



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, October 14, 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 12:00 pm and Announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning
Attending Members: McCarthy, Botticelli, Toole, O'Mara, Allen, Poor, Thayer, Mondani
Late Arrivals: O'Mara, 12:13 pm; Mondani, 12:15 pm

Adoption of agenda:

Motion **Motion to Approve the agenda as amended.** (made by: Botticelli) (seconded)
Roll-call vote Carried 5-0//McCarthy, Botticelli, Toole, Thayer, and Allen-aye

I. APPROVAL OF MINUTES

1. August 12, 2021
2. September 9, 2021

Snell – Mr. Toole noted some typographic errors.

Motion **Motion to Approve the minutes as amended.** (made by: Toole) (seconded)
Vote Carried 5-0//Toole, Thayer, O'Mara, Botticelli, and McCarthy-aye

II. OLD BUSINESS

1. 06-12 Jayne C. Debasio & Brian F. Debasio 39 Meadow View Drive Reade
Continued to November 18, 2021
2. 18-21 Ack Smart as Applicant for 21 Woodbine, LLC 21 Woodbine Street Beaudette
Continued to November 18, 2021
3. 19-21 Ack Smart as Applicant for Timothy & Lauren Miner 12 South Valley Road Beaudette
Continued to November 18, 2021
4. 21-21 Michael S. Jemison & Kristina Jameson 195C Hummock Pond Road Brescher
Applicants are seeking a modification of a previously issued Special Permit (File No. 040-04) and to the extent necessary, a Special Permit for the expansion of the pre-existing nonconforming use, to allow for an increase in ground cover ratio to construct a pool cabana. Locus is situated at 195C Hummock Pond Road, shown on Assessor's Map 65 as Parcel 23, and as Unit 2 on Plan No. 03-34. Evidence of owner's title is recorded in Book 865, Page 40 with the Nantucket County Registry of Deeds. The site is zoned Village Residential (VR).
Voting McCarthy, Allen, Poor, Thayer, Mondani
Alternates None
Recused None
Documentation File with associated plans, photos, correspondence, and required documentation
Representing John Brescher, Glidden & Brescher P.C.
Public None
Discussion (12:20) **Brescher** – This is to increase in groundcover; the existing ZBA decision limits groundcover. Submitted the Historic District Commission (HDC) approval for the cabana and the Board of Health (BOH) approval for the septic plan. This lot already has 3 condominium dwelling units; the cabana cannot be a dwelling. The other property owners have sent letters of support. Asked to continue for a redesign rather than receiving a denial.
Allen – She had asked to see the plans for the cabana to understand the layout of the proposed interior; this looks like a guesthouse with a bedroom labeled as a playroom and with a full bathroom and kitchen. This should be applied for as a guesthouse.
McCarthy – The only way she would be okay with this is that it is called out as not for human habitation – no bedrooms allowed.
Thayer & Mondani – Agree.
Poor – If we limit it to no habitation, he'd be okay with it. He understands the concerns of the other Board members. After looking at all the documentation, the site plan doesn't have the appropriate zoning information; that needs to be updated as part of anything we approve.

McCarthy – If we approve the relief, she wants 2 conditions: final Certificate of Occupancy (CO) specifies and restricts that this is not for human habitation and that the site plan is updated to reflect the correct zoning.

Allen – As it is right now, she would deny granting the relief; a true cabana would have no kitchen and, in her opinion, would be one room with a half bath and perhaps an outdoor shower. As designed, this has a laundry room, full bath, full kitchen, dining and living areas and a bedroom; to her this is a guesthouse.

Toole – With 2 sperate rooms and no kitchen, he could approve it as a cabana.

Poor – He’s okay with the cabana having a sink and refrigerator for a snack bar that opens up onto the pool.

Thayer – He agrees with Mr. Poor; when you have cooking appliances, it becomes a full kitchen.

Mondani – He’s concerned about “cabana creep.”

