



Planning and Land Use Services

Building ▪ Historic District Commission ▪ Planning Board ▪ Zoning Board of Appeals

Date: October 7, 2021

To: Zoning Board of Appeals

From: Leslie Woodson Snell, AICP

Re: Staff Memo for October 14 ZBA Meeting

APPROVAL OF THE MINUTES:

- August 12, 2021
- September 9, 2021

OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN)

- **06-21** Jayne C. Debiasio & Brian F. Debiasio 39 Meadowview Dr. Reade
Action Deadline October 5, 2021
No new information was received.
- **18-21** Ack Smart as Applicant for 21 Woodbine, LLC 21 Woodbine St. Beaudette
Action Deadline November 10, 2021
No new information was received.
- **19-21** Ack Smart as Applicant for Timothy & Lauren Miner 12 S. Valley Rd. Beaudette
Action Deadline November 10, 2021
No new information was received.
- **21-21** Michael S. Jemison & Kristina Jemison 195 C Hummock Pond Rd Brescher
Action Deadline December 8, 2021

The applicant submitted the approved septic system permit application, a site plan, and the HDC COA. They also noted that the proposed cabana has a hipped roof (6:12) with no gables and that a serving window to the outside kitchenette sink is proposed.

NEW BUSINESS (INITIAL PUBLIC HEARINGS AND VOTES MAY BE TAKEN):

- Adam Delaney-Winn 40 Warren's Landing Rd. File No. 22-21 Reade
Action Deadline January 12, 2022

2 Fairgrounds Road Nantucket Massachusetts 02554
508-325-7587 telephone 508-228-7298 facsimile

Applicant is appealing the determination of the Zoning Enforcement Officer that the driveway accessing the locus from Blue Heron Way is in violation of Zoning Bylaw section 139-20.1B (1) because there is an additional driveway access from Warren's Landing Road. Locus is situated at 40 Warren's Landing Road, shown on Assessor's Map 38 as Parcel 45, and as Lot 10 upon Land Court Plan 16956-E. Evidence of owner's title is registered on Certificate of Title No. 27280 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 2 (LUG-2).

The applicant provided a detailed description of the appeal, which is included in your packet.

Section 139-21 (Appeals) of the Zoning Bylaw states the following:

- A. An appeal to the Board of Appeals (or to the Zoning Administrator if authorized to hear such appeal) may be taken:
- (1) By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § **139-25B(1)** above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or ...
- B. Filing of notice of appeal.
- (1) Any appeals under this § **139-31** to the Board of Appeals (or the Zoning Administrator if authorized to hear such appeal) shall be taken within 30 days from the date of the order or decision which is being appealed.

Marcus Silverstein, Zoning Compliance Coordinator, provided a report and supporting information for your review.

The Board should consider the following:

- (1) Is this a timely appeal of the Zoning Enforcement Officer's (ZEO) determination? See Bylaw sections and report referenced above.**
- (2) If the Board determines that the appeal was not made within 30 days, then you need to make findings to support that determination.**
- (3) If the Board determines that the appeal was made within 30 days, then you need to evaluate the specific details of the matter and either uphold or overturn the ZEO's determination.**

There are several letters from neighbors in your packet.

- **Timothy Greene** **6 Macy Rd** **File No. 23-21** **Williams**
Action Deadline January 12, 2022
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 recorded in registered on Certificate of Title No. 28130 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

The applicant provided a detailed description of the proposed work, which is included in your packet.

Swimming pools are permitted by special permit in the VR district subject to the following standards listed in Zoning Bylaw Section 139-2A (Definitions):

SWIMMING POOL - RESIDENTIAL

A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth and exceeding 150 square feet of water surface area, or exceeding 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The swimming pool must be located on the same or contiguous lot as a residential dwelling or constructed for the benefit of a group of residences, such as a multifamily development, subdivision, or in conjunction with a neighborhood association. ***In the VR District only, the Zoning Board of Appeals, acting as the special permit granting authority, may grant a special permit to allow a residential swimming pool on a lot, subject to the following criteria being met: (1) the lot must meet or exceed the minimum lot size for the district, and (2) side and rear yard setbacks of 20 feet shall apply to the residential swimming pool and associated mechanical equipment.***

Further, Section 139-30 (Special Permits)

A. The special permit granting authority shall be the Board of Appeals for all special permits, except those special permits for which the Planning Board is specifically designated by any provision of this chapter. In instances where any portion of a project involves a special permit application to the Planning Board for an apartment, apartment building, elder housing facility, medical marijuana treatment center, recreational marijuana establishment, neighborhood employee housing, secondary dwelling, or tertiary dwelling all pursuant to § 139-2, business commercial, commercial industrial, and industrial uses as categorized in the "Use Chart" pursuant to § 139-7A, residential development options pursuant to § 139-8, and for certain uses in the Public Wellhead Recharge District pursuant to § 139-12B, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project.

