



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 ~~

Monday, November 22, 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: Paul Murphy, Building Commissioner; Megan Trudel, Land-use Specialist; Nicky Sheriff; Administrative Assistant; Terry Norton, Town Minutes Taker
Attending Members: McCarthy, Botticelli, Toole, O'Mara, Allen, Poor, Thayer, Mondani
Late Arrivals: O'Mara, 12:12 pm; Mondani, 2:56 pm.
Early Departure: Poor, unk.; Botticelli, 3:58 pm
Town Counsel: Alex Weisheit, K&P Law

Adoption of Agenda

Motion **Motion to Approve as amended.** (made by: Toole) (seconded)
Roll-call vote Carried 5-0//McCarthy, Toole, Allen, Poor ground movement LP one midnight LP, and Thayer-aye

I. APPROVAL OF MINUTES

1. October 14, 2021
McCarthy – Page 3 of 5: 24-21, Cohen should read, “supply revised site...plan.”
Page 5 of 5: 23-21 McCarthy should read “we will consider conditioning...”
Motion **Motion to Approve as amended.** (made by: Toole) (seconded)
Roll-call vote Carried 5-0//McCarthy, Toole, Allen, Poor, and Thayer-aye

II. NEW BUSINESS APPEALS

1. 30-21 Anne Dewez, et. al (Applicants) 103 Main Street Self
Applicant is appealing the determination of the Zoning Enforcement Officer (ZEO) that a structure at 103 Main Street conforms to the definition of hot tub/spa in Zoning Bylaw Section 139-2A. Locus is situated at 103 Main Street, shown on Assessor's Map 42.3.3 as Parcel 153, and as Lot 2 upon Plan File 04-48. Evidence of owner's title is recorded in Book 1494, Page 211 at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
Voting McCarthy, Toole, O'Mara, Allen, Thayer
Alternates Poor
Recused Botticelli
Documentation File with associated plans, photos, required documentation, and correspondence.
Representing Wayne Dennison, Brown Rudnick LLP, for Anne Dewez of 5 Mill Street, Peter Taylor of 98 Main Street, and Rob & Margie Kargman of 8 Mill Street
Other Speakers None
Discussion (12:12) **Dennison** – We're talking about more than just an oversight. His clients had asked about the gallonage of the spa and were told that the zoning definition doesn't reference gallonage for a spa/hot tub. The problem is that doesn't take into account other definitions in the Zoning Bylaw. He submitted a letter on November 12th explaining the basis for this appeal; it appears the letter hasn't been delivered to the Board. If the Board wants time to review the letter, his clients are comfortable with a continuance.
McCarthy – The owner of the property did not receive notice and didn't know about this appeal until November 16th. They would like this continued, so they can prepare a response.
Weisheit – The statutory dead line for the appeal is December 30th, 2021
Motion **Motion to Hold for the December ZBA meeting.**
Roll-call vote Carried 5-0//McCarthy, Toole, Thayer, Allen, and O'Mara-aye

