



ZONING BOARD OF APPEALS

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Susan McCarthy (Chair), Lisa Botticelli (Vice chair), Elisa Allen (Clerk), Michael J. O'Mara
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, November 10, 2022

Public Safety Facility, 4 Fairgrounds Road, Community Room –1:00 p.m.

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

Called to order at 1:05 pm and announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Nicky Sheriff, Administrative Specialist; Terry Norton, Town

Minutes Taker

Attending Members: McCarthy, Botticelli, O'Mara, Allen, Mondani

Absent: Poor, Thayer

Agenda adopted by unanimous consent

Motion **Motion to Approve.** (made by: Botticelli) (seconded)

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. October 13, 2022

McCarthy – Typo on Item 12-22 O'Mara said “they” versus “the”

Motion **Motion to Approve as amended.** (made by: Botticelli) (seconded)

Vote Carried unanimously

II. OLD BUSINESS

1. 09-22 Harris on Weweeder, LLC

50 Weweeder Avenue

Brescher

CONTINUED to December 8, 2022

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

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: Botticelli) (seconded)

Vote Carried unanimously

III. NEW BUSINESS

1. 37-21 Kristina & Nicholas Amendolare

8 Bank Street

Williams

Applicants are seeking a Special Permit pursuant to Nantucket Zoning Bylaw Sections 139-30 and 139-33A in order 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, O'Mara, Allen, Mondani

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing Linda Williams

Michael Wilson Esq.

Angus MacLeod, Architect

Jeff Blackwell, Blackwell & Associates

Kristina Amendolare, owner

Wayne McArdle, engineer

Public Jeff and Ann Ramsey Gardner, 9 Broadway

Jon Fitch, for the Gardners at 9 Broadway

Jesse Richins & Walter Kaeck, MRC Engineering

Sarah Alger, Sarah F. Alger P.C 11 Broadway

Kathy Arvay, 11 Front Street

Lyn Filipski, President 'Sconset Civic Association

Margret Van Deusen, 7 Front Street

Pamela Suan, 2 Broadway

Lisa Soeder 13 Broadway

Anne Maletta, 15 Broadway

Kitt Murphy, 'Sconse Civic Association & 'Sconset Trust

Discussion

Williams – We are lifting this onto a new foundation, but we are not expanding the footprint.

Wilson – The zone requires a 5' setback; this has 3.5'. Asked that the 12 square feet (sf) intrusion going up 12" is a de minimis impact on the neighborhood.

Allen – Asked how deep they are going for the foundation.

MacLeod – It's a full basement with 8' clear ceiling height. The 1st floor elevation is at 18 with a mud wall at grade. It'll be about 10'4" to the bottom of the footings.

A. Gardner – The report says excavation is going down 17'.

MacLeod – The lot topography slopes up to the bank. His measurement is at the middle of the structure. The high part of the lot is about 4' higher.

Blackwell – The topographical survey provides existing threshold elevation of 19.72'. The depth below the existing threshold will demonstrate the final depth of the footings.

Discussion about the existing grade and the final grade.

Mondani – Asked if the roof plain weren't going up, would we be having this discussion.

Wilson – No. This isn't an expansion going up, it's an alteration; the configuration will be the same with no visual impact.

Amendolare – We purchased the home in 2020; we're looking to add a bedroom and the only way to go is down.

McArdle – They want a full basement; the site will be shored with a steel shoring system. The plant list has been submitted. The soldier piling system will be installed using vibration. We've proposed pre-construction surveys for all the neighbors. We will perform vibration monitoring during installation and a Geotech monitoring program. Someone from our office will monitor the site in real time; and we will have 2 seismographs installed and will be monitored at all times.

Allen – Asked how long the process will take until to put in the pilings, retaining walls and backfilling and pouring the foundation until they get to grade, and they can put a deck on the foundation.

Wilson – The general contractor can't be put out until the project is approved. Toscana has done an analysis of the site, but no one has been hired to do the work.

Mondani – Confirmed similar work with similar monitoring has been permitted.

McArdle – Listed projects with such close proximity to property lines that he has worked on. We are proposing to explore the retaining wall along Middle Gully Road: how deep, it's bearing, and how to protect it. Regarding monitoring, if we hit a threshold number, work will stop.

Wilson – Explained the liability of the contractor should the retaining wall start to fail.

Discussion about who's responsible for the liability insurance and its pertinence to the ZBA decision.

Wilson – Asked if the concern of Board member is that the excavation or vibrations could cause subsidence of the soil and collapse of the wall.

