



## ZONING BOARD OF APPEALS

2 Fairgrounds Road  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

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

### ~~ MINUTES ~~

**Thursday, February 09, 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 1:05 pm and announcements made by Ms. McCarthy

Staff in attendance: Leslie Snell, Deputy Director of Planning; Nicky Sheriff, Administrative Specialist; William Saad, Land Use Specialist

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

Absent:

Agenda adopted by unanimous consent

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

Vote Carried unanimously

### I. APPROVAL OF MINUTES

1. January 12, 2023

McCarthy – Error in attending members Thayer was absent and include John Brescher as in attendance.

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

Vote Carried unanimously

### II. OLD BUSINESS

1. 09-22 Harris on Weweeder, LLC

50 Weweeder Avenue

Brescher

**CONTINUED to March 9, 2023**

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

2. 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

Public Attorney Malgorzata Mrozek 9 Broadway

Jeff and Ann Ramsey Gardner, 9 Broadway & 9 Front Street

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

Anne Relly, 7 Front Street

Discussion **Williams** – I believe we are down to method; I believe the best way to do it is to turn it over to the engineer Wayne McArdle.

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**McArdle** – What we found was that Middle Gully Road was a rubble wall- no footing, no foundation and sitting basically at grade or just below grade. Up until this point we thought that the concrete block retaining wall ended at the northwestern corner of the existing building, but we've discovered that it extends down to the entire length of the building and returns to the southwestern corner. Since our last meeting a lot of concerns raised by the neighbors particularly about vibrations from the installation of the shoring system. The Amendolare's have agreed to drill the soldier piles so vibrations will not be a concern. The other thing that was mentioned by the consultants was deflection to the shoring system which the Amendolare's have also agreed to brace the top of the shoring system.

**Allen** – Will those be permanent?

**McArdle** – Permanent.

**Botticelli**- Is there a plan that shows that?

**McArdle**- We are going to have to work with the Geo Technical Contractor to come up with some ideas and design.

**Botticelli**- Where is your plan that shows where the soldier piles are drilled in?

**McArdle**- There are no plans- they will be drilled into the face- that existing concrete block retaining wall and they will go back into the slope.

**Botticelli**- How do you get in there if it's so close to the building?

**McArdle**- The house is going to be moved off site.

**Allen**- So will we see the tops of the metal steel sheets?

**McArdle**-No, everything will be cut off and below grade.

**Allen** - If this were to pass today when will construction start?

**McArdle**- In the Fall.

**McCarthy**- Are we still concerned with the intrusion of the shed roof corner?

**Botticelli**- I wasn't concerned about that in terms of that raising the foot that it raises, which is the only part that needs relief.

**McCarthy**- We had concerns about how the bank would be supported in storms. Does this explanation address that? Michael, I think that was one of your concerns.

**O'Mara**- I'm confident that would be addressed- if there's any damage to the bank or that rubble stone wall, I think the applicant already said that they would take care of that. We've asked for a lot of information on this and in my opinion, they've done everything we've asked them to do.

**Botticelli**- Do you know how deep the footing is with this concrete retaining wall?

**McArdle**- We don't-the face of the existing retaining wall is what we are focusing on. Depending on how the tie backs will be put in we may have to reinforce that face of the wall anyway- whatever it is will be permanent.

**Wilson**- All of this is going to be addressed with through the engineer's plan working in conjunction with the geo technical firm which will have to be reviewed and approved by the building commissioner including the building department's engineers.

**Allen**- May I make a motion to approve?

**McCarthy**- Well, you can but I think we are not quite there yet.

**Mrozek**- I would request that the ZBA deny the special permit of this application. In order to approve this special permit, the ZBA must find that the proposed construction is not substantially more detrimental than the existing structure to the neighborhood. There remains, despite opportunities for clarification and revisions, serious concerns about the retaining wall and the risk of damage to numerous surrounding properties. The proposed construction cannot be found to not be substantially more detrimental than the existing structure. At the October hearing the Board asked for clarifications on several concerns, including whether there is a plan to protect the wall in Middle Gully Road which we have not seen specifically. There were plans to contact neighbors and homeowners who wanted preconstruction surveys, plans to pay back homeowners whose properties may be damaged as a result of construction, clarification as to whether there is insurance to protect the abutters and whether the applicant has communicated with the Town about the Town's concerns regarding the stability of Middle Gully Road. All these concerns have not yet been taken care of.