2. 36-21 Cathy Ward (as Applicant) 9 West Dover Street Self
- Applicant is appealing a determination by the Building Commissioner that the use of 9 West Dover Street as a short-term rental (“STR”) business is not a commercial use prohibited in the residential zone in which it is located. Applicant requests that the Zoning Board of Appeals overturn the Commissioner’s determination with respect to the property and further that zoning enforcement action be taken by issuing an order to the owner to cease and desist using the property as an STR. The Locus is situated at 9 West Dover Street, is shown on Assessor’s Map 55.1.4 as Parcel 189 and in Plan Book 7, Page 29. Evidence of title is recorded in Book 1581, Page 238 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
- Voting McCarthy, O’Mara, Allen, Poor, Thayer
- Alternates Toole
- Recused Botticelli,
- Documentation File with associated plans, photos and required documentation
- Representing Catherine Ward, 4A Silver Street
Christian Hoffman, 42 Pine Street
Melissa Philbrick, 4 Silver Street
Sarah Ellis, 7 Silver Street
- Other speakers Linda and Peter Grape, owners 9 West Dover Street
Robert McLaughlin, Gilman, McLaughlin, & Hanrahan, LLP, Atty for Dr. & Ms. Grape
- Discussion (12:23) **Ward** – She lives on Silver Street behind this house. The current non-resident owner uses the house for STR; this is a residential neighborhood and STRs are incompatible with residential zoning. She can’t enjoy being outside on her property due to loud voices, noises, and parties. Residents want to enjoy their summers without loud neighbors. Zoning is meant to ensure the safety and health of residents. She has support of the neighbor for preserving the quiet ambience of this neighborhood. Cited a case as precedence against STRs.
- McLaughlin** – Noted that his clients and their family stay at the property and stay in the apartment when STRs are in main residence. He sent a memorandum to the ZBA. Explained why the Lindfield case supports his clients use of the property; there’s a distinction between rental and event use, which was the case in Lindfield. There is also the STR case on Nantucket of 14 New Mill Street. Said Ms. Ward doesn’t have standing, which she must prove to the ZBA. Asked the ZBA to uphold Paul Murphy’s determination.
- Murphy** – STRs don’t violate the zoning laws.
- Hoffman** – He would like to receive Mr. McLaughlin’s memorandum. Doesn’t feel this should be characterized as something about ACKNow. The question is what the ZBA bylaw does and does not allow. A question is when does a residential use become a commercial use; that’s an issue for ZBA to consider. Another question is when does a residential area become so impacted by STRs that it is no longer a residential neighborhood.
- McCarthy** – Doesn’t feel the ZBA needs to get into the issue of standing at this time. Asked to hear from the Board.
- Toole** – He’d like to see the memorandum as well. Asked when it was sent (November 19th at 9:30 am.) He was unaware of it and did not read it.
- McCarthy** – Mr. McLaughlin hit all the bullet points in his memo.
- Allen** – She had wondered how much time the Grapes spend at the house; it sounds like quite a bit.
- L. Grape** – What Mr. McLaughlin said is fairly accurate. With the exception of April 2020, we come in the winter twice a month and regularly in the shoulder season and about 3 times a month during the summer.
- Allen** – In her opinion, they aren’t breaking any laws. Everyone knows what it’s like to have renters nearby; it’s part of life. If they aren’t breaking any laws, there’s no way to police how much time owners spend in the house and the people who rent the house. Like so many other property owners, they rent out.
- Philbrick** – You have the rental history. She feels transient activity has a destabilizing influence on the neighborhood. In the Lindfield case, they recognized different types of rentals; the Town of Nantucket needs to recognize that. The people who rent out as intensely as this situation are investing in economic opportunity, not the community. She doesn’t think this use is grandfather; these little “hotels” are commercial in nature.
- Thayer** – Appreciates everything Ms. Allen said; however, he also agrees with Ms. Philbrick and understands both sides. He’s not comfortable with changing policy at this time; it should be hashed out in Town Meeting.
- O’Mara** – Agrees with Mr. Thayer. Ms. Ward does have standing, in his opinion, by virtue of the fact she’s an abutter.
- Poor** – Agrees with his fellow commissioners based upon what our current zoning bylaws consider proper use of property. It’s up to a Town Warrant Article to determine where we go. We upheld the New Mill Street decision, which was a bell test for this issue.
- Cohen** – He has an active interest in this issue. One point is that everything Ms. Ward described as objectionable is typical residential activity for a single-family dwelling. The Nantucket zoning code has a definition for transient rentals – motels, hotels, boarding houses, and guest houses. Renting out a single room would require a special permit. Recommends the ZBA uphold Mr. Murphy’s decision.
- Ellis** – Appreciates a lot of points made. She is also a resident of Silver Street. Rentals have been a part of the community for a very long time. Our neighborhood is at the edge of Residential Old Historic where the year-round residents look out for each other. Asked if the Grapes are legal residents.
- Allen** – Doesn’t think Residency matters in this case.

Ellis – Part of what alarms her is the number of properties, which are solely for investment. ROH is a confined space.

Toole – Asked if this could be continued to allow Town Meeting to make a determination; he wonders what happens if Town Meeting changes the policy after we affirm Mr. Murphy's determination.

