



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, John Brescher
Alternates: Mark Poor, Geoff Thayer, Jim Mondani

~~ MINUTES ~~

Thursday, December 8, 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 1:00 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, O'Mara, Allen, Brescher, Poor, Thayer, Mondani
Remote participant: Thayer
Absent: Botticelli

Agenda adopted by unanimous consent

Motion **Motion to Approve as drafted.** (made by: O'Mara) (seconded)

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

I. APPROVAL OF MINUTES

1. November 10, 2022

McCarthy – Page 9 her 1st comment: should read “zoning setbacks considered reasonable for the zoning district” and “but doesn’t see reducing a setback for the installation of a pool”. Her 3rd comment that page “intruding” should read “intrude.”

Motion **Motion to Approve as amended.** (made by: O'Mara) (seconded)

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

II. OLD BUSINESS

1.	37-21	Kristina & Nicholas Amendolare	8 Bank Street	Williams
2.	09-22	Harris on Weweeder, LLC	50 Weweeder Avenue	Brescher

Continued to January 12, 2023

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

Alternates Thayer

Recused Brescher

Documentation None

Representing None

Public None

Discussion None

Motion **Motion to continue to January 12, 2023.** (made by: Allen) (seconded)

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

III. NEW BUSINESS

1.	10-22	Paul P. Moran & Jean M. Moran	4 Washington Avenue	Santos
2.	17-22	Nantucket Cottage Hospital	16 Vesper Lane	Erickson
3.	18-22	Jeff McDermott, et al.	32 Monomoy Road	Anderson & Kreiger

Continued to January 12, 2023

Voting McCarthy, O'Mara, Allen, Brescher, Poor

Alternates Thayer, Mondani

Recused None

Documentation None

Representing None

Public None

Discussion None

Motion **Motion to continue 10-22, 17-22 & 18-22 to January 12, 2023.** (made by: Allen) (seconded)

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

4. 15-22 Christopher Quick, appellant 15 Delaney Road Anderson & Kreiger
- Applicant is appealing the Building Commissioner's September 21, 2022 determination pursuant to Zoning Code Section 139-31A-(1) and Massachusetts General Laws Chapter 40A, Sections 8 and 15. The Building Commissioner determined that use of the Property for short-term rentals ("STR") does not violate Nantucket's Zoning Bylaw. Locus subject to the appeal is situated at 15 Delaney Road, shown on Assessor's Map 30 as Parcel 635 and upon Land Court Plan 14695-C. Evidence of owner's title is registered on Certificate of Title No. 25803 with the Nantucket County District of the Land Court. The site is zoned Residential 1 (R1).
- Voting McCarthy, O'Mara, Allen, Brescher, Poor
- Alternates Thayer, Mondani
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing Nina Pickering-Cook, Anderson Kreiger, for the Quicks at 9 Delaney Road
- Public Paul Murphy, Building Commissioner
- Steven Cohen, Cohen & Cohen Law P.C, Bonny & Ralph Keith, 15 Delaney Road
- John Kichner, STR Workgroup
- Discussion (1:18) **Pickering-Cook** – Her clients feel the STR is not permitted under the Zoning Bylaw; they've been negatively impacted by the use of this house as exclusively STR. The onerous use is commercial; no one lives there. Appellate courts in Bourne and Lynnfield have rendered the opinion that these are commercial in nature. A full-time STR can't be incidental to a primary residential use if there is no primary residential use; this is different from someone who lives on the property and rents it out a couple of months a year. Cited relevant cases regarding incidental/accessory use as a STR.
- Murphy** - His letter is self-explanatory; he does not feel and STR violates the Zoning by-law.
- Cohen** – You only have to find whether or not Mr. Murphy's finding is reasonable. This is not exclusively an STR; his client uses the property frequently and submitted photos into the record to support this argument. There have been no nuisance or noise complaints against this property. Argues that it's use as a STR is not a secondary use. It's a mixed use allowed under the bylaw. Reviewed the bylaws which are related to and pertain to STRs and this property.
- Pickering-Cook** – We can agree the Nantucket Zoning Bylaw doesn't address the issue of STRs. She didn't hear Mr. Cohen cite any provision that allows STRs. Our argument is that this is a commercial use as supported by the SAP and Massachusetts Appeals Court. Our documentation shows this property is available for rental 365 days a year. The argument that STRs have no less impact than long-term rentals is countered by studies showing differently. She can provide that literature to the Board.
- McCarthy** – We've had this conversation before; in the last few decisions, we've been clear these are larger policy issues. Nantucket might or might not amend the Bylaw. We look at the Bylaw we have; she doesn't need to see literature about long-term effects because we don't change or make policy.
- Pickering-Cook** – You are a quasi-adjudicatory board and can take in evidence.
- Brescher** – Asked if there are updates from the STR group.
- McCarthy** – They don't have anything to give us yet; hopefully they will in the future.
- Kichner** – He's on the STR Group. What was decided is that we are going to submit an article for a Special Town Meeting; it will take until February to get accurate information from Granicus.
- Motion **Motion to uphold the Building Commissioner's determination that the use of the property as STR doesn't violate the Bylaw.** (made by: Allen) (seconded)
- Roll-call vote Carried 5-0//Brescher, Poor, Allen, McCarthy, and O'Mara-aye

IV. OTHER BUSINESS

- Approval of 2023 Meeting Schedule
- Motion **Motion to Approve the 2023 meeting schedule as proposed.** (made by: Brescher) (seconded)
- Roll-call vote Carried 5-0//Mondani, O'Mara, McCarthy, Allen, and Poor-aye
- Snell – There are several petitions that would impact the ZBA. They will be in the January packet for a recommendation to the Planning Board.

V. ADJOURNMENT

- Motion **Motion to Adjourn at 1:56 pm.** (made by: Mondani) (seconded)
- Roll-call vote Carried 5-0//Mondani, O'Mara, McCarthy, Allen, and Poor-aye

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

- 2023 Meeting Schedule

Submitted by:
Terry L. Norton