



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, January 12, 2023

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; Paul Murphy, Building Commissioner; William Saad, Land Use Specialist
Attending Members: McCarthy, Botticelli, O'Mara, Allen, Poor, Mondani, Brescher
Remote attendance: O'Mara
Absent: Thayer

Agenda adopted by unanimous consent

Motion **Motion to Approve the agenda.** (made by: Allen) (seconded)

Vote Carried unanimously

I. APPROVAL OF MINUTES

1. December 8, 2022

Motion **Motion to Approve as drafted.** (made by: Brescher) (seconded)

Vote Carried unanimously

II. OLD BUSINESS

- | | | | | |
|----|-------|---------------------------------------|--------------------|----------|
| 1. | 37-21 | Kristina & Nicholas Amendolare | 8 Bank Street | Williams |
| | | Continued to February 09, 2023 | | |
| 2. | 09-22 | Harris on Weweeder, LLC | 50 Weweeder Avenue | Brescher |
| | | Continued to February 09, 2023 | | |

III. NEW BUSINESS

- | | | | | |
|----|---------------|--|---------------------|--------------------|
| 1. | 10-22 | Paul P. Moran & Jean M. Moran | 4 Washington Avenue | Santos |
| | | Continued to February 09, 2023 | | |
| 2. | 19-22 | Pacaso, Inc | 11A Meadow Lane | Panebianco |
| | | Continued to February 09, 2023 | | |
| 3. | 17-22 | Nantucket Cottage Hospital | 16 Vesper Lane | Erickson |
| | | Continued to February 09, 2023 | | |
| | Voting | McCarthy, Botticelli, O'Mara, Allen, Brescher | | |
| | Alternates | Poor, Mondani | | |
| | Motion | Motion to Continue 37-21, 09-22, 10-22, 19-22, and 17-22. (made by: Botticelli) (seconded) | | |
| | Vote | Carried 4-1//Brescher abstain | | |
| 4. | 18-22 | Jeff McDermott, Et Al | 32 Monomoy Road | Anderson & Kreiger |
| | | Applicants are appealing the Building Commissioner's October 31, 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 32 Monomoy Road, shown on Assessor's Map 54 as Parcel 242 and upon Land Court Plan 14974-C. Evidence of owner's title is registered on Certificate of Title No. 25823 with the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1). | | |
| | Voting | McCarthy, Allen, Brescher, Poor, Mondani | | |
| | Alternates | None | | |
| | Recused | None | | |
| | Documentation | File with associated plans, photos and required documentation | | |
| | Appellants | Nina Pickering-Cook, Anderson & Kreiger, for the appellants | | |
| | | Matthew Westfall, 30 Monomoy Road | | |
| | | Robert Landreth, 4 Berkeley Avenue | | |
| | | Mark Wilmot, 33 Monomoy Road | | |
| | | Hale Everets, 46 Monomoy Road | | |

Frnaci Neely, 5 Saltmarsh Road

Stephen Ketchem, 34 Monomoy Road

Copley Reps John Hofmann, Gilman, McLaughlin & Hanrahan, LLP.

Discussion (00:02:59)

Pickering-Cook – 32 Monomoy Road is a 6-bedroom family home used exclusively as a STR. A past decision was that this property doesn't violate zoning bylaws given it is residential; however, the only use of this property is as a business investment through the Copley Group, LLC. Her clients have suffered are at the hands of the STR. No one lives at the property or rents it for more than 30 days at a time. She will address the legalities.

Two appellate courts have decided that properties that charge weekly rental rates by contract through a 3rd party are commercial transactions and not permitted in a residential area. This is part of a business portfolio with no personal use. There is no primary use by the owner as a residence. This board believes use as a STR would be decided at Town Meeting; however, this board is charged with enforcing the current bylaw and binding State law determines that STR is commercial. Article 39 from last Town Meeting, Copley Group indicated it legalized STR use in residential zones; that is not true. She would like the Board to hear from her clients.

Westfall – He's a voting resident of Nantucket and 30 Monomoy is their primary residence. His observations of the impacts are based on off-season residence and rents it during the summer season. The Copley rental is different; in 2016, they began renting this property. Since then, we have experienced criminal trespass, illegal cutting of our trees, excessive noise, inebriation, and a party with over 200 underaged drinkers to which the Police responded. We've experienced these in the off-season. Detailed the trespass-illegal cutting incident and the cost of damages; he will share our demand letter to Copley Group President Norman Levinson dated 20 October 2016. Detailed an incident from 26-28 May 2018 that resulted in neighbors calling the police; he will share his letter to the Copley Group dated 31 May 2018. There is ample evidence of recurring irresponsible behavior of the renters and apathy of the Copley Group. Last Spring 2022 he cleaned up debris such as pumpkins that dated to October 2021. We have found children running through our yard; we've had unattended children entering through our gate into the pool area. Explained how this corporate-owned property is an anomaly within a close-knit residential neighborhood. My family and I are aggrieved parties and offer compelling factual evidence of that harm. We ask that the ZBA order cessation or operations.