McCarthy – It's inappropriate to make this wait for Town Meeting; the Town needs to have that larger policy discussion. We are a regulatory board upholding existing bylaws. This isn't in violation of our zoning code, as it is currently written.

Weisheit – If the use were to become unlawful in the future, you would have a different case before you.

McCarthy – In this case, we would Roll-call vote to uphold Mr. Murphy's determination and Roll-call vote to deny the appeal.

Motion **Motion to uphold the Building Commissioner's determination and deny the applicant's administrative appeal.**
(made by: Thayer) (seconded)

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

3. 22-21 Adam Delaney-Winn, Trustee of Warren's Landing Nominee Trust 40 Warren's Landing Road Reade

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).

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

Alternates Poor, Thayer

Recused None

Documentation File with associated plans, photos and required documentation

Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for appellant

Public None

Discussion (1:20) **McCarthy** – We've been asked to have this be continued to the January 13th, 2022 meeting.

Motion **Motion to Hold for the January 13th, 2022 meeting.** (made by: O'Mara) (seconded)

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

III. OLD BUSINESS

1. 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

Recused None

Documentation File with associated plans, photos and required documentation

Representing Linda Williams

Public None

Discussion (1:25) **Williams** – She took pictures of the pool location and it's clear there is very little impact; submitted the revised screening plan. A GIS topographical map was in the original submission. Submitted photos and a planting plan.

Botticelli – Ms. Williams was supposed to set up the site visit through staff. There is no topographical map in the original submission. There were questions about the height of the retaining wall and we don't have that.

McCarthy – We have asked Ms. Williams to set up a site visit and we never heard from her; we had also asked for other information none of which was submitted: topography plan, lighting plan, and encroachment detailed. We haven't had time to review any new information. We should continue this for December when we have all the requested information and have had a site visit.

Williams – Reviewed photos she had taken of the site. There is no lighting plan because there are no lights proposed.

Botticelli – She wants to see the property line and the pool outline staked.

McCarthy – Wants a site visit, to see a detailed planting plan, and a lighting plan, which is needed for safety; if we don't have accurate information by December, we will continue this for January 2022.

Motion **Motion to Continue to December 9th, 2021.** (made by: Toole) (seconded)

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

2. 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, Botticelli, Toole, O'Mara, Allen
Alternates	Poor, Thayer
Recused	None
Documentation	File with associated plans, photos and required documentation
Representing	Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Public	None
Discussion (1:40)	Reade – We're dealing with an existing garage-studio constructed in 2012 and designated as not for human habitation due to septic restrictions; it's siting was based upon the wetland setbacks. Now the house is connected to sewer with no limitation on bedrooms. Mr. Toole noticed a structure within the wetland buffer and asked its legitimacy; we received the Order of Conditions allowing it to be moved off site and now have the Certificate of Compliance. We're asking to remove the limitation not for human habitation. Also, the Planning Board has approved it as a second dwelling. Botticelli – Confirmed the October 29th, 2021 site plan is the correct one showing the shed removed and that any plans showing the shed are obsolete. Allen – With the shed gone, asked if everything else is in compliance with all requisite boards (yes). Toole – Asked if the work is complete and the plan shows the lot as it is now (yes). Motion to Grant the relief as requested. (made by: Toole) (seconded)
Motion	
Roll-call vote	Carried 5-0//McCarthy, Toole, O'Mara, Botticelli, and Allen-aye
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, Mondani
Alternates	None
Recused	Toole, Thayer
Documentation	File with associated plans, photos, required documentation, and correspondence.
Representing	Richard Beaudette, Vaughan, Dale, Hunter & Beaudette, P.C.
Public	Zachary Dusseau, ACK Smart Christine Petrella, 16 Pequot Street Tom and Gail Palmer, for Mary Ann Carpenter of 14 Pequot Street Elisa Allen
Discussion (2:56)	Beaudette – The arrays are now within the zoning setback, in some places 4' to 5' from the setback. Based upon a 2017 correspondence with Marcus Silverstein, ZEO, they thought solar arrays could go in the setback. Mr. Murphy disagreed with Mr. Silverstein's interpretation. It's significantly costly to move the arrays. Concerns about screening were raised. We have HDC approval for the current location. He included proposed screening in his ZBA letter submitted last week. The footpath is not on this property. If this relief is granted, his client would be willing to withdraw the 12 South Valley Road application. Petrella – She submitted a letter dated November 17th. Has an issue the client relied on a 4-year-old email and did not ask someone in authority. The panels are a different dimension than approved by the HDC. Doesn't understand why all the panels had to go into the setback on such a large property or why the array wasn't downsized. At time of installation, they chose not to screen the array. Almost all the vegetation is on her property; there's not much space between the panels and the property line for screening. McCarthy – We have a planting plan for evergreen screening. T. Palmer – Ms. Carpenter submitted a letter. This intrusion into the setback was not necessary. Screening is necessary; this is in plain view of the abutting properties as well as a public road. Asked if the HDC has the authority to overrule zoning. McCarthy – The HDC doesn't overrule the ZBA but it provides guidance that they are okay with the current location. Botticelli – The Zoning bylaw doesn't require arrays from being in the setback; no matter how this goes, they should be out of the setback in the future because they are a structure. We are not a policy board that hasn't been correctly illuminated in the bylaws. Beaudette – We wouldn't be here but that we built these relying on old information. If the policy in 2017 allowed them in the setback but away from the property line, it was okay; Mr. Murphy has set the policy of not being in the setback. We aren't totally relying on the neighbor's screening; we feel there's enough room for adequate screening. There could be a condition that we maintain the screening; proposing Leland Cyprus. O'Mara – He's troubled by the existence of the email; the Town has some liability as a result of it. He's hoping that can get worked out. McCarthy – She agrees; the applicant relied on a Town official. Now that has changed, and they are doing what they can. Murphy – Everyone had the best intentions here; allowing solar arrays in the setback was the policy prior to his arrival. However, he knows of no other community in Massachusetts that allows them in the setback. He doesn't think we'll see this problem again.

