



Planning and Land Use Services

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

Date: August 30, 2022
To: Zoning Board of Appeals
From: Billy Saad
Land Use Specialist
RE: Staff Report for 09-08-22 ZBA Meeting

I. APPROVAL OF THE MINUTES:

- August 11, 2022

Staff reviewed the minutes. We recommend approval.

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

37-21 Kristina & Nicholas Amendolare

8 Bank Street

Williams

Sitting: SM, LB, JT, MO, EA

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

The applicant provided some of the requested materials from the May 12, 2022 meeting: drilling method, MRCE Report, details for protection of Middle Gully Rd stone wall abutting west elevation of 8 Bank St, list of home planning to survey, Blackwell survey of Gardners fence, landscape plan, updated drawings by architect, excavation quote.

If the Board is inclined to approve the application, you will need to make the finding that "such extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure and/or use to the neighborhood" and that "... the nonconforming setback distance is not made more nonconforming" and "that the extension will not be substantially more detrimental to the neighborhood than the existing nonconformity".

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

Reade

Sitting: SM, LB, ET, MO, EA

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).

STAFF suggests the Board carefully examine the exhibit materials submitted by the Appellant, including a narrative refuting the ZEO findings that the driveway is grandfathered.

ZEO Marcus Silverstein submitted dated photo documentation to substantiate his finding that the Appellant was in violation of the above-referenced Bylaw.

Mr. Silverstein will be present at the hearing.

The relevant sections of the By-law are:

Section 139-29.E(1)

(1) The Board of Appeals shall have the following powers:

[...]

(d) To hear and decide appeals from decisions of the Zoning Enforcement Officer.

Section 139-31.A(1) AN APPEAL TO THE BOARD OF APPEALS (OR TO THE ZONING ADMINISTRATOR IF AUTHORIZED TO HEAR SUCH APPEAL) MAY BE TAKEN:

By any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Commissioner [see § **139-25B(1)** above], the Zoning Enforcement Officer, or from any other administrative officer under the provisions of this chapter; or

139-31.E (3)

The **concurring vote of at least four members** of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official under this chapter.

09-22 Harris on Weweeder, LLC 50 Weweeder Avenue

Brescher

Sitting: SM, EA, MO, JT, MP

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 side yard setback from 10 feet to 2.7 feet only where it applies to the proposed pool cabana. Locus is situated at 50 Weweeder Avenue, shown on Assessor's Map 79 as Parcel 15 and upon Land Court Plan 42927-A. Evidence of owner's title is registered on Certificate of Title No. 27684 on file at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

The Board requested to view the property to assess the current state of the proposed cabana structure. The Board has also requested the applicant provide both Building and HDC files to layout a timeline for applications and approvals of structures located on the property.

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

10-22 Paul P. Moran & Jean M. Moran

4 Washington Ave

Santos

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-30 and 139-2 in order to install an in-ground swimming pool. Locus is situated at 4 Washington Avenue, shown on Assessor's Map 60.2.4 as Parcel 65 and upon Land Court Plan 14672-A. Evidence of owner's title is registered on Certificate of Title No. 27684 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

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

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

SWIMMING POOL - RESIDENTIAL

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

Further, Section 139-30 (Special Permits)

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

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

11-22 Benjamin Rubenstein & Arienne Bistany

51 Tennessee Avenue

Williams

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning By-law Sections 139-2 and 139-7A in order to install an inground swimming pool. Locus is situated at 51 Tennessee Avenue, shown on Assessor's Map 59.4 as Parcel 202 and as lot 138,147,150 upon Land Court Plan 3092-S. Evidence of owner's title is registered on Certificate of Title No. 27878 with the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).

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

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

SWIMMING POOL - RESIDENTIAL

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

Further, Section 139-30 (Special Permits)

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

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

Staff has included at the end of the staff report a previous decision with conditions imposed on a special permit for a pool in the VR district.

IV. ADJOURNMENT (VOTE WILL BE TAKEN)



ZBA
NANTUCKET
TOWN CLERK
2022 JUL 12 PM 3:10

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

Date: July 01, 2022

To: Parties in Interest and Others concerned with the Decision of
The BOARD OF APPEALS in the Application of the following:

Application No: 07-22

Owner/Applicant: 265 MADAKET ROAD LLC

Address: 265 MADAKET ROAD

Enclosed is the Decision of the BOARD OF APPEALS which has this
day been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision may be taken pursuant to Section 17
of Chapter 40A, Massachusetts General Laws.

