

2021 DEC 22 PM 12:47

Nantucket Zoning Board of Appeals



PUBLIC NOTICE

A **PUBLIC HEARING** of the **NANTUCKET ZONING BOARD OF APPEALS** is scheduled for **1:00 PM** on **Thursday, January 13, 2022**, *via* Zoom on the Nantucket Government TV YouTube Channel, pursuant to Governor Baker's March 12, 2020, Order Regarding Open Meeting Law. Information about viewing the meeting can be found at <https://www.nantucket-ma.gov/138/Boards-Commissions-Committees>. A complete copy of each application is on file with the Zoning Board of Appeals at the office of Planning and Land Use Services at 2 Fairgrounds Road, Nantucket, MA, 02554. Requests to review an electronic copy of the complete application materials may be submitted *via* e-mail to nsheriff@nantucket-ma.gov. Written comments for the January 13, 2022 meeting received by 12:00 PM on Friday, January 7, 2022 will be provided to the Board in advance of the meeting.

OLD BUSINESS

- Adam Delany-Winn, Trustee of Warren's Landing Nominee Trust, File No. 22-21
- John J. Barry & Nancy J. Barry, File No. 25-21
- CRH 46 Surfside, LLC, File No. 29-21
- Anne Dewez, et.al (as applicants), File No. 30-21
- Kristina & Nicholas Amendolare File No. 37-21

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

James A. & Susan G. Genthner, Trustees of the James A. Genthner Trust and the Susan G. Genthner Trust **File No. 31-21**

Applicant is seeking a variance pursuant to Zoning Bylaw Sections 139-16A and 139-32 to exceed the maximum allowable ground cover ratio of 7% and to reduce the rear yard setback from 10 feet to 5 feet only where it applies to the proposed new dwelling. 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).

Brett Stephen Morneau & Sarah Morneau

File No. 38-21

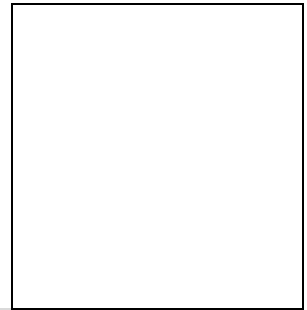
Applicants are seeking a Special Permit pursuant to Zoning Bylaw Sections 139-30 and 139-16. C.(1) in order to reduce the ten (10) foot side yard setback to five (5) feet to site an addition to the premises. Locus is situated at 7 Goldfinch Drive and shown on Assessor's Map 68 and Parcel 504. Evidence of owner's title is registered on Certificate Title No. 27995 with the County District of the Land Court. The site is zoned Residential 5 (R5).



MEETING POSTING

TOWN OF NANTUCKET

Pursuant to MGL Chapter 30A, § 18-25
All meeting **notices and agenda** must be filed and time stamped with the Town Clerk's Office and posted at least 48 hours prior to the meeting (excluding Saturdays, Sundays and Holidays)



Committee/Board/s | Zoning Board of Appeals

Day, Date, and Time | Thursday, January 13, 2021 at 1:00 PM

Location / Address | **REMOTE PARTICIPATION VIA ZOOM WEBINAR**
INFORMATION on viewing the meeting can be found at
<https://www.nantucket-ma.gov/138/Boards-Commissions-Committees>

Signature of Chair or Authorized Person | Leslie Woodson Snell, Deputy Director of Planning and Zoning Administrator

WARNING: **IF THERE IS NOT A QUORUM OF MEMBERS OR IF THE MEETING POSTING IS NOT IN COMPLIANCE WITH THE OPEN MEETING LAW, NO DELIBERATIONS MAY TAKE PLACE-BUT THE MEMBERS MAY APPEAR AND ANNOUNCE A NEW SCHEDULE.**

AGENDA

(Subject to Change)

The meeting will be recorded and archived at www.nantucket-ma.gov

***Participation in Public Comment will be available through Zoom Webinar. You must register in advance in order to participate. Use the link below to register for Zoom participation. Contact nsheriff@nantucket-ma.gov with any questions. ***

ZOOM WEBINAR REGISTRATION LINK:

https://us06web.zoom.us/webinar/register/WN_oKTYe_w6SaWqiW2zIzSg2w

To view the LIVE broadcast of the meeting, see YouTube Link at

<https://youtu.be/PIPl8aCym4>

BELOW ARE THE TOPICS THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING.

- I. **CALL TO ORDER:**
- II. **APPROVAL OF THE AGENDA:**
- III. **APPROVAL OF THE MINUTES:**
 - December 09,2021
 - December 16,2021

IV. OLD BUSINESS (CONTINUED PUBLIC HEARINGS AND VOTES MAY TAKEN)

Pg 19-87 30-21 Anne Dewez, et. al (Applicants)

103 Main St

Dennison

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).

37-21 Kristina & Nicholas Amendolare

8 Bank St

Williams

Continued to February 10, 2022

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).

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

1 Goose Cove Way

Brescher

Withdraw without Prejudice

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).

22-21 Adam Delaney-Winn, Trustee of Warren's Landing Nominee Trust

Reade

Continued to February 10, 2022

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).

29-21 CRH 46 Surfside LLC

46 Surfside Rd

Halik

Continued to February 10, 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).

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

Pg 93-109 31-21 James A. & Susan G. Genthner, Trustees of the James A. Genthner Trust and the Susan G. Genthner Trust

Applicant is seeking a variance pursuant to Zoning Bylaw Sections 139-16A and 139-32 to exceed the maximum allowable ground cover ratio of 7% and to reduce the rear yard setback from 10 feet to 5 feet only where it applies to the proposed new dwelling. 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).

Pg 110-134 38-21 Brett Stephen Morneau & Sarah Morneau 7 Goldfinch Dr Brescher

Applicants are seeking a Special Permit pursuant to Zoning Bylaw Sections 139-30 and 139-16. C.(1) in order to reduce the ten (10) foot side yard setback to five (5) feet to site an addition to the premises. Locus is situated at 7 Goldfinch Drive and shown on Assessor's Map 68 and Parcel 504. Evidence of owner's title is registered on Certificate Title No. 27995 with the County District of the Land Court. The site is zoned Residential 5 (R5).

VI. OTHER (VOTES MAY BE TAKEN)

VII. ADJOURNMENT (VOTE WILL BE TAKEN)

Minutes

12-09-21 & 12-16-21



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 9, 2021

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

Called to order at 1:00 pm and Announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Nicky Sheriff, PLUS Admin spec; Marcus Silverstein, Zoning Enforcement Officer; Paul Murphy, Building Commissioner; Terry Norton, Town Minutes Taker
Attending Members: McCarthy, Botticelli, Toole, O'Mara, Allen, Poor, Thayer, Mondani
Early Departures: Poor, departed early in the meeting.
Town Counsel: Alex Weisheit, KP Law

I. APPROVAL OF MINUTES

1. November 22, 2021

Motion **Motion to Approve as modified.** (made by: Toole) (seconded)

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

II. OLD BUSINESS

1. 30-21 Anne Dewez, et. al (Applicants) 103 Main Street Dennison
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 McCarthy, Toole, O'Mara, Allen, Thayer
Alternates Poor, Mondani
Recused None
Documentation File with associated plans, photos, required documentation, and Timing Deadlines PowerPoint
Appellant rep. Wayne Dennison, Brown Rudnick LLP
Anne Dewez, 5 Mill Street
Appellee rep. Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Dan Bailey, Pierce Attwood
Linda Williams
Discussion (1:07) **Weisheit** – Procedural matters have been related to him. One matter is standing of abutters and whether or not they are aggrieved persons; the Board should solicit how they are aggrieved. Another matter is the timeliness of the appeal; normally an abutter must challenge a ruling within 30 days of issuance of the permit; the papers submitted here raise the question of when the notice of the issuance of the building permit occurred; the Board should elicit facts about when the abutters had actual or constructive notice of issuance of the building permit. Those two matters should be addressed first then dive into the question of hot tub versus pool.
Mondani – Asked for clarification about the 30 days or 8 years and what triggers which. Also asked if matters what was installed versus what was permitted.
Weisheit – The normal rule is 30 days; case law become murky when an abutter claims they had no notice within 30 days. There are some cases in which the land court takes equitable factors into account and if the abutters waited until after the work was completed before appealing. He'd be interested to hear why enforcement wasn't requested during construction. If what was constructed was something different from what the building permit contemplated, the court might be more lenient on the 30-day deadline. He understands that what was constructed here is what the permit allowed.
Dennison – In his opinion, the Zoning Enforcement Officer (ZEO) got this wrong; there have been procedural issues raised. The law is nuanced around notice; he's organized cases around the appeal versus issuance of the building permit. The staff comment looks like the staff is recommending looking at procedural and timing. Referred to a Timing Deadlines PowerPoint explaining the Massachusetts General Law regarding notification of issuance of a building permit and aggrievement. If you have a permit for a spa and you install a pool, you have exceeded the building permit.
Another issue is standing as an aggrieved person. Ms. Anne Dewez at 5 Mill Street and Mr. Robert Kargman at 8 Mill Street testified to diminution in their property and other nearby property values due to the construction of an unlawful pool. Mr. Peter Taylor's property at 98 Main Street is within 55 feet of 103 Main Street. All these properties are within the ROH, which

prohibits swimming pools. Addressed the definition of pools versus spas versus plunge pools. The definition of spa doesn't address gallonage. Cited case precedent allowing multiple or successive request for zoning bylaw enforcement. He doesn't agree with Town Counsel that this case is murky; the law applies to this case where there was no actual notice of issuance of the building permit.

Bailey – After reading the many cases, he agrees with Town Counsel that it's not black and white. Regarding timeliness, the question is whether or not Ms. Dewez had constructive notice of issuance of the building permit; The Historic District Commission (HDC) approved the spa in December 2020; the building permit was issued on March 3, 2021 with construction beginning on April 23, 2021. Reviewed the reasons he feels Ms. Dewez was aware that construction had started at 103 Main Street. No one said anything between April and August until the gunite for the spa sides arrived when Ms. Dewez approached the workers. These cases on timeliness are much talked about; there is a question if a permit holder can be subject to enforcement after construction, which is based upon a building permit, is complete. Zoning boards don't normally look at the subject of standing; it requires fact-finding and inquiry. He submits there is no standing; explained reasons for his opinion that none of the appellants have standing. To be aggrieved, a person must state a particularized harm, which no one has in this case. For these reasons, we request the Board dismiss the appeal.

Reade – There is a distinction in the bylaw between hot tub/spa and a swimming pool. The hot tub/spa falls within the category of accessory use permitted under Zoning Bylaw section 15. In 2017 at Special Town Meeting (STM) a definition of hot tub/spa was included for clarification. The definition of pool includes language for exceeding 1,000 gallons; he submits that language has resulted in many absurd results. Explained the math behind the error of having the 1,000 gallons as part of the pool definition. Commissioner Murphy was correct in issuing the building permit.

Toole – Asked Mr. Weisheit's response to the presentations.

Weisheit – He agrees the Board should address all issue including procedural and merits in one decision. He received the most recent submission from the appellant's counsel a couple of hours before this hearing and would like time to review that information. Both counsel have pointed out factual disputes; the law is nuanced in this area. It would behoove everyone to take more time to absorb the information.

Allen – Since Mr. Reade has all the math down, asked how many gallons would be in a body of water that is 15'X8' and 4' deep.

Reade – Approximately 4,000 gallons.

Toole – In one presentation, we heard this particular structure is 3,000 gallons.

McCarthy – That was in some of the letters of concerns; she doesn't recall it from the presentation.

Mondani – If you have a 3x3 spa, 1,000 gallons would allow for it to be 17' deep. His question is would that still be a spa; to him that would be more like a pool.

Reade – Any application of gallonage to pools and spas results in absurd results.

O'Mara – The math as he's heard it deals with a pool in terms of depth, length, and width. All spas have a gunite bench, which wouldn't be included in the cubic footage of a pool. From the photo, it's hard to tell if this structure as a spa bench. Asked Town Counsel that if the 1,000 gallons was a scrivener's error, what provisions are in there in the law for that.

Weisheit – He's not aware of any zoning related law with a scrivener's error. The zoning bylaws needs to be read as a whole; a court review this would take the language in its totality and would consider whether or not it leads to inconsistent results.

Dennison – The issue about gallonage is being approached backwards. Before 2011, a pool in Nantucket was a body of water over 1,000 gallons. You don't need a definition of a pool in terms of depth; what you need to know is putting in a spa that isn't a spa. As far as HDC review of a pool or spa, their jurisdiction is what is visible, and the depth isn't visible. If you don't impose the 1,000-gallon limitation, what you are saying is that you can put in a plunge pool in a district where swimming pools are prohibited. With respect to dispute over whether or not Ms. Dewez interacted with the workmen, there is an affidavit that never happened. Mr. Kargman has opined Ms. Dewez's property values are impacted by this use.

McCarthy – Mr. Dennison is say Mr. Kargman is an expert witness whose affidavit give Ms. Dewez's status.

Dennison – Mr. Kargman has 50 years of experience in evaluation of real property. He has opined under oath that Ms. Dewez's property is impacted by this plunge pool.

McCarthy – If he's an expert witness, he is then not an aggrieved person and doesn't have the right to bring this appeal because he's providing support for an aggrieved person. For her, she hasn't heard anything about what the exact harm is to Ms. Dewez. She doesn't understand how a spa that is blocks away impacts her property value.

Dennison – You can be both an expert witness and be an aggrieved person; that is sufficient to prove standing. You don't have to be an abutter to have standing. Ms. Dewez was acting on behalf of a group.

Bailey – He agrees Mr. Kargman has a lot of real estate experience, but he's not an appraiser. Cited a case where diminution in value alone wasn't enough to demonstrate aggravement. Courts are very strict on who is an aggrieved person. Someone who is 600' feet away will be hard pressed to prove aggravement.

Silverstein – He's read a lot of appeals where property value is a frequent argument; usually there is lack of proof for actual diminution in property value. Nantucket Bylaw is burnt from State Code Chapter 40.A, as are all municipal codes, with its own in-and-out. He spoke with the owners to work out the gallonage of this spa; he had hoped he would have it today. Appellants don't know that gallonage. The spa has a bench around all four sides, that cuts the gallonage down. 1,000 gallons stopped being a standard at 2017 STM; prior to that, the pool was defined as either greater than 150 square feet (sf) of surface

area with more than 24" depth or exceed 1,000 gallons. The definition, approved at STM, for a spa is defined as less than 150 sf surface area and depth greater than 2'. Mr. Reade addressed the ridiculous results of applying 1,000 gallons to a spa.

Allen – Asked Mr. Silverstein if the wording of the pool definition is 150sf OR 1,000 gallons.

Silverstein – The working is a surface area of more than 150 sf surface area AND a depth greater than 24" OR 1,000 gallons. We had this situation in early 2017; at that time, he requested the gallonage, which exceed 1,000 gallons; that was denied.

Allen – She googled 5 New Mill Street; 5 New Mill is more like 1,000 feet from the appellee's property. There is no way this structure will affect that property's value. Also, our current real estate market is off the chart, so in her opinion, that argument means nothing.

Dewez – It's important to understand the context of the definition for hot tub/spa; there were no public hearings and was part of a complicated technical amendment broken down into 5 pieces, one of which was definitions. Those definitions were for structures excluded from ground cover; it makes sense in that case to exclude gallonage. Stated she lives on Mill Street, which is closer to Main Street. She finds it incredible that it was insinuated she knew about this just because she lives in the old historic district. She knew nothing about this until she got a photo taken from the Thomas Macy House on August 9th. She did not complain to the construction crew; that statement is false. From 2011 to 2017, people abided by the less than 1,000-gallon rule. It's not hard to construct a basin of water that's less than 1,000 gallons and very comfortable. She has been following the HDC hearings this summer regarding construction in her neighborhood, each of which have spas designed to be under 1,000 gallons. Thinks it's sad to look at just procedural issues rather than the merits.

McCarthy – We are a regulatory board; it's our job to make decisions based upon zoning bylaw as written.

Silverstein – Agrees that dealing with the merit is paramount but the merits aren't there; this matches the definition for a hot tube. As far as regarding groundcover, there is nothing in any record saying the hot tub definition was added to the bylaw because of groundcover. As far as the structure under appeal, we haven't heard what the gallonage is and from all appearances, this is a spa and can't be used for anything but sitting in.

McCarthy – The question of abutters to abutters to abutters, she wants to be clear on who the appellants are. She would like to know the gallonage. Mr. Silverstein confirmed the benches all around the interior. Town Counsel has said they want time to review the memos. She wants to give Town Counsel time to respond in a meaningful way and give the Board better guidance regarding standing and timeliness. Action deadline expires before the next ZBA meeting on January 13th.

Murphy – Stated that this was a legally issued permit.

Toole – He'd like to look at this in person; he doesn't see a bench all the way around in the photo; the pool is done except for the finish and coping. The plans as submitted, don't show a bench in the spa.

Dennison – We will agree to an extension of the action date. You can't look at the spa definition and ignore the pool definition; you must look at both.

Williams – She's disturbed comments were attributed to her by someone without a clue. We split the definitions in the article and so the bylaw because we wanted to allow them; there were no problems until recently. Spas are innocuous and don't generate the noise of a pool. This meets the definition for a spa as stated in the bylaw. If this is continued to March, that's past the 1st publication of the articles.

McCarthy – This work has already been done. One of the issues is if there is standing for an appeal.

Mondani – The "elephant in the room" is the plunge pool; when this tech amend was made, he doesn't know of plunge pools were an issue. Asked if this is shot down by standing, asked if Mr. Dennison's client would file an appeal.

Dennison – All he's asked for is an interpretation of the bylaw that's consistent with the bylaw. Going forward, the case law is clear that repetitive requests relative to this pool/spa can be made under the appeals court decision. This already has a building permit, so it won't be impacted by the proposed article.

McCarthy – Suggested extending the action date to Feb 1. If you don't like the bylaw, Mr. D's client can change it; it's clear that the Town officials were working within the current bylaw.

Allen – The location of 5 Mill Street looks like more the 5'. It looks like there are 5 or 6 properties between 103 Main Street and 5 Mill Street. Asked if she is an abutter or a citizen appeal.

McCarthy – That's something she wants TC to rule on if any of these the appellants have standing. She also wants to know the existing gallonage of the spa and to see how it looks on the ground now.

Toole – Asked if he can go onto the property to look at what's there.

Bailey – He will check with the client.

Weisheit – Asked for something acknowledging they agree to extending the deadline.

Motion **Motion to Continue to January 13th meeting.** (made by: O'Mara) (seconded)

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

2. 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, Toole, O'Mara, Mondani

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 (2:46) Discussion about whether or not Mr. Toole can sit on this and his feeling he needs to review the information.
Motion **Motion to Continue to December 16 at 8:10 am.** (made by: Botticelli) (seconded)
Roll-call vote Carried 5-0//McCarthy, Botticelli, O'Mara, Mondani, and Toole-aye
3. 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, Mondani
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 (2:47) Discussion on whether or not to go forward with a 4-person board without Mr. Poor.
Snell – Suggested a special meeting for the two Ack Smart applications. No public notice necessary.
Motion **Motion to Continue to December 16 at 8:10 am.** (made by: Botticelli) (seconded)
Roll-call vote Carried 5-0//McCarthy, Botticelli, O'Mara, Mondani, and Toole-aye
4. 21-21 Michael S. Jemison & Kristina Jemison 195C Hummock Pond 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 None
Documentation File with associated plans, photos and required documentation
Representing John Brescher, Brescher & Glidden P.C.
Public None
Discussion (3:09) **Brescher** – All the Board was waiting for was the HDC Certificate of Appropriateness (COA) number; we have that. He thought the Board was ready to vote and is willing to go forward with the 4-member Board.
McCarthy – Staff brought up getting clarification on the no-cooking condition.
Toole – He could read back in; his conflict is more perceived.
Snell – This is not a dwelling so shouldn't have a kitchen. It could be conditioned with no stove or microwave.
McCarthy – Now that the cooking apparatus is gone, it is more of an enforcement issue.
Allen – If they decide not to install the washer-dryer and sink in the laundry room, can they get a Certificate of Occupancy (CO) because it looks like a bedroom again.
Murphy – Once they make that decision, they should come in to explain the change; he can still give them a CO as long as it complies.
McCarthy – If this is ruled as not for human habitation, any change towards a dwelling becomes an enforcement issue. Conditions would be: no egress basement windows, basement to remain unfinished, and not for human habitation; any changes to the plan are to come back for relief.
Brescher – Asked for a vote.
Discussion about a new motion:
McCarthy – Suggested adding a condition removing the door from the laundry room.
Allen – Wants the laundry room door removed and no provisions made to delete the laundry room and to get the CO, the laundry room must be in place with no door.
Discussion about how to condition this so that it can get 4 votes.
Allen – No laundry door and any further changes to come before the ZBA.
Botticelli – ZBA has no jurisdiction over the interior. At issue is the groundcover.
Motion Motion to Approve as written with conditions as discussed; we are approving this as a cabana, not a dwelling. (made by: Thayer) (seconded)
Roll-call vote Not Carried //McCarthy, Mondani, Thayer-aye; Allen-nay
Motion **Motion to reopen the application.** (made by: Allen) (seconded)
Roll-call vote Carried 4-0//McCarthy, Allen, Mondani, and Thayer-aye

- Motion **Motion to Approve with no egress basement windows, unfinished basement, not for habitation, no exterior laundry door, constructed in substantial conformity with the attached plan, any changes to be reviewed by ZBA.**
(made by: Allen) (seconded)
- Roll-call vote Carried 4-0//McCarthy, Allen, Mondani, and Thayer-aye
5. 25-21 John J. Barry and Nancy J. Barry 1 Goose Cove Way Brescher
Continued to January 13, 2022
- Voting McCarthy, Botticelli, Toole, O'Mara, Mondani
- Alternates Thayer
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing None
- Public None
- Discussion (time) None
- Motion **Motion to Continue to January 13, 2022.** (made by: Mondani) (seconded)
- Roll-call vote Carried 5-0//McCarthy, Mondani, Botticelli, Toole, and O'Mara-aye
6. 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 Thayer, Mondani
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing Linda Williams
- Public None
- Discussion (3:43) **Williams** – We marked the sideline and staked the end of the pool; there is no longer a retaining wall. The prior owner had owed part of the neighbor's lawn; we will replant that as shown in the new landscaping plans. We put it at grade so there is no issue with setback.
McCarthy – When we ask for a lighting plan, it can state on the plan where and type of internal lighting and no external lighting; that would suffice; Staff has the language.
Toole – Looking at the newest plan, it seems the 2nd-floor deck and part of the 1st-floor deck are within the setback.
Botticelli – The zoning setback is 10' and the pool setback is 20'.
Toole – The decision will mirror other decisions we've made: engage a professional to fill, discharge, and dispose of pool water; no chemical treatment between November 1 and May 1; chemical treatment stopped 3 prior to discharge; and landscaping and hardscaping is to be installed in substantial compliance with the submitted HDC approved site plan.
Allen – Confirmed which plan is the newest landscape plan.
Williams – It's the one that shows replanting of the abutters lawn and no retaining wall. She sent the revised plan out this morning.
Ms. Botticelli and Mr. Toole did not get that plan; Ms. McCarthy forwarded them a copy.
- Motion **Motion to Approve based upon Paul Santos landscape plan dated 12/2/2021 to be submitted as Exhibit A; Exhibit B to be the plan emailed out yesterday; and other conditions applicable to this type of application.** (made by: Botticelli) (seconded)
- Roll-call vote Carried 5-0//McCarthy, Botticelli, Allen, Toole, and O'Mara-aye

III. NEW BUSINESS

1. 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).
- Voting McCarthy, Botticelli, Toole, O'Mara, Allen
- Alternates Thayer, Mondani
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing Linda Williams
- Michael Wilson, attorney
- Public Margaret Van Deusen,
Kathy Arvay, 11 Front Street

Williams – Explained the application for raising the ridge 1' in the southwest setback. There was a lot of concern expressed at the HDC and after-the-fact objections, all of which have nothing to do with the ZBA.

Snell – Getting revisions to a project the morning of the meeting makes coordination very difficult.

Toole – He wants to see something that limits the height of the structure.

Thayer – The engineer plan calls out the ridge at elevation 37.7 (above sea level); that should be the number our decision would refer to.

Toole – The neighbor's opposition was probably toward the height, which has been reduced from the original submission.

Botticelli – It should be constructed in substantial conformance with the HDC approval. Looking at the east elevation, the south side of the taller roof should be extended no farther south.

Allen – Confirmed that the only thing within ZBA jurisdiction is the southwest corner of the little shed roof.

Wilson – We are asking for a finding that the *diminimis* increase in the roof height in the location calling for a 5' set back won't be detrimental.

Van Deusen – Regarding the HDC process, the vote was to hold for revisions and that cannot be appealed; their minutes don't reflect an approval. Many people from the neighborhood were on the September 7th meeting. This is going to have to be resolved by the HDC and whether or not there was a violation of Open Meeting Law (OML) by the HDC. Then this board compounding the issue by putting a height limit on this prior to HDC approval would be premature. The statement this wasn't appealed in time is inaccurate.

Botticelli – Asked if this was heard by HDC since September 7th at which this was approved.

McCarthy – Mr. Wilson and Ms. Snell reached out to Town Counsel; read their opinion that the motion to approve was carried by the majority of attendees; 2 voted in favor and 2 abstained leaving a 2-0 vote. Therefore, the motion to hold for revisions wasn't valid because the motion to approve was carried. This is what the HDC enabling act allows.

Toole – He's not comfortable the HDC was doing the right thing; he'd like a more complete vote of the HDC before moving forward with this.

O'Mara – It goes back to preventing obstructionism. He agrees with Town Counsel.

McCarthy – She sees no reason to hold this up.

Van Deusen – The HDC vote to hold was 4-0; that is something they have to work out. Given the timing on this, there is an opportunity to go back to the HDC on this. This has been a very contentious project for the neighborhood because of the height will have a deleterious effect on Front Street. Asked that this go back to HDC. Doesn't know how the plans got stamped when it was not approved at the meeting.

Williams – Town Counsel told HDC staff to stamp the plans.

McCarthy – This is a procedural issue for the HDC; Town Counsel has given an opinion upon which HDC moved forward. The HDC isn't contesting what occurred. Feels the ZBA has to take this at face value. If the HDC approval is reversed through litigation, our decision will follow that. At this point, this is a valid, approved, HDC request.

Van Deusen – Feels this will certainly be appealed because no one knew it was approved until this filing. Feels ZBA has some authority due to the irregularities with the HDC. If you allow this setback, you've approved a project the neighbors feel shouldn't be approved.

McCarthy – Any questions we would have on the HDC vote has been answered by Town Counsel, and it is not our purview to question their vote. We can still condition this.

Toole – Asked if the opponents have lost the ability to appeal the HDC decision or if anyone notified the aggrieved about the approval.

Williams – Yes, you only have 10 days to appeal based upon merits. They are filing an OML complaint.

Snell – The ZBA should rely on Town Counsel's opinion that the approval was valid. If you approve the request and then the HDC approval is found to be not valid, the applicant won't be able to implement the ZBA's plans.

McCarthy – If that happens and the structure gets revised, we would review it again.

Snell – If the ZBA includes the condition requiring substantial compliance with the HDC plans and those plans change, they have to come back to the ZBA.

Toole – Who asked for Town Counsel's opinion and why.

Snell – I did. It was an interesting vote; between our staff and the applicant and representatives, everyone thought the vote meant something different. Town Counsel explained that Roberts Rules of Order, which HDC follows, has a different process regarding voting than the ZBA and Planning Board.

Botticelli – Finds it interesting that the neighbors weren't informed of the approval denying them the ability to appeal the approval. HDC was mistaken that the motion to approve didn't carry; this is a very unusual circumstance.

McCarthy – We only have control over the application as it is before us.

Mondani – Asked for clarification on the request.

Wilson – Reviewed the structure and the reason for this request; less than 25sf will go up 1' within the setback.

Arvay – This is a pretty situation the way it was approved. A main concern is the fact that a basement will be excavated right against a bank backing onto a road that is emergency access; no one is addressing this. Feels an engineer study should be requested.

Wilson – That concern is addressed through the code and the Building Commissioner's review of the permit. The triangular section in question would have no impact on that.

Botticelli – We have required engineering plans when digging so close to the property lines. The footing will have to extend onto the other property.

Toole – We will need some protocol digging that close to the property line. We should ask for a plan. He's still very uncomfortable with how this played out and the applicant should have gone through the process and found a loophole and taking advantage of that.

Williams – It wasn't a loophole. The vote was questioned by staff.

Snell – Numerous people asked about the vote and what it meant; that's why she asked for Town Counsel's opinion. Further discussion about how the HDC vote was handled not allowing abutters the chance to appeal.

Botticelli – We need engineer's information on this.

O'Mara – His question is about construction and driving steel into the bank. He had assumed all Codfish Park was in a wetland.

Williams – This lot is not.

O'Mara – Agrees that in the past we always required an engineer's plan and stamp before we approved it.

Van Deusen – Codfish Park is on a flood plain and the bank is a coastal bank; both are protected by the Wetlands Protection Act. At some point the Conservation Commission decided they weren't going to regulate between South and North Gully due to the excessive construction in the area; she doesn't understand their reasoning.

O'Mara – Given the scope of the work, we need a lot more information. If he were a neighbor on the hill, he'd want to know how damage to the bank and neighbors would be mitigated.

Allen – Asked what type of foundation is proposed. It looks like the west elevation window wells are in the bank. As she sees the plan, there is no full basement or crawl space. The window well on the north side encloses the door swing area. If this is on a slab, from having to shore up the one side you don't have to dig any further into the ground than the 1st-floor.

Botticelli – We need clarification on the foundation and how deep it is. We need to understand on the digging perspective.

Allen – Asked if the ZBA can vote on the corner in question as the plans are now.

McCarthy – We usually require more information on a property that's this tight.

Thayer – They will need to retain both streets and the Town will have to sign off on both of those as well as Public Works will want to weigh in.

Wilson – The Board is appropriately situated on voting the relief as requested; that is that the integrity of the neighborhood is improved and there is no detriment. The course of construction must conform to the Building Code. Asked the Board to look at the finished elevation as it relates to the triangular piece and if the 1' increase will have a detrimental impact on the integrity of the neighborhood. It remains a single-family dwelling with the same level of non-conformity.

McCarthy – Other projects that are this close, we've asked for more information on the construction protocol.

Mondani – Mr. Thayer noted the construction will be governed by other Town agencies because the abutting properties are public roads.

Toole – We have always have been involved by making it part of our decision. He'd like to go see the site; it talks about an existing retaining wall that he doesn't see in the pictures. Also, the architect should make clear whether or not they are digging down and what needs to be retained.

Mondani – Agrees it would be helpful to look at this.

Thayer – The wall referenced is holding up Middle Gully Road.

Van Deusen – The plans presented to the HDC indicated 8' to 9' deep basement with living space.

Toole – The 1st-floor plan shows stairs going up and down; that indicated a basement. Also, he'd like them to go back to the HDC for an approval.

Arvay – Her property abuts to the north; there is a retaining wall on the north side. Also, there is a retaining wall to the west. The HDC plans called for 2 bedrooms and a bath in the basement.

Wilson – Asked what is being sought and if it is to be supplemented to this application.

McCarthy – She's like to see a basement plan. Asked if Ms. Williams or Mr. Wilson can confirm whether or not there is a full basement. We need clarification on the basement; how far they are digging down and an engineering plan addressing shoring up the abutting properties for the excavation.

Motion

Motion to Continue to January 13th, 2022; the board is expecting engineering plans addressing excavation and basement plan. (made by: O'Mara) (seconded)

Roll-call vote

Carried 5-0//McCarthy, Toole, Botticelli, MO, and Allen-aye

2. 29-21

CRH 46 Surfside, LLC

46 Surfside Road

Halik

Continued to January 13, 2022

3. 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).