Petrella – Still doesn't see that it was necessary to go into the setback. Not a fan of Leland Cyprus. It's unfortunate the abutters have to live with this.

Beaudette – We will talk to the neighbors about what screening would be acceptable.

Botticelli – It's unfortunate it happened. Doesn't think there were bad any intentions. She would like the client to work out the screening to everyone's satisfaction.

T. Palmer – We wanted to see where the ZBA stood before responding to the applicants. There were a bunch of things they could have done, but feel the burden was put upon the abutters.

G. Palmer – The zoning policy is very clear the array shouldn't have been in the setback; that is now clear going forward. Feels the structure should be modified to adhere to the zoning. Screening alone is not a suitable solution.

Mondani – Asked for whom the financial hardship exists, the owner or installation company.

Beaudette – The applicant is the solar company and the hardship will fall on them. The reason we didn't appeal Mr. Murphy's determination is practicality. He'd prefer to be asking for a special permit, but this area doesn't allow that.

Allen – Asked how much it would cost, is the cost in the labor or parts, and how far it has to be moved or reduced. Asked if the remaining panels would generate sufficient power.

Beaudette – This would cost somewhere in the realm of \$30,000; removing the 12 South Valley Road array is about \$10,000. The southern side would be the biggest expense.

Dusseau – Most of this property is visible from a public way; this area can't accommodate additional panels. We would have to refund to the owner the proportionate of loss of power and then have the cost of removal: labor, panels, and electrician. The way the array is assembled, you can't simply remove a square. There is the cost of rewiring.

McCarthy – She doesn't need to see a spreadsheet of the costs; she feels it meets the standard for financial hardship.

Petrella – Described an email exchange with Tim Carruthers of ACK Smart.

T. Palmer – Doesn't think it's an either screening or removing. Feels the economics are important regarding the hard cost of labor and parts and soft cost of loss of potential power.

Dusseau – The rebate for productivity loss is \$25,000 with the rest for labor and parts. We can't reuse the removed parts.

Mondani – Asked the height of the encroaching section of the array (5.5').

McCarthy – We have a 4-person board without Mr. Poor; she fears we have to continue to December for a full board. Mr. O'Mara's connection is spotty; he stated he'd grant the variance.

Mondani – He would grant the variance.

Botticelli – She missed the whole discussion on the financial hardship.