Landreth – Our son and daughter-in-law live in our house year round. Supports Mr. Westfall's comments. It seems the Town Bylaw is not ambiguous regarding commercial use in a residential neighborhood. If this type of commercial ownership is allowed to continue, he wonders how long until 1-out-of-4 or -5 homes is an STR and what that will do to residential neighborhoods.

Wilmot – All things mentioned are our issues.

Murphy – The use as an STR doesn't violate code; it's still a residential use and he won't take action against the property owner.

Hofmann – We submitted a memo that reiterates points we've made before. We think the ZBA should deny the appeal and affirm Mr. Murphy's decision. The operation of the private home as an STR is for private, residential use and is consistent with the long-standing tradition of STRs on Nantucket. Explained how STRs play an important part in Nantucket's tourism industry, which would suffer without STRs. Regarding the case Pickering-Cook referenced, the State Appeals Court (SAC) made its ruling with the caveat that other towns are different with different bylaws regarding STRs. We feel the articles, both rejected and adopted by Nantucket in prior ATMs, are relevant; and prior decisions of this board are consistent with the Bylaw and recognize the importance of the Bylaw. Mr. Westfall admitted that he rents his house out as an STR showing how common it practice is. The ZBA should be mindful of the rejection of Article 90 and adoption of Article 39, which set up registration of STRs and set up the workgroup to devise regulations. Asked the ZBA to deny the appeal.

Mondani – Asked for an explanation of the standing argument and aggrieved party issue.

Hofmann – We noted that standing is a requirement, which neighbors have to prove; we've included that argument because we feel it's still relevant. The Board needs to show aggrievement; we laid out those requirements. Mr. Westfall might have standing for this purpose of this Board; it seems to be the practice of this Board to skip past standing and decide on other points.

Everets – It seems this is not an owner occupied home and a business is being run out of the home. Asked why that is not considered an accessory use; it seems it's run as a for-profit business.

Murphy – It's still considered residential use in that the activity is the same as for an occupied home. He doesn't believe this is a commercial use.

Neely – She bought into the neighborhood because it was solely residential. This matter is not identical to the ZBA's prior decisions; in the past, the ZBA has not considered a property that is solely for STR purposes. To argue that it's residential, one could build a hotel and call it residential. The Monomoy neighborhood has spoken *en masse* against purely commercial STRs in its neighborhood. STRs like this erode the fabric of the neighborhood. Cited problems she's encountered with the property. Feels it's inequitable to place a burden to the neighborhood to become "vigilantes" and have to call the aid of the understaffed NPD to rein in the behavior renters. Harm has been caused to Mr. Westfall's property; harm that the Copley Group ignored. AS for limiting STRs damaging Island tourism, our service providers are already overburdened. Asked the ZBA to not let Copley Group override the neighborhood.

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Ketchum – We spend the better part of August on Nantucket. During the rental season, he has had to respond to renters regarding noise, trash, vehicles parked on his property, and call the police. It's an unyielding issue for me and my neighbors; I agree with what other residents have said.

McCarthy – We've had this type of appeal before us and been consistent in our decision.

Motion **Motion to Deny the appeal and affirm the BC's decision.** (made by: Allen) (seconded)

Vote Carried 5-0//Poor, Allen, McCarthy, Brescher, and Mondani-aye

5. 20-22 Steven L. Cohen & Christopher P. Choma, Trust 29 Monomoy Road Cohen

Applicant is seeking Variance relief pursuant to Zoning By-law Section 139-32 for a waiver from the ground cover provision in Section 139-16 in order to construct an accessory structure of up to 780.25 SF. Locus is situated at 29 Monomoy Road, shown on Assessor's Map 54 as Parcel 209 and as Lots 10 and 11 on Land Court Plan 10937-C. Evidence of owner's title is registered on Certificate of Title No. 22883 at the Nantucket County District of the Land Court. The site is zoned Limited Use General 1 (LUG-1).

Voting McCarthy, Botticelli, Allen, Brescher, Mondani

Alternates Poor, O'Mara

Recused None

Documentation File with associated plans, photos and required documentation

Representing Steven Cohen, Cohen & Cohen Law P.C

Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for Joann Bennett at 27 Monomoy Road

Discussion (00:55:30) **Cohen** – His clients have an agreement to purchase 5400 square feet (sf) of land from 14 Brewster Road with Orleans Road (Lot F) separating the two making it impossible to have contiguous land. The Chomas have been waiting 7 years for the Yard Sale of the road to take place. The Variance request is temporary until such time as the of 14-Brewster land is purchased and the approximately 6600 sf of land from the Yard Sale takes place.