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

Alternates Thayer, Mondani

Recused

Documentation File with associated plans, photos and required documentation

Representing Susan Genthner, co-owner

Public

Discussion (5:21) **Genthner** – Explained the reasons for her request; 2 paper roads flank her property, which she was awarded through the Yard Sale Program in 2013 and provides enough land for a second dwelling. The Land Court process is taking frustratingly long; reviewed the timeline since 2013. She's now asking for relief to allow her to start construction on a second dwelling.

Snell – The Land Court can be and unpredictably long process; there is no reason it won't be approved. The variance would be temporary until she takes possession of the roads.

McCarthy – We have gone forward on similar requests in the past; asked if this is in the same stage of process as those.

Snell – Yes. Ms. Genthner is not asking for relief on a potential setback matter.

Toole – He recalls the Linda Yates matter.

McCarthy – We had asked Ms. Yates to get to a certain point to ensure she would get the property. Our concern was that we would approve the variance and the structure built then when the yard sale came through, the owner decided not to purchase that property because they already have the property.

Snell – They were waiting for a new certificate to be issued.

Toole – He would prefer to wait until the new certificate is issued to the Town.

Botticelli – She doesn't have a strong feel. There will be a large number of these coming up and it's hard to keep granting variances.

O'Mara – He's willing to accommodate the applicant as long as we can tighten up the guarantee they will purchase the properties when they become available.

Genthner – She's stalled in the process; she had a design done, which is no longer available; she was half-way through the HDC process. She will have to do a redesign but doesn't want to start the process again until she's sure she can build the structure.

Allen – Asked if construction would start before she purchases the paper roads.

Genthner – She needs the variance in order to build the structure; once she purchases the land, the variance goes away. Because she thought the transfer of property was imminent, she placed the structure exactly where she wanted it. Now she wants the variance for groundcover; once she has that, she can come back about the placement.

Mondani – It's an important distinction if you are building on the existing property or building into the setback or road. We've gone through a couple of these and it's a matter of Land Court jammed up because of COVID; he feels more comfortable about granting something as long as the building is on her current property.

Thayer – He somewhat agrees with Mr. Mondani in that the relief sounds reasonable.

Genthner – The setback is 10' from the back line, asked if they could consider a lesser setback at this time.

Snell – We didn't advertise the setback relief; it's not an option to vote on today.

McCarthy – She agrees with Mr. Mondani about it not being built in the paper road. Asked about reducing the rear and side-yard setback.

Snell – In LUG-1, you can't reduce the setback; that has to be done through a variance. We could notice with setback for next month.

Discussion about how much to allow for intrusion into the setback and other requests involving delays at the Land Court.

Botticelli – Wants some assurance that the property can't be subdivided after the property is transferred.

McCarthy – No one seems ready to vote on this; asked how members want to proceed and what additional information they want to see: site plan with dimensions placing the structure showing a 10' setback.

Botticelli – She has to leave; she supports the continuance.

Motion **Motion to Continue to January 13, 2022.** (made by: Toole) (seconded)

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

IV. OTHER BUSINESS

1. Toole – Asked if the next meeting was for December 16th and the time.
McCarthy – December 16th at 8:00 am and needs to be over by 9:15 am for the two ACK Smart projects. McCarthy, Botticelli, O'Mara, Thayer, and Toole on one and the other is McCarthy, Botticelli, O'Mara, Mondani, and Toole.
2. McCarthy – Hopes the meetings will be back in person on February 10th and that will make the meetings shorter.
3. Toole – Asked about the issue of a member showing up for 1 minute and leaving.
McCarthy – There is a process for that.

V. ADJOURNMENT

Motion **Motion to Adjourn at 6:00 pm.** (made by: Toole) (seconded)
Roll-call 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

PROPOSED



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

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

Old Business

Anne Dewez

File No. 30-21

103 Main St

Appeal

Withdrawn

Nickesha Sheriff

From: Dennison, Wayne F. <WDennison@brownrudnick.com>
Sent: Friday, January 7, 2022 11:26 AM
To: Nickesha Sheriff
Cc: Daniel Bailey; air@readelaw.com
Subject: RE: 103 Main Street Appeal

Dear Ms. Sheriff:

Happy New Year.

As you know, I represent Anne Dewez, Peter Taylor and Robert Kargman (the "Appellants") in connection with the above-referenced appeal. The Appellants hereby formally withdraw their appeal. Please inform the ZBA and Town Counsel of the withdrawal at your earliest convenience so that they need not devote further attention to this matter.

If a further appearance before the ZBA is required, please let me know. In any event, the Appellants are no longer appealing from the adverse determination of the Zoning Enforcement officer rendered on August 23, 2021.

Thank you for your attention to this matter.

brownrudnick

Wayne F. Dennison

Partner, Co-Chair, Commercial Litigation

Brown Rudnick LLP
One Financial Center
Boston, MA 02111
T: 617.856.8247
M: 781.962.4625
wdennison@brownrudnick.com
www.brownrudnick.com



Inclusion and self-expression are professional and personal values of mine. One way I practice these values is to share my preferred gender pronouns.

Mine are he / him / his

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TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554

NANTUCKET
TOWN CLERK
2021 SEP 21 PM 2:42

APPLICATION

Fee: \$450.00

File No. _____

Owner's name(s): 103 Main Street LLC

Mailing address: 201 Kenlyn Road, Palm Beach, FL 33480

Phone Number: unknown E-Mail: unknown

Applicant's name(s): ANNE DENEZ ; PETER TAYLOR **
R. M. KARGMAN *

Mailing Address: 5 Mill Street, Nantucket, MA 02554

Phone Number: 203 685 5361 E-Mail: afmdenez@gmail.com

Locus Address: 103 Main St. Assessor's Map/Parcel: 4233-153

Land Court Plan/Plan Book & Page/Plan File No.: 04-48 lot 2

Deed Reference/Certificate of Title: Book 1494
Page 211 Zoning District ROH

Uses on Lot- Commercial: None Yes (describe)

Residential: Number of dwellings 2 Duplex Apartments

Date of Structure(s): all pre-date 7/72 or 2005

Building Permit Numbers: BLDR 2021-03-1459

Previous Zoning Board Application Numbers:

* 8 Mill Street, Nantucket, MA 02554
** 98 MAIN STREET, Nantucket, MA 02554 ABUTTER

State below or attach a separate addendum of specific special permits or variance relief applying for:

Please see addendums attached

- 103 Main Spa Appeal [1] (3 pages)
- Special Town Meeting Nov 6 2017 Summary

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE: _____ Owner*

SIGNATURE: James M. Dewey Applicant/Attorney/Agent*

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

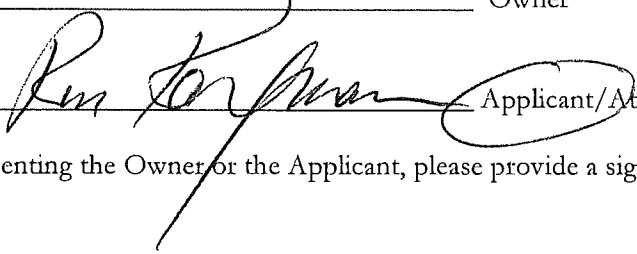
Application received on: __/__/__ By: _____ Complete: _____ Need Copies: _____
Filed with Town Clerk: __/__/__ Planning Board: __/__/__ Building Dept.: __/__/__ By: _____
Fee deposited with Town Treasurer: __/__/__ By: _____ Waiver requested: _____
Granted: __/__/__ Hearing notice posted with Town Clerk: __/__/__ Mailed: __/__/__
I&M __/__/__ & __/__/__ Hearing(s) held on: __/__/__ Opened on: __/__/__
Continued to: __/__/__ Withdrawn: __/__/__ Decision Due By: __/__/__
Made: __/__/__ Filed w/Town Clerk: __/__/__ Mailed: __/__/__

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

State below or attach a separate addendum of specific special permits or variance relief applying for:

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE: _____ Owner*

SIGNATURE:  Applicant/Attorney/Agent*

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on: ___/___/___ By: _____ Complete: _____ Need Copies: _____
Filed with Town Clerk: ___/___/___ Planning Board: ___/___/___ Building Dept.: ___/___/___ By: _____
Fee deposited with Town Treasurer: ___/___/___ By: _____ Waiver requested: _____
Granted: ___/___/___ Hearing notice posted with Town Clerk: ___/___/___ Mailed: ___/___/___
I&M ___/___/___ & ___/___/___ Hearing(s) held on: ___/___/___ Opened on : ___/___/___
Continued to: ___/___/___ Withdrawn: ___/___/___ Decision Due By: ___/___/___
Made: ___/___/___ Filed w/Town Clerk: ___/___/___ Mailed: ___/___/___

State below or attach a separate addendum of specific special permits or variance relief applying for:

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE: Pete Monahan ~~Owner~~ Applicant

SIGNATURE: _____ Applicant/Attorney/Agent*

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on: __/__/__ By: _____ Complete: _____ Need Copies: _____
Filed with Town Clerk: __/__/__ Planning Board: __/__/__ Building Dept.: __/__/__ By: _____
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I&M __/__/__ & __/__/__ Hearing(s) held on: __/__/__ Opened on: __/__/__
Continued to: __/__/__ Withdrawn: __/__/__ Decision Due By: __/__/__
Made: __/__/__ Filed w/Town Clerk: __/__/__ Mailed: __/__/__

Appeal of Zoning Enforcement Officer Marcus Silverstein's opinion that the definition of Hot Tub/Spa allows a pool in the ROH.

At Annual Town Meeting on April 5, 2011 (the second night), voters overwhelming passed Article 58, which effectively banned pools in ROH and SOH. The mechanism for doing this was to define Swimming Pool – Residential, add it to the Town of Nantucket Use Chart and enter N (No) at the intersection of Swimming Pool – Residential and ROH SOH. The relevant part of the definition for the purposes of this appeal is:

SWIMMING POOL – RESIDENTIAL

A structure designed to be used for recreational purposes, either above or below grade, contain 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.

This commentary on Article 58 was posted by Atlantic East Real Estate on April 7, 2011

(<https://nantucketrealestate.com/pools-banned-in-town-and-sconset-old-historic-districts/>)

Pools Banned in Town and Sconset Old Historic Districts

Posted on **April 7, 2011**

During the second night of Annual Town Meeting, Article 58 was overwhelmingly approved, after a lengthy discussion. The zoning by-law amendment prohibits the construction of swimming pools in the downtown and Sconset historic districts. The Planning Board tried to have further study on the issue, but the article was amended on Town Meeting floor to eliminate a provision that would have allowed pool through a special permit which the majority viewed as too large a loophole.

On August 23 at 10.25AM, I wrote to Marcus Silverstein:

Dear Marcus,

Mark Godfrey referred me to you. I am beginning to suspect that one of two key criteria that govern “spas” in ROH is being ignored: the 1,000 gallon limitation.

This is a “spa” under construction at 103 Main Street:



The application lists the “spa” as 15’x8’. The landscape plan shows it as 13’x8’. There are no other specifications. Let’s assume it’s the smaller dimension. In that case, the depth is limited by the 1,000 gallon restriction to 15.4”. Clearly this “spa” is at least 4’ deep, if not 5’ - a clear violation of the rules.

Could you please look into this? I will research other “spas” to confirm that this situation exists elsewhere and let you know the addresses.

Thanks very much, Anne Dewez

I received the following response the same day at 1.58PM:

Anne,

Per the Nantucket Zoning Code, Sec. 139-2: Hot Tub/Spa -- <https://ecode360.com/11471477> -- a structure is considered a “Hot tub/spa” if it has a depth of water greater than 24-inches and less than 150-s.f. of water surface area (15’ x 8’ = 120-s.f.). The bylaw provides no maximum permitted gallonage.

If any person is aggrieved by this opinion, an appeal may be filed with the Zoning Board of Appeals within thirty (30) days of the date of this notice.

Respectfully,

Marcus Silverstein
Zoning Enforcement Officer
Town of Nantucket

At Special Town Meeting on November 6, 2017, voters passed Article 18 (Zoning Bylaw Amendment: Technical Amendments – Definitions). Please see the accompanying document “Special Town Meeting Nov 6 2017” for a summary of this Article. There are no public records that account for any discussion of this Article at the Board of Selectmen or the Planning Board. The Town Clerk provided the following account of the discussion of Article 18 at the Special Town Meeting:

Article 18 of the 2017 Special Town Meeting was called by Bobby DeCosta. Lisa Botticelli made a motion to amend the main motion relating to the definition of “structure.” After discussion, Lisa’s motion was NOT ADOPTED by a majority voice vote. I do not recall any other discussion. The Main Motion, as proposed by the Finance Committee and as printed in the Warrant, was ADOPTED by a declared 2/3 voice vote.

We appeal the opinion of the Zoning Enforcement Officer. The zoning code of Nantucket defines a Swimming Pool – Residential based on its surface area OR its volume. In other words, volume alone is sufficient to determine if a body of water is a pool. If a body of water is greater than 1,000 gallons, it is a Swimming Pool and therefore prohibited in ROH.

To review the math, there are 7.481 gallons per cubic foot. In order to contain less than 1000 gallons, a “spa” can be up to 133.7 cubic feet. The 13’x8’ spa at 103 Main Street would need to be a mere 15.4 inches deep to contain less than 1,000 gallons. Photographs show the “spa” at 103 Main Street is at least 4’ deep, if not 5’, meeting the definition of swimming pool, a prohibited use in the OHD.

We hope the Board will remember how strongly the residents of the Historic Districts felt about banning pools in their neighborhoods, when they did so in 2011. All residents were surveyed and over 80% agreed that “pools are not compatible with the historic character of the ROH and SOH districts”.

The survey showed that residents objected to noise, privacy impacts, visual impacts, safety concerns, and environmental concerns. Importantly, there was no mention of “spa” in the survey, no permitted use in the OHD of spa, and no discussion of spa at Town Meeting in 2011, when voters banned residential pools. For this reason, we and other residents have concerns about spas in our neighborhood.

Regardless of concerns for “spas”, we request the Zoning Board of Appeals to recognize the pool at 103 Main Street to be a pool, and therefore a violation of zoning code.

Because of this violation of the zoning code, we ask for relief in the form of a revocation of the building permit for the “spa” and an order that the “spa” be built so as not to contain more than 1,000 gallons of water; in the alternative, the ground should be restored to its original condition.

Special Town Meeting Nov 6 2017 Summary

ARTICLE 18

(Zoning Bylaw Amendment: Technical Amendments - Definitions)

To see if the Town will vote to amend Chapter 139 (Zoning) of the Code of the Town of Nantucket, as follows (NOTE: new language is shown as highlighted text, language to be deleted is shown by ~~strikeout~~; these methods to denote changes are not meant to become part of the final text and, further, that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Nantucket):

1. Amend section 2A by as follows, with new definitions to be added in alphabetical order:

BAKERY

BREEZEWAY

DUPLEX

FOOD PROCESSING ESTABLISHMENT

GROUND COVER

HOT TUB/SPA

A structure designed to be used for recreational purposes accessory to a principal use, either above or below grade, containing water more than 24 inches in depth and less than 150 square feet of water surface area. This shall not include ornamental ponds, decorative water features, including, but not limited to fountains, bird baths, and the like.

SECONDARY DWELLING

STREET

STRUCTURE

Anything constructed or erected, the use of which requires a fixed location on the ground. "Structure" shall be construed, where the context allows, as though followed by the words "or part thereof" and shall include, but not be limited to, buildings, retaining walls which support buildings, platforms, ~~more than two steps providing access to a structure~~, antenna towers, steel storage containers, lighthouses, docks, decks, chimneys, tents, and game courts. "Structure" shall not include retaining walls not exceeding four feet in height for landscaping purposes, fences, rubbish bins, ~~underground propane tanks~~, and a maximum of two aboveground propane tanks not to exceed 120 gallons each.

UNENCLOSED PORCH

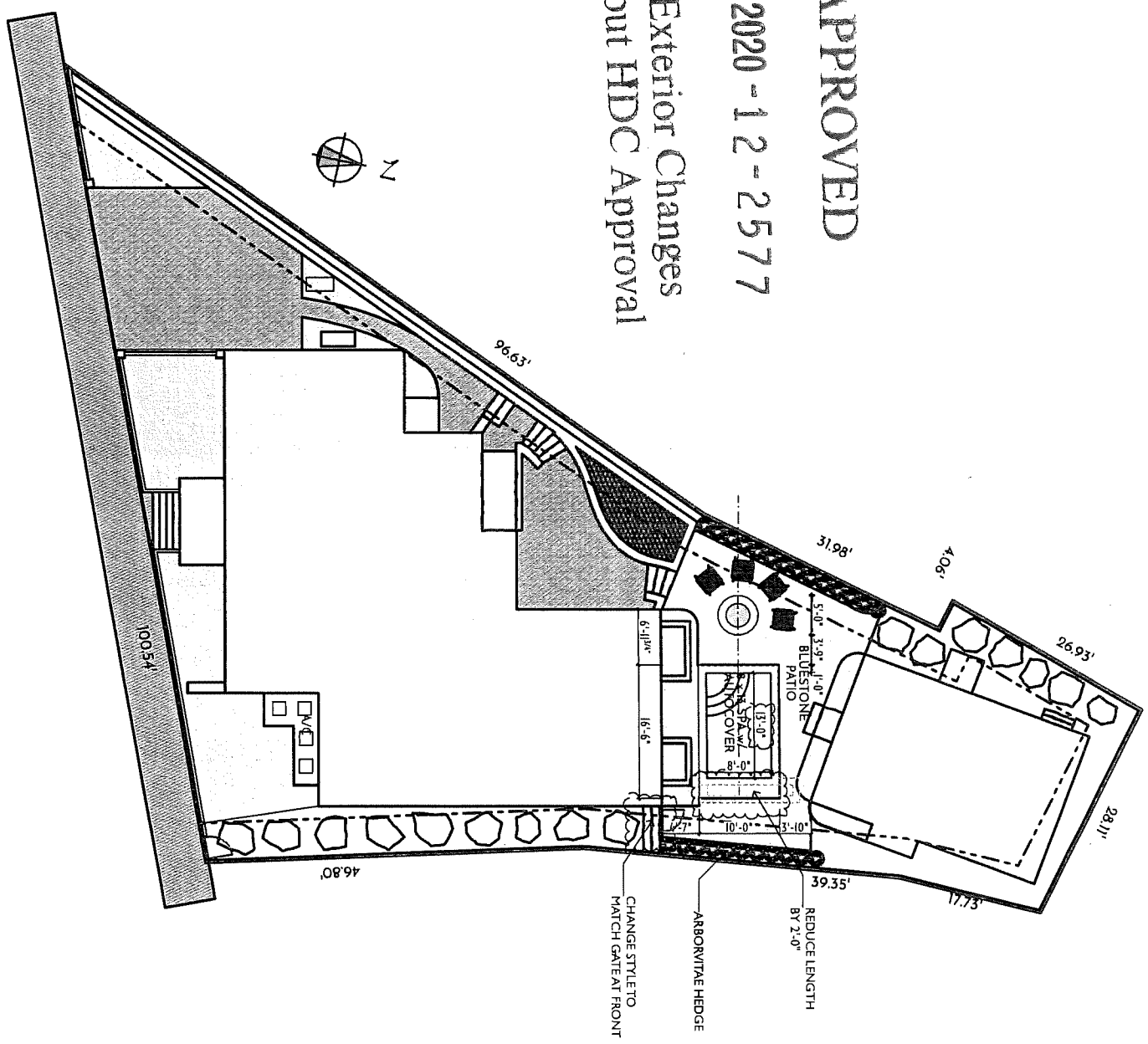
Or, to take any other action related thereto. (Board of Selectmen for Planning Board)

Note: Structure is the only definition that received a discussion that was more substantive than clarification during Town Meeting, per the YouTube video of the meeting; hence it is included above.



LOCUS PLAN FROM NANTUCKET TAX
ASSESSORS MAP BOOK

APPROVED
HDC2020 - 12 - 2577
No Exterior Changes
Without HDC Approval



1 HDC LANDSCAPE PLAN
SCALE: 1" = 20'

HDC Site Plan

MARK	DATE

Landscape at
103 Main St.
Nantucket, Ma.
02554

M: 42.3.3
P: 153
Zoning: ROH
Front Setback: 0
S&R Setback: 5
Scale: As Noted
Plotted: 1/26/21
Drawing No.:

HDC-B

atlantic
LANDSCAPING, INC.

Town of Nantucket
Zoning Board of Appeals

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER.....103 MAIN STREET LLC.....
MAILING ADDRESS.....% ROBERT GEASE, PO BOX 3142, PALM BEACH, FL 33480.....
PROPERTY LOCATION.....103 MAIN ST.....
ASSESSOR MAP/PARCEL.....4233/153.....
APPLICANT.....ANNE DEWEZ.....

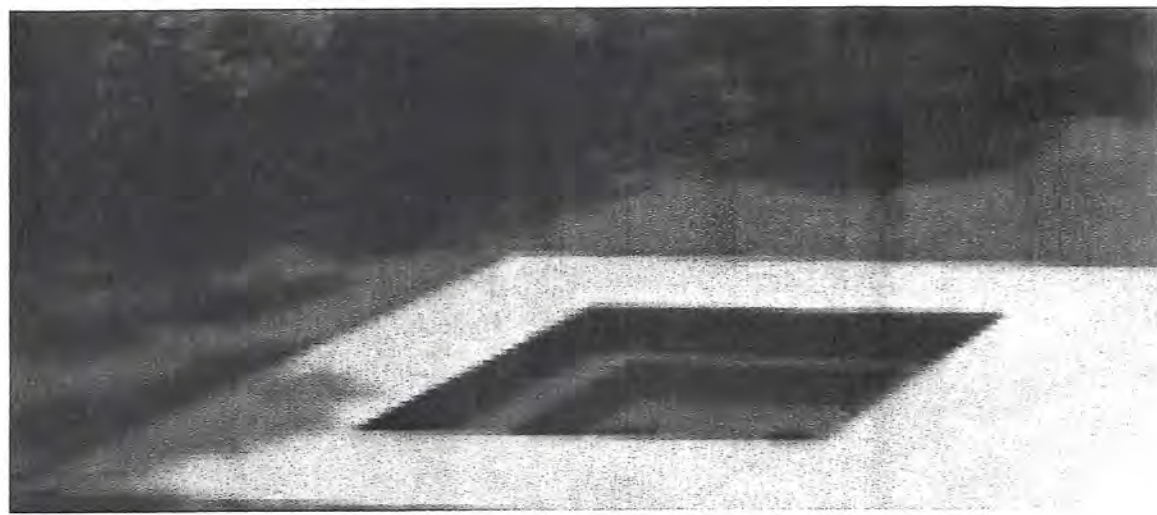
SEE ATTACHED PAGES

I certify that the foregoing is a list of persons who are owners of abutting property, owners of land directly opposite on any public or private street or way; and abutters of the abutters and all other land owners within 300 feet of the property line of owner's property, all as they appear on the most recent applicable tax list (M.G.L. c. 40A, Section 11 Zoning Code Chapter 40A Section 139-2

Digitally signed by Rob Ranney
DN: cn=Rob Ranney, o=Town of
Nantucket, ou=Assessor's Office,
email=rranney@nantucket-ma.gov, c=US
Date: 2021.09.20 10:38:07 -04'00'

09-20-2021
DATE

ASSESSOR'S OFFICE
Town of Nantucket



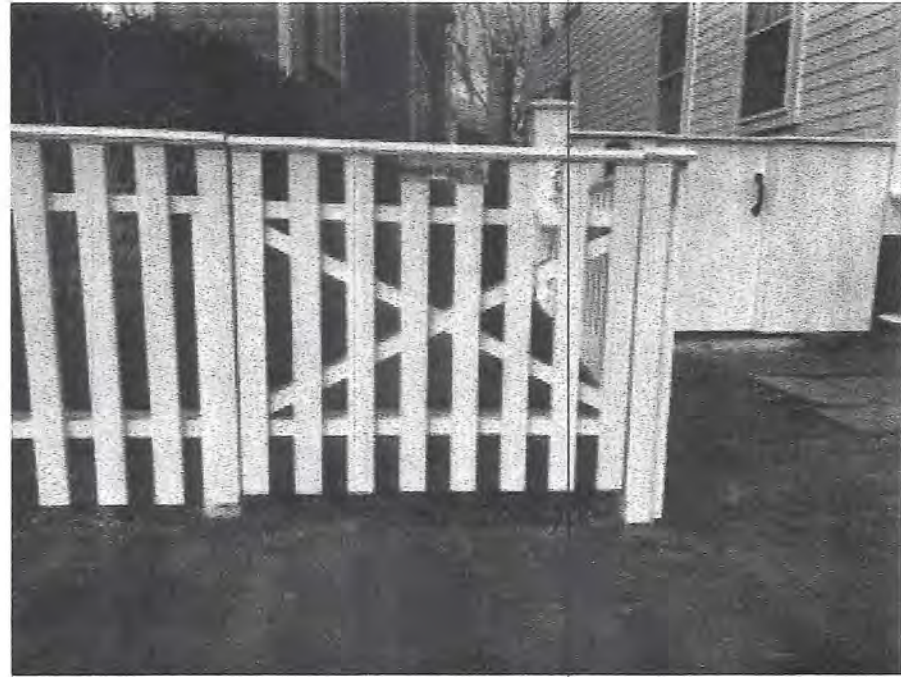
9 SPA FLUSH W GRADE



10 circular bluestone fire pit



12 NEW GATE LOCATION



11 MATCH EXISTING GATE



2 LOCUS M-42.3.3 P-153



3 VIEW 1 MAIN ST



4 VIEW 2 MAIN ST



5 VIEW 3 MAIN ST



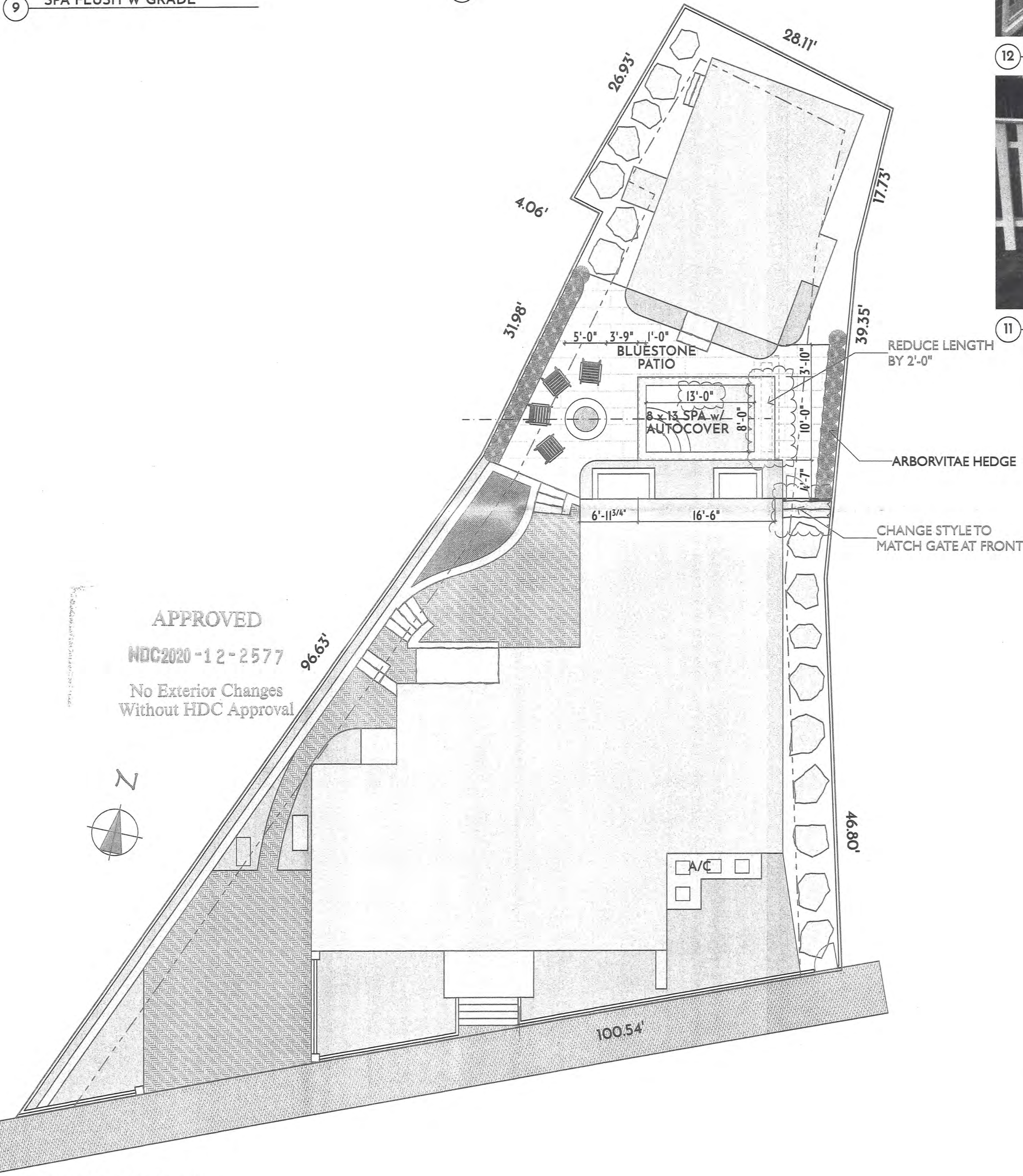
6 VIEW 4 MAIN ST



7 VIEW 5 MAIN ST



8 VIEW 6 MAIN ST



1 HDC LANDSCAPE PLAN
SCALE: 1/8" = 1'-0"

MARK	DATE

HDC Landscape Plan

Landscape at
103 Main St.
Nantucket, Ma.
02554

M: 42.3.3
P: 153
Zoning: ROH
Front Setback: 0
S&R Setback: 5
Scale: As Noted
Plotted: 1/26/21
Drawing No.:
HDC-1

Dear Nicky,

Please ensure that this message and the attachment are included in the file for this appeal and are distributed to the members of the ZBA in advance of the ZBA meeting on December 9.

Thank you, Anne

Dear Chair McCarthy and Members of the ZBA,

I have attached a verbatim copy of the discussion of Article 18, "Zoning Bylaw Amendment: Technical Amendments - Definitions", at the Special Town Meeting on November 6, 2017. The definition of Hot Tub/Spa is one of the definitions in this Article. As this definition is the basis of the Zoning Enforcement Officer's approval of the pool at 103 Main Street, I thought it was important to put this definition in context. The bolding is mine; it illustrates and underscores the importance of full disclosure of matters of consequence to the voters of Nantucket.

The YouTube video of the meeting can be seen via this link:

<https://www.youtube.com/watch?v=5z6t34LHuPA>

The discussion of Article 18 starts at 1hour, 52 minutes and 14 seconds. It lasts 15 minutes and 15 seconds. The participants in the discussion are:

- Sarah Alger, the STM moderator
- Linda Williams, chair of the Planning Board
- Leslie Snell and Andrew Vorce of PLUS, representing the Planning Board
- Bobby Decosta, Lisa Botticelli, Chip Webster and Marybeth Splaine, Nantucket voters

I have included the whole discussion, but only the first 3 minutes and 44 seconds are relevant for the purposes of understanding the basis for developing and including the new definition of Hot Tub/Spa in Article 18.

It is quite clear that there was one purpose, and one purpose only, for the definition of Hot Tub/Spa: to ensure that basins of water less than 150 sq ft are included in the list of exclusions from Ground Cover calculations.