Motion **Motion to Continue to November 18th, 2021 meeting.** (made by: Thayer) (seconded)

Roll-call vote Carried 5-0//McCarthy, Thayer, Allen, Poor, and Mondani-aye

III. NEW BUSINESS

1. 22-21 Adam Delaney-Winn, Trustee of Warren’s Landing Nominee Trust 40 Warren’s Landing Road Reade
 Voting McCarthy, Botticelli, Toole, O’Mara, Allen
 Alternates Poor, Thayer, Mondani
 Recused None
 Documentation None
 Representing None
 Public None
 Discussion (12:56) **Snell** – This has been continued.
 Not opened at this time.
 Motion **Motion to continue to November 18th, 2021 meeting.** (made by: McCarthy) (seconded)
 Roll-call vote Carried 5-0//McCarthy, Botticelli, Toole, O’Mara, and Allen-aye
2. 26-21 Richard W. Ralston & Doreen Ralston 33 Goldfinch Drive Brescher
 Applicant is seeking a special permit pursuant to Zoning Bylaw Section 139-16C (1) and 139-30 to reduce the ten (10) foot required side yard setback to five (5) feet along the westerly side yard lot line in order to construct an addition to the existing dwelling. Locus is situated at 33 Goldfinch Drive, shown on Assessor’s Map 68 as Parcel 544, and as Lot 240 upon Land Court Plan 16514-12. Evidence of owner’s title is registered on Certificate of Title No. 19012 with the Nantucket County District of the Land Court. The site is zoned Residential 5 (R-5).
 Voting McCarthy, Botticelli, Toole, O’Mara, Mondani
 Alternates Poor, Thayer
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing John Brescher, Glidden & Brescher P.C.
 Richard Ralston, owner
 Public None
 Discussion (12:39) **Brescher** – Explained the request for a special permit. In 2009, zoning changed requiring the 10’ setback. He submitted the HDC approval. The reduction of the side-yard setback is in harmony with the Bylaw.
Botticelli – It seems reasonable; the aerial GIS indicates most houses are tight to the setback on at least one side.
Ralston – The two plans the architect submitted to the HDC this year had the old zoning distirct; many residents aren’t aware the zoning changed to R-5.
McCarthy – She appreciates that the homeowners architectural review board has reviewed and approved this.
Mondani – Asked if there were any abutter correspondence (no). Asked how close the additions are to the line.
Brescher – 6.4’ on the left and the other is 9.9’.
O’Mara – Given the fact we haven’t heard from the neighbor at 35 Goldfinch and the fact that it was up-zoned; he’s prepared to approve the request.
Toole – He thought there was a grace period after a zoning change in which you don’t have to request a special permit.
Snell – The zoning went into effect at the first publication of the warrant.
 Motion **Motion to Approve the relief as requested.** (made by: Mondani) (seconded)
 Roll-call vote Carried 5-0//Mondani, Botticelli, McCarthy, O’Mara, and Toole-aye
3. 24-21 Steven L. Cohen, Trustee of the 6 Village Way Realty Trust & Trustee of the 37 Pocomo Rd Realty Trust Cohen
 6 Village Way & 37 Pocomo Road
 Applicant is seeking a special permit pursuant to Zoning Bylaw Section 139-33A(1)(a) or in the alternative 139-33A(1)(b) to demolish the existing pre-existing nonconforming dwelling at 6 Village Way and to replace it with a new dwelling. The Applicant also seeks a modification/clarification of prior Variance relief granted in 2000 and a Special Permit granted in 2002 to reflect that the two lots are now in common ownership and to allow the septic system for 6 Village Way to be located within the required 50-foot vegetative buffer. Locus is situated at 6 Village Way and 37 Pocomo Road, shown on Assessor’s Map 14 as Parcels 41 and 38, and as Lot 2D upon Land Court Plan 16220-B and Lot 17A upon Land Court Plan 22667-B. Evidence of owner’s title is registered on Certificate of Title Nos. 27528 and 21644 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).
 Voting McCarthy, Botticelli, Toole, O’Mara, Allen
 Alternates Thayer, Mondani