**A. Gardner** – The depth of the excavation doubles the height of the Cliff; it goes below the water line which goes into the other issue which Sarah Alger mentioned last time about the septic system. How do you expand the septic system when you are already below the water line. I feel like there has been so little information provided as to whether to determine if it's going to be harmful to the neighborhood or not and I'm not sure how you could approve it without additional information.

**Arvay**- I do have a concern; you're talking about the cement wall to the west of the present structure but how about the cement wall to the north? That cement wall is on our property line as well as a fence, to the west of the present structure, and I don't know if there were plans to do anything with that section of the wall but that's on our property so I don't know how you could.

**McArdle**- By drilling the piles in and supporting the top of this excavation we are expecting little to no damage to anything around this excavation. All these things are based on deflections of the shoring system and the vibrations from installing it that was the concern for damage around surrounding properties.

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**McCarthy-** So if there is damage, what's the typical response?

**McArdle-** We are going to offer preconstruction service for the neighbors who want those. Even though we are doing a system that's braced and we are not causing any vibrations by its installation.

**McCarthy-** As for the wall on the North that meets up with 11 Front Street what are the plans for that wall?

**McArdle-** That is going to remain- nothing is changing with that. The attorney mentioned rubble wall damage- if it is damaged, we'll fix it. By tying the wall back, we are making it more stable.

**O'Mara-** I had asked several questions about insurance back when you were going to be using a vibratory tool but now that you're not I don't think that insurance is as important. But just to be clear the insurance will be provided by the homeowner, the builder, presumably by your office and anyone else that's working on the property.

**McArdle-** I can only speak for my company we have professional liability coverage.

**Mondani-** Can you address the neighbors' concerns about the depth?

**McArdle -** The bottom of this excavation is going to be an elevation of at least 7 if not higher than that, so that's roughly 10 feet below 8 Bank Street. That elevation is about 4 to 5 feet above state wide ground water at the site.

**Relly-** I am an abutter at 7 Front Street and I also see that a lot of things that have been asked at previous meetings have not been provided. This deep excavation build proposal next to Sconset's coastal bank puts way too much at risk. Potentially the collapse of the bank on gully road, the underlying water main infrastructure which supplies Codfish Park and of course damage to abutting properties.

**Richins-** We appreciate much of the stated improvements for the proposed system, monitoring repair work but it's difficult to have much confidence in them on how they will be executed and designed when we haven't seen it in writing beyond the statements that were made just now.

**Alger-** I just want to say that this is an enormous project that is going to have a big impact on this area, and it seems really poorly thought out and that bothers me on how this will play out. We keep hearing promises about they'll fix this and that. How do we know they even have the resources to back up these promises? They haven't provided any information about what they are doing with their septic system. Given all of that I just don't see how you can find that this project won't be more detrimental to the neighborhood.

**Suan-** I was most concerned about water and septic issues. This home is advertised as a one-bedroom room rental on VRBO sites and so adding more bedrooms will put great stress on it and there is no room for leech fields. I live at 2 Broadway and agree with the abutters that this is a dangerous change and sets a horrible precedent for what will happen in the future in Codfish Park with building.

**Van Duesen –** I just would like to say that the bank is a critical line of defense against sea level rise, flooding and land erosion and geologically it's part of the coastal bank of the eastern shore on the island irrespective of whether the conservation commission regulates it under the town's wetlands bylaw. Allowing this kind of excavation both beneath and into the coastal bank in this area is a terrible precedent and I think it clearly falls within your scope in terms of protecting the health, safety and general welfare of the inhabitants of Nantucket. So, for that reason I would ask you to deny it.

**Soeder-** As reflected in the comments of my neighbors over the past 14 months there's a very real risk associated with the proposed deep excavation regardless of whether it has vibration or not which impacts the stability of the Sconset bluff, the integrity of middle gully road as the emergency access to Codfish Park and the water supply to Codfish Park. The material submitted by the applicants does not address the real risks and concerns in writing. I hope you ensure that historic Sconset endures by denying this Special Permit.

**J.Gardner-** For two years now property owners in Sconset have followed the rules, numerous letters have been submitted to HDC, ZBA and Town Council voicing concerns over the potential damage that could occur should the demolition and dig related to 8 Bank Street be allowed to move forward . Our concerns are falling on deaf ears, it is totally bewildering. Why are we being ignored? It is not fair, and it is wrong. The scores of letters submitted to the HDC and ZBA have been well written about the dismay we feel over the loss of the existing structure and the potential for damage to the abutting properties above the site along Front Street. The owners of 8 Bank Street should cherish and appreciate the property they purchased as it is. Please do not approve this request.

**O'Mara-** What is the plan, if the ground water is higher than you expect and you notice it during construction.

**McArdle-** If we encounter higher ground water during construction which we don't anticipate. But if we did, we would have to dewater during construction. The basement has been designed with an under-drainage system below the slab. Any water that came up to the slab would be ejected out on to the site or to one side of the building.

**O'Mara-** Do you have a septic plan at this point?

**Wilson-** I represented the past owner of this property who was obligated to upgrade to a fully compliant septic system prior to transferring the property to the current applicants.

**Botticelli-** One bedroom or more than one bedroom?

**Wilson-** For a one bedroom its compliant and was installed in 2018.

**Botticelli-** Well the question is when you go to the basement and add a bedroom then that's another bedroom. It is the way the Board of Health will interpret it now.

**Wilson-** But It's not a bedroom.

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**McCarthy-** I thought that the applicants were planning on living here in this space and I thought there were more than two people in the family unit that were going to be living in this space.

**Wilson-** Well, they're married, he lives here year-round and works here on the island she works in Boston, and they have children. This is not their primary residence.

**McCarthy-** So where are the children going in the summer? If it's not a bedroom and there is more than one child. It was a bedroom, I have plans with two twin beds.

**Wilson-** Well that plan was eliminated and modified and now it's not a bedroom. But the Board of Health will have to weigh in on any septic change, not the Zoning Board.

**McCarthy-** I'm just curious has the plan for use of this property changed from what was originally presented to us.

**Wilson-** The only change is the elimination of any bedroom space that would have been below grade so that it is a compliant one-bedroom house.

**Botticelli-** I am only one member but I am not prepared to approve or deny this today. I would like to see further information as it relates to Geo Technical plans.

**Wilson-** Geo Technical plans for which component?

**Botticelli-** For tying the existing concrete wall back into the bank, where the new pilings are going to go, how it relates to the window wells. All that information has to be more clearly presented to us and give the neighbors' consultants the ability to read it and respond.

**Wilson-** I'm confused about the Zoning Board asking about information from the Board of Health as part of the Zoning Board's decision making.

**Botticelli-** I think because the public has brought up a very good concern about the septic system and its expandability and whether or not it's going to be able to service this building.

**Wilson-** There is no proposal before this Board or any Board to expand the septic system and there is no proposal to add bedrooms to this property. So, if the Board wants more information, one of the pieces of information is the opinion from the Board of Health on whether they are going to approve a building permit application?

**McCarthy-** Whether or not they consider the drawings for the basement a rep room or a bedroom. I think also what Mr. McArdle said about the drain and if there is run off, I think it would be helpful for the neighbors to know what the plan is.

**Wilson-** That was raised by Mr. O'Mara and Mr. McArdle said that part of the plan was for rainwater which is consistent with the abutters statement today about atmospheric conditions. Mr. McArdle's information suggests that ground water is at the closest 5 feet away from the lowest point of excavation and that there will be no need for dewatering the site during construction or close construction unless we saw a 5 plus or minus swing in ground water.

**Allen-** I just want to step back and reiterate that this is in front of the ZBA because of the 5 by 5 square foot area of this structure.

**Wilson-** That is correct, the small triangular portion of the roof plain that currently sits within the zoning setback is going to be by the end of the project a foot taller.

**Allen-** So if you were not asking for that you wouldn't even be in front of us?

**Wilson-** In fact if we shrunk the basement and didn't adjust the height of that, I don't think any zoning would be needed.

**Mondani-** And this is the point I made at the last meeting is that all this could be done except for the 5 by 5-foot thing, and I think we're expanding our scope. I understand the neighbors' concerns, but the homeowner has an engineer while they're bringing up concerns with no engineer. If the water table is above that level let's see it so that the engineers can dispute what they're claiming.

**Snell-** I think that the Board has asked for a lot of information over the past several months and you've been provided with all or most of that, a lot of it is way outside of your jurisdiction but I think it was helpful for you and the neighbors to hear it so they could voice their concerns in some way. The site plan review section of the by-law which is what a lot of this is about exempts single-family dwellings so none of that really applies to your review. If the new construction doesn't meet Board of Health regulations, they will deal with that, and state law says that you can't regulate the interior of a single-family dwelling so getting into the number of bedrooms is not something that the Zoning Board can regulate.

**McCarthy-** I thought that coming in today we would be making a decision, but I don't know that we're there. Lisa, you're interested in seeing more information based on the new plan of action.

**O'Mara-** Despite what Leslie said I would still like to hear what the Health Department has to say about it. I was planning on voting today before I came here and as I mentioned earlier, I'm happy to receive the information we've been waiting for and I'm leaning towards approving it, but I would rather wait.

Motion

**Motion to Continue to March 09, 2023.** (made by: O'Mara) (seconded)

Vote Carried unanimously.

### III. NEW BUSINESS

1. 10-22 Paul P. Moran & Jean M. Moran 4 Washington Avenue Santos

**CONTINUED to March 9, 2023**

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

2. 17-22 Nantucket Cottage Hospital 16 Vesper Lane Erickson

**CONTINUED to March 9, 2023**

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

3. 19-22 Pacaso, Inc 11A Meadow Lane Williams

**Requests to Withdraw without Prejudice**

Voting McCarthy, Botticelli, O'Mara, Allen, Mondani  
 Discussion Not opened at this time.  
 Motion **Motion to Withdraw without Prejudice.** (made by: Botticelli) (seconded)  
 Vote Carried unanimously

4. 01-23 & 03-23 Cueto, Francis E., Trustee of FAO Nominee Trust 23 & 29 Orange Street Beaudette

Applicant is seeking a Modification to previously issued Special Permits to remove a condition related to ground cover expansion. The applicant also requests that the Board grant the alteration of the preexisting nonconforming pool use on 23 Orange Street by allowing the applicant to site it on 29 Orange Street. The requested relief is the result of a lot line adjustment between the two properties and no physical changes are proposed to the existing structures. Locus is situated at 23 Orange Street and 29 Orange Street, shown on Assessor's Map 42.3.2 as Parcel 9 and 42.3.2 as Parcel 69, respectively. Evidence of the owner's title is recorded in Book 2 and Page 91 and as "A" in Book 7 and Page 23 with the Nantucket County Registry of Deeds. The sites are zoned Residential Old Historic (ROH).

Voting McCarthy, Brescher, O'Mara, Allen, Poor  
 Alternates Poor  
 Recused Botticelli  
 Documentation File with associated plans, photos and required documentation  
 Representing Rick Beaudette  
 Public None

Discussion (1:18) **Beaudette-** There is a pool on 23 Orange Street and all we are seeking to do is change the property line, so the pool is on 29 Orange Street. 23 Orange Street is a pre-existing non-conforming lot there is a special permit that exists on this property it's about 20 years old related to an addition that was done and a little bit of ground cover that was added and specifically relevant to this application is that there's a condition in that decision that says they can't increase ground cover without relief from this Board. There is also a pre-existing non-conforming pool on 23 Orange Street that was built somewhere around 2010 before the prohibition came into effect. 29 Orange Street my client has owned for about 10 years it is also pre-existing nonconforming it's an oversized lot that also has a special permit attached to it relative to an addition. The relief we are requesting by special permit number one with respect to 23 Orange Street we're asking to change that condition in the in the special permit to allow us to go to 49 percent ground cover when we take property away from 23 Orange Street and give it to 29 Orange Street that causes the ground cover to go somewhere from about 36 percent up to 49. The second request is relative to 29 Orange Street we have a pre-existing non-conforming pool we want to alter that pre-existing not performing use to allow it to be on 29 on that street.

**O'Mara-** Do any of the neighbors think it's more detrimental to the neighborhood?

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**Beaudette-** We haven't heard anything I don't know if anyone else has I assume not but I can't speak for them.

**Allen-** Does moving the lot line put the pool in any setbacks?

**Beaudette-** No, we've specifically kept it out of the setbacks intentionally.

**Brescher-** I will make a motion to Grant relief as requested to modify the existing special permit to increase the ground cover to increase it 49 percent on 23 and I would call it the validation of the swimming pool as pre-existing non-conforming.

**McCarthy-** So that's 23 and for 29 would you like to make a motion again John?

**Brescher-** I would move to approve the relief as requested.

Motion            **Motion to Approve relief as requested.** (made by: Brescher) (seconded)  
Vote Carried unanimously

5. 02-23     7 Laretta Lane LLC

7 Laretta Lane

Cohen

Applicant is seeking a Modification to previously issued Special Permits to remove a condition related to ground cover expansion. The applicant also requests that the Board grant the alteration of the preexisting nonconforming pool use on 23 Orange Street by allowing the applicant to site it on 29 Orange Street. The requested relief is the result of a lot line adjustment between the two properties and no physical changes are proposed to the existing structures. Locus is situated at 23 Orange Street and 29 Orange Street, shown on Assessor's Map 42.3.2 as Parcel 9 and 42.3.2 as Parcel 69, respectively. Evidence of the owner's title is recorded in Book 2 and Page 91 and as "A" in Book 7 and Page 23 with the Nantucket County Registry of Deeds. The sites are zoned Residential Old Historic (ROH).

|               |                                                               |
|---------------|---------------------------------------------------------------|
| Voting        | McCarthy, O,Mara, Botticelli, Allen, Mondani                  |
| Alternates    | Mondani                                                       |
| Recused       | None                                                          |
| Documentation | File with associated plans, photos and required documentation |
| Representing  | Steven Cohen                                                  |
|               | Ron Winters                                                   |
| Public        | None                                                          |

Discussion (1:28) **Cohen-** My client has a lot that is an unusual shape, and a significant portion of the lot is essentially unbuildable because of wetlands and intermittent stream. Before my client installed the solar array, I emailed the Zoning Enforcement Officer in 2019 and asked him under Mass General Law 48 Section 3 if the zoning setbacks would apply and he responded to me that all efforts should be made to comply with zoning setbacks but putting a solar array within the setback is not considered to be a violation of the Nantucket Zoning Bylaw. We applied to the HDC and got permission and applied to the Building Department and got a building permit and then we closed out that building permit in 2020. The Building Commissioner told us that he does consider zoning solar arrays to be required to comply with setbacks to the extent possible there are some exceptions, but he said that we needed to comply. We're seeking a Variance that is based on the shape and topography of the lot which renders most of the lot unbuildable and also the fact that it would cost 100,000 to \$150 000 to relocate the array.

**McCarthy-** Does anyone have any questions for the Building Commissioner in the audience?

**Mondani-** Is there any documentation in here that permitted the installation of these?

**Botticelli-** There's an email from Marcus on page 430 and then there's a building permit application and then there's the certificate of completion.

**McCarthy-**What's the intrusion in the setback Stephen?

**Cohen-** Because of the thin shape of the lot it's a very significant intrusion it's I think it's like a foot and a half from one side and five or ten feet on the other side.

**Botticelli-** I'm just curious, did they put it at that slight angle and not stay perpendicular to the road just because it was better exposure?

**Cohen-** Yes, for efficiency.

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**Botticelli-** I know the lot is extremely wet, there's no other buildable area other than where the house sits there'd be no other place to put an array.

**Allen-** It would cost a hundred plus thousand to move it from where it is to within the setbacks?

**McCarthy-** That's what it says on the email from the installer says for the estimate for relocation of the solar array that states that it would cost over a hundred thousand dollars forty to fifty for site prep trenching and repair the landscape so if you add that to the \$58,000 for the latest pricing and that was from January.

**Winters-** The actual installation would not fit in this trip right it's wider than the amount of land that would be in the setback so even if it wasn't uh facing the sun it wouldn't have fit in there when we applied for the building permit it was actually done through Ack Solar and Steven Cohen was assured by the zoning officer that it would be not a problem it would be in compliance or we would have dealt with it at the time because it was certainly a question of when we were doing it so I believe that the building inspector has signed off on it at that time and I think that not that they're planning on doing any building there but for the owner that would be purchasing the property depending on the determination of what the frontage of that property would be could further bring this up so we're trying to get this behind on this property that it's in zoning compliance through ZBA.

**Botticelli-** So I would only say that I would grant this 1.8 setback only because of the solar panels and no other structure.

**Cohen-** I think that condition is fine then it's limited to the existing structure there's no further intrusion and if the board wanted to require that the vegetation be maintained for screening that's also a good idea.

**McCarthy-** Lisa's made a motion to Grant the relief as requested with those conditions of no further intrusion and vegetative screening maintained.

**Botticelli -** I do want to make the point that this does have significant Wetlands, so it has a lot to do with the shape and topography of the lot.

**Cohen-**Madam chair I believe you have that language in your packet that you're supposed to use to make that motion.

**Botticelli-**I make the motion to approve the relief as requested due to the shape of the lot and soil conditions thereon relief for the setback provisions of section 189-16A by variance percent in bylaw section 139-32 to validate the solar array as it now sits with the conditions that no further change to the solar array nor structure is allowed in that area without further relief from the board and keeping the vegetation along the road for screening .

**McCarthy-** And that the setback intrusion is limited to just one.

Motion                **Motion to approve relief as requested**(made by: Botticelli) (seconded)

Vote                    Carried unanimously.

6. 04-23     David Stanley-Brown Trustee of Windmoor NT                    37 Chuck Hollow Road                    Williams  
Applicant is seeking relief by Variance pursuant to Nantucket Zoning By-law Section 139-16 (Intensity regulations). The applicant is seeking validation of an existing lot as separately marketable and buildable from abutting 39 Chuck Hollow Road. Locus is situated at 37 Chuck Hollow Road, shown on Assessor's Map 75, Parcel 108 and as Lot 602 on Land Court Plan 54004-25. Evidence of owner's title is registered on Certificate of Title No. 19732 at the Nantucket County District of the Land Court. The site is zoned Limited Use General-3 (LUG-3).

|               |                                                               |
|---------------|---------------------------------------------------------------|
| Voting        | Botticelli, O,Mara, Brescher, Allen, Mondani                  |
| Alternates    | Mondani                                                       |
| Recused       | McCarthy                                                      |
| Documentation | File with associated plans, photos and required documentation |
| Representing  | Linda Williams<br>Michael Wilson                              |
| Public        | Rand Smith<br>Barbara Tibbets-42 Chuck Hollow                 |

Discussion (1:41) **Williams-** Primarily in the 80s up to probably the mid to late 90s we saw a tremendous amount of these because the legal establishment wasn't necessarily aware that when you merge a you have two side-by-side Lots they're undersized one has a house

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or not and you have undeveloped land next to it they merge for zoning purposes even though these are L:and Court properties they have separate addresses, separate tax bills, separate identities. In this particular case this family always thought when they bought the lots separately in 1973 and 1974 there was no houses out there that particular owner bought the two lots and they transferred in a one title so they kept going in one title even though they were referred to separately in the title they referred to separately as far as the town was concerned as far as their addresses and tax bills which have always been separate so they do have separate identities and the variance is that the ZBA has never denied over time we've seen them and granted variance relief under financial hardship and topography of the lot type of thing to separate them make them separately marketable and buildable and that's why we're here now. A year-round couple wants to buy 37 and the family wants to keep 39 so now we have a problem because technically regardless of all their identity history that they are separate technically they have merged for no other purpose but zoning purposes that's why we're here to get them legally marketable in separate ownership.

**Wilson-** I think just the most illustrative depiction for the board is what Miss Williams referred to and it's a good GIS area plan shows all of the flintlock long wood Whitetail Chuck Hollow neighborhood Parson you know a lot if not super majority as you have in your packet are all consistently shaped and developed as what's before you what the applicant is before you take a look at the other side of the road I have a particular interest over there I live over there the wild west side where we have a lot of very small Lots on the from Gloucester all the way up to Arlington now all of them for the for the most part are developed save a few in between so if you look at the nature of the neighborhood the fact that we have year-round employees who want to uh year-round I'm sorry residents who have finally gotten an opportunity and I think you have a letter in there from the contract seller represented by other Council which explains their position on it and their concern and confusion about where they find themselves now will the relief being requested have us have any type of negative impact on this neighborhood and I would submit to you that if you look at how the neighborhood is developed um this is septic so to the extent Title Five Bears on your concerns the amount of development on this property is controlled by title V and I suppose if um if these contract sellers wanted to go the Covenant route this could be subdivided under the Covenant program similarly but thankfully my clients don't qualify under the Covenant program because they've been working hard and living here for the last decade plus I came across this property we'd like to build their year-round home here and I'd ask on that basis and to the extent the other information in the packet you need either read it in or if you want to stipulate that it's in the record and consider also the contract sellers request to the board as well.

**Alger-** These properties have been merged for a very long time this is exactly what merger is supposed to address it's supposed to merge lots to cure non-conformities this is specifically why we have mergers to reduce non-conformities and that's what has happened in this case. Your criteria for finding that a variance is appropriate includes a specific finding that owing to circumstances relating to the soil conditioned shape or topography of such land or structures and especially affecting circulator structures but not affecting generally the Zoning District in which it is located I don't see how in this particular case you can make a finding that there are soil condition shape or topography that affect this land but doesn't generally affect the Zoning District. Mr. Wilson just showed you the overview of the neighborhood and pointed out that there are all sorts of lots that fall into this exact same situation, so the lot is not unique it's not specifically affected by soil topography, and I just don't think that there's away for you to make the finding necessary to grant the variance.

**Williams-** I think Sarah just made our case, if you force the combining of these lots when they have been considered separate for 50 years now that would create a situation that is an anomaly because when you look at the other four or five vacant lots in there and they all have houses pending this would be the only one in the old subdivision that would be combined. This would create a massive financial hardship for this family who thought for estate purposes these were separate lots and could be divided out as separately marketable and buildable.

**O'Mara-** Leslie this is pre-existing non-conforming because of the Advent of Zoning?

**Snell-** I'm not sure if they're pre-existing non-conforming because they were created prior to zoning or if they were created when the zoning was different in Tom Nevers because Tom Nevers hasn't always been in a LUG 3 Zone.

**O'Mara-** The zoning was changed either it's it was done in 1972 or at some time.

**Snell-** They were valid pre-existing non-conforming lots, so they've merged.

**O'Mara-** Assuming they've merged, or they haven't merged is there any difference in the amount of ground cover that could be on these two? The number of bedrooms would probably be about the same depending on septic size?

**Snell-** The ground cover would be the same and the number of bedrooms because the Board of Health regulations are based on lot size.

**Modani-** Not that we can control this but, this is not being purchased to build a spec house or a rental?

**Williams-** No.

**O'Mara-** If the board is willing to approve this without a 3600 square footage limit on both properties and you know which may mean 1800 feet a lot seems like that's something and I personally don't need to make that condition but if that's what the board wants to do if you're heading towards voting for it, I'll support it.

**Williams-** I'd hate to say it, but it would be unfair considering how everybody else gets the 2000 square feet in Tom Nevers and the 10-foot setback because they're in an LUG 3 zone so it's an anomaly with Tom Nevers.

**Botticelli-** I do think that the zoning there did change it used to be 1500 square feet and then for whatever reason a couple years ago it got increased to 2000 which you know isn't necessarily a good thing, but you know there's more density instead of having two building or two dwellings you'll have four dwellings potentially.

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**Alger**-I just would like to clarify a few statements that have been made for the record the Dale Doctrine didn't come out of Tom it came out of the Woody Tash fabricator system I remember that one on North Liberty Street that's where that came from not that it matters but it didn't come from Tom Nevers these lots are not restricted to one bedroom per ten thousand square feet because they couldn't have IA systems and get bonus bedrooms maybe what that would be but it would be at least two if not good to eight yeah right probably get you to eight maybe nine bedrooms um they could have three dwellings per lot so tertiary with the tertiary as opposed to a total of three the ground cover you've already pointed out they do they do gain ground cover when they have the two separate lots so I think if you're going to bend over backwards to grant this relief despite what the bylaw says and what the clear state law is on the subject you should think about some restrictions either bedrooms dwellings ground cover all of that to make it so that there isn't such an impact on the neighborhood.

**Tibbetts**-The owners that she's representing at 5 Parsons Lane live behind me and their house is giant I don't know how many bedrooms I know there's a giant pool there's a giant tennis court and it was built behind me and I didn't even really know what was happening because I wasn't living here full time which I am now so I'm not sure why she's arguing about how big the properties are on for the income numbers. I think that's an important thing that we need to pay attention to right now based on all the things that are happening to this island I moved here because I love this small community and I think that we need to listen to the people that really want to work and live here.

**Williams**-Can I point out one more thing usually I do it conversely to how much ground cover you're allowed but 2000 square feet on an acre and a half gives you 58000 square feet of open space so how much impact is 2000 square feet going to have on this lot because no matter what he does he's still stuck with 2000 square feet like everybody else. I know from an HDC perspective I've seen people come back to get that extra 500 square feet on a garage apartment or you know some other thing a studio or something else or an office, so I mean everybody is beginning to take advantage of that 2000 square foot that's on a minimum of an acre to two acres in a LUG 3 zone.

**Allen**- I would like to make a motion to approve but to limit the newly subdivided lot to 1800 square feet per lot.

**Williams**-Even the one of the family's keeping yes I don't know what the how that impacts the existing you should be willing to leave them alone include that you only since one family owns it right now uh that they've got 3 600 feet and they can divide it up any way they want yeah they can't go over 2 000 on one lot obviously but it'd be two thousand and uh 1600 on the other one

**Botticelli**- I have less concern about ground coverage than I do six potential dwelling units on these two lots.

**Williams**- We don't want to do anything to 39 because they're keeping that, they didn't do anything wrong leave 39 alone because we don't know what their plans are over there, and I don't want to negatively impact that.

**Mondani**-I think the sellers should be restricted in some way because they're gaining this benefit.

**Williams**-They thought they had that all along for estate purposes and worked with a local attorney and were told these are two separate lots and they can always sell one out so your family can keep the other one. We understand that this is the third generation of this family but I don't want to negatively impact 39 because they have rights over there but if Rand who's getting 37 and it runs with if Rand sells it runs with the next owner it runs with the land if they have one dwelling unit and one pool and they're capped at 1800 square feet that's it two thousand that's it for them they're not going to a secondary dwelling they're not going to a tertiary dwelling but I don't want to do something to 39

**Brescher**-I think right, wrong, or otherwise these two are connected and I appreciate that we may not want to punish 39 in any way but by the same token the two are connected and I'm inclined to grant this with a reasonable restriction of some sort.

**Allen**-I'd like to make a motion to approve and with a condition of 37 only allowed to have 1800 square feet and one dwelling and a pool and with 39 being allowed the 2000 square feet with a limit of two dwellings.

**Snell** Can I ask the applicant a question because they've been saying that the one property is going to be retained by the family but their listings for 37 and 39 Chuck Hollow Road

**Williams**-I mean if the family needs to sell them, they need to sell them, but it has nothing to do with anything in here because we understood that the family was retaining it so I'm not I'm not making any other representations other than that and it's not relevant.

**Smith**-They're all in a row, they're all 1.5 acre lots except you would put this one would be a three-acre lot, and somebody could build a mansion with a pool and guest house and additional buildings so if this is left of the three it's going to look different than all the other homes that are there. I'm trying to say there's no equity in it then that they're all kind of cookie cutter one and a half and they're all allowed to have two thousand except for these two in the middle.

**Botticelli**- I'm just going to point out that the existing property that you're saying is going to look different only has the ground coverage of 1600 and something square feet at the moment so maybe we freeze it at that and then you won't look so odd.

**Mondani**-So you would prefer 2000 square feet on the new lot?

**Wilson**-I would just respectfully tell you that I represent the contract purchasers not the contract sellers and I'm not in a position to be able to bind 39 and I'd ask you to consider not binding 39 with respect to 37 in the overall arching goal of zoning to keep this neighborhood without any negative impact on it my clients want you to restrict no secondary dwelling no tertiary dwelling and just allow them the default ground cover ratio on both lots.

**Leslie**- Point of order I think there's a motion on the floor, but you all have sort of veered away from that.

**Allen**- Motion to approve and to have 37 and 39 be restricted to one dwelling unit each at 2000 square feet of ground cover per lot, and 1 pool per lot.

**Mondani**-I just want to amend that motion there's some language that I like, and I'll read it for you in one of the decisions which says we caution that the decision reached in this case is reached upon the fact set forth in here in particularly the good faith nature of the

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applicant's status and that we might well reach a different decision upon the facts presented by another case even if the history of the subdivision and conveyance were similar to that now before us.

Motion            **Motion to approve relief with conditions** (made by: Mondani) (seconded)

Vote                Carried unanimously.

7. 05-23     David Stanley-Brown Trustee of Windmoor NT                      39 Chuck Hollow Road                      Williams  
Applicant is seeking relief by Variance pursuant to Nantucket Zoning By-law Section 139-16 (Intensity regulations). The applicant is seeking validation of an existing lot as separately marketable and buildable from abutting 39 Chuck Hollow Road. Locus is situated at 39 Chuck Hollow Road, shown on Assessor's Map 75, Parcel 108 and as Lot 602 on Land Court Plan 54004-25. Evidence of owner's title is registered on Certificate of Title No. 19732 at the Nantucket County District of the Land Court. The site is zoned Limited Use General-3 (LUG-3).

Motion            **Motion to approve relief with conditions** (made by: Mondani) (seconded)

Vote                Carried unanimously.

**IV. OTHER BUSINESS**

1. None

**V. ADJOURNMENT**

Motion            **Motion to Adjourn at 3:30 pm.** (made by: Brescher) (seconded)

Vote                Carried unanimously

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

1. None

Submitted by:  
Nickesha Sheriff