Respectfully, Anne Dewez

This email was scanned by Bitdefender

Anne F M Dewez | 5 Mill Street, Nantucket, MA 02554, USA | Cell: +1(203) 685-5361 |
[Email: afmdewez@gmail.com](mailto:afmdewez@gmail.com)

Transcription details:

Date: 18-Nov-2021
Input sound file: Article 18.m4a

Transcription results:

00:00 **Alger**
18, appears on page 19 and 20, 21. The Planning Board motion starts at the bottom of page 21, continues to page 22, 23. There is a comment. Those comments, again, are not part of the motion that you're voting on. I'm going to ask for your unanimous consent to waive the reading of the Planning Board's motion. Recognized Ms. Williams for the purpose of making that motion. Ms. Williams?

00:35 **Williams**
[I so move?].

00:37 **Alger**
So moved. Is there a second?

00:39 **Unknown**
Second.

00:40 **Alger**
The motion is made and seconded. Do you want to say anything about this before I go to an amendment or go to Mr. da Costa? [inaudible]? No. Okay. Mr. da Costa?

01:02 **Decosta**
Madam Chairman, this **article is defined as definitions, but this is major changes to how we've conducted business in this town for the last 25 years.** The ground cover section now is going to include unenclosed roofed overhangs, connectors, entryway hoods, projections, pergolas, playground structures, docks, exterior in-ground and aboveground hot tubs and spas. I have a real hard time with that, because there's some days I can't get out of bed without crawling to my hot tub to go to work in the morning, so I don't want to have to count it as ground cover-- window wells. So, I mean, these are major changes to how we're going to conduct business in this town, and and **to hide this under definitions is ludicrous, especially at a Special Town Meeting.** I would urge everyone in this room to vote no on these. **There needs to be serious community discussion.** I'm sure that three-quarters of the building community doesn't even know that these things are in here. I mean, I didn't even really notice it until tonight.

02:12 **Alger**
Those hot tubs are excluded, by the way.

02:16 **Decosta**
Not the way I read it. So all this stuff is not going to be in here.

02:20 **Alger**
All those things are excluded. It says, "Excluding, for instance, tents, retaining walls, etc., etc., etc., etc." All those things that are listed are exclusions.

02:33 **Decosta**
Then why do we have a definition of what a hot tub is? And why do we have a definition of what a unenclosed porch is?

02:40 **Alger**
I'll go to the Planning staff for that. They can explain.

02:46 **Decosta**
It's very unclear what this does.

02:48 **Alger**
Okay. Ms. Snell?

02:52 **Snell**
Thank you, Madam Moderator. Leslie Snell for the Planning Board. So as the Moderator explained, the changes to the Ground Cover definition are adding exclusions. They're not adding additional inclusions. The changes proposed in this article are clarifications to our existing definitions, and these are proposed due to changing building trends, to evolving interpretations of existing language, and to concerns brought up at the Zoning Boof Appeals hearings when there are special permits, variances, or other appeals from our enforcement personnel before them. The primary intent of this article is to increase predictability in permitting and to remove subjective language from the bylaw. I would ask you all to please vote in favor of this article. Thank you.

03:44 **Alger**
Okay. So I do have a proposed amendment from Ms. Botticelli that we're going to put up, and that amendment is a change to the definition of "Structure" on page 23. The motion is to add the language, after "Platforms," "More than two steps providing access to a structure two feet in depth in any zone within a FEMA flood hazard district and with five foot minimum side yard setbacks." So Ms. Botticelli's motion is to strike the language that's stricken and to add the language that's highlighted, so that it would read, "More than two steps providing access to a structure that are more than two feet in depth in any zone within a FEMA flood hazard district and with five foot minimum side yard setbacks." Is that your motion, Ms. Botticelli? Okay. So is there a second?

05:01 **Unknown**
Second.

05:02 **Alger**
Okay. Ms. Botticelli if you want to stand up, you can ask your question and describe your amendment.

05:10 **Botticelli**
Hello. The one question I had for the Planning staff is the original definition of "Structure" did not include the words, "More than two steps that were more than 10 feet in length." I'm curious why that language was added.

05:32 [inaudible].

05:40 [inaudible].

05:43 **Vorce**
I'm sorry. Could you repeat that question, please?

05:46 **Botticelli**
Okay. I'm sorry, I didn't get right to the right page. The original Article-- hold on. Under the definition of "Structure," prior to the amendment that came out of the Planning Board discussion, there was no mention of steps that were longer or less than 10 feet in length.

06:08 **Vorce**
Right.

06:08 **Botticelli**
So anything more than 10 feet in length is considered a structure. I'm just curious where the 10 feet came from?

06:14 **Vorce**
I think that the motivation for that was to make it tighter so that you couldn't have a run of, say, a 40-foot long step or something like that, and that the idea was to limit that.

06:29 **Botticelli**
I guess my point is that 10 feet in length for a step needed to get out of the house is pretty-- it's wide. And I'm not so sure why it needs to be so wide?

06:40 **Vorce**
Right. I think-- I think that there was some consideration where decks might have a wider step or something like that.

06:49 **Botticelli**
Okay.

06:49 **Vorce**
But I think there was-- the intent was to put some parameters around it where there were none as originally proposed.

06:55 **Botticelli**
Okay.

06:57 **Botticelli? Alger?**
Thank you.

06:57 **Botticelli**
And just to explain the reason that I brought up the amendment to the article, I know that this came up at the Annual Town Meeting last April. I brought up the same concerns about allowing steps into the setbacks in all zones, which is the way it was originally worded. I do appreciate the change to the maximum of having two steps within the zoning setback, but I still don't understand why it should be allowed in areas where we're not-- that are not facing flood elevation issues. And so the four zones or the five zones that have been restricted from the bylaw are obviously larger zones, where if you have three acres, you shouldn't have to put your steps in a

setback no matter what. But I don't know why some of the other zones weren't restricted as well.

07:55 [inaudible].

07:56 **Alger**
Ms. Williams?

07:57 **Williams**
Thank you.

07:58 **Alger**
On the amendment. Now we're on Ms. Botticelli's amendment.

08:02 **Williams**
I'm asking you to vote against this amendment. We struggled with this for quite some time since April. I don't think you should remove-- the districts R40, LUG1/2/3, MMD-- some of those areas have FEMA flood hazards, and they have larger lots. The reason why we said-- except for R40. That's one acre. LUG1 is one acre, LUG2 is two acre, LUG3 is three acre, and MMD is 10 acre-- we left the smaller acreage in, which is all of Brant Point, most of town-- some of the other areas that have difficulty when they have to come up, the steps generally have to be added because you have to come up eight, nine feet above flood plain. Some of these are coming up four to five feet. They look like they're on stilts on Washington Street, to give you an example. When you come up, you have to add steps. Why should they have to go through the rigmarole of going to the ZBA, hopefully to get a variance to do that? There's no guarantee for variance. The ZBA is giving variances because what choice do you have? But soil shape and topography are the only reasons you can grant a variance. Not an owner-created hardship. So if anybody wanted to litigate a variance that we've been giving out for some time because of the flood plain, more than likely the variance would be kicked by a court.

09:25 **Williams**
So we struggled with this at great length. I have in my 20 years on the HDC seen 40-foot-long steps because they go on wraparound porches and they're very wide and they come off the porch and they can get away with that. That's why we backed it down to 10 feet, to put some parameters on it. But I think we need to leave the zoning part of this in, so it's only the small lots, the 5,000-square-foot lots, the 10,000-square-foot lots, and maybe a 20,000-square-foot lots because Brant Point has all of those zones. And the old historic are 5,000-square-foot. So I don't like this amendment at all. I don't think it accomplishes anything. FEMA maps are changing all the time. They increased the velocity zone recently within the last couple of years when they accepted the hazard maps. It could change tomorrow, and it could be somewhere else or more extensive. We've got eight zones and everything else. I think this is not going to accomplish what you want, and I think there's a word missing if you want to vote in favor of this. It looks like flood hazard district and with a district that requires a minimum of a five-yard setback. So I don't think this would accomplish it, and I think it actually makes it worse.

10:38 **Williams**
And they shouldn't have to go jump through hoops to get a two-foot when they had to raise the house or they made a mistake because grade changes or somebody messed with your batter boards. This is nuts. Other parts of the bylaw also have allowances under special permit, not a variance, for unintended intrusions up to four

or five feet. We have other things that are allowed in the setbacks, like garbage sheds, propane tanks, retaining walls less than four feet, window wells for egress windows, which are quite deep, because you have to have an egress window to get out of a basement bedroom or living space. So two insignificant steps that are restricted should be allowed as a matter of right, as everything else in the setback is allowed.

11:30

Alger

Thank you. On Ms. Botticelli's amendment-- okay. This requires a majority vote. We're just voting on the amendment. The amendment would be to add the highlighted language and strike the stricken language from the definition of "structure." All those in favor, please say "aye."

11:54

Aye.

11:55

Alger

Those opposed, "no."

11:56

No.

11:58

Alger

That motion is not adopted. Okay. Now we're on Article 18 as moved by the Planning Board and printed in the warrant. Is there any further discussion on Article 18? Mr. Webster?

12:23

Webster

Thank you, Madam Moderator. Chip Webster. I have a question. Looks like in the recommendation, the definition for "Breezeway" was completely eliminated. So I guess first half of my question is, "Am I reading that correctly? And if so, why?"

12:42

Alger

Okay, you are reading that correctly, and I'll let Ms. Snell tell you why.

12:52

Snell

Yes, you are correct. The recommendation includes removing "Breezeway" from the definitions. There seems to be some conflicting ideas about what a breezeway is, and the Planning Board determined that that's more of an architectural feature and less of a zoning issue. And therefore they would no longer propose that we regulate breezeways by zoning and just allow that to be part of the HDC review.

13:24

Webster

Hello? Testing. So for clarification, would that be counted as ground coverage or not counted as ground coverage, if there's no definition?

13:40

Snell

Depending on the design, it would either be considered an enclosed porch or an unenclosed porch, so that would determine whether or not it counts towards Ground Cover. Unenclosed would not count towards Ground Cover.

13:58

Alger

Okay, anything else on Article 18? Yes, Ms. Splaine.

14:11

Splaine

I'm looking-- Marybeth Splaine. I'm looking for confirmation from the Planning Board that on-ground solar arrays, according to state law, are not counted as Ground Cover.

14:32

Williams

We've never counted them for Ground Cover in all the years I've been involved with zoning, I've never looked at them as Ground Cover, including yours. They do count for setbacks, I would assume. But nobody's ever counted those for Ground Cover, unless they start it. And then we'll have to put them in an amendment and add them to the list. But I've never seen them counted for Ground Cover.

14:56

Alger

Okay. All right. So on the main motion, as printed in the warrant, on Article 18, a yes vote will adopt the motion. A no vote will defeat the motion. All those in favor, please say "aye."

15:11

Aye.

15:12

Alger

Those opposed, "no."

15:14

No.

15:15

Alger

That motion is adopted by a declared two-thirds. Okay. I am recusing myself on articles 20 and 20.

Abutters Listing

MBLU	Lot	Lot Cut	Owner Full Name	Co-Owner Full Name	Address Line 1	City	State	Zip	Location
4233	11		NANTUCKET HISTORICAL ASSN		PO BOX 1016	NANTUCKET	MA	02554	8 HOWARD ST
4233	12		WINTERS RONALD & ELLEN		7 THIRTY ACRES LN	NANTUCKET	MA	02554	12 GARDNER ST
4233	13		SAYER JOHN D & RUTH P		27 CONSTITUTION HILL	PRINCETON	NJ	08540	10 GARDNER ST
4233	14		STRONG DANIELLE I TR	STRONG DANIELLE I SEPARATE PROP TRUST	2665 GRASSY SPRING PLACE	LAS VEGAS	NV	89135	11 GARDNER ST
4233	16		NORTHERN TRUST CO TRST	MIDDLE BRICK REALTY TRUST	C/O JOE BLUMBERG B3	CHICAGO	IL	60603	95 MAIN ST
4233	17		RUFIO ACK HOLDINGS LLC		C/O ANDREW CALDER	HOUSTON	TX	77005	93 MAIN ST
4233	18		OLYMPIC EQUITY HOLDINGS LLC		1290 EAST MAIN ST 3RD FL	STAMFORD	CT	06902	91 MAIN ST
4233	19		HEDGES HILLARY C & RAYPORT JEFFREY F		247 COMMONWEALTH AVE UNIT E	BOSTON	MA	02116	89 MAIN ST
4233	53		SPLENDID LLC		6951 GREENTREE ROAD	BETHESDA	MD	20817	7 HOWARD ST
4233	54		AINSLIE LEE TRUSTEE	MAVERICK CAPITAL LTD	1900 N PEARL ST 20TH FLOOR	DALLAS	TX	75201	9 HOWARD ST
4233	55		MERRITHEW PAUL B		P O BOX 120	AMHERST	NH	03031	4 GARDNER ST
4233	56		NANTUCKET HISTORICAL ASSN		PO BOX 1016	NANTUCKET	MA	02554	8 GARDNER ST
4233	57		BROCK AMY D TRST ETAL	C/O JUDITH B PHELAN	PO BOX 293	GERMANTOWN	NY	12526	9 GARDNER ST
4233	58		7 GARDNER STREET LLC		PO BOX 22424	CHARLESTON	SC	29413	7 GARDNER ST
4233	58	1	7A GARDNER STREET LLC		PO BOX 22424	CHARLESTON	SC	29413	7 A GARDNER ST
4233	60		BIRCHWOOD HOLDINGS LTD LLC		1290 EAST MAIN ST	STAMFORD	CT	06902	97 MAIN ST
4233	61		NANTUCKET HISTORICAL ASSN		PO BOX 1016	NANTUCKET	MA	02554	96 MAIN ST
4233	62		NOMOR LLC	C/O ANNE O'NEIL	94 MAIN ST	NANTUCKET	MA	02554	94 MAIN ST
4233	63		GRAHAM GOLDSMITH 2012 TRUST		2 VALLEY FORGE ROAD	DARIEN	CT	06820	92 MAIN ST
4233	64		GLIDDEN RICHARD J TRST	90 MAIN ST REALTY TRUST	37 CENTER ST	NANTUCKET	MA	02554	90 MAIN ST
4233	104		DAVIS HUGH O		112 MAIN ST	NANTUCKET	MA	02554	112 MAIN ST
4233	105		REILLY JOHN H TRST ETAL	113 MAIN ST REALTY TRUST	PO BOX 529	GLENSIDE	PA	19038	113 MAIN ST
4233	106		REILLY JOHN		1 HOWARD ST	NANTUCKET	MA	02554	1 HOWARD ST
4233	107		MIESMER CHARLES R & LINDSEY		1259 CEDAR RD	SOUTHPORT	CT	06490	3 HOWARD ST
4233	109		BURKE JACQUELYN & ROBERT F		25 FELLSCREST RD	ESSEX FELLS	NJ	07021	5 GARDNER ST
4233	110		NANTUCKET HISTORICAL ASSN		PO BOX 1016	NANTUCKET	MA	02554	99 MAIN ST
4233	111		TAYLOR PETER R & HARRISON W TR	98 MAIN STREET REALTY TRUST	P O BOX 446	KESWICK	VA	22947	98 MAIN ST

4233	112		1 PLEASANT NANTUCKET LLC		4 HUNTER LANE	RYE	NY	10580	1 PLEASANT ST
4233	113		NANTUCKET HISTORICAL ASSN		PO BOX 1016	NANTUCKET	MA	02554	2 PLEASANT ST
4233	114		MANGANARO MARGARET S TR		12312 WEDGETON LN	ST LOUIS	MO	63131	7 SUMMER ST
4233	115		WILMOT GUNNAR P		139 HAMPSHIRE RD	BRONXVILLE	NY	10708	3 SUMMER ST
4233	147		WRC/CCC REALTY LLC	C/O WILLIAM CAMP	1616 FOUNTAIN VIEW DR #607	HOUSTON	TX	77057	110 MAIN ST
4233	148		MERCHANT REALTY ASSOCIATES LLC	C/O JANE SCHNITZER	250 SOUTH 18TH ST #1602	PHILADELPHIA	PA	19103	111 MAIN ST
4233	149		ODONNELL MICHAEL & DEANE		9659 PRESTON TRAIL WEST	PONTE VEDRA BEACH	FL	32082	2 GARDNER ST
4233	150		RAUL ALAN C & MARY TINSLEY		3417 PROSPECT ST	WASHINGTON	DC	20007	109 MAIN ST
4233	151	1	BRESKMAN LOUIS A & SELINA V		180 UNDERDOWN RD	ANN ARBOR	MI	48105	107A MAIN ST
4233	152		DESETA EDWARD B & WANDA L TRST	105 MAIN ST NOM TRUST	PO BOX 20516	CHARLESTON	SC	29413	105 MAIN ST
4233	153		103 MAIN STREET LLC	C/O ROBERT GEASE	201 KENLYN ROAD	PALM BEACH	FL	33480	103 MAIN ST
4233	154		100 MAIN NANTUCKET LLC		100 MAIN ST	NANTUCKET	MA	02554	100 MAIN ST
4233	155		WEINMAN RHODA H TR	3 PLEASANT STREET NOM TRUST	PO BOX 1365	NANTUCKET	MA	02554	3 PLEASANT ST
4233	156		LEVINE ARTHUR E TR ETAL		335 N MAPLE DR STE 240	BEVERLY HILLS	CA	90210	5 PLEASANT ST
4233	157		TOLAND JOHN GERARD TR	JOHN G TOLAND REVOCABLE TRUST	4 PLEASANT ST	NANTUCKET	MA	02554	4 PLEASANT ST
4233	158		AKERS SUSAN D		1 STURGES HWY	WESTPORT	CT	06880	7 PLEASANT ST
4233	159		BURKE ROBERT F & JACQUELYN M		25 FELLSCREST RD	ESSEX FALLS	NJ	07021	102 MAIN ST
4233	159	1	NARBONNE LLC		138 WEST 17TH STREET APT 10	NEW YORK	NY	10011	104 MAIN ST
4233	175		MADAKET MILK LLC		50 PARK ROW WEST STE 113	PROVIDENCE	RI	02903	5 MILK ST
4233	176		GLASER TODD M & KIM AIMEE		PO BOX 402249	MIAMI	FL	33140	3 MILK ST
4233	177		ANCONA EDGAR D & NORA M		199 N GREEN BAY ROAD	LAKE FOREST	IL	60045	1 MILK ST
4233	178		RUETTIGERS MICHAEL C & MAUREEN		453 BEDFORD ROAD	CARLISLE	MA	01741	108 MAIN ST
4233	179		NANTUCKET ISLANDS LAND BANK		22 BROAD ST	NANTUCKET	MA	02554	106 MAIN ST
4233	180		BUTLER ROBERT M TRUSTEE	BUTLER FAMILY NOMINEE TRUST	22 WAYDALE ROAD	NANTUCKET	MA	02554	2 MILK ST
4233	181		GREENBERG TOBY A TR	TOBY GREENBERG TRUST	4 MILK ST	NANTUCKET	MA	02554	4 MILK ST
4233	182		GRIFFITHS CHRISTOPHER L & MELISSA S		PO BOX 728	CONCORD	MA	01742	8 MILK ST
4234	31		OLYMPIC EQUITY HOLDINGS LLC		1290 EAST MAIN ST 3RD FLOOR	STAMFORD	CT	06902	24 LIBERTY ST
4234	32		BIRCHWOOD HOLDINGS LTD LLC		1290 EAST MAIN ST	STAMFORD	CT	06902	97R MAIN ST

4234	34	DWYER MARY JEAN & DANIEL J		PO BOX 75	EAST WINTHROP	ME	04343	13 GARDNER ST
4234	35	BULLOCK CHARLES E & KRISTEN A TRST	BULLOCK C E & K A REVOCABLE TRUST	35 FAGAN DRIVE	HILLSBOROUGH	CA	94010	1 HOWARD CT
4234	74	ISSAC COFFIN LANCASTRIAN	SCHOOL	19 NEWTOWN ROAD	NANTUCKET	MA	02554	4 WINTER ST
4234	76	BLOOMER JEREMY J D ETAL		15 GARDNER ST	NANTUCKET	MA	02554	15 GARDNER ST
4234	77	MOCHARY MARY V &	BERGSTEIN ALEXANDRA M	26 PARK STREET SUITE 101	MONTCLAIR	NJ	07042	14 GARDNER ST
4234	115	CANNON KATHLEEN M TRST		221 CHESWOLD LANE	HAVERFORD	PA	19041	26 LIBERTY ST
4234	116	WELD FRANCIS L & HELENÉ M		16 GARDNER ST	NANTUCKET	MA	02554	16 GARDNER ST
Count:		62						

NANTUCKET HISTORICAL ASSN
PO BOX 1016
NANTUCKET, MA 02554

STRONG DANIELLE I TR
STRONG DANIELLE I SEPARATE PROP
TRUST
2665 GRASSY SPRING PLACE
LAS VEGAS, NV 89135

OLYMPIC EQUITY HOLDINGS LLC
1290 EAST MAIN ST 3RD FL
STAMFORD, CT 06902

AINSLIE LEE TRUSTEE
MAVERICK CAPITAL LTD
1900 N PEARL ST 20TH FLOOR
DALLAS, TX 75201

BROCK AMY D TRST ETAL
C/O JUDITH B PHELAN
PO BOX 293
GERMANTOWN, NY 12526

BIRCHWOOD HOLDINGS LTD LLC
1290 EAST MAIN ST
STAMFORD, CT 06902

GRAHAM GOLDSMITH 2012 TRUST
2 VALLEY FORGE ROAD
DARIEN, CT 06820

REILLY JOHN H TRST ETAL
113 MAIN ST REALTY TRUST
PO BOX 529
GLENSIDE, PA 19038

BURKE JACQUELYN & ROBERT F
25 FELLSCREST RD
ESSEX FELS, NJ 07021

1 PLEASANT NANTUCKET LLC
4 HUNTER LANE
RYE, NY 10580

WINTERS RONALD & ELLEN
7 THIRTY ACRES LN
NANTUCKET, MA 02554

NORTHERN TRUST CO TRST
MIDDLE BRICK REALTY TRUST
C/O JOE BLUMBERG B3
CHICAGO, IL 60603

HEDGES HILLARY C & RAYPORT
JEFFREY F
247 COMMONWEALTH AVE UNIT E
BOSTON, MA 02116

MERRITHEW PAUL B
P O BOX 120
AMHERST, NH 03031

7 GARDNER STREET LLC
PO BOX 22424
CHARLESTON, SC 29413

NANTUCKET HISTORICAL ASSN
PO BOX 1016
NANTUCKET, MA 02554

GLIDDEN RICHARD J TRST
90 MAIN ST REALTY TRUST
37 CENTER ST
NANTUCKET, MA 02554

REILLY JOHN
1 HOWARD ST
NANTUCKET, MA 02554

NANTUCKET HISTORICAL ASSN
PO BOX 1016
NANTUCKET, MA 02554

NANTUCKET HISTORICAL ASSN
PO BOX 1016
NANTUCKET, MA 02554

SAYER JOHN D & RUTH P
27 CONSTITUTION HILL
PRINCETON, NJ 08540

RUFIO ACK HOLDINGS LLC
C/O ANDREW CALDER
HOUSTON, TX 77005

SPLENDID LLC
6951 GREENTREE ROAD
BETHESDA, MD 20817

NANTUCKET HISTORICAL ASSN
PO BOX 1016
NANTUCKET, MA 02554

7A GARDNER STREET LLC
PO BOX 22424
CHARLESTON, SC 29413

NOMOR LLC
C/O ANNE O'NEIL
94 MAIN ST
NANTUCKET, MA 02554

DAVIS HUGH O
112 MAIN ST
NANTUCKET, MA 02554

MIESMER CHARLES R & LINDSEY
1259 CEDAR RD
SOUTHPORT, CT 06490

TAYLOR PETER R & HARRISON W TR
98 MAIN STREET REALTY TRUST
P O BOX 446
KESWICK, VA 22947

MANGANARO MARGARET S TR
12312 WEDGETON LN
ST LOUIS, MO 63131

WILMOT GUNNAR P
139 HAMPSHIRE RD
BRONXVILLE, NY 10708

WRC/CCC REALTY LLC
C/O WILLIAM CAMP
1616 FOUNTAIN VIEW DR #607
HOUSTON, TX 77057

MERCHANT REALTY ASSOCIATES LLC
C/O JANE SCHNITZER
250 SOUTH 18TH ST #1602
PHILADELPHIA, PA 19103

ODONNELL MICHAEL & DEANE
9659 PRESTON TRAIL WEST
PONTE VEDRA BEACH, FL 32082

RAUL ALAN C & MARY TINSLEY
3417 PROSPECT ST
WASHINGTON, DC 20007

BRESKMAN LOUIS A & SELINA V
180 UNDERDOWN RD
ANN ARBOR, MI 48105

DESETA EDWARD B & WANDA L TRST
105 MAIN ST NOM TRUST
PO BOX 20516
CHARLESTON, SC 29413

103 MAIN STREET LLC
C/O ROBERT GEASE
201 KENLYN ROAD
PALM BEACH, FL 33480

100 MAIN NANTUCKET LLC
100 MAIN ST
NANTUCKET, MA 02554

WEINMAN RHODA H TR
3 PLEASANT STREET NOM TRUST
PO BOX 1365
NANTUCKET, MA 02554

LEVINE ARTHUR E TR ETAL
335 N MAPLE DR STE 240
BEVERLY HILLS, CA 90210

TOLAND JOHN GERARD TR
JOHN G TOLAND REVOCABLE TRUST
4 PLEASANT ST
NANTUCKET, MA 02554

AKERS SUSAN D
1 STURGES HWY
WESTPORT, CT 06880

BURKE ROBERT F & JACQUELYN M
25 FELLSCREST RD
ESSEX FALLS, NJ 07021

NARBONNE LLC
138 WEST 17TH STREET APT 10
NEW YORK, NY 10011

MADAKET MILK LLC
50 PARK ROW WEST STE 113
PROVIDENCE, RI 02903

GLASER TODD M & KIM AIMEE
PO BOX 402249
MIAMI, FL 33140

ANCONA EDGAR D & NORA M
199 N GREEN BAY ROAD
LAKE FOREST, IL 60045

RUETTIGERS MICHAEL C & MAUREEN
453 BEDFORD ROAD
CARLISLE, MA 01741

NANTUCKET ISLANDS LAND BANK
22 BROAD ST
NANTUCKET, MA 02554

BUTLER ROBERT M TRUSTEE
BUTLER FAMILY NOMINEE TRUST
22 WAYDALE ROAD
NANTUCKET, MA 02554

GREENBERG TOBY A TR
TOBY GREENBERG TRUST
4 MILK ST
NANTUCKET, MA 02554

GRIFFITHS CHRISTOPHER L & MELISSA S
PO BOX 728
CONCORD, MA 01742

OLYMPIC EQUITY HOLDINGS LLC
1290 EAST MAIN ST 3RD FLOOR
STAMFORD, CT 06902

BIRCHWOOD HOLDINGS LTD LLC
1290 EAST MAIN ST
STAMFORD, CT 06902

DWYER MARY JEAN & DANIEL J
PO BOX 75
EAST WINTHROP, ME 04343

BULLOCK CHARLES E & KRISTEN A TRST
BULLOCK C E & K A REVOCABLE TRUST
35 FAGAN DRIVE
HILLSBOROUGH, CA 94010

ISSAC COFFIN LANCASTRIAN
SCHOOL
19 NEWTOWN ROAD
NANTUCKET, MA 02554

BLOOMER JEREMY J D ETAL
15 GARDNER ST
NANTUCKET, MA 02554

MOCHARY MARY V &
BERGSTEIN ALEXANDRA M
26 PARK STREET SUITE 101
MONTCLAIR, NJ 07042



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Letters

Mr. & Mrs. Jeffrey Rayport
89 Main Street
Nantucket, MA 02554

November 7, 2021

VIA EMAIL

Ms. Leslie Woodson Snell
Deputy Director of Planning

Dear Ms. Snell:

This letter is regarding the ZBA case file number 30-21, 103 Main Street, pool/spa. We own the residence at 89 Main Street.

Swimming Pools and Spas in the neighborhood are a serious concern. They cause noise, light, and environmental pollution. They intrude on privacy and generate additional service calls and traffic. We do not want any pools in our neighborhood, which is, like all of the Old Historic District, densely populated with small lots.

For this reason, as you know, voters at the 2011 ATM banned pools in the OHD and SOH. Restrictions were expanded to other zones last year.

Leading up to 2011, and continuing today, a pool is defined in the Nantucket zoning code as having 1,000 or more gallons of water. As a matter of Town law, this may not be ignored. While the large "spa" at 103 Main Street is less than 150 sq. feet of surface area, it evidently holds over 3,000 gallons of water, making it a pool, which is not permitted in the OHD.

Why is gallonage the critical measure under this zoning code? The gallonage establishes guidelines for overall size and limits type of use (active swimming and jumping) and environment (quantity of pool water that must be serviced, including heating, pumping, and cleaning).

Our neighbor likely did not realize that he was violating the zoning code by installing such a swimming pool. It's never comfortable to object to a neighbor's actions. Regardless, the pool is a serious imposition on the neighborhood as well as a violation of Town code. We would be seriously aggrieved if even a small spa, let alone a 1,000+ gallon pool, were to be installed on our lot line and under our windows.

It's very important that the ZBA clarify for the building and planning department and the public that the Nantucket zoning code defines a pool by volume. Nantucket voters worked hard to limit pools. Please uphold the zoning code, which restricts swimming pools.

Kind Regards,

Hillary and Jeffrey Rayport

-----Original Message-----

From: Marie Sussek <sussekmarie@gmail.com>

Sent: Monday, November 8, 2021 12:26 PM

To: Leslie Snell <LSnell@nantucket-ma.gov>

Subject: ZBA case file #30-21

As residents of 85 Main Street, we are writing to express our concern about the ZBA case referenced above. Our understanding is the so-called spa at 103 Main Street holds 3000 gallons which is illegal in the Old Historic District. We believe the zoning law allows pools of 1000 gallons or less. We wonder what the definition of "spa" is in this instance. We would think a "spa" would be no bigger than a hot tub.

The Old Historic District is made up of small lots which are close together. Even on Main Street where houses may be larger than the smaller streets, our lots are still small and separated only by fences, not large expanses. Pools and spas(?) should not be allowed in the OHD: it is designated that because the idea is to preserve the historic integrity of the area. Pools and spas do not fit that category. Therefore we are strongly opposed to a 3000 gallon body of water in the OHD.

With regards,
Marie and John Sussek

November 5, 2021

Town of Nantucket
Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Thomas M. Montgomery
33 N. Liberty Street
Nantucket, MA 02554

Ms. Susan McCarthy, Chair
Ms. Lisa Botticelli
Mr. Edward S. Toole
Mr. Michael J. O'Mara
Ms. Elisa H. Allen
Mr. James Mondani
Mr. Mark W. Poor
Mr. Geoff Thayer

Re: 103 Main Street, ZBA File No. 30-21

As a long-time year-round resident, and tax paying voter of Nantucket, I want to convey to you my utmost displeasure with recent events taking place at 103 Main Street, in the form of a swimming pool, that is being construed as a spa.

There is nothing about this swimming pool that is even close to what anyone would consider a spa. It's too deep and will be able to contain too much water to be considered anything other than a swimming pool.

At our Annual Town Meeting on April 5, 2011 (the second night), voters passed Article 58, which effectively banned pools in ROH and SOH. The mechanism for doing this was to define Swimming Pool-Residential, add it to the Town of Nantucket Use Chart and enter N (No) at the intersection of Swimming Pool-Residential and ROH SOH.

The relevant part of the definition for this is:

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.

If my memory serves me correctly, during that second night, the Planning Board tried to have further study on the issue, imagine that, but the article was amended on Town Meeting floor to eliminate a provision that would have allowed pools through a special permit which the majority of the voters viewed as too large a loophole. This was posted two days later on April 7, 2011.