Recused	Poor to
Documentation	File with associated plans, photos, correspondence, and required documentation.
Representing	Steven Cohen, Cohen & Cohen Law P.C.
Public	None
Discussion (12:15)	Cohen – Explained the request involving demolition of an existing dwelling and construction of a new structure; work is approved by the HDC. The new structure reduces setback encroachment by over 50%. There is a deck that also encroaches, but if the Board has concerns, it can be converted to a patio. In 2000, 6 Village and 37 Pocomo were identified as 2 separate buildable lots with one structure on each; it required a 50' vegetative buffer between the two properties. The prior owner put the septic in the buffer, so seeking a waiver to allow the septic in the buffer. There is a restriction on the height of the 6 Village Way house not being raised without relief. McCarthy – The condition on the height was very specific. Toole – Doesn't understand why that condition was added. O'Mara – The condition might have been added for clarification it was only the porch roof being raised. Botticelli – If this building were to move south, the 2-story section would be less nonconforming. Allen – Agrees with Ms. Botticelli; if we get the 2-story element out of the setback, they don't need relief. Mondani – He'd prefer to keep the height restriction. Discussion about reducing or eliminating the vegetative buffer between the two properties. Toole – Just because the buffer was cleared in 2004 for a septic doesn't make it right. Cohen – If the board wants to limit to a percentage of clearing, that would be appreciated since his client would like to maintain some vegetation in the buffer. If the house shifts back, we will need to find another place for the parking; parking in front would be unattractive. Botticelli – She would like to see a plan showing the resited building, parking, the location of the septic, and the vegetation. Allen – The proposed height is shorter than all but one of the neighboring houses. McCarthy – She wants to see photos of the existing buffer and depictions of the proposed buffer. Asked if there were any letters of concern other than Richard Preston's. Cohen – He's happy to supply the revised site plan not conscious three I have to dig.
Motion	Motion to Continue to November 18th, 2021 meeting. (made by: Botticelli) (seconded)
Roll-call vote	Carried 5-0//Botticelli, Toole, O'Mara, McCarthy, and Mondani-aye
4. 25-21	John J. Barry and Nancy J. Barry
	1 Goose Cove Way
	Brescher
	Applicant is seeking a special permit pursuant to Zoning Bylaw Section 139-2A and 139-7A to construct a residential swimming pool on the locus. Locus is situated at 1 Goose Cove Way, shown on Assessor's Map 59.4 as Parcel 133, and as Lot 892 upon Land Court Plan 3092-118. Evidence of owner's title is registered on Certificate of Title No. 28218 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).
Voting	McCarthy, Botticelli, Toole, O'Mara, Mondani
Alternates	Poor, Thayer (Allen commented but didn't vote)
Recused	None
Documentation	File with associated plans, photos, correspondence, required documentation, and standard Madaket pool conditions.
Representing	John Brescher, Glidden & Brescher P.C.
Public	Doneyn Bourke, 6 Arkansas Avenue Peter Baur, 38 Arkansas Avenue Kerry McKenna, 22 Arkansas Avenue Ada Ruth Waig, 34 Arkansas Avenue
Discussion (1:44)	Brescher – Explained the reasons for the request. HDC has approved the swimming pool and appurtenances. In response to the letter of opposition, he submitted a landscape plan showing 10 Leland Cyprus planted along the northern property line. The Health Department confirmed there is no problem with radii from wells. Allen – Asked if the vegetative buffer appeases the abutter. Bourke – Explained their main concern is the impact on water quality, the setback, and leaching of the chemicals used. McCarthy – In the decision, we address how the pool is emptied or water disposed of. Brescher – The site plan submitted from Don Bracken's, Bracken Engineering, office shows the pool 20' away from all setbacks; same with the pool equipment. The BOH will have to approve the pools setback from wells and leach fields. This will be a saltwater pool; doesn't know the exact procedures to be used but suspect it will be using best practices. Botticelli – There are still chemicals. We address the chemicals with our standard pool conditions. Asked to see the standard conditions for pools in Madaket. Review and discussion of Val Oliver's landscape plan and Mr. Bracken's site plan showing a 50' wide vegetative buffer between the pool and Starbuck Road. Discussion of the conditions related to what is needed for this request and review of photos of the existing buffer provided by the Bourkes. Mondani – He would like to see a more detailed landscape plan. He doesn't like introducing Leland Cyprus to Madaket and would prefer more native species. Botticelli – The buffer isn't to address a visibility issue; she too prefers native vegetation over Leland. One issue is where the fence will go and if some landscaping has to be cut staff that to install it.