Any action appealing the Decision must be brought by filing a
complaint in Land Court within TWENTY (20) days after this day's
date. Notice of the action with a copy of the complaint and
certified copy of the Decision must be given to the Town Clerk so
as to be received within such TWENTY (20) days.

Leslie Woodson Snell, AICP
Deputy Director of Planning/Zoning Administrator

cc: Town Clerk
Planning Board
Building Commissioner/Zoning Enforcement Officer

PLEASE NOTE: MOST SPECIAL PERMITS AND VARIANCES HAVE A TIME LIMIT
AND WILL EXPIRE IF NOT ACTED UPON ACCORDING TO NANTUCKET ZONING
BY-LAW SECTION 139-30 (SPECIAL PERMITS); SECTION 139-32
(VARIANCES). ANY QUESTIONS, PLEASE CALL THE NANTUCKET ZONING BOARD
OF APPEALS OFFICE AT 508-325-7587.

NANTUCKET ZONING BOARD OF APPEALS
2 Fairgrounds Road
Nantucket, MA 02554

Assessor's Map 59.4, Parcel 319
265 Madaket Road
Village Residential (VR)

Certificate No. 27365
Land Court Plan No. **3092-S**
Lots 118-123

DECISION:

1. At a public hearing of the Nantucket Zoning Board of Appeals held on Thursday, May 12, 2022, at 1:00 P.M, at 4 Fairgrounds Road, Nantucket, Massachusetts, the Board made the following Decision on the Application of **265 Madaket Road LLC**, the owner of record, ("Applicant"), 10 Tower Office Park, Suite 1, Woburn, MA 01801, in **File No. 07-22**.
2. Applicant is seeking relief by SPECIAL PERMIT pursuant to Nantucket Zoning By-Law Section 139-2 (Definitions and word usage – swimming pools) and Section 139-7A (Use chart). Applicants propose to construct a 20' x 36' residential swimming pool ("pool") in the rear section of their lot in Madaket. The property contains a single-family dwelling constructed in 2006 and is now situated in the Village-Residential ("VR") zoning district. Locus is situated at 265 Madaket Road, shown on Assessor's Map 594 as Parcel 319, as Lots 118-123 upon Land Court Plan 3092-S. Evidence of the owner's title is registered on Certificate of Title No. 27365 at the Nantucket County District of the Land Court.
3. Our decision is based upon the application and accompanying materials, photographs, Historic District Commission approval documents, representations, and testimony received at the public hearing. No oral opposition was presented at the hearing.
4. As shown on the undated plan entitled, "Gehlot – General Site and Locus Plan", prepared by Meerbergen Designs, there is substantial existing natural vegetation and landscaping that would screen the pool at the rear, front and sides of the lot from both the roadway and from abutting properties. The Locus is dimensionally conforming as to frontage and setbacks. Residential pools are allowed by Special Permit in the VR provided the pool meets certain specified criteria. The minimum required lot size in the VR is 20,000 square feet. The Locus has a lot size of about 36,000 square feet, which exceeds the minimum required. The pool and associated equipment will be sited more than 20 feet from any side or rear yard lot line as required. The pool will be sited to the rear of the lot surrounded by extensive vegetation and at a lower grade (16' elevation) than Madaket Road (20' elevation). Thus, the pool will have no impact on the surrounding neighborhood and will not be visible from Madaket Road, K Street, Oakland Street, or Tennessee Avenue. The Historic

District Commission approved the pool at its March 15, 2022 meeting in COA #2022-02-5766. Photographic evidence has been included in the packet.

5. Applicant, through its representative, presented testimony at the public hearings. Applicant is requesting Special Permit relief pursuant to Nantucket Zoning By-Laws Section 139-2 (definitions – residential swimming pool) and Section 139-7A (Use chart) and 139-30 in order to construct the residential swimming pool. Proposed conditions of a site plan showing installation of the pool, associated pool equipment, and landscaping improvements are attached herewith as “Exhibit A”.
6. In the VR zoning district, 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 finding that the pool use, and associated mechanicals, are in harmony with the general purpose and intent of the Zoning By-Law and provided that the project meets the following criteria:
 - a. The lot must meet the minimum lot size for the district, and
 - b. Side and rear yard setbacks of twenty (20) feet shall apply to the residential swimming pool and associated mechanical equipment.
7. Accordingly, by a **UNANIMOUS** vote, the Board **GRANTS** the **SPECIAL PERMIT** pursuant to Section 139-2A and Section 139-7A to allow the construction of a residential swimming pool upon the Locus in the VR Zoning District subject to the following conditions:
 - a. All chemical treatments of the pool water shall stop three weeks prior to any draining or discharging of the pool. If this is not feasible, the owner shall engage a professional company to discharge the pool water in a tanker and dispose of it at the Wastewater Treatment Facility.
 - b. If a municipal water source is not available, the owner shall engage a professional company to fill the pool, as needed.
 - c. The pool shall not be chemically treated between November 1 and May 1 of any given year.
 - d. The location of the pool, landscaping, and lighting shall be installed substantially as shown on the undated plan entitled, “Gehlot – General Site and Locus Plan”, prepared by Meerbergen Designs, a reduced copy of which is attached hereto as Exhibit A.
 - e. All work shall be done in substantial conformity with the Site Plan approved in conjunction with Certificate of Appropriateness No. 2022-02-5766, duly issued by the Nantucket Historic District Commission.
 - f. All mechanical equipment associated with the pool shall be located in the basement of the garage structure as shown in the attached plan.