If we are to maintain the National Historic Landmark title which Nantucket has earned, we need and the Planning and Zoning Boards need to adhere to the rules and laws passed at our town

body form of government, namely Annual Town Meeting, and respect the wishes and decisions of the voters. An end run, like changing the terms of a swimming pool to a spa and using legal gobbledygook & maneuvering to accomplish it, as illegal as it is, only serves to detract from the ROH SOH and sets a bad precedent.

Do the right thing, and require the applicant at 103 Main Street, to conform this atrocity to the norms for a spa that have evolved from the Pool definition, as voted the (second night) April 5, 2011 Town Meeting, or rescind the building permit. Thank you.

Sincerely,

Thomas M. Montgomery

Cc: Ms. Leslie W. Snell

From: Helene Weld <hmweld@gmail.com>
Date: November 15, 2021 at 10:47:52 AM EST
To: Leslie Snell <LSnell@nantucket-ma.gov>
Subject: 103 Main Street

Ms. Leslie W. Snell
Deputy Director of Planning and Zoning Administration

Dear Ms. Snell.

I am writing regarding the ZBA case file # 30-21, 103 Main Street pool/spa.

We live at 16 Gardner Street and received notice of an appeal filed by several neighbors. The neighborhood is within the Old Historic District and is densely populated. Pools/spas create noise, light and can be very dangerous to children and pets.

We support the appeal and ask that you rescind the permit.

Sincerely,
Helene and Francis Weld
16 Gardner Street

To: The Zoning Board of Appeals

Date: November 10, 2021

Subject: 103 Main Street “water feature”

I live on upper Main Street (111 Main) and our neighborhood is becoming increasingly concerned with the proliferation of “water features”—hot tubs/spas/pools—in the area.

Several years back, (2010?) zoning restrictions were passed at ATM which specified the permitted size and scope of these “water features”. As I remember, an important consideration was the allowable volume of water. A limit of 1000 gallons of water was decided upon and voted in. I hear people saying that the “water feature” at 103 Main Street is considerably larger than this. What has happened?

We all know that our historic district is a very densely packed residential area. People are upset about the disturbances that are resulting from these “features”. Fences don’t stop noise. Anything we can do in this day and age to keep contention to a minimum among neighbors is a very good idea.

The people of Nantucket have already voted their opinion on this issue. Zoning regulations are there to protect us all. Shame on us if we do not enforce them.

Thank you for your service to our island.

Respectfully submitted,

Jane Schnitzer

Subject: 103 Main St. mini-pool appeal

I am writing to object to the zone variance for 103 Main St. for a "mini pool".

I am a direct abutter and strongly object to the zone variance.

The corner of Gardner St and Main St. is already an impossible traffic thoroughfare. It is not conducive to add additional traffic to the street, not to mention that there is no parking available for service people.

The noise and addition to people in the Historic District is not advisable. There are enough problems without adding to them.

Please deny this zone variance.

Thank you,
Danielle Strong
11 Gardner St.
Nantucket, Ma. 02554

Nickesha Sheriff

From: Hillary Hedges Rayport <h_hedges@mac.com>
Sent: Sunday, November 21, 2021 6:20 PM
To: Anne Dewez
Subject: FW: ZBA case file#30-21,103 Main Street , pool/spa

FYI...

From: Nini Holmes <niniholmes@comcast.net>
Date: Monday, November 15, 2021 at 1:15 PM
To: Hillary Hedges Rayport <hrayport@mac.com>
Subject: Fwd: ZBA case file#30-21,103 Main Street , pool/spa

Sent from my iPhone

Begin forwarded message:

From: Nini Holmes <niniholmes@comcast.net>
Date: November 15, 2021 at 12:14:21 PM CST
To: Isnell@nantucket-ma.gov
Subject: ZBA case file#30-21,103 Main Street , pool/spa

Mary Margaret Holmes
88 Main Street
Nantucket, MA 02554

November 15, 2021

VIA EMAIL
Ms. Leslie Woodson Snell
Deputy Director of Planning

Dear Ms. Snell,

This letter is regarding ZBA case file number 30-21 ,103 Main Street, pool/ spa. I own 88 Main Street & 2 Traders Lane .

My family and I have enjoyed the privilege of having an historic Main Street home for 22 years . We are an active family of three generations . All of my children and grandchildren have spent all their Summers , as well as , other months on Nantucket .

Ours is a neighborhood that has always tried to be respectful of keeping noise , lights & traffic at a minimum, since like all homes in the Old Historic District ,our neighborhood is densely populated with

small lots .

We do not need any pools in our neighborhood . Pools create noise , light , environmental pollution and intrude on privacy .

With homes so close together on small lots , we at 88 Main have worked diligently to encourage children of all ages to use “ inside voices “ outside ,to keep lights and music at a minimum. Our wonderful neighbors do as well .

It would be quite unpleasant if even a small “spa “ were to be installed on my lot line and under my windows .

It is very important that the zoning code that defines a pool by volume be upheld . Please uphold the zoning code , which restricts swimming pools .

Kind regards ,
Mary Margaret Holmes (Mrs. Brainerd)

Sent from my iPhone

This email was scanned by Bitdefender

Nickesha Sheriff

From: RUTH SAYER <rsayer9454@aol.com>
Sent: Monday, November 22, 2021 3:02 PM
To: Anne Dewez; Helene Weld
Subject: Fwd: ZBA case file #30-21 103 Main Street pool and spa

Hope this letter is helpful.

Sent from my iPad

Begin forwarded message:

From: RUTH SAYER <rsayer9454@aol.com>
Date: November 22, 2021 at 3:00:51 PM EST
To: L.Snell@nantucket-ma.gov
Subject: ZBA case file #30-21 103 Main Street pool and spa

Ms. Leslie W. Snell
Deputy director of Planning and Zoning Administration

Dear Ms. Snell

I am writing in regard to above captioned case.

We live at 10 Gardner and received notice of the case and support the appeal and ask that you rescind the permit.

In the Old Historic District the houses are so close together and sound carries. While a pool/spa is in use, the noise would interfere with quiet enjoyment of the property of the others in the neighborhood.

Again, we request that you rescind the permit.

Regards,
John and Ruth Sayer
10 Gardner Street

Sent from my iPad

November 12, 2021

BY E-MAIL AND FIRST CLASS MAIL

Nantucket Zoning Board of Appeals
c/o Leslie Woodson Snell, Deputy Director of Planning and Zoning Administrator
2 Fairgrounds Road
Nantucket, MA 02554

lsnell@nantucket-ma.gov

**Re: Appeal of Zoning Enforcement Officer's Decision Concerning Legality of Purported
"Spa" at 103 Main Street**

Dear Chairman McCarthy and Members of the Zoning Board:

This Firm represents Peter Taylor of 98 Main Street, Anne FM Dewez of 5 Mill Street, and Robert and Marjie Kargman of 8 Mill Street in connection with their appeal from an August 23, 2021 determination of the Zoning Enforcement Officer, Marcus Silverstein, as to the legality of the purported "spa" then under construction at 103 Main Street. The structure at issue is depicted in Exhibit A, attached hereto.

In short, the Zoning Enforcement Officer was asked by my clients to determine whether the structure then being built exceeded the 1000 gallon limitation of the zoning bylaw. Referencing the definition of "Hot Tub/Spa" in Section 139-2 of the Nantucket Zoning Code, Mr. Silverstein responded that "[t]he bylaw provides no maximum permitted gallonage" with respect to spas and appropriately informed my clients of their right to appeal and the timing for an appeal of that determination.

Although Mr. Silverstein is correct in his observation that the "Hot Tub/Spa" definition does not reference a maximum permitted gallonage, he erred by failing to consider the Code's further delineation as to the gallonage at which a "Hot Tub/Spa" becomes a residential "Swimming Pool."

Ultimately, the Zoning Enforcement Officer's determination as to the legality of the "spa" is erroneous and must be overturned by the Zoning Board on multiple grounds.

A. The Structure at Issue is an Illegal Swimming Pool.

First and foremost, the structure at issue is not a "Hot Tub/Spa;" it is a "Swimming Pool" and is therefore specifically prohibited in the Residential Old Historic ("ROH") District. See Nantucket Zoning Code, Sec. 139-7(A) Town of Nantucket Use Chart ("Use Chart").



The language of the applicable bylaw is clear. If the structure exceeds 1000 gallons in volume, it is a “Swimming Pool”:

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.

Nantucket Zoning Code, Sec. 139-2 (emphasis added)

The Code differentiates some Swimming Pools from spas¹ based on the water surface area of the structure – specifically, whether it is greater or less than 150 square feet in water surface area. However, the Code could not be more clear that **any** structure of this nature exceeding 1000 gallons is by definition a “Swimming Pool” irrespective of whether its water surface area also exceeds or is less than 150 square feet.

One Thousand liquid gallons equates to 133.681 cubic feet in volume. The building permit application for the “Hot Tub/Spa” indicates that it is 15 feet long by 8 feet wide in size. The landscape plan (attached as Exhibit B) shows it as 13 feet by 8 feet. Irrespective of which measurement is correct, the structure at issue cannot be a “Hot Tub/Spa,” which, by definition, requires a depth of exceeding 24 inches or 2 feet. At minimum, the structure in question is at least 208 cubic feet (13’ by 8’ by 2’) and therefore greatly exceeds 1000 gallons in volume.²

Because Swimming Pools are not a permitted use in the ROH District, the structure at issue is unlawful and the Zoning Enforcement Officer’s determination must be overturned.

B. A Hot Tub/Spa is Not a Permitted Accessory Use.

Given that the structure at 103 Main Street is clearly a prohibited Swimming Pool, the Zoning Board need not reach this issue. However, even if the Board were to conclude that the structure is a Hot Tub/Spa and not a Swimming Pool it is unlawful because it is not authorized as an accessory use in the ROH District.

Accessory uses are defined as “[s]eparate structures, buildings or uses which are subordinate and customarily incidental to a principal structure, building or use located on the same lot.” Nantucket Zoning Code, Section 139-15. The Code’s definition of “Hot Tub/Spa” specifically

¹ A hot tub or spa is “a structure designed to be used for recreational purposes accessory to a principal use, either above or below grade, containing water **more than 24 inches in depth** and **less than 150 square feet of water surface area**.” (emphases added).

² The photograph attached as Exhibit A shows a structure significantly exceeding 2 feet in depth.



provides that it is “a structure designed to be used for recreational purposes accessory to a principal use.” Nantucket Zoning Code, Section 139-2.

However, not all accessory uses are authorized in all zoning districts. Rather, Section 139-6 of the Zoning Code provides that “[n]o ... structure shall be constructed or erected and no ... structure ... shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district...” Permitted uses and authorized accessory uses are then specifically set forth in the “Use Chart” referenced in Section 139-7(A) of the Zoning Code.

In the ROH District, only “Studio[s],” “Garage[s],” “Shed[s]” and “Outbuildings – other³” are enumerated as permissible accessory uses in the Use Chart. No express authorization for a Hot Tub/Spa as an accessory use is provided.

Moreover, in other districts, where the Zoning Code intends to authorize Hot Tubs/Spas, it does so explicitly. For example, with respect to flex development in the Town Overlay District and open space residential development in the Country Overlay District, the Zoning Code expressly provides that the following accessory structures are allowed ...: “residential swimming pool(s) and/or hot tub(s)/spa(s) and their associated decks and/or patios, outbuildings which are cabanas, clubhouses, fitness studios, and/or offices, and game courts.” Nantucket Zoning Ordinance, Section 139-8(A)(2)(f) (emphasis added).

No express authorization for Hot Tubs/Spas in the ROH District appears in the Zoning Code. They are therefore prohibited.

Accordingly, and with all due respect to the Zoning Enforcement Officer, his determination as to the legality of the “spa” must be overturned.

Sincerely,

BROWN RUDNICK LLP

A handwritten signature in blue ink, appearing to read 'Wayne E. Dennison', is written over a horizontal line.

Wayne E. Dennison

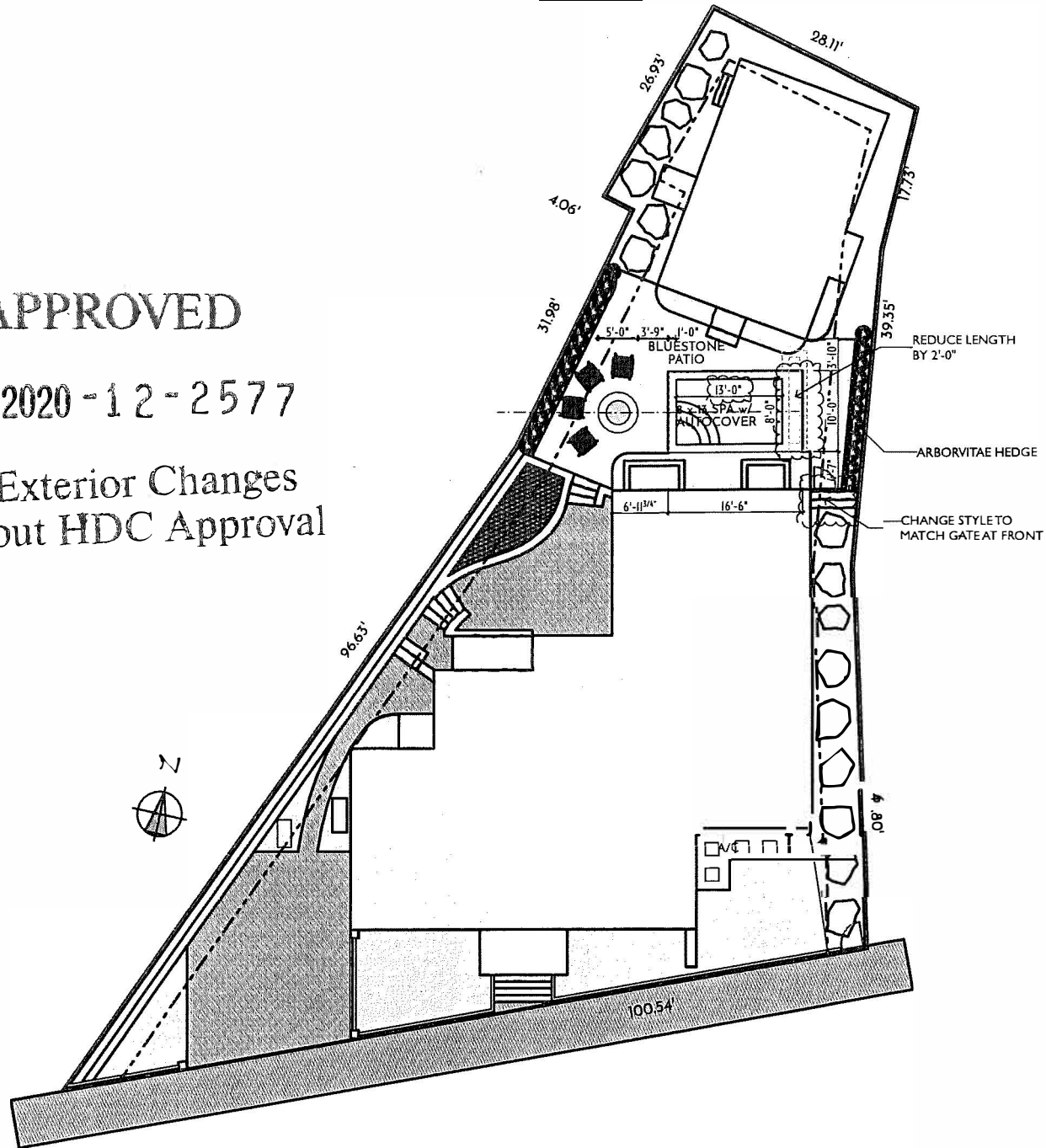
cc: Peter Taylor
Anne FM Dewez
Robert and Marjie Kargman

³ Outbuildings are defined as “[d]etached accessory residential structure(s) such as a cabana, barn, hoop barn, shanty, greenhouse, gazebo, playhouse, fitness studio, home office, but not including dwelling units or structures used for habitation, studios, or sheds.” Nantucket Zoning Code, Section 139-2. This definition does not include any reference to Hot Tub/Spa.

Exhibit A



APPROVED
HDC2020-12-2577
No Exterior Changes
Without HDC Approval



1 HDC LANDSCAPE PLAN
SCALE: 1" = 20'

61

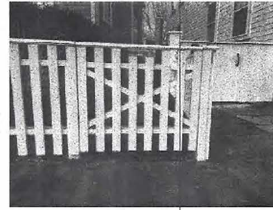


9 SPA FLUSH W GRADE

10 circular bluestone fire pit



12 NEW GATE LOCATION



11	MATCH EXISTING GATE
----	---------------------



② LOCUS M-42.3.3 P-153



VIEW 1 MAIN ST



4 VIEW 2 MAIN ST



5 VIEW 3 MAIN ST



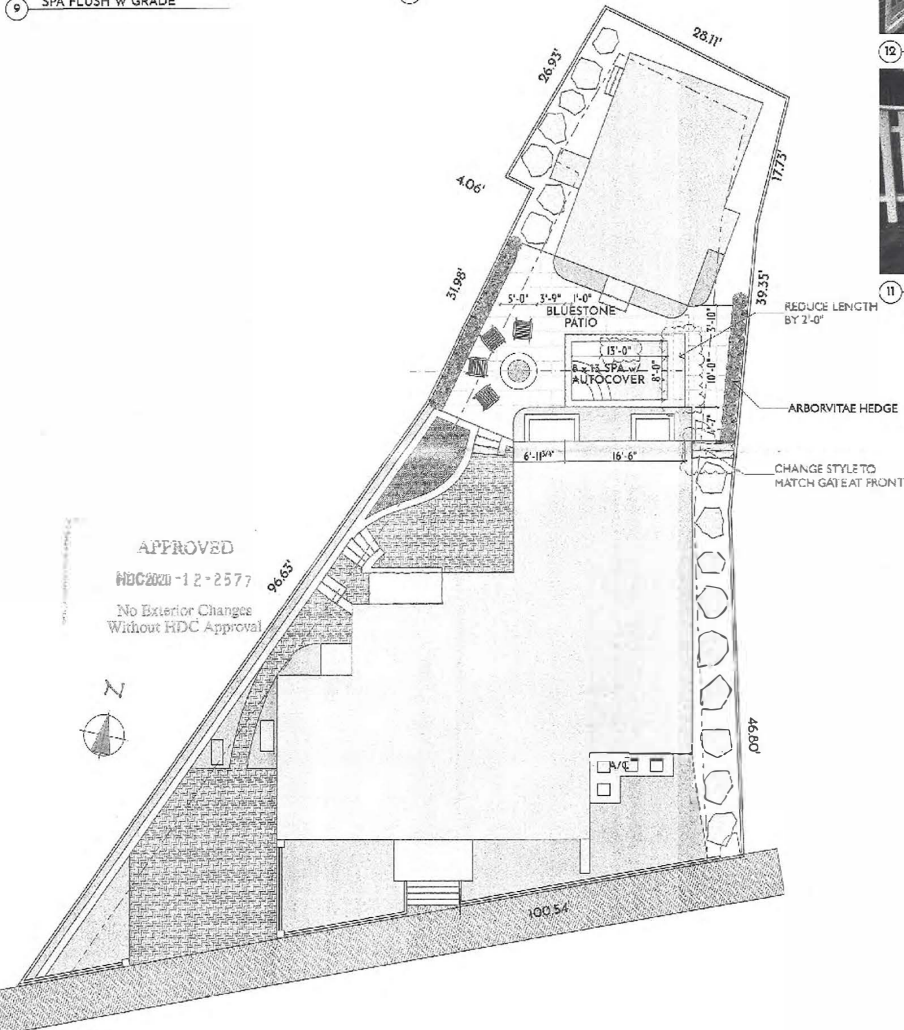
6 VIEW 4 MAIN ST



7 VIEW 5 MAIN ST



VIEW 6 MAIN ST



① HDC LANDSCAPE PLAN
SCALE: 1/8" = 1'-0"

MARK	DATE

HDC Landscape Plan

Landscape of
103 Main St.
Nantucket, Ma.
02554

M: 42.3.3
P: 153
Zoning: ROH
Front Setback: 0
S&R Setback: 5
Scale: As Noted
Plotted: 1/26/21
Drawing No.:

HDC-1

December 5, 2021

To: Zoning Board of Appeals
Nantucket, Massachusetts

From: Paul Merrithew
4 Gardner Street, Nantucket

Re: ZBA Case No. 30-21, 103 Main Street

Dear Sir/Madam:

My property is located at 4 and 8 Gardner Street. I am writing to object to the zoning enforcement officer's decision to approve a 13 ft by 8 ft "spa" at 103 Main Street.

To me a 13' by 8' body of water is not a spa, but I suppose this is arguable. Key to the definition of this 13' by 8' body of water is its depth. If it is much more than about 2 feet in depth, it is definitely not a spa. Common sense must prevail. If one sits on the bottom of this body of water and one's head is under water, it is a pool, not a spa. Under current ZBA restrictions pools are not allowed in the Old Historic District.

ZBA and HDC regulations were formulated to preserve the special and historic character of Nantucket. It is in the best interest of all of the Nantucket community to preserve Nantucket's character. It is, after all, this special and historic character that is the underpinning of the Nantucket economy. We all should be vigilant to prevent a gradual erosion of ZBA regulations.

Sincerely,

Paul Merrithew

Nicky,

Mr Winters said below:

"Feel free to submit this email to the board on my behalf."

Accordingly, could you please add it to the 30-21 file?

Thank you, Anne

Anne F M Dewez | 5 Mill Street, Nantucket, MA 02554, USA | Cell: +1(203) 685-5361 |
[Email: afmdewez@gmail.com](mailto:afmdewez@gmail.com)

Begin forwarded message:

From: Ron Winters <RonWinters@thirtyacrewood.com>
Subject: Re: 103 Main St mini-pool appeal
Date: December 4, 2021 at 10:05:12 EST
To: Anne Dewez <afmdewez@gmail.com>
Cc: Julia Lindner <jlindner@acknow.org>

Anne,

I too don't want to see pools in the downtown area even though I love to swim and miss my old home with a pool, on a three acre lot. I as a builder do know that pools are an environmental issue and create more service needs, which the OHD has too much of.

To fight this I think we need the board to inspect the pool (spa) to see if it is swimmable. I have built pools that size designed to swim in place against a stream created by the pool equipment return. The 4 to 5' depth is critical for swimming and is reason to be suspicious of the intent. Maybe the board would hold the decision until a determination is made.

To fight this at another level a town meeting warrant should be proposed to establish a clear definition for spa size, shape and depth for the OHD at least.

Feel free to submit this email to the board on my behalf. Hope this helps.

Best Ron

December 5, 2021

To: Zoning Board of Appeals
Nantucket, Massachusetts

From: Paul Merrithew
4 Gardner Street, Nantucket

Re: ZBA Case No. 30-21, 103 Main Street

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Anne F M Dewez | 5 Mill Street, Nantucket, MA 02554, USA | Cell: +1(203) 685-5361 |
[Email: afmdewez@gmail.com](mailto:afmdewez@gmail.com)

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To fight this at another level a town meeting warrant should be proposed to establish a clear definition for spa size, shape and depth for the OHD at least.

Feel free to submit this email to the board on my behalf. Hope this helps.

Best Ron

December 8, 2021

BY E-MAIL AND FIRST CLASS MAIL

Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554
Attention: Nickesha Sheriff

nsheriff@nantucket-ma.gov

Re: Response to December 2, 2021 Letter from 103 Main Street LLC

Dear Chairman McCarthy and Members of the Zoning Board:

As you know, this Firm represents Peter Taylor of 98 Main Street, Anne FM Dewez of 5 Mill Street, and Robert and Marjie Kargman of 8 Mill Street (collectively, “the Appellants”) in connection with their appeal from an August 23, 2021 determination of the Zoning Enforcement Officer, Marcus Silverstein, as the legality of the purported “spa” then under construction at 103 Main Street.

I write in response to the letter dated December 2, 2021 sent by Daniel J. Bailey III, Esq. on behalf of 103 Main Street LLC (the “Owner”). The legal analysis provided in the December 2 letter is fundamentally wrong:

1. The Owner flatly ignores the unambiguous language of the Zoning Code that defines a “Swimming Pool – Residential” as a “structure ... containing water ... **exceeding 1000 gallons.**” Nantucket Zoning Code, Sec. 139-2(A) (emphasis added). There is simply no other way to reasonably construe this provision of the Code. The Owner does not dispute that that structure at issue contains more than 1000 gallons of water. The structure is therefore, by definition, a Swimming Pool.
2. The Owner admits that the Zoning Code limits permissible uses to those “hereinafter set forth as permitted in the district.” Nantucket Zoning Code, Sec. 139-15. Spas, as an accessory use, are expressly allowed in two districts: flex development in the Town Overlay District and open space residential development in the Country Overlay District. Nantucket Zoning Ordinance, Sec. 139-8(A)(1)(b)(2)(f) (“the following accessory structures are allowed ...: residential swimming pool(s) and/or hot tub(s)/spa(s)”) In the ROH District, only “Studio[s],” “Garage[s],” “Shed[s]” and “Outbuildings – other” are enumerated as permissible accessory uses.



3. The Owner's timeliness argument is wrong as a matter of law. This is not an appeal from the issuance of a building permit. This is an appeal from the Zoning Enforcement Officer's denial of a request for enforcement made pursuant to G.L. c. 40A, sec. 7. That section expressly provides up to 6 years from the commencement of the alleged violation in which to bring an enforcement action.

The Owner's own admissions establish the availability of an enforcement action under Section 7. The Affidavit provided by the Owner states that the building permit at issue was issued on March 8, 2021, but work did not begin on the "Spa installation" until "[o]n or about April 23, 2021." Affidavit, ¶¶8-9.

Where, as here, the 30-day period to appeal from the issuance of a building permit has already run before construction begins, a Section 7 request for enforcement is the appropriate remedy. Hauer v. Casper, No. 07 Misc. 338201 HMG, 2012 WL 951645, at *11 (Mass. Land Ct. Mar. 16, 2012) ("[C]onstruction on the cabana did not begin for almost sixty days after the building permit was issued.... Thus, they lacked notice within the thirty day period that the building permit had issued [and] were entitled to pursue an enforcement action under G.L. c. 40A, § 7...."); see also 81 Spooner Road, LLC v. Zoning Bd. of Appeals of Brookline, 78 Mass. App. Ct. 233, 244 (2010) (concluding that ZBA had jurisdiction over appeal from denial of Section 7 enforcement request, because "[t]he permit's issuance did not, within the following thirty-day appeal period, 'come to the attention' of the [parties requesting enforcement]. The town provided no written notice to the[m]. Nor did [the Owner] commence construction, under its permit, during the appeal period."); Guaranteed Builders & Developers, Inc. v. Bylinski, No. WOCV200902052B, 2012 WL 676222, at *4 (Mass. Super. Ct. Feb. 2, 2012) ("Without adequate notice of the building permit within the 30-day appeal period, it was permissible for Bylinski to pursue a challenge to the permit via an enforcement action under § 7...").

Indeed, as the Appeals Court has noted, a 30-day delay in beginning construction could otherwise deprive the public of any enforcement right. Gallivan v. Zoning Bd. of Appeals of Wellesley, 71 Mass. App. Ct. 850, 857 (2008) ("If a § 15 appeal were the sole remedy for a party aggrieved, the recipient of a permit could keep the permit under wraps for thirty days and then would have succeeded in foreclosing any challenge."). Instead, "[t]he availability of a request for enforcement [under Section 7] answers the potential unfairness of holding an aggrieved party to a thirty-day appeal period where the permit recipient can foreclose review by simply taking no action under the permit for thirty days." Id.; see also Elio v. Zoning Bd. of Appeals of Barnstable, 55 Mass. App. Ct. 424, 428 (2002) ("[S]uch an alternative remedy is necessary because persons aggrieved by the issuance of a building permit or other order may not even know of the permit or order until the appeal period has expired. This is because no notice of the permit or order to interested third persons is required.").



Only where the party requesting enforcement has adequate notice of the issuance of the building permit is the 30-day limitation for appeals of the building permit's issuance applicable. No actual notice was provided to my clients (and the Owner does not claim otherwise). While constructive notice may, in some circumstances, arise from construction activity, that conclusion cannot be drawn here. The Owner admits that construction of the spa did not commence until more than 30 days after the building permit had issued. In short, this is not an appeal from the issuance of a building permit; it is a Section 7 request for enforcement of the Zoning Code subject to the 6 year statute of repose.

Finally, even the principal case upon which the Owner relies, Connors v. Annino, 460 Mass. 790 (2011) acknowledges the existence of a Section 7 remedy on the facts here presented: "A third circumstance where an enforcement request under § 7 might provide a remedy is one where a party claims that the beneficiary of an order that was valid as issued has allegedly exceeded the scope of the order." Id. at 798 n.9; see also Elio, 55 Mass. App. Ct. at 424 (holding that a § 7 enforcement request mechanism was still available to aggrieved party where permit holder allegedly exceeded scope of permit).

Here, the Owner exceeded the scope of any valid building permit to construct a "spa" by constructing a structure containing more than 1,000 gallons of water and thereby building a "Swimming Pool."

The enforcement request was clearly timely as a matter of decided law. The appeal to this Board was made within 30 days of the written determination of the Zoning Enforcement Officer responding to the August 23 enforcement request. In fact, the law is clear that enforcement requests with respect to this violation of the Zoning Code can be made for the next 5+ years.

4. The Appellants are each aggrieved by the determination of the Zoning Enforcement Officer. As the Land Court has recognized, this Board is not required to engage in a close analysis of "the fact-intensive and legally complicated issues necessarily raised in assessing whether a party has standing." Pitsick, LLC v. Lipsitt, No. 13 MISC 477862(AHS), 2015 WL 2250393, at *9 (Mass. Land Ct. May 14, 2015). Rather, it "is perfectly acceptable" for a ZBA to conduct a "limited inquiry" into standing and declining to consider "particular [standing] concerns in detail." Id.

Here, each of the Appellants reside in the Old Historic District, where pools are expressly prohibited under the Zoning Code. Mr. Taylor owns real property immediately adjacent to 103 Main Street. He is therefore presumed to be aggrieved under the Zoning Act.¹ Ms. Dewez is the organizer, leader, and spokesperson of the Mill

¹ Google Maps estimates the distance from Mr. Taylor's property to the 103 Main Street property at less than 55 feet. The property are or are very nearly directly across Main Street



Street Area Neighborhood Group.² In that capacity, she is primarily responsible for two citizens petitions to be introduced at the next Town Meeting seeking amendment of the Zoning Code to explicitly prohibit hot tubs/spas in the Old Historic District. Similarly, in her representative capacity, Ms. Dewez made timely inquiry of the Zoning Enforcement Officer as to the legality of the “water feature” then under construction at 103 Main Street. Mr. Kargman is the President and CEO of Boston Land Company and has amassed more than 50 years’ experience with the development, management, and valuation of real property.³ He has opined that the value of his property and that of other nearby properties in the Old Historic District, including without limitation Ms. Dewez’s property, is adversely impacted by the infiltration of unlawful Swimming Pools and, in particular, the Swimming Pool here at issue. See Three Harbour Drive, LLC v. Provincetown Zoning Bd. of Appeals, 29 Mass. L. Rptr. 634, No. BACV201100135, 2012 WL 2335204, at *1 (Mass. Super. Ct. Feb. 16, 2012) (holding that plaintiff sufficiently established it was aggrieved by issuance of special permit to install an in-ground swimming pool where affidavit submitted opined that plaintiff’s lot will suffer a diminution in value as a result of the installation of the pool).

Declarations attesting to the foregoing facts, and to the fact that none of the Appellants were aware of the Owner’s intention to construct an unlawful Swimming Pool are submitted herewith.