Allen – Wants to know if the pool has an auto cover, which doesn't require a fence.

Mondani – The buffer on the north looks like it's on the adjoining property; further buffer might be required on this property.

Bourke – He's concerned about the noise from the pump; the proposed pump runs at over 50 decibels. Stressed that Madaket is a very quiet environment.

McCarthy – We do address pool equipment placement.

McKenna – Read into the record their opposition to the pool: environment, water quality, power efficiency, and dark skies. Expressed concern about the means of abutter notification.

Snell – Explained notification requirements for the ZBA.

Waig – Mirrors the concerns expressed by Mr. Bauer and Mr. McKenna. Would prefer a structure around the pool equipment to mitigate the noise. Expressed concerns with notification. Wants actual fencing around 4 sides of the pool.

Botticelli – If the pool has an auto cover, no fence is required. The house as the "fourth wall" seems a bit stretched.

Toole – If there is no auto cover, the pool has to be alarmed as well as fenced. He sees no safety concerns.

Allen – Mr. Bracken's plan shows the pool equipment with a 2' landscaped surround.

O'Mara – Different pumps have different decibel ratings; this board might want to require a quiet pump.

Bourke – Going to back to the point of the salt water pool, they do use chlorine.

Poor – One plan proposes the pool as 9X21 and another plan proposes it 14X28. That needs to be resolved.

McCarthy – The September 13th plan shows the pool as 9X21. The client needs to get BOH approval for the pool. We need to know whether or not the pool has an auto cover. We will include the standard pool conditions in our decision. We need a landscape plan and requirements for the 15' buffer. The Board prefers native plantings. We need a lighting plan; we will impose limitations on lighting. Neighbors brought up issues of the safety of 4 walls versus 3 walls, fence, equipment location and decibel rating, and screening to mitigate pool equipment noise. The manufacturer specification on the pool equipment would be helpful.

Botticelli – Asked for a copy of the noise bylaw.

Motion **Motion to Continue to November 18th, 2021 meeting.** (made by: Toole) (seconded)

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

5. 28-21 Roy W. Weedon & Shelly Lafleur Weedon 9 Twin Street Williams

Withdrawn

6. 27-21 ACK86QR, LLC. 86 Quidnet Road Williams

Applicant is seeking a special permit pursuant to Zoning Bylaw Section 139-33A (4) to remove and reconstruct portions of the pre-existing nonconforming structure while moving it away from the coastal bank without exceeding the existing ground cover ratio and will meet all setback requirements. Locus is situated at 86 Quidnet Road, shown on Assessor's Map 21 as Parcel 102 (also includes Parcels 103 and 69), and as Lot 8 upon Land Court Plan 8606-A (also includes Lot 7 upon Land Court Plan 8606-A and Lot 34 upon Land Court Plan 8606-B). Evidence of owner's title is recorded in Book 1802, Page 65 at the Nantucket County Registry of Deeds (and on Certificate of Title No. 28160 with the Nantucket County District of the Land Court). The site is zoned Residential 20 (R-20).

