



Planning and Land Use Services

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

Date: 9/27/2022
To: Zoning Board of Appeals
From: Billy Saad
Land Use Specialist
RE: Staff Report for 10-13-22 ZBA Meeting

I. APPROVAL OF THE MINUTES:

- September 8, 2022

Staff reviewed the minutes. We recommend approval.

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

Pg 9-88

12-22 John Esposito

14 Eat Fire Spring Rd

Quick

Applicant is appealing the building permit within the time allowed by G.L.c. 40A, § 15 for appeals under G.L.c. 40A, § 8: (1) as persons aggrieved by the decision of the inspector of buildings to issue building permits despite a violation of the Code, and (2) as persons aggrieved by the inability to obtain a stop-work order from the Building Commissioner pursuant to G.L.c. 40A, § 7 despite an acknowledgement that the Property owners are not in compliance with the Code. The Locus subject to the appeal is situated at 12 Eat Fire Spring Road, shown on Assessor's Map 20 as Parcel 62, and as Lot 84 upon Land Court Plan 6283-8, Sheet 2. Evidence of owner's title is registered on Certificate of Title No. 28818 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 3 (LUG-3).

STAFF recommends that the Board carefully review the materials submitted by the Appellant.

This is an Appeal of the Building Commissioner's determination to not issue a stop work order.

Building Commissioner Murphy will be present at the hearing. His letter, dated 8/16/2022, to Attorney Quick regarding request for a zoning enforcement against the property is included in the packet. Staff notes that a four-times penalty fee was administered by the Building Commissioner for commencing work without a permit. The total fee for building permit #BLDR-2022-06-3147 was \$6,764.00 (\$1,691.00 X 4). The property owner also reapplied to the Planning Board to change the siting of the 2nd dwelling. The revised Planning Board secondary dwelling approval is included in the packet.

The relevant sections of the By-law are:

Section 139-29.E(1)

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

[...]

(b) To hear and decide appeals from decisions of the Building Inspector.

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.

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

Pg 90-378

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".

Pg 379-447

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.

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

Pg 449-460

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.**

Staff notes that the proposal meets the standards. Sample conditions are included below for your review.

- 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 Site Plan provided.
- e. Exterior lighting in the pool area shall be in conformity with the provisions of Chapter 102 of the Town Code for outdoor recreational lighting.
- f. All work shall be done in substantial conformity with the Site Plan provided and in conjunction with the HDC Certificate of Appropriateness.

****Placement of mechanical equipment associated with the pool shall be subject to contingencies at the boards discretion****

Pg 461-474

14-22 Montana Heaven LLC

13 Arkansas Avenue

Cohen

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 13 Arkansas Avenue, shown on Assessor's Map 59.4 as Parcel 158. Evidence of owner's title is registered on Certificate of Title No. I-992, for Units 1-15 of Lot 639 on Land Court Plan 3092-64 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.

Staff notes that the proposal meets the standards. Sample conditions are included below for your review. The applicant has also included similar proposed site contingencies on the application.

- 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 Site Plan provided.
- e. Exterior lighting in the pool area shall be in conformity with the provisions of Chapter 102 of the Town Code for outdoor recreational lighting.
- f. All work shall be done in substantial conformity with the Site Plan provided and in conjunction with the HDC Certificate of Appropriateness.

****Placement of mechanical equipment associated with the pool shall be subject to contingencies at the boards discretion****

Pg 475-510

13-22 Brian and Lorri Ryder

3.5 Mary Ann Drive

Williams

Applicants are seeking Variance relief pursuant to Nantucket Zoning By-law Sections 139-16C (1) (Intensity regulations-setback) in order to construct a 704 SF one-bedroom apartment on second floor of an existing personal storage building with a 2-bay garage space on the first floor. Locus is situated at 3.5 Mary Ann Drive, shown on Assessor's Map 68 as Parcel 988 and as lot 786 upon Land Court Plan 16514-78. Evidence of owner's title is registered on Certificate of Title No. 27496 with the Nantucket County District of the Land Court. The site is zoned Commercial Trade Entrepreneurial Craft (CTEC).

The Applicants are seeking to reduce the 10-foot rear yard setback on the north side of the structure to approximately 6.7 feet in order to accommodate a second means of egress required by code for the proposed employee apartment. The applicant provided a detailed description of the proposed work, which is included in your packet. Structure was built in 2010, which is the same year the area was rezoned from Residential-Commercial-2 (RC-2) to CTEC. Rear yard setback requirements increased from 5-foot to 10-foot with the zoning change.

Section 139-16C(1) of the Bylaw is pasted below:

- (1) Notwithstanding the provisions of § 139-16C(4), the Board of Appeals may grant a special permit to reduce the ten-foot side yard setback in R-5 and the ten-foot side and rear yard setback in R-10, R-20 and SR-20 to five feet.

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

V. ADJOURNMENT (VOTE WILL BE TAKEN)