Contrary to the Owner’s assertion, the fact that Ms. Dewez acted on behalf of the other Appellants is irrelevant to the other Appellants’ ability to challenge the building permit at issue. The case law is again clear. Fisher v. Presti Family Ltd. P’ship, 100 Mass. App. Ct. 234, ___, 2021 WL 4203426 (Sep. 16, 2021) holds that there is nothing that prevents multiple other persons from making a subsequent Section 7 request or a previous requester from making subsequent Section 7 requests:

Except for the “indirect effects of the statute of repose provisions set forth in G. L. c. 40A, § 7,” the Legislature has placed “no express statutory limitation on when [an] enforcement request need be filed.” Barkan v. Zoning Bd. of Appeals of Truro, 95 Mass. App. Ct. 378, 385, 126 N.E.3d 1008 (2019). This makes sense because uses of

from one another. There is little question that he would be able to hear activity in the Swimming Pool here at issue. At minimum, he is an abutter to an abutter within 300 feet and therefore entitled to a presumption of aggrievement.

² Ms. Dewez resides in the block of homes (bounded by Milk, Main, Pleasant and Mill Street immediately across Main Street and New Dollar Lane) immediately across from 103 Main Street. Google Maps estimates that distance between her property and the subject property at less than 610 feet.

³ Google Maps estimates that Mr. Kargman’s Mill Street property is located less than 750 feet from the 103 Main Street property.



real property may evolve or change over time, an aggrieved person may not know of the precise contours, extent, or even existence of all uses of property at the same point in time, and because towns have an ongoing interest in the use of property within their boundaries. See Connors, supra at 798 & n.9, 955 N.E.2d 905. In addition, we have found nothing either in our case law or in c. 40A that forecloses multiple or successive requests for zoning bylaw enforcement by different aggrieved persons (such as other abutters). Moreover, a property owner should not acquire a permanent right to engage in ongoing uses that violate zoning bylaws simply because one aggrieved person failed to timely appeal the zoning enforcement officer's denial of zoning enforcement.

Id., 2021 WL 4203426, at *6 (footnotes omitted).

Accordingly, and with all due respect to the Zoning Enforcement Officer, his determination as to the legality of the "water feature" at 103 Main Street should be overturned.

Sincerely,

BROWN RUDNICK LLP

/s/Wayne F. Dennison

Wayne F. Dennison

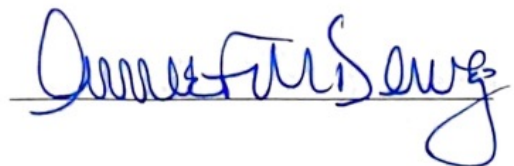
cc: Peter Taylor
Anne FM Dewez
Robert and Marjie Kargman

AFFIDAVIT OF ANNE F.M. DEWEZ

I, Anne F.M. Dewez, do hereby depose and state under oath as follows:

1. My family's irrevocable trust owns the real property and home at 5 Mill Street, Nantucket, where I spend all of the summer and a month in the fall around Thanksgiving and have done so for many years.
2. I am the organizer, de facto leader, and spokesperson of the Mill Street Area Neighborhood Group.
3. In that capacity, I am primarily responsible for two citizens petitions to be introduced at the next Town Meeting seeking amendment of the Zoning Code to explicitly prohibit hot tubs/spas in the Old Historic District, the District in which I reside, or significantly limit them in size and volume of water.
4. Copies of the proposed petitions are attached and explicitly concern the installation of structures like that at 103 Main Street, and in particular, the efforts of developers and some homeowners to circumvent the prohibitions against Swimming Pools in my area (the Old Historic-District) through the installation of so-called "plunge pools."
5. On behalf of myself and of the Mill Street Area Neighborhood Group, on or about August 23, 2021, I contacted the Zoning Enforcement Officer to inquire about the legality of the "water feature" then under construction at 103 Main Street.
6. Google Maps estimates the distance between my property and the 103 Main Street property as less than 610 feet.
7. My home is in the block of homes (bounded by Milk, Main, Pleasant and Mill Street immediately across Main Street and New Dollar Lane) immediately across from 103 Main Street.
8. I had no knowledge of the "spa" installation at 103 Main Street until on or about August 9, 2021, when I was informed of this work by a concerned citizen aware of my substantial involvement with protecting the Old Historic District against the infiltration of unlawful Swimming Pools.
9. I had no knowledge that a building permit had been issued for this work until on or after August 9, 2021.
10. Contrary to the suggestion in the Affidavit submitted by the Owner of 103 Main Street, I had no communication or interaction with the workers at that location, nor did I take the photograph of the work that has been provided to the Zoning Board as part of this appeal. I am not the person described in the Owner's Affidavit.

Signed and sworn under the pains and penalties of perjury this 6th day of December 2021.



Article Title: Disallow Hot Tubs and Spas in the Historic Districts (ROH and SOH)

Article Text:

To see if the Town will vote to amend Chapter 139 (Zoning) of the Code of the Town of Nantucket, as follows (*NOTE: new language is shown as highlighted text, language to be deleted is shown by strikeout; these methods to denote changes are not meant to become part of the final text and, further, that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Nantucket*):

Amend Section 7A (use chart) by adding a new line after Swimming Pool – Residential entitled “Hot Tub/Spa” and inserting “N” in the ROH SOH column and “A” in each other column under the respective zoning districts across the chart except for zoning district CI: “N” and zoning districts V-R and MMD: SP

;or otherwise to act thereon

Article Title: Reconcile definitional inconsistency: Swimming Pool – Residential and Hot Tub/Spa and change the size criterion for pools and spas

Article Text:

To see if the Town will vote to amend Chapter 139 (Zoning) of the Code of the Town of Nantucket, by taking the following actions (*NOTE: new language is shown as highlighted text, language to be deleted is shown by strikeout; these methods to denote changes are not meant to become part of the final text; and, further, that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Nantucket*):

Amend section 2A (definitions) as follows:

HOT TUB/SPA

A structure designed to be used for recreational purposes accessory to a principal use, either above or below grade, containing water more than 24 inches in depth and ~~equal to or less than 150~~ **64** square feet of water surface area, and equal to or less than 1,000 gallons. This shall not include ornamental ponds, decorative water features, including, but not limited to, fountains, bird baths, and the like.

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~~ **64** 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. In the R-1, SR-1, R-5 and R-5L districts only, the following criteria must be met: (1) a minimum lot area of 7,500 square feet is required, and (2) side and rear setbacks of 10 feet shall apply to the residential swimming pool and associated mechanical equipment.

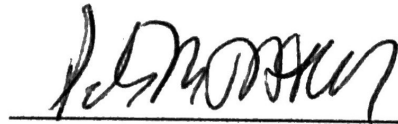
;or otherwise to act thereon

AFFIDAVIT OF PETER TAYLOR

I, Peter Taylor, do hereby depose and state under oath as follows:

1. I co-own real property and home at 98 Main Street, Nantucket in a family trust.
2. Our property is in the Old Historic District, in which Swimming Pools are prohibited.
3. Google Maps estimates the distance between our property and the 103 Main Street property as less than 55 feet.
4. Our property and the 103 Main Street property either directly abut or very nearly abut one another.
5. I have every expectation that I will be able to hear activity that occurs at the 103 Main Street "spa".
6. I had no knowledge of the "spa" installation at 103 Main Street or the issuance of a building permit with respect to it until construction began in Spring, 2021.

Signed and sworn under the pains and penalties of perjury this 6th day of December 2021.



64315533 v1-WorkSiteUS-031938/0004

AFFIDAVIT OF ROBERT KARGMAN

I, Robert Kargman, do hereby depose and state under oath as follows:

1. My wife and I own the real property and home at 8 Mill Street, Nantucket, where we spend much of the summer and have done so for many years.
2. I am the President and CEO of Boston Land Company and have amassed more than 50 years' professional experience with the development, management, and valuation of real property.
3. Google Maps estimates the distance between my property and the 103 Main Street property as less than 750 feet.
4. My property is in the Old Historic District, in which Swimming Pools are prohibited.
5. In my opinion, both professionally and personally, the value of my property and that of other nearby properties in the Old Historic District, including without limitation those of Anne Dewez and Peter Taylor, is diminished and our properties otherwise adversely impacted by the unlawful infiltration of Swimming Pools and, in particular, the Swimming Pool here at issue into the Old Historic District.
6. The Zoning Code expressly prohibits Swimming Pools in the Old Historic District. However, there appears to be an effort by developers and some homeowners to circumvent the prohibitions against Swimming Pools in my area (the Old Historic District) through the installation of large spas and "plunge pools."
7. I had no knowledge of the "spa" installation at 103 Main Street or the issuance of a building permit with respect to it until on or about August 2021, when I learned of it from Anne Dewez, who is the spokesperson for the Mill Street Area Neighborhood Group, to which I belong.
8. On my behalf and that of others in the Mill Street Area Neighborhood Group, on or about August 23, 2021, Ms. Dewez sought enforcement of the Zoning Code through the Zoning Enforcement Officer.
9. When our enforcement request was denied, Ms. Dewez, Peter Taylor and I brought a timely appeal of the Zoning Enforcement Officer's determination.

Signed and sworn under the pains and penalties of perjury this 8th day of December 2021.

/s/ Robert Kargman

New Materials Submitted by the Appellee

By Electronic Mail

January 6, 2022

Susan McCarthy, Chair
Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Re: 103 Main Street / Appeal of Denial of Enforcement

Dear Chair McCarthy:

I am writing in follow up to the ZBA hearing on December 9, 2021 regarding 103 Main Street (“Property”). We appreciate the time the Board has already spent with respect to Ms. Dewez’s appeal from the Zoning Enforcement Officer’s determination that our client’s “Hot Tub/Spa” (the Spa) is a legal accessory use in the ROH zoning district. It is our opinion, as stated in our earlier letter and at the December 9, 2021 hearing, that applicants lack the necessary standing for this Board to even consider the application.

As we noted before, only Ms. Dewez requested enforcement of the Bylaw against our client. When he denied her request, she appealed to this Board as a “person aggrieved.” In what appears to be recognition of her tenuous claim of aggrievement, she included two “co-applicants,” Messrs. Taylor and Kargman. Neither Mr. Taylor nor Mr. Kargman requested enforcement of the Bylaw. Only the person who requests enforcement can take the next step, which is appealing the enforcement decision to the Board. Therefore, the Board should decline to hear anything from Mr. Taylor or Mr. Kargman in their “position” as applicants.

The availability of appeal to this Board is further limited by the requirement that only a “person aggrieved” has standing to bring an appeal. “Standing is an issue of subject matter jurisdiction.” Planning Bd. of Marshfield v. Zoning Bd. of Appeals of Pembroke, 427 Mass. 699, 703 (1998). “Aggrieved person status is no less a jurisdictional condition to maintaining an appeal to a board of appeal under G.L. c. 40A, § 8, than it is to maintaining judicial review under § 17.” Chongris v. Bd. of Appeals of Andover, 17 Mass. App. Ct. 999, 1000 (1984); see also Warrington v. Zoning Bd. of Appeals of Rutland, 78 Mass. App. Ct. 903, 905 (2010) (“the standing requirements of § 8 are no less fundamental to sound operation of the statutory scheme than are the standing requirements of § 17.”). To have standing in any capacity, Ms. Dewez must

demonstrate that she has suffered an injury. Slama v. Attorney General, 384 Mass. 620, 624 (1981). The injury alleged must be established “by direct facts and not by speculative personal opinion” and must be “special and different from the concerns of the rest of the community.” Barnevik v. Alderman of Newton, 33 Mass. App. Ct. 129, 132 (1992). Further, Ms. Dewez “must put forth credible evidence to substantiate [her] allegations.” Marashlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719, 721 (1996). Ms. Dewez has not, and cannot, meet this standard.

Ms. Dewez, in both her enforcement request and in her appeal, complains that the Bylaw is being incorrectly interpreted. She alleges that the Spa is an illegal pool, but presents no evidence that its presence has harmed her in any specific and direct manner.¹ See Chongris v. Bd. of Appeals of Andover, 17 Mass. App. Ct. 999, 1000 (1984) (finding no standing to appeal to zoning board where “[t]he record fails to disclose that [the appealing party] ever alleged that he, as an individual property owner, was harmed by the building inspector's issuance of the permit.”). “A generalized, nonspecific interest in enforcement of the zoning law is not the same as an assertion that a private interest has been affected.” Denneny v. Zoning Bd. of Appeals of Seekonk, 59 Mass. App. Ct. 208, 215 (2003). Ms. Dewez cannot satisfy the standing requirement by asserting “a claim that involves a matter of general public interest.” Nickerson v. Zoning Bd. of Appeals of Raynham, 53 Mass. App. Ct. 680, 683 (2002). “Oversight of a municipality's zoning policies is the responsibility of duly authorized municipal officials; it is not a task for private attorneys general who do not themselves have a cognizable legal interest affected by the zoning action. That cognizable legal interest does not embrace a general civic interest in enforcement of the zoning by-law.” Denneny v. Zoning Bd. of Appeals of Seekonk, 59 Mass. App. Ct. 208, 215 (2003). In sum, a general concern about compliance with the zoning bylaw is insufficient for this Board to hear Ms. Dewez’s appeal. See also Southgate at Shrewsbury, Inc. vs. Shea, Mass. Super., No. CIV. A. 96-0710B (Aug. 15, 1996) (“[A] generalized civic interest of citizens or residents in a zoning decision has specifically been held not to confer standing.”) (emphasis in original); Cohen v. Zoning Bd. of Appeals of Plymouth, 35 Mass. App. Ct. 619, 625 fn. 5 (1993) (residence in same zoning district alone insufficient to grant standing to challenge use).

There is simply no evidence that Ms. Dewez’s private interests and rights are impacted by the Spa. Com. v. Dowd, 37 Mass. App. Ct. 164, 166–67 (1994) (“The phrase ‘person aggrieved’ means ‘someone who can assert a plausible claim of private right, private property interest, or private legal interest as opposed to a general public concern about a zoning question.’”). Indeed, at the last hearing Ms. Dewez stated that she infrequently travels down Main Street. She cannot rationally claim that her property, which is hundreds of feet away from our client’s, on a street that she rarely visits, is impacted by the Spa. Nor has she attempted to – Ms. Dewez and others state that their concern is the potential impact should pools or spas be permitted generally in the ROH zoning district. There are other avenues available to address these concerns. This appeal, and this Board, is simply not the proper vehicle and venue to

¹ These are the same concerns alleged by Messrs. Taylor and Kargman, further evidence that they are not appropriate applicants to this Board.

address their general concerns. The collective challenge to the Zoning Enforcement Officer's determination should not be heard by this Board because all three applicants lack standing. See Harrington vs. Kelley, Mass. Land Ct., No. 09 MISC 409735 (Apr. 26, 2010) ("Since [plaintiff] failed to establish his standing before the Board by establishing his aggrievement, this court rules that the Board did not have authority to hear his appeal.").

Moreover, as the Zoning Enforcement Officer, Building Inspector, and former Planning Board member all explained at the December 9, 2021 Zoning Board hearing, the Spa complies with the definition of "Hot Tub/Spa" in the Bylaw and is a legal accessory use. The Spa is greater than 24 inches in depth and has less than 150 square feet of surface area. There is no volume requirement or limitation in the "Hot Tub/Spa" definition. We also note that the Spa has physical characteristics that distinguish it from a standard swimming pool. The Spa has jets to provide aeration and can heat the water therein to 104 degrees, a temperature not found in common swimming pools. The Spa is walk-in and, as stated in their affidavit filed with the Board in this matter, the Spa was installed to provide therapeutic relief for one of the owners, who is disabled. The Zoning Enforcement Officer's determination that the Spa is not a swimming pool is appropriate both with respect to the literal language of the Bylaw and in the context of the Zoning Enforcement Officer's authority to interpret the Bylaw in its entirety.

We ask that this Board determine that none of the applicants have the necessary standing to bring this appeal and dismiss the same. In the alternative, we request that this Board uphold the Zoning Enforcement Officer's determination that the Spa is a legal use of the Property.

Sincerely yours,

Daniel J. Bailey

Daniel J. Bailey III

DJB/smg

cc: Alexander Weisheit, Esq.
Arthur I. Reade, Esq.
Wayne F. Dennison, Esq.

Materials Submitted by the Appellee

December 2, 2021

Susan McCarthy, Chair
Nantucket Zoning Board of Appeals
2 Fairgrounds Road
Nantucket, MA 02554

Re: 103 Main Street / Appeal of Denial of Enforcement

Dear Chair McCarthy:

This firm represents 103 Main Street LLC, the record owner of 103 Main Street ("Property"). 103 Main Street LLC obtained HDC approval and a building permit for the installation of a "Hot Tub/Spa" (the "Spa") and associated landscaping in the backyard of the Property. The Property is a summer residence for the owners and the Spa is intended to provide therapeutic relief for the residents of the house; the Property is never rented to third parties. Work on the project began on April 23, 2021. On August 23, 2021 Anne Dewez sought enforcement of the Zoning Bylaw, followed by this appeal, seeking to revoke the building permit on the grounds that the Spa is an illegal pool.

The Spa is Not a Swimming Pool

The Spa is a "Hot Tub/Spa" as that term is used in the Nantucket Zoning Bylaw (the "Bylaw"). The term "Hot Tub/Spa" was added to the Bylaw at the November 2017 Town Meeting. It is defined as "A structure designed to be used for recreational purposes accessory to a principal use, either above or below grade, containing water more than 24 inches in depth and less than 150 square feet of water surface area." The Spa meets this definition; it has 120 square feet of water surface area, and contains water more than 24 inches deep. The purported conflict with the definition of "swimming pool – residential"¹ is not truly a conflict when the entirety of the Bylaw is read and given a reasonable construction. It is obvious that the intent was to distinguish between pools and spas based upon their surface area; anything less than 150 square feet is a spa, anything more is a pool. The Zoning Enforcement Officer properly determined that the Spa meets the prior definition, not the latter. The Zoning Enforcement Officer has the authority to consider the context of the entire Bylaw and interpret the contents therein, even

¹ "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."

where that interpretation may not fall neatly within the literal terms of a specific definition. Bylaw § 139-2.A.

The Spa is an Allowed Accessory Structure

The Spa is a permitted accessory use to the principal residential use of the Property and for which the Building Commissioner properly issued a building permit. The Bylaw states that “No building or structure shall be constructed or erected and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses hereinafter set forth as permitted in the district in which such building, structure or land is located.” § 139-6.A. The Spa constitutes a use “hereinafter set forth as permitted in the district.” The Use Chart, while a useful starting point, is not the ultimate authority in determining which uses are permissible in any given district — the language “hereinafter set forth as permitted in the district” anticipates a reading of the entirety of the Bylaw to determine which uses are permitted. Indeed, other sections of the Bylaw deviate from or supplement the Use Chart, demonstrating that a full reading of the Bylaw is required to determine all available uses. See generally Bylaw § 139-12 (overlay districts), §§ 139-13, 14.

With respect to accessory uses, the Bylaw states “In addition to the principal buildings, structures or uses permitted in a district, there shall be allowed in that district, as accessory uses, such activities as are subordinate and customarily incident to such permitted uses.” § 139-15. It would be next to impossible to list all potential accessory uses in the Use Chart, which is why the Zoning Enforcement Officer has discretion to determine which uses comply with the Bylaw. The permitting authorities have the discretion to determine what constitutes a “subordinate and customarily incidental” use and issue a permit. Here, the determination was that the Spa is a permitted accessory use in the ROH district because it meets the Bylaw’s definition and is “subordinate and customarily incidental” to the principal single-family residential use and the Building Commissioner issued a permit. The Zoning Enforcement Officer upheld this determination. This Board should not overturn the well-reasoned analysis of both officials.

The Appellants Failed to Appeal the Building Permit Within 30 Days of Issuance

It is well settled law that an appeal from the issuance of a building permit must be brought within 30 days, and that deadline is strictly enforced and a jurisdictional prerequisite to a zoning board’s jurisdiction to hear said. G.L. c. 40A, §§ 8, 15; see Connors v. Annino, 460 Mass. 790, 797 (2011); McIntyre v. Zoning Bd. of Appeals of Braintree, 94 Mass. App. Ct. 204, 207 (2018). This 30 day time period cannot be lengthened. Racette v. Zoning Bd. of Appeals of Gardner, 27 Mass. App. Ct. 617, 619 (1989). In her appeal to this Board Ms. Dewez explicitly asks that the building permit for the Spa be revoked. Her request comes too late – the building permit issued on March 8, 2021 and she requested enforcement on August 23, 2021, well over 30 days later. Ms. Dewez devotes a substantial amount of time to keeping apprised of developments in the Town, particularly those in the Historic District. It is exceedingly unlikely that Ms. Dewez was not aware of the LLC’s plans for the Property and the issuance of the building permit. It appears that Ms. Dewez is attempting an end run around the mandatory statutory 30-day appeal

period for issuance of a building permit by seeking an enforcement action. Such an attempt is futile in this instance and the Board can dismiss her appeal on this basis alone.

We also note that construction activity at the Property started in April, 2021 and continued through May, June, July and August. See attached Affidavit of Peter Barissi and Robert Gause (“Owner Affidavit”). Construction vehicles were parked on Main Street in front of the Property, including a large vac truck. An excavator was used to dig the hole for the Spa. The excavated material was pumped through black plastic tubes to the vac truck. See Owner Affidavit. Yet Ms. Dewez did nothing for months, even though it was obvious that a construction project was underway at 103 Main Street. She waited until the project was near completion, thereby prejudicing our client. If the enforcement matter had been timely brought, 103 Main Street LLC could have had this appeal resolved before completing the project.

The Appeal Should be Dismissed Because the Appellants are Not Aggrieved Persons

In August Ms. Dewez, who resides at 5 Mill Street (approximately 600 feet from the Property) began yelling at and harassing the workers who were on the job. Ms. Dewez objected to the installation of the Spa, on the grounds that the Spa is not permitted under the Zoning Bylaw because it is an illegal swimming pool. When the Zoning Enforcement Officer took the position, consistent with the issuance of the building permit to our client, that the Spa is legal, Ms. Dewez filed this appeal. Her application alleges only that the pool is illegal. There is zero explanation of how she, or her cosigners on the application (but not the enforcement request), have been or will be harmed by the Spa.

Ms. Dewez lacks standing to bring this appeal. She lives over 600 feet from the Property and cannot see the Property, let alone the Spa in its backyard, from her home. She had to cross third party property to take the photo that she submitted to the Zoning Enforcement Officer as it is not visible from a public way. She has utterly failed to identify any manner in which she is harmed by the Spa. She raises only a general objection to the Zoning Enforcement Officer’s interpretation of the Bylaw on behalf of “residents of the Historic District.” Such a general discontent with the zoning bylaw provides grounds to request enforcement from the zoning enforcement officer; to appeal that determination to the zoning board, a higher threshold must be crossed. Only a person who is actually aggrieved by the zoning enforcement officer’s response to their request can appeal to the zoning board. Green v. Bd. of Appeals of Provincetown, 404 Mass. 571, 574 (1989). The Zoning Enforcement Officer’s email to Ms. Dewez (a copy is included with the appeal) states that “persons aggrieved” has the right to appeal. The phrase “person aggrieved” means “someone who can assert a plausible claim of private right, private property interest, or private legal interest as opposed to a general public concern about a zoning question.” Com. v. Dowd, 37 Mass. App. Ct. 164, 166–67 (1994). Ms. Dewez cannot.

That others cosigned the application does not save her. Neither Peter Taylor nor R.M. Kargman are entitled to participate in this matter because they did not request enforcement of the zoning bylaw. They likewise have not identified any aggrievement. “Aggrieved person status is no less a jurisdictional condition to maintaining an appeal to a board of appeal under G.L. c.

40A, § 8, than it is to maintaining judicial review under § 17.” Chongris v. Bd. of Appeals of Andover, 17 Mass. App. Ct. 999, 1000 (1984). None of the applicants to this Board have demonstrated aggrievement, nor can they. They even lack the presumption of aggrievement that comes from being a “party in interest,” as none of them are “abutters², owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line.” G.L. c. 40A, § 11. They had no right to file this appeal and the board has no authority to hear it. Turner v. Bd. of Appeals of Milton, 305 Mass. 189, 193 (1940).

In sum, this appeal is without merit and untimely. We respectfully request that this Board uphold the determination of the Zoning Enforcement Officer and dismiss this appeal.

Sincerely yours,

Daniel Bailey

Daniel J. Bailey

DJB/smg

Enclosure: Affidavit of Peter Barissi and Robert Gease

cc: Peter Barissi and Robert Gease
Arthur I. Reade, Esq.
Wayne F. Dennison, Esq.

² Despite being identified as an “abutter” on the application, Mr. Taylor is not.

AFFIDAVIT OF PETER BARRESI AND ROBERT GEASE

We, Peter Barresi and Robert Gease, do hereby state as follows:

1. 103 Main Street LLC owns the property known as 103 Main Street, Nantucket, Massachusetts by a deed dated July 20, 2015.
2. Robert Gease is a manager and Peter Barresi is an authorized signatory of the LLC.
3. 103 Main Street is improved with a single family home.
4. 103 Main Street is our summer home. We do not rent the house to third parties when we are not there.
5. In December 2020 we applied to the Nantucket Historic District Commission for approval to install an 8'x15' spa tub ("Spa") in the backyard of the property as an accessory to the single-family home.
6. We wished to install the Spa to provide opportunities for badly-needed therapeutic relief for Robert, who is disabled.
7. The HDC approved the proposed Spa.
8. On March 8, 2021, a building permit was issued to permit us to renovate the backyard and install the Spa consistent with the plans approved by the HDC.
9. We placed the building permit in a side window facing Main Street.
10. On or about April 23, 2021 work began on the Spa installation.
11. Shortly thereafter, workers came to the house to begin work on the property in anticipation of installing the spa tub.

12. Those workers parked on the street. Their vehicles had identification, including Nantucket Oasis Pool & Spa, Kevin Dineen Electrical Contractors, Mark O'Banion Plumbing, and New England Alarm.
13. On May 13, 2021, the Town approved our application seeking to block Main Street for two days (May 25 and 26) by parking a 9 foot x 42 foot Vac-Truck to assist in the excavation.
14. On or about May 25, 2021, digging began in the backyard.
15. The neighbors had to be aware that construction was taking place. The small entry gate was removed and a small piece of heavy equipment was used to dig. An enormous pump truck was parked on Main Street. It was used to pump the dirt from the yard via large black plastic tubes. The truck looks like a Septic Tank Pump truck or an oil / propane tank truck. It was not quiet. Additionally, some utilities had to be relocated. This required Kevin Dineen Electrical Contractors, New England Alarm, my then caretaker, Chris Dalton, and the spa builders to make frequent trips to and from the property. Stone dust was dumped over the staircase on the side yard to make it easy for the small digging equipment to access the yard. Plywood was placed to protect the shared fence with 99 Main Street.
16. It would have been obvious to anyone passing by that construction work had begun on the property. Several local friends called with excitement when they learned that the spa had been approved.
17. Our direct abutters have not objected at any point to the Spa or the construction work on the property.
18. On or about August 2, 2021 the gunite for the spa tub was delivered.

19. Also on August 2, 2021 Peter was told that an individual, who we now know to be Anne Dewez, screamed at and harassed the workers delivering the gunit. Peter was familiar with the workers by that point, having given them coffee in the mornings when they arrived at the property. On August 2, one of the men was visibly annoyed and shaken. He said something to the effect of "one of your neighbors just came at me screaming "top! This is illegal! You do NOT have a permit. Pools are not allowed in Town."" He said that he pulled up the permit on his phone and showed it to her.
20. We also understand that Ms. Dewez, or someone under her direction, has taken photographs of the backyard of 103 Main Street without permission. She took a photograph of our side yard by accessing the property of 99 Main Street. It appears that she extended her hand over the shared fence to take photos. Our yard is not visible from the street and the HDC made it clear that they were fine with all alterations to the yard, as long as they were not visible from the street.
21. We understand that Ms. Dewez regularly circulates emails to a group of Nantucket residents providing updates on the many concerns she seems to have about other peoples' properties, and that my property has been the subject of her emails.
22. The Spa has been completed.

Signed under the pains and penalties of perjury this 2nd day of December, 2021.

Peter Barresi

Peter Barresi (Dec 2, 2021 14:00 EST)

Peter Barresi



Robert Gease (Dec 2, 2021 14:01 EST)

Robert Gease

John j. & Nancy j.
Barry

File No. 25-21

1 Goose Cove Way

Special Permit

Withdrawn without Prejudice

Kristina & Nicholas
Amendolare

File No. 37-21

8 Bank St

Special Permit

Continued to February 10,2022

Adam Delaney-Winn

Trustee of Warren's Landing Nominee Trust

File No. 22-21

40 Warren's Landing Rd

Appeal

Continued to February 10,2022

CRH 46 Surfside LLC

File No. 29-21

46 Surfside Rd

Appeal

Continued to February 10,2022

New Business

James A. & Susan G.
Genthner

File No. 31-21

128 Surfside Rd

Variance Relief



**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554**

APPLICATION

Fee: \$450.00

File No. 31-21

Owner's name(s): James A. Genthner + Susan G. Genthner Trust

Mailing address: PO Box 64 Nantucket MA 02554

Phone Number: 508 685 5355 E-Mail: Suegenthner@gmail.com

Applicant's name(s): James + Susan Genthner

Mailing Address: PO Box 64 Nantucket MA 02554

Phone Number: 508 685 5355 E-Mail: Suegenthner@gmail.com

Locus Address: 128 Surfside Rd Assessor's Map/Parcel: 80/299.1

Land Court Plan/Plan Book & Page/Plan File No.: 40394-A File # 13,322

Deed Reference/Certificate of Title: 28319 Zoning District LUG 1

Uses on Lot- Commercial: None ☒ Yes (describe) _____

Residential: Number of dwellings 1 current Duplex _____ Apartments _____

Date of Structure(s): all pre-date 7/72 _____ or House 1992 Barn 1995 Shed 2011

Building Permit Numbers: House 8588-92 Barn 12072-95 Shed 317-11

Previous Zoning Board Application Numbers: Planning Board Approved
2nd dwelling in 2014 (November)

State below or attach a separate addendum of specific special permits or variance relief applying for:

see attached

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE:

Susan Gauthier + J. [Signature] Owner*

SIGNATURE:

Susan Gauthier + J. [Signature] Applicant/Attorney/Agent*

*If an Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on: __/__/__ By: ____ Complete: ____ Need Copies: ____
Filed with Town Clerk: __/__/__ Planning Board: __/__/__ Building Dept.: __/__/__ By: ____
Fee deposited with Town Treasurer: __/__/__ By: ____ Waiver requested: ____
Granted: __/__/__ Hearing notice posted with Town Clerk: __/__/__ Mailed: __/__/__
I&M __/__/__ & __/__/__ Hearing(s) held on: __/__/__ Opened on: __/__/__
Continued to: __/__/__ Withdrawn: __/__/__ Decision Due By: __/__/__
Made: __/__/__ Filed w/Town Clerk: __/__/__ Mailed: __/__/__

Susan and James Genthner
128 Surfside Road
80/299.1

Application for Variance Continued from Dec. 9th meeting

1. We are applying for a variance to build a 2nd dwelling with an 860sqft footprint while waiting for paper roads to clear the Land Court.

In 2013 there was a taking of the paper roads abutting our property. We applied and were granted ownership of those paper roads identified as Parcel J on the Roadway Acquisition Plan prepared by Bracken Engineering. The roads have been tied up in Land Court since 2016. The paper roads will allow us enough ground cover to build a second dwelling.

The paper roads, Parcel J, adds 8,642sqft to my lot.