Allen – Her concern is the process in which these piles will be vibrated into place and how those vibrations will radiate out and affect the surrounding properties.

Wilson – Reviewed the monitoring that will be in place. Explained how the soil will be affected by the vibration.

O'Mara – Over the last few months, there's been a lot of discussion about the vulnerability of Middle Gully Road and maintaining the road's integrity. We never got an answer in terms of protecting the road.

Wilson – We will have seismic monitoring points above and below the road.

Botticelli – Asked the process should something happen.

McArdle – Work would stop until a plan is put in place to address the problem; the roadway and wall can take quite a bit of movement. The vibratory hammer is a Zero-Moment Hammer; it cancels out harmful startup/shut down vibrations. The vibrations would be a serious issue if we were working with stones or other blockages; we are talking about sand and the piles will go in within a couple of days.

McCarthy – There are a lot of people who are concerned about what will happen to their homes and the impact on emergency access.

McArdle – If there is any damage to the wall, work will stop, and repairs made.

O'Mara – Asked if it would be a good idea for the Town's engineer to inspect the work at the cost of the owner.

Snell – She can't recall a situation where the Town took that action. The Department of Public Works (DPW) would take steps to protect the road.

McCarthy – On the plan in the back triangle toward Beach Street, asked if the retaining to be removed will be replaced.

McArdle – That wall will not have to be replaced; the foundation will be in its place.

Open to public comment

Fitch – Referenced a letter opposing the request for special permit due to the significant risks the demolition of the structure will pose to the area. This is not about just 12sf; it's about the demolition of the structure. Asked for a denial of the request.

Wilson – This is not a demolition; it's an Historic District Commission (HDC) approved renovation project.

A. Gardner – There has been significant contributions from neighbors, geo-technical engineers, 'Sconset Civic Association, and others; reviewed those concerns. Insurance would only protect the Amendolare's; it would not protect the abutting homes should damage occur.

J. Gardner – Feels the potential risks are too great for a “trust-us” attitude. Little information has been made available. According to 1971 historic landmark data, this property is one of only 1000 remaining historic homes; abutting historic homes are fragile. Without adequate information, we and other abutters ask that the request be denied.

Richins – MRC’s primary concern is ensuring the design protects and stabilizes the wall. The cantilevered wall will deflect and cause some movement at the top of the slope, which is steep. All borings indicate loose soil. Zero-moment hammers can work, however, that’s with modern construction and the adjacent walls are old and brittle. No borings were done up the hill, so we don’t know if there are obstructions in the hill. Details of construction, sequencing, and erosion protection are necessary; we don’t have those details. Vibration limits are appropriate for modern, engineered walls, not old brittle walls. There should be an agreement plan in place in the event there is damage.

Alger – We’re very concerned about the safety of our property; we echo the concerns of the Gardners and their engineer. This property is served by an on-site septic system, which was repaired in 2020 and has a variance; it’s a 1-bedroom system. Nothing in the plan talks about safeguarding the septic or how they are going to get a new system for 2 bedrooms; she doesn’t think they will be able to have a 2-bedroom home. The project is clearly more detrimental to the neighborhood and won’t be successful. Urged the Board not to approve this permit.

McCarthy – If they can’t get the septic upgraded, they can’t move forward with the project.

Blackwell – One solution is to connect to public sewer. That is something the owner will have to secure despite the ZBA’s decision.

Mondani – Feels septic as well as insurance are not relative to the ZBA. There are other boards to permit those.

Arvay – We abut 8 Bank Street and Middle Gully Road. The retaining wall on the north of this site is on our property line. We would want our house inspected before work starts and have some recourse. We do not want any construction in the summer.

Filipski – There are no Town sewers in Cod Fish Park. This lot is one of only 2 lots that are only 1.238 acres, and it’s on a hillside location. The design to increase space above and below presents problems for neighbors and emergency access. An escrow account to address potential damage to neighbors was not provided. She has worked with DPW Director Stephen Arceneaux about the potential damage to Middle Gully Road. We find multiple issues with the depth they are going to and the ramifications for the area.

Kaeck – Reinforced Mr. Richins’ comments about the brittle wall holding up the road and adjacent properties.