- (1) The special permit granting authority shall issue special permits for structures and uses which are in harmony with the general purpose and intent of this chapter subject to the provisions of such chapter.***
- (2) Such permits may impose conditions, safeguards and limitations intended to ensure that the use or structure is in harmony with the general purpose and intent of this chapter.***

If the proposed swimming pool meets the standards contained within the definition, then the ZBA must grant the permit, although conditions may be included. Staff notes that the proposal meets the standards

- **Steven L. Cohen, Trustee of the 6 Village Way Realty Trust and Steven L. Cohen, Trustee of the 37 Pocomo Road Realty Trust** **File No. 24-21 Self**
Action Deadline January 12, 2022

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 recorded in 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).

The applicant provided a detailed description of the proposed work, which is included in your packet.

The sections referenced in the requested relief are pasted below.

(1) Preexisting, nonconforming structures or uses may be extended, altered, or changed, provided that:

- (a) ***The special permit granting authority finds that such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood.*** Where an existing structure violates a front, rear, or side yard setback distance, ***the special permit granting authority may issue a special permit to allow an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and based upon a finding that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity*** ; or
- (b) The Zoning Administrator or ***the special permit granting authority finds that the alteration, extension, or change to a structure does not increase its nonconforming nature and does not create any new nonconformities*** . Where an existing structure violates a front, rear, or side yard setback distance, the Zoning Administrator ***may issue a permit allowing an extension, alteration, or change to the structure, provided that the nonconforming setback distance is not made more nonconforming and no new nonconformities are created*** ;

The applicant is also requesting a modification/clarification of a prior variance and special permit to allow the septic system to remain in the required buffer area and to allow a change to a roof height within a required setback, which would no longer be applicable if this permit is approved.

A letter from an abutter is included in your packet.

- **John J. Barry and Nancy J. Barry 1 Goose Cove Way File No. 25-21**
Brescher
Action Deadline January 12, 2022
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 recorded in registered on Certificate of Title No. 28218 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

The applicant provided a detailed description of the proposed work, which is included in your packet.

Swimming pools are permitted by special permit in the VR district subject to the following standards listed in Zoning Bylaw Section 139-2A (Definitions):

2 Fairgrounds Road Nantucket Massachusetts 02554
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SWIMMING POOL - RESIDENTIAL

A structure designed to be used for recreational purposes, either above or below grade, containing water more than 24 inches in depth and exceeding 150 square feet of water surface area, or exceeding 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like. The swimming pool must be located on the same or contiguous lot as a residential dwelling or constructed for the benefit of a group of residences, such as a multifamily development, subdivision, or in conjunction with a neighborhood association. ***In the VR District only, the Zoning Board of Appeals, acting as the special permit granting authority, may grant a special permit to allow a residential swimming pool on a lot, subject to the following criteria being met: (1) the lot must meet or exceed the minimum lot size for the district, and (2) side and rear yard setbacks of 20 feet shall apply to the residential swimming pool and associated mechanical equipment.***

Further, Section 139-30 (Special Permits) states the following:

- A. The special permit granting authority shall be the Board of Appeals for all special permits, except those special permits for which the Planning Board is specifically designated by any provision of this chapter. In instances where any portion of a project involves a special permit application to the Planning Board for an apartment, apartment building, elder housing facility, medical marijuana treatment center, recreational marijuana establishment, neighborhood employee housing, secondary dwelling, or tertiary dwelling all pursuant to § **139-2**, business commercial, commercial industrial, and industrial uses as categorized in the "Use Chart" pursuant to § **139-7A**, residential development options pursuant to § **139-8**, and for certain uses in the Public Wellhead Recharge District pursuant to § **139-12B**, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project.
- (1) The special permit granting authority shall issue special permits for structures and uses which are in harmony with the general purpose and intent of this chapter subject to the provisions of such chapter.***
- (2) Such permits may impose conditions, safeguards and limitations intended to ensure that the use or structure is in harmony with the general purpose and intent of this chapter.***

If the proposed swimming pool meets the standards contained within the definition, then the ZBA must grant the permit, although conditions may be included. Staff notes that this proposal meets all the standards and that the shape of the lot is very irregular, so placement of the pool is limited. Concerns were expressed by an abutter that should be discussed at the meeting.