Lot **without** paper roads is 41,174 allowing a total GC of 2,882
Lot **with** the paper roads is 49,816 allowing a total GC of 3,487

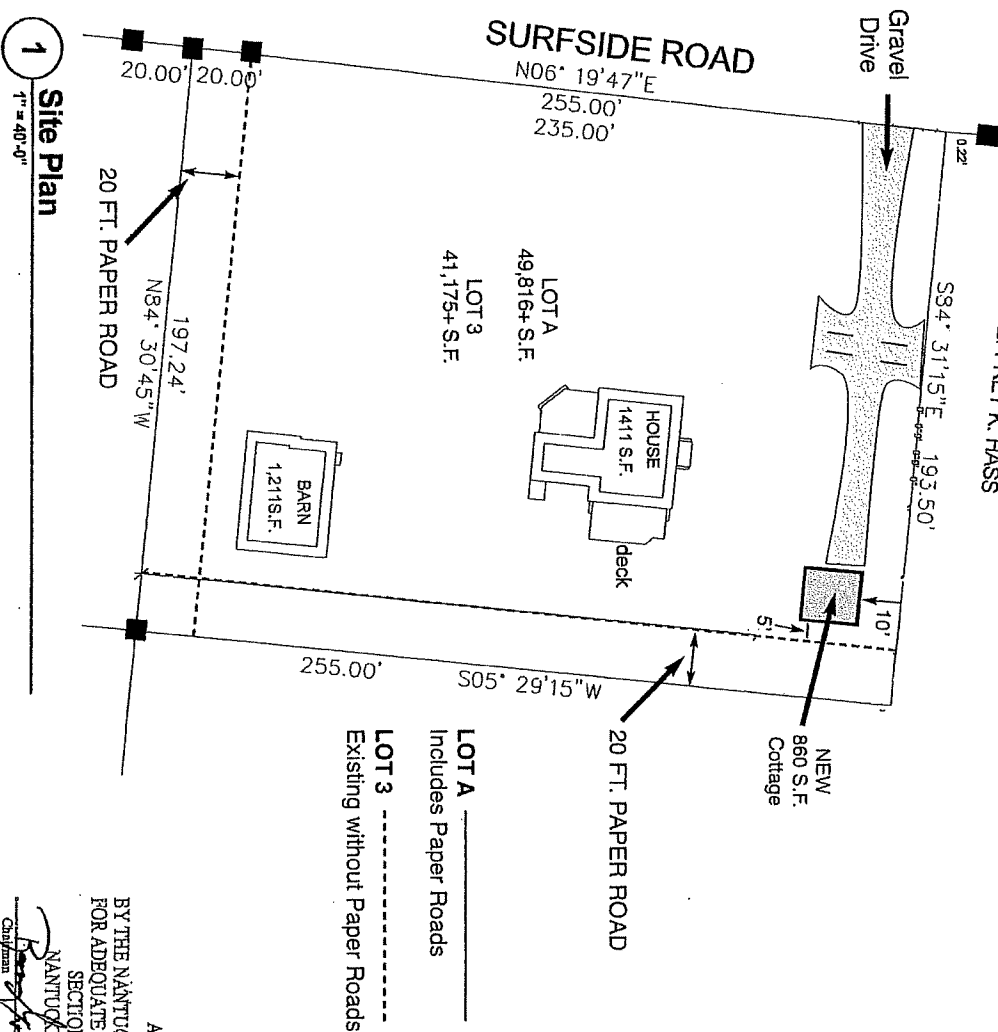
Existing House	1,411sqft
Existing Barn	1,211sqft
Proposed dwelling	860sqft

Total GC	3,482sqft
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2. We are applying for relief from the 10' rear setback. We request a 5' setback for the rear of the cottage.

NANTUCKET ZONING BOARD APPLICATION

MARIANNE E. LOFFREDO
JEFFREY K. HASS



LOT A _____
Includes Paper Roads

LOT 3 -----
Existing without Paper Roads

APPROVED

BY THE NANTUCKET PLANNING BOARD
FOR ADEQUATE ACCESS PURSUANT TO
SECTION 139-20.1 OF THE

NANTUCKET ZONING BYLAW
 11/8/14
 Date
 Chairman

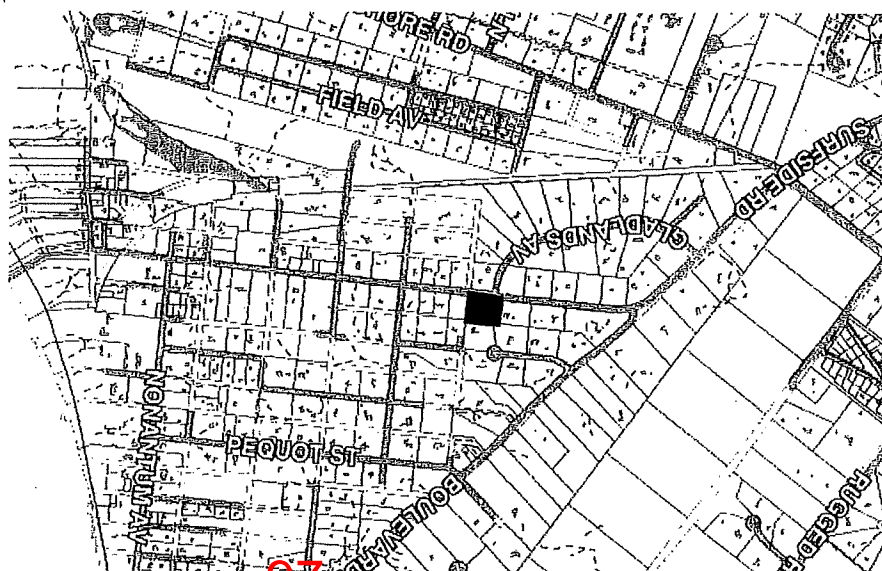
Gentner Cottage

**128 Surdside Road.
Nantucket, MA 02554**

Zoning Information

Map & Parcel	80-299.1	Min. Lot Size	40,000 SF
Current Zoning	LUG-1	Allowable G.C.	7% of 348 SF
Minimum Frontage	100 FT	Lot Size	48,816 SF
Front Setback	35 FT	Existing G.C.	2,622 SF
Side/Rear Setback	10 FT	Proposed G.C.	860 SF
		Total Proposed G.C.	3,482 SF

12.18.21





128
Surfside
80/
299.1
Gentline

City and County of
TUCKET
Massachusetts

SCHOFIELD BROTHERS, INC.
PROFESSIONAL ENGINEERS - REGISTERED LAND SURVEYORS
140 FEDERAL ST., NANTUCKET, MASS.



MASSACHUSETTS COORDINATE
SYSTEM
ISLAND ZONE

SHEET INDEX

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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128 Surfside 80/299.1
Gentner



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 07/29/2021
Data updated Jan. 2021

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.



Nantucket Planning Board

February 12, 2013

James A. Genthner & Susan G. Genthner
PO Box 64
Nantucket, MA 02554

Re: Eminent Domain Taking by Town of Nantucket

Dear Landowner:

Please be advised that on January 30, 2013, pursuant to Massachusetts General Laws Chapters 40 and 79, the Town of Nantucket recorded an Order of Taking of property interest on unconstructed or "paper" streets known as portions of Poplar Street, Mequash Avenue, a.k.a. Sechacha Avenue, Shawaukema Avenue and Tuckernuck Avenue, adjacent to your property at 128 Surfside Road (Map 80 Parcel 299.1). Said taking is on file at the Nantucket Registry of Deeds as Certificate of Title 23257, Document Number 139966 and Book 1368 Page 23. The Town took the land for general municipal purposes as authorized by the affirmative vote on Article 76 of the 2010 Annual Town Meetings.

The land in question is referred to as Parcel J on a plan entitled, "Roadway Acquisition Plan in Nantucket, Mass. of Boulevard, Tuckernuck Avenue, Masquetuck Street, Shawaukema Avenue, Mequash Avenue, Prepared by Bracken Engineering, Inc.," dated August 31, 2012. Said plan is on file at the Nantucket Registry of Deeds, as plan number 2012-68.

The Town awarded \$1.00 as compensation for each parcel of this taking. You may submit a written request for your award or entitled percentage on any day, Monday through Friday, from 8:00 AM to 4:00 PM at the office of the Town Treasurer in the Town Offices, 37 Washington Street, Nantucket, MA 02554. Requests for compensation must be received in writing, and may also be mailed to the Town Treasurer, c/o Town Manager, 16 Broad Street, Nantucket, MA 02554. Once received, your request will be processed on the next available warrant and then the check will be mailed.

You may appeal this decision of an award of damages pursuant to Section 14 of Massachusetts General Laws Chapters 40 and 79 by filing a petition requesting a new determination of damages in the Superior Court within three (3) years from the date the Order of Taking was recorded.

The Board of Selectmen was granted additional authority by the vote of Town Meeting including the ability to release all or portions of land acquired. Please contact Andrew Vorce Director of Planning at 508.325.7587 or by email at avorce@nantucket-ma.gov for further information.

Sincerely,

C. Elizabeth Gibson
Town and County Manager



Planning and Land Use Services

May 21, 2013

Susan & James Genthner
P.O. Box 64
Nantucket, MA 02554

Dear Mr. & Mrs. Genthner:

The purpose of this letter is to inform you that the Board of Selectmen of Nantucket have been advised that you are the most advantageous proposer and will be awarded the surplus property identified as "Poplar Street, Parcel J, Plan No. 2012-68", as part of the Nantucket Yard Sale Program.

The Town will forward your proposal to our counsel to begin the preparation of legal documents necessary to convey the property. As stated in the Request for Proposals, you will be required to pay for these legal costs, as well as arrange for any actions necessary to combine the surplus parcel with your existing lot.

Please contact us in the upcoming weeks for more information on the procedure of conveyance. Otherwise, we will contact you at some point in the future to close out this matter.

If you should have any questions, please do not hesitate to contact me at 508-325-7587 or avorce@nantucket-ma.gov. Thank you.

Sincerely,

Andrew V. Vorce
Director of Planning

cc: Town Counsel

NANTUCKET REGISTRY
 OF DEEDS
 Date: 8/17/2012
 Time: 3:25 PM
 Plan No.: 344-99
 Title: ROADWAY ACQUISITION

SHEET 1 of 1

RESERVED FOR REGISTRY USE

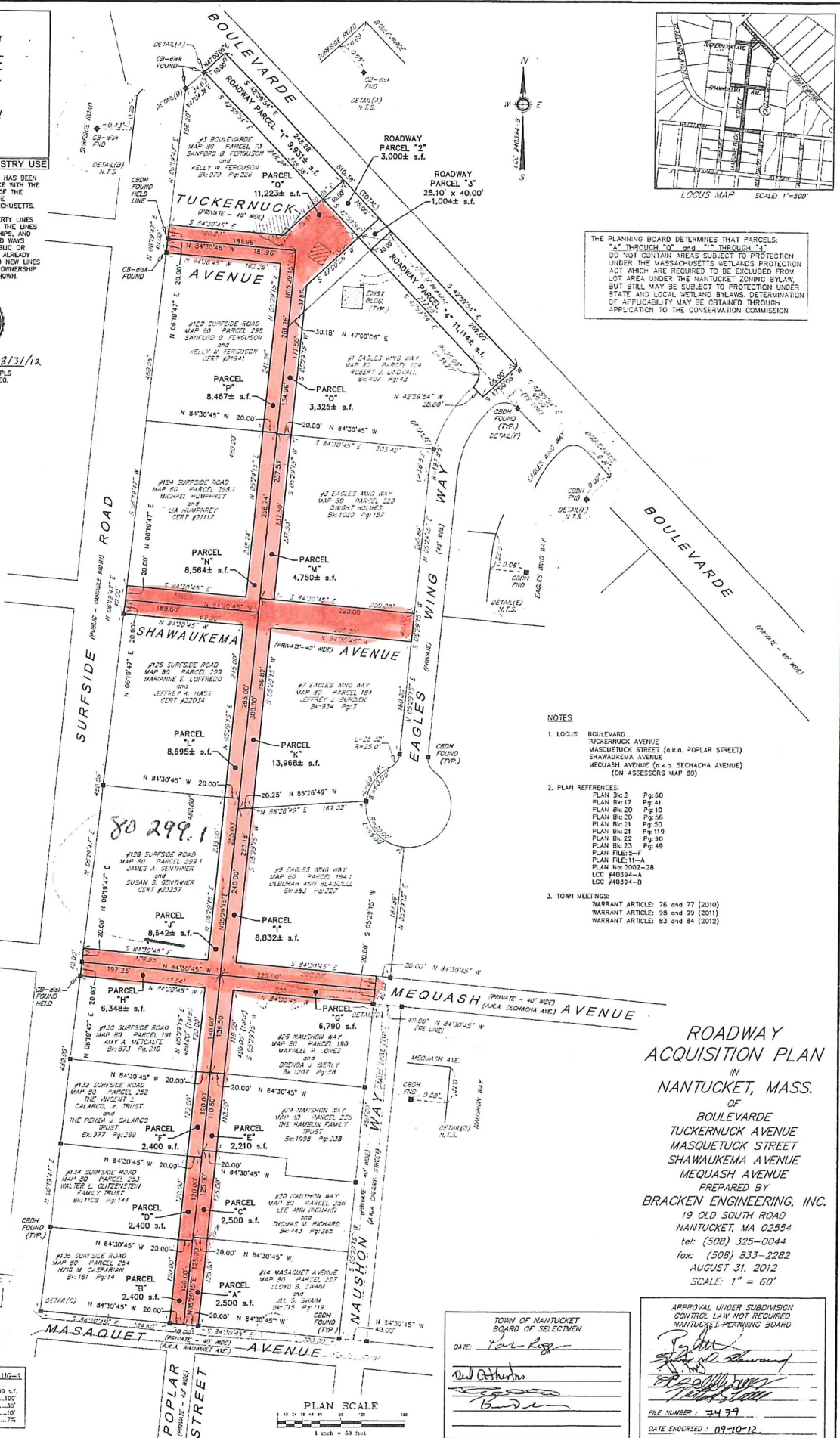
I CERTIFY THAT THIS PLAN HAS BEEN
 PREPARED IN CONFORMANCE WITH THE
 RULES AND REGULATIONS OF THE
 REGISTRY OF DEEDS OF THE
 COMMONWEALTH OF MASSACHUSETTS.



SHANE M. MALLON, PLS
 MASSACHUSETTS REG.
 No. 48887

Gewilmer
 80 299.1
 128
 Surfside
 Shows
 paper
 roads
 Parcel
 J
 to be
 added
 8,642
 sqft.

ZONING CLASSIFICATION: LUG-1
 MINIMUM LOT SIZE: 40,000 s.f.
 MINIMUM FRONTAGE: 100'
 FRONT YARD SETBACK: 30'
 REAR/SIDE YARD SETBACK: 10'
 GROUND COVER RATIO: 7%



THE PLANNING BOARD DETERMINES THAT PARCELS
 "A" THROUGH "Q" AND "R" THROUGH "T"
 DO NOT CONTAIN AREAS SUBJECT TO PROTECTION
 UNDER THE MASSACHUSETTS WETLANDS PROTECTION
 ACT WHICH ARE REQUIRED TO BE EXCLUDED FROM
 LOT AREA UNDER THE NANTUCKET ZONING BYLAW.
 BUT STILL MAY BE SUBJECT TO PROTECTION UNDER
 STATE AND LOCAL WETLAND BYLAWS. DETERMINATION
 OF APPLICABILITY MAY BE OBTAINED THROUGH
 APPLICATION TO THE CONSERVATION COMMISSION.

NOTES

1. LOCUS: BOULEVARD
TUCKERNUCK AVENUE
MAQUETUCK STREET (a.k.a. POPLAR STREET)
SHAWAUKEMA AVENUE
MEQUASH AVENUE (a.k.a. SECHACHA AVENUE)
(ON ASSESSORS MAP 80)
2. PLAN REFERENCES:
PLAN Bk:2 Pg:80
PLAN Bk:17 Pg:41
PLAN Bk:20 Pg:10
PLAN Bk:20 Pg:36
PLAN Bk:21 Pg:50
PLAN Bk:21 Pg:119
PLAN Bk:22 Pg:90
PLAN Bk:23 Pg:49
PLAN FILE:5
PLAN FILE:11-A
PLAN No: 3000-28
LCC #40394-A
LCC #40394-B
3. TOWN MEETINGS:
WARRANT ARTICLE: 76 and 77 (2010)
WARRANT ARTICLE: 98 and 99 (2011)
WARRANT ARTICLE: 83 and 84 (2012)

ROADWAY
 ACQUISITION PLAN
 IN
 NANTUCKET, MASS.

OF
 BOULEVARD
 TUCKERNUCK AVENUE
 MAQUETUCK STREET
 SHAWAUKEMA AVENUE
 MEQUASH AVENUE
 PREPARED BY
 BRACKEN ENGINEERING, INC.
 19 OLD SOUTH ROAD
 NANTUCKET, MA 02554
 tel: (508) 325-0044
 fax: (508) 833-2282
 AUGUST 31, 2012
 SCALE: 1" = 60'

TOWN OF NANTUCKET
 BOARD OF SELECTMEN
 DATE: 8/17/2012
 [Signatures]

APPROVAL UNDER SUBDIVISION
 CONTROL LAW NOT REQUIRED
 NANTUCKET PLANNING BOARD
 [Signatures]
 FILE NUMBER: 344-99
 DATE ENCLOSED: 09-10-12

Genthner 80 244.1
128 Surfside Rd

**REQUEST FOR PROPOSALS
DISPOSAL OF UNBUILDABLE SURPLUS PROPERTY VIA
"NANTUCKET YARD SALE"
TWENTY-SEVEN PARCELS**

The Town of Nantucket invites qualified responders to submit proposals for the purchase of surplus property owned by the Town, which has been identified as having inconsequential public purpose.

Surplus Property:

Paper Street	Parcel #	Square Footage	Price	Plan Reference	Article, Annual Town Meeting
Poplar Street	A	2,500	\$2,500	2012-68	99, 2011
Poplar Street	B	2,400	\$2,500	2012-68	99, 2011
Poplar Street	C	2,500	\$2,500	2012-68	99, 2011
Poplar Street	D	2,400	\$2,500	2012-68	99, 2011
Poplar Street	E	2,210	\$2,500	2012-68	99, 2011
Poplar Street	F	2,400	\$2,500	2012-68	99, 2011
Poplar Street	G	6,790	\$5,000	2012-68	77, 2010; 99, 2011
Poplar Street	H	6,348	\$5,000	2012-68	77, 2010; 99, 2011
Poplar Street	I	8,832	\$5,000	2012-68	77, 2010
Poplar Street	J	8,642	\$5,000	2012-68	77, 2010
Poplar Street	K	13,968	\$5,000	2012-68	84, 2012
Poplar Street	L	8,695	\$5,000	2012-68	84, 2012
Poplar Street	M	4,750	\$2,500	2012-68	84, 2012
Poplar Street	N	8,564	\$5,000	2012-68	84, 2012
Poplar Street	O	3,325	\$2,500	2012-68	84, 2012
Poplar Street	P	8,467	\$5,000	2012-68	84, 2012
Poplar Street	Q	11,223	\$5,000	2012-68	84, 2012
Mequash Avenue	B	3,576	\$2,500	2012-62	99, 2011
Mequash Avenue	C	5,124	\$5,000	2012-62	99, 2011
Mequash Avenue	D	4,800	\$2,500	2012-62	99, 2011
Mequash Avenue	E	4,400	\$2,500	2012-62	99, 2011
Holly Street	F	4,800	\$2,500	2012-62	99, 2011
Holly Street	G	4,800	\$2,500	2012-62	99, 2011
Weweeder Avenue	1	5,200	\$5,000	2012-61	99, 2011
Weweeder Avenue	2	4,800	\$2,500	2012-61	99, 2011

Town of Nantucket
Zoning Board of Appeals

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER..... Susan Genthner
MAILING ADDRESS..... PO. Box 64, Nantucket, MA 02554
PROPERTY LOCATION..... 128 Surfside Rd
ASSESSOR MAP/PARCEL..... 80-299.1
APPLICANT..... Susan Genthner

SEE ATTACHED PAGES

I certify that the foregoing is a list of persons who are owners of abutting property, owners of land directly opposite on any public or private street or way; and abutters of the abutters and all other land owners within 300 feet of the property line of owner's property, all as they appear on the most recent applicable tax list (M.G.L. c. 40A, Section 11 Zoning Code Chapter 40A Section 139-2

October 6, 2021

DATE

Mary Haley,
Senior Clerk,
Assessor's Office

Digitally signed by Mary
Haley, Senior Clerk,
Assessor's Office
Date: 2021.10.06 14:22:44
-04'00'

ASSESSOR'S OFFICE
Town of Nantucket

Abutters Listing

MBLU	Lot	Lot Cut	Owner Full Name	Co-Owner Full Name	Address Line 1	City	State	Zip	Location
80	119		THOMAS RICHARD		37 EUCLID AVE	WESTWOOD	NJ	07675-2813	121 SURFSIDE RD
80	120		CARNEVALE JAMES M & DEBRA J TRS	DULJ REALTY TRUST	235 OLD CART WAY	NORTH ANDOVER	MA	01845	125 SURFSIDE RD
80	184		7 EAGLES WING WAY LLC		7 EAGLES WING WY	NANTUCKET	MA	02554	7 EAGLES WING WY
80	184	1	BLAISDELL DEBORAH ANN		117 MILFORD POINT RD	MILFORD	CT	06460	9 EAGLES WING WY
80	185		JOHNSON ERIK O & SUSAN ALLISON		8 EAGLES WING WY	NANTUCKET	MA	02554	8 EAGLES WING WY
80	185	1	KEPENASH MICHAEL T & PATRICIA		10 EAGLES WING WY	NANTUCKET	MA	02554	10 EAGLES WING WY
80	189		LANGSTON JILL A TR	LANGSTON JILL A NOM TR	185 HAMPTON LAKE CROSSING	BLUFFTON	SC	29910	21 NAUSHON WY
80	190		BIERLY BRENDA J ETAL		26 NAUSHON WY	NANTUCKET	MA	02554	26 NAUSHON WY
80	191		HAKUBA 130 LLC		111 PARK AVE APT 12D	NEW YORK	NY	10128	130 SURFSIDE RD
80	192		OSBORNE BARBARA J		131 SURFSIDE RD	NANTUCKET	MA	02554	131 SURFSIDE RD
80	229		HOLMES DWIGHT T & NANCY L		3 EAGLES WING WY	NANTUCKET	MA	02554	3 EAGLES WING WY
80	234		SKAISTIS RACHEL TR		825 EIGHTH AV	NEW YORK	NY	10019	3 GLADLANDS
80	249		COTTO JAMES R & CORY E		62 LAMBERT BRIDGE RD	CROSS RIVER	NY	10518	133 SURFSIDE RD
80	250		SCHUTT WILLIAM R & LAURIE R		135 SURFSIDE RD	NANTUCKET	MA	02554	135 SURFSIDE RD
80	252		132 SURFSIDE ROAD LLC		1111 PARK AVE # 12D	NEW YORK	NY	10128	132 SURFSIDE RD
80	253		GLITZENSTEIN JANET E TRST ETAL		2030 RIDGE SPRING DR	THE VILLAGES	FL	32162	134 SURFSIDE RD
80	255		HAMBLIN GARY S & ROBERTA G TRS	HANBLIN FAMILY TRUST	24 NAUSHON WY	NANTUCKET	MA	02554	24 NAUSHON WY
80	256		RICHARD LEE ANNE & THOMAS M		PO BOX 126	NANTUCKET	MA	02554	22 NAUSHON WY
80	298	1	HUMPHREY LIA		124 SURFSIDE RD	NANTUCKET	MA	02554	124 SURFSIDE RD
80	299		LOFFREDO MARIANNE E & HASS JEFFREY K		12 FRANCES DRIVE	KATONAH	NY	10536	126 SURFSIDE RD

Count: 20

Gentner
80/299.1
128 Surfside Rd.

Transfer Certificate of Title

Genthner
80/299.1
128 Surfside
Rd.

Cert No: 28319
Doc No: 169740

From Transfer
Certificate No. 23257 Originally Registered June 15, 2009 at the Registry District of Nantucket County

This is to Certify that

JAMES A. GENTHNER and SUSAN G. GENTHNER, as Trustees of the JAMES A. GENTHNER TRUST u/d/t dated December 3, 2020, for which a Trust Certificate pursuant to M.G.L. Ch. 184, sec. 35 is registered as Document No. 169741 at the Registry District of Nantucket County; and SUSAN G. GENTHNER and JAMES A. GENTHNER, as Trustees of the SUSAN G. GENTHNER TRUST u/d/t dated December 3, 2020, for which a Trust Certificate pursuant to M.G.L. Ch. 184, sec. 35 is registered as Document No. 169742 at the Registry District of Nantucket County

of PO Box 64, Nantucket in the County of Nantucket and the Commonwealth of Massachusetts, 02554 are the owners, in fee simple, of that land situated in Nantucket, in the County of Nantucket and said Commonwealth, described as follows:

Lot 3 on plan numbered 40394-B, drawn by John J. Shugrue Inc., Surveyor, dated June 27, 1985, and filed with Certificate of Title No. 13,322 at the Registry District of Nantucket County.

So much of said Lot 3 as is included within the limits of said Shawaukema Avenue, Poplar Street and Sechacha Avenue is subject to the rights of all persons lawfully entitled thereto in and over the same.

And it is further certified that said land is under the operation and provisions of Chapter 185 of the General Laws, and that the title of said

JAMES A. GENTHNER and SUSAN G. GENTHNER, Trustees of the JAMES A. GENTHNER TRUST and SUSAN G. GENTHNER and JAMES A. GENTHNER, Trustees of the SUSAN G. GENTHNER TRUST

to said land is registered under said Chapter subject, however, to any of the encumbrances mentioned in section forty-six of said chapter, which may be subsisting, and subject also as aforesaid; and to a mortgage given by Sonia A. Messina to David S. Mulchinock, dated June 27, 1979, duly recorded in Book 173, Page 10. (Doc. 24656)

Witness **GORDON H. PIPER**, Esquire, Chief Justice of the Land Court, at Nantucket in said County of

Nantucket the twenty-fifth day of May in the year two thousand and twenty-one at 1 o'clock and 6 minutes in the afternoon.

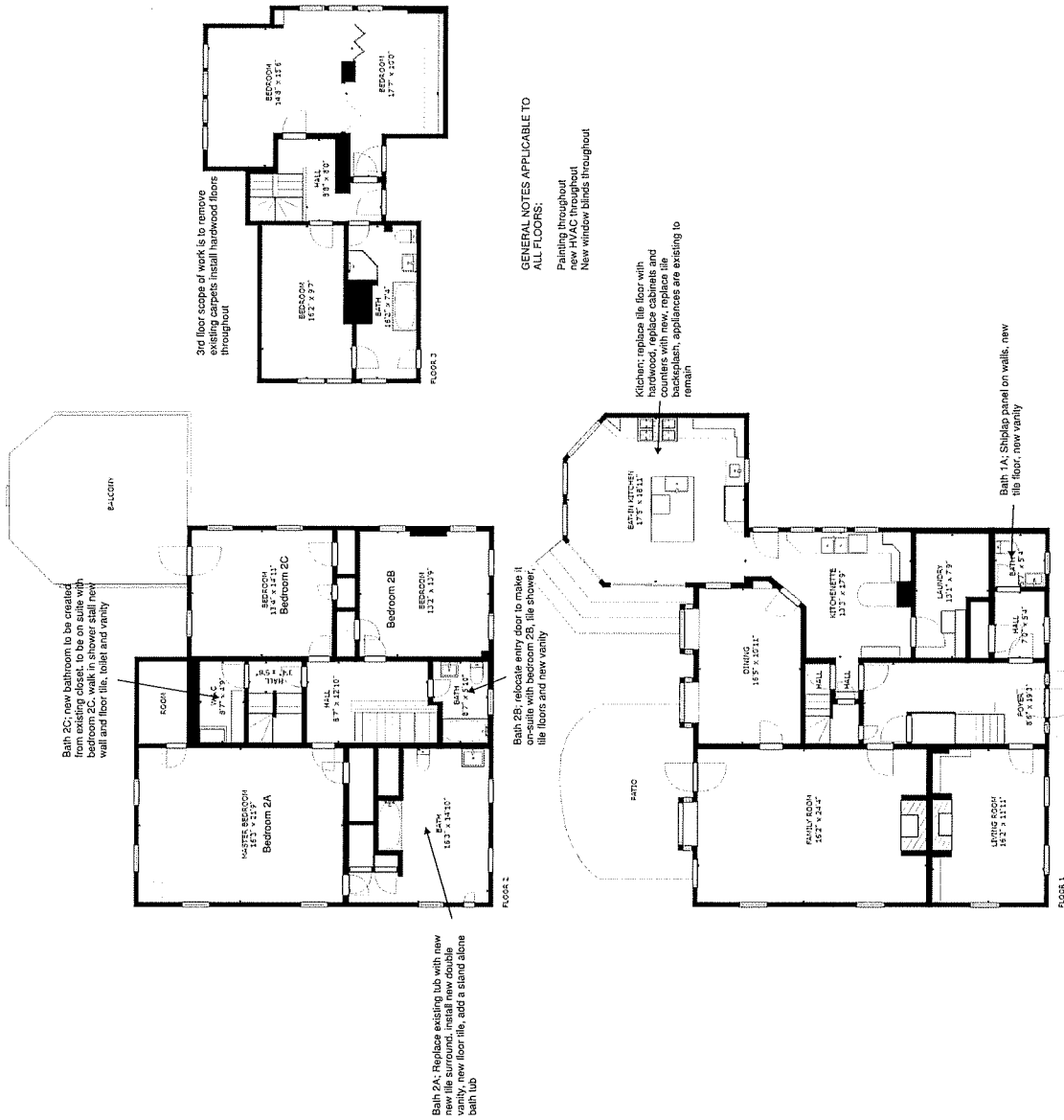
Jennifer H. Ferreira

Attest, with the Seal of said Court,

Jennifer H. Ferreira, Assistant Recorder

Purported Property Address: 128 Surfside Road

Land Court Case No. 40394



GROSS INTERNAL AREA
 FLOOR 1: 1748 sq ft, FLOOR 2: 1326 sq ft
 FLOOR 3: 712 sq ft, EXCLUDED AREAS:
 REDUCED HEADROOM BELOW 1.5M: 31 sq ft
 TOTAL: 3786 sq ft
 SIZES AND DIMENSIONS ARE APPROXIMATE. ACTUAL MAY VARY.