EXHIBIT A

255 MADAKET ROAD LLC

LOCUS MAP - NOT TO SCALE (59.4/319)

The map displays a large red rectangular area in the center, representing the main building footprint. This area is surrounded by a dense collection of yellow house icons, each labeled with a parcel number. The map is titled "255 MADAKET ROAD LLC" and "LOCUS MAP - NOT TO SCALE (59.4/319)". The map shows a complex arrangement of parcels, with the central red area being the largest. The surrounding parcels are smaller and are labeled with numbers such as 39-110, 39-111, 39-112, 39-113, 39-114, 39-115, 39-116, 39-117, 39-118, 39-119, 39-120, 39-121, 39-122, 39-123, 39-124, 39-125, 39-126, 39-127, 39-128, 39-129, 39-130, 39-131, 39-132, 39-133, 39-134, 39-135, 39-136, 39-137, 39-138, 39-139, 39-140, 39-141, 39-142, 39-143, 39-144, 39-145, 39-146, 39-147, 39-148, 39-149, 39-150, 39-151, 39-152, 39-153, 39-154, 39-155, 39-156, 39-157, 39-158, 39-159, 39-160, 39-161, 39-162, 39-163, 39-164, 39-165, 39-166, 39-167, 39-168, 39-169, 39-170, 39-171, 39-172, 39-173, 39-174, 39-175, 39-176, 39-177, 39-178, 39-179, 39-180, 39-181, 39-182, 39-183, 39-184, 39-185, 39-186, 39-187, 39-188, 39-189, 39-190, 39-191, 39-192, 39-193, 39-194, 39-195, 39-196, 39-197, 39-198, 39-199, 39-200, 39-201, 39-202, 39-203, 39-204, 39-205, 39-206, 39-207, 39-208, 39-209, 39-210, 39-211, 39-212, 39-213, 39-214, 39-215, 39-216, 39-217, 39-218, 39-219, 39-220, 39-221, 39-222, 39-223, 39-224, 39-225, 39-226, 39-227, 39-228, 39-229, 39-230, 39-231, 39-232, 39-233, 39-234, 39-235, 39-236, 39-237, 39-238, 39-239, 39-240, 39-241, 39-242, 39-243, 39-244, 39-245, 39-246, 39-247, 39-248, 39-249, 39-250, 39-251, 39-252, 39-253, 39-254, 39-255, 39-256, 39-257, 39-258, 39-259, 39-260, 39-261, 39-262, 39-263, 39-264, 39-265, 39-266, 39-267, 39-268, 39-269, 39-270, 39-271, 39-272, 39-273, 39-274, 39-275, 39-276, 39-277, 39-278, 39-279, 39-280, 39-281, 39-282, 39-283, 39-284, 39-285, 39-286, 39-287, 39-288, 39-289, 39-290, 39-291, 39-292, 39-293, 39-294, 39-295, 39-296, 39-297, 39-298, 39-299, 39-300, 39-301, 39-302, 39-303, 39-304, 39-305, 39-306, 39-307, 39-308, 39-309, 39-310, 39-311, 39-312, 39-313, 39-314, 39-315, 39-316, 39-317, 39-318, 39-319, 39-320, 39-321, 39-322, 39-323, 39-324, 39-325, 39-326, 39-327, 39-328, 39-329, 39-330, 39-331, 39-332, 39-333, 39-334, 39-335, 39-336, 39-337, 39-338, 39-339, 39-340, 39-341, 39-342, 39-343, 39-344, 39-345, 39-346, 39-347, 39-348, 39-349, 39-350, 39-351, 39-352, 39-353, 39-354, 39-355, 39-356, 39-357, 39-358, 39-359, 39-360, 39-361, 39-362, 39-363, 39-364, 39-365, 39-366, 39-367, 39-368, 39-369, 39-370, 39-371, 39-372, 39-373, 39-374, 39-375, 39-376, 39-377, 39-378, 39-379, 39-380, 39-381, 39-382, 39-383, 39-384, 39-385, 39-386, 39-387, 39-388, 39-389, 39-390, 39-391, 39-392, 39-393, 39-394, 39-395, 39-396, 39-397, 39-398, 39-399, 39-400, 39-401, 39-402, 39-403, 39-404, 39-405, 39-406, 39-407, 39-408, 39-409, 39-410, 39-411, 39-412, 39-413, 39-414, 39-415, 39-416, 39-417, 39-418, 39-419, 39-420, 39-421, 39-422, 39-423, 39-424, 39-425, 39-426, 39-427, 39-428, 39-429, 39-430, 39-431, 39-432, 39-433, 39-434, 39-435, 39-436, 39-437, 39-438, 39-439, 39-440, 39-441, 39-442, 39-443, 39-444, 39-445, 39-446, 39-447, 39-448, 39-449, 39-450, 39-451, 39-452, 39-453, 39-454, 39-455, 39-456, 39-457, 39-458, 39-459, 39-460, 39-461, 39-462, 39-463, 39-464, 39-465, 39-466, 39-467, 39-468, 39-469, 39-470, 39-471, 39-472, 39-473, 39-474, 39-475, 39-476, 39-477, 39-478, 39-479, 39-480, 39-481, 39-482, 39-483, 39-484, 39-485, 39-486, 39-487, 39-488, 39-489, 39-490, 39-491, 39-492, 39-493, 39-494, 39-495, 39-496, 39-497, 39-498, 39-499, 39-500, 39-501, 39-502, 39-503, 39-504, 39-505, 39-506, 39-507, 39-508, 39-509, 39-510, 39-511, 39-512, 39-513, 39-514, 39-515, 39-516, 39-517, 39-518, 39-519, 39-520, 39-521, 39-522, 39-523, 39-524, 39-525, 39-526, 39-527, 39-528, 39-529, 39-530, 39-531, 39-532, 39-533, 39-534, 39-535, 39-536, 39-537, 39-538, 39-539, 39-540, 39-541, 39-542, 39-543, 39-544, 39-545, 39-546, 39-547, 39-548, 39-549, 39-550, 39-551, 39-552, 39-553, 39-554, 39-555, 39-556, 39-557, 39-558, 39-559, 39-560, 39-561, 39-562, 39-563, 39-564, 39-565, 39-566, 39-567, 39-568, 39-569, 39-570, 39-571, 39-572, 39-573, 39-574, 39-575, 39-576, 39-577, 39-578, 39-579, 39-580, 39-581, 39-582, 39-583, 39-584, 39-585, 39-586, 39-587, 39-588, 39-589, 39-590, 39-591, 39-592, 39-593, 39



