



Planning and Land Use Services

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

Date: December 7, 2021
To: Zoning Board of Appeals
From: Leslie Snell, AICP
Deputy Director of Planning
Re: December 9 ZBA Meeting Agenda

APPROVAL OF THE MINUTES:

- November 22, 2021

Staff made corrections to the minutes after the packet was posted. We recommend approval of the minutes as modified.

OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN)

30-21 Anne Dewez, et. al (Applicants) Dennison

103 Main Street

Applicant is appealing the determination of the Zoning Enforcement Officer 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 Members: SM, ET, MJO, EA, and GT

New information is in your packet from the applicant, abutters, and the property owner. Town Counsel will be in attendance at the meeting to provide guidance on this matter.

FROM THE 10-14 MEETING MEMO:

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.**

**18-21 Ack Smart As Applicant for 21 Woodbine LLC
Beaudette**

21 Woodbine Street

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 Members: SM, LB, MJO, JM, and MP

This matter was discussed at your last meeting and continued due to a voting member being absent from all or part of the meeting. I anticipate that final vote can be taken. No new information has been received. The finding the Board will need to make to approve the variance is that "owing to circumstances related to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw".

**19-21 Ack Smart as Applicant for Timothy & Lauren Miner
Beaudette**

12 S Valley Road

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 Members: SM, LB, MJO, GT, and MP

This matter was continued at your last meeting with no discussion. No new information has been received. The finding the Board will need to make to approve the variance is that "owing to circumstances related to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw".

**21-21 Michael S. Jemison & Kristina Jemison
Brescher**

195 C Hummock Pond Road

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 Members: SM, EA, JM, GT, and MP

This matter was discussed at your last meeting and continued due to a voting member being absent from all or part of the meeting. I anticipate that final vote can be taken. The applicant submitted HDC plans that are on the consent agenda for the HDC to approve – approval will be confirmed at the meeting on Thursday. Potential conditions discussed at the last meeting included no cooking applicants (that would need to be a bit more specific. No stove?), no egress windows in the basement, and that the basement must remain unfinished space (i.e. uninhabitable space).

**25-21 John J. Barry and Nancy J. Barry
Brescher**

1 Goose Cove Way

Continued to January 13, 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 registered on Certificate of Title No. 28218 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

**23-21 Timothy Green
Williams**

6 Macy Road

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 Members: SM, LB, EA, ET, and MJO.

New information is included in your packet. The site was staked, as requested, for you to view. Staff recommends approval of the request.

FROM THE 10-14 MEETING MEMO:

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

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

37-21 Kristina & Nicholas Amendolare

8 Bank Street

Williams

Applicants are seeking a Special Permit pursuant to Zoning Bylaw Sections 139-30 and 139-33A to make renovations, including an addition, to a single-family dwelling that is pre-existing non-conforming to the setbacks. Locus is situated at 8 Bank Street, shown on Assessor's Map 73 and Parcel 69. Evidence of owner's title is recorded in Book 1770, Page 216 on file at the Nantucket County Registry of Deeds. The site is zoned Sconset Old Historic (SOH).

The applicant provided a detailed description of the proposed work, which is included in your packet. Staff notes that HDC approval has already been obtained. If the Board is inclined to approve the application, you will need to make the finding that "such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood" and that "... the nonconforming setback distance is not made more nonconforming" and "that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity".

Letters from neighborhood property owners were submitted for your review. Some are in the packet and others were sent to you after the packet was posted.

29-21 CRH 46 Surfside LLC

46 Surfside Road

Halik

Continued to January 13, 2022

Applicant is appealing the action and determination of the Building Commissioner relative to the issuance of a cease and desist letter and refusal to grant a Certificate of Occupancy for the structure. The issue is whether or not the proposed use of the structure is compliant with the "contractor's shop" use as allowed in the Major Commercial Development special permit issued by the Planning Board or whether the proposed use constitutes a commercial laundry. Locus is situated at 46 Surfside Road, shown on Assessor's Map 67 as Parcel 120.3 and upon Land Court Plan 26439-Z. Evidence of owner's title is recorded at Certificate of Title No. 27187-Z on file at the Nantucket County Registry District of the Land Court. The site is zoned Commercial Neighborhood (CN).

31-21 James A. and Susan G. Genthner, Trustees of the James A. Genthner Trust and Susan G. Genthner Trust

128 Surfside Road

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).

The applicant provided a detailed description of the proposal, which is included in your packet. The request is to grant a variance to allow the ground cover of the property to TEMPORARILY increase above 7% pending the finalization of a land conveyance from the Town of Nantucket to the applicant. Staff notes that the applicant was awarded the paper streets surrounding their property in May of 2013. Since that time, the legal work necessary to finalize the transaction has been stalled at the Land Court, through no inaction of the applicant. The Board has reviewed applications for other applicants with similar situations and has acted favorably.

The finding the Board will need to make to approve the variance is that "owing to circumstances related to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve a substantial hardship, financial or otherwise, to the petitioner or appellant, and the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw".

Staff recommends approval of the request.