Beaudette – He's comfortable asking a 4-person board to roll-call vote. Asked for a continuance, he will reach out to the abutters about a different screening plant.

Motion **Motion to Continue to December 19th, 2021 meeting.** (made by: Mondani) (seconded)

Roll-call vote Carried 4-0//Mondani, McCarthy, Botticelli, and O'Mara (by text)-aye

4. 19-21 Ack Smart as Applicant for Timothy & 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, Allen

Alternates Poor, Thayer

Recused Toole

Documentation File with associated plans, photos and required documentation

Representing Richard Beaudette, Vaughan, Dale, Hunter & Beaudette, P.C.

Zachary Dusseau, ACK Smart

Public None

Discussion See the above discussion.

Motion **Motion to Continue to December 19th, 2021 meeting.** (made by: Botticelli) (seconded)

Roll-call vote Carried 4-0//Botticelli, McCarthy, Allen, and Thayer-aye

5. 21-21 Michael S. Jemison & Kristina Jemison 195 C 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, Thayer, Mondani

Alternates None

Recused Botticelli, Toole

Documentation File with associated plans, photos and required documentation

Representing John Brescher, Glidden & Brescher, P.C.

Public	None
Discussion (4:25)	McCarthy – We had to continue this before because Mr. Poor dropped off. The new plan and photos, of the proposed, were submitted. Brescher – He needs 4 votes for this, he’s not sure he has that unless all 4 members present would vote to support it. Asked to open this for feedback with the idea it will continue. Reviewed the application. Don’t have HDC approval yet. Thayer – He would a condition of the approval to be that there would be no cooking appliances allowed now or in the future; he would also want no windows in the foundation, so it can’t be finished off. Allen – Wants to add the restriction, “not for human habitation.” Mondani – He agrees with what’s been said. McCarthy – She’s not pleased to see the basement but likes the restriction of no windows to contain possible creep. She would be okay with the proposed conditions. This was approved by the HDC, if there are no external changes, that would be okay. Allen – It looks like the hipped roof line grew. Wants to ensure nothing gets slipped in between now and the HDC approval. Asked if this could be approved upon consent after the HDC approves it. Brescher – West elevation added a window and the south elevation went from a single to a double door; the height doesn’t look to have changed. An option would be to attach the proposed site plan, which the HDC would have to approve. McCarthy – Wants to hold this until HDC approves the modified cabana.
Motion	Motion to Continue to December 9th, 2021 meeting. (made by: Toole) (seconded)
Roll-call vote	Carried //McCarthy, Allen, Thayer, Mondani, and Toole-aye
6. 25-21	John J. Barry and Nancy J. Barry 1 Goose Cove Way Brescher
	Continued to December 9,2021
Motion	Motion to Continue for December 9th, 2021. (made by: Botticelli) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Botticelli, O’Mara, Toole, and Allen-aye
7. 24-21	Steven L. Cohen, Trustee of the 6 Village Way Realty Trust & Trustee of the 37 Pocomo Rd Realty Trust 6 Village Way and 37 Pocomo Rd Cohen
	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
Voting	McCarthy, Toole, Allen, Thayer, Mondani
Alternates	None
Recused	None
Documentation	File with associated plans, photos, required documentation, and correspondence.
Representing	Steven Cohen, Cohen & Cohen Law P.C
Public	None
Discussion (12:12)	Discussion to ascertain if there are 5 Board members present. Cohen – Substantially eliminating side yard setback and removing the 2nd-floor out of the setback and proposing a 3’ path and parking in the 50’ vegetative buffer and revegetate a comparable area. Thayer – He read a letter from Richard Preston, an abutter, asking if the property-line screening would be disturbed. Cohen – There is about 108’ between Mr. Preston and the disturbance; Mr. Preston is an abutter to the west and the disturbance is all to the east. McCarthy – We had asked for a plan showing the buffer, the septic, and the house shift. The septic is on a lot held in common ownership. Cohen – There is a recorded easement allowing the septic to be on the other lot. Allen – Asked what happens if the house is sold with the septic on the other property. Cohen – The septic is benefited by an easement. McCarthy – Asked if the height restriction was called out in the notice. We discussed about keeping the height restriction if the 2nd floor is kept out of the setback. Cohen – The height falls under the amendments to the prior decision; he thinks it’s actually inapplicable here. Mondani – Asked if other things would be located in the easement area beside the septic. Cohen – Parking, septic, and walking path.
Motion	Motion to Approve the relief as requested. (made by: Allen) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Mondani, Allen, Thayer-aye