34 Liberty Street Nantucket
 Contractor;
 Sean Fennell
 978-352-6500

THOMAS RICHARD
37 EUCLID AVE
WESTWOOD, NJ 07675-2813

CARNEVALE JAMES M & DEBRA J TRS
DJLJ REALTY TRUST
235 OLD CART WAY
NORTH ANDOVER, MA 01845

7 EAGLES WING WAY LLC
7 EAGLES WING WY
NANTUCKET, MA 02554

BLAISDELL DEBORAH ANN
117 MILFORD POINT RD
MILFORD, CT 06460

JOHNSON ERIK O & SUSAN ALLISON
8 EAGLES WING WY
NANTUCKET, MA 02554

KEPENASH MICHAEL T & PATRICIA
10 EAGLES WING WY
NANTUCKET, MA 02554

LANGSTON JILL A TR
LANGSTON JILL A NOM TR
185 HAMPTON LAKE CROSSING
BLUFFTON, SC 29910

BIERLY BRENDA J ETAL
26 NAUSHON WY
NANTUCKET, MA 02554

HAKUBA 130 LLC
111 PARK AVE APT 12D
NEW YORK, NY 10128

OSBORNE BARBARA J
131 SURFSIDE RD
NANTUCKET, MA 02554

HOLMES DWIGHT T & NANCY L
3 EAGLES WING WY
NANTUCKET, MA 02554

SKAISTIS RACHEL TR
825 EIGHTH AV
NEW YORK, NY 10019

COTTO JAMES R & CORY E
62 LAMBERT BRIDGE RD
CROSS RIVER, NY 10518

SCHUTT WILLIAM R & LAURIE R
135 SURFSIDE RD
NANTUCKET, MA 02554

132 SURFSIDE ROAD LLC
1111 PARK AVE # 12D
NEW YORK, NY 10128

GLITZENSTEIN JANET E TRST ETAL
2030 RIDGE SPRING DR
THE VILLAGES, FL 32162

HAMBLIN GARY S & ROBERTA G TRS
HANBLIN FAMILY TRUST
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NANTUCKET, MA 02554

RICHARD LEE ANNE & THOMAS M
PO BOX 126
NANTUCKET, MA 02554

HUMPHREY LIA
124 SURFSIDE RD
NANTUCKET, MA 02554

LOFFREDO MARIANNE E & HASS
JEFFREY K
12 FRANCES DRIVE
KATONAH, NY 10536

Genthner
80 299.1
128 Surfside Rd

108

THOMAS RICHARD
37 EUCLID AVE
WESTWOOD, NJ 07675-2813

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62 LAMBERT BRIDGE RD
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NEW YORK, NY 10128

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LOFFREDO MARIANNE E & HASS
JEFFREY K
12 FRANCES DRIVE
KATONAH, NY 10536

Geuthner
80 299.1
128 Surfside Rd
109

Brett Stephen. & Sarah
Morneau

File No. 38-21

7 Goldfinch Dr

Special Permit

PLUS

NANTUCKET
TOWN CLERK
2021 DEC -7 AM 11:25

RECEIVED
DEC 06 2021
By

PAID
DEC 06 2021
BY

**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MA 02554**

APPLICATION

Fee: \$450.00

File No. 38-21

Owner's name(s): Brett Stephen Morneau and Sarah Morneau

Mailing address: 7 Goldfinch Drive, Nantucket, MA 02554

Phone Number: 508-228-0771 **E-Mail:** john@gliddenandglidden.com

Applicant's name(s): Same

Mailing Address: Same

Phone Number: **E-Mail:**

Locus Address: 7 Goldfinch Drive **Assessor's Map/Parcel:** 68 / 504

Land Court Plan/Plan Book & Page/Plan File No.: Lot 280 LC Plan No. 16514-12

Deed Reference/Certificate of Title: 27995

Zoning District: R-5

Uses on Lot- Commercial: No Yes (describe)

Residential: Number of dwellings: 1 Duplex _____ Apartments _____

Date of Structure(s):

Building Permit Numbers:

Previous Zoning Board Application Numbers: N/A

State below or attach a separate addendum of specific special permits or variance relief applying for:

See attached Addendum A

I certify that the information contained herein is substantially complete and true to the best of my knowledge, under the pains and penalties of perjury.

SIGNATURE:_____ Owner*

SIGNATURE:_____ ~~Applicant/Attorney/Agent*~~

*If an Attorney or other Agent is representing the Owner or the Applicant, please provide a signed proof of agency.

OFFICE USE ONLY

Application received on: __/__/__ By: _____ Complete: _____ Need Copies: _____
Filed with Town Clerk: __/__/__ Planning Board: __/__/__ Building Dept.: __/__/__ By: _____
Fee deposited with Town Treasurer: __/__/__ By: _____ Waiver requested: _____
Granted: __/__/__ Hearing notice posted with Town Clerk: __/__/__ Mailed: __/__/__
I&M __/__/__ & __/__/__ Hearing(s) held on: __/__/__ Opened on : __/__/__
Continued to: __/__/__ Withdrawn: __/__/__ Decision Due By: __/__/__
Made: __/__/__ Filed w/Town Clerk: __/__/__ Mailed: __/__/__

Addendum A

The Owner/Applicant, Brett Stephen Morneau and Sarah Morneau (hereinafter referred to as “Morneau”) are the owners 7 Goldfinch Drive (“the Premises”) by virtue of Certificate of Title No. 27995 registered at the Nantucket County Registry District of the Land Court. Applicant is requesting Special Permit relief pursuant to Nantucket Zoning Bylaw Section 139-30 and Section 139-16.C.(1) in order to reduce the ten (10) foot side yard setback to five (5) feet in order to site an addition to the premises. The resulting addition will be as close as 5.1 feet from the side yard lot line as shown on the site plan entitled, “Plot Plan to be filed with Application to the Z.B.A.” dated November 6, 2021 prepared by Earle & Sullivan, Inc., enclosed herewith.

The Premises is presently located in the R-5 zoning district, which allows for a five (5) foot side yard setback on one side and a ten (10) foot side yard setback on the other. The Premises and the structures thereon are presently conforming to the R-5 zoning regulations.

In 2008, the entire Naushop neighborhood was rezoned from RC-2 to R-5. The result of which is that the two five (5) foot setbacks were reduced to one five (5) foot setback and one ten (10) foot setback. Multiple properties in this neighborhood were rendered pre-existing nonconforming as a result of this change.

Morneau has Historic District of Commission approval by virtue of Historic District Commission Certificate of Appropriateness No. 2021-03-3256, has approval from the Naushop Architectural Review Committee for the proposed additions, and has a letter of support from the neighbor at 5 Goldfinch Drive.

Therefore, because there were historically five (5) foot setbacks in this neighborhood, desirable relief may be granted by Special Permit to pursuant to Nantucket Zoning Bylaw Section 139-16.C.(1) to reduce the ten (10) foot setback to five (5) feet so the addition as proposed may be constructed. Furthermore, such relief would be in harmony with the purpose and intent of this Zoning Bylaw because this neighborhood historically has had five (5) foot setbacks.

CERTIFICATE NO: HDC 2021-03-3256

DATE ISSUED: 3/22/2021

Application to the HISTORIC DISTRICT COMMISSION, Nantucket, Massachusetts, for a

CERTIFICATE OF APPROPRIATENESS

for structural work.

All blanks must be filled in using BLUE OR BLACK INK (no pencil) or marked N/A.

NOTE: It is strongly recommended that the applicant be familiar with the HDC guidelines, *Building with Nantucket in Mind*, prior to submittal of application. Please see other side for submittal requirements. Incomplete applications will not be reviewed by the HDC.

This is a contractual agreement and must be filled out in ink. An application is hereby made for issuance of a Certificate of Appropriateness under Chapter 395 of the Acts and Resolves of Mass., 1970, for proposed work as described herein and on plans, drawings and photographs accompanying this application and made a part hereof by reference.

The certificate is valid for three years from date of issuance. No structure may differ from the approved application. Violation may impede issuance of Certificate of Occupancy.

PROPERTY DESCRIPTION

TAX MAP N°: 68 PARCEL N°: 504
 Street & Number of Proposed Work: 7 Goldfinch Drive
 Owner of record: BRETT & SARAH MORNEAU
 Mailing Address: 7 GOLDFINCH DRIVE
NANTUCKET, MA. 02554
 Contact Phone #: _____ E-mail: Morneau51@ttdmail.com

AGENT INFORMATION (if applicable)

Name: Thornhill Design LLC
 Mailing Address: 48 Dukes Rd
Nantucket Ma
 Contact Phone #: 508 333 0702 E-mail: Thornhilldesign@comcast.net

FOR OFFICE USE ONLY

Date application received: 3/21/2021 Fee Paid: \$ 104.30
 Must be acted on by: 4/25/2021
 Extended to: _____
 Approved: _____ Disapproved: _____
 Chairman: _____ (acting)
 Member: WBCoombs
 Member: _____
 Member: _____
 Notes - Comments - Restrictions - Conditions

DESCRIPTION OF WORK TO BE PERFORMED

See reverse for required documentation.

☐ New Dwelling ☒ Addition ☐ Garage ☐ Driveway/Apron ☐ Commercial ☐ Historical Renovation ☐ Deck/Patio ☐ Steps ☐ Shed
☐ Color Change ☐ Fence ☐ Gate ☐ Hardscaping ☐ Move Building ☐ Demolition ☐ Revisions to previous Cert. No.

☐ Pool (Zoning District _____) ☐ Roof ☐ Other _____
 Size of Structure or Addition: Length: 24 Sq. Footage 1st floor: 524.5 Decks/Patio: Size: 27x10 ☐ 1st floor ☐ 2nd floor
width: 14 Sq. footage 2nd floor: _____ Size: 5x12 ☐ 1st floor ☐ 2nd floor
 Sq. footage 3rd floor: _____

Difference between existing grade and proposed finish grade: North 0 South 0 East 0 West 0
 Height of ridge above final finish grade: North _____ South 11'9" East 11'9" West 13'0"

Additional Remarks

Historic Name: _____

Original Date: _____

Original Builder: _____

- REVISIONS**
1. East Elevation ADDITIONS & REPLACEMENT WINDOWS
 2. South Elevation ADDITIONS & REPLACEMENT WINDOWS
 3. West Elevation ADDITIONS & REPLACEMENT WINDOWS
 4. North Elevation ADDITIONS & REPLACEMENT WINDOWS
- *Cloud on drawings and submit photographs of existing elevations.

DETAIL OF WORK TO BE PERFORMED

Foundation: Height Exposed 3" ☐ Block ☐ Block Parged ☐ Brick (type) _____ ☒ Poured Concrete ☐ Piers
 Masonry Chimney: ☐ Block Parged ☐ Brick (type) _____ ☐ Other _____
 Roof Pitch: Main Mass 12 /12 Secondary Mass 4 /12 Dormer _____ /12 Other _____
 Roofing material: ☒ Asphalt: ☐ 3-Tab ☒ Architectural
☐ Wood (Type: Red Cedar, White Cedar, Shakes, etc.) _____

Fence: Height: _____
 Type: _____
 Length: _____

Skylights (flat only): Manufacturer _____ Rough Opening _____ Size _____ Location _____
 Manufacturer _____ Rough Opening _____ Size _____ Location _____

Gutters: ☒ Wood ☐ Aluminum ☐ Copper ☐ Leaders (material) _____

Leaders (material and size): 6x6 CEDAR BOX

Sidewall: ☒ White cedar shingles ☐ Clapboard (exposure: _____ inches) Front ☐ Side

☐ _____
☐ Other _____

Trim: A. Wood ☐ Pine ☐ Redwood ☒ Cedar ☐ Other _____

B. Treatment ☐ Paint ☒ Natural to weather ☐ Other _____

C. Dimensions: Fascia _____ Rake _____ Soffit (Overhang) _____ Corner boards _____ Frieze _____

Window Casing _____ Door Frame _____ Columns/Posts: Round _____ Square _____

Windows*: ☒ Double Hung ☐ Casement ☐ All Wood ☒ Other Picture window in front
☐ True Divided Lights (muntins), single pane ☒ SDL's (Simulated Divided Lights) Manufacturer ANDERSON

Doors* (type and material): ☐ TDL ☒ SDL Front 6 panel wood Rear 13 lite / wood Dutch Side _____

Garage Door(s): Type _____ Material _____

Hardscape materials: Driveways N/A Walkways N/A Walls N/A

* Note: Complete door and window schedules are required.

COLORS

Sidewall NAT. Clapboard (if applicable) _____ Roof Gray (existing)
 Trim NAT. Sash BLACK Doors BLACK
 Deck NAT. Foundation NAT Fence _____ Shutters _____

* Attach manufacturer's color samples if color is not from HDC approval list.

I hereby authorize the agent named above to act on my behalf to make changes in the specifications or the plans contained in this application in order to bring the application into compliance with the HDC guidelines. I hereby agree to abide by and comply with the terms and conditions of this application. I hereby agree that the submission of any revisions to this application will initiate a new sixty-day review period.

Date 3/23/21 Signature of owner of record Brett & Sarah Morneau Signed under penalties of perjury

115

DOOR & WINDOW SCHEDULE

NOTE:

ALL EXISTING DOOR WINDOWS ARE ANDERSON 400 SERIES. EXISTING PICTURE WINDOW ON FRONT OF HOUSE IS WHITE TO LIGHT SDR.

PROPOSED WINDOWS:

ANDERSON 400 SERIES - BUICK 6/8 DECK-TITANUM.

- ① TJ24310 - R.O = 2-6/8 X 4-0/8
- ② P4540 - R.O = 4-5/8 X 4-0/8 - 20 LITE PICTURE UNIT
- ③ TJ2432 - R.O = 2-6/8 X 3-1/8

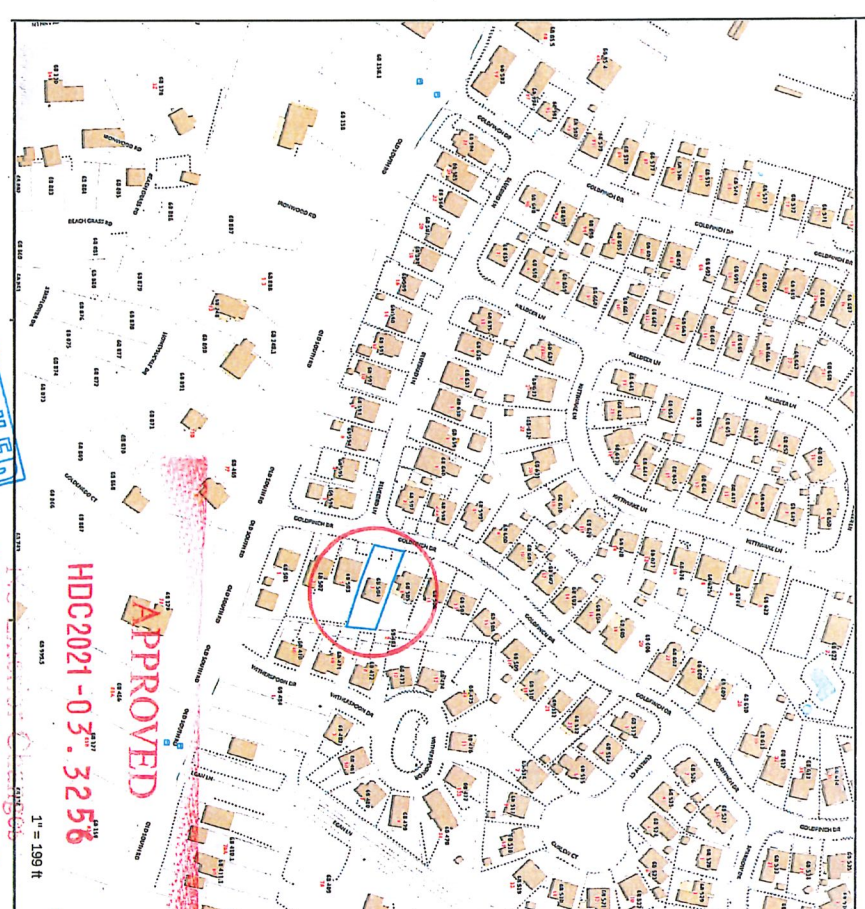
NOTE: LUMBER-TYPE / WINDOW SETS TO COMPLY ON SITE SIZES. FIT EXISTING OPENINGS AS REPLACEMENT UNITS. KEEP THIS SCHEDULE APPORT TO ALL WINDOWS AS MATCHING EXISTING SIZE.

DOORS:

- ① 6 PANEL WOOD 3068 FRONT DOOR -
- ② ANDERSON 28611 15 LIGHT DOOR - BUICK.
- ③ 2 PANEL WOOD DOOR DOOR 2468 P.D. BUICK.

EXTERIOR TRIM ALL CEDAR NATURAL DOOR & WINDOW TRIM FINISH CEDAR 5/4 X 4

GENERAL EXTERIOR FINISH NOTES:
SIDEWALL WHITE CEDAR SHINGLES.
TRIM - NATURAL CEDAR PLANKS & FINISH TO MATCH EXISTING.
ROOF - ASPHALT. APPLICABLE TO NECTH EXISTING. GUTTER, QUARTERS NATURAL.
LANDINGS, CORNERS 6x6 CEDAR NATURAL.
DECK - NATURAL 1x4
RAILING - CEDAR. NECT TO LANTHORN.

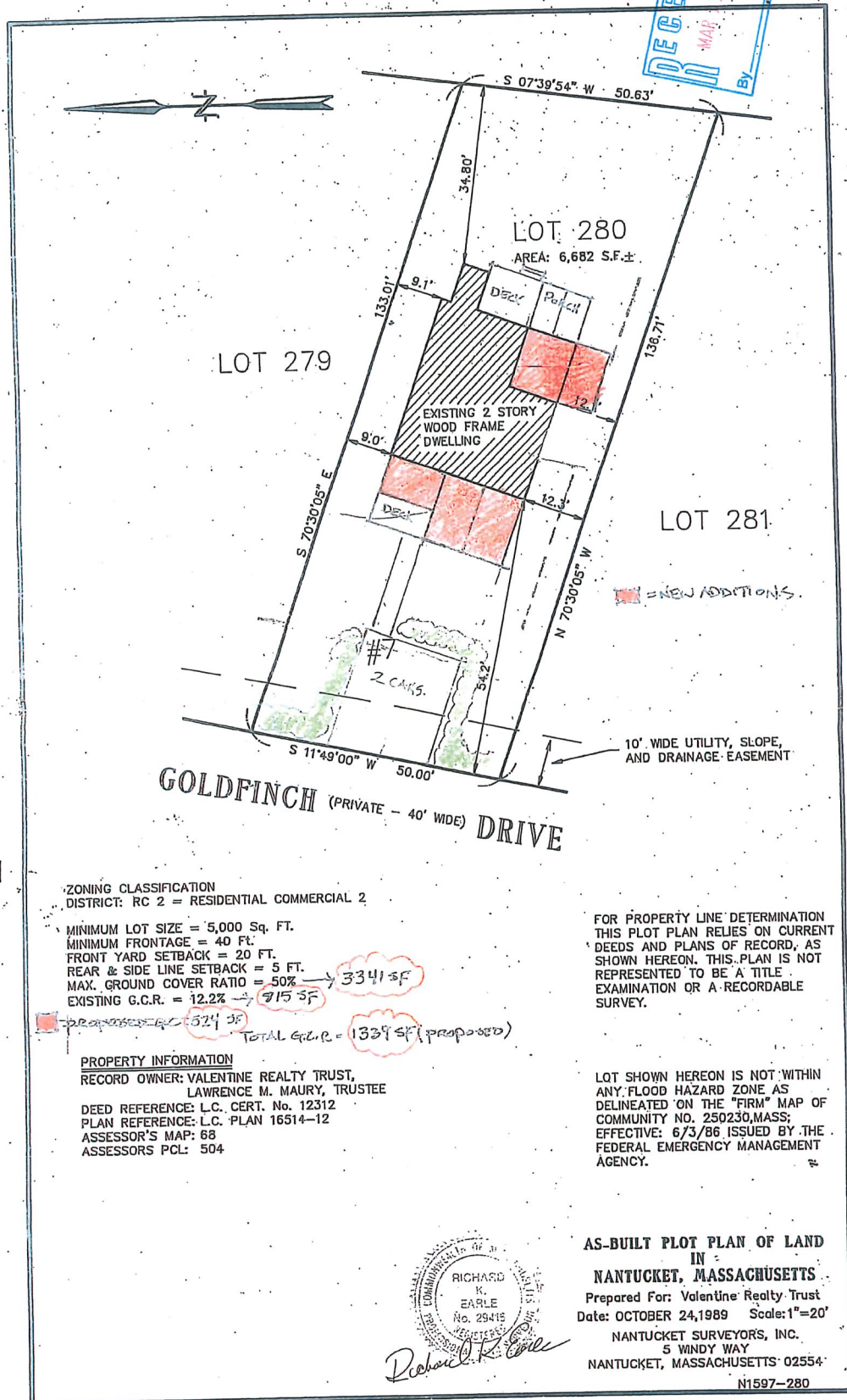


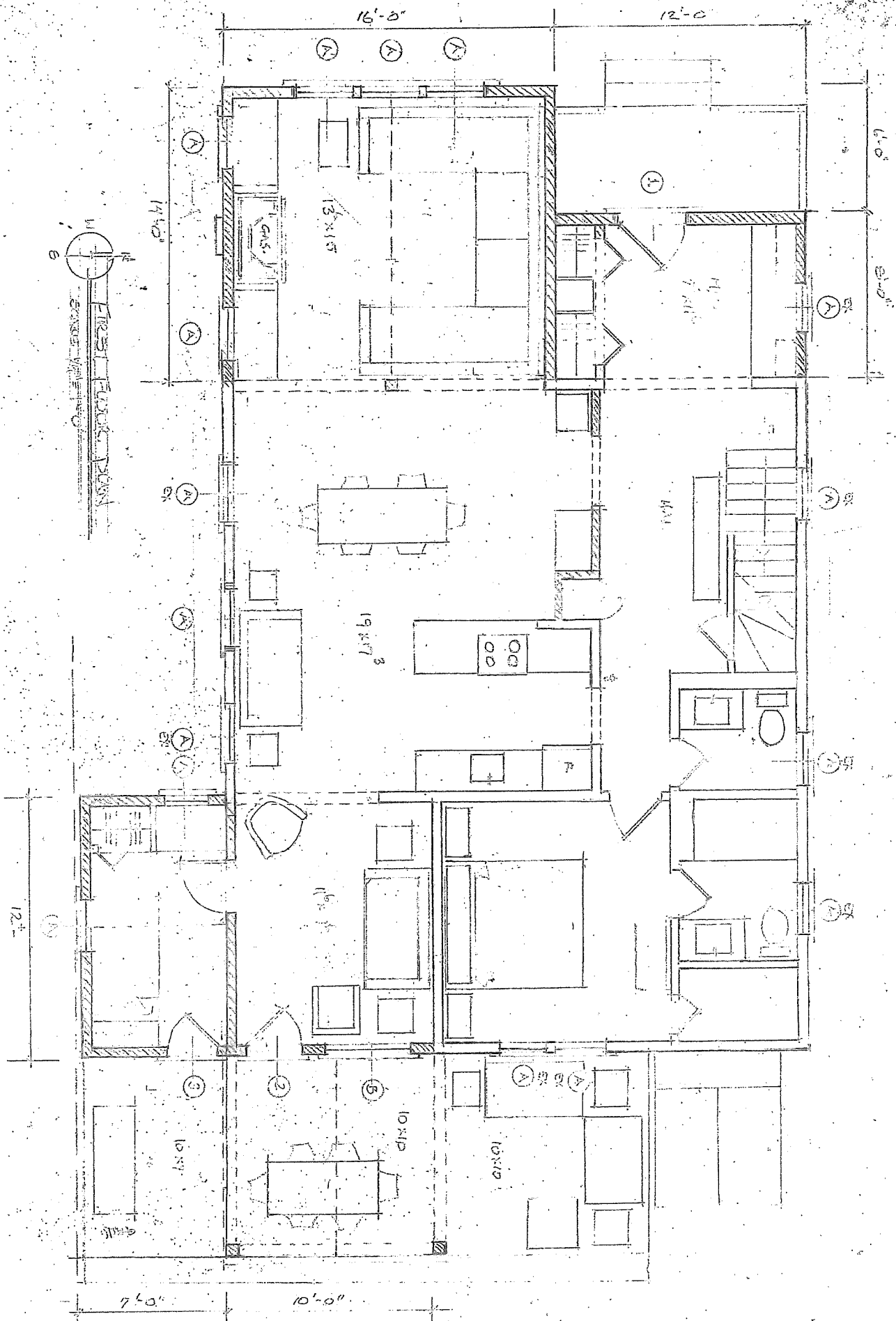
RECEIVED
MAR 11 2021
BY

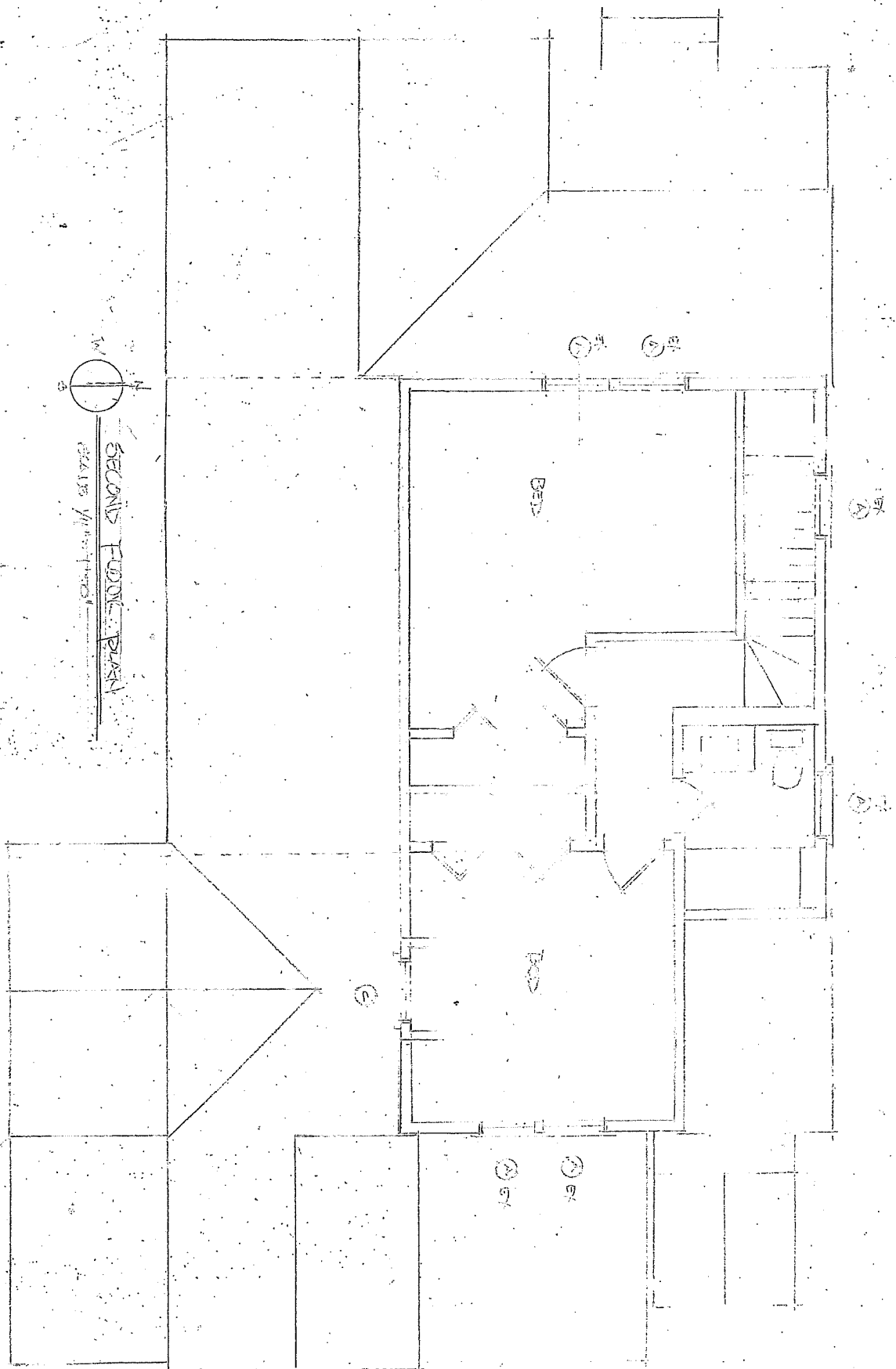
APPROVED
HDC2021-03.3256
1" = 100 ft

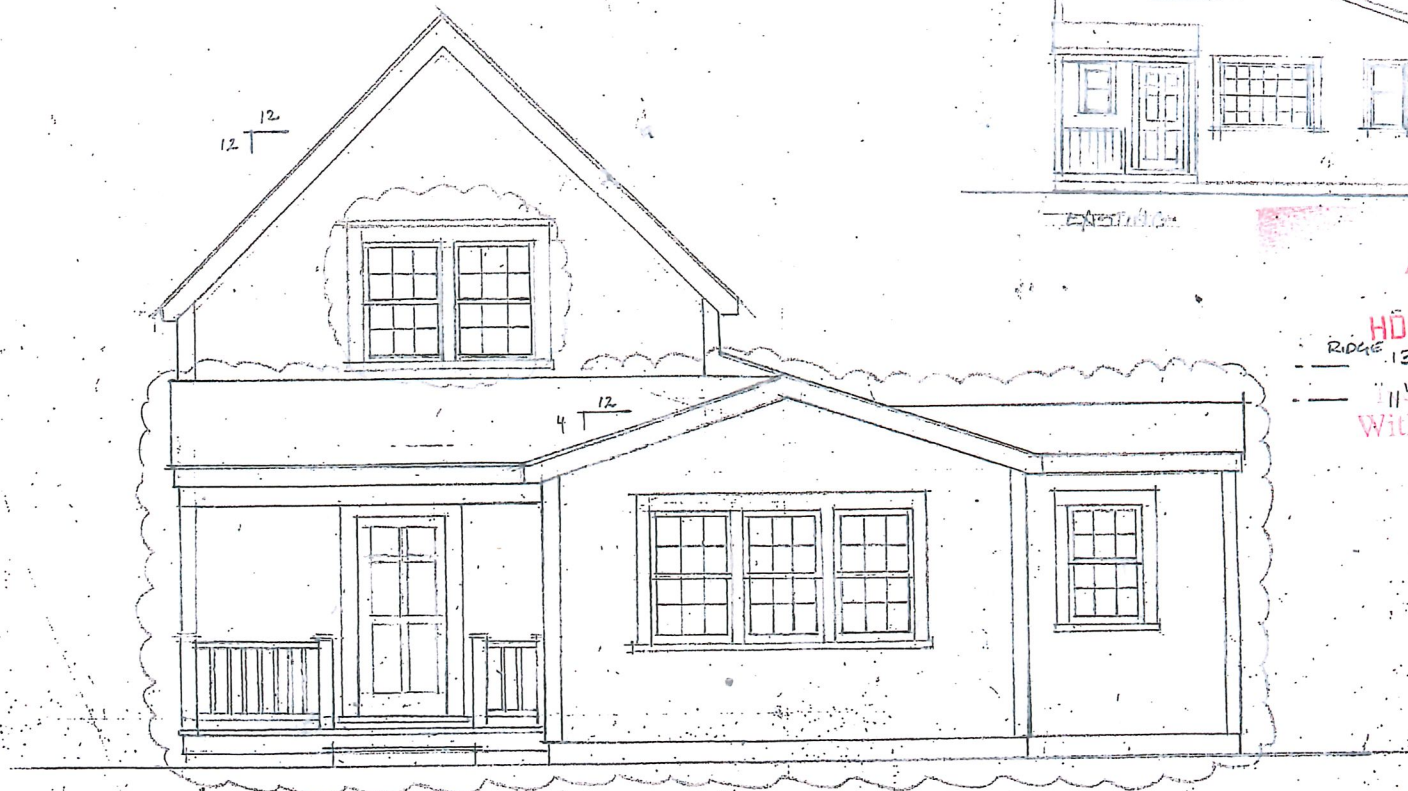
Without HDC Approval
BRETT & SARA MORIKAWA
7 GOLFVIEW DRIVE
ADDITIONS & RENOVATION
WAP 68 PIERCE SQ

THORNTON DESIGN LLC.