A letter from an abutter is included in your packet.

- **Richard W. Ralston & Doreen Ralston, 33 Goldfinch Drive** **File No. 26-21**
Brescher
Action Deadline January 12, 2022
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

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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).

The applicant provided a detailed description of the proposed work, which is included in your packet.

Section 136-16C(1) of the Bylaw is pasted below:

- (1) Notwithstanding the provisions of § **139-16C(4)**, the Board of Appeals may grant a special permit to reduce the ten-foot side yard setback in R-5 and the ten-foot side and rear yard setback in R-10, R-20 and SR-20 to five feet.

Further, Section 139-30 (Special Permits) states the following:

- A. The special permit granting authority shall be the Board of Appeals for all special permits, except those special permits for which the Planning Board is specifically designated by any provision of this chapter. In instances where any portion of a project involves a special permit application to the Planning Board for an apartment, apartment building, elder housing facility, medical marijuana treatment center, recreational marijuana establishment, neighborhood employee housing, secondary dwelling, or tertiary dwelling all pursuant to § **139-2**, business commercial, commercial industrial, and industrial uses as categorized in the "Use Chart" pursuant to § **139-7A**, residential development options pursuant to § **139-8**, and for certain uses in the Public Wellhead Recharge District pursuant to § **139-12B**, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project.
- (1) The special permit granting authority shall issue special permits for structures and uses which are in harmony with the general purpose and intent of this chapter subject to the provisions of such chapter.**
- (2) Such permits may impose conditions, safeguards and limitations intended to ensure that the use or structure is in harmony with the general purpose and intent of this chapter.**

The proposed addition of less than 100 square feet is shown as approximately 6.4 feet from the side yard lot line, which is consistent with the siting of other structures within the Naushop neighborhood.

- **ACK86QR, LLC.**
Williams
Action Deadline January 12, 2022
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).

The applicant provided a detailed description of the proposed work, which is included in your packet. The applicable section of the Bylaw for the requested relief is pasted below:

- (4) Removal and reconstruction of any or all of the preexisting nonconforming structure(s), or any portion(s) thereof, in excess of the permitted ground cover ratio upon a lot, **shall be allowed by special permit**, provided that:
- (a) **Such special permit shall have been issued prior to the removal of the preexisting nonconforming structure(s), or any portion(s) thereof** ;
 - (b) (Reserved)
 - (c) **All reconstructed structure(s), or portion(s) thereof, shall conform to all applicable front, rear and side yard setback requirements** ; unless relief is granted under separate provisions of this chapter; and
 - (d) **The special permit granting authority shall have made the finding that the result of the proposed removal and reconstruction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure and/or use.**

The proposal reduces overall ground cover and will meet setback requirements.

- **Roy W. Weedon & Shelly Lafleur Weedon 9 Twin Street File No. 28-21 Williams**
Action Deadline January 12, 2022
Applicants are seeking a special permit pursuant to Zoning Bylaw Section 139-33A (4) in order to demolish (or move off site) the pre-existing nonconforming dwelling and to construct a new dwelling with the same ground cover ratio and meeting all setback requirements. Locus is situated at 9 Twin Street, shown on Assessor's Map 55.4.1 as Parcel 7.1, and as Lot 2 upon Plan No. 2013-33. Evidence of owner's title is recorded in Book 1397, Page 253 at the Nantucket County District of the Land Court. The site is zoned Residential Old Historic (ROH).

The applicant provided a detailed description of the proposed work, which is included in your packet. The applicable section of the Bylaw for the requested relief is pasted below:

- (4) Removal and reconstruction of any or all of the preexisting nonconforming structure(s), or any portion(s) thereof, in excess of the permitted ground cover ratio upon a lot, **shall be allowed by special permit**, provided that:
- (a) **Such special permit shall have been issued prior to the removal of the preexisting nonconforming structure(s), or any portion(s) thereof** ;
 - (b) (Reserved)
 - (c) **All reconstructed structure(s), or portion(s) thereof, shall conform to all applicable front, rear and side yard setback requirements** ; unless relief is granted under separate provisions of this chapter; and

- (d) *The special permit granting authority shall have made the finding that the result of the proposed removal and reconstruction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure and/or use.*

The proposal reduces overall ground cover and will meet setback requirements.