IV. NEW BUSINESS

1. 35-21 Hugh and Kelly Mahon Johnston 76 Polpis Road Cohen
 Applicant is seeking a modification/clarification to a previously granted special permit in order to convert a portion of the garage structure to a second dwelling unit. Locus is situated at 76 Polpis Road, shown on Assessor's Map 43 as Parcel 177 and on Plan No. 2014-30. Evidence of owner's title is recorded in Book 1766, Page 20 on file at the Nantucket County Registry of Deeds. The site is zoned Limited Use General (LUG-3).
 Voting McCarthy, Botticelli, Toole, O'Mara, Allen
 Alternates Poor, Thayer
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Steven Cohen, Cohen & Cohen Law P.C.
 Public None
 Discussion (2:07) **Cohen** – This is to convert the garage to a dwelling. Asked for an amendment to the existing special permits or an exception to it. The Planning Board has approved this as a second dwelling; they conditioned it for parking, emergency access, site lines at the road, and an apron at the road.
Botticelli – This doesn't seem to be an unreasonable request.
Toole – Asked if the ZBA has done this before where we preserved the ground cover ratio (yes). Confirmed the ZBA had allowed the use to change from a non-dwelling to a dwelling.
 Motion **Motion to Grant the relief as requested revising Paragraph 4 to read, "...or other ancillary structure/dwelling unit..."** (made by: Botticelli) (seconded)
 Roll-call vote Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, and Allen-aye
2. 32-21 H.C. Bowen Smith, Trustee of Four Lowell Place Nominee Trust 4 Lowell Place Reade
 Applicant is seeking a modification to a previously granted special permit to increase the pre-existing nonconforming ground cover in order to construct additions to the existing structure. Locus is situated at 4 Lowell Place, shown on Assessor's Map 41 as Parcel 168 and in Plan Book 19, Page 26. Evidence of owner's title is recorded in Book 1390, Page 271 on file at the Nantucket County Registry of Deeds. The site is zoned Residential 1 (R-1).
 Voting McCarthy, Botticelli, Toole, O'Mara, Allen
 Alternates Poor, Thayer
 Recused None
 Documentation File with associated plans, photos and required documentation
 Representing Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
 Joe Topham, Topham design
 Public None
 Discussion (12:12) **Reade** – 30% is the maximum groundcover in this area; we got relief for an increase to 38.1%. As constructed, the present plan shows current groundcover at 36.77%; his client now wants to add a 64sf addition, which would increase groundcover to 38.3%. This has been approved by the HDC. This is a *deminimis* proposal with little to no impact on the neighborhood.
Botticelli – Looking at the architectural plan, asked why the addition needs to increase so much when it could remain within the currently allowed 38.1%; you would have to remove 15", which is "point"2% and equals 8sf.
Topham – It would have gone over 12sf of the allowable groundcover.
 Discussion about how much would have to be removed for the addition to remain within the currently allowed groundcover.
Reade – Read the prior decision. Since the physical layout is different, he'd feel more comfortable with a special permit.
McCarthy – The previous decision was acted upon, so it didn't expire.
O'Mara – Asked if there was any correspondence on this (no).
Poor – Doesn't think we would need a revised plan since they are staying within the 38.1%.
 Motion **Motion to Modify the special permit allowing the 38.1% to be utilized in accordance with the plan attached hereto.** (made by: Botticelli) (seconded)
 Roll-call vote Carried 5-0//McCarthy, Botticelli, Toole, O'Mara, and Poor-aye
3. 33-21 Sea Daze, LLC 27 Baxter Road Reade
 Applicant is seeking a modification to a previously granted special permit to alter the pre-existing nonconforming structure in order to place a new foundation under the existing dwelling and to increase the height of a gable located within the side yard setback. Locus is situated at 27 Baxter Road, shown on Assessor's Map 49.2.3 as Parcel 10 and as Lot 29 in Plan Book 2, Page 52. Evidence of owner's title is recorded in Book 1269, Page 202 on file at the Nantucket County Registry of Deeds. The site is zoned Siasconset Residential 20 (R-20).
 Voting McCarthy, Toole, O'Mara, Allen
 Alternates Poor, Thayer
 Recused Botticelli
 Documentation File with associated plans, photos and required documentation

