modify the prior variance. (made by: Mondani) (seconded)

Roll-call Vote

Carried 4-1//McCarthy, Toole, Allen, and Mondani-aye; O’Mara-nay

2. 21-21

Michael S. and Kristina Elizabeth Jemison

195C Hummock Pond Road

Glidden

Applicant is requesting special permit pursuant to Nantucket Zoning Bylaw Section 139-30, and to the extent is situated at 195C Hummock Pond Road, is shown on Nantucket Tax Assessor’s Map 65 as Parcel 23 and shown as Evidence of owner’s title is recorded in Book 865, Page 40 on file at the Nantucket County Registry of Deeds. The site is zoned village residential (VR).

Voting

McCarthy, Allen, Thayer, Mondani

Alternates

None (Poor departed at some point)

Recused

None

Documentation

File with associated plans, photos, required documentation, and correspondence.

Representing

John Brescher, Glidden & Brescher

Public

None

Discussion (2:32)

Brescher – Explained the application to increase groundcover allowance; historically, the lot is pre-existing nonconforming. There are letters of support and they have received HDC approval. This increase request is for this unit only. This relief would be in harmony with the bylaw.

McCarthy – Looking at the proposed site plan dated July 16, 2021, it looks like part of this is R-20. Asked if the 850 sf will cause problems with the other two condo units.

Brescher – This property was rezoned at 2021 Annual Town Meeting from R-20 to VR; Dan Mulloy’s, Site Design Engineering, site plan just missed that change. The other condo owners are okay with this request.

Allen – Asked if any abutters are opposed to this.

Toole – Owners of 200 Hummock Pond Road submitted an email of opposition. Asked if the Land Bank has weighed in on this.

Snell – We have not heard from the Land Bank; she doesn't anticipate hearing from them.

Brescher – Once this change is approved, the master condo plan will be amended. Units A and B will remain at 2500 sf groundcover; they have elected not to increase their groundcover.

Discussion about why the groundcover was set at 2500 sf and the impact of this requested change.

Allen – Asked if this is enclosed or open. If it's open on at least 3 sides, we'd be ensured it is just a cabana as opposed to its being a potential guesthouse if it's completely enclosed. She doesn't want to approve something that sounds like a guesthouse but is called a pool house.

Brescher – It is completely enclosed and there is a bathroom in it

McCarthy – Referenced the letter of opposition regarding concerns it could be a dwelling. Asked if it can be conditioned against its being used for habitation. We would want to see an HDC approval.

Just realized Mr. Poor had left; she hadn't intended for this to be opened with a 4-person board.

Brescher – This has to continue; asked what they are looking for.

McCarthy – Plans confirming it is a pool house. Asked the procedure to ensure there is a 5-person board at the next hearing.

Snell – There are three people who can read back in for the next hearing.

Toole – He wants confirmation that there is a room that is counted as a bedroom for septic capability.

Motion **Motion to Continue to October 14th meeting.** (made by: Thayer) (seconded)

Roll-call Vote Carried 4-0//McCarthy, Thayer, Mondani, and Allen-aye

IV. OTHER BUSINESS

1. As of right now, the October 14th meeting has the two continued applications, Debiasio, this application and two new applications.

V. ADJOURNMENT

Motion **Motion to Adjourn at 2:57 pm.** (made by: Mondani) (seconded)

Roll-call vote Carried unanimously

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

1. None

Submitted by:

Terry L. Norton