Van Duesen – Our house is perched atop the ‘Sconset bank with no foundation and is supported by pilings of an indeterminate age. We have sheeting in front of the house, but it provides no support. The bank is fragile and eroding. We are concerned about the depth of excavation. This is a risky construction project proposed in a sensitive site where results could be catastrophic. We don’t know who the general contractor will be; it’s concerning we would have to chase the owners for reparations. Asked how many projects Mr. McArdle was involved in where the excavation was going into a coastal bank. Asked the Amendolares indemnify the neighbors and place funds in escrow for protection to the neighbors and the Town. Any owner within the area should be able to get a pre- and post-construction survey, not just the immediate abutters. Given climate change and sea-level rise, Codfish Park is under threat with the bank being the sole protection for the rest of ‘Sconset. The plan is to pump brown water away from the site but there is no stormwater plan for Codfish Park; there is no plan to capture and infiltrate the runoff on site. The intersection of Codfish Park Road and Beach Street doesn’t drain and can’t handle storm events. There is no application for demolition when we the neighbors think that will have to happen to complete this project. Asked for a denial.

Suan – She appreciates the technical evaluations. Those of us that own old historic homes without foundations, we hope people who come into the area will respect the history and architecture of the area. It concerns her a house this tiny and positioned as such will go from a 1-bedroom bungalow to a 2-bedroom home; that could open the door for a lot of the cute and quaint homes to be bought and renovated for rental use and thus lose the residential feel.

Soder – My house is 274 years old. Echoes the concerns of her neighbors and their attorneys, especially the impact of a 17’ excavation on the bluff and our homes. Hopes that if ZBA approves the height increase, you consider the fact this is 18’ above sea level and the fact that this is an emergency access road and construction could obstruct vehicular access. She feels any structure should harmonize with the neighborhood and site it is in. She can’t see a way, with all of the unknowns, that this cannot be more detrimental to the area.

O’Mara – One of the engineers brought up the groundwater at the depth they are going. Asked about that.

Wilson – The engineer report verifies groundwater is 5’ below the excavation; pumping is only to prevent concrete from going into the puddle after a rain.

McCarthy – Reviewed drainage as addressed in the previous application. She also has notes about moving the house.

McArdle – We believe the house is not being demolished; the house will be moved off site during construction of the foundation. It will be fully permitted and zoning compliant during construction.

Williams – It can’t leave Codfish Park; we haven’t explored where it will go because we don’t have a general contractor. Any time we block a street, we have to go to the Town.

Allen – Asked if there are pro-active plans for protection of the old wall and Middle Gully Road.

McArdle – Currently no. Some portions of the project will result in improved conditions of the wall and road. We will have to investigate drainage and the wall along Middle Gully. We can make the monitoring program more robust, come

up with a contingency plan, and stabilize the bank surface. We could move toward internal bracing to eliminate concerns about deflection.

O'Mara – We've spent a couple of hours on this application. He'd like to know more about mitigation of damage to the road and plans for contacting owners of homes who want their houses surveyed. Asked how they will ensure that if there is any damage to dwellings, the owner gets payback. There is insurance available for abutters' protection.

Botticelli – HDC has made the determination that the design is appropriate. Her concerns are stabilization of the bank and that the work won't be more detrimental to the neighborhood.

Mondani – Wants to understand what is meant by more detrimental to the neighborhood.

Snell – It's subjective; you have broad discretion to talk about that but advised against putting too much thought into non-ZBA issues. One thing the Planning Board sometimes does is require a Construction Management Plan and a construction timeline; people can view it.

Mondani – Would also like the applicant to talk to the Town about their concerns about Middle Gully Road

J. Gardner – The best plan is to not dig.

AGardner – We met with Richard Moore of DPW; they haven't responded to specific questions. There's a water pipe under Middle Gully; there's a pipe and leach field. According to the geotechnical report groundwater depth is 14.6' the excavation is 15' below. Insurance protects the owners, not anyone outside; questions why we should insure against catastrophic damage when there should be an escrow.

Maletta – She never received any notification; her neighbors, who were notified, told her. Her house is on boulders with partial cement footings; when trucks go down Broadway, the house shakes. She's never seen a hydrology report for 'Sconset. Any vibration or the way the sand moves or sits, it will fill in with water courses; that would cause her house to list. She fears the long-term effects from vibrations; she shouldn't be disadvantaged for this project in a very fragile system.

Murphy – Mr. Mondani mentioned that the objections seem to be more aesthetic. The objections are structural or to the excavation. All along the ZBA has asked questions, some of which have never been answered; that's why she is asking the project not be approved and not extended for another month.

Wilson – The Board is looking for more information; asked for a continuance to January 2023.

Motion **Motion to Continue to January 12, 2023.** (made by: O'Mara) (seconded)

Vote Carried unanimously

2. 0-22 Paul P. Moran & Jean M. Moran

4 Washington Avenue

Santos

CONTINUED to December 8, 2022

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

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: O'Mara) (seconded)

Vote Carried unanimously

3. 15-22 Christopher Quick

15 Delaney Road

Gagalis

CONTINUED to December 8, 2022

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

Discussion Not opened at this time.