Botticelli – It would be helpful to have a surveyed site plan showing the proposed final lot.

McCarthy – Asked why there are here now when there appears to be several steps before this can happen.

Cohen – Two steps that need to happen. His client's contract to purchase the land from 14 Brewster is contingent upon acquiring relief from the ZBA. Once they have that relief, they will purchase the land; once they acquire the section of Orleans Road, they will become 50% more compliant.

McCarthy – Asked why the land purchase is contingent upon the relief; you don't need the variance relief to buy that land.

Cohen – The land will be useful once they purchase the 5400sf and the yard sale. Been waiting since 2014 for the Yard Sale to take place. The proposed structure is a garage not intended for residential use and to go on Monomoy Road.

McCarthy – This would create a very irregular lot just for a garage.

Botticelli – The hard part is that the perceived density will be very noticeable; no one will make the connection they own additional land. It's hard to grant relief at this time.

O'Mara – Asked if there is a good "to-date" for the contract. At this rate you could be dealing with successors to the 14 Brewster property.

Cohen – The contract is not open ended, but everyone would like to close; that's why they are asking for relief. Explained that once the land is purchased, the successor could not opt into the Yard Sale.

Brescher – His big concern is the lack of a binding agreement between the Chomas and the Russells as it relates to 5400sf. We also haven't seen an agreement between the Russells and Town saying they don't want Lot F; they need to actively disclaim any interest they have. Also, regarding Lot F, once its value exceeds \$30,000 it becomes eligible for a Request for Proposal (RFP) and any abutter would have the right to bid. He feels this application is very premature; there are a lot of steps that have to happen to make this possible

Cohen – He could provide confirmation from the Russells that a contract is in place and that they disclaim any interest in Lot F. He'd like to take this feedback to his client and talk to the Town about the Yard Sale in hopes of working out a conditioned approval.

Reade – The Yard Sale situation is highly speculative and been pending for a long time. The process once it comes out of the land court will go through the Real Estate Assessment Committee, which makes a recommendation and then it goes before the SB. Not every case brought to the Select Board has resulted in approval of the Yard Sale. You're being asked for a variance, which requires a hardship related to the property; it's hard to see the hardship to the owner at this time. They have 204 sf upon which they could build a garage as a matter of right. If the Russells don't elect to purchase the portion adjacent to their property, 1st preference goes to the abutter directly across the road, which is his client's property; she would want to acquire it. Asked the ZBA to deny this.

Botticelli – When they come back, we need a proposed plan, so we know what we're voting on.

Mondani – He's doesn't think any amount of information can be convince him on this.

Cohen – Asked for a continuance to the next meeting.

Motion **Motion to Continue to February 9th.** (made by: Botticelli) (seconded)

Vote Carried 5-0//Allen, Botticelli, McCarthy, Brescher, and Mondani-aye

6. 21-22 Jennifer Bowman 14 Starbuck Road Williams
- 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) in order to construct a small residential spa. Locus is situated at 14 Starbuck Road, shown on Assessor's Map 60 as Parcel 114 and as Lots 296 and 850 on Land Court Plan 3092-19 and 3092-103. Evidence of owner's title is registered on Certificate of Title No. 27039 at the Nantucket County District of the Land Court. The site is zoned Village Residential (VR).
- Voting McCarthy, Botticelli, O'Mara, Allen, Brescher
- Alternates Poor, Mondani
- Recused None
- Documentation File with associated plans, photos and required documentation
- Representing Linda Williams
- Public Susanna & Emmett Sheehan, 54 Starbuck
- Discussion (01:25:35) **Williams** – This spa is 8X12X3.5. Spas were exempt from a special permit until last year. The Historic District Commission (HDC) approved this due to lack of visibility; it's in the back of the lot.
- McCarthy** – We can approve this conditioned upon the HDC approval.
- O'Mara** – Asked if the Town added the maximum gallonage to the Article.
- Snell** – There is no maximum gallonage. She's working on an article that would change how pools and spas are treated.
- Williams** -A spa doesn't require a fence or a pool cover; this is simply a spa.
- S. Sheehan** – Confirmed this is an above-ground hot tub.
- Poor** – On the HDC Certificate of Appropriateness (COA), there is nothing about the deck or its height; it seems the deck isn't approved.
- Williams** – The deck was approved as part of the house.
- S. Sheehan** – The exterior lighting will be visible; wants the record to reflect that the exterior lighting will be down-lit and turned off at 10:00 pm.
- Williams** – There is no additional lighting related to the spa.
- McCarthy** – We can say the only lighting will be that required for safety. Asked if everyone read the email from Bruce Mandel.
- Allen** – Asked if the spa will be a cover (yes).
- Botticelli** – Mr. Mandel is asking that any mechanical equipment be enclosed in a sound-proof enclosure with a roof.
- Williams** – You can't put a roof over pool equipment.
- McCarthy** – We had an application where we discussed noise cancelling.
- O'Mara** – We discussed that for the pumps. Noise reduction is available for a spa as well; the heater will be on a lot. They will need an insulated cover; the best one for child protection would be an auto cover with insulation. Equipment used for a spa is typically louder than that for a pool.
- McCarthy** – You can put a roof over the pool equipment.
- Williams** – This spa has less intense equipment than a pool on a large lot. She has used sound-dampening boards on a smaller lot; this lot and the neighbors are 23,000 square feet. This will have a solid, vertical-board fence; we are willing to add sound dampening to the fence. The neighbor closest to the equipment has not commented.
- O'Mara** –The equipment for a spa is typically louder than for a pool; he's sure they make blowers for spas.
- McCarthy** – One condition is no chemical treatment between Sept and May; however, Condition C doesn't apply since spas are used during the cooler months.
- O'Mara** – There's a blower and a pump on a spa; they make sound dampeners for both.
- McCarthy** – Condition C will cover sound dampening and Condition D will state no external lighting related to the spa other than safety and any outdoor lighting will comply with Chapter 102.
- E. Sheehan** – This is a "mini" gunite pool with an auto cover. We're okay with this with the Conditions.
- S. Sheehan** – This is a very open and quite area; noise is a concern.
- McCarthy** – Reviewed the conditions. To be 8X12 flush with the deck.
- Mondani** – Mr. Mandel asked that ZBA address removal of mature vegetation.
- McCarthy** – ZBA can require a landscaping plan; it would be helpful to understand what that plan is. We can say that existing vegetation as shown on HDC approved plan will remain.
- Mondani** – Another issue is regarding the access to the road.
- McCarthy** – We did that for an application where there was another access that was used for construction access; that isn't happening here.
- Motion **Motion to Grant per noted conditions.** (made by: Botticelli) (seconded)
- Vote Carried 5-0//O'Mara, Allen, Botticelli, McCarthy, and Brescher-aye

IV. OTHER BUSINESS

1. Discussion of Citizen Warrant Zoning Articles for ATM 2023
 - a. Article 8: Zoning Bylaw Amendment – Swimming Pool – Residential, Campbell Sutton
Snell – This would change the requirements for pools by changing the side and rear setbacks to 20'. If that were to be approved, someone would have to come to ZBA for a variance. This would include some of the smaller districts.
Botticelli – She'd support increase setbacks for pools.
Mondani – If it were passed, we'd have more variance requests.
 - b. Article 16: Zoning Bylaw Amendment – Swimming Pool – Residential, Linda Williams
Snell – This would change the special permit granting authority to the Planning Board.
Mondani – He supports this. To him it feels like pools are outside ZBA's authority. Wonders the reasoning behind this change: is Planning Board more lenient?
McCarthy – To her Planning Board deals with large scopes while we deal with neighborhoods. We ask for more detailed information.
Snell – The Special Permit for pools in the VR districts was a compromise since residents were looking for a total ban.
Mondani – He wonders if it's worth having a sub-group looking at pools since we struggle.
Allen – We could create a boilerplate set of conditions. We should also connect with HDC regarding the covers.
McCarthy - The recommendation would be to oppose this change.
 - c. Article 22: Zoning Map Change – Intensity Regulations – Exception for frontage, Linda Williams
Snell – This would reduce the special permit frontage in commercial districts to 20' and change the granting authority to the Planning Board. In this case, the Planning Board would make more sense.
 - d. Article 23: Zoning Map Change – Intensity Regulations – Setbacks, Linda Williams
Snell – This would change the special permit granting authority to the Planning Board for the setback reduction. Recommends this stay with the ZBA.
McCarthy – This is a more local issue.
 - e. Article 25: Zoning Bylaw Amendment – Pre-Existing Non-Conforming Status of Lots, Emily Molden
 - f. Article 26: Zoning Bylaw Amendment – Lots Created Under MGL 41-81L, Emily Molden
Snell – There have been developments on these so would like to hold them for a later meeting.
2. O'Mara – Commended the Select Board for their appointment of John Brescher to the ZBA.

V. ADJOURNMENT

Motion **Motion to Adjourn at 3:22 pm.** (made by: Mondani) (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