



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, December 16, 2021

This meeting was held via remote participation using ZOOM and YouTube.

Called to order at 8:22 pm and Announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Nicky Sheriff, PLUS Admin spec
Attending Members: McCarthy, Botticelli, Toole, O'Mara, Poor, Thayer, Mondani
Absent: Allen

I. OLD BUSINESS

1. 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, Poor, Mondani
Alternates Toole
Recused None
Documentation File with associated plans, photos and required documentation
Representing Richard Beaudette, Vaughan, Dale, Hunter & Beaudette, P.C.
Tim Carruthers, ACK Smart
Public Tom Palmer, 14 Pequot
Christine Petrella, (other side)
Discussion **Beaudette** – He sent a couple of as-built surveys and an aerial but no other new information. ACK Smart put the solar in the setback and then learned the Town changed its position about arrays within the setback. We went to the Historic District Commission (HDC) for approval to have them where they are with screening. He's gone over the hardship for ACK Smart should they have to move the array. They have changed their policy, so this won't happen again. They've met with neighbors about conditions for this approval. A mix of Leland Cyprus and red cedar will be installed by Spring; we will maintain both sides of the Lelands. We can't agree to maintaining the height of the screening will be 10' because it impacts the efficacy of the array; we are willing to accept 6'; 7' is pushing it.
Palmer – Our first preference is for remediation; we took to heart the sentiment of the Board. Our big concern with screening is sufficient room; we'll take the most effective screening we can get. We asked for 10' trees because our houses are upside down and the array will be visible.
McCarthy – Asked how close his house is to the property.
Palmer – The structure is about 40 yards to the south. We had thought about developing the northern part of the property.
Petrella – Mr. Palmer covered all our thoughts and concern for adequate screening. She's not opposed to solar; she just feels like as a neighbor, she has to deal with the array. She was unable to speak on the HDC meeting and the documents she submitted weren't reviewed by the HDC. Right now, there are a couple of tall trees that don't cast that much of a shadow on the array.
Mondani – Asked for confirmation the arrays are 5' tall.
Carruthers – Confirmed the arrays are 5' tall.
O'Mara – Asked if all the plantings will be on the applicant's property.
Beaudette – Yes; we don't want the neighbors to bear the burden of screening. That's why we are offering to maintain both sides of the screening; that includes watering.
Mondani – His goal is to make the screening as high as possible. Asked about the going to 7'.
Carruthers – We design our systems through an industry standard tool that does a 365-day solar production and found that as we crossed the 6' threshold, annual production starts to diminish; at 7' it substantially diminishes; and at 10' it loses over 10% across the entire array.
Botticelli – The Lelands sometimes get very tall but don't hold vegetation at the bottom; asked about seeing through at eye level. You can see the array through the scrub that's there now. Asked if a low fence would need to be incorporated.

Palmer – We talked about this; there is a wire fence in place that might have to be removed; the SE corner is an active deer path and we talked about deer-resistant plants.

Botticelli – Asked what height they ran the model at.

Carruthers – We ranged from 5' to 10' to 15' feet. He added dense vegetation along the south property line.

Palmer – Asked if the modelling was done on the original location of the array.

McCarthy – We need to stick to the model and screening we have now. The 100% energy production factors in the existing tall trees.

Botticelli – At worst case, you'd be at 90% production.

Toole – Feels it isn't fair to burden the neighbors with a larger array and being in the setback. Feels using a comment made in 2017 by Marcus Silverstein has nothing to do with a 2020 application.

McCarthy – We discussed that a lot at prior meetings. Everyone is bending a little to make this more palatable.

Toole – He is hearing resignation from the neighbors that they will have to take this on the chest so are trying to get the best deal possible. ACK Smart submitted a plan, which they basically ignored; now they are coming back asking for forgiveness when they should have reapplied.

Discussion about why this application has dragged on through the ZBA process.

Beaudette – We all rely on Mr. Silverstein and Mr. Murphy for advice. Mr. Murphy changed the policy after 2017. This wasn't intentional. It isn't fair the neighbor and that's why we want to provide screening. If we move this out of the setback, we have zero obligation to apply screening. We've done everything the ZBA asked us to do. We are trying to screen it as much as possible for the neighbors while keeping the system efficient.

Toole – He doesn't understand the reliance on the 2017 memorandum when a new building commissioner was in place when the application was submitted in late 2020.

Beaudette – When they reasonably believed they could rely on Mr. Silverstein, there is no reason they would go back.

McCarthy – We've talked about that a lot in the past meetings and we need to move on from that. We can't undo the decision making that happened. She agrees they should have made different decisions, but this is where we are. We asked them to go back to the HDC and to meet with the neighbors; they did that.

Botticelli – A board fence on the property line makes sense with 10' vegetation inside that; she is not willing to negotiate that.

Mondani – He agrees with the 10' high vegetation and providing as much screening as possible. The type of vegetation isn't our purview, but cedar is a native species.

Petrella – Lelands aren't native and deer eat them.

O'Mara – He's not sure about have a fence next to a tree and impacting photosynthesis. He's willing to go with the Board. Deer gnaw and rub antlers on the trunks of cedar, but they don't eat it.

Poor – A fence might be a better solution. Lelands can grow broad and could come up against the panels; you can put up a net to keep the deer off them; if you lop them off, they become more of a hedge. The best thing is about how fast it grows.

McCarthy – For Ms. Botticelli and Mr. Mondani, 10' vegetation is a hard pass. She agrees either trees or a fence; a netting on the trees might be sufficient. A fence might bring more attention to the arrays.

Botticelli – The screening plan should be done by someone who understands the deer impact on trees. The screening should be natural, so a single species of tree isn't sufficient. Asked who would be doing the planting. She doesn't want to see a Leland hedge; it should look like it's always been there.

Beaudette – Whoever is hired to put the plants in; they would do the planting plan. It's his client's responsibility to ensure the deer don't eat the screening. If the ZBA wants 10' screening, they would have to go in at 10'.

McCarthy – We can require a planting plan be attached to the decision. We could require a mix of indigenous plants and Leland Cypress consistent with an attached planting plan; also, the height to be 10', owner to provide deer mitigation for the screening, owner to provide sufficient watering, owner to maintain both sides of the vegetation for the time the array remains on the property, all plantings to be on the owner's property, and installed on or before May 1.

Motion to Grant the relief per noted conditions. (made by: O'Mara) (seconded)

Motion

Roll-call vote

Carried 5-0//McCarthy, O'Mara, Poor, Botticelli, and Mondani-aye

2. 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 South 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, Thayer, Poor
Alternates None
Recused None
Documentation File with associated plans, photos and required documentation
Representing Richard Beaudette, Vaughan, Dale, Hunter & Beaudette, P.C.
Public None

Discussion **Beaudette** – We are withdrawing this application.
Motion **Motion to accept the withdrawal.** (made by: Botticelli) (seconded)
Roll-call vote Carried 5-0//McCarthy, Poor, Botticelli, Thayer, and O'Mara-aye

II. OTHER BUSINESS

1. None

III. ADJOURNMENT

Motion **Adjourned at 8:18 am**
Roll-call vote N/A

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

1. None

Submitted by:
Terry L. Norton