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

Alternates Poor

Recused Botticelli (Toole took a break)

Documentation File with associated plans, photos and required documentation

Representing Linda Williams

Steve Theroux, Nantucket Architectural Group

Public None

Discussion (2:28) **Williams** – Reviewed the request. HDC has approved all the changes and they have ConCom permits. Her client hopes to complete work before next summer. The staging area is across the street. Her client is taking steps to combine the 3 east-facing lots; doing that would eliminate the groundcover issues.

Theroux – The structure is moving out of the setback and away from wetland resource areas. We worked with all neighbors to secure their comfort level with this project. The 1st-floor elevation is not changing, and the existing groundcover is being reduced.

Motion **Motion to Approve as submitted.** (made by: Allen) (seconded)

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

7. 23-21 Timothy Green 6 Macy Road Williams

Applicant is seeking a special permit pursuant to Zoning Bylaw Section 139-2A and 139-7A to construct a residential swimming pool on the locus. Locus is situated at 6 Macy Road, shown on Assessor's Map 60 as Parcel 144, and as Lot 265 upon Land Court Plan 3093-18. Evidence of owner's title is registered on Certificate of Title No. 28130 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

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

Alternates Poor, Thayer, Mondani

Recused None

Documentation File with associated plans, photos and required documentation

Representing Linda Williams

Timothy Green, owner

Public	None
Discussion (2:55)	Williams – Reviewed the request. HDC has approved the work. They don’t have municipal water but do have a substantial well with which to fill the pool; the pool will have an auto-cover. The BOH will have to review and approve the pool. We will be fine with a condition to provide a lighting plan; she understands a low light must be kept on while the pool is not covered. It is 100 feet from the pool to the neighbor’s house with a massive amount of existing vegetation for screening. Botticelli – If they take water out of the well to fill the pool, they undermine the aquifer. McCarthy – A condition we would consider is that they contract with someone to fill the pool. Toole – On the GIS photo, it doesn’t look like the neighbors are as far away from the pool as Ms. Williams indicates. McCarthy – We need a more accurate landscape plan showing the house with decks. Referencing page 189 of the packet, HDC approved the landscape plan. Asked if that landscape plan is adequate. Toole – This should meet the same requirements as every other pool in Madaket. We’ve asked for planting plans before. Botticelli – The landscaping goes off their property; that area needs to be revegetated. She’d like to see a previously approved site plan for comparison. Allen – It looks like 75’ between the pool and the nearest neighbor’s house. Mondani – Confirmed that it’s the inside of the pool can’t be in the setback. Cedar would be good; Leland Cyprus are not indigenous to Nantucket. McCarthy – Referenced another pool application that had a planting plan. There is a list of indigenous plants for landscapers to use. Botticelli – We need notes on the plans indicating existing vegetation will remain and we need photos of the existing vegetation and notes on what will be added. She’s concerned about the lack of vegetation between the pool and retaining wall, which is under the control of this property owner. Snell – The level of screening is at ZBA discretion based upon conditions. Green – The retaining wall is only 12” to 18”. All work is within existing lawn; nothing is being cut away. He is not doing any landscape lighting. He is cutting away the existing deck and tucking the pool close to the house. The pool is 12X28. Allen – Wants to know the distance between the pool coping and the retaining wall; that’s not on the plans. McCarthy – We need a lighting plan, topography plan, detailed landscape plan with plantings, and screening plan. The encroaching clearing needs to be filled in to inside the west property line. We need to be consistent about what we require with pool applications in Madaket. O’Mara – Suggested a site visit set up by Ms. Williams. Botticelli – Would like a stake at the corner of the retaining wall. Discussion about placement of this on the November 18th agenda.
Motion	Motion to continue to November 18th, 2021. (made by: Toole) (seconded)
Roll-call vote	Carried 5-0//Toole, O’Mara, McCarthy, Botticelli, and Allen-aye

IV. OTHER BUSINESS

1. Discussion about when the ZBA might be able to return to meeting in person.

V. ADJOURNMENT

Motion	Motion to Adjourn at 3:42 pm. (made by: Toole) (seconded)
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