APPROVED

HDC2021-03.3256

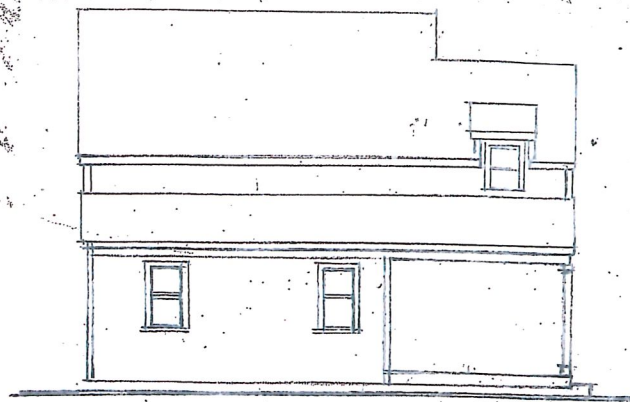
RIDGE 13-DAF4

11-9-APC in Changes
Without HDC Approval

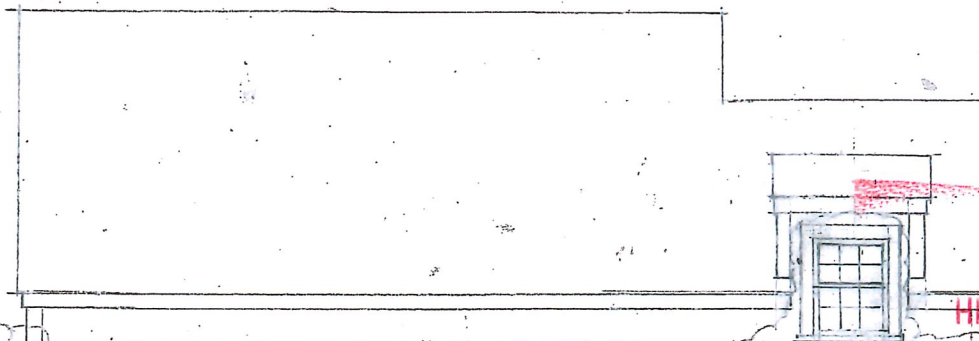


WEST ELEVATION

SCALE 1/4" = 1'-0"



EXISTING



APPROVED

HDC2021-03.3256

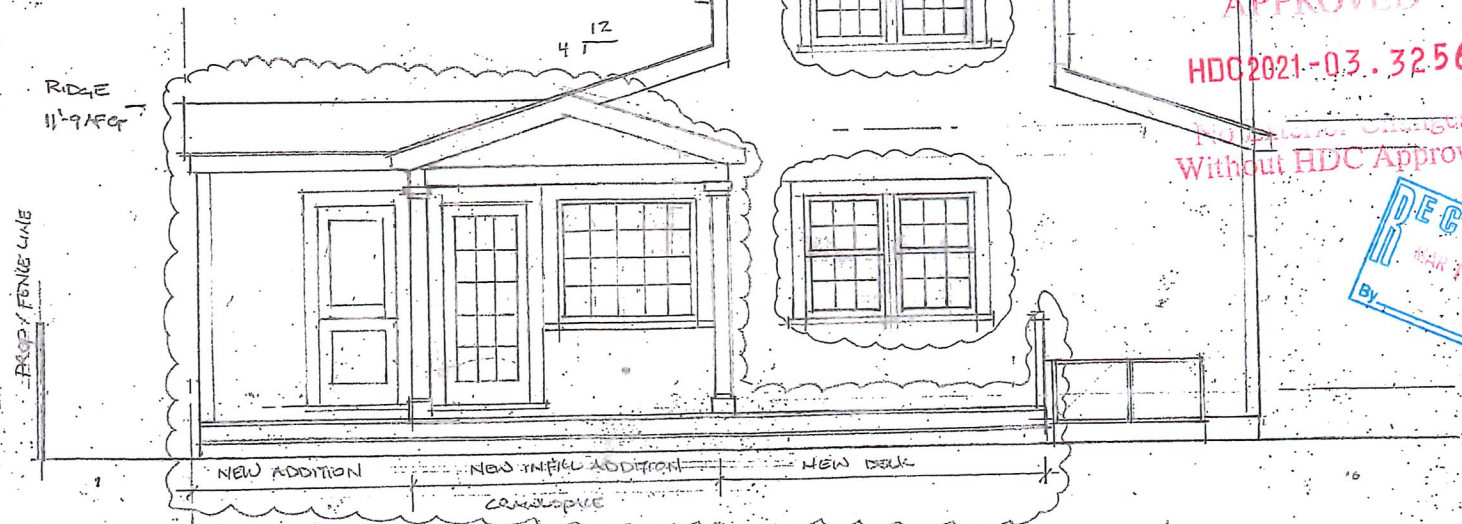
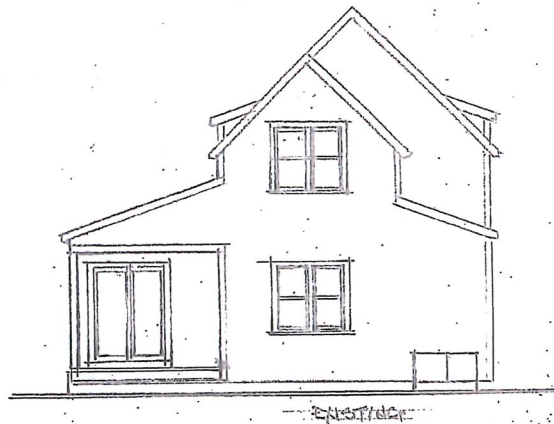
No Exterior Changes
Without HDC Approval

RECEIVED
MAR 11 2021
By _____



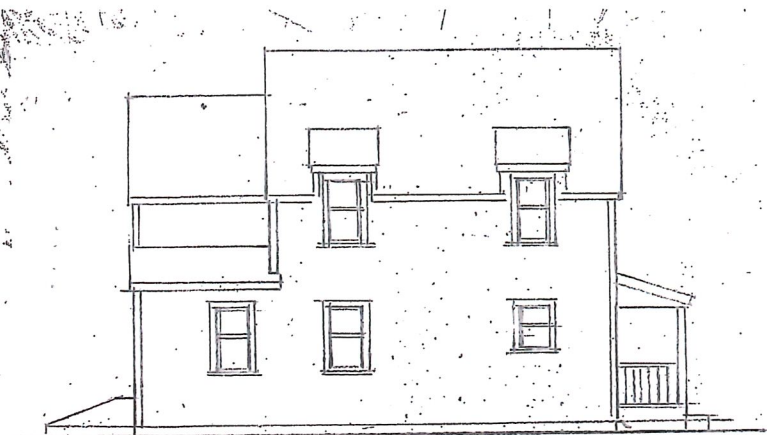
SOUTH ELEVATION

SCALE 1/4" = 1'-0"



APPROVED
HDC2021-03.3256
No other changes
Without HDC Approval



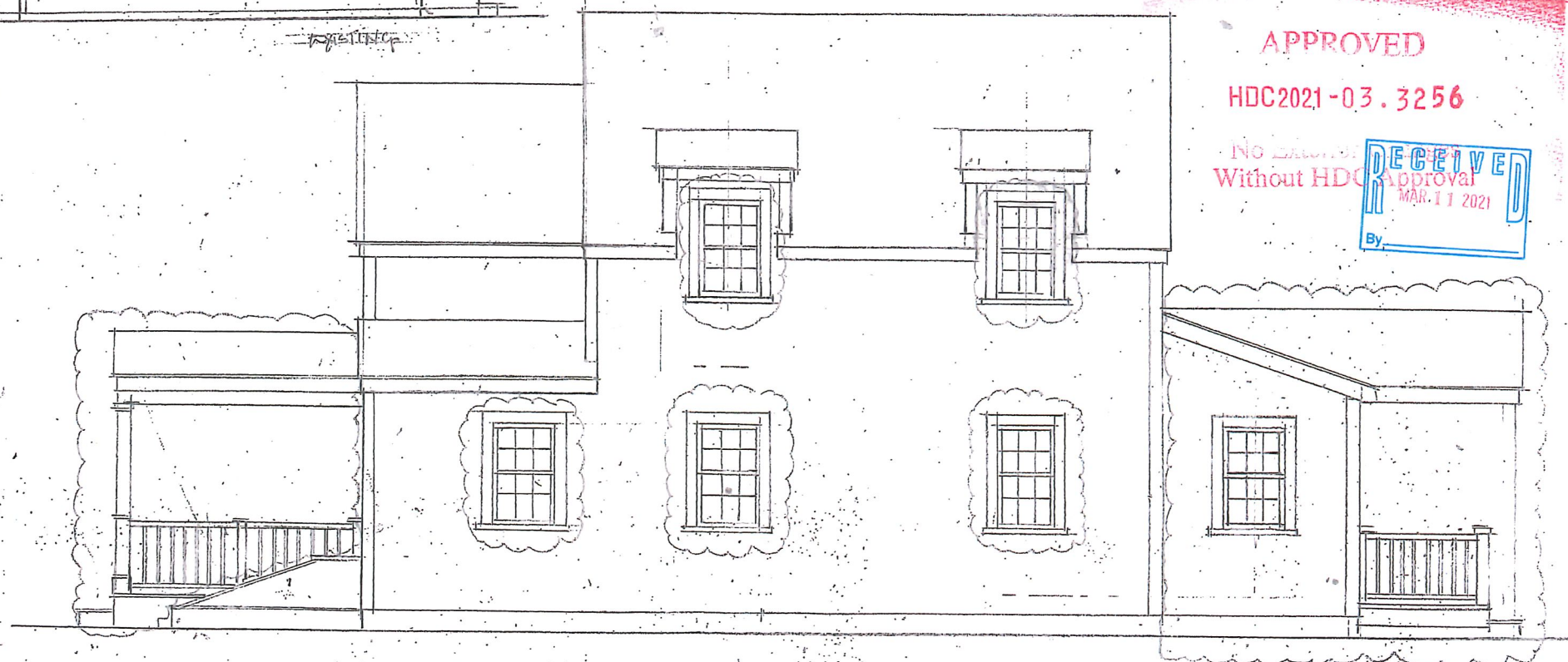
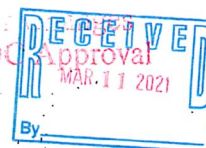


REAR ELEVATION

APPROVED

HDC2021-03.3256

NO EXEMPTION
Without HDC



NORTH ELEVATION

SCALE 1/4" = 1'-0"

**Property Information**

Property ID 68 504
 Location 7 GOLDFINCH DR
 Owner MORNEAU BRETT S & SARAH



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 11/04/2021
 Data updated Jan. 2021

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.

John Brescher

From: brett morneau <morneau511@hotmail.com>
Sent: Friday, December 3, 2021 2:17 PM
To: John Brescher
Subject: Fwd: Building

This is from Laura, lol. She said to let her know if the email needs to be more formal.



Brett

Sent from my iPhone

Begin forwarded message:

From: laura cooper <lcoop16@gmail.com>
Date: December 3, 2021 at 2:14:07 PM EST
To: morneau511@hotmail.com
Subject: Building

Hi- happy to have you build your addition! Laura Davison 5 goldfinch

Sent from my iPhone

John Brescher

From: brett morneau <morneau511@hotmail.com>
Sent: Monday, December 6, 2021 12:57 PM
To: John Brescher
Subject: Re: 7 Goldfinch

Hi John Brescher, you are authorized to represent me at the ZBA.

Thank you,

Brett Morneau

Sent from my iPhone

On Dec 6, 2021, at 8:33 AM, John Brescher <John@gliddenandglidden.com> wrote:

Hi Brett:

Can you please respond to this email or send a separate email authorizing me to represent you at the ZBA?

Thanks.

Best,
John

John B. Brescher, Esquire
Glidden & Brescher, P.C.
37 Centre Street / PO Box 1079
Nantucket, Massachusetts 02554
508-228-0771
508-228-6205 (fax)
john@gliddenandglidden.com

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Wire Fraud Alert: Email hacking to fraudulently misdirect funds is on the rise. ALWAYS CONFIRM WIRE INSTRUCTIONS. If you receive an e-mail or other communication from this office requesting that you wire or otherwise transfer funds, please call a known contact person at this firm using a telephone number found through an independent source to verify the request and any corresponding instructions before you initiate any transfer. Please do not rely on an email that appears to originate from this office. We are not responsible for any wires sent by you to an incorrect bank account. Our wiring instructions never change.

Town of Nantucket

Zoning Board of Appeals

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER..... Brett Stephen Marcenau + Sarah Marcenau
MAILING ADDRESS..... 7 Goldfinch Drive, Nantucket, MA 02554
PROPERTY LOCATION..... 7 Goldfinch Drive
ASSESSOR MAP/PARCEL..... 68/504
SUBMITTED BY..... Glidden + Brescher, PC

SEE ATTACHED PAGES

I certify that the foregoing is a list of all persons who are owners of abutting property, owners of land directly opposite on any public or private street or way; and abutters of the abutters and all other land owners within 300 feet of the property line of owner's property, as they appear on the most recent applicable tax list (M.G.L. c. 40A, Section 11 and Zoning Code Chapter 40A, Section 139-29B (2).

11-29-2021

DATE

Digitally signed by Rob Ranney
DN: cn=Rob Ranney, o=Town of
Nantucket, ou=Assessor's Office,
email=rranney@nantucket-ma.gov, c=US
Date: 2021.11.29 10:23:08 -05'00'

ASSESSOR'S OFFICE
TOWN OF NANTUCKET

Abutters Listing

MBU	Lot	Lot Cnt	Owner Full Name	Co-Owner Full Name	Address Line 1	City	State	Zip	Location
68	128		EGAN CYNTHIA ETAL		PO BOX 3012	NANTUCKET	MA	02584	79 OLD SOUTH RD
68	404		DUGAN TIMOTHY E		72A OLD SOUTH RD	NANTUCKET	MA	02554	72A OLD SOUTH RD
68	405		ORB LLC		PO BOX 3051	NANTUCKET	MA	02584	74 OLD SOUTH RD
68	406		QUIJADA JOSE S & LAURA Y S		74A OLD SOUTH RD	NANTUCKET	MA	02554	74A OLD SOUTH RD #1
68	406	1	ARNO JOHN & COLLEEN TRUSTEES		74A OLD SOUTH RD	NANTUCKET	MA	02554	74A OLD SOUTH RD
68	406	2	SULLIVAN BRIAN TR	BRIAN SULLIVAN REV TRUST	56 HUMMOCK POND RD	NANTUCKET	MA	02554	74 B OLD SOUTH RD #2
68	407		LURVEY BRADFORD E		PO BOX 2422	NANTUCKET	MA	02584	76 OLD SOUTH RD
68	465		EGAN CYNTHIA		PO BOX 3012	NANTUCKET	MA	02584	77 OLD SOUTH RD
68	466		EGAN CYNTHIA ETAL		PO BOX 3012	NANTUCKET	MA	02584	81A OLD SOUTH RD
68	470	1	BARRANTES JOSUE J & MAYA		4A WITHERSPOON DR	NANTUCKET	MA	02554	4A WITHERSPOON DR
68	470	2	DESTEFANO TYLER S & RACHAEL C		4 HICKORY LN	IPSWICH	MA	01938	4B WITHERSPOON DR
68	471	1	RENZULLI RODGER A & JOSEPH R		615 HICKMAN CIR	SANDFORD	FL	32771	6A WITHERSPOON DR
68	471	2	WESTMOOR CLUB LLC		10 WESTMOOR LANE	NANTUCKET	MA	02554	6B WITHERSPOON DR
68	472	1	RANSTATLER JOSEPH & KELLY		20 BROAD ST	NANTUCKET	MA	02554	8 A WITHERSPOON DR #1
68	472	2	WITHERSPOON DRIVE LLC		354 SALSBURY ST	WORCESTER	MA	01609	8 B WITHERSPOON DR #2
68	473		BOYLAN MICHAEL F & MARYELLEN FAY		10 WITHERSPOON DR	NANTUCKET	MA	02554	10 WITHERSPOON DR
68	474		BENJAMIN ROBERT & DEBORAH G		1 DEERFIELD ROAD	POUND RIDGE	NY	10576	12 WITHERSPOON DR
68	475		14 WITHERSPOON LLC		15 CHESTNUT ST	WAKEFIELD	MA	01880	14 WITHERSPOON DR
68	476		OGREN PETER J		603 SALEM STREET	WAKEFIELD	MA	01880	15 WITHERSPOON DR
68	477	1	QUIGLEY JENNIFER		PO BOX 388	SIACONSET	MA	02564	13A WITHERSPOON DR
68	477	2	RAISCH TODD & SUSAN M		245 N CENTRAL AVE	RAMSAY	NJ	07446	13B WITHERSPOON DR
68	478	1	GRAY KELSEA B & JORDAN D		PO BOX 3369	NANTUCKET	MA	02584	11 A WITHERSPOON DR #1
68	478	2	DEAN APRYL R & JAMES M		11B WITHERSPOON DR	NANTUCKET	MA	02564	11 B WITHERSPOON DR
68	479		MORIN RICHARD A & PATRICIA A		2 ELIZABETH DRIVE	WESTBOROUGH	MA	01581	9 WITHERSPOON DR #2
68	480		ELYSIAN PRIVATE EQUITY LLC		811 BIRDIE VIEW PT	SANIBEL	FL	33957	7 WITHERSPOON DR

68	481	1	WEINER ANDREW D & CHRISTINEA TRST	WEINER FAMILY TRUST	79 WILD ROSE DR	ANDOVER	MA	01810	5A WITHERSPOON DR
68	481	2	MCMASTER SUSAN J		PO BOX 3075	NANTUCKET	MA	02564	5B WITHERSPOON DR #2
68	482	1	FORSGREEN ALISON K		PO BOX 39	NANTUCKET	MA	02564	3 A WITHERSPOON DR #603-1
68	482	2	PAYOT OLIVIER & SILVEIRA LISA		3B WITHERSPOON DR	NANTUCKET	MA	02564	3 B WITHERSPOON DR #603-2
68	483		HAY KATHLEEN TR ETAL	WITHERSPOON DR OWNERS ASSC TRUST	PO BOX 239	NANTUCKET	MA	02564	2 WITHERSPOON DR
68	484		HAY KATHLEEN TR ETAL	WITHERSPOON DR OWNERS ASSC TRUST	P O BOX 239	NANTUCKET	MA	02564	1 WITHERSPOON DR
68	501		BONNIE KEVIN J		1 GOLDFINCH DR	NANTUCKET	MA	02564	1 GOLDFINCH DR
68	502		KUNCL RALPH W & NANCY L		861 HIGHLAND AV	REDLANDS	CA	92373	3 GOLDFINCH DR
68	503		DAVISON BRETT & LAURA		61 OLD SOUTH RD # 131	NANTUCKET	MA	02564	5 GOLDFINCH DR
68	504		MORNEAU BRETT S & SARAH		87 HINGSDALE ROAD	NANTUCKET	MA	02564	7 GOLDFINCH DR
68	505		KARBERG NOAH J & JENNIFER M		9 GOLDFINCH DRIVE	NANTUCKET	MA	02564	9 GOLDFINCH DR
68	506		YEAKEL GLENN SCOTT & NANCY JEAN		PO BOX 422	MIDDLEBURG	VA	20118	11 GOLDFINCH DR
68	507		ZINNY MARTIN G & RACHEL F		28 CHESTERTON RD	WELLESLEY	MA	02481	13 GOLDFINCH DR
68	508		WELD KATE W		15 GOLDFINCH DR	NANTUCKET	MA	02564	15 GOLDFINCH DR
68	509		LYONS JAMES R & PENNY A S TR	LYONS FAMILY REV TRUST	301 HARBOUR PLACE DR #215	TAMPA	FL	33602	17 GOLDFINCH DR
68	510		FISHER SUSAN J TRST	BLUE WATER NOMINEE TRUST	19 GOLDFINCH DRIVE	NANTUCKET	MA	02564	19 GOLDFINCH DR
68	511		21 GOLDFINCH DRIVE LLC		4 STILLMEADOW RD	WESTON	MA	02493	21 GOLDFINCH DR
68	516		SIEBENECK HILARY A & BOLLAM JEREMEY TRS	BOLLAM FAMILY IRREVOCABLE TRUST	56 REGATTA VIEW DR	SARATOGA SPRINGS	NY	12180	7 CURLEW CT
68	517		LA ROCCO ANTHONY P & KAREN E		1 STONEWALL LN	MOUNTAIN LAKES	NJ	07046	9 CURLEW CT
68	591		12 BLUEBIRD LANE LLC	C/O GRANITY CITY ELECTRIC SUPPLY	19 QUINCY AVENUE	QUINCY	MA	02169	12 BLUEBIRD LN
68	592		KELLEY JAMES A & SHARON B		1906 BELLE HAVEN RD	ALEXANDRIA	VA	22307	10 BLUEBIRD LN
68	593		SOUTH MADISON REAL ESTATE LLC		25 HIGHLAND PARK VILLAGE STE 100-516	DALLAS	TX	75205	8 BLUEBIRD LN
68	594		EVEREST CHRISTOPHER		20 KELSEY RD	BOXFORD	MA	01921	6 BLUEBIRD LN
68	595		DEUTSCH ELLEN ELIZABETH		4 MUIRFIELD LANE	BLOOMFIELD	CT	06002	4 BLUEBIRD LN
68	596		LUYRINK JOHN		PO BOX 480	WEST BROOKFIELD	MA	01585	2 BLUEBIRD LN
68	597		TRAPASSO ALEXA	C/O TRAPASSO ALEXA	15 EVERGREEN CIRCLE	STERLING	MA	01564	2 GOLDFINCH DR
68	598		AVAMOVA ZHANETA A		61 OLD SOUTH RD	NANTUCKET	MA	02564	4A GOLDFINCH DR

68	598	1	CAVALIER MARIYANA S ETAL		48 GOLDFINCH DRIVE	NANTUCKET	MA	02554	48 GOLDFINCH DR
68	599		ESTI JEANNE M		6 GOLDFINCH DR	NANTUCKET	MA	02554	6 GOLDFINCH DR
68	600		NILDA PADISA-MOTTERSHEAD TR	NILDA PADISA-MOTTERSHEAD REV LIV TRUST	309 CHAMBLISS ST	CHATTANOOGA	TN	37405	8 GOLDFINCH DR
68	601		MARRERO ERICA L & ANDRE J		61 OLD SOUTH RD STE 201	NANTUCKET	MA	02554	10 GOLDFINCH DR
68	602		SEAQUIST LYNN H ETAL	C/O CHRISTOPHER HART	73 WHITCOMB AVENUE	HINGHAM	MA	02043	12 GOLDFINCH DR
68	603		SHROPSHIRE NORMAN & GERALDINE		608 S OLD MIDDLETOWN RD	MEDIA	PA	19063	14 GOLDFINCH DR
68	604		CHEW DAVID P & COULL PATRICIA A		16 GOLDFINCH DR	NANTUCKET	MA	02554	16 GOLDFINCH DR
68	629		WINGER DENNIS L & WALDMAN BARBARA L TRS		78 GOLD MINE DRIVE	SAN FRANCISCO	CA	94131	16 KITTWAKE LN
68	630		DUPREE SUSAN L & WILLIAM J TR		18 KITTWAKE LN	NANTUCKET	MA	02554	18 KITTWAKE LN
68	631		GIFFORD CHARLES H III & JUDY A		20 KITTWAKE LN	NANTUCKET	MA	02554	20 KITTWAKE LN
68	632		ALLARD CHARLES J JR	58 BLUEWATER	1/F HILLGROVE A3	HONG KONG			22 KITTWAKE LN
68	633		FREEDMAN DEBRA O TRUSTEE		4 STONY GATE OVAL	NEW ROCHELLE	NY	10804	24 KITTWAKE LN
68	637		ROBERTS NATHEN A & TRACY L TR	ROBERTS FAMILY TRUST	7 BLUEBIRD LANE	NANTUCKET	MA	02554	7 BLUEBIRD LN
68	638		CHOTKOWSKI GREGORY & MALONEY MARIBETH		5 BLUEBIRD LANE	NANTUCKET	MA	02554	5 BLUEBIRD LN
68	639		CARTY THOMAS P TRST ETAL		56 LEXINGTON AVE	NEEDHAM	MA	02494	3 BLUEBIRD LN
68	640		LUCAS MARK C ETAL	HOLTON ROTH SARAH	PO BOX 345	SASCONSET	MA	02554	1 BLUEBIRD LN
68	999	1	NHA PROPERTIES INC		PO BOX 3149	NANTUCKET	MA	02554	75B OLD SOUTH RD
Count:		69							

EGAN CYNTHIA ETAL
PO BOX 3012
NANTUCKET, MA 02584

DUGAN TIMOTHY E
72A OLD SOUTH RD
NANTUCKET, MA 02554

CRB LLC
PO BOX 3051
NANTUCKET, MA 02584

QUIJADA JOSE S & LAURA Y S
74A OLD SOUTH RD
NANTUCKET, MA 02554

ARNO JOHN & COLLEEN TRUSTEES
74A OLD SOUTH RD
NANTUCKET, MA 02554

SULLIVAN BRIAN TR
BRIAN SULLIVAN REV TRUST
56 HUMMOCK POND RD
NANTUCKET, MA 02554

LURVEY BRADFORD E
PO BOX 2422
NANTUCKET, MA 02584

EGAN CYNTHIA
PO BOX 3012
NANTUCKET, MA 02584

EGAN CYNTHIA ETAL
PO BOX 3012
NANTUCKET, MA 02584

BARRANTES JOSUE J & MAYA
4A WITHERSPOON DR
NANTUCKET, MA 02554

DESTEFANO TYLER S & RACHAEL C
4 HICKORY LN
IPSWICH, MA 01938

RENZULLI RODGER A & JOSEPH R
615 HICKMAN CIR
SANDFORD, FL 32771

WESTMOOR CLUB LLC
10 WESTMOOR LANE
NANTUCKET, MA 02554

RANSTATLER JOSEPH & KELLY
20 BROAD ST
NANTUCKET, MA 02554

WITHERSPOON DRIVE LLC
354 SALISBURY ST
WORCESTER, MA 01609

BOYLAN MICHAEL F & MARYELLEN FAY
10 WITHERSPOON DR
NANTUCKET, MA 02554

BENJAMIN ROBERT & DEBORAH G
1 DEERFIELD ROAD
POUND RIDGE, NY 10576

14 WITHERSPOON LLC
15 CHESTNUT ST
WAKEFIELD, MA 01880

OGREN PETER J
603 SALEM STREET
WAKEFIELD, MA 01880

QUIGLEY JENNIFER
PO BOX 388
SIASCONSET, MA 02564

RAISCH TODD & SUSAN M
245 N CENTRAL AVE
RAMSAY, NJ 07446

GRAY KELSEA B & JORDAN D
PO BOX 3369
NANTUCKET, MA 02584

DEAN APRYL R & JAMES M
11B WITHERSPOON DR
NANTUCKET, MA 02554

MORIN RICHARD A & PATRICIA A
2 ELIZABETH DRIVE
WESTBOROUGH, MA 01581

ELYSIAN PRIVATE EQUITY LLC
811 BIRDIE VIEW PT
SANIBEL, FL 33957

WEINER ANDREW D & CHRISTINEA TRST
WEINER FAMILY TRUST
79 WILD ROSE DR
ANDOVER, MA 01810

MCMASTER SUSAN J
PO BOX 3075
NANTUCKET, MA 02584

FORSGREN ALISON K
PO BOX 39
NANTUCKET, MA 02554

PAYOT OLIVIER & SILVEIRA LISA
3B WITHERSPOON DR
NANTUCKET, MA 02554

HAY KATHLEEN TR ETAL
WITHERSPOON DR OWNERS ASSC
TRUST
PO BOX 239
NANTUCKET, MA 02554

HAY KATHLEEN TR ETAL
WITHERSPOON DR OWNERS ASSC TRUST
P O BOX 239
NANTUCKET, MA 02554

BONNIE KEVIN J
1 GOLDFINCH DR
NANTUCKET, MA 02554

KUNCL RALPH W & NANCY L
851 HIGHLAND AV
REDLANDS, CA 92373

DAVISON BRETT & LAURA
61 OLD SOUTH RD # 131
NANTUCKET, MA 02554

MORNEAU BRETT S & SARAH
87 HINSDALE ROAD
NANTUCKET, MA 02554

KARBERG NOAH J & JENNIFER M
9 GOLDFINCH DRIVE
NANTUCKET, MA 02554

YEAKEL GLENN SCOTT & NANCY JEAN
PO BOX 422
MIDDLEBURG, VA 20118

ZINNY MARTIN G & RACHEL F
28 CHESTERTON RD
WELLESLEY, MA 02481

WELD KATE W
15 GOLDFINCH DR
NANTUCKET, MA 02554

LYONS JAMES R & PENNY A S TR
LYONS FAMILY REV TRUST
301 HARBOUR PLACE DR #215
TAMPA, FL 33602

FISHER SUSAN J TRST
BLUE WATER NOMINEE TRUST
19 GOLDFINCH DRIVE
NANTUCKET, MA 02554

21 GOLDFINCH DRIVE LLC
4 STILLMEADOW RD
WESTON, MA 02493

SIEBENECK HILLARY A & BOLLAM
JEREMEY TRS
BOLLAM FAMILY IRREVOCABLE TRUST
56 REGATTA VIEW DR
SARATOGA SPRINGS, NY 12180

LA ROCCO ANTHONY P & KAREN E
1 STONEWALL LN
MOUNTAIN LAKES, NJ 07046

12 BLUEBIRD LANE LLC
C/O GRANITY CITY ELECTRIC SUPPLY
19 QUINCY AVENUE
QUINCY, MA 02169

KELLEY JAMES A & SHARON B
1905 BELLE HAVEN RD
ALEXANDRIA, VA 22307

SOUTH MADISON REAL ESTATE LLC
25 HIGHLAND PARK VILLAGE STE 100-
516
DALLAS, TX 75205

EVEREST CHRISTOPHER
20 KELSEY RD
BOXFORD, MA 01921

DEUTSCH ELLEN ELIZABETH
4 MUIRFIELD LANE
BLOOMFIELD, CT 06002

LUYRINK JOHN
PO BOX 480
WEST BROOKFIELD, MA 01585

TRAPASSO ALEXA
C/O TRAPASSO ALEXA
15 EVERGREEN CIRCLE
STERLING, MA 01564

AVAMOVA ZHANETA A
61 OLD SOUTH RD
NANTUCKET, MA 02554

CAVALER MARIYANA S ETAL
4B GOLDFINCH DRIVE
NANTUCKET, MA 02554

ESTI JEANNE M
6 GOLDFINCH DR
NANTUCKET, MA 02554

NILDA PADISA-MOTTERSHEAD TR
NILDA PADISA-MOTTERSHEAD REV LIV
TRUST
309 CHAMBLISS ST
CHATTANOOGA, TN 37405

MARRERO ERICA L & ANDRE J
61 OLD SOUTH RD STE 201
NANTUCKET, MA 02554

SEAQUIST LYNN H ETAL
C/O CHRISTOPHER HART
73 WHITCOMB AVENUE
HINGHAM, MA 02043

SHROPSHIRE NORMAN & GERALDINE
608 S OLD MIDDLETOWN RD
MEDIA, PA 19063

CHEW DAVID P & COULL PATRICIA A
16 GOLDFINCH DR
NANTUCKET, MA 02554

WINGER DENNIS L & WALDMAN
BARBARA L TRS
78 GOLD MINE DRIVE
SAN FRANCISCO, CA 94131

DUPREE SUSAN L & WILLIAM J TR
18 KITTIWAKE LN
NANTUCKET, MA 02554

GIFFORD CHARLES H III & JUDY A
20 KITTIWAKE LN
NANTUCKET, MA 02554

ALLARD CHARLES J JR
5B BLUEWATER
1/F HILLGROVE A3
HONG KONG,

FREEDMAN DEBRA O TRUSTEE
4 STONY GATE OVAL
NEW ROCHELLE, NY 10804

ROBERTS NATHEN A & TRACY L TR
ROBERTS FAMILY TRUST
7 BLUEBIRD LANE
NANTUCKET, MA 02554

CHOTKOWSKI GREGORY & MALONEY
MARIBETH
5 BLUEBIRD LANE
NANTUCKET, MA 02554

CARTY THOMAS P TRST ETAL
56 LEXINGTON AVE
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LUCAS MARK C ETAL
HOLTON ROTH SARAH
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End of Packet