Motion **Motion to Allow Continuance.** (made by: Botticelli) (seconded)

Vote Carried unanimously

4. 16-22 Dean & Alba Cestari

2 Nautilus Lane

Williams

Applicants are seeking Special Permit relief pursuant to Nantucket Zoning By-law Section 139-16C(1) (Intensity regulations – setback) in order to reduce rear yard setback from 10 feet to 8 feet to construct a 10' x 19' in-ground pool. Locus is situated at 2 Nautilus Lane, shown on Assessor's Map 67 as Parcel 176.2 and lot 166 upon Land Court Plan 34507-26. Evidence of owner's title is registered on Certificate of Title No. 28810 with the Nantucket County District of the Land Court. The site is zoned Residential 10 (R-10)

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

Alternates None

Recused None

Documentation File with associated plans, photos and required documentation

Representing Linda Williams

Dr. Dean Cestari, owner

Gary King, Waterscape

Public Jill Evarts, 65 B Fairgrounds Road

Discussion (3:24) **Williams** – This is for a small pool. A recent letter was “way off base”. She has provided photos confirming that the pool will not be visible. The immediate abutter to the pool is in favor of the request to reduce the setback to 8 feet. The finding is that this is in keeping with the intent of the zoning bylaw.

Cestari – We bought this house and would love to spend time at the house and think the pool will make it special. We emailed the neighbors to ensure they had no concerns. The extra 2' makes a big difference in the size of the pool.

O'Mara – Asked if there were any letters opposed to this.

McCarthy – It's from Jill Evarts.

Williams – She's not an abutter and her claims were spurious and irrelevant.

Cestari – The pool equipment will be next to the HVAC unit in the backyard and will be screened.

King – The pool equipment will not be in the setback. There is an area shown as a planter; that's where the equipment will go. There will be a fence around it.

Allen – Asked about the strip of grass between the edge of the coping and the walkdown.

King – The walkdown stairs are in the way of moving the pool closer to the house.

Botticelli – If the pool were narrower, it wouldn't need relief.

Mondani – The full provision isn't in our packet.

Snell – The wrong section is referenced. Read the bylaws that are pertinent allowing a reduction in the setback 139-16 C.1.

Botticelli – Questions why we have zoning setbacks, if we're going to always grant relief.

McCarthy – The zoning setbacks are considered reasonable for the zoning district, but she doesn't see reducing a setback for the installation of a pool.

Allen – Asked if there are other options for the pool not to intrude into the setback.

Botticelli – It could go elsewhere on the lot or be narrower.

Allen – It could be moved right up against the walkdown.

Mondani – This provision was put in place for when the zoning changes.

Botticelli – She agrees with Mr. Mondani. There are reasons to have zoning and feels it doesn't apply to wanting a pool.

Williams – This board has granted similar relief.

King – Right now the pool is very narrow; you can't put a pool up against the steps because you have run plumbing around it and access for a skimmer. We would like to have a walkway around the pool.

McCarthy – We've granted it more for a bump-out addition, but a pool is not a necessity.

Williams – She's concerned about the level of negativity from Town board members against pools. According to the definition in the Town Code, this is a structure.

McCarthy – She would have concerns approving a shed to intrude into the setback; enhancements don't carry the same weight as a residence.

Allen – Suggested redesigning so it doesn't need relief.

O'Mara – You can either continue or we can vote to deny.

Cestari – We've looked at every possibility. The length is within the setback. It's the width that intrudes.

Botticelli – A pool isn't essential and shouldn't intrude into the setback.

Williams – The neighbor most impacted by this has no concerns.

Evarts – Her concern is that's it's officially listed as a short-term rental property, and they are accepting 10 guests.

Botticelli – Being a short-term rental isn't her concern. She sees no reason to grant a special permit for this.

O'Mara – This is an opportunity to withdraw. It's getting late and it's time to vote for a withdrawal.

Cestari – This is a huge investment, and we are committed to taking care of our home. We are withdrawing the short-term rental notice from all the realtors; this is for our family.

Williams – Asked for a withdrawal without prejudice.

Motion to Approve the withdrawal without prejudice. (made by: Botticelli) (seconded)

Motion

Vote

Carried unanimously

IV. OTHER BUSINESS

1. None

V. ADJOURNMENT

Motion

Motion to Adjourn at 3:53 pm. (made by: Mondani) (seconded)

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