Representing	Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP Ray Pohl, Botticelli & Pohl
Public	None
Discussion (2:38)	Reade – Seeking a modification to the special permit without changing the footprint to allow for a new foundation and add a dormer. Pohl – There is no change in the ridge height. The plate height of the 1.5-story wing about 2'. Sheriff – There was no mail on this.
Motion	Motion to Approve. (made by: Allen) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Allen, Toole, Poor, and Thayer-aye
4. 34-21	Jason P. and Brian P. Hafler 71 North Liberty Street Reade
	Applicant is seeking a special permit pursuant to Zoning Bylaw Section 139-33A to demolish and reconstruct a pre-existing nonconforming use (residential swimming pool). Locus is situated at 71 North Liberty Street, shown on Assessor's Map 71 as Parcel 141.1 and as Lot 2 in Plan File 23-B. Evidence of owner's title is recorded in Book 335, Page 195 on file at the Nantucket County Registry of Deeds. The site is zoned Residential Old Historic (ROH).
Voting	McCarthy, Botticelli, Toole, O'Mara, Allen
Alternates	Poor, Thayer
Recused	None
Documentation	File with associated plans, photos, required documentation, and HDC approval.
Representing	Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP Stephen Theroux, Nantucket Architectural Group Jason & Brian Hafler, co-owners
Public	None
Discussion (2:44)	Reade – The existing pool pre-dates the prohibition of pools within the ROH; the new pool will meet all required setbacks. The HDC has approved this. Without relief, we could repair and rehab the existing; but we are improving conditions. Theroux – The new pool is smaller than the existing. No hardscaping has been approved and relocation of the sauna hasn't been approved. O'Mara – There are no regulations against adding cubic footage. McCarthy – Asked what the HDC approved specifically; we are looking at just the pool. Botticelli – This will need to have a pool fence. Toole – This is similar to demolishing a non-conforming house. Mondani – It looks like the fence intrudes into the abutting property.
Motion	Motion to Grant the relief as requested allowing demolition and reconstruction of a non-conforming pool. (made by: Botticelli) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Botticelli, Toole, Allen, and Mondani-aye
5. 29-21	CRH 46 Surfside LLC 46 Surfside Road Halik
	Continued to December 9, 2021
Motion	Motion to Continue for December 9th, 2021. (made by: Thayer) (seconded)
Roll-call vote	Carried 5-0//McCarthy, Thayer, Mondani, Allen, and Toole-aye
6. 31-21	James A. and Susan G. Genthner, Trustees of the James A. Genthner Trust and Susan G. Genthner Trust Self
	Applicant is seeking a variance pursuant to Zoning Bylaw Section 139-A and 139-32 to exceed the maximum allowable ground cover ratio of 7%. Locus is situated at 128 Surfside Road, shown on Assessor's Map 80 as Parcel 299.1 and as Lot 3 upon Land Court Plan 40394-B. Evidence of owner's title is registered on Certificate of Title No. 28319 on file at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).
Voting	McCarthy, Toole, Allen, Thayer, Mondani
Alternates	None
Recused	None
Documentation	File with associated plans, photos and required documentation
Representing	None
Public	None
Discussion	Trudel – The applicant couldn't make the meeting and asked this be continued.
Motion	Motion to Continue for December 9th, 2021. (made by: Toole) (seconded)
Roll-call vote	Carried 5-0//Toole, Allen, McCarthy, Mondani, and Thayer-aye

V. OTHER BUSINESS

1. None

VI. ADJOURNMENT

Motion **Motion to Adjourn at 4:48 pm.** (made by: Toole) (seconded)

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

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

1. None

Submitted by:

Terry L. Norton