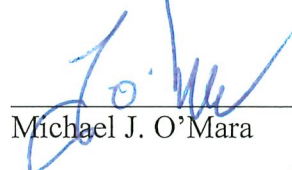
Assessor's Map 594, Parcel 319
265 Madaket Road
Village Residential (VR)

Book & Page C0027365/0
Land Court Plan No. **3092-S**
Lots 118-123

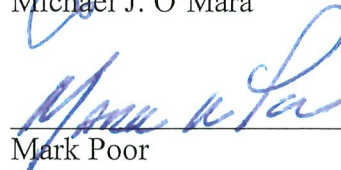
Dated: July 1, 2022


Susan McCarthy, Chair

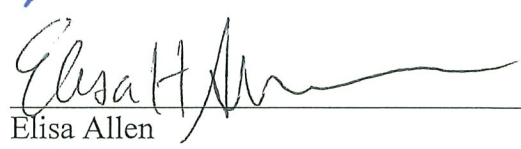
Lisa Botticelli



Michael J. O'Mara



Mark Poor

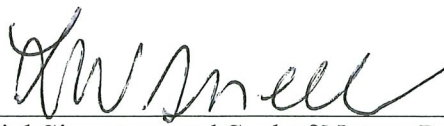


Elisa Allen

COMMONWEALTH OF MASSACHUSETTS

County of Nantucket,

On the 8 day of July, 2022, before me, the undersigned notary
republic, personally appeared Susan McCarthy, one of the above-
named members of the Zoning Board of Appeals of Nantucket, Massachusetts, personally
known to me to be the person whose name is signed on the preceding document, and
acknowledged that they signed the foregoing instrument as their free act and deed and
voluntarily for the purposes therein expressed.



Official Signature and Seal of Notary Public
My commission expires:

