



Planning and Land Use Services

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

Date: 01/09/2023
To: Zoning Board of Appeals
From: Billy Saad
Land Use Specialist
RE: Staff Report for 01-12-23 ZBA Meeting

I. APPROVAL OF THE MINUTES:

- December 08, 2022

Staff reviewed the minutes. We recommend approval.

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

37-21 Kristina & Nicholas Amendolare <i>Continued to February 9, 2023</i>	8 Bank Street <i>Sitting: SM, LB, MO, EA, JM</i>	Williams
09-22 Harris on Weweeder, LLC <i>Continued to February 9, 2023</i>	50 Weweeder Avenue <i>Sitting: SM, EA, MO, GT, MP</i>	Brescher

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

10-22 Paul P. Moran & Jean M. Moran <i>Continued to February 9, 2023</i>	4 Washington Ave	Santos
---	------------------	--------

Pg 10-119

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).

This is an Appeal of the Building Inspector's determination that the use of the property for Short Term Rentals (STRs) does not violate the Zoning By-law. The Appellant's Addendum/Memo filed with the Appeal is on Pages 21-27 of the packet, the central premise of which is that exclusive use of a property for STRs constitutes a commercial use in a residential zone and would be more properly characterized as a "Transient Residential Facility" and therefore creates a compliance issue with the By-law. The letter from Paul Murphy dated 9/21/2022 is on Page 20 of the packet. [REDACTED]

M.G.L. Chapter 40A Section 8.

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

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.

The Board has reviewed similar appeals in the past and has maintained that "as a regulatory body rather than a policy-making body, they are charged with determining whether the use could be construed as commercial according to the Zoning By-law as it currently exists". The Board has also stated that "Town Meeting is the appropriate forum to address and regulate STRs in order to establish more specific guidelines regarding what constitutes an acceptable threshold for this type of use".

19-22 Pacaso, Inc

11A Meadow Lane

Panebianco

Continued to February 09, 2023

Applicant is appealing the Zoning Enforcement Officer's determination regarding transient residential facilities. Locus subject to the appeal is situated at 11A Meadow Lane, shown on Assessor's Map 41 as Parcel 448.1 Evidence of owner's title is recorded in Book 1911 and Page 44 with the Nantucket County Registry of Deeds. The site is zoned Residential 20 (R-20).

17-22 Nantucket Cottage Hospital**16 Vesper Ln****Jeanette Ives Erickson**

Applicant is seeking Variance relief pursuant to Nantucket Zoning ByLaw Section 139-16 in order to divide an existing lot, which is nonconforming as to frontage, into two lots, both of which will not meet the required frontage of 50 feet in the CN district. Both lots will be accessed via an easement from Vesper Lane. Locus is situated at 16 Vesper Lane, shown on Assessor's Map 34 as Parcel 72 and shown as Lot 1 with the Nantucket County Registry of Deeds. Evidence of owner's title is recorded in Book 184 and Page 112 with the Nantucket County Registry of Deeds. The site is zoned Commercial Neighborhood (CN).

The Applicant is seeking Variance relief from the required 50' of frontage within the Commercial Neighborhood (CN) zoning district. The locus is an oversized rear lot with no existing frontage. It is accessed by an easement through Gouin Village. Applicant is proposing to divide the lot into 2, one of which will be retained by Nantucket Cottage Hospital and the other conveyed to the Affordable Housing Trust Fund for the development of affordable housing. An access easement for the AHTF lot will be provided through Gouin Village and over the NCH site.

In Appendix A (Pages 123– 124 of the packet), the Applicant has made a compelling argument as to why Variance relief may be granted.

20-22 Steven L. Cohen & Christopher P. Choma, Trs. 29 Monomoy Rd Nominee Trust, 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).

The applicant provided a detailed description of the proposal, which is included in your packet. The request is to grant a variance to allow the ground cover of the property to TEMPORARILY increase above 7% pending the finalization of a land conveyance from the Town of Nantucket.

This is a unique situation given the layout of the lots abutting Orleans Road, see "Roadway Acquisition Plan" on Page 140 of the packet. The acquisition of Lot "F" has been stalled at Land Court and therefore has not been legally acquired by the owner of 14 Brewster Road. Additionally, the owner of 14 Brewster Road would be required to obtain a written agreement with the Board of Selectman to finalize any such sale with the applicant. While the acquisition of Lot "F" may be forthcoming to the applicant, the request for Variance is premature.

The finding the Board will need to make to approve the variance is that "owing to circumstances related to 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 a 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".

Staff does not recommend approval of the request at this time.

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).

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

Swimming pools and spas 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 or hot tub/spa 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 board's discretion****

IV. OTHER Pg 176-207

Discussion of Citizen Warrant Zoning Articles for ATM 2023

Citizen articles of importance to the ZBA have been included in your packet. Please review as you may want to make recommendations to the Planning Board.

V. ADJOURNMENT (VOTE WILL